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—Policy Issues for Foreign Exchange Administration—

Mizuho China Business Express

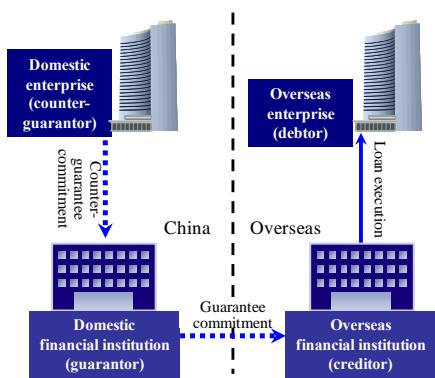
(No. 327)

State Administration of Foreign Exchange Issues New Rules on the Provision of Cross-border Guarantees, Exempts Performance of Guarantee Obligations up to a Certain Amount from Inclusion in the External Debt Quota

On May 12, 2014, the State Administration of Foreign Exchange (SAFE) issued the [Circular of the SAFE on Releasing the Provisions on Foreign Exchange Administration for Cross-border Guarantees](#) (Huifa [2014] No. 29; hereinafter referred to as “Circular No. 29”). Circular No. 29, which takes effect from June 1, 2014, consolidates the foreign exchange administration regulations governing the provision of cross-border guarantees, including “Overseas Loans under Domestic Guarantee” (so-called “**Nei Bao Wai Dai**”) where a domestic financial institution or enterprise guarantees the repayment of bank loans extended to an overseas enterprise, and “Domestic Loans under Overseas Guarantee” (so-called “**Wai Bao Nei Dai**”) where an overseas financial institution or enterprise guarantees the repayment of bank loans extended to a domestic enterprise.

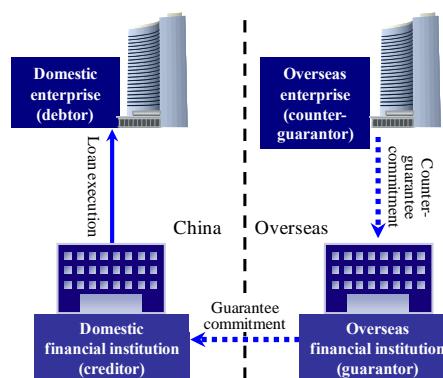
Circular No. 29 provides for the implementation of a registration-based approach to the administration of Overseas Loans under Domestic Guarantee and Domestic Loans under Overseas Guarantee. It removes quota management and case-by-case pre-approval requirements for Overseas Loans under Domestic Guarantee, and opens up Domestic Loans under Overseas Guarantee to Chinese-funded enterprises. In addition, it counts the short-term external debt incurred through the performance of guarantee obligations as net assets thereby exempting such amounts from borrowing gap (external debt quota) administration.

Fig. 1: A Basic Overseas Loan under Domestic Guarantee



(Compiled by China Advisory Division)

Fig. 2: A Basic Domestic Loan under Overseas Guarantee



(Compiled by China Advisory Division)

This article explains the new regulations on cross-border guarantees on the basis of the annexes to Circular No. 29, namely: the Provisions on Foreign Exchange Administration for Cross-border Guarantees (hereinafter referred to as the “Provisions”) and the Operational Guidelines for Foreign Exchange Administration for Cross-border Guarantees (hereinafter referred to as the “Guidelines”).

All Overseas Loans under Domestic Guarantee to be administered by registration

Circular No. 29 states explicitly that guarantors are permitted to enter into an Overseas Loan under Domestic Guarantee contract on their own without seeking prior approval from the SAFE (Article 8 of the Provisions). This effectively removes the quota management of banks, the requirement for case-by-case approval on the guarantees by non-bank financial institutions or enterprises, and the various criteria imposed on guarantors and guarantees that were provided for by the *Circular Concerning Issues related to the Management of External Guarantees by Domestic Institutions* (Huifa [2010] No. 39, which is repealed with the entry into force of Circular No. 29).

Instead, guarantors must complete registration with the SAFE after signing of an Overseas Loan under Domestic Guarantee contract (Article 9 of the Provisions). Where the guarantors are banks, contractual data is to be reported through the capital account information system; where the guarantors are non-bank financial institutions or enterprises, the registration procedures are to be completed with the local SAFE within 15 working days after signing of the guarantee contract. De-registration procedures need to be completed in respect of Overseas Loans under Domestic Guarantee following the expiration of a guarantee, the repayment by the debtor of the debt, or the performance of the guarantee (Article 13 of the Provisions).

Circular No. 29 states that the use of funds under an Overseas Loan under Domestic Guarantee (i.e., the bank loans that will be the object of the guarantee) is limited to expenditures within the normal business scope of overseas enterprises (debtors), and prohibits their use in false trade transactions and speculative transactions (Article 11 of the Provisions). In addition, funds under an Overseas Loan under Domestic Guarantee that are used by an overseas enterprise (debtor) to borrow funds, make equity investment or invest in securities in China are not allowed to be brought back into China, directly or indirectly (see Part I, Article 4 of the Guidelines for specific examples). The domestic financial institution or enterprise that is to serve as guarantor has a duty to examine the debtor, the use of funds under guarantee, and the relevant trading background, and to supervise the proper use of such funds (Article 12 of the Provisions).

In the event of the performance of a guarantee, where the guarantor is a bank, it may directly handle the procedures for external payments under the performance of guarantee obligations. Where the guarantor is a non-bank financial institution or enterprise, it may also handle the procedures for foreign exchange purchases and external payments directly with banks upon the strength of the guarantee registration document, but may not enter

into any new Overseas Loan under Domestic Guarantee contract until such time as the overseas debtor has paid off the debt arising from the performance of guarantee obligations (Article 14 of the Provisions). Note that domestic guarantors and counter-guarantors are required to complete the registration procedures for external claims following the performance of guarantee obligations (Article 15 of the Provisions).

**End to approval requirement for external payments of guarantee fees
for Domestic Loans under Overseas Guarantee**

Where a domestic enterprise obtains a loan or credit limit from a domestic financial institution, it may pledge a guarantee provided by an overseas institution or individual to the domestic financial institution, and enter into a guarantee agreement without seeking prior approval from the SAFE (Article 17 of the Provisions). However, the Provisions also state that all the conditions listed in the box at right must be fulfilled at the time of signing a Domestic Loan under Overseas Guarantee contract, and clarifies the scope of the relevant business.

Contractual requirements for domestic loans under overseas guarantee

- ✓ The debtors are non-financial institutions registered and operating within the PRC
- ✓ The creditors are financial institutions registered and operating within the PRC
- ✓ The object of the guarantee is a domestic or foreign currency loan (excluding an entrusted loan) or a binding credit limit, which is provided by the financial institution
- ✓ The form of the guarantee complies with the domestic and overseas laws and regulations

(Article 17 of the Provisions)

Domestic financial institutions as creditors must collectively submit data to the SAFE following the signing of a Domestic Loan under Overseas Guarantee contract (Article 18 of the Provisions), and thus the domestic enterprises as debtors are not required to complete registration and other relevant procedures. At the same time, **domestic debtors must complete the registration procedures for short-term external debt with the SAFE** following the performance of guarantee obligations for a Domestic Loan under Overseas Guarantee (Article 20 of the Provisions). These provisions are consistent with existing regulations, but differ in that **the short-term external debt incurred through the performance of guarantee obligations is now counted as net assets and thereby exempting such amounts from borrowing gap (external debt quota) administration**. The **outstanding principal balance of the short-term external debt** incurred through the performance of guarantee obligations **must not exceed the amount of net assets** (of the debtor) **and any amount in excess of the net assets will take up the external debt quota**, and, where the external debt quota is insufficient, the rules state that it will be treated as a case of external borrowing without approval (Article 3, Part II of the Guidelines). Added to which, restrictions are imposed on the debtors, which **are not permitted to enter into any new Domestic Loan under Overseas Guarantee contracts** or withdraw funds under the guarantee contract **until such time as the debts incurred through the performance of guarantee obligations have been repaid** (Article 19 of the Provisions).

Domestic debtors must complete the registration procedures for short-term external debt contracts and the record filing procedures for the relevant information with the local SAFE within 15 working days from the time of the performance of guarantee obligations for a Domestic Loan under Overseas Guarantee (Article 4, Part II of the Guidelines). At which point, the SAFE is required to check for any violations of the provisions on Domestic Loans under Overseas Guarantee.

**Materials required for external debt registration related to
the performance of a guarantee for a Domestic Loan under Overseas Guarantee**

- ✓ A written application for the registration of external debt contracts (the content of which shall include the company profile, information regarding the Domestic Loan under Overseas Guarantee business on a case-by-case and summary basis, information regarding the performance of this guarantee, and other matters that require description)
- ✓ A copy of the guarantee contract and the supporting documents on the performance of the guarantee (where there is much text in the contract, providing the brief terms of the contract affixed with the seal; where the contract is made in a foreign language, providing the Chinese translation thereof)
- ✓ The certificates of approval for foreign-invested enterprises and the business licenses
- ✓ The audited financial statements of the debtor at the end of the previous year
- ✓ Other materials as may be required by the SAFE in order to verify the compliance and authenticity of the business (such as the certificates of incorporation of the overseas creditors or the identity certificates of individuals, etc.)

(Article 4, Part II of the Guidelines)

Under the provisions of the **Measures for Administration of External Debt Registration** (Huifa [2013] No. 19, Annex 2), which was promulgated in April 2013, external payments of guarantee fees for guarantee pledges are subject to prior approval from the SAFE. However, the Provisions state that such procedures **may be handled directly with banks in accordance with the relevant provisions on foreign exchange administration for trade in services**, meaning that prior approval is no longer necessary (Article 26 of the Provisions).

Standardization for property guarantee procedures

Circular No. 29 includes provisions for the pledging of property guarantees, such as mortgages and pledges, within the scope of cross-border guarantee commitments (Chapter IV of the Provisions; Part III of the Guidelines). Registration procedures are to be undertaken where a property guarantee constitutes an Overseas Loan under Domestic Guarantee or Domestic Loan under Overseas Guarantee, and such procedures must be in compliance with the relevant provisions for Overseas Loans under Domestic Guarantee or Domestic Loans under Overseas Guarantee (Article 24 of the Provisions). However, whilst the SAFE will not examine the legality of the property guarantee and as the registration certification by the SAFE does not constitute reliance on or the effective conditions of the property guarantee contract, the parties to the guarantee are required to confirm that the content of the guarantee contract complies with the relevant laws and regulations (Article 21 of the Provisions).

Circular No. 29 states that, domestic institutions that provide or accept an Other Cross-border Guarantee other than

an Overseas Loan under Domestic Guarantee or a Domestic Loan under Overseas Guarantee may by themselves enter into the cross-border guarantee contracts, and that registration and recording procedures are unnecessary unless specifically set forth otherwise by the SAFE (Article 25 of the Provisions). Guarantee obligations are not subject to approval, registration or recording procedures, but the relevant procedures for external claims and/or debts will need to be completed where necessary.

Circular No. 29 states that, the pledging of cross-border guarantees, whether in the form of an Overseas Loan under Domestic Guarantee or a Domestic Loan under Overseas Guarantee or any other form is prohibited in the event that the guarantor or the debtor “clearly knows or ought to know that the obligation to perform the guarantee will definitely be affected” (Article 27 of the Provisions). This provision is thought to be intended to prevent arbitrage or any other speculative transactions (the criteria for determining the intention to perform guarantee obligations are given in Article 3, Part IV of the Guidelines).

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A provisional translation of Circular No. 29 together with the original Chinese document is presented below for further reference.

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(Provisional Translation)

State Administration of Foreign Exchange

Huifa [2014] No. 29

Circular on Releasing the Provisions on Foreign Exchange Administration for Cross-border Guarantees

Provincial, autonomous region, and municipal branches, foreign exchange administrative departments, Shenzhen, Dalian, Qingdao, Xiamen and Ningbo branches of the SAFE and designated China-funded foreign exchange banks:

To deepen the reform of the foreign exchange administration system, streamline administrative approval procedures, and regulate receipt and payment activities under cross-border guarantees, the State Administration of Foreign Exchange (SAFE) has decided to improve the methods of foreign exchange administration for cross-border guarantees and has developed the *Provisions on Foreign Exchange Administration for Cross-border Guarantees* and its operational guidelines (hereinafter referred to as “these Provisions”). These Provisions are now issued to you for implementation.

