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Ya-Huei Chen

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## LEGAL ASPECTS OF OFFSHORE BANKING IN TAIWAN

YA-HUEI CHEN\*

### I. INTRODUCTION

Taiwan has enjoyed uniformly high growth rates since the early 1950's, except during the 1974-75 oil crisis.<sup>1</sup> It is expected that the gains already achieved will be held and that economic development will continue.<sup>2</sup> The demand for capital is increasing because of this economic and industrial development, but the financial market in Taiwan is still poorly developed and generally unresponsive to market demand.<sup>3</sup> Financial services in Taiwan have been criticized as being inadequate, inefficient, disorderly and too conservative. The liberalization, reorganization, modernization and internationalization of Taiwan's financial system is necessary and imminent.<sup>4</sup>

The expansion and internationalization of the capital market is a priority of Taiwan's government. Progress has already been made toward enhancing Taiwan's economic position by making the country an international financial center. Visible reforms include the indirect opening of Taiwan's stock market to foreign investors,<sup>5</sup> the plan to have branches of many of Taiwan's banks in foreign states,<sup>6</sup> and the creation of an offshore banking center in Taipei.<sup>7</sup>

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\* Ms. Chen is an attorney-at-law from Taiwan with an LL.M. degree from Harvard Law School and an LL.M. degree from the Law School of the University of Pennsylvania.

1. The real GNP growth leaped from 2.4 percent in 1975 to 11.5 percent in 1976, 8.1 percent in 1977 and 12.8 percent in 1978. *World Sourcing Sites in Asia: Manufacturing Costs and Conditions in Hong Kong, Korea, Singapore and Taiwan*, A BUS. INT'L ASIAN RESEARCH REP., Nov. 1979, at 351 [hereinafter cited as *World Sourcing Sites in Asia*].

2. *TRADE AND INVESTMENT IN TAIWAN v.* (R. Cosway, H. H. P. Ma, & W. Shattuck eds. 1973).

3. *World Sourcing Sites in Asia*, *supra* note 1, at 371.

4. Y.D. Xu, *Jinrong Xingzheng Gaige Zhi Wojian* (A view on financial administrative reform), 5 *CAISHUI YANJIU* (Tax & Finance Study) 5, 18-21 (1973) [hereinafter cited as Y.D. Xu].

5. Tanzer, *New Route into Taiwan*, *FAR E. ECON. REV.*, July 28, 1983, at 70-71; *see also* Y.D. Xu, *supra* note 4, at 21.

6. A Supplement of the Economic News, 1982-83 *FIN. Y.B., REPUBLIC OF CHINA* 31-34 (1983); *see also* W. L. Zhang, *Zhuanbianzhongde Duiwai Jinrong Guanxi* (Changing foreign financial relations), 15 *CAISHUI YANJIU* (Tax & Finance Study) 5, 80 (1983).

7. Choushe Jingwai Jinrong Zhongxin Jihua Jianjie (A brief introduction to the plan to establish an offshore banking center) at 2 (June 1983) (unpublished official document) (draft by the Central Bank of China and Ministry of Finance) [hereinafter cited as A Brief Introduction]. Offshore banking centers not only minimize the impact of local taxation, reserves and

The type of international financial center a country chooses to establish varies with the purpose underlying its formation. For example, in the Bahamas and the Cayman Islands, offshore funds are attracted by offering tax incentives. The formalities of the transaction are performed at the international financial center, but the loans are frequently consummated in New York or elsewhere. Thus, these offshore centers amount to no more than "booking centers." In contrast, Singapore's and Bahrain's international financial centers encourage foreign institutions to make and book loans within the centers. These centers are considered to be "offshore banking centers." Finally, New York and London are examples of "true international financial centers" because a broad range of high level economic activities are conducted with free movement of funds.<sup>8</sup>

The establishment of a booking center would be of no substantial benefit to Taiwan since the purpose of creating an international financial center in Taiwan is to attract foreign capital which would finance domestic enterprises and would promote international financial activities within the center.<sup>9</sup> Furthermore, because Taiwan will encounter difficulties in setting up a fully free international financial center due to foreign exchange controls and other economic considerations, it best suits Taiwan to operate an offshore banking center.<sup>10</sup>

Firms benefit from conducting business in an offshore banking center. Typically, the advantages include employment of the holding company (1) as a repository,<sup>11</sup> (2) as a financing center,<sup>12</sup> (3) to maintain share quotations on stock exchanges where the parent company does not wish to have its own listing,<sup>13</sup> (4) to pool foreign earnings before transmitting them to

legal or regulatory constraints, but are "financial and money market centers in their own right, increasing the accessibility of the international banking system and tying together the world's financial markets." INTERNATIONAL BANKING CENTERS 1 (B. Brown ed. 1982) [hereinafter cited as INTERNATIONAL BANKING CENTERS].

8. Choushe Taiwan Chengwai Yuandong Jinrong Zhongxin Kexingxing Ji Shishi Jihua Zhi Yanjiu (A study about the feasibility of establishing a Far East Financial Center in Taiwan and its implementation) at 2-3 (Sept. 1982) (unpublished official document) (draft by the Ministry of Finance, Republic of China) [hereinafter cited as A Study on Feasibility].

9. *Id.* at 1.

10. A Brief Introduction, *supra* note 7, at 4.

11. The offshore financing subsidiary provides a facility to accumulate dividends and capital gains in a tax-free pool which is available to meet the needs of the parent company and its subsidiaries. D. WOOD & J. BYRNE, INTERNATIONAL BUSINESS FINANCE 172 (1981).

12. The holding company can issue financial instruments that may be prohibited in the country of residence of the parent company. The offshore financial company can also pay dividends free of withholding taxes. *Id.*

13. Such a situation might arise where there are disclosure problems or such difficulties as the inability to pay convertible dividends to foreign shareholders. The offshore company can also be used to issue shares which neither alter the control position nor dilute the parent com-

the parent company and to pool high tax credits,<sup>14</sup> (5) as an intermediary through which to take advantage of tax incentives,<sup>15</sup> (6) as a location for making or receiving license payments or royalties,<sup>16</sup> and (7) as a bank operating with lower reserves than those which would be possible in the domestic market.<sup>17</sup>

This article will consider the legal framework underlying the establishment of the offshore banking center, certain standards of which may be overrestrictive for Taiwan's purposes. The impact of Taiwan's domestic environment on an offshore financial center will be assessed. Finally, there will be consideration of the unique characteristics of Taiwan's economic and political situation which could ensure the success of an offshore banking center there.

## II. LEGAL FRAMEWORK OF OFFSHORE BANKING

Preparation for the establishment of an offshore banking center in Taiwan has been under way since 1982. An enabling statute, the "Act for Offshore Banking Operations,"<sup>18</sup> enacted and promulgated on December 12, 1983, contains guidelines for future offshore banking operations and removes restrictions prescribed in other laws and regulations currently in

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pany's equity. *Id.*

14. The pooling of all foreign earnings prior to transmission to the parent company may be used to minimize the number of unused tax credits. Where high tax credits are pooled in the offshore holding company, the parent company may claim credit for an overall foreign tax burden equal to the average rate of tax of the income streams coming from the holding company. In this way, the incidence of "overspill," i.e., foreign tax deductions at rates higher than those imposed on the parent company, is minimized, although if tax rates in the parent company's country are low, "overspill" will still occur. *Id.*

15. If the international company's earnings are remitted to the parent, however, because they carry no tax credit, they will be taxed at the full rate of tax prevailing in the parent company's home territory. The tax burden will thus be much the same as if the company had paid foreign tax and obtained a tax credit to offset against the tax liability of the parent. Thus, it becomes necessary for a holding company to own the foreign subsidiary in order to receive, accumulate, and reinvest the tax-free income. *Id.*

16. The desirable location for receiving or making license payments or royalties depends on the claim of tax liabilities which apply between the royalty payor and royalty receiver. In some instances, no withholding tax is levied on royalty payments, while in others, withholding tax is charged. Payments to tax haven countries, however, would generate a withholding tax liability. *Id.* at 172-73.

17. Because there are no official regulations concerning reserve requirements, if a holding company is organized as a bank, it can make commercial decisions about the lending it undertakes influenced mainly by the resultant impact on its own credit rating and hence its ability to attract deposits. In general, the holding company could operate with lower reserves than it could in any domestic market. *Id.* at 201.

18. See Appendix *infra*.

effect. Additional legal instruments including implementing rules and the guidelines for screening applications for offshore banking licenses have also been promulgated.<sup>19</sup> Taipei's offshore banking center opened on July 1, 1984.

The Act for Offshore Banking Operations separates international financial operations from the domestic financial market. Under the Act, the activities of offshore banks are exempt from the domestic financial restrictions imposed by the Banking Law, Foreign Exchange Control Act, Interest Rate Control Act and Law of the Central Bank of China.<sup>20</sup> The legal basis of offshore financing in Taiwan is determined by the Act and the relevant provisions in certain other existing laws and regulations including the Civil Law, Income Tax Law, Business Tax Law, Law of Stamp Duties, Regulations for the Establishment of Branch or Representative Office of Foreign Bank, Regulations for Buying and Selling of Foreign Exchange by Appointed Banks, Regulations for Exchange Operations by Appointed Banks and Foreign Exchange Transactions Between the Central Bank of China and Appointed Banks, and Regulations for the Leasing of International Telecommunications System. In addition, the rules implementing the Act for Offshore Banking Operations and the guidelines for screening applications for offshore banking licenses form part of this legal framework.

#### A. *Authorities' Supervision*

The Banking Law authorizes the Ministry of Finance to inspect all bank transactions and accounts.<sup>21</sup> The Act for Offshore Banking Operations requires an offshore bank to submit its operation report, balance sheet and income statement to the Ministry of Finance<sup>22</sup> after the close of each business year. In addition, the Ministry of Finance may at any time order offshore banks to provide, within a given period, information on their business or financial condition.<sup>23</sup> The Ministry of Finance has discretion to grant approval for the establishment of an offshore bank<sup>24</sup> and to set and adjust the amount of license fees that offshore banks must pay.<sup>25</sup>

19. *Id.* at p. 270-72.

