

碍和隐瞒。”

二、第四十二条改为第四十三条，第一款增加一项，作为第六项：“违反本法第四十二条规定对有关单位或者个人进行调查的”。

第二款修改为：“银行业监督管理机构从事监督管理工作的人员贪污受贿，泄露国家秘密、商业秘密和个人隐私，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予行政处分。”

三、增加一条，作为第四十九条：“阻碍银行业监督管理机构工作人员依法执行检查、调查职务的，由公安机关依法给予治安管理处罚；构成犯罪的，依法追究刑事责任。”

本决定自 2007 年 1 月 1 日起施行。

《中华人民共和国银行业监督管理法》根据本决定作修改并对条款顺序作调整后，重新公布。

中华人民共和国银行业监督管理法

(2003 年 12 月 27 日第十届全国人民代表大会常务委员会第六次会议通过 根据 2006 年 10 月 31 日第十届全国人民代表大会常务委员会第二十四次会议《关于修改〈中华人民共和国银行业监督管理法〉的决定》修正)

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第一章 总 则

第一条 为了加强对银行业的监督管理，规范监督管理行为，防范和化解银行业风险，保护存款人和其他客户的合法权益，促进银行业健康发展，制定本法。

第二条 国务院银行业监督管理机构负责对全国银行业金融机构及其业务活动监督管理的工

作。

本法所称银行业金融机构，是指在中华人民共和国境内设立的商业银行、城市信用合作社、农村信用合作社等吸收公众存款的金融机构以及政策性银行。

对在中华人民共和国境内设立的金融资产管理公司、信托投资公司、财务公司、金融租赁公司以及经国务院银行业监督管理机构批准设立的其他金融机构的监督管理，适用本法对银行业金融机构监督管理的规定。

国务院银行业监督管理机构依照本法有关规定，对经其批准在境外设立的金融机构以及前二款金融机构在境外的业务活动实施监督管理。

第三条 银行业监督管理的目标是促进银行业的合法、稳健运行，维护公众对银行业的信心。

银行业监督管理应当保护银行业公平竞争，

提高银行业竞争能力。

第四条 银行业监督管理机构对银行业实施监督管理，应当遵循依法、公开、公正和效率的原则。

第五条 银行业监督管理机构及其从事监督管理工作的人员依法履行监督管理职责，受法律保护。地方政府、各级政府部门、社会团体和个人不得干涉。

第六条 国务院银行业监督管理机构应当和中国人民银行、国务院其他金融监督管理机构建立监督管理信息共享机制。

第七条 国务院银行业监督管理机构可以和其他国家或者地区的银行业监督管理机构建立监督管理合作机制，实施跨境监督管理。

第二章 监督管理机构

第八条 国务院银行业监督管理机构根据履行职责的需要设立派出机构。国务院银行业监督管理机构对派出机构实行统一领导和管理。

国务院银行业监督管理机构的派出机构在国务院银行业监督管理机构的授权范围内，履行监督管理职责。

第九条 银行业监督管理机构从事监督管理工作的人员，应当具备与其任职相适应的专业知识和业务工作经验。

第十条 银行业监督管理机构工作人员，应当忠于职守，依法办事，公正廉洁，不得利用职务便利牟取不正当的利益，不得在金融机构等企业中兼任职务。

第十一条 银行业监督管理机构工作人员，应当依法保守国家秘密，并有责任为其监督管理的银行业金融机构及当事人保守秘密。

国务院银行业监督管理机构同其他国家或者地区的银行业监督管理机构交流监督管理信息，应当就信息保密作出安排。

第十二条 国务院银行业监督管理机构应当公开监督管理程序，建立监督管理责任制度和内部监督制度。

第十三条 银行业监督管理机构在处置银行业金融机构风险、查处有关金融违法行为等监督管理活动中，地方政府、各级有关部门应当予以配合和协助。

第十四条 国务院审计、监察等机关，应当依照法律规定对国务院银行业监督管理机构的活动进行监督。

第三章 监督管理职责

第十五条 国务院银行业监督管理机构依照法律、行政法规制定并发布对银行业金融机构及其业务活动监督管理的规章、规则。

第十六条 国务院银行业监督管理机构依照法律、行政法规规定的条件和程序，审查批准银行业金融机构的设立、变更、终止以及业务范围。

第十七条 申请设立银行业金融机构，或者银行业金融机构变更持有资本总额或者股份总额达到规定比例以上的股东的，国务院银行业监督管理机构应当对股东的资金来源、财务状况、资本补充能力和诚信状况进行审查。