These Provisions will come into force as of June 1, 2014. If there is any inconsistency between previously issued regulations and these Provisions, these Provisions will prevail. When these Provisions become effective, the regulations as listed in Annex 3 will be repealed.

Upon receipt of these Provisions, the SAFE branches and foreign exchange administrative departments should promptly forward them to the central sub-branches, sub-branches, urban commercial banks, rural commercial banks, foreign banks, and rural credit cooperatives under their respective jurisdictions, and the China-funded banks should promptly forward them to the branches under their jurisdictions. Please contact the Capital Account Administration Department of the SAFE immediately should any problems be encountered in terms of their implementation.

Annexes:

1. *Provisions on Foreign Exchange Administration for Cross-border Guarantees*
2. *Operational Guidelines for Foreign Exchange Administration for Cross-border Guarantees*
3. Catalogue of the Repealed Regulations (omitted)

The State Administration of Foreign Exchange

May 12, 2014

Annex 1

Provisions on Foreign Exchange Administration for Cross-border Guarantees**Chapter I: General Provisions**

Article 1: In order to improve the foreign exchange administration of cross-border guarantees, regulate the receipts and payments under cross-border guarantees, and promote the sound and orderly development of the cross-border guarantee business, these Provisions are hereby formulated in accordance with the laws and regulations, such as the *Property Law of the People's Republic of China*, the *Guarantee Law of the People's Republic of China*, and the *Regulations of the People's Republic of China on Foreign Exchange Administration*.

Article 2: Cross-border guarantees herein refer to the guarantees provided, in written and legally binding form, by a guarantor for a creditor to commit to perform the relevant payment obligations in accordance with the guarantee contract, which may result in guarantees for balance of payments transactions, such as cross-border receipts and payments of funds or cross-border transfers of asset ownership.

Article 3: On the basis of the places of incorporation of the parties to the guarantee, a cross-border guarantee is classified as an Overseas Loan under Domestic Guarantee, a Domestic Loan under Overseas Guarantee, or an Other Cross-border Guarantee.

An Overseas Loan under Domestic Guarantee refers to a cross-border guarantee in which the place of incorporation of the guarantor is within the People's Republic of China (PRC), and the places of incorporation of the debtor and creditor are outside of the PRC.

A Domestic Loan under Overseas Guarantee refers to a cross-border guarantee in which the place of incorporation of the guarantor is outside of the PRC, and the places of incorporation of the debtor and creditor are within the PRC.

An Other Cross-border Guarantee refers to any cross-border guarantee other than an Overseas Loan under Domestic Guarantee or a Domestic Loan under Overseas Guarantee.

Article 4: The State Administration of Foreign Exchange (SAFE) and its branches and sub-branches (hereinafter collectively referred to as the "Foreign Exchange Administration") shall be responsible for regulating the various balance of payments transactions arising from cross-border guarantees.

Article 5: A domestic institution that provides or accepts a cross-border guarantee shall comply with the laws and regulations of the state and the provisions of the relevant industrial authorities, and shall handle the relevant foreign exchange administration procedures in accordance with these Provisions.

The parties to the guarantee shall abide by business ethics and shall be honest and trustworthy in the cross-border guarantee business.

Article 6: The Foreign Exchange Administration shall administer the registration of an Overseas Loan under Domestic Guarantee or Domestic Loan under Overseas Guarantee.

Domestic institutions shall complete the Overseas Loan under Domestic Guarantee registration for their Overseas Loan under Domestic Guarantee business as required by these Provisions. In the event of the performance of a guarantee for an Overseas Loan under Domestic Guarantee registered by the Foreign Exchange Administration, the guarantors may handle it by themselves. After the performance of the guarantee, registration of the external claims shall be completed as required by these Provisions.

Domestic institutions shall meet the relevant conditions specified by these Provisions with respect to their Domestic Loan under Overseas Guarantee business. For a Domestic Loan under Overseas Guarantee registered by the Foreign Exchange Administration, the creditors may handle the procedures for receiving payments related to the performance of the guarantee by themselves. After the performance of the guarantee, the domestic debtors shall complete the external debt registration as required by these Provisions.

Article 7: Domestic institutions providing or accepting an Other Cross-border Guarantee shall comply with the relevant provisions for foreign exchange administration.

Chapter II: Overseas Loans under Domestic Guarantee

Article 8: Guarantors handling Overseas Loan under Domestic Guarantee business may enter into an Overseas Loan under Domestic Guarantee contract on their own in accordance with the laws and regulations of the state, the provisions of the relevant industrial authorities, and the provisions on foreign exchange administration.

Article 9: The guarantors shall complete the Overseas Loan under Domestic Guarantee registration in accordance with the following provisions, after signing an Overseas Loan under Domestic Guarantee contract.

Where the guarantors are banks, the guarantors shall submit the data related to the Overseas Loan under Domestic Guarantee business to the Foreign Exchange Administration by the data interface program or by other methods.

Where the guarantors are non-bank financial institutions or enterprises (hereinafter referred to as "non-bank institutions"), they shall handle the registration procedures for Overseas Loan under Domestic Guarantee contracts by signing with the local Foreign Exchange Administration within 15 working days after signing of the guarantee contract. Where there is any change in the key clauses of the guarantee contract, the guarantors shall handle the registration procedures for the alteration of the Overseas Loan under Domestic Guarantee contract.

The Foreign Exchange Administration shall carry out a procedural examination of the registration applications by guarantors that are non-bank institutions and shall handle the registration procedures in accordance with the principles of authenticity and compliance.

Article 10: Banks and non-bank financial institutions that provide an Overseas Loan under Domestic Guarantee as a guarantor shall have the relevant qualifications to operate the guarantee business in accordance with the provisions of the relevant industrial authorities.

Article 11: The use of funds under an Overseas Loan under Domestic Guarantee shall comply with the following provisions:

- (1) The funds under an Overseas Loan under Domestic Guarantee shall only be used for relevant expenditures within the normal business scope of the debtors, shall not be used to support relevant transactions of the debtors beyond their normal business scope, and shall not be used for arbitrage or any other speculative transactions by means of fabricated trading backgrounds.
- (2) Without the approval of the Foreign Exchange Administration, the debtors shall not directly or indirectly transfer funds under the guarantee back to the PRC for use, by such methods as borrowing, equity investments, or securities investments in the PRC.

Article 12: Upon handling the Overseas Loan under Domestic Guarantee business, the guarantor shall examine the capacity as a debtor, the use of funds under the guarantee, the expected source of the funds for repayment, the possibility of the performance of the guarantee, and the relevant trading background, carry out due diligence on compliance with the relevant domestic and overseas laws and regulations, and supervise, in an appropriate manner, the debtor to use the funds under the guarantee in accordance

with the declared use.

Article 13: Under an Overseas Loan under Domestic Guarantee, after the due date for the guarantor to make the payment expires, if the debtor pays off the debt under the guarantee, or if the guarantee is performed, the guarantor shall handle the Overseas Loan under Domestic Guarantee de-registration procedures.

Article 14: In the event of the performance of a guarantee under an Overseas Loan under Domestic Guarantee, where the guarantor is a bank, it may handle by itself the procedures for external payments under the performance of the guarantee.

Where the guarantor is a non-bank institution, it may handle the procedures for foreign exchange purchases and external payments under the performance of the guarantee directly with banks upon the strength of the guarantee registration document. Before an overseas debtor pays off the debt owed to a domestic guarantor arising from the performance of the guarantee by the guarantor, the guarantor shall not enter into any new Overseas Loan under Domestic Guarantee contract without the approval of the Foreign Exchange Administration.

Article 15: In the event of the performance of a guarantee under Overseas Loan under Domestic Guarantee business, the domestic guarantor or counter-guarantor that becomes an external creditor shall handle the registration procedures for external claims in accordance with the relevant provisions.

Article 16: Domestic individuals may handle Overseas Loan under Domestic Guarantee business with reference to non-bank institutions as guarantors.

Chapter III: Domestic Loans under Overseas Guarantee

Article 17: Domestic non-financial institutions may use a guarantee provided by overseas institutions or individuals and sign by themselves the Domestic Loan under Overseas Guarantee contracts to obtain loans or credit limits from the domestic financial institutions, subject to the fulfillment of all the following conditions:

- (1) The debtors are non-financial institutions registered and operating within the PRC;
- (2) The creditors are financial institutions registered and operating within the PRC;
- (3) The object of the guarantee is a domestic or foreign currency loan (excluding an entrusted loan) or a binding credit limit, which is provided by the financial institution;
- (4) The form of the guarantee complies with the domestic and overseas laws and regulations.

Without approval, domestic institutions shall not handle Domestic Loan under Overseas Guarantee business beyond the above scope.

Article 18: Where domestic debtors engage in Domestic Loan under Overseas Guarantee business, the domestic financial institutions that disburse the loans or provide the credit limits shall collectively submit the data related to the Domestic Loan under Overseas Guarantee business to the Foreign Exchange Administration.

Article 19: In the event of the performance of a guarantee under Domestic Loan under Overseas Guarantee business, before the domestic debtor pays off the debt owed to the overseas guarantor, the domestic debtor shall not enter into any new Domestic Loan under Overseas Guarantee contract without the approval of the Foreign Exchange Administration. Where Domestic Loan under Overseas Guarantee contracts have been already signed but no withdrawal has been made or not all of the withdrawals have been made, the domestic debtors shall not make any new withdrawals without the approval of the local Foreign Exchange Administration.

With respect to the external liabilities of domestic debtors arising from the performance of guarantees under a Domestic Loan under Overseas Guarantee, the outstanding principal balance shall not exceed the amount of the net assets of the domestic debtor as audited at the end of the previous year.

Upon submitting an application to the creditor for Domestic Loan under Overseas Guarantee business, the domestic debtor shall provide the creditor with authentic and complete information on the debt default, the external debt registration, and the debt servicing in its previous Domestic Loan under Overseas Guarantee business.

Article 20: In the event of the performance of overseas guarantees under Domestic Loan under Overseas Guarantee business, domestic debtors shall handle the registration procedures for short-term external debt contracts and the recording of the relevant information with the local Foreign Exchange Administration. The Foreign Exchange Administration shall carry out ex-post verification on the compliance of the Domestic Loan under Overseas Guarantee business of the debtors during the registration procedure for the external debt contract.

Chapter IV: Foreign Exchange Administration of Property Guarantees

Article 21: The Foreign Exchange Administration will not examine the legality of the property granted by way of

security (RRGWS), which is created by the parties to the guarantee. The parties to the guarantee shall confirm by themselves that the content of the guarantee contract complies with the relevant domestic and overseas laws and regulations and the provisions of the relevant industrial authorities.

Article 22: The cross-border receipts and payments and transactions between the guarantor and the creditor arising from the provision of property guarantees, such as mortgages and pledges, shall comply with the restrictive or procedural provisions, if any, on foreign exchange administration.

Article 23: Where the place of incorporation of the guarantor or the creditor is within the PRC and that of the other is outside the PRC, or the registration location of the RRGWS (or property location, location of the source of the proceeds) or the place of incorporation of the guarantor or creditor is within the PRC and the other is outside the PRC, the domestic guarantor or the domestic creditor shall handle the relevant foreign exchange administration procedures in accordance with the following provisions:

- (1) With respect to the place of incorporation of the guarantor and that of the creditor and the registration location of the RRGWS (or property location, location of the source of the proceeds), where at least one of them is within the PRC and the other(s) is (are) outside the PRC, the method of realization by the guarantor of the RRGWS shall comply with the provisions of the relevant laws.
- (2) Unless specifically set forth otherwise, the guarantor or the creditor may submit an application directly to a domestic bank for remittance or receipt of the proceeds from disposal of the collateral. After the bank examines the authenticity and compliance of the performance of the guarantee and retains the necessary materials, the guarantor or the creditor may proceed with the foreign exchange purchases and settlement and the cross-border receipts and payments.
- (3) Where the ownership of the relevant collateral is transferred between the guarantor and the creditor, and foreign exchange registration for cross-border investments is required to be completed in accordance with the relevant provisions, the parties shall handle the relevant procedures for the registration or alteration.

