

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

### 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 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 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 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 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;
- (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;
- (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 important 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.