Banking Supervision Law of the PRC

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Chapter I — General Provisions

Article 1 — This Law is enacted for the purposes of strengthening the supervision and administration of the banking industry, regulating the supervisory and administrative acts, preventing and mitigating financial risks in the banking industry, protecting the lawful rights and interests of depositors and other customers, and promoting the sound and steady development of the banking industry.

Article 2 — The banking regulatory authority of the State Council shall be responsible for the supervision and administration of banking financial institutions and their business operations throughout the country. For the

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purposes of this Law, banking financial institutions refer to financial institutions established within the territory of the People's Republic of China, including commercial banks, urban credit cooperatives, rural credit cooperatives, and policy banks, that engage in taking deposits from the public, and financial institutions such as financial asset management companies, trust and investment companies, finance companies, and financial leasing companies established within the territory of the People's Republic of China, and other financial institutions established with the approval of the banking regulatory authority of the State Council. The provisions of this Law on the supervision and administration of banking financial institutions shall apply to the supervision and administration of financial asset management companies, trust and investment companies, finance companies, financial leasing companies, and other financial institutions established with the approval of the banking regulatory authority of the State Council established within the territory of the People's Republic of China. The banking regulatory authority of the State Council shall, in accordance with the relevant provisions of this Law, supervise and administer the financial institutions lawfully established by the aforesaid financial institutions outside the territory and their business operations, or entrust the financial regulatory authority of the host country or region to conduct supervision in lieu thereof.

Article 3 — The objectives of banking supervision and administration are to promote the lawful and sound operations of the banking industry and to maintain public confidence in the banking industry. Banking supervision and administration shall protect fair competition in the banking industry and enhance the competitive capacity of the banking industry.

Article 4 — The banking regulatory authority shall carry out supervision and administration of banking financial institutions in accordance with the principles of lawfulness, openness, fairness, and efficiency.

Article 5 — The banking regulatory authority, in the performance of its supervisory and administrative functions and responsibilities, shall not be subject to interference by any local people's governments, government departments at any level, social groups, or individuals.

Article 6 — The banking regulatory authority of the State Council shall establish supervisory cooperation mechanisms with the People's Bank of China and other financial regulatory authorities under the State Council.

Article 7 — The banking regulatory authority of the State Council may establish supervisory cooperation mechanisms with the banking regulatory authorities of other countries or regions to carry out cross-border supervisory and administrative cooperation.

Chapter II — Supervisory and Administrative Institution

Article 8 — The banking regulatory authority of the State Council shall, as required for the performance of its functions and responsibilities, establish dispatched offices. The banking regulatory authority of the State Council shall exercise vertical and unified leadership over its dispatched offices. The dispatched offices of the banking regulatory authority of the State Council shall, within the scope authorized by the banking regulatory authority of the State Council, perform their supervisory and administrative functions and responsibilities.

Article 9 — Personnel engaged in supervisory and administrative work in the banking regulatory authority shall possess professional knowledge and work experience commensurate with their positions, and shall not engage in any form of concurrent positions in financial institutions or other enterprises.

Article 10 — Personnel engaged in supervisory and administrative work in the banking regulatory authority shall faithfully perform their duties, handle matters in accordance with the law, and maintain impartiality and integrity. They shall not take advantage of their positions to seek improper benefits, and shall not disclose state secrets or trade secrets of the banking financial institutions and parties under their supervision and administration of which they have become aware in the course of performing their duties. The State Council shall, in accordance with the provisions of this Law, formulate provisions on the qualification requirements,

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appointment and removal, training, assessment, rewards and punishments of the personnel engaged in supervisory and administrative work.

Chapter III — Supervisory and Administrative Functions and Responsibilities

Article 11 — The banking regulatory authority of the State Council shall perform its supervisory and administrative functions and responsibilities in accordance with the law. The specific supervisory and administrative functions and responsibilities shall be prescribed by the State Council.

Article 12 — The banking regulatory authority of the State Council shall, in accordance with the law, formulate and promulgate rules and regulatory documents governing the supervision and administration of banking financial institutions and their business operations.

Article 13 — The banking regulatory authority of the State Council shall, in accordance with the prescribed conditions and procedures, examine and approve the establishment, change, termination, and business scope of banking financial institutions.

