Global Financial Services Regulatory Guide - Taiwan

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# 1. Who regulates banking and financial services in your jurisdiction?

## Who regulates banking and financial services in your jurisdiction?

Taiwan has two regulators responsible for the authorization and supervision of banks, insurers and other financial institutions. These are the Financial Supervisory Commission (FSC) and the Central Bank of the Republic of China (Taiwan) (CBC). The allocation of responsibilities between the FSC and the CBC is as follows:

The FSC functions as an independent agency that directly reports to the Executive Yuan, Republic of China (Taiwan), Taiwan's highest administrative agency. Its responsibilities include supervision, examination and inspection of the financial market. Four bureaus and one government-owned corporation, the Central Deposit Insurance Corporation (CDIC), compose the FSC. The Banking Bureau, the Securities and Futures Bureau and the Insurance Bureau supervise financial institutions, while the Examination Bureau monitors their operations and audits financial institutions from time to time. CDIC is organized to protect depositors' rights and interests in financial institutions, maintain credit order and enhance the sound development of financial businesses in accordance with the Banking Act and the Deposit Insurance Act. Anti-money laundering and counterterrorism are the key areas monitored by the FSC and the Ministry of Justice, which is the competent authority of the Money Laundering Control Act.

The CBC is mandated by the Banking Act and the Central Bank of the Republic of China (Taiwan) Act to implement monetary policy and foreign exchange regulations.

# 2. What are the main sources of regulatory laws in your jurisdiction?

## What are the main sources of regulatory laws in your jurisdiction?

The Banking Act, the Financial Holding Company Act and the Central Bank of the Republic of China (Taiwan) Act are the three main pillars of the domestic banking industry's legal framework. The Banking Act sets forth general regulations that govern the banking business, protect depositors, facilitate the development of enterprises and coordinate banks' operations within the national financial policy of Taiwan. The Financial Holding Company Act regulates the establishment and operations of financial holding companies. In addition, a separate Offshore Banking Act governs offshore banking units, and the Credit Cooperatives Act regulates community financial institutions.

The Act Governing Electronic Payment Institutions ("**EPI Act**") and the Act Governing Issuance of Electronic Stored Value Cards used to be the two pillars governing electronic payment, which have increased in significance with the emergence of fintech solutions from the financial market. From 1 July 2021, the electronic payments and electronically stored value cards have been integrated and collectively governed by the amended EPI Act, with the aim of establishing a unified electronic payment-centered ecosystem. As a result, the Act Governing Issuance of Electronic Stored Value Cards has been repealed. By broadening the licensing scope and laying down detailed requirements for electronic payment institutions, the new EPI Act endeavors to promote the development of the electronic payment market as well as to ensure consumer protection.

The Insurance Act is the main framework law in Taiwan for insurance enterprises. There are a number of regulations, including the Enforcement Rules for the Insurance Act; Regulations Governing Insurance Brokers; Regulations Governing Insurance Agents; Regulations Governing Establishment and Management of Insurance Enterprises; and Regulations Governing Offshore Insurance Branches. In general, insurance activities in Taiwan will trigger different requirements for insurance licenses.

The Securities and Exchange Act is the main framework law in Taiwan for securities and securities firms. The regulations include Regulations Governing the Offering and Issuance of Securities by Securities Issuers; Regulations Governing the Offering and Issuance of Securities by Foreign Issuers; Regulations Governing Securities Firms; Regulations Governing Offshore Structured Products; and Taipei Exchange Rules Governing the Operation by Securities Firms of the Business of Proprietary Trading of Security Tokens.

The government has promulgated other financial laws to regulate various financial activities in Taiwan, including the Trust Enterprise Act; the Financial Institutions Merger Act; the Act Governing Bills Finance Business; Securities Investment Trust and Consulting Act; the Financial Asset Securitization Act; Real Estate Securitization Act; and Financial Technology Development and Innovative Experimentation Act.