第十八条 银行业金融机构业务范围内的业务品种，应当按照规定经国务院银行业监督管理机构审查批准或者备案。需要审查批准或者备案的业务品种，由国务院银行业监督管理机构依照法律、行政法规作出规定并公布。

第十九条 未经国务院银行业监督管理机构批准，任何单位或者个人不得设立银行业金融机构或者从事银行业金融机构的业务活动。

第二十条 国务院银行业监督管理机构对银行业金融机构的董事和高级管理人员实行任职资格管理。具体办法由国务院银行业监督管理机构制定。

第二十一条 银行业金融机构的审慎经营规则，由法律、行政法规规定，也可以由国务院银行业监督管理机构依照法律、行政法规制定。

前款规定的审慎经营规则，包括风险管理、内部控制、资本充足率、资产质量、损失准备金、风险集中、关联交易、资产流动性等内容。

银行业金融机构应当严格遵守审慎经营规则。

第二十二条 国务院银行业监督管理机构应当在规定的期限，对下列申请事项作出批准或者不批准的书面决定；决定不批准的，应当说明理由：

（一）银行业金融机构的设立，自收到申请文件之日起六个月内；

（二）银行业金融机构的变更、终止，以及业务范围和增加业务范围内的业务品种，自收到申请文件之日起三个月内；

（三）审查董事和高级管理人员的任职资格，自收到申请文件之日起三十日内。

第二十三条 银行业监督管理机构应当对银行业金融机构的业务活动及其风险状况进行现场监管，建立银行业金融机构监督管理信息系统，分析、评价银行业金融机构的风险状况。

第二十四条 银行业监督管理机构应当对银行业金融机构的业务活动及其风险状况进行现场检查。

国务院银行业监督管理机构应当制定现场检查程序，规范现场检查行为。

第二十五条 国务院银行业监督管理机构应当对银行业金融机构实行并表监督管理。

第二十六条 国务院银行业监督管理机构对中国人民银行提出的检查银行业金融机构的建议，应当自收到建议之日起三十日内予以回复。

第二十七条 国务院银行业监督管理机构应当建立银行业金融机构监督管理评级体系和风险

预警机制，根据银行业金融机构的评级情况和风险状况，确定对其现场检查的频率、范围和需要采取的其他措施。

第二十八条 国务院银行业监督管理机构应当建立银行业突发事件的发现、报告岗位责任制度。

银行业监督管理机构发现可能引发系统性银行业风险、严重影响社会稳定的突发事件的，应当立即向国务院银行业监督管理机构负责人报告；国务院银行业监督管理机构负责人认为需要向国务院报告的，应当立即向国务院报告，并告知中国人民银行、国务院财政部门等有关部门。

第二十九条 国务院银行业监督管理机构应当会同中国人民银行、国务院财政部门等有关部门建立银行业突发事件处置制度，制定银行业突发事件处置预案，明确处置机构和人员及其职责、处置措施和处置程序，及时、有效地处置银行业突发事件。

第三十条 国务院银行业监督管理机构负责统一编制全国银行业金融机构的统计数据、报表，并按照国家有关规定予以公布。

第三十一条 国务院银行业监督管理机构对银行业自律组织的活动进行指导和监督。

银行业自律组织的章程应当报国务院银行业监督管理机构备案。

第三十二条 国务院银行业监督管理机构可以开展与银行业监督管理有关的国际交流、合作活动。

第四章 监督管理措施

第三十三条 银行业监督管理机构根据履行职责的需要，有权要求银行业金融机构按照规定报送资产负债表、利润表和其他财务会计、统计报表、经营管理资料以及注册会计师出具的审计报告。

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第三十四条 银行业监督管理机构根据审慎监管的要求,可以采取下列措施进行现场检查:

- (一) 进入银行业金融机构进行检查;
- (二) 询问银行业金融机构的工作人员,要求其对有关检查事项作出说明;
- (三) 查阅、复制银行业金融机构与检查事项有关的文件、资料,对可能被转移、隐匿或者毁损的文件、资料予以封存;
- (四) 检查银行业金融机构运用电子计算机管理业务数据的系统。

进行现场检查,应当经银行业监督管理机构负责人批准。现场检查时,检查人员不得少于二人,并应当出示合法证件和检查通知书;检查人员少于二人或者未出示合法证件和检查通知书的,银行业金融机构有权拒绝检查。

第三十五条 银行业监督管理机构根据履行职责的需要,可以与银行业金融机构董事、高级管理人员进行监督管理谈话,要求银行业金融机构董事、高级管理人员就银行业金融机构的业务活动和风险管理的重大事项作出说明。