20. Guoji Jinrong Yewu Tiaoli (The Act for Offshore Banking Operations), art. 5 (1983) [hereinafter cited as the Act].

21. Yinghang Fa (Banking Law), art. 45, 49 [hereinafter cited as Banking Law].

22. The Ministry of Finance is a "competent administrative authority" under the Act for Offshore Banking Operations. The Act, *supra* note 20, art. 2.

23. *Id.* art. 20.

24. *Id.* art. 3.

25. *Id.* art. 21. The license fee for branches of foreign banks is currently NT \$800,000 (U.S. \$20,000) (NT \$40 equals approximately U.S. \$1). Tanzer, *Not Drowning, Waving*, FAR E. ECON. REV., July 26, 1984, at 54 [hereinafter cited as *Not Drowning, Waving*].

The Central Bank of China is authorized to supervise offshore banking activities as provided in Article 4 of the Act for Offshore Banking Operations.<sup>26</sup> The permission of the Central Bank must be obtained if an offshore bank intends to engage in the business of remittance or conversions between foreign currencies and New Taiwan dollars.<sup>27</sup>

### B. *Eligibility for Licenses*

Four categories of banks may apply for offshore banking licenses: 1) foreign banks designated by the Central Bank of China to conduct foreign exchange operations within the territory of the Republic of China; 2) foreign banks with government-approved representative offices in the Republic of China; 3) qualified reputable foreign banks approved by the competent authority; and 4) domestic banks appointed by the Central Bank of China to conduct foreign exchange operations.<sup>28</sup> In the case of a foreign bank, its offshore banking business can only be conducted through its branch in Taiwan.

The criteria for a foreign bank to establish its branch or representative office in Taiwan for the purpose of operating general banking activities are set forth in the Regulations for Establishment of Branch or Representative Office of Foreign Bank.

#### 1. *Branch Status*

Branch status is preferable to representative office status.<sup>29</sup> A foreign bank must fulfill the following conditions in order to receive branch status:

- a. The foreign bank must have had a business connection with Taiwan's domestic banks for more than ten years; and
- b. During the three years prior to application, the volume of transactions among the foreign bank and domestic banks and major enterprises must have been greater than one billion U.S. dollars; and
- c. During the one year prior to application, the bank's volume of transactions (up to five billion U.S. dollars, including medium or long term loans to major enterprises) must have averaged more than sixty million U.S. dol-

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26. See *supra* note 22.

27. The Act, *supra* note 20, art. 8.

28. *Id.* art. 3.

29. While a branch operates as a direct extension of the parent company, a representative office is a simpler and more limited form of entry for a foreign bank. Representative offices do not conduct or solicit banking transactions, but serve merely as liaisons to customers. See INTERNATIONAL BANKING CENTERS, *supra* note 7, at 256.

lars per year for three years.<sup>30</sup>

## 2. *Representative Office Status*

In order to receive status as a representative office, the following conditions must be fulfilled:

a. The foreign bank must have had a business connection with Taiwan's domestic banks for more than five years; and

b. During the three years prior to application, the volume of transactions among the foreign bank and domestic banks and major enterprises must have been greater than one billion U.S. dollars, of which the medium and long-term loans made to major enterprises must have averaged more than twenty million U.S. dollars per year.<sup>31</sup>

## 3. *Other Criteria for Approval*

Even where the above criteria are not met, the Ministry of Finance may approve a branch or representative office if any of the following conditions are met:

a. The nation in which the foreign bank resides has not yet set up any branch in Taiwan; or

b. At least sixty percent of the shares held by the foreign bank are those of citizens of a nation which has not yet established a banking branch in Taiwan, and the total assets of the bank make it one of the hundred largest banks in the free world;<sup>32</sup> or

c. Where the financial authorities governing the foreign bank have approved branches or representative offices of Taiwan banks in the foreign country, that country's foreign bank shall be allowed to establish its banking branch or representative office in Taiwan on the basis of reciprocity.<sup>33</sup>

A foreign bank which has been permitted to establish a branch or representative office in accordance with these criteria, whether or not it is an Appointed Bank,<sup>34</sup> may apply for an offshore banking license without meet-

30. Waiguo Yinghang Sheli Fenheng Ji Lianluoyuan Banshichu Shengai Yaodian Ji Yewu Fanwei (Regulation for Establishment of Branch or Representative Office of Foreign Bank), art. 1.

31. *Id.* art. 2.

32. *Id.* art. 3.

33. *Id.* art. 4.

34. The Appointed Bank is a bank designated by the Foreign Exchange Department of the Central Bank to handle foreign exchange transactions including the holding of foreign currency proceeds deposit accounts, opening and negotiating letters of credit, making foreign currency loans, guaranteeing repayment of foreign currency loans and negotiating inward and outward remittance. M. S. LIN & P. M. SCARROW, *LEGAL ASPECTS OF DOING BUSINESS IN*

ing additional requirements.

#### 4. *Qualified Reputable Banks*

Apart from the above-mentioned criteria, a foreign bank which is not an Appointed Bank or has never set up a branch or representative office in Taiwan may be permitted to establish an offshore banking branch in Taiwan, if the foreign bank shows that it is reputable and experienced in the operations of international financial business in important international financial centers and has performed outstandingly.<sup>35</sup>

#### C. *Range of Operations*

An offshore bank is permitted to conduct the operations defined in Article 4 of the Act for Offshore Banking Operations. There are no limitations on loans of foreign currencies to and from non-residents. Certain limitations on participation by residents in this market are imposed, however, since the domestic foreign exchange controls in Taiwan are still in effect.<sup>36</sup>

Permissible offshore banking activities include the following:

1. An offshore bank may accept foreign exchange deposits from individuals, legal entities or government agencies outside the territory of the Republic of China.<sup>37</sup>
2. The offshore bank may accept foreign exchange deposits from foreign or domestic financial institutions. An offshore bank may not take deposits from the domestic individuals, legal entities or government agencies.
3. The offshore bank may raise capital on international financial markets.
4. The offshore bank may engage in trading and remittance of foreign currencies.
5. The offshore bank may make loans to foreign and domestic individuals, legal entities, government agencies or financial institutions. Loans may be made in all foreign currencies other than New Taiwan dollars.
6. The offshore bank may manage funds in international financial markets.
7. The offshore bank may book and manage foreign currency loan-re-

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TAIWAN 114 (1982).

35. Lianhe Bao (United Daily News), Dec. 11, 1933, at 2; *see also* Zhongyang Ribao (Central Daily News), March 12, 1984, at 1.

36. *See infra* Section II(E).

37. An individual outside the Republic of China is defined as a natural person who has no domicile in Taiwan and who does not reside in Taiwan for more than 180 days during the taxable year. Lianhe Bao (United Daily News), Dec. 11, 1983, at 2.



lated liabilities.<sup>38</sup>

#### D. Taxation

Among the various taxes imposed by the Taiwan Government,<sup>39</sup> only the income tax, gross business receipts tax, stamp duties and securities transaction tax are relevant to banking operations. Of these, only the last may be imposed in connection with the operations of offshore banking.

##### 1. Business Income Tax

The business income tax is imposed on all profit-seeking enterprises. A branch office or representative office of a foreign bank is considered to be a domestic profit-seeking enterprise for tax purposes, but only with regard to income generated in Taiwan. Very generally, taxes are levied on the net profit of a profit-seeking enterprise; net profit being defined as the total yearly income after deduction of eligible costs, expenses, losses and miscellaneous other taxes.<sup>40</sup>

Generally, all income, whether operating or non-operating income, that is received by the branch or representative office in Taiwan is subject to the business income tax. Branches and representative offices must keep independent books and must separate their income from the income of their head offices.<sup>41</sup> But if a representative office finds it difficult to separate its

38. The Act, *supra* note 20, art. 4.

39. Taiwan relies heavily on indirect taxes for government revenue. Taxes are collected at all three levels of government—central, provincial and local. The Central Government receives revenue from taxation of personal income (called consolidated income), business income, inheritance, customs duties, commodities, stamp securities transactions, mines and salt. Only the customs duties and salt taxes, however, are directly collected by the Central Government. The remaining taxes are collected by the Provincial Government on behalf of the Central Government. The Provincial Government also gets revenue from land, land value increment, gross business receipts, harbor dues and vehicle license taxes, as well as from the profits of government enterprises. The local government collects building, slaughter, amusement, entertainment and deed taxes. M. S. LIN & P. M. SCARROW, *supra* note 34, at 61.

40. The business income includes: dividends declared by local companies; profits distributed by local cooperatives or partnerships; remuneration for services rendered within the territory; interest payments obtained from entities located in the territory; rents obtained from leasing local property; royalties obtained by allowing local persons to use patents, trademarks, copyrights, secret formulae, etc.; profits relating to local property transactions; profits obtained from the operation of local business of any kind; awards or grants for participation in various local skill contests, games, lotteries, etc., and any other income obtained within the territory. Sodeshui Fa (Income Tax Law), art. 14 [hereinafter cited as Income Tax Law].

41. M. S. LIN & P. M. SCARROW, *supra* note 34, at 76. Resident branches establishing offshore banking units will want to deduct costs from the taxable income of their domestic offices, but the tax codes are ambiguous regarding allocation of expenditures between the two

income from that of its head office, it may apply to the Ministry of Finance to have ten percent of its revenues from Taiwan treated as its net income.<sup>42</sup> Under Article 13 of the Act for Offshore Banking Operations, the income derived from the operations of offshore banking is exempt from this taxation.

