

Content

Title :	Regulations Governing Qualification Requirements for the Promoter or Responsible Persons of Financial Holding Companies and Concurrent Serving Restrictions and Matters for Compliance by the Responsible Persons of a Financial Holding Company 
Date :	2010.10.19
Legislative :	<ol style="list-style-type: none">1. Full text of 10 articles adopted and promulgated on 31 October 2001 per Order No. (90)-Tai-Tsai-Rong-(II)-0900006540 of the Ministry of Finance; for enforcement from 1 November 20012. Name and full text of 18 articles amended and promulgated 22 February 2005 per Order No. Jin-Kuan-Yin-(VI)-0946000086 of the Financial Supervisory Commission, Executive Yuan; for enforcement from the date of issuance except for Article 4, paragraph 3, and Article 14, paragraph 2, which are to be enforced from 1 January 2006 (original name: Regulations Governing the Scope of Financial Holding Company Promoters and Responsible Persons and their Qualification Requirements)3. Article 4 and 18 amended 4 February 2010 per Order No. Jin-Guan-Fa-Zi-09900542800 of the Financial Supervisory Commission, Executive Yuan4. Name and full text of 17 articles amended and promulgated 19 October 2010 per Order No. Jin-Kuan-Yin-Kong-Zi-09960005670 of the Financial Supervisory Commission, Executive Yuan
Content :	<p>Article 1</p> <p>These regulations are enacted pursuant to Paragraph 1, Article 17 of Financial Holding Company Act (hereafter referred to as "the Act").</p> <p>Article 2</p> <p>For the purposes of these Regulations, the term "responsible person" means any director, supervisor, general manager, assistant general manager, deputy assistant general manager, manager, or person in an equivalent position.</p> <p>Article 3</p> <p>A person having any of the following situations may not act as a promoter or responsible person of a financial holding company:</p> <ol style="list-style-type: none">1. Having no legal capacity or having limited legal capacity or is subject to the order of the commencement of assistance that has not been revoked yet.2. Having been convicted of a crime under the Organized Crime Act.3. Having been sentenced to imprisonment for counterfeiting currency or valuable securities, misappropriation, fraud or breach of trust and the sentence has not been completed or ten (10) years have not elapsed since the date of sentence completion, the expiration of probation period, or the pardon of such punishment.4. Having been sentenced to imprisonment for forging instruments or seals, offence against privacy, usury, impairing the rights of creditors or violating the Tax Collection Act, Trademark Act, Patent Act or other laws governing industrial or commercial activity and the sentence has not been completed or five (5) years have not elapsed since the date of sentence completion, the expiration of probation period, or the pardon of such punishment.

5. Having been sentenced to imprisonment for embezzlement and the sentence has not been completed or five (5) years have not lapsed since the date of sentence completion, the expiration of probation period, or the pardon of such punishment.
6. Having been sentenced to imprisonment for violating the Act, Banking Act, Trust Enterprise Act, Act Governing Bills Finance Business, Financial Assets Securitization Act, Real Estate Securitization Act, Insurance Law, Securities and Exchange Act, Futures Trading Act, Securities Investment Trust and Consulting Act, Foreign Exchange Control Act, Credit Cooperatives Act, Agricultural Finance Act, Farmers' Association Act, Fishermen's Association Act, Money Laundering Control Act or other laws regulating financial activity, and the sentence has not been completed or five (5) years have not elapsed since the date of sentence completion, the expiration of probation period or the pardon of such punishment.
7. Having been adjudicated bankrupt, and rights and privileges have not been reinstated.
8. Having been the responsible person of a legal entity at the time such legal entity was adjudicated bankrupt and five (5) years have not elapsed since the closure of the bankruptcy or the terms of bankruptcy settlement have not yet been fulfilled.
9. Having been denied service by the bills clearing house and the denial status has yet to be removed, or there remains a record of dishonored check(s) due to insufficient funds in three (3) years since the denial status has been removed.
10. Having an ongoing event that seriously damages his or her credit worthiness or five (5) years have not elapsed since the closure of such an event.
11. Five (5) years have not elapsed since being replaced or discharged from duties by order of the competent authority due to a violation the Act, Banking Act, Trust Enterprise Act, Act Governing Bills Finance Business, Financial Assets Securitization Act, Real Estate Securitization Act, Insurance Law, Securities and Exchange Act, Futures Trading Act, Securities Investment Trust and Consulting Act, Credit Cooperatives Act, Farmers' Association Act, Fishermen's Association Act, Agricultural Finance Act, or other laws regulating financial activity.
12. Having been ordered to enter a reformatory or having been ordered to perform compulsory labor due to the offense of larceny or receiving stolen property and the sentence has not been completed or five (5) years have not elapsed since the sentence completion.
13. There is factual proof that the person has engaged in or otherwise been involved with any other dishonest or improper activities which indicate that she/he is unfit to serve as a promoter or responsible person of a financial holding company.

