

Closure of financial institutions in China

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With the deepening of financial reforms and expansion of financial markets, the accumulated financial risks hidden in China's financial system are gradually being exposed. While the big four state-owned commercial banks are facing the problem of non-performing loans, some of the small- and medium-sized financial institutions are running high risks because of keen competition and poor management. Some have even suffered payment crises. Warding off financial risks, keeping financial institutions sound and promoting the healthy development of the financial industry are urgent tasks for China's financial authorities.

Introduction

Over recent years, China has taken a number of measures to strengthen its financial system. In 1998 a special government bond amounting to 270 billion yuan was issued to the four state-owned commercial banks for the purpose of strengthening their capital base while reserve requirements were lowered. A number of small institutions such as urban credit cooperatives were merged, some were acquired by larger institutions, and several institutions in difficulties were closed by the People's Bank of China (the PBC). This paper will focus on one important aspect of recent bank restructuring in China – the closure of financial institutions – and discuss the approaches used, problems with them and ways to improve them.

The first part of the paper describes preconditions, procedures and characteristics of the closure of financial institutions in China. The

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second part analyses problems in closed institutions and provides a case study of closure. The third part discusses several policy issues related to closures, and the last part presents conclusions.

Closure versus other restructuring instruments

Legal basis for closure of financial institutions

There is no explicit definition of closure of financial institutions in China. The main legal basis for closure is the *1986 Bankruptcy Law* for general enterprises and the *Provisional Regulation on Financial Institutions* promulgated by the PBC in 1994. Furthermore, the *Law on the People's Bank of China*, *Commercial Banking Law* and *Company Law* also provide some reference for closure.

In practice, when a financial institution incurs heavy losses and cannot meet maturing debts because of illegal operations or poor management, the central bank will close it legally. Therefore, to close a financial institution means the central bank uses compulsory administrative measures to terminate the operations of financial institutions, and dissolves them.

Preconditions for closing financial institutions

The PBC sets out the following nine preconditions for closing financial institutions in its *Provisional Regulation on Financial Institutions*. The PBC will close an institution if:

- it violates relevant laws, rules or policies stipulated by the authorities;
- it does not start to operate 90 days after the Licence For Legal Person and Licence For Operation of Financial Business have been granted;
- its capital does not meet the minimum standards required by the central bank, or its management does not meet the "fit and proper" requirements of the central bank;
- it has ceased operation for more than six consecutive months or cumulatively for more than one year;
- it merges with, or is acquired by, another financial institution;
- its losses in each of the last three years have been more than 10% of its capital, or accumulated losses have been more than 15% of its capital;

- it does not make sufficient progress after failing to qualify in an annual review based on major financial statements,¹ or fails to qualify for two successive years in annual examinations;
- it provides false information or behaves inappropriately during application for establishment;
- other situations arise under which the central bank thinks the institution should be closed.

In practice, the PBC will close a financial institution when any of the following three situations emerges:

1. It has been continuously loss-making for several years.
2. It is seriously insolvent, cannot meet maturing debts, and has suffered a bank run.
3. It violates relevant rules or laws.

Closure procedure²

Once the central bank has decided to close a problem institution, the following steps are taken:

First, the central bank publishes its decision to close the financial institution. At the same time, the closed institution stops operation.

Second, if necessary, the PBC will designate a financial institution (usually a commercial bank) to take care of the claims and liabilities of the closed institution as well as unwinding its business.

Third, a liquidation team will be set up to liquidate the assets of the closed institution, to calculate its losses and net assets, and to confirm and register its debts. The team usually includes representatives from the central bank, the closed institution and other experts. As to the closure of some small institutions owned by local governments, since the repayment of their debts usually involves public or budgetary funds, representatives from local governments are sometimes also included in the liquidation team.

¹ The PBC and its subsidiaries are authorised to conduct on-site examinations of financial institutions at any time to examine their routine business. Furthermore, the PBC and its subsidiaries are required to carry out annual off-site reviews of financial institutions in the first quarter of each year. For further information, please refer to Chapter IX, *Provisional Regulation on Financial Institutions*.

