

## **Law of the People's Republic of China on Regulation of and Supervision over the Banking Industry**

The Law of the People's Republic of China on Regulation of and Supervision over the Banking Industry, adopted at the 6th Meeting of the Standing Committee of the Tenth National People's Congress of the People's Republic of China on December 27, 2003, is hereby promulgated and shall go into effect as of February 1, 2004.

(December 27, 2003)

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### **Chapter I**

#### **General Provisions**

Article 1 This law is enacted with a view to improving regulation of and supervision over the banking industry, standardizing such regulation and supervision, preventing and mitigating risks in the banking industry, protecting the lawful rights and interests of depositors and other customers, and promoting the sound development of the banking industry.

Article 2 The banking regulatory authority under the State Council shall be responsible for the regulation of and supervision over the financial institutions of the banking industry and their business operations throughout the country.

For purposes of this law, the "financial institutions of the banking industry" refer to the financial institutions established in the People's Republic of China that receive deposits from the general public, including, among others, commercial banks, urban credit cooperatives and rural credit cooperatives, and policy banks.

The provisions of this Law pertaining to the regulation of and supervision over the financial institutions of the banking industry are applicable to the regulation and supervision of the financial asset management companies, trust and investment corporations, finance companies and financial leasing companies established in the territory of the People's Republic of China and other financial institutions established with the approval of the banking regulatory authority under the State Council.

The banking regulatory authority under the State Council shall, in accordance with the relevant provisions of this Law, regulate and supervise the financial institutions that, upon its approval, are established outside the People's Republic of China, as well as the business operations conducted abroad by the financial institutions mentioned in the preceding two paragraphs.

Article 3 The objectives of regulation of and supervision over the banking industry are to promote the lawful, sound and steady operation of the banking industry and preserve public trust in the industry.

The banking industry shall be regulated and supervised in such a way as to protect fair competition in the industry and increase the competitiveness of the industry.

Article 4 When exercising regulation and supervision, the banking regulatory authority shall follow the principles of law-abiding openness, impartiality and efficiency.

Article 5 Performance of the duties of supervision in accordance with law by banking regulatory authority and its staff members engaged in supervision shall be protected by law. Local governments, government departments at various levels, public organizations and individuals shall not interfere.

Article 6 The banking regulatory authority under the State Council shall establish a mechanism with the People's Bank of China and other financial regulatory authorities under the State Council for sharing supervisory information.

Article 7 The banking regulatory authority under the State Council may establish a cooperative mechanism of supervision with the banking regulatory authorities in other countries or regions for cross-border supervision.

## Chapter II

### The Regulatory Authority

Article 8 In light of the need to perform its duties, the banking regulatory authority under the State Council may set up local offices. It shall exercise unified leadership and administration of such offices.

The local offices of the banking regulatory authority under the State Council shall perform their supervisory duties within the scope authorized by the said authority.

Article 9 The staff members of the banking regulatory authority who are engaged in supervision shall have the professional knowledge and work experience commensurate with the positions they are holding.

Article 10 Staff members of the banking regulatory authority shall be devoted to their duties, act in accordance with law and be impartial and honest; they shall not take advantage of their positions to seek illegitimate benefits, or concurrently hold positions in enterprises such as financial institutions.

Article 11 Staff members of the banking regulatory authority shall, in accordance with law, guard State secrets, and it is incumbent upon them to guard the secrets of the financial institutions of the banking industry and of the parties subject to their supervision.

For exchanging supervisory information with the banking regulatory authorities of other countries and regions, the banking regulatory authority under the State Council shall make arrangements for preserving the confidentiality of information.

Article 12 The banking regulatory authority under the State Council shall make public its supervisory procedures, and establish a supervisory responsibility system and an internal supervisory system.

Article 13 Local governments and the relevant government departments at various levels shall cooperate with and provide assistance to the banking regulatory authority when the latter deals with risks confronted by financial institutions of the banking industry, investigates and handles violations of law in finance, and exercises supervision in other manners.

Article 14 The auditing, supervisory and other departments under the State Council shall, in accordance with the provisions of relevant laws, oversee the activities of the banking regulatory authority under the State Council.

### **Chapter III**

#### **Regulatory and Supervisory Responsibilities**

Article 15 The banking regulatory authority under the State Council shall, in accordance with laws and administrative regulations, formulate and promulgate supervisory rules and regulations governing the financial institutions of the banking industry and their business activities.

Article 16 The banking regulatory authority under the State Council shall, in accordance with the requirements and procedures provided for in laws and administrative regulations, examine, before giving approval, the establishment, change, termination and business scope of financial institutions of the banking industry.

Article 17 Where an application is submitted for the establishment of a financial institution of the banking industry and where such an institution intends to replace a shareholder that holds more than the specified percentage of the total amount of capital or shares, the banking regulatory authority under the State Council shall examine the source of capital, financial strength, ability to replenish capital and integrity of the shareholders.