Article 24: Where the property guarantee provided by the guarantor for a third-party debtor in favor of the creditor constitutes an Overseas Loan under Domestic Guarantee or Domestic Loan under Overseas Guarantee, the guarantee registration procedures shall be handled in accordance with the relevant provisions for an Overseas Loan under Domestic Guarantee or Domestic Loan under Overseas Guarantee, and the relevant provisions shall be complied with.

Where a property guarantee registered by the Foreign Exchange Administration fails to be legally

created for any reason, the guarantor shall handle the relevant de-registration procedures with the Foreign Exchange Administration.

Chapter V: Supplementary Provisions

Article 25: Domestic institutions that provide or accept an Other Cross-border Guarantee other than an Overseas Loan under Domestic Guarantee or a Domestic Loan under Overseas Guarantee may by themselves enter into the cross-border guarantee contracts, subject to the domestic and overseas laws and regulations and these Provisions. Unless specifically set forth otherwise by the Foreign Exchange Administration, with respect to an Other Cross-border Guarantee the guarantor and the debtor are not required to handle the registration or the recording procedures with the Foreign Exchange Administration.

Domestic institutions may handle by themselves the performance of the guarantee with respect to an Other Cross-border Guarantee. Where the external claims and debts under the guarantee are subject to prior approval or authorization, or there are any changes to the external claims and debts due to the performance of the guarantee, the relevant approval or registration procedures shall be handled in accordance with the relevant provisions.

Article 26: Domestic debtors may submit an application directly to the banks in accordance with the relevant provisions on foreign exchange administration for trade in services with respect to the external payments of the guarantee fees.

Article 27: The guarantor or the debtor shall not sign a cross-border guarantee contract if it clearly knows or ought to know that the obligation to perform the guarantee will definitely be affected.

Article 28: Where the guarantor, the debtor, or the creditor submits an application to a domestic bank for the handling of the foreign exchange purchase and payment or the foreign exchange collection and settlement business related to the cross-border guarantee, the domestic bank shall carry out due diligence on the background of the cross-border guarantee transaction to confirm that the guarantee contract complies with the laws and regulations of the PRC and these Provisions.

Article 29: The approval, registration, or recording by the Foreign Exchange Administration of the cross-border guarantee contract, and other administrative matters or requirements specified in these Provisions, shall not constitute the essential element for the effectiveness of the cross-border guarantee contracts.

Article 30: The Foreign Exchange Administration shall regularly analyze the overall situation for an Overseas Loan under Domestic Guarantee or Domestic Loan under Overseas Guarantee, and shall keep a close eye on the effect of the cross-border guarantees on the balance of payments.

Article 31: Where the Foreign Exchange Administration carries out verifications and inspections of the cross-border guarantee business of domestic institutions, the parties to the guarantee and the domestic banks shall provide the relevant materials as required by the Foreign Exchange Administration. Penalties shall be imposed by the Foreign Exchange Administration in accordance with the *Regulations of the People's Republic of China on Foreign Exchange Administration* on those that fail to handle their cross-border guarantee business in accordance with these Provisions and the relevant provisions.

Article 32: The SAFE may make adjustments to the administration methods for cross-border guarantees in due time for the purpose of guaranteeing a balance of payments equilibrium.

Article 33: The power to interpret these Provisions shall remain with the SAFE.

Annex 2

Operational Guidelines for Foreign Exchange Administration for Cross-border Guarantees**Part I: Foreign Exchange Administration of Overseas Loans under Domestic Guarantee**

1. The guarantors may enter into Overseas Loan under Domestic Guarantee contracts by themselves in their Overseas Loan under Domestic Guarantee business, subject to the laws and regulations of the state, the provisions of the relevant industrial authorities, and the provisions on foreign exchange administration.
2. Registration of Overseas Loans under Domestic Guarantee

The guarantors shall complete the Overseas Loan under Domestic Guarantee registration in accordance with the following provisions, after signing an Overseas Loan under Domestic Guarantee contract:

- (1) Where the guarantors are banks, the guarantors shall submit the data related to the Overseas Loans under Domestic Guarantees to the capital account information system of the Foreign Exchange Administration by the data interface program or by other methods.
- (2) Where the guarantors are non-bank financial institutions or enterprises (hereinafter referred to as "non-bank institutions"), they shall handle the registration procedures for Overseas Loan under Domestic Guarantee contracts with the local Foreign Exchange Administration within 15 working days after signing the guarantee contract. Where there is any change to the key clauses of the guarantee contracts or the debt contracts under the guarantee (including changes in the extension of the debt contracts, the amount and term of the debt, or the guarantee or the creditor), the guarantors shall handle the registration procedures for the alteration of the Overseas Loan under Domestic Guarantee within 15 working days.
 - i) Upon handling with the Foreign Exchange Administration the registration procedures for Overseas Loans under Domestic Guarantees contracts, non-bank institutions shall provide the following materials:
 - a. A written application for the registration of the Overseas Loan under Domestic Guarantee contract (the content of which shall include the company profile, the balance of registered and outstanding cross-border guarantees, a summary of the content of this guarantee transaction, the expected source of funds for repayment, and other matters that require a description). Where there is any co-guarantor, a description thereof shall be included with the application;
 - b. The guarantee contract and the principal debt contract under the guarantee (where there is much text to the contract, providing the brief terms of the contract, affixed with the seal; where the contract is made in a foreign language, the Chinese translation thereof

shall be provided, affixed with the seal);

- c. The relevant evidentiary materials deemed necessary to be supplemented by the Foreign Exchange Administration in accordance with these Provisions (such as the approval documents from the National Development and Reform Commission [NDRC] and the commerce authorities with respect to the overseas investment project, and the changed materials required to be provided upon registration of an alteration, etc.).

- ii) The Foreign Exchange Administration shall carry out a procedural examination of the registration application for the guarantors that are non-bank institutions, and shall handle the registration procedures for such guarantors in accordance with the principles of authenticity and compliance. Where the Foreign Exchange Administration has any doubts about the authenticity, commercial reasonableness, compliance, or performance of the guarantee contract, it has the right to require that the guarantor submit a written explanation. Where the Foreign Exchange Administration determines, in accordance with reasonable commercial standards and the relevant regulations, that the guarantor's explanation is obviously not substantiated, it may decide not to accept the registration application and shall give the applicant a written explanation of the reasons thereof.
Where the guarantor fails to handle the guarantee registration procedures with the Foreign Exchange Administration within the prescribed time limit, if the guarantor is able to provide a reasonable explanation and there is no intention to affect an obligation to perform the guarantee upon the application by the guarantor for the registration, the Foreign Exchange Administration may handle supplementary registration procedures for the guarantor in accordance with the normal procedures. If the guarantor is unable to provide a reasonable explanation, the Foreign Exchange Administration may treat it as a case of failure to complete the guarantee registration in a timely manner and shall handle the supplementary registration procedures for the guarantor after handing over the case to the foreign exchange inspection department.

- iii) Non-financial institutions may submit an application to the Foreign Exchange Administration for submission of Overseas Loans under Domestic Guarantee data via the capital account system with reference to the financial institutions.
- iv) Where there are multiple domestic guarantors under the same Overseas Loan under Domestic Guarantee business, they may designate, on their own through mutual agreement, one guarantor to handle the registration procedures with the local Foreign Exchange Administration. When handling the Overseas Loans under Domestic Guarantee registration procedures, the Foreign Exchange Administration shall indicate the other guarantor(s) in the "Remarks" column.

3. Financial institutions that provide an Overseas Loan under Domestic Guarantee as a guarantor shall have

the relevant qualifications to operate the guarantee business in accordance with the provisions of the relevant industrial authorities. The guarantee provided in the name of the domestic branch shall be authorized by the head office or the principal office.

4. The use of funds under an Overseas Loan under Domestic Guarantee shall comply with the following provisions:

(1) The funds under the Overseas Loan under Domestic Guarantee shall only be used for relevant expenditures within the normal business scope of the debtors, shall not be used to support relevant transactions of the debtors beyond their normal business scope, and shall not be used for arbitrage or any other speculative transactions by means of fabricated trading backgrounds.

(2) Without the approval of the Foreign Exchange Administration, the debtors shall not, directly or indirectly, transfer funds under the guarantee back to the PRC for use, by such methods as borrowing, equity investments, or securities investments in the PRC.

The funds under the guarantee shall not be used for equity or debt investments, by overseas institutions or individuals directly or indirectly, in domestic institutions or individuals, including but not limited to the following circumstances:

i) The debtor uses the funds under the guarantee to make, directly or indirectly, equity or debt investments in institutions incorporated within the PRC.

ii) The funds under the guarantee are used to acquire, directly or indirectly, the equity of an overseas target company, of which over 50 percent of the assets are located within the PRC.

iii) The funds under the guarantee are used to repay the debt of the debtor or any other overseas company, while the original funds from the financing are transferred, directly or indirectly, back to the PRC in the form of equity or debt.

iv) The debtor uses the funds under the guarantee to make advance payments for trade in goods or trade in services, and the payment time is more than one year before the time of delivery of the goods or services and the amount of the advance payment exceeds USD 1 million and 30 percent of the total price of the sales and purchase agreement (for the export of large complete sets of equipment or contract services, the completed workload may be deemed as the delivery).

(3) The following special transactions under Overseas Loan under Domestic Guarantee contracts shall comply with the following provisions:

i) Where the subject of the guarantee under the Overseas Loan under Domestic Guarantees is the repayment obligation under a bond offering by the overseas debtor, the equity of the overseas debtor shall be held, directly or indirectly, by the domestic institutions, the proceeds from the overseas bond offering shall be used for overseas investment projects that have an affiliation with domestic institutions in terms of equity, and the relevant overseas institutions or projects

shall have obtained the approval, registration, recording, or confirmation by the relevant overseas investment authorities of the PRC in accordance with the relevant provisions.

- ii) Where the funds from the financing under Overseas Loan under Domestic Guarantee contracts are used to acquire, directly or indirectly, the equity (including the establishment of new overseas enterprises, acquisition of the equity of overseas enterprises, and capital increases in overseas enterprises) or the debt of any other overseas institution, such investments shall comply with the provisions of the relevant departments of the PRC regarding overseas investments.
- iii) Where the obligation under the Overseas Loan under Domestic Guarantee contract is the payment obligation under the derivative transactions of the overseas institutions, the derivative transactions of the debtor shall be carried out for the purpose of stopping losses or hedging, shall be consistent with the scope of its main business, and shall be duly authorized by its shareholders.

5. De-registration of Overseas Loans under Domestic Guarantee

After the debtor pays off the debt under the guarantee, the due date for the guarantor to make the payment expires, or the guarantee is performed, with respect to an Overseas Loan under Domestic Guarantee, the guarantor shall handle the Overseas Loan under Domestic Guarantee de-registration procedures. In particular, banks may submit updated Overseas Loan under Domestic Guarantee data to the capital account system of the Foreign Exchange Administration by the data interface program or by other methods; non-bank institutions shall submit applications to the Foreign Exchange Administration for the relevant de-registration within 15 working days.

6. Performance of the Guarantee

- (1) Where the banks perform a guarantee under an Overseas Loan under Domestic Guarantee, they may handle by themselves the procedures for external payments under the performance of the guarantee, and their funds for the performance of the guarantee may be derived from the foreign exchange advances made by themselves to the counter-guarantors, the security deposit in foreign exchange or RMB from the counter-guarantors, or other funds paid by the counter-guarantors. The counter-guarantors may handle the procedures for foreign exchange purchases or payments directly upon the strength of the supporting documents on the performance of the guarantee.
- (2) Where non-bank institutions perform the guarantee, they may handle the procedures for foreign exchange purchases and external payments under the performance of the guarantee directly with the banks upon the strength of the guarantee registration documents affixed with the seal of the Foreign Exchange Administration. Upon handling an indirect declaration of the balance of payments, the

business number obtained upon the guarantee registration shall be filled in.

Where non-bank institutions perform the guarantee under an Overseas Loan under Domestic Guarantee, before the overseas debtor pays off the debt owed to the domestic guarantor (with the exception if the overseas debtor is unable to pay off the debt due to bankruptcy, liquidation, etc.), the guarantor shall not enter into any new Overseas Loan under Domestic Guarantee contract without the approval of the Foreign Exchange Administration.