While the initial coin offerings or securities token offerings (STO) and transactions involving other categories of crypto-assets are emerging from the Taiwan market, the regulators are just in the early stages of crafting legislation related to the crypto-assets markets, focusing mainly on anti-money laundering and STO regulations. The Taipei Exchange Rules Governing the Operation by Securities Firms of the Business of Proprietary Trading of Security Tokens have been in force since 20 January 2020 to regulate the STO and trading business. However, the regulatory regime governing outside of such activities is still unclear. Among all types of crypto-assets, Taiwan regulators only provide a specific legal framework for security tokens, which are subject to the Securities and Exchange Act and relevant securities token offerings regulations (with a few exemptions). In contrast, if the crypto-asset involved does not qualify as a security token, there is no bright-line indicating whether and how those relevant service providers concerned will be regulated. For instance, Bitcoin is still treated like a commodity not subject to financial regulations unless from the anti-money laundering perspective. Therefore, drawing distinctions between different types of crypto-assets (though not easy) is critical in Taiwan because the regulatory treatment hinges largely on whether or not it is a security, which is determined via FSCs case-specific analysis. Lacking in clear supervision, crypto-asset service providers call for being supervised to ease their business promotion. Otherwise, they have difficulties in conducting "know-your-customer" checks at the instersection with fiat currency. As virtual assets frauds and scandals have garnered wide attention, on 26 September 2023, the FSC announced its Virtual Asset Service Providers (VASP) Managing Guidelines as an attempt to strengthen consumer protection from various aspects,such as transparency, assets custody and segregation, internal control of VASP operators and external expert assistance. In addition, the Virtual Asset Management Bill was introduced in the Legislative Yuan and passed the first reading in October 2023. Meanwhile, the FSC is currently conducting a feasibility study to propose its own bill on virtual assets and expects to complete the study by September 2024, showing the possibility of regulating virtual assets through formal legislation in the near future.

# 3. What types of activities require a license in your jurisdiction?

## What types of activities require a license in your jurisdiction?

The types of activity that may qualify as banking and financial activity requiring a license in Taiwan include the following:

Deposit taking – As defined in the Banking Act, "deposit taking" refers to the act of accepting deposits or other funds from the general public and agreeing to return the principal or to pay an amount equal to or greater than the principal.

Providing mortgage loans – Under the Banking Act, "mortgage loan" refers to a kind of “secured credit,” which implies that the following types of collateral have been furnished to secure such credit

Mortgage for immovables or movable

Pledge for movables or right

Bills/notes receivable from business transactions of a borrower

Guarantees extended by a government agency in charge of the public treasury, a bank or a government-authorized credit agency

Consumer lending – This is defined as the extension of credit by a bank to a person to accommodate the financing needs of such person for the acquisition of a property, an investment, consumption or other expenditures, as defined in the Guidelines Governing the Credit Extensions by Member Banks of the ROC Bankers Association. A bank will usually expect the borrower’s salary, interest revenue, leasing revenue, investments, and the like, as repayment sources. The Fair Trade Commission and various consumer protection institutions closely monitor the consumer lending terms and conditions.

Issuing credit and charge cards – "Credit card" pertains to the card used by a card holder to obtain in advance, by virtue of the card-issuing institution’s credit, money, goods, services or other benefits from certain specially arranged parties, and to repay the relevant indebtedness thereafter or in accordance with other arrangements.

Taiwan and other countries are keen to develop its fintech by introducing a sandbox regulation where fintech solution providers may be exempted from certain regulatory requirements if they are approved to enter into an experiment.

Providing foreign exchange and money remittance services – "Money remittance services" refer to the purchase or sale of foreign currency and money transfers to and from Taiwan. Under the amended EPI Act, an entity other than banks or electronic payment institutions (EPI) will be allowed to engage in limited foreign exchange and inward/outward remittance services provided to foreign workers subject to further approval by the FSC. Such relaxation aims to satisfy more migrant workers’ needs, who used to suffer from relatively expensive transaction costs for migrant remittances.

