

## Administrative Measures on Financial Leasing Companies

China Banking Regulatory Commission Order No. (2007) 1

23 January 2007

### **Chapter I — General Principles**

#### [Article 1](#)

These Measures are formulated pursuant to the provisions of the *Law of the People's Republic of China on Supervision and Administration of Banking Industry*, the *Company Law of the People's Republic of China* and the relevant laws and regulations to promote the steady development of the financial leasing industry in China and strengthen supervision and administration of financial leasing companies.

#### [Article 2](#)

A financial leasing company referred to in these Measures shall mean a non-banking financial institution approved by the China Banking Regulatory Commission to engage mainly in financial leasing activities.

The name of a financial leasing company shall include the words "financial leasing". Unless laws and regulations stipulate otherwise, no organisation or individual shall engage in the business of financial leasing or include the word "financial leasing" in the name of an entity without the approval of the China Banking Regulatory Commission.

#### [Article 3](#)

Financial leasing referred to in these Measures shall mean a transaction in which a lessor collects lease payments from a lessee for possession and use of leasehold property by the lessee under a contractual agreement, whereby the property is obtained by the lessor from a supplier and the property and supplier are selected or approved by the lessee.

The applicable leasehold property for financial leasing transactions must be a fixed asset.

#### [Article 4](#)

Sale and leaseback referred to in these Measures shall mean a form of financial leasing whereby property belonging to a lessee is

simultaneously sold to a lessor and leased back to the lessee through the conclusion of a financial leasing contract between the lessor and lessee. A sale and leaseback arrangement is a form of financial leasing whereby the lessee is the supplier of the leased property.

[Article 5](#)

Interested party relationships and interested party transactions referred to in these Measures shall mean interested party relationships and interested party transactions which comply with the provisions of the relevant enterprise accounting standards.

[Article 6](#)

The China Banking Regulatory Commission and its branches shall supervise and administer financial leasing companies pursuant to law.

## **Chapter II — Entity Incorporation, Modification and Termination**

[Article 7](#)

An application for the incorporation of a financial leasing company must satisfy the following conditions:

- (1) the capital contributors satisfy the provisions of these Measures;
- (2) the registered capital satisfies the minimum requirement stipulated in these Measures;
- (3) the articles of association satisfies the provisions of the *Company Law of the People's Republic of China* and these Measures;
- (4) the directors, senior management staff and qualified employees familiar with financial leasing satisfy the appointment criteria stipulated by the China Banking Regulatory Commission;
- (5) the systems of corporate governance, internal control, business operation, risk control and other systems are proper;
- (6) the business premises, safety and precautionary measures and other relevant business facilities satisfy conditions; and
- (7) the application satisfies any other condition stipulated by the China Banking Regulatory Commission.

[Article 8](#)

The capital contributors of a financial leasing company shall comprise main contributors and general contributors. The main contributors refer to contributors whose contribution constitutes 50% or more of the registered capital of the proposed financial leasing

company. General contributories refer to contributories other than the main contributories.

Applications to the China Banking Regulatory Commission for the incorporation of a financial leasing company shall be made by the main contributories.

[Article 9](#)

A main contributory of a financial leasing company must satisfy one of the following conditions:

- (1) It is a commercial bank with independent legal person qualifications incorporated in China or overseas and satisfies the following conditions:
  - (i) the capital adequacy ratio satisfies the requirements of the financial regulatory authorities at its place of incorporation and it is not be below 8%;
  - (ii) the value of the year-end assets for the preceding year is not less than RMB80 billion or an equivalent value in a freely convertible currency;
  - (iii) the last two consecutive years have been profitable;
  - (iv) the laws and regulations of the place of incorporation are complied, with no prior major legal case record or major violation of laws and regulations in the last two years;
  - (v) a good corporate governance structure, system of internal control and a proper risk management system exist; and
  - (vi) other prudence requirements stipulated by the China Banking Regulatory Commission are satisfied.
- (2) It is a leasing company incorporated in China or overseas and satisfies the following conditions:
  - (i) the value of the year-end assets of the preceding year is not less than RMB10 billion or an equivalent value in a freely convertible currency;
  - (ii) the last two consecutive years have been profitable; and
  - (iii) the laws and regulations of the place of incorporation are complied, with no prior major legal case record or major violation of laws and regulations in the last two years.
- (3) It is a large enterprise incorporated in China to engage mainly in the manufacture of products suitable for financial leasing and satisfies the following conditions:
  - (i) the turnover value in the preceding year is not less than RMB5 billion or an equivalent value in a freely convertible currency;
  - (ii) the last two consecutive years have been profitable;

- (iii) the year-end net asset ratio of the preceding year is not lower than 30%;
  - (iv) the sales revenue of the principal business constitutes 80% or more of the total turnover;
  - (v) the credit records are good;
  - (vi) the laws and regulations of the place of incorporation are complied, with no prior major legal case record or major violation of laws and regulations in the last two years;
- (4) It is a financial institution recognised by the China Banking Regulatory Commission as having the capacity to act as a main capital contributory.

