



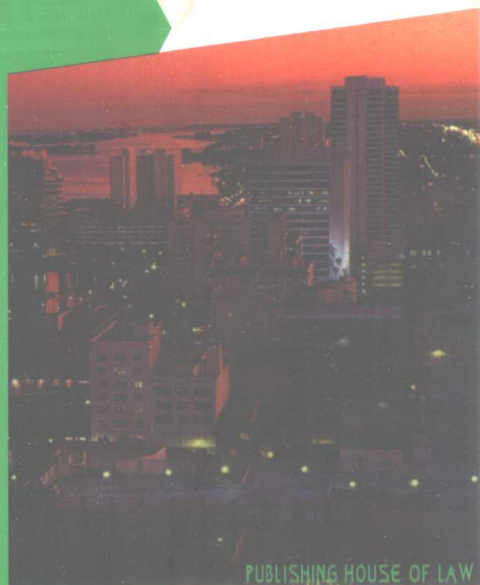
法律英语读物

English Readings in Legal Studies

西方 银行法

Western Banking Law

陈庆柏 / 编



PUBLISHING HOUSE OF LAW



法律出版社



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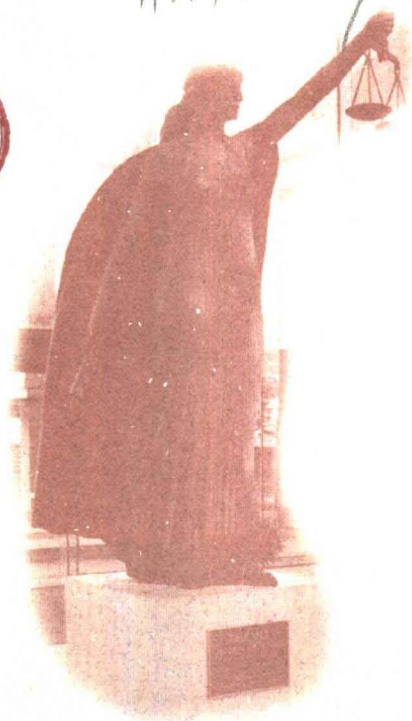
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出版者的话

1755年,在英语——作为一种文字的发展史上,是具有里程碑意义的。这一年,英国的第一部《英语大辞典》问世。她的作者便是英国著名的作家和词典编纂学家撒缪尔·约翰逊(Samuel Johnson)。他在这部大辞典的序言里写下了这样一句话: The great pest of speech is frequency of translation. ... this is the most mischievous and comprehensive innovation (语言最大的祸害就是频繁的翻译,这是一种最有害且最综合意义上的“再炮制”。)

“炮制”常常会差强人意,甚至于以讹传讹,而法学译作更在一定意义上是件“不可为而为之”的作品。英美法的一些概念、术语实难在汉语中有完美的匹配。于是我们推崇读原文。

原文闪烁着作品本身质朴而灵动的光芒,而地道的语言传送着的是英语中“法言法语”独特的个性化色彩。

少有机会读到英美法学原篇的中国学子们,将会从这套丛书中看到真正的英文法学篇章是个什么样子。这里既有严谨、典型的英美法学学术篇章,也有法庭上唇枪舌剑的审判实录,更有闻名于世的英美法“案例学习”。

这套辑录自90年代以来的“原汁原味”的法学英语读物,我们相信她带给您的会是这样的阅读体验——语言一百分,思想不打折。

BAG-5/7

1997年12月

导 言

本书可供具有大学三年级以上英语水平的法律专业和金融专业的读者阅读学习。它以通俗、规范的英语较系统地介绍了西方有代表性的发达国家银行法的基本内容。他们是:中央银行和商业银行的基本功能;英国对其银行业的法律监督与管理 and 几个主要与银行业有关的国会立法;美国对银行的法律监管以及一些重要的针对银行业的联邦专门立法;德国银行法概述。

