

The Financial Regulation of Interested Transactions under Taiwan's Banking Act

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Abstract

Scandals of financial institutions in Taiwan often involved tunneling caused by interested transactions. Therefore, Taiwan's financial laws, including the Banking Act, Financial Holdings Act, and Insurance Act, have set up a huge amount of rules for interested transactions of financial institutions, which imposed considerable legal compliance costs upon financial institutions. That said, the existing financial laws remain inadequate in many aspects. Taking banks, for instance, regulations for interested credit transactions and non-credit transactions diverge, the definition of interested parties diverges, the determination of interested parties appears formalistic and thus creates room for circumvention, and an explicit avoidance requirement for controlling the conflict of interest is lacking. Therefore, the regulatory effect appears limited in practice.

Since Taiwan often took reference from the Federal Reserve Act in the United States when enacting its interested transaction rules for banks, this paper proposes to study the theory and laws in the United States. From a theoretical perspective, after clarifying the regulatory theory for banks' interested transactions, this paper highlights the risk management aspect that distinguishes from the protection of banks' interest and uses it as a theoretical foundation for

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designing interest transaction laws for financial institutions. From a comparative law perspective, this paper analyzes the interested transaction rules for banks under the Federal Reserve Act, Federal Deposit Insurance Act, and their related regulations and sums up the characteristics of the United States laws. On these bases, this paper proposes several principles for amending Taiwan's interested transaction rules for banks under the Banking Act, including adding rules for regulating interested non-credit transactions, expanding the scope of credit transactions, defining interested parties in a substantive manner, stipulating the avoidance requirement for interested parties, and reducing the penalties for unlawful interested transactions to administrative liability. This paper finally proposes specific amendment bills for legislators' reference.

Keywords: financial institutions, banks, interested transactions, interested credit transactions, insider transactions, affiliate transactions, interested parties, risk management