

Content

Title :	Offshore Banking Act Enforcement Rules <b>Ch</b>
Date :	2013.12.26
Legislative :	3.Article 4 amended and promulgated by Ministry of Finance Order Tai-Tsai-Rong (5) Zi-0925000752 and Central Bank of China Order Tai-Yang-Wai (11) Zi-0920064893 on December 2, 2003. 4.Amended on 26 December,2013
Content :	<p>Article 1</p> <p>These Enforcement Rules are adopted pursuant to Article 23 of the Offshore Banking Act (the "Act").</p> <p>Article 2</p> <p>The competent administrative authority for offshore banking and offshore securities business referred to in Article 2 of the Act, namely the Financial Supervisory Commission (FSC), shall take charge of the following matters:</p> <ol style="list-style-type: none"><li>1. Drafting or adopting of the Act, these Enforcement Rules, the Rules Governing Offshore Banking Branches, and the Regulations Governing Offshore Securities Branches.</li><li>2. Interpretation of the laws and regulations relating to offshore banking and offshore securities business, and issuance or adoption of relevant administrative orders.</li><li>3. Granting of special concession licenses for the establishment of offshore banking branches and offshore securities branches.</li><li>4. Approval of the business items for operation by offshore banking branches and offshore securities branches.</li><li>5. Supervision and regulation of the finance, business, and personnel of offshore banking branches and offshore securities branches.</li><li>6. Examination of the business operations of offshore banking branches and offshore securities branches.</li><li>7. Taking disciplinary actions in accordance with the Act.</li></ol> <p>Matters set forth in subparagraphs 1, 3 and 4 of the preceding paragraph shall be handled jointly or in consultation with the Central Bank of the Republic of China (Taiwan) (CBC), and the same shall apply to the matters set forth in subparagraph 2 which involve the duties of the CBC.</p> <p>Article 3</p> <p>The competent operational authority for offshore banking and offshore securities business referred to in Article 2 of the Act, namely the CBC, shall take charge of the following matters:</p> <ol style="list-style-type: none"><li>1. Approval of business relating to transactions and remittances between foreign currencies and New Taiwan Dollars by offshore banking branches and offshore securities branches.</li><li>2. Examination of business operations of offshore banking branches and offshore securities branches.</li><li>3. Review of information on the business and financial conditions and annual reports of offshore banking branches and offshore securities</li></ol>

branches.

4. Preparation of statistics, analysis, and reports regarding the business, performance, and scale of offshore banking branches and offshore securities branches.

5. Research on the development of offshore banking and offshore securities business.

6. Liaison and cooperation with respect to matters that require consultation with the FSC.

#### Article 4

A foreign bank under Article 3, subparagraphs 2 and 3 of the Act applying to establish an offshore banking branch within the territory of the Republic of China (ROC) shall meet the following conditions:

1. A foreign bank has no record of any material regulatory violation or serious misconduct within the most recent 5 years.
2. A foreign bank has been ranked, in terms of capital or assets, among the world's top 500 banks during the 1 year before application, or it has conducted transactions with banks and major enterprises of the ROC amounting to at least US\$1 billion during the 3 calendar years before application, in which the medium or long term credit provided by it has reached US\$180 million. Where there are special provisions in an economic and trade agreement signed by the ROC and the home country of the foreign bank, such special provisions shall prevail.
3. A foreign bank's ratio of equity capital to risk-weighted assets is in compliance with the standards set by the FSC.
4. A foreign bank has obtained the approval from the competent banking authority in its home country for the establishment of an offshore banking branch within the territory of the ROC, and the competent banking authority in the home country has agreed to cooperate with the ROC in supervision of the bank on a consolidated basis.
5. The competent banking authority and the head office in the home country of the foreign bank have the capability to supervise all of its overseas branches on a consolidated basis.

#### Article 5

A bank applying to establish an offshore banking branch shall submit the following documents to the FSC:

1. An application letter, a list of business items to be approved, a brief history, the balance sheet, and the statement of comprehensive income of the bank.
2. Certified copies of the banking business license issued by the Ministry of Finance or the competent banking authority in the home country of the bank and the currently effective articles of incorporation of the bank's head office (accompanied by a Chinese translation of each).
3. A certified copy of the resolution of the bank's board of directors in favor of the request for the special concession (accompanied by a Chinese translation).
4. A list of the bank's directors, other responsible persons, and the designated litigious and non-litigious agent in the ROC (accompanied by a Chinese translation).
5. An authenticated copy of the power of attorney issued by the bank to designate the litigious and non-litigious agent in the ROC (accompanied by

a Chinese translation).