(3) Where non-bank institutions fail to complete the registration after the provision of an Overseas Loan under Domestic Guarantee but need to handle the procedures for the performance of the guarantee, the guarantors shall submit an application to the Foreign Exchange Administration for supplementary registration of the Overseas Loan under Domestic Guarantee, then handle with the banks the procedures for the performance of the guarantee upon the strength of the supplementary registration documents. Before handling the supplementary registration procedures, the Foreign Exchange Administration shall hand over the case to the foreign exchange inspection department.

7. Registration of External Claims

(1) In the event of the performance of a guarantee under Overseas Loan under Domestic Guarantee business, the domestic guarantor or the domestic counter-guarantor that becomes an external creditor shall handle the registration procedures for the external claims.

Where the external creditor is a bank, it shall submit the information related to the external claims through the capital account information system. Where the creditor is a non-bank institution, it shall handle the registration procedures for external claims with the local Foreign Exchange Administration within 15 working days after the performance of the guarantee, and shall handle the registration for an alteration or de-registration procedures related to the external claims in accordance with the relevant provisions.

(2) Where the external creditor is a bank and the debtor (or counter-guarantor) under the guarantee proactively performs the repayment obligation to the guarantor, the debtor (or the counter-guarantor) and the guarantor may handle by themselves their respective procedures for payments and receipts. Where the debtor (or counter-guarantor) is unable to proactively perform the repayment obligations for various reasons, and the funds collected by lawful means by the guarantor from the debtor (or the counter-guarantor) are not in the same currency as the original currency used for the performance of the guarantee, the guarantor may handle by itself the relevant exchange procedures on behalf of the debtor (or the counter-guarantor).

(3) Where the external creditor is a non-bank institution and the funds recovered from the debtor is in foreign exchange, it may handle the procedures for the foreign exchange settlement after it explains the source of the funds to the bank and the bank confirms that the domestic guarantor has completed

the registration of the external claims in accordance with the relevant provisions.

8. Other Provisions

- (1) Upon handling Overseas Loan under Domestic Guarantee business, the guarantor shall examine the capacity as a debtor, the use of the funds under the guarantee, the expected source of funds for repayment, the possibility of the performance of the guarantee, and the relevant trading background, carry out due diligence on compliance with the relevant domestic and overseas laws and regulations, and supervise, in an appropriate manner, the debtor to use the funds under the guarantee in accordance with the use as declared by the debtor.
- (2) Domestic individuals, as guarantors, may handle Overseas Loan under Domestic Guarantee business with reference to domestic non-bank institutions.
- (3) The counter-guarantee provided by the domestic institution for the overseas institution (debtor) in favor of the overseas guarantor of the debtor shall be subject to administration as the Overseas Loan under Domestic Guarantee, and the domestic institution that provides the counter-guarantee shall comply with these Provisions. Where the domestic institution provides the guarantee for the overseas institution (debtor) in accordance with the provisions on the Overseas Loan under Domestic Guarantee, the counter-guarantee provided by any other domestic institution for the debtor in favor of the domestic institution that provides the Overseas Loan under Domestic Guarantee shall not be subject to administration as the Overseas Loan under Domestic Guarantee, but shall be subject to the relevant provisions on foreign exchange administration.
- (4) An Overseas Loan under Domestic Guarantee whose upper limit of the guarantee liability cannot be reasonably estimated by the guarantor, such as a project completion guarantee issued by a domestic enterprise without an upper limit of compensation, may not be subject to registration and may handle the procedures for the performance of the guarantee upon approval by the Foreign Exchange Administration.

Part II: Foreign Exchange Administration of Domestic Loans under Overseas Guarantee

1. Domestic non-financial institutions may use a guarantee provided by overseas institutions or individuals and sign by themselves the Domestic Loan under Overseas Guarantee contracts to obtain loans or credit limits from domestic financial institutions, subject to the fulfillment of all the following conditions:

- (1) The debtors are non-financial institutions registered and operating within the PRC;
- (2) The creditors are financial institutions registered and operating within the PRC;
- (3) The object of the guarantee is a domestic or foreign currency loan (excluding an entrusted loan) or a

binding credit limit, which is provided by the financial institution;

(4) The form of the guarantee complies with the domestic and overseas laws and regulations.

Without approval, domestic institutions shall not handle Domestic Loan under Overseas Guarantee business beyond the above scope.

2. Where domestic debtors engage in Domestic Loan under Overseas Guarantee business, the domestic financial institutions that disburse the loans or provide the credit limits shall collectively submit the data related to the Domestic Loan under Overseas Guarantee business to the capital account system of the Foreign Exchange Administration.
3. In the event of the performance of a guarantee under a Domestic Loan under Overseas Guarantee, financial institutions may handle directly with the overseas guarantors the procedures for receipts under the performance of the guarantee.

In the event of the performance of the guarantee under Domestic Loan under Overseas Guarantee business of domestic debtors, before the domestic debtor pays off the debt owed to the overseas guarantor, the domestic debtor shall not enter into any new Domestic Loan under Overseas Guarantee contract without the approval of the Foreign Exchange Administration. Where the Domestic Loan under Overseas Guarantee contracts have been already signed but no withdrawal has been made or not all the withdrawals have been made, the domestic debtors shall not make any new withdrawals without the approval of the local Foreign Exchange Administration.

With respect to the external liabilities of domestic debtors arising from the performance of guarantees under a Domestic Loan under Overseas Guarantee, the outstanding principal balance shall not exceed the amount of net assets of the domestic debtors as audited at the end of the previous year. Where the above limit is exceeded, the external debt quota of the domestic debtors shall be used. Where the external debt quota is still insufficient, it shall be treated as a case of external borrowing without approval.

Where a domestic non-bank financial institution is the creditor and an overseas guarantor performs the guarantee, the domestic non-financial institution shall fill in the business number obtained upon the Domestic Loan under Overseas Guarantee registration in the declaration form, while handling the indirect declaration of the balance of payments.

Upon submitting an application to the creditor for Domestic Loan under Overseas Guarantee business, the domestic debtor shall provide the creditor with authentic and complete information on the debt default, the

external debt registration, and debt servicing in its previous Domestic Loan under Overseas Guarantee business.

4. In the event of the performance of overseas guarantees under Domestic Loan under Overseas Guarantee business, domestic debtors shall handle the registration procedures for short-term external debt contracts and the recording of the relevant information with the local Foreign Exchange Administration within 15 working days from the time of the performance of the guarantee. The Foreign Exchange Administration shall carry out ex-post verification on the compliance of the Domestic Loan under Overseas Guarantee business of the debtors during the registration procedure for the external debt contract. Where any violation is found, the Foreign Exchange Administration may handle the external debt registration procedures after the case of violation is handed over to the foreign exchange inspection department.

Where an application for external debt registration is submitted due to the performance of overseas guarantees, the debtor shall provide the Foreign Exchange Administration with the following materials:

- (1) A written application for the registration of the external debt contracts (the content of which shall include the company profile, information regarding the Domestic Loan under Overseas Guarantee business on a case-by-case and summary basis, information regarding the performance of this guarantee, and other matters that require description);
- (2) A copy of the guarantee contract and the supporting documents on the performance of the guarantee (where there is much text in the contract, providing the brief terms of the contract affixed with the seal; where the contract is made in a foreign language, the Chinese translation thereof shall be provided affixed with the seal of the debtor);
- (3) Documents such as the certificates of approval and the business licenses for foreign-invested enterprises, and the business licenses for Chinese-funded enterprises;
- (4) The audited financial statements of the debtor at the end of the previous year;
- (5) Other materials as may be required by the Foreign Exchange Administration in order to verify the compliance and authenticity of the Domestic Loan under Overseas Guarantee business (such as the certificates of incorporation of the overseas creditors or the identity certificates of individuals).

5. Where financial institutions handle the procedures for the performance of the guarantee under a Domestic Loan under Overseas Guarantee, and foreign exchange settlements or purchases are required because the funds for the performance of the guarantee are not in the same currency as the withdrawal currency with respect to the debt under the guarantee, they shall submit an application to the Foreign Exchange Administration. Where financial institutions handle the business of foreign exchange settlements (or foreign exchange purchases) for the funds under the performance of overseas guarantees, their branches or head

offices shall collectively submit an application to the local Foreign Exchange Administration thereof after summarizing the applications to themselves and their subordinate branches with respect to the foreign exchange settlement (or foreign exchange purchase) for the funds under the performance of the guarantee.

Applications of financial institutions with respect to foreign exchange settlements (or foreign exchange purchases) for funds under the performance of overseas guarantees shall be submitted to the capital account administration departments of the Foreign Exchange Administration. Where there is no irregular activity by the financial institutions upon their entry into the loan guarantee contracts as creditors, the Foreign Exchange Administration may approve their foreign exchange settlement (or foreign exchange purchase) for the funds under the performance of the guarantee. Where irregular activities by the financial institutions are attributable to procedural violations, such as a failure to complete the collective registration by the creditors, the Foreign Exchange Administration may first approve the foreign exchange settlement (or the foreign exchange purchase) and then handle the violation cases in accordance with the relevant regulations. Where the irregular activities of the financial institutions are attributable to substantial violations, such as not being permitted by the existing policies, and the financial institutions shall assume the relevant responsibilities, the Foreign Exchange Administration shall hand over the cases to the foreign exchange inspection department before approval of the foreign exchange settlement (or foreign exchange purchase).

6. Where the financial institutions apply for foreign exchange settlement (or foreign exchange purchases) for funds under the performance of the guarantee, they shall submit the following documents:

- (1) An application;
- (2) The Domestic Loan under Overseas Guarantee business contract (or brief terms of the contract);
- (3) Written materials evidencing the source of the funds for the foreign exchange settlement (or the foreign exchange purchase);
- (4) Certificates for the external debt registration provided by the debtors for the performance of the guarantee under the Domestic Loan under Overseas Guarantee (where the debtors are unable to obtain the external debt registration certificates due to liquidation, dissolution, debt exemptions, or other reasonable factors, the reason shall be described);
- (5) Other evidentiary materials deemed necessary by the Foreign Exchange Administration.

7. Where the overseas guarantor provides a partial guarantee (risk sharing) for the loan portfolio granted by a domestic financial institution to several domestic debtors and the guarantee is performed (compensation is made), if the contract provides that the domestic financial institution recovers the debt against the debtor on behalf of the overseas guarantor, the acting financial institution shall submit the data on the external debt registration to the Foreign Exchange Administration, and the outstanding principal balance shall not exceed

the sum of the amount of the net assets of the debtors audited at the end of the previous year under the guarantee contract.

Part III: Foreign Exchange Administration for Property Guarantees

1. The Foreign Exchange Administration shall only regulate foreign exchange administration under the capital account involved in cross-border guarantees, and will not examine the legality of the RRGWS created by the parties to the guarantee. The parties to the guarantee shall confirm by themselves compliance with the relevant laws and regulations by the following, including but not limited to:
 - (1) Whether the property or right under the mortgage (pledge) is within the scope as specified by the law;
 - (2) Whether there is any legally mandatory registration requirement on the creation of the mortgage (pledge);
 - (3) Whether there is any prior approval, registration, or recording required by the relevant authorities for the creation of the mortgage (pledge);
 - (4) Whether the subject of the mortgage or the pledge shall be subject to a value assessment before the creation of the mortgage (pledge), or whether an over-mortgage (pledge) is permitted, etc.;
 - (5) Whether there are any restrictive provisions by the relevant departments of the state regarding the transfer or realization of the property or rights under the mortgage (pledge) upon the realization of the mortgage (pledge).
2. The cross-border receipts and payments and transactions between the guarantor and creditor arising from the provision of property guarantees, such as a mortgage and pledge, shall comply with the restrictive or procedural provisions, if any, on foreign exchange administration.

Whether there is any restrictive provision of the state regarding cross-border acquisitions of specific types of assets (equity, debt, housing property, or other types of assets) by the domestic and overseas institutions or individuals, if an overseas institution acquires domestic assets from a domestic institution or another overseas institution, or a domestic institution acquires overseas assets from an overseas institution or another domestic institution, the parties to the guarantee shall confirm by themselves that the performance of the guarantee contract does not conflict with the relevant restrictive provisions.

