

L'ACCES AUX MARCHES FINANCIERS DE TAIWAN

Rédacteur : M. Wei Li, avocat

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L'auteur

Né à Shanghai, Monsieur Wei LI étudie à l'Université de la Chine orientale à Shanghai puis y devient avocat en 1991.

Il travaille ensuite pendant quatre ans à l'Administration nationale de l'industrie et du commerce (SAIC) à Shanghai avant de se rendre en Suisse où il obtient une licence en droit à l'Université de Fribourg ainsi qu'un DEA (Diplôme d'études approfondies en droit) à l'Université de Genève. Il est par ailleurs titulaire du brevet d'avocat de la République et Canton de Genève depuis décembre 2004.

Conseil juridique de la Chambre de commerce Chine-Suisse depuis avril 2000, il participe aussi au comité de surveillance de la Fondation Swiss Centers et du Swiss Center de Shanghai dès 2003.

De juillet 2004 à mars 2005, il collabore comme expert juridique stagiaire dans le secteur Politique et commerce de services du SECO, où il a rédigé la présente étude.

Ensuite, il rejoint l'étude d'avocats Bonnard Lawson à Genève et Lausanne.



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Préface

La présente étude est la concrétisation des recherches effectuées par M. Li pour le SECO. Ces recherches visent principalement à soutenir le SECO dans les négociations commerciales qu'il conduit en matière de commerce de services. Nous avons cependant pensé qu'il serait utile de partager les résultats de ces travaux avec tous les acteurs concernés tant dans le service public que dans les milieux économiques. L'étude de M. Li est basée essentiellement sur des sources de droit primaires (actes législatifs, accords GATS/OMC). Elle présente et analyse les conditions d'accès au marché financier sur la base du droit bancaire et boursier en vigueur, en tenant compte des amendements intervenus jusqu'à tout récemment. L'étude se clôt avec une description des engagements contractés par le Taipei Chinois au sein du GATS/OMC.

M. Li illustre à travers les textes législatifs le développement du processus de réforme en cours dans l'île. Au cours de ce processus, engagé parallèlement à l'accession à l'OMC, le secteur financier a entamé une consolidation tandis que la participation directe de l'Etat dans le secteur financier a sensiblement reculé. A l'évidence, les autorités s'emploient à poursuivre le désengagement de l'Etat, ce qui constitue une condition pour dynamiser l'activité privée dans le secteur financier, notamment les investissements par des entreprises étrangères. C'est que Taiwan s'est fixé comme objectif de devenir un centre financier régional. Pour y parvenir, les autorités pourront compter sur leur grand groupes industriels qui ont besoin d'un tissu financier national diversifié et performant. Dans le cadre de cette stratégie, Taiwan nourrit l'ambition en particulier de se positionner comme centre régional de gestion d'actifs, secteur non sans intérêt pour la Suisse. Face à quelques autres places financières de la région déjà bien établies dans ce rôle, Taiwan devra compter sur ses atouts propres, et dans un premier temps sur la possibilité qui lui est affecté d'inciter le rapatriement des avoirs de l'île placés à l'étranger.

M. Li a de même effectué pour le SECO une étude similaire relative à la Chine, également disponible pour le public.

Christian Pauletto
Secrétariat d'Etat à l'économie (SECO)

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Acronymes

APVCA	Asia Pacific Venture Capital Alliance ; Alliance du Capital Risque d'Asie Pacifique
BOMA	Bureau of Monetary Affairs; Bureau des Affaires Monétaires
CBC	Central Bank of China
CDIC	Central Deposit Insurance Corporation
CEPD	Council for Economic Planning and Development
CHF	Franc suisse
FEB	Financial Examination Bureau
FHC	Financial Holding Company
FSC	Financial Supervisory Commission; Commission de Surveillance Financière
GATS	Accord général sur le commerce des services
GDR	Global Depository Receipt
GTSM	Gre-Tai Securities Market
HNWI	High Net Worth Individual
IB	Insurance Bureau of the Financial Supervisory Commission
MOF	Ministry of Finance
NTD	Nouveau dollar de Taiwan
OBU	Offshore banking units
OCDE	Organisation de coopération et de développement économique
OMC	Organisation mondiale du commerce
QDII	Investisseur institutionnel domestique qualifié
QFII	Investisseur institutionnel étranger qualifié
SFB	Securities and Futures Bureau
TAIMEX	Taiwan Mercantile Exchange
TAIFEX	Taiwan Futures Exchange
TFSR	Taiwan Financial Services Roundtable
TSE	Taiwan Stock Exchange
TSEC	Taiwan Stock Exchange Corp.
TVCA	Taiwan Venture Capital Association
TWD	Dollar de Taiwan
USD	Dollar US



Liens utiles

www.banking.gov.tw

www.boma.gov.tw

www.cbc.gov.tw

www.cdic.gov.tw

www.cepd.gov.tw

www.feb.gov.tw

www.fsc.gov.tw

www.fscey.gov.tw

www.ib.gov.tw

www.mof.gov.tw

www.moj.gov.tw

www.sfb.gov.tw

www.tvca.org.tw

english.taipei.gov.tw

english.www.gov.tw

Introduction

Le marché financier de Taiwan est l'un des plus importants du monde. Une réglementation qui compartimente les activités des banques induit une sur-bancarisation. La bourse de Taïpei est très importante dans la région et pourrait profiter d'une libéralisation du cadre financier. Le secteur du capital risque est au quatrième rang mondial en matière de rentabilité et connaît une forte croissance de banques offshore. A l'heure actuelle, le secteur bancaire est toujours dominé par les banques publiques et la présence de banques étrangères est limitée. Entamée dans les années quatre-vingt, la réforme du secteur financier a abouti à des résultats mitigés. La deuxième phase de la réforme a été relancée avec la création d'une autorité de surveillance indépendante, la Financial Supervisory Commission (FSC). Cette mesure s'inscrit dans la volonté du gouvernement de faire de Taiwan un pôle financier régional.

1 Le marché financier

Un secteur bancaire dominé par les banques publiques

Jusqu'à la fin des années 80, le secteur financier taiwanais était resté fermé. Les douze banques contrôlées par l'Etat régissaient le marché et bénéficiaient de marges d'intérêt très confortables. A partir de 1988, la libéralisation du secteur financier, s'est traduite par une plus grande ouverture (notamment vis-à-vis des banques étrangères). Parallèlement, le gouvernement a incité certaines institutions publiques à opter pour le statut de banque commerciale, tandis qu'il privatisait certaines grandes banques et prenait des initiatives pour une gestion plus concurrentielle des banques publiques. Fortement demandée par les plus grands groupes industriels du pays, désireux de créer leurs propres banques, la libéralisation se caractérise en 1991 par l'agrément de 16 banques commerciales privées. Il y a une sur-bancarisation qui s'explique aussi par la réglementation qui compartimente les activités des banques, en les séparant en diverses entités (par exemple : *Securities finance companies, Investment trust companies, commercial banks*).

En avril 2004, le secteur financier était dominé par les banques qui gèrent les deux tiers des actifs financiers taiwanais. On comptait quelques 415 établissements de dépôt se répartissant comme suit :

- 49 banques commerciales domestiques forment la structure de base du système financier avec 72,9 pour cent des dépôts et 91,25 pour cent des prêts en avril 2004. Douze de ces banques sont sous tutelle publique dont les quatre premières, contrôlées à cent pour cent par le gouvernement (*Bank of Taiwan, Taiwan Cooperative Bank, Land Bank of Taiwan, Central Trust of China*), lesquelles détiennent 20 pour cent des actifs, 27 pour cent des dépôts et 28 pour cent des prêts. Les quatre plus grandes banques publiques pourraient être privatisées avant fin 2006.
- 330 institutions communautaires depuis 2003 (380 en 2000) incluant les coopératives de crédit et les établissements de crédit des associations d'agriculteurs et de pêcheurs. Elles fonctionnent



plus ou moins sous la forme de mutuelles. La politique actuelle est de fusionner ces établissements et de les transformer en banques commerciales.

- 36 filiales de banques étrangères.

Une présence des banques étrangères limitée

Malgré que des efforts importants eurent été consentis par les autorités taiwanaises pour ouvrir leur marché le secteur financier est encore protégé par des réglementations contraignantes. Le capital requis pour la création de filiales par des banques étrangères est élevé et pénalisant.

Les 36 filiales de banques étrangères jouent un rôle limité, en raison des restrictions qui pèsent sur le contrôle des changes, des restrictions aux investissements étrangers, et de la concurrence des établissements locaux (elles détiennent 2,5 pour cent des dépôts et 2,8 pour cent des prêts). Ces banques connaissent cependant une rentabilité largement supérieure à celle enregistrée par les banques locales. Elles concentrent leur activité dans les opérations en devises pour le compte de clients institutionnels (*corporate clients*), dans le financement de projets d'investissements et dans les activités de banques d'affaires. Seules les banques étrangères les plus importantes – telle que la *Citibank* détenant une licence de banque de détail (*retail banking*) – fournissent des services aux particuliers et sont orientées vers le crédit à la consommation.

Une ouverture progressive du secteur bancaire aux sociétés étrangères est attendue. La banque centrale vient d'autoriser les filiales taiwanaises des banques étrangères à offrir des services de gestion de portefeuilles financiers liés aux opérations sur les taux de change. Les clients peuvent désormais confier aux banques étrangères la gestion de leur compte en devises pour mener des opérations de marge. Cette libéralisation est destinée à favoriser la réduction des opérations sous-jacentes sur les devises.

L'autorité de surveillance devrait prochainement autoriser les institutions financières étrangères, ainsi que les fonds de placement à long terme situés à l'étranger, à investir dans les banques taiwanaises en difficulté. Cette mesure s'inscrit dans la volonté du gouvernement de faire de Taiwan un pôle financier régional. Les réformes bancaires sont menées à un rythme soutenu en vue de la signature prévue en 2006 des accords de Bâle II.

Une réforme du secteur bancaire qui se poursuit

Depuis l'adoption du *Financial Holding Company Act (FHC Act)* de 2001, lequel encourage les institutions financières à se regrouper en holdings financiers, les institutions financières ne peuvent plus obtenir de licences leur permettant d'ouvrir de nouvelles agences. Seules les fusions-acquisitions leur permettent de se développer. En juin 2004, le Ministère des finances (MOF) a réitéré son

intention de limiter les nouvelles licences pour les FHCs, et à l'avenir l'attribution des licences sera plus stricte.

Le gouvernement a récemment annoncé son intention d'entamer la deuxième phase des réformes financières avec la création d'un centre de services financiers destiné à favoriser les investissements locaux par les investisseurs institutionnels étrangers. Parallèlement, pour réaliser l'ouverture aux capitaux étrangers, fixée comme une priorité par le gouvernement, le Council for Economic Planning and Development (CEPD) vise un objectif de part des capitaux étrangers de 30 pour cent de la capitalisation totale de la bourse de Taipei (TSE). Ainsi, le plafond du montant des crédits accordés par les banques étrangères a-t-il été dernièrement augmenté. Toutefois, les banques concernées par cette réforme sont celles qui enregistrent un actif net d'un montant supérieur à 8,9 milliards de USD. L'actif net englobe les actifs de roulement et les profits réservés. On dénombre 25 banques étrangères qui seraient éligibles pour cette nouvelle réforme.

Dès 2004, certaines nouvelles tendances sont apparues dans le secteur financier. D'abord, des entreprises taiwanaises implantées en Europe de l'Est souhaitent voir les institutions financières taiwanaises les suivre et s'implanter dans ces pays. Ensuite, la montée du risque de change existant entre le TWD et le USD engendre une hausse des opérations effectuées par les banques sur les produits dérivés. Enfin, le marché de la gestion des patrimoines financiers individuels est en pleine croissance. Ce marché, estimé 625 millions de USD de revenus annuels selon les banques taiwanaises, est centré sur les patrimoines individuels supérieurs à 100'000 USD et représente environ 400'000 à 500'000 portefeuilles.

Fin octobre 2004, Le Président taiwanais a relancé le train des réformes bancaires et la consolidation du secteur. Quatre objectifs ont été définis :

- faire en sorte que trois Financial Holding Company (FHC, il en existe 14) détiennent chacune au moins 10 pour cent du marché d'ici à la fin 2005. Ce projet, défini depuis longtemps par les autorités de régulations et de surveillance, ne s'était jamais vu imposer de date butoir.
- diviser par deux le nombre de FHC d'ici à la fin 2006. La réforme apparaît difficile, puisque la création de ces holdings avait été en 2000 une des solutions principales à la réduction du trop grand nombre d'acteurs et avait surtout servi aux groupes à réunir leurs activités autour d'un même pôle.
- réduire les institutions financières publiques à six d'ici à la fin 2006 (aujourd'hui, 12 sont contrôlées par l'Etat). Cette réduction, passant par des privatisations ou des fusions-acquisitions, ne fait cependant en aucun cas renoncer l'Etat au contrôle de ces institutions. En effet, bien que n'ayant plus la majorité formelle, il conserve souvent une tutelle de fait en étant l'actionnaire majoritaire.



- s'assurer enfin qu'au moins une institution financière taiwanaise soit contrôlée par un investisseur étranger ou cotée sur un marché étranger. Cette prise de contrôle devrait intervenir avant la fin 2006.

L'ouverture du marché taiwanais aux capitaux étrangers existe depuis déjà longtemps, mais la majorité des investisseurs étrangers s'étaient refusés à entrer de manière trop forte dans le capital de banques privatisées à cause du contrôle que gardait l'Etat. Cette dernière mesure peut apparaître ainsi comme une garantie de renonciation à une tutelle gouvernementale sur au moins une banque publique. L'Etat, qui possède les quatre plus importantes banques taiwanaises, pourra également, tout en libéralisant le marché, effectuer une opération économique fructueuse dans un contexte de déficit public grandissant. La nécessité de ces mesures est connue et de nombreuses réformes ont été faites. L'autorité de surveillance en la matière, et le ministère des finances avant elle, ont depuis longtemps tenté ces mêmes réformes. La différence est qu'aujourd'hui, pour la première fois, des dates butoirs ont été fixées, ce qui permettra une évaluation à moyen terme, et que pour la première fois aussi, la présidence s'engage directement dans le processus de réformes.

Une bourse importante qui tirerait des avantages d'une libération du cadre financier

La Bourse de Taipei (TSE), qui figure parmi les quinze plus grands marchés de titrés au monde, est au cœur de l'économie taiwanaise et joue un rôle essentiel dans le financement des entreprises. La capitalisation est encore largement détenue par des particuliers qui influent sur la variation des cours et les rendent très spéculatifs. Le marché des actions est particulièrement actif. Le marché obligataire est beaucoup plus réduit en raison d'un cadre juridique et fiscal inadapté. Le marché des produits dérivés se met progressivement en place. Bien que les opérateurs taiwanais aient été autorisés à procéder à des transactions à l'étranger dès 1992, la création d'un véritable marché de Futures sur produits financiers à Taiwan date de juillet 1998 avec l'ouverture du TAIFEX (Taiwan Futures Exchange). Le marché taiwanais est très spéculatif et très sensible à son environnement.

La régulation du marché est assurée par le *Securities and Futures Bureau* (SFB, voir ci-après). Les autorités sont donc très vigilantes sur l'évolution du marché, notamment du fait de sa volatilité. Le gouvernement n'hésite pas à intervenir directement en cas de forte baisse en achetant directement des actions sur le marché. Cette initiative, qui déroge au libre jeu du marché et suscite les critiques des investisseurs étrangers, traduit le dilemme auquel sont confrontées les autorités pour libéraliser le système financier.

Le marché est déjà largement ouvert. Le plafond de participation étrangère dans le capital des sociétés listées, qui était limité à 15 pour cent avant 1999, a été porté à 100 pour cent, sauf pour un nombre limité de secteurs d'activité. Les fonds étrangers qui souhaitent investir sur la place de Taipei ne sont plus soumis à la procédure d'autorisation préalable dite QFII (*Qualified Foreign Institutional Investors*) délivrée par le Ministère des finances depuis octobre 2003. Les investisseurs étrangers ont

dès lors renforcé leur présence. Ils détiennent 20 pour cent de la capitalisation boursière, et ont une influence déterminante sur la fixation des cours. Les flux d'investissements étrangers sur la place de Taipei ont atteint 74,8 milliards de USD en juillet 2004. Ils contribuent ainsi à valoriser la devise taiwanaise sur le marché des changes.

L'ouverture du marché implique une restructuration du secteur financier qui compte trop d'établissements peu compétitifs. Ce constat s'applique aux banques, aux compagnies d'assurance et aux maisons de titres. Plus de 150 courtiers sont établis à Taiwan. Un processus de consolidation est considéré comme nécessaire, lequel devrait voir certains groupes émerger du lot et devenir les acteurs dominants du marché.

Les groupes taiwanais lèvent par ailleurs des capitaux à l'étranger. Ils procèdent à l'émission de GDR (*Global Depository Receipt*) sur les places américaines et européennes pour obtenir des financements en devises. L'île représente ainsi 40 pour cent des opérations réalisées en 2003 en Asie (hors Japon) contre seulement 13,5 pour cent en 2000. Cette évolution témoigne du développement international des groupes taiwanais. Elle renforce l'influence exercée par les grandes places financières sur la bourse de Taipei.

Le secteur du capital risque se classe au quatrième rang mondial en matière de rentabilité

Un récent rapport de l'*International Institut for Management Development (IMD)* classe Taiwan au quatrième rang mondial en matière de rentabilité de son secteur du capital risque, derrière les Etats-Unis, Hong Kong et la Finlande. On dénombre 241 entreprises de capital risque actives à Taiwan, avec un montant total d'engagements de 4,9 milliards de USD dans près de neuf mille projets. Encouragé par les pouvoirs publics, le capital risque taiwanais s'est spécialisé dans les secteurs de hautes technologies et, après avoir investi aux Etats-Unis, élargit son champ d'action à l'Asie et à l'Europe.

En 2001, le gouvernement a adopté les « *Scope and Guidelines for Venture Capital Funds* », qui remplacent les « *Regulations Governing Venture Capital Investment Enterprises* » de 1983. Ces directives ont simplifié la création des sociétés de capital risque, en transformant leur statut en société de droit commun, soumise toutefois à enregistrement auprès du ministère de l'économie. En revanche, les sociétés dont les fonds sont apportés par des sociétés soumises à la loi bancaire (*Banking Act*), à la loi sur les holdings financiers (*FHC Act*) ou encore aux dispositions réglementant les compagnies d'assurances et les sociétés de courtage, restent soumises à des conditions restrictives d'activité.

L'Association des sociétés de capital risque de Taipei a pris une dimension nationale en 1999 sous le nom de *Taiwan Venture Capital Association (TVCA)*. Sa mission consiste à promouvoir l'industrie du capital risque, tant au niveau national qu'international, et à créer un environnement propice à son développement. La TVCA se donne notamment pour mission de renforcer les échanges entre les



sociétés de capital risque et les entreprises locales et étrangères. En outre, la loi fait obligation à toutes les sociétés de capital risque taiwanaises de devenir membres de cette association. Qui plus est, toute demande d'aide gouvernementale doit obligatoirement être instruite et validée par la TVCA. C'est donc un partenaire incontournable dans la perspective d'une recherche de partenaire ou de financement par le secteur du capital risque taiwanais.

