

# Banking Regulation

*Contributing editor*  
**David E Shapiro**



**2017**

GETTING THE  
DEAL THROUGH 

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*Contributing editor*

**David E Shapiro**

**Wachtell, Lipton, Rosen & Katz**

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# Taiwan

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## Regulatory framework

### 1 What are the principal governmental and regulatory policies that govern the banking sector?

The purposes of banking laws and regulations are, among others, to improve the banking business, to protect the rights and interests of depositors and to coordinate with the development of industries and the national financial policy.

### 2 Summarise the primary statutes and regulations that govern the banking industry.

The primary laws and regulations governing the Taiwan banking industry include:

- the Banking Act, which provides rules of conducting banking business, including the setting-up and dissolution of banks, general business scope of various types of banks; compliance requirements, business restrictions, etc;
- the Central Bank of the Republic of China (Taiwan) Act, which sets out general rules as well as the powers and functions of Taiwan's central bank;
- the Financial Holding Company Act (FHCA), which governs the establishment, business, finance and supervision of financial holding companies;
- the Deposit Insurance Act, which governs Taiwan's deposit insurance system; and
- the Financial Consumer Protection Act, which governs the protection of the interests of consumers who deal with financial institutions.

### 3 Which regulatory authorities are primarily responsible for overseeing banks?

The Financial Supervisory Commission (FSC) is an independent primary regulatory authority governing the financial services industry in Taiwan, which determines financial policy, drafts regulations 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 Banking Bureau regulates banking and bill finance, and the Examination Bureau is in charge of financial inspection and audits of financial institutions regulated by the FSC.

The Central Bank of the Republic of China (Taiwan), Taiwan's central bank, regulates monetary and credit policies. It also manages official foreign exchange reserves, issues currency, adjusts reserve ratios and inspects banks.

The Central Deposit Insurance Corporation (CDIC) is delegated under the Deposit Insurance Act to handle deposit insurance-related matters, to manage deposit insurance risk and to deal with failing and failed insured institutions.

### 4 Describe the extent to which deposits are insured by the government. Describe the extent to which the government has taken an ownership interest in the banking sector and intends to maintain, increase or decrease that interest.

The CDIC is delegated under the Deposit Insurance Act to handle matters regarding the deposit insurance system in Taiwan. The CDIC is now jointly owned by the FSC and the central bank. Financial

institutions duly approved to accept deposits should apply to the CDIC to participate in the deposit insurance programme. If an insured financial institution is ordered by a relevant competent authority to suspend its operations, the CDIC should pay the insurance amount to the depositors with a coverage limit of NT\$3 million per depositor. The types of deposits covered generally include deposits in current accounts (checking deposits), demand deposits, time deposits, deposits required by law to be deposited in certain financial institutions and any other deposits as approved by the competent authority.

It has been a policy of the Taiwanese government to privatise certain government-owned banks and financial holding companies and to sell the government's shareholdings in privatised banks.

### 5 Which legal and regulatory limitations apply to transactions between a bank and its affiliates? What constitutes an 'affiliate' for this purpose? Briefly describe the range of permissible and prohibited activities for financial institutions and whether there have been any changes to how those activities are classified.

In general, the major provisions and limitations regarding the transactions between a bank and its affiliates include (without limitation) the following.

#### Prohibition on extension of unsecured credit

No unsecured credit shall be extended by a bank to:

- enterprises in which the bank holds 3 per cent or more of the total paid-in capital;
- its responsible person;
- its employees;
- its major shareholders (defined as a person who holds 1 per cent or more of the total issued shares of the bank); and
- any interested party of its responsible person or an employee in charge of credit extensions, subject to certain exceptions.

#### Limitation on extension of secured credit

Any secured credit extended by a bank to the following persons shall be fully secured, and shall not be more favourable than the terms and conditions offered to other same type of clients:

- enterprises in which the bank holds 5 per cent or more of the total paid-in capital;
- its responsible person;
- its employees;
- its major shareholders (defined as a person who holds 1 per cent or more of the total issued shares of the bank); and
- any interested party of its responsible person or an employee in charge of credit extensions.

