

On Breach of Trust by Managers and Employees of Financial Institutes in Taiwan

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Abstract

In 2000s, legislators passed couples of amendments about breach of trust by managers and employees of many kinds of financial institutions, such like article 125-2 of the Banking Act, which is enacted to punish Bank's managers or employees 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. This article introduces and discusses these various but similar provisions of breach of trust. The main aim of these similar provisions is to protect the interests of investors and depositors and also to prevent potential financial crisis. However, these provisions, with more severe punishments than the regular breach of trust in Penal Code, cannot be fully justified by the explanations made by the courts nowadays. This study begins the discussion by considering what the "legal interest" of these provisions should be, and then try to explain the phases of "managers and employees in financial institutions", "violating his/her duty", "damages" and "criminal income". After that, the author discusses the application of business judgment rules to these provisions, and the proper use of "encounter offense".

Keywords: breach of trust, illegal loan, business judgment rules, encounter offense, abstract dangerousness offenses, financial crisis

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