3. Where the place of incorporation of the guarantor or the creditor is within the PRC and that of the other is outside the PRC, or the registration location of the RRGWS (or property location, location of the source of the proceeds) or the place of incorporation of the guarantor or creditor is within the PRC and the other is

outside the PRC, the domestic guarantor or domestic creditor shall handle the relevant foreign exchange administration procedures in accordance with the following provisions:

- (1) With respect to the place of incorporation of the guarantor and that of the creditor and the registration location of the RRGWS (or the property location, location of the source of the proceeds), where at least one of them is within the PRC and the other(s) is (are) outside the PRC, the method of realization by the guarantor of the RRGWS shall comply with the provisions of the relevant laws.
- (2) Unless specifically set forth otherwise, the guarantor or the creditor may submit an application directly to a domestic bank for remittance or receipt of the proceeds from disposal of the collateral. After the bank examines the authenticity and compliance of the performance of the guarantee and retains the necessary materials, the guarantor or the creditor may proceed with the foreign exchange purchases and settlement and the cross-border receipts and payments.
- (3) Where the ownership of the relevant collateral is transferred between the guarantor and the creditor, and the foreign exchange registration for cross-border investments is required to be completed in accordance with the relevant provisions, the parties shall handle the relevant procedures for the registration or alteration.

4. Where the property guarantee provided by the guarantor for a third-party debtor in favor of the creditor constitutes an Overseas Loan under Domestic Guarantee or Domestic Loan under Overseas Guarantee, the guarantee registration procedures shall be handled in accordance with the relevant provisions for an Overseas Loan under Domestic Guarantee or Domestic Loan under Overseas Guarantee, and the relevant restrictive provisions shall be complied with.

Where a property guarantee registered by the Foreign Exchange Administration fails to be legally created for any reason, the guarantor shall handle the relevant de-registration procedures with the Foreign Exchange Administration.

5. Where domestic non-bank institutions provide a property guarantee for overseas debtors in favor of overseas creditors, the Foreign Exchange Administration shall, upon handling the Overseas Loan under Domestic Guarantee registration, make a brief record of the specific content of the RRGWS on the Overseas Loan under Domestic Guarantee registration certificate.

The specific content of the RRGWS recorded by the Foreign Exchange Administration on the Overseas Loan under Domestic Guarantee registration certificate shall not constitute the basis for the creation of the relevant mortgage or pledge, nor shall it constitute a condition for the effectiveness of the relevant mortgage or pledge contract.

6. Where domestic institutions provide a cross-border property guarantee for their own debts, they shall not be required to complete the guarantee registration. Where the guarantor converts the subject of the mortgage into money to repay the debt in a manner permitted by the regulations, or the mortgagee applies for a foreign transfer after the sale of the subject of the mortgage, the guarantor may handle the relevant payment procedures with reference to the repayment of the principal and the interest under an ordinary external debt.

Part IV: Foreign Exchange Administration for Other Cross-border Guarantees

1. Other Cross-border Guarantees

- (1) An Other Cross-border Guarantee refers to any cross-border guarantee other than the said Overseas Loan under Domestic Guarantee and Domestic Loan under Overseas Guarantee, including but not limited to:
 - i) A cross-border guarantee in which the place of incorporation of the guarantor is located within the PRC and the place of incorporation of the debtor or the creditor is located within the PRC and that of the other is located outside the PRC;
 - ii) A cross-border guarantee in which the place of incorporation of the guarantor is located outside the PRC and the place of incorporation of the debtor or the creditor is located within the PRC and that of the other is located outside the PRC;
 - iii) A cross-border guarantee in which the places of incorporation of the parties to the guarantee are located within the PRC and the registration location of the RRGWS is located outside the PRC;
 - iv) A cross-border guarantee in which the places of incorporation of the parties to the guarantee are located outside the PRC and the registration location of the RRGWS is located within the PRC.
- (2) Domestic institutions that provide or accept an Other Cross-border Guarantee may by themselves enter into the cross-border guarantee contracts, subject to the domestic and overseas laws and regulations and these Provisions. Unless specifically set forth otherwise by the Foreign Exchange Administration, the guarantor and the debtor are not required to handle the registration or the recording procedures with the Foreign Exchange Administration with respect to an Other Cross-border Guarantee and are not required to submit the data to the capital account information system.
- (3) Domestic institutions shall, upon handling an Other Cross-border Guarantee, handle the foreign exchange administration procedures related to the external claims and debts in accordance with the relevant provisions. Where the external claims or debts under the guarantee are subject to any prior approval or registration procedures, such relevant procedures shall be handled.

- (4) Unless specifically set forth otherwise, the domestic guarantor or the domestic creditor may submit an application directly to a domestic bank for remittance or receipt of the funds under the performance of the guarantee. After the bank examines the authenticity and compliance of the performance of the guarantee and retains the necessary materials, the guarantor or the creditor may proceed with the relevant foreign exchange purchases, foreign exchange settlement, or cross-border receipts and payments.
- (5) Where the place of incorporation of the guarantor is located within the PRC and that of the debtor is located outside the PRC and external claims are formed after the performance of the guarantee, registration of the external claims shall be completed. Where the place of incorporation of the guarantor is located outside the PRC and that of the debtor is located within the PRC and the overseas creditor is changed after the performance of the guarantee, the alteration registration for the creditor under the external debt shall be completed.
- (6) Where the domestic guarantor pays the domestic creditor the funds under the performance of the guarantee or the domestic debtor compensates the domestic guarantor for the funds under the performance of the guarantee, and where the payer is required to handle the procedures for the domestic foreign exchange transfer because the debt under the guarantee is denominated and settled in a foreign currency, the payer may handle the relevant payment procedures directly with the banks.

2. Domestic debtors may submit an application directly to the banks in accordance with the relevant provisions on foreign exchange administration for trade in services with respect to the external payments of the guarantee fees.
3. The guarantor or the debtor shall not sign a cross-border guarantee contract if it clearly knows or ought to know that the obligation to perform the guarantee will definitely be affected. The guarantor, the debtor, and the creditor may, under reasonable commercial principles, determine whether the guarantee contract has any obvious intention of performing the guarantee, in accordance with the following criteria:
 - (1) Whether the debtor itself has sufficient solvency or predictable sources of funds for repayment upon entering into the guarantee contract;
 - (2) Whether the financing conditions set forth in the loan contract under the guarantee are obviously inconsistent with the use of the loan funds declared by the debtor, with respect to the amount, interest rate, or term, etc.;
 - (3) Whether the parties to the guarantee have any intention to repay in advance the debt under the guarantee through the performance of the guarantee;
 - (4) Whether there has been any performance of the guarantee or debt default in bad faith committed by the parties to the guarantee as guarantors, counter-guarantors, or debtors.

4. Where the guarantor, the debtor, or the creditor submits an application to a domestic bank for the handling of the foreign exchange purchase and payment and the foreign exchange collection and settlement business related to the cross-border guarantee, the domestic bank shall carry out due diligence on the background of the cross-border guarantee transaction to confirm that the guarantee contract complies with the laws and regulations of the PRC and these Provisions.
5. The cross-border commitments under any of the following circumstances shall not be brought into the scope of foreign exchange administration as a cross-border guarantee:
 - (1) Such commitments do not have a contractual nature or are not legally binding;
 - (2) The method of the performance of the committed obligation does not include payment obligations, such as cash deliveries or repayment by conversion of property into money;
 - (3) The performance of a committed obligation will not create any creditor's right, which is directly corresponding thereto, against the party to whom the commitment is made;
 - (4) The cross-border commitments that are effectively regulated by other departments under other regulations of the PRC by other methods, and which, as defined by the Foreign Exchange Administration, are not brought into the scope of foreign exchange administration as cross-border guarantees, such as sight and usance letters of credit issued by domestic banks for domestic institutions under the import of goods and service, and credit insurance within the scope of regulation by the relevant industrial authorities;
 - (5) Where any single transaction has multiple links and the regulators have effectively regulated one of such links, the cross-border commitments that, as defined by the Foreign Exchange Administration, are not repeatedly brought into the scale and statistical scope, such as the security deposit or the counter-guarantee to be provided by domestic clients as required by the domestic banks upon issuance of a letter of guarantee, issuance of a letter of credit, or disbursement of loans to foreign parties;
 - (6) Relevant commitments that, as determined by the Foreign Exchange Administration for other reasons, are not brought into the scope of the foreign exchange administration as a cross-border guarantee.

Relevant procedures for cross-border receipts and payments shall not be handled in the name of the performance of cross-border guarantees for the relevant commitments that are not brought into the scope of the foreign exchange administration as a cross-border guarantee.

6. Cross-border guarantees may be classified as financing guarantees or non-financing guarantees. Financing guarantees refer to guarantees provided by the guarantor with respect to the financing payment obligation

that derives from the relevant transaction with the general characteristics of the financing contract, including but not limited to ordinary loans, bonds, finance leases, and binding credit limits, etc. Non-financing guarantees refer to the guarantees provided by the guarantor with respect to the non-financing payment obligations that are derived from the transaction without the general characteristics of a financing contract, including but not limited to a bid guarantee, an advance payment guarantee, a deferred payment guarantee, a performance guarantee under the contract for sale and purchase of goods, etc.

7. Where the Foreign Exchange Administration carries out verifications and inspections of the cross-border guarantee business of domestic institutions, the parties to the guarantee and the domestic banks shall provide the relevant materials as required by the Foreign Exchange Administration. Penalties shall be imposed by the Foreign Exchange Administration in accordance with the *Regulations of the People's Republic of China on Foreign Exchange Administration* (hereinafter referred to as the "Regulations") on those that fail to handle the cross-border guarantee business in accordance with these Provisions and other relevant provisions.

- (1) Where the debtors violate Article 11 (2) of the *Provisions on Foreign Exchange Administration for Cross-border Guarantees* (hereinafter referred to as the "Provisions") by transferring the funds under the guarantee back to the PRC for use, penalties shall be imposed on the guarantors in accordance with Article 41 of the Regulations.
- (2) Penalties shall be imposed in accordance with Article 43 of the Regulations under any of the following circumstances:
 - i) The guarantors violate Article 8 of the Provisions by handling Overseas Loan under Domestic Guarantee business in violation of the laws and regulations and the provisions of the relevant departments;
 - ii) The guarantors violate Article 10 of the Provisions by providing an Overseas Loan under Domestic Guarantee beyond the scope permitted by the relevant industrial authorities;
 - iii) The guarantors violate Article 12 of the Provisions by failing to examine the capacity as a debtor, the use of funds under the guarantee, the expected source of the funds for repayment, the possibility of the performance of the guarantee, and the relevant trading background, or by failing to carry out due diligence on the compliance with the relevant domestic and overseas laws and regulations, or failing to supervise, in an appropriate manner, the debtor to use the funds under the guarantee in accordance with the use as declared by the debtor;
 - iv) The guarantors violate Article 14 of the Provisions by entering into any new Overseas Loan under Domestic Guarantee contract without the approval of the Foreign Exchange Administration before recovery of the funds provided under the performance of the guarantee

from the debtors;

- v) The debtors or the creditors violate Article 17 of the Provisions in the handling of Domestic Loan under Overseas Guarantee business beyond the scope specified therein without approval;
- vi) Domestic debtors violate paragraph 1 of Article 19 of the Provisions by entering into a new Domestic Loan under Overseas Guarantee contract or making any new withdrawal without the approval of the Foreign Exchange Administration before paying off the debt owed to the overseas guarantor;
- vii) The domestic debtors violate paragraph 2 of Article 19 of the Provisions by having an outstanding principal balance under the performance of the guarantee that exceeds the amount of the net assets as audited at the end of the previous year;
- viii) The guarantors or the guarantees violate Article 27 of the Provisions by entering into cross-border guarantee contracts when they clearly know or ought to know that the obligation to perform the guarantee will definitely be affected.

(3) Penalties shall be imposed in accordance with Article 47 of the Regulations under any of the following circumstances:

- i) The banks violate Article 23 (2) of the Provisions and fail to examine the authenticity and compliance of the performance of the guarantee or to retain the necessary materials;
- ii) The domestic banks violate Article 28 of the Provisions and fail to carry out due diligence on the background of the cross-border guarantee transaction to confirm that the guarantee transaction complies with the laws and regulations of the PRC and these Provisions.

