

Yinfa No. 331 [1998], Notice of the People's Bank of China on Regulations on the Administrative Punishments Imposed on the Financial Institutions and Their Liable Persons for Violation of the Regulations on Management of Sale and Payments of Foreign Exchange

Branches of the People's Bank of China in all provinces, autonomous regions and municipalities directly under the Central Government, and the branch of the People's Bank of China in Shenzhen; branches of the State Administration of Foreign Exchange in all provinces, autonomous regions and municipalities directly under the Central Government, and the branch of the State Administration of Foreign Exchange in Shenzhen; and the headquarters of all designated Chinese-funded foreign exchange banks:

In order to strengthen foreign exchange management, effectively crack down on evasion and illegal arbitrage of foreign exchange, and regulate foreign exchange business operations of financial institutions, the *Regulations on the Administrative Punishments Imposed on the Financial Institutions and Their Liable Persons for Violation of the Regulations on Management of Sale and Payments of Foreign Exchange* are formulated, which are hereby issued for your compliance and implementation. All branches (bureaus) are requested to forward them to financial institutions within their respective jurisdictions, and headquarters of all designated Chinese-funded foreign exchange banks are requested to forward them to their branches. You should report any problem encountered in the implementation to the State Administration of Foreign Exchange in a timely manner.

The People's Bank of China

July 19, 1998

Regulations on the Administrative Punishments Imposed on the Financial Institutions and Their Liable Persons for Violation of the Regulations on Management of Sale and Payments of Foreign Exchange

Article 1 These Regulations are formulated to improve foreign exchange management and crack down the violations of foreign exchange management in accordance with the *Regulations on Foreign Exchange Management* and relevant laws and regulations.

Article 2 The financial institutions mentioned in the Regulations refer to the Chinese-funded financial institutions, non-bank financial institutions and their branches approved to carry out foreign exchange business.

Article 3 When financial institutions committed behaviors violating the regulation on the sale and

the payments of foreign exchange, State Administration of Foreign exchange and its branches (hereafter referred to as "SAFE") shall give administrative punishments to them pursuant to *Regulations on Foreign exchange Management* and these Regulations.

For those liable persons making the violations, SAFE shall suggest that the financial institutions where the persons work or the administrative agencies at next higher level take disciplinary measures against them. Financial institutions or their administrative agencies at next higher level shall take disciplinary measures against the persons pursuant to the Regulations and report the sanction to SAFE.

Article 4 If financial institutions committed one of the misbehaviors listed as follows:

1. colluded with clients to take advantage of false declaration forms for arbitrage of foreign exchange;
2. opened L/C for clients while knowing perfectly well that the clients had no trade background;
3. sold foreign exchange to clients while there were no prescribed valid certificates or valid commercial documents;
4. remitted foreign exchange abroad for clients while there were no prescribed valid certificates or valid commercial documents;

Relevant liable persons shall be given the following types of administrative punishments:

1. from recording a major demerit to administrative dismissal;
2. administrative post-removing or administrative dismissal in case of liable persons who instigated, inspired the violations or didn't stop while being fully aware of the misbehaviors.

If the accumulated amount involved in the violations within one year has an equivalent of US\$5,000,000 (including US\$5,000,000), the bank's business of the sale and the payments of foreign exchange shall be suspended.

Article 5 If financial institutions committed one of the misbehaviors listed as follows:

1. without the approval from SAFE, unauthorizedly sold foreign exchange to enterprises in bonded areas;
2. without the approval from SAFE, unauthorizedly sold foreign exchange for agent import to those foreign-funded enterprises which don't enjoy the agent right or those production-oriented enterprises which don't have the agent right for import and export;

Relevant liable persons shall be given the following types of administrative punishments:

1. from recording a major demerit to administrative dismissal;
2. administrative demotion or administrative post-removing in case of persons in charge who instigated, inspired the violations or didn't stop while being fully aware of the misbehaviors.

If the accumulated amount involved in the violations within one year is US\$100,000,000 and more in equivalents, the bank's business of the sale and the payments of foreign exchange will be suspended.

Article 6 If financial institutions committed one of the misbehaviors listed as follows:

1. the amount of foreign exchange sold to clients was more than the prescribed amount which shall be sold to clients according to the valid certificates;
2. didn't examine carefully and sold foreign exchange to clients while the import contract, bill of lading, declaration or other documents were clearly and significantly falsified;
3. didn't mark the date or the amount of sale of foreign exchange, or didn't stamp the common seal or business seal on valid certificates after the sale of foreign exchange;

Relevant liable persons shall be given the following types of administrative punishments:

1. from recording a major demerit to administrative dismissal;
2. from recording a major demerit to administrative post-removing in case of persons in charge who instigated, inspired the violations or didn't stop while being fully aware of the misbehaviors.

