

Banking Regulation

Contributing editor
Richard K Kim



2018

GETTING THE
DEAL THROUGH 

GETTING THE
DEAL THROUGH 

Banking Regulation 2018

Contributing editor

Richard K Kim

Wachtell, Lipton, Rosen & Katz

Reproduced with permission from Law Business Research Ltd

This article was first published in April 2018

For further information please contact editorial@gettingthedealthrough.com

Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
James Spearing
subscriptions@gettingthedealthrough.com

Senior business development managers
Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com



Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3780 4147
Fax: +44 20 7229 6910

© Law Business Research Ltd 2018
No photocopying without a CLA licence.
First published 2008
Eleventh edition
ISBN 978-1-912377-19-0

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between January and March 2018. Be advised that this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



CONTENTS

Andorra	5	Lebanon	74
Miguel Cases and Marc Ambrós Cases & Lacambra		Carlos Abou Jaoude, Souraya Machnouk, Eddy Maghariki and Fouad El Cheikha Abou Jaoude & Associates Law Firm	
Austria	12	Monaco	81
Christoph Moser and Stefan Weber Weber & Co		Olivier Marquet and Michael Dearden CMS Pasquier Ciulla & Marquet	
Canada	20	Norway	86
Pat Forgione, Darcy Ammerman and Tayleigh Armstrong McMillan LLP		Klaus Henrik Wiese-Hansen and Bjarne Rogdaberg Advokatfirmaet Schjødt AS	
Germany	27	Philippines	92
Maximilian von Rom, Benjamin Herz Gleiss Lutz Hootz Hirsch PartmbB		Jose Florante M Pamfilo SyCip Salazar Hernandez & Gatmaitan	
Ghana	32	Singapore	97
Theophilus Tawiah Nobisfields		Krishna Ramachandra and Gabriel Lee Duane Morris & Selvam LLP	
Hungary	38	Spain	102
Zoltán Varga and Eszter Kovács-Szitkay Nagy és Trócsányi		Fernando Mínguez and Miguel Sánchez Monjo Cuatrecasas	
India	46	Switzerland	108
Feroz Dubash, Sonali Mahapatra and Shruti Zota Talwar Thakore & Associates		Patrick Hünerwadel, Shelby R du Pasquier, Marcel Tranchet and Maria Chiriaeva Lenz & Staehelin	
Italy	55	Taiwan	117
Marcello Gioscia, Gianluigi Matteo Pugliese and Benedetto Colosimo Ughi e Nunziante - Studio Legale		Abe T S Sung and Eddie Hsiung Lee and Li, Attorneys-at-Law	
Japan	63	United Arab Emirates	123
Yoshiyasu Yamaguchi, Hikaru Kaieda, Yoshikazu Noma, Tae Ogita, Shuhei Oi and Ken Omura TMI Associates		Bashir Ahmed and Vivek Agrawalla Afridi & Angell	
Korea	69	United Kingdom	127
Soonghee Lee, Young Ho Kang and Hye Jin Hwang Yoon & Yang LLC		Selmin Hakki and Ben Kingsley Slaughter and May	
		United States	137
		Richard K Kim Wachtell, Lipton, Rosen & Katz	

Preface

Banking Regulation 2018

Eleventh edition

Getting the Deal Through is delighted to publish the eleventh edition of *Banking Regulation*, which is available in print, as an e-book, and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Ghana and Monaco.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Richard K Kim of Wachtell, Lipton, Rosen & Katz, for his continued assistance with this volume.

GETTING THE
DEAL THROUGH 

London
March 2018

Taiwan

Abe T S Sung and Eddie Hsiung

Lee and Li, Attorneys-at-Law

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; and
 - 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 Taiwanese government policy 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, the 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, the 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 the responsible person or major shareholders concurrently serves as the responsible person or representative;
- the financial holding company's affiliates or any of the affiliate's responsible person or major shareholder; and
- the financial holding company's bank subsidiary, insurance subsidiary, securities subsidiary or any of the subsidiary's responsible persons.

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

A regulatory challenge facing the banking industry is owing to the new amendments to anti-money laundering (AML) laws. The 'Money Laundering Control Act' (which took effect in June 2017) and the 'Directions Governing Internal Control Systems of Anti-Money Laundering and Countering Terrorism Financing of Banking Business, Electronic Payment Institutions and Electronic Stored Value Card Issuers' were newly amended in June 2017, mainly to reflect the 40 Recommendations of the Financial Action Task Force. The main amendments include, among others:

- expanding the definitions of anti-money laundering, related crimes, and criminal gains;
- strengthening the know your customer (KYC) procedures to be conducted;
- requiring the necessary transaction records be kept for five years; and
- increasing the level of punishments.

We believe that the 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 December 2016) 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 the 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 question 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 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 December 2017, the Taiwanese parliament passed a law for a regulatory sandbox, the FinTech Development and Innovation and Experiment Act, in order to enable fintech businesses to test their financial technologies. According to the Act, 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 the 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. If the result is positive, the FSC would actively examine the existing financial laws and regulations to explore the possibility of amending them, after which the business model or activities previously tested in the sandbox could become feasible under law (but the sandbox entity might still be required to apply to the FSC in order to formally conduct the activities as previously tested in the sandbox).