La TVCA a d'ailleurs lancé en 2001 l'initiative d'une *Alliance du Capital Risque d'Asie Pacifique (Asia Pacific Venture Capital Alliance – APVCA)* à laquelle se sont jointes cinq autres associations nationales de capital risque en Asie (les associations de Hong Kong, d'Indonésie, de Corée du Sud, de la Malaisie et de Singapour). L'APVCA s'est fixé pour but de promouvoir le développement et la croissance de l'industrie du capital risque dans la région, elle vise à établir un réseau de contacts entre les investisseurs et les entrepreneurs en Asie, et à faciliter l'activité des sociétés dans les différents marchés de la région (cf. le « *Memorandum of Understanding Among the Venture Capital Associations of the Asia Pacific* », 14 novembre 2001). La TVCA a également exprimé son intérêt pour un développement des relations du capital risque taiwanais avec ses homologues européens.

Récemment, le gouvernement a envisagé d'ouvrir les activités de banque d'affaire et de conseil financier aux sociétés de capital risque installées à Taiwan. Il étudierait notamment la possibilité de les autoriser à intervenir sur le marché du rachat et de la restructuration d'entreprises. Ces deux propositions répondent aux demandes exprimées par la profession, et visent à renforcer encore la profitabilité du secteur.

Une forte croissance des banques offshore

D'après la statistique de la Banque centrale de janvier 2005, il existait fin novembre 2004 70 filiales de banques offshore dont le siège est à Taiwan (*offshore banking units, OBU*). Parmi elles, 42 appartenaient à des banques taiwanaises et 28 à des banques étrangères. Le montant total de leurs actifs s'élevait à 69,59 milliards de USD, soit une augmentation de 14,98 pour cent par rapport au même mois de l'année précédente, et de trois pour cent par rapport au mois de juillet 2004. Les actifs des banques taiwanaises représentent 62 pour cent du total (moins trois points par rapport au mois d'octobre). Ces fonds proviennent principalement de dépôts faits par les bureaux apparentés (47 pour cent des flux de fonds totaux), par les institutions commerciales (27 pour cent), et par les institutions financières (7 pour cent). Géographiquement, ils proviennent à 67 pour cent d'Asie, 21 pour cent d'Amérique, 8 pour cent d'Europe. Ces fonds sont principalement renvoyés dans le circuit des dépôts, soit vers des institutions financières, soit vers des bureaux apparentés (54 pour cent de l'actif total). Les prêts comptent pour 26 pour cent, et l'investissement en titres pour 10 pour cent. L'Asie, menée par la Chine, est la principale destination de ces fonds, suivie par l'Amérique et l'Europe. L'encours des prêts octroyés par les OBUs s'élevait à la fin du mois d'août 2004 à 18.23 milliards de USD dont 84 pour cent touchent des débiteurs non-résidents. Les OBUs taiwanaises



restent donc bien spécialisées sur la zone asiatique et principalement sur la Chine, marché privilégié des investisseurs taiwanais.

2 Les autorités de surveillance

2.1 La Commission de Surveillance Financière (FSC)

Dans le sillage de la *Financial Holding Company Act* adoptée en 2001, Taiwan tente depuis des années d'intégrer la libéralisation et la mondialisation des marchés financiers. Le gouvernement a décidé de se doter d'un organisme performant et à même de contrôler à lui seul les institutions financières, en évitant ainsi la collégialité de la Banque Centrale (CBC), du Bureau des Affaires Monétaires (*Bureau of Monetary Affairs – BOMA*) et du *Central Deposit Insurance Corporation (CDIC)*. C'est ainsi que la loi du 10 juillet 2003 (*Act Governing the Establishment and Organisation of the Financial Supervisory Commission*) a créé la *Financial Supervisory Commission (FSC)*, laquelle est séparée du Ministère des Finances et de la Banque centrale pour assurer son indépendance.

Cette commission a pris ses fonctions le 1^{er} juillet 2004. Elle est constituée de neuf membres (*commissioners*), dont un président et deux vice-président, qui sont proposés par le Premier ministre et nommés par le Président. Ils prennent leurs décisions à la majorité. Ses responsabilités comprennent la supervision et l'examen de toutes les institutions financières (holdings, banques, compagnies d'assurance...), ainsi que l'application des normes internationales et le respect des ratios prudentiels.

Quatre bureaux sont dépendants de la FSC, à savoir:

- le bureau des affaires monétaires (Banking Bureau/Bureau of Monetary Affairs - BOMA),
- le bureau d'assurance (Insurance Bureau - IB),
- le bureau des bourses et contrats à terme (Securities and Futures Bureau - SFB),
- le bureau d'examen (Financial Examination Bureau - FEB).

A part la FSC, des autres organes du gouvernement central ont aussi des rapports directs avec le secteur financier.

2.2 Les autres autorités de surveillance

Les autres entités dotées de fonctions de surveillances sont les suivantes:

- Le *Council for Economic Planning and Development* (CEPD), lequel est chargé d'étudier et d'arrêter les plans des réformes, y compris les réformes du secteur financier.
- Le *Ministry of Finance* (MOF), lequel est chargé de la réglementation et de l'approbation des licences, et a également pour fonction de contrôler les établissements financiers. Il subsiste dans la nouvelle organisation de juillet 2004, après avoir toutefois transféré à la FSC toute sa compétence de contrôle.
- La *Central Bank of China* (CBC), c'est-à-dire la banque centrale, laquelle supervise les opérations des institutions financières, subsiste dans la nouvelle organisation, mais abandonne une partie de son pouvoir à la FSC dans le but d'éviter les conflits qui pouvaient l'opposer au BOMA.
- La *Central Deposit Insurance Corporation* (CDIC), qui protège les déposants contre les défaillances éventuelles d'établissements financiers (jusqu'à 1 million de TWD).
- Les autorités locales, qui détiennent certaines banques et exercent un contrôle sur les associations et coopératives de crédit (elles sont, depuis juillet 1997, chargées de l'audit des actifs liquides de ces établissements).

Sous l'impulsion de la FSC, six organisations et associations financières ont décidé, ce mois, de former une fédération nationale des sociétés de services financiers qui portera le nom de *Taiwan Financial Services Roundtable* (TFSR). Cette fédération s'érigera en interlocuteur des pouvoirs publics pour toutes les questions touchant aux services financiers. Elle s'inspire de la *Financial Services Roundtable* (FSR) américaine qui rassemble 100 des 150 plus importantes sociétés de services financiers.

3 La réglementation relative au marché financier

3.1 Principaux actes législatifs

La législation en la matière comprend des lois, des réglementations (ou règles) et, des directives, ainsi que des décisions de l'autorité de surveillance. Elles sont accessibles sur les sites internet du gouvernement (www.banking.gov.tw, www.moj.gov.tw, www.fscey.gov.tw), souvent accompagnées de traduction en anglais. Parmi celles qui s'appliquent aux opérateurs étrangers, les plus importantes sont les suivantes:

Lois:

- The Banking Act of the Republic of China, 2000/11/01, amended 2005/05/18
- Financial Holding Company Act, 2001/07/09, amended 2005/05/18



- The Credit Cooperatives Act of the R.O.C, 2004/02/04
- The Act Governing Bills Finance Business, 2004/02/04
- Trust Enterprise Act, 2000/12/20
- The Financial Institutions Merger Act, 2000/12/13
- Offshore Banking Act, 1997/10/11
- Foreign Exchange Control Act, 1995/08/02

Règlements (par ordre chronologique) :

- Directions Governing Banks Engaging in Wealth Management Business 2005/1/20
- Regulations Governing Foreign Bank Branches and Representative Offices 2004/3/5
- Regulations Governing Limitation on Types and Amounts of the Securities in which a Commercial bank may Invest 2004/06/30
- Guidelines For Banks Engaging In Financial Derivatives Business 2004/2/13
- Regulations of the Procedures for Banking Institutions to Evaluate Assets and Deal with Past-Due/Non-Performing Loans 2004/1/6
- Regulations Regarding Article 7 of The Money Laundering Control Act (Cash Transactions) 2003/11/18
- Regulations Governing Institutions Engaging In Credit Card Business 2003/10/7
- Regulations Regarding Article 8 of The Money Laundering Control Act (Suspicious Transactions) 2003/8/4
- Regulations Governing Qualification Requirements For Responsible Persons Of Banks 2003/5/27
- Rules on Preferred Share Offerings by Taiwan R.O.C. Banks 2003/5/25
- Regulations Governing Issuance Of Financial Debentures By Banks 2003/5/13
- Enforcement Rules of the Banking Act 2002/8/27
- Enforcement Regulations for Bank Internal Audit Control System 2002/1/31
- Guidelines for a Local Branch of a Foreign Bank in Providing Information on Opening Deposit Accounts with its Head Office at the Request of its Customers 2002/1/2
- Regulations Governing Financial Institutions Applying To Engage In Bills Finance Business 2001/12/25
- Rules for Outsourcing of Financial Services of Financial Institutions 2001/12/11
- Regulations Governing Approval of the Issuance of Stored Value Cards by Banks 2001/10/8
- Rules Governing the Management and Employment of Collective Investment Trust Fund 2001/9/25
- Guidelines for the Qualifications of Responsible Person of Trust Business And Special Knowledge or Experience Requirement for Operating or Managing Persons 2001/7/29
- Regulations Governing Authorization and Administration of Service Enterprises Engaged in Interbank Credit Information 2001/7/4
- Regulations Governing The Recognition Of An Impartial Third Party And Its Public Auction Procedure 2001/6/14
- Rules Governing Offshore Banking Branches 1999/3/19
- Guidelines Governing the Operation of Local Banking Institutions Regarding the Opening of the New Taiwan Dollar Accounts by Non-resident Foreign Nationals 1996/11/15

Une description des principales dispositions du droit financier taiwanais figure dans les trois sous-chapitre ci-après consacrés aux sujets suivante : 1) banques et sociétés holding financières, 2) banques étrangères, et 3) gestion d'actifs.

3.2 Les banques et les sociétés holding financières

L'organisation et l'activité des banques sont régies par la Loi sur les banques (*Banking Act of the Republic of China*) qui vient juste d'être amendée, par la Loi sur l'activité fiduciaire (*Trust Enterprise Act*) et par la Loi sur les sociétés holdings financières (*Financial Holding Company Act*).

3.2.1 La Loi bancaire

Selon l'article 20 de la Loi sur les banques, les banques peuvent être constituées sous l'une des trois formes juridiques suivantes : les banques commerciales (*Commercial Banks* - Articles 70 à 76), les banques professionnelles (*Banks for a Special Business Purpose* - Articles 87 à 99) et les sociétés d'investissements fiduciaires (*Investment Trust Companies* - Articles 100 et suivants). Le champ d'activité des banques commerciales est très large, mais ces dernières ne sont pas autorisées à investir sur le marché immobilier sauf pour leur usage propre. Les banques professionnelles ont pour mission de fournir des crédits pour les secteurs industriels, l'agriculture, les exportations et importations, les petites et moyennes entreprises, le marché immobilier, et les régions. Les sociétés d'investissements fiduciaires sont des institutions financières qui acceptent et gèrent, en qualité de mandataire et selon un objectif donné, les avoirs et les capitaux qui leur sont confiés; elles accomplissent par ailleurs en tant qu'intermédiaire des investissements spécifiques relatifs au marché des capitaux.

La banque est une personne morale et doit être constituée sous la forme de société anonyme (Article 52). Les critères d'établissement sont fixés par l'autorité compétente (Article 52). Après avoir obtenu l'autorisation, en respectant la Loi sur les sociétés (*Company Law*), la banque est tenue de former la société, de libérer le capital total, de s'inscrire au registre du commerce, et de solliciter la licence auprès de l'autorité. Les actions sont nominatives et la détention par un seul actionnaire de plus de quinze pour cent des actions émises est soumise à l'accord de l'autorité. La détention de vingt-cinq pour cent des actions émises est prohibée (Article 25).

La banque ne peut commencer son activité qu'après en avoir obtenu l'autorisation de l'autorité compétente (Article 21) et ne peut pas opérer en dehors des activités fixées par cette dernière (Article 22). Les institutions non bancaires ne peuvent pas accepter des dépôts du public, ni offrir des services fiduciaires, ni des activités en devises.

L'autorité compétente divise le pays en plusieurs régions et fixe le capital minimal de chaque type de banque selon le nombre d'habitants et la situation économique de la région ainsi que le type de banque (Article 23). Elle détermine également la restriction d'établir des banques ou des filiales de celles-ci d'après la situation économique et financière du pays (Article 26). Elle autorise, en coordination avec de la Banque centrale (CBC), l'établissement des filiales des banques à l'étranger (Article 27). Elle fixe et ajuste au besoin le ratio entre les actifs et les passifs des banques, tandis que les pourcentages des diverses provisions/réserves sont fixés par la Banque centrale. Elle fixe enfin les qualifications professionnelles exigées responsables des banques.

Le gouvernement ou les banques mettent en place un système de garantie des dépôts afin de protéger l'intérêt des déposants. Les banques sont également tenues de garantir la confidentialité des données personnelles des clients sauf dans les cas prévus par des lois ou des règles de l'autorité compétente.

En vertu de l'Article 50, les banques sont tenues de verser trente pour cent de leur bénéfice annuel net à un fonds de réserve destiné à couvrir des pertes et à faire face à des amortissements avant d'acquitter les obligations fiscales. Lorsque le fonds de réserve n'équivaut pas au montant du capital social, l'attribution des bénéfices ne peut dépasser quinze pour cent du capital social.

Les articles 116 à 124 sont consacrés aux banques étrangères. Ces dispositions sont complétées par la Règle sur la filiale et la représentation des banques étrangères (*Regulations Governing Foreign Bank Branches and Representative Offices*). La banque étrangère au sens de cette loi désigne la filiale d'une banque étrangère qui a été établie à Taiwan selon la Loi sur les sociétés et la Loi sur les banques ainsi que l'autorisation du gouvernement (Article 116). L'autorité compétente détermine la localité où les banques peuvent s'installer (Article 117). L'autorité et la Banque centrale décident le champ d'activité des banques étrangères et la Banque centrale accorde également l'approbation pour des activités en devises (Article 119). Une banque étrangère ne peut accepter que des dépôts en monnaie locale à moins que la Banque centrale décide autrement (Article 122).

La Loi sur les banques contient aussi des dispositions concernant le champ d'activité des diverses sortes des banques, les fonds propres et la liquidité, les règles de gestion, l'organisation interne, la comptabilité, la révision, la fusion, la mise en faillite et liquidation, les responsabilités légales (articles 125 et suivants).

3.2.2 La Loi relative à l'activité fiduciaire

La Loi sur l'activité fiduciaire (*Trust Enterprise Act*) régit le champ d'activité des institutions qui fournissent de tels services, les qualifications professionnelles des personnes responsables, le contrat de mandat, les interdictions de certaines opérations, et les responsabilités légales. Elle est applicable aux banques autorisées à opérer des activités fiduciaires (Article 3). La société s'organise sous forme

de société anonyme, et les banques sont exemptées de cette restriction (Article 10). L'arrêt temporaire ou définitif des activités fiduciaires d'une banque est soumis à l'approbation de l'autorité (Article 15). Il est prohibé de garantir le capital investi et le profit minimal (Article 31). Les sociétés fiduciaires sont tenues d'adhérer à l'Association des sociétés fiduciaires qui édicte les réglementations et la conduite pour le secteur.

3.2.3 La Loi relative aux sociétés holding financières

La Loi sur les sociétés holdings financières (*Financial Holding Company Act*) régit la fondation, l'administration et la surveillance de telles sociétés. La société holding financière doit avoir la forme de société anonyme et est tenue d'indiquer clairement dans la raison sociale le terme de « société holding financier ». Les autres institutions ne peuvent utiliser ce terme. Lorsqu'en application de cette loi une banque effectue des fusions ou scissions, les dispositions relatives à la société anonyme de la Loi sur les sociétés s'appliquent, et ce même si la banque n'est pas constituée sous cette forme juridique (Article 2).

Une personne physique ou morale qui détient une participation de plus de vingt-cinq pour cent du capital social d'une banque, d'une compagnie d'assurance ou d'une société de négociation de titres, doit solliciter l'autorisation de fondation d'une société holding financière auprès de l'autorité compétente (Article 16). Cette dernière fixe le capital social minimal. En cas d'acquisition ou d'actes similaires, l'approbation de la Commission de la concurrence loyale est nécessaire (Article 19).

Une société holding financière peut investir dans les domaines suivants :

- Banques (*Banking Enterprises*);
- Sociétés de papiers valeurs (*Bills finance enterprises*);
- Sociétés de carte crédit (*Credit card businesses*);
- Sociétés fiduciaires (*Trust Enterprises*);
- Compagnies d'assurance (*Insurance Enterprises*);
- Sociétés de valeurs mobilières (*Securities Enterprises*);
- Sociétés de contrats à terme (*Futures Enterprises*);
- Sociétés d'investissement (Venture capital investment enterprises);
- Institutions financières étrangères autorisées par l'autorité (Foreign financial institutions which have been approved for investment by the MOF);
- Les autres sociétés relatives à l'activité financière et autorisées par l'autorité (*Other enterprises which the MOF considers to be financially related businesses*).

Une société holding financière étrangère (qui détient des participations dans des banques, des compagnies d'assurances et des sociétés de valeurs mobilières) qui remplit des conditions suivantes et qui a obtenu l'approbation de l'autorité compétente est exemptée de fonder une nouvelle société holding financière à Taiwan. Elle est soumise aux conditions suivantes (Article 25):

- Respecter les conditions de fondation imposées par l'article 9 alinéa 1 de la même loi, à savoir la situation saine d'activité financière ainsi que la capacité de gestion, le capital suffisant et enfin l'impact sur l'intérêt public et sur la concurrence du secteur;
- Disposer des expériences de gestion d'une société holding financière et jouir d'une bonne réputation;
- L'autorité de surveillance du pays d'origine a approuvé l'investissement à des sociétés de Taiwan (réciprocité), et coopère avec l'autorité compétente de Taiwan dans la surveillance;
- L'autorité de surveillance du pays d'origine et la société holding financière mère exercent conjointement la surveillance de la société filiale à Taiwan;
- La société holding financière mère a mandaté des intermédiaires à Taiwan pour les affaires contentieuses et non contentieuses.

Ces conditions sont également applicables aux institutions financières étrangères qui opèrent déjà dans des activités concernant les plusieurs secteurs dans leur pays d'origine.

3.3 La présence des banques étrangères

La Règle sur l'établissement et la surveillance de la filiale et de la représentation des banques étrangères (*Regulations Governing Foreign Bank Branches and Representative Offices*) régit la présence des banques étrangères à Taiwan. Une banque étrangère ne peut commencer son activité qu'après avoir obtenu l'autorisation, laquelle est accordée lorsque les conditions suivantes sont réunies (Article 2) :

- Ne pas avoir commis des violations graves des obligations légales dans les cinq années précédentes;
- Au cours de la dernière année, la banque doit être classée dans les cinq cents plus grandes banques du monde au niveau des actifs ou du capital, sinon la banque devait avoir effectué des affaires avec les banques et les entreprises de Taiwan pour un montant supérieur de 1 milliard de USD dont les crédits à long ou à moyen terme s'élèvent à 0.18 milliards de USD, à moins que le pays d'origine ait signé avec le Taiwan des conventions qui prévoient autrement;
- La banque exerce les activités internationales, jouit d'une bonne réputation, dispose du capital minimal et respecte le ratio de risque fixé par les autorités de surveillance;
- Les personnes chargées d'administrer et de gérer la filiale disposent des connaissances professionnelles adéquates et les expériences sur les affaires financières internationales;
- La banque mère et l'autorité de surveillance du pays d'origine sont compétentes pour la surveillance de la filiale, et cette autorité délivre préalablement une approbation autorisant l'établissement de la filiale ainsi qu'un accord de coopération de surveillance;
- La banque fournit la preuve de l'absence des tous actes entravant une activité irréprochable.

