

## **Rule on Management of Automobile Financial Institutions**

**[DRAFT FOR COMMENT]**

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(Unofficial translation by The US-China Business Council)

The People's Bank of China (PBOC) has drafted the Rule on Management of Automobile Financial Institutions [Draft for Comment] to fulfill China's commitment to open the automobile consumer credit market following China's WTO entry and to standardize automobile financial services and its management. This draft rule is published to seek public opinion.

Enterprises and individuals are to submit recommended changes or opinions to the PBOC before October 31, 2002, by post, e-mail, or fax.

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### **Chapter 1: General Rules**

#### **Article 1**

This rule is stipulated in accordance with the PRC Law on the People's Bank of China (PBOC), the PRC

Company Law, and other relevant laws and administrative regulations, to better meet the needs of the development of automobile financial services and to standardize the management of automobile financial service operations by non-bank financial institutions.

#### **Article 2**

Automobile financial institutions in this rule refers to non-bank financial institutions (including domestically funded, equity joint venture, and wholly foreign-owned automobile financial institutions) established in accordance with the PRC Company Law, other relevant laws, and this rule to provide loans and engage in related financial services for automobile purchasers in China.

#### **Article 3**

Automobile financial institutions are, by law, subject to the supervision management of the PBOC.

## **Chapter 2: Institution Establishment, Change, and Termination**

### **Article 4**

The establishment of automobile financial institutions must undergo examination approval by the PBOC.

No enterprise or individual may presume to establish an automobile financial institution or engage in automobile loans, or related financial services, without PBOC approval.

### **Article 5**

Companies legally established in China and companies whose establishment is registered abroad in accordance with foreign law (hereafter foreign companies ) that meet the following conditions may initiate the establishment of an automobile financial institution:

1. Non-financial institutions:

- Most recent year total assets must be no less than RMB 8 billion [Council note:\$967 million] or an equivalent amount in a freely convertible currency;
- Year-end net assets must be no less than 30 percent of total assets;
- Total investment amount must not exceed 50 percent of net assets;
- Institution must have three-years of consecutive profits.

2. Financial institutions:

- Most recent year total assets must be no less than RMB 8 billion [Council note:\$967 million] or an equivalent amount in a freely convertible currency;
- Capital adequacy ratio must be no less than 10 percent;
- Total investment amount must not exceed 50 percent of net assets;
- Institution must have three-years of consecutive profits.

### **Article 6**

Applications to establish automobile financial institutions must:

1. Meet the minimum registered capital requirements of this rule;
2. Meet the statutes of the PRC Company Law, other relevant laws, and this rule;
3. Possess senior management personnel familiar with automobile financial services;
4. Possess sound organizational structure, management and risk management systems;
5. Possess an operational location, safety prevention measures, and other infrastructure corresponding to service operations;
6. Other conditions as stipulated by the PBOC.

### **Article 7**

The minimum registered capital amount for automobile financial institutions is RMB 500 million [Council note: \$60 million] or an equivalent amount in a freely convertible currency. The registered capital is to be paid-in capital.

The PBOC may, according to the service scope of an automobile financial institution and the needs of management supervision prudence, raise this minimum registered capital amount at the time of establishment or at any time after establishment.

### **Article 8**

The establishment of automobile financial institutions must go through two stages: preparation and launch of operations.

### **Article 9**

Applicants applying to prepare for the establishment of automobile financial institutions must submit the following materials to the PBOC:

1. Application to prepare for establishment that contains the name, company location, registered capital, shareholders and shareholder rights structure, operational scope, etc. for the proposed automobile financial institution;
2. Feasibility study for the establishment of the automobile financial institution that contains the following:
  - a. Survey report of market development and need for the establishment of the automobile financial institution;
  - b. Initiator conditions (name, legal representative, copy of operating permit, operating situation credit report, and capital guarantee); and
  - c. Initiator s balance sheet, profit and loss sheet, and cash flow sheet for the most recent three years prepared by an authorized auditing institution recognized by the PBOC.
3. Article of association for the proposed automobile financial institution;
4. Names and resumes for the personnel responsible for preparation;
5. Other documents as stipulated by the PBOC. If an applicant is a foreign financial institution under management supervision by its home country s financial management supervision authorities, the applicant must, at the time of application to prepare establishment, submit a written opinion by the home country financial management supervision authority. If the laws of the applicant s country do not place the financial institution under management supervision by the financial management supervision authorities, or if the applicant is a non-financial institution, then the applicant must, at the time of application to prepare the establishment, submit a credit appraisal report prepared by an appraisal institution. The credit appraisal result must be good or better. A Chinese translation must be included for each of the materials listed above that are written in a foreign language.

