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| Title : | Standards for the Establishment of Trust Enterprises Ch |
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| Legislative : | 1.Full text of 22 articles adopted and promulgated on 20 September 2000 2.Article 3 amended and issued on 18 February 2002 3.Articles 1, 3, 5, 6, 8 and 15 amended and issued, and article 18-1 added on 29 September 2003 4.Full text of 23 articles amended and issued on 5 October 2009 5.Article 9 amended and issued on 28 December 2012 |
| Content : | <p>Article 1 These Standards are adopted pursuant to Paragraph 3, Article 10 of the Trust Enterprise Act (referred to as the "Act" hereunder) and Paragraph 3, Article 4 of the Real Estate Securitization Act (referred to as the "RESA" hereunder).</p> <p>Article 2 To promote the sound operations and development of trust enterprises, the Competent Authority, when necessary, may add conditions to a permit or approval it grants under these Standards.</p> <p>Article 3 To apply for the establishment of a trust company, a minimum paid-in capital of NT\$2 billion is required. The capital contributions of promoters and shareholders shall be made in cash only. Notwithstanding the foregoing, the minimum paid-in capital required for a trust company engaging only in real estate investment trust (REIT) business under the RESA shall be NT\$1 billion; the minimum paid-in capital for a trust company engaging only in real estate asset trust (REAT) business shall be NT\$300 million; and the minimum paid-in capital for a trust company engaging only in REIT and REAT business shall be NT\$1 billion. The Competent Authority may adjust the minimum paid-in capital set out under the preceding paragraph in view of the economic and financial conditions and actual needs. Where a trust company fails to meet a minimum paid-in capital requirement after an adjustment has been made under the preceding paragraph, the Competent Authority shall order it to carry out a capital increase and pay in the capital in full within a prescribed time period; the Competent Authority may restrict its scope of business and business volume if it fails to pay in the capital in full within that time period. A trust company shall be a public company.</p> <p>Article 4 The promoters of a trust company shall, at the time of promotion, fully subscribe the total shares issued based on the paid-in capital, and pay up at least 20 percent of the share capital. The original promoters shall, within the limits set forth in Paragraph 2, Article 6 herein, be jointly and severally liable for subscribing and paying for any shares that have been subscribed but not yet paid for; the</p> |

same shall also apply for any shares that have been subscribed but for which the subscription has been withdrawn.

Article 5

A trust company shall have promoters and shareholders who meet any of the following qualification requirements and who collectively have subscribed shares representing no less than 40 percent of the paid-in capital; provided, this restriction shall not apply where promoters and shareholders are financial holding companies that have subscribed more than 50 percent of the shares:

1. Bank:

(1) Having been established for at least three years and its asset management business having not been subject to any disciplinary action imposed by competent authorities in the home country in the past three years.

(2) Having experience in international finance, securities, or trust business.

(3) Having been ranked in the past year among the world's top 1,000 banks by assets or net worth.

2. Insurance company:

(1) Having been established for at least three years and its asset management business having not been subject to any disciplinary action imposed by competent authorities in the home country in the past three years.

(2) Having experience in insurance fund management.

(3) Holding securities and real estate assets totaling more than NT\$20 billion.

3. Fund management institution:

(1) Having been established for at least three years and its asset management business having not been subject to any disciplinary action imposed by competent authorities in the home country in the past three years.

(2) Having experience in managing or operating international securities investment trust fund.

(3) Having among all the assets managed by the institution and its controlling or subsidiary institutions, mutual funds, unit trusts or investment trusts raised by public offering and invested in securities or real estate that have a combined total of not less than NT\$65 billion.

Pursuant to the RESA, a trust company engaging only in REIT or REAT business may have a real estate management institution that has experience in real estate management, has been established for at least five years, has paid-in capital of not less than NT\$1 billion, and has gone public as a professional promoter or shareholder required under the preceding paragraph.

Any transfer of shares by a promoter meeting the qualification requirements under paragraph 1 or the preceding paragraph shall be submitted to the Competent Authority for recordation in advance.

A promoter under paragraph 1 or 2 holding 50 percent or more of the total issued shares of a trust company may invest in one trust company only. Real estate management institutions referred to in paragraph 2 shall be limited to real estate management institutions as defined in the RESA.

Article 6

The stocks of a trust company shall be in registered form.

Among the promoters and shareholders of a trust companies, a same person or same concerned person respectively may not hold more than 25 percent of all issued shares of the trust company; provided, this restriction does not apply to a promoter or shareholder that is a financial holding company or that otherwise meets the qualification requirements set forth in Article 5 herein.

As used in the preceding paragraph, the term "same person" means a same natural person or a same juristic person; if the promoter or shareholder is a natural person, the term "same concerned person" includes the person, his or her spouse, blood relatives within the second degree, and enterprises of which the person or his or her spouse is a responsible person; if the promoter or shareholder is a juristic person, the term "same concerned person" includes juristic persons controlled by the same entity or having a controlling relationship with each other.