Article 14 — The banking regulatory authority of the State Council shall, in accordance with the prescribed conditions, examine the qualifications of the directors, supervisors, and senior management personnel of banking financial institutions, and approve their appointments.

Article 15 — The banking regulatory authority of the State Council shall, in accordance with the law, formulate prudential rules for the operation and management of the banking industry. The term "prudential rules" includes, but is not limited to, rules relating to risk management, internal controls, capital adequacy, asset quality, loan loss provisioning, risk concentration, connected transactions, and liquidity management of assets.

Article 16 — The banking regulatory authority of the State Council shall, in accordance with the law and prescribed procedures, conduct on-site examinations and off-site surveillance of the business operations and risk profile of banking financial institutions.

Article 17 — The banking regulatory authority of the State Council shall establish a rating system and a risk monitoring and early warning mechanism for the supervisory and administrative assessment of banking financial institutions, and shall conduct comprehensive risk assessments of banking financial institutions based on their rating and risk profile.

Article 18 — The banking regulatory authority of the State Council shall establish a reporting system for identifying and reporting emergency incidents in the banking industry, and shall formulate contingency plans for emergency incidents in the banking industry to clarify the responsible institutions, measures, and procedures for handling such incidents.

Article 19 — The banking regulatory authority of the State Council shall, in conjunction with the relevant departments, establish a mechanism for handling emergency incidents and a risk disposal mechanism in the banking industry.

Chapter IV — Supervisory and Administrative Measures

Article 20 — The banking regulatory authority of the State Council shall, in accordance with the law, formulate and promulgate rules and regulatory documents governing the supervision and administration of banking financial institutions. Such rules and regulatory documents shall be based on laws and administrative regulations and shall not contravene them.

Article 21 — The banking regulatory authority shall have the right to require banking financial institutions to submit balance sheets, income statements, other financial accounting reports, statistical reports, and information on business operations and management on a regular basis, and may require the directors and senior management personnel of banking financial institutions to attend meetings to explain matters

concerning material business operations and risk management.

Article 22 — The banking regulatory authority shall, in accordance with the provisions, conduct on-site examinations of the business operations and risk profile of banking financial institutions. For on-site examinations, examiners shall be not fewer than two persons and shall present their examination credentials and examination notice. Before conducting an on-site examination, the banking regulatory authority shall notify the banking financial institution to be examined, except for examinations by surprise or for which advance notice would affect the effectiveness of the examination.

Article 23 — When conducting an on-site examination, the banking regulatory authority shall have the right to adopt the following measures: (1) interviewing the directors, supervisors, senior management personnel, and other staff members of the banking financial institution to be examined, and requiring them to explain matters relating to the examination; (2) consulting and reproducing the documents and materials relating to the examination, such as the financial and accounting reports, statistical reports of the banking financial institution to be examined, and sealing up the same if they might be lost, transferred, or concealed; (3) examining the computer information management system of the banking financial institution and the data and materials in the system. The banking financial institution to be examined shall cooperate and shall not refuse or obstruct the examination.

Article 24 — The banking regulatory authority shall establish a system for off-site surveillance of banking financial institutions, collecting, analyzing, and evaluating their information on their business operations and risk profile in accordance with the law, so as to monitor their risk profile on an ongoing basis.

Article 25 — Where, during the course of supervision and administration, the banking regulatory authority discovers that a banking financial institution is in violation of prudential rules, it may, within the prescribed time limit, talk with the directors and senior management personnel of the banking financial institution to require them to explain the relevant situation, or discuss the measures to be taken with the board of directors or senior management of the banking financial institution; it may issue a supervisory reminder to the banking financial institution and make a risk warning.

Article 26 — Where a banking financial institution violates the prudential rules, the banking regulatory authority may order it to make rectification within a specified time limit. Where the banking financial institution fails to make rectification within the time limit, or where its act seriously endangers the sound operation of the banking financial institution and damages the lawful rights and interests of depositors and other customers, the banking regulatory authority may, depending on the severity of the circumstances, adopt the following measures: (1) ordering the suspension of some business operations or ceasing the approval of new business; (2) restricting the distribution of dividends and other income; (3) restricting asset transfers; (4) ordering the controlling shareholders to transfer their equity interests or restricting the rights of shareholders; (5) ordering the adjustment of directors and senior management personnel or restricting their rights; and (6) ceasing the approval of the establishment of new branches.