虽然学习本书要比学习同样内容的中文版本困难一些,但可以获得以下好处:首先、读者通过对此书的学习可以巩固自己在基础英语学习阶段碰到的一些句型。短语或词汇从而起到“温故而知新”的功效;其次,可学到新的地道的,规范的英美,银行金融法律英语,获得“原汁原味”的语言享受。其三,在学习银行金融法律英语的同时可学到西方发达国家(其中包括普通法的英美两国和大陆法德国)对银行业的先进法律监管经验。这对提高我国法律人材和金融人材素质,改善我国银行业监督管理,促进我国银行业务与世界银行业的接轨,无疑会起到一些积极推动作用;第四,本书对从事西方银行立法研究的同志来说也具有较高的参考价值。

为帮助读者学习,本书在每篇文章后附有中文或英文注释,其中包括对语言难点、新的单词短语、必要的背景知识的注释。

最后,因编者水平有限,不足之处在所难免,希望有关读者批评指正。

陈庆柏

1997年10月于北京

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1. The Central Banks

The central banks lie at the heart of any modern banking system. Despite their names, however, they are not really in the business of everyday banking. The basic functions of any central banking authority may vary, but, in general, can be stated very simply. They act as:

- The government's banker;

- The banks' bank;

- The vehicle through which a government carries out its monetary policy;

- The lender of last resort; and

- The overall supervisor of the country's banking system, including control of the issue of notes and coins.

The central banks carry out these roles within the context of the country's laws and regulations, with differing degrees of independence. They may, for instance, set basic interest rates, or these may be decided by the finance ministry or left to the commercial banks themselves. In some countries—Germany most obviously, for example—the central authority has autonomy in interpreting government policy. In fact, the independence of the Bundesbank, the German central bank, is written into Germany's post-war constitution. Few would deny it has been one of the most successful in the world in protecting and promoting the economic interests of the country, despite, or perhaps because of, an occasional difference of opinion with the government of the day.

In the USA the Federal Reserve's freedom in its day-to-day dealings is written into US law. In contrast, in the UK, the Treasury, under the Chancellor of the Exchequer, has the final say on monetary policy, though the personality of the Governor of the Bank of England can greatly increase the Bank's effective power. The position of the Governor, however, is more explicitly political than in Germany or the USA, and fierce and public arguments between the Bank and a new government with new policies with which the sitting Governor may not agree are not rare.

Even the Bank of England has more freedom of manoeuvre than other central banks. The Bank of Japan is an extremely powerful organization technically but it is not independent politically, and the banking sector is directly regulated by the Ministry of Finance through its banking bureau, thus denying the central bank what, in some countries, is one of its key functions.

Notes

1. centrak bank 中央银行(简标“央行”)

其主要职能为发行货币,执行货币政策,监管银行和非银行金融机构等……

2. at the heart of 处在……中心地位

3. banker n. 银行家; 银行

4. vehicle n. 工具; 手段

5. monetary policy 货币政策(对付货币供给的政策)

6. the lender of last resort 最终贷款人,最终放款人(它常用来指“中央银行”)

7. the issue of notes and coins 发行纸币和硬币(中央银行职能之一)

8. within the context of 在……范围内

9. the finance ministry 财政部 在英国英语中用 the Treasury, 美语中用 the Treasury Department, 大多数国家用 the Ministry of Finance 或 the Finance Ministry

10. autonomy n. 独立;自主

11. the Bundesbank n. 德意志联邦银行(德国的中央银行全名为 the German Bundesbank 或 the Deutsche Bundesbank

12. constitution n. 宪法(一个国家的根本大法,它包括治理一个国家的根本原则)

13. the Federal Reserve “联储”。全名为 the Federal Reserve System “联邦储备系统”。它是美国的中央银行,美国人常常简称它为“PRS”或“Fed”。

14. the Chancellor of the Exchequer (英国)财政大臣,在大多数国家通常都用 the Minister of the Finance Ministry 或 the Ministry of Finance, 美国英语中用 the Secretary of the Treasury Department

15. the Governor of the Bank of England 英格兰银行行长;英国中央银行行长

16. the Bank of Japan 日本银行(日本的中央银行)

17. manoeuvre n. 策略;花招

18. bureau n. (政府部门中的)司或局

2. The Commercial Banks

There is no single definition of a bank, and not all financial institutions are banks (though all banks are financial institutions). Whenever new banking laws are proposed, attempts are made to define banks precisely. They usually involve phrases such as 'high standards', 'utmost probity', etc. but never define a bank in simple terms. Perhaps it is best to fall back on the description given by Gordon Richardson when he was Governor of the Bank of England in the 1970s: like an elephant, it is always difficult to describe a bank but you know one when you see one.