Article 4

The chairperson of a financial holding company may not serve concurrently as a general manager. However, a person is not subject to the restrictions if the person has one of the following facts and has been approved by the competent authority:

1. The chairperson or the general manager cannot carry on their duties due to resignation from the job.

2. The chairperson or the general manager is replaced or dismissed by the competent authority.
3. The chairperson or the general manager has encountered other issues that prevent them from continuing their job.

When a financial holding company applies for its chairperson to act concurrently as the general manager pursuant to the proviso in (of) the preceding paragraph to the competent authority, the competent authority is allowed to ratify a maximum of three months for concurrent positions. The financial holding company may apply for one extension, if needed, to the competent authority one month before the end of the period.

The chairperson or the general manager of a financial holding company is not allowed act as the chairperson or general manager of other non-financial enterprises; however, people are not subject to these restrictions if they act in an incorporated foundation or other non-profit corporation.

The promoter or the responsible person of a financial holding company may not act as the responsible person of other financial holding companies. However, a person is not subject to the restrictions on account of a merge and has been approved by the competent authority.

A responsible person should be dismissed if the person violates the restrictions of the preceding four paragraphs.

If the government or a juridical person is a shareholder, the representative or the natural person designated to act such position, when they act as the chairperson, supervisor, they shall comply with the preceding article and the preceding five paragraphs *mutatis mutandis*.

The promoter of a financial holding company may not act concurrently as the promoter of other financial holding companies.

If a financial holding company is converted from a financial institute, and its promoter is the shareholder of the original financial institute, the promoter is not applicable to the regulations in the preceding article, paragraph 4 and the preceding paragraph.

Article 5

A financial holding company should have one person act as the general manager to handle the general affairs of the company and should not have another person with the equivalent functionalities. The general manager shall have good personal character, leadership and the ability to effectively manage the financial holding company, and possess any one of the following qualification:

1. Have worked for not less than nine years in a financial institution or financial holding company as defined in the Act, and have served for not less than five years in the position of manager or in an equivalent position at the head office, and have performed with excellence in such position.
2. There is other factual evidence sufficient to prove that he/she has leadership and professional financial expertise to operate the business of the financial holding company in a sound and effective manner.

A person may not act as a general manager of a financial holding company until the relevant qualification documents have been submitted to and approved by the competent authority.

Article 6

An assistant general manager, deputy assistant general manager, manager, or person in an equivalent position in a financial holding company shall have good personal character, leadership and the ability to effectively manage the financial holding company, and possess any one of the following qualifications:

1. Have worked for not less than five years in a financial institution or financial holding company as defined in the Act, and have served for not less than three years in the position of assistant manager or in an equivalent position at the head office, and have performed with excellence in such position.
2. There is other factual evidence sufficient to prove that he/she has the ability to operate the business of the financial holding company in a sound and effective manner, and his/her qualification has been reported to and recognized by the competent authority in advance.

Article 7

A supervisor's spouse, blood relative within the second degree, or relative by marriage within the first degree, may not act as a director or manager at the same financial holding company.

The provisions of the preceding paragraph shall also apply to a natural-person representative of the government or of a juristic person.

Article 8

The board of directors of a financial holding company is responsible for electing managers, and shall realistically review whether a manager meets the qualification requirements, and also is responsible for monitoring whether a manager maintains the required qualifications and otherwise remains suitable for the office.

Article 9

A director of a financial holding company shall have good personal character; any one of the following qualifications shall be possessed by at least two directors if there are five directors or less, and by another one director for each additional four directors, if there are more than five directors; and by at least two managing directors, if such positions are established:

1. Have worked for not less than five years in a financial institution or financial holding company as defined in the Act, and have served for not less than three years in the position of assistant manager or in an equivalent position at the head office, and have performed with excellence in such position.
 2. Have worked for not less than five years in financial administration or management, and have served in the civil service at junior rank (grade 8) or higher, or in an equivalent position, and have performed with excellence in such position.
 3. There is other factual evidence sufficient to prove that he/she has the ability to manage the financial holding company, and to operate the business of the financial holding company in a sound and effective manner.
- The chairperson of a financial holding company shall possess any of the qualifications set out in the preceding paragraph.

Among the supervisors of a financial holding company, at least one supervisor shall possess any of the qualifications set forth in paragraph 1 or have not less than five years of auditing experience in a financial

institution or financial holding company as defined in the Act, and have performed with excellence in such position.

A financial holding company shall, within 10 days following any election of chairperson or a director or supervisor possessing the qualification set forth in paragraph 1, subparagraph 3, report the election and submit relevant qualification documents to the competent authority for recognition; where any of that person's qualifications has not been recognized by the competent authority, the competent authority may order the financial holding company to make an adjustment within a prescribed period of time.

