

Content

Title :	Regulations Governing Public Offerings of Beneficiary Securities by Trustee Institutions and Public Offerings of Asset-Backed Securities by Special Purpose Companies <b>Ch</b>
Date :	2006.03.06
Legislative :	2. Articles 5, 13 amended and promulgated 9 September 2003 per Order No. Taiwan-Finance-Securities-(IV)-0920143029 of the Ministry of Finance, for implementation from the date of promulgation 3. Abolished on 06 March 2006 per Order No. Taiwan-Finance-Securities-(IV)-0950001012 of the Ministry of Finance, for implementation from the date of promulgation
Content :	<p><b>Article 1</b> These Regulations are promulgated pursuant to Article 17, paragraph 2 and the mutatis mutandis application of Article 17, paragraph 2 through Article 101 of the Financial Asset Securitization Act ("the Act").</p> <p><b>Article 2</b> Public offerings of beneficiary securities and asset-backed securities as referred to in these Regulations shall be limited to those "other securities" ratified by the Ministry of Finance pursuant to Article 6 of the Securities and Exchange Act. Public offerings of beneficiary securities by trustee institutions and asset-backed securities by special purpose companies ("SPCs") to unspecified persons within the territory of the ROC in accordance with the Act shall be carried out in accordance with these Regulations; matters not provided for herein shall be governed by the provisions of the Securities and Exchange Act or other acts and regulations.</p> <p><b>Article 3</b> Public offerings of beneficiary securities by trustee institutions and asset-backed securities by SPCs shall require prior approval by or effective registration with the competent authority.</p> <p><b>Article 4</b> A public offering of beneficiary securities by a trustee institution or asset-backed securities by an SPC shall be consigned in full to a securities underwriter for underwriting on a firm commitment basis, except where otherwise provided in applicable acts or regulations. Where there exists between the securities underwriter referred to in the preceding paragraph and the originator any circumstance under Article 26, paragraph 1, subparagraphs 1-8 of the Rules Governing Securities Firms, the underwriter may not act as lead underwriter in an offering of beneficiary securities or asset-backed securities by the trustee institution or SPC.</p> <p><b>Article 5</b> Any trustee institution publicly offering beneficiary securities or any SPC publicly offering asset-backed securities shall do so only after filing with the competent authority in charge of securities ("the SFC") for effective registration or approval, submitting a registration form (Attachment 1) or an application (Attachment 2), along with the following documents: 1. An evidentiary document from the competent authority showing approval or effective registration of the public offering of beneficiary securities by the trustee institution or asset-backed securities by the SPC. 2. An asset trust securitization plan or asset securitization plan. 3. A special-purpose trust agreement or an agreement for assignment of assets.</p>

4. For a public offering of beneficiary securities or asset-backed securities, documents showing the consent of the originator's board of directors to the entrustment or sale of assets shall be attached. When the originator is a foreign institution, a signed document from the authorizing unit or officer of the bank headquarters (or main company office) may be substituted. Public offerings of asset-backed securities will additionally require submission of the SPC's articles of incorporation and registration documents.
5. The minutes of the trustee institution or SPC's board of director's meeting showing consent to the offering of beneficiary securities or asset-backed securities. When the trustee institution is a foreign institution, a signed document from the authorizing unit or officer of the bank headquarters may be substituted.
6. A preliminary prospectus for the offering.
7. The consignment agreement or trust agreement, or other evidentiary document, from the trustee institution or trust services institution.
8. A legal opinion from an attorney (Attachment 3).
9. The underwriter's assessment report.
10. A credit rating on the beneficiary securities or asset-backed securities from a credit rating institution approved by the competent authority.
11. The credit enhancement agreement signed between the credit enhancement institution and the trustee institution or the SPC and certified by an attorney (where such an agreement exists).
12. An opinion from a CPA regarding the appraisal method, basic accounting assumptions, and appropriateness of pricing for the trust assets or assigned assets.
13. Other documents as per SFC regulations.

When a trustee institution or SPC files for registration of a planned offering pursuant to the preceding paragraph, registration shall become effective 12 business days from the date on which the documents filing for a public offering of beneficiary securities by a trustee institution or asset-backed securities by an SPC are received by the SFC and SFC-designated institutions.