The definition and scope of “foreign exchange business” include the following:

Foreign exchange business related to export

Foreign exchange business related to import

Inward and outward remittances

Foreign currency deposits

Foreign currency loans

Foreign currency payment guarantees

Foreign exchange derivatives business

Other foreign exchange businesses

Conducting trust business – This covers the following activities:

Trust of money

Trust of loans and related security interests

Trust of securities

Trust of movable property

Trust of real estate

Trust of leases

Trust of superficies

Trust of patents

Trust of copyrights

Trust of other property rights

Trust products or services in Taiwan are standardized because they are highly regulated by the FSC.

Providing securities investment trust and securities investment consulting services – "Securities investment trust services" refers to offering securities investment trust funds and issuing beneficial interest certificates to unspecified persons, or privately placing securities investment trust funds and delivering beneficial interest certificates to specified persons, and investing in or trading securities, securities-related products, or other items approved by the competent authority. "Securities investment consulting services" refers to providing analysis, opinions or recommendations on matters relating to an investment in or trading of securities, securities-related products or other items approved by the competent authority, in return for compensation obtained directly or indirectly from a principal or third party.

Carrying on insurance business, insurance agency business and insurance broker business – "Insurance agent" refers to a person who, on the basis of a contract of agency or a letter of authorization, collects remuneration from an insurer and acts as a business agent on the insurer’s behalf. "Insurance broker" refers to a person who, on the basis of the interest of the insured, negotiates an insurable contract or provides related services and collects a commission or remuneration.

Providing securities custody, book-entry transfer and registration of book-entry securities.

Carrying on business of securities underwriting, proprietary trading and securities brokerage – Only a licensed securities firm is allowed to carry on securities business.

Providing electronic payment services – "Electronic payment institution" means a company approved by the competent authority to engage in the following businesses in the capacity of an intermediary between payers and recipients:

Collecting and making payments for real transactions as an agent, excluding an institution that engages only in this business and where the total balance of funds collected/paid and kept by them as an agent does not exceed TWD 1 billion

Accepting deposits of funds as stored value funds (top-up service)

Domestic or international small-amount remittances – Transferring limited amount of funds between e-payment accounts or electronically stored value cards

Trading foreign currencies to operate the aforementioned three businesses

Other related businesses approved by the competent authority, such as: (1) providing custody of payments for product (service) gift certificates or tickets and assisting in services related to their issuance, sales, and settlement; and (2) providing reward points integration and redemption for payments collected or made for actual transactions as an agent.

Securitization of real estate and financial assets – Securitization of real estate covers a trustee establishing a real estate investment trust (REIT) or real estate asset trust (REAT) and acquiring funds from issuing beneficiary securities to specific persons through private placement. Securitization of financial assets covers the act that the originator entrusts the assets to a trustee or transfer the assets to a specific purpose company (SPC), whereby the trustee or SPC issues beneficial securities or asset-backed securities. However, the REIT or REAT markets are no longer active in Taiwan because the regulations are not flexible, and there are better alternatives in the market. Specifically, the current model governed by the Real Estate Securitization Act, which allows trust structure REIT alone, fails to provide sufficient flexibility to satisfy the Taiwan REIT market appetite. On 14 March 2024, following the FSCs proposal in 2021, the Executive Yuan adopted a resolution to amend the Securities Investment Trust and Consulting Act and rename it as the Securities and Real Estate Investment Trust and Securities Consulting Act permitting REIT to be issued in fund structure in parallel with the existing trust structure. If the bill is further passed by the Legislative Yuan, business operators may choose to issue REIT through either fund or trust structure and will be subject to the supervision of the Securities and Futures Bureau or Banking Bureau, respectively.

