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Regulations on Closure of Financial Institutions

(Adopted at the 47th Executive Meeting of the State Council on November 14, 2001, promulgated by Decree No. 324 of the State Council of the People's Republic of China on November 23, 2001, and effective as of December 15, 2001)

Chapter I General Provisions

Article 1 These Regulations are formulated for the purposes of strengthening the supervision and regulation of financial activities, maintaining financial order and protecting the interests of the State and the public.

Article 2 The closure of financial institutions by the People's Bank of China shall be governed by these Regulations.

As used in these Regulations, the term "closure" refers to the situation that the People's Bank of China, by taking compulsory administrative measures according to law, terminates the business operation of a financial institution established as a legal person with its approval, and has it dissolved.

Article 3 The People's Bank of China, its staff members and other personnel concerned shall perform their duties in accordance with these Regulations and maintain confidentiality with respect to the closed financial institution in accordance with the law.

Article 4 The local people's government of the place where the closed financial institution is located shall organize the departments concerned to carry out the tasks relating to the closure.

Chapter II Closure Decision

Article 5 Where a financial institution has its business operated in breach of laws and regulations, or fails to conduct safe and sound operations, etc., thus posing a grave danger to financial order or harm to social and public interests unless it is

closed, it then shall be closed in accordance with the law.

Article 6 Where the People's Bank of China has decided to close a financial institution, it shall produce a written closure decision.

The closure decision shall enter into force from the day of its announcement by the People's Bank of China.

The closure decision shall be published in newspapers and posted on the premises of the closed financial institution.

Article 7 From the date on which the closure decision enters into force, the closed financial institution shall immediately terminate its business operation, and return the legal person license of the financial institution and the business license(s) of its branch(es); and its senior executives, board of directors and the shareholders' meetings shall be suspended from performing their functions.

Chapter III Closure Liquidation

Article 8 Where a commercial bank is to be closed in accordance with the law, the People's Bank of China shall establish a liquidation group therefor; where a non-bank financial institution is to be closed in accordance with the law, the People's Bank of China or the relevant local people's government under the commission of the People's Bank of China shall establish a liquidation group therefor. The liquidation shall start from the date on which the closure decision enters into force. The liquidation group shall be responsible to and report its work to the People's Bank of China.

The liquidation group shall be composed of representatives from the People's Bank of China, fiscal department, auditing department and other department(s) concerned, local people's government, and shareholders of the closed financial institution, and of relevant specialists as well. The head and members of the liquidation group shall be appointed or approved by the People's Bank of China.

During liquidation, the liquidation group shall perform the same management functions as those of the closed financial institution, and the head of the liquidation

group shall perform the same functions as those of the legal representative of the closed financial institution.

Article 9 After the establishment of the liquidation group, the legal representative and other relevant person(s)-in-charge of the closed financial institution shall have all its official seals, account books, records, receipts, files and documents transferred to the liquidation group and shall assist the liquidation group in the process of liquidation.

Article 10 During liquidation, the legal representative, members of the board of directors and the supervisory board, senior management personnel with a position at or above the department level, financial personnel and other relevant personnel of the closed financial institution shall do work as required by the liquidation group, and shall not leave their posts without permission, nor leave the country without approval.

Article 11 During liquidation, the liquidation group shall fulfill the following duties:

(1) to safekeep and check up on the assets of the closed financial institution, and to formulate a balance sheet and a detailed inventory of assets;

(2) to notify depositors and other creditors by notice or announcement so as to determine claims;

(3) to dispose of and wind up any unfinished business of the closed financial institution;

(4) to clear up claims and debts, to collect on claims, and to dispose of assets;

(5) to work out a liquidation plan and have debts settled in accordance with the approved liquidation plan;

(6) to pay off taxes owed by the financial institution;

(7) to dispose of, after paying off the debts of the closed financial institution, its remaining property;

(8) to participate in lawsuits and arbitrations on behalf of the closed financial institution;

(9) to make a request to relevant departments for investigating for legal liability of the senior management personnel and other personnel concerned who are

directly responsible for the closure of the financial institution;

(10) to handle other liquidation matters.

Article 12 During liquidation, the liquidation group may commission liquidation matters to a financial institution designated by the People's Bank of China (hereinafter referred to as the commissioned institution).

The commissioned institution shall not assume any liabilities of the closed financial institution, advance any funds, or take the responsibility for the placement of the personnel of the closed financial institution. Commission fees shall be included as part of the liquidation expenses of the closed financial institution.

Article 13 The local people's government of the place where the closed financial institution is located shall establish a leading group for closure work. The responsible person of the local people's government concerned shall act as the head of the leading group.