Before the filing to the SFC becomes effective or approval is granted, a trustee institution offering beneficiary securities or an SPC offering asset-backed securities shall obtain a letter of consent from the Taiwan Stock Exchange or the GreTai Securities Market for exchange listing or OTC listing.

"Business days" as referred to in paragraph 2 shall mean days when trading takes place on the securities markets.

When a trustee institution or special purpose company fails to submit all required filing documents or to fully disclose required information, but acts on its own to rectify the insufficiency prior to SFC notification of suspension of effectiveness of the filing, the filing shall become effective upon the lapse of the period specified in paragraph 2, calculated from the date the supplemented documentation is received by the SFC or SFC-designated institution.

Specific content and procedures in regard to paragraph 1, subparagraph 9 shall be formulated by the Chinese Securities Association and reported to the SFC for ratification.

#### **Article 6**

The SFC may suspend the effectiveness of a filing for registration of a planned public offering of beneficiary securities by a trustee institution or of asset-backed securities by an SPC given any of the following circumstances:

1. The filing documents are not submitted in full or the information disclosed therein is incomplete.
2. The existence of circumstances under Article 8.
3. The SFC deems suspension necessary in order to safeguard the public interest.

#### **Article 7**

From the date notice is served of suspension of the effectiveness of a filing for registration, the trustee institution or SPC may supplement

materials to rectify the cause of suspension and apply for lifting of the suspension. Where the SFC neither rejects the filing nor issues a further notice for supplementation, registration shall become effective from the lapse of the period specified under Article 5, paragraph 2, calculated from the date the supplemented documentation is received by the SFC or an SFC-designated institution.

When the SFC suspends the effectiveness of a filing for effective registration by a trustee institution or an SPC pursuant to the preceding article, if after 12 business days from the date the letter notifying suspension is served, the trustee institution or SPC has submitted no application for rescission of the suspension pursuant to the preceding paragraph, or where such application has been submitted but the cause of suspension remains, the SFC may reject the application.

#### **Article 8**

In public offerings of beneficiary securities by a trustee institution or asset-backed securities by an SPC, given a material adverse change in the operations or finances of the trustee institution or SPC or a change in the information disclosed in the filing or application during the period between filing or application and effective registration or approval, resulting in a material effect on the price of the securities, then in addition to public announcement made within two days from the occurrence of the change and reporting to the competent authority and the SFC, an expert opinion shall also be submitted when deemed necessary in view of the nature of the change, and the underwriter shall submit to the SFC an opinion on the effect of the change on the public offering plan.

#### **Article 9**

When any circumstance of the following subparagraphs applies in a public offering of beneficiary securities by a trustee institution or asset-backed securities by an SPC, the trustee institution or SPC shall carry out the offering only after submitting an application and required documents to the SFC for approval:

1. Where the previous filing or application by the trustee institution or SPC under the terms of Article 5 was rejected, cancelled, revoked, or failed to obtain approval from the SFC or the competent authority.
2. Where, within the last three years, the originator, the trustee institution, the SPC's shareholders, the servicer, or the back-up servicer have violated an act, regulation, or relevant provisions and received a disposition from the respective competent authority due to violation of any provision of Article 61-1, paragraph 1, subparagraphs 2 to 4 of the Banking Act; Article 44, paragraph 1, subparagraph 2 or paragraph 2 of the Trust Enterprise Act; Article 149, paragraph 2, subparagraphs 2 or 3 of the Insurance Act; or Article 66, subparagraphs 2 to 4 of the Securities and Exchange Act.
3. Where there was a failure to pay principle, dividends, interest, or earnings in connection with the most recent offering of beneficiary securities by the trustee institution or the previous establishment of an SPC by SPC shareholders for an offering of asset-backed securities.
4. Other circumstances where deemed necessary by the SFC.

#### **Article 10**

A public prospectus shall be provided by any trustee institution offering beneficiary securities or any special purpose company offering asset-backed securities, to be prepared in accordance with the Criteria Governing Information to be Published in Prospectuses for Public Offerings of Beneficiary Securities by Trustee Institutions and Public Offerings of Asset-backed Securities by Special Purpose Companies.

