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| Title : | Regulations Governing Loaning of Funds and Making of Endorsements/Guarantees by Public Companies Ch |
| Date : | 2019.03.07 |
| Legislative : | <ol style="list-style-type: none">1. Full 27 articles promulgated per 18 December 2002 Order No. Taiwan-Finance-Securities-VI-0910161919 of the Securities and Futures Commission, Ministry of Finance; for implementation from the date of promulgation2. Articles 5 and 7 amended and promulgated per 29 December 2005 Order No. Financial-Supervisory-Securities-VI-0940006026 of the Financial Supervisory Commission, Executive Yuan3. Articles 3, 5, 10, 13, 16, 20, 22, and 25 amended per 15 January 2009 Order No. Financial-Supervisory-Securities-VI-0980000271 of the Financial Supervisory Commission, Executive Yuan4. Articles 5, 12, 14, and 17 amended and issued per 19 March 2010 Order No. Financial-Supervisory-Securities-Auditing-0990011375 of the Financial Supervisory Commission, Executive Yuan5. Articles 1 to 3, 5 to 7, 12, 22, 23, 25, and 26 amended and issued, and Article 26-1 added, per 6 July 2012 Order No. Financial-Supervisory-Securities-Auditing-1010029874 of the Financial Supervisory Commission6. Articles 2, 3, 7 to 9, 11, 12, and 25 amended, and Article 26-2, added per 7 March 2019 Order No. Financial-Supervisory-Securities-Auditing-1080304826 of the Financial Supervisory Commission |
| Content : | <p>Chapter I General Principles</p> <p>Article 1 These Regulations are promulgated pursuant to Article 36-1 of the Securities and Exchange Act ("the Act").</p> <p>Article 2 A public company shall comply with these Regulations when making loans to and endorsements/guarantees for others; provided, where financial laws or regulations provide otherwise, such provisions shall govern.</p> <p>Article 3 Under Article 15 of the Company Act, a public company shall not loan funds to any of its shareholders or any other person except under the following circumstances: <ol style="list-style-type: none">1. Where an inter-company or inter-firm business transaction calls for a loan arrangement; or2. Where an inter-company or inter-firm short-term financing facility is necessary, provided that such financing amount shall not exceed 40 percent of the lender's net worth.The term "short-term" as used in the preceding paragraph means one year, or where the company's operating cycle exceeds one year, one operating cycle. The term "financing amount" as used in paragraph 1, sub-paragraph 2 of this Article means the cumulative balance of the public company's short-term financing. The restriction in paragraph 1, subparagraph 2 shall not apply to inter-company loans of funds between overseas companies in which the public company holds, directly or indirectly, 100% of the voting shares, nor to loans of fund to the public company by any overseas company in which the public company holds, directly or indirectly, 100% of the voting shares. However, the Public Company shall still prescribe limits on the aggregate amount of such loans and on the amount of such loans permitted to a single borrower, and shall specify limits on the durations of such loans. If a public company has paid-in capital of not less than NT\$1 billion and it furthermore has joined a leasing association and stated that it will</p> |

comply with the self-regulatory rules, and has complied with the requirements of Article 9, paragraph 2, the restriction in paragraph 1, subparagraph 2 shall not apply to its provision of short-term financing, provided, however, that the amount loaned by it may not exceed 100 percent of its net worth.

When a responsible person of a company violates paragraph 1 or the proviso of the preceding paragraph, the responsible person shall bear joint and several liability with the borrower for repayment; if the company suffers damage, the responsible person also shall be liable for damages.

Article 4

The term "endorsements/guarantees" as used in these Regulations refers to the following:

1. Financing endorsements/guarantees, including:
 - A. Bill discount financing.
 - B. Endorsement or guarantee made to meet the financing needs of another company.
 - C. Issuance of a separate negotiable instrument to a non-financial enterprise as security to meet the financing needs of the company itself.
2. Customs duty endorsement/guarantee, meaning an endorsement or guarantee for the company itself or another company with respect to customs duty matters.
3. Other endorsements/guarantees, meaning endorsements or guarantees beyond the scope of the above two subparagraphs.

Any creation by a public company of a pledge or mortgage on its chattel or real property as security for the loans of another company shall also comply with these Regulations.

Article 5

A public company may make endorsements/guarantees for the following companies:

1. A company with which it does business.
2. A company in which the public company directly and indirectly holds more than 50 percent of the voting shares.
3. A company that directly and indirectly holds more than 50 percent of the voting shares in the public company.

