Regulations on the Revocation of Financial Institutions of China (the PRC)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Chapter I — General Provisions

Article 1 — These Regulations are formulated to strengthen supervision and administration of financial activities, maintain financial order, and protect national interests and the public interest.

Article 2 — The revocation of financial institutions by the People's Bank of China shall be carried out in accordance with these Regulations.

For the purposes of these Regulations, "revocation" means the administrative compulsory measure taken by the People's Bank of China, in accordance with law, against a financial institution with legal person status

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established with its approval to terminate its business operations and dissolve it.

Article 3 — The People's Bank of China, its staff and other relevant personnel shall, in performing their duties in accordance with these Regulations, keep confidential the secrets of the revoked financial institution in accordance with law.

Article 4 — The local people's government at the place where a revoked financial institution is located shall organize the relevant departments to do a good job in matters relating to the revocation.

Chapter II — Decision on Revocation

Article 5 — Where a financial institution engages in operations in violation of laws or regulations or is poorly managed, and failure to revoke it would seriously endanger financial order and harm the public interest, it shall be revoked in accordance with law.

Article 6 — Where the People's Bank of China decides to revoke a financial institution, it shall prepare a revocation decision.

The revocation decision shall take effect from the date of its announcement by the People's Bank of China.

The revocation decision shall be published in newspapers and posted at the business premises of the revoked financial institution.

Article 7 — From the effective date of the revocation decision, the revoked financial institution must immediately cease its business operations, surrender its financial institution legal person license and the business licenses of its branches, and its senior management personnel, board of directors and shareholders' meeting must immediately cease exercising their functions and powers.

Chapter III — Revocation and Liquidation

Article 8 — Where a commercial bank is revoked in accordance with law, the People's Bank of China shall organize the establishment of a liquidation group; where a non-bank financial institution is revoked in accordance with law, the People's Bank of China or the relevant local people's government entrusted by the People's Bank of China shall organize the establishment of a liquidation group. Liquidation shall commence from the effective date of the revocation decision. 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 of the People's Bank of China, the finance, audit and other relevant departments, the local people's government, shareholders of the revoked financial institution, and relevant professionals. The head and members of the liquidation group shall be designated by the People's Bank of China or upon the consent of the People's Bank of China.

During the liquidation period, the liquidation group shall exercise the management functions and powers of the revoked financial institution, and the head of the liquidation group shall exercise the functions and powers of the legal representative of the revoked financial institution.

Article 9 — After the liquidation group is established, the legal representative and relevant responsible persons of the revoked financial institution shall transfer all seals, account books, documents, instruments, files and other materials of the revoked financial institution to the liquidation group, and assist the liquidation group in carrying out liquidation.

Article 10 — During the liquidation period, the legal representative, members of the board of directors and the board of supervisors, senior management personnel at or above the level of department heads, financial personnel and other relevant personnel of the revoked financial institution shall carry out work in accordance with the requirements of the liquidation group, and may not leave their posts without authorization or leave the country on their own.

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Article 11 — During the liquidation period, the liquidation group shall perform the following duties:

(1) keeping and clearing the property of the revoked financial institution, and preparing balance sheets and property inventories;

(2) notifying and announcing to depositors and other creditors, and confirming claims;

(3) handling unfinished business relating to the liquidation of the revoked financial institution;

(4) clearing claims and debts, collecting claims, and disposing of assets;

(5) preparing a liquidation plan, and settling debts in accordance with the approved liquidation plan;

(6) settling taxes owed;

(7) handling the remaining property of the revoked financial institution after settlement of its debts;

(8) participating in litigation and arbitration activities on behalf of the revoked financial institution;

(9) requesting the relevant departments to pursue the legal liability of the senior management personnel and other relevant personnel directly responsible for the revocation of the financial institution;

(10) handling other liquidation matters.

Article 12 — During the liquidation period, the liquidation group may entrust a financial institution designated by the People's Bank of China (hereinafter referred to as the "custodian institution") to handle the liquidation matters.

The custodian institution shall not bear the debts of the revoked financial institution, shall not advance funds, and shall not be responsible for the placement of personnel of the revoked financial institution. Custody fees shall be included in the liquidation expenses of the revoked financial institution.