第三十六条 银行业监督管理机构应当责令银行业金融机构按照规定,如实向社会公众披露财务会计报告、风险管理状况、董事和高级管理人员变更以及其他重大事项等信息。

第三十七条 银行业金融机构违反审慎经营规则的,国务院银行业监督管理机构或者其省一级派出机构应当责令限期改正;逾期未改正的,或者其行为严重危及该银行业金融机构的稳健运行、损害存款人和其他客户合法权益的,经国务院银行业监督管理机构或者其省一级派出机构负责人批准,可以区别情形,采取下列措施:

- (一) 责令暂停部分业务、停止批准开办新业务;
- (二) 限制分配红利和其他收入;
- (三) 限制资产转让;

(四) 责令控股股东转让股权或者限制有关股东的权利;

(五) 责令调整董事、高级管理人员或者限制其权利;

(六) 停止批准增设分支机构。

银行业金融机构整改后,应当向国务院银行业监督管理机构或者其省一级派出机构提交报告。国务院银行业监督管理机构或者其省一级派出机构经验收,符合有关审慎经营规则的,应当自验收完毕之日起三日内解除对其采取的前款规定的有关措施。

第三十八条 银行业金融机构已经或者可能发生信用危机,严重影响存款人和其他客户合法权益的,国务院银行业监督管理机构可以依法对该银行业金融机构实行接管或者促成机构重组,接管和机构重组依照有关法律和国务院的规定执行。

第三十九条 银行业金融机构有违法经营、经营管理不善等情形,不予撤销将严重危害金融秩序、损害公众利益的,国务院银行业监督管理机构有权予以撤销。

第四十条 银行业金融机构被接管、重组或者被撤销的,国务院银行业监督管理机构有权要求该银行业金融机构的董事、高级管理人员和其他工作人员,按照国务院银行业监督管理机构的要求履行职责。

在接管、机构重组或者撤销清算期间,经国务院银行业监督管理机构负责人批准,对直接负责的董事、高级管理人员和其他直接责任人员,可以采取下列措施:

- (一) 直接负责的董事、高级管理人员和其他直接责任人员出境将对国家利益造成重大损失的,通知出境管理机关依法阻止其出境;
- (二) 申请司法机关禁止其转移、转让财产或者对其财产设定其他权利。

第四十一条 经国务院银行业监督管理机构或者其省一级派出机构负责人批准，银行业监督管理机构有权查询涉嫌金融违法的银行业金融机构及其工作人员以及关联行为人的账户；对涉嫌转移或者隐匿违法资金的，经银行业监督管理机构负责人批准，可以申请司法机关予以冻结。

第四十二条 银行业监督管理机构依法对银行业金融机构进行检查时，经设区的市一级以上银行业监督管理机构负责人批准，可以对与涉嫌违法事项有关的单位和个人采取下列措施：

（一）询问有关单位或者个人，要求其对有关情况作出说明；

（二）查阅、复制有关财务会计、财产权登记等文件、资料；

（三）对可能被转移、隐匿、毁损或者伪造的文件、资料，予以先行登记保存。

银行业监督管理机构采取前款规定措施，调查人员不得少于二人，并应当出示合法证件和调查通知书；调查人员少于二人或者未出示合法证件和调查通知书的，有关单位或者个人有权拒绝。对依法采取的措施，有关单位和个人应当配合，如实说明有关情况并提供有关文件、资料，不得拒绝、阻碍和隐瞒。

第五章 法律 责 任

第四十三条 银行业监督管理机构从事监督管理工作的人员有下列情形之一的，依法给予行政处分；构成犯罪的，依法追究刑事责任：

（一）违反规定审查批准银行业金融机构的设立、变更、终止，以及业务范围和业务范围内的业务品种的；

（二）违反规定对银行业金融机构进行现场检查的；

（三）未依照本法第二十八条规定报告突发事件的；

（四）违反规定查询账户或者申请冻结资金的；

（五）违反规定对银行业金融机构采取措施或者处罚的；

（六）违反本法第四十二条规定对有关单位或者个人进行调查的；

（七）滥用职权、玩忽职守的其他行为。

银行业监督管理机构从事监督管理工作的人员贪污受贿，泄露国家秘密、商业秘密和个人隐私，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予行政处分。

