

This article was published in the *2016 Guide to Financial Services Regulation in Asia Pacific* on May 26, 2016.

Financial Services Regulation In Asia Pacific Taiwan

1. What are the main bodies responsible for regulating financial services in Taiwan?

The main bodies are:

- Financial Supervisory Commission (**FSC**), under which 4 bureaux have been established, namely the Banking Bureau (**BB**), the Securities and Futures Bureau (**SFB**), the Insurance Bureau (**IB**) and the Financial Examination Bureau (**EB**) (collectively known as **Bureaux**). Each of the BB, SFB and IB is separately responsible for regulating the banking, securities and insurance industries. The EB is in charge of financial inspection and audits of financial institutions regulated by the FSC;
- Central Bank of the Republic of China (Taiwan) (**CBC**);
- Taiwan Stock Exchange Corporation (**TSEC**);
- Taipei Exchange (**TPEX**) (formerly known as GreTai Securities Market/GTSM); and
- Taiwan Futures Exchange Corporation (**TFEC**).

2. What does each of these bodies regulate?

The FSC is an independent primary regulatory authority governing the financial services industry in Taiwan, which determines financial policy, drafts laws and rules with regard to the financial industry, conducts financial examinations and supervises financial institutions.

While the FSC issues regulations relating to financial services generally, the Bureaux are responsible for administering the regulations relating to separate financial services sectors. In this regard, the BB regulates banking and bill finance; the SFB, together with the TSEC and the TFEC, oversee all activities in the securities and futures market; the IB supervises the insurance business and the EB is responsible for conducting financial investigations with a view to maintaining market order and ensuring the protection of investors.

The FSC also oversees the Taiwan Depository and Clearing Corporation and all the activities in the TPEX, ie, the over-the-counter (**OTC**) market in Taiwan.

The CBC, the government bank performing the functions of a central bank, regulates monetary and credit policies. It also manages official foreign exchange reserves, issues currency, adjusts reserve ratios and examines banks.

The TSEC regulates trading on the Taiwan Stock Exchange and companies listed on the Taiwan Stock Exchange. The TPEX regulates the trading of the OTC securities market and the TFEC regulates trading on the Taiwan Futures Exchange.

3. What is the source of financial services regulation in Taiwan?

The *Company Act* sets forth the general rules of structure and operation for all incorporated entities including financial institutions such as banks, securities houses and insurance corporations.

The *Central Bank of the Republic of China (Taiwan) Act* (**CBCA**) sets out general regulations as well as the powers and functions of the CBC. In accordance with the CBCA, the CBC issues compliance rules to participants in the financial services market.

The *Financial Supervisory Commission Organisation Act* sets out the legal basis for the organisation of the Bureaux under the FSC.

The *Banking Law* (**BL**) provides guidelines for conducting banking business, including the incorporation and dissolution of banks and the regulation of various types of banks.

The *Insurance Law (IL)* regulates the terms and conditions of insurance contracts and the administration of insurance companies.

The *Securities and Exchange Act (SEA)* regulates securities firms, the stock exchange and the offering, issuing, private placement and trading of securities. Similarly, the *Futures Trading Law (FL)* provides guidelines for the futures exchange market and futures enterprises.

The *Operation Rules of the Taiwan Stock Exchange Corporation*, the *Operation Rules of the Taiwan Futures Exchange Corporation* and the *Taipei Exchange Rules Governing Securities Trading on the TPEX (Operation Rules)* provide the rules relating to the operations of the stock exchange, futures exchange and OTC market respectively.

The TSEC, the TFEC and the TPEX also issue a variety of implementation regulations.

4. Do all the regulatory bodies described above have the same powers of enforcement?

No. The CBC has the authority to examine financial institutions to ensure their compliance with the regulations issued by it. The SFB takes action against stock market participants in relation to their illegal activities, the BB exercises its enforcement power over authorised banks for misconduct and the IB is responsible for taking enforcement action against insurance companies for their wrongdoing. The EB has extensive powers of investigation and is responsible for conducting regulatory audits and examinations over financial activities. The TSEC, the TFEC and the TPEX enforce rules relating to securities firms, futures commission merchants and clearing members.