Article 13 — The local people's government at the place where a revoked financial institution is located shall establish a revocation work leading group, the head of which shall be a responsible person of the local people's government.

The revocation work leading group shall support and cooperate with the liquidation group in collecting claims and handling other liquidation matters, and organize the relevant departments to maintain social order in accordance with law, handle emergencies, investigate and punish illegal acts, and pursue the legal liability of the relevant responsible personnel in accordance with law.

Article 14 — The liquidation group shall, within 10 days from the date of its establishment, notify creditors in writing to declare their claims, and shall publish announcements in newspapers at least three times within 60 days.

Creditors shall declare their claims to the liquidation group within 30 days from the date of receipt of the notice; creditors that have not received the notice shall declare their claims to the liquidation group within 90 days from the date of the first announcement.

The liquidation group may decide that small-amount savings depositors need not declare their claims, and shall confirm and register savings deposits based on the accounting books and relevant vouchers of the revoked financial institution.

Article 15 — When declaring a claim, a creditor shall state the nature, amount and time of occurrence of the claim and provide relevant supporting materials. The liquidation group shall examine the supporting materials for the declared claims, confirm whether the claims are secured by property and the amounts thereof, and register secured claims and unsecured claims separately.

Article 16 — Where a creditor fails to declare its claim within the prescribed time limit, it shall be handled in accordance with the following provisions:

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

(2) claims of unknown creditors may be satisfied upon request before the distribution of the liquidation property of the revoked financial institution is completed; where the distribution of the liquidation property of the revoked financial institution has already been completed, they shall no longer be satisfied.

Article 17 — From the effective date of the revocation decision, interest on the debts of the revoked financial institution shall cease to accrue.

Article 18 — The following property of the revoked financial institution shall serve as liquidation property for the settlement of debts:

(1) all property of the revoked financial institution from the date of commencement of liquidation, including the capital contributions and other rights and interests of its shareholders, the property of its wholly-owned subsidiaries, and the shares it holds through investment;

(2) property lawfully acquired by the revoked financial institution during the liquidation period;

(3) other property of the revoked financial institution.

Any malicious transfer or disguised transfer of property by the revoked financial institution before the effective date of the revocation decision shall be void; the property so transferred or disguised transferred shall be recovered by the liquidation group and incorporated into the liquidation property.

Article 19 — When clearing the property of the revoked financial institution, the liquidation group shall assess the actual value of the property in accordance with law; where the property has suffered loss, the amount of the loss shall be verified.

Article 20 — The liquidation group may sell the effective assets of the revoked financial institution in accordance with law; where the effective assets of the revoked financial institution are auctioned, the reserve price shall be determined in accordance with the appraisal results issued by an intermediary institution qualified for asset appraisal business.

For the purposes of the preceding paragraph, "effective assets" means the property of the revoked financial institution that has actual value after clearing and verification.

Article 21 — The clearing and disposal of the property of the revoked financial institution shall be exempt from taxes and administrative fees.

Article 22 — After the property of the revoked financial institution has been cleared and verified, the liquidation group shall prepare a liquidation plan.

The liquidation plan shall include particulars such as the creditors, the amounts of claims, the amount of liquidation property, the amount for payment of the principal and lawful interest of individual savings deposits, and the amount for settlement of other debts, and shall be accompanied by materials such as the balance sheet, property inventory and asset appraisal report.

The liquidation plan shall, after consultation between the liquidation group and the creditors, be submitted to the People's Bank of China for confirmation.

Chapter IV — Settlement of Debts

Article 23 — The liquidation property of the revoked financial institution shall first be used to pay the principal and lawful interest of individual savings deposits.

Article 24 — The remaining property of the revoked financial institution after payment of the principal and lawful interest of individual savings deposits shall be used to settle the debts of legal persons and other organizations.

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Article 25 — The remaining property of the revoked financial institution after settlement of its debts shall, upon liquidation, be distributed in accordance with the proportion of capital contributions or the proportion of shares held by the shareholders.

Chapter V — Cancellation of Registration

Article 26 — After liquidation is completed, the liquidation group shall prepare a liquidation report, statements of income and expenditure during the liquidation period, and various financial account books, and submit them to the People's Bank of China for confirmation.