La banque mère fournit le capital dont la filiale a besoin et supporte toute ou la grande partie de la dette de cette dernière (Article 2).



Le capital minimal pour une filiale est de 0.15 milliard de NTD et un montant additionnel de 0.12 milliard de NTD pour chaque nouvelle filiale. L'augmentation du capital de la filiale est soumise à l'approbation des autorités de surveillance et la Banque centrale (Article 3).

Lors de sa demande de l'établissement de la filiale, la banque remettra à l'autorité divers documents, notamment (Article 6):

- La requête;
- L'étude de la faisabilité qui inclut la stratégie et le projet de la banque mère; la connaissance de la situation politique, économique et financière de Taiwan et des pays voisins; la connaissance de la législation, de la fiscalité et du système bancaire de Taiwan; la concurrence éventuelle, les échanges commerciaux bilatéraux, l'investissement mutuel ainsi que les activités bancaires entre le pays d'origine et Taiwan;
- Des données de la banque mère, à savoir : l'organisation, le champ d'activité, le bilan et le rapport annuel de trois dernières années, les données relatives aux responsables, les principaux actionnaires dont les dix premiers actionnaires et les personnes qui détiennent au moins dix pour cent du capital;
- Des données concernant la situation du pays d'origine : les autorités de surveillance, le système de la protection des déposants, la politique du contrôle de devises, les réglementations sur les banques étrangères;
- La preuve de son rang sur la liste des principales banques du monde;
- Les règlements définissant la gestion irréprochable et les explications sur le respect des législations dans les cinq dernières années;
- L'approbation des autorités de surveillances du pays d'origine;
- L'accord de coopération entre les autorités de surveillances du pays d'origine et celle de Taiwan, les documents attestant la bonne conduite de la banque ;
- Les données relatives aux personnes chargées de gérer la filiale;
- Le plan d'activité de la filiale notamment la prévision sur les profits et les pertes dans les trois années avenir;
- La décision du conseil d'administration autorisant l'établissement de la filiale;
- Le rapport annuel révisé de la banque;
- La procuration des mandataires locaux pour les affaires contentieuses et non contentieuses;
- Le statut de la banque;
- La licence de la banque fixant le champ d'activité.

La préparation de l'activité de la filiale est limitée dans une durée de huit mois. Le changement des locaux ainsi que la cessation d'activité de la filiale sont soumises à l'approbation de l'autorité de surveillance.

Le montant total des actifs nets de toutes filiales à Taiwan et ceux de la section des affaires internationales de la banques mère ne sera inférieur à deux tiers du capital minimal d'exploitation fixé par les autorités. En cas contraire, ces dernières impartissent un délai à la banque pour verser le montant manquant. Le champ d'activité de la filiale est indiqué dans la licence (Article 7).

La filiale ne peut pas accorder à une personne physique ou morale des crédits en devises dépassant 25 pour cent des actifs nets de la banque mère. Les crédits en NTD sont limités à 1 milliard de NTD ou à un montant inférieur de dix pour cent du crédit total en NTD, lorsque



l'actif net de la filiale n'a pas dépassé de 0.3 milliard NTD au cours de l'année précédente; ou en cas contraire à 2 milliards de NTD ou à un montant inférieur de quinze pour cent.

La filiale est tenue d'instaurer d'une part le système du contrôle interne, d'autre part les règles de la gestion des risques (Article 16).

Le rapatriement des profits de la filiale doit respecter des réglementations en la matière et requérir une autorisation.

Les mandataires locaux, qui sont obligatoires, ont la tâche d'informer et de requérir l'autorisation dans de nombreux cas, notamment (Article 21) :

- La dissolution ou la cessation d'activité de la filiale;
- La réorganisation, la liquidation et la faillite de la filiale;
- La violation grave des obligations légales ou les cas où l'autorité de surveillance du pays d'origine retire à la banque mère l'autorisation d'exercer son activité;
- Le changement du nom ou du siège principal de la banque mère;
- Le changement de la participation qualifiée (le transfert de plus de dix pour cent des actions) ou le changement du montant du capital de plus de dix pour cent;
- La fusion, la cession ou l'acquisition du capital ou des activités;
- L'investissement important de la filiale à Taiwan;
- Le cas des endettements importants en cours ou prévisibles;
- Les grandes affaires litigieuses;
- Le changement de la politique d'exploitation;
- La modification du système bancaire et des législations du pays d'origine.

Une banque étrangère est également autorisée à établir un bureau de représentation dont l'activité est strictement limitée à l'information et au contact professionnel. Les conditions d'approbation sont les suivantes (Articles 23 suivants) :

- Ne pas avoir commis des violations graves des obligations légales dans les trois ans précédentes;
- Au cours de la dernière année, la banque doit être classée parmi les mille plus grandes banques du monde au niveau des actifs ou capitaux ou, la banque doit avoir effectué des activités avec des banques et des entreprises de Taiwan pour un montant supérieur de 0.3 milliard de USD, à moins que le pays d'origine ait signé avec Taiwan des conventions qui prévoient autrement;
- La banque doit jouir d'une bonne réputation et l'autorité de surveillance du pays d'origine a autorisé l'établissement de la représentation.

La requête de la banque doit être accompagnée de nombreux documents qui sont similaires à ceux de l'établissement de la filiale. La banque doit terminer la préparation dans les huit mois après avoir obtenu l'autorisation et informer le Ministère de l'Economie en respectant les exigences de la Loi sur la société. La représentation de la banque remettra le rapport annuel de son activité à l'autorité de surveillance et doit requérir l'approbation de ceux-ci dans deux mois dès la fin de l'année d'exercice de la banque mère.

Le changement des locaux et la cessation d'activité de la représentation font également l'objet de l'autorisation. L'autorité de surveillance peut charger des spécialistes d'effectuer des contrôles sur les activités et d'autres affaires relatives de la représentation de la banque, et ordonner à celle-ci de fournir le rapport d'activité et tous les renseignements dont elle a besoin.

3.4 La gestion de patrimoines financiers

Le 7 juillet 2005, l'autorité de surveillance (FSC) a publié la Directive sur les banques opérant la gestion des patrimoines financiers (*Directions Governing Banks Engaging in Wealth Management Business*; ci-après : la Directive) et, la Directive sur les maisons de titres opérant la gestion des patrimoines financiers (*Directions Governing Securities Firms Engaging in Wealth Management Business*). La Directive est entrée en vigueur trois mois après.

La FSC a insisté sur le fait que suite à l'ouverture du marché financier et à l'internationalisation des activités dans le secteur, l'autorité encourage la création de nouveaux produits financiers ainsi que la coopération entre les banques, les assurances et les négociants de valeurs mobilières. Il y a de plus en plus d'institutions financières locales et de filiales de banques étrangères qui mettent en place des centres de la gestion des patrimoines financiers visant les clients dits HNWI (*High Net Worth Individual*). Le développement des activités de gestion des patrimoines financiers fait partie du Plan visant à promouvoir Taiwan comme centre financier régional (plan qui est coordonné par la CBC). À l'aide des nombreuses mesures, le gouvernement veut instaurer un système et reflétant un standard international en la matière, accroître la concurrence internationale, inciter le retour des capitaux nationaux placés à l'étranger et ainsi faire de Taiwan un pôle régional de gestion des patrimoines financiers.

Largement inspirée des expériences de pays développés tels que les Etats-Unis et la Suisse, la Directive met d'abord l'accent sur les mesures anti-blanchement. Cela se justifie d'une part, par le fait que de nombreux clients de ce service sont des étrangers qui résident dans des pays peu stables politiquement et qui cherchent une sécurité pour leur fortune. D'autre part, la vérification de l'identité de ces clients et des mouvements des capitaux sont difficiles. À l'heure actuelle, la majeure partie des clients reste encore des résidents locaux. La protection des déposants, la gestion des risques et le système du contrôle interne sont par conséquent également des aspects importants de la Directive.

Parmi les références sur lesquelles repose la Directive figure notamment le Principe de la gestion des risques pour les activités des banques privées et la Règle de la surveillance des sociétés holding financière sur les activités des banques privées filiales de Réserve fédérale des Etats-Unis, de même que la Règle sur l'anti-blanchiment d'argent pour les activités internationales des banques privées publiée par les douze banques privées internationales.



La Directive se compose de treize points prévoyant notamment :

- la définition de la gestion des patrimoines financiers,
- le règlement du champ d'activité,
- le règlement sur l'opération,
- l'organisation correspondant à cette activité,
- la gestion des opérateurs, le contrôle interne,
- la gestion des risques, et
- le système de la révision interne.

La gestion des patrimoines financiers est soumise à trois conditions cumulatives, à savoir : les clients doivent répondre aux critères HNWI, les gestionnaires doivent posséder les qualifications professionnelles nécessaires, enfin les services doivent être adaptés aux besoins et aux objectifs de placement du client. Les critères de HNWI sont déterminés par chaque banque. Les services offerts comprennent des activités ordinaires de banque, les activités fiduciaires et celles relatives à des valeurs mobilières, les activités d'assurance et de négociations des titres à travers les sociétés holding financières. L'autorisation de la Banque centrale (CBC) est obligatoire pour des produits et services financiers en devises. La banque qui propose des conseils de placement en valeurs mobilières et les contrats à terme doivent en outre respecter les législations en la matière et obtenir l'approbation des autorités compétentes.

La banque doit arrêter des règlements internes spécifiques correspondant à cette activité, lesquelles sont soumises à l'agrément du conseil d'administration. En ce qui concerne une filiale de la banque étrangère, la banque mère détermine les personnes en charge de la gestion patrimoniale. Les réglementations comprennent d'une part la politique de gestion et, d'autre part, les critères opérationnels.

La gestion de patrimoines financiers est assumée par des gestionnaires professionnels qui sont regroupés dans un département spécialisé et séparé des autres au sein de la banque. Les gestionnaires doivent acquérir des qualifications spéciales, dont les critères sont fixés par la Fédération nationale des associations des sociétés financières et approuvés par les autorités compétentes.

La banque est tenue de mettre en place un système de contrôle interne et de gestion des risques, lequel comprend au moins les aspects suivants : l'information sur les clients, la surveillance des opérations douteuses, la gestion des risques liés aux services et les avoirs déposés, la restriction des échanges entre les parties liées (le personnel de la banque et les actionnaires) et la prévention sur les conflits internes, la procédure litigieuse entre les clients et la banque.

L'information relative au client vise essentiellement aux critères d'acceptation ou du refus des clients, aux principes d'examen à l'ouverture de compte, à la vérification périodique des données personnelles des clients.



La surveillance des opérations douteuses exige l'instauration, selon les exigences des législations en vigueur, d'un système interne d'inspection des opérations douteuses, d'une gestion spécifique pour les opérations hautement risquées et de la formation des collaborateurs en matière anti-blanchiment.

La gestion des risques liés aux services offerts et aux avoirs déposés concerne d'une part la promotion des services et la gérance des avoirs doivent respecter les dispositions relatives en la matière. Toutes les publicités de promotions des produits et des services doivent être examinées par les personnes responsables. Une politique des produits adéquats, qui comprend une liste des risques relatifs à ces produits et services, est obligatoire. Le contenu de cette politique est fixé par l'Association nationale des banquiers (*The Bankers Association of the Republic of China*) et approuvé par les autorités compétentes. Tous les conseils fournis aux clients doivent être sous forme écrite et doivent être conservés. Des personnes qualifiées et indépendantes des gestionnaires adressent aux clients des rapports périodiques et occasionnels sur l'état de la gestion.

La restriction des échanges entre les parties liées (les personnels de la banque et les actionnaires) et la prévention sur les conflits internes se réfère aux dispositions relatives aux activités fiduciaires ainsi qu'aux dispositions en matière de la lutte contre la concurrence déloyale. La séparation de l'administration des informations du secteur de la gestion des patrimoines financiers de celle des autres secteurs de banque est impérative.

La procédure litigieuse entre les clients et la banque comprend au moins la procédure de la plainte de clients, la procédure de l'inspection ainsi que la procédure de recours.

La procédure, le système de la révision interne ainsi que les responsabilités légales pour la gestion des patrimoines financiers sont prévues par les dispositions y relatives de la Loi sur la banque.

4 Engagements GATS/OMC

Taiwan a formulé des engagements pour ouvrir le marché financier lors de son accession à l'OMC/GATS fin 2001. Une reproduction *in extenso* des engagements relatifs au secteur financier figure en annexe à la présente étude.

Taiwan n'a pas contracté d'engagements relatifs à la vente de produits financiers en Mode 1, excepté en ce qui concerne la fourniture et le transfert d'information financières et de conseil.

En ce qui concerne la consommation à l'étranger (Mode 2), Taiwan a pris un engagement qui est limité aux services financiers autorisés dans le pays où ils sont consommés.



Les engagements de Taiwan relatifs au Mode 3 (présence commerciale) sont structurés en deux parties : une partie énonçant des restrictions de portée générale, puis une partie indiquant les restrictions applicables à des activités de service spécifiques. Dans les deux cas, Taiwan n'a inscrit aucune restriction au Traitement national dans ses engagements. Cela implique que Taiwan s'engage à traiter les prestataires étrangers sur pied d'égalité avec les prestataires taiwanais. De ce fait, la description ci-après des engagements en Mode 3 n'aborde que des restrictions relatives à l'Accès au marché. Ces restrictions sont relativement nombreuses et sont le reflet d'un système financier en réforme mais pas libéralisé en profondeur, à l'époque de l'accession à l'OMC (fin 2001). Enfin, il convient de rappeler que les engagements GATS comprennent une partie dite « horizontale » applicable à tous les secteurs de services et donc aussi au secteur financier. Les restrictions relatives au Mode 3 inscrites dans cette partie horizontale ne sont pas décrites ici mais figurent en annexe à la présente étude.

4.1 Les restrictions de portée générale concernant la présence commerciale de prestataires étrangers

Les engagements concernant la fourniture des services bancaires par le biais d'une présence commerciale au Taipei sont limités aux établissements suivants: banques commerciales, filiales de banques étrangères, filiales offshore de banques, firmes étrangères de courtage en devises, organismes d'émission de cartes de crédit et sociétés de financement des factures. L'engagement stipule que les banques, les sociétés de financement des factures et les firmes étrangères de courtage en devises doivent être constituées en sociétés anonymes.

Aux termes de la Loi sur la banque (*The Banking Act*), nul ne peut détenir des parts sociales d'une banque commerciale au-delà de vingt cinq pour cent du total des actions émises, et les personnes apparentées à l'actionnaire ne peuvent détenir plus de 15 pour cent du total des actions de la banque, sauf avec l'agrément du Ministre des finances.

De même, en vertu de la Règle sur la filiale et le bureau de représentation de banque étrangère (*Regulations Governing Foreign Bank Branches and Representative offices*), s'agissant des filiales de banques étrangères, les banques étrangères peuvent demander d'établir leur première filiale au Taipei lorsqu'elles satisfont au critère d'activité antérieure ou si elles figurent parmi les 500 principales banques du monde par leur actif ou leur capital. Le critère d'activité antérieure consiste, pour les banques étrangères, à avoir réalisé un volume d'affaires d'au moins 1 milliard de USD avec les banques ou des grandes entreprises du Taipei durant les trois années civiles précédentes, dont au moins 180 millions de USD accordés sous la forme de crédits à moyen ou à long terme.

Il est important de préciser que le droit au Taiwan en la matière, contrairement au droit suisse, ne fait pas la distinction entre une filiale et une succursale. Il emploie le terme l'établissement affilié.

Certains documents de l'OMC relatifs à ce sujet utilisent le mot succursale. Cela risque de créer de confusion.

Selon les dispositions de la Règle sur la filiale de des activités bancaires outre mer (*Rules Governing Offshore Banking Branches*), S'agissant des filiales bancaires offshore: filiales de banques offshore ne peuvent ni effectuer de transactions ni procéder à des échanges entre devises étrangères et nouveau dollar de Taiwan, ni pratiquer le placement direct en actions de sociétés ou dans l'immobilier; en outre la clientèle des succursales bancaires offshore est limitée aux non-résidents et aux banques de change étrangères.

Aucune nouvelle société fiduciaire n'est autorisée.

S'agissant des maisons de courtage en devises, les investissements dans de tels établissements font l'objet des restrictions suivantes: les investissements de chaque investisseur national ou étranger sont limités à dix pour cent des fonds propres; les investissements de chaque investisseur national ou étranger autre que les institutions financières sont limités à vingt pour cent des fonds propres. Les investissements effectués par les firmes de courtage sont exemptés des restrictions précitées.

4.2 Les restrictions relatives à certaines activités spécifiques

Nombreuses réglementations topiques régularisent des domaines spécifiques. A titre d'exemple, la Règle sur la limitation des types et du montant de titres que la banque commerciale peut investir (*Regulations Governing Limitations on Types and Amounts of the Securities in which a commercial Bank may Invest*), la Loi sur le contrôle des devises (*Foreign Exchange Control Act*), ou encore la Loi sur les entreprises fiduciaires (*Trust Enterprise Act*).

L'acceptation de dépôts en compte de chèque en devises et l'émission de certificats négociables en devises de dépôt à terme sont interdites. Les filiales bancaires offshore qui acceptent les dépôts en devises ne peuvent accepter des dépôts en numéraire de devises étrangères ni autoriser le retrait en nouveaux dollars de Taiwan (NTD) de dépôts en devises étrangères.

Les crédits accordés à un client en devises étrangères par les banques étrangères ne peuvent dépasser 25 pour cent de l'actif net de leur siège, et le crédit en NTD par client est limité à 10 pour cent du crédit total accordé en NTD ou à 1 milliard de NTD si ce montant est plus élevé. Le financement en devises étrangères n'est disponible que lorsqu'il existe des transactions sous-jacentes. Les prêts en devises étrangères sont réservés aux entreprises nationales et aux particuliers ressortissants du Taiwan. Il est interdit de convertir en NTD les prêts en devises étrangères à l'exception des prêts après exportation.

La garantie en devise est réservée aux entreprises et aux particuliers ressortissants de Taiwan.



Les activités de change à terme ne sont possibles que lorsqu'il y a des transactions sous-jacentes. Les succursales de banques ne sont pas autorisées à effectuer des opérations pour compte propre en actions de sociétés.

Les firmes étrangères de courtage monétaire ne sont pas autorisées à opérer sur le marché du NTD.

Pour les services fiduciaires, les banques ne sont pas autorisées à recevoir des fonds fiduciaires dont le principal ou les intérêts sont garantis.