Companies in which the public company holds, directly or indirectly, 90% or more of the voting shares may make endorsements/guarantees for each other, and the amount of endorsements/guarantees may not exceed 10% of the net worth of the public company, provided that this restriction shall not apply to endorsements/guarantees made between companies in which the public company holds, directly or indirectly, 100% of the voting shares.

Where a public company fulfills its contractual obligations by providing mutual endorsements/guarantees for another company in the same industry or for joint builders for purposes of undertaking a construction project, or where all capital contributing shareholders make endorsements/guarantees for their jointly invested company in proportion to their shareholding percentages, or where companies in the same industry provide among themselves joint and several security for a performance guarantee of a sales contract for pre-construction homes pursuant to the Consumer Protection Act for each other, such endorsements/guarantees may be made free of the restriction of the preceding two paragraphs.

Capital contribution referred to in the preceding paragraph shall mean capital contribution directly by the public company, or through a company in which the public company holds 100% of the voting shares.

Article 6

"Subsidiary" and "parent company" as referred to in these Regulations shall be as determined under the Regulations Governing the Preparation of Financial Reports by Securities Issuers.

Where a public company's financial reports are prepared according to the International Financial Reporting Standards, "net worth" in these Regulations means the balance sheet equity attributable to the owners of the parent company under the Regulations Governing the Preparation of Financial Reports by Securities Issuers.

Article 7

The term "announce and report" as used in these Regulations means the process of entering data to the information reporting website designated by the Financial Supervisory Commission (FSC).

"Date of occurrence" in these Regulations means the date of contract signing, date of payment, dates of boards of directors resolutions, or other date that can confirm the counterparty and monetary amount of the loan of funds or endorsement/guarantee, whichever date is earlier.

Chapter II Formulation of Operation Procedures

Section I Loans of Funds to Others

Article 8

A public company intending to loan funds to others shall formulate its Operational Procedures for Loaning Funds to Others in compliance with these Regulations, and, after passage by the board of directors, submit the Procedures to each supervisor and submit them for approval by the shareholders' meeting; where any director expresses dissent and it is contained in the minutes or a written statement, the company shall submit the dissenting opinion to each supervisor and for discussion by the shareholders' meeting. The same shall apply to any amendments to the Procedures.

Where a public company has appointed independent directors, when it submits its Operational Procedures for Loaning Funds to Others for discussion by the board of directors under the preceding paragraph, the board of directors shall take into full consideration each independent director's opinion. If an independent director expresses any dissent or reservation, it shall be noted in the minutes of the board of directors meeting.

A public company without the intention of loaning funds to others may, after passage by the board of directors, be relieved from the obligation of formulating the Operational Procedures for Loaning Funds to Others. If such a company subsequently intends to loan funds to others, it shall still comply with the preceding two paragraphs.

Where a public company has established an audit committee, when it adopts or amends its Operational Procedures for Loaning Funds to Others, the procedures or amended procedures shall require the approval of one-half or more of all audit committee members, and furthermore shall be submitted for a resolution by the board of directors, and the provisions of paragraph 2 shall not apply.

If the approval of one-half or more of all audit committee members as required in the preceding paragraph is not obtained, the Operational Procedures may be implemented if approved by two-thirds or more of all directors, and the resolution of the audit committee shall be recorded in the minutes of the board of directors meeting.

The terms "all audit committee members" in paragraph 4 and "all directors" in the preceding paragraph shall be counted as the actual number of persons currently holding those positions.

Article 9

A public company shall specify the following matters in its Operational Procedures for Loaning Funds to Others, and shall comply with those Operational Procedures when loaning funds:

1. Entities to which the company may loan funds.
2. Evaluation standards for loaning funds to others:
 - A. Where funds are loaned for reasons of business dealings, evaluation standards shall be specified for determining whether the amount of a loan is commensurate to the total amount of trading between the two companies.
 - B. Where short-term financing is needed, the reasons for and conditions of extending loans shall be enumerated.
3. The aggregate amount of loans and the maximum amount permitted to a single borrower shall each be prescribed separately for business transactions and for short-term financing respectively.
4. Duration of loans and calculation of interest.
5. Procedures for handling loans of funds.
6. Detailed review procedures, including:

- A. The necessity of and reasonableness of extending loans to others.
 - B. Borrower credit status and risk assessment.
 - C. Impact on the company's business operations, financial condition, and shareholders' equity.
 - D. Whether collateral must be obtained and appraisal of the value thereof.
7. Announcement and reporting procedures.
 8. Subsequent measures for control and management of loans, and procedures for handling delinquent creditor's rights.
 9. Penalty for violation of these Regulations or of the company's Operational Procedures for Loaning Funds to Others by managers or personnel in charge.
 10. Procedures for controlling and managing loans of funds to others by subsidiaries.
 11. Other particulars required by the FSC.