第四十四条 擅自设立银行业金融机构或者非法从事银行业金融机构的业务活动的，由国务院银行业监督管理机构予以取缔；构成犯罪的，依法追究刑事责任；尚不构成犯罪的，由国务院银行业监督管理机构没收违法所得，违法所得五十万元以上的，并处违法所得一倍以上五倍以下罚款；没有违法所得或者违法所得不足五十万元的，处五十万元以上二百万元以下罚款。

第四十五条 银行业金融机构有下列情形之一，由国务院银行业监督管理机构责令改正，有违法所得的，没收违法所得，违法所得五十万元以上的，并处违法所得一倍以上五倍以下罚款；没有违法所得或者违法所得不足五十万元的，处五十万元以上二百万元以下罚款；情节特别严重或者逾期不改正的，可以责令停业整顿或者吊销其经营许可证；构成犯罪的，依法追究刑事责任：

（一）未经批准设立分支机构的；

（二）未经批准变更、终止的；

（三）违反规定从事未经批准或者未备案的业务活动的；

（四）违反规定提高或者降低存款利率、贷款利率的。

第四十六条 银行业金融机构有下列情形之一，由国务院银行业监督管理机构责令改正，并处

二十万元以上五十万元以下罚款；情节特别严重或者逾期不改正的，可以责令停业整顿或者吊销其经营许可证；构成犯罪的，依法追究刑事责任：

（一）未经任职资格审查任命董事、高级管理人员的；

（二）拒绝或者阻碍非现场监管或者现场检查的；

（三）提供虚假的或者隐瞒重要事实的报表、报告等文件、资料的；

（四）未按照规定进行信息披露的；

（五）严重违反审慎经营规则的；

（六）拒绝执行本法第三十七条规定的措施的。

第四十七条 银行业金融机构不按照规定提供报表、报告等文件、资料的，由银行业监督管理机构责令改正，逾期不改正的，处十万元以上三十万元以下罚款。

第四十八条 银行业金融机构违反法律、行政法规以及国家有关银行业监督管理规定的，银行业监督管理机构除依照本法第四十四条至第四十七条规定处罚外，还可以区别不同情形，采取下列措施：

（一）责令银行业金融机构对直接负责的董事、高级管理人员和其他直接责任人员给予纪律

处分；

（二）银行业金融机构的行为尚不构成犯罪的，对直接负责的董事、高级管理人员和其他直接责任人员给予警告，处五万元以上五十万元以下罚款；

（三）取消直接负责的董事、高级管理人员一定期限直至终身的任职资格，禁止直接负责的董事、高级管理人员和其他直接责任人员一定期限直至终身从事银行业工作。

第四十九条 阻碍银行业监督管理机构工作人员依法执行检查、调查职务的，由公安机关依法给予治安管理处罚；构成犯罪的，依法追究刑事责任。

第六章 附 则

第五十条 对在中华人民共和国境内设立的政策性银行、金融资产管理公司的监督管理，法律、行政法规另有规定的，依照其规定。

第五十一条 对在中华人民共和国境内设立的外资银行业金融机构、中外合资银行业金融机构、外国银行业金融机构的分支机构的监督管理，法律、行政法规另有规定的，依照其规定。

第五十二条 本法自 2004 年 2 月 1 日起施行。



Banking Supervision Law of the People's Republic of China (2006 Amendment)

中华人民共和国银行业监督管理法 (2006 修正)

Banking Supervision Law of the People's Republic of China

(Adopted at the 6th session of the Standing Committee of the 10th National People's Congress of the People's Republic of China and revised according to the Decision on Amending the Banking Supervision Law of the People's Republic of China as adopted at the 24th meeting of the Standing Committee of the 10th National People's Congress of the People's Republic of China on October 31, 2006)

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Chapter I. General Provisions

Article 1 The present Law is formulated to strengthen the supervision over the banking industry, regulate the activities of supervision, prevent and eliminate banking risks, protect the legitimate rights and interests of the depositors and other clients and promote the sound development of the banking industry.

Article 2 The banking supervision institution of the State Council shall be responsible for the supervision over the nationwide banking financial institutions and operations. The term "banking financial institutions" as mentioned in the present Law refers to the commercial banks, urban credit cooperatives, rural credit cooperatives and other financial institutions and policy banks established within China and engaged in taking in deposits of the general public.

The present Law shall be applicable to the supervision over the financial assets management companies, trust investment companies, financial companies and the financial lease companies established within the People's Republic of China and other financial institutions established within China upon approval of the banking supervision institution of the State Council.

The banking supervision institution of the State Council shall, in accordance with the



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relevant provisions of the present Law, conduct supervision over the financial institutions established abroad upon its approval and the overseas operations of the financial institutions as mentioned in the preceding two paragraphs.