6. A self-assessment analysis of the compliance and soundness of the bank's business operations, including an explanation of any regulatory violations, fraud, or sanctions imposed within the past 5 years.

7. A certified copy of the calculation of the bank's ratio of equity capital to risk-weighted assets at the end of the preceding fiscal year, issued by the competent banking authority in the bank's home country or by a certified public accountant.

8. A letter issued by the competent banking authority in the home country of the foreign bank, confirming (1) its approval for the bank to establish an offshore banking branch in the ROC, (2) its willingness to cooperate with the ROC in supervision of the bank on a consolidated basis, and (3) the soundness of the bank's financial conditions and business operations.

9. Documents evidencing the nationality of the responsible person of the foreign bank that files the application or does so through an attorney or a certified public accountant, and if the person is not a statutory representative of the bank, an authenticated copy of power of attorney issued by the bank shall be additionally submitted.

10. A power of attorney issued by the responsible person of the bank if the application is filed by an authorized attorney or a certified public accountant.

11. If the foreign bank did not rank among the world's top 500 banks in terms of capital or assets during the 1 year before application, it shall submit the financial statistics showing the transactions between the foreign bank and the banks and major enterprises in the ROC during the 3 calendar years before application.

12. A business plan, the content of which shall contain the following:

(1) Organizational structure, division of responsibilities, and deployment of hardware and software resources.

(2) Business items for operation.

(3) Operating procedures or rules for major business.

(4) Authorized ceilings for business operations and the design of risk management system.

(5) Accounting system and internal audit system.

(6) Documents evidencing the academic and experiential qualifications of the designated offshore banking branch manager.

(7) Assessment of business operations and forecast business volume for the next 3 years.

(8) Systems and procedures for the handling of asset quality evaluations, loss reserve provisions, clear-up of non-performing loans, and loan loss write-offs.

After the FSC accepts the application documents, it shall review the application in conjunction with the CBC.

After the bank's application is approved in accordance with the preceding paragraph, the FSC shall issue a license for the establishment of the offshore banking branch and the CBC a license for the operation of offshore banking business.

An offshore banking branch applying to operate the business set forth in Article 4, paragraph 1, subparagraph 4 of the Act shall submit the photocopies of the approval letter and the permission license issued by the

competent securities authority.

#### Article 6

After a foreign bank under Article 3, subparagraphs 2 and 3 of the Act has been granted a special concession to establish an offshore banking branch, it shall apply for recognition in accordance with the Company Act and complete branch office registration.

#### Article 7

After a foreign bank under Article 3, subparagraphs 2 and 3 of the Act has been granted a special concession to establish an offshore banking branch, it shall allocate working capital for its operation at the minimum amount of US\$2 million.

The FSC may adjust the minimum amount of the working capital referred to in the preceding paragraph depending on domestic economic and financial circumstances.

#### Article 8

The net worth of an offshore banking branch of a foreign bank shall be calculated in combination with the net worth of all branches of the foreign bank within the ROC, and the aggregate net worth may not be less than two-thirds of the minimum amount of the working capital prescribed by the FSC.

#### Article 9

If an offshore banking branch has any of the following circumstances, it shall report to the FSC for approval and notify the CBC:

1. Change of the institution's name.
2. Change of the institution's location.
3. Change of the responsible persons.
4. Change of the working capital.
5. Acquisition of the all or a major part of the business or property of any other offshore banking branch, or transfer of such to any other offshore banking branch.
6. Suspension, resumption, or termination of business operations.

#### Article 10

The term "an offshore banking branch with independent accounting" in Article 3 of the Act means that the branch shall use separate accounting documents, establish separate account books, and prepare separate accounting statements, and none of them may be mixed with those of the head office or other branches of the same bank.