Dans le domaine de la gestion d'actifs (par exemple gestion de trésorerie et de portefeuille, toutes formes de gestion de placements collectifs, gestion de caisses de pensions, services de garde, de dépôts et de fiducie), en ce qui concerne les entreprises de placement fiduciaires en valeurs mobilières, les parts de capital social détenues par un seul actionnaire et des personnes qui lui sont apparentées sont limitées à 25 pour cent, sauf dans les cas où au moins 20 pour cent du capital social sont apportés par des établissements qui satisfont aux conditions suivantes :

- Etablissements de gestion de fonds : s'élevant à 65 milliards de NTD au minimum (fonds communs de placement, sociétés d'investissement à capital variable ou sociétés de placement), y compris les actifs gérés par les succursales de holding contrôlées à 50 pour cent ou plus;
- Banques : classement parmi les 1'000 principales banques du monde par leurs avoirs ou leur actifs nets;
- Compagnies d'assurance : détention d'avoirs en valeurs mobilières s'élevant à 8 milliards de NTD au minimum. Sociétés de dépôt de titres : leur nombre est limité à un dépositaire par bourse de valeurs. Toutefois, des banques ayant l'agrément du BOMA pour pratiquer la garde de titres sont autorisées à offrir ces services pour des fonds de placement.

En matière de services de règlement et compensation (settlement and clearing), l'engagement stipule que seules des bourses de valeur ou des sociétés de dépôt de titre agréées par ces bourses peuvent fournir de tels services. En outre, une seule société de dépôt par bourse est autorisée.



ANNEXES

- Banking Act
- Offshore Banking Act

The Banking Act of the Republic of China

AS LAST AMENDED ON 18 MAY 2005

CHAPTER I - GENERAL PROVISIONS

Article 1 (Purpose)

This Act is enacted to improve the conduct of the banking business, to protect the rights of depositors, to coordinate with the development of productive enterprises and to keep Bank credit abreast of national financial policy.

Article 2 (Definition of Bank)

The term, "Bank", as used in this Act shall mean an organization formed and registered in accordance with the provisions of this Act for purposes of transacting a banking business.

Article 3 (Scope of Business of Banks)

Businesses which may be conducted by a Bank are as follows:

1. To accept Checking Deposits;
2. To accept various kinds of other Deposits;
3. To manage Trust Funds under mandate;
4. To issue Bank Debentures;
5. To extend loans;
6. To discount bills and notes;
7. To invest in securities;
8. To invest in productive enterprises;
9. To invest in residential construction and construction for business purposes;
10. To handle domestic and foreign remittances;
11. To accept commercial drafts;
12. To issue Letters of Credit;
13. To guarantee domestic and foreign transactions;
14. To act as collecting and paying agent;
15. To underwrite and trade in securities for its own account or for customers;
16. To manage issuance of bonds and debentures and to provide advisory services with respect thereto;
17. To act as attester for the issuance of stocks, bonds and debentures;
18. To manage various kinds of property under mandate;
19. To conduct businesses related to investment and trusts regarding securities;
20. To buy and sell gold bars/coins and/or silver bars/coins and foreign currencies;
21. To conduct warehousing, custody and agency businesses in relation to the businesses itemized above; and
22. To conduct other relevant businesses which may be authorized by the Central Competent Authority.

Article 4 (Authority Over Scope of Business Issues)

The scope of business of each Bank shall be determined individually by the Central Competent Authority in accordance with the classification of the Bank and the items of business specified in this Act, and shall be indicated on the Business License of each such Bank.

However, transactions relating to foreign exchange must be approved by the Central Bank of China.

Article 5 (Term of Credit)

Credit extended by a Bank under this Act shall be called short-term credit if such credit matures within not more than one (1) year; medium-term credit if such credit matures in more than one (1) year and not more than seven (7) years; and long-term credit if such credit matures in more than seven (7) years.

Article 5-1 (Definition of Accepting Deposits)



The term, "Accept(ing) Deposits", as used in this Act shall mean the act of accepting Deposits or other funds from the general public¹, and agreeing to return the principal or to pay an amount equal to or greater than the principal.

Article 5-2 (Definition of Extend(ing) Credit)

The term, "Extend(ing) Credit", as used in this Act shall mean the following business conducted by a Bank:

1. Extending loans;
2. Extending overdraft facilities;
3. Discounting bills and notes;
4. Extending guarantees;
5. Accepting drafts; and
6. Other business as specified by the Central Competent Authority.

Article 6 (Definition of Checking Deposit)

The term, "Checking Deposit", as used in this Act shall mean a Deposit which, as agreed, may be drawn at any time without interest by use of a check signed by the depositor or by use of automatic equipment under mandate.

Article 7 (Definition of Demand Deposit)

The term, "Demand Deposit", as used in this Act shall mean a Deposit which can be drawn by the depositor at any time by use of a passbook or by other agreed means.

Article 8 (Definition of Time Deposit)

The term, "Time Deposit", as used in this Act shall mean a Deposit of a fixed term which can be drawn by the depositor upon maturity by presentation of a Deposit certificate or by other agreed means.

*Article 8-1 (Termination and Pledge of Time Deposits)

Time Deposits shall not be withdrawn before maturity, provided, that the depositor may pledge a time deposit or terminate a time deposit by giving seven (7) days prior notice to the Bank.

Rules governing the pledge and early-termination of time deposits shall be prescribed by the Competent Authority after consulting with Central Bank of China.

*Article 9 (Definition of Savings Deposit)

Deleted

Article 10 (Definition of Trust Funds)

The term, "Trust Funds", as used in this Act shall mean funds which are received by a Bank in the position of trustee and managed in accordance with the terms of a trust agreement for the interest of a beneficiary named by the trustor.

Article 11 (Definition of Bank Debentures)

The term, "Bank Debentures", as used in this Act shall mean bonds/debentures issued by a Bank in accordance with the relevant provisions of this Act, after having obtained the approval of the Central Competent Authority, to provide funding for the extension by such Bank of medium-term and/or long-term credit.

Article 12 (Definition of Secured Credit)

The term, "Secured Credit", as used in this Act shall mean the following collateral has been furnished to secure such credit:

1. Mortgage over immovables or movables;
2. Pledge over movables or rights;
3. Bills/Notes receivable from business transactions of a borrower; and/or
4. Guarantees extended by a government agency in charge of the public treasury, a Bank or a government authorized credit agency.

*Article 12-1 (Limitation on Guarantees)

In extending self-use residence loans or consumer loans, if the Bank has obtained sufficient collateral in accordance with the preceding Article, the Bank shall not require provision of guarantor(s) for whatsoever reasons.

Subject to the preceding paragraph, if a guarantor is required by the Bank in connection with a credit extension, the guarantee shall be in a specific amount.

In seeking recovery, the Bank shall first pursue the borrower and then pursue the guarantor(s) for the remaining portion on a pro-rata basis; provided, that such shall not apply to applications for execution title or in the provisional proceedings.

Article 13 (Definition of Unsecured Credit)



The term, "Unsecured Credit", as used in this Act shall mean a credit extended without having obtained any of the collateral listed in the preceding Article.

Article 14 (Definition of Medium- or Long-term Loan Repayable in Installments)

The term, "Medium- or Long-term Loan Repayable in Installments", as used in this Act shall mean a loan extended by a Bank, the principal and interest on which shall be repayable and payable in installments in accordance with the terms of a loan agreement and other relevant terms to be observed by the borrower determined based on negotiations between the parties and the financial ability of the borrower to make repayment.

Article 15 (Definition of Commercial Negotiable Instrument)

The term, "Commercial Negotiable Instrument", as used in this Act shall mean a bill of exchange or promissory note issued in connection with domestic or foreign trade in goods or services.

An aforesaid bill of exchange on which the recipient of the goods sold or services provided is named as payor and which has been accepted by such recipient, shall be called a trade or commercial acceptance.

In cases where the aforesaid recipient mandates a Bank as the payor and the bill of exchange is accepted by the Bank, such bill of exchange shall become a banker's acceptance. In cases where a person, who sells goods or provides services, signs and issues a bill of exchange in an amount based on transaction documents and on which a Bank is mandated as the payor and such bill of exchange is accepted by such Bank, such

bill of exchange shall also be called a banker's acceptance.

Purchase of a post-dated bill of exchange or promissory note by a Bank by means of deducting non-accrued interest in advance shall be called a discount.

Article 16 (Definition of Letter of Credit)

The term, "Letter of Credit", as used in this Act shall mean an instrument which a Bank issues upon the request of a customer to notify and authorize a beneficiary named by the customer to issue a draft or other certificate in accordance with a prescribed form and in an amount not to exceed a certain limit, such draft to be accepted or paid by the Bank or its designated correspondent upon the beneficiary performing certain agreed upon terms and conditions.

***Article 17 (Definition of Deposit Reserve)**

Deleted.

Article 18 (Definition of Responsible Person of a Bank)

The term, "Responsible Person of a Bank", as used in this Act shall mean the person designated to be responsible in accordance with the provisions of the Company Law, other laws or the organic regulations and rules of the relevant Bank.

***Article 19 (Definition of Competent Authority)**

The term, "Competent Authority", as used in this Act shall mean the Ministry of Finance.

***Article 20: (Definition of Bank)**

The term, "Bank", as used in this Act shall include:

1. Commercial Banks;
2. Banks for a Special Business Purpose; and;
3. Investment and Trust Companies.

Except for those Banks established by the Government, the type and special business purpose of a Bank shall be indicated in the Bank's name.

A non-Bank may not use a name specified in Paragraph 1 or any other name that would likely cause people to mistake it for a bank.

Article 21 (Requirement of Formation Procedures)

A Bank or a branch office thereof shall not commence business operations before having completed the formation procedures prescribed in Chapter II of this Act.

Article 22 (Restrictions on Business Activity)

A Bank shall not conduct any business other than as approved by the Central Competent Authority.

Article 23 (Minimum Capital Requirements)

The minimum capital requirements for different types of Banks shall be determined or adjusted, as applicable, by the Central Competent Authority based on the population and economic conditions in each of the geographic areas established by the Central Competent Authority and the type of Bank, respectively.



In the event that a Bank's capital falls below such minimum requirements after the aforesaid adjustment, the Central Competent Authority shall prescribe a period of time within which such Bank to increase its capital and shall revoke such Bank's Permit² if the Bank fails to comply within such period of time.

Article 24 (Currency of Capital)

The capital of a Bank shall be established in terms of the national currency.

*Article 25

The shares issued by a Bank shall be registered shares.

The same person or same concerned party who holds more than fifteen percent (15%) of a Bank's issued shares with voting rights shall notify the Bank and the Bank shall report such fact to the Competent Authority for approval. Except for shares owned by financial holding companies, the Government and with Competent Authority approval in connection with managing financially troubled institutions, the amount of a Bank's shares held by the same person or same concerned party may not exceed twenty-five percent (25%) of the total amount of the Bank's issued shares with voting rights. The establishment and management of financial holding companies shall be prescribed by separate laws.

If, during any given month, there is any change in the shareholding of a person or concerned party which holds more than fifteen percent (15%) of the issued shares of a Bank with voting rights or shares held by such person or concerned party are pledged, such person or concerned party shall notify the Bank thereof by the fifth (5th) day of the following month and the Bank shall report to the Competent Authority accordingly prior to the fifteenth (15th) day of each month.

As used in the preceding two paragraphs, the term, " same person " , shall mean the same natural or juristic person, and the term, " same concerned party " , shall mean the principal, his/her spouse, blood relatives within the second degree and enterprises of which the principal or his/her spouse is the responsible person.

If the total amount of a Bank's shares held by the same person or by the principal, his/her spouse and children who are under twenty (20) years old exceeds one percent (1%) of the total amount of a Bank's issued shares with voting rights, such principal shall notify the Bank thereof.

Article 26

The Central Competent Authority may impose restrictions on the establishment of new Banks or additional branches in specific geographic areas depending on local financial and economic conditions.

Article 27

The establishment of Overseas branch(es) by a Bank shall require the approval of the Central Competent Authority after consultation with the Central Bank of China.

*Article 28

If a commercial bank or a bank for a special business purposes conducts a trust or securities business, the business and accounting [for the trust or securities business] must be independent; rules related to the business scope and risk management [of such businesses] may be prescribed by the Competent Authority.

A Bank conducting a trust or securities business shall appropriate funds exclusively for such business operations. The amount of such exclusive business operation funds shall be as approved by the Competent Authority.

Unless otherwise provided by other laws, a Bank conducting a trust business shall be subject to the provisions of Chapter Six of this Act.

Unless otherwise provided by other laws or rules prescribed by the Competent Authority, a Bank's staff members conducting trust or securities business shall keep customer information and transaction materials confidential; such confidentiality obligations shall apply to dealings between such staff members and the staff members of other departments of the Bank.

Article 29

Unless otherwise provided by law, any organization other than a Bank shall not Accept Deposits, manage Trust Funds or public property under mandate or handle domestic or foreign remittances.

Upon a violation of Paragraph 1 of this Article, remedial action shall be taken by the Competent Authority or the competent authority in charge of the particular enterprise, together with the juridical police authority, and the case shall be referred to the court for action.

If the organization concerned is a juristic person, the responsible person shall be jointly and severally liable for repayment of the relevant obligations.

In performing the duties stipulated above, a suspected party's accounting books and documents may be searched and detained in accordance with the law, facilities including signs may be torn down and/or other necessary actions may be taken.



Article 29-1

Using borrowed money, accepting investments, making the depositor a shareholder or using other classifications in order to accept deposits or obtain capital from the general public³ by agreeing to pay or paying a bonus, interest, share dividend interest or other reward in an excessive amount, shall be deemed the act of Accepting Deposits.

Article 30

If, in connection with extension of loans, issuance of Letters of Credit or issuance of guarantees, the borrower, mandator or the party on behalf of which the guarantee is issued is a company limited by shares and, under the authority of a board of directors resolution, makes a written commitment to the Bank offering certain property as collateral and agreeing not to encumber the same by mortgage or pledge to a third party, the Bank may permanently or temporarily waive the registration of real estate mortgages or chattel mortgages or the delivery of the items pledged. However, the Bank may request subsequent registration or delivery thereof within a period of time prescribed by the Bank if and when necessary.

In the case of a breach of the aforesaid commitment by the borrower, mandator or guarantor, such borrower, mandator or guarantor's directors who participated in making such decision and the wrongdoer shall be jointly and severally liable for compensation.

Article 31

Regarding the issuance of Letters of Credit and undertakings to accept Commercial Negotiable Instruments by a Bank, the rights and obligations between the Bank and its customer shall be governed by an agreement.

If security is required of a customer in connection with the aforesaid business, such security shall comply with Article 12 of this Act.

Article 32

No unsecured credit shall be extended by a Bank to enterprises in which the Bank holds three percent (3%) or more of the total paid-in capital, to its staff members, to its Major Shareholders, to any interested party of its own responsible person or of a staff member in charge of credit extensions. However, the foregoing prohibition on unsecured credit shall not apply to consumer loans and loans extended to the government.

The credit amount of the aforesaid consumer loans shall be as prescribed by the Central Competent Authority.

The term, "Major Shareholder", as set forth in this Act shall mean a shareholder who holds at least one percent (1%) of the total number of issued and outstanding shares of the Bank. Where a Major Shareholder is a natural person, the shares of his/her spouse and the shares of his/her minor children shall be counted in the total number of shares held by such Major Shareholder.

Article 33

For any secured credit extended by a Bank to enterprises in which the Bank holds at least five percent (5%) of the total paid-in capital of said enterprises, to its own responsible person, to its staff members, to its Major Shareholders, to any interested party of its own responsible person or of a staff member in charge of credit extensions, the terms of such extended credit shall not be more favorable than those terms offered to other same category customers. If the credit amount to be extended by a Bank exceeds the amount prescribed by the Central Competent Authority, a Bank needs the concurrence of at least three-quarters of all of such Bank's directors present at a meeting attended by at least two-thirds of the directors, to extend such credit.

[In addition to the foregoing], the amount of the aforesaid connected credit extension to each related party, the aggregate amount of such credit extensions thereof, the terms and conditions of such credit extension and the same category customers referred to under this preceding Paragraph shall be prescribed by the Central Competent Authority after consultation with the Central Bank of China.

Article 33-1

The definition of interested parties as used in the preceding two articles shall mean:

1. Spouse, relatives by blood within the third degree of relationship or relatives by marriage within the second degree of relationship of the responsible person of a Bank or of a staff member in charge of credit extensions by such Bank.
2. An enterprise solely invested in, by or a partnership invested in by the responsible person of a Bank, by a staff member in charge of credit extensions of such Bank or by an interested party stipulated in Subparagraph 1 of this Article.
3. An enterprise of which more than ten percent (10%) of the total issued and outstanding shares or paid-in capital is solely or totally held by the responsible person of a Bank, by a staff member in charge of credit extensions of such Bank or by an interested party stipulated in Subparagraph 1 of this Article.
4. An enterprise invested in by a Bank in which a director, supervisor or manager of such invested enterprise is the responsible person, a staff member in charge of credit extensions of such Bank or an interested party stipulated in Subparagraph 1 of this Article; provided, that such investment and the holding of such concurrent positions has been approved by the Central Competent Authority.

³ This translation uses the term, "general public". However, a literal translation would be "a group of persons or undefined persons". The reader should note that this varies from the language used in Article 5-1.



5. A juristic person or other organization in which the representative or administrator is the responsible person of a Bank, a staff member in charge of credit extensions of a Bank or an interested party stipulated in Subparagraph 1 of this Article.

Article 33-2

A Bank shall not "cross" extend unsecured credit to the responsible person or a Major Shareholder of such Bank's correspondent bank or to an enterprise whose responsible person is also the responsible person of the correspondent bank. Any secured [cross] credit extension thereof shall be handled in accordance with Article 33 of this Act.

*Article 33-3

The Competent Authority may impose restrictions on credit extensions or other transactions by a Bank with the same person, the same concerned party and/or the same related entities. The amount limits on such credit extensions or other transactions shall be as stipulated by the Competent Authority.

The terms, " same person" and " same concerned party" , as used in the preceding Paragraph shall have the meanings set out in Article 25, Paragraph 4 of this Act; and the term, " same related entities" , as used in the preceding Paragraph shall have the meaning prescribed in Articles 369-1 through 369-3, Article 369-9 and Article 369-11 of the Company Law.

*Article 33-4

The foregoing shall apply to persons falling under Articles 32, 33 or 33-2 who use other persons' names to apply for credit extensions. The amount of credit extensions obtained by persons who obtained such extensions by using other persons' names and the amount of loan proceeds transferred to such persons by using other persons' names shall be deemed as credit extensions to such persons for purposes of the preceding paragraph.

*Article 33-5

In determining whether the amount invested by a Bank is more than three percent (3%) or five percent (5%), as applicable, of the paid-in capital of an entity for purposes of Article 32-1, Paragraph 1 and Article 33, Paragraph 1 the following investments shall be included:

1. The amount invested by one or more of the Bank's subsidiary(ies);
2. The amount invested by a third party acting for the Bank; and
3. The amount invested by a third party acting for the Bank's subsidiary(ies).

The term, "Bank's subsidiary", as used in the preceding Paragraph, shall have the meaning set out in Article 369-2, Paragraph 1, of the Company Law.

Article 34

A Bank shall not offer allowances, gifts or other payments in addition to regular interest in order to solicit Deposits. This provision shall not apply to Trust Funds for which dividends may be declared pursuant to the relevant trust agreement(s).

Article 35

Neither the responsible person nor any staff member of a Bank shall accept, under any pretense, commissions, rebates and the amount of other unwarranted benefits from depositors, borrowers or other customers.

Article 35-1

Neither the responsible person nor any staff member of a Bank may concurrently hold a position(s) in another Bank(s) unless in the capacity of a director or supervisor of an invested Bank arising from an investment relationship and then only with the approval of the Central Competent Authority.