Article 18 The types of services offered by a financial institution of the banking industry within its business scope shall, in accordance with relevant regulations, be subject to examination and approval by the banking regulatory authority under the State Council or be submitted to the authority for the record. With regard to the types of services that are subject to examination and approval or to being put on record, the banking regulatory authority under the State Council shall, in accordance with relevant laws and administrative regulations, formulate regulations and make them known to the public.

Article 19 Without approval by the banking regulatory authority under the State Council, no institution or individual may establish a financial institution of the banking industry or engage in business activities of such an institution.

Article 20 The banking regulatory authority under the State Council shall exercise control of the qualifications for the positions of the directors and senior managers of the financial institutions of the banking industry. Specific measures in this regard shall be formulated by the banking regulatory authority under the State Council.

Article 21 The rules of prudent operation of the financial institutions of the banking industry shall be stipulated in laws or administrative regulations, and they may also be formulated by the banking regulatory authority under the State Council in

accordance with relevant laws and administrative regulations.

The rules of prudent operation mentioned in the preceding paragraph shall cover, among other things, risk management, internal control, capital adequacy, asset quality, loan loss provisioning, risk concentration, connected transactions, and liquidity management of assets.

The financial institutions of the banking industry shall strictly observe the rules of prudent operation.

Article 22 The banking regulatory authority under the State Council shall, within a prescribed period of time, make a decision of approval or disapproval in writing in response to the following applications; if it makes a decision of disapproval, it shall explain the reasons why:

(1) for the establishment of a financial institution of the banking industry, it is six months from the date it receives the application documents;

(2) for the change or termination of a financial institution of the banking industry, for the business scope or for offering more types of services within the business scope, it is three months from the date it receives the application documents; and

(3) for examination of the qualifications of a director or senior manager, it is 30 days from the date it receives the application documents.

Article 23 The banking regulatory authority shall conduct off-site supervision of the business operations and risk profile of the financial institutions of the banking industry, for which it shall establish an information system to analyse and assess the risk profile of such institutions.

Article 24 The banking regulatory authority shall conduct on-site inspection of the business operations and risk profile of the financial institutions of the banking industry.

The banking regulatory authority under the State Council shall formulate procedures for on-site inspection to standardize such inspection.

Article 25 The banking regulatory authority under the State Council shall supervise the financial institutions of the banking industry on a consolidated basis.

Article 26 With respect to the proposal made by the People's Bank of China for inspection of a financial institution of the banking industry, the banking regulatory authority under the State Council shall respond within 30 days from the date it receives the proposal.

Article 27 The banking regulatory authority under the State Council shall establish a rating system and an early-warning mechanism for supervision over the financial institutions of the banking industry, in order to determine, on the basis of the rating and risk profile of such institutions, the frequency and scope of on-site inspection of the institutions, as well as other supervisory measures that need to be taken.

Article 28 The banking regulatory authority under the State Council shall establish a system of post responsibility for identifying and reporting emergencies in the banking industry.

When it identifies any emergency that may lead to systemic risks in the banking industry and thus seriously jeopardize social stability, the banking regulatory authority shall immediately report the matter to the leading member of the banking regulatory authority under the State Council; the leading member shall, when deeming it necessary, immediately report to the State Council while informing the People's Bank of China, the finance department and other relevant departments under the State Council of the matter.

Article 29 The banking regulatory authority under the State Council shall, in conjunction with the People's Bank of China, the finance department and other relevant departments under the State Council, establish a system for coping with emergencies in the banking industry, including formulating contingency plans, designating institutions and staff members, specifying their responsibilities and the measures and procedures, in order to ensure that emergencies in the banking industry are handled in a timely and effective manner.

Article 30 The banking regulatory authority under the State Council shall be responsible for compiling, in a unified manner, statistics and reports of the financial institutions of the banking industry throughout the country and, in accordance with the relevant regulations of the State, publish the statistics and reports.

Article 31 The banking regulatory authority under the State Council shall guide and oversee the activities of the self-regulated organizations of the banking industry.

The self-regulated organizations of the banking industry shall submit their articles of association to the banking regulatory authority under the State Council for the record.

Article 32 The banking regulatory authority under the State Council may engage in international exchange and cooperation related to regulation of and supervision over the banking industry.

## Chapter IV

### Supervisory Measures

Article 33 The banking regulatory authority shall, in light of the need for performing its duties, have the power to require the financial institutions of the banking industry to submit, in accordance with relevant regulations, their balance sheets, profit statements, other financial accounting statements, statistical reports and information concerning business operations and management, as well as the audit reports prepared by certified public accountants.