If the credit amount to be extended by a bank to any of the said persons exceeds an amount set by the Banking Bureau, such credit extension should be approved by three-quarters or more of the directors present at a board meeting attended by two-thirds or more of the directors.

#### Limitation on real estate transaction

Any real estate transaction between a commercial bank and any of the following persons should be in the normal course of operation of the bank, and should be approved by three-quarters or more of the

directors present at a board meeting attended by two-thirds or more of the directors:

- enterprises in which the bank holds 3 per cent or more of the total paid-in capital;
- its responsible person;
- its employees;
- its major shareholders (defined as a person who holds 1 per cent or more of the total issued shares of the bank); and
- any interested party of its responsible person.

#### **Limitation on transactions other than extension of credit**

If a bank is a subsidiary of a financial holding company, such bank's transactions (other than extension of credit) with the following persons shall not be more favourable than the terms and conditions offered to other persons of the same type:

- the financial holding company or any of its responsible persons or major shareholders;
- enterprises solely invested in by or a partnership invested in by a responsible person or major shareholder of the financial holding company, or organisations in which such responsible person or major shareholders concurrently serves as the responsible person or representative;
- the financial holding company's affiliates or any of such affiliate's responsible person or major shareholder; and
- the financial holding company's bank subsidiary, insurance subsidiary, securities subsidiary or any of such subsidiary's responsible persons.

#### **6 What are the principal regulatory challenges facing the banking industry?**

Similarly to other jurisdictions, Taiwan's financial regulations have been also putting much emphasis on supervision of complex financial products since the financial crisis in 2008. The FSC recently amended certain regulations in response to the reported significant losses investors suffered on currency-related financial derivatives mainly because of the volatility of the yuan exchange rate in recent years. The amendments to the relevant derivatives regulations include: enhancing the thresholds for the qualifications of certain types of customers, requiring more stringent know-your-customer (KYC) procedures, prohibitions or limitation on trading of certain complex financial products by certain types of customers, etc. Specifically, starting from September 2016, the FSC required that providing complex financial products to retail investors (ie, investors other than institutional investors and high net-worth corporate investors) be subject to FSC's review.

Another regulatory challenge facing the banking industry is owing to the new amendments to anti-money laundering (AML) laws. The 'Money Laundering Control Act' (to take effect in June 2017) and the 'Directions Governing Anti-Money Laundering and Countering Terrorism Financing in Banking Sector' were newly amended in December 2016, mainly to reflect the 40 Recommendations of Financial Action Task Force. The main amendments include, among others: (i) expanding the definitions of anti-money laundering, related crimes, and criminal gains; (ii) strengthening the KYC procedures to be conducted; (iii) requiring the necessary transaction records be kept for five years; and (iv) increasing the level of punishments.

We believe that such amendments would to some extent affect the business of banks as well as increase their compliance costs.

#### **7 Are banks subject to consumer protection rules?**

The Financial Consumer Protection Act (FCPA) (last amended in 2015) protects the financial consumers (defined under the FCPA) who consume any financial product or service offered by a bank. Major principles include (without limitation):

- the terms and conditions of the contract signed between a bank and a financial consumer shall be based on the principles of fairness, reasonableness, equality, reciprocity and good faith;
- any conspicuously unfair term and condition of a contract with a financial consumer should be null and void;
- if the terms and conditions are ambiguous, their interpretation should be favourable to a financial consumer;
- when carrying out advertising, promotional or marketing activities, the bank shall not falsify, conceal, hide or take any action that will mislead financial consumers, and should be obliged to ensure

the truthfulness of the advertisements while the obligations of the bank toward financial consumers in an advertisement shall not be less than those indicated in the materials or explanations made to financial consumers during the said advertising, promotional or marketing activities; and

- when signing contracts with a financial consumer, the bank shall fully know the relevant information of such financial consumer (KYC) to ensure the suitability of the particular product or service concerned, and should provide the financial consumer with sufficient explanations of the content of the materials and sufficient risk disclosure regarding the financial product concerned.

