

CIRCULAR OF THE STATE ADMINISTRATION OF FOREIGN EXCHANGE ON ISSUES CONCERNING THE ADMINISTRATION OF DONATIONS IN FOREIGN EXCHANGE

国家外汇管理局关于境内机构捐赠外汇管理有关问题的通知

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为完善捐赠外汇管理，便利捐赠外汇收支，根据《中华人民共和国外汇管理条例》及其他相关规定，现将境内机构捐赠外汇管理有关问题通知如下

一、本通知所称的捐赠是指境内机构与境外机构或境外个人之间无偿赠与及援助合法外汇资金的行为。

二、境内机构捐赠外汇收支必须遵守我国法律法规及其他相关管理规定，不得违背社会公德，不得损害公共利益和其他公民的合法权益。

三、境内机构应当通过捐赠外汇账户办理捐赠外汇收支。外汇指定银行（以下简称银行）应当为境内机构开立捐赠外汇账户，并纳入外汇账户管理信息系统进行管理。

除本通知另有规定外，捐赠外汇账户的开设、使用、变更、关闭按照经常项目外汇账户管理相关规定办理，其收入范围是：从境外汇入的捐赠外汇资金、从同名经常项目外汇账户或购汇划入的用于向境外捐赠的外汇资金；支出范围是：按捐赠协议约定的支出及其他捐赠支出。

境外非政府组织境内代表机构捐赠外汇账户收支范围是：境外非政府组织总部拨付的捐赠项目外汇资金及其在境内的合法支出。

境内企业接受或向境外营利性机构或境外个人捐赠，其捐赠外汇账户的开设、使用、变更、关闭按照资本项目外汇账户管理相关规定办理。

四、境内机构应按照本通知规定，提交相关单证并经银行审核通过后，方可办理捐赠外汇资金的入账及对外支付手续。

五、境内企业接受或向境外非营利性机构捐赠，应持以下单证在银行办理：

For the purpose of realizing the administration of donations in foreign exchange and facilitating the receipt and payment of donations in foreign exchange, and pursuant to the Regulations of the People's Republic of China on Foreign Exchange Administration and other relevant laws and regulations, the relevant issues concerning administration of donations in foreign exchange by domestic institutions are hereby promulgated:

Article 1. Donations here in refer to free donations and aid of legal foreign exchange funds between domestic institutions and overseas institutions/individuals.

Article 2. Donations in foreign exchange by domestic institutions must be conducted in compliance with the laws and regulations and other relevant administrative rules of the People's Republic of China, and shall not be in violation of social morality, nor be detrimental to the public interest and legal rights and interests of other citizens.

Article 3. Domestic institutions shall handle donations in foreign exchange via separate foreign exchange accounts for donations. Designated foreign exchange banks (hereinafter referred to as Banks) shall open accounts hereof for domestic institutions, and bring them under the administration of the foreign exchange account administration information system.

Unless otherwise stipulated in the Circular, the opening, use, alteration, and closing of foreign exchange accounts for donations shall be subject to the relevant regulations of foreign exchange administration for current accounts. The income of the accounts hereof shall include: donated foreign exchange funds remitted inward from overseas countries/regions and foreign exchange funds for donation to overseas countries/regions that have been transferred from the foreign exchange accounts of the current accounts under the same name or via foreign exchange purchases. Expenditures hereof shall include donations agreed upon in donation agreements as well as other donation expenditures.

Income/expenditure of foreign exchange accounts for donations by domestic representative institutions of overseas non-governmental organizations (NGOs) shall include foreign exchange funds for donations to projects agreed upon by the general headquarters of overseas NGOs and for the legal expenditures incurred in China.

In the event that domestic enterprises accept/make donations from/to overseas profit-making institutions or overseas individuals, the opening, use, alteration, and closing of their foreign exchange accounts for donations shall be subject to the relevant regulations concerning the administration of foreign exchange accounts under the current account.