² Closure of banks and other restructuring measures are discussed in general in John Hawkins and Philip Turner's "Bank Restructuring in Practice: an Overview", and with specific reference to China, see Xie Ping, "Bank Restructuring in China", both in *Policy Papers* No. 6, BIS, August 1999.

Fourth, principles are promulgated for the repayment of debts. This decision is usually made with reference to relevant laws such as the *Bankruptcy Law* and the consideration of protecting the interests of residents and foreign creditors. Therefore, in general, the principal and legal interests of foreign debts and household deposits would be repaid in priority.

Finally, if liquidators find that the institution incurred such heavy losses that it is impossible to repay most of its debts, either itself or its creditors may apply to the court for bankruptcy. Once the bankruptcy procedure begins, the procedure of closure and liquidation terminates.

Characteristics of closure of financial institutions in China

Given the existing legal and institutional infrastructure, there are two salient characteristics in the closure of financial institutions in China.

First, the nine conditions for closure are relatively general compared to international standards; some of them are even vague. This is mainly because they were first stipulated in 1994 while the first case of closure occurred in early 1997. The central bank lacks experience with closure, and the old rule cannot fit into current situations given the rapid development of China's financial industry over the last two decades. With the introduction of market mechanisms and development of financial markets, a new regulatory framework for closure has been necessary.

The second characteristic is the combined application of market discipline, government's involvement and legal regulations in closures. Government's involvement was usually embodied in their significant roles in decision-making concerning the disposal of problem institutions as well as the funds they provided for the repayment of household deposits and foreign debts. It is necessary and helpful for the government to provide funds for the repayment of debts given the unsound legal framework and market conditions in China.

Other alternatives for bank restructuring in China

Recapitalisation. This means the governments or shareholders inject new capital or quality assets into financial institutions owned by them to strengthen their capital base.

Bankruptcy. Commercial banks or other financial institutions that are not able to meet maturing debts will be declared bankrupt by the courts with the consent of the PBC. Either the institution itself or its creditors may apply for bankruptcy. Bankruptcy may also result from closure and central bank takeover.

Merger. Usually, merger should be based on commercial principles. In such circumstances, merger is an autonomous decision made by financial institutions. However, mergers can be used as restructuring instruments of the central bank. To deal with problem institutions, the central bank may compel them to merge with a healthy and sound institution.

*Central bank takeover*³. This is another way for the PBC to deal with problem institutions. Takeover means the central bank takes over such an institution and is responsible for it temporarily. This happens when a financial institution is or might be in crisis and this might affect depositors. The purpose of the takeover is to take necessary steps to protect depositors and to help restore it to operation. After a financial institution has been taken over by the central bank, its claims and debts will not change.

The PBC cannot own the institutions it has taken over for more than two years. After this time, the central bank must decide how to dispose of the institution. If its problems have been solved, the institution can resume operations; otherwise, it has to be merged with other institutions or go into bankruptcy.

Central bank or government assistance. When a financial institution is in trouble but basically solvent, the central bank may provide liquidity assistance to it. Usually, when small-sized institutions owned by local governments meet with difficulties, the local governments have responsibilities for assisting or rescuing them through new capital injection or liquidity help.

Sometimes, even if the central bank or local governments have provided assistance to troubled institutions, they still have serious problems. In this case, the central bank will finally close them.

The Chinese authorities have adopted all these approaches in bank restructuring over recent years. In 1995 the PBC took over the Zhongyin Investment and Trust Company for the first time, and an instance of recapitalisation occurred when the government recapitalised

³ Article VII, Commercial Banking Law.

the four state commercial banks in 1998. Only one institution (GITIC) has gone bankrupt up to now. In contrast, merger as well as central bank or government assistance seem to have been adopted more frequently in resolving small- and medium-sized institutions.