The FSC may take disciplinary actions against a bank violating the FCPA. In addition, the Financial Ombudsman Institution (FOI) has been established by the government as an independent foundation to provide an alternative dispute resolution system for disputes between financial consumers and financial services providers (eg, a bank). All the services provided by the FOI to financial consumers are free of charge.

As described in questions 6 and 11, in recent years the FSC's attention has been on the banks' business on derivatives and structured products, and whether a bank has appropriately performed its required procedures (eg, assessing suitability, KYC processes, risk disclosure) with respect to sale of complex high-risk financial products to financial consumers.

#### **8 In what ways do you anticipate the legal and regulatory policy changing over the next few years?**

One of the most important policy objectives in Taiwan is to promote financial technology (fintech) innovation. For this purpose, the FSC has permitted financial holding companies and banks 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. In early 2017, the FSC announced a draft bill for a regulatory sandbox in order to enable the fintech businesses to test their financial technologies. According to the draft bill, a fintech company needs to apply to and obtain approval from the FSC in order to enter the sandbox. After the application is approved, the sandbox entity may perform experiments in compliance with applicable regulations and guidelines governing sandbox and its approved experimental activities may enjoy exemptions from FSC licensing requirements and certain legal liability exemptions. After completing the approved experiments, the FSC will analyse the results of the experiments. Even if the result is positive, the sandbox entity will still be required to apply to the FSC in order to formally conduct the activities as previously tested in the sandbox. Currently, the proposed regulatory sandbox is still a draft bill.

#### **Supervision**

#### **9 How are banks supervised by their regulatory authorities? How often do these examinations occur and how extensive are they?**

The Banking Bureau may, at any time, appoint its staff, professionals (eg, attorneys or accountants), authorised organisations or officials of local competent authorities to examine the business, financial and other affairs of a bank and request a bank to submit its financial reports, property inventories or other relevant documents for examination. The central bank, when it thinks necessary, may also conduct examination on a bank and request a bank to submit its financial reports, property inventories or other relevant documents for examination.

#### **10 How do the regulatory authorities enforce banking laws and regulations?**

The actions that the Banking Bureau may take in exercising its regulatory functions include (without limitation):

- prescribing corrective measures or issue an improvement order;
- partially suspending a corporation's operations, or dissolving the corporation;
- ordering the dismissal of managerial officers or employees of a corporation;

- ordering the removal of directors or supervisors of a corporation, or prohibiting the corporation from carrying out its activities; and
- taking other necessary actions.

For the actions that the FSC may take if a bank becomes undercapitalised, see question 17.

#### 11 What are the most common enforcement issues and how have they been addressed by the regulators and the banks?

The FSC announced on its official website that its examination on banks in 2017 would focus on, among others:

- the derivatives business of a bank such as the risk control and evaluation; the suitability, KYC, risk disclosure with respect to sale of complex high-risk financial products;
- AML and anti-terrorism such as compliance with the reporting requirements;
- personal data protection such as a bank's measure for maintenance of the security of the personal data; and
- financial consumer protection such as KYC assessment procedures and implementation of internal control and risk management systems for financial services.

#### Resolution

#### 12 In what circumstances may banks be taken over by the government or regulatory authorities? How frequent is this in practice? How are the interests of the various stakeholders treated?

The FSC may place a bank in receivership if any of the following occur:

- there is a concern that a bank might be unable to pay its debts when due or there might be a detriment to the depositors' interests due to obvious deterioration in the bank's business or financial condition;
- a bank's capital is graded as being seriously inadequate and 90 days have lapsed since the date the bank is listed as having seriously inadequate capital. However, if a bank is ordered by the FSC to undertake capital restructuring or a merger within a prescribed period and fails to comply, the 90 days should be calculated from the day subsequent to the prescribed period; or
- the losses of a bank exceed one third of the bank's capital and the bank fails to make up such deficit within three months.

According to the latest statistics as of 31 December 2016 published by the CDIC, seven banks were placed under receivership during 2006 to 2008, but none afterwards.

