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Act for the Establishment and Administration of the Financial Restructuring Fund

Taiwan: Legislative Yuan

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Article Content

- Title :** Act for the Establishment and Administration of the Financial Restructuring Fund [\[Ch\]](#)
- Amended Date :** 2015-07-01
- Category :** Financial Supervisory Commission (金融監督管理委員會)
- Article 1** For the sake of disposing distressed financial institutions to maintain an orderly credit system, improve the constitution of the financial industry, create a sound financial environment, and establish an administration and operation mechanism, this Act is enacted for the establishment of Executive Yuan Financial Restructuring Fund (referred to as the "Fund" hereunder).
- Article 2** The competent authority under the Act shall be the Financial Supervisory Commission.
- Article 3** The funding sources of the Fund include the following:
(1) Business tax revenues collected from businesses as provided in paragraph 1 of Article 11 of the Value-added and Non-value-added Business Tax Act during a period of nine years from January 2002 to the end of December 2010.
(2) Increased deposit insurance premium income covering a ten-year period from January 2002 onwards that is derived from an increase in the deposit insurance assessment rate which took effect on January 1, 2000.
(3) Proceeds from the disposal of non-performing loans under the Fund.
(4) Other income of the Fund.
(5) Any amounts that are allocated following the government budget procedures.
In the event the revenues from the tax and insurance premium income described in subparagraphs (1) and (2) of the preceding paragraph are not fully realized to cover the pay-offs stipulated in paragraph 3 of Article 4 and paragraph 1 of Article 10 herein, the Fund may entrust the Central Deposit Insurance Cooperation (referred to as the "CDIC" hereunder) to acquire special financing from financial institutions; or else issue bank debentures in the name of CDIC pursuant to Paragraph 1, Article 72 of the Banking Act using funds generated from sources provided in subparagraphs (1) to (3) of the preceding paragraph as collateral. CDIC shall repay the principals, interests and related expenses of the aforementioned financing and debentures with funds generated from sources specified in the preceding paragraph.
Of the increased business tax revenues generated according to subparagraph (1) of paragraph 1 subsequent to the promulgation of the amended Act herein, the total amount that can be used for the purpose of the Fund shall not exceed NT \$110 billion. The remaining tax revenues, if any, shall be paid into a special reserve for deposit insurance pay-off.
- Article 4** The term "distressed financial institutions" depicted in the Act herein shall mean a financial institution having one of the following situations:
(1) The adjusted net worth is negative after an examination by the competent authority or the central competent authority for agriculture finance, or an audit by an accountant.
(2) Unable to repay its debts.
(3) Significant deterioration in businesses or financial status as stipulated in Paragraph 1, Article 62 of the Banking Act that the financial institution becomes unable to repay its debts when due or the depositors' interests might be damaged, or sustaining losses exceeding one third of its capital and failing to improve within a prescribed time period as provided in Article 64 of the Banking Act, and being determined by the competent authority and the Management Committee of the Fund to be incapable of continuing operations.
The Fund will give precedence to handling distressed community financial institutions, while maintaining the principle of equal treatment whether in form or in substance. The Fund shall set aside 20% of increased funds generated subsequent to the promulgation of the amended Act on June 22, 2005 for pay-offs of farmers' and fishermen's associations without being subjected to the operating period of the Fund. The aforesaid fund shall be deposited in a special account; regulations governing the utilization and administration of said account shall be set forth by the Executive Yuan.
The benefits of members of the distressed credit cooperatives that have been placed under superintendence or conservatorship by the competent authority pursuant to the Credit Cooperatives Act and are included under the Fund prior to the promulgation of the amended Act on June 22, 2005 shall be safeguarded by blank guarantee in accordance with the principle of equal treatment in the preceding paragraph. Their claims shall be paid off in full by financial institutions that assume the assets of the aforesaid credit cooperatives. In the event that the assuming financial institution defaults on pay-off, the Fund will pay the claims of the members in full.
CDIC may apply for utilization of the Fund when acting pursuant to Paragraph 1, Article 15 and Paragraph 2, Article 17 of the Deposit Insurance Act to pay off in full the deposits and non-deposit debts of a distressed financial institution. The Fund shall assume the assets of such financial institutions without being restricted by the maximum coverage as stipulated in Article 9 of the Deposit Insurance Act and the provision of cost being less than the loss arising from cash pay-offs as stipulated in Paragraph 2, Article 15 and Paragraph 2, Article 17 of the same Act.
Subsequent to the promulgation of the amended Act on June 22, 2005, when the competent authority or the central competent authority for agriculture finance handles a distressed financial institution, non-deposit debts of said institution will not be paid off. Notwithstanding the foregoing, non-deposit debts of such institutions that had been incurred before the promulgation of the amended Act on June 22, 2005 or bank debentures of such institutions that had been approved by the competent authority and their offering period spanned across the date of promulgation of the amended Act will be covered.
