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## Statute for the Establishment and Management of the Executive Yuan's Financial Restructuring Fund

Taiwan: Executive Yuan

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# **Statute for the Establishment and Management of the Executive Yuan's Financial Restructuring Fund**

**As amended and promulgated on June 22, 2005 by Presidential**

## **Article 1**

This *Statute* is enacted to dispose of failed financial institutions in order to maintain an orderly credit system, to improve the financial structure, to make a sound financial environment, to establish a management and operation mechanism, and establish the Executive Yuan's Financial Restructuring Fund (hereinafter simply referred to as the Fund).

## **Article 2**

The term "competent authority", as used in this *Statute*, shall mean the Financial Supervisory Commission, Executive Yuan.

## **Article 3**

Resources of the Fund are the following:

- (1) Business tax revenues collected from the businesses applicable to value-added and non-value-added business taxes as provided in paragraph 1 of Article 11 of the *Business Tax Law* during the period of nine years from January 2002 to the end of December 2010.
- (2) Incremental insurance premium income covering a ten-year period from January 2002 onwards that arises as a result of the increase in the insurance assessment rate which took effect on January 1, 2000.
- (3) Income arising from disposal of non-performing loans.
- (4) Other sources of the Fund.
- (5) Any amounts that are allocated following the government budget procedures.

In the event that the revenues from the tax and insurance premium income of items (1) and (2) of the preceding paragraph are not realized, the Fund may entrust Central Deposit Insurance Cooperation (hereinafter simply

referred to as CDIC) to apply to financial institutions for accommodation for the pay-offs stipulated in paragraph 3 of Article 4 and paragraph 1 of Article 10; or else issue bank debentures in name of CDIC pursuant to paragraph 1 of Article 72 of the *Banking Law*, and shall use the sources provided in items (1) to (3) of the preceding paragraph as collateral to sustain cash receipts and expenditures. CDIC shall repay any such amounts from the principals, interests and expenses of the aforesaid accommodation and debentures by the resources of funds in the preceding paragraph.

The total operations amount of the incremental financial business tax revenues from item (1) of paragraph 1 arising from the amendment and enactment of this *Statute* shall not exceed NT \$110 billion. Any tax revenues beyond the amount shall be paid in to deposit insurance pay-off special reserves.

#### **Article 4**

The term "failed financial institutions", as used in this *Statute*, shall mean one of the following:

- (1) Adjusted net worth is negative after the examination by the competent authority of bank, agriculture finance or with certificated auditing by Accountant.
- (2) Failure to repay its debts.
- (3) Significant deterioration in businesses or financial status as stipulated in paragraph 1 of Article 62 of the *Banking Law*, failure to repay its debts, risking damaging the benefits of depositors, or pursuant to Article 64 losses exceeding one third its capital and failure to improve within a prescribed timeline and being determined by the competent authority and the Management Committee of the Fund to be incapable of continuing operations.

The Fund takes handling community financial institutions as its priority. In

the process of disposal the Fund shall maintain same treatment whether formally or in essence. The Fund shall set aside 20% of the incremental resources of the funds after the amendment and enactment of this *Statute* for pay-offs of farmer's and fishermen's associations without being limited by the operative period of this Fund. The aforesaid fund shall be saved to an exclusive account; regulation governing the utilization and management of the said account shall be enacted by the Executive Yuan.

Prior to the amendment and promulgation of this *Statute*, the benefits of members of the failed credit cooperatives that have been placed in supervision or conservatorship by the competent authority pursuant to the *Credit Cooperatives Act* and are included for disposal by the Fund shall be safeguarded by blank guarantee in accordance with the principle of same treatment in the preceding paragraph. Their rights shall be protected by the pay-offs in full of the 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 shall repay in full.

CDIC may apply for the utilization of the Fund when engaging in paragraph 1, Article 15 and paragraph 2, Article 17 of the *Deposit Insurance Act* for pay-off in full of the deposits and non-deposits liabilities of the failed institutions. The Fund shall assume the assets of the said institutions without being limited by the maximum coverage as stipulated in Article 9 and that cost shall not exceed losses of cash payoffs as stipulated in paragraph 2, Article 15 and the proviso in paragraph 2, Article 17 of the said *Act*.

When the competent authority or the competent authority of the central government for agriculture finance deals with failed financial institutions

after the amendment and promulgation of this *Statute*, non-deposit debts of the said institutions shall not be paid off. Nevertheless, the non-deposit debts of the said institutions that had occurred before the amendment and promulgation of this *Statute* shall be protected based on the principle of non-retroactiveness of law and trust and protection.

