

Administrative Measures on Trust Companies

China Banking Regulatory Commission Order No. (2007) 2

23 January 2007

Chapter I — General Principles

[Article 1](#)

These Measures are formulated pursuant to the provisions of the *Trust Law of the People's Republic of China*, the *Law of the People's Republic of China on Supervision and Administration of Banking Industry* and other relevant laws and regulations for the purposes of strengthening supervision and administration of trust companies, standardising trust company business activities and promoting healthy development of the trust industry.

[Article 2](#)

A trust company referred to in these Measures shall mean a financial institution established to engage mainly in trust business activity pursuant to the *Company Law of the People's Republic of China* and these Measures.

Trust business activities referred to in these Measures shall mean the activities of a trust company where the trust company undertakes to act as trustee in a trust arrangement and manage trust matters thereunder for the purposes of business and profit.

[Article 3](#)

Trust property is neither individual property of a trust company nor a liability of the trust company towards the beneficiary. Trust property shall not be part of the liquidation assets when a trust company is terminated.

[Article 4](#)

Trust activities of trust companies must comply with provisions under laws, regulations and trust instruments, and must not be detrimental to national interest, public interest and the lawful rights and interests of beneficiaries.

[Article 5](#)

The China Banking Regulatory Commission shall conduct supervision and administration over trust companies and their business activities.

Chapter II — Entity Incorporation, Modification and Termination

[Article 6](#)

A trust company shall be incorporated in the form of a limited liability company or a company limited by shares.

[Article 7](#)

The approval of the China Banking Regulatory Commission and a financial permit must be obtained before incorporation of a trust company.

Unless laws and regulations stipulate otherwise, no entity or individual shall engage in trust business activities and no entity shall use the words “trust company” in its name without prior approval of the China Banking Regulatory Commission.

[Article 8](#)

The incorporation of a trust company must satisfy the following conditions:

- (1) the articles of association of the proposed trust company complies with the provisions of the *Company Law of the People's Republic of China* and the provisions of the China Banking Regulatory Commission;
- (2) the shareholders of the proposed trust company satisfies the shareholding criteria stipulated by the China Banking Regulatory Commission;
- (3) the registered capital of the proposed trust company satisfies the minimum requirement stipulated by these Measures;
- (4) the directors, senior management personnel and staff for trust business activities satisfy the appointment criteria set by the China Banking Regulatory Commission;
- (5) the proposed trust company has proper organisational structure, trust business activity operating procedures and system of risk management;
- (6) the business premises, security measures and other business-related facilities of the proposed trust company satisfy requirements;

(7) any other condition stipulated by the China Banking Regulatory Commission.

[Article 9](#)

The China Banking Regulatory Commission shall examine a trust company incorporation application pursuant to laws and regulations and prudent regulation principles, and decide whether to approve the application. Reasons shall be given for applications that are not approved.

[Article 10](#)

A trust company shall have a minimum registered capital amount of RMB300 million or an equivalent value in a freely convertible currency fully paid up in cash.

Where a trust company applies to engage in enterprise annuity funds, underwriting of securities, asset securitisation and other transactions, the minimum registered capital requirements stipulated by the relevant laws and regulations must be complied.

The China Banking Regulatory Commission may adjust the minimum registered capital requirement for trust companies according to the needs of the trust industry's development.

[Article 11](#)

A branch of a trust company must not be established directly or in any other guise without prior approval of the China Banking Regulatory Commission.

[Article 12](#)

A trust company must obtain the approval of the China Banking Regulatory Commission under any of the following circumstances:

- (1) change of name;
- (2) change in registered capital;
- (3) change of company address;
- (4) change of organisation form;
- (5) change in scope of business;
- (6) change of directors or senior management personnel;
- (7) change of shareholders or shareholding structure, except where the circulating shares of a listed company held by a shareholder is less than 5% of the total shares of the company;

- (8) amendment to the company's articles of association;
- (9) merger or division; or
- (10) any other circumstance stipulated by the China Banking Regulatory Commission.

[Article 13](#)

Where a trust company applies for dissolution as a result of a merger or division or any other grounds for dissolution provided in the company's articles of association, the company shall be dissolved upon the approval of the China Banking Regulatory Commission and a liquidation committee shall be formed to carry out liquidation pursuant to law.