Financial information service business – This refers to an inter-bank financial information network operator that provides a value-added network for real-time settlement of interbank transactions between financial institutions. The term "settlement" refers to the procedures of crediting and debiting the designated accounts of participants according to the payment instructions of financial institutions and the netting of receivables and payables between financial institutions to discharge the payment obligations of the paying bank.

Service enterprise engaged in inter-bank credit information processing and exchange – This is an enterprise that either gathers credit information from financial institutions and/or enterprises related to financial institutions, or having been authorized by the competent authority, gathers and processes various kinds of credit information with the object of duly providing such information for access and use by financial institutions, interested parties or other parties authorized by the competent authority.

# 4. How do the licensing requirements apply to cross-border business in your jurisdiction?

## How do the licensing requirements apply to cross-border business in your jurisdiction?

Banking and financial activities are highly regulated in Taiwan. Any person (individual and entity) planning to conduct banking and financial activities shall be recognized and licensed for its business and activities in Taiwan. An offshore financial institution that is not licensed in Taiwan cannot operate any banking or financial business or conduct any related activities in Taiwan.

Furthermore, it is the FSCs strict policy that an offshore bank may not dispatch its staff into Taiwan for any banking business activities. Banking business and activities in Taiwan by an offshore bank or its staff is strictly prohibited. The FSC has not provided any exemption for an unlicensed offshore bank in that regard. In addition, cross-border financial services provided in Taiwan by a foreign bank/branch without license or approval in Taiwan is not allowed. In other words, even though an offshore financial institution has set up its Taipei branch, staff from other branches, subsidiaries or affiliates of such offshore financial institution may not conduct any business activities in Taiwan, and the staff from its branch/branches other than its Taipei branch cannot promote or introduce any financial products to clients in Taiwan.

By way of reiteration of this policy, the FSC issued two rulings to the ROC Bankers’ Association in Taiwan, on 27 March 2014 (“**27 March Letter**”) and on 10 May 2016 ("**10 May Letter**”), which expressly provide that financial institutions that have no presence in Taiwan shall not provide financial services within the territory of Taiwan, and the local branches or subsidiaries of an offshore bank shall not solicit a client in Taiwan to open an overseas account with the head office, affiliates and/or alliance of such offshore bank or any other financial institution that is not approved by the competent authorities of Taiwan, nor hold funds.

Nevertheless, according to the FSC ruling to the ROC Bankers’ Association in Taiwan on 9 September 2014 (“**9 September Letter**”), a local bank may provide assistance to its offshore entities with respect to confirmation and delivery of information, contract signing and identity verification in the process of conducting deposit taking, and credit facility business with corporate clients and responsible persons of corporates. With respect to deposit taking, however, a local bank may only provide assistance to offshore branches; with respect to the credit facility business, a local bank may provide assistance to offshore branches and subsidiaries. Further, provision of assistance by offshore subsidiaries of a local bank to such local bank with respect to confirmation and delivery of information, contract signing and identity verification in the process of conducting deposit taking and facility business is currently not prohibited by ROC laws and is subject to the laws of the place where the offshore subsidiary is located. After COVID-19, the FSC promulgated a ruling on 14 January 2021 to extend the 9 September Letter to be applied for the periodical renewal process, not only of corporate clients but also of individual clients, to ease the continuous anti-money laundering due diligence check process for existing clients of both offshore subsidiaries as well as branches.

To provide information/marketing material via remote communication such as telephone or email by an unlicensed foreign institution upon a client’s request is not expressly prohibited. We note that offshore financial institutions may come to Taiwan and meet clients for a courtesy visit or social event. Such activity is not restricted because a courtesy visit or social event in Taiwan is not deemed as a business activity. However, these offshore financial institutions should be cautious not to mention or explain any unapproved or non-licensed offshore products or offshore services to clients in Taiwan, even if they make any request during such a visit or social event.