Article 34 The banking regulatory authority may take the following measures to conduct on-site inspection, as required by prudent supervision:

- (1) to enter a financial institution of the banking industry for on-site inspection;
- (2) to interview staff members of a financial institution and require them to provide explanations on the matters under inspection;
- (3) to check and make copies of the financial institution's documents and materials related to the matters under inspection, and to seal up the documents and materials that are likely to be removed, concealed or destroyed; and
- (4) to examine the computer system with which the financial institution controls its business data.

On-site inspection shall be subject to approval by the leading member of the banking regulatory authority. For on-site inspection, there shall be no less than two inspectors, who shall produce their legal certificates and the written notification of inspection. Where there are less than two inspectors, or no legal certificates and written notification of inspection are produced, the financial institution shall have the right to refuse to accept inspection.

Article 35 The banking regulatory authority may, in light of the need for performing its duties, hold supervisory consultations with the directors and senior managers of a financial institution of the banking industry, asking them to explain the important matters concerning business operations and risk management.

Article 36 The banking regulatory authority shall instruct financial institutions of the banking industry to disclose, truthfully and in accordance with relevant regulations, to the public information, including, among other things, their financial and accounting reports, statements of risk management, changes in the directors and senior managers and other important matters.

Article 37 Where a financial institution of the banking industry violates the rules of prudent operation, the banking regulatory authority under the State Council or its office at the provincial level shall instruct it to rectify within a time limit; if it fails to comply at the expiration of the time limit, or the violation seriously threatens the sound and steady operation of the institution, jeopardizes the lawful rights and interests of the depositors and other customers, the banking regulatory authority under the State Council or its office at the provincial level may, with the approval of the leading member, take the following measures, depending on the seriousness of the circumstances:

(1) instructing it to suspend part of its business or ceasing to give approval to its starting of new businesses;

(2) restricting the distribution of dividends and other returns;

(3) restricting asset transfers;

(4) instructing the holding shareholders to transfer their rights or restricting the rights of the shareholders concerned;

(5) instructing the institution to replace the directors or senior managers or restricting their rights; and

(6) ceasing to give approval to its establishment of new branches.

After rectification, the financial institution shall submit a report to the banking regulatory authority under the State Council or its office at the provincial level. After the said authority or office inspects the institution and accepts it as conforming to the rules of prudent operation, it shall, within three days after the date of acceptance, discontinue the measures prescribed in the preceding paragraph.

Article 38 Where a financial institution of the banking industry is experiencing or is likely to experience a credit crisis, thereby seriously jeopardizing the lawful rights and interests of depositors and other customers, the banking regulatory authority under the State Council may, in accordance with law, take over the institution or facilitate its restructuring. The take-over and restructuring shall be carried out in accordance with relevant laws and the regulations of the State Council.

Article 39 Where a financial institution of the banking industry operates in violation of laws or is not operated or managed properly, thereby seriously threatening financial order and undermining public interests unless it is closed, the banking regulatory authority under the State Council shall have the power to close it.

Article 40 Where a financial institution of banking industry is taken over,



restructured, or closed, the banking regulatory authority under the State Council shall have the power to require the directors, senior managers and other staff members of the institution to perform their duties according to the requirements of the authority.

In the course of the take-over, restructuring or liquidation after the closure of the institution, the banking regulatory authority under the State Council may, with the approval of the leading member of the authority, take the following measures against the directors and senior managers who are directly in charge and the other staff members who are directly responsible:

(1) where their departure from the People's Republic of China will cause heavy losses to the interests of the State, notifying the exit control authority of the need to prevent them, in accordance with law, from leaving the country; and

(2) submitting an application to the judicial authority for prohibiting their moving to other places or their transferring of their property, or for establishing other rights on their property.

Article 41 A banking regulatory authority shall, with the approval of the leading member of the banking regulatory authority under the State Council or of its office at the provincial level, have the power to inquire about the bank accounts of the financial institution of the banking industry suspected of violating laws in financial affairs, and the bank accounts of its staff members and connected parties; and may, with the approval of the said leading member, submit an application to the judicial authority for freezing the illegally obtained funds that are suspected of being about to be moved to other places or concealed.

## **Chapter V**

### **Legal Responsibility**

Article 42 Any staff member of the banking regulatory authority engaged in supervision commits any of the following acts shall be given administrative sanctions according to law; and if a crime is constituted, he shall be investigated for criminal responsibility in accordance with law:

(1) in violation of relevant regulations, examining and giving approval to the establishment, change or termination of a financial institution of the banking industry, or its business scope or the services it offers within its business scope;

(2) in violation of relevant regulations, conducting on-site inspection of a financial institution of the banking industry;

(3) failing to report an emergency in accordance with the provisions in Article 28

of this Law;

(4) in violation of relevant regulations, inquiring about bank accounts or submitting an application for freezing funds;

(5) in violation of relevant regulations, taking measures against or penalizing a financial institution of the banking industry; and

(6) other acts such as abuse of power and neglect of duties.