In addition, deposit interest acquired from Taiwan is treated as ordinary income and taxed accordingly.<sup>43</sup> The fifteen percent withholding tax at source is usually credited against the taxpayer's annual tax bill.<sup>44</sup> Interest income earned by foreign depositors from deposits in offshore banks is exempt from the withholding tax,<sup>45</sup> and thereby from the income tax.

### 2. *Gross Business Receipts Tax (Business Tax)*

Recent amendments to this provincial tax on domestic gross business receipts have extended its application. For example, the tax is now applied to foreign companies with a local representative office even though these offices do not generate income. Needless to say, the local business receipts of a foreign bank with a domestic branch are subject to this tax regardless of whether or not the revenue is generated through the branch.<sup>46</sup> Business revenue subject to this tax should include the receipts generated from commodities sold, services performed, or other business activities performed within the territory. The branch or representative office of a foreign company is responsible for payment of this tax, otherwise the tax is to be withheld by the local purchaser of the foreign company's commodities or services. Usually, the rate of business tax is levied on the business receipts of banking, trust, investment, securities, brokerage, consulting and other financial enterprises at a rate between four and six percent.<sup>47</sup> Nevertheless, business receipts from offshore banking operations are exempt from the business tax.

### 3. *Stamp Duties*

Stamp duties are imposed on business transaction documents, sales invoices and receipts, property titles, licenses and permits. Documents which

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banking units. *Not Drowning, Waving*, *supra* note 25, at 54.

42. *Id.* at 79.

43. Income Tax Law, *supra* note 40, art. 8(4), 14(4).

44. *Capital Market in Asia's Developing Countries*, A BUS. INT'L ASIAN RESEARCH REP., Nov. 1976, at 158 [hereinafter cited as *Capital Market in Asia's Developing Countries*].

45. The Act, *supra* note 20, art. 16.

46. M. S. LIN & P. M. SCARROW, *supra* note 34, at 77.

47. *Id.* at 72.

are executed abroad, receipts for delivery of goods, evidence of securities transactions, and books recording capital investment are exempt from stamp duties.<sup>48</sup> A receipt issued by banking entities would normally incur a 0.04 percent stamp duty.<sup>49</sup> Those instruments used in offshore banking operations, however, are exempt from the levy of stamp duties.<sup>50</sup>

#### 4. *Securities Transaction Tax*

Transactions in all types of securities, except those involving bonds issued by the Government, are ordinarily subject to a transaction tax of 1.5 percent of the price of securities transferred.<sup>51</sup> There is no indication that the securities transactions conducted by the offshore banks are to be exempt from this tax.

#### E. *Foreign Exchange Controls*

A comprehensive regime of foreign exchange controls is imposed in Taiwan.<sup>52</sup> Under the Foreign Exchange Control Act, the Ministry of Finance is responsible for matters relating to foreign exchange administration, while the Central Bank is in charge of foreign exchange operations.<sup>53</sup> Although offshore banking activities are completely exempt from the domestic foreign exchange controls and such controls are gradually being liberalized, the domestic controls still in place unavoidably affect the broader aspects of international financing.

"Foreign exchange" here is defined as inward remittance, foreign currencies, securities and other negotiable instruments denominated in foreign currency.<sup>54</sup> Subject to other regulations, foreign securities and negotiable instruments may be carried into and out of the country.<sup>55</sup> Moreover, the export of gold and silver bullion is prohibited and the export of gold and

48. *Id.* at 75.

49. Yinhuashui Fa (Stamp Duties Law), art. 1(2).

50. The Act, *supra* note 20, art. 15.

51. DOING BUSINESS IN TAIWAN 94 (Price, Waterhouse & Co. ed. 1979) [hereinafter cited as DOING BUSINESS IN TAIWAN].

52. Legislation relating to foreign exchange control includes the Foreign Exchange Control Act, the Statute for Investment by Foreign Nationals, the Statute for Investment by Overseas Chinese, and Regulations governing Foreign Exchange Proceeds Deposits, Buying and Selling of Foreign Exchange by Appointed Banks, Forward Exchange Operations by Appointed Banks and Foreign Exchange Transactions Between the Central Bank of China and Appointed Banks. M. S. LIN & P. M. SCARROW, *supra* note 34, at 115.

53. *World Sourcing Sites in Asia*, *supra* note 1, at 374.

54. Goanli Waihui Tiaoli (Foreign Exchange Control Act), art. 2 [hereinafter cited as Foreign Exchange Control Act].

55. M. S. LIN & P. M. SCARROW, *supra* note 34, at 114.

silver ornaments is governed by regulations.

With a view toward attaining a balance of international payments and thus achieving financial stability, the Foreign Exchange Control Act was enacted in 1958 and revised in 1970. Generally, all transactions involving foreign currencies require a license or prior permission. Effective February 1, 1979, the Government established a foreign exchange market with the following basic principles used to regulate and control the market:

1. Inward remittance of less than five thousand U.S. dollars may be sold directly to designated banks. Amounts in excess of five thousand U.S. dollars (or its equivalent) from certain sources<sup>56</sup> should be deposited with foreign exchange proceeds deposits in the banks designated by the Central Bank before they can be converted into New Taiwan dollars.

2. Foreign exchange required for effecting certain types of payment may be withdrawn directly from foreign proceeds deposit accounts or may be purchased on the foreign exchange market through a designated bank or the Central Bank.<sup>57</sup>

3. With the exception of foreign exchange that must be held in foreign exchange proceeds deposit accounts, Chinese nationals and foreigners who reside in Taiwan may hold foreign currency deposits with the designated banks and withdraw such deposits in the original currency.<sup>58</sup>

4. The exchange rates for New Taiwan dollars with all foreign currencies are determined by the supply and demand of the foreign currencies in the market and the use of the Government's floating exchange rate policy.<sup>59</sup>

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56. Those sources include proceeds derived from export and related transactions; income obtained through provision of shipping services and insurance; income obtained through approved foreign investments abroad by Chinese nationals whose residents are in Taiwan; inward remittances; principal, interest, net profit and royalties arising from approved foreign investment, financing or technical cooperation of domestic enterprises; other income in foreign exchange. Foreign Exchange Control Act, *supra* note 54, art. 7.

57. Payment falling into this category includes the following: payments for importing commodities; payments for expenditures on services by shipping, insurance and other industries; expenditures required for travel abroad for medical treatment, education, inspection tours, visiting close relatives, employment and business; expenses needed for family maintenance abroad by nationals or foreigners serving in governmental organizations and private enterprise within the country; principal, interest and net profit arising from investments in the country by foreigners and overseas Chinese; principal, interest and guarantee fees of foreign loans made with the approval of the Government; payments of royalties to foreigners or overseas Chinese resulting from approved technical cooperation agreements; investment or lending abroad with the approval of the Government; other Government-approved expenditures. *Id.* art. 13.

58. *Id.* art. 8.

59. The floating rate of the foreign exchange, however, will not be allowed to fluctuate more than plus or minus 0.5 percent per day. DOING BUSINESS IN TAIWAN, *supra* note 51, at 14.

5. The Central Bank is entitled to intervene in the foreign exchange market by buying or selling spot foreign exchange. It may also, upon request, deal with designated banks by buying or selling spot foreign exchange on each business day to cover the net overbought or oversold positions of those banks. In forward market situations, designated banks may deal in import and export transactions but they may not cover any financial transaction.<sup>60</sup>

Foreign exchanges in the offshore financial market, however, are not subject to this exchange control system. Nevertheless, because of the existence of domestic foreign exchange controls, offshore banking operations must be limited in ways that may affect the stability of the domestic financial market. In this regard, an offshore bank handling foreign exchange deposits is prohibited from accepting foreign currency in cash and from permitting the withdrawal of foreign exchange deposits in New Taiwan dollars.<sup>61</sup> Moreover, an offshore bank is not allowed to handle remittances or conversions between foreign currencies and New Taiwan dollars unless approved by the Central Bank of China.<sup>62</sup>

#### F. Interest Rates Controls

Usually, the interest rates on deposits and loans in domestic financial institutions are determined by the Central Bank and are subject to the system of interest rate control. The Interest Rate Control Act provides that:

1. The interest rate on deposits should not exceed the rate on loans;
2. The local bankers association should fix the ceiling on interest rates for loans in accord with the circumstances of the daily financial market and should request the Central Bank to approve and announce this fixed rate;<sup>63</sup>
3. If the interest rates on loans adopted by financial institutions exceed the ceiling announced by the Central Bank, a creditor has no right to claim payment for excessive interest charge;<sup>64</sup> and
4. If the parties to a loan agreement do not negotiate the rate of interest, one-half of the daily interest rate announced by the Central Bank will be the applicable rate for the agreement.<sup>65</sup>

Moreover, Article 205 of the Civil Law provides that the interest rate agreed upon by the parties to a contract shall not exceed one-fifth of the total amount lent; otherwise, the creditor has no right to claim the payment

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60. M. S. LIN & P. M. SCARROW, *supra* note 34, at 115.

61. The Act, *supra* note 20, art. 7.

62. *Id.* art. 8.

63. Lishui Goanli Tiaoli (Interest Rate Controls Act), art. 2.

64. *Id.* art. 4.

65. *Id.* art. 6.

for the excessive portion.