The leading group for closure work shall support and cooperate with the liquidation group in collecting on claims and handling other liquidation matters, and shall organize the departments concerned to maintain public security and order, deal with emergencies, investigate and deal with illegal activities, and investigate for legal liability of the person(s) responsible therefor in accordance with the law.

Article 14 The liquidation group shall, within ten days of its establishment, notify creditors in writing to declare and register their claims, and shall make at least three announcements thereupon in newspapers within sixty days.

The creditors shall declare and register their claims with the liquidation group within thirty days from the date of the receipt of the notice or, within ninety days from the date of the first public announcement for those who have not received the notice.

The liquidation group may decide that depositors with small amount household deposits may be exempted from declaring and registering their claims, and that their household deposits are to be confirmed and registered by the liquidation group on the basis of the account books and other documents of the closed financial institution.

Article 15 When declaring and registering his claims, a creditor shall specify

the nature, amount and the incurring time of the claims and provide supporting materials. The liquidation group shall examine the supporting materials for claim declaration and registration, determine whether the claims are secured and the amount thereof, and have the secured and unsecured claims separately registered.

Article 16 Where a creditor fails to declare and register his claims within the specified time period, the following provisions shall apply:

(1) claims of known creditors shall be included in the liquidation;

(2) claims of unknown creditors may be requested to be satisfied before the distribution of the remaining assets of the closed financial institution is brought to an end; the claims shall no longer be satisfied if the distribution of the remaining assets of the closed financial institution has been completed.

Article 17 Interest on the debts of a closed financial institution shall cease to accrue from the date on which the closure decision enters into force.

Article 18 The following assets of a closed financial institution shall be included as assets subject to liquidation for repaying its debts:

(1) all assets of the closed financial institution as of the starting date of liquidation, including its shareholders' paid-in capital and other interests, the assets of any wholly-owned subsidiary of and any equity investments by the closed financial institution;

(2) assets legitimately obtained by the closed financial institution during liquidation;

(3) all other assets of the closed financial institution.

The transfer of assets in bad faith or under disguise by the financial institution prior to the date on which the closure decision enters into force shall be invalid. The assets transferred as such shall be recovered by the liquidation group and incorporated into the assets subject to liquidation.

Article 19 When checking up on the assets of a closed financial institution, the liquidation group shall appraise the actual value of its assets according to law. If there are any losses to the assets, the amount thereof shall be verified.

Article 20 The liquidation group may sell up the valid assets of a closed

financial institution; if the valid assets of the closed financial institution are to be auctioned, the base price for auction shall be determined on the basis of the appraisal result presented by an intermediary institution qualified for the business of assets appraisal.

As used in the preceding paragraph, the term “valid assets” refers to the assets of the closed financial institution that have been checked up and whose actual value has been verified.

Article 21 The checking up on and disposal of the assets of a closed financial institution shall be exempted from taxes and administrative fees.

Article 22 After the assets of a closed financial institution have been checked up and verified, the liquidation group shall formulate a liquidation plan.

The liquidation plan shall include information about creditors, amount of claims, amount of assets subject to liquidation, amount of money to repay the principal and legitimately accrued interests of individual household deposits, and amount of other debts to be settled. Such data as a balance sheet, a detailed inventory of assets, and an asset appraisal report shall also be attached thereto.

The liquidation plan shall be submitted to the People’s Bank of China for approval after the liquidation group has consulted with the creditors.

Chapter IV Repayment of Debts

Article 23 The assets subject to liquidation of a closed financial institution shall be first used to pay the principal and legitimately accrued interests of individual household deposits.

Article 24 After the principal and legitimately accrued interests of individual household deposits have been paid, any remaining assets subject to liquidation of a closed financial institution shall be used to repay the debts owed to legal persons and other organizations.

Article 25 After paying off all the debts, the assets of a closed financial institution left from the assets subject to liquidation shall be distributed in proportion

to the shareholders' capital contributions or to the shareholders' shareholdings.

Chapter V Cancellation of Registration

Article 26 Upon the completion of liquidation, the liquidation group shall prepare a liquidation report, a statement of amounts received and paid during the period of liquidation and various relevant account books, and submit them to the People's Bank of China for approval.

Article 27 Upon the completion of liquidation, the liquidation group shall go through the formalities for cancellation of registration with the administrative department for industry and commerce, thus terminating all the rights of the shareholders of the closed financial institution, and dissolving the closed institution immediately, and the People's Bank of China shall make a public announcement to this effect.

