|  |  |  |
| --- | --- | --- |
| 发文机关Promulgator | ：: | 全国人民代表大会常务委员会The Standing Committee of the National People's Congress |
| 发布日期Date of Issue | ：: | 2006.10.312006.10.31 |
| 生效日期Effective Date | ：: | 2007.01.012007.01.01 |
| 时效性Effectiveness | ：: | 现行有效Current |

# 中华人民共和国银行业监督管理法（2006修订）

# Law of the People's Republic of China on Banking Regulation (Revised in 2006)

中华人民共和国银行业监督管理法（2006修订）

Law of the People's Republic of China on Banking Regulation (Revised in 2006)

（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）

(Adopted at the 6th Meeting of the Standing Committee of the Tenth National People's Congress on December 27, 2003, and amended according to the Decision on Amending the Banking Supervision Law of the People's Republic of China at the 24th Meeting of the Standing Committee of the Tenth National People's Congress on October 31, 2006)

第一章 总 则

Chapter 1 General Provisions

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。

Article 1 This Law is formulated for the purposes of strengthening regulation of the banking industry, standardising regulation, preventing and resolving banking risks, protecting the legitimate rights and interests of depositors and other clients, and promoting healthy development of the banking industry.

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。

Article 2 The banking supervision institution of the State Council shall be responsible for the supervision over the nationwide banking financial institutions and business activities thereof.

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。

For the purposes of this Law, the term "banking financial institutions" shall mean financial institutions established in the People's Republic of China that take deposits from the general public, including, among others, commercial banks, urban credit cooperatives and rural credit cooperatives, and policy banks.

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。

The provisions of this Law that relate to the regulation of banking institutions apply to financial asset management companies, trust and investment companies, finance companies, financial leasing companies and other financial institutions established in the People's Republic of China and approved by the banking regulatory authority under the State Council.

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。

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.

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。

Article 3 The objectives of regulation of the banking industry shall be to promote the legal and stable operation of the banking industry and to safeguard the confidence of the public in the banking industry.

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。

The regulation of the banking industry shall protect fair competition in the banking industry and enhance the competitiveness of the banking industry.

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。

Article 4 The banking supervision and administration institutions shall, when undertaking banking supervision and administration, observe the principles of legality, openness, impartiality and efficiency.

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。

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 law. None of the local governments, government departments of all levels, the social institutions and individuals may interfere with them.

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。

Article 6 The banking regulatory authority under the State Council shall establish supervisory information sharing mechanisms with the People's Bank of China and other financial supervisory authorities under the State Council.

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。

Article 7 The banking regulatory authority under the State Council may establish supervisory cooperation mechanisms with the banking supervisory authorities in other countries and/or regions to ensure effective supervision and regulation of cross-border banking activities.

第二章 监督管理机构

Chapter 2 Regulatory Authorities

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。

Article 8 The banking regulatory authority under the State Council may, if deemed necessary for performing its responsibilities, set up local offices. The banking regulatory authority under the State Council shall lead and administer its representative agencies in a unified manner.

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。

The agencies of the banking regulatory authority of the State Council shall perform regulatory duties within the scope authorised by the banking regulatory authority of the State Council.

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。

Article 9 Banking regulatory authority personnel engaged in regulatory work shall possess the professional knowledge and work experience appropriate to their posts.

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。

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

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。

Article 11 The functionaries of banking supervision and administration institutions shall keep secrets of the state according to law, and shall be obligated to keep secrets of the banking financial institutions and the parties concerned under their supervision and administration.

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。

The banking regulatory authority under the State Council shall make relevant arrangements for preserving the confidentiality of information in the process of exchanging supervisory information with the banking supervisory authorities in other countries and/or regions.

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。

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

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。

Article 13 When the banking regulatory authority is carrying out regulatory activities such as the management of risks in banking financial institutions and the investigation and handling of relevant illegal financial acts, local governments and relevant departments at all levels shall provide assistance.

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。

Article 14 The audit and supervisory authorities under the State Council shall supervise the activities of the banking regulatory authority under the State Council in accordance with applicable provisions.

第三章 监督管理职责

Chapter 3 Supervision and Administration Responsibilities

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。

Article 15 The banking regulatory authority under the State Council shall, in accordance with applicable laws and administrative regulations, formulate and promulgate supervisory rules and regulations for banking institutions.

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。

Article 16 The banking regulatory authority under the State Council shall, in accordance with the criteria and procedures stipulated in applicable laws and administrative regulations, authorize the establishment, changes, termination and business scope of banking institutions.

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。

Article 17 In the case of an application for establishment of a financial institution in the banking industry, or where a financial institution in the banking industry changes the total amount of capital it holds or the total number of shares of a shareholder reaches or exceeds the stipulated percentage, the banking regulatory authority of the State Council shall examine the source of funds, financial status, capital adequacy and creditworthiness of the shareholders.