However, interest rates on deposits or loans adopted by offshore banks are not subject to this control system. An offshore bank and its customers have complete freedom to decide on interest rates on the basis of mutual consent.<sup>66</sup>

### G. *Reserve Requirements*

Offshore banks will be exempt from deposit reserve requirements.<sup>67</sup> Provisions for loan loss will not be required except as may be imposed by the laws of the country in which the head office of the offshore bank is situated or by such country's competent banking authority.<sup>68</sup>

### H. *Prohibited Businesses*

Offshore banks are prohibited from direct investment and investment in real property.<sup>69</sup> Apart from this restriction, the Banking Law prohibits the making of a loan or an advance to a bank's director or officers if no security or guarantee for the loan is provided. Furthermore, when a loan or an advance is made to a director or officers of the bank, or to an enterprise or individual whose interests coincide with those of a director or officers, the bank is prohibited from offering better treatment to those persons than to other borrowers, even where a security or guarantee has been provided.<sup>70</sup>

### I. *Provisions Concerning Loans Made to Domestic Individuals, Legal Entities, Government Agencies or Financial Institutions*

Offshore banks are permitted to lend foreign currency to domestic individuals, legal entities, government agencies or financial institutions. Because of domestic foreign exchange controls,<sup>71</sup> an offshore bank will be treated as if it were a foreign bank located outside of Taiwan which seeks profits from Taiwanese sources. Therefore, the interest earned on these loans will be considered ordinary income and will not be exempt from the business income tax.<sup>72</sup> In addition, if a domestic individual, enterprise, government

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66. The Act, *supra* note 20, art. 12.

67. *Id.* art. 11. Compare Singapore which imposes a ten percent tax on offshore-generated income. *Not Drowning, Waving, supra* note 25, at 55.

68. The Act, *supra* note 20, art. 17.

69. *Id.* art. 9. The Law does not specify the precise scope of direct investment; further authoritative interpretation in this regard will be necessary.

70. Banking Law, *supra* note 21, art. 32, 33.

71. *See supra* Section II(E).

72. The Act, *supra* note 20, art. 13.

agency or financial institution borrows foreign exchange from the offshore bank, it will be treated as if it were a resident borrowing funds from a foreign bank located outside of Taiwan and will be subject to the system of domestic foreign exchange controls.<sup>73</sup>

### J. *Miscellaneous Provisions*

1. Separate accounts must be kept for all offshore banking operations, particularly to distinguish taxable from nontaxable activities.<sup>74</sup>

2. Offshore banks are not obligated to disclose any information to third parties, except as otherwise required by court order or by law.<sup>75</sup>

3. The Government may, on an annual basis, collect license fees from the offshore banks.<sup>76</sup>

4. Violations of the provisions of Articles 4, 7, 8, 9 and 20 of the Act for Offshore Banking Operations or of any regulations prescribed in accordance with the Act may result in the person responsible being fined and the suspension of operations or revocation of the bank's license.<sup>77</sup>

5. Telecommunications equipment and information systems used by an offshore bank in connection with its head office and other international financial institutions may be imported upon application on a case-by-case basis.<sup>78</sup>

6. An offshore bank established by a domestic bank may have the same

73. *Id.* art. 6.

74. *Id.* art. 3. Considerations, not only of taxation, but of foreign exchange controls, are involved in this respect. An offshore bank must keep separate accounting books, accounting evidence and financial statements which distinguish offshore banking business from the business of remittances and conversions between foreign currency and New Taiwan dollars (if the offshore bank is also an Appointed Bank). Jingji Ribao (Economic Daily News), Sept. 23, 1983, at 1.

Moreover, a profit-seeking enterprise is usually required to register with the tax office within fifteen days from commencement of business in Taiwan. Such an enterprise is required to keep sufficient and accurate account books, vouchers and accounting records for the purpose of calculating its total business income. M. S. LIN & P. M. SCARROW, *supra* note 34, at 62. Since the operations of offshore banks are exempt from many taxes, their accounting books certainly must be able to distinguish these operations from other profit-seeking activities.

75. The Act, *supra* note 20, at 18.

76. *Id.* art. 21. The amount of the fee is to be determined annually by the Ministry of Finance.

77. *Id.* art. 22. Fines may range from fifty thousand to one hundred and fifty thousand yuan (approximately \$3,000 to \$11,250 U.S. dollars).

78. *Id.* art. 19. Telecommunications, so essential to financial operations, is sorely underdeveloped in Taiwan. The bureaucracy regulating telecommunications may be too cumbersome to keep pace with the swiftly advancing technology. See *Not Drowning, Waving*, *supra* note 25, at 54.

place of business as its head office; and an offshore bank established by a foreign bank may have the same place of business as its branch designated to do foreign exchange deals.<sup>79</sup>

### III. LEGAL ISSUES CONCERNING OFFSHORE BANKING IN TAIWAN

#### A. *Eligibility of Foreign Banks for Offshore License*

Taiwan has chosen to limit potential offshore banking licenses (a) to foreign banks with Taiwan branches which are Appointed Banks,<sup>80</sup> (b) to representative offices, or (c) to internationally reputable banks. The requirements that a foreign bank establish a branch for offshore banking and that an internationally reputable bank be experienced in international finance are of questionable utility.

In order to establish an offshore banking branch in Taiwan, an internationally reputable bank must have had experience in international financial business in any important international financial center. Under this standard, few banks are able to qualify for a license. Those which do qualify are not necessarily interested in operating offshore banking in Taiwan, and foreign banks which are interested in conducting offshore banking in Taiwan but which have had little or no experience in international financing are excluded.

Thus, Taiwan should consider a more flexible standard to enable banks that have sufficient assets and sound financial management to establish offshore banks, even though they lack experience in international financing. The capability of a bank to manage international financial business is better judged under free competition than under rigid standards.

The requirement that a foreign bank establish a branch rather than a subsidiary in order to engage in offshore banking is a more practical limitation. Where tax management is concerned, the advantages and disadvantages of operating an offshore banking business through a branch or through a subsidiary are about equal.<sup>81</sup> However, where bankruptcy is at issue, the requirement that a foreign bank set up a branch ensures greater security for the depositor.

#### 1. *Tax Concerns*

From the standpoint of tax management, the major difference between

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79. The Act, *supra* note 20, art. 10.

80. *See supra* note 34.

81. Note that other international banking facilities permit operation by subsidiaries. *See generally* INTERNATIONAL BANKING CENTERS, *supra* note 7.



branch and subsidiary operations is that a branch is a direct extension of the parent company, while a subsidiary is independent of the parent company.

With a branch, the parent company is simply trading abroad and is totally responsible for the branch's business. The logical consequence of this position is that all the branch's transactions are the parent company's transactions, and, therefore, branch profits must be included in the parent's taxable income even if not remitted. An operating branch may also have to disclose the parent's total business to the host government. Such disclosure may be unwelcome and may raise questions with the tax authority in the host country about transfer prices, intra-company charges, and other issues.

A subsidiary, on the other hand, is independent, such that the parent company's taxes are based on remittances (dividends) received from the subsidiary rather than on the subsidiary's total earnings. In the case of a loss-making branch, however, any loss can be immediately offset against a parent's other tax liabilities. In the case of a subsidiary, the loss will be carried forward on the books and is available to offset taxes when the subsidiary eventually does become profitable.

Of course, in the case of a currency that is appreciating relative to the parent, the relative advantages of branches and subsidiaries are reversed. When the subsidiary or branch is expected to make a taxable profit, or is already doing so, subsidiaries are generally more effective than branches for tax deferral purposes. This is because branches will normally have the same accounting period as the parent, while subsidiaries' accounting years can be almost a year out of phase with the parent's. However, the ability to defer taxes for the parent is not necessarily advantageous. The result depends upon factors such as the relative tax rate of the host and base countries and the exchange rate movements.<sup>82</sup>

In practice, since Taiwan exempts offshore banking operations from income tax, the tax status of a branch will be unchanged. A branch's gain or loss will be included in the parent's taxable income and will be subject to the taxes of the parent's company. The subsidiary may be able to more effectively adjust the tax position of the parent company. The subsidiary's income will be remitted when the parent suffers a loss, and the tax deferral strategy may be exercised when the parent earns taxable profits. Nevertheless, if a subsidiary loses money, the loss cannot offset the profits of the parent company as that of a branch can; and regardless of whether or not the subsidiary carries forward the loss on its books to offset future profits earned by the subsidiary, Taiwan does not tax this profit.

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82. D. WOOD & J. BYRNE, *supra* note 11, at 167-69.

## 2. *Bankruptcy*

In addition, the assets and liabilities of a branch are included in the total assets and liabilities of its parent, while the assets and liabilities of a subsidiary are independent of its parent's. If the bank goes bankrupt, a subsidiary must liquidate its local assets. By contrast, a parent is liable for the obligation of liquidation or compensation for its branch. Since an offshore bank in Taiwan is not subject to deposit reserve requirements and loan loss requirements, there would be substantial risk to the depositor if foreign banks were permitted to set up independent subsidiaries. The requirement that a branch be established, however, provides greater guarantees and protections for the depositor because the financial back-up by the parent company is available.

### B. *Impact of Foreign Exchange Controls on Offshore Banking*

Taiwan is considering a major overhaul of its foreign exchange control system.<sup>83</sup> Restrictions have already lessened to meet the demand for a free international financial market. Foreign exchange controls will not be applicable to offshore banking operations. The Ministry of Finance has decided to exempt from the income tax and stamp duties the interest acquired from interbank foreign exchange transactions.<sup>84</sup> The Ministry of Finance is also considering a proposal that would permit residents to hold, deposit and transact foreign exchange in public and relieve the limitations on remittance of foreign exchange to some extent.<sup>85</sup> Consideration of these proposals aside, however, the foreign exchange controls on domestic financial activities currently remain in effect.

The Act for Offshore Banking Operations, through its restrictions, tries to prevent residents from avoiding foreign exchange controls through offshore banks and also tries to prevent offshore banking activities from interrupting the domestic exchange control system. Under articles 4(1), 6, 7, and 8 of the Act, an offshore bank will not be able to take deposits in both New Taiwan dollars and foreign currencies from domestic individuals, legal entities or government agencies, or from domestic financial institutions. The borrowing by residents from an offshore bank is subject to foreign exchange controls and other limitations. An offshore bank may not accept foreign currency in cash and may not permit the withdrawal of foreign exchange

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83. *Jingji Ribao* (Economic Daily News), Oct. 4, 1983, at 2; *Jingji Ribao* (Economic Daily News), Oct. 14, 1983, at 1; *Jingji Ribao* (Economic Daily News), Oct. 18, 1983, at 1. Currency controls have been tight as a result of rampant inflation in the mid-70s.

