



# The Legal 500 Country Comparative Guides

## Taiwan

# BANKING & FINANCE

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This country-specific Q&A provides an overview of banking & finance laws and regulations applicable in Taiwan.

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## TAIWAN

### BANKING & FINANCE



#### 1. What are the national authorities for banking regulation, supervision and resolution in your jurisdiction?

In Taiwan, the Financial Supervisory Commission (FSC) is the government body regulating all financial products and services. There are four bureaux established under the FSC, which are the Banking Bureau (BB), the Securities and Futures Bureau (SFB), the Insurance Bureau (IB) and the Financial Examination Bureau (EB) (collectively the Bureaux). Among the four Bureaux, the BB is the national authority for regulation and supervision and banking related activities, and the EB is in charge of financial inspection and audits of financial institutions regulated by the FSC, including banks.

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

#### 2. Which type of activities trigger the requirement of a banking licence?

In Taiwan, conducting banking-related activities generally requires a license from the FSC. Such banking-related activities include, without limitation: deposit taking, remittance, credit card issuance, etc.

#### 3. Does your regulatory regime know different licenses for different banking services?

Generally speaking, a bank needs to specify clearly the specific banking businesses/services it wishes to carry out when filing the license application with the FSC, while services such as deposit taking, lending and remittance are considered core functions that every local commercial bank will generally have.

#### 4. Does a banking license automatically permit certain other activities, e.g., broker dealer activities, payment services, issuance of e-money?

No. If a bank wishes to conduct broker-dealer activities, it needs to apply to the SFB for the license for securities firm, while businesses falling within the scope of "electronic payment" will require a license of "electronic payment" from the BB.

#### 5. Is there a "sandbox" or "license light" for specific activities?

To promote fintech services and companies, the Taiwan government promulgated a law for the fintech regulatory sandbox, the FinTech Development and Innovation and Experiment Act (Sandbox Act), which took effect on 30 April 2018. The Sandbox Act was promulgated to enable fintech businesses to test their financial technologies in a controlled regulatory environment.

Pursuant to the Sandbox Act, an applicant needs to obtain an approval from the FSC before entering the sandbox and beginning the experiment. During the experiment period, the experimental activities may enjoy exemptions from certain laws and regulations (such as FSC licensing requirements and certain legal liability exemptions). After completion of the approved experiments, the FSC will analyze the results of the experiments. If the result is positive, the FSC may review the existing financial laws and regulations and explore the possibility of amending such existing rules that pose obstacles to the experimented financial innovation if put in the real world. Note, however, that, depending on the review result of the FSC, the sandbox entity or individual might still be required to apply for a relevant license or approval from the FSC in order to formally conduct the activities as previously tested in the sandbox.

#### 6. Are there specific restrictions with

### respect to the issuance or custody of crypto currencies, such as a regulatory or voluntary moratorium?

Except for crypto currencies having the nature of securities, currently there are no specific restrictions with respect to the issuance or custody of crypto currencies. However, please note that according to Taiwan's crypto-related AML regulations (effective from July 2021), designated crypto-related business operators shall comply with relevant AML-related obligations, such as establishing an internal control and audit mechanism, a reporting procedure of suspicious transactions, KYC procedure, and specifically, a crypto-related business operator may not start with its business operation before (i) it has submitted a declaration to the FSC declaring that it has fully complied with the applicable AML regulations and (ii) the submitted declaration has been duly confirmed by the FSC.

Issuance and trading of crypto currencies with the nature of securities (offerings of which are called security token offering (STO)), as well as the as the STO platform operators, are governed by a set of rules and regulations announced by the Taipei Exchange (TPEX).

### 7. Do crypto assets qualify as deposits and, if so, are they covered by deposit insurance and/or segregation of funds?

No, based on the current laws and regulations as well as the relevant court precedents.

But please note that there have been more and more discussions on whether taking "stablecoins" should be considered taking "deposits" without a banking license, but such interpretation would be subject to the potential challenge under the principle of "no penalty without a law."

### 8. If crypto assets are held by the licensed entity, what are the related capital requirements (risk weights, etc.)?

In a FSC press release issued in 2014, the FSC ordered that local banks neither accept bitcoin as a payment method nor provide any other services related to bitcoin (e.g., the exchange of bitcoins for fiat currency). Such ruling is considered as the general prohibition on financial institutions providing any crypto-related services. As such, FSC licensed entities (e.g., banks) may not hold crypto assets under current Taiwan laws and regulations.

