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**FAQ: Registration by Foreign Issuers on Taiwan's Emerging Stock Board (ESB) under the Emerging Stock Market (ESM)**

[**Table**](http://tw.dictionary.yahoo.com/search?ei=UTF-8&p=%E7%9B%AE%E9%8C%84)[**of**](http://tw.dictionary.yahoo.com/search?ei=UTF-8&p=%E7%9B%AE%E9%8C%84)[**Contents**](http://tw.dictionary.yahoo.com/search?ei=UTF-8&p=%E7%9B%AE%E9%8C%84)

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1. **Issuers**

**Q1. Why allow foreign issuers to register on Taiwan's Emerging Stock Board?**

A1. The bylaws of the Taipei Exchange (TPEx) formerly provided that only domestically registered public companies could apply for registration on the Emerging Stock Board. Foreign companies could apply for either a secondary TPEx listing of shares or an TPEx listing of Taiwan depositary receipts provided they were already listed on a TPEx-recognized foreign securities market, but they were not allowed to apply for Emerging Stock Board registration or a primary TPEx listing. More recently, however, in order to coordinate with the "1-2-3 Project for TPEx Listings in Taiwan by Overseas Firms" adopted by the Executive Yuan on 5 March 2008, the TPEx has begun taking active steps to encourage foreign companies to apply in Taiwan for Emerging Stock Board and primary TPEx listings of original shares. The objective is to expand the size of TPEx markets. Toward that end, the TPEx has been working on amendments to relevant rules and bylaws to allow foreign firms to register on the Emerging Stock Board and provide investors with more avenues to trade in the stocks of foreign enterprises.

**Q2. Does a foreign issuer need to first register its stocks on the Emerging Stock Board before applying for primary listing on TPEx?**

A2. Under the Article 4 of the Rules Governing the Review of Foreign Securities for Trading on the TPEx ,foreign issuers have the option of either having filed listing advisory guidance with the TPEx for at least six months or having registered for trading of its stock on the Emerging Stock Board (ESB) under the Emerging Stock Market (ESM) structure for at least six months (provided that for a foreign issuer having switched its registration from the Pioneer Stock Board (PSB) to the ESB, the combined period of its ESB and PSB registration shall be not less than 6 months and the period of its ESB registration shall be not less than 2 months) before applying for primary listing on TPEx. The time for a foreign issuer to carry out public issuance of stocks differs somewhat under those two options. A foreign issuer may plan for either option in consideration of costs, length of preparation period and other factors.

**Q3. What eligibility requirements apply to foreign enterprises intending to apply for registration on Taiwan's Emerging Stock Board?**

A3. The eligibility requirements for foreign enterprises intending to apply for registration on Taiwan's Emerging Stock Board are in principle the same as those governing domestic enterprises. In addition, there are several requirements that apply only to foreign enterprises, as follows:

1. A foreign enterprise may register on the Emerging Stock Board as an investment holding company. An "investment holding company" is an issuer with professional investing expertise that directly, or indirectly through a subsidiary or subsidiaries, owns more than 50 percent of the issued voting shares or capital contributions of a holding company subsidiary, with the purpose of controlling the operations of the holding company subsidiary.

2. To comply with current cross-strait policy, a foreign enterprise is not allowed to apply to register on the Emerging Stock Board unless it is in compliance with the applicable provisions of the Act Governing Relations Between the Peoples of the Taiwan Area and the Mainland Area. “Not violating any applicable provisions of the Act of Governing Relations Between the Peoples of the Taiwan Area and the Mainland Area” means not having any of the following situations:

(1) The company is incorporated and registered under the laws of the Mainland Area; the Mainland Area does not include Hong Kong or Macao; and

(2) A citizen, juristic person, organization or other institution in the Mainland Area singly or jointly holds directly or indirectly more than 30% of the company’s equity interest or is a controlling shareholder of the company. If necessary, a company that does not meet the aforementioned criteria may apply for approval under a special case status. However, it is also required at the same time that Taiwanese owned enterprises hold a larger stake in the foreign issuer than Chinese owned enterprises and have effective control over the foreign issuer.

3. The applicant must carry out public issuance of stock in accordance with the *Regulations Governing the Offering and Issuance of Securities by Foreign Issuers.*

4. The applicant's shares must not be listed on another securities market, and did not apply for primary TPEx or TWSE listing.