Article 35-2

The qualifications of, and requirements necessary for being, the Responsible Person of a Bank shall be as prescribed by the Central Competent Authority.

Article 36

The Central Competent Authority may, when necessary, impose appropriate restrictions on the extension of unsecured Loans or Guarantees by Banks after consultation with the Central Bank of China.

The Central Competent Authority may, when necessary, set the standard for the ratio of a Bank's major assets to major liabilities and major liabilities to net worth after consultation with the Central Bank of China. Any Bank, which ratio does not meet the above prescribed standard, in addition to being punished pursuant to the relevant provisions, may be restricted by the Central Competent Authority in distributing its profits.

The terms "major asset" and "major liability", as used in the preceding Paragraph shall be as defined by the Central Competent Authority taking into consideration the business nature of the different kinds of Banks.

Article 37



The value of items to be pledged or properties to be mortgaged by a borrower shall accurately be determined by Banks based on current price, rate of depreciation and saleability.

Whenever necessary, the Central Bank of China, in order to control credit, may impose a maximum lending rate on loans secured by selected types of items for pledge or properties for mortgage.

Article 38

Banks may extend medium- or long-term loans for the purchase or construction of residential buildings or buildings for business purposes. However, the term of such loans may not exceed thirty (30) years.

Article 39

A Bank may extend medium-term loans to individuals for purchase of durable consumer goods or may discount notes issued by a buyer and endorsed by a distributor/seller.

Article 40

In extending the loans referred to in the preceding two Articles, the procedure for repayment in instalments used in medium- or long-term loans shall be applicable. The Central Bank of China may, when necessary, regulate and control the terms and duration of repayment.

Article 41

A Bank's interest rates shall be based on an annual rate and shall be posted in the Bank's place of business⁴.

Article 42

A Bank shall provide reserves for different types of Deposits and other types of liabilities held by such Bank in accordance with the reserve rates established by the Central Bank of China from time to time.

The scope of the "other types of liabilities" as mentioned in the preceding paragraph shall be determined by the Central Bank of China after the consultation of the Ministry of Finance.

*Article 42-1

The Bank shall obtain the Competent Authority's approval prior to issuing cash storage cards and shall post reserves thereon in accordance with regulations prescribed by the Central Bank of China; rules for approval and management of such issuance shall be prescribed by the Competent Authority after consulting with the Central Bank of China.

The term, " cash storage card" , shall mean a card which uses electronic, magnetic or optical methods to store the value of money such that the cardholder may use all or part of the saved value to exchange for merchandise or services or to otherwise make payments.

Article 43

In order to assure that a Bank maintains adequate liquidity, the Central Bank of China, after consultation with the Central Competent Authority, may from time to time prescribe a minimum ratio between the current assets of the Bank and the Bank's various liabilities. Upon a Bank's failure to comply with said minimum ratio, the Central Competent Authority shall notify the Bank to make due adjustment within a specified period of time.

*Article 44

The ratio between equity capital and risk assets of a Bank shall not be less than eight percent (8%); when necessary, the Competent Authority may, based on international standards, increase the ratio.

For Banks which are required by the Competent Authority to produce consolidated financial statements, such ratio between equity capital and risk assets shall also be met on such consolidated basis.

The scope and the method of calculating the aforesaid equity capital and risk assets shall be as prescribed by the Competent Authority. When necessary, the Competent Authority may set restrictions on a Bank's risk assets.

If the actual ratio of a Bank is lower than the required ratio, the Competent Authority may prohibit such Bank from paying dividends and/or take other necessary actions. Applicable regulations with respect to the above matters shall be prescribed by the Competent Authority.

Article 45

The Central Competent Authority may, at any time, appoint a designee, entrust an appropriate institution or direct a local Competent Authority to appoint a designee to examine the business, financial affairs and other relevant affairs of a Bank or related parties, or direct a Bank or related parties to prepare and submit, within a prescribed period of time, balance sheets, property inventories or other relevant documents for examination. The Central Competent Authority may, when necessary, appoint professionals to verify



statements, materials or affairs which are subject to examination pursuant to the preceding Paragraph, and such professionals shall, in turn, present a report to the Central Competent Authority. Any fees arising therefrom shall be borne by the relevant Bank(s).

***Article 45-1**

A Bank shall establish an internal control system and audit system; regulations governing the objectives, principles, policies, operating procedures, qualifications and conditions for internal auditors, scope of internal control audits that a certified public accountant shall be engaged to undertake, and other matters requiring compliance, shall be prescribed by the Competent Authority.

A Bank shall establish an internal processing system and procedures with respect to the evaluation of asset quality, the creation of loan loss provision, the clearing of and writing off of non-performing and non-accrual loans. Applicable regulations with respect to the above system and procedures shall be prescribed by the Competent Authority.

Where any Bank operations are entrusted to another person to handle, the Bank shall adopt an internal operation system and procedures covering the scope of the matters entrusted, protection of customer rights and interests, risk management, and internal control principles. Applicable regulations with respect thereto shall be prescribed by the Competent Authority.

Article 45-2

Banks shall reinforce security protections for their business premises, vaults, rental safe deposit boxes (rooms), automated teller machines, and cash transport operations. Applicable regulations with respect thereto shall be prescribed by the Competent Authority.

A Bank shall exercise the due care of a good-faith administrator with respect to deposit accounts. Where a deposit account is suspected of illegality or an obviously irregular transaction, a Bank may temporarily suspend deposits, withdrawals, or outward remittances of funds.

Standards for determining suspected illegality or obviously irregular transactions of accounts under the preceding paragraph and operational procedures and regulations for temporary account suspension shall be prescribed by the Competent Authority.

Article 46

In order to safeguard the interests of depositors, a Deposit insurance organization may be formed by the Government or by one or more Banks.

Article 47

In order to make reserves mutually available and to increase the availability and efficiency of credit, Banks may prescribe rules and regulations regarding the formation of an interbank organization to provide mutual support.

Article 47-1

Institutions wishing to engage in a money market or credit card business shall first obtain the approval of the Central Competent Authority. Administrative rules governing such institutions shall be promulgated by the Central Competent Authority after consultation with the Central Bank of China.

***Article 47-2**

Article 4, Article 32 through Article 33-4, Article 35 through Article 35-2, Article 36, Article 45, Article 45-1, Article 49 through Article 51, Article 58 through Article 62-9, Article 64 through Article 69 and Article 76 shall apply to institutions conducting a money market business.

***Article 47-3**

A financial information service business which intends to engage in an inter-bank funds transfer clearing services shall obtain the Competent Authority's approval to do so. If such business also involves large amount funds transfer clearing, the approval of the Central Bank of China is also required. Regulations with respect to the approval and management of such business shall be prescribed by the Competent Authority after consulting with the Central Bank of China.

To engage in an inter-bank credit information business shall require prior approval from the Competent Authority. Regulations with respect to the approval and management of such business shall be prescribed by the Competent Authority.

Article 48

A Bank may not accept requests from third parties to stop payment on Deposits, remittances or others, to detain collateral or articles in such Bank's custody, or other similar requests, unless such are made by judgment of a court or under relevant provisions of law.

A Bank shall keep confidential all information regarding Deposits, loans or remittances etc. of its customers unless otherwise required by law or by order of the Central Competent Authority.



*Article 49

At the end of each business year, each Bank shall prepare and submit its annual report and business report, financial statements, determination as to distribution of profits or make up of losses and other items designated by the Competent Authority to the Competent Authority and the Central Bank of China respectively, for recordation, within fifteen (15) days after such reports are approved by such Bank's annual shareholders' meeting or if there is no shareholders' meeting, within fifteen (15) days after such reports are approved by such Bank's board of directors, as applicable. The matters to be included in the annual report shall be as prescribed by the Competent Authority.

In addition to publishing its financial statements and other items specified by the Competent Authority in a daily newspaper in the place where such Bank is located or in such other manner as may be designated by the Competent Authority, a Bank shall also post one copy thereof in a conspicuous place in each of its business premises for [public] review; provided, that if Bank complies with Article 36 of the Securities and Exchange Act, the above publication shall not be required.

The reports and items required to be published under the preceding Paragraph shall be audited and certified by a certified public accountant.

Article 50

A Bank, at the time of distributing its earnings for each fiscal year, shall set aside thirty percent (30%) of its after-tax earnings as a legal reserve. However, unless and until the accumulated legal reserve equals the Bank's paid-in capital, the maximum cash profits which may be distributed shall not exceed fifteen percent (15%) of the Bank's paid-in capital.

In the event that the accumulated legal reserve equals or exceeds a Bank's paid-in capital, the foregoing provision shall not apply.

In addition to the required legal reserve, a Bank may set aside a special surplus reserve in accordance with its Articles of Incorporation or a resolution of its shareholders.

Article 51

The business hours and holidays of Banks shall be prescribed and publicly announced by the Central Competent Authority.

Article 51-1

So as to educate its professional staff, a Bank shall set aside funds exclusively for use in the development of financial study and training programs. Related methods and principals shall be established by the Bankers Association of the Republic of China and approved by the Competent Authority.

CHAPTER II - FORMATION, AMENDMENT, SUSPENSION AND DISSOLUTION OF BANKS

Article 52

A Bank is a juristic person and, unless otherwise provided by law, shall only be in the form of a company limited by shares or have been established with special approval obtained prior to the amendment and enforcement of this Act.

The stock of a Bank shall be publicly issued unless otherwise approved by the Competent Authority.

The requirements for establishment of Banks or other financial institutions to be established in accordance with this Act or other laws shall be as prescribed by the Central Competent Authority.

Article 53

In order to establish a Bank, the applicant(s) shall submit the following information to the Central Competent Authority for approval:

1. Type of Bank, name and type of company organization;
2. Total capital;
3. Business plan;
4. Locations of head office and branch offices; and
5. Names, native places, home addresses and curriculum vitae of each promoter and the amount of shares subscribed by each promoter.

Article 54

A company which has been approved by the Competent Authority to be established in accordance with the Company Law may apply for a banking business license from the Competent Authority by submitting the following supporting documents to the Competent Authority after its capital has been fully paid-in and its company registration has been completed:

1. Certificate of company registration;
2. Statement for verification of capital;
3. Articles of Incorporation of the Bank;
4. Shareholders' roster and minutes of shareholders' meeting;
5. Directors' roster and minutes of board of directors' meeting;
6. Managing directors' roster and minutes of managing directors' meeting; and
7. Supervisors' roster and minutes of supervisors' meeting.

A Bank which is not organized as a company may directly submit an application for a business license, in accordance with the preceding Paragraph, after its application for establishment is approved.

Article 55

To commence business operations, a Bank shall, at its head office and branch offices, publicly announce the particulars of its business license as issued by the Central Competent Authority.

Article 56

After a business license has been issued to a Bank, the Central Competent Authority may revoke the Bank's Permit if the particulars in the original application are discovered to have been materially untrue.

Article 57

If a Bank wishes to establish a branch office, it shall apply to the Central Competent Authority for approval and for a business license for such branch office by submitting a business plan and specifying the proposed location of such branch office. If a Bank wishes to relocate or close a branch office, such Bank shall apply to the Central Competent Authority for approval.

A Bank wishing to establish, relocate, or close a non-business operation office or a automated service facility outside a place its business shall file an application in advance, and may establish, relocate or close such place or facility if the Central Competent Authority does not expressly reject such application within a specified period of time from the date of application. However, the Bank shall not engage in any actions applied for prior to the expiry of such specified period.

Administrative rules governing the preceding 2 paragraphs shall be as stipulated by the Central Competent Authority.

Article 58

Mergers of Banks or any proposed amendments to the particulars set forth in Article 53, paragraphs 1), 2) or 4) of this Act shall require the approval of the Central Competent Authority, followed by an amendment to the Bank's company registration and application for issuance of a new business license.

Public announcement of the aforesaid mergers and amendments shall be made at the Bank's head office and branch offices within fifteen (15) days after issuance of the new business license.

Article 59

If a Bank violates the first Paragraph of the preceding Article, the Competent Authority may order the Bank to take corrective measures within a prescribed period of time. If such Bank fails to take such measures and the violation is serious, the Competent Authority may order the Bank to suspend operations.

Article 60 (deleted)

Article 61

A Bank, in adopting a resolution for dissolution at a shareholders' meeting, shall state the reason for dissolution in the minutes of the said shareholders' meeting, provide a plan for the repayment of liabilities and apply to the Competent Authority, by submitting such minutes and plan, for approval before the liquidation procedure may be commenced.

The Competent Authority, in approving dissolution under the preceding paragraph, shall revoke the Permit granted to the Bank.

Article 61-1

If there is a possibility that a Bank has violated laws and regulations, its Articles of Incorporation or disturbed the sound operation [of the financial system], the Competent Authority may, depending on the situation, take any of the following actions in addition to ordering correction or improvement by the Bank within a specified period of time:

1. Revoke resolutions of statutory meetings;
2. Suspend part of the Bank's business;
3. Order the Bank to discharge managers or staff members;
4. Discharge directors and supervisors or suspend them from performance of their duties for a specified period of time; and/or
5. Other necessary measures.

In the event that a Bank's directors or supervisors are discharged in accordance with Subparagraph 4 of the preceding Paragraph, the Competent Authority shall notify the Ministry of Economic Affairs to cancel the registration of such directors or supervisors.

If business assistance is needed in order to improve a Bank's operation defects, the Competent Authority may designate institutions to provide such assistance.

Article 62

If a Bank, due to obvious adverse changes in its business or financial status, fails to pay its liabilities when due or risks damage to depositors' interests, the Central Competent Authority may order such Bank to suspend business and undergo rehabilitation within a certain time limit, may suspend part of such Bank's business, may assign officials to take conservatorship or receivership over its operations or may take other necessary actions, including a request to the relevant authorities to restrict the departure from the country of the Responsible Person of the Bank.



When assigning officials to take conservatorship or receivership over a Bank, the Central Competent Authority may suspend all or part of the rights and functions of shareholders' meetings, the board of directors or supervisors.

Regulations governing conservatorship or receivership under the preceding two paragraphs shall be as prescribed by the Central Competent Authority.

When the Competent Authority orders a Bank to suspend business and undergo rehabilitation within a certain time limit, or sends officials to take conservatorship or receivership over a Bank, the provisions of the Company Act concerning temporary managers, inspectors, and reorganization shall not apply.

A Bank, as referred to in paragraph 1, above, which has been ordered to suspend business, may apply to the Central Competent Authority to resume its business operations if it has recovered from financial insolvency during the period of time prescribed for rehabilitation. If approval to resume business is not granted within the period of time prescribed for taking corrective measures, the Bank's Permit shall be revoked, the Bank shall then be deemed to have been dissolved commencing from the date of suspension, and the rehabilitation procedures shall be deemed liquidation procedures.

The provisions of the preceding five paragraphs shall apply to Banks and other financial institutions which are established under other laws.

***Article 62-1**

In the event a Bank is placed under conservatorship or receivership or is ordered to suspend business and undergo rehabilitation, the Competent Authority may notify relevant government agencies or institutions to prohibit the transfer, delivery or registration of rights to the properties owned by the Bank or its responsible person or staff members who are suspected of violating laws, and may request relevant government agencies to prohibit the above persons from traveling abroad.

***Article 62-2**

Where the Competent Authority has assigned officials to take receivership over a Bank, the Bank's operations and property management shall be handled by a receiver.

Upon the Bank receiving a letter ordering receivership, the responsible person(s) and staff members of the Bank shall deliver all books, documents, chops and properties together with an inventory thereof to the receiver and shall disclose all necessary matters related to the assets and liabilities of the Bank to the receiver and take other necessary actions to permit such receivership; the Bank's responsible person(s) or staff members shall not refuse to answer relevant inquiries or falsely respond thereto.

A Bank which is placed under the conservatorship of officials dispatched by the Competent Authority shall be subject mutatis mutandis to the preceding Paragraph.

Article 62-3

The following actions by a receiver with respect to a Bank under receivership shall require preparation of a feasibility report and approval from the Competent Authority:

1. Mandating other Banks, financial institutions or the Central Depository Insurance Company to operate all or part of the business;
2. Increasing capital, reducing capital or increasing capital after reducing capital;
3. Sale of all or part of the business, assets or liabilities;
4. Merger with another bank; and/or
5. Other important actions as determined by the Competent Authority.

Article 62-4

In the event that a bank or financial institutions business, assets and liabilities are sold, the following shall apply:

1. For a Bank, if a majority of the shareholders with voting rights approve the sale in a shareholders meeting at which shareholders owning a majority of the issued shares with voting rights are present, objecting shareholders may not request buy back of their shares; for a Farmers Association or Fishermen's Association, if a majority of the members (representatives) agree in a members meeting at which a majority of the members (representatives) are present, Article 185 through Article 188 of the Company Law, Article 37 of the Farmers Association Law and Article 39 of the Fishermen's

Association Law shall not apply.

2. Notification of assignment of rights may be done by public announcement and Article 297 of the Civil Code shall not apply.

3. With respect to the assumption of obligations, consent of the creditor under Article 301 of the Civil Code shall not be required.

4. If the Competent Authority determines that it is necessary to proceed with a transfer immediately and that no serious and disadvantages affect to market competition will occur, approval of the Fair Trade Commission under Article 11, Paragraph 1 of the Fair Trade Law shall not be required.

In addition to Subparagraph 4 of the preceding paragraph, the following shall apply when a Bank is merged with a Bank under receivership in accordance with Subparagraph 4 of the preceding Article:

1. For a company, if a majority of the shareholders with voting rights approve the merger in a shareholders meeting where shareholders owning a majority of the issued shares with voting rights are present, objecting shareholders may not request buy back of their shares. For a Farmers Association or Fishermen's Association, if a majority of a members (representatives) agree to the merger in the members meeting where a majority of the members (representatives) are present, objecting member may not request refund of the amount of their shares and Article 316, Paragraph 1 through Paragraph 3 and Article 317 of the Company Law, Article 37 of the



Farmer's Association Law, Article 39 of the Fishermen's Association Law and Article 29, Paragraph 1, of the Credit Association Act shall not apply.

2. Notifications of dissolution or merger may be done by a public announcement and Article 316, Paragraph 4, of the Company Law shall not apply.

Subparagraph 4 of the first paragraph shall apply where other Banks, financial institutions or the Central Depository Insurance Company is mandated to operate the business.

Article 62-5

Where a Bank is to undergo rehabilitation, the Competent Authority shall designate a rehabilitator to handle such measures and may dispatch officials to supervise the rehabilitation process; Article 62-2, Paragraph 1 and Paragraph 2 shall apply to the rehabilitator's performance of his or her duties.

The duties of the rehabilitator shall be to:

1. Close out the current business.
2. Collect sums due and repay debts.

In performing the duties prescribed in the preceding Paragraph, the rehabilitator shall have the right to represent the Bank in executing the rights in litigious and non-litigious proceedings, provided, that when transferring assets and liabilities to the other banks or financial institutions, or carrying out a merger with another bank, the rehabilitator shall report to and obtain the approval of the Competent Authority.

Paragraphs 1 and 2 of the preceding article shall apply where business, assets, and/or debts of the bank under rehabilitation are transferred to or merged with another bank or institution.

In carrying out his/her duties under the preceding Paragraph and applying for attachment or temporary measures, it is not necessary for a rehabilitator to provide security.