### 9. What is the general application process for bank licenses and what is the average timing?

The major steps for setting up a bank in Taiwan are as follows: (i) application to the BB for establishment permit; (ii) company set-up (incorporation); and (iii) application to the BB for banking license. The prior approval from the Investment Commission may also be required if one or more shareholders are foreigners.

The timing required would be six months to one year, or even longer, depending on the individual circumstances.

### 10. Is mere cross-border activity permissible? If yes, what are the requirements?

There is no concept of "passporting" right in Taiwan, no any other cross-border approval under Taiwan law. Therefore, generally foreign banks (which are not licensed by the FSC in Taiwan) need to apply for the relevant licenses to the FSC in order to carry out its banking business in Taiwan. Without a banking license, a foreign bank may only conduct its business offshore.

### 11. What legal entities can operate as banks? What legal forms are generally used to operate as banks?

According to the Taiwan's Banking Act, a bank shall be a company and the legal form shall be a company limited by shares unless it has been established with special approval obtained prior to the amendment and enforcement of the Taiwan's Banking Act or otherwise provided by law.

### 12. What are the organizational requirements for banks, including with respect to corporate governance?

The banks shall have a shareholders meeting, a board of directors and the supervisors (or independent directors). In addition, the banks shall also have an audit department (which shall report to the board of directors). With respect to the corporate governance, the Corporate Governance Best-Practice Principles for Banks provides that a bank shall establish a complete internal control system and implement it effectively. The board of directors shall take the ultimate responsibility for ensuring an appropriate and effective internal control system be established and maintained. The management shall be in charge of implementing

business strategies and policies approved by the board of directors, developing a procedure sufficient to identify, assess, supervise, and control the bank's risk, and establishing an appropriate and effective internal control system.

### **13. Do any restrictions on remuneration policies apply?**

According to Article 14-6 of Securities and Exchange Act, a company whose stock is listed on the stock exchange or traded over-the-counter shall establish a remuneration committee. The FSC also issued the regulations governing the appointment and exercise of powers of a remuneration committee. In addition, some directives require that remuneration to staffs selling financial products or services to customers shall be determined based on all factors (including risks associated therewith) and shall not be fully paid immediately after conclusion of transactions.

### **14. Has your jurisdiction implemented the Basel III framework with respect to regulatory capital? Are there any major deviations, e.g., with respect to certain categories of banks?**

The FSC has issued the Regulations Governing the Capital Adequacy and Capital Category of Banks ("Capital Adequacy and Capital Category Regulations") in 2012 (last amended on December 23, 2019) and implemented the Basel III framework. It includes the amendment of the composition of Regulatory Capital and the requirement of Minimum Capital Adequacy Ratio.

According to the Regulations Governing the Capital Adequacy and Capital Category of Banks, the bank's calculation of its stand-alone and consolidated capital adequacy ratio shall meet the following standards:

1. The common equity tier 1 ratio shall not be less than 7%
2. The Tier 1 capital ratio shall not be less than 8.5%
3. The total capital adequacy ratio shall not be less than 10.5%.

### **15. Are there any requirements with respect to the leverage ratio?**

According to the Article 4 of the Capital Adequacy and Capital Category Regulations, the bank shall calculate its stand-alone leverage ratio. The minimum requirement of

leverage ratio is no less than 3% and it shall be carried out in accordance with the calculation methods.

### **16. What liquidity requirements apply? Has your jurisdiction implemented the Basel III liquidity requirements, including regarding LCR and NSFR?**

By reference to the Basel III, the FSC issued the Standards Implementing the Liquidity Coverage Ratio of Banks ("Standards") in 2014. Pursuant to the Standards, the term "liquidity coverage ratio" is calculated by dividing total amount of high-quality liquid assets by total net cash outflows over the next 30 calendar days and the liquidity coverage ratio calculated in accordance with the Standards shall not be less than 100%. The calculation of NSFR is implemented in 2018.