### **Article 10**

The reply period for the PBOC to respond to an application to prepare establishment of an automobile financial institution is six months. If an applicant does not receive a formal approval reply, the applicant may not submit an application with the same content for one year.

### **Article 11**

The maximum establishment preparation period of an automobile financial institution is six months. Approval to establish an automobile financial institution automatically expires if an applicant does not apply to launch operations or does not meet the standards for operation

launch within this period. Under special circumstances, an applicant may, having applied and received PBOC approval, extend this period of establishment preparation, though such extension may not exceed six months. Operational activities in the name of the automobile financial institution may not be engaged during the period of establishment preparation.

### **Article 12**

An application to launch operations must be submitted to the PBOC following completion of the establishment preparatory work by an automobile financial institution with the following documents:

1. Report on completion of work for establishing an automobile financial institution;
2. Proof of capital examination prepared by a capital examination institution legally authorized by China;
3. Articles of association of the automobile financial institution;
4. Names and detailed curriculum vitae for proposed senior management personnel;
5. Names of shareholders and their respective capital contributions;
6. Proposed system bylaws for handling service and the internal risk management system;
7. Materials on operational location and other infrastructure related to service;
8. Other documents as stipulated by the PBOC.

### **Article 13**

Following PBOC approval of an application to launch the operation of an automobile financial institution, PBOC will issue a Financial Institution Legal Person Permit. An automobile financial institution may begin operation after registering with the administration of industry and commerce office relying on this permit and being issued an Enterprise Legal Person Operating License.

The PBOC will revoke the permit and publicize such revocation if an automobile financial institution approved to launch operations does not start operations within three months from the date the operating license is obtained, or if operations, once started, cease for six months consecutively.

### **Article 14**

The senior management personnel of an automobile financial institution must report to the PBOC for examination and approval authorization.

The senior management personnel of an automobile financial institution includes the chairman, vice

chairman, supervisory affairs officer, general manager, deputy general manager, executive board director, independent board director, chief financial officer and other personnel who may exercise significant influence on the company's operational management.

The senior management personnel of an automobile financial institution must be familiar with and respect China's financial supervision management laws and regulations, and must be familiar with automotive financial and related services. The general manager, deputy general manager, and executive board director each must possess at least three years of experience in automobile consumer financial services or other related services.

### **Article 15**

Automobile financial institutions must report the following changes to PBOC for approval:

1. Modification of company name;
2. Modification of registered capital;
3. Modification of place of operation;
4. Adjustment of business scope;
5. Modification of organizational form;
6. Adjustment of share structure;
7. Modification of bylaws;
8. Change of senior management personnel;
9. Merger or separation; and
10. Other modifications as identified by the PBOC.

### **Article 16**

Should the capital funds of an automobile financial institution fall below than the minimum limit, capital funds must be injected.

Detailed regulations on investment in automobile financing institutions will be established separately.

### **Article 17**

Regarding termination of an automobile financing institution arising from dissolution, revocation, and bankruptcy:

1. Dissolution may occur when an automobile financing institution applies for dissolution arising from separation, merger, or other causes for dissolution as indicated in the bylaws, following approval from the PBOC. A liquidation group must be formed in accordance with the law to handle liquidating activities.
2. The PBOC will order the revocation of an automobile financing institution in line with the Ordinance on Revocation of Financial Institutions, should an automobile financing institution violate laws and regulations or have poor operational and management performance that seriously jeopardizes the financial order or damages social public interest.
3. An automobile financing institution unable to pay its debts may, with PBOC consent, apply to the courts for bankruptcy.

## **Chapter 3: Business Scope**

### **Article 18**

With approval from the PBOC, an automobile financing institution may engage in the following partial or complete automobile financing operations:

1. Issue corporate bonds and commercial bills;
2. Borrow from financial institutions in the form of a guarantee;

3. Accept savings from its shareholders and enterprises purchasing automobiles with loans with terms of three months or longer;
4. Provide automobile dealers with loans for purchasing automobiles and operational equipment;
5. Provide automobile purchasing loans and leasing services;
6. Provide guarantees for loans to purchase automobiles;
7. Provide agency business associated with the above mentioned automobile financing activities;
8. Engage in other businesses as approved by the PBOC.

