

China - Measures for the Control of Provision of Security to Foreign Parties by Organizations, 1996

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Measures for the Control of Provision of Security to Foreign Parties by Organizations within the People's Republic of China (Promulgated by the People's Bank of China on September 25, 1996)

Article 1

These Measures are formulated in accordance with the Law of the People's Republic of China on Security and the provisions of the relevant administrative regulations on foreign exchange control of the State in order to promote foreign economic and technological cooperation, to support development of foreign trade, to promote export of labor and import of advanced foreign technology, equipment and funds, to ensure the smooth development of foreign-related financial activities, to define the ambits for the provision of security to foreign parties and to strengthen the control over provision of security to foreign parties.

Article 2

Provision of security to foreign parties as mentioned herein refers to the provision by organizations within the People's Republic of China (except foreign-invested financial institutions within the People's Republic of China, hereinafter referred to as the "Security Provider") of guarantees in the form of letters of guarantee, standby letters of credit, promissory notes and bills of exchange, of mortgages of property stipulated under Article 34 of the Law of the People's Republic of China on Security, of pledges of moveable property stipulated under Section 1 of Chapter 4 of the Law of the People's Republic of China on Security and of the rights stipulated under Article 75 of Section 2 of the Law of the People's Republic of China on Security, to organizations outside the People's Republic of China or foreign-invested financial institutions within the People's Republic of China (creditor or beneficiary, hereinafter referred to as the "Creditor") as undertakings that when the debtor (hereinafter referred to as the "Secured Party") fails to repay its debts as provided for in a contract, the Security Provider will perform its obligation to repay the debts. Security to foreign parties include:

- (i) finance security;
- (ii) finance lease security;
- (iii) security under compensation trade arrangements;
- (iv) security in connection with contracted projects outside the People's Republic of China;
- (v) other security with a foreign debt nature. A Security Provider shall not grant security to foreign parties in the form of lien or deposit. Security provided to foreign-invested financial institutions within the People's Republic of China shall be deemed as security to foreign parties.

Article 3

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The People's Bank of China authorizes the State Administration of Foreign Exchange and its branches and sub-branches (hereinafter referred to as "SAFE") as the authority for the control of provision of security to foreign parties. SAFE shall be responsible for the examination and approval, control and registration of security to foreign parties.

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Article 4

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The Security Providers stipulated by these Measures are:

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(i) financial institutions (excluding foreign-invested financial institutions) approved with the authority to engage in business of providing security to foreign parties;

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(ii) non-financial enterprises with the status of legal persons, including domestic enterprises and foreign investment enterprises, which have the ability of repaying debts in place of the debtors.

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Except as approved by the State Council in order to utilize loans from foreign governments or international economic organizations for on-lending purposes, State organizations and units shall not provide security to foreign parties.

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Article 5

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The aggregate sum of the outstanding amount under security to foreign parties, the outstanding amount under security in foreign exchange within the People's Republic of China and the outstanding amount of foreign exchange debts of a financial institution shall not exceed 20 times the amount of its own foreign exchange funds.

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The outstanding amount under security to foreign parties provided by a non-financial enterprise-legal person shall not exceed 50% of its net assets and shall not exceed its foreign exchange income of the preceding year.

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Article 6

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A domestic enterprise may only provide security to foreign parties for foreign debts of its direct subsidiaries or for foreign debts of an enterprise in which it has a share holding up to the proportion of its investment in such enterprise.

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When a trade type domestic enterprise provides security to foreign parties, the ratio of its net assets to total assets shall not in principle be less than 15%.

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When a non-trade type domestic enterprise provides security to foreign parties, the ratio of its net assets to total assets shall not in principle be less than 30%.

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Article 7

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A Security Provider shall not provide security to foreign parties for enterprises which incur losses in respect of their operations.

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Article 8

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When a Security Provider provides security to foreign parties for foreign investment enterprises (excluding wholly foreign-owned enterprises), it shall insist on the principle of sharing risk and profit, at the same time the application of the foreign loan being secured shall comply with the State industrial policy and the foreign loan shall not be converted into Renminbi* for use without approval.

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A Security Provider shall not provide security to foreign parties in respect of foreign parties' capital contribution to the registered capital of foreign investment enterprises.

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Save for foreign investment enterprises, a Security Provider shall not provide security to foreign parties for the foreign debts in respect of its part of investment owed by foreign investment enterprises.

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Article 9

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When examining and approving the provision of security to foreign parties by a Security Provider for a trade type enterprise outside the People's Republic of China, SAFE shall examine and investigate the ambit of trade, the asset-debt ratio and the profit and loss situation of the Secured Party to ascertain the upper limit of security to foreign parties that shall be acceptable to the Secured Party.

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When examining and approving the provision of security for foreign parties by a Security Provider for a contracted project type enterprise outside the People's Republic of China, SAFE shall examine and investigate the quantity of the contracted project, the risk of the project, the asset-debt ratio and the profit and loss situation of the Secured Party, to ascertain the upper limit of security to foreign parties that shall be acceptable to the Secured Party.