5. What powers of investigation do these regulatory bodies have?

The EB has extensive powers of investigation, including conducting regular or irregular examinations over financial activities. Generally, the Bureaux, the TSEC, the TFEC and the TPEX conduct investigations in specific situations described under the BL, the SEA, the IL, the FL and the Operation Rules. The following table sets out the powers of these regulatory bodies:

POWERS	BB	SFB	IB	EB	TSEC, TFEC AND TPEX
Who conducts investigations	BB, professionals (eg, attorneys or accountants) appointed by the BB, authorised organisations or officials of local competent authorities which are directed by the BB to investigate	SFB or professionals appointed by the SFB	IB or any staff appointed by the IB	EB	TSEC/TFEC/TPEX
Who are required to assist in investigations	The responsible person or staff of the bank, or any other associated persons	The issuer, securities firms, futures commission merchants or any other associated persons	The responsible person or relevant staff of the corporation, or any other associated persons	The responsible person or staff of the financial institution, or any other associated persons	The issuer, securities firms, futures commission merchants or any other associated persons
Require production of records and documents	Yes	Yes	Yes	Yes	Yes
Require a party to answer	Yes	Yes	Yes	Yes	Yes

questions or provide information

Conduct interviews	No explicit authority to conduct interviews but the BB may request information from the responsible person or relevant staff of the corporation	No explicit authority to conduct interviews but the SFB may request information from the responsible person or relevant staff of the corporation	No explicit authority to conduct interviews but the IB may request information from the responsible person or relevant staff of the corporation	Yes	No
Conduct searches at premises	Yes, with a search warrant from court	Yes, with a search warrant from court	Yes, with a search warrant from court	Yes, with a search warrant from court	Yes, with a search warrant from court
Statutory power to compel production of evidence and/or attendance of witnesses	Yes	Yes	Yes	Yes	No
Consequences of non-compliance with the above investigation requirements	Liable to an administrative fine	Liable to an administrative fine	Liable to an administrative fine	Liable to an administrative fine	Liable to a default penalty under the agreement with the TSEC/TFEC/TPEX

If the regulatory bodies discover any misconduct involving criminal liability during an investigation, they can report to the prosecutor who can conduct a search of the premises of the suspected person, bank or corporation after obtaining a warrant from the court.

6. Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

The FSC provides guidelines requiring investigators to keep the information disclosed during the course of financial investigations confidential.

The TSEC, the TFEC and the TPEX are not governmental agencies and each of them has contractual relationships with the market participants. Therefore, they are subject to the general confidentiality obligations (if applicable) in law. In practice, they do not disclose any confidential information gathered through investigations unless required to do so, for example, by law or a court order.

7. Are there protections available when responding to investigations by these regulatory bodies, eg, right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

The laws and regulations do not provide for the right to legal representation at interviews. However, it is unlikely to be prohibited.

Privilege against self-incrimination is available only in criminal proceedings and cannot be asserted when providing information during interviews with regulatory bodies, which are deemed to be part of administrative rather than criminal proceedings.

Communications with legal advisers and documents created upon the instructions of legal advisers are not subject to legal professional privilege during administrative investigations.

8. Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, eg, in proceedings in a court of law?

Any information obtained by these regulatory bodies may be presented or used in court proceedings, depending upon the requirements of each procedure.