5. To safeguard investor interests and facilitate supervision by the TPEx after a foreign issuer has registered on the Emerging Stock Board, the foreign issuer is required to retain a professional shareholder services agent in Taiwan, and appoint a litigious and non-litigious agent in Taiwan under the ROC Securities and Exchange Act and designate the agent as its responsible person in Taiwan to handle matters related to shareholder services and legal compliance. Because the litigious and non-litigious agent is required to have a domicile or residence in Taiwan, the agent must be a natural person. However there are no specific requirements for the agent’s educational background, work experience or professional qualification. Nor is there a requirement of “appointment of an attorney at law” as the litigious agent or non-litigious agent as provided in the Code of Civil Procedure and the Act Governing Non-litigious Matters. Still a foreign issuer should give careful consideration to whether its litigious and non-litigious agent has the competence to perform the aforementioned duties. A foreign issuer that applies for registration on Emerging Stock Board should set out the legal status of its litigious and non-litigious agent under the ROC Securities and Exchange Act in its articles of incorporation and authorization documents.

6. In order to safeguard the interests of domestic investors, a foreign enterprise is required to pledge as follows:

(1) It must pledge to abide by the ROC Securities and Exchange Act and related regulations, directives, and policies. If the foreign enterprise is an investment holding company, its subsidiaries must also make the same pledge.

(2) It must pledge to cooperate with on-site audits by the TPEx as necessary, and if requested by the TPEx, it will retain a designated CPA or professional organization to carry out a targeted examination focusing on matters designated by the TPEx, and must further pledge to furnish examination results to the TPEx and bear all related costs.

(3) It must pledge that the shares it is applying to register on the Emerging Stock Board will be delivered by the book-entry transfer method.

(4) For Important matters in connection with protection of shareholder equity, if such matters conflict with mandatory provisions of laws or regulations in the issuer's country of registration, the issuer shall enhance the disclosure of any material discrepancies in its public prospectus. If such matters are not in conflict with mandatory provisions of law of the issuer's country of registration, they shall be specified in the company's articles of incorporation or organizational documents. If specified in the organizational documents, the articles of incorporation shall state that such matters will be separately dealt with in the organizational documents, and the procedures for adoption and amendment of the organizational documents shall be the same as for the articles of incorporation.

(5) If, with respect to important matters connected with the protection of shareholder equity, the laws of the country where the issuer is registered contain provisions regarding exclusive jurisdiction of courts that exclude the jurisdiction of ROC courts, and further, if the jurisdiction of ROC courts is not specified within the issuer's articles of incorporation, the issuer shall take out directors liability insurance and maintain it throughout the period of Emerging Stock Board registration period.

7.A foreign issuer must issue its stocks, private stocks and bonds in dematerialized form, unless it is otherwise provided by the laws and regulations of the issuer’s country of registration.

8.The agreement for TPEx trading of emerging stock signed by a foreign issuer shall be governed by the law of the Republic of China. For any dispute arising out of or in connection with the agreement, the Taiwan Taipei District Court shall be the court of first instance.

9.Share related affairs shall be handled in accordance with the ROC Regulations Governing the Administration of Shareholder Services of Public Companies, unless it is otherwise provided by the laws and regulations of the issuer’s country of registration (see Article 49-2 of the aforementioned Regulations).

10.Apply mutatis mutandis to Article 14- 2 of Securities and Exchange Act and its relevant regulation of establishment of independent directors, and must have at least 1 independent director domiciled in Taiwan.

11.Apply mutatis mutandis to Article 14- 6 of Securities and Exchange Act and its relevant regulation of establishment of remuneration committee.

12.If provisions of the ROC Securities and Exchange Act that are applicable mutatis mutandis are in conflict with mandatory provisions of law of the issuer's country of registration, the mutatis mutandis application of those provisions may be excluded only if they fall within the scope of specific provisions of the Securities and Exchange Act for which the competent authority has publicly announced an exemption from application.

13.If with respect to important matters connected with the protection of shareholder equity, the laws of the country where the issuer is registered contain provisions regarding exclusive jurisdiction of courts that exclude the jurisdiction of ROC courts, and further, if the jurisdiction of ROC courts is not specified within the issuer's articles of incorporation, it must have at least two directors (which may include independent directors) domiciled in Taiwan.