Case study: closure of financial institutions in China

Four medium-sized financial institutions have been closed since 1997: one commercial bank – Hainan Development Bank⁴ – and three International Trust and Investment Companies (ITICs) – China Agribusiness International Trust and Investment Company (AITIC), China Venture Technology Investment and Trust Company (VITIC) and Guangdong International Trust and Investment Company (GITIC). In addition, 23 urban credit cooperatives and 18 rural credit cooperatives were closed during the same period.⁵

All these closed institutions are now in conservatorship and liquidation except AITIC and GITIC. AITIC's liquidation has been finished and it has been dissolved; GITIC is now undergoing bankruptcy proceedings.

Problems of the closed institutions

Inadequate internal control and poor risk management

Inadequate capital. The capital ratios of the closed institutions were far below 8%. Even so, they used to extend loans to shareholders to provide them with funds used as equity.

Serious structural imbalances between assets and liabilities. The institutions invested in long-term assets with short-term liabilities and borrowed heavily. Their loan/deposit ratios and leverage ratios were too high.

Low asset quality and high risks. The non-performing loans persisted at relatively high levels since large amounts of loans were either related

⁴ Xie Ping, "Bank Restructuring in China", Policy Papers No. 6, August 1999, BIS.

⁵ Liu Shiyu, "China's experience in small and medium financial institution resolution", in this volume.

loans or were invested in property. Furthermore, the proportion of loans without guarantees or collateral was relatively high.

High credit concentration or market concentration. The closed institutions used to extend large amounts of loans to a single borrower or market. Once the borrower or the market failed, the institutions incurred heavy losses. For the 14 closed urban credit cooperatives, 50% of their loans were for property. When the property bubble burst, most of them became bad loans, and the institutions made large losses.

Weak governance and absence of positive incentives

Most of the closed institutions were set up only a few years previously by bigger institutions or local governments. Their operations were mainly based on administrative instructions and good relations with relevant authorities so as to enjoy priorities in their operations. Effective governance was absent; the assessment of staff was not based on performance and staff therefore lacked a positive incentive to promote the sound development of the institution.

High concentration of financial institutions and strong competition

By the end of 1998, there were a total of 104 commercial banks (four state-owned, 10 joint-stock banks, two regional housing savings banks and 88 city commercial banks) operating in China, as well as 239 ITICs, 91 securities firms, 25 insurance companies, a large number of urban and rural credit cooperatives and some other institutions. Most of these institutions set up their own networks of subsidiaries across the country. Given the limited size of the market, these institutions competed heavily, some of them even conducted illegal and risky business.

Weak basis since establishment due to wrong decisions

Though establishing a financial institution is subject to the approval of the central bank, some local governments exerted great pressure on the local branches of the central bank to get approval for small institutions aimed at meeting their financing demands. In this way, some institutions did not have enough capital, or the market for them was very narrow, which led them into distress immediately after establishment.

Moral hazard

To some extent, the risky behaviour of some small- and medium-sized institutions resulted from the belief that the central bank or local governments would come to the rescue when they got into trouble. Moral hazard is a long-standing problem with financial institutions, and has proved difficult to remove.

Closure of GITIC and its impact

The history and nature of ITICs

ITICs were born in the early 1980s when China's economic reform unfolded. With the development of the economy, domestic entities' demand for finance increased sharply and inflows of foreign funds grew rapidly. At the same time, the market infrastructure was still in its infancy, so it was very difficult for creditors, especially foreign creditors, to obtain enough information and to oversee borrowers efficiently. In response, some financial institutions, including ITICs, were founded by local governments and some big commercial banks, aiming at serving as intermediaries between companies in need of funds, financial institutions and suppliers of funds.

The main business scope for ITICs was stipulated by the PBC in 1986 in its *Provisional Regulation on the Trust and Investment Company*.⁶ Some of the larger ITICs were also licensed by the central bank to conduct foreign business, including raising foreign debt in international markets. However, given the great pressure from local governments or their parent institutions and strong competition, some ITICs also conducted banking business in disguised forms. Non-performing assets of ITICs stood at relatively high levels and some of them got into trouble.

The PBC had consolidated the ITIC industry several times to ward off the risks to which it exposed the whole economy (Table 1). The number of ITICs decreased steadily during the last two decades, from more than 620 in 1982 to 239 at the end of 1998. The most significant

⁶ ITICs are allowed to conduct the following business: (i) trust business specified by settlors or testators; (ii) general trust business requested by settlors or testators without any special specifications; (iii) financial leasing business; (iv) agency services related to trust asset management, including collection, custody and securities issuance; (v) securing and issuing currency debt; (vi) other business approved by the PBC.