Article 62-6

After appointment of a rehabilitator, a public announcement shall be made in the daily newspapers where the Bank's head office is located requesting creditors to declare their claims within thirty (30) days and stating that claims, other than claims otherwise known to the rehabilitator, which are not declared within such specified period of time shall be excluded from the rehabilitation.

The rehabilitator shall investigate the Bank's financial conditions and prepare balance sheet and property inventories within three (3) months after the above declaration period expires, and prepare a rehabilitation plan, report same to the Competent Authority for acknowledgment and publish the Bank's balance sheet in daily newspapers where the Bank's head office is located.

During the period specified in the first paragraph, the rehabilitator shall not pay any claims other than release of trust asset or assets held as custodian and payment of staff salaries and payments made in accordance with the Deposit Insurance Act.

Article 62-7

If a Bank is ordered by the Competent Authority to suspend business and undergo rehabilitation, except for proceeding for purposes of establishing claim rights, no third party's claims may be executed against the Bank except as part of the rehabilitation procedures described in Paragraph 1 of the preceding article.

If disposition of claims may be delayed due to legal proceedings related to matters prescribed in the preceding Paragraph, the rehabilitator may reserve appropriate amounts pro rata and pay the balance to other creditors.

During a Bank's rehabilitation period, corporate reorganization, bankruptcy, settlement, compulsory execution proceedings shall automatically be suspended.

The following claims shall not be included in the rehabilitation:

1. Claims for interest accrued after the Bank's suspension of business.
2. Expenses incurred by creditors for their own benefit in participating in the rehabilitation.
3. Compensation or penalties arising from non-performance of obligations after the Bank's suspension of business, and
4. Criminal and administrative fines and related penalties.

Persons who hold pledges, mortgages or retention rights over the Bank's properties established prior to the date of suspension of business shall have a right of exclusion; creditors with a right of exclusion may execute their rights without complying with the rehabilitation procedure; provided, that claims which remain unpaid after execution of the right of exclusion may be declared and included in the rehabilitation.

Fees and Obligations arising from the performance of rehabilitation duties by the rehabilitator shall have priority over rehabilitation claims and may be repaid at any time from the assets of the bank undergoing rehabilitation.

The statute of limitations on claims declared in accordance with Paragraph 1, above or which known to the rehabilitator and included as rehabilitation claims shall be interrupted and shall be reinstated from the day on which the rehabilitation measures are concluded.

The rights of creditors repaid in the rehabilitation procedure, to request payment of the unpaid part of their claims shall be relinquished. If any shareable properties are discovered after the rehabilitation measures are concluded, such shall also be shared and used to repay creditors participating in the rehabilitation procedure. The claims of creditors falling under Paragraph 4 shall remain enforceable.

Article 62-8



The rehabilitator shall prepare an revenue and expense statement and income statement and other relevant records for the rehabilitation period within fifteen (15) days after the rehabilitation is completed, and shall publish same in the daily newspapers where the Bank's head office is located and report same to the Competent Authority to cancel the Bank's licenses.

Article 62-9

The costs incurred by an institution designated by the Competent Authority or its dispatched officials to provide assistance, conservatorship, receivership or rehabilitation shall be born by the Bank undergoing the assistance, conservatorship, receivership, or rehabilitation.

Article 63

(Deleted).

Article 63-1

Article 61-1 and Article 62-1 through Article 62-9 shall apply to Banks or financial institutions established under other laws.

Article 64

If the losses of a Bank exceed one third (1/3) of the Bank's capital, the Bank's directors or supervisors shall immediately report such information to the Central Competent Authority.

In the above-described circumstances, the Central Competent Authority may require the Bank to correct such deficit of capital within a prescribed period of time. If the Bank fails to do so within such prescribed period of time, it shall be ordered to suspend its business.

Article 65

If a Bank is ordered to suspend its business and is instructed to take corrective measures on certain matters within a prescribed period of time, but fails to correct the matters within such prescribed period of time, the Central Competent Authority shall revoke such Bank's Permit.

Article 66

If a Bank's Permit is revoked by the Central Competent Authority, such Bank shall be dissolved and liquidation procedures shall commence immediately.

Article 67

If a Bank is approved for dissolution or has its Permit revoked, such Bank shall surrender and cancel its business license within a prescribed period of time. Upon failure to do so, the Central Competent Authority shall cancel the business license of such Bank by public announcement.

Article 68

In supervising a special liquidation of a Bank, the court shall consult with the Competent Authority for advice and, when necessary, request the Competent Authority to recommend a liquidator or to delegate a representative to assist the liquidator in carrying out the liquidator's functions.

Article 69

After a Bank has commenced liquidation, no distribution of capital or dividends shall be made under any pretense unless all of the Bank's liabilities have been settled. In the course of liquidation of a Bank, the handling of the Bank's Trust Funds and trust properties shall be dealt with in accordance with the terms of the relevant trust agreements.

CHAPTER III - COMMERCIAL BANKS

Article 70

The term, " Commercial Bank" , as used in this Act shall mean a Bank the principal function of which is to accept Checking Deposits and Demand Deposits and Time Deposits and extend short-term and medium-term loans.

Article 71

Businesses which may be conducted by a Commercial Bank are as follows:

1. To accept Checking Deposits;
2. To accept Demand Deposits;
3. To accept Time Deposits;
4. To issue Bank Debentures;
5. To extend short-term, medium-term and long-term loans;
6. To discount bills and notes;
7. To invest in government bonds, short-term notes, corporate bonds, Bank Debentures and corporate stocks;
8. To handle domestic and foreign remittances;



9. To accept commercial drafts;
10. To issue foreign and domestic Letters of Credit;
11. To guarantee the issuance of corporate bonds;
12. To guarantee domestic and foreign transactions;
13. To act as collecting and paying agent;
14. To act as agent to sell government bonds, treasury notes, corporate bonds and stocks;
15. To conduct warehousing, custody and agency businesses in relation to the businesses in the preceding fourteen items subparagraphs; and
16. To conduct other relevant business which may be authorized by the Competent Authority.

Article 72

The total amount of medium-term loans extended by a Commercial Bank shall not exceed the balance of its Time Deposits received.

Article 72-1

A Commercial Bank may issue Bank Debentures having a minimum tenor of two years. By agreement with the holders such debentures may enjoy the priority over other creditors of the Bank; applicable regulations with respect to issuance and maximum amounts shall be prescribed by the Competent Authority after consulting with the Central Bank of China.

Article 72-2

The total amount of loans extended for residential construction and construction for business purposes by a Commercial Bank shall not exceed thirty percent (30%) of the aggregate of such Commercial Bank's deposits and Bank Debentures issued at the time such loans is extended; provided, that the following shall not be subject to such limitation;

1. Housing loans approved by the Competent Authority for the encouragement of savings to purchase private homes;
2. Housing loans which are extended using postal savings deposits which are allocated by the Central Bank of China and redeposited with the bank;
3. Loans extended for purposes of financing purchase of residential construction by use of medium-and long-term funds from the Council for Economic Planning and Development;
4. Loans extended for construction for business purposes using medium-and long-term funds from the Development Fund and/or the Council for Economic Planning and Development;
5. Loans for purposes of encouraging investment in construction of public housing, loans for purchase of public housing and loans for purchase of residential houses by government employees and teachers.

A maximum amount of the loans under the provisos to the preceding Paragraph may, when necessary, be prescribed by the Competent Authority.

Article 73

With respect to issuing, buying and selling stocks, a Commercial Bank may extend financing to stock brokers and stock investment companies.

The rules governing such financing shall be as prescribed by the Central Bank of China.

Article 74

Commercial Banks may apply to the Competent Authority for approval to invest in financial related businesses. The application shall be deemed approved if the Competent Authority does not object thereto within fifteen (15) days after the application is submitted to the Competent Authority; provided, that, until such fifteen (15) day period has elapsed, the Bank shall not proceed with the relevant investment.

Commercial Banks which obtain approval from the Competent Authority to do so, may invest in non-financial related businesses in cooperation with a Government's economic development project; provided, that such Banks shall not be involved in the management of such businesses. An application for approval to make such investments shall be deemed approved if the Competent Authority does not object thereto within thirty (30) days after the application is submitted to the Competent Authority; provided, that until such thirty (30) day period has elapsed, such Bank shall not proceed with the relevant investment.

Investment made pursuant to the two preceding paragraphs shall be subject to the following requirements:

1. The total investment amount shall not exceed forty percent (40%) of the Bank's paid-in capital less aggregate losses, and the total amount invested in non-financial related businesses shall not exceed ten percent (10%) of the Bank's paid-in capital less the aggregate losses.
2. Unless such is in cooperation with a government policy and is approved by the Competent Authority, a Commercial Bank shall not invest in more than one entity engaging in the same line of business; and
3. In the event that a Commercial bank invests in a non-financial related business, the investment shall not exceed the total paid-in capital of such business or five percent (5%) of the total issued shares of such business whichever is less.

The term, "financial related business", as used in Paragraph 1 and Subparagraph 2 of the preceding Paragraph, shall mean Banks, Bills Houses, Securities Companies, Futures Companies, Credit Card Companies, Financial Leasing Companies, Insurance Companies, Trust Companies and other financial related businesses designated by the MOF.



The Competent Authority shall prescribe rules to facilitate the supervision and management of mergers between Banks and invested businesses and prevent conflicts of interest between Banks and invested businesses.

If it becomes obvious that the operation of an invested business could affect the soundness of a Bank's operations, the Competent Authority may order the Bank to dispose of its shares in such invested business within a prescribed period of time.

If, prior to this amendment becoming effective [e.g. prior to November 1, 2000] the total amount invested in non financial related businesses exceeds the ratio stipulated in Paragraph 3, Subparagraphs 1 and 3, respectively, then with the approval of the Competent Authority, a Bank may continue to exceed the ratio of invested amount to the Bank's total paid-in capital less aggregate losses and the investment ratio in other businesses.

Article 74-1: (Securities)

Commercial Banks may invest in securities; the types and limits with respect to the securities which may be invested in shall be prescribed by the Competent Authority.

Article 75

With the exception of warehousing for business use, a Commercial Bank shall not invest in real estate for self use in an amount in excess of the net worth of such Commercial Bank at the time such investment is made. The amount of a Commercial Bank's investment in warehousing for business use shall not exceed five percent (5%) of the total amount of such Commercial Bank's Deposits at the time the investment in such warehousing is made.

A Commercial Bank shall not invest in real estate other than for self use, unless:

1. A substantial portion of the real estate is for self use;
2. The real estate will be used for self-use in the near future; or
3. A substantial portion of rebuilt original real estate is for self-use.

The total amount of a Commercial Bank's investment in real estate not for self use made in accordance with the exceptions in the preceding Paragraph shall not exceed twenty percent (20%) of a Bank's net worth.

The total amount of the Bank's investment in real estate not for self use plus the total amount of Bank's investment in real estate for self use shall not exceed the Bank's net worth at the time of the investment in such real estate.

In the event a Commercial Bank conducts real estate transactions with an entity in which the Bank holds more than three percent (3%) of the paid-in capital, or with the responsible person(s) or staff members or major shareholders of the Bank, or with an interested party of the Bank's responsible person as defined in Article 33-1, the Bank shall do so at arms length and obtain the consent of more than three-quarters of its directors present at a board meeting at which at least two-thirds of the directors are present.

Article 76

Save as permitted by Articles 74 and 75 of this Act, real estate and stocks acquired by a Commercial Bank through the foreclosure of mortgages or pledges shall be disposed of within four (4) years from the date of acquisition.

CHAPTER IV - SAVING BANKS (ARTICLES 77 THROUGH 86)

Deleted.

CHAPTER V - BANKS FOR A SPECIAL BUSINESS PURPOSE

Article 87

To facilitate extension of specialized credit, the Central Competent Authority may approve the establishment of a Bank(s) for a Special Business Purpose or designate an existing Bank(s) to perform such functions.

Article 88

The term, "specialized credit" , as used in the preceding article shall be classified in the following categories:

1. Industrial credits;
2. Agricultural credits;
3. Export-import credits;
4. Credits for medium and small sized enterprises;
5. Real estate credits; and
6. Local credits.

Article 89

The scope of business of a Bank for a Special Business Purposes shall be as prescribed by the Competent Authority in accordance with Article 3 of this Act, taking into consideration the principal functions of such Bank for a Special Business Purpose and the requirements for economic development.

Unless otherwise prescribed by law or the Competent Authority's regulations, Article 73 through Article 76 shall apply to Banks for a Special Business Purpose.

Article 90

Unless otherwise prescribed by the Competent Authority, a Bank for a Special Business Purpose the principal function of which is to extend medium-term and long-term loans may issue Bank Debentures in accordance with Article 72-1 of this Act.

The funds acquired by a Bank for a Special Business Purpose, from the issuance of Bank Debentures in accordance with the preceding Paragraph, shall be utilized exclusively for investment in specialized enterprises and for extending medium-term and long-term loans.

Article 91

A Bank for a Special Business Purpose which purpose is to extend credit for industrial purposes is classified as an Industrial Bank. The principal functions of an Industrial Bank shall be to extend medium-term and long-term credit to industrial, mining, transportation and other public utilities enterprises.

An Industrial Bank may invest in the manufactory industry; the scope of manufacturing business in which investments may be made shall be prescribed by the Competent Authority.

An Industrial Bank may accept deposits; provided, that such business shall be limited to customers which are companies in which the Bank invests or to which the Bank extends credit, insurance enterprises established in accordance with applicable law, foundations and the Government.

The establishment criteria, credit extensions, securities investment, enterprise investments, deposit taking and the scope of, limits on and administration rules for issuance of Bank Debentures by an industrial bank shall be as prescribed by the Competent Authority.

Article 91-1

If an Industrial Bank directly invests in manufacturing businesses in the following circumstances, such Bank shall obtain the approval of more than three-quarters of its directors present at a Board meeting at which two-thirds of the directors are present; and its total investment amount shall not exceed five percent (5%) of the Bank's net worth as of the end of the preceding fiscal year:

1. The invested business is the Bank's major shareholder, responsible person(s) or an affiliate of such shareholder or person;
2. The invested business is the Bank's shareholder, the Bank's responsible person or a partnership or sole proprietorship managed by a related person of such shareholder person or responsible person;
3. The major shareholder or responsible person of the Bank and their related persons jointly or severally hold more than ten percent (10%) of the total amount of issued shares or paid-in capital of the invested business; or
4. The Bank's major shareholder, responsible person(s) and/or their related persons are directors, supervisors or managers of the invested business except in cases where they act as directors, supervisors or managers due to the Bank's investment relationship with such business.

The term, " affiliate" , as used in Subparagraph 1 of the preceding Paragraph shall have the meaning set out in Articles 369-1 through 369-3, Articles 369-9 and 369-11 of the Company Law.

The term, " related persons" , as used in Subparagraphs 2 through 4 of Paragraph 1, shall include the spouse, blood relatives within three degree and marriage relatives within two degree of the Bank's major shareholder(s) and the Bank's responsible person.

Article 92

A Bank for a Special Business Purpose which purpose is to extend credit for agricultural purposes is classified as an Agricultural Bank. The principal functions of an Agricultural Bank shall be to improve the financial situation in rural areas and to extend credit necessary for production to agricultural, forestry, fishing, animal husbandry and related enterprises.

Article 93

In order to strengthen the availability and efficiency of agricultural credit, an Agricultural Bank may absorb funds in rural areas through the assistance of farmers' associations and use such funds to extend agricultural credit and to provide banking services related to farmers' livelihood.

Article 94

A Bank for a Special Business Purpose which purpose is to extend credit to export-import enterprises is classified as an Export-Import Bank.

The principal functions of an Export-Import Bank shall be to extend medium-term and long-term credit with a view to expanding overseas markets, and to facilitating the import of equipment and raw materials needed domestically by industrial enterprises.

Article 95

To facilitate the supply of important raw materials needed domestically by industrial enterprises, an Export-Import Bank, with the approval of the Central Competent Authority, may extend credit to enterprises for investment in obtaining important raw materials in foreign countries.

Article 96

A Bank for a Special Business Purpose which purpose is to extend credit to medium and small sized enterprises is classified as a Medium and Small Sized Enterprise Bank.



The principal functions of a Medium and Small Sized Enterprise Bank shall be to extend medium- and long-term credit to medium and small sized enterprises in order to assist them in improving their productive equipment and financial structure and strengthening their management and operations.

The scope of business of a Medium and Small Sized Enterprise Bank shall be as prescribed by the central competent authority in charge of economic affairs and submitted to the Executive Yuan for approval.

Article 97

A Bank for a Special Business Purpose which purpose is to extend credit to real estate enterprises is classified as a Real Estate Credit Bank.

The principal functions of a Real Estate Credit Bank shall be to extend medium- and long-term credit for the purposes of land development, city improvement, urban development, road construction, tourist facilities and housing construction projects.

Article 98

A Bank for a Special Business Purpose which purpose is to extend credit in local areas is classified as a Citizens' Bank.

The principal functions of a Citizens' Bank shall be to extend medium- and long-term credit for the purposes of assisting in area development and in meeting the needs of local residents.

Article 99

Citizens' Banks shall be operated by district. In principle, there shall be only one such Bank in each district.

The total amount of loans extended by a Citizens' Bank to any one customer shall not exceed a prescribed amount.

Districts where Citizens' Banks may be established and the amount of loans to be extended to any one customer shall be as prescribed by the Central Competent Authority.

CHAPTER VI - INVESTMENT AND TRUST COMPANIES

Article 100

The term, "Investment and Trust Company", as used in this Act shall mean a financial institution which, for a specific purpose and in the capacity of trustee, accepts, operates, manages and employs Trust Funds and manages trust properties or, as an investment broker, invests funds relating to capital markets for specific purposes.

The operations and administration of an Investment and Trust Company shall be governed by this Act; matters with no applicable provisions in this Act shall be governed by other relevant laws; the administrative rules for Investment and Trust Companies shall be as stipulated by the Central Competent Authority.

Article 101

Businesses which may be conducted by an Investment and Trust Company are as follows:

1. To extend medium-term and long-term loans;
2. To invest in government bonds, short-term notes, corporate bonds, Bank Debentures and listed stocks;
3. To guarantee issuance of corporate bonds;
4. To guarantee domestic and foreign transactions;
5. To underwrite and trade in securities for its own account or for customers;
6. To accept, manage and employ various Trust Funds;
7. To publicly raise mutual Trust Funds;
8. To manage various kinds of property under mandate;
9. To act as trustee for issuance of bonds;
10. To act as attester for the issuance of bonds and stocks;
11. To act as agent for issuance, registration and transfer of securities and distribution of interest and dividends thereon;
12. To act as executor of wills and administrator of estates of deceased persons;
13. To act as supervisor for the reorganization of companies;
14. To provide consulting services in connection with the issuance and raising of securities and to engage in agency services related to the aforesaid business; and
15. To conduct other relevant businesses which may be authorized by the Central Competent Authority.

With the approval of the Central Competent Authority, an Investment and Trust Company may use its non-trust funds to invest directly in productive enterprises or in residential construction and construction for business purposes.

Article 102

For Investment and Trust Companies which engage in the underwriting and trading of securities, a special fund equivalent to at least ten percent (10%) of the net worth of the Investment and Trust Company in the preceding year shall be allocated for purposes of the operation thereof. Such special fund shall, prior to any appropriation thereof, be deposited in cash with other financial institutions or shall be used for the purchase of government bonds.