The claims of the shareholders or members of a distressed financial institution that has been placed under superintendence or conservatorship by the competent authority pursuant to the Banking Act or the Credit Cooperatives Act and has been included under the Fund subsequent to the promulgation of the amended Act on June 22, 2005 shall be forfeited except for entitlement to distribution of remaining properties. The competent authority shall notify such shareholders or members of the same by means of public announcement.
The Fund shall draw up regulations governing the disposal of distressed financial institutions and submit to the competent authority for approval and promulgation.
- Article 5** The Fund has the capacity of a litigant and shall set up a Management Committee of the Financial Restructuring Fund (referred to as the "Management Committee" hereunder) and a Valuation Panel of the Financial Restructuring Fund (referred to as the Valuation Panel hereunder).
The Management Committee is in charge of the following:
(1) Reviewing the utilization of the Fund, and giving approval to items as provided in the preceding article, Article 10 and Article 12 herein.
(2) Approving the Fund's receipts and expenditures custody plans.
(3) Reviewing the Fund's financial reports and fund allocation.
(4) Giving approval to other matters concerning the management, implementation and public disclosure of the Fund.
(5) Employing international credit rating agencies or professional appraisal institutions to assist the Valuation Panel in exercising its duties.
The Fund may entrust CDIC with the execution of decisions made in the preceding paragraph and the drafting of related matters.
Any resolution adopted by the Management Committee must have the consent of at least two thirds of the Committee members present in a meeting attended by no less than two thirds of all Committee members.
The Valuation Panel is in charge of the following:
(1) Determining distressed financial institutions to be handled by the Fund.
(2) Determining the priority of handling distressed financial institutions by the Fund.
(3) Determining the methods for handling the distressed financial institutions by the Fund.
(4) Determining the types and prices of debts to be paid off and assets to be assumed by the Fund through CDIC.
(5) Overseeing the execution of matters entrusted by the Fund.
Any decision made by the Valuation Panel shall be submitted to the Management Committee for approval after it is consented by at least two thirds of panel members present in a meeting attended by no less than two thirds of all panel members.
- Article 6** The Fund shall determine how to handle a distressed financial institution based on the following principles:
(1) The distressed financial institution has closed businesses or has deposit runoff that may trigger systemic risk of the financial system.
(2) The financial status of the distressed financial institution seriously deteriorates.
(3) The distressed financial institutions will incur less disposal cost.
Determination of distressed financial institutions and the priority of handling by the Fund shall be first established by the Valuation Panel and then approved by the Management Committee. In the event that the Management Committee disagrees with the decision of the Valuation Panel, it shall provide concrete reasons for disagreement in writing.
- Article 7** The Management Committee consists of nine to thirteen members, including a convener who is undertaken by the chief of the competent authority and represents the Committee, and a vice-convener who is undertaken by the deputy chief of the competent authority. The remaining Committee members by appointment shall be taken up by a deputy governor of the Central Bank of China, a vice chairman of the Council of Agriculture, a deputy director of the Directorate-General for Budget, Accounting and Statistics, and the chairman of CDIC, who will be appointed in that capacity and excused from office on the same basis. In addition, the remaining Committee members by selection shall be undertaken by people with professional knowledge and experience in the field of law, economics, finance and other fields that are relevant to the business of the Management Committee. Management Committee members who belong to the same party shall not exceed half of the total number of Committee members.
The Valuation Panel consists of seven to nine members, who are selected by the Management Committee on the basis of their professional knowledge and experience in international finance, banking management, or asset valuation. The convener of the Valuation Panel is elected by and among the members of the Valuation Panel, who also serves as a natural member of the Management Committee by selection. The Valuation Panel members shall excuse themselves from a meeting in the event of conflict of interest.
Members who are selected pursuant to paragraph 1 hereof shall serve a term of three years. Should a Committee member be substituted before the term expires, the term of the successor will expire on the original expiration date.
Members of Valuation Panel who are selected pursuant to paragraph 2 hereof shall serve the same term as members of the Management Committee.
- Article 8** The Management Committee will install an executive secretary, who shall be a Grade 12 officer or above appointed by the Committee convener. The competent authority and its subordinate departments shall dispatch several currently employed staff to assist in the Committee affairs, and may employ one to five persons as required by the business.
- Article 9** The Management Committee meeting shall be called and chaired by the Committee Convener. When the convener is unable to perform his/her duties, the vice-convener shall act on his/her behalf. When the vice-convener is unable to perform his/her duties, the convener shall designate a Committee member to act on his/her behalf.