9. What actions may these bodies take in exercising their regulatory functions?

These regulatory bodies may take the following actions:

BODIES	ACTIONS
BB	<ul style="list-style-type: none"> • Prescribe corrective measures or issue an improvement order • Partially suspend a corporation’s operations, or dissolve the corporation • Order the dismissal of managerial officers or employees of a corporation • Order the removal of directors or supervisors of a corporation, or prohibit the corporation from carrying out its activities • Take any other necessary actions
SFB	<ul style="list-style-type: none"> • Wholly or partially dissolve a corporation or revoke the corporation’s licence • Wholly or partially suspend or terminate a corporation’s business • Order the removal of a corporation’s directors, supervisors or managers • Issue a reprimand
IB	<ul style="list-style-type: none"> • Prescribe corrective measures or issue an improvement order • Partially suspend a corporation’s operations, or dissolve the corporation • Order the dismissal of managerial officers or employees of a corporation • Order the removal of directors or supervisors of a corporation, or prohibit the corporation from carrying out its activities • Take any other necessary actions
EB	<ul style="list-style-type: none"> • Impose an administrative fine
TSEC/TFEC/TPEX	<ul style="list-style-type: none"> • Prescribe corrective measures or issue an improvement order • Wholly or partially suspend trading • Terminate the market usage contract

10. What disciplinary sanctions may these regulatory bodies impose?

If a regulatory body considers that the conduct of any entity or individual does not meet the standard provided in the relevant laws and regulations, the regulatory body can impose the following sanctions:

BODIES	ACTIONS
BB	<ul style="list-style-type: none"> • Issue a warning and order a corporation to take rectification action • Suspend or revoke the licence of a corporation or an individual • Impose an administrative fine
SFB	<ul style="list-style-type: none"> • Issue a warning and order a corporation to take rectification action • Prohibit participation in the securities and futures market • Suspend or revoke the licence of a corporation or an individual • Impose an administrative fine
IB	<ul style="list-style-type: none"> • Issue a warning and order a corporation to take rectification action • Suspend or revoke the licence of a corporation or an individual • Impose an administrative fine
EB	<ul style="list-style-type: none"> • Impose an administrative fine
TSEC/TFEC/TPEX	<ul style="list-style-type: none"> • Issue a warning and order a corporation to take rectification action • Impose a default penalty under the agreement with the TSEC/TFEC/TPEX

11. Is it possible to enter into a settlement to resolve any enforcement action taken by any of these regulatory bodies?

Under certain circumstances, securities firms, futures commission merchants, securities investment trust enterprises and securities investment consulting enterprises (collectively, **Firms**)

may reach settlement with the FSC by entering into an administrative settlement agreement (**Settlement**).

According to the relevant regulations promulgated by the FSC, a Settlement may be sought where:

- the FSC finds that, after investigating the matter, it is not possible to ascertain the underlying facts or legal relationships on which the potential enforcement action is to be based;
- a Settlement may achieve the FSC's administrative purpose; and
- a Settlement may resolve the disputes between the FSC and the Firm.

Before proceeding with negotiating a Settlement, the FSC should conduct an investigation into the facts or the legal relationships on which the potential enforcement action is to be based, and the investigation period shall not be less than 30 days. The FSC should also take into consideration the following factors: (a) the legality and appropriateness of making mutual concessions with the Firm; (b) protection of public interests; and (c) the potential losses which may be sustained by interested parties in the event of Settlement.

12. Are there provisions for persons to appeal against any enforcement action taken by the regulatory bodies against them?

In general, an appeal against an administrative decision made by a governmental authority may be filed with the governmental authority at a higher level. Therefore, decisions made by the Bureaux may be appealed to the FSC, while decisions made by the FSC may be appealed to the Administrative Appeals Commission (**AAC**) under the Executive Yuan (ie, the cabinet).

Except for administrative cases that are subject to simplified administrative litigation proceedings, a party dissatisfied with a decision of the FSC may file with the AAC for an appeal and then appeal the AAC's decision with the High Administrative Court (**HAC**) if the AAC's decision is not in favour of such party. If the HAC finds against the party, then the party can further appeal to the Supreme Administrative Court for the highest court's review.

The TSEC, the TFEC and the TPEX are not governmental agencies and each of them has contractual relationships with the market participants. Therefore, any dispute with the TSEC/TFEC/TPEX needs to be resolved through the civil court unless the parties agree to settle in advance.