(4) Penalties shall be imposed in accordance with Article 48 of the Regulations under any of the following circumstances:

- i) The guarantors violate Article 9 of the Provisions and fail to complete the Overseas Loan under Domestic Guarantee registration in accordance with the relevant provisions;
- ii) The guarantors violate Article 13 of the Provisions and fail to handle the Overseas Loan under Domestic Guarantee de-registration procedures in accordance with the relevant provisions;
- iii) The guarantors or counter-guarantors violate Article 15 of the Provisions and fail to handle the registration procedures for external claims in accordance with the relevant provisions;
- iv) Domestic financial institutions violate Article 18 of the Provisions and fail to submit the data related to the Domestic Loan under Overseas Guarantee business to the Foreign Exchange Administration in accordance with the relevant provisions;
- v) The debtors violate paragraph 3 of Article 19 of the Provisions and fail to provide, upon handling the Domestic Loan under Overseas Guarantee business, the creditor with authentic and complete information on debt defaults, external debt registration, and debt servicing in previous Domestic Loan under Overseas Guarantee business;
- vi) The domestic debtors violate Article 20 of the Provisions and fail to handle with the local

Foreign Exchange Administration the registration procedures for short-term external debt contracts and the relevant information recording procedures in accordance with the relevant provisions;

- vii) The parties violate Article 23 (3) of the Provisions and fail to complete the foreign exchange registration of cross-border investments in accordance with the relevant provisions;
- viii) The guarantors violate paragraph 2 of Article 24 of the Provisions and fail to handle the relevant de-registration procedures with the Foreign Exchange Administration.

(中国語原文)

国家外汇管理局
汇发[2014]29号
关于发布《跨境担保外汇管理规定》的通知

国家外汇管理局各省、自治区、直辖市分局、外汇管理部，深圳、大连、青岛、厦门、宁波市分局，各中资外汇指定银行：

为深化外汇管理体制改革，简化行政审批程序，规范跨境担保项下收支行为，国家外汇管理局决定改进跨境担保外汇管理方式，制定了《跨境担保外汇管理规定》及其操作指引（以下简称《规定》）。现印发给你们，请遵照执行。

《规定》自2014年6月1日起实施，之前相关规定与本《规定》内容不一致的，以本《规定》为准。《规定》实施后，附件3所列法规即行废止。

国家外汇管理局各分局、外汇管理部接到本通知后，应及时转发辖内中心支局、支局、城市商业银行、农村商业银行、外资银行、农村合作银行；各中资银行接到本通知后，应及时转发所辖各分支机构。执行中如遇问题，请及时向国家外汇管理局资本项目管理司反馈。

附件：1.跨境担保外汇管理规定
2.跨境担保外汇管理操作指引
3.废止法规目录

国家外汇管理局
2014年5月12日

附件 1

跨境担保外汇管理规定

第一章 总则

第一条 为完善跨境担保外汇管理，规范跨境担保项下收支行为，促进跨境担保业务健康有序发展，根据《中华人民共和国物权法》、《中华人民共和国担保法》及《中华人民共和国外汇管理条例》等法律法规，特制定本规定。

第二条 本规定所称的跨境担保是指担保人向债权人书面作出的、具有法律约束力、承诺按照担保合同约定履行相关付款义务并可能产生资金跨境收付或资产所有权跨境转移等国际收支交易的担保行为。

第三条 按照担保当事各方的注册地，跨境担保分为内保外贷、外保内贷和其他形式跨境担保。

内保外贷是指担保人注册地在境内、债务人和债权人注册地均在境外的跨境担保。

外保内贷是指担保人注册地在境外、债务人和债权人注册地均在境内的跨境担保。

其他形式跨境担保是指除前述内保外贷和外保内贷以外的其他跨境担保情形。

第四条 国家外汇管理局及其分支局（以下简称外汇局）负责规范跨境担保产生的各类国际收支交易。

第五条 境内机构提供或接受跨境担保，应当遵守国家法律法规和行业主管部门的规定，并按本规定办理相关外汇管理手续。

担保当事各方从事跨境担保业务，应当恪守商业道德，诚实守信。

第六条 外汇局对内保外贷和外保内贷实行登记管理。

境内机构办理内保外贷业务，应按本规定要求办理内保外贷登记；经外汇局登记的内保外贷，发生担保履约的，担保人可自行办理；担保履约后应按本规定要求办理对外债权登记。

境内机构办理外保内贷业务，应符合本规定明确的相关条件；经外汇局登记的外保内贷，债权人可自行办理与担保履约相关的收款；担保履约后境内债务人应按本规定要求办理外债登记手续。

第七条 境内机构提供或接受其他形式跨境担保，应符合相关外汇管理规定。

第二章 内保外贷

第八条 担保人办理内保外贷业务，在遵守国家法律法规、行业主管部门规定及外汇管理规定的前提下，可自行签订内保外贷合同。

第九条 担保人签订内保外贷合同后，应按以下规定办理内保外贷登记。

担保人为银行的，由担保人通过数据接口程序或其他方式向外汇局报送内保外贷业务相关数据。

担保人为非银行金融机构或企业（以下简称非银行机构）的，应在签订担保合同后 15 个工作日内到所在地外汇局办理内保外贷签约登记手续。担保合同主要条款发生变更的，应当办理内保外贷签约变更登记手续。

外汇局按照真实、合规原则对非银行机构担保人的登记申请进行程序性审核并办理登记手续。

第十条 银行、非银行金融机构作为担保人提供内保外贷，按照行业主管部门规定，应具有相应担保业务经营资格。

第十一条 内保外贷项下资金用途应当符合以下规定：

- (一) 内保外贷项下资金仅用于债务人正常经营范围内的相关支出，不得用于支持债务人从事正常业务范围以外的相关交易，不得虚构贸易背景进行套利，或进行其他形式的投机性交易。
- (二) 未经外汇局批准，债务人不得通过向境内进行借贷、股权投资或证券投资等方式将担保项下资金直接或间接调回境内使用。

第十二条 担保人办理内保外贷业务时，应对债务人主体资格、担保项下资金用途、预计的还款资金来源、担保履约的可能性及相关交易背景进行审核，对是否符合境内外相关法律法规进行尽职调查，并以适当方式监督债务人按照其申明的用途使用担保项下资金。

第十三条 内保外贷项下担保人付款责任到期、债务人清偿担保项下债务或发生担保履约后，担保人应

办理内保外贷登记注销手续。

第十四条 如发生内保外贷履约，担保人为银行的，可自行办理担保履约项下对外支付。

担保人为非银行机构的，可凭担保登记文件直接到银行办理担保履约项下购汇及对外支付。在境外债务人偿清因担保人履约而对境内担保人承担的债务之前，未经外汇局批准，担保人须暂停签订新的内保外贷合同。

第十五条 内保外贷业务发生担保履约的，成为对外债权人的境内担保人或反担保人应当按规定办理对外债权登记手续。

第十六条 境内个人可作为担保人并参照非银行机构办理内保外贷业务。

第三章 外保内贷

第十七条 境内非金融机构从境内金融机构借用贷款或获得授信额度，在同时满足以下条件的前提下，可以接受境外机构或个人提供的担保，并自行签订外保内贷合同：

- (一) 债务人在境内注册经营的非金融机构；
- (二) 债权人在境内注册经营的金融机构；
- (三) 担保标的为金融机构提供的本外币贷款（不包括委托贷款）或有约束力的授信额度；
- (四) 担保形式符合境内、外法律法规。

未经批准，境内机构不得超出上述范围办理外保内贷业务。

第十八条 境内债务人从事外保内贷业务，由发放贷款或提供授信额度的境内金融机构向外汇局集中报送外保内贷业务相关数据。

第十九条 外保内贷业务发生担保履约的，在境内债务人偿清其对境外担保人的债务之前，未经外汇局批准，境内债务人应暂停签订新的外保内贷合同；已经签订外保内贷合同但尚未提款或尚未全部提款的，未经所在地外汇局批准，境内债务人应暂停办理新的提款。

境内债务人因外保内贷项下担保履约形成的对外负债，其未偿本金余额不得超过其上年度未经审计的净资产数额。

境内债务人向债权人申请办理外保内贷业务时，应真实、完整地向债权人提供其已办理外保

内贷业务的债务违约、外债登记及债务清偿情况。

第二十条 外保内贷业务发生境外担保履约的，境内债务人应到所在地外汇局办理短期外债签约登记及相关信息备案手续。外汇局在外债签约登记环节对债务人外保内贷业务的合规性进行事后核查。

第四章 物权担保的外汇管理

第二十一条 外汇局不对担保当事各方设定担保物权的合法性进行审查。担保当事各方应自行确认担保合同内容符合境内外相关法律法规和行业主管部门的规定。

第二十二条 担保人与债权人之间因提供抵押、质押等物权担保而产生的跨境收支和交易事项，已存在限制或程序性外汇管理规定的，应当符合规定。

第二十三条 当担保人与债权人分属境内、境外，或担保物权登记地（或财产所在地、收益来源地）与担保人、债权人的任意一方分属境内、境外时，境内担保人或境内债权人应按下列规定办理相关外汇管理手续：

- (一) 当担保人、债权人注册地或担保物权登记地（或财产所在地、收益来源地）至少有两项分属境内外时，担保人实现担保物权的方式应当符合相关法律规定。
- (二) 除另有明确规定外，担保人或债权人申请汇出或收取担保财产处置收益时，可直接向境内银行提出申请；在银行审核担保履约真实性、合规性并留存必要材料后，担保人或债权人可以办理相关购汇、结汇和跨境收支。
- (三) 相关担保财产所有权在担保人、债权人之间发生转让，按规定需要办理跨境投资外汇登记的，当事人应办理相关登记或变更手续。

第二十四条 担保人为第三方债务人向债权人提供物权担保，构成内保外贷或外保内贷的，应当按照内保外贷或外保内贷相关规定办理担保登记手续，并遵守相关规定。

经外汇局登记的物权担保因任何原因而未合法设立，担保人应到外汇局注销相关登记。

第五章 附则

第二十五条 境内机构提供或接受除内保外贷和外保内贷以外的其他形式跨境担保，在符合境内外法律法规和本规定的前提下，可自行签订跨境担保合同。除外汇局另有明确规定外，担保人、债务人不需要就其他形式跨境担保到外汇局办理登记或备案。

境内机构办理其他形式跨境担保，可自行办理担保履约。担保项下对外债权债务需要事前审批或核准，或因担保履约发生对外债权债务变动的，应按规定办理相关审批或登记手续。

第二十六条 境内债务人对外支付担保费，可按照服务贸易外汇管理有关规定直接向银行申请办理。

第二十七条 担保人、债务人不得在明知或者应知担保履约义务确定发生的情况下签订跨境担保合同。

第二十八条 担保人、债务人、债权人向境内银行申请办理与跨境担保相关的购付汇或收结汇业务时，境内银行应当对跨境担保交易的背景进行尽职审查，以确定该担保合同符合中国法律法规和本规定。

第二十九条 外汇局对跨境担保合同的核准、登记或备案情况以及本规定明确的其他管理事项与管理要求，不构成跨境担保合同的生效要件。

第三十条 外汇局定期分析内保外贷和外保内贷整体情况，密切关注跨境担保对国际收支的影响。

第三十一条 外汇局对境内机构跨境担保业务进行核查和检查，担保当事各方、境内银行应按照外汇局要求提供相关资料。对未按本规定及相关规定办理跨境担保业务的，外汇局根据《中华人民共和国外汇管理条例》进行处罚。