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。

Article 18 Products and services offered by a banking institution within its business scope authorized by the banking regulatory authority under the State Council shall, in accordance with applicable regulations, be subject to prior approval of the banking regulatory authority under the State Council or the report for filing requirement. The types of services that need to be examined and approved or filed for the record shall be stipulated and announced by the banking regulatory authority under the State Council in accordance with laws and administrative regulations.

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。

Article 19 Without the approval of the banking regulatory authority under the State Council, no institution or individual may establish a banking institution or engage in banking businesses.

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。

Article 20 The banking regulatory authority under the State Council shall conduct fit and proper tests for directors and senior managers. The specific measures shall be formulated by the banking regulatory authority of the State Council.

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。

Article 21 Prudential regulations and requirements applied to banking institutions may be stipulated in laws or administrative regulations, or formulated by the banking regulatory authority under the State Council in accordance with relevant laws and administrative regulations.

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。

Prudent operation rules as mentioned in the preceding paragraph include risk management, internal control, capital adequacy ratio, quality of assets, loss reserves, risk concentration, related-party transactions, liquidity of assets and other contents.

银行业金融机构应当严格遵守审慎经营规则。

Banking financial institutions shall strictly abide by the prudent operation rules.

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：

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

（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；

1. In the case of establishment of a banking institution, within six months from the date of receiving the application documents;

（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；

(II) In the case of a banking financial institution, within three months of the date on which it receives the application documents, it modifies or terminates, and its business scope or adds new businesses; or

（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。

(III) As regards the examination of the qualifications of the directors and senior managerial personnel, the time limit shall be 30 days from the day when the application documents are received.

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非现场监管，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。

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

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。

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

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。

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

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。

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

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。

Article 26 The banking regulatory authority of the State Council shall issue a reply to any proposal from the People's Bank of China to inspect a banking industry financial institution within 30 days of the date on which the proposal is received.

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。

Article 27 The banking supervision and administration institutions of the State Council shall establish a banking financial institution supervision and administration rating system and a risk pre-warning mechanism, and shall, according to the rating and risk situation of a banking financial institution, determine the frequency and scope of on-site inspections, and other necessary measures.

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。

Article 28 The banking supervision and administration institutions of the State Council shall establish a post responsibility system for the discovery and reporting of banking emergencies.

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。

In case a banking supervision and administration institution discovers any emergency that 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 and administration institution of the State Council. If the person-in-charge believes it necessary to report to the State Council, he shall do so immediately and shall inform the People's Bank of China, the finance department of the State Council and other relevant departments.

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。

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

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。

Article 30 The banking regulatory authority under the State Council shall compile and publish statistics and reports of banking institutions in accordance with applicable requirements of the State.

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。

Article 31 The banking supervision and administration institutions of the State Council shall guide and supervise the activities of the banking self-disciplinary organizations.

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。

The constitution of any banking self-disciplinary organization shall be submitted to the banking supervision and administration institution of the State Council for archival purposes.

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。

Article 32 The banking regulatory authority under the State Council may engage in the international activities related to banking regulation and supervision.

第四章 监督管理措施

Chapter 4 Supervision Measures

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。

Article 33 The banking supervision and administration institutions shall, in light of the needs to fulfill their duties, be entitled to demand the banking financial institutions to submit their balance sheets, profit statements and other financial and accounting statements, operation management materials and the audit reports issued by certified public accountants.

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：

Article 34 In accordance with the requirements of prudent supervision, the banking supervision institutions may take the following measures to conduct on-site inspection:

（一）进入银行业金融机构进行检查；

1. to enter a banking institution for inspection;

（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；

(II) To question the functionaries of the banking financial institution, to demand them to give explanations about the relevant to-be-inspected items;

（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；

(III) examining and copying the documents and materials related to the to-be-inspected items, sealing up the documents and materials that may be transferred, hidden or destroyed; and

（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。

(IV) To examine the banking financial institution's computer system for business data management.

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。

The on-site examination is subject to prior approval of the head of the banking regulatory authority. In an on- site inspection, the number of inspectors shall not be less than two, and the inspectors shall show their legitimate certificates and the inspection notice. If the number of inspectors is less than two or the inspectors fail to show their legitimate certificates and the inspection notice, the banking financial institution shall have the right to refuse the inspection.

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。

Article 35 The banking regulatory authority may, for the purpose of performing its responsibilities, hold supervisory consultations with the directors and senior managers of a banking institution to inquire about the major activities concerning its business operations and risk management.

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。

Article 36 Banking regulatory authorities shall order banking financial institutions to truthfully disclose to the public information such as financial and accounting reports, risk management status, changes in directors and senior management personnel, and other major matters in accordance with applicable provisions.