## **Chapter 4: Risk Management and Supervision Management**

### **Article 19**

Automobile financing institutions that provide loans to natural persons for automobile purchase must comply with the relevant regulations of the rules on management of individual automobile loans. Automobile financing institutions that provide automobile loans to legal persons or other institutions must comply with the General Rules on Loans and other relevant regulations.

### **Article 20**

Automobile financing institutions must adopt management control over the ratio between total capital and risk assets. The specific requirements for all categories of asset risk control and management will be established separately by the PBOC.

### **Article 21**

Automobile financing institutions must implement a corresponding financial enterprise accounting system, must set up reserve funds for bad debt in accordance with prudential accounting principles and relevant state regulations, and must write off bad debt on a timely basis.

**[Council Note: The PBOC Chinese text as posted mistakenly lists three articles as Article 21. The mistake is repeated here in this translation in order to remain consistent with the Chinese text.]**

### **Article 21**

Automobile financing institutions must, in line with the regulations, compile and submit to the PBOC balance sheets, profit and loss sheets, cash flow sheets, and other sheets required by the PBOC. The financial sheets and materials for the previous year must be submitted within one month of the end of the fiscal year.

### **Article 21**

Automobile financing institutions must establish and complete all business administrative systems and internal control systems in accordance with the Guiding Principles for Enhancing Internal Control of Financial Institutions and report to the PBOC.

## **Article 22**

The PBOC implements site inspection and non-site inspection systems for automobile financing institutions.

## **Article 23**

For problems identified by the PBOC in its daily supervision and management, the PBOC may interrogate the legal person and other senior managerial personnel of the automobile financing institution.

The PBOC may order the institution to correct the problem within a specific period. Where no correction or rectification is carried out, the PBOC has the right to cancel the qualifications of the legal person and relevant senior managerial personnel.

## **Article 24**

Automobile financing institutions must establish regular external auditing systems. Annual auditing reports confirmed with the signature of the chairman of the board or supervisory affairs officer must be submitted to the PBOC within four months of the end of the fiscal year.

## **Article 25**

An automobile financing institution must report to the PBOC immediately if it encounters difficulty in making payments or other such emergencies.

## **Article 26**

The PBOC may order the suspension of operations should an automobile financing institution encounter any of the following situations:

1. Current year losses exceed 30 percent of registered capital, or annual losses over three consecutive years exceed 10 percent of registered capital;
2. Difficulties making payments;
3. Violation of national laws or regulations;
4. Other situations for which the PBOC considers suspension of operations to be necessary.

## **Article 27**

The PBOC may adopt the following measures following an order to suspend the operation of an automobile financing institution:

1. Require or prohibit change to senior management personnel of the automobile financing institution;
2. Suspend partial or all business operations;
3. Order an increase of capital funds within a specified period;
4. Order the automobile financing institution to restructure or reform its shareholders organization;
5. Other measures deemed necessary by the PBOC.

## **Article 28**

An automobile financing institution that has had operations suspended and that meets the following conditions may, following PBOC approval, resume normal operations:

1. Payment capability has been recovered;

2. Losses have been compensated;
3. Irregularities have been corrected. Suspension of operation may not exceed one year.

## **Chapter 5: Penalties**

### **Article 29**

Contravention of Article 4 of this rule (i.e. establishing an automobile financing institution without approval from the PBOC) will be handled according to the Rule on Crackdown of Illegal Financial Institutions and Illegal Financial Service Activities.

### **Article 30**

Operational activities of an automobile financing institution that violate relevant regulations of this rule will receive administrative penalties from the PBOC in accordance with the Rule on Penalties for Financial Irregularities and other relevant regulations. An automobile financing institution may, should it not be satisfied with the penalty decision by the PBOC, appeal or file an administrative complaint with the courts according to the law.

## **Chapter 6: Appendix**

### **Article 31**

Automobile financing institutions established by investors from Hong Kong SAR, Macao SAR, or Taiwan must adhere to this rule.

### **Article 32**

This rule will take effect on (blank) and is subject to interpretation by the PBOC.