Table 1
Consolidations of ITICs

Time	Main measures	Number of ITICs
1982	Consolidation of institutions. The State Council decided all ITICs sponsored by local governments had to stop operations. Only banks could set up ITICs, and all ITICs had to be subject to banking credit quotas.	620
1984 and 1985	To deal with the overheating of the economy, the State Council and the PBC urgently consolidated trust business, and required ITICs to restrain trust loans and to withdraw non-trust loans. Trust loans and trust investments were suspended temporarily in 1985.	–
1988–91	Most ITICs established subsidiaries all over the country and conducted unauthorised business, collecting deposits with high interest rates. This coincided with the market disorder and high inflation at that time. The State Council and the PBC decided to segregate trust business from banking business.	1991: 371
1993	In a situation similar to 1988, the State Council required ITICs to sever links with their funding sources – mainly commercial banks.	376

Source: PBC (1994): *Fourteen years of reform and opening up*. China Finance Publishing House, pp. 20–2.

step by the Chinese authorities in consolidating ITICs took place in 1993 when they severed the links between the 376 ITICs and the banks, which were their major funding source. It was one of the efforts by the authorities to pull the financial system back on track from disorders during that period. By 1995, out of the total of 391 ITICs, the number of those attached to banks dropped from 186 to 38. At the end of 1998, the total assets of the 239 ITICs stood at more than 600 billion yuan (7.5% of GDP), and 21 of them operated nationwide.

Background of GITIC

Founded by the Guangdong provincial government in July 1980, GITIC became a non-bank financial institution in 1983 with the approval of the

PBC and was licensed for foreign exchange business. In 1989, it was appointed by the former MOFTEC (Ministry of Foreign of Technical and Economic Cooperation) as one of the so-called “Big Ten Funding Windows”⁷ for borrowing abroad. Over the past two decades, GITIC sponsored and supported a number of important infrastructure projects in Guangdong Province and was once ranked the second biggest ITIC in China. At the end of 1980s, it expanded from a trust company into an enterprise group involved in both the financial market and industries, and established more than 200 subsidiaries. Some famous enterprises in Guangdong Province formed its good assets. It was a famous investment arm of Guangdong Province and China’s best-known borrower on world capital markets.

Closure and bankruptcy of GITIC

However, due to its poor management, deposits with unusually high interest rates, illegal interbank business, illegal investment and evasion of supervision, GITIC failed to meet its maturing debts in 1998. The PBC declared it closed on 6 October 1998 to protect creditors’ interests. The three-month liquidation found GITIC’s aggregate assets were only 21.5 billion yuan while liabilities were as high as 36.2 billion yuan, which meant the liability/asset ratio was 168% and GITIC was apparently insolvent.

Its Board of Directors decided that GITIC and three of its over 200 subsidiaries – GITIC Shenzhen Company, Guangdong International Leasing Company and Guangxin Development Enterprise – would apply for bankruptcy in January 1999. Proceedings are now under way.

Among the total of 240 creditors of GITIC, 135 were foreign creditors, and their claims accounted for about half of the total. Among the foreign debts, part had been raised without approval from the State Administration of Foreign Exchange (SAFE), and were unregistered illegal

⁷ These were appointed by MOFTEC in 1988 to curtail the extremely high growth of foreign debt. Foreign debt increased significantly in the 1980s, and the funding cost increased sharply. After the appointment, only the ten funding windows could raise funds on international markets.

The ten funding windows included three commercial banks and seven ITICs: the three banks were Bank of China, Bank of Communication and China Investment Bank; ITICs were China International Trust and Investment Company (CITIC), Shanghai ITIC, GITIC, Dalian ITIC, Tianjin ITIC, Fujian ITIC and Hainan ITIC.

debts. Therefore the central government of China would not accept responsibilities for them. Registered legal foreign debts, instead of being fully honoured by the government, were therefore to be treated equally with domestic debts, and how much of them can be repaid depends on the net realisable assets after liquidation.