If the accumulated amount involved in the violations within one year has an equivalents of US\$100,000,000 or more, the bank's business of the sale and the payments of foreign exchange will be suspended.

Article 7 If financial institutions committed one of the misbehaviors listed as follows:

1. didn't differentiate and make the second check to the declaration form of imported goods according to relevant provisions;
2. didn't check the agreement of agent import according to relevant provisions but sold foreign exchange to clients in case of agent import;
3. didn't check the approval issued by SAFE according to relevant provisions but sold foreign exchange to clients whose advance payments exceeded the prescribed amount or the prescribed proportion;
4. didn't check the approval issued by SAFE according to relevant provisions and sold foreign exchange to clients whose commission exceeded the prescribed amount or prescribed proportion;
5. didn't check the approval issued by SAFE according to relevant provisions but sold foreign exchange to clients in the case of transit trade characterized by initial payments and subsequent reimbursement;
6. didn't check the approval issued by SAFE according to relevant provisions but sold foreign exchange exceeding the prescribed ceiling to the resident individuals for private purpose;
7. didn't check the approval issued by SAFE according to relevant provisions but sold foreign exchange to clients for the capital account transaction;

Relevant liable persons shall be given the following types of administrative punishments:

1. from recording a major demerit to administrative dismissal;
2. from recording a major demerit to administrative post-removing in case of persons in charge who

instigated, inspired the violations or didn't stop the misbehaviors while being fully aware of the misbehaviors.

If the accumulated amount involved in the violations within one year has an equivalent of US\$100,000,000 or more, the bank's business of the sale and the payments of foreign exchange shall be suspended.

Article 8 If financial institutions committed one of the misbehaviors listed as follows:

1. didn't check the approval issued by SAFE according to relevant provisions but made the payments of foreign exchange for clients for the capital account transaction;
2. didn't check the prescribed valid certificates and commercial documents or didn't check the approval issued by SAFE according to relevant provisions but made the payments of foreign exchange for clients for current account transaction;
3. didn't check the record form of payments of foreign exchange in import submitted by importing entities according to relevant provisions but made the payments of foreign exchange for those importing entities which shall be paid foreign exchange only in the presence of record form of payments of foreign exchange in import;

Relevant liable persons shall be given the following types of administrative punishments:

1. from recording a demerit or a major demerit to the administrative dismissal;
2. from recording a demerit to administrative demotion in case of persons in charge who instigated, inspired the violations or didn't stop while being fully aware of the misbehaviors.

Article 9 If financial institutions committed one of the misbehaviors listed as follows:

1. didn't make registration of foreign debts pursuant to provisions when domestic Chinese-funded financial institutions opened forward L/C of more than 90 days but less than 365 days or opened L/C with renewal period exceeding 90 days for client;
2. unauthorizedly opened forward L/C of more than 365 days without approval from SAFE for domestic financial institutions;
3. after the opening of L/C, unauthorizedly extended the renewal period of forward L/C opened for domestic financial institutions to more than 365 days without approval from SAFE;

Relevant liable persons shall be given the following types of administrative punishments:

1. from recording a major demerit to administrative dismissal;
2. from administrative demotion to administrative discharge in case of persons in charge who instigated, inspired the violations or didn't stop while being fully aware of the misbehaviors.

Article 10 If financial institutions committed one of the misbehaviors listed as follows:

1. didn't promptly report to SAFE in case of abnormal circumstances such as the large amount purchase of foreign exchange or the frequent purchase for the payments;

2. didn't report or submit all of the verification form of payments of foreign exchange in import to SAFE according to provisions;
3. made the payments of foreign exchange for clients not having filled in the verification form of the payments of foreign exchange in import;
4. didn't report the second verification results to SAFE according to provisions.

Relevant liable persons shall be given the following types of administrative punishments:

1. from granting an administrative warning to recording a demerit;
2. from granting an administrative warning to administrative demotion in case of persons in charge who instigated, inspired the violations or didn't stop while being fully aware of the misbehaviors.

Article 11 If the violation of provisions of the sale and the payments of foreign exchange by financial institutions are so serious that it has caused great financial loss, the qualification of their senior management personnel will be removed according to the *Provisional Regulations on the Control of the Working Qualification of Senior Management Personnel in Financial Institutions*. If constituting crime, relevant liable persons shall be investigated for criminal responsibility according to the laws.

Article 12 The interpretation of these Regulations is with the State Administration of Foreign exchange.

Article 13 The Regulations shall come into effect as of August 1 1998.