

# Notice of the State Administration of Foreign Exchange on Issues Concerning the Administration of Foreign Exchange Donated To or By Domestic Institutions (China, 2010)

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Text of the Statute:

*Translated by Orange King at Beijing Yirenping Center.*

In order to improve the administration of donated foreign exchange and facilitate the donated foreign exchange receipts and payments, according to the *Regulation of the People's Republic of China on Foreign Exchange Administration* and other relevant provisions, we hereby notify you of the issues concerning the administration of foreign exchange donated to or by domestic institutions as follows:

1. The term "donation" as mentioned in this Notice refers to the gratuitous endowment and aid of legal foreign exchange funds between domestic institutions and overseas institutions or overseas individuals.

2. The receipts and payments of foreign exchange donated to or by domestic institutions shall comply with the laws and regulations and other relevant administrative provisions of China and shall not go against social morality or damage public interests and the legitimate rights and interests of other citizens.

3. The receipts and payments of foreign exchange of domestic institutions shall be transacted through a donated foreign exchange account, which shall be set up at the designated foreign exchange banks ("Banks") and incorporated into the foreign exchange account management system by the Banks.

Except as herein provided, the opening, use, altering and closure of the donated foreign exchange account shall be dealt with in accordance with the regulations on foreign exchange accounts under current account. The scope of receipts include donated foreign exchange from overseas and foreign exchange funds for the purpose of overseas donation (purchased or allocated from foreign exchange accounts under current account in the same name). The scope of payments include payments stipulated in the donation agreement and other donation payments.

The scope of receipts and payments of donated foreign exchange accounts of the representative offices within China of overseas non-governmental organizations include donated foreign exchange appropriated from their headquarter as well as the legitimate expenses of those organizations.

Where the donations occur between domestic enterprises and overseas for-profit institutions or overseas individuals, the opening, use, altering and closure of domestic enterprises's donated foreign exchange accounts shall be dealt with in accordance with the regulations on foreign exchange accounts under current account.

4. Domestic institutions shall present correlative documents as stipulated in this Notice for the examination and approval of the Banks to proceed the receipts and payments of foreign exchange donations.

5. Where the donations occur between domestic enterprises and overseas non-profit organizations, the domestic enterprises shall present the following documents so as to proceed in the Banks:

1) an Application(in which the domestic enterprises shall truthfully promise that the donation is not against national prohibitive regulation, that the transaction has, in accordance with relevant laws and regulations, been examined and filed in record, that the overseas institution is a non-profit institution, that the domestic enterprise shall strictly follow the agreement in making use of the donation and bear the legal responsibility thus caused. For the format of the Application, see Attachment I);

2) a copy of its business license;

3) a notarized donation agreement with the purpose of donation prescribed;

4) a certificate of registration of the overseas non-profit organization (with its Chinese translation attached);

5) Where the above materials fail to sufficiently establish the authenticity of the transaction, other materials required;

The donation between domestic enterprises and overseas for-profit institutions or individuals shall be dealt with in accordance with the regulations on cross-border investment and external credit or debt.

6. Where the donation is made to or by state organs at or above the county level and certain organizations that, according to relevant regulation provisions, do not have to register or are exempt from registration, they shall present the Application to proceed foreign exchange receipts and payments at the Banks. (For the list of such organizations, see Attachment II.)

7. The representative office established by the overseas non-governmental organization within China shall present the Application and the donation agreement between its headquarter and the Chinese Beneficiary so as to handle the entry of the donated foreign exchange.

8. Other domestic institutions not listed in Article 5, 6 or 7 of this Notice shall present the following documents so as to proceed the receipts and payments of donated foreign exchange:

(1) An Application(in which the domestic institution shall truthfully promise that the donation is not against national prohibitive regulation, that the transaction has, in accordance with relevant laws and regulations, been examined and filed in record, that the domestic institution shall strictly follow the agreement in making use of the donation and bear the legal responsibility thus caused.)