The interests of the depositors, shareholders, creditors or employees should not be generally affected solely because the FSC issues the order of receivership, until the receiver of the bank takes any further actions as described in question 13. In local practice, however, if a bank is placed under receivership and has been included in the coverage of the Financial Restructuring Fund set up by Taiwan's Executive Yuan (the cabinet of the Taiwan government), the rights of the shareholders of the bank should be forfeited except for entitlement to distribution of remaining assets. For the seven banks in crisis during the time span of 2006 to 2008, the FSC divided their assets into 'bad banks' (non-performing assets) and good banks (the other assets) and sold them separately. The bad banks were sold to asset management companies; the businesses of the good banks were sold to and assumed by the banks that back then needed additional bank channels at a consideration that the FSC agreed to pay to the assuming banks certain amount of compensation. The depositors and employees suffered little hurt, but the shareholders and non-deposit creditors generally received nothing back after the disposal.

#### 13 What is the role of the bank's management and directors in the case of a bank failure? Must banks have a resolution plan or similar document?

If the FSC places a bank in receivership, the bank's operations and management power and the powers to administrate and dispose of the bank's properties shall be owned by the receiver as appointed by the FSC. The duties and powers of the bank's shareholders' meeting, board of directors, directors, supervisors or audit committee should be suspended.

The receiver may formulate a concrete plan for taking the following actions toward a bank under receivership, which should be subject to the FSC's approval:

- mandating other banks, financial institutions or the CDIC to operate all or part of the business;
- increasing capital, reducing capital or increasing capital after reducing capital;
- selling all or part of the business, assets or liabilities;
- a merger with another bank or another financial institution; and
- other important actions as determined by the FSC.

#### 14 Are managers or directors personally liable in the case of a bank failure?

If a bank is placed under receivership, the FSC may notify relevant authorities or institutions to prohibit the transfer, delivery or creation of rights in the properties owned by the bank or its responsible persons or employees who are suspected of violating laws, and may request the immigration authority to prohibit said persons from departing the country. Also, the directors might be subject to civil liabilities for breach of fiduciary duties under Taiwan's Company Act as well as criminal liability for criminal breach of trust.

#### Capital requirements

#### 15 Describe the legal and regulatory capital adequacy requirements for banks. Must banks make contingent capital arrangements?

The current capital adequacy requirements are set by the FSC to be in line with the standards under the Basel III framework, which are set out as below.

	2013	2014	2015	2016	2017	2018	2019
Common Equity Tier 1 Ratio (per cent)	3.5	4	4.5	5.125	5.75	6.375	7
Tier 1 Capital Ratio (per cent)	4.5	5.5	6	6.625	7.25	7.875	8.5
Total Capital Adequacy Ratio (per cent)	8	8	8	8.625	9.25	9.875	10.5

The said ratios are generally defined as follows:

- Common Equity Tier 1 Ratio: net Common Equity Tier 1 divided by total risk-weighted assets;
- Tier 1 Capital Ratio: net Tier 1 Capital divided by total risk-weighted assets; and
- Total Capital Adequacy Ratio: aggregate amount of net Tier 1 Capital and net Tier 2 Capital divided by total risk-weighted assets.

#### 16 How are the capital adequacy guidelines enforced?

A bank shall periodically report relevant capital adequacy-related ratios to the FSC, and the FSC may at any time request a bank to do so. The FSC may assess a bank's capital based on the report made by the bank.

A bank is also required to self-assess its capital adequacy and establish its strategy to maintain its capital adequacy. The FSC may, based on a bank's self-assessment, request the bank to improve its risk management. If the bank fails to do so, the FSC may require such bank to raise the minimum Total Capital Adequacy Ratio, adjust its regulatory capital and risk-weighted assets or submit a capital restructuring plan within a certain period.

#### 17 What happens in the event that a bank becomes undercapitalised?

The level of capitalisation (capital grades) of a bank is classified into four categories as follows:

- adequate capital;
- inadequate capital;
- significantly inadequate capital; and
- seriously inadequate capital.