According to the relevant news published in local newspapers, the FSC will promulgate the enforcement rules for the regulatory sandbox in the first quarter of 2018 and start accepting applications from the second quarter of 2018. It is generally expected that relevant market players of some controversial business models and activities (such as initial coin offerings) would apply to enter the sandbox, but whether or not the results of these experiments would be positive should really depend on the FSC's then attitude towards the tested models and activities.

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 18.

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 of the banks in 2018 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 derivatives and structured products;
- AML and anti-terrorism such as compliance with the reporting requirements;
- financial consumer protection such as KYC assessment procedures, implementation of internal control and risk management systems for financial services and personal data protection; and
- digital financial business such as identity verification and monitoring of unusual transactions with respect to online applications for services and mobile payment 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 owing 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 the deficit within three months.

According to the latest statistics (as of 31 December 2017) 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 the Taiwanese government's cabinet, 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 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, at the time, needed additional bank channels at a consideration that the FSC agreed to pay to the assuming banks some compensation. The depositors and employees suffered little loss, but the shareholders and non-deposit creditors generally received nothing following 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 into 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 FSC-appointed receiver. 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.

15 Describe any resolution planning or similar exercises that banks are required to conduct.

Currently, no requirements exist regarding 'resolution planning' or 'living wills' under Taiwanese law.

Capital requirements

16 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	From 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

These 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.

17 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 the 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.

18 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.

These four categories are defined based on the relevant ratios as described under question 16, and the ratios increase year by year until 2019. Take 2018 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	9.875 per cent or more	7.875 per cent or more	6.375 per cent or more
Inadequate capital	7.875 per cent (inclusive) to 9.875 per cent (exclusive)	Less than 7.875 per cent	Less than 6.375 per cent
Significantly inadequate capital	2 per cent (inclusive) to 7.875 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 the 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 FSC prior approval 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.

19 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 the 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.

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

As described in questions 16 and 18, 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

21 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 22) and prior approvals (see question 26).

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), the person should apply to the FSC for setting up a financial holding company (to indirectly hold stakes in the bank, securities firm or insurance company), subject to certain exceptions. 'Controlling interest' means:

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

22 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 (the 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 the 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 the 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.

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

See question 26 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.

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

See question 26 for the FSC's prior approval required for the acquisition of a bank, and question 29 for required filing for the 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.

25 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

26 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 bank's voting shares 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;
- 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 the person or the related party.

See question 21 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 22 for the PRC ownership restriction.

27 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 22.

There is no major difference in acquisition of a Taiwanese bank by a foreign acquirer (compared with a local acquirer) except for the PRC ownership restriction as described in question 22 and the prior approval from the IC) as described under question 26.

28 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 26), 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 21 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.

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

See question 26 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, the investor shall report this fact to the bank. This notification need only be made to the bank and not 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 bank's voting shares, it shall report this fact to the FSC within 10 days. Thereafter, in the event of any 1 per cent cumulative change (increase or decrease) in these shareholdings, further reporting is required to be made to the FSC within 10 days of this 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;
- 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 the 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 a bank's voting shares should report its shareholding changes during the preceding month to the bank, and the bank should report this information to the Taiwan Stock Exchange or Taipei Exchange and make the required announcement by the 15th day of each month.

30 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 about two months for the FSC to grant its approval.

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

See question 26 for the requirement for prior approvals.

The above timeframe 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.



Abe T S Sung
Eddie Hsiung

abesung@leeandli.com
eddiehsiung@leeandli.com

7F, 201 Tun Hua N. Road
Taipei 10508
Taiwan

Tel: +886 2 2183 2232 / +886 2 2183 2162
Fax: +886 2 2514 9841
www.leeandli.com

Getting the Deal Through

Acquisition Finance
Advertising & Marketing
Agribusiness
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Appeals
Arbitration
Asset Recovery
Automotive
Aviation Finance & Leasing
Aviation Liability
Banking Regulation
Cartel Regulation
Class Actions
Cloud Computing
Commercial Contracts
Competition Compliance
Complex Commercial Litigation
Construction
Copyright
Corporate Governance
Corporate Immigration
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
e-Commerce
Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation
Equity Derivatives
Executive Compensation & Employee Benefits
Financial Services Litigation
Fintech
Foreign Investment Review
Franchise
Fund Management
Gas Regulation
Government Investigations
Healthcare Enforcement & Litigation
High-Yield Debt
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Joint Ventures
Labour & Employment
Legal Privilege & Professional Secrecy
Licensing
Life Sciences
Loans & Secured Financing
Mediation
Merger Control
Mergers & Acquisitions
Mining
Oil Regulation
Outsourcing
Patents
Pensions & Retirement Plans
Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Banking & Wealth Management
Private Client
Private Equity
Private M&A
Product Liability
Product Recall
Project Finance
Public-Private Partnerships
Public Procurement
Real Estate
Real Estate M&A
Renewable Energy
Restructuring & Insolvency
Right of Publicity
Risk & Compliance Management
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
Shipbuilding
Shipping
State Aid
Structured Finance & Securitisation
Tax Controversy
Tax on Inbound Investment
Telecoms & Media
Trade & Customs
Trademarks
Transfer Pricing
Vertical Agreements

Also available digitally

Online

www.gettingthedealthrough.com