It is a common market practice in Taiwan for an offshore branch of a multinational financial institution to participate in cross-border syndication for granting straight loans to Taiwan customers or simply in a bilateral loan because lending (including project finance, ship/aircraft finance, real estate finance, acquisition finance and trade finance) by offshore arrangers and/or lenders to onshore borrowers is not prohibited. There are no requirements or prohibitions on the location of the booking centers for such straight loans. Other unlicensed banking services or products provided by an offshore bank or financial institution to Taiwan customers, including but not limited to promotion and solicitation activities in Taiwan, visiting customers in Taiwan or executing contracts and documentation in Taiwan, are restricted. Negotiation and discussion of the terms of any financial products with clients in Taiwan could be deemed to be within the scope of conducting banking or financial business, which is not allowed.

# 5. What are the requirements to obtain authorization in your jurisdiction?

## What are the requirements to obtain authorization in your jurisdiction?

The requirements for becoming authorized to conduct banking and financial activities in Taiwan can vary, depending on the particular regulated activities. In general, the applicant should first apply to the FSC for prior approval and obtain an establishment permit. Upon receiving an establishment permit, the applicant is required to apply for company registration before applying for a business license from the FSC. Broadly, the following requirements may need to be satisfied:

Submission of information and supporting documents – This may include an application form for an establishment permit; business plan; the list of promoters and its certification; self-assessment form for promoters from financial industry meeting requirements of investments-related regulations; the application forms for the same person or the same interested parties who have more than 10% of the shares concerning promoters who are from a non-financial industry; the minutes of the promoters’ meeting; a written declaration of the promoters stating that they are of good moral character; certification that the promoters have already deposited the capital; description of promoters’ fund source(s); articles of the public offering; the certification of qualifications of the president, vice president and assistant vice president; articles of incorporation of the bank; auditing opinions of a certified public accountant and lawyer; and other documents required by the competent authority.

Having a physical presence in Taiwan – The applicant must establish a company limited by shares, a branch, or a representative office in Taiwan.

Meeting capital requirement – The minimum paid-in capital for an onshore commercial bank (including a virtual bank) is TWD 10 billion; TWD 2 billion for an insurance company; from TWD 200 million to TWD 400 million for a securities firm; TWD 300 million for a securities investment trust enterprise; TWD 20 million for a securities investment consulting enterprise; and TWD 2 billion for a trust enterprise. The amended EPI Act adopts a more differentiated regulation. For instance, the minimum capital requirement will be categorized in three tiers: TWD 500 million, TWD 300 million and TWD 100 million. Without engaging in domestic or international small-amount remittances business, the EPI will only be required to prepare TWD 300 million paid-in capital. If it is not involved in domestic or international small-amount remittances as well as accepting stored value funds, the minimum capital threshold will be reduced to TWD 100 million.

# 6. What is the process for becoming authorized in your jurisdiction?

## What is the process for becoming authorized in your jurisdiction?

An applicant for authorization must complete a formal process to apply for prior approval and obtain an establishment permit. After incorporation but before the commencement of business, an applicant must apply for a business license from the FSC. Also, in order to meet the capital requirements, an applicant must apply for an injection of capital to invest in Taiwan and after the capital injection, it is also required to apply for verification of such investment with the Department of Investment Review (DIR), Ministry of Economic Affairs (MOEA)

The time frame within which to obtain approvals and of commencement of business is on a case-by-case basis. For instance, it may take about two months for the FSC to determine whether or not to approve the application of establishment of a securities firm, one month for the DIR to approve the injection of capital, and one month for the FSC to issue a business license for a securities firm.

For an onshore commercial bank, the following are required to be completed:

 Prior approval – To establish an onshore commercial bank in Taiwan, the applicants (e.g., the promoters of the bank) must submit the following information before incorporation:

Application form for establishment permit

Business plan: The business scope, the principles and guidelines of the business operation and the concrete method to carry out the business (including the location of facility, the division of the internal organization, the employment and training of personnel, the business development plan and the financial forecast for the next three years), etc.

