

Box 3

Implementation of the Financial Consumer Protection Act in Taiwan

The Financial Consumer Protection Act was put into action on 30 December 2011. The Financial Ombudsmen Institution that was set up in accordance with the law was also put into effect on 2 January 2012. This symbolizes a huge step forward in the protection of financial consumers in Taiwan.

1. Main content of the Financial Consumer Protection Act

The Financial Consumer Protection Act has four chapters and thirty-three articles in all. It is applicable to banks, securities firms, futures firms, insurance companies, electronic stored value card enterprises, and enterprises in other financial services. It is mainly concerned with mechanisms for financial consumer protection and also sets up an institution that deals with disputes in financial consumerism. The highlights are below:

1.1 Target of this law

The target group for the Financial Consumer Protection Act is financial consumers who are at a disadvantage, whether it is from a financial, information or professional standpoint. Therefore, the legal definition for financial consumers is those who accept services or products from financial institutions, but excludes qualified institutional investors and natural or legal persons with a prescribed level of financial capacity or professional expertise¹ in order to more effectively utilize the resources needed to settle financial disputes.

1.2 Key protection measures

- When a financial services enterprise enters into a contract with a financial consumer for the provision of financial products or services, the enterprise shall act in conformity with the principles of fairness, reasonableness, equality, reciprocity, and good faith. Contractual provisions entered into by a financial services enterprise and a financial consumer that are clearly unfair shall be invalid. If there is a disagreement over the meaning of any contractual provision, the provision shall be interpreted in favor of the financial consumer.
- A financial services enterprise, in publishing or broadcasting advertisements or carrying out solicitation or promotional activities, shall not engage in falsehood, deception, concealment, or other conduct sufficient to mislead another party, and shall verify truthfulness of the content of its advertisements. The obligation it bears to

financial consumers shall not be less than that indicated in the content of the aforementioned advertisements or in materials or explanations provided to financial consumers in the aforementioned solicitation or promotional activities.

- Before a financial services enterprise enters into a contract with a financial consumer for the provision of financial products or services, the enterprise shall fully understand the information pertaining to the financial consumer in order to ascertain the suitability of those products or services to the financial consumer.
- Before a financial services enterprise enters into a contract with a financial consumer for the provision of financial products or services, the enterprise shall fully explain important aspects of the financial products or services, and of the contract, to the financial consumer, and shall also fully disclose the associated risks.
- A financial services enterprise violating the rules of the suitability and the obligation of disclosure with fault or not has to compensate the consumers for any injury or loss arising therefrom. And the burden of proof is on the side of the enterprise.

1.3 Mechanism to deal with disputes concerning financial consumers

1.3.1 The Financial Ombudsmen Institution

The Financial Ombudsmen Institution is an organization that specializes in dealing with financial disputes. It is made up of an arbitration committee that hires around 9 to 25 arbitration members. The members are mainly comprised of scholars, professionals or unbiased persons who specialize or have experience in related fields, and are responsible for dealing with ombudsman cases. In addition, the institution has an “arbitration office” which helps the arbitration members to deal with cases that come before them. There is also an education and promotional planning division that informs and educates financial consumers about financial knowledge, assists financial services enterprises in dealing with disputes and complaints, and provides advice for financial consumers.

1.3.2 Financial consumers must make a complaint with financial institutions first before applying to the ombudsman body

Financial consumers shall deal with a financial consumer dispute by first filing a complaint with the relevant financial services enterprise. The financial services enterprise shall appropriately handle the matter within 30 days from the day the complaint is received. If the financial consumer does not accept the disposition or the financial services enterprise fails to handle the matter before the aforementioned time limit, the

financial consumer may, within 60 days from either the day they receive notification of the disposition or the day the time limit expires, apply to the ombudsman body to institute an ombudsman case. After the ombudsman body entertains an application to institute an ombudsman case, it may seek to institute mediation proceedings.

1.3.3 Arbitration decisions made for an amount of money under a certain threshold are binding for financial institutions

If financial service providers have already agreed to abide by the rulings of the law to settle disputes on paper, then they should agree to the decisions made by the arbitration committee for amounts that are less than NT\$1 million (for investment products or services) or less than NT\$100 thousand (for non-investment products). However, a decision of the arbitration committee is non-binding for related consumers of financial products, and if they do not agree with the ultimate decision, they can continue with legal proceedings.

1.3.4 An arbitration decision has the same effect as a ruling on civil cases in a court

Financial consumers can, within 90 days after the decision by the arbitration committee, apply for approval from the court. After approval, the arbitration decision will have the same legal power as any rulings on civil cases, and the parties involved may not pursue any more legal actions or ask for arbitration according to this law.

1.3.5 Consumers who apply for the process of arbitration do not need to pay

Consumers who apply for arbitration do not need to pay any fees. However, the institution shall ask for annual fees and service fees from financial services enterprises. The annual payment is calculated as 0.008% of the entire financial industry's income as of the previous year, and then under preset rules the fees that each individual financial product or service provider has to pay are calculated. The service fee depends on the amount that a financial institution has to pay, which is decided by the arbitration members, with a ceiling of NT\$10 thousand.

2. Current operation

According to the information provided by the Financial Ombudsmen Institution, from 1 January to 13 March 2012, financial dispute cases totaled 1,251. Of these cases, insurance industry related cases were the most at 1,050 (or 83.93%), with the banking industry's 186 cases (or 14.87%) coming in second and the securities and the futures

market's 15 cases (or 1.20%) coming in third.

A deeper analysis shows that, concerning different types of disputes, the banking industry's disputes mostly center around banks' methods of enticing customers, whilst the insurance industry's disputes mainly lie with the sum of compensation, the ways that they entice customers and the services which are not provided according to relative regulations.

3. Expected effect

The government hopes that the Financial Ombudsmen Institution can improve the quality of provision of financial products and services, and also effectively protect consumers of financial products. It also hopes to achieve the following goals:

- To integrate the laws that are separate under the status quo into a single mechanism for consumers of financial products and services to apply for arbitration in order to lessen the resources spent.
- To use the mechanism for dealing with financial disputes such that it will lessen the burden of civil courts.
- To use the arbitration provided in order to get greater insight into the problems concerning financial disputes so as to get a greater grasp on the goals and targets of financial supervisory policies.

Note: As the regulation of the Order No. 10000707320 promulgated by the Financial Supervisory Commission on 12 December 2011.