A third person who holds shares of the trust company on behalf of a same person or same concerned person in trust, by mandate or through other types of contract, agreement or authorization shall fall within the purview of a concerned person.

Article 7

To establish a trust company, all directors, supervisors, and managers shall meet the requirements set out in the Regulations Governing Qualification Requirements for Responsible Persons and Trust Expertise or Experience Requirements for Operating and Managerial Personnel of Trust Enterprises (the "Regulations").

To establish a trust company, a person to whom any of the circumstances in Article 2 of the Regulations applies may not serve as a promoter of the trust company.

Where a promoter, director or supervisor is a juristic person, the provisions in the preceding two paragraphs shall apply mutatis mutandis to its authorized representative or other individual(s) designated by the juristic person to perform duties on its behalf.

Article 8

To establish a trust company, the promoters shall within the prescribed time period submit the following documents, each in triplicate, to apply with the Competent Authority for a permit for establishment; an application will not be processed if submitted after the time period:

- 1.Trust Company Establishment Permit Application Form.
- 2.Business plan, specifying the business scope, business principles and policies, and specific implementation methods (including premises and facilities, internal organization and segregation of duties, personnel recruitment and training, business development plan, and financial forecasts for the coming three years).
- 3.A register of promoters and relevant evidentiary documentation.
- 4.Promoters meeting minutes.
- 5.A written statement that none of the circumstances in Article 2 of the Regulations applies with respect to the promoters.
- 6.Certification that the promoters have opened a segregated account for deposit of share capital pursuant to Paragraph 1 of Article 13 herein.

7. An explanation of the sources of the promoters' funds.
8. Documents evidencing the qualifications of the general manager, assistant general managers, and deputy assistant general managers.
9. Articles of incorporation of the trust company.
10. Corporate bylaws and business operating procedures of the trust company.
11. Review opinions by a certified public accountant and a lawyer.
12. Other documents as required by the Competent Authority.

Article 9

A bank that applies to operate trust business concurrently shall meet the following qualification requirements:

1. "Bank's regulatory capital to its risk weighted assets" should meet the Article 5 of Regulations Governing the Capital Adequacy and Capital Category of Banks; and
2. The bank has set aside sufficient amount of loan loss provision; and
3. The bank's credit rating reaches the level required for application to offer and issue collective trust fund and to establish a trust fund collective management account; and
4. The bank was not subject to any disciplinary action meted out pursuant to Subparagraphs 2 through 5, Paragraph 1, Article 61-1 of the Banking Act in the past six months.

The specific items of trust business, qualification requirements for applying to the Competent Authority for approval, application procedure, and registration operation for a securities investment trust enterprise, securities investment consulting enterprise, or securities firm that may concurrently conduct trust business pursuant to Paragraph 2, Article 3 of the Act shall be governed by the regulations set forth pursuant to Paragraph 3, Article 3 of the Act.

Article 10

A bank that applies to operate trust business concurrently shall file a permit application with the Competent Authority by submitting the following documents:

1. An application form.
2. A photocopy of the business license.
3. Articles of incorporation or equivalent documents.
4. Business plan, specifying the business items, business operating principles, internal organization and division of duties, namelist of managers and business personnel, personnel recruitment, summary of premises and equipment, the working capital earmarked for use exclusively in the trust business, business development plan, and financial projections for the coming three years.
5. Minutes of the board of directors meeting or council members meeting.
6. Register of directors (council members) and supervisors.
7. A written declaration stating that none of the circumstances in Article 2 of the Regulations applies with respect to its managers.
8. Corporate bylaws and business operation procedures for the trust business.
9. Documents evidencing the qualifications of manager, and a namelist of personnel possessing trust expertise or experience as required under the Regulations and documents evidencing their qualifications.
10. Other documents as required by the Competent Authority.

A bank applying to operate trust business concurrently shall apply for issuance of a new business license within six months from the grant of a permit by the Competent Authority.

Article 11

A trust company's articles of incorporation shall include the following information:

1. Company name.
2. Business items.
3. Total shares issued and value per share.
4. Company location.
5. Means of public notice.
6. The numbers of directors and supervisors, their terms of office, and rules governing their appointment and discharge.
7. The responsibilities of the board of directors, and division of duties between the board of directors and the management.
8. The year, month, and date of adoption of the articles of incorporation.

Article 12

The term "corporate bylaws" of a trust company as referred to in Subparagraph 10 of Article 8 herein includes:

1. Organizational structure and department functions.
2. Personnel allocation, management, and training.
3. Internal control system (including business management and accounting systems).
4. Internal audit system.
5. Business principles and policies.
6. Operations manual and division of powers and duties.
7. Other matters.

Article 13

To establish a trust company, a bank shall be appointed to collect share capital that is to be deposited into a segregated account opened in the name of the preparatory office.