**Q4. Can an enterprise with main operations in Taiwan adjust its organizational structure and register on Taiwan’s Emerging Stock Board as an overseas holding company?**

**A4.** The established policy of the TPEx is to promote the TPEx listing of well-run foreign enterprises, not to encourage domestic enterprises to repackage themselves through equity restructuring and list in Taiwan as a foreign enterprise. It is not the intent of the government to implement the opening policy so that a domestic enterprise could adjust its organizational structure and apply for ESB registration as an overseas holding company, for it is tantamount to bypassing the established emerging stock registration requirements for domestic enterprises.

**Q5. How do foreign enterprises registered on Taiwan's Emerging Stock Board hold shareholders meetings?**

**A5.** A foreign enterprise registered on Taiwan's Emerging Stock Board must hold shareholders meetings in Taiwan, provided that doing so does not violate the laws and regulations of the jurisdiction where it is registered. If laws or regulations in the jurisdiction where it is registered prohibit the holding of shareholders meetings in a foreign country ( area ), the foreign enterprise must have a system that allows for voting by proxy or via Internet or telephone. The system must set out specific procedures, the voting restrictions of the jurisdiction where the enterprise is registered, protections for the interests of ROC shareholders, and other important matters.

Foreign issuer’s regular shareholders' meeting shall be held within six months after its accounting year ends. Before the regular shareholders' meeting, shareholders should be notified 30 days before, but if foreign issuer’s notification cannot reach its shareholders due to registered country’s law, shareholders should be notified at least 21 days before the regular shareholders' meeting.

**Q6. What should a foreign issuer disclose in its prospectus with regard to “methods for exercising shareholder rights”?**

**A6.** A foreign issuer should describe in the prospectus whether it has adopted specific measures for safeguarding the exercise of shareholder rights in its articles of incorporation or organizational document. Foreign issuers that have not adopted important measures for protecting shareholder rights according to the Checklist for Shareholder Rights Protection Measures Adopted by A Foreign Issuer at the Place of Registration prepared by the TPEx, the foreign issuer should state reasons and describe relevant rules in the country ( area ) of registration and any impact on the rights of ROC shareholders.

**Q7. What are the things to pay attention to when a foreign issuer prepares its articles of incorporation, organizational documents or other relevant information for listing application?**

**A7.**When a foreign issuer prepares its articles of incorporation, organizational documents or other relevant information to apply for primary listing on TPEx, it should pay attention to the following:

1. If the foreign issuer, by the laws and regulations of the country of registration, did not stipulate in its articles of incorporation certain provisions in the “Table of Shareholder Rights Protection in the Countries of Registration of Foreign Issuers”:

(1) With respect to the provision prohibiting the issue of new shares to original shareholders via capitalization of legal reserves or income derived from issuance of new shares at a premium or from endowments by a resolution adopted by an extemporary motion in a shareholders’ meeting, a foreign issuer should consult the ROC Company Act to stipulate the legal reserves provision in its articles of incorporation under the condition that such stipulation does not violate the laws and regulations of issuer’s country of registration. As to the content of such stipulation, the definition and the use of legal reserves should be specified.

(2) With respect to the right to propose an extemporary motion in a shareholders’meeting, such right should be granted to shareholders in the articles of incorporation with the restriction that an extemporary motion may be proposed only when it is directly related to the purpose of the shareholders’ meeting.

(3) Provided that the laws and regulations of the issuer’s country of registration are not violated, a foreign issuer should stipulate in its articles of incorporation the right of a minority shareholder to convene a special shareholders' meeting. However, the stipulation that the competent authority may convene a special shareholders’ meeting can be excluded.

(4) A foreign issuer should stipulate in its articles of incorporation that voting by a written statement or via electronic means can be deemed as voting at a meeting in person.

(5) A foreign issuer may include a general clause in its articles of incorporation that the ROC Rules Governing the Use of Proxies for Attendance of Shareholders' Meetings of Public Companies are applicable.

(6) With respect to the quorum and required votes for a motion involving the material interests of shareholders, a foreign issuer may stipulate in its articles of incorporation that such material motion may be adopted “in a shareholders meeting attended by shareholders representing a majority of all issue and outstanding shares and at which meeting at least two thirds of the votes held by shareholders present are cast in favor of such resolution”, so as to comply with the laws of the issuer’s country and the ROC Company Act with regard to the voting requirement for a public company.

2. With regard to should the procedure for convening a board meeting or shareholders’meeting as well as the methods for adopting resolutions be stipulated in exact accordance with the ROC Company Act, provided that the laws and regulations of the issuer’s country of registration are not violated, the procedure for convening a board meeting or shareholders' meeting as well as the methods for adopting resolutions should be stipulated in accordance with the Company Act of the ROC, where a written resolution is not permitted in order to protect the rights of investors.