Article 3 The banking supervision shall be targeted for promoting the lawful, steady, and sound operations of the banking industry, and maintaining the confidence of the general public in the banking.

The banking supervision shall protect the fair competitions of banking and improve the competitive ability of the banking industry.

Article 4 When conducting banking supervision, the banking supervision institutions shall comply with the principle of law compliance, openness, impartiality and efficiency.

Article 5 The banking supervision institutions and their functionaries engaged in banking supervision shall perform their duties in accordance with the law, shall be protected by the law. None of the local governments, government departments of all levels, the social institutions and individuals may interfere with them.

Article 6 The banking supervision institution of the State Council shall establish a supervision information sharing system with the People's Bank of China and the other financial supervision institutions of the State Council.

Article 7 The banking supervision institution of the State Council may also establish cooperation systems with the banking supervision institutions of other countries or regions for the purpose of conducting transnational supervision.

Chapter II. Supervision Institutions

Article 8 The banking supervision institution of the State Council may set up dispatched institutions in light of the needs for exercising their duties. The banking supervision institution of the State Council shall practice unified leadership and management to the institutions dispatched by it.

The institutions dispatched by the banking supervision institution of the State Council shall, within the powers granted by the banking supervision institution of the State Council, perform their supervision duties.

Article 9 Among the functionaries of the banking supervision institutions, those engaged in supervision shall have the professional knowledge and experiences adapting to their respective post.

Article 10 The functionaries of the banking supervision institutions shall devote to their duties, handle matters in pursuance of the law, be impartial and clean, shall not seek improper interests by taking advantages of their posts, and shall not hold concurrent positions in other financial institutions or other enterprises.

Article 11 The functionaries of banking supervision institutions shall keep the secrets of the state in accordance with the law, and shall be obligated to keep the secrets of the banking financial institutions and the parties concerned under their supervision. Where the banking supervision institution of the State Council exchanges supervision



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information with the banking supervision institutions of other countries or regions, it shall make an arrangement to keep the information secret.

Article 12 The banking supervision institution of the State Council shall disclose the supervision procedures, shall establish supervision responsibility system and internal supervision system.

Article 13 When the banking supervision institutions deal with the risks of a banking financial institution, investigate into and punish relevant illegal financial offences, or carry out other supervision activities, the local governments, the departments of all levels shall support and cooperate with them.

Article 14 The auditing, oversight and other organs of the State Council shall conduct supervision over the activities of the banking supervision institution of the State Council in pursuance of the law.

Chapter III. Supervision Duties

Article 15 In accordance with the law and the administrative regulations, the banking supervision institution of the State Council shall formulate and issue regulations and rules governing the supervision over the financial banking institutions and their operations.

Article 16 In pursuance of the requirements and procedures as prescribed in the laws and the administrative regulations, the banking supervision institution of the State Council shall be responsible for the examination and approval of the establishment, modifications, termination and operation scope of the banking financial institutions.

Article 17 With regard to an applicant for establishing a financial institution or a banking financial institution that modifies the shareholder whose total capital contributions or total shares reach or exceed the prescribed proportion, the banking supervision institution of the State Council shall examine the shareholder's sources of funds, financial status, capital adequacy and credit standing.

Article 18 The operations within the operation scope of a banking financial institution shall be subject to the examination and approval of or be registered by the banking supervision institution of the State Council. The specific operations shall be prescribed and announced by the banking supervision institution of the State Council in accordance with the laws and administrative regulations.

Article 19 Without approval of the banking supervision institution of the State Council, no entity or individual may establish any banking financial institution or carry on operations as a banking financial institution.

Article 20 The banking supervision institution of the State Council shall adopt qualification management for the appointment of directors and senior managerial personnel of the banking financial institutions and it shall formulate specific measures.

Article 21 The rules for prudent operations governing the banking financial institutions may be provided for in the laws and administrative regulations, and may



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also be formulated by the banking supervision institution of the State Council in accordance with the laws and administrative regulations.

The term "rules for prudent operations" as mentioned in the preceding paragraph covers the risk management, internal control, capital adequacy ratio, quality of capital, loss reserve fund, risk concentration, related transactions and liquidity of assets, etc. All banking financial institutions shall strictly abide by the rules for prudent operations.

Article 22 The banking supervision institution of the State Council shall, within the prescribed time limit, make a written decision about approving or disapproving any of the following items; if it decides to disapprove, it shall give the reasons:

- (1) The establishment of a banking financial institution, within 6 months from the day when the application documents are received;
- (2) The modification or termination, the operation scope and the operations added to the operation scope of a banking financial institution, within 3 months from the day when the application documents are received;
- (3) The examination of the qualifications of the directors and senior managerial personnel, within 30 days from the day when the application documents are received.