A public company that engages in short-term financing under Article 3, paragraph 5, in addition to complying with the preceding paragraph, furthermore shall perform enhanced risk assessment for, respectively, unsecured financing, financing to enterprises in any single industry, and financing to any single group of affiliated enterprises or members of a single corporate group, and shall prescribe limits on the amounts that may be loaned in such financing.

Article 10

Where a subsidiary of a public company intends to make loans to others, the public company shall instruct it to formulate its own Operational Procedures for Loaning Funds to Others in compliance with these Regulations, and it shall comply with the Procedures when loaning funds.

Section II Endorsements/Guarantees for Others

Article 11

A public company intending to make endorsements or guarantees for others shall formulate its Operational Procedures for Endorsements/Guarantees in compliance with these Regulations, and, after passage by the board of directors, submit the same to each supervisor and for approval by the shareholders' meeting. Where there any director expresses dissent and it is contained in the minutes or a written statement, the company shall submit the dissenting opinions to each supervisor and for discussion by the shareholders' meeting. The same shall apply to any amendments to the Procedures.

Where a public company has appointed independent directors, when it submits the Operational Procedures for Endorsements/Guarantees for discussion by the board of directors pursuant to the preceding paragraph, the board of directors shall take into full consideration each independent director's opinions. If an independent director expresses any dissent or reservation, it shall be specifically recorded in the minutes of the board of directors meeting.

A public company without the intention of making endorsements or guarantees for others may, after passage by the board of directors, be relieved from the obligation of formulating the Operational Procedures for Endorsements/Guarantees. If such a company subsequently intends to make endorsements or guarantees, it shall still comply with the preceding two paragraphs.

Where a public company has established an audit committee, when it adopts or amends its Operational Procedures for Endorsements/Guarantees, the provisions of Article 8, paragraphs 4 to 6 shall apply mutatis mutandis.

Article 12

A public company shall specify the following matters in its Operational Procedures for Endorsements/Guarantees, and shall comply with those Operational Procedures when making endorsements/guarantees:

1. Entities for which the company may make endorsements/guarantees.
2. Where an endorsement/guarantee is made due to needs arising from business dealings, evaluation standards shall be specified for determining whether the amount of an endorsement/guarantee is commensurate the total amount of trading between the two companies.

3. The ceilings on the amounts a public company is permitted to make in endorsements/guarantees, including on the public company's aggregate endorsement/guarantee amount and the amount of its endorsements/guarantees for any single entity, as well as on the aggregate endorsement/guarantee amount, and the amount of endorsements/guarantees for any single entity, that the public company and its subsidiaries as a whole are permitted to make. If the aggregate amount of endorsements/guarantees that is set as the ceiling for the public company and its subsidiaries as a whole reaches 50% or more of the net worth of the public company, an explanation of the necessity and reasonableness thereof shall be given at the shareholders meeting.
 4. Procedures for making endorsements/guarantees.
 5. Detailed review procedures, including:
 - A. The necessity of and reasonableness of endorsements/guarantees.
 - B. Credit status and risk assessment of the entity for which the endorsement/guarantee is made.
 - C. The impact on the company's business operations, financial condition, and shareholders' equity.
 - D. Whether collateral must be obtained and appraisal of the value thereof.
 6. Procedures for controlling and managing endorsements/guarantees by subsidiaries.
 7. Procedures for use and custody of corporate chops.
 8. Hierarchy of decision-making authority and delegation thereof.
 9. Announcing and reporting procedures.
 10. Penalty for violation of these Regulations or the company's Operational Procedures for Endorsements/Guarantees by managers and personnel in charge.
 11. For circumstances in which an entity for which the company makes any endorsement/guarantee is a subsidiary whose net worth is lower than half of its paid-in capital, relevant follow-up monitoring and control measures shall be expressly prescribed.
 12. Other particulars required by the FSC.
- In the case of a subsidiary with shares having no par value or a par value other than NT\$10, for the paid-in capital in the calculation under subparagraph 11 of the preceding paragraph, the sum of the share capital plus paid-in capital in excess of par shall be substituted.

Article 13

Where a subsidiary of a public company intends to make endorsements/guarantees for others, the public company shall instruct it to formulate its own Operational Procedures for Endorsements/Guarantees in compliance with these Regulations, and it shall comply with the Procedures when making endorsements/guarantees.