84. *Jingji Ribao* (Economic Daily News), Sept. 20, 1983, at 1.

85. *Zhongyang Ribao* (Central Daily News), April 3, 1984, at 1.

deposits in New Taiwan dollars. Finally, an offshore bank may not handle remittances or conversions between foreign currencies and New Taiwan dollars, unless approved by the Central Bank of China.

The same regime was adopted by Singapore in 1968 when its Asian Dollar Market was initially established,<sup>86</sup> but the offshore banks in Singapore were entitled to accept deposits from residents of Singapore up to specified limits before the lift of exchange controls.<sup>87</sup> The foreign exchange controls in Singapore had been relaxed gradually and were eventually deleted in 1978.<sup>88</sup> In Hong Kong, foreign exchange controls had little real significance because there was an officially tolerated free market in U.S. dollars and other convertible currencies, even before its foreign exchange controls lapsed in 1973.<sup>89</sup> Compared with Singapore and Hong Kong, the foreign exchange controls imposed on Taiwan's onshore financial market are somewhat restrictive.

Liberalizing the foreign exchange control system has its advantages and disadvantages. Taiwan's large amounts of foreign exchange reserves and its sound economic growth favor deregulation of the banking industry. However, deregulation also may increase the outward flow of foreign exchange remitted by residents. Potential loss of foreign exchange should be prevented, but otherwise, such intensive exchange controls may not be necessary.

### C. *Loans Made to Residents by Foreign Banks*

Commentators predict that, at least initially, offshore banking activities in Taiwan will be dominated by foreign banks because domestic banks are not scheduled to participate until they have developed expertise and trained personnel.<sup>90</sup> Unlike the international banks which set up branch offices in the South East Asian region in order to serve the banking needs of Asia, those in Singapore and Hong Kong, for example, the purpose of many

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86. SINGAPORE AS AN INTERNATIONAL FINANCING CENTER 44-45 (Price, Waterhouse & Co. ed. 1976).

87. *Capital Market in Asia's Developing Countries*, *supra* note 44, at 32.

88. Ishihara & Kim, *Financial System of Singapore*, in EMERGING FINANCIAL CENTERS 913, 927 (R.C. Effros ed. 1982); *see also* R. A. JOHNS, TAX HAVENS AND OFFSHORE FINANCE: A STUDY OF TRANSNATIONAL ECONOMIC DEVELOPMENT 219-20 (1983).

89. THE BUSINESS ENVIRONMENT IN HONG KONG 160 (D.G. Lethbridge ed. 1980).

90. *Offshore Banking Units: Taiwan's Proposal May Spur Reforms*, BUS. ASIA, March 25, 1983, at 92 [hereinafter cited as *Offshore Banking Units*]. Economic planners hope, in fact, that technology transfer from foreign banks to domestic banks will provide much-needed training in foreign-exchange trading, merchant banking and other skills so that local companies may develop foreign markets and invest overseas. *Not Drowning, Waving*, *supra* note 25, at 55.

foreign banks in Taiwan has been and will be to finance domestic public and private enterprises. Foreign banks are worried about their opportunity to arrange loans in New Taiwan dollars for domestic enterprises.<sup>91</sup> But, since one of the major functions of offshore banking is to eliminate the present inconvenient status of Taiwan's domestic banks and enterprises, which results from geographical distance and the time-consuming method of borrowing foreign capital from other international financial centers, an offshore bank in Taiwan will be permitted to make loans to local individuals, legal entities, government agencies or financial institutions.

The language used in Article 4(6) of the Act for Offshore Banking Operations indicates that an offshore bank is permitted to make loans to both non-residents and residents, but this article does not specify the allowable currencies. The provisions of Articles 7 and 8 of the Act imply that an offshore bank may not make loans to nonresidents in New Taiwan dollars, but the Act does not explicitly prohibit loans to residents in New Taiwan dollars. Further regulations should clarify whether an offshore bank will be allowed to make loans in New Taiwan dollars to residents.

Permitting offshore banks to make loans in domestic currency would conflict with the Government's domestic exchange control policy and with the policy which favors confining business in New Taiwan dollars to domestic banks. Until now, New Taiwan dollar loans made to domestic individuals and legal entities have been performed by domestic banks and approximately thirty foreign banks in Taiwan. A foreign bank that intends to make these loans must apply for permission according to the Banking Law and is subject to tax imposition, interest rate controls, foreign exchange controls and other relevant regulations. Some loosening of these relatively strict regulations on foreign banks is expected.<sup>92</sup> Even greater liberalization is required<sup>93</sup> and may be forthcoming if new international financial operations go well in Taiwan.

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91. *Offshore Banking Units*, *supra* note 90, at 93.

92. Foreign banks may now accept six-month New Taiwan dollar time deposits. Jingji Ribao (Economic Daily News), Aug. 25, 1983, at 2. Thus, the foreign banks are able to obtain local currency at a lower cost than in the past, while previously they relied primarily on the interbank market for New Taiwan dollars, which forced them to pay higher interest rates than their local competitors on borrowings. Moreover, foreign banks may now grant a total of six million U.S. dollars worth of export loans per week, instead of the previous one million U.S. dollars per day. However, the Ministry of Finance continues to restrict the total six-month time and demand deposits that a foreign branch may accept. A bank's overall intake may not exceed 12.5 times the amount of its inward capital remittances up to a maximum of two billion New Taiwan dollars. Jingji Ribao (Economic Daily News), Aug. 27, 1983, at 1.

93. For example, restrictions on time deposits should be extended to nine, twelve or fifteen months. *Taiwan Reforms Benefit Bank Branches, Fill NT Dollar Coffers*, BUS. ASIA, Nov. 18, 1983, at 363 [hereinafter cited as *Taiwan Reforms*].

In view of the fact that such intricate regulations govern the usual process for a foreign bank making loans to residents, it is unlikely that the legislators intended to permit loans in New Taiwan dollars to residents by offshore banks. It is equally unlikely that the legislators will permit an offshore bank to participate in local financing without limitation. It is impossible, for instance, to lend local currency to residents since offshore banks are not allowed to raise funds in New Taiwan dollars.

If offshore banks are prohibited, however, from lending New Taiwan dollars to residents, the development of an international financial center may be adversely affected. First, the international financial business in Asia has so far been satisfactorily handled by Singapore and Hong Kong, and the Tokyo financial center will also provide potential competition for Taiwan's banking center in the future. Taiwan's financial market should be made more attractive in order to cope with this competition. Second, the prohibition against lending New Taiwan dollars to residents by offshore banks in order to protect domestic banks will frustrate free competition and thus deter the fast growth of the banking industry.

Even taking these restrictions into account, however, foreign banks still have incentive to locate offshore business in Taiwan. Not only will Taiwan's tax incentives reduce the tax on offshore transactions to virtually zero, but the demand for capital from Taiwanese enterprises is by itself sufficient incentive.

#### IV. IMPACT OF THE DOMESTIC ENVIRONMENT ON THE DEVELOPMENT OF INTERNATIONAL FINANCING IN TAIWAN

The current economic circumstances in Taiwan tend to shift away from labor-intensive industries and toward capital- and technologically-intensive ones. Strategies for future industrial development have been planned which include continued development of heavy and precision industries, improvement of traditional light industries and of small and medium industries, and intensification of research and development in science, technology and the strategic industries. A ten-year development program, covering the period from 1979 through 1989, is being undertaken. The major projects for development are as follows:

1. continuing construction of nuclear, thermal and hydroelectric power plants;
2. increasing facilities for the production of basic metals such as copper, steel and aluminum;
3. expanding the scale of production in the automobile industry including heavy duty trucks;
4. improving the quality and increasing production of heavy machinery, heavy electrical machinery and precision machinery products;

5. improving the quality and degree of sophistication of electronic products, particularly in the areas of consumer electronics, telecommunications, computers and semiconductors;

6. advancing the quality and quantity of production of petrochemicals and certain specialty chemicals such as pharmaceuticals, pesticides, explosives, etc.;

7. modernizing the textile industry by replacing large quantities of obsolete equipment; and

8. continuing development of industrial estates.<sup>94</sup>

Although Taiwan is financially sound, these substantial economic and industrial goals require additional foreign capital. As *Business Asia* reported on February 10, 1984:

Foreign investors should find a new financial environment evolving in Taiwan—in the usual, cautious style. The strong local dollar, healthy foreign reserves, and stable commodity prices are likely to give the island's leadership the confidence to implement financial reforms leading to the opening of an offshore banking center, greater foreign investment in the local stock market, less rigid exchange controls, and the development of private banking. . . . Improvements over the past year include . . . [that] local and foreign bank branches have begun installing computerized banking facilities, including transmission circuits for SWIFT (the Society for Worldwide Interbank Financial Telecommunications), a global banking network that allows members to handle transactions electronically.

All signs point to a good year for business. Exports should rise by some 15%, and Taiwan's trade surplus is expected to surpass U.S. \$5 billion. Real GDP growth is forecast at 7-7.5%, and inflation should be held to 5-6%.

. . . .

Taiwan's hefty trade surplus, huge foreign exchange reserves, and recent surge in bank savings deposits indicate that local credit will not be hard to come by. As of end-1983, foreign reserves—excluding gold—topped U.S. \$13 billion, enough to cover about seven months' worth of imports. Total bank deposits amounted to NT \$1.71 billion at end-November 1983, a 27.3% increase over the year-earlier figure. . . . However, as business expansion accelerates after midyear, the demand for credit should increase. . . .<sup>95</sup>

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94. Chang, *Economic Conditions of Taiwan and Its Prospects for Development*, 11 INDUSTRY OF FREE CHINA 4 (1979).