3. If a foreign issuer plans to set up an audit committee, provided that the laws and regulations of the issuer’s country of registration are not violated, the issuer should include the ROC rules and regulations governing audit committee in its articles of incorporation as basis for compliance.

4. With regard to whether a foreign issuer should be required to set aside legal reserves, in consideration that the distribution of cash dividends or stock dividends should be handled in accordance with the laws and regulations of the issuer’s country of registration and is regarded as an internal corporate matter, a foreign issuer is not required to set aside legal reserves in accordance with the ROC Company Act. However, a foreign issuer should disclose fully its dividend policy in its articles of incorporation and prospectus.

5. Under the ROC Company Act, a foreign issuer's articles of incorporation must not designate employee profit sharing and profit-sharing compensation for directors and supervisors as earnings distribution items.

6. The system for assessing protections of shareholder rights and interests is based on a foreign issuer's country of registration at the time of application to register its stock on the Emerging Stock Board. Therefore, in order to prevent a change of country of registration, which could have an unforeseeable effect on shareholder rights and interests, and insofar as there is no violation of any mandatory or prohibitory provisions of laws or regulations of the country of registration, if the country of registration of the foreign issuer applying to register stock on the Emerging Stock Board allows a change of country of registration with the precondition that this must be provided for in the company's articles of incorporation, then the company's articles of incorporation should not contain any provisions related to a change of country of registration.

**Q8. When the capital surplus generated during share swap in the restructuring of investment framework comes from the undistributed earnings of the controlled company prior to share swap, could the capital surplus be included in earnings distribution?**

**A8.** With regard to the question of whether capital surplus of a foreign issuer generated during share swap in the restructuring of investment framework could be distributed as cash dividends or capitalized in the year of swap if it comes from the undistributed earnings of the controlled company prior to share swap, it is an internal corporate matter and should be handled in accordance with the laws and regulations of the issuer’s country of registration and its own articles of incorporation.

**Q9. What are the application and review procedures for a foreign enterprise seeking to register on Taiwan's Emerging Stock Board?**

**A9.**

 1. According to the provisions of the Regulations Governing the Offering and Issuance of Securities by Foreign Issuers, when a foreign issuer intends to register its stock on the Emerging Stock Board in Taiwan, its application for Emerging Stock registration must be submitted together with a filing for registration of retroactive public issuance of its stock. Three weeks prior to its formal submission, the foreign issuer may first provide the application documents to the TPEx, which may conduct a pre-inspection of the application (and registration) documents to see whether they meet requirements (e.g. Do the submitted financial reports meet the requirements of the Regulations Governing Information to be Published in Public Offering and Issuance Prospectuses? Does its Checklist for Shareholder Rights Protection Measures fail to comply with important provisions in Taiwan's Company Act or Securities and Exchange Act governing the protection of shareholder rights, such that the issuer's articles of incorporation need to be amended?), so that the foreign issuer can take responsive actions as soon as possible to avoid delays in the timeframe for completing Emerging Stock registration.

 2. After a foreign issuer's retroactive handling of public issuance procedures is effectively registered, the registration of its stock on the Emerging Stock Board will be publicly announced and related matters handled within 3 business days from the day on which the issuer has completely furnished all the required Emerging Stock application documents.

**Q10. What are the rules for a foreign issuer’s employee stock option plan?**

**A10.** Under the premise that the laws and regulations of the country ( area ) of registration are not violated, a foreign issuer’s employee stock option plan should comply with ROC regulations governing employee stock options issued by domestic public companies, that is, the aggregate volume of shares a company may grant to its employees under the employee stock option plan should not exceed 15% of the total shares issued by the company.

If a foreign issuer issues restricted stocks (stocks awarded to employees based on their years of service or performance) or other stock-based employee compensations with potential equity dilution effect, such stocks should be included in calculating the maximum number of shares issued for employee stock options. The operational procedures and methods for the conversion, sales and information disclosure regarding issued but unexercised employee stock options of a foreign issuer that has been approved by the TPEx for ESB registration are subject to applicable rules governing the issue of employee stock options by a domestic emerging stock company.