[Article 10](#)

A general capital contributory of a financial leasing company must comply with the relevant provisions of the China Banking Regulatory Commission on investment and equity participation in financial institutions. A capital contributory that satisfies the conditions of a main capital contributory stipulated by these Measures may act as general capital contributory of a financial leasing company.

[Article 11](#)

The minimum registered capital for a financial leasing company shall be RMB100 million or an equivalent value in a freely convertible currency; the registered capital must be fully paid-up in cash.

The China Banking Regulatory Commission may adjust the minimum registered capital requirement for a financial leasing company according to the needs of the financial leasing industry's development.

[Article 12](#)

The incorporation of a financial leasing company is required to undergo the two stages, preparation for establishment and commencement of business. Chinese text shall be the standard for all preparation for establishment application materials and commencement of business application materials submitted by the applicant. The procedures for the acceptance, examination and approval of application materials shall be conducted pursuant to the implementation provisions of the China Banking Regulatory Commission on administrative licensing matters.

[Article 13](#)

The applicant shall submit the following documents when making an application for preparation for establishment of a financial leasing company:

- (1) the preparation for establishment application form, contents of which include the proposed financial leasing company's name, registered address, registered capital, capital contributories and their respective amount of capital contribution, scope of business, etc;
- (2) a feasibility study report, contents of which include analyses on the proposed company's market prospects, future development plans of the business, organisational management structure and risk management, and forecasts of the company's scale of assets, liabilities, profits, etc, three years after business commencement;
- (3) the articles of association (draft) of the proposed financial leasing company;
- (4) basic information of the capital contributories, which include the name, legal representative, registered address, a photocopy of the business licence, the business status and the capital contribution agreement; a written opinion issued by the financial regulatory authorities at the place of incorporation of the capital contributory shall be submitted where the capital contributory is an overseas financial institution;
- (5) annual audit reports of the capital contributories for the last two years audited by a qualified intermediary; and
- (6) any other document required by the China Banking Regulatory Commission.

[Article 14](#)

An application for commencement of business and the following documents shall be submitted to the China Banking Regulatory Commission upon completion of preparation work for establishment of the financial leasing company:

- (1) a work report on preparation for establishment and the commencement of business application form;
- (2) a capital verification certificate issued by a qualified intermediary in China and the certificate of registration of the pre-approved name for the proposed financial leasing company issued by the administration for industry and commerce;
- (3) the shareholders' register and their respective amount and percentage of capital contribution;
- (4) the articles of association of the financial leasing company which sets out at least the following contents: name of the institution, business address, nature of institution, registered capital, scope of

business, organisational structure, business management; suspension and liquidation matters, etc;

- (5) a list of the names of the proposed senior management staff, their detailed curriculum vitae and evidentiary materials of their appointment qualifications;
- (6) the proposed business rules and system and the system of risk management;
- (7) materials on the business premises and other related business facilities; and
- (8) any other document required by the China Banking Regulatory Commission.

[Article 15](#)

A financial leasing company may establish branches upon approval by the China Banking Regulatory Commission. The specific conditions for the establishment of branches shall be formulated by the China Banking Regulatory Commission separately.

[Article 16](#)

The China Banking Regulatory Commission shall verify the appointment qualifications of the directors and senior management staff of a financial leasing company.

[Article 17](#)

A financial leasing company shall obtain the approval of the China Banking Regulatory Commission for any of the following changes:

- (1) change of name;
- (2) change in organisational structure;
- (3) revision of scope of business;
- (4) change in registered capital;
- (5) change in equity;
- (6) amendment to articles of association;
- (7) change of registered address or business address;
- (8) change of directors and senior management staff;
- (9) merger and division;
- (10) any other change stipulated by the China Banking Regulatory Commission.

