

摘 要
金融與商業分離原則
—金融控股公司轉投資非金融事業相關問題探討

受到全球金融自由化之發展以及國際上金融機構跨業經營趨勢之影響，又正值台灣金融危機問題爆發，政府遂因應局勢進行大幅度金融改革，其中「金融控股公司法」即於 2001 年 7 月制定公布；另針對實務應用所生問題，至 2009 年間亦修正多次以資因應。

金融控股公司係一種金融機構跨業經營平台之機制設計，設立用意乃欲利用其特性以收規模經濟之效；惟相對又須避免在規模發展巨大化下，一旦崩解而可能導致對整體金融、甚至全體經濟社會影響甚鉅之結果；此外亦可能發生利用此聚合力量造成不公平競爭及利害衝突，或濫用轉投資大開方便之門，而成為對整體金融市場造成不穩定因素之一；故目的上為防止金融機構對於非金融機構利用其經濟力介入經營內容，便有所謂「金融與商業分離原則」（亦有稱金融與產業分離或銀行與商業分離）(Separation of Finance and Commerce)之產生。在採用金融控股公司制度的世界各國中，該原則似已然成為對於金融機構經營非金融相關產業之共通立法例。

本文欲先自各國對於金融與商業分離原則之應用予以論述，進而針對我國法制與實務探討此原則在我國應用之情形，並針對修法前後差異予以分析比較，進而提出個人見解與建議。

全文共分成六章，主要重點為第四、五章內容，各章節摘要如下：

第一章：緒論。說明本文之研究動機、目的、範圍與限制。

第二章：金融與商業分離原則之理論與應用。概述該原則之定義，首節針對形成之歷史背景略述；次節則針對英國、日本、美國之應用予以說明。

第三章：跨業經營在我國金融控股公司法之規範內容與實務運作。本章分為二節。首先定性金融控股公司並對金融控股公司法就轉投資規定內容分析金融事業、非金融事業、創投事業等意涵，再就其轉投資之途徑，包括透過股份收購、資產收購、合併、營業讓與、分割等方式，加以探討。

第四章：金融與商業分離原則在我國金融控股公司法規定之應用與探討。以金融控股公司法條文規定之內容，得出原則之應用與例外。並就其他相關法規、行政解釋函令等加以論述。次就金融監理相關問題探討。末節則針對 2008 年 12

月修法之前後條文內容提出比較以及對於過往實務、學術上之批評探討是否有所回應，一併探究。

第五章：金融與商業分離原則實踐問題分析。本章擬先就金融業之現況概述；次而針對金融控股公司轉投資非金融事業事例中，最具體之富邦金控轉投資錢櫃KTV一案為研究對象，同時探討金融控股公司法相關之規定與金融監理機關—行政院金融監督管理委員會對本例之對應。

由於前章已先針對金控法修正詳論，故富邦一例對於金控法修正之影響，於此僅再略為補充；而係將重點擺在金控公司利用保險業子公司操作轉投資相關規範，以及本案例對此部分之影響為論述。

第六章：結論。就前述各章內容進行整理，並提出個人建議與看法。

關鍵字

金融控股公司、純粹控股公司、二級控股制、創業投資事業、非金融事業、金融控股公司轉投資、金融與商業分離原則。



ABSTRACT

The principle of separation between banking and commerce

- The study of related problems about the financial holding companies invest in the non-banking business

This research tried to expound the evolution of the principle of separation between banking and commerce in some countries, and how it be put into effect first. Then by the case of Fubon FHC invested Cashbox KTV, what's the influence for Taiwan's legal system and realities of financial services. Furthermore, this research also compared and analyzed Taiwan's Financial Holding Company Act before and after legal amendments. The whole research is comprised of six parts as follows:

First chapter: Introduction. To explain the research motive, goal, the scope and the limit of this article.

Second chapter: To elaborate the theory and the application about the principle of separation between banking and commerce. The first subject expounds the definition concise and to the point. Particularly explains in view of forms the historical background; second part aims at applications of England, Japan, and the United States.

Third chapter: To introduce the legal rules and practice operation in Taiwan. This chapter is divided into two sections. First section definite the financial holding company, then analyzes the meaning of financial in nature, non-financial activity, and venture capital fund. Second subpart explains several ways of reinvestment. Including stock acquisition, asset acquisition, a merger, or release of on-going business etc..

Fourth chapter: To explain the application about the principle of separation between banking and commerce. According to the clause of the financial holding law, try to get the range of the application. The second part expounds the related legislations and the comment for the clause by the administrative organ. Moreover, this section also discusses some questions about the financial supervision. The last part tries to make the comparison for Taiwan's Financial Holding Company Act before and after legal amendments, including the opinions and response by the science and practice.

Fifth chapter: To analyze the practice problems about the principle of separation between banking and commerce. This chapter present outlines the situation of the financial industry first. Then focus on the financial holding company to reinvests in the non-banking business object that Fubon financial holding company invested in

Cashbox KTV. At the same time aims at what the limits of laws and regulations, and financial supervisory authority- Financial Supervisory Commission, Executive Yuan, R.O.C. how to response it and improve such situation for the case.

According to the forth chapter has gone to the details about the amendments of Taiwan's Financial Holding Company Act, so how Fubon reinvestment case influences the amendments, this chapter will stress on how the Fubon FHC uses its insurance subsidiaries to do the reinvestment and other related issues.

Sixth chapter: Conclusion and Suggestions. To summarize the thoughts of each chapters, then try to give the viewpoints of this article.

Key Words

Financial Holding Company

Reinvestment

The Second System of Financial Holding Company

Venture Capital Fund

Non-banking Business

Separation of Banking and Commerce