The list of promoters and their certifications

Self-assessment form for promoters from financial industry meeting requirements of investments-related regulations

The application forms stipulated in paragraph 6 of Article 25 of the Banking Act for the same person or the same interested parties who have more than 10% of the shares concerning promoters who are from non-financial industry

The minutes of the promoters’ meeting

Written declaration of the promoters stating that none of the circumstances listed in Article 3 of the "Regulations Governing Qualification Requirements and Concurrent Serving Restrictions and Matters for Compliance by the Responsible Persons of Banks" apply to them

Certification that the promoters have already deposited capital of at least TWD 2 billion

Description of promoters’ fund source/s

Articles of public offering

Certification of qualifications of the president, vice president and assistant vice president

Articles of incorporation of the bank

Auditing the opinions of a certified public accountant and lawyer

Other documents required by the competent authority

Incorporation and registration – Upon receiving approval from the FSC, the promoters shall then incorporate the onshore commercial bank by filing a company registration application with the MOEA. When applying for company registration, an application together with a complete set of the documents as required must be filed with the MOEA. The minimum paid-in capital of an onshore commercial bank is TWD 10 billion.

Capital injection – To inject capital to invest in the contemplated bank, the applicants must submit the following information:

Application form for investment

Identification information of the applicant

Information of the invested enterprise (i.e., the contemplated bank)

Minutes of a board or shareholders’ meeting

Other supporting documents as required

Banking business license – After incorporation but before the commencement of a banking business, an onshore commercial bank must apply for a banking business license from the FSC by submitting the following supporting documents:

Application form for a banking business license

Certificate of company registration

Statement of capital verification

Articles of Incorporation of the bank

Minutes of the promoters’ meeting

Shareholders’ roster and minutes of shareholders’ meetings

Directors’ roster and minutes of board meetings

Managing directors’ roster and minutes of their meetings

Supervisors’ roster and minutes of their meetings

Managerial officers’ roster

Internal rules and guidelines as well as business procedures

Declaration statements of directors, supervisors and managerial officers

A record of simulated business operation for two weeks or more

The FSC shall approve the scope of business of each onshore commercial bank in accordance with the type of bank and the business items provided under the Banking Act. However, the business items related to foreign exchange must be approved by the CBC. An onshore commercial bank's business items will be provided in its banking business license granted by the FSC. On 7 August 2020, the FSC activated a new business item by enforcing regulations enabling an onshore commercial bank’s domestic banking unit (DBU) to provide specific financial products or investment services to its high-net-worth clients, such as foreign-currency-denominated structured notes or other indices in the local equity market that used to be open to its offshore banking unit (OBU) alone as such investments are considered riskier. The term "high net worth client" refers to any individual or juristic person that: (1) provides a certificate of account balance that shows the net worth of investable assets and insurance products is equivalent to TWD 100 million or above; or (2) has investable assets worth more than TWD 30 million in the said bank’s account and provides a declaration that the net worth of investable assets and insurance products is equivalent to TWD 100 million or above. In deploying the new wealth management rules, Taiwan is attempting to position itself as the rising Asian financial hub to seize potential capital outflows, particularly from Hong Kong, and compete with Singapore. As of March 2024, the FSC has granted 11 banks permission to launch this special wealth management program, and the total amount of assets under management (AUM) of these high-net-worth clients is approximately TWD 880.8 billion.

As for fintech, on 14 November 2018, the FSC made amendments to two regulations, allowing the establishment of virtual banks to encourage financial innovation and to enhance financial inclusion. As of March 2024, the FSC has granted licenses to three virtual banks. Furthermore, the Financial Technology Development and Innovative Experimentation Act and related regulations enable enterprises to launch and test their innovative digital technology or business models in regulatory sandboxes under the FSC's supervision.

# 7. What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

## What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

As Taiwan is not a European Economic Area member state, a Taiwan-regulated financial institution is not entitled to the right of passporting across Europe or to any other jurisdiction.

# 8. Authors and contact information

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