The rights of the shareholders or members of the failed financial institutions that have been placed in supervision or conservatorship by the competent authority pursuant to the *Banking Law* or the *Credit Cooperatives Act* after the amendment and promulgation of this *Statute* and have been included for disposal by the Fund shall be lost except distribution of the remaining property. The competent authority shall notify the said shareholders or members.

The Fund shall draw up regulations governing the disposal of failed financial institutions and submit to the competent authority for approval and promulgation.

## **Article 5**

The Fund has the capacity of a litigant and set up the Management Committee of the Financial Restructuring Fund (hereinafter simply referred to as the Management Committee) and the Valuation Division of the Financial Restructuring Fund (hereinafter simply referred to as the Valuation Division).

The Management Committee is in charge of the following:

- (1) Review of the uses and operations of the Fund, and approval of the items as provided in the preceding article, Article 10 and Article 11.
- (2) Approval of the Fund's receipts and expenditures custodianship plans.
- (3) Review of the Fund's financial reports and funding deployment.
- (4) Other matters concerned with the management, implementation and public disclosure of the Fund.
- (5) Hire international credit rating institutions or specialized valuation

institutions to assist the Valuation Division.

The Fund may entrust CDIC with the execution and drawing up of the items in the preceding paragraph.

The resolution passed by the Management Committee shall have haven't less than two thirds of the Committee members participating in the meeting and the agreement of no less than two thirds of the participating members.

The Valuation Division is in charge of the following:

- (1) Determination of the failed financial institutions to be dealt with by the Fund.
- (2) Determination of the sequence in and priority of dealing with the failed financial institutions by the Fund.
- (3) Determination of the methods of dealing with the failed financial institutions by the Fund.
- (4) Determination of the types of pay-offs and assets to be assumed and their prices and amounts that the Fund has entrusted to CDIC.
- (5) Monitoring the execution of matters entrusted by the Fund.

The decision with respect to the preceding by the Valuation Division shall be submitted to the Management Committee for resolution with more than two thirds of members participating in the meeting and the agreement of no less than two thirds of the participating members.

## **Article 6**

The Fund shall determine to deal with failed financial institutions based on the following principles:

- (1) The failed financial institutions have closed businesses or have deposit bank run that may trigger systemic risk of the financial system.
- (2) The failed financial institutions have more serious deterioration of the financial status.

(3) The failed financial institutions have smaller handling cost.

Determination of failed financial institutions and the sequence of priority of the Fund's dealing with these institutions shall be first established by the Valuation Division and then adopt the resolution by the Management Committee. In the event that the Management Committee disagrees with the determination of the Valuation Division, it shall in writing concretely demonstrate the reasons.

#### **Article 7**

The Management Committee consists of nine to thirteen members, including one Committee Convener, who serves concurrently as the Head of the competent authority and represents the Committee, and one Committee Vice-Convener, who serves concurrently as Deputy Head of the competent authority. The remaining Committee members, who shall serve currently in that capacity, shall include a Deputy Governor of the Central Bank , 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, and shall be appointed in that capacity and excused from office on the same basis. In addition, the remaining Committee members shall be selected on the basis of their professional knowledge and experience in the field of law, economics, finance and other fields that are relevant to the Management Committee. Such Management Committee members who belong to the same party shall not exceed half of the total number of Committee members.

The Valuation Division consists of seven to nine members, who serve on the basis of the professional knowledge and experience that they have in international finance, banking management, or asset valuation and are hired by the Management Committee. Head of the Valuation Division is elected by and among the members of the Valuation Division, who also serves as natural member of the Management Committee. The Valuation Division

members shall avoid the meetings in the event of interest conflict.

Members who are selected pursuant to paragraph 1 shall have an appointment period of three years. Should a Committee member be substituted before the term expires, the new term of the successor shall terminate on the original expiration date.

Members who are selected pursuant to paragraph 2 shall have the same termination of appointment as the members of the Management Committee.

### **Article 8**

The Management Committee installs one 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 currently-employed staff assist the execution of the Management Committee operations and may employ one to five persons as required by the businesses.

### **Article 9**

The Management Committee meeting shall be convened and chaired by the Committee Convener. Whenever the Committee Convener is for cause unable to execute the above duties, the Vice-Convener shall act for him. Whenever the Committee Vice-Convener is for cause unable to execute the above duties, the Committee Convener shall designate one of the other Committee members to act for him.