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：

Article 37 In case a banking financial institution violates the prudent operation rules, the banking supervision and administration institution of the State Council or any of its dispatched institutions at the province level shall order it to correct within a time limit. In case the banking financial institution fails to do so, or if its offences are so serious that will endanger the steady and sound operation 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 and administration institution of the State Council:

（一）责令暂停部分业务、停止批准开办新业务；

1. ordering it to suspend part of its business and stopping approving it to run new business;

（二）限制分配红利和其他收入；

(II) Restricting its distribution of dividends and other incomes;

（三）限制资产转让；

(III) restricting the transfer of assets;

（四）责令控股股东转让股权或者限制有关股东的权利；

(IV) To order the controlling shareholders to transfer their stock rights or restrict the powers of relevant shareholders;

（五）责令调整董事、高级管理人员或者限制其权利；

(V) Ordering it to adjust its directors and senior managers or restricting their rights; and

（六）停止批准增设分支机构。

(VI) To stop approving the establishment of any new branches.

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。

The banking institution shall report to the banking regulatory authority under the State Council or its provincial offices once it is restored to meet the prudential regulations or requirements after taking corrective measures. The banking regulatory authority under the State Council or its provincial offices shall terminate the measures prescribed in the preceding paragraph within three days after the verification of compliance.

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。

Article 38 When a banking institution is experiencing or likely to experience a credit crisis, thereby seriously jeopardizing the interests of depositors and other clients, the banking regulatory authority under the State Council may take over the banking institution or facilitate a restructuring. The take-over or restructuring shall be carried out in accordance with applicable laws and administrative regulations.

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。

Article 39 When a banking institution has been found serious violation of laws and regulations, or significant unsafe or unsound practices, thereby seriously threatening financial order and public interests unless it is closed, the banking regulatory authority under the State Council shall have the authority to close it down.

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。

Article 40 In the case of the take-over, restructuring, or closure of a banking institution, the banking regulatory authority under the State Council shall have the authority to require the directors, senior managers and other staff of the banking institution to perform their duties according to the requirements of the banking regulatory authority under the State Council.

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：

In the course of the take-over, restructuring or liquidation after the closure of a banking institution, the banking regulatory authority under the State Council shall have the authority, subject to the approval of its Chairman, to take the following measures against the directors and senior managers directly in charge and other staff directly held responsible:

（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；

1. If the direct liable directors, senior managerial personnel and other direct liable persons leave the territory, and the interests of the state will be subject to a great loss, the exit administrative organs shall be notified to prevent them from leaving the territory;

（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。

(II) To request the judicial authority to prohibit them from moving, transferring their properties or setting other rights on their properties.

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。

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

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：

Article 42 When conducting an inspection on a banking financial institution, the banking supervision and administration institution may, upon approval of the person in charge of the banking supervision and administration institution at the level of districted city or above, take the following measures against any entity or individual suspected of being involved in any illegal matter:

（一）询问有关单位或者个人，要求其对有关情况作出说明；

1. Question the relevant entities or individuals and require them to explain the relevant situation;

（二）查阅、复制有关财务会计、财产权登记等文件、资料；

(II) Consulting and copying relevant financial accounting, property registration and other documents and materials; and

（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。

(III) Registering and preserving in advance the documents and materials that may be transferred, concealed, destroyed or forged.

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。

When the banking regulatory authority adopts the measures in the preceding provision, the investigating personnel shall not be less than two persons, and the legal identification documents and notice of investigation shall be presented. Where the number of investigation personnel is less than two or the investigation personnel fail to present the legal identification document and notice of investigation, the relevant entity or individual shall have a right of refusal. The relevant organisations and individuals shall cooperate in the measures adopted pursuant to the law, state the relevant information truthfully and provide the relevant documents and materials, and shall not refuse, hinder or conceal.

第五章 法律责任

Chapter 5 Legal Liabilities

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：

Article 43 When the supervisory staff of the banking regulatory authority commits any of the following acts, he shall be subject to administrative sanctions according to law. If the case constitutes a crime, he shall be investigated for criminal liability according to law:

（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；

1. Violating the requirements in examining and approving the establishment, modifications, termination, operation scope and the operation varieties within the operation scope of the banking financial institutions;

（二）违反规定对银行业金融机构进行现场检查的；

(II) Conduct on-site examination of banking institutions in violation of regulations;

（三）未依照本法第二十八条规定报告突发事件的；

(III) failing to report the emergencies according to Article 28 of this Law;

（四）违反规定查询账户或者申请冻结资金的；

(IV) Violating the requirements in inquiring about the banking accounts or applying for freezing them;

（五）违反规定对银行业金融机构采取措施或者处罚的；

(V) to take measures against or punish a banking institution in violation of regulations;

（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；

(VI) making an investigation on a relevant entity or individual in violation of Article 42 hereof; or

（七）滥用职权、玩忽职守的其他行为。

(VII) Other acts of abusing power or neglecting duties.