(一) 申请书(境内企业在申请书中须如实承诺其捐赠行为不违反国家相关禁止性规定,已按照国家相关规定办理审批备案等手续,与其发生捐赠外汇收支的境外机构为非营利性机构,境内企业将严格按照捐赠协议使用资金,并承担由此产生的法律责任。格式见附件1);

(二) 企业营业执照复印件;

(三) 经公证并列明资金用途的捐赠协议;

(四) 境外非营利性机构在境外依法登记成立的证明文件(附中文译本);

(五) 在上述材料无法充分证明交易真实性时,要求提供的其他材料。

境内企业接受或向境外营利性机构或境外个人捐赠,按照跨境投资、对外债权债务有关规定办理。

六、县级以上(含)国家机关、根据有关规定不登记和免于社团登记的部分团体

(名单见附件2)接受或向境外捐赠,应持申请书在银行办理外汇收支手续。

七、境外非政府组织境内代表机构凭申请书、境外非政府组织总部与境内受赠方之间的捐赠协议办理外汇入账手续。

八、除本通知第五、六、七条规定之外的其他境内机构办理捐赠外汇收支,应向银行提交以下单证:

(一) 申请书(境内机构在申请书中须如实承诺该捐赠行为不违反国家相关禁止性规定,已按照国家相关规定办理审批备案等手续,并承担由此产生的法律责任);

(二) 有关管理部门颁发的登记证书复印件;

(三) 列明用途的捐赠协议。

全国性宗教团体一次性接受等值100万元人民币以上(含)的捐赠外汇收入,还应提交国家宗教事务局批准接受该笔捐赠的证明文件;寺院、宫观、清真寺、教堂等宗教活动场所和地方宗教团体一次性接受等值100万元人民币以上(含)的捐赠外汇收入,还须提交所在地省级人民政府批准接受该笔捐赠的证明文件。

九、境内机构向境外捐赠,除按本通知规定提交相关单证外,还应按有关规定提交《服务贸易、收益、经常转移和部分资本项目对外支付税务证明》。

十、银行为境内机构办理捐赠外汇收支,应按规定审核相关单证,并及时向所在地外汇管理部门报告可疑或异常捐赠外汇收支信息。

银行应在审核单证上注明办理日期、金额并加盖业务印章后,留存相关单证五年备

Article 4. Domestic institutions shall not carry out the account procedures for entry and outward payments of donated foreign exchange funds unless the relevant materials have been provided and approved by the banks in compliance with the Circular.

Article 5. In the event of accepting/making donations from/to overseas non-profit institutions by domestic enterprises, the domestic enterprises shall provide the following materials to the banks:

(1) An application. (In the application the domestic enterprises must truthfully guarantee and affirm that their donations shall not be in violation of any relevant prohibitions of the state, that all procedures such as approval and filing have been conducted in line with the relevant regulations of the state, that the overseas institutions from/to which they accept/make donations are non-profit institutions, and that the domestic enterprises shall use the donated funds in strict accordance with the donation agreements and shall be held legally responsible for any issues arising therefrom. See Annex 1 for the format);

(2) A photocopy of the business license of the enterprise;

(3) A notarized donation agreement specifying the purpose of the fund;

(4) Supporting documents proving the legal overseas registration and establishment of the overseas non-profit institutions (accompanied by Chinese translations);

(5) Other required materials when the aforesaid materials fail to sufficiently prove the validity of the transaction.

When domestic enterprises accept/make donations from/to overseas profit-making institutions or overseas individuals, the relevant procedures shall be conducted in line with the relevant regulations on cross-border investments and external liabilities and claims.

Article 6. When donations are made/accepted by government organs at or above the county level and some social organizations (see Annex 2 for the list) that do not need to register or that are exempt from social organization registration according to the relevant regulations, the relevant procedures for receipt and payment of foreign exchange shall be carried out with the aforesaid application at the banks.