This decision differed from market expectations. Many foreign creditors believed that the Chinese local or central governments, especially the Guangdong provincial government, would honour their claims as in earlier cases. Without priority for being repaid fully, they would suffer heavy losses. Hence some creditors tried to lobby the Chinese authorities for GITIC to be restructured instead of being made bankrupt, but China's *Bankruptcy Law* allows restructuring plans only when creditors force bankruptcy on the company, whereas GITIC had entered bankruptcy voluntarily.

Implications for China

The most significant feature of the closure of GITIC is the different treatment of foreign debts compared with earlier cases, and it has had some significant consequences for China. On one hand, it had some adverse effect in the short term. After the episode, foreign creditors began to reassess the soundness and profitability of other ITICs with some even withdrawing their credit lines. A few ITICs, such as Huitong ITIC based in Hainan Province and Guangzhou ITIC in Guangdong Province, suffered due to the contagion effect of the loss of confidence. At the end of July 1999, Standard & Poor's announced a downgrade of China's sovereign credit ratings. In the near future, capital inflows might slow and the confidence of foreign banks in China might be weakened. If foreign banks no longer roll over their claims for fear that they might be unrecoverable, some Chinese financial institutions and firms will be in difficulty due to the short-term nature of their liabilities.

On the other hand, it also has some positive implications for the sound development of China's financial system in the longer term. First, it shows that the Chinese government is now determined to make companies responsible for their own problems and warns the world not to take the creditworthiness of an enterprise as equal to that of central government credit. Second, it is an alarm signal to foreign financial institutions that they should be responsible for their own decisions.

Foreign institutions have become more aware of individual institutions' merits and creditworthiness and fully recognise financial risks ahead. In short, an important step has been taken towards establishing a healthier financial system in China. To some extent, the bailout of some problem institutions by the government in the past contributed to the moral hazard among domestic and foreign institutions. With the introduction of market mechanisms, a proper way of market exit and of "bailing-in the creditors" of problem institutions should be established.

China is going to restructure the ITIC industry mainly through merger and takeover. The authority is considering consolidation of its 239 ITICs into 70 or 80, each with a minimum capital of 300 million yuan. The main measure would be for local governments to inject quality assets or money into problem ITICs and take over bad debts. Foreign participation is also under review.

Policy issues related to closure

Different treatment of domestic and foreign debts

In most cases, the Chinese authorities treated domestic debts and foreign debts differently in closures. Foreign debts enjoyed priority of repayment, as did household deposits, while domestic entity debts had to wait for repayment after liquidation.

This different treatment does not find legal support in laws concerning closure and bankruptcy of enterprises. The consideration for the Chinese authorities was to protect the interests of foreign institutions and foreign investors, to maintain the creditworthiness of Chinese financial institutions and, most importantly, to keep the confidence of foreign investors in the sound development of the Chinese economy.

Some Chinese creditors thought it unfair that the interests of foreigners were protected, as there were no explicit clauses giving foreign creditors priority and the nature of the debts was the same regardless of nationality. Therefore, foreign creditors should be treated equally. With the establishment of a diversified financial system and strengthened financial supervision, this kind of protection should be removed gradually to create competitive equality. However, the abrupt policy change in the case of GITIC produced an unexpectedly strong reaction in the markets.

Legal infrastructure

As mentioned above, there is no specific law or rule for the closure of financial institutions in China, while several laws provide guidance for it. In 1995 the *Law on the People's Bank of China* and the *Commercial Banking Law* were enacted, which established the framework for financial supervision and the scope of business for commercial banks. Apart from this, the *1986 Bankruptcy Law* and *Provisional Regulation on Financial Institutions* are the main legal references in practice, while the latter only set out conditions for closure.

All these laws and regulations are not specific laws for closing financial institutions, nor do they have detailed clauses for financial institutions. None of them contains detailed information on closure. Under such circumstances, there is no consistent way for the closure and liquidation of financial institutions. Therefore, the decisions of the authorities concerning liquidation and other matters may sometimes be made case by case. This ad hoc approach inevitably means that the procedures applied are not always sufficiently transparent to foreign investors.