[Article 14](#)

Where a trust company is unable to repay debts that are due and owing, and it has insufficient assets to discharge debts or it is evidently insolvent, the trust company may file for bankruptcy at the People's Court upon obtaining the consent of the China Banking Regulatory Commission.

The China Banking Regulatory Commission may apply to a People's Court for debt restructuring or bankruptcy liquidation of the trust company directly.

[Article 15](#)

The duties of a trust company to manage a trust shall terminate simultaneously with the termination of the trust company. The liquidation committee shall take proper custody of trust property, report on how matters under a trust are administered and transfer trust property to the new trustee. Where the trust document provides otherwise, such provisions shall prevail.

Chapter III — Scope of Business Activity

[Article 16](#)

Trust companies may apply to engage in all or part of the following business activities in Renminbi or foreign currencies:

- (1) trust funds;
- (2) trusts for movables;
- (3) real estate trusts;
- (4) securities trusts;

- (5) trusts in other property or property rights;
- (6) act as the promoter of an investment fund or a fund management company and engage in fund investment activities;
- (7) enterprise asset restructuring, mergers and acquisitions, and project financing, corporate finance, financial consulting, etc;
- (8) securities underwriting as entrusted by the relevant departments of the State Council;
- (9) mediation, advisory, credit investigation, etc;
- (10) bailment and safe deposit locker facility; and
- (11) any other business activity stipulated by laws and regulations or approved by the China Banking Regulatory Commission.

[Article 17](#)

Trust companies may engage in charitable trust activities pursuant to the relevant provisions of the *Trust Law of the People's Republic of China* and other relevant laws and regulations.

[Article 18](#)

Trust companies may establish different types of trusts based on the needs of the market and according to the respective objectives under a trust, the type of trust property or the manner in which the trust property is managed.

[Article 19](#)

Trust companies may, in the management and disposition of trust property, invest, sell, deposit with another trust company, reverse repurchase, lease or loan the trust property pursuant to provisions under the trust document. Where the China Banking Regulatory Commission provides otherwise, such provisions shall prevail.

Trust companies must not use sale and repurchase as a means for the management of trust property.

[Article 20](#)

The individual operations of trust companies may include interbank deposit, interbank loan, loan, leasing, investment and other activities. The investment business activities shall be restricted to investments in the equity of companies in finance, investments in financial products and investments in fixed assets for individual use.

Unless the China Banking Regulatory Commission stipulates otherwise, trust companies shall not use their individual assets for industrial investment.

[Article 21](#)

Unless the China Banking Regulatory Commission stipulates otherwise, trust companies shall not engage in other loan business activities other than interbank borrowings and the interbank borrowings balance must not exceed 20% of the net assets of a trust company.

[Article 22](#)

Trust companies may provide guarantees to external parties, but the balance of the guarantees provided to external parties must not exceed 50% of net assets.

[Article 23](#)

Trust companies must comply with the relevant foreign exchange control provisions of the State and accept inspection and supervision by the foreign exchange control authorities when engaging in foreign currency trust business activities.

Chapter IV — Business Rules

[Article 24](#)

Trust companies shall manage and dispose trust property with utmost diligence, perform all duties with honesty, trustworthiness, prudence and management effectiveness, and protect the greatest beneficial interests of the beneficiaries.

[Article 25](#)

Trust companies must avoid conflict of interests when administering matters under a trust. Where conflict is inevitable, the trust company must make sufficient information disclosure to the settlor and beneficiary or decline from handling the matter.

[Article 26](#)

Trust companies shall administer matters under a trust personally. Where the trust document provides otherwise or under circumstances where it is impracticable, a matter may be entrusted for

administration by others on behalf of the trust company, but the trust company is to conduct adequate supervision and shall be accountable for the actions undertaken by others in administering the matter.

[Article 27](#)

Trust companies have a duty of confidence towards the settlor and the beneficiary for all matters and data that arise in connection with the administration of a trust unless laws and regulations or the trust document provide to the contrary.