13. Is securities and futures market misconduct (eg, insider dealing, market manipulation etc) a criminal offence or a civil contravention?

Securities and futures market misconduct, such as insider dealing and market manipulation, constitutes a criminal offence and also gives rise to civil liability. The FSC may actively co-operate with the prosecutor to investigate the misconduct. Persons engaging in market misconduct may, on conviction, be sentenced to imprisonment for a period of 3 to 10 years, and a fine of NT\$10 million to NT\$200 million. Where the amount gained from the misconduct is NT\$100 million or more, a sentence of imprisonment for not less than 7 years may be imposed, as well as a fine of NT\$25 million to NT\$500 million.

14. What civil remedies are there for investors?

The SEA provides that bona fide buyers or sellers are entitled to seek compensation from persons who commit securities and futures market misconduct, eg, insider dealing or market manipulation. Market manipulation refers to the following:

- the offering of a quote on a centralised securities exchange market and failure to deliver or settle the transaction after accepting such quotation, where such omission affects market order;
- conspiracy with other parties in a scheme where one party buys or sells designated securities at an agreed price and the other party sells or buys from the first party in the same transaction, with intent to inflate or deflate the price of the securities on the centralised securities exchange market;

- continuously buying at high prices or selling at low prices designated securities for his/her/its own account or under the names of other parties with intent to inflate or deflate the price of the securities on the centralised securities exchange market, when there is a likelihood that market prices or market order will be affected;
- continuously ordering or reporting a series of trades under his/her/its own account or under the names of other parties, and completing the corresponding transactions with the intent of creating an impression on the centralised securities exchange market of brisk trading in a particular security;
- spreading rumours or false information with intent to influence prices of designated securities traded on the centralised securities exchange market; or
- performing directly or indirectly any other manipulative acts to influence prices of designated securities traded on the centralised securities exchange market.

Investors who have been victimised by securities and futures market misconduct may file a civil action against an individual or institution. In general, the civil liability for market misconduct would be the actual losses sustained by such investors. However, in the case of insider dealing, a formula is explicitly set forth in the SEA for the assessment of damages and the civil liability may be increased by the court to up to triple the amount of the losses if the misconduct is deemed severe in nature.

The Securities and Futures Investors Protection Center may file class-action suits on behalf of investors who have been victimised by securities exploitation, such as false financial statements and prospectuses, insider dealing, or market manipulation. It can be authorised by more than 20 investors or traders to commence a civil action in its own name, on the condition that the subject matter of the claim involves injury to a majority of investors or traders.

15. Do the police assist these regulatory bodies in investigations?

The regulatory bodies usually transfer cases involving financial crimes to the offices of public prosecutors for investigation. Although the *Criminal Procedure Act* provides that policemen, military policemen, and persons authorised by law to exercise the duty and power of a judicial policeman in special matters have the duty and power to inquire into an alleged offence under the instruction and order of a public prosecutor, the investigators of the Investigation Bureau, Ministry of Justice (**MJIB**) most frequently act as the judicial policemen who conduct the investigation of financial crimes. The Economic Crime Prevention Centre at the MJIB and the MJIB's field stations have been involved in a lot of investigations of violations of bank laws and securities exchange laws, among others.

16. How do these regulatory bodies interact with overseas regulators?

The FSC co-operates with overseas regulators through various Memoranda of Understanding (**MOUs**). Such MOUs usually provide the essential arrangements for sharing information, accessing markets, protecting investors, assisting with each other's bank examinations, exchanging staff, and meeting with each other on an ongoing basis.

As of December 2014, the FSC has signed 48 bilateral cooperation agreements and/or exchange of letters with foreign regulators. The FSC has also entered into several MOUs with the regulators in the PRC in relation to banking, securities and insurance respectively, laying the groundwork for interaction and cooperation on supervision between financial institutions in Taiwan and the PRC. In addition, the FSC is a member of the International Organisation of Securities Commissions (**IOSCO**) and a signatory to the IOSCO's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

17. Which regulatory bodies are empowered to investigate and combat corruption, terrorist financing and money laundering within the financial services industry?