The said four categories are defined based on the relevant ratios as described under question 15, and the ratios increase year by year until 2019. Take 2017 for example, the relevant ratios for the level of undercapitalisation are as follows:

Level of Capitalisation (Capital grades)	Total Capital Adequacy Ratio	Tier 1 Capital Ratio	Common Equity Tier 1 Ratio
Adequate capital	9.25 per cent or more	7.25 per cent or more	5.75 per cent or more
Inadequate capital	7.25 per cent (inclusive) to 9.25 per cent (exclusive)	Less than 7.25 per cent	Less than 5.75 per cent
Significantly inadequate capital	2 per cent (inclusive) to 7.25 per cent (exclusive)	–	–
Seriously inadequate capital	Less than 2 per cent. A bank whose ratio of 'net worth to total assets' is less than 2 per cent	–	–

The FSC should take all or some of the following actions if a bank becomes undercapitalised.

#### Inadequate capital

- order the bank or its responsible person to submit a plan for capital restructuring or improvement of finance and business. If a bank fails to submit or implement such plan, the FSC may take the actions applicable to the next capital grade; or
- restrict the new acquisition of risky assets or take other necessary actions.

#### Significantly inadequate capital

- take the actions applicable for inadequate capital;
- remove the responsible person from his or her position;
- order the bank to obtain the prior approval of the FSC before acquiring or disposing of specific assets;
- order the bank to dispose of specific assets;
- restrict or prohibit credit extension or other transactions with interested parties;
- restrict the investment activities or some businesses of the bank, or order the bank to close a branch or department within a prescribed period;
- limit the interest rates for deposits to a level not exceeding the interest rates offered by other banks for comparable deposits or deposits of the same nature;
- order the reduction in remuneration of responsible persons; or
- assign officials to take conservatorship over the bank's operations or take other necessary actions.

#### Seriously inadequate capital

- take the actions applicable for significantly inadequate capital; or
- place the bank in receivership after 90 days have lapsed since the date the bank was listed as having seriously inadequate capital. However, if a bank is ordered by the FSC to undertake capital restructuring or merger within a prescribed period but fails to comply, the 90 days should be calculated from the day subsequent to the prescribed period.

### 18 What are the legal and regulatory processes in the event that a bank becomes insolvent?

As to the circumstances where a bank may be taken over (ie, receivership) by the government, see question 12.

Also, the FSC may order a bank to suspend and wind up its business if there is a concern that such bank might be unable to pay its debts when due or there might be a detriment to the depositors' interests because of obvious deterioration in the bank's business or financial condition. In such a case, the duties and powers of the bank's shareholders' meeting, board of directors, directors, supervisors or audit committee should be suspended.

For the winding-up of a bank, the major processes are generally as follows:

- the FSC designates a liquidator to handle the relevant proceedings;
- after appointment of a liquidator, the liquidator makes a public announcement requesting creditors to declare their claims within 30 days;
- the liquidator prepares the balance sheet and property inventories and the liquidation plan for submission to the FSC within three months of the expiry of the declaration period;
- repayment of debts: for creditors who have been repaid in the winding-up proceeding, the unpaid part of their claims should be deemed extinguished;
- distribution of the remaining assets (if any) to the bank's shareholders; and
- within 15 days of the completion of winding up, the liquidator makes a public announcement of the relevant books and records and makes a filing with the FSC for cancelling the bank's licence.

### 19 Have capital adequacy guidelines changed, or are they expected to change in the near future?

As described in questions 15 and 17, the relevant capital adequacy requirements are set by the FSC to be in line with the standards under the Basel III framework, and the relevant ratios are to be increased year by year until 2019. As of 1 January 2019, the Common Equity Tier 1 Ratio shall not be less than 7 per cent, the Tier 1 Capital Ratio shall not be less than 8.5 per cent, and the Total Capital Adequacy Ratio shall not be less than 10.5 per cent.

### Ownership restrictions and implications

#### 20 Describe the legal and regulatory limitations regarding the types of entities and individuals that may own a controlling interest in a bank. What constitutes 'control' for this purpose?