[Article 28](#)

Trust companies shall maintain complete records of matters administered under a trust and report on the status of the administration, disposition and income and expenditure of the trust property to the settlor and beneficiary on a regular basis.

The settlor and the beneficiary have a right to information on the status of the administration, disposition and income and expenditure of the trust property by the trust company and require the trust company to provide details.

[Article 29](#)

Trust companies shall separately manage and maintain the accounts of trust property from individual property; and separately manage and maintain the accounts of trust property of different settlors.

[Article 30](#)

Trust companies shall maintain accounts pursuant to the law, maintain separate accounts for trust business activities from non-trust business activities, and maintain separate accounts for each trust.

[Article 31](#)

The trust business activity department of a trust company shall be independent from other departments; staff from the trust business department shall not hold another position in another department; and information from trust business activities must not be disclosed to other departments of the company for their benefit.

[Article 32](#)

Where a trust is established in the form of a trust contract, the trust contract shall set out the following matters:

- (1) the objective of the trust;
- (2) the name and address of the settlor and the trustee;
- (3) the beneficiary or the extent of the beneficiaries;
- (4) the extent, type and state of the trust property;
- (5) the rights and obligations of the parties under the trust;
- (6) the disclosure and burden of risk management of the trust property;
- (7) the manner of administering trust property and the authority of the trustee;
- (8) the manner benefits under the trust is calculated and the way trust benefits are delivered to the beneficiary;
- (9) the calculation and payment of the trust company's remuneration;
- (10) the taxes and fees borne by the trust property and the calculation of other expenses;
- (11) the duration of the trust and termination of the trust;
- (12) the ownership of trust property upon termination of the trust;
- (13) reports on matters under the trust;
- (14) the liability of the parties to the trust in default and the dispute resolution mechanism;
- (15) the manner in which a new trustee is elected; and
- (16) any other matter deemed necessary to the trust by the parties.

Where a trust is established in the form of a written document other than a trust contract, the matters to be set out in such a written document must comply with the provisions of the relevant laws and regulations.

[Article 33](#)

Trust companies must not commit any of the following acts when engaging in their individual businesses activities:

- (1) provide financing or transfer property to an interested party;
- (2) provide guarantee for an interested party; or
- (3) provide financing by pledging the shares of the trust company held by its shareholders.

An interested party of a trust company shall be determined according to the relevant standards stipulated by the *Company Law of the People's Republic of China* and the enterprise accounting standards.

[Article 34](#)

Trust companies must not commit any of the following acts when engaging in trust business activities:

- (1) seek improper gains by abusing its capacity as a trustee;
- (2) use trust property for a purpose that does not conform to the objective of the trust;
- (3) undertake that no loss will be incurred by the trust property or guarantee a minimum gain;
- (4) provide a guarantee for the trust property; or
- (5) commit any other act prohibited by laws and regulations and the China Banking Regulatory Commission.

[Article 35](#)

Interested party transactions conducted by trust companies must be at fair market prices and individual written reports must be submitted to the China Banking Regulatory Commission prior each transaction with information disclosed pursuant to the relevant provisions.

[Article 36](#)

Unless the China Banking Regulatory Commission stipulates otherwise, trust companies shall be remunerated in the form of a handling fee or commission provided under the trust document for the execution of trust business activities.

The beneficiary shall be notified of the remuneration collected by a trust company with specific details of the remuneration provided.

[Article 37](#)

Where a trust company makes disposition of trust property against the objective of the trust, violates duties of management or executes matters under the trust improperly, which results in loss of trust property, the trust company must not request for remuneration before restoration of the original status of the trust property or compensation is made.

[Article 38](#)

The expenses and debts incurred by a trust company in the execution of matters under a trust are borne by the trust property, but this must be clearly provided under the trust contract or the beneficiary must be clearly informed. Where the trust company made payment using individual property, it shall be entitled to a priority ranking for compensation on the trust property. Any debt incurred or loss

suffered as a result of violation of administration duties or improper administration of matters under a trust by a trust company shall be borne by the individual property of the trust company.

[Article 39](#)

Where a trust company makes a disposition of trust property against the objective of the trust or a significant mistake in the management or disposition of trust property, the settlor or the beneficiary shall have the right to terminate the trust company pursuant to the provisions of the trust document or apply to the People's Court to terminate the trust company.