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Article 10

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The limits of the authority to examine and approve security to foreign parties:

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1. the provision of security to foreign parties for domestic enterprises within the People's Republic of China and the provision of security to foreign parties for foreign investment enterprises of a term of up to one year (including one year) shall be submitted to and examined and approved by SAFE of the province, autonomous region, municipality directly under the Central Government, municipality with independent planning power or special economic zone where the Security Provider is located;

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2. the provision of security to foreign parties for foreign investment enterprises for a

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term of more than one year (excluding one year)and the provision of security to foreign parties for organizations outside the People's Republic of China shall be submitted to and pre-examined by the branch of SAFE of the province, autonomous region, municipality directly under the Central Government, municipality with independent planning power or special economic zone where the Security Provider is located and then be submitted by that branch of SAFE to the State Administration of Foreign Exchange for examination and approval.

Article 11

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When a Security Provider conducts the application procedures for security examination and approval, it shall provide the following materials or part thereof to SAFE:

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(1)the approval documents for the feasibility study report of the secured project and other approval documents;

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(2)a balance sheet of the Security Provider which has been audited by a registered accountant(if the Security Provider is a group company, it shall provide the consolidated balance sheet and its own balance sheet);

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(3)a balance sheet of the Secured Party which has been audited by a registered accountant;

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(4)a letter of intent in respect of the contract of security;

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(5)the contract or the letter of intent in respect of the principal debt under the secured project and other related documents;

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(6)the materials stipulated under Article 8 and Article 9 of these Measures;

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(7)other materials required by SAFE.

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Article 12

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A Security Provider may provide security to foreign parties only after examination by and approval of SAFE.

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Article 13

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When a Security Provider provides security to foreign parties, it shall enter into a written contract with the Creditor and the Secured Party to stipulate the following rights and obligations of the Security Provider, the Creditor and the Secured Party:

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(1)the Security Provider has the right to monitor the financial and asset conditions of the Secured Party;

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(2)after the provision of security to foreign parties by the Security Provider, if the Creditor and the Secured Party need to amend the contract being secured, the consent of the Security Provider shall be obtained and the Security Provider shall report the

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amendments to SAFE for examination and approval; in the absence of the consent of the Security Provider and the approval of SAFE, the Security Provider shall be released automatically from its security obligations;

(3)after the provision of security to foreign parties by the Security Provider and within the validity period of the contract of security, the Security Provider shall perform its obligations in accordance with the contract of security. After the Security Provider has performed its obligations, it shall have the right to seek compensation from the Secured Party; 53

(4)after the provision of security to foreign parties by the Security Provider and within the validity period of the contract of security, if the Creditor fails to perform its obligations in accordance with the provisions of the debt contract, the Security provider shall automatically be released from its security obligations; 54

(5)the Security Provider has the right to demand the Secured Party to implement counter-guarantee measures or to provide corresponding security over assets; 55

(6)the Security Provider has the right to receive the agreed security fee. 56

Article 14 57

After the provision of security to foreign parties by the Security Provider, the Security Provider shall register the security with SAFE of the place where it is located. 58

After provision of security to foreign parties by a non-financial institution, it shall, within 15 days from the date of establishment of the contract of security, complete the "Provision of Security to Foreign Parties Registration Form" at the SAFE of the place where it is located and obtain "Certificate of Registration for the Provision of Security to Foreign Parties"; in respect of the foreign exchange required to be paid for the performance of the contract of security, the remittance of which shall be verified by SAFE of the place where it is located and the outstanding amount of the security and the outstanding amount of the debt shall be reduced. 59

For financial institutions, a system of periodic monthly registration shall be implemented; financial institutions shall within 15 days after the end of each month complete "Feedback Forms for Provision of Security to Foreign Parties" to report the security obligations in the preceding month. 60

Article 15 61

If an extension is required upon the expiry of the security period, the Security Provider shall, within 30 days prior to the maturity date of the debt, conduct application procedures for extension at SAFE of the place where it is located. SAFE shall conduct examination and give approval within the limits of authority stipulated in Article 10 of these Measures. 62

Article 16

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A Security Provider which is a non-financial institution shall, within 15 days of the date on which the debt being secured has matured or the security obligations having been fully performed or the date of occurrence of any event terminating the contract of security, return the "Certificate of Registration for the Provision of Security to Foreign Parties" to the issuing SAFE and conduct cancellation procedures. A financial institution shall conduct cancellation procedures one monthly basis.

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Article 17

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If a Security Provider provides security to foreign parties without approval, the contract of security shall be invalid.

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If a Security Provider provides security to foreign parties without approval or the Security Provider fails to register the security after its provision of security to foreign parties, SAFE shall, according to circumstances, give warnings, circulate notices of criticism of, or suspend or revoke the Security Provider's business of providing security to foreign parties.

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Article 18

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These Measures shall apply to the provision of counter-guarantees to foreign parties.

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Article 19

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These Measures shall be in force from 1st October 1996. At the same time, the Measures for the Control of the Provision of Foreign Exchange Guarantees to Foreign Creditors by Organizations within the People's Republic of China promulgated on the 26th of September 1991 shall be repealed. The State Administration of Foreign Exchange shall be responsible for the interpretation of these Measures.

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