Article 27 — Where a banking financial institution has been or is likely to be subject to a credit crisis, thereby seriously affecting the lawful rights and interests of depositors and other customers, the banking regulatory authority of the State Council may, in accordance with the law, take over or restructure the banking financial institution.

Article 28 — Where a banking financial institution engages in serious illegal operations or poor management and is unable to pay its matured debts, the banking regulatory authority of the State Council may, if the situation cannot be remedied, propose to the People's Court that it reorganize or liquidate the banking financial institution by way of bankruptcy in accordance with the law, after obtaining the consent of the People's Bank of China.

Article 29 — Where a banking financial institution is ordered to be closed, the banking regulatory authority of the State Council shall form a liquidation team in accordance with the law to carry out the liquidation and

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shall refund the principal and pay the interest due to depositors in accordance with the provisions.

Article 30 — Where, in the performance of its functions and responsibilities, the banking regulatory authority has reason to suspect that any unit or individual has illegally accepted deposits from the public or illegally engaged in banking operations, it may conduct an investigation. The banking regulatory authority may, in conducting the investigation, adopt the following measures: (1) inquiring of the relevant units and individuals and requesting them to explain matters relevant to the investigation; (2) consulting and reproducing the documentary evidence and property registration materials relevant to the investigation, such as the account books, documents, and records of the relevant units and individuals; (3) examining the computer information management system of the relevant unit and the data and materials recorded in the system; and (4) applying to the judicial authority for freezing the illegal funds and property suspected to be involved.

Article 31 — When conducting an examination or investigation, the banking regulatory authority may apply to the relevant judicial authority for freezing the illegal funds and property involved in the examination or investigation, where there is evidence to prove that the relevant units and individuals have transferred or concealed the illegal funds and property involved.

Chapter V — Legal Liability

Article 32 — Where a banking financial institution commits any of the following acts in violation of laws or administrative regulations, the banking regulatory authority shall order it to make rectification, and may also impose a fine on it; where the circumstances are serious, it may order the suspension of business for rectification or revoke its business license; where a crime is constituted, criminal liability shall be pursued in accordance with the law: (1) establishing a branch without approval; (2) changing or terminating business operations without approval; (3) conducting business operations in violation of the prescribed scope of business or business rules; (4) failing to make the required provisions or failing to set aside reserves in accordance with the provisions; (5) seriously violating the prudential rules; (6) refusing or obstructing on-site examinations or off-site surveillance; (7) providing false or concealed financial accounting reports, statistical reports, or other information and materials; (8) failing to disclose information as required; and (9) other acts that seriously endanger the sound operation of the banking financial institution.

Article 33 — Where a banking financial institution commits any act in violation of laws or administrative regulations as specified in the preceding Article, the banking regulatory authority may impose the following sanctions on the directors and senior management personnel directly responsible and other directly liable persons: (1) ordering the banking financial institution to impose disciplinary sanctions; (2) imposing a fine; (3) disqualifying them from holding a position for a specified period or for life; or (4) prohibiting them from working in the banking industry for a specified period or for life.

Article 34 — Personnel engaged in supervisory and administrative work in the banking regulatory authority who commit any of the following acts shall be subject to administrative sanctions in accordance with the law; where a crime is constituted, criminal liability shall be pursued in accordance with the law: (1) approving the establishment, change, and termination of banking financial institutions or their business scope in violation of the prescribed conditions and procedures; (2) conducting on-site examinations that violate the provisions; (3) failing to report and deal with risks in the banking industry in a timely manner in accordance with the provisions; (4) taking supervisory coercive measures in violation of the prescribed conditions and procedures; (5) taking over or restructuring a banking financial institution in violation of the provisions; (6) taking enforcement measures against the property of banking financial institutions or individuals in violation of the law; and (7) other acts of abuse of power, neglect of duty, or engaging in malpractice for personal gain.

Chapter VI — Supplementary Provisions

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Article 35 — The banking regulatory authority of the State Council may, in accordance with this Law, formulate measures for the implementation of supervisory and administrative work and submit the same to the State Council for approval before implementation.

Article 36 — The State Council may, in accordance with the provisions of this Law, formulate regulations on the supervision and administration of banking financial institutions.

Article 37 — This Law shall enter into force on February 1, 2004.

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