Generally, a bank is what the central bank and the government's finance ministry accepts as a bank. This naturally varies from country to country. Though few countries have a legal definition of a bank, the test is that it is an institution which accepts deposits; operates current accounts; and collects and pays cheques. Within those wide parameters, however, banks differ considerably in the kind of business they carry out and, in the modern financial marketplace, there are banks which operate on a much narrower base than others. Though they do not define what banks are, company laws and banking legislation usually set out clearly which organizations can and which cannot describe themselves as banks. There are many financial institutions, for example, which take deposits (licensed deposit takers), make loans and even issue cheque books, but they are not banks and they are not permitted so to describe themselves. Finance houses which provide the bulk of the money for hire purchases and credit

sales are a case in point. They may take deposits to finance their loans but they are not banks.

No moneylender could call itself a bank. Even when they recognize an institution as a bank, the authorities take a rigid attitude to what a bank may call itself. Old-established names are allowed to remain, however wide a concept they may imply, but a new bank would not be permitted to call itself, for example, the British Bank or the European Bank. The title would have to be much narrower than either of those, so that there is no confusion in customers' minds that banks are more substantial institutions than they in fact are.

Today, however, even when financial institutions are not banks, they are usually subject to the same regulatory authority, either the central bank or the finance ministry, or a special banking supervision committee. They will have to adhere to legally required capital requirements and reserve ratios in the same way as banks, though these may not be quite so stringent.

The chief role of the commercial bank is to accept deposits from those with surplus cash and lend to those who are temporarily short of funds.

Notes

1. commercial bank 商业银行(简称为“商行”)

a business that trades in money, receiving and holding deposits, paying money according to customers' instructions, lending money, etc. 进行货币交易,吸收保管存款并按客户指示付款,向外放款……的企业

2. probity n. 正直;诚实;诚信

3. cheque n. 支票(英国用法,美国用 check)

a bill of exchange drawn on a bank, and payable on demand

4. parameters n. 范围(用复数)
5. to set out 陈述;宣布
6. finance house 信贷公司,金融公司(与 finance company 意同)
7. the bulk of 大部分
8. reserve ratios 准备金比率
percentage of deposits taken to be held at the central bank
9. stringent adj. 严格的;严厉的
10. hire purchase 租购;分期付款购买
system of buying something by paying a sum regularly each month

3. The Financial Revolution: Central Banking in the 1990s

In the old days, strict regulations kept different financial institutions separate. Banks couldn't be dealers on the floor of the stock exchange, and building societies couldn't be banks. Strict regulations controlled entry into each of these activities, limiting competition from new entrants. Codes of conduct were often implicit, and the central bank usually acted as informal policeman for the financial sector.

Beginning in the mid-1980s, financial markets throughout the world were subject to a wave of reform: enhanced competition, deregulation, and then regulation in a new form which amounted to a financial revolution. We discuss the effect on stock markets in particular. Here we are concerned primarily with how it affected the central bank's role in financial supervision. We also explain its implication for the money supply and the demand for money.

London was the first European financial centre to experience the wind of change. Big Bang in October 1986 allowed banks (who have lots of financial backing) to become market-makers on the stock exchange floor. Other reforms made it easier for building societies to compete with banks. Similar reforms elsewhere were leading to a *globalization* of world financial markets. Entry barriers to particular financial sectors came tumbling down, and competition increased. Because *entry* had been deregulated, a new set of regulations for *conduct* became imperative. Relying on the old gentlemen's club—my word is my bond—was no longer enough.