Article 7. Domestic representative institutions of overseas NGOs shall carry out the procedures for account entry of foreign exchange with the aforesaid application and the donation agreement between the general headquarters of the overseas NGO and the domestic party receiving the donation.

Article 8. When domestic institutions other than those prescribed in Article 5, 6, and 7 herein carry out receipt and payment of donations in foreign exchange, the following materials shall be provided to the banks:

(1) An application. (In the application the domestic enterprises must truthfully guarantee and affirm that their donations shall not be in violation of any relevant prohibitions of the state, that they have carried out all procedures, such as the approval and filing in compliance with the relevant regulations of the state, and that they shall be held legally responsible for any issues arising therefrom);

(2) A photocopy of the registration certification issued by the relevant authorities;

(3) The donation agreement specifying the purpose of the fund.

When national religious organizations accept donations in foreign exchange equivalent to RMB 1,000,000 or more in a lump sum, the supporting documents for the approval of the donation hereof by the State Administration for Religious Affairs shall also be provided. When religious sites, such as Buddhist temples, Taoist temples, mosques and

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十一、外汇管理部门应依法对捐赠外汇收支进行监督管理，并加强对捐赠外汇收支的非现场监管。

十二、对违反本通知及相关外汇管理规定的行为，依照《中华人民共和国外汇管理条例》等有关规定予以处罚。

十三、本通知自 2010 年 3 月 1 日起执行。以往规定与本通知规定相抵触的，按本通知执行。

各分局收到本通知后，应尽快转发辖内支局、城市商业银行、农村商业银行、外资银行；各中资外汇指定银行应尽快转发所辖分支机构。执行中如遇问题，请及时向国家外汇管理局反馈。

Source: State Administration of Foreign Exchange,

“国家外汇管理局关于境内机构捐赠外汇管理有关问题的通知”，(accessed June 22, 2011)

churches, and local religious organizations accept donations in foreign exchange equivalent to RMB 1,000,000 or more in a lump sum, supporting documents for approval of the donation hereof by the peoples government at the provincial level in the places where the aforesaid sites and organizations are located shall also be provided.

Article 9. In the event of donations to overseas countries/regions by domestic institutions, other than such materials as prescribed herein, the Tax Certificates for Foreign Payments under Trade in Services, Profits, Current Transfers, and Partial Capital Accounts shall also be submitted according to the relevant regulations.

Article 10. In the event of carrying out the receipt and payment of donations in foreign exchange for domestic institutions, the banks shall examine the relevant materials according to the relevant regulations and report in a timely manner to the administrative foreign exchange authorities in the locality where they are located any information regarding suspicious or abnormal receipt/payment of donations in foreign exchange.

The banks shall, on the examination documents, specify the date and amount of the transaction and affix their business seal. The relevant documents shall be preserved in the archives for a period of 5 years for future reference.

Article 11. The Administrative foreign exchange authorities shall, according to the relevant laws, supervise and administer the receipt and payment of donations in foreign exchange according to the laws and regulations and shall enhance the off-site supervision thereof.

Article 12. Conduct in violation of the Circular and the relevant regulations on foreign exchange administration shall be punished in accordance with such regulations as the Regulations of the People's Republic of China on Foreign Exchange Administration.

Article 13. This Circular shall enter into force as of March 1, 2010. Should there be any difference between previous regulations and this Circular, this Circular shall prevail.

Upon receipt of this Circular, the branches of the SAFE in a timely manner shall forward it to their subdivisions, city commercial banks, rural commercial banks, and foreign banks within their jurisdiction. The Chinese-funded designated foreign exchange banks shall in a timely manner forward it to their branches and divisions. In the event of any problem arising from implementation, kindly provide feedback to the SAFE promptly.

Source: State Administration of Foreign Exchange, “Circular of the SAFE on Relevant Issues Concerning the Administration of Donations in Foreign Exchange by Domestic Institutions,” (accessed June 22, 2011)