Chapter III Case Evaluation

Section I Loans of Funds to Others

Article 14

Before making a loan of funds to others, a public company shall carefully evaluate whether the loan is in compliance with these Regulations and the company's Operational Procedures for Loaning Funds to Others. The company may loan funds to others only after the evaluation results under this paragraph and Article 9, paragraph 6 have been submitted to and resolved upon by the board of directors. The company shall not empower any other person to make such decision.

Loans of funds between the public company and its parent company or subsidiaries, or between its subsidiaries, shall be submitted for a resolution by the board of directors pursuant to the preceding paragraph, and the chairperson may be authorized, for a specific borrowing counterparty, within a certain monetary limit resolved by the board of directors, and within a period not to exceed one year, to give loans in installments or to make a revolving credit line available for the counterparty to draw down.

The "certain monetary limit" mentioned in the preceding paragraph on authorization for loans extended by the public company or any of its subsidiaries to any single entity shall not exceed 10% of the net worth on

the most current financial statements of the lending company, except in cases of companies in compliance with Article 3, paragraph 4.

Where a public company has appointed independent directors, when it loans funds to others, it shall take into full consideration each independent director's opinions; independent directors' opinions specifically expressing assent or dissent and their reasons for dissent shall be included in the minutes of the board of directors' meeting.

Article 15

A public company shall prepare a memorandum book for its fund-lending activities and truthfully record the following information: borrower, amount, date of approval by the board of directors, lending/borrowing date, and matters to be carefully evaluated under paragraph 1 of the preceding Article.

The public company's internal auditors shall audit the Operational Procedures for Lending Funds to Others and the implementation thereof no less frequently than quarterly and prepare written records accordingly. They shall promptly notify all the supervisors in writing of any material violation found.

Article 16

If, as a result of a change in circumstances, an entity for which an endorsement/guarantee is made does not meet the requirements of these Regulations or the loan balance exceeds the limit, a public company shall adopt rectification plans and submit the rectification plans to all the supervisors, and shall complete the rectification according to the timeframe set out in the plan.

Section II Endorsements/Guarantees for Others

Article 17

Before making an endorsement/guarantee for others, a public company shall carefully evaluate whether the endorsement/guarantee is in compliance with these Regulations and the company's Operational Procedures for Endorsements/Guarantees for Others. The company may make an endorsement/guarantee only after the evaluation results under this paragraph and Article 12, paragraph 5 have been submitted to and resolved upon by the board of directors, or approved by the chairman of the board, where empowered by the board of directors under Article 12, paragraph 8 to grant endorsements/guarantees within a specific limit, for subsequent submission to and ratification by the next board of directors' meeting.

Before making any endorsement/guarantee pursuant to Article 5, paragraph 2, a subsidiary in which the public company holds, directly or indirectly, 90% or more of the voting shares shall submit the proposed endorsement/guarantee to the public company's board of directors for a resolution, provided that this restriction shall not apply to endorsements/guarantees made between companies in which the public company holds, directly or indirectly, 100% of the voting shares.

Where a public company has appointed independent directors, when it makes endorsements/guarantees for others, it shall take into full consideration each independent director's opinions; independent directors' opinions specifically expressing assent or dissent and their reasons for dissent shall be included in the minutes of the board of directors' meeting.

A public company shall use the corporate chop registered with the Ministry of Economic Affairs as the dedicated chop for endorsements/guarantees. The chop shall be kept in the custody of a designated person approved by the board of directors and may be used to seal or issue negotiable instruments only in prescribed procedures.

When making a guarantee for an overseas company, a public company shall have the Guarantee Agreement signed by a person authorized by the board of directors.

Article 18

A public company shall prepare a memorandum book for its endorsement/guarantee activities and record in detail the following information for the record: the entity for which the endorsement/guarantee

is made, the amount, the date of passage by the board of directors or of authorization by the chairman of the board, the date the endorsement/guarantee is made, and the matters to be carefully evaluated under paragraph 1 of the preceding article.

The public company's internal auditors shall audit the Operational Procedures for Endorsements/Guarantees for Others and the implementation thereof no less frequently than quarterly and prepare written records accordingly. They shall promptly notify all the supervisors in writing of any material violation found.

Article 19

Where a public company needs to exceed the limits set out in the Operational Procedures for Endorsements/Guarantees to satisfy its business requirements, and where the conditions set out in the Operational Procedures for Endorsements/Guarantees are complied with, it shall obtain approval from the board of directors and half or more of the directors shall act as joint guarantors for any loss that may be caused to the company by the excess endorsement/guarantee. It shall also amend the Operational Procedures for Endorsements/Guarantees accordingly and submit the same to the shareholders' meeting for ratification after the fact. If the shareholders' meeting does not give consent, the company shall adopt a plan to discharge the amount in excess within a given time limit.