Article 103

An Investment and Trust Company shall deposit a trust fund reserve with the Central Bank of China in cash or valuable securities acceptable to the Central Bank of China. Such reserve shall be within the range of fifteen percent (15%) to twenty percent (20%) of the total value of the various trust agreements, as determined by the Central Bank of

China. However, the minimum reserve amount shall not be less than twenty percent (20%) of the Trust and Investment Company's total paid-in capital.

At the commencement of operations of an Investment and Trust Company, the aforesaid reserve shall temporarily be based on twenty percent (20%) of paid-in capital of such Investment and Trust Company, and, commencing one (1) year from such commencement of operations, such reserve shall be adjusted at the end of each month in accordance with the foregoing standard.

Article 104

In accepting, managing or employing Trust Funds and managing properties under a trust mandate, trust agreements between Investment and Trust Companies and trustors shall contain the following terms:

1. Means and scope of employing the funds;
2. Method of management of properties;
3. Allocation of income;
4. Responsibility of the Investment and Trust Company;
5. Submission of accounting reports;
6. Standards for payment and calculation of fees of the Investment and Trust Company; and
7. Other relevant agreed upon terms.

Article 105

An Investment and Trust Company shall in good faith exert its utmost care in managing Trust Funds or trust assets in its custody.

Article 106

The operation and administration of an Investment and Trust Company shall be handled by financial personnel with special knowledge and experience, assisted by qualified legal, accounting and other technical personnel necessary for the various businesses involved.

Article 107

If an Investment and Trust Company violates laws, ordinances or trust agreements or, for other reasons for which the Investment and Trust Company is responsible, causes loss to trustors, the Investment and Trust Company's responsible director, officer-in-charge, and the Investment and Trust Company itself shall be jointly and severally liable to make compensation for the damages incurred.

The aforesaid liability imposed on the responsible director or officer-in-charge shall terminate if no lawsuit has been brought against such person within two (2) years after the date of his resignation registration.

Article 108

Unless otherwise authorized by court order, by the written agreement of trustors (for purchase at market price) or, without consent of the trustors (for purchases at market price by open bid), an Investment and Trust Company shall not engage in the following transactions:

1. Acquisition of ownership of trust properties;
2. Creation or obtaining of any rights or privileges over trust properties;
3. Sale of its own properties or rights to trustors;
4. Other transactions related to the aforesaid three Subparagraphs; and
5. Any transactions employing Trust Funds and properties with the Investment and Trust Company's directors, staff members or third parties who have an interest in the Trust Funds operated by the Investment and Trust Company.

If an Investment and Trust Company makes the decision to engage in transactions proscribed in the aforesaid proviso, in addition to first applying to the Central Competent Authority for approval, the following restrictions shall apply:

1. If the Investment and Trust Company makes the decision to engage in a transaction, any director or staff member who has a direct or indirect interest in the trust accounts, trust properties or securities in connection with the such transaction shall not participate in such decision.
2. If the Investment and Trust Company engages in the underwriting or trading of securities, or directly invests for its own account or for the account of investors, the company's directors or staff members who are concurrently directors or staff members of the company issuing such securities or who have direct or indirect interests in the said securities shall not participate in any decisions relating to such transaction.

Article 109

Prior to the investment of Trust Funds by an Investment and Trust Company pursuant to the terms of the relevant trust agreements, or prior to continuing investment of the said Trust Funds after retrieval of the Trust Funds by the Investment and Trust Company, such Trust Funds shall be deposited with Commercial Banks or Banks for a Special Business Purpose.



Article 110

An Investment and Trust Company may operate the following Trust Funds:

1. Trust Funds for uses designated by the trustors; and
2. Trust Funds for uses determined by the Investment and Trust Company.

For Trust Funds, the uses of which are determined by the Investment and Trust Company, it may be specified in the trust agreement that the Investment and Trust Company shall be responsible for compensation for losses of principal.

For compensation for losses of principal, the Investment and Trust Company shall, at the end of each fiscal year, make a precise assessment of such principal losses and shall compensate such losses by allocating funds from the Investment and Trust Company's special reserve as stipulated in the relevant trust agreement(s).

The aforesaid special reserve shall be appropriated from the annual income derived from trust properties pursuant to standards approved by the Competent Authority.

Surpluses in the special reserve account, after full compensation for principal losses, shall be credited to the Investment and Trust Company's income; any deficit in the special reserve shall be covered by the Investment and Trust Company's own funds.

Article 111

An Investment and Trust Company shall individually establish a special account for each trustor and each type of Trust Fund. The Investment and Trust Company's own properties and trustors' properties shall be kept in separate accounts and shall not be commingled.

An Investment and Trust Company shall not borrow funds for the account of its Trust Funds.

Article 112

The creditors of an Investment and Trust Company may not apply for seizure or exercise other such rights over trust properties.

Article 113

An Investment and Trust Company shall set up a trust property assessment committee to assess, every three (3) months, the value of the trust properties provided by each trustor. The result of the assessment of each such trust account shall be reported to the Board of Directors of the Investment and Trust Company.

Article 114

An Investment and Trust Company shall submit to each trustor and to the Central Competent Authority, periodic accounting reports in accordance with the trust agreements and the regulations of the Central Competent Authority.

Article 115

An Investment and Trust Company, in offering public common Trust Funds, shall prepare a plan for such issuance and shall submit the same to the Central Competent Authority for approval.

Administrative rules governing the aforesaid public common Trust Funds shall be as prescribed by the Central Competent Authority.

Article 115-1

Except as regards businesses approved by the Competent Authority in accordance with Article 101, Paragraph 2, above Article 74, Article 75 and Article 76 shall apply to Investment and Trust Companies.

Article 116

The term, "Foreign Bank", as used in this Act, shall mean a Bank organized and incorporated in accordance with the laws of a foreign country, which Bank has been recognized by the government of the Republic of China and registered for business as a branch office within the territory of the Republic of China, in accordance with the Company Law and this Act.

Article 117

A Foreign Bank, which establishes a branch office within the territory of the Republic of China, must obtain approval from the Competent Authority, and be recognized and registered in accordance with the Company Law. A Foreign Bank branch shall commence operations only after obtaining a business license pursuant to the procedures set out in Article 54 of this Act; a Foreign Bank which establishes a representative office in the Republic of China shall obtain the approval of the Competent Authority.

The rules for establishment and operations of foreign banks under the preceding paragraph shall be prescribed by the Competent Authority.

Article 118

The Central Competent Authority may, in consideration of the need for international trade and industrial development, designate areas where Foreign Banks may be allowed to establish branches.

Article 119 (deleted)



Article 120

A Foreign Bank shall appropriate funds exclusively for its operation of business within the territory of the Republic of China and Articles 23 and 24 of this Act shall apply mutatis mutandis.

Article 121

Businesses which may be conducted by a Foreign Bank shall be as prescribed by the Competent Authority, after consultation with the Central Bank of China, within the business scope stipulated in Articles 71 and Article 101, Paragraph 1, of this Act. Matters pertaining to foreign exchange shall be as permitted by the Central Bank of China.

Article 122

Any receipts and disbursements of funds made by a Foreign Bank branch shall be in the Chinese national currency, with the exception of foreign currency Deposits with respect to which special permission has been granted by the Central Bank of China.

Article 123

Chapter 1 through Chapter 3 and Chapter 6 of this Act shall also apply to Foreign Banks.

Article 124 (deleted)

Article 125

Those who violate Article 29, Paragraph 1, of this Act shall be punished by imprisonment for not less than three (3) years and not more than ten (10) years, and may be fined a criminal fine of not less than Ten Million New Taiwan Dollars (NT\$10,000,000) and not more than Two Hundred Million New Taiwan Dollars (NT\$200,000,000). Those who thereby obtain criminal income of One Hundred Million New Taiwan Dollars (NT\$100,000,000) or more shall be punished by imprisonment for more than seven (7) years, and may also be fined a criminal fine of not less than Twenty Five Million New Taiwan Dollars (NT\$25,000,000) and not more than Five Hundred Million New Taiwan Dollars (NT\$500,000,000).

A financial information service business which operates inter-bank funds transfer and account clearing without obtaining the approval of the Competent Authority shall be punished in accordance with the preceding Paragraph.

Should a juristic person commit the offenses prescribed in the preceding two paragraphs, its responsible person shall be punished.

Article 125-1

A person who damages the credit of a Bank, a Foreign Bank, a money market business's or a financial information service business which operates inter-bank funds transfer and bills clearing by spreading rumors or by fraud shall be punished by imprisonment for less than five (5) years and a criminal fine of less than Ten Million New Taiwan Dollars (NT\$10,000,000).

Article 125-2

A Bank's responsible person or staff member who violates his/her duty with the intent to gain illegal benefit for himself/herself or a third party and damages the Bank's assets or other interests shall be punished by imprisonment for not less than three (3) years and not more than ten (10) years, and may be fined a criminal fine of not less than Ten Million New Taiwan Dollars (NT\$10,000,000) and not more than Two Hundred Million New Taiwan Dollars (NT\$200,000,000). Those who thereby obtain criminal income of One Hundred Million New Taiwan Dollars (NT\$100,000,000) or more shall be punished by imprisonment for more than seven (7) years, and may also be fined a criminal fine of not less than Twenty Five Million New Taiwan Dollars (NT\$25,000,000) and not more than Five Hundred Million New Taiwan Dollars (NT\$500,000,000).

When two or more responsible persons or staff members of a Bank jointly commit the offenses prescribed in the preceding Paragraph, their punishment may be increased by up to one-half of the specified punishment.

Attempts to commit the acts described in the preceding two paragraphs shall be punishable.

The preceding three paragraphs shall apply to the responsible person or staff members of Foreign Banks or institutions conducting money market businesses.

Article 125-3

Those who, with the intent to gain illegal benefit for themselves or a third party, use fraudulent methods to cause the Bank to deliver the assets of the Bank or a third party, or use unjustified methods to enter fictitious data or unjustified commands into the Bank computer or relevant equipment, or make records of acquisition, loss or alteration of the assets so as to obtain the assets of others, the criminal income of which amount to One Hundred Million New Taiwan Dollars (NT\$100,000,000) or more, shall be punished by imprisonment for not less than three (3) years and not more than ten (10) years, and may also be fined a criminal fine of not less than Ten Million New Taiwan Dollars (NT\$10,000,000) and not more than Two Hundred Million New Taiwan Dollars (NT\$200,000,000). Those who use methods described in the foregoing paragraph to obtain the illegal benefit of assets or cause a third party to do so shall likewise be subject to the specified punishments.

Attempts to commit the acts described in the preceding two paragraphs shall be punishable.

Article 125-4



The punishment of those who commit the offenses described in Articles 125, 125-2, or 125-3 but voluntarily surrender after the crime, and at free will turn over all income or assets obtained as a result of the crime, shall be mitigated or waived; the punishment of those persons whose voluntary surrender results in the capture of other accomplices shall be waived.

The punishment of those who commit the offenses described in Articles 125, 125-2, or 125-3 but confess during investigation, and at free will turn over all income or assets obtained as a result of the crime, shall be mitigated; the punishment of those persons whose confession results in the capture of other accomplices shall be mitigated by up to one-half of the prescribed terms.

If the criminally obtained benefit of those who commit the offenses described in Articles 125, Paragraph 1 and 125-2, Paragraph 1 and 125-3, Paragraphs 1 and 2 exceeds the highest prescribed criminal fine, the criminal fine imposed on those persons may be increased within the scope of their criminally obtained benefit. The punishment of those whose offenses harm the stability of financial markets shall be increased by up to one-half of the prescribed terms.

Article 125-5

Where a gratuitous act done by a responsible person or staff member of a Bank under Article 125-2, Paragraph 1, or by a committer of a violation under Article 125-3, Paragraph 1, is prejudicial to the rights of a Bank, the Bank may apply to the court to cancel such act.

Where a non-gratuitous act done by a responsible person or staff member of a Bank or a committer of a violation as referred to in the preceding paragraph is done with the knowledge, at the time of commission, that it would be prejudicial to the rights of a Bank, and the beneficiary of the act also knows such circumstances at the time the benefit is received, the Bank may apply to the court to cancel such act.

When applying to the court for cancellation under either of the preceding two paragraphs, a party may also apply to the court to order the beneficiary or any party to whom the benefit has been transferred to restore the status quo ante; provided, this shall not apply where the party to whom the benefit has been transferred was not aware at the time of transfer that there was any cause for cancellation.

Any disposition of property between a responsible person or staff member of a Bank or a committer of a violation as referred to in Paragraph 1, and such person's spouse, lineal relative, cohabiting relative, head of household, or family member shall be deemed a gratuitous act.

Any disposition of property between a responsible person or staff member of a Bank or a committer of a violation as referred to in Paragraph 1 and any person other than those set forth in the preceding paragraph shall be presumed to be a gratuitous act.

The right to cancellation under Paragraphs 1 and 2 shall be extinguished one year after the time the Bank is aware of any cause for cancellation if the Bank fails to exercise the right, or ten years after the time of the act.

The preceding six paragraphs shall apply to the responsible person or staff members of Foreign Banks under Article 125-2, Paragraph 4.

Article 125-6

The crimes set forth in Article 125-2, Paragraph 1, Article 125-2, Paragraph 1, as applied under Article 125-2, Paragraph 4, and Article 125-3, Paragraph 1, are serious crimes as defined in Article 3, Paragraph 1, of the Money Laundering Control Act, and are subject to the application of relevant provisions of the Money Laundering Control Act.

Article 126

In the event that a company limited by shares violates its commitment made pursuant to Article 30 of this Act, its directors and those who participated in the decision that led to the violation of said commitment shall be punished by imprisonment for not more than three (3) years, detention, and/or a criminal fine of not more than one million and eight hundred thousand New Taiwan Dollars (NT\$1,800,000).

Article 127

In the event of a violation of Article 35 of this Act, punishment by imprisonment for not more than three (3) years, detention, and/or a criminal fine of not more than Five Million New Taiwan Dollars (NT\$ 5,000,000) shall be imposed. However, if a more severe punishment is stipulated in other laws, such more severe punishment shall be imposed.

In the event of a violation of Article 47-2 or Article 123 (which applies Article 35), punishment shall be imposed in accordance with the preceding Paragraph.

Article 127-1



In the event of a violation of Article 32, Article 33, or Article 33-2 of this Act or in the event of a violation which is punishable under the preceding three articles, or Article 91-1, through the acts described in Article 33-4, Paragraph 1, the responsible person shall be punished by imprisonment for not more than three (3) years, detention, and/or a criminal fine of not less than Five Million New Taiwan Dollars (NT\$ 5,000,000) and not more than Twenty-Five Million New Taiwan Dollars (NT\$25,000,000).

In the event that the amount of a loan extended by the Bank exceeds the amount prescribed by the Competent Authority under Article 33, or a direct investment in a manufacturing business is made under Article 91-1 without obtaining approval from not less than three quarters of the directors present in the board meeting at which not less than two-thirds directors are present, or violation of the credit limit or total balance of loans extended prescribed by the Competent Authority under Article 33, Paragraph 2 or violation of Article 91-1 with respect to total investment exceeding five percent (5%) of the Bank's net worth in the preceding fiscal year, the responsible person shall be punished by an administrative fine of not less than Two Million New Taiwan Dollars (NT\$2,000,000) and not more than Ten Million New Taiwan Dollars (NT\$10,000,000) and the preceding Paragraph shall not apply.

In the event that an entity operating a money market business violates Article 47-2 by application of Article 32, Article 33, Article 33-2 or Article 33-4, or a Foreign Banks violates Article 123 by application of Article 32, Article 33, Article 33-2 or Article 33-4, the responsible person shall be punished in accordance with the preceding two paragraphs.

The preceding three paragraphs shall apply to responsible persons who commit such offenses outside the territory of Republic of China.

Article 127-2

In the event of a violation of a disposition ordered by the Competent Authority pursuant to Article 62, Paragraph 1, of this Act, if the said violation is sufficient to cause damage to others or the public, the person(s) responsible for the violation shall be punished by imprisonment for not less than one (1) year and not more than seven (7) years, and a criminal fine of not more than Twenty Million New Taiwan Dollars (NT\$20,000,000).

Commission of any of the following acts by a Bank's responsible person or staff members in connection with the Competent Authority sending officials to take conservatorship or receivership over the business operations or order of suspension of the business and rehabilitation measures shall be punished by imprisonment for not less than one (1) year and not more than seven (7) years and a criminal fine of not more than Twenty Million New Taiwan Dollars (NT\$20,000,000):

1. Refusing to deliver the books, documents, chops and assets related to the banking business or finance to the conservators, receivers or rehabilitators designated by the Competent Authority, refusing to provide information as to the necessary matters in connection with assets and liabilities of the Bank to such persons, or refusing such persons' requests to carry out necessary acts for conservatorship, receivership, or rehabilitation.
2. Concealing or damaging the books or other documents regarding a Bank's business or financial condition;
3. Concealing or destroying a Bank's properties, or making other decisions to the detriment of creditors;
4. Failing to reply, without justification, to inquiries from conservators, receivers, or rehabilitators appointed by the Competent Authority to ; or
5. Fabricating claims or accepting false claims.

With respect to violation of the measures imposed by the Competent Authority pursuant to Article 47-2, Article 123 applying Article 62, Paragraph 1, Article 62-2 or Article 62-5 and the occurrence of any of the events prescribed in the preceding two paragraphs, the preceding two paragraphs shall apply.

Article 127-3

If the responsible person(s) or a staff member of a Bank violates Article 35-1 of this Act with respect to concurrently holding positions in other Banks, such person shall be punished by an administrative fine of not less than Two Million New Taiwan Dollars (NT\$2,000,000) and not more than Ten Million New Taiwan Dollars (NT\$10,000,000). If the staff member was assigned to such concurrent position by the Bank, the punishment shall be imposed on the Bank.

If the responsible person(s) or a staff member(s) of a money market business violate Article 47-2 applying Article 35-1 of this Act with respect to holding concurrent positions, or if the responsible person(s) or a staff member(s) of a Foreign Bank violate Article 123 applying Article 35-1 of this Act with respect to holding concurrent positions such shall be punished in accordance with the preceding Paragraph.

Article 127-4

Although punishment is to be imposed on the responsible person(s) in accordance with other provisions, in the event that the responsible person(s), agent, employee(s) or a staff member(s) of a legal entity commit any of punishable under Article 125 through Article 127-2 of this Act, the legal entity shall also be punished by the administrative fine or criminal fine described in each such article.

The preceding Paragraph shall apply to Foreign Banks.

Article 127-5

A violation of Article 20, Paragraph 3, shall be punished by imprisonment for not more than three years, detention, and/or a criminal fine of not more than NT\$5 million.

Should a juristic person commit the offense in the preceding paragraph, its person responsible for the act shall be punished.

Article 128

The directors or supervisors of a Bank who violate Article 64, Paragraph 1, of this Act by delaying filing reports to the Competent Authority, or the directors or the staff members of an Investment and Trust Company who violate Article 108 of this Act by participating in such decision, shall, respectively, be punished by an administrative fine of not less than Two Million New Taiwan Dollars (NT\$ 2,000,000) and not more than Ten Million New Taiwan Dollars (NT\$10,000,000).

In the event that the directors or supervisors of an entity conducting a money market business fail to comply with the reporting requirements prescribed in Article 47- 2 applying Article 64, Paragraph 1, of this Act, or the responsible person(s) or staff member(s) violate Article 123 applying Article 108 of this Act by participating in the decision, the punishments prescribed in the preceding Paragraph shall apply.