95. *Taiwan Financial Outlook*, BUS. ASIA, Feb. 10, 1984, at 46-47.

Thus, Taiwan's economy is healthy enough to support an international financial center. However, Taiwan's accounting practices and political situation may hinder the development of this market.

### B. *Accounting Practices*

A reliable accounting infrastructure is essential to the success of an offshore banking center. Compared with most advanced countries, however, Taiwan's accounting profession is anemic.<sup>96</sup> Of roughly 1,200 licensed certified public accountants (CPAs), only about 400 actually practice. Most firms are tiny, understaffed operations with fewer than five full-time professional assistants, and only about twenty firms have three or more CPAs. The largest accounting firm in Taiwan—T. N. Soong & Co.—is twice the size of its closest competitor. These shortcomings have raised serious doubts about the ability of many firms to perform proper audits. Most local companies are too small and undercapitalized to pay for a CPA's services or to even recognize the need for them. As a result, companies are often unaware of their own deficiencies. Moreover, internationally recognized accounting rules are ignored by most small firms. These poor accounting practices cause problems during recessions such that many businesses issue fraudulent financial statements.<sup>97</sup>

One reason for the underdeveloped state of the accounting profession has been the lack of a consistent and effective qualification system for CPAs.<sup>98</sup> Thus, the new regulations, promulgated in July 1983, call for a

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96. Other problematic areas which require development include Taiwan's law firms and printing firms, as well as telecommunications systems, *see supra* note 78. *Not Drowning, Waving, supra* note 25, at 54.

97. Such was the case with Chung Hsin Co. and Yuan I Industrial Corp. during the last economic recession in 1982. The audit of the Securities and Exchange Commission (SEC) showed that Chung Hsin's listed net worth of fifteen million New Taiwan dollars was overstated by more than five million New Taiwan dollars. Claimed earnings of almost seven million New Taiwan dollars from several real estate transactions were found to be highly questionable, including a "profit" of four million New Taiwan dollars from a property sale that never took place. In the case of Yuan I, the independent audit concluded that Yuan I had overvalued its inventory by nine million New Taiwan dollars, and that its actual financial situation was so serious that creditors were preparing to have the company declared legally bankrupt. Some foreign banks in Taiwan which had loaned money to these firms were forced to write off some of the loans. *Taiwan Reforms, supra* note 93, at 363. Details of the two cases involving these firms illustrate the dubious practices and inadequate financial reporting which have convinced authorities to enact reforms.

98. Until recently, the "back door" for entering the accounting profession was wide open. Thus, people who taught accounting in universities for three or more years needed only pass a partial four-subject examination. Most licensed CPAs are former government or military officials who were admitted to the profession after leaving public service.

stricter system of qualifications with higher educational standards, as well as a broader system for oversight of auditing methods.<sup>99</sup> These new regulations apply to accounting firms that audit listed companies. Before being allowed to audit Taiwan's 115 listed companies, an accounting firm must now obtain the approval of Taiwan's Securities and Exchange Commission (SEC), which is based on compliance with the regulations.

If these regulations are enforced, it will be easier to evaluate the financial health of Taiwanese business enterprises. However, more reforms are necessary, especially the long-overdue reform of the entire local accounting profession. These new rules apply only to the accounting firms which audit listed companies, so the qualifications and accounting practices of firms that audit non-listed companies are still unregulated. Thus, unlisted companies will continue to issue fraudulent financial statements and inadequate financial reports to avoid taxes or to make credits. The dual supervisory system will unintentionally deter firms from seeking listed status since the new rules only require listed companies to expose their genuine financial status, while non-listed companies are not strictly obligated to present authentic financial statements. This phenomenon will certainly affect the development of international finance in Taiwan. For the sake of the soundness of its financial operations, Taiwan must reorganize its accounting profession and review and innovate its accounting practices.

### C. *Political Risks*

Taiwan encounters intricate and troublesome political problems. Not only does it face the normal amount of domestic instability of a developing country, but it also faces potential military conflict with China. The international business literature contains a range of techniques which are recommended to evaluate the current and future prospects of political and polit-

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99. The new regulations require the following prior to SEC approval: (1) The accounting firm must employ at least three CPAs and half of the CPAs must have passed either the full or the partial examination. Thus, if a firm employs three CPAs, two must have been licensed through the so-called "front-door" process. To become a CPA via this route, applicants must pass a difficult examination covering nine subjects. Fewer than one percent of those taking the examination pass, and, in the most recent three-year period, only twenty-seven people qualified for a CPA license under this rigorous process. Fewer than thirty percent of Taiwan's CPAs have entered the profession in this way. (2) Each firm must maintain a minimum of nine professional assistants on its staff, with at least one-third holding college degrees in accounting. (3) Auditing methods are subject to a peer group review, and failure to meet professional standards can lead to disqualification. (4) Continuing education courses are mandatory for all personnel auditing listed companies. (5) Audit reports must be signed by at least two CPAs; formerly, just one signature was required. See *New Accounting Rules, Tougher Standards for Taiwan Firms*, BUS. ASIA, Aug 19, 1983, at 759-60.



ico-economic stability in foreign investment environments. The main areas of interest suggested by most of the methods are given as follows:

(a) The trend in money supply and the government deficit position, and the way in which any inflation may result in stresses in the economic and political management structure.

(b) The prospects for economic growth and its likely distribution amongst the population.

(c) The attitude to foreign investment, the fiscal and monetary incentives provided to foreign investors and the degree of control currently exercised over foreign companies.

(d) The alignment of the country (including associate membership) to political and economic groupings which involve a commitment to certain standards of commercial and political behavior.

(e) The existing treatment of exchange control matters, the availability of external convertibility for the currency. The existence of a forward market for the currency and the availability of local and international finance in the country.

(f) The commercial standards in the country, the availability of business infrastructure—banking, legal, accounting, insurance and credit rating services, etc.

(g) The extent to which the local labor market can provide adequate unskilled, skilled and managerial resources.

(h) The degree of communication between parent and host country—ships, aircrafts, telephones, mutual trade, aid programs, standards, etc.

(i) The nature of other international business operations in the territory—extractive, consumer goods, assembly, etc.; their mode of operation—participative, exploitive, etc.; and their current acceptability in the local community.

(j) Stability and base of the political system of the country—the physical security.<sup>100</sup>

Generally speaking, Taiwan's ability to respond to these requirements is satisfactory. Of the ten standards described above, only two are problematic: the ability of the country to align with international economic and political groupings and the establishment of a proper political system.

With respect to the former issue, political disturbance created by the Chinese Communist Government in the international forum has in the past prohibited Taiwan from participating in any international economic and po-

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100. D. WOOD & J. BYRNE, *supra* note 11, at 30.

litical associations and from developing diplomatic relationships with foreign countries. Chinese governments claim that Taiwan is a province of China, and that, therefore, its legal character and status shall be represented by China. Under this theory, Taiwan has no standing in the international community. Nevertheless, Taiwan retains formal diplomatic relations with about twenty countries, mostly in the Third World<sup>101</sup> and also has commercial connections with more than 150 countries. In its 1980 forecast on economic trends, the American Institute stated that "the break in formal relations with the United States in 1979 and the break with the IMF in 1980 have had no measurable effect upon Taiwan's credit-worthiness or upon the desire of foreigners to make direct investments and syndicated loans to the island."<sup>102</sup> The diplomatic climate does not seem to affect Taiwan's commercial relations with the rest of the world.

With respect to the stability and basis of Taiwan's political system, there are basically two issues involved: (1) the relationship between Taiwan's government and its people and, (2) the political relationship between Taiwan and China.

Regarding the first issue, there have been internal conflicts between the government and the people of Taiwan since early 1949 when the Chinese Nationalist Government retreated into Taiwan. Minor disturbances have occurred over the past three decades. The political system itself is the key element of conflict. Since the existing constitution in Taiwan treats the island as a province of China, the enforcement of that constitution can never fully reflect the opinions of Taiwan's public. The people never cease to fight for overall revision of the constitution, but so far there has been no improvement. Continual struggle is foreseeable. The maintenance of social and political stability will depend upon the ability of the Government to settle the people's requests and upon the extent to which people are allowed to participate in politics. The development thus far shows that political reform is carried out gradually and that expectation for achieving democracy is increasing.

The relationship between China and Taiwan is often compared to the relationship between China and Hong Kong; but apparent similarities in status disappear upon close comparison. China is much less likely to have an opportunity to interfere with Taiwan's affairs as compared with Hong Kong's. Unlike Hong Kong, Taiwan is geographically separate, agriculturally self-sufficient and economically independent in relation to China. In addition, Taiwan is ruled by a Chinese—albeit rival—government, while

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101. Nolan, *U.S. Banks "Lined Up and Waiting" to Enter Taiwan*, 354 J. COM. 8C (1982).

102. M. S. LIN & P. M. SCARROW, *supra* note 34, at 21.

Hong Kong is currently under British rule. Most importantly, while Hong Kong possesses no defense ability and would probably not risk military conflict with China, Taiwan has at least sufficient military capabilities for purposes of self-defense.