Article 28 Such data as accounting vouchers, account books, accounting statements and other important documents concerning the operations and liquidation of a closed financial institution shall be put under the custody of an organization designated by the People's Bank of China after the cancellation of registration.

Article 29 The auditing institution shall audit the responsible person of a closed financial institution.

Chapter VI Legal Liability

Article 30 Where any senior executive or other person concerned of a closed financial institution has, by taking advantage of his position, accepted another person's money or property, granted loans illegally, issued financial bills illegally or committed illegalities for personal gains or by fraudulent means, thus causing the closure of the financial institution, he shall be investigated for criminal liability in accordance with the relevant provisions of the criminal law on the crime of bribery, the crime of illegal grant of loans, the crime of illegal issuance of financial bills or the

crime of committing illegalities for personal gains or by fraudulent means resulting in bankruptcy or losses, or any other crime; where the offense is not serious enough for criminal penalty, he shall be given an administrative sanction of removal from office or even up to discharge from public employment, and also be prohibited for life from serving as a senior executive or holding any position equivalent to the previous one in any financial institution.

Article 31 Where any staff member of the People's Bank of China has illegally examined and approved a financial institution, or failed to supervise a financial institution according to law, or failed to investigate and deal with its illegal act(s), thus causing the closure of the financial institution as a result of serious circumstances, he shall be investigated for criminal liability in accordance with the provisions of the criminal law on the crime of abuse of power, the crime of neglect of duty, or any other crime; where the offense is not serious enough for criminal penalty, he shall be given an administrative sanction of recording of grave demerit, or demotion in the title or removal from office.

Article 32 Where a staff member of any government agency has illegally interfered with the normal business activities of any financial institution and thus holds direct responsibility for the closure of such financial institution, he shall be investigated for criminal liability in accordance with the relevant provisions of the criminal law on the crime of abuse of power or any other crime; where the offense is not serious enough for criminal penalty, he shall be given an administrative sanction of recording of grave demerit, or demotion in the title or removal from office.

Article 33 Where any staff member of a closed financial institution has committed any of the following acts during the course of closure and liquidation, he shall be investigated for criminal liability in accordance with the relevant provisions of the criminal law on the crime of interference with performance of public duties, the crime of interference with liquidation, or any other crime; where the offense is not serious enough for criminal penalty, he shall be given an administrative sanction of removal from office or even up to discharge from public employment:

- (1) preventing the liquidation group from performing its duties in accordance

with law;

(2) refusing to provide information or providing false information;

(3) secretly withdrawing funds, hiding assets, or evading repayment of debts;

(4) transferring in bad faith or under disguise the assets of a closed financial institution.

Article 34 Where a closed financial institution continues to engage in business activities in violation of the law after the closure decision has entered into force, the People's Bank of China shall have such activities banned as provided for by the Measures Banning Illegal Financial Institutions and Illegal Financial Business Activities; criminal liability shall be investigated for in accordance with the relevant provisions of the criminal law on the crime of taking in deposits illegally from the general public or any other crime; where the offence is not serious enough for criminal penalty, an administrative penalty shall be given in accordance with the law.

Article 35 Where, during liquidation, any member of the liquidation group abuses his power, neglects his duty, or commits illegalities for personal gains or by fraudulent means, thus resulting in losses of assets or damage to creditors' interests, he shall be investigated for criminal liability in accordance with the relevant provisions of the criminal law on the crime of abuse of power, the crime of neglect of duty, or any other crime; where the offense is not serious enough for criminal penalty, he shall be given an administrative sanction of demotion in the title or even up to discharge from public employment, or given a disciplinary sanction.

Article 36 Where, in performing their duties as provided for by these Regulations, any staff member of the People's Bank of China or any other person concerned divulges State secrets or the business secrets he has known, he shall be investigated for criminal liability in accordance with the relevant provisions of the criminal law on the crime of divulging State secrets, the crime of infringing on business secrets, or any other crime; where the offense is not serious enough for criminal penalty, he shall be given an administrative sanction of demotion in the title or even up to discharge from public employment, or given a disciplinary sanction.

Article 37 Where an commissioned institution fails to perform the duties

commissioned to it, thus causing losses to the assets of a closed financial institution, it shall bear civil liability in accordance with the law; the person in charge who takes direct responsibility and any other person(s) directly responsible for the failure shall be given an disciplinary sanction in accordance with the law.

Chapter VII Supplementary Provision

Article 38 These Regulations shall be effective as of December 15, 2001.

本译本仅供参考，若有歧义，请以中文版本为准。

The English version is for reference only. In case of any discrepancy or ambiguity of meaning between this English translation and the Chinese version, the latter shall prevail.