It was not merely the number of institutions that was growing; the volume and type of business transacted was becoming ever fancier. Much of the new business was 'off balance sheet'. Instead of taking in money and relending it, the traditional role of a bank, banks were expanding business by acting as agents to repackaging existing loans. *Swaps* involve exchanging the income stream from two different assets (e.g. a sterling bond and a dollar bond). *Securitization* means bundling together separate illiquid investments and passing them on as a more attractive package which can be actively traded on a second-hand market.)

Financial supervision had become a task that was too big for central banks alone. For example, in London the Securities and Investments Board (SIB) was established to oversee supervision of the financial sector. Each subsector, such as life assurance companies, had its own self-regulatory organization (SRO) to establish and enforce 'fit and proper' rules of conduct to protect investors. But central banks retain an important role in supervising banks themselves.

Globalization of business led to calls for all banks to be regulated in broadly the same way, to establish 'level playing fields' or equal treatment so that effective competition could take place. In 1988 the Group of 10, the world's largest economies, signed the Basle Accord, making interational banking the first industry to be truly regulated at international level. The Accord was concerned with (i) *capital adequacy provisions*, specifying minimum financial backing for each type of credit risk; (ii) *risk assessment*, specifying the relative importance of different risks; and (iii) *fit and proper* rules for management conduct. Within the European Community, the 1992 programme to complet the single internal market has followed broadly similar lines in the Banking Directives, which establish regulatory rules for banking within the EC. Increasingly, therefore, the microeconomic role of a European central bank will be to implement the broad guidelines laid

down at international or European Community level.

And the macroeconomic role of the central bank is also changing in the 1990s. If the European Community succeeds in moving to European Monetary Union (EMU), there will eventually be a European System of Central Banks providing unified decision-making on the common monetary policy of the Community.

The financial revolution has had two other consequences which should be borne in mind in reading the rest of this chapter. First, the definition of a bank is becoming increasingly blurred. For example UK building societies, traditionally offering interest-bearing savings accounts and relending for house purchase, are now offering chequing facilities. So the appropriate definition of money itself (whose deposits should count in the money supply?) is becoming ambiguous. Second, greater competition is raising the interest rates paid on current accounts. The consequence for the opportunity cost of holding money is discussed in the text.

Notes

1. regulations n. 条例;法规(用复数,单数表示“控制”,如:“政府住房条例深受人们欢迎”应译成 The government regulations on housing are highly welcome.)

2. building societies 住宅或房屋互助协会(它实际上是英国商业银行中的一种,因其主要职能之人是为购房人提供抵押贷款才得此名)

3. entrant n. 进入者(本文指进入银行业者)

4. stock exchange 证券交易所;股票交易所(“商品交易所”为 commodity exchange)

5. codes of conduct 行为准则,行为规范,行为守则

6. implicit adj. 含蓄的,不言明的

7. policeman “监管者”(在本文中用此意,不能译成“警察”
a person or an organization that controls or supervises

8. deregulation n. 减少(政府对一产业的)控制

9. supervision n. 监督;管理

10. Big Bang (金融)“大爆炸式”改革

What occurs on the day when a significant financial market removes a swath of (一套) old-fashioned rules and regulation. The most famous Big Bang occurred at the London Stock Exchange on October 27th 1986.

11. Market maker 股票经纪人 a dealer in securities who is prepared to buy and sell (that is, to make a market in) the securities of a particular firm or industry or you can say a market maker is a person who buys and sells shares for clients on the Stock Exchange

12. tumble down 倒塌

13. bond n. 保证书

14. fancy adj. 高的(与 price 连用有此意)

15. balance sheet 资产负债表(企业或一公司的重要财务报表“financial statement”中的一种)

16. swap n. (金融资产)互换交易 a transaction in which two parties exchange financial assets

17. securitization n. 利用证券市场融资

18. bundling together 放在一起

19. illiquid adj. 不能变现的;难以变成现金的(反义词为 liquid)

20. life assurance 人寿保险(美语中用 life insurance, 前者为英式用法)

21. to enforce vt. 强制执行

22. Group of 10 10国集团 referring to the group formed by the world's 10 largest economies, i. e. Belgium, Canada, France, Germany, Italy, Japan, Holland, the United States, Britain and Sweden