The EB has extensive powers to investigate financial activities, while the Bureau, TSEC, TFEC and TPEX are also empowered to conduct investigations of financial institutions under certain circumstances. They have a responsibility to report to the prosecutors any facts with regards to corruption, money laundering and terrorist financing within the financial services industry which are discovered during their investigations.

The *Money Laundering Control Act (MLCA)* requires financial institutions to report any "Suspicious Transactions" to the Money Laundering Prevention Centre at MJIB. The Money Laundering Prevention Centre will analyse such transactions, forward relevant information to the authorities and conduct further investigations as it deems necessary.

18. Is there any requirement to provide information about past misconduct/non-compliance by a financial institution and/or its employees during the licence/authorisation application process?

Local financial institutions are required to provide information about their past misconduct/non-compliance when they apply for certain licences/authorisation. For example, a local bank applying to establish a new branch shall provide the information that it has not been subject to any disciplinary action by the regulators within the previous year for violation of banking regulations (or that any violation has been corrected and confirmed by the regulators). A local securities firm applying to establish a new branch shall also provide the information that it has not been subject to any disciplinary action by the TSEC within the previous year.

Foreign financial institutions are also required to provide information about their past misconduct/non-compliance during their licence/authorisation application process. For example:

- Pursuant to the BL and its related regulations, a foreign bank applying to establish a branch in Taiwan shall provide information on whether it has been involved in any material incompliance, irregularities or disciplinary action within the previous 5 years.
- The SEA and its related regulations require a foreign securities firm applying to establish a branch in Taiwan to provide information that such firm has not been subject to any disciplinary action by the securities regulator in its home country within the previous 2 years.
- Pursuant to the IL and relevant regulations, a foreign insurance company applying to establish a branch in Taiwan is required to provide information that no material disciplinary action was taken against it by the insurance regulator in its home country within the previous 3 years.

Furthermore, a "responsible person" (such as a director or a manager) of a financial institution is required to meet the qualification requirements as set out by the FSC. Such requirements generally include, among others, that such person shall not have committed or conducted certain offences or misconduct within a certain period of time. For financial institutions such as a bank or an insurance company, the qualification requirements for the "responsible person" also apply, under which a person shall not serve as a responsible person if there has been factual evidence showing that the person has engaged in, or been involved in, dishonest or improper activities which indicate that he/she is unfit. In practice, a person, before serving as a responsible person of a financial institution, will be required to: (a) issue a declaration to the FSC specifying that he/she has met all the qualification requirements pursuant to applicable laws and regulations; or (b) provide necessary documents or information regarding the satisfaction of the qualification requirements to the FSC upon the FSC's request.

In addition, the FSC in practice has the power to require a financial institution to provide any such documents/information (including, without limitation, information about past misconduct/non-compliance by the institution and/or its employees) as the FSC may deem necessary during the licence/authorisation application process, even if the FSC's rules or regulations do not expressly require such documents/information.

19. Is a financial institution in Taiwan under any obligation to report to the Taiwan regulator(s) any misconduct/non-compliance with rules and regulations by the institution/its employees/its clients?

If a responsible person of a bank fails to meet any of the qualification requirements regarding misconduct/non-compliance (as discussed under Question 18 above) during his/her term of office, he/she is required to promptly notify the bank of such event. The bank should immediately report the same to the FSC.

In addition to the reporting obligations regarding money laundering-related activities as discussed under Question 17 above, a bank shall also report to the Joint Credit Information Center (**JCIC**,

an entity established for the purpose of collecting, processing and exchanging credit information among financial institutions in Taiwan) if any of the following has occurred on the part of its employee: (a) such employee is discharged from his/her job through an FSC disciplinary action due to his/her misconduct; or (b) a court's final and unappealable decision has confirmed the facts of such employee's misconduct.