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。

In case any functionary for supervision and administration over the banking supervision and administration institutions embezzles public funds, accepts bribes, divulges any state secret, commercial secret or personal privacy, if any crime is constituted, he (she) shall be subject to criminal liabilities; if no crime is constituted, he (she) shall be given an administrative sanction.

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。

Article 44 Any one who establishes a banking financial institution without approval or illegally carries on business activities as a banking financial institution shall be banned by the banking supervision and administration 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 and administration institution of the State Council shall confiscate the illegal gains; if the amount of the illegal gains is not less than 500,000 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; if there are no illegal gains or the amount of the illegal gains is less than 500,000 Yuan, a fine of 500,000 Yuan up to 2 million Yuan shall be imposed.

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：

Article 45 In case a banking financial institution is under any of the following circumstances, it shall be ordered to make corrections by the banking supervision and administration 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 but not more than 5 times of the amount of the illegal gains shall be imposed; if there are no illegal gains or the amount of 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 it fails to make corrections within the time limit, the banking supervision and administration institution of the State Council may order it to stop its operation for internal rectification or withdraw its business license; if any crime is constituted, it shall be subject to the criminal liabilities according to law:

（一）未经批准设立分支机构的；

1. establishing branches without approval;

（二）未经批准变更、终止的；

(II) carrying out any change or termination without approval;

（三）违反规定从事未经批准或者未备案的业务活动的；

(III) Engaging in business activities without approval or without record-filing in violation of the relevant provisions; or

（四）违反规定提高或者降低存款利率、贷款利率的。

(IV) violating any of the regulations, elevating or lowering savings interest rates and credit interest rates.

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：

Article 46 In case a banking financial institution is under any of the following circumstances, it shall be ordered to make corrections by the banking supervision and administration 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 make corrections within the time limit, the banking supervision and administration institution of the State Council may order it to stop its operation for internal rectification or revoke its business license; if any crime is constituted, it shall be subject to criminal liabilities according to law:

（一）未经任职资格审查任命董事、高级管理人员的；

1. Appointing directors and senior managers without undergoing qualification examination;

（二）拒绝或者阻碍非现场监管或者现场检查的；

(II) Refusing or hindering off-site supervision and administration or on- site inspection;

（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；

(III) providing statements, reports and other documents and materials that are false or wherein important facts are concealed;

（四）未按照规定进行信息披露的；

(IV) Failing to disclose information in accordance with provisions;

（五）严重违反审慎经营规则的；

(V) Violating the prudent operation rules seriously; or

（六）拒绝执行本法第三十七条规定的措施的。

(VI) refusing to implement any of the measures stipulated in Article 37 hereof.

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。

Article 47 When a banking institution fails to submit statements, reports, documents or materials in accordance with regulations, the banking regulatory authority under the State Council shall order it to take corrective measures. If the banking institution fails to make correction within the prescribed period of time, the banking regulatory authority may impose a fine ranging from 100,000 yuan to 300,000 yuan.

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：

Article 48 When a banking institution violates laws, administrative regulations or other regulations of the State on banking regulation, the banking regulatory authority may, in addition to the enforcement actions prescribed in Articles 43 to 46 hereof, take the following measures depending on the circumstances:

（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；

1. to order the banking financial institution to impose disciplinary sanctions upon the directly liable directors, senior managers and other directly liable persons;

（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；

(II) 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;

（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。

(III) Disqualifying the direct liable directors, senior managerial personnel from taking the positions for a certain period even a life-long period, prohibiting the direct liable directors, senior managerial personnel and other direct liable persons from engaging in banking operations for a certain period even a life-long period.

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。

Article 49 Persons who hinder legitimate inspection and investigation by personnel of the banking regulatory authority shall be subject to public security punishment imposed by the public security department pursuant to the law; where the case constitutes a criminal offence, criminal liability shall be pursued in accordance with the law.

第六章 附 则

Chapter 6 Supplementary Provisions

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。

Article 50 Where there are other provisions in any law or administrative regulation concerning the regulation of policy banks or financial asset management companies established in the People's Republic of China, such provisions shall prevail.

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。

Article 51 Where the laws and administrative regulations provide otherwise the Regulation of the wholly foreign-funded banking institutions, Sino-foreign joint venture banking institutions and branches of foreign banking institutions that are established in the People's Republic of China, these provisions shall prevail.

第五十二条   本法自2004年2月1日起施行。

Article 52. This Law shall be effective 1 February 2004.