Both entities and individuals may own a controlling interest in a bank, subject to the Peoples' Republic of China (PRC) ownership restriction (see question 21) and prior approvals (see question 25).

In addition, Taiwan's FHCA generally requires that if a person (including related parties) concurrently has a 'controlling interest' in at least two types of business entities (being a bank, a securities firm or an insurance company), such person should apply to the FSC for setting up a financial holding company (to indirectly hold stakes in such bank, securities firm or insurance company), subject to certain exceptions. 'Controlling interest' means:

- holding more than 25 per cent of the issued voting shares of such bank, securities firm or insurance company; or
- otherwise having the direct or indirect power to appoint the majority of the directors of such bank, securities firm or insurance company.

#### 21 Are there any restrictions on foreign ownership of banks?

Currently there is no general restriction on foreign ownership of banks, except for certain restrictions on investment in a bank by persons from the PRC. Generally, no PRC investor may invest in a Taiwanese bank, unless the PRC investor is, among others:

- a PRC bank (definition may be complicated, which generally also includes a bank not incorporated in the PRC but is 30 per cent owned by PRC persons; and controlled by PRC persons), subject to the following restrictions on ownership percentage:
  - a PRC bank's investment in a Taiwanese bank may not exceed 5 per cent of the total issued voting shares or capital amount of such Taiwanese bank; and
  - a PRC bank's investment in a Taiwanese bank, together with investment by other PRC investors (generally the qualified domestic institutional investors (QDII) as approved by the PRC's securities regulator, as further explained below), may not exceed 10 per cent of the total issued voting shares or capital amount of such Taiwanese bank; and
- other PRC investors: Any QDII is generally allowed to trade listed shares of a Taiwanese bank cumulatively up to a 10 per cent shareholding of any single Taiwanese bank.

## 22 What are the legal and regulatory implications for entities that control banks?

See question 25 for the FSC's prior approval required for acquisition of banks.

If the entity controlling a bank is a financial holding company, it should be subject to regulation under the FHCA, which covers, among other things, shareholders' reporting obligations, business (eg, permitted investment activities), and finance (eg, permitted use of short-term funds, capital adequacy) with respect to a financial holding company.

## 23 What are the legal and regulatory duties and responsibilities of an entity or individual that controls a bank?

See question 25 for the FSC's prior approval required for acquisition of a bank, and question 28 for required filing for an acquisition of a bank.

If the entity controlling a bank is a financial holding company, it should be subject to the regulation under the FHCA, which covers, among other things, shareholders' reporting obligations, business (eg, permitted investment activities) and finance (eg, permitted use of short-term funds, capital adequacy) with respect to a financial holding company.

## 24 What are the implications for a controlling entity or individual in the event that a bank becomes insolvent?

There is no criminal or administrative sanction set out under the Banking Act that would be imposed on an entity or individual simply because it controls a bank in the particular event that the bank becomes insolvent.

### Changes in control

## 25 Describe the regulatory approvals needed to acquire control of a bank. How is 'control' defined for this purpose?

The following are the major regulatory approvals generally required for acquisition of a bank.

### FSC

The FSC's prior approval would be required for any acquisition of 10 per cent, 25 per cent and 50 per cent of the issued voting shares of a bank by a person (including related parties). The definition of 'related party' of a bank generally includes the following (assuming that the investor is a juridical person):

- the juridical person and its chair and general manager, as well as their spouses and relatives by blood within the second degree of kinship;
- an enterprise in which the juridical person and natural persons referred to in the above hold more than one-third of voting shares or capital contribution; or the enterprise or foundation in which the juridical person and natural persons referred to above serve as the chair, general manager or majority of the directors; and
- the affiliated enterprises of the juridical person.

In addition, the shares held by a third party for or on behalf of the person or related party in trust, by mandate or through other types of contract, agreement or authorisation should be aggregated with the shareholdings held by such person or the related party.

See question 20 for the requirement of setting up a financial holding company to hold a bank, securities firm or insurance company.