Article 23 The banking supervision institutions shall conduct non-on-site supervision over the operations and risk status of the banking financial institutions, shall establish banking financial institution supervision information system, and shall analyze and evaluate the risk status of banking financial institutions.

Article 24 A banking supervision institution shall conduct on-site inspection on the operations and risk status of the banking financial institutions.

The banking supervision institution of the State Council shall formulate on-site inspection procedures, and regulate on-site inspections.

Article 25 The banking supervision institution of the State Council shall adopt consolidated financial statements in conducting supervision over the banking financial institutions.

Article 26 With regard to the advice given by the People's Bank of China about the inspection on banking financial institutions, the banking supervision institution of the State Council shall make a reply within 30 days from the day it receives the advice.

Article 27 The banking supervision institution of the State Council shall establish a banking financial institution supervision grade evaluation system and a risk pre-warning system. It shall, in light of the grade and the risk situation of a banking financial institution, determine the frequency and scope of on-site inspections, and other necessary measures.

Article 28 The banking supervision institution of the State Council shall establish a post responsibility system for the discovery and reporting of banking emergencies. Where a banking supervision institution discovers an emergency may result in a systematic banking risk or may seriously affect the stability of the society, it shall immediately report to the person-in-charge of the banking supervision institution of the State Council. If the person-in-charge considers it necessary to report to the State Council, it shall report to the State Council at once, and shall inform the People's



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Bank of China, the finance department of the State Council and other relevant departments.

Article 29 The banking supervision institution shall, jointly with the People's Bank of China, the finance department of the State Council and other relevant departments, shall establish a banking emergency handling system, formulate a banking emergency disposal plan and clearly specify the handling institutions, the personnel and their duties, the measures and procedures so as to timely and effectively handle any banking emergencies.

Article 30 The banking supervision institution of the State Council shall be responsible for the making of unified statistics and statements of the nationwide banking financial institutions, and shall announce them in accordance with relevant regulations of the State.

Article 31 The banking supervision institution of the State Council shall guide and supervise the activities of the banking self-disciplinary organizations. The constitution of any banking self-disciplinary organization shall be submitted to the banking supervision institution of the State Council for archival purposes.

Article 32 The banking supervision institution of the State Council may carry out activities of international communication and cooperation related to banking supervision.

Chapter IV. Supervision Measures

Article 33 A banking supervision institution shall, in light of the needs to perform its duties, have the power to demand the banking financial institutions to submit their asset-liability statements, profit statements, and other financial and accounting statements, operation management materials and the audit reports issued by certified public accountants.

Article 34 In accordance with the requirement of prudent supervision, a banking supervision institution shall taking following measures for conducting on-site inspection:

- (1) To conduct inspection by entering into a banking financial institution;
- (2) To question the functionaries of the banking financial institution, to demand them to give explanations about the relevant to-be-inspected items;
- (3) To examine and copy the documents and materials relating to the to-be-inspected items, to seal up the documents and materials that may be moved, hidden or destroyed;
- (4) To examine the banking financial institution's computer system for operation data management.

An on-site inspection shall be subject to the approval of the person-in-charge of the banking supervision institution. In an on-site inspection, the number of inspectors shall not be less than 2, and the inspectors shall show their legitimate certificates and the inspection notice. Under the circumstance of insufficient number of inspectors or a failure to show the legitimate certificates and inspection notice, the banking financial institution shall be entitled to refuse the inspection.

Article 35 In light of the needs to perform the duties, a banking supervision institution



may talk with the directors and the senior managerial personnel of a banking financial institution, may demand them to give explanations about significant matters concerning the operations and risk control of this banking financial institution.

Article 36 The banking supervision institutions shall order the banking supervision institutions to faithfully disclose the information about the financial and accounting statements, the status of risk management, the replacement of the directors and senior managerial personnel and other significant matters.

Article 37 Where a banking financial institution is in violation of the prudent operation rules, the banking supervision institution of the State Council or its dispatched institution of the province level shall order it to get right within a time limit. If the banking financial institution fails to do so, or if its offences are so serious that will endanger the steady and sound operations of the banking financial institution or impair the legitimate rights and interests of the depositors or other clients, the following measures may be taken on the basis of different circumstances upon approval of the person-in-charge of the banking supervision institution of the State Council:

- (1) To order it to suspend some of its operations, to stop approving new operations;
- (2) To restrict the distribution of bonus and other incomes;
- (3) To restrict the alienation of assets;
- (4) To order the controlling shareholder to transfer its stock right or to restrict the powers of relevant shareholders;
- (5) To order it to replace the directors and senior managerial personnel or restrict their powers;
- (6) To stop approving the establishment of any new branches.