[Article 18](#)

A financial leasing company may be dissolved under any of the following circumstances upon approval by the China Banking Regulatory Commission:

- (1) the term for business operations provided in the company's articles of association has expired or any other grounds for dissolution provided in the company's articles of association has occurred;
- (2) a resolution by the shareholders' meeting to dissolve the company;
- (3) a merger or division requires the dissolution of the company;
- (4) the company has its business licence revoked, is ordered for closure or is revoked pursuant to the law;
- (5) any other legal grounds for dissolution.

[Article 19](#)

A financial leasing company may file for bankruptcy at a court under any of the following circumstances upon approval by the China Banking Regulatory Commission:

- (1) the company is insolvent and filing for company bankruptcy is made by the company voluntarily or by the creditors;
- (2) the liquidation committee discovers that the financial leasing company is insolvent and should file for bankruptcy while the company undergoes liquidation as a result of dissolution or revocation.

[Article 20](#)

Where a financial leasing company is unable to repay debts that are due and owing, and its assets are insufficient to discharge all debts or it is evidently insolvent, the China Banking Regulatory Commission may apply to the People's Court for debt restructuring or bankruptcy liquidation of the financial leasing company.

[Article 21](#)

Where a financial leasing company is terminated as a result of dissolution, lawful revocation or bankruptcy declaration, liquidation matters shall be conducted pursuant to the relevant laws and regulations of the State.

### **Chapter III — Scope of Business**

[Article 22](#)

A financial leasing company may engage in all or part of the following businesses in Renminbi or foreign currencies upon approval by the China Banking Regulatory Commission:

- (1) financial leasing business;

- (2) accept fixed deposits of one year (inclusive) or more from shareholders;
- (3) accept lease security deposits from lessees;
- (4) transfer rental receivables to a commercial bank;
- (5) issue financial bonds upon approval;
- (6) interbank borrowing;
- (7) take loans from a financial institution;
- (8) make borrowings in overseas foreign currencies;
- (9) realisation and handling of the residual value of leased property;
- (10) economic consulting;
- (11) any other business approved by the China Banking Regulatory Commission.

[Article 23](#)

Financial leasing companies must not accept deposits from shareholders that are banks.

[Article 24](#)

Where business operations of the financial leasing company involve foreign exchange control matters, the relevant provisions of the State on foreign exchange control must be complied.

## **Chapter IV – Business Rules**

[Article 25](#)

A financial leasing company shall, for the purpose of corporate governance, establish an organisational structure comprising the shareholders' meeting, board of directors, board of supervisors, senior management, etc; specify the respective duties to ensure independence and effective balance; and devise a scientific and efficient mechanism for decision-making, motivation and control.

[Article 26](#)

A financial leasing company shall establish and improve its system of internal control according to the principles of completeness, prudence, effectiveness and independence, and file records with the China Banking Regulatory Commission or any of its branches.

[Article 27](#)

Interested party transactions of a financial leasing company shall adhere to commercial principles and shall have terms no more favourable than non-interested-party transactions of the same kind.

[Article 28](#)

A financial leasing company shall formulate an interested party transactions management system with the following specific contents included:

- (1) supervision and administration of interested party transactions by the board of directors or the decision-making body;
- (2) duties and members of the interested party transactions control committee;
- (3) collection and management of interested parties' information;
- (4) reports and undertakings by interested parties and a system for identification and confirmation;
- (5) interested party transaction types and pricing policies and their examination and approval procedures and standards;
- (6) abstention system;
- (7) internal audit and supervision;
- (8) information disclosure;
- (9) penalty measures; and
- (10) any other content required by the China Banking Regulatory Commission.

[Article 29](#)

Significant interested party transactions of a financial leasing company must be approved by the board of directors. A significant interested party transaction shall mean a single transaction between a financial leasing company and an interested party of an amount constituting 5% or more of the net capital of the financial leasing company, or a transaction between a financial leasing company and an interested party which has a balance transaction amount constituting 10% or more of the net capital of the financial leasing company after the said transaction occurs.

[Article 30](#)

When the board of directors of a financial leasing company or the decision-making body of a financial leasing company has yet to form a board of directors and the interested party transactions control committee votes or decides on an interested party transaction, persons related to the interested party transaction must abstain from participation in the voting or decision-making.

[Article 31](#)

There must be a specific subject matter in a sale and leaseback transaction and the subject matter must comply with the provisions of these Measures.

[Article 32](#)

The lessee shall have actual possession and the right of disposition of the subject matter in a sale and leaseback transaction. A financial leasing company shall not accept any property under an existing mortgage interest, property rights dispute, judicial sequester and seizure or any other defect to ownership, as the subject matter of a sale and leaseback transaction.