However, some improvements have been achieved. A series of laws, such as the *Securities Law* and *Insurance Law*, as well as regulations and rules have been promulgated in recent years to safeguard the financial system as a whole. All these efforts constitute an important step towards a sound legal infrastructure for China's financial markets.

Inadequate transparency and disclosure

The transparency of bank restructuring and supervisory policies in China needs to be improved – to match the great progress made in enhancing transparency of monetary policy over recent years. In addition, although certain disclosure requirements for financial institutions have been formulated, only a few institutions publish their fundamental indicators regularly, and the reliability and accuracy of the information disclosed by other institutions remains doubtful. Hence, independent external auditing agencies can contribute to the improvement.

Pace of policy changes

The GITIC experience suggests that policy changes aimed at improving the way of dealing with failures of financial institutions should be implemented cautiously. Unexpected or abrupt policy changes may lead

to effects opposite to that originally intended. It is certainly necessary for China to deal with closed institutions by not covering all debts. But how specifically to implement this general policy and how long it should take to allow market participants to adjust should be studied carefully.

The role of the central bank and governments in closure

Ensuring the central bank enjoys independence of action is a long-standing issue in China. Usually, the local governments that own the medium and small-sized institutions have a right to vote on the destiny of these institutions. In this way, the central bank is not able to make decisions completely according to market principles. Sometimes local governments even impede the closure process in order to protect local interests.

The institutional restructuring of the PBC, aimed at reducing governments' intervention last year, consolidated its branches into nine, each covering several provinces, stepping forward to a more independent central bank.

Greater use of other restructuring instruments

China has taken a number of measures to strengthen its financial system in the past few years. With other restructuring instruments being applied, the frequency of closure also seems to be rising. It is unusual that during such a short period so many institutions were closed. Although it shows the determination of the Chinese authorities to consolidate their problem institutions, it also produces adverse implications for China in terms of the magnitude of the problem and difficulties. Frequent closure may undermine the confidence of market participants in China's financial system.

The Chinese authorities are fully aware of the drawbacks of closure. The principle of more restructuring, less bankruptcy and less closure has been announced as guidance for bank restructuring in the future.

Enhancement of the oversight capability of the supervisory authorities

Over recent years, drawing lessons from disorders in domestic financial markets and the recent Asian turmoil, China has been implementing

the principle of segregation of financial institutions' business lines to contain risks. After the disturbances of the ITICs, this principle will be reinforced in that securities and other business, except trust business, will be separated from ITICs to limit their speculative operations.

Accordingly, the recent segregation of financial supervision in China divides supervisory responsibilities clearly among three supervisory bodies. The Securities Regulatory Commission is responsible for the sound operation of securities firms, while the Insurance Supervisory Commission supervises all the insurance companies. The PBC's responsibility is to ensure the health of all the commercial banks, ITICs, credit cooperatives and other financial institutions. In the current immature market and institutional environment, this kind of segregation helps China to prevent financial risks from rapidly spreading among sectors and is conducive to more efficient and more specialised supervision.

In addition, a sound capital framework and the introduction of new supervisory techniques can also help to improve the supervisory capability of the Chinese authorities. The establishment of early warning systems is critical to effective supervision. In essence, supervisory authorities should be an *ex ante* "watchdog" rather than an *ex post* "fireman".

Foreign participation in dealing with problem institutions

Foreign banks can bring advanced techniques and sound management to developing countries. Hence some Asian countries such as Korea and Thailand encouraged foreign banks' participation in dealing with the non-performing assets of their crisis-hit financial institutions. To a certain extent, their experiences have some implications for China's financial reform.

Conclusions

China has continued its efforts in bank restructuring over recent years, and some financial institutions have been closed during the last two years. The Chinese authorities have taken a series of measures to improve their ability to deal with closed institutions, whereas the lack of a legal basis, inadequate transparency and government intervention still constitute the main problems in closure. Further improvements in all these areas are critical.

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