

In the case of transfer of postal savings fund to the Sunny Bank, investigations have been concluded and no substantive criminal facts are found:

In March 2008 it was reported by media that: after the prosecutorial authorities applied to the court take into custody Chen Shen-Hong, the president of Sunny Bank and his wife Shue Ling, the bank's director, on July 25, 2007, due to allegations of over-borrowing and effectively emptying Sunny Bank, then Deputy Premier Chiou I-Jen had immediately on July 26, 2007 called a meeting to instruct the Taiwan Post Co., Ltd. (now renamed Chunghwa Post Co., Ltd., hereinafter still referred to as "TPCL") to transfer NT\$10 billion of the postal savings fund to the Sunny Bank; initially the bank was required to repay the amount after one month, but Sunny Bank had failed to make the repayment in time; then Managing Deputy Director of the Ministry of Transportation and Communications Ho Yuan-Shuan, also acting president of TPCL at the time, had however repeatedly agreed to allow Sunny Bank's requests for extensions, so that \$6.5 billion of the deposits were still outstanding as at March 2008. The above violated provisions of the "Postal Fund Utilization, Management and Procedural Regulations" regarding the postal savings fund not being used for granting of loans, and may only be deposited with banks with normal credit ratings; the relevant parties were therefore suspected of illegalities. In addition to investigation of the above allegations by the Special Investigation Division of this Office based on news cuttings in case 97-Te-Ta-Zi No. 77, two other members of the public had also filed complaints with the Taipei District Prosecutors Office based on the same facts. The Taipei District Prosecutors Office had transferred these two cases to this Office, which thereafter merged as case 98-Te-Ta-Zi No. 10 for purposes of the investigation.

After interviewing witnesses and reviewing the relevant documents, results of the investigations are as follows:

1. To constitute the offense of racketeering under the Criminal Code and the offense of racketeering in respect of supervised or monitored matters under the Anti-Corruption Act, the doer of the act must be a public servant as defined by the Criminal Code, and must have directly or indirectly derived a benefit from matters supervised or monitored by him/herself for the illegitimate benefit of him/herself or other private persons, despite knowing that such act is contrary to law. In this case, the \$10 billion that was transferred to the Sunny Bank had been fully recovered by June 26, 2008, and the interest rates applicable to the first deposit and all subsequent renewed deposits of the transferred fund were never lower than the range of interest rates prevailing in the market at the time. The interest paid by the Sunny Bank can therefore be considered appropriate, and it is difficult to accuse any person of deriving any illegitimate benefits. Therefore the elements of racketeering have not been constituted.
2. To constitute the offense of breach of fiduciary duty under the Criminal Code, the doer of the act must have been handling matters for another person, and must have undertaken an act contrary to such duty for the illegitimate benefit of him/herself or a third party or in detriment to the interest of the principal, resulting in detriment to the property or other interests of the principal. It is found that:
  - (1) The process in handling the run on Sunny Bank was for the most part consistent with the regulations of the Financial Supervisory Commission regarding handling of other problematic banks. Therefore, one cannot find Chiou I-Jen or Ho Yuan-Shuan guilty of breach of fiduciary duties in any way regarding the decision to transfer the TPCL savings

fund to the Sunny Bank.

- (2) Transfer of the postal savings fund was not the same as a grant of loan by other general financial institutions. Although there was a run on Sunny Bank, it was nonetheless a bank with normal credit ratings and had not been blacklisted for receipt of transfers from the postal savings fund. Therefore the relevant regulations of TPCL had not been violated by Ho Yuan-Shuan's agreement or instruction to renewals of the deposit with Sunny Bank, and one cannot find his conduct to be in breach of his fiduciary duty.
- (3) While it was contrary to ordinary procedure for TPCL to directly transfer \$5 billion to Sunny Bank prior to convention of the coordination meeting, based merely on oral instructions of senior members of the Executive Yuan and the Financial Supervisory Commission, nonetheless said instructions had been issued by the Executive Yuan and the Financial Supervisory Commission; given that the Central Deposit Insurance Corporation, Bank of Taiwan, Land Bank and TPCL are all public enterprises 100% controlled by the Government, it was unlikely that there would be a conflicting resolution by the subsequent coordination meeting. It was also unlikely that Chiou I-Ren and Ho Yuan-Shuan could have subjectively foreseen that making the transfer early would have any detrimental effect on TPCL. Therefore one cannot accuse them of having any intention to breach their fiduciary duties at the time.
- (4) The Sunny Bank was not a poorly operated financial institution. When the run on the bank occurred in July 2007, according to evaluations of the Financial Supervisory Commission the bank had positive net value, and its various financial and business indicators were still normal; the Commission had therefore decided to assist the bank by coordinating other banks to provide liquidity. As managing deputy director of the Ministry of Transportation and Communications as well as president of TPCL, Ho Yuan-Shuan had taken into account the facts that it was normal for ordinary financial institutions to require some period of time after a run to return to their usual fund level, that it was necessary for banking order as a whole to stabilize, and considering utilization of and returns on the TPCL savings fund; he had therefore decided not to recover the transferred deposits as soon as possible, but had instead adopted the less stringent measure of agreeing to renewing the deposit and recovering it in installments. While there may have been some error in terms of risk management, nonetheless he had not taken these steps and stubbornly ignoring the risks while knowing that the Sunny Bank had low net value and poor financial and operating circumstances. He may be responsible for certain administrative liabilities, but one cannot find him guilty of breach of fiduciary duty.
- (5) Upon reviewing the investigative reports prepared by the Financial Supervisory Commission in respect of the Sunny Bank from 2004 until May 2008, there was no major irregular event recorded against the Sunny Bank, and there direct connection was found between the instant transfer case and any irregularities in extension of credit and lending procedures.

Based on the above explanations, in this case the former Deputy Premier Chiou I-Jen and former managing deputy director of the Ministry of Transportation and Communications and president of TPCL Ho Yuan-Shuan have not been found to be involved in any substantive facts of criminal offenses, and the investigations were concluded by approval of the Prosecutor General on May 5, 2010, as detailed in the attached "Supreme Prosecutors Office Reasons for Concluding Case 97-Te-Ta-Zi No. 77

and Case 98-Te-Ta-Zi No. 10”.

As for the case of alleged emptying of the Sunny Bank, Chen Shen-Hong and Shue Ling were indicted by the Shihlin District Prosecutors Office for various offenses including violation of the Banking Act, but subsequently found not guilty by the court. The prosecutor in charge has appealed against the judgment, and the case is currently being heard by the Taiwan High Court.

**The Supreme Prosecutors Office**