[Article 33](#)

The basis of a financial leasing company's purchase price of a subject matter in a sale and leaseback transaction shall be reasonable with no violation of any accounting standards; purchase of a low-valued subject matter at a high price is prohibited.

[Article 34](#)

A financial leasing company engaging in sale and leaseback business shall acquire actual ownership over the corresponding subject matter. The financial leasing company shall complete the relevant registration formalities, with the registration authorities for the transfer of a subject matter where laws and regulations provide for registration of a category of property.

## **Chapter V — Supervision and Administration**

[Article 35](#)

Financial leasing companies shall comply with the following regulatory indices:

- (1) capital adequacy ratio --C the net capital of a financial leasing company shall not be lower than 8% of the risk-weighted assets;
- (2) concentration of financing to a single client --C the balance amount of financing by a financial leasing company to a single lessee shall not exceed 30% of the net capital. The security deposit provided by a lessee at the time of credit extension credit may be deducted in the calculation of the balance amount of financing;

(3) degree of relation to a single client --C the balance amount of financing by a financial leasing company to an interested party shall not exceed 30% of the net capital of the financial leasing company;

(4) degree of relation to a group of clients --C the balance amount of financing by a financial leasing company to all interested parties shall not exceed 50% of the net capital of the financial leasing company;

(5) ratio of interbank borrowings --C the balance amount of interbank borrowings of a financial leasing company shall not exceed 100% of the net capital of the financial leasing company.

The China Banking Regulatory Commission may make appropriate adjustments to the aforesaid indices according to regulatory needs.

[Article 36](#)

Financial leasing companies shall perform information disclosure pursuant to the relevant enterprise accounting standards and the relevant provisions of the China Banking Regulatory Commission.

[Article 37](#)

Financial leasing companies shall implement a five-tiered classification system for risk assets.

[Article 38](#)

Financial leasing companies shall formulate a doubtful debt provision system pursuant to the relevant provisions and make prompt and adequate provision for doubtful debts. No profits may be distributed where provision for doubtful debt is not made.

[Article 39](#)

Financial leasing companies shall prepare balance sheets, income statements and any other financial statements required by the China Banking Regulatory Commission for submission to the China Banking Regulatory Commission. The legal representative and management personnel of the financial leasing company shall be legally responsible for the veracity of the financial statements submitted.

[Article 40](#)

Financial leasing companies shall submit a report on interested party transactions for the previous accounting year to the China Banking Regulatory Commission or the relevant branch within four months

after the end of each accounting year. The report shall set out the interested parties, transaction types, transaction amounts, subject matter, transaction prices and pricing methods, transaction gains and losses, and the nature and percentage of an interested party's share in each transaction.

[Article 41](#)

Financial leasing companies shall establish a regular external audit system and submit annual audit reports signed and verified by a legal representative to the China Banking Regulatory Commission and relevant branches within four months after the end of each accounting year

[Article 42](#)

The China Banking Regulatory Commission may order a financial leasing company to make correction within a stipulated period for violations of relevant provisions of these Measures; where the financial leasing company fails to make correction within the stipulated period or its conduct severely threatens steady operations and the lawful rights and interests of its clients, the China Banking Regulatory Commission may, distinguish actual circumstances and adopt regulatory measures such as suspension of business operations or restriction of shareholders' rights, etc, pursuant to the provisions of the *Law of the People's Republic of China on Supervision and Administration of Banking Industry* and other relevant laws and regulations.

[Article 43](#)

Where a financial leasing company is experiencing or is likely to experience a credit crisis that severely affects the lawful rights and interests of its clients, the China Banking Regulatory Commission may implement receivership or supervised restructuring pursuant to law; where the case is serious, the China Banking Regulatory Commission has the right to revoke the financial leasing company.

[Article 44](#)

Persons who violate the relevant provisions of these Measures shall be penalised by the China Banking Regulatory Commission pursuant to the provisions of the *Law of the People's Republic of China on Supervision and Administration of Banking Industry* and other relevant laws and regulations. A financial leasing company that

objects to a penalty decision by the China Banking Regulatory Commission may apply for administrative review or file administrative legal proceedings with the People's Court pursuant to the law.

## **Chapter VI — Supplementary Provisions**

### [Article 45](#)

The China Banking Regulatory Commission shall be responsible for the interpretation of these Measures.

### [Article 46](#)

These Measures shall be effective 1 March 2007.