Where the public company has appointed independent directors, when it makes endorsements/guarantees for others, it shall take into full consideration the opinions of each independent director; independent directors' opinions specifically expressing assent or dissent and the reasons for dissent shall be included in the minutes of the board of directors' meeting.

Article 20

Where as a result of changes of condition the entity for which an endorsement/guarantee is made no longer meets the requirements of these Regulations, or the amount of endorsement/guarantee exceeds the limit, a public company shall adopt rectification plans and submit the rectification plans to all the supervisors, and shall complete the rectification according to the timeframe set out in the plan.

Chapter IV Information Disclosure

Section I Loans of Funds to Others

Article 21

A public company shall announce and report the previous month's loan balances of its head office and subsidiaries by the 10th day of each month.

Article 22

A public company whose loans of funds reach one of the following levels shall announce and report such event within two days commencing immediately from the date of occurrence:

1. The aggregate balance of loans to others by the public company and its subsidiaries reaches 20 percent or more of the public company's net worth as stated in its latest financial statement.
2. The balance of loans by the public company and its subsidiaries to a single enterprise reaches 10 percent or more of the public company's net worth as stated in its latest financial statement.
3. The amount of new loans of funds by the public company or its subsidiaries reaches NT\$10 million or more, and reaches 2 percent or more of the public company's net worth as stated in its latest financial statement.

The public company shall announce and report on behalf of any subsidiary thereof that is not a public company of the Republic of China any matters that such subsidiary is required to announce and report pursuant to subparagraph 3 of the preceding paragraph.

Article 23

A public company shall evaluate the status of its loans of funds and reserve sufficient allowance for bad debts, and shall adequately disclose

relevant information in its financial reports and provide certified public accountants with relevant information for implementation of necessary auditing procedures.

Section II Endorsements/Guarantees for Others

Article 24

A public company shall announce and report the previous month's balance of endorsements/guarantees of itself and its subsidiaries by the 10th day of each month.

Article 25

A public company whose balance of endorsements/guarantees reaches one of the following levels shall announce and report such event within two days commencing immediately from the date of occurrence:

1. The aggregate balance of endorsements/guarantees by the public company and its subsidiaries reaches 50 percent or more of the public company's net worth as stated in its latest financial statement.
2. The balance of endorsements/guarantees by the public company and its subsidiaries for a single enterprise reaches 20 percent or more of the public company's net worth as stated in its latest financial statement.
3. The balance of endorsements/guarantees by the public company and its subsidiaries for a single enterprise reaches NT\$10 millions or more and the aggregate amount of all endorsements/guarantees for, carrying value of equity method investment in, and balance of loans to, such enterprise reaches 30 percent or more of public company's net worth as stated in its latest financial statement.
4. The amount of new endorsements/guarantees made by the public company or its subsidiaries reaches NT\$30 million or more, and reaches 5 percent or more of the public company's net worth as stated in its latest financial statement.

The public company shall announce and report on behalf of any subsidiary thereof that is not a public company of the Republic of China any matters that such subsidiary is required to announce and report pursuant to subparagraph 4 of the preceding paragraph.

Article 26

A public company shall evaluate or record the contingent loss for endorsements/guarantees, and shall adequately disclose information on endorsements/guarantees in its financial reports and provide certified public accountants with relevant information for implementation of necessary audit procedures.

Article 26-1

A foreign company as specified under Article 165-1 of the Act ("foreign company") shall comply mutatis mutandis with these Regulations when making loans to, and endorsements or guarantees for, others.

If the foreign company does not have corporate chops, it may be exempted from application of the provisions of Article 12, paragraph 1, subparagraph 7, and Article 17, paragraph 4.

Net worth of a foreign company as calculated under these Regulations means the balance sheet equity attributable to the owners of the parent company.

Article 26-2

Where a public company has appointed independent directors, when there is any matter of which it is required to notify the supervisors under Article 15, paragraph 2 or Article 18, paragraph 2, it shall at the same time also give written notice to the independent directors. When it submits a rectification plan to the supervisors under Article 16 or 20, it shall at the same time also submit the rectification plan to the independent directors.

Where a public company has established an audit committee, the provisions of Articles 15, 16, 18, and 20 regarding supervisors shall apply mutatis mutandis to the audit committee.

Chapter V Supplemental Provisions

Article 27

These Regulations shall be enforced from the date of promulgation.

Data Source : Financial Supervisory Commission Laws and Regulations Retrieving System