

Establishment and Operation of Asset Management Companies in Taiwan

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I. Background

The Trust Enterprise Law (“TEL”), which was enacted on 30 June 2000, provides for the establishment of trust enterprises in Taiwan. According to an announcement made by the Ministry of Finance (“MOF”), the agency in charge of the TEL, trust enterprises may engage in “asset management”, which in this narrow context means the management, purchase, and sale of assets from financial institutions. “Assets” includes performing and non-performing loans as well as collateral provided in relation to those loans. The current position of the MOF is that “financial institutions” for purposes of asset management by trust enterprises includes only banks because banks are the only financial institutions authorized to make loans.

The MOF’s goal in allowing trust enterprises to engage in asset management is to resolve the non-performing loan problem in Taiwan. The current intent of the MOF is not to create a legal structure under which all or many types of financial assets or claims are transformed into marketable securities. In other words, to date there is no plan to introduce a comprehensive structure for securitization in Taiwan. For example, there is no concept of a Special Purpose Vehicle (“SPV”) under Taiwan law to engage in asset management on a specific transaction basis.

The MOF is currently drafting regulations governing the public offering and transfer of beneficiary certificates of common trust funds. It is expected that these regulations will be issued in January 2001. The Securities and Futures Commission may also draft regulations on the transfer of beneficiary certificates, particularly if the determination is made that the certificates may be listed on the Taiwan Stock Exchange and the Taisdaq (Taiwan’s over-the-counter market).

The Financial Institution Merger Law (“FIML”), which was approved by the Legislative Yuan on 24 November 2000, provides details on how non-performing loans purchased from financial institutions may be disposed of by “asset management companies”. The FIML does not define “asset management companies”, however, according to officials of the MOF’s Bureau of Monetary Affairs (“BOMA”)—the agency in charge of the FIML—trust enterprises with asset management business in their business scopes would be considered to be asset management companies under the FIML.

Article 15 of the FIML provides that asset management companies may perform auctions of collateral of non-performing loans through authorized third parties without court proceedings. Another provision of the FIML provides for bankruptcy remote transfer. This provision excludes collateral from non-performing loans from court execution if the assets were transferred to an asset management company before the original debtor declares bankruptcy or announces corporate reorganization plan.

The FIML also provides that asset management companies be trustees and auditors in bankruptcy and reorganization proceedings if the asset management companies are the largest creditors of companies that declare bankruptcy or file for reorganization.

In addition, the FIML states that asset management companies are eligible to use the financial institution business tax rate for the portion of their operations relating to non-performing loans. A proposal is pending in the Legislative Yuan to reduce the tax rate from 2% to 0%.

The FIML does not address the issue of providing asset management companies the right to securitize assets purchased from financial institutions.

II. General Asset Management Companies

There is no specific law or regulation governing the definition of or establishment requirements of asset management companies that are not trust enterprises. In practice, a company could be established under the Company Law with “purchase of loans from financial institutions” in the company’s business scope. Such a business scope item was authorized by the Ministry of Economic Affairs (“MOEA”) earlier this year. Capitalization requirements would be only NT\$1 million (approx. US\$30,000) for a company limited by shares. According to MOEA officials, upon receiving an application to establish a company with a business scope containing the business item “purchase of loans from financial institutions”, the MOEA will consult with the BOMA on whether to approve such an application. According to MOEA officials, one factor affecting approval is the capitalization of the applicant.

According to BOMA officials, asset management companies established according to the procedures set forth in the preceding paragraph could engage in asset management activities authorized under the FIML. Asset management companies that are not established as trust enterprises, however, would not be allowed to issue beneficiary certificates.