[Article 40](#)

Where the duties of a trustee is terminated pursuant to law, a new trustee shall be elected according to the provisions of the trust document; where the trust document makes no provision, the settlor shall select a new trustee; where the settlor is unable to select a new trustee, the beneficiary shall select a new trustee; where civil capacity of the beneficiary is lacking or restricted, the beneficiary's guardian shall select a new trustee on its behalf pursuant to law. The China Banking Regulatory Commission may appoint a temporary trustee before the appointment of a new trustee.

[Article 41](#)

A trust shall be terminated under any of the following circumstances when the trust company administers trust business activities:

- (1) the occurrence of a ground for termination as provided by the trust document;
- (2) the continuing existence of the trust violates the objective of the trust;
- (3) the objective of the trust has been achieved or cannot be achieved;
- (4) the parties to the trust negotiated and agreed to a termination;
- (5) the term of the trust has expired;
- (6) the trust is discharged;
- (7) the trust is revoked; or
- (8) all the beneficiaries waived their beneficial rights.

[Article 42](#)

Where a trust is terminated, the trust company shall issue a liquidation report on the matters managed under the trust pursuant to

the provisions of the trust document. Where no beneficiary or holder of rights to the trust property objects to the liquidation report, the trust company shall be discharged from responsibility in respect of the matters stated in the liquidation report, unless the trust company engaged in improper conduct.

Chapter V — Supervision and Administration

[Article 43](#)

A trust company shall establish an organisational structure with a shareholders' meeting, a board of directors, a board of supervisors, senior management, etc, specify the division of their respective duties, and ensure independent operations, effective checks and balances, and mechanisms for rational and efficient decision-making, reward and control.

[Article 44](#)

Trust companies shall create corresponding job positions according to the principle of division of responsibilities, to ensure risk prevention measures are taken, control is exercised during the occurrence of an event, and monitoring and correction are performed after the event, thereby forming the comprehensive mechanisms for internal control and supervision.

[Article 45](#)

Trust companies shall formulate their own business rules for trust business activities and other businesses activities pursuant to the provisions, establish and improve the respective systems of business management and internal control, and file records with the China Banking Regulatory Commission.

[Article 46](#)

Trust companies shall establish and improve their own financial accounting system pursuant to the relevant provisions of the State, and truthfully record and comprehensively reflect their business activity and financial status. The financial accounting statements of the company shall be audited by a qualified intermediary.

[Article 47](#)

The China Banking Regulatory Commission may regularly or randomly inspect the business activities of a trust company; and where necessary, request the trust company to produce the relevant audit reports issued by a qualified intermediary.

Trust companies shall produce the relevant business information and financial statements as requested by the China Banking Regulatory Commission and truthfully provide information on related business operations.

[Article 48](#)

The China Banking Regulatory Commission shall implement net capital administration over trust companies. The specific measures shall be formulated by the China Banking Regulatory Commission separately.

[Article 49](#)

Trust companies shall allocate 5% of their after-tax profit to the trust compensation reserve fund annually; but the trust company may cease making further allocations to the trust compensation reserve fund once the total amount accumulated thereunder attains 20% of the company's registered capital.

The trust compensation reserve fund of a trust company shall be deposited at a domestic commercial bank with stable operations and of a certain scale, or used for the purchase of low-risk, high-liquidity securities such as treasury bonds.

[Article 50](#)

The China Banking Regulatory Commission shall implement the criteria for examining the appointment qualifications of directors and senior management personnel of trust companies. No appointment shall be taken by a person who has not undergone the China Banking Regulatory Commission's examination or fails the examination.

Trust companies shall conduct outgoing audits on directors and senior management personnel who plan to leave their position and file the audit outcome with the China Banking Regulatory Commission for record. Where there is a change in the trust company's legal representative, the existing legal representative must not vacate its position before the China Banking Regulatory Commission examines

and approves the appointment qualification of the new legal representative.

[Article 51](#)

The China Banking Regulatory Commission shall implement a work qualification management system for the appointment of trust company employees. Qualified persons shall be issued a work qualification certificate for trust business activities. A person must not engage in trust business activities before obtaining a work qualification certificate for trust business activities.