#### **Article 11**

The fact of approval or effective registration of an offering of beneficiary securities by a trustee institution or of asset-backed securities by an SPC may not be used in any verification report (or application) or any promotion guaranteeing the price of beneficiary securities or asset-backed securities.

## Article 12

Under any of the following circumstances in a public offering of beneficiary securities by a trustee institution or asset-backed securities by an SPC, the SFC may deny approval:

1. The particulars of the registration (or application) are in violation of an act or regulation, or contain misrepresentations or false statements.
2. A trustee institution or SPC fails to submit in full all required filing documents or information and fails to supplement the required materials within the specified time period.
3. The attorney's legal opinion indicates violation of an act or regulation, impacting public offering of the beneficiary securities or asset-backed securities.
4. The underwriter's assessment report does not clearly indicate the validity or feasibility of the public offering plan for the beneficiary securities or asset-backed securities.
5. The CPA has not clearly indicated appropriate pricing for the trust assets or assigned assets.
6. A trust institution or an SPC files or applies for a public offering within three months from the day on which it receives SFC notification of rejection, cancellation, revocation, or failure to obtain SFC approval or on which it withdraws its filing or application.
7. Objective facts prove the impossibility of carrying out the asset trust or asset securitization plan.
8. There is a serious violation of an act or regulation by the trust institution or the SPC, or facts verify serious irregularities in finances or operations, and no resolution or rectification has been effected.
9. There is a serious instance of failure to pay principle, dividends, interest, or earnings in connection with the previous offering of beneficiary securities or asset-backed securities by the trustee institution or SPC.
10. Where otherwise deemed necessary in protection of the public interest.

## Article 13

After registration becomes effective or approval is granted, a trust institution or SPC shall carry out public offering of beneficiary securities or asset-backed securities in accordance with the following provisions:

1. Public announcement and arrangement for public offering shall be carried out within 30 days from the date notification of approval or effective registration is received, except where otherwise provided by applicable acts or regulations.
2. Except where otherwise provided by applicable acts or regulations, after approval or effective registration for a public offering of beneficiary securities or asset-backed securities, the offering shall be fully subscribed within three months from the date notification of approval or registration is received, provided that with legitimate reasons, application may be made to the SFC prior to expiration of that period for an extension to be granted one time only and for a period not in excess of three months.
3. The trust enterprise or SPC shall report to the SFC or competent authority for recordation after the offering is closed, except where otherwise provided in the regulations of the SFC or competent authority. The trust enterprise or SPC shall deliver the beneficiary securities or asset-backed securities within 30 days from the day the offering is closed and reported to the SFC for recordation. Securities delivered by the book-entry method pursuant to Article 19, paragraph 3 of the Act need not be produced in physical form; delivery of those securities shall be handled according to the provisions of the Securities and Exchange Act.

## Article 14

In a public offering of beneficiary securities by a trustee institution or asset-backed securities by an SPC already effectively registered or approved, where any of the following occurs prior to exchange listing or trading on an OTC market, the SFC may cancel or revoke the registration or approval:

1. When the offering has not been fully subscribed and the funds collected after the lapse of the prescribed period beginning from receipt of the letter giving notice of registration or approval.
  2. Circumstances in violation of Article 20 of the Securities and Exchange Act.
  3. A serious violation of relevant acts or regulations by the trustee institution or SPC.
  4. The trustee institution or SPC releases to the public information that is false or at variance with the registration filing or application, resulting in a serious impact on the rights and interests of the offeree or purchaser or on the price of the securities.
  5. Circumstances in violation of Article 8.
  6. A material adverse change in financial assets, with a serious effect on the price or terms and conditions of issuance of the beneficiary securities or asset-backed securities.
  7. Other circumstances in violation of these Regulations or of restrictions or prohibitive provisions imposed by the SFC at the time of approval or effective registration.
- After cancellation or revocation of effective registration or approval of an application, prices already received for securities shall be returned by the trustee institution or SPC, with interest duly calculated in accordance with law, within 10 days from the date of receipt of the notice of cancellation or revocation.

#### **Article 15**

These Regulations shall be enforced from the date of promulgation.