The Management Committee may notify the Valuation Panel to designate members to participate in the meeting called by the Committee. The resolutions made by the Committee in relation to Article 4, Article 10 and Article 12 shall be submitted in five days to the Legislative Yuan regarding reasons for the resolutions, basis of computing, decisions of the Valuation Panel along with relevant assessment reports.
When handling distressed financial institutions, the Fund shall submit to the Legislative Yuan a report on the financial status, problems, loss estimation and principles of disposal. The Fund shall also inform the Legislative Yuan in writing before drawing on its budget.
- Article 10** The Fund may entrust CDIC to handle a distressed financial institution in accordance with the following methods:
(1) Paying off the debts of the financial institution and assuming its assets.
(2) Paying off the debts that exceed the value of assets.
The Fund is regarded as a financial institution and asset management company referred to in the Financial Institution Merger Act, to which Article 15, Article 17 and Article 18 of the Merger Act apply.
- Article 11** The Fund shall make public the names of customers of a distressed financial institution with a bad debt exceeding 1 million NT dollars for a transaction before taking actions pursuant to the preceding paragraph.
The competent authority should make the public information in the preceding paragraph widely known on Internet or by other appropriate means.
- Article 12** Except for funds drawn pursuant to Article 4 herein, the Management Committee shall preserve the Fund's funds in the name of the Fund by the following means
(1) Cash.
(2) Deposits in financial institutions with good credit standing.
(3) Purchase of government bonds, bank debentures, and negotiable certificates of deposit issued by banks.
(4) Other means in accordance with regulations prescribed by the competent authority.
- Article 13** The proceeds from disposing the assets of distressed financial institutions taken over by the Fund by tender offer, auction, or other means shall be deposited into the Fund.
For the management and disposal of assets assumed by the Fund, the Fund may entrust CDIC for collection, debt valuation, debt consolidation, public tender offer and securitization. Article 15-1 of the Deposit Insurance Act may apply mutatis mutandis when CDIC is entrusted to carry out the aforesaid affairs.
The Fund shall bear the cost that CDIC may be incurred from handling the affairs provided in the preceding paragraph and Article 10 herein. Article 25 to Article 27 and Article 88 of the Budget Act do not apply when the Fund takes actions pursuant to paragraph 1 of Article 10 and the preceding three paragraphs hereof.
- Article 14** The accounting and audit of the Fund shall be based on systems established according to the generally accepted accounting and auditing principles.
- Article 15** The Fund may start including distressed financial institutions for handling from the promulgation of the Act until July 10, 2005. The Fund may proceed with the following after July 10, 2005:
(1) Paying off the debts of included distressed financial institutions, assuming and selling their assets.
(2) Collecting taxes and insurance premiums set forth in subparagraph (1) and subparagraph (2), paragraph 1 of Article 3 herein.
(3) Disposing outstanding assets and debts.
(4) Handling lawsuits associated with the Fund and matters in relation to the Fund.
The Fund shall be terminated when the taxes and insurance premium set forth in subparagraph (1) and subparagraph (2), paragraph 1 of Article 3 cease to be included.
When the Fund is terminated, the remaining assets and debts shall be assumed by the National Treasury after the principals, interests and expenses of the debts arising from the Fund's disposal of distressed financial institutions have been paid with the Fund's funds from tax revenues and premium income set forth in subparagraph (1) and subparagraph (2), paragraph 1 of Article 3.
- Article 16** The responsible person or any employee of a CDIC-insured financial institution who engages in unbecoming conduct with the intent to benefit self or a third party, or damage the interests of said financial institution or the Fund that results in damages to the financial institution, or the assets or other interests of the Fund shall be subject to a prison term of more than three years and less than ten years, or in addition thereto a fine up to NT \$100 million.
Where the offense described in the preceding paragraph is an act of collaboration between the responsible person of the financial institution and other employees or between two or more employees, the punishment of prison term imposed shall be increased by one half, and the perpetrators shall be held jointly liable for damages.
A person guilty of criminal attempt as provided in paragraph 1 hereof shall also be subject to punishment.
- Article 17** After making pay-offs pursuant to the provisions of the Act herein, the Fund shall, up to the extent of pay-offs, acquire the right of claim for damages against the responsible person or employee of the financial institution for non-performance of debt or act of tort arising from the appointment of position or employment contract as well as the right of claim for damages against the guarantor of employment, insurer, and persons in the joint act of tort.
CDIC may, after being authorized by the Fund to take legal actions, may in its own name file civil action against the persons liable for damages as set forth in the preceding paragraph or request to succeed a party concerned in a lawsuit.
When taking legal actions pursuant to the preceding paragraph, CDIC shall be exempt temporarily from paying any judgment fee thereof, or from providing security when filing for provisional seizure, provisional disposition or provisional execution.
- Article 18** The Act herein is in force on the date of promulgation.