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Amendments to the Banking Act

January 13, 2009

On December 9, 2008, the Legislative Yuan passed an amendment bill of the Banking Act (hereinafter the "Amendments"), amending 24 articles thereof. The Amendments were promulgated by the President on December 30, 2008 and became effective on January 1, 2009. The major amendments are as follows:

I. To Better Monitor the Shareholding Structure of Controlling Shareholders and Responsible Persons of Banks

In order to better monitor the shareholding structure of banks, the threshold for reporting the shareholding of a banks' shareholders to the Financial Supervisory Commission (hereinafter the "FSC") is lowered whilst various shareholding thresholds subject to prior approval from the FSC have been added. Also, the FSC has lifted the 25% maximum shareholding restriction on the bank's outstanding voting shares held by a person or a related party. The term "related party" is further defined in order to prevent any circumvention of the provisions regarding shareholding restriction. As for the qualifications of the responsible person of a bank, the provisions originally found under the Regulations Governing the Qualifications of Responsible Persons of Banks, which provides that the responsible person of a bank must be discharged if not meeting the relevant qualifications is now moved to the Banking Act.

1. Lower the shareholding threshold for reporting and removal of the 25% maximum shareholding restriction

Under the old Banking Act, a person or a related party who held more than 15% of a bank's total outstanding voting shares must notify the bank and the bank shall report this to the FSC for approval. Also, such person or related party had to notify the bank of any change in his/her/its shareholding or pledge of the shares and the bank shall report the same to the FSC on a monthly basis. Under the Amendments, a person or related party who, individually, jointly or collectively holds more than 5% of a bank's total outstanding voting shares shall report to the FSC within 10 days upon his/her/its acquisition of shares. This requirement will also apply whenever there is a more than 1% accumulated increase or decrease in such person's or related party's shareholding. Said person or related party must obtain prior approval from the FSC if he/she/it intends to individually, jointly or collectively hold more than 10%, 25% or 50% of a bank's total outstanding voting shares. In addition, the Amendments removed the provision under the old Banking Act that except for shares owned by financial holding companies or the government or, with the approval from the FSC, for the purpose of managing distressed financial institutions, the amount of

shares in a bank held by a person or a related party may not exceed 25% of the bank's total outstanding voting shares.

Shareholders who hold more than 5% but less than 15% of a bank's total outstanding voting shares before the Amendments took effect shall report to the FSC within 6 months from the implementation of the Amendments. However, shareholders who hold more than 10% of a bank's total outstanding voting shares and intend to increase their shareholding for the first time shall seek prior approval from the FSC.

Under the Amendments, if a shareholder who fails to observe his/her/its reporting obligations or obtain the prior approval of the FSC, the voting rights of the shares held by him/her/it in excess of the applicable threshold shall have no voting rights. The FSC may further order such shareholder to dispose of such excessive shares within a prescribed period.

2. Amendments to the definition of Related Party

Under the revised Article 25-1 of the Banking Act, the term "related party" is further defined as follows:

(1) Parties related to a natural person include:

- A. the natural person and his/her spouse and blood relatives within the second degree;
- B. the enterprises in which the persons listed in (1) A collectively hold more than one-third of the total amount of the outstanding voting shares or capital; and
- C. the enterprises or associations of which the persons listed in (1) A are the chairman or general manager, or constitute the majority of the directors.

(2) Parties related to a legal person include:

- A. the legal person and its chairman and general manager, and their spouse and blood relatives within the second degree;
- B. the enterprises in which the legal person and the natural persons listed in (2) A collectively hold more than one-third of the total amount of the outstanding voting shares or capital, or the enterprises or associations of which the legal person or the natural person listed in (2) A is the chairman or general manager, or constitutes the majority of the directors; and
- C. the affiliates of a legal person as defined under Articles 369-1 to 369-3, 369-9 and 369-11 of the Company Act.