[Article 52](#)

Where a trust company's director, senior management personnel or employee engages in trust business activity that violates provisions under laws and administrative regulations or the provisions by the China Banking Regulatory Commission, the China Banking Regulatory Commission shall have the right to revoke an appointment or work qualification.

[Article 53](#)

The China Banking Regulatory Commission may, according to the needs in the performance of duties, hold dialogues with a trust company's director or senior management personnel and require the director or senior management personnel to explain the trust company's business activity and risk management pertaining to a significant event.

[Article 54](#)

Trust companies that violate prudent business rules shall be ordered by the China Banking Regulatory Commission to make correction within a stipulated period; where the trust company fails to make correction within the stipulated period or its action is seriously detrimental to its stable operations and the lawful rights and interests of a beneficiary, the China Banking Regulatory Commission may adopt measures such as suspension of business operations or restriction of shareholders' rights, etc, depending on the circumstances and 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 55](#)

Where a trust company encounters or is likely to encounter a credit crisis that seriously affects the lawful rights and interests of a beneficiary, the China Banking Regulatory Commission may put the trust company under receivership or a supervised restructuring.

[Article 56](#)

Where the China Banking Regulatory Commission discovers a concealment of certain facts or false contents in the application materials upon approval of an incorporation, change or termination of a trust company, the China Banking Regulatory Commission may order the applicant to make a supplementation or correction or revoke the approval.

[Article 57](#)

Trust companies may join the China Trust Association and exercise industry self-governance.

The China Trust Association shall accept the supervision of the China Banking Regulatory Commission in the conduct of its activities.

Chapter VI — Penalty Provisions

[Article 58](#)

The China Banking Regulatory Commission shall suppress trust companies established without its approval pursuant to the law; where the case constitutes a criminal offence, criminal liability shall be imposed according to law; where the case does not constitute a criminal offence, the China Banking Regulatory Commission shall confiscate the illegal income; where the amount of illegal income is RMB500,000 or above, a fine ranging from one to five times the amount of illegal income shall be imposed; where there is no illegal income or the amount of illegal income is less than RMB500,000, a fine ranging from RMB500,000 to RMB2 million shall be imposed.

[Article 59](#)

Persons who establish a branch without the approval of the China Banking Regulatory Commission or engage in prohibited business activities in violation of Article 19, Article 20, Article 21, Article 22, Article 33 and Article 34 shall be ordered by the China Banking Regulatory Commission to make correction; where there is illegal income, the illegal income shall be confiscated; where the amount of

illegal income is RMB500,000 or above, a fine ranging from one to five times the amount of illegal income shall be imposed; where there is no illegal income or the amount of illegal income is less than RMB500,000, a fine ranging from RMB500,000 to RMB2 million shall be imposed; where the case is serious or correction is not made with the stipulated period, the China Banking Regulatory Commission shall order the entity to suspend operations for correction or revoke the financial permit of the entity; where the case constitutes a criminal offence, criminal liability shall be imposed according to law.

[Article 60](#)

Trust companies that violate other 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.

[Article 61](#)

The China Banking Regulatory Commission shall revoke a trust company pursuant to law if illegal operations and improper business management of a trust company and its continued existence will be seriously detrimental to financial market order and public interest.

[Article 62](#)

Directors, senior management personnel and other personnel directly accountable for disciplinary violations of a trust company shall be penalised by the China Banking Regulatory Commission in the form of fines and cancellations of appointments or work qualifications pursuant to the circumstances and 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 63](#)

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

Chapter VII — Supplementary Provisions

[Article 64](#)

The registered capital of a trust company that does not manage trust matters by itself, ie trust companies that do not perform the duties of an investment manager, shall not be less than RMB100 million or an equivalent value in a freely convertible currency. Supervision and administration of such trust companies shall be executed with reference to these Measures.

[Article 65](#)

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

[Article 66](#)

These Measures shall be effective 1 March 2007. The former *Measures on the Administration of Trust and Investment Companies* (People's Bank of China Order No. (2002) 5) shall cease to apply.