Since it is unlikely that the people of Taiwan would agree to unification with China under the rule of a Communistic government, the only way China could procure Taiwan is through successful military acquisition. The possibility of successful acquisition, let alone China's willingness to invade, is dubious since a war would result in serious injury to both China and Taiwan and would guarantee no benefit to China. For these reasons, relations between China and Taiwan shall not foreseeably be a challenge to international investment, business or finance in Taiwan. Indeed, the *Business Week's* survey of the opinions of global 250 enterprises, government officers, politicians and other experts concluded that Taiwan would be one of the politico-economically least risky countries for investment, business and finance in 1984.<sup>103</sup>

#### V. LIKELIHOOD OF TAIWAN'S SUCCESS IN THE INTERNATIONAL BANKING ARENA

##### A. *Taiwan Versus the Competing Market in Asia*

Four international financial centers have been established in the Far East—in Singapore, Hong Kong, the Philippines and Bahrain<sup>104</sup>—and two more offshore banking centers are being planned—one in Tokyo<sup>105</sup> and one in Australia.<sup>106</sup> The international financial performance in Singapore and Hong Kong is prominent and distinguished. The establishment of a genuine international financial and capital market in Tokyo has been debated for many years and will soon be settled.<sup>107</sup> In spite of the keen competition in this area, and although international banks are usually unwilling to move when business has been settled somewhere, Taiwan still possesses certain characteristics which may enable it to develop a successful international financing market.

If the Taipei offshore banking center is considered primarily as a de-

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103. Jingji Ribao (Economic Daily News), Dec. 26, 1983, at 2.

104. Lianhe Bao (United Daily News), Dec. 3, 1983, at 1.

105. Tatsumi, *Japanese Financial Institutions Wary of Proposed Offshore Market*, Wall St. J., Sept. 23, 1982, at 21(E), col. 7.

106. *Now for the Next Miracle . . . Finance in the Far East: A Survey, Collect Dust, Make a Mountain*, 285 ECONOMIST 26 Survey (1982) [hereinafter cited as *Now for the Next Miracle*].

107. Cullison, *Offshore Banking Appears Nearer for Japan*, 354 J. COM. 4A(1) (1982).

pository for transitional funds, the expectations of volume must necessarily take into account the well-trained personnel and effective administration of Singapore's market, as well as that of Hong Kong and potentially Tokyo. But the more significant immediate purpose of Taiwan's offshore banking center is to facilitate the funding of domestic economic activities and growth. From this perspective, focus shifts away from the competing markets to Taiwan's large domestic demand for capital.<sup>108</sup>

In addition, Taiwan is one of the major borrowers of Singapore's and Hong Kong's offshore funds. The presence of an offshore banking center in Taipei may facilitate a shift of some of these transactions to Taiwan. Seventy percent of Singapore's offshore funds are presently utilized to make loans to the governments of Taiwan, Indonesia, Malaysia, the Philippines, Thailand and South Korea. Singapore's gradually growing syndication business benefits from the loans made to South Korea and Taiwan.<sup>109</sup> Moreover, Taiwan, South Korea and the Philippines have been and still are the main borrowers of Hong Kong's offshore funds. The developing lending expertise of Hong Kong is looking toward China, Taiwan and South Korea.<sup>110</sup>

Furthermore, the recent political uncertainty of Hong Kong seriously affects its business atmosphere and the reputation of its international financial center.<sup>111</sup> While foreign investors and the Chinese Government are increasing their investments in Hong Kong, more and more local Chinese enterprises are moving out.<sup>112</sup> The stock market appears unstable, and the value of the Hong Kong dollar fluctuates frequently.<sup>113</sup> Although Britain and China have agreed that Hong Kong will be returned to Chinese sovereignty in 1997, just what changes will be made in the present political and economic structure has yet to be determined.<sup>114</sup> Hong Kong will certainly require time to readjust its position. Most of its existing business activities

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108. Interview with Randolph M. Selig, *A Taiwan-Based Offshore Banking Center Would Bolster the Local Economy*, 1982-83 FIN. Y.B., REPUBLIC OF CHINA 40 (1983).

109. R. A. JOHNS, *supra* note 88, at 221-22.

110. *Now for the Next Miracle*, *supra* note 106, at 25 Survey.

111. Gray, *Back to the Big Banks: Asian Banking and Finance*, BUS. WK., Jan. 18, 1982, at 18A-W (14).

112. *Will Capitalism Live After Britain Leaves?*, BUS. WK., Sept. 26, 1983, at 55-56.

113. Bonring, *From Panic to Peg*, FAR E. ECON. REV., Oct. 6, 1983, at 114; Gigot, *Investor Confidence in Hong Kong Likely to Fall Until Colony's Future Clears Up*, WALL ST. J., Oct. 4, 1982, at 37(E), col. 1; Miller, *Hong Kong Stock Market Registers Drop Amidst Political and Economic Jitters*, WALL ST. J., Aug. 4, 1982, at 25(E), col. 1; *Hong Kong's Stocks Plummet on Worries about Colony's Future*, WALL ST. J., Aug. 13, 1982, at 20(W)(E), col. 2; Currie, *Decline in Hong Kong Dollar Tied to Political Uncertainty*, 355 J. COM. 5A(1) (1982); Wong, *Hong Kong Dollar Pulls out of Nose Dive After Moves by British Colony and Banks*, WALL ST. J., Sept. 27, 1983, at 40(E), col. 2.

114. See Iyer, *A Colony's Uncertain Future*, TIME, Oct. 8, 1984, at 38, 51.

may have to be carried on elsewhere, and, therefore, many countries will welcome the "flight business" and floating capital shaken loose by Hong Kong's discomfiture.<sup>115</sup>

### B. *Taiwan's Status in the World Market*

Over the last twenty years, the capitalist economics of the Far East have outperformed those of the rest of the world, expanding rapidly with a lower rate of inflation than in other developing countries. The region grew at the fastest rate the world has ever known, and its economic appeal has lured businessmen from all over the world who still see East Asia as the last frontier of fast economic growth. The region's growth and relative stability encouraged people to save, enabling these countries to invest heavily and grow faster.

A number of factors have helped to bring financial expertise into the region from outside. First, although the East Asian countries have a high and rising level of savings, their appetite for growth has been greater than their capacity to finance it from domestic savings. Second, the increasing scale of development projects, particularly those in energy and mining, dwarfed the ability of any single domestic or international institution to finance them. Third, the oil-importing developing countries in the region had to finance current-account deficits which were widened by the two surges in oil prices in the 1970s. The demand for loans is only part of the reason for the growth of international capital markets in the region. Politicians and bureaucrats have deliberately used financial systems as a tool of industrial growth,<sup>116</sup> thus leading to the establishment of new international financial centers in the Far East.

The characteristics of Taiwan's financial and political setting which make it possible for a new offshore banking center to compete in the Asian market have been set forth above. In addition, recent evaluations by commentators have placed Taiwan among the most credit-worthy nations. In a recent ranking of the top ten sovereign state borrowers published by the international banking magazine *Euromoney*, Taiwan ranked number one, above the United States, Japan and the Common Market Countries. In a classification of the seventy nations it surveys, the *World Political Risk Forecasts* listed the financial risk rating of the nations on a scale from A-plus to D. Taiwan was rated A, higher than Japan and South Africa and equal to the oil-rich OPEC nations. Only West Germany, the United States

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115. *Now for the Next Miracle*, *supra* note 106, at 26 Survey.

116. *Id.* at 5-11 Survey.

and Puerto Rico were higher with A-plus ratings.<sup>117</sup>

#### VI. CONCLUSION

The creation of an offshore banking center in Taiwan will attract further foreign investment to the region and will fund domestic economic development. Although the current legislation governing and affecting offshore banking operations is ambiguous and overrestrictive in certain respects, some relaxation of these regulations and controls can be expected if the new international financial operations go well in Taiwan.

For the purposes of a new international banking center, Taiwan possesses the requisite political stability and a highly positive outlook for economic growth. And, although the Taiwanese financial sector may currently lack some of the expertise which offshore banking operations will require, swift modernization of the country's financial system is inevitable as Taiwan's needs for capital expand. Undoubtedly, many foreign banks will be willing to do business in a nation which economists agree is one of the world's most credit-worthy.

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117. Nolan, *supra* note 101, at 1C(2).

## APPENDIX

### *Offshore Banking Act*

(Promulgated by the Government on December 12, 1983)

#### Article 1

This Act is promulgated to encourage international financial activities, establish a regional financial center and to authorize banks to set up offshore banking branches within the territorial confines of the Republic of China.

#### Article 2

The Ministry of Finance shall be the competent administrative authority and the Central Bank of China, the competent operations authority.

#### Article 3

The following types of bank may, through their respective head offices, apply to the competent authority for authorization to establish an offshore banking branch with independent books of account to conduct offshore banking operations:

- 1) Foreign banks appointed by the Central Bank of China to conduct foreign exchange operations within the Republic of China.
- 2) Foreign banks with government approved representative offices.
- 3) Qualified reputable foreign banks approved by the competent authority.
- 4) Domestic banks appointed by the Central Bank of China to conduct foreign exchange operations.

#### Article 4

An offshore banking branch may conduct only the following types of operations:

- 1) Accept foreign exchange deposits from individuals, legal entities or government agencies without the territory of the Republic of China.
- 2) Accept foreign exchange deposits from financial institutions.
- 3) Raise funds on international financial markets.
- 4) Manage funds on international financial markets.
- 5) Engage in foreign currency trading and remittances.
- 6) Make loans to individuals, legal entities, government agencies or financial institutions.
- 7) Book and manage foreign currency loan.

**Article 5**

Except as otherwise provided in this Act, offshore banking branches conducting operations specified in the preceding Article shall not be subject to all related restrictions prescribed in the Statute for Foreign Exchange Regulation, the Interest Rate Regulation Act, the Banking Act and the Central Bank of China Act.

**Article 6**

Transactions between any individual, legal entity, government agency or financial institution within the territorial confines of the Republic of China and any offshore banking branch shall be handled in accordance with the applicable laws and regulations governing transactions with foreign banks.

**Article 7**

Offshore banking branches handling foreign exchange deposits shall not perform the following acts:

- 1) Accept foreign currency in cash.
- 2) Permit the withdrawal of foreign exchange deposits in New Taiwan Dollars.

**Article 8**

Unless approved by the Central Bank of China, an offshore banking branch shall not handle remittances or conversions between foreign currencies and New Taiwan Dollars.