After a banking financial institution gets right, it shall submit a report to the banking supervision institution of the State Council or to its dispatched institution on the province level, which shall conduct a re-inspection. If the banking financial institution is found to meet the prudent operation rules upon re-inspection, the relevant measures as mentioned in the preceding paragraph shall be lifted within 3 days as of the completion of the re-inspection.

Article 38 Where a banking financial institution has already had or may have a credit crisis, which seriously impairs the legitimate rights and interests of the depositors and other clients, the banking supervision institution of the State Council may take over the banking financial institution or urge it to restructure. The taking over and restructure shall be implemented in accordance with the relevant laws and the regulations of the State Council.

Article 39 Where a banking financial institution conducts illegal operations or faulty operations and management, and it will seriously impair the financial order and the interests of the general public unless cancelled, the banking supervision institution of the State Council shall be empowered to cancel it.

Article 40 Where a banking financial institution is taken over, restructured or canceled, the banking supervision institution of the State Council shall be empowered to demand the directors, the senior managerial personnel and other functionaries to perform their duties according to the requirements of the banking supervision institution of the State Council.



During the course of taking over, restructure or cancellation liquidation, the following measures may be taken against the direct liable directors, senior managerial personnel and other direct liable persons upon approval of the person-in-charge of the banking supervision institution of the State Council:

- (1) If the direct liable directors, senior managerial personnel and other direct liable persons exit China, and the interests of the state will suffer a serious loss, the exit administrative organs shall be given a notice prohibiting them from exiting China in accordance with the law;
- (2) It shall request the judicial organ to prohibit the banking financial institution from moving, transferring its properties or setting other rights to its properties.

Article 41 Upon approval of the person-in-charge of the banking supervision institution of the State Council or upon approval of the person-in-charge of its dispatched institution on the province level, the banking supervision institution shall be empowered to inquire about the bank accounts of a banking financial institution that is suspected of conducting illegal financial operations, its functionaries and other persons involved. With regard to those who are suspected of moving or hiding illegal funds, upon approval of the person-in-charge of the banking supervision institution, an application may be filed to the judicial organ for freezing the funds.

Article 42 When conducting any inspection of banking financial institutions, the banking regulatory organ may, subject to approval of the person in-charge of the banking regulatory organ at or above the level of districted city, take the following measures against any entity or individual suspected of being involved in illegal acts:

- (1) Inquiring about the relevant entity or individual, and requiring it/him to explain the relevant matters;
- (2) Inspecting and copying relevant financial accounting, property registration and other documents and materials;
- (3) Conducting advanced registration and preservation of documents and materials that may be transferred, concealed, destroyed or falsified.

When the banking regulatory organ adopts the measures prescribed in the preceding Paragraph, there shall be no less than two functionaries, who shall show lawful certificates and investigation notices. Where there are less than two investigation functionaries or they fail to show lawful certificates or investigation notices, the relevant entity or individual shall have the right to refuse the investigation. Where the measures are adopted according to law, the relevant entity or individual shall give coordination, faithfully explain the relevant conditions and provide relevant documents and materials, and shall not refuse to do so, or hamper or hide anything.

Chapter V. Legal Liabilities

Article 43 Any of the functionaries engaged in supervising banking supervision institutions is under any of the following circumstances shall be given an administrative sanction in pursuance of the law; if any crime is constituted, he (she) shall be subject to the criminal liabilities.

- (1) Violating the requirements in examining and approving the establishment, modifications, termination, operation scope and the specific operations within the operation scope of the banking financial institutions;
- (2) Violating the requirements in conducting on-site inspections on the banking financial institutions;



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- (3) Failing to report the emergencies in accordance with Article 28 of the present Law;
 - (4) Violating the requirements in inquiring about the banking accounts or applying for freezing them;
 - (5) Violating the requirements in taking measures against or punishing a banking financial institution;
 - (6) Investigating the relevant entity or individual against Article 42 of this Law; or
 - (7) Other offences of abusing his (her) powers or neglecting his (her) duties.
- Where any functionary for supervision and administration in the banking regulatory organ embezzles public funds, accepts bribes, divulges state secrets, commercial secrets or personal privacy, if any crime is constituted, he shall be subject to criminal liabilities; and if no crime is constituted, he shall be given an administrative sanction.