#### Article 11

The term "a natural person outside the territory of the ROC" in Article 4, paragraph 1, subparagraphs 1 to 6 and subparagraphs 9 and 10 of the Act means a natural person holding a passport issued by a foreign country and having no domicile in the ROC; and the term "a juristic person outside the territory of the ROC" means a juristic person organized and registered under the laws of a foreign country; however, a branch recognized by the ROC government for operating within the territory of the ROC shall be excluded.

#### Article 12

An offshore banking branch handling the asset allocation prescribed in Article 4, paragraph 1, subparagraph 10 of the Act may do so in a discretionary manner.

Before the offshore banking branch applies to handle the business referred

to in the preceding paragraph, its head office shall obtain a prior permission from the FSC for concurrent operation of discretionary investment business and a prior permission from the CBC for conducting discretionary investment business in foreign currency.

#### Article 13

A securities firm under Article 22-3, paragraph 1 of the Act applying to establish an offshore securities branch in the ROC shall meet the following conditions:

1. The securities firm is one that concurrently operates the business of brokerage, underwriting, and proprietary trading, and its net worth reported in the CPA-audited and attested financial report for the most recent period meets the standard prescribed by the FSC. In the case of a foreign securities firm applying to establish an offshore securities branch, the working capital for its operation in the ROC allocated by the offshore securities branch may not be less than the above mentioned minimum net worth prescribed by the FSC.
2. The securities firm's financial condition and regulatory capital adequacy ratio meet the standards set by the FSC.
3. The securities firm is in compliance with the law, soundly managed, and has not been subject to any disposition for any material regulatory violation during the 3 years before application, or, it has received a disposition but the circumstances resulting in the violation have been materially improved and the improvement is recognized by the FSC or the CBC.

When the FSC establishes the standards for the net worth reported by the securities firm in the CPA-audited and attested financial report for the most recent period referred to in subparagraph 1 of the preceding paragraph and for the regulatory capital adequacy ratio referred to in subparagraph 2, it shall consult with the CBC for consent.

#### Article 14

A securities firm applying to establish an offshore securities branch shall submit the following documents to the FSC:

1. Application form and the list of business items to be approved.
2. Articles of incorporation or equivalent documentation.
3. A business plan, specifying the following:
  - (1) Organizational structure, division of responsibilities, and deployment of hardware and software resources.
  - (2) Business items for operation.
  - (3) Operating procedures or rules for each business item.
  - (4) Internal control system and risk management mechanisms.
  - (5) Accounting system.
  - (6) Documents evidencing the academic and experiential qualifications of the designated managerial officers of the offshore securities branch.
  - (7) Business development plan and assessment of financial condition for the future 3 years.
4. The meeting minutes of the board of directors.
5. The balance sheet and the statement of comprehensive income for the most recent period audited and attested by the CPA.
6. The securities firm's business license.
7. Documents verifying that the securities firm meets all of the conditions

set forth in Article 13.

8. Other documents required by the FSC.

After the FSC accepts the application documents, it shall review the application in conjunction with the CBC.

After the securities firm's application is approved in accordance with the preceding paragraph, the FSC shall issue a license for the establishment of the offshore securities branch and the CBC a license for the operation of offshore securities business.

Article 15

The FSC may deny permission if any of the following circumstances applies to the application for establishment of an offshore securities branch:

1. The applicant's qualifications do not meet the conditions set out in Article 13.
2. Any misrepresentation or falsehood is found in any content or information in the application documents.
3. The business plan or the internal control system is not concrete enough, or cannot be implemented effectively.
4. There is likelihood that the professional competence of the managerial officers is insufficient for sound and effective operation of an offshore securities branch.
5. Denial of permission is otherwise deemed necessary to protect the public interest.

When the FSC imposes a deadline for supplementation or correction because any application documents submitted under these Enforcement Rules are incomplete or contain incomplete information, if the deadline is not met, the application will be dismissed.

Article 16

An offshore securities branch shall allocate working capital for its operation at the minimum amount of US\$2 million.

The FSC may adjust the minimum amount of the working capital referred to in the preceding paragraph depending on domestic economic and financial circumstances.

Article 17

Articles 9 to 11 shall apply mutatis mutandis to an offshore securities branch.

Article 18

Article 12 shall apply mutatis mutandis to an offshore securities branch if it handles the asset allocation prescribed in Article 22-4, paragraph 1, subparagraph 6 of the Act.

Article 19

These Enforcement Rules shall come into force from the date of issuance.