In determining whether the applicable shareholding threshold has been reached, the shares held by a third party in a bank under trust, mandate, or other arrangements such as contracts, agreements or powers of attorney for a person or related party shall be included. However, Amendments expressly exclude the following shares or

investment amounts which are acquired via involuntary transactions when calculating the number of shares in a bank held by a person or a related party holds in a bank under the Amendments:

- (1) the shares acquired by a securities firm during its underwriting period and subsequently disposed of within the period prescribed by the FSC;
- (2) the pledged shares acquired by a financial institution for less than 4 years from the acquisition date in a foreclosure; and
- (3) the shares acquired by inheritance or legacy for less than 2 years from the inheritance or legacy date.

3. To better monitor the responsible persons of banks

New Article 35-2 is added to the Banking Act providing that anyone who does not meet the qualifications set out under the Regulations Governing the Qualifications of Responsible Persons of Banks shall not act as the responsible person of a bank. A responsible person who does not meet the required qualifications shall be discharged from his/her office immediately.

II. To Provide a Mechanism for Immediate Rectification and Exit

1. Supervisory mechanism based on capital adequacy ratio

Under the old Banking Act, the capital adequacy ratio of a bank should not be lower than 8% and if necessary, may be raised by the FSC based on international standards. However, as the standard capital adequacy ratio varies from country to country, the FSC is authorized under the Amendments to set a fixed minimum capital adequacy ratio.

In order to establish a supervisory mechanism for banks based on capital adequacy ratio, the Amendments provide that banks may be divided into four categories based on capital adequacy ratio: banks that have adequate capital, banks that have inadequate capital, banks that are obviously short of capital, and banks that are seriously short of capital. A bank is categorized as seriously short of capital if its capital adequacy ratio is lower than 2%. In addition, if the ratio of a bank's net worth to asset value is lower than 2%, it will be considered as a bank seriously short of capital. For the other three categories, the FSC is authorized to determine the relevant criteria.

Different immediate rectification measures are applicable under the Amendments to banks falling into the four categories above, ranging from an FSC's order to a bank or its responsible person to provide a capital restructuring plan or other financial and operational improvement plan within a prescribed period to a compulsory receivership by the government. This allows timely actions through imposing restrictions and remedial measures to deal with a bank whose capital adequacy ratio or net value has been deteriorated.

2. Strengthening exit mechanism

To integrate the immediate rectification measures and exit mechanism of financial institutions, the Amendments provide an exit mechanism under which the FSC shall take over the management of a bank within 90 days if the bank falls into the category of being seriously short of capital. For a bank that is permitted by the FSC to proceed with restructuring or a merger within a prescribed period but fails to do so, the FSC shall take over the management of the bank within 90 days from the next day upon expiry of the prescribed period.

The Amendments also empower the receiver to handle all litigious and non-litigious matters on behalf of the bank. During the receivership period, the provisions regarding temporary administrators, inspectors, and reorganization under the Company Act and the Bankruptcy Act shall not apply.

As for the expenses and assumption of debts arising from the receivership, it is expressly prescribed under the Amendments that a bank under receivership shall be responsible for all the necessary expenses and debts incurred by the receiver in the course of his/her/its duties and in maintaining the bank's operations. Payments of such expenses and debts shall have priority over rehabilitation claims and shall be repaid from the assets of the bank undergoing rehabilitation.

The Amendments also provide that Paragraph 2 of Article 5 of the Act for Mass Redundancy of Employees shall not apply if a bank under receivership sells its business, assets or liabilities. With this new provision, the FSC can efficiently deal with distressed financial institutions while protecting the interests of employees of these financial institutions.

III. To Disclose Information on Bad Debts

In the past, a bank should keep customers' information confidential under Paragraph 2 of Article 48 of the old Banking Act. To balance public interest and personal privacy, the revised Paragraph 2 of Article 48 exempts a bank from its confidentiality obligation on bad debts under certain prescribed circumstances.

We hope the above will be helpful. Should you have any questions, please feel free to let us know.