### **17. Do banks have to publish their financial statements? Is there interim reporting and, if so, in which intervals?**

The banks shall prepare and submit its annual report and business report, financial statements and other items designated by the FSC each year. The bank shall also prepare and submit its quarter report and financial statements on a quarterly basis. Such annual reports and financial statements are made available to the public on a website designated by the FSC as well as their respective official websites.

### **18. Does consolidated supervision of a bank exist in your jurisdiction? If so, what are the consequences?**

The approach of consolidated supervision is not officially adopted under Taiwan law. However, where a bank is a subsidiary of a financial holding company, the FSC as a regulator supervising financial holding company would look into the whole group of the financial holding company. Also, in the event of an M&A transaction involving acquisition of a bank, it is our observation that the FSC may tend to adopt similar approach to assess the acquirer during the approval process.

### **19. What reporting and/or approval requirements apply to the acquisition of shareholdings in, or control of, banks?**

According to the Taiwan's Banking Act,

1. The same person or same concerned party

who singly, jointly or collectively acquires more than five percent (5%) of a Bank's outstanding voting shares shall report such fact to the FSC within ten (10) days from the day of acquisition; the preceding provision applies to each cumulative increase or decrease in the shares of the same person or same concerned party by more than one percent (1%) thereafter.

2. The same person or same concerned party who intends to singly, jointly or collectively acquire more than ten percent (10%), twenty-five percent (25%) or fifty percent (50%) of a Bank's outstanding voting shares shall apply for prior approval of the Competent Authority. The FSC shall also prescribe the regulations of qualifications, required documentation, shares to be acquired, purpose of acquisition, sources of funding, and other matters to be complied with.

## 20. Does your regulatory regime impose conditions for eligible owners of banks (e.g., with respect to major participations)?

The FSC has a discretionary power to approve or disapprove a M&A transaction involving acquisition of a bank. However, no specific conditions for eligible owners of banks have been promulgated by the FSC. On a related note, the FSC issued the Regulations Governing Qualification Requirements and Concurrent Serving Restrictions and Matters for Compliance by the Responsible Persons of Banks. Such Regulations provide the qualifications and requirements for the responsible persons (including directors and executive officers) of the bank. The specific conditions of responsible person include necessary expertise, good moral character, and without any conflict of interests or any violation of the respective internal controls of the institutions.

## 21. Are there specific restrictions on foreign shareholdings in banks?

Except for investors from China, there are no specific restrictions on foreign shareholders in banks. However, acquisition of Taiwanese bank may require the approval of the Department of Investment Review of the Ministry of Economic Affairs, the FSC and other competent authorities (such as the anti-trust authority, as the case may be).

## 22. Is there a special regime for domestic

## and/or globally systemically important banks?

Systemically important banks in Taiwan are required to meet 4% additional capital buffer requirements with their Common Equity Tier 1 capital. The 4% additional capital buffer includes a 2% additional regulatory capital buffer and a 2% bank's internal capital buffer.

Systemically important banks in Taiwan are required every year to submit their contingency action plans for dealing with situations where the capital is not sufficient. They are also required to conduct and report two-year stress test results to the FSC.

After estimating the size, interconnectedness, substitutability and complexity of each bank, the FSC has announced that CTBC Bank Co, Ltd, Cathay United Bank, Taipei Fubon Bank, Mega International Commercial Bank, Taiwan Cooperative Bank and First Commercial Bank are categorised as domestic systemically important banks.

## 23. What are the sanctions the regulator(s) can order in the case of a violation of banking regulations?

The FSC can impose sanctions on banks for misconduct. The actions include: (i) revocation of resolutions of statutory meetings; (ii) partial suspension of the bank's business; (iii) imposing restrictions on investments; (iv) ordering the bank to dispose of or transfer certain assets or prohibiting the bank from disposing of or transferring certain assets; (v) ordering the bank to close a branch or department within a prescribed period; (vi) ordering the bank to discharge managers or staff members or suspend them from performance of their duties for a specified period of time; (vii) discharging directors or supervisors; (viii) ordering the bank to set aside a certain amount of monetary reserve; and (ix) other necessary measures.