### Investment Commission (IC)

Foreign and PRC investors (other than foreign and PRC investors who have registered with the Taiwan Stock Exchange for making investments in the Taiwan securities market) wishing to make direct investments in a Taiwanese bank are generally required to submit a foreign or PRC investment approval application to the Investment Commission of the Ministry of Economic Affairs or other applicable government authority. However, see question 21 for the PRC ownership restriction.

## 26 Are the regulatory authorities receptive to foreign acquirers? How is the regulatory process different for a foreign acquirer?

The FSC is generally receptive to foreign acquirers, provided that PRC investors should be subject to the PRC ownership restriction as described under question 21.

There is no major difference for acquisition of a Taiwanese bank by a foreign acquirer (compared with a local acquirer) except for the PRC ownership restriction as described in question 21 and the prior approval from the IC) as described under question 25.

## 27 What factors are considered by the relevant regulatory authorities in an acquisition of control of a bank?

During the application process for the FSC prior approval (as described in question 25), the FSC would normally require the applicant to provide certain supporting information regarding the applicant or relevant plan post-closing, or both, such as:

- the applicant's good faith, integrity, interests in the bank (in the case of approval for 10 per cent investment);
- whether the applicant's business and finance conditions may improve the safety and soundness of the operations of the bank (in the case of approval of a 25 per cent investment); and
- operation plan, information on future management team, protection of employees' interests (in the case of 50 per cent investment).

The FSC may have sole discretion as to whether to grant the approval. Where an entity wishes to set up a financial holding company (to hold a bank, securities firm or insurance company) (see question 20 for the requirement), the FSC would examine the following factors:

- the soundness of the financial and business condition as well as the management capacity;
- capital adequacy; and
- the impact on the competition in the financial market and improvement in the public interest.

## 28 Describe the required filings for an acquisition of control of a bank.

See question 25 for prior approvals required for acquisition of a bank.

In addition, the following are other certain important notification and reporting obligations with respect to substantial shareholding in a bank.

### 1 per cent shareholding notification to the bank

If an investor (together with the investor's spouse and minor children (as applicable)) in aggregate has held 1 per cent or more of voting shares in a bank, such investor shall report such fact to the bank. This notification need only be made to the bank, and such notification need not be made to the FSC.

### 5 per cent shareholding reporting to the FSC

If an investor (including related parties) acquires or holds more than 5 per cent of the voting shares of a bank, it shall report such fact to the FSC within 10 days. Thereafter, in the event of any 1 per cent cumulative change (increase or decrease) in the said shareholdings, further reporting is required to be made to the FSC within 10 days of such change. The definition of 'related party' of a bank generally includes the following (assuming the investor is a juridical person):

- the juridical person and its chair and general manager as well as their spouses and relatives by blood within the second degree of kinship;
- an enterprise in which the juridical person and natural persons referred to in the above hold more than one-third of voting shares or capital contribution; or the enterprise or foundation in which the juridical person and natural persons referred to above serve as the chair, general manager or majority of the directors; and
- the affiliated enterprises of the juridical person.

In addition, the shares held by a third party for or on behalf of the person or related party in trust, by mandate or through other types of contract, agreement or authorisation should be aggregated with the shareholdings held by such person or the related party.

### 10 per cent shareholder's monthly reporting

By the fifth day of each month, an investor (including related parties) holding more than 10 per cent of the voting shares of a bank should report its shareholding changes during the preceding month to the bank, and the bank should report such information to the Taiwan Stock



Exchange or Taipei Exchange and make the required announcement by the 15th day of each month.

**29 What is the typical time frame for regulatory approval for both a domestic and a foreign acquirer?**

For a domestic acquirer, prior approval from the IC would not be required. It would typically take around two months for the FSC to grant its approval.

For a foreign acquirer, FSC and IC approvals are both required. It would typically take around three to four months to receive both of the approvals.

See question 25 for the requirement for prior approvals.

The above time frame starts from the time that all required documents and information are in order for filing, so it would take more time for document preparation (eg, notarisation and legalisation of relevant required documents would generally be required for a foreign acquirer). The actual time spent depends on individual cases.



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