第三十二条 国家外汇管理局可出于保障国际收支平衡的目的，对跨境担保管理方式适时进行调整。

第三十三条 本规定由国家外汇管理局负责解释。

附件 2

跨境担保外汇管理操作指引

第一部分 内保外贷外汇管理

一、 担保人办理内保外贷业务，在遵守国家法律法规、行业主管部门规定及外汇管理规定的前提下，可自行签订内保外贷合同。

二、 内保外贷登记

担保人签订内保外贷合同后，应按以下规定办理内保外贷登记：

(一) 担保人为银行的，由担保人通过数据接口程序或其他方式向外汇局资本项目信息系统报送内保外贷相关数据。

(二) 担保人为非银行金融机构或企业（以下简称为非银行机构）的，应在签订担保合同后 15 个工作日内到所在地外汇局办理内保外贷签约登记手续。担保合同或担保项下债务合同主要条款发生变更的（包括债务合同展期以及债务或担保金额、债务或担保期限、债权人等发生变更），应当在 15 个工作日内办理内保外贷变更登记手续。

1、 非银行机构到外汇局办理内保外贷签约登记时，应提供以下材料：

- (1) 关于办理内保外贷签约登记的书面申请报告（内容包括公司基本情况、已办理且未了结的各项跨境担保余额、本次担保交易内容要点、预计还款资金来源、其他需要说明的事项。有共同担保人的，应在申请报告中说明）；
- (2) 担保合同和担保项下主债务合同（合同文本内容较多的，提供合同简明条款并加盖印章；合同为外文的，须提供中文翻译件并加盖印章）；
- (3) 外汇局根据本规定认为需要补充的相关证明材料（如发改委、商务部门关于境外投资项目的批准文件、办理变更登记时需要提供的变更材料等）。

2、 外汇局按照真实、合规原则对非银行机构担保人的登记申请进行程序性审核，并为其办理登记手续。外汇局对担保合同的真实性、商业合理性、合规性及履约倾向存在疑问的，有权要求担保人作出书面解释。外汇局按照合理商业标准和相关法规，认为担保人解释明显不成立的，可以决定不受理登记申请，并向申请人书面说明原因。

担保人未在规定期限内到外汇局办理担保登记的，如能说明合理原因，且担保人提出登记申请时尚未出现担保履约意向的，外汇局可按正常程序为其办理补登记；不能说明合理原因的，外汇局可按未及时办理担保登记进行处理，在移交外汇检查部门后再为其办理补登记手续。

3、 非金融机构可以向外汇局申请参照金融机构通过资本项目系统报送内保外贷数据。

4、 同一内保外贷业务下存在多个境内担保人的，可自行约定其中一个担保人到所在地外汇局

办理登记手续。外汇局在办理内保外贷登记时，应在备注栏中注明其他担保人。

三、 金融机构作为担保人提供内保外贷，按照行业主管部门规定，应具有相应担保业务经营资格。以境内分支机构名义提供的担保，应当获得总行或总部授权。

四、 内保外贷项下资金用途应当符合以下规定：

(一) 内保外贷项下资金仅用于债务人正常经营范围内的相关支出，不得用于支持债务人从事正常业务范围以外的相关交易，不得虚构贸易背景进行套利，或进行其他形式的投机性交易。

(二) 未经外汇局批准，债务人不得通过向境内进行借贷、股权投资或证券投资等方式将担保项下资金直接或间接调回境内使用。

担保项下资金不得用于境外机构或个人向境内机构或个人进行直接或间接的股权、债权投资，包括但不限于以下行为：

1、债务人使用担保项下资金直接或间接向在境内注册的机构进行股权或债权投资。

2、担保项下资金直接或间接用于获得境外标的公司的股权，且标的公司 50% 以上资产在境内的。

3、担保项下资金用于偿还债务人自身或境外其他公司承担的债务，而原融资资金曾以股权或债权形式直接或间接调回境内的。

4、债务人使用担保项下资金向境内机构预付货物或服务贸易款项，且付款时间相对于提供货物或服务的提前时间超过 1 年、预付款金额超过 100 万美元及买卖合同总价 30% 的（出口大型成套设备或承包服务时，可将已完成工作量视同交货）。

(三) 内保外贷合同项下发生以下类型特殊交易时，应符合以下规定：

1、内保外贷项下担保责任为境外债务人债券发行项下还款义务时，境外债务人应由境内机构直接或间接持股，且境外债券发行收入应用于与境内机构存在股权关联的境外投资项目，且相关境外机构或项目已经按照规定获得国内境外投资主管部门的核准、登记、备案或确认；

2、内保外贷合同项下融资资金用于直接或间接获得对境外其他机构的股权（包括新建境外企业、收购境外企业股权和向境外企业增资）或债权时，该投资行为应当符合国内相关部门有关境外投资的规定；

3、内保外贷合同项下义务为境外机构衍生交易项下支付义务时，债务人从事衍生交易应当以止损保值为目的，符合其主营业务范围且经过股东适当授权。

五、 内保外贷注销登记

内保外贷项下债务人还清担保项下债务、担保人付款责任到期或发生担保履约后，担保人应办理内保外贷登记注销手续。其中，银行可通过数据接口程序或其他方式向外汇局资本项目系统报送内保

外贷更新数据；非银行机构应在 15 个工作日内到外汇局申请注销相关登记。

六、 担保履约

- (一)** 银行发生内保外贷担保履约的，可自行办理担保履约项下对外支付，其担保履约资金可以来源于自身向反担保人提供的外汇垫款、反担保人以外汇或人民币形式交存的保证金，或反担保人支付的其他款项。反担保人可凭担保履约证明文件直接办理购汇或支付手续。
- (二)** 非银行机构发生担保履约的，可凭加盖外汇局印章的担保登记文件直接到银行办理担保履约项下购汇及对外支付。在办理国际收支间接申报时，须填写该笔担保登记时取得的业务编号。非银行机构发生内保外贷履约的，在境外债务人偿清境内担保人承担的债务之前（因债务人破产、清算等原因导致其无法清偿债务的除外），未经外汇局批准，担保人必须暂停签订新的内保外贷合同。
- (三)** 非银行机构提供内保外贷后未办理登记但需要办理担保履约的，担保人须先向外汇局申请办理内保外贷补登记，然后凭补登记文件到银行办理担保履约手续。外汇局在办理补登记前，应先移交外汇检查部门。

七、 对外债权登记

- (一)** 内保外贷发生担保履约的，成为对外债权人的境内担保人或境内反担保人，应办理对外债权登记。
对外债权人为银行的，通过资本项目信息系统报送对外债权相关信息。债权人为非银行机构的，应在担保履约后 15 个工作日内到所在地外汇局办理对外债权登记，并按规定办理与对外债权相关的变更、注销手续。
- (二)** 对外债权人为银行时，担保项下债务人（或反担保人）主动履行对担保人还款义务的，债务人（或反担保人）、担保人可自行办理各自的付款、收款手续。债务人（或反担保人）由于各种原因不能主动履行付款义务的，担保人以合法手段从债务人（或反担保人）清收的资金，其币种与原担保履约币种不一致的，担保人可自行代债务人（或反担保人）办理相关汇兑手续。
- (三)** 对外债权人为非银行机构时，其向债务人追偿所得资金为外汇的，在向银行说明资金来源、银行确认境内担保人已按照相关规定办理对外债权登记后可以办理结汇。

八、 其他规定

- (一)** 担保人办理内保外贷业务时，应对债务人主体资格、担保项下资金用途、预计的还款资金来源、担保履约的可能性及相关交易背景进行审核，对是否符合境内、外相关法律法规进行尽职调查，并以适当方式监督债务人按照其申明的用途使用担保项下资金。
- (二)** 境内个人作为担保人，可参照境内非银行机构办理内保外贷业务。

- (三) 境内机构为境外机构（债务人）向其境外担保人提供的反担保，按内保外贷进行管理，提供反担保的境内机构须遵守本规定。境内机构按内保外贷规定为境外机构（债务人）提供担保时，其他境内机构为债务人向提供内保外贷的境内机构提供反担保，不按内保外贷进行管理，但需符合相关外汇管理规定。
- (四) 担保人对担保责任上限无法进行合理预计的内保外贷，如境内企业出具的不明确赔偿金额上限的项目完工责任担保，可以不办理登记，但经外汇局核准后可以办理担保履约手续。

第二部分 外保内贷外汇管理

一、 境内非金融机构从境内金融机构借用贷款或获得授信额度，在同时满足以下条件的前提下，可以接受境外机构或个人提供的担保，并自行签订外保内贷合同：

- (一) 债务人在境内注册经营的非金融机构；
- (二) 债权人在境内注册经营的金融机构；
- (三) 担保标的为本外币贷款（不包括委托贷款）或有约束力的授信额度；
- (四) 担保形式符合境内、外法律法规。

未经批准，境内机构不得超出上述范围办理外保内贷业务。

二、 境内债务人从事外保内贷业务，由发放贷款或提供授信额度的境内金融机构向外汇局的资本项目系统集中报送外保内贷业务数据。

三、 发生外保内贷履约的，金融机构可直接与境外担保人办理担保履约收款。

境内债务人从事外保内贷业务发生担保履约的，在境内债务人偿清其对境外担保人的债务之前，未经外汇局批准，境内债务人应暂停签订新的外保内贷合同；已经签订外保内贷合同但尚未提款或全部提款的，未经所在地外汇局批准，应暂停办理新的提款。

境内债务人因外保内贷项下担保履约形成的对外负债，其未偿本金余额不得超过其上年度未经审计的净资产数额。超出上述限额的，须占用其自身的外债额度；外债额度仍然不够的，按未经批准擅自对外借款进行处理。

境内非银行金融机构为债权人，发生境外担保人履约的，境内非银行金融机构在办理国际收支间接申报时，应在申报单上填写该笔外保内贷登记时取得的业务编号。

境内债务人向债权人申请办理外保内贷业务时，应向债权人真实、完整地提供其已办理外保内贷业

务的债务违约、外债登记及债务清偿情况。

四、 外保内贷业务发生境外担保履约的，境内债务人应在担保履约后 15 个工作日内到所在地外汇局办理短期外债签约登记及相关信息备案。外汇局在外债签约登记环节对债务人外保内贷业务的合规性进行事后核查。发现违规的，在将违规行为移交外汇检查部门后，外汇局可为其办理外债登记手续。

因境外担保履约而申请办理外债登记的，债务人应当向外汇局提供以下材料：

- (一)** 关于办理外债签约登记的书面申请报告（内容包括公司基本情况、外保内贷业务逐笔和汇总情况、本次担保履约情况及其他需要说明的事项）。
- (二)** 担保合同复印件和担保履约证明文件（合同文本内容较多的，提供合同简明条款并加盖印章；合同为外文的，须提供中文翻译件并加盖债务人印章）。
- (三)** 外商投资企业应提供批准证书、营业执照等文件，中资企业应提供营业执照。
- (四)** 上年度未经审计的债务人财务报表。
- (五)** 外汇局为核查外保内贷业务合规性、真实性而可能要求提供的其他材料（如境外债权人注册文件或个人身份证件）。

五、 金融机构办理外保内贷履约，如担保履约资金与担保项下债务提款币种不一致而需要办理结汇或购汇的，应当向外汇局提出申请。金融机构办理境外担保履约款结汇（或购汇）业务，由其分行或总行汇总自身及下属分支机构的担保履约款结汇（或购汇）申请后，向其所在地外汇局集中提出申请。

金融机构提出的境外担保履约款结汇（或购汇）申请，由外汇局资本项目管理部门受理。金融机构作为债权人签订贷款担保合同时无违规行为的，外汇局可批准其担保履约款结汇（或购汇）。若金融机构违规行为属于未办理债权人集中登记等程序性违规的，外汇局可先允许其办理结汇（或购汇），再依据相关法规进行处理；金融机构违规行为属于超出现行政策许可范围等实质性违规且金融机构应当承担相应责任的，外汇局应先移交外汇检查部门，然后再批准其结汇（或购汇）。

六、 金融机构申请担保履约款结汇（或购汇），应提交以下文件：

- (一)** 申请书；
- (二)** 外保内贷业务合同（或合同简明条款）；
- (三)** 证明结汇（或购汇）资金来源的书面材料；
- (四)** 债务人提供的外保内贷履约项下外债登记证明文件（因清算、解散、债务豁免或其他合理因素导致债务人无法取得外债登记证明的，应当说明原因）；
- (五)** 外汇局认为必要的其他证明材料。

七、境外担保人向境内金融机构为境内若干债务人发放的贷款组合提供部分担保（风险分担），发生担保履约（赔付）后，如合同约定由境内金融机构代理境外担保人向债务人进行债务追偿，则由代理的金融机构向外汇局报送外债登记数据，其未偿本金余额不得超过该担保合同项下各债务人上年度未经审计的净资产数之和。