Any staff member of the banking regulatory authority engaged in supervision who commits embezzlement, bribery or divulgence of State secrets or the business secrets he knows, which constitutes a crime, shall be investigated for criminal responsibility according to law; and if it is not serious enough to constitute a crime, he shall be given administrative sanctions according to law.

Article 43 Where a financial institution of the banking industry is established without authorization, or the business activities of financial institutions are illegally engaged in, the banking regulatory authority under the State Council shall outlaw such an institution and such business activities. If a crime is constituted, criminal responsibility shall be investigated according to law; if the case is not serious enough to constitute a crime, the unlawful gains shall be confiscated by the banking regulatory authority under the State Council; if the unlawful gains exceed RMB 500,000 yuan, a fine of not less than the amount of the unlawful gains but not more than five times that amount shall, in addition, be imposed; and if there are no unlawful gains or the amount of such gains is less than 500,000 yuan, a fine of not less than 500,000 yuan but not more than 2,000,000 yuan shall be imposed.

Article 44 Where a financial institution of the banking industry commits one of the following acts, it shall be instructed by the banking regulatory authority under the State Council to rectify; if there are unlawful gains, such gains shall be confiscated; if the unlawful gains exceed 500,000 yuan, it shall, in addition, be fined not less than the amount of such gains but not more than five times that amount ; if there are no unlawful gains, or such gains are less than 500,000 yuan, it shall be fined not less than 500,000 yuan but not more than 2,000,000 yuan; if the circumstances are particularly serious, or if the institution fails to rectify within the prescribed period of time, the banking regulatory authority under the State Council may instruct it to suspend business for rectification or revoke its business license; if a crime is constituted, the institution shall be investigated for criminal responsibility according to law:

(1) establishing a branch without approval;

(2) making changes or terminating business operations without approval;

(3) in violation of relevant regulations, engaging in business activities for which no approval is obtained or which are not put on record; and

(4) in violation of relevant regulations, raising or lowering interest rates on deposits or loans.

Article 45 Where a financial institution of the banking industry commits one of the following acts, the banking regulatory authority under the State Council shall instruct it to rectify and shall, in addition, impose on it a fine of not less than 200,000 yuan but not more than 500,000 yuan; if the circumstances are particularly serious, or if the institution fails to rectify within the prescribed period of time, the said authority may instruct it to suspend business for rectification or revoke its business license; if a crime is constituted, the institution shall be investigated for criminal responsibility according to law:

(1) appointing directors or senior managers without subjecting their qualifications for the positions to examination;

(2) refusing to accept or obstructing the off-site supervision or on-site inspection;

(3) providing statements, reports, documents or materials that are false or conceal important facts;

(4) failing to disclose information to the public in accordance with relevant regulations;

(5) violating the rules of prudent operation to a serious extent; and

(6) refusing to enforce the measures as provided for in Article 37 of this Law.

Article 46 Where a financial institution of the banking industry fails to provide statements, reports, documents or materials in accordance with relevant regulations, the banking regulatory authority shall instruct it to rectify. If it fails to comply within the prescribed period of time, it shall be fined not less than 100,000 yuan but not more than 300,000 yuan.

Article 47 Where a financial institution of the banking industry violates laws, administrative regulations or regulations of the State governing regulation and supervision of the banking industry, the banking regulatory authority may, in addition to the penalties specified in Articles 43, 44, 45 and 46 of this Law, take the following measures, depending on the seriousness of the circumstances:

(1) to instruct the financial institution to impose disciplinary sanctions on the directors and senior managers who are directly in charge and the other persons who are

directly responsible;

(2) if the case is not serious enough to constitute a crime, to give disciplinary warnings to the directors and senior managers who are directly in charge and the other persons who are directly responsible and impose on them each a fine of not less than 50,000 yuan but not more than 500,000 yuan; and

(3) to disqualify the directors and senior managers who are directly in charge for a specified period of time or for life, or to prohibit them and the other persons who are directly responsible from working in the banking industry for a specified period of time or for life.

## **Chapter VI**

### Supplementary Provisions

Article 48 Where with regard to the regulation of and supervision over the policy banks and asset management companies established in the territory of the People's Republic of China, laws and administrative regulations provide otherwise, the provisions there shall prevail.

Article 49 Where with regard to the regulation of and supervision over the wholly foreign-funded financial institutions, Chinese-foreign joint venture financial institutions and branches of foreign financial institutions of the banking industry that are established in the territory of the People's Republic of China, laws and administrative regulations provide otherwise, the provisions there shall prevail.

Article 50 This Law shall go into effect as of February 1, 2004.