The share capital deposited in the segregated account under the preceding paragraph may not be drawn before commencement of business. However, the same shall not apply where any of the following circumstances arises after the establishment permit is obtained:

1. To purchase fixed assets necessary for business operations and to pay organization costs out of the share capital paid by the promoters, as agreed unanimously by the directors and supervisors elected by the promoters.
2. To use on liquidity assets as set out in Article 36 of the Act after the company license is obtained.

Article 14

In any of the following circumstances, the Competent Authority may reject an application for establishment of a trust company:

1. Promoter qualifications or shareholding do not comply with the provisions in Article 5 herein.
2. The shareholding of promoters in a same trust company does not comply with Paragraph 2 of Article 6 herein.
3. The application documents are found to contain false statements or information.

4. Failure to make supplementation or correction within a prescribed time period on matters required by the Competent Authority, or circumstances in which supplementation or correction is impossible.
5. Determined by the Competent Authority that it is likely to be unable to operate trust business in a sound and effective manner.
6. Other noncompliance with requirements of these Standards.

Article 15

A trust company that has been granted an establishment permit shall install the computer facilities for its principal business before commencing its business operations.

Article 16

The Competent Authority may revoke a permit for the establishment of a trust company if there is any change in promoters prior to the company's incorporation registration. However, this restriction shall not apply in any of the following circumstances where the company has filed an application with the Competent Authority for approval of the change within two weeks after occurrence of the change:

1. A promoter is missing or dies.
2. A promoter is declared by a court to be under guardianship or assistance.
3. A circumstance set out in Article 2 of the Regulations is found to apply to a promoter after the application for establishment has been submitted.
4. A promoter, if a company, is subject to a court ruling for reorganization, or otherwise to a material loss of creditworthiness.

For any change other than to a promoter, a report specifying a legitimate reason shall be submitted to the Competent Authority for approval in advance, except that where circumstances do not allow the report to be submitted for approval in advance, it shall be submitted to the Competent Authority for approval within two weeks after the change.

The Competent Authority may revoke the permit if a report is not submitted and approved.

Article 17

To establish a trust company, an application shall be filed with the Ministry of Economic Affairs (MOEA) for incorporation registration within six months after the approval by the Competent Authority, and, within three months after completion of the incorporation registration, the following documents, each in triplicate, shall be submitted in an application to the Competent Authority for issuance of a business license:

1. Business license application form.
2. Company registration documents.
3. Capital verification certificate.
4. Articles of incorporation of the trust company.
5. Promoters meeting minutes.
6. Register of shareholders and shareholders meeting minutes.
7. Register of directors and meeting minutes of the board of directors.
8. Register of managing directors and meeting minutes of the board of managing directors.
9. Register of supervisors and supervisors meeting minutes.
10. A written statement that none of the circumstances in Article 2 of the Regulations applies with respect to the directors, supervisors, and managers.

11. Documents evidencing the qualifications of the president, vice president, assistant vice president, chief auditor, and head-office manager.

12. The trust company's namelist of responsible persons and of personnel possessing trust expertise or experience as required by the Regulations, and documents evidencing their qualifications.

13. Corporate bylaws and business operation procedures of the trust company.

14. Records of simulated business operations for a period of not less than two weeks.

Before the expiration of the time periods set forth in the preceding paragraph for applications for incorporation registration and issuance of the business license, an extension may be applied for, if there is legitimate reason; extensions for incorporation registration and business license issuance may not exceed six months and three months, respectively, and shall be limited to one time each. If an extension is not approved, the Competent Authority may revoke the permit.

Article 18

The Competent Authority shall revoke the establishment permit granted to a trust company that has failed to commence its business operations after a period of six months following issuance of the business license, require the company to surrender the business license for cancellation within a prescribed time period, and notify the MOEA. However, if there is a justifiable reason that has been approved by the Competent Authority, an extension to the prescribed time period may be made for no more than six months and shall be limited to one time.

Article 19

The Competent Authority may restrict the establishment of new trust companies in consideration of domestic economic and financial conditions.

Article 20

A trust company engaging only in REIT or REAT business in accordance with the RESA and with a permit issued by the Competent Authority, may engage only in the businesses activities allowed under the RESA.

Where a trust company in the preceding paragraph has a paid-in capital of less than NT\$1 billion, the aggregate balance of trust properties accepted for management and/or disposal by a trust company may not exceed 20 times its net worth.

The Competent Authority may adjust the multiple set out in the preceding paragraph in consideration of economic and financial conditions and actual needs.

Article 21

With respect to matters related to the establishment of a trust company, the Competent Authority may from time to time dispatch personnel to conduct examination, and may further order the applicant applying to establish the trust company to submit necessary documents and information within a prescribed time period or to designate representatives to appear before the Competent Authority to provide explanations.

Article 22

The formats for application documents required to be submitted under these Standards shall be separately prescribed by the Competent Authority.

Article 23

Except for Subparagraph 2, Paragraph 1 of Article 16 amended on October 5, 2009 that will take force on November 23, 2009, these Standards shall take force from the date of promulgation.

Data Source : Financial Supervisory Commission Laws and Regulations Retrieving System