## 24. What is the resolution regime for banks?

The FSC may take over a bank if any of the following occur:

- there is a concern that a bank might not be able to pay its debts when due or there might be a detriment to the depositors' interests due to obvious deterioration in the bank's business or financial condition;
- a bank's capital is graded as being seriously

inadequate and 90 days have lapsed since the date the bank was so graded. However, if a bank is ordered by the FSC to undertake capital restructuring or a merger within a prescribed period and fails to do so, the 90 days should be calculated from the day subsequent to the prescribed period; or

- the losses of a bank exceed one third of the bank's capital and the bank fails to make up such deficit within three months.

If the FSC places a bank in receivership, the duties and powers of the bank's shareholders' meeting, board of directors, directors, supervisors and audit committee shall be suspended. The receiver appointed by the FSC has the power to manage the bank's business and dispose of the bank's properties.

## 25. How are client's assets and cash deposits protected?

All Taiwanese banks that are duly approved to accept deposits should participate in the deposit insurance programme of the Central Deposit Insurance Corporation of Taiwan (CDIC). If a bank is ordered to suspend its operations by the FSC, the CDIC will compensate each depositor up to NT\$3 million. The types of deposits covered generally include deposits in current accounts (checking deposits), demand deposits, time deposits, deposits required by law to be deposited in certain financial institutions and any other deposits as approved by the FSC.

## 26. Does your jurisdiction know a bail-in tool in bank resolution and which liabilities are covered? Does it apply in situations of a mere liquidity crisis (breach of LCR etc.)?

The law does not empower the FSC to bail creditors. If the FSC places a bank in receivership, the duties and powers of the bank's shareholders' meeting, board of directors, directors, supervisors and audit committee shall be suspended. The receiver appointed by the FSC has the power to manage the bank's business and dispose of the bank's properties.

The FSC has the power to resolve failing banks in an orderly manner. In local practice, seven banks were placed under receivership from 2006 to 2008. The FSC divided their assets into non-performing assets and other assets/liabilities (including obligations regarding deposits), and sold them separately. The non-performing assets were sold to asset management companies while the other assets/liabilities were sold/transferred to other

banks, with a certain amount of compensation agreed to be paid by the FSC. The depositors, employees and non-deposit creditors suffered little hurt.

The FSC implemented the liquidity coverage ratio (LCR) framework in 2015. The LCR is calculated by dividing a bank's high-quality liquid assets by its total net cash flows over a 30-day period. Since 1 January 2019, banks incorporated under the laws of Taiwan must maintain an LCR of at least 100%. Banks whose LCR does not meet the minimum requirement should report to the FSC and the Central Bank of the Republic of China (Taiwan), including reasons and remedial actions to be taken.

## 27. Is there a requirement for banks to hold gone concern capital ("TLAC")? Does the regime differentiate between different types of banks?

Tier 2 capital is considered to be gone concern capital. There is no statutory requirement for banks to hold gone concern capital provided that the total capital adequacy ratio (i.e., aggregate amount of net Tier 1 capital and net Tier 2 capital divided by total risk-weighted assets) shall be above 10.5%. The statutory regime does not differentiate between different types of banks.

## 28. In your view, what are the recent trends in bank regulation in your jurisdiction?

In 2018, Taiwan's financial regulator, the FSC, promulgated regulations governing the establishment of "digital-only" banks, which are defined as banks without physical branches. It is generally anticipated that the establishment of digital-only banks would encourage cross-industry combinations and fintech applications for everyday life by building a fintech ecosystem.

Following the promulgation of these regulations, three applications to set up digital-only banks were filed with the FSC in early 2019, all of which were approved by the FSC on 30 July 2019. The FSC grants approvals to LINE, Next Bank and Rakuten Bank to set up digital-only banks and further grants digital banking licenses to the same.

The FSC has been researching the supervision of digital-only banks, focusing on topics such as real-time monitoring of liquidity risk and other important matters of digital banks, as well as the introduction of supotech (supervisory technology) and regtech (regulatory technology) into the supervision and surveillance of digital banks' business activities.

**29. What do you believe to be the biggest threat to the success of the financial sector in your jurisdiction?**

It is anticipated that the uncertainty of the relationship between Taiwan and China would have impact on Taiwan's banking system. In view of the FSC's desire to

expand Taiwan's financial market and increase employment opportunities, it is anticipated that more products should be made available to customers in Taiwan. Taiwan's banking industry needs to find a way to become more competitive vis à vis neighboring financial markets such as Hong Kong and Singapore, and to retain talent in Taiwan.

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