(2) a copy of the certificate of registration issued by relevant administrative departments

(3) A donation agreement with the purpose of donation prescribed

Where religious groups on the national level accept a donation of foreign exchange equivalent to or above 1 million yuan RMB, they shall also present the approval of accepting the donation issued by the State Administration for Religious Affairs. Where local religious groups and sites for religious activities such as temples, monasteries, mosques and churches accept a donation of foreign exchange equivalent to or above 1 million yuan RMB, they shall also present the approval of accepting the donation issued by its Provincial People's Government.

9. Where domestic institutions make a donation to overseas, they shall, in addition to the correlative documents stipulated in this Notice, submit as in accordance with relevant regulation provisions the *Tax Certificate for Foreign Payments under Trade in Services, Benefits, Current Transfer and Some Capital Items*.

10. In processing the receipts and payments of donated foreign exchange for domestic institutions, the Banks shall examine the documents submitted according to relevant regulation provisions and report to local SAFE departments suspicious and unusual cases in a timely manner.

The Banks shall indicate on its examination and approval the date and amount of the transaction with its official chop for business. All correlative documents shall be kept for five years for future reference.

11. The SAFE departments shall in accordance with relevant laws and regulations supervise and administer the receipts and payments of donated foreign exchange . They shall further enhance off-site supervision of the donations.

12. Violations of this Notice and correlative foreign exchange administrative regulations shall be punished in accordance with *Regulation of the People's Republic of China on Foreign Exchange Administration* and other relevant regulations.

13. This Notice shall enter into force as of March 1, 2010. In case of any contradiction with previous regulations, this Notice shall prevail.

On receiving this Notice, all branches of the SAFE shall transmit it promptly to the sub-branches, city commercial banks, rural commercial banks and foreign-funded banks under their jurisdiction. All Chinese-funded Banks shall promptly forward the Notice to their branches. Any problem encountered during the implementation shall be fed back to the SAFE in a timely manner.

Attachment I Application for Receipts and Payments of Foreign Exchange Donation by Domestic Enterprises

Attachment II List of Certain Organizations Exempt from Registration According to the Ministry of Civil Affairs

December 25, 2009

Attachment I.

**Application for Receipts and Payments of Foreign Exchange Donation by Domestic Enterprises**

Bank :

The Enterprise hereby applies to receive/pay donated foreign exchange in the amount of\_, mainly for the purpose of\_.

The Enterprise solemnly promises, that the receipt/payment of the donated foreign exchange is not against relevant national prohibitive regulations, that the transaction has, in accordance with relevant laws and regulations, been examined and filed in record, that the overseas institution is a non-profit institution. The Enterprise shall strictly follow the donation agreement in making use of the donation and bear the legal responsibility thus caused.

Contact Person: Contact Phone Number:

The Enterprise: (With its Official Chop/Seal)

Date: Year Month Day

Attachment II

**List of Certain Organizations Exempt from Registration According to the Ministry of Civil Affairs**

1. Organization that took part in the Chinese People's Political Consultative Conference:

All-China Federation of Trade Unions、 China Communist Youth League、 All-China Women Federation、 China Association for Science and Technology、 All-China Federation of Returned

Overseas Chinese、 All-China Federation of Taiwan Compatriots。 All-China Youth Federation、 All-China Federation of Industry and Commerce。

2. Organizations that are exempt from registration according to the State Council:

China Federation of Literary and Art Circles、 China Writers Association、 All-China Journalists' Association、 Chinese People's Association for Friendship with Foreign Countries、 Chinese People's Institute of Foreign Affairs、 China Council for the Promotion of International Trade、 China Disabled Persons' Federation、 China Soong Ching Ling Foundation、 China Law Society、 Red Cross Society of China、 China Society for the Study of Ideological and Political Work among Workers and Staff、 Western Returned Scholars Association、 Huangpu Military Academy Fellow-Student Association、 National Association of Vocational Education of China。

3. Eleven Artists' Associations under China Federation of Literary and Art Circle:

Chinese Theatre Association、 China Film Association、 Chinese Musicians Association、 China Artists Association、 Chinese Ballad Singers Association、 China Dancers Association、 Chinese Folk Literature and Art Society、 China Photographers Association、 China Calligraphers Association、 China Acrobats Association、 China Television Artists Association。

4. All Provincial, Autonomous Regional, and Municipal-level Federations of Literary and Art Circle and Writers Associations