III. Permitted Businesses of Trust Enterprises

In addition to asset management, trust enterprises may engage in the following businesses pursuant to the TEL:

- a. operating trusts comprising the following assets:
 - i. cash assets
 - ii. loans and secured property;
 - iii. securities;
 - iv. chattel and real estate;
 - v. leaseholds;
 - vi. superficies

- vii. patent rights and copyrights;
- viii. other types of property.
- b. acting as an agent for the issuance, transfer, and registration of securities, and the distribution of dividends, interest, and bonuses;
- c. providing consulting services for the offering and issuance of securities;
- d. providing certification for issuance of stocks and bonds;
- e. serving as a trustee in bankruptcy proceedings and as an auditor in corporate reorganization proceedings;
- f. serving as supervisor for trusts as stipulated under the Trust Law;
- g. handling custodial matters;
- h. providing services related to investment, financial management, real estate development;
- i. handling the following items on an agency basis:
 - i. acquisition, management, disposition, and leasing of property;
 - ii. liquidation of property;
 - iii. debt collection;
 - iv. performance of debtor obligations.
- j. handling other trust business as a broker for the sale or lease of real estate.

IV. Trust Enterprise Licensing

- a. Procedure
 - i. preliminary application filed with MOF;
 - ii. within six months of MOF preliminary approval, apply to MOEA for company registration; and
 - iii. within three months of obtaining MOEA approval apply for license with the MOF.
- b. Deadlines
Preliminary applications with the MOF accepted from 1 November to 2000 to 30 April 2001.
- c. Application fee
NT\$1.25 million (approx. US\$40,000)
- d. Applicant requirements
 - i. company limited by shares (limited liability company);
 - ii. minimum capital requirement of NT\$5 billion (approx. US\$160 million)
(NT\$1 billion [approx. US\$30 million must be invested upon application, the remainder due upon issuance of license];
 - iii. one of the promoters must be a qualified financial institution which owns at least 40% of the trust enterprise's shares. Qualified financial institutions include the following:
 - 1. banks with international finance, securities, or trust management experience, and whose asset or net worth in the most recent year has been ranked among the top 1,000 in the world;
 - 2. insurance companies with assets and real estate under their management of no less than NT\$20 billion (approx. US\$630 million); and

3. fund management companies with experience in managing international mutual funds and having fund assets of no less than NT\$65 billion (approx. US\$1.96 billion).

Qualified financial institutions may be foreign or Taiwan companies. Because there are no restrictions on foreign ownership of trust companies, a trust company could be a wholly-owned subsidiary of a qualified foreign financial institution.

- e. Shareholding restrictions

With the exception of qualified financial institutions, individual shareholders and their affiliates are not allowed to hold more than 25 percent of the shares of a trust enterprise.

V. Methods of engaging in asset management

The TEL provides the following three methods for trust enterprises to engage in asset management:

- a. Being retained by financial institutions to help manage loans and collateral, and assist with debt collection. Under this method, the trust enterprise's income is derived from fees charged to assist the financial institutions.
- b. Issuing beneficiary certificates to raise common trust funds that are then used to purchase loans and collateral from financial institutions. The trust enterprise is usually compensated by receiving a management fee based upon a percentage of the fund's net asset value.
- c. Using the trust enterprise's own capital to purchase loans and collateral from financial institutions.

VI. Process for issuing beneficiary certificates

The following is an outline of the requirements and procedure for the issuance of beneficiary certificates by trust enterprises engaged in asset management:

- a. According to the TEL, a trust enterprise establishing a common trust fund must submit an issuance plan to the MOF for approval. The plan must include the investment purpose of the fund, percentage of assets making up the fund, method of raising capital, transfer of rights, calculation of net asset value, allocation of rights, list of prohibited activities and responsibilities of the trust enterprise;
- b. According to the TEL, the beneficiary certificates must be registered certificates;
- c. According to draft regulations of the MOF, beneficiary certificates issued by trust enterprises engaging in asset management may be issued only in Taiwan. It is unlikely that the regulations would allow local trusts to hold such certificates on behalf of foreign

investors because the intent of the TEL is for foreign investors to establish trust enterprises in Taiwan;

- d. The transfer of beneficiary certificates may only be made in accordance with MOF regulations. As noted above, the MOF is currently drafting regulations regarding the transfer of beneficiary certificates.

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