Article 44 Any one who establishes a banking financial institution without approval or illegally carries on operations as a banking financial institution shall be banned by the banking supervision institution of the State Council; if any crime is constituted, he (she) shall be subject to criminal liabilities; if no crime is constituted, the banking supervision institution of the State Council shall confiscate its illegal gains; if the amount of the illegal gains is not less than 550, 000 yuan, a fine of not less than the same amount of but not more than 5 times of the amount of the illegal gains shall be imposed on it; if there are no illegal gains or the amount of the illegal gains is less than 550, 000 yuan, a fine of 500, 000 yuan up to 2, 000, 000 yuan shall be imposed on it.

Article 45 Where a banking financial institution is under any of the following circumstances, it shall be ordered to get right by the banking supervision institution of the State Council. If there are illegal gains, the illegal gains shall be confiscated; if the amount of the illegal gains are not less than 500, 000 yuan, a fine of not less than the same amount of or not more than 5 times of the amount of the illegal gains shall be imposed; if there are no illegal gains or the illegal gains are less than 500, 000 yuan, a fine of 500, 000 up to 2, 000, 000 yuan shall be imposed. If the circumstance is extremely serious, or if the banking financial institution fails to get right within the time limit, the banking supervision institution of the State Council may order it to stop its operations for internal rectification or withdraw its business license; if any crime is constituted, it shall be subject to the criminal liabilities according to law:

- (1) Establishing a branch without approval;
- (2) Making modification or terminating without approval;
- (3) Violating any of the regulations, or carrying on operations without approval or without registration;
- (4) Violating any of the regulations, elevating or lowering savings interest rates and credit interest rates.

Article 46 Where a banking financial institution is under any of the following circumstances, it shall be ordered to get right by the banking supervision institution of the State Council, and shall be imposed on a fine of 200, 000 up to 500, 000 yuan; if the circumstance is extremely serious, or if it fails to get right within the time limit, the banking supervision institution of the State Council may order it to stop its operations for internal rectification or withdraw its business license; if any crime is constituted, it shall be subject to criminal liabilities in accordance with the law:

- (1) Appointing directors and senior managerial personnel without undergoing qualification examination;



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- (2) Refusing or hindering the non-on-site supervisions or on-site inspections;
- (3) Providing false statements, reports and other documents and materials or providing statements, reports and other documents and materials without disclosing imports facts;
- (4) Failing to disclose the information as required;
- (5) Violating the prudent operation rules seriously; or
- (6) Refusing to execute the measures as provided in Article 37 of the present Law.

Article 47 Where a banking financial institution fails to provide the statements, reports and other documents and materials as required, it shall be ordered to get right the banking supervision institution within a time limit. If it fails to get right within the time limit, it shall be imposed on a fine of 100, 000 up to 300, 000 yuan.

Article 48 Where a banking financial institution is in violation of the laws, administrative regulations and the relevant regulation of the state on banking supervision, the banking supervision institution shall not only punish it in accordance with Articles 43 through 46 of the present Law, but also may take the following measures in light of the different circumstances:

- (1) To order the banking financial institution to give a disciplinary sanction to the direct liable directors, senior managerial personnel and other liable persons;
- (2) If the offences of the banking financial institution constitute no crime, the direct liable directors, senior managerial personnel and other direct liable persons shall be given a warning, and be imposed on a fine of 50, 000 up to 500, 000 yuan;
- (3) To disqualify the direct liable directors, senior managerial personnel from taking the positions for a certain time period to even a life-long period, to prohibit the direct liable directors, senior managerial personnel and other direct liable persons from engaging in banking operations for a certain time period to even a life-long period.

Article 49 In case anyone hampers any inspection or investigation legally carried out by the functionaries of the banking regulatory organ, he shall be given a public security administrative penalty; and if any crime is constituted, he shall be subject to criminal liabilities.

Chapter VI. Supplementary Provisions

Article 50 Where it is otherwise provided for the supervision over the policy banks and financial assets management companies established within the People's Republic of China in the laws and administrative regulations, the relevant laws and administrative regulations shall prevail.

Article 51 Where it is otherwise provided for the supervision over the foreign-funded banking financial institutions, the Sino-foreign joint equity banking financial institutions and the branches of foreign banking financial institutions established within the People's Republic of China in the laws and administrative regulations, the relevant laws and administrative regulations shall prevail.

Article 52 The present Measures shall be implemented as of February 1, 2004.



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