

□ Six Financial Institutes Violate Article 24 of the Fair Trade Law by Adding an Acceleration Clause in the Loan Contracts or Requiring that Borrowers abide unspecific catch-all clauses 【December 14, 2006】

During its 788th Commissioners' Meeting on December 14, 2006, the FTC determined that 6 financial institutes, Singfor Life Insurance Company (hereinafter called "Singfor Life"), China Life Insurance Company (hereinafter called "China Life"), Sinon Life Insurance (hereinafter called "Sinon Life"), Metropolitan Life Insurance Company (hereinafter called "MetLife"), Cathay United Bank, and Hsinchu International Bank (hereinafter called "HiBank"), violated Article 24 of the Fair Trade Law by adding an acceleration clause in the loan contracts or requesting that borrowers follow unspecific catch-all clauses. In addition to ordering the above-mentioned 6 businesses to immediately cease the aforesaid unlawful acts, the FTC also imposed administrative fines of NT\$1,300,000 on Singfor Life, \$1,000,000 on China Life, NT\$1,300,000 on Sinon Life, NT\$1,000,000 on MetLife, NT\$1,500,000 on Cathay United Bank and NT\$1,100,000 on HiBank, which came to a total amount of NT\$7,200,000 in fines.

Compared to a financial institute, an individual borrower obviously has a disadvantageous position in terms of having the ability to negotiate. In addition, the loss of benefits in terms of time has a respectable impact on the borrower's rights and interests. If any financial institute improperly adds an acceleration clause or requests that a borrower follow unspecific catch-all clauses, this should put many borrowers at a great disadvantage. In light of this major issue, the FTC initiated a case, *ex officio*, to investigate the applicability of the content of loan contracts provided by the banking and insurance industries. Upon the FTC's promulgation of the "Fair Trade Commission Policy Statements on the Business Practices of Financial Industry" on November 6, 2002, it was stipulated that in circumstances where it may become necessary for a financial enterprises to take protective measures such as accelerating the maturity of a debt in the event of a deficiency in the borrower's credit, it is advisable to reach an agreement with the borrower in advance defining what constitutes a deficiency in credit: e.g.

1. failure to repay the principal of any single debt as stipulated ;.....
6. failure to repay the interest on any single debt as stipulated ;
7. where security is attached or security is destroyed or lost, declines in value, or is insufficient to secure the creditor's rights ;
8. where the actual use to which the party puts the borrowed funds is different from the purpose approved by the financial enterprise ;
9. where there is a likelihood the financial enterprise will not be repaid because of a disposition for compulsory execution, injunction, or other precautionary measures.

For an acceleration clause based on reasons in points 6 to point 9, the party should be given a reasonable period of advance notification or prompting. Apart from the above nine kinds of grounds that may trigger an acceleration clause as set out above, an enterprise may negotiate and stipulate other grounds on a case-by-case basis if it is really necessary for the protection of the creditor's rights. It is advisable to specify such grounds in the contract in a prominent manner such as in bold font or in differently colored font, and to expressly state the effect of accelerating the term to maturity (with notice or without notice). A financial enterprise that fails to disclose information under this paragraph sufficient to affect trading order, is likely to be in violation of Article 24 of the Fair Trade Law.

Upon examination of the various loan contracts provided by the aforesaid businesses, the types of violations found were as follows:

1. Article 5, Page 7 of Singfor Life's Housing Loan Contract; Article 2 of China Life's Housing Mortgage Loan Contract; Article 12 of Sinon Life's Credit Facility Agreement;

Article 10 of MetLife's Loan Contract; Article 6 of Cathay United Bank's Diamond Card Contract; Article 11 of HiBank's Credit Facility Agreement and Article 4 of Hibank's Loan Agreement Provisions. These provisions changed the advance notice/notification from required to not required prior to the exercise of the acceleration clause which deprived the borrowers from remedying the situation before the maturity of the loan and gave rise to an obvious imbalance between both parties to the contract. Such provisions obviously formed an unfair act sufficient to affect trading order and violated Article 24 of the Fair Trade Law.

2. Article 9 of Sinon Life's Credit Facility Agreement, Cathay United Bank's Loan Contract and Article 4, Chapter 3 of its Auto Loan Contract. These provisions employed a catch-all clause to describe the reasons giving rise to a deficiency in credit under the acceleration clause. In light of the financial business's advantageous position in terms of market information compared with the borrower, although there may have been an additional agreement or advance notice had been provided, the financial business could still have involved its trading counterparts in an uncertain situation regarding their obligations by unilaterally interpreting or applying the catch-all clause in question. By taking into account the imbalance of rights and interests between the two parties to the contract, the above-mentioned provisions were determined to be a violation of Article 24 of the Fair Trade Law.
3. Article 12, Page 8 of Singfor Life's Housing Loan Contract read, "Applicability of other laws and regulations: Unless otherwise provided herein, the borrower hereby agrees to follow relevant laws and regulations and all rules stipulated by Singfor Life, the Life Insurance Association and the Bankers' Association to deal with his/her debt. The borrower further agrees that the above-referenced rules are a part of this Contract." An unspecific catch-all clause could have many explanations, which could make the trading counterpart bear uncertain liabilities. By taking into account the principle of good faith and honesty, this act by the financial business of unilaterally restraining the contract contents was obviously unfair and violated Article 24 of the Fair Trade Law.

After taking into account the motive, objective, expected improper benefits, degree of damage to trading order, duration of the actions, benefits obtained, scale of business, business operations, market position, whether the competent authority had previously corrected or warned against such action, the type, number and interval of previous violations and punishment, remorse shown after the violation, cooperation during the investigation and other factors, the FTC imposed the above-mentioned punishment in accordance with the forepart of Article 41 of the Fair Trade Law.