

Rights Related to Beneficial Ownership re Bank Accounts in Taiwan

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A. Questions

1. What is the current framework / requirements regarding beneficial ownership of bank accounts?
2. What is the legal effect of a disclosed third party beneficial owner with regard to the Bank?
3. The issue of trusts (信託) is not part of the question, but will receive brief comments.

B. Principal Legal Sources

1. Financial Supervisory Commission (FSC) directions (金管會發布之應行注意事項) (hereinafter: "FSC Directions")
2. Banking Act of The Republic of China, dated December 30, 2008 (hereinafter: "Banking Act")
3. APG MUTUAL EVALUATION REPORT on Chinese Taipei, 2007

C. Brief Legal Assessment

1. *How does the requirement of beneficial owner information from bank or any other financial institution in Taiwan?*

Taiwan only obtained a "PC" (Partial Compliance) rating with regard to the Recommendation 5 of the FATF. An important factor of this rating is the lack of explicit requirement for financial institutions to take reasonable measures to check if a customer is acting on behalf of another person and to identify the beneficial owner as part of the routine KYC procedure for all customers.

In Taiwan, explicit requirements for financial institutions to verify the beneficial owner are currently confined to certain specific situations where the bank already has knowledge (!) of the fact that the person carrying out a financial transaction is acting on another person's behalf. Such situations include the following examples:

(a) The FSC Directions address wealth management businesses undertaken by banks, securities firms, and life insurance companies respectively. Under the FSC Directions, a financial institution engaging in wealth management business must perform additional due diligence measures in situations where a customer authorizes another person to sign and open an account on his/her behalf. The financial institution must conduct due diligence on such an authorized person and identify the ultimate beneficial owner.

(b) When signing a trust agreement, a trust enterprise must identify both the trustor and the beneficiary.

(c) When a securities broker or a futures commission merchant accepts account opening from a custodian institution representing the principal consigning discretionary account investments, the name of both principal and consignee must be specified in the account name.

(d) When a trustee applies for opening of an account, a securities broker must indicate in the account name that it is a segregated trust account and must identify both the trustor and the trustee.

(e) When a securities firm or a futures commission merchant accepts orders to trade securities through an omnibus trading account, it must make trading quotes corresponding to the orders placed by the principals or the mandatory's, and should note the name or symbol of the principal or the mandatory on the order form or the trading order record.

However, other than the above-mentioned specific situations, in Taiwan there is no legal requirement for financial institutions to take reasonable measures as a routine KYC procedure for all customers to check if the customer is acting on behalf of another person.

In addition, there is currently also no explicit requirement for financial institutions to take reasonable measures to understand the ownership structure of a customer that is a legal person or to identify the natural person that ultimately owns or controls the legal person.

2. *What is the legal effect when third party beneficial ownership is provided to the Bank? Does the beneficial owner have any authority or right with regard to the Bank?*

The terms “beneficial owner” is not defined clearly in the laws of Taiwan, and correspondingly neither have related rights and obligations. Even in the above-mentioned situations where the account holder is required to disclose a third party beneficial owner, there is no fine or punishment for providing incorrect information. Therefore, information on beneficial ownership can be seen as additional information rather than necessary information, under the current legal framework in Taiwan.

According to articles 6,7 and 8 of the Banking Act it is the account holder (or: “Depositor”, “存款人”), who is authorized to give instruction to bank. In fact, according the article 5 of the Name Act, the name (戶名) used as account holder of the bank account must be the real. i.e. the legal name of the respective individual. Banks require the signature or stamp of the Depositor (i.e. account holder) when the Depositor opens the account in order to confirm the identity of the person authorized.

(Note: Signature/stamp from the beneficial owner is not required nor recorded - as a more practical result, the Bank would not even be able to verify the identity/authority of instructions issued by a beneficial owner.)

In other wards, the beneficial owner has no authority to instruct the Bank to handle the property in bank accounts, nor does the Bank have any legal obligation towards and beneficial owner.

Another case is with regard to trusts agreement (信託契約). Currently, the Bank Association issued and FSC approved the related procedure of opening bank accounts entitled on trust property (信託財產) under trust agreement between trustor and non trust-enterprise fiduciary (非信託業者). According the direction, the trustor and fiduciary shall both provide their identification documents, open bank account in person and provide the notary trust agreement to bank. Even in such strict situation

that clear relationship disclosed and document provided, according the "procedure of non trust-enterprise opening trust property account in bank" (非信託業者在銀行開立「受託信託財產專戶」開戶流程) the name of bank account still only entitle as the fiduciary so that only its signature or stamp needs to be provided to confirm the instruction. Furthermore, if beneficiary is not trustee, in the general introduction of this procedure(非信託業者開立「受託信託財產專戶」開戶流程草案及開戶聲明書草案總說明), it also state that the information of beneficiary would not be required the same as Customer Due Diligence for Banks (October 2001) issued by Basel Committee on Banking Supervision did because beneficiary is neither the parties under the trust agreement nor the applicant of opening account and it is hard to identify the beneficiary in practice. This is an example that, in Taiwan, only the one whose name on the bank account can instruct bank but not the beneficial owner.

In conclusion, although Taiwan has been a member of APG since 1997 and had made great effort on all kinds of act and regulations related AML and CFT to achieve the global recommendation of FATF, a considerable part of Taiwan regime, which according to the FATF Recommendations should be explicitly stipulated in laws or regulations, are captured only by guidelines or leaved blank especially in beneficial owner information.

A depositor/account holder is not be required to disclose the information of the beneficial owner at the opening of the account. Even if a 3rd party beneficial owner were disclosed to the Bank, such beneficial owner has no authority to instruct the Bank.

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