**Q11. Are there rules for the name and abbreviation of the name of a foreign issuer?**

**A11.** The TPEx does not require a foreign issuer applying for ESB registration to have a Chinese company name, but the issuer should have at least an English company name. The principle of ticker symbol assignment for stock of foreign emerging stock companies is the same as that for domestic emerging stock companies. But to help investors distinguish foreign emerging stock companies that issue non-par stocks or stocks with par value other than NT$10, the ticker symbols of their stocks will be marked with an asterisk (\*). If a foreign emerging stock company has issued stock without par value or with par value other than NT$10, its name shall be abbreviated as follows: "abbreviated company name\*-code of country of incorporation". If its stock has a par value of NT$10, the asterisk will not be added. For example, in the case of a foreign enterprise registered in the Cayman Islands, if its stock has no par value or a par value other than NT$10, its name will be abbreviated as "abbreviated company name\*-KY". If its stock has a par value of NT$10, it will be abbreviated as "abbreviated company name-KY".

**Q12. Is a foreign issuer required to establish relevant operations according to the ROC Regulations Governing Establishment of Internal Control Systems by Public Companies?**

**A12.** A foreign issuer shall establish its internal control system under the Regulations Governing the Establishment of Internal Control Systems by Public Companies. When a CPA audits the financial statements of a foreign issuer, the CPA should conduct internal control compliance test and assess the issuer’s control risks so as to determine the scope (depth and breadth) of audit. When a CPA discovers deficiency in a foreign issuer’s internal control system during the audit of its financial statements, the CPA should, the same as the prevailing practice, make internal control recommendations to the foreign issuer. A foreign issuer is also required to state under special disclosures in its prospectus the internal control recommendations made by its CPA in the past three fiscal years and improvement actions taken.

**Q13. If a foreign issuer applicant is an investment holding company, must the applicant have the positions of president (general manager) and department heads set up?**

**A13.** A foreign issuer that applies for ESB registration should have the positions of chairman and president. But whether an investment holding company that is a professional investment company and has subsidiaries as operational entities should have department heads depends on whether the applicant’s operations have such needs. Still the TPEx suggests that an investment holding company should have an internal audit unit set up to perform internal control and internal audit of the company and its subsidiaries.

**Q14. If a foreign issuer applicant is an investment holding company, what are the requirements for disclosure of information on its management, top ten suppliers and customers, production and sales in its prospectus?**

**A14.**For a foreign issuer that applies for ESB registration as an investment holding company, it is suggested that the applicant discloses at least the management, production and sales of its primary subsidiary that does not specialize in investment. If the primary subsidiary is also a professional investment company, the applicant should disclose in addition the relevant information of the next-level subsidiary that has actual business operations. If the primary subsidiary has other entities operating under it, the TPEx will decide on a case-by-case basis if the relevant information of such entities should be disclosed. With regard to information on the top ten suppliers and customers, the applicant can disclose and analyze the information in consolidated financial reports.

**Q15. What legal requirements govern Emerging Stock registration of any new shares that may be issued by a foreign emerging stock company for a capital increase?**

**A15.** Registration for Emerging Stock Board trading of new shares issued by a foreign emerging stock company is subject to the following provisions:

1. When a foreign emerging stock company files for issue of new shares for the purpose of cash capital increase within the ROC:

(1) If the company has allocated a specific ratio of the shares for public sale to outside parties, with the exception of a public sale conducted for an initial TPEx or TWSE listing, then the company must apply to the TPEx for issuance of an opinion letter by submitting an Application for Opinion on TPEx Trading of New Shares of Emerging Stock Issued for Capital Increase and relevant documents.

(2) If the company has not allocated a specific ratio of the shares for public sale to outside parties, after obtaining effective registration from the competent authority, the company's shares may begin trading on the TPEx from the day of their delivery to the shareholders.

The foreign issuer must, by 5 business days before the new shares start trading on the TPEx, report the matter and upload related documentation to the TPEx-designated information reporting website and pay the TPEx trading fees.

2. If the foreign issuer subsequently issues new common shares as bonus shares then it must, by 5 business days before the new shares begin trading on the TPEx, report the matter and upload related documentation to the TPEx-designated information reporting website and pay the TPEx trading fees. The new shares may begin trading on the TPEx from the day of their delivery to the shareholders.

**Q16. What legal provisions govern applications by foreign emerging stock companies for TPEx trading of new shares issued after a capital decrease?**

**A16.** By 5 business days before the day on which new shares issued due to a capital decrease are to begin trading on the TPEx, the foreign emerging stock company must report the matter and upload related documentation to the TPEx-designated information reporting website; the company's shares may begin trading on the TPEx from the day of their delivery to shareholders.