**Article 9**

An offshore banking branch shall not engage either in direct investments or in investments in real property.

**Article 10**

An offshore banking branch established by a domestic bank may have the same place of business as its head office, and an offshore banking branch established by a foreign bank may share the same place of business as its branch designated to do foreign exchange dealings.

**Article 11**

Offshore banking branch deposits shall be exempt from deposit reserve



requirements.

**Article 12**

Interest rates on deposits and loans of offshore banking branches shall be as determined between the offshore banking branch and its customer.

**Article 13**

Income of offshore banking branches shall be exempt from business income tax, except that the assessment and exemption of tax on interest earnings from loans to individuals, legal entities, government agencies or financial institutions within the Republic of China shall be dealt with in accordance with the provisions of the Income Tax Law.

**Article 14**

Offshore banking branches shall be exempt from business tax on their business receipts.

**Article 15**

All types of instruments used by offshore banking branches shall be exempt from stamp duties.

**Article 16**

Offshore banking branches shall be exempt from withholding tax requirements on interest paid on their deposits.

**Article 17**

Except as may be provided by the laws of the country in which the offshore banking branch's head office is situated or such country's competent banking authority, offshore banking branches shall be exempt from loan loss reserve requirements.

**Article 18**

Except as otherwise required by court order or law, offshore banking branches shall not be obligated to disclose any information to third parties.

**Article 19**

Telecommunications equipment and information systems for use by an off-

shore banking branch in connection with its head office and other international financial institutions may be imported upon application on a case-by-case basis.

#### Article 20

After the close of each business year, an offshore banking branch shall submit its operations report, balance sheet and statement of profit and loss to the competent authority. The competent authority may at any time order the offshore banking branch to provide within a given period any information on its business or financial conditions or other reports. However, the offshore banking branch shall be exempt from publishing its balance sheet in newspaper.

#### Article 21

The government may, on an annual basis, collect license fees from offshore banking branches, the fee schedule to be prescribed by the competent authority.

#### Article 22

If an offshore banking branch violates the provisions of Articles 4, 7, 8, 9 or 20 of this Act or the provisions of any regulations prescribed by the competent authority in accordance with this Act, the responsible person of such offshore banking branch shall be fined from fifty to one hundred and fifty thousand yuan; and in addition thereto, the business operations of the offshore banking branch may be suspended for a certain period of time or the license of the offshore banking branch may be revoked.

#### Article 23

The rules for implementing this Act shall be established by the competent authority.

#### Article 24

This Act shall become effective as of the date of its promulgation.

(Remarks: The above-mentioned Act are written in Chinese and the Chinese version shall govern in the event of any discrepancy with the English translation)

*Rules for Implementing the Offshore Banking Act*

(Promulgated by the Government on April 20, 1984)

Article 1

These Rules are established in accordance with Article 23 of the Offshore Banking Act (hereinafter called the "Act").

Article 2

The competent administrative authority referred to under Article 2 of the Act shall handle matters related to the coordination, granting of approvals and imposition of punishments, while the competent operations authority, matters related to the provision of assistance in, supervision over and development of, offshore international banking.

Article 3

An application by a bank to establish an offshore banking branch shall be supported by the documents specified below and filed with the Ministry of Finance; provided, however, that the submission of the document under subparagraph (3) shall be waived in the case of a local bank or a foreign bank that already operates a branch within the territory of the Republic of China:

- (1) An application form, a statement of material facts for recognition, a brief history, balance sheets and statements of profit and loss over the last three years.
- (2) Legalized copies of the banking license issued by the Finance Ministry in applicant's home country or the functional equivalent thereof and the articles of incorporation of the applicant's principal place of business currently in force and effect, plus the Chinese translations of both.
- (3) Certificate of the applicant's credit standing issued by the competent authority of the applicant's home country or by the competent organization established abroad by the Republic of China.
- (4) Legalized copy of the resolution adopted by the applicant at its directors' meeting approving the proposed application for a permit in the Republic of China, plus the Chinese translation thereof.
- (5) List of the applicant's directors, other responsible persons and the designated litigious and non-litigious agent in the Republic of China, plus the Chinese translation thereof.
- (6) Two Powers of Attorney issued by the applicant, one in favor of the designated litigious and non-litigious agent in the Republic of China,

and the other in favor of the designated agent for receiving service of process in connection with litigious and non-litigious matters, plus the Chinese translations thereof.

- (7) Other documents as have been prescribed by the Ministry of Finance.

Upon receipt of the application documents, the Ministry of Finance shall review the application in concert with the Central Bank of China.

After having been approved by the Ministry of Finance to establish an offshore banking branch in the Republic of China, the offshore banking branch shall apply to the Central Bank of China for a permit to operate offshore banking business.

#### Article 4

The term "offshore banking branch with independent books of account" referred to under Article 3 of the Act denotes that said branch shall use independent accounting documents, establish independent books of account and prepare independent accounting statements, none of which are to be mixed with those of the head office or other branches.

#### Article 5

The term "individuals without the territory of the Republic of China" referred to under Article 4 (1) of the Act denotes those persons as holders of passports issued by other countries and non-residents of the Republic of China.

#### Article 6

The term "legal entities without the territory of the Republic of China" referred to under Article 4 (1) of the Act denotes as follows:

- (1) An offshore branch of a legal entity organized and registered under the laws of the Republic of China and duly recognized by a foreign government for conducting business without the territory of the Republic of China.
- (2) A legal entity organized and registered under the laws of a foreign country, excluding its branch duly recognized by the government of the Republic of China for conducting business within the territory of the Republic of China.

#### Article 7

Where a foreign bank has obtained approval from the government of the Republic of China for operating a representative office within the territory

of the Republic of China, the offshore banking branch may share the same place of business with the representative office.

**Article 8**

The term "fee schedule of license fees" referred to under Article 21 of the Act shall be prescribed by the Ministry of Finance separately.

**Article 9**

The Ministry of Finance may, pursuant to Article 22 of the Act, consult the Central Bank of China to penalize the offshore banking branch or its responsible person for having committed any violations.

**Article 10**

These Rules shall become effective as of the date of their promulgation.

(Remarks: The above-mentioned Rules are written in Chinese and the Chinese version shall govern in the event of any discrepancy with the English translation)

## 國際金融業務條例

中華民國七十二年十二月十二日公布

第一條 為加強國際金融活動，建立區域性金融中心，特許銀行在中華民國境內，設立國際金融業務分行，制定本條例。

第二條 國際金融業務之行政主管機關為財政部；業務主管機關為中央銀行。

第三條 左列銀行，得由其總行申請主管機關特許，在中華民國境內，設立會計獨立之國際金融業務分行，經營國際金融業務：

一、經中央銀行指定，在中華民國境內辦理外匯業務之外國銀行。

二、經政府核准，設立代表人辦事處之外國銀行。

三、經主管機關審查合格之著名外國銀行。

四、經中央銀行指定，辦理外匯業務之本國銀行。

第四條 國際金融業務分行，以辦理左列業務為限：

一、收受中華民國境外之個人、法人或政府機關之外匯存款。

二、收受金融機構之外匯存款。

三、透過國際金融市場吸收資金。

四、透過國際金融市場運用資金。

五、外幣買賣及滙兌。

六、對於個人、法人、政府機關或金融機構之放款。

七、外幣放款之債務管理及記帳業務。

第五條 國際金融業務分行，辦理前條各款業務，除本條例另有規定者外，不受管理外匯條例、利率管理條例、銀行法及中央銀行法等有關規定之限制。

第六條 中華民國境內之個人、法人、政府機關或金融機構向國際金融業務分行融資時，應依照向國外銀行融資之有關法令辦理。

第七條 國際金融業務分行，辦理外匯存款，不得有左列行為：

一、收受外幣現金。

二、准許以外匯存款兌換為新臺幣提取。

第八條 國際金融業務分行，非經中央銀行核准，不得辦理外幣與新臺幣間之交易及滙兌業務。

第九條 國際金融業務分行，不得辦理直接投資及不動產投資業務。

第十條 本國銀行設立之國際金融業務分行，得與其總行同址營業；外國銀行設立之國際金融業務分行，得與其經指定辦理外匯業務之分行同址營業。

第十一條 國際金融業務分行之存款免提存款準備金。

第十二條 國際金融業務分行之存款利率及放款利率，由國際金融業務分行與客戶自行約定  
第十三條 國際金融業務分行之所得，免徵營利事業所得稅。但對中華民國境內之個人、法

人、政府機關或金融機構放款之利息，其徵免應依照所得稅法規定辦理。

第十四條 國際金融業務分行之營業額，免徵營業稅。

第十五條 國際金融業務分行所使用之各種憑證，免徵印花稅。

第十六條 國際金融業務分行支付存款利息時，免扣稅款。

第十七條 國際金融業務分行，除其總行所在國法律及其金融主管機關規定，應提之呆帳準備外，免提呆帳準備。

第十八條 國際金融業務分行，除依法院裁判或法律規定者外，對第三人無提供資料之義務。

第十九條 國際金融業務分行與其總行及其他國際金融機構，往來所需自用之通訊設備及資訊系統，得專案引進之。

第二十條 國際金融業務分行每屆營業年度終了，應將營業報告書、資產負債表及損益表，報請主管機關備查。主管機關得隨時令其於限期內，提供業務或財務狀況資料或其他報告。但其資產負債表免予公告。



第二十一條 政府對國際金融業務分行，得按年徵收特許費；標準由主管機關定之。

第二十二條 國際金融業務分行，違反第四條、第七條、第八條、第九條、第二十條或主管機關依本條例所爲之規定者，其負責人處五萬元以上十五萬元以下罰鍰，並得按其情節輕重，停止其一定期間營業或撤銷其特許。

第二十三條 本條例施行細則，由主管機關定之。

第二十四條 本條例自公布日施行。