Furthermore, the FSC's regulations require a bank to report to the judicial policeman offices, MJIB and/or JCIC if certain events occur in respect of any of the deposit accounts opened with the bank. Such events include, without limitation, the following:

- a deposit account is opened under a fake name;
- a deposit account is a "Watch-Listed Account" as designated by the court, prosecutors or judicial policeman offices;
- the holder of a deposit account frequently applies to open deposit accounts with the bank during a short period of time without providing any reasonable explanation to the bank;
- the holder of a deposit account applies for a transaction, the nature of which is apparently unfit for such holder in terms of his/her age or other background;
- the contact information provided by the holder of a deposit account cannot be reasonably verified;
- a deposit account has been reported by other financial institutions or the general public as one that has been/is being used by a suspect of a felonious offence;
- a deposit account has just been resumed from the status of a dormant account and is involved in unusual transactions;
- a deposit account is involved in transactions appearing to be money laundering activities; and
- a deposit account is used to conduct transactions as determined by the relevant authorities or financial institutions to be suspicious or unusual.

20. Are there any laws or regulations imposing obligations on persons to "whistle-blow" or disclose suspected financial services-related wrongdoing?

The MLCA requires staff or managers in charge of financial institutions, including banks, credit card companies, insurance companies, securities brokers and futures brokers etc, to report to the Money Laundering Prevention Center if there is a suspicious situation of money laundering by persons or legal entities.

Moreover, according to the corporate governance best practice principles issued by the local self-regulatory organisations, the internal audit personnel and chief legal compliance officer of a financial institution shall immediately report to the FSC if their suggestion to correct and/or improve material defects in internal controls, non-compliance or irregularity is not adopted by the management of such institution and, as a result, may cause significant loss to such institution.

21. How are hedge funds regulated?

On 2 August 2005, the FSC promulgated the *Regulations Governing Offshore Funds* (as amended in 2015) (**Offshore Funds Regulations**) pursuant to the *Securities Investment Trust and Consulting Act*, which provide detailed implementation rules regarding the offer, distribution and sale of offshore funds in Taiwan through public offering or private placement under certain conditions. Although there is no definition of "hedge funds" to date, foreign hedge funds are in practice subject to the Offshore Funds Regulations.

For an offshore hedge fund to be offered in Taiwan through public offering, it must be approved or effectively registered with the FSC, and a qualified master agent and distributors must be appointed. The fund should also meet certain conditions, including that its derivative transactions and investments in PRC-related securities shall not exceed the limits prescribed by the FSC.

For an offshore hedge fund to be offered by private placement, it must be a securities investment trust fund, and the qualifications and the number of offerees should meet the criteria prescribed

by the FSC. Furthermore, under the Offshore Funds Regulations, a report regarding the basic information of the fund by private placement should be filed with the Securities and Investment Trust and Consulting Association of the R.O.C. (**SITCA**), with a copy to the CBC after all payments of the subscription price have been made.

On 12 December 2014, the FSC issued a ruling permitting local securities investment trust enterprises (**SITEs**) and local securities investment consulting enterprises (**SICEs**) meeting certain qualifications to sell (or provide consultation services in relation to) offshore funds which have not been approved by or registered with the FSC, to qualified institutional investors in Taiwan. Under this new approach, the offshore fund institution of an offshore hedge fund may appoint a SITE or SICE with certain qualifications to market or sell its hedge funds to certain qualified institutional investors in Taiwan, without having to obtain the FSC's prior approval of the funds or going through a private placement process. However, post-reporting similar to that required under a private placement shall be made by the appointed SITE or SICE with the SITCA.

22. Are there likely to be any significant developments in the near future with regards to financial services regulation?

One of the most important policy objectives in Taiwan is to promote financial technology (**FinTech**) innovation. For this purpose, the FSC has permitted certain types of financial institutions (such as financial holding companies, banks, and insurance companies) to invest in FinTech companies as well as information services companies, subject to certain conditions. It is expected that more regulatory reform will be conducted by the FSC to promote FinTech, to encourage more local FinTech companies to develop and provide cross-border products and services with international competitiveness.

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