

金融服務業橫向整合之困難與挑戰 ——金融與商業分離原則之定位與落實

林盟翔*

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摘要

* 東吳大學法律系兼任講師、中國文化大學法律系兼任講師、國立臺北大學法律學系博士生。

我國參酌英國「金融服務及市場法」、「金融服務業現代化法」、日本「金融商品販賣法」之立法例，採取階段性、漸進式之立法，針對現行銀行、保險、證券法令具共通性而管理不一致的事項予以整合，採取功能性之規範並保留各業法，制訂「金融服務業法草案」，作為推展金融法規整合工程之第一步。本文首先就金融服務業法之立法目的、金融服務業定義之基本核心議題產生之爭議進行檢視與探討。其次以我國現行各金融服務業法之規範內容為基礎，探討「金融與商業分離原則」一致性規範建立之必要性、法規體系之整合性及對於金融服務業之影響程度，進行分析與比較。最後提出結論與建議。

「金融與商業分離原則」之落實，係為確保金融服務業投資於非與其本業相關之事業，為期專心致力於本業並避免利益衝突，明定其負責人、業務人員與受僱人不得參與非本業事業之經營，並規範非金融服務業投資金融服務業時，其擔任金融服務業負責人之適格條件應符合主管機關及目的事業主管機關之規定，以維持授信公平、避免利益衝突及危害金融服務業經營。值得注意的是，金融服務業法刪除上述原則之統一性規範，除造成主管機關核准裁量之不一致外，金融服務業利用監理套利，而與商業過度結合所造成限制競爭或不正競爭之情事，將使金融監理一元化與功能性監理之效果無從發揮。此時，行政院公平交易委員會應主動積極介入，針對金融政策中「金融與商業分離原則」規範不足之處，藉由公平交易法第二十四條補充規定之特色，與競爭政策發揮調和與導正之作用，以確實維護金融產業之穩定與公平性，彌補金融監理一元化與功能性監理不足之橫向整合漏洞。

關鍵字：金融與商業分離原則、功能性監理、金融監理一元化、金融控股公司、

金融服務業法草案（金融服務法草案）

Difficulties and Challenges to the Horizontal Intergradations of Financial Services Supervision ——The Orientation and Practice of Principle of Separation on Banking and Commerce--

Meng-Shiang Lin

Abstract

According to United Kingdom's "Financial Services and Markets Act of 2000", America's "Gramm-Leach-Bliley Act of 1999" and Japan's "Law on Sales of Financial Products", R.O.C. integrates to the difference management between current financial services law (especially between Banking Law, Insurance law, and Securities and Exchange Law) as the functional regulation by gradually legislation for the "Draft of Financial Services Law" as the first step of intergradations in the system of financial services law. Three topics will be discussed in this paper. The first topic is the discussion and basic issue for the purpose of the Draft of Financial Services Law, definition of the financial services. The second topic is the issue of necessity for the unified code for the principle of the separation on the banking and commerce, integration of law and effectiveness to financial services which based on the current financial services law in R.O.C.. The third topic is suggestion and conclusion of this paper.

The principle of the separation on the banking and commerce rules the financial services shall not participate the non-relevant business to be avoided the beneficial conflict and make sure the financial services concentrate on the financial business. Meanwhile, it

also governs the qualification of financial services while investing in the non-financial business for matching the authority's request and law as to maintain the fairness, avoid beneficial conflict and risk to the financial services. It is noted that current Draft of Financial Services Law eliminates the unified principle above so the standard of permissions of Authority are different and besides, financial services merged with business to obtain the limited and unfair competition and therefore the Unified Financial Supervision and Functional Regulation will be failed. It's the time for the Fair Trade Commission of the Executive Yuan, R.O.C. shall intervene by the article 24 of Fair Trade Law to amend the principle of the separation on the banking and commerce of the current policy to maintain the stability and fairness of the financial services and reinforce the Unified Financial Supervision and Functional Regulation.

Key words : Principle of Separation on Banking and Commerce, Functional Regulation, Unified Financial Supervision, Financial Holding Company, Draft of Financial Services Law.