In the event that a shareholder of the Bank violates Article 25, Paragraph 2, of this Act with respect to shareholding, such shareholder shall be punished by an administrative fine of not less than Two Million New Taiwan Dollars (NT\$2,000,000) and not more than Ten Million New Taiwan Dollars (NT\$10,000,000), and its/his/her voting rights exceeding the approved shares shall be prohibited from being exercised. A Bank which knows of the above violation but fails to report to the Competent Authority shall be punished by an administrative fine of not less than Two Million New Taiwan Dollars (NT\$2,000,000) and not more than Ten Million New Taiwan Dollars (NT\$10,000,000).

A financial information business which handles inter-bank funds-transfers and bills clearing, or a service business which handles the exchanges inter-bank credit data processing commits one of the following acts shall be punished by an administrative fine of not less than Two Million Dollars (NT\$2,000,000) and not more than Ten Million Taiwan Dollars (NT\$10,000,000):

1. Refusing to reply without justifiable reasons or falsely replying to the inquiries of the investigators, failing to timely or honestly or completely submit data when the Competent Authority dispatches officials or mandates appropriate institutions to check the business, financial condition and other related matters, or orders submission of financial reports or other related data or refusing to provide or concealing or damaging related data.
2. Suspending all or part of its business without obtaining the approval of the Competent Authority.
3. Unless otherwise provided by the other laws or regulations prescribed by the Competent Authority, disclosing without justifiable reasons third party's data acquired or in such person's possession as the result of their position.

A business which conducts inter-bank credit data exchanges without obtaining the Competent Authority's approval shall be punished pursuant to the preceding Paragraph.

Article 129

Commission of any of the following acts shall be punished by an administrative fine of not less than Two Million New Taiwan Dollars (NT\$2,000,000) and not more than Ten Million New Taiwan Dollars(NT\$10,000,000):

1. Violations of Article 21, Article 22 or Article 57 or violations of Article 47-2 applying Article 4, Article 123 applying Article 21, Article 22 or Article 57 of this Act.
2. Issuing share certificates in violation of Article 25 of this Act.
3. Violations of Article 28, Paragraph 1 through Paragraph 3 or violation of Article 123 applying Article 28, Paragraph 1 through Paragraph 3.
4. Violations of restrictions imposed by the Competent Authority under Article 33-3 or Article 36 or Article 47-2 or Article 123 applying Article 33-3 or Article 36 of this Act.
5. Violations of a prescription on the minimum ratios prescribed by the Competent Authority in accordance with Article 43 or Article 123 applying Article 43 of this Act by failing to make the adjustment required thereby within the period of time prescribed therein;
6. Violations of the restrictions prescribed by the Competent Authority in accordance with Article 44 of this Act;
7. Failure to establish or diligently conduct an internal system in accordance with Article 45-1 or Article 47-2 applying Article 45-1 or Article 123 applying Article 45-1.
8. Failure to apply for approval in accordance with Article 108, Paragraph 2, or in violation of Article 123 applying Article 108, Paragraph 2, of this Act.
9. Violation of Article 110, Paragraph 4, or violation of Article 123 applying Article 110, Paragraph 4, of this Act by failing to appropriate a special reserve; or
10. Violation of Article 115, Paragraph 1, or violation of Article 123 applying Article 115, Paragraph 1, of this Act in publicly offering common trust funds.

Article 129-1

The responsible person(s) or staff member(s) of a Bank or other concerned persons committing any of the following acts when the Competent Authority dispatches officials or mandates appropriate institutions or orders local Competent Authorities to dispatch officials or designates professional and technical persons to check the business, financial condition and other related matters, or orders the Bank or other concerned persons to submit financial reports, property inventories or other related documents and reports in accordance with Article 45 of this Act shall be punished by an administrative fine of not less than Two Million New Taiwan Dollars (NT\$2,000,000) and not more than Ten Million Dollars (NT\$10,000,000):

1. Refusing to be investigated or refusing to open the vault or other storage facilities;
2. Concealing or damaging books and documents related to business or financial conditions;
3. Refusing to reply or misrepresenting responses to inquiries of the investigator without justifiable reasons.



4. Failure to timely, honestly or completely provide financial reports, property inventories or other related data or reports, or to pay investigation fees within the specified period(s) of time.

The responsible person(s) or staff member(s) or other concerned person(s) of a money market business or a Foreign Bank committing the acts listed in the preceding Paragraph when the Competent Authority dispatches officials or mandates appropriate institutions or orders local Competent Authorities to dispatch officials or designates professional and technical persons to check the business, financial condition and other related matters, or orders the Bank or other concerned person(s) to provide financial reports, property inventories or other related documents and reports in accordance with Article 47-2 or Article 123 applying Article 45 of this Act shall be punished pursuant to the preceding Paragraph.

Article 130

Commission of any of the following acts shall be punished by an administrative fine of not less than One Million New Taiwan Dollars (NT\$1,000,000) and not more than Five Million New Taiwan Dollars (NT\$5,000,000).

1. Violations of regulations regarding the extension of loans prescribed by the Central Bank of China in accordance with Article 40 or Article 123 applying Article 40 of this Act.
2. Violations of Article 72 or Article 123 applying Article 72 or regulations prescribed by the Competent Authority in accordance with Article 99, Paragraph 3, of this Act in extending loans;
3. Violations of Article 74, Article 89, Paragraph 2, Article 115-1 or Article 123 applying Article 74 of this Act in making investments;
4. Violations of Article 74-1, Article 75 or of Article 89, Paragraph 2, applying Article 74-1 or of Article 89, Article 115-1 or Article 123 applying Article 75 of this Act in making investments;
5. Violations of Article 76, Article 47-2, of Article 89, Paragraph 2, Article 115-1 or Article 123 applying Article 76.
6. Violations of Article 91 or the scope, restrictions or management rules prescribed by the Competent Authority for credit extensions, investments, acceptance of deposits and issuance of Bank Debentures in accordance with Article 91.
7. Violations of Article 109 or Article 123 applying Article 109 of this Act in employing Trust Funds; or
8. Violations of Article 111 or Article 123 applying Article 111 of this Act.

Article 131

Commission of any of the following acts shall be punished by an administrative fine of not less than Five Hundred Thousand New Taiwan Dollars (NT\$ 500,000) and not more than Two Million and Five Hundred Thousand New Taiwan Dollars (NT\$2,500,000):

1. Violations of Article 34 or Article 123 applying Article 34 of this Act in accepting Deposits.
2. Violations of Article 49 or Article 47-2 or Article 123 applying Article 49 of this Act.
3. Violations of Article 114 or Article 123 applying Article 114 of this Act.
4. Violations of the regulations prescribed by the Competent Authority in accordance with Article 51 or Article 47-2 or Article 123 applying Article 51 of this Act.
5. Violations of the regulations prescribed by the Competent Authority in accordance with Article 51-1 of this Act in refusing to pay.

Article 132

Unless otherwise prescribed by this Act with respect to punishment by an administrative fine, violation of this Act or the related mandatory or prohibiting regulations authorized by this Act or failure to perform obligations to be performed shall be punished by an administrative fine of not less than Five Hundred Thousand New Taiwan Dollars (NT\$500,000) and not more than Two Million Five Hundred Thousand New Taiwan Dollars (NT\$2,500,000).

Article 133

The party punishable by an administrative fine under Article 129 through Article 132 of this Act shall be the Bank or the Bank's branch; provided, that the party punishable shall be the shareholder itself/himself/herself or the Bank which is required to give notice or apply in the event of a violation of Article 25, Paragraph 3 or Paragraph 5.

After having been punished pursuant to the preceding Paragraph, the relevant Bank or Bank branch shall claim compensation from the responsible person(s).

Article 134

The amount of the administrative fines prescribed by this Act shall be determined and punished by the Competent Authority.

With respect to administrative fines prescribed by Article 130, Subparagraph 1 as violating Article 40, and the administrative fines prescribed by Article 132 as violating Article 37, Paragraph 2, Article 42 or Article 73, Paragraph 2 which authorize the Central Bank of China to prescribe mandatory or prohibiting regulations shall be punished by the Central Bank of China with notice to the Competent Authority.

In the event that a party penalized by an administrative fine under the preceding two paragraphs disagrees with the decision, such party may appeal such decision in accordance with the procedures for administrative appeals and administrative proceedings. During the period of administrative appeal and administrative proceedings, the execution of the penalty may be suspended by the provision of bonds in the appropriate amounts.

Article 135



In the event of failure to pay an administrative fine within the prescribed period of time, a surcharge for late payment shall be levied, and calculated at the rate of one percent (1%) of the amount of the fine in arrears for each day of delay, starting from the day following the expiry of the prescribed period of time. If the payment of the fine still has not been made thirty (30) days therefrom, the case shall be referred to the court for compulsory execution and the Central Competent Authority may, in addition, suspend the business of the relevant Bank or Bank branch.

Article 136

A Bank that has been penalized in accordance with this Chapter and which fails to take corrective measures within the specified period of time may be punished by consecutive imposition of penalties imposed daily based on the amount of the originally imposed administrative fine until the corrective measures are taken. If a Bank repeatedly violates the provisions of this Act, or where the violations are of a serious nature, the Bank may be ordered to replace the responsible person within a specified period of time or the Permit of the Bank may be cancelled.

Article 136-1

Any criminally obtained assets or property in the possession of those who have violated this Act shall be confiscated, with the exception of compensations due to those victims or parties eligible for claims against damages. If some or all of the assets or property cannot be recovered, the equivalent value of the violator's own money or property shall be confiscated as compensation. .

Article 136-2

Those who violate this Act and are fined Fifty Million New Taiwan Dollars (NT\$50,000,000) or more, but are unable to pay their fine in full, shall perform not more than two (2) years of labor service; the length of their labor service shall be calculated as the number of days in a two-year period proportional to the amount of the fine. Those who are fined One Hundred Million New Taiwan Dollars (NT\$100,000,000) or more, but are unable to pay their fine in full, shall perform not more than three (3) years of labor service; the length of their labor service shall be calculated as the number of days in a three-year period proportional to the amount of the fine.

Article 137

Prior to the enforcement of this Act, any Bank that has not applied for or obtained a business license or any institution that has been conducting deposit and lending activities in a manner similar to a Bank, shall complete the establishment procedures in accordance with the provisions of this Act within the period of time prescribed by the Central Competent Authority.

Article 138

Subsequent to the promulgation and enforcement of this Act, if classifications or functions of any existing Banks or institutions with operations similar to a Bank are not in conformity with this Act, such shall be adjusted within the period of time prescribed by the Central Competent Authority, in accordance with the relevant provisions of this Act.

Article 138-1

For purposes of trying a criminal case of violation of this Act, the court may set up a special tribunal or appoint certain persons to hear the case.

Article 139

The provisions of this Act shall also apply to those Banks or financial institutions established under other laws, unless such laws provide otherwise.

Administrative rules governing the aforesaid financial institutions shall be as stipulated by the Executive Yuan.

Article 139-1

Regulations governing the application of this Act shall be as stipulated by the Central Competent Authority.

Article 140

This Act shall become effective from the date of promulgation; provided, that the effective date for Article 42 shall be the date as determined by the Executive Yuan.

The Offshore Banking Act, October 11, 1997

Article 1	This Act is promulgated to promote international financial activities, to establish a regional financial center and to authorize banks to set up offshore banking branches within the territory of the Republic of China ("R.O.C.").
Article 2	The Ministry of Finance ("MOF") shall be the competent administrative authority and the Central Bank of China ("CBC") shall be the competent operational authority.
Article 3	<p>The following types of banks may, through their head offices, apply to the competent authorities for obtaining the approval of the establishment of an offshore banking branch with a separate set of accounts to conduct international banking activities:</p> <ol style="list-style-type: none">1.Foreign banks authorized by the CBC to engage in foreign exchange businesses within the R.O.C.2.Foreign banks authorized to have a representative office in the R.O.C.3.Reputable foreign banks approved by the competent authorities. <p>Domestic banks authorized by the CBC to engage in foreign exchange businesses.</p>
Article 4	<p>An offshore banking branch may only conduct the following types of business:</p> <ol style="list-style-type: none">1.Accepting foreign currency deposits from natural persons, juridical persons, government agencies and financial institutions within or outside the territory of the R.O.C.;2.Extending credit in foreign currency to natural persons, juridical persons, government agencies and financial institutions within or outside the territory of the R.O.C.;3.Selling foreign currency financial debentures or other certificates of debt issued by the head office to natural persons, juridical persons, government agencies and financial institutions within or outside the territory of the R.O.C.;4.Undertaking proprietary dealing, brokerage and agency activities of foreign currency securities for natural persons, juridical persons, government agencies and financial institutions within or outside the territory of the R.O.C.5.Conducting the issuance, advising and negotiation of letters of credit in foreign currency, and import/export collection for natural persons, juridical persons, government agencies and financial institutions outside the territory of the R.O.C.;6.Conducting foreign currency remittances and exchanges, foreign currency transactions, borrowing or lending of funds, and buying or selling of foreign currency denominated securities, between the said offshore banking branch and other financial institutions, and between the said offshore banking branch and natural persons, juridical persons, government agencies and financial institutions outside the territory of the R.O.C.;7.Underwriting securities issued outside the territory of the R.O.C.;8.Book-keeping and managing for foreign currency loans extended outside the territory of the R.O.C.;9.Conducting custody, agency and consultation businesses related to the businesses stipulated above for natural persons, juridical persons, government agencies and financial institutions within or outside the territory of the R.O.C.; and10.Other foreign currency businesses approved by the competent authorities.
Article 5	<p>Unless otherwise provided in the Act, the conduction of the businesses specified in the preceding Article by an offshore banking branch shall not be subject to the limitations of relevant Articles of the Statute Governing Foreign Exchange, the Banking Law and the Law Governing the Central Bank of China.</p> <p>The MOF, after consulting with the CBC, shall set regulations for offshore banking branches concerning: credit extension to individual customer and other transactions restrictions, examinations by the competent authorities or other appropriate institutions mandated thereby, the contents of the reports and means for submitting the reports regarding financial and business conditions, the qualifications of managers, utilization of funds and risk management. An offshore banking branch established pursuant to Article 3, Items 2 and 3 of this Act shall appropriate working capital for its operations in the R.O.C. The minimum amount of the said working capital shall be stipulated by the MOF.</p>

Article 5-1	Articles 32 to 33-2 of the Banking Law shall apply mutatis mutandis to credits extended to related parties by an offshore banking branch. In the event of any violation of the preceding paragraph, the person responsible for such violation shall be punishable by imprisonment of no more than three years or detention and/or a fine of One Million Eight Hundred Thousand New Taiwan Dollars (NT\$1,800,000).
Article 6	Natural persons, juridical persons, government agencies or financial institutions within the territory of the R.O.C. financed by an offshore banking branch shall be governed by applicable laws and regulations governing finance transactions with non-resident banks.
Article 7	An offshore banking branch accepting foreign currency deposits shall not: 1.accept foreign currency in cash ; and 2.allow the withdrawal of foreign currency deposits in New Taiwan Dollars.
Article 8	Unless approved by the CBC, an offshore banking branch shall not conduct exchanges or other transactions between foreign currencies and New Taiwan Dollars.
Article 9	An offshore banking branch shall not engage in direct investment and investment in real estate.
Article 10	The offshore banking branch of a domestic bank may operate in the same business premises as its head office, and the offshore banking branch of a foreign bank may operate in the same business premises as its branch appointed to engage in foreign exchange business.
Article 11	Deposits received by an offshore banking branch shall be exempt from deposit reserve requirements.
Article 12	Interest rates on deposits or loans of offshore banking branches may be determined between the offshore banking branch and its customers.
Article 13	Income of offshore banking branches shall be exempt from business income tax; however, income of offshore banking branches derived from credit extension to natural persons, juridical persons, government agencies and financial institutions within the territory of the ROC shall be subject to taxation or exemptions as stipulated in the relevant income tax laws.
Article 14	Revenues of offshore banking branches shall be exempt from business tax; however, the business revenue of offshore banking branches derived from services to natural persons, juridical persons, government agencies and financial institutions within the territory of the R.O.C. shall be subject to taxation or exemptions as stipulated in relevant business tax laws.
Article 15	All types of certificates used by offshore banking branches shall be exempt from stamp duties.
Article 16	Interests paid by offshore banking branches to financial institutions, and natural persons, juridical persons and government agencies outside the territory of the R.O.C. shall be exempt from withholding requirement on income tax.
Article 17	Offshore banking branches shall be exempt from loan loss reserve requirements, unless otherwise required by the laws of the country where the said offshore banking branch's head office is located or required by the said country's banking authority.
Article 18	Unless otherwise required by court order or law, offshore banking branches are under no obligation to disclose any information to third parties.
Article 19	Telecommunications equipment and information systems to be used by an offshore banking branch in connection with its head office and other international financial institutions may be imported upon case-by-case applications.
Article 20	After the end of each fiscal year, an offshore banking branch shall submit its operation report, balance sheet and income statement to the competent authorities. The competent authorities may at any time request the offshore banking branch to provide, within a given period of time, information concerning its business or financial conditions or other reports. However, offshore banking branches shall be exempt from the requirements to make public their balance sheets.

Article 21	License fees may be charged to offshore banking branches based on the fee schedule to be prescribed by the competent authorities.
Article 22	<p>If an offshore banking branch commits any of the following acts, its responsible person shall be punishable by a fine of from One Hundred Eighty Thousand New Taiwan Dollars (NT\$180,000) to one Million Eight Hundred Thousand New Taiwan Dollars (NT\$1,800,000):</p> <ol style="list-style-type: none">1. Conducting any business not provided for in Article 4 of this Act,2. Violating Articles 7 through 9 of this Act,3. Failing to submit the reports required under Article 20 of this Act, or failing to provide the information concerning the business or financial conditions or other reports pursuant to the same Article,4. Failing to pay the license fee pursuant to Article 21 of this Act. In the cases where the violations continue even after the punishment, the competent authorities may impose an additional fine of one to five times the prescribed amount. In addition, if the above deed is a serious one, the competent authority may impose the following punishments: <ol style="list-style-type: none">1. suspension of the said offshore banking branch's business operations for a specified period of time; or2. revocation of the license of the said offshore banking branch.
Article 22- 1	<p>In the event of any violation of the regulations stipulated pursuant to Article 5, Section 2, the following punishments shall be imposed:</p> <ol style="list-style-type: none">1. A fine of from One Hundred Eighty Thousand New Taiwan Dollars (NT\$180,000) to One Million Eight Hundred Thousand New Taiwan Dollars (NT\$1,800,000) upon any violation of restrictions on single customer credit extensions related party lending or other transaction restrictions;2. A fine of from One Hundred Eighty Thousand New Taiwan Dollars (NT\$180,000) to One Million Eight Hundred Thousand New Taiwan Dollars (NT\$1,800,000) upon the concealment or destruction of related documents or upon reasonable lack of response to questions from regulatory auditors or the competent authorities.3. A fine of One Hundred Twenty Thousand New Taiwan Dollars (NT\$120,000) to One Million Two Hundred Thousand New Taiwan Dollars (NT\$1,200,000) upon any violation of any limitation set by the competent authorities on the type and amount of foreign currency securities invested by offshore banking branches.
Article 23	The regulations for the implementation of this Act shall be set by the competent authorities.
Article 24	This Act shall become effective as of the date of its promulgation.