**Q17. What legal provisions govern information filing and disclosure by foreign emerging stock companies?**

**A17.** Provisions governing information filing and disclosure by foreign emerging stock companies are set out in Article 33 of the TPEx Rules Governing the Review of Emerging Stocks for Trading on the TPEx. Requirements for foreign emerging stock companies are in principle identical to those governing domestic firms, except for the following principal differences:

1. Deadlines for filing are based on Taiwan time.

2. The Chinese version of all filings will prevail, but an English version may also be provided.

3. A foreign enterprise may have disclosures filed by its agent for litigious and non-litigious matters.

4. If filing is not required under the laws and regulations of the issuer's country of registration, or if there is some other reasonable cause and the issuer has obtained consent from TPEx, it may be exempted from the requirement of Article 33, paragraph 1, subparagraph 4 to disclose its business turnover.

5. If the issuer, due to the laws and regulations of its country of registration, is unable to deliver meeting notices for a regular shareholders' meeting at least 30 days before the meeting is to be convened, then by at least the latest possible date for delivery of meeting notices as required by the TPEx (21 days before the regular shareholders' meeting), the company must file the electronic versions of the meeting notice, proxy form, explanatory materials relating to all agenda items including motions requiring ratification, matters for deliberation, and motions for the election or dismissal of directors or supervisors, and must file electronic versions of the shareholders meeting agenda handbook and supplemental materials on the same day that it sends out the shareholders meeting notices.

**Q1****8. What legal provisions govern the filing and disclosure of material information by foreign emerging stock companies?**

**A18.** Provisions governing the filing and disclosure of material information by foreign emerging stock companies are set out in Article 34 of the TPEx Rules Governing the Review of Emerging Stocks for Trading on the TPEx. Requirements for foreign emerging stock companies are in principle identical to those governing domestic emerging stock companies, except for the following principal differences:

 1. New provisions have been added to require that a foreign issuer must report material information when it switches its agent for litigious or non-litigious matters, or when its financial report has not been prepared in accordance with Taiwan's Regulations Governing the Preparation of Financial Reports by Securities Issuers and the cumulative difference in the reported figures for income before tax is NT$10 million or more, or when it does not have an independent director who is domiciled in Taiwan.

 2. Foreign enterprises need not publicly announce financial forecasts or statements on internal control.

 3. The aforementioned material information must be reported in Chinese. An English version may also be provided, but the Chinese version will prevail.

 4. A foreign issuer is exempted from the requirement to disclose its acquisition or disposal of privately placed securities.

**Q19. What legal provisions govern the holding of press conferences by foreign emerging stock companies to explain material information?**

**A19.** Provisions governing the holding of press conferences by foreign emerging stock companies to explain material information are set out in Article 35 of the TPEx Rules Governing the Review of Emerging Stocks for Trading on the TPEx and foreign emerging stock companies are allowed to hold such an event by video conference except under conditions set forth in Article 35, paragraph 1, subparagraphs 1, 2, 6, 7, 11, and 14, and/or under certain circumtances as deemed by the TPEx to be unfeasible. A foreign emerging stock company may also designate its litigious and non-litigious agent or independent director in addition to its spokesperson or deputy spokesperson to call a press conference according to law. In addition, under a newly added provision, if a foreign firm is required to disclose material information in accordance with the aforementioned Article 35 and the deadline as set out in the laws or regulations of the foreign jurisdiction are different, the foreign firm may observe the deadline of the foreign jurisdiction. However, it must first release the material information overseas, and if the press conference is held on a day that is not a business day in Taiwan, or after 9:00 p.m. Taiwan time, then it must release the information in Taiwan within two hour before the beginning of trading on the next business day.

**Q20.** **What are the circumstances of foreign emerging stock companies that should apply to the TPEx for a halt and resumption of TPEx trading of its stock?**

**A20.** The regulations regarding the halt and resumption of trading of foreign emerging stock companies are set out in Chapter Ⅱ section 5(article 37-1 to 37-4) of the TPEx Rules Governing the Review of Emerging Stocks for Trading on the TPEx. Requirements for foreign emerging stock companies are in principle identical to those governing domestic emerging stock companies. In addition, the foreign company should formulate application procedures for halting and resuming its stock trading operations before applying for registration on Taiwan's Emerging Stock Board, and it has been approved by its board of directors. For information regarding