Article 27 — After liquidation is completed, the liquidation group shall complete the cancellation of registration formalities with the industrial and commercial administrative authorities; the qualification of the shareholders of the revoked financial institution shall terminate, and the revoked financial institution shall be dissolved forthwith, which shall be announced by the People's Bank of China.

Article 28 — The various accounting vouchers, account books, accounting statements and other materials of the revoked financial institution, as well as important documents relating to business and liquidation, shall be kept by an institution designated by the People's Bank of China after cancellation of registration.

Article 29 — The audit authority shall audit the responsible persons of the revoked financial institution.

Chapter VI — Legal Liability

Article 30 — Where senior management personnel and other relevant personnel of the revoked financial institution take advantage of their positions to accept property from others, illegally grant loans, illegally issue financial instruments, or engage in malpractices for personal gain causing the financial institution to be revoked, criminal liability shall be pursued in accordance with the provisions of the Criminal Law on the crimes of bribery, illegally granting loans, illegally issuing financial instruments, malpractice causing bankruptcy or losses, or other crimes; where criminal punishment is not warranted, disciplinary sanctions of removal from office up to dismissal shall be imposed, and they shall be barred for life from holding senior management positions or positions equivalent to their former positions in any financial institution.

Article 31 — Where staff of the People's Bank of China illegally approve financial institutions, fail to exercise supervision and administration over financial institutions in accordance with law, or fail to investigate and punish illegal acts in accordance with law, with serious circumstances leading to the revocation of a financial institution, criminal liability shall be pursued in accordance with the provisions of the Criminal Law on the crimes of abuse of authority, dereliction of duty or other crimes; where criminal punishment is not warranted, administrative sanctions of recording a major demerit, demotion or removal from office shall be imposed.

Article 32 — Where staff of any state organ illegally interferes with the normal business operations of a financial institution and bears direct responsibility for the revocation of the financial institution, criminal liability shall be pursued in accordance with the provisions of the Criminal Law on the crime of abuse of authority or other crimes; where criminal punishment is not warranted, administrative sanctions of recording a major demerit, demotion or removal from office shall be imposed.

Article 33 — Where, during the revocation and liquidation process, staff of the revoked financial institution commit any of the following acts, criminal liability shall be pursued in accordance with the provisions of the Criminal Law on the crimes of obstructing official duties, obstructing liquidation or other crimes; where criminal punishment is not warranted, disciplinary sanctions of removal from office up to dismissal shall be imposed:

(1) obstructing the liquidation group in performing its duties in accordance with law;

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

(3) withdrawing funds or concealing property to evade debts;

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(4) maliciously transferring or disguised transferring the property of the revoked financial institution.

Article 34 — Where a revoked financial institution illegally engages in business operations after the effective date of the revocation decision, the People's Bank of China shall ban it in accordance with the Measures for the Banning of Illegal Financial Institutions and Illegal Financial Business Activities; criminal liability shall be pursued in accordance with the provisions of the Criminal Law on the crime of illegally absorbing public deposits or other crimes; where criminal punishment is not warranted, administrative penalties shall be imposed in accordance with law.

Article 35 — Where staff of the liquidation group abuse their authority, neglect their duties or engage in malpractices for personal gain in the course of liquidation, causing loss of property and harming the interests of creditors, criminal liability shall be pursued in accordance with the provisions of the Criminal Law on the crimes of abuse of authority, dereliction of duty or other crimes; where criminal punishment is not warranted, administrative or disciplinary sanctions of demotion up to dismissal shall be imposed.

Article 36 — Where staff of the People's Bank of China and other relevant personnel divulge state secrets or trade secrets known to them in performing their duties in accordance with these Regulations, criminal liability shall be pursued in accordance with the provisions of the Criminal Law on the crimes of divulging state secrets, infringing trade secrets or other crimes; where criminal punishment is not warranted, administrative or disciplinary sanctions of demotion up to dismissal shall be imposed.

Article 37 — Where a custodian institution fails to perform its custody duties, causing loss of property of the revoked financial institution, it shall bear civil liability in accordance with law, and disciplinary sanctions shall be imposed in accordance with law on the responsible management personnel and other directly responsible personnel thereof.

Chapter VII — Supplementary Provisions

Article 38 — These Regulations shall come into force as of December 15, 2001.

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