Where a financial holding company has concerns about whether the provision of paragraph 1, subparagraph 3, applies to a candidate for director or supervisor, it may file a report with the competent authority for recognition before the election.

Where a financial holding company has a bank subsidiary, at least one of its directors shall have worked for not less than five years in a bank and have served for not less than three years in the position of assistant manager or in an equivalent position at the head office, or have worked for not less than five years in financial administration or management and have served in civil service at junior rank (grade 8) or higher, or in an equivalent position, and with good performance record; the same shall apply to a financial holding company having an insurance or securities subsidiary.

Article 10

In order to determine whether the responsible person of a financial holding company possess the qualification enlisted in these regulations, the competent authority is able to demand the financial holding company to submit necessary documents and information within a prescribed period of time or to designate a person to make explanations.

Article 11

Where any circumstance that constitutes ipso facto cause for dismissal applies to a responsible person of a financial holding company, the responsible person shall promptly notify the financial holding company. Upon learning of any circumstance that constitutes ipso facto cause for dismissal applies to a responsible person, a financial holding company shall promptly take the initiative to handle the circumstance, and report to the competent authority and notify the Ministry of Economic Affairs for revocation or voidance of the relevant registration.

Article 12

The concurrent holding of positions and the number of concurrently held positions of the responsible person of a financial holding company shall be subject to the principle that the responsibilities of the principal position and the concurrent position are both effectively discharged. Besides the preceding paragraph, the responsible person of a financial holding company who has concurrent positions in a subsidiary shall not exceed the extent necessary for maintaining the supervising mechanism between the financial holding company and the subsidiary.

The concurrent holding of positions of the responsible person of a financial holding company may not result in any conflict of interests or any violation of the internal controls of the financial holding company and

the subsidiary, and shall consider concurrently the internal check-and-balance control mechanisms of the consortium and in a manner that safeguards the rights and interests of the shareholders.

Article 13

A responsible person of a financial holding company who, due to the investment relationship, concurrently holds a position in a subsidiary is not subject to the restrictions in the first half of Paragraph 3, Article 11 of the Act Governing Bills Finance Business, provided that the responsible person holding such concurrent position shall still meet the relevant qualification requirements prescribed by the regulatory authority responsible for the supervision of that subsidiary.

The chairperson or general manager of a financial holding company may act concurrently as chairperson of only one subsidiary. This restriction shall not apply, however, in any of the following circumstances:

1. The chairperson or general manager of a financial holding company act concurrently as the chairperson of a bank subsidiary and as the chairperson of an overseas subsidiary bank. If it is otherwise prescribed by the foreign competent authority, then the person should comply accordingly.
2. To act concurrently as chairperson of one or more subsidiaries during a certain period of time as necessitated to facilitate a business merger or organizational restructuring for purposes of enhancing overall operating effectiveness and efficiency.
3. To act concurrently during a certain period of time as necessitated by other special factors.

The concurrent positions mentioned in Subparagraph 2 and 3 of the preceding paragraph should be approved by the competent authority.

A responsible person of a financial holding company may act concurrently as a manager of only one subsidiary.

A financial holding company shall on a regular basis evaluate the performance of a responsible person concurrently holding a position in a subsidiary, having regards to its investment management needs, risk management policies, and the provisions of the Regulation; the evaluation results shall serve as an important reference to determine whether the concurrently held position(s) will be maintained or reduced in number.

Article 14

A responsible person of a financial holding company may not, in his or her own capacity or in the capacity of a representative of a juristic person other than the financial holding company and its subsidiary, hold a position in a subsidiary of the financial holding company.

Article 15

A responsible person of a financial holding company who concurrently holds a position in a subsidiary due to the investment relationship may not, in his or her own capacity or in the capacity of a representative of a juristic person other than the financial holding company and its subsidiary, simultaneously hold a position in another company operating the same type of business as the subsidiary.

Article 16

Where a responsible person of a financial holding company who has served in that position since before the amendment of the Regulation on January 1 of 2006, fails to comply with the provisions of Article 4, paragraph 3, that

person may serve in the concurrent position until the end of its term or the dismissal day of the chairperson or the general manager of non-financial enterprises. The period should be longer than five years.

Where a chairperson of a financial holding company who has acted as the general manager or other equivalent positions fails to comply with the provisions of Article 4, Paragraph 1 before the amendment of the Regulation on October 19, 2010, whose duties should be modified within one year upon the promulgation of the amendment.

Where the number and responsibilities of the general manager or equivalent position of a financial holding company fail to comply with the provisions of Article 5, Paragraph 1 before the amendment of the Regulation on October 19, 2010, it should be modified within six months upon the promulgation of the amendment.

Article 17

The Regulations shall enter into force as of the date of promulgation.

Data Source : Financial Supervisory Commission Laws and Regulations Retrieving System