第三部分 物权担保外汇管理

一、外汇局仅对跨境担保涉及的资本项目外汇管理事项进行规范，但不对担保当事各方设定担保物权的合法性进行审查。担保当事各方应自行确认以下事项符合相关法律法规，包括但不限于：

- (一)** 设定抵押（质押）权的财产或权利是否符合法律规定的范围；
- (二)** 设定抵押（质押）权在法律上是否存在强制登记要求；
- (三)** 设定抵押（质押）权是否需要前置部门的审批、登记或备案；
- (四)** 设定抵押（质押）权之前是否应当对抵押或质押物进行价值评估或是否允许超额抵押（质押）等；
- (五)** 在实现抵押（质押）权时，国家相关部门是否对抵押（质押）财产或权利的转让或变现存在限制性规定。

二、担保人与债权人之间因提供抵押、质押等物权担保而产生的跨境收支和交易事项，已存在限制或程序性外汇管理规定的，应当符合规定。

国家对境内外机构或个人跨境获取特定类型资产（股权、债权、房产和其他类型资产等）存在限制性规定的，如境外机构从境内机构或另一境外机构获取境内资产，或境内机构从境外机构或另一境内机构获取境外资产，担保当事各方应自行确认担保合同履约不与相关限制性规定产生冲突。

三、当担保人与债权人分属境内、境外，或担保物权登记地（或财产所在地、收益来源地）与担保人、债权人的任意一方分属境内、境外时，境内担保人或境内债权人应按下列规定办理相关外汇管理手续：

- (一)**当担保人、债权人注册地或担保物权登记地（或财产所在地、收益来源地）至少有两项分属境内外时，担保人实现担保物权的方式应当符合相关法律规定。
- (二)**除另有明确规定外，担保人或债权人申请汇出或收取担保财产处置收益时，可直接向境内银行提出申请；银行在审核担保履约真实性、合规性并留存必要材料后，担保人或债权人可以办理相关购汇、结汇和跨境收支。
- (三)**相关担保财产所有权在担保人、债权人之间发生转让，按规定需要办理跨境投资外汇登记的，当事人应办理相关登记或变更手续。

四、 担保人为第三方债务人向债权人提供物权担保，构成内保外贷或外保内贷的，应当按照内保外贷或外保内贷相关规定办理担保登记手续，并遵守相关限制性规定。

经外汇局登记的物权担保因任何原因而未合法设立，担保人应到外汇局注销相关登记。

五、 境内非银行机构为境外债务人向境外债权人提供物权担保，外汇局在办理内保外贷登记时，应在内保外贷登记证明中简要记录其担保物权的具体内容。

外汇局在内保外贷登记证明中记录的担保物权具体事项，不成为设定相关抵押、质押等权利的依据，也不构成相关抵押或质押合同的生效条件。

六、 境内机构为自身债务提供跨境物权担保的，不需要办理担保登记。担保人以法规允许的方式用抵押物折价清偿债务，或抵押权人变卖抵押物后申请办理对外汇款时，担保人参照一般外债的还本付息办理相关付款手续。

第四部分 跨境担保其他事项外汇管理

一、 其他形式跨境担保

(一) 其他形式跨境担保是指除前述内保外贷和外保内贷以外的其他跨境担保情形。包括但不限于：

- 1、担保人在境内、债务人与债权人分属境内或境外的跨境担保；
- 2、担保人在境外、债务人与债权人分属境内或境外的跨境担保；
- 3、担保当事各方均在境内，担保物权登记地在境外的跨境担保；
- 4、担保当事各方均在境外，担保物权登记地在境内的跨境担保。

(二) 境内机构提供或接受其他形式跨境担保，在符合境内外法律法规和本规定的前提下，可自行签订跨境担保合同。除外汇局另有明确规定外，担保人、债务人不需要就其他形式跨境担保到外汇局办理登记或备案，无需向资本项目信息系统报送数据。

(三) 境内机构办理其他形式跨境担保，应按规定办理与对外债权债务有关的外汇管理手续。担保项下对外债权或外债需要事前办理审批或登记手续的，应当办理相关手续。

(四) 除另有明确规定外，境内担保人或境内债权人申请汇出或收取担保履约款时，可直接向境内银行提出申请；银行在审核担保履约真实性、合规性并留存必要材料后，担保人或债权人可以办理相关购汇、结汇和跨境收支。

(五) 担保人在境内、债务人在境外，担保履约后构成对外债权的，应当办理对外债权登记；担保人在境外、债务人在境内，担保履约后发生境外债权人变更的，应当办理外债项下债权人变更登记手续。

(六) 境内担保人向境内债权人支付担保履约款，或境内债务人向境内担保人偿还担保履约款的，因担保项下债务计价结算币种为外币而付款人需要办理境内外汇划转的，付款人可直接在银行办理相关付款手续。

二、 境内债务人对外支付担保费，可按照服务贸易外汇管理有关规定直接向银行申请办理。

三、 担保人、债务人不得在明知或者应知担保履约义务确定发生的情况下签订跨境担保合同。担保人、债务人和债权人可按照合理商业原则，依据以下标准判断担保合同是否具备明显的担保履约意图：

- (一)** 签订担保合同时，债务人自身是否具备足够的清偿能力或可预期的还款资金来源；
- (二)** 担保项下借款合同规定的融资条件，在金额、利率、期限等方面与债务人声明的借款资金用途是否存在明显不符；
- (三)** 担保当事各方是否存在通过担保履约提前偿还担保项下债务的意图；
- (四)** 担保当事各方是否曾经以担保人、反担保人或债务人身份发生过恶意担保履约或债务违约。

四、 担保人、债务人、债权人向境内银行申请办理与跨境担保相关的购付汇和收结汇时，境内银行应当对跨境担保交易的背景进行尽职审查，以确定该担保合同符合中国法律法规和本规定。

五、 具备以下条件之一的跨境承诺，不按跨境担保纳入外汇管理范围：

- (一)** 该承诺不具有契约性质或不受法律约束；
- (二)** 履行承诺义务的方式不包括现金交付或财产折价清偿等付款义务；
- (三)** 履行承诺义务不会同时产生与此直接对应的对被承诺人的债权；
- (四)** 国内有其他法规、其他部门通过其他方式进行有效管理，经外汇局明确不按跨境担保纳入外汇管理范围的跨境承诺，如境内银行在货物与服务进口项下为境内机构开立的即期和远期信用证、已纳入行业主管部门监管范围的信用保险等；
- (五)** 一笔交易存在多个环节，但监管部门已在其中一个环节实行有效管理，经外汇局明确不再重复纳入规模和统计范围的跨境承诺，如境内银行在对外开立保函、开立信用证或发放贷款时要求境内客户提供的保证金或反担保；
- (六)** 由于其他原因外汇局决定不按跨境担保纳入外汇管理范围的相关承诺。

不按跨境担保纳入外汇管理范围的相关承诺，不得以跨境担保履约的名义办理相关跨境收支。

六、 跨境担保可分为融资性担保和非融资性担保。融资性担保是指担保人为融资性付款义务提供的担保，这些付款义务来源于具有融资合同一般特征的相关交易，包括但不限于普通借款、债券、融资租赁、有约束力的授信额度等。非融资性担保是指担保人为非融资性付款义务提供的担保，这些付款义务

来源于不具有融资合同一般特征的交易，包括但不限于招投标担保、预付款担保、延期付款担保、货物买卖合同下的履约责任担保等。

七、 外汇局对境内机构跨境担保业务进行核查和检查，担保当事各方、境内银行应按照外汇局要求提供相关资料。对未按本规定及相关规定办理跨境担保业务的，外汇局根据《中华人民共和国外汇管理条例》（以下简称《条例》）进行处罚。

(一) 违反《跨境担保外汇管理规定》（以下简称《规定》）第十一条第（二）项规定，债务人将担保项下资金直接或间接调回境内使用的，按照《条例》第四十一条对担保人进行处罚。

(二) 有下列情形之一的，按照《条例》第四十三条处罚：

- 1、违反《规定》第八条规定，担保人办理内保外贷业务违反法律法规及相关部门规定的；
- 2、违反《规定》第十条规定，担保人超出行业主管部门许可范围提供内保外贷的；
- 3、违反《规定》第十二条规定，担保人未对债务人主体资格、担保项下资金用途、预计的还款资金来源、担保履约的可能性及相关交易背景进行审核，对是否符合境内、外相关法律法规未进行尽职调查，或未以适当方式监督债务人按照其申明的用途使用担保项下资金的；
- 4、违反《规定》第十四条规定，担保人未经外汇局批准，在向债务人收回提供履约款之前签订新的内保外贷合同的；
- 5、违反《规定》第十七条规定，未经批准，债务人、债权人超出范围办理外保内贷业务的；
- 6、违反《规定》第十九条第一款规定，境内债务人未经外汇局批准，在偿清对境外担保人债务之前擅自签订新的外保内贷合同或办理新的提款的；
- 7、违反《规定》第十九条第二款规定，境内债务人担保履约项下未偿本金余额超过其上年度未经审计的净资产数额的；
- 8、违反《规定》第二十七条规定，担保人、被担保人明知或者应知担保履约义务确定发生的情况下仍然签订跨境担保合同的。

(三) 有下列情形之一的，按照《条例》第四十七条处罚：

- 1、违反《规定》第二十三条第（二）项规定，银行未审查担保履约真实性、合规性或留存必要材料的；
- 2、违反《规定》第二十八条规定，境内银行对跨境担保交易的背景未进行尽职审查，以确定该担保交易符合中国法律法规和本规定的。

(四) 有下列情形的，按照《条例》第四十八条处罚：

- 1、违反《规定》第九条规定，担保人未按规定办理内保外贷登记的；
- 2、违反《规定》第十三条规定，担保人未按规定办理内保外贷登记注销手续的；
- 3、违反《规定》第十五条规定，担保人或反担保人未按规定办理对外债权登记手续的；
- 4、违反《规定》第十八条规定，境内金融机构未按规定向外汇局报送外保内贷业务相关数据的；
- 5、违反《规定》第十九条第三款规定，债务人办理外保内贷业务时未向债权人真实、完整地

提供其已办理外保内贷业务的债务违约、外债登记及债务清偿情况的；

- 6、违反《规定》第二十条规定，境内债务人未按规定到所在地外汇局办理短期外债签约登记及相关信息备案手续的；
- 7、违反《规定》第二十三条第（三）项规定，当事人未按规定办理跨境投资外汇登记的；
- 8、违反《规定》第二十四条第二款规定，担保人未到外汇局注销相关登记的。

附件 3

废止法规目录

- 1、《境内机构对外担保管理办法实施细则》（[97]汇政发字第 10 号）
- 2、《国家外汇管理局关于境内机构对外担保管理问题的通知》（汇发[2010]39 号）
- 3、《国家外汇管理局关于在部分地区试行小额外保内贷业务有关外汇管理问题的通知》（汇发[2013]40 号）
- 4、《国家外汇管理局关于外汇担保项下人民币贷款有关问题的补充通知》（汇发[2005]26 号）
- 5、《国家外汇管理局关于核定部分分局 2013 年度中资企业外保内贷额度有关问题的通知》（汇发[2013]23 号）
- 6、《国家外汇管理局关于外债、对外担保补登记有关问题的通知》（汇资函[1999]77 号）
- 7、《国家外汇管理局关于规范对外担保履约审批权限的通知》（汇发[2000]84 号）
- 8、《国家外汇管理局关于如何界定擅自以外汇作质押的函》（[97]汇政法字第 2 号）
- 9、《国家外汇管理局关于金融机构外汇担保项下人民币贷款有关问题的复函》（汇复[1999]56 号）
- 10、《国家外汇管理局关于保险权益质押登记问题的批复》（汇复[2001]144 号）
- 11、《国家外汇管理局关于核定境内银行 2011 年度融资性对外担保余额指标有关问题的通知》（汇发[2011]30 号）
- 12、《国家外汇管理局关于转发和执行<最高人民法院关于适用<中华人民共和国担保法>若干问题的解释>的通知》（汇发[2001]6 号）