The Management Committee may notify the Valuation Division to designate members to participate in the meeting called by the Committee. The resolutions that are made in relation to Article 4, Article 10 and Article 12 shall be submitted in five days to the Legislative Yuan regarding reasons of the resolutions, basis of computing, resolutions of the Valuation Division along with relevant assessment reports.



When dealing with failed financial institutions the Fund shall submit to the Legislative Yuan the reports in relation to the financial status, problems, loss estimation and principles of disposal. The Fund shall also notify the Legislative Yuan in writing in advance when the budget is drawn on.

#### **Article 10**

The Fund may entrust CDIC with the handling of financial institutions whose operations are unsound in accordance with the following methods:

- (1) Pay off the debts of financial institutions and assume their assets.
- (2) Pay off the debts that exceed the amount of the assets.

The Fund is regarded as the financial institution and assessment management company referred to in the *Financial Institutions' Merger Law* and shall apply to Article 15, Article 17 and Article 18 of the *Law*.

#### **Article 11**

The Fund shall publish by notice in advance every single bad debt exceeding 1 million NT dollars of the customers of the failed financial institutions when dealing with the failed financial institutions pursuant to the preceding paragraph.

The competent authority shall make it known to the general public in internet the item that should be published in the preceding paragraph or by other appropriate means.

#### **Article 12**

The Management Committee shall preserve the Fund's funds in the name of the Fund in the following means except those used pursuant to Article 4:

- (1) Cash.
- (2) Deposits in creditworthy financial institutions.
- (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 resulting from selling the assets of financial institutions with unsound operations taken over by the Fund by tender, auction, or other means shall be deposited in to the Fund.

For the assets assumed by the Fund arising from the Fund's management and disposal of failed financial institutions, the Fund may entrust CDIC for collection, debts rating, packaging and combination, public sale by tender and securitization. CDIC shall apply to Article 15-1 of the *Deposit Insurance Act* when entrusted with the aforesaid.

The Fund shall bear the cost that CDIC may be incurred arising from being entrusted with the affairs of the preceding paragraph and Article 10.

The Fund shall not apply to Article 25 to Article 27 and Article 88 of the *Budget Law* when following paragraph 1 of Article 10 and the preceding three paragraphs.

### **Article 14**

The handling of the Fund's accounting and auditing matters shall be based on the system of generally accepted accounting and auditing principles.

### **Article 15**

The Fund may require that the period of failed financial institutions for disposal starts from the promulgation of this *Statute* and ends on July 10, 2005.

The Fund may proceed with the following after July 10, 2005:

- (1) Pay-off, assumption and sale by tender of the financial institutions already under disposal.

- (2) Collection of the taxes and insurance premium income set forth in item (1) and item (2), paragraph 1 of Article 3.
- (3) Disposal of outstanding assets and liabilities.
- (4) The Fund's lawsuit cases and matters in relation to the Fund.

The Fund shall be terminated when the taxes and insurance assessment set forth in item (1) and item (2), paragraph 1 of Article 3 cease incorporation.

The remaining assets and liabilities shall be assumed by the National Treasury after the principals, interests and expenses of the liabilities arising from the Fund's disposal of failed financial institutions are paid by the Fund's resources of tax revenues and premium income set forth in item (1) and item (2), paragraph 1 of Article 3 when the Fund is terminated.

#### **Article 16**

Any person who with intent illegally benefits from the Fund whether for himself or a third party, or damages property or other benefits of institutions participating in deposit insurance or the Fund, such person shall receive a sentence of between three and ten years, together with a fine of up to NT \$100 million.

In the event that the insured institution's responsible official or two or more employees collaborate together in committing the above-mentioned crimes, the aforesaid penalties shall be increased by half, and that the violators shall jointly be required to pay compensation.

Non-penetration shall apply to paragraph 1.

#### **Article 17**

The Fund after the pay-off pursuant to the provisions of this *Statute* and within the limits of its pay-off shall acquire the right of the failed financial institution to claims damages of the non-performance of the debts or tort

arising from the appointment or employment contract of the responsible official or staff of the institution along with the right to claim damages of its guarantor of employment, guarantor of insurance and joint acting person of tort.

CDIC may after the authorization of legal proceedings by the Fund in its own name file civil legal action against the person liable for damages compensation set forth in the preceding paragraph or file for lawsuit as succeeding party concerned.

CDIC when filing legal proceedings pursuant to the paragraph shall be exempt temporarily from paying judgment fee, or free from providing collateral if filing for provisional seizure, provisional disposition or provisional execution.

#### **Article 18**

This regulation shall become effective on the date of promulgation.

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