


英语金融专业系列教材

外国银行法

FOREIGN BANKING LAW

陈庆柏 编著



北京语言文化大学出版社

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总 序

随着国际交往中经济因素的不断增大和我国以经济建设为中心的国策的实施,社会对一专多能人才的需求已呈多元化的趋势,外语或经济类专业应该从单科的“经院式”人才培养模式转向宽口径、应用性、复合型人才的培养模式。朱镕基总理、李岚清副总理在谈到人才的培养模式及教育改革时都指出:要尽可能地加大直接用外语,尤其是英语授课的内容,要培养复合型的人才。实际上,市场大量需求的是外语基础扎实,又具备外交、经贸、法律、新闻等相关学科知识的复合型人才。只有迅速转变教育思想和教育观念,停止无意义的争议,加大改革力度,拓宽人才培养模式,培养高素质的复合型外语人才,才能适应时代的变化以及社会主义市场经济的需求。在权威机构所列出的当今及未来各类热门人才排行榜中,具备外语和相关专业知识并能将其融会贯通的复合型人才无一落选。在现实工作和生活中,那些既懂外语又懂专业的人才的确是社会中的一个耀眼群体。我国从最高当局到各界人士都深刻地认识到,传统的培养模式已经陈旧,培养出来的学生知识结构狭窄,能力与素质难以适应 21 世纪我国市场经济和国际间竞争的需要。因此,我国教育部要求全国高校要转变思想观念,鼓励各类院校“闯出各自复合型专业人才培养的道路,力求办出特色”及“大力开展用双语进行专业课教学”。

为增强中国入世后高等教育的国际竞争力,教育部日前出台的《关于加强高等学校本科教学工作,提高教学质量的若干意见》中指出:大力开展双语教学,使用先进教材和多媒体授课。为适应经济全球化,教育部要求各高校大力使用英语等外语进行公共课和专业课教学,特别是在信息、生物、新材料技术以及入世后急需的金融、法律等专业开展双语教学。采用双语教学是一种新的、有区别于传统教

学方式与课程设置的专教育模式,是经过实践证明的符合中国国情的教育新路子。它注重对学生综合素质的培养,强调学科之间的复合、交融和渗透,并非两种专业的简单相加,经过努力和完善,肯定会产生 $1+1>2$ 的效果。

许多教育界的同仁都认为:国内财经类英语教材、论著不少,但系统、全面且有深度的原文教材却不多见。临时选定的教材难免在编写体系、难易程度安排等方面缺乏系统性和连贯性。要保证双语教学获得成功,教材问题的解决迫在眉睫。从策划这套教材伊始,北京语言文化大学就把它提到学科建设和人才培养的高度。为适应学科的重大调整和复合型人才的培养,组织了一批有过国外教学背景,既精通英语又具有扎实理论功底的北京语言文化大学金融系和对外经济贸易大学金融学院的教师们精心设计、编写。在这套教材的编写中,除了兼顾教育部对金融学专业教学的要求,同时还着重考虑了我国学生直接采用英文教材学习专业课所可能遇到问题的解决。书目的选择原则上以本科教学方案为蓝本,共10余本,充分体现了“宽口径、厚基础”的学科设置意图。在编写内容上,尽可能地保持原版教材的“原汁原味”,吸收国外大学教材的优点,选取的资料内容包括了经济金融类的基础理论,涉及到经济学,尤其是国际金融业近年来的最新发展,也包括了金融业务的实际操作方法;在写作方法上,力求规范分析与实证分析相结合,理论与实践相结合;在编写风格上,做到体例新颖,针对启发式教学方法的需要,打破老教材的刻板面孔,给读者耳目一新的感觉。这套教材的最显著的特点是教材的编写根据双语教学的特点,始终以精炼、实用、有新意为宗旨,除了遵循编写教材的一般原则外,还注意了以下两点:1)信息可理解性:学生是通过理解信息来学习专业内容的,因此,学科教材中提供给学生学习的信息必须具有可理解性,所使用的英语讲解也必须具有可理解性。2)背景知识可利用性:这一原则与第一条原则是相辅相成的。要想使所输入的信息具有可理解性,学生大脑中不能缺少相关的背景知识。因此在编写教材时,不能忽视学生大脑中的背景知识。总

的来说,这套教材体现了编写者的探索和创新精神,可以说是目前国内市场上由我国经济类课程教师用英文撰写的体系设置科学、内容新颖、编写质量高的一套教科书。

培养理论基础扎实、通晓专业知识、适应时代发展变化的财政金融人才,是我们国家提高国际竞争力、迎接挑战的当务之急,也是几代教育工作者的共同愿望和责任。正是基于这样的紧迫感和责任感,北京语言文化大学出版社适时推出了全新的金融学专业的系列教材,以此奉献给跨入新世纪的学子们。

这套系列教材主要包括:《经济学》、《货币银行学》、《国际金融》、《国际贸易》、《国际结算》、《国际信贷》、《投资银行学》、《外国银行法》、《银行会计学》、《市场营销学》、《金融市场学》、《金融函电》、《财政学》、《证券投资学》等教材。

当然,由于种种原因,用英文编写教材是摆在我们大家面前的一个需要不断探索的课题,无前车可鉴,会存在这样或那样的问题,对此,诚恳读者予以指正。

北京文化文化大学
外国语学院
院长
方立
2001年10月

Foreword

To meet the needs of China's financial service industries after her entry into WTO, a series of textbooks on finance written in English is being compiled by the Finance Department of Beijing Language and Culture University and will be published in the next few years.

This series is designed for the undergraduates of finance departments across the country, those who want to carry out their advanced studies in the field of finance abroad, and those who have already worked in the financial service industries for many years but up to the present have had little exposure to English.

The series covers the major sub-disciplines within finance including, among others, Foreign Banking Law, International Trade, International Finance, Financial Markets, Money and Banking, International Settlement, International Credit, Microeconomics and Macroeconomics, Essentials of Accounting, Financial Accounting, Accounting Analysis and Corporate Finance.

The series has the following features:

- It provides the reader with up-to-date information on finance;
- It lays emphasis on the mastery of basic concepts and basic theories;
- It supplies the reader with enough case studies to develop his analytic ability;
- It addresses the subject matters in a systemic and coherent way;
- It is written in simple English to enhance readability.

The compilers of the series (listed in the alphabetical order) are:

Al Kang, Associate Professor of Finance at Beijing Language and Culture University;
Chen Qingbai, Professor at University of International Business and Economics;
Liu Ke, Professor of Finance at Beijing Language and Culture University;
Qiu Zhikun, Associate Professor at Beijing Language and Culture University;
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Wu Jinghong, Lecturer of Finance at Beijing Language and Culture University;
Xin Bin, Associate Professor of Finance at Beijing Language and Culture University;
Xu Jinqian, Associate Professor of Finance at Beijing Language and Culture University.

Fang Li
Professor and Dean
College of Foreign Languages
Beijing Language and Culture University

Preface

The aim of this book is to outline the law relating to banking business chiefly in the US and the UK.

This book has been compiled for the following categories of people:

(1) Students majoring in money and banking and international economic law;

(2) Those who are going to work or are already working in the fields of foreign banking;

(3) Those who want to study business management in the United States and Britain;

(4) Those who intend to take the Financial English Test (intermediate level) given by the People's Bank of China; and

(5) Those who practise foreign banking law.

Because this book is in English, users, no matter what they are, may receive five benefits from this book which include: to review and consolidate their basic English, financial English and their knowledge of money and banking; to enrich their knowledge of banking law and help those who intend to apply for jobs in foreign banks or Chinese banks operating abroad after China's entry into the WTO.

This book is composed of seven parts: Part One is a general introduction to law; Part Two deals briefly with banking; Part Three gives a general picture of American banking law which includes banking regulations, chief modern banking legislation, agency, trusts, negotiable instruments, insurance and securities law; Part Four is on English banking law including banking regulations, major laws relating to

banking passed by the parliament in the twentieth century, contracts, torts, cheques, company law, etc. Part Five: the continental banking law; Part Six: letter of credit law; Part Seven: Canadian money-laundering law. Also included in the book are two annexes: 1. American law relating to money laundering, and 2. The Core Principles for Effective Banking Supervision worked out by Basle Committee on Banking Supervision (with Chinese translation).

I would like to express my thanks to my daughter, my wife, my students and professors Guo Fei and Li Mei for their useful assistance and their valuable encouragement in the preparation of this book.

Chen Qingbai

编者说明

(The Compiler's Words)

随着世界经济全球化的速度加快,中国“入世”的日益临近和中国未来金融市场的更大开放,专业英语(其中包括金融英语、金融法律英语)越来越受到人们的重视。有的高等院校还直接用英语开设一些专业课。这无疑会加快结束在我国高等院校中长期存在的“两张皮”分家现象。本人编写的英文《外国银行法》一书就是在此大背景下问世的。

本教材共分七大部分:

第一部分 法的各论;

第二部分 银行业概论;

第三部分 美国银行法(包括银行监管、20世纪国会主要立法、代理法、财产法、信托法、流通票据法、保险法和证券法等);

第四部分 英国银行法(包括银行监管、议会的有关主要立法和与银行业务有关的合同法、侵权法、支票法、汇票法、公司法等);

第五部分 大陆法(主要是德国银行法);

第六部分 信用证法;

第七部分 加拿大的洗钱法。

书后的附录收入了对广大读者有重要参考价值的两部分内容:

1. 美国的洗钱法简介

2. 巴塞尔银行监管委员会的《有效银行监管的核心原则》的全文及参考译文。

本教材可供下列人员使用:

(1) 高等院校的财经及金融专业、法律院校的国际经济法专业的师生;

(2) 涉外金融机构和在中国开展业务的外国银行分支机构的工作人员；

(3) 中国金融系统的准备参加中国人民银行金融英语中级证书考试的人员；

(4) 涉外法律工作者。

由于本人水平有限,加之国内很少有类似的教科书作为参考,书中不当之处与错误一定会存在。敬请有关同志、大专院校的师生给予批评指正。

陈庆柏
2001年5月于北京

《英语金融专业系列教材》

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Part One

Law in General

Chapter 1

A General Introduction to Law

Law concerns the relations of individuals with one another as they affect the social and economic order. It is both the product of civilization and the means by which civilization is maintained. This is the opinion of many Western legal scholars.

Definition

There is no universally accepted definition of law. Different people and different classes have different ways of defining the word "law". But the following two may be of help to us at this stage.

(1) Law is the expression of the will of the ruling class, which belongs to the superstructure. It is determined by the economic foundation and in turn it serves the economic foundation.

Apparently this is the definition given by the working class. This is a Marxist definition.

(2) Law refers to a set of rules administered and enforced by the state.

This is a common definition given by Western legal scholars.

I think these two definitions are perfectly adequate for our present purposes.

Functions of Law in the West

It is generally recognized in the developed countries that law performs the following three essential functions.

The first and also the primary function of law is to maintain stability in the social, political and economic system while at the same time permitting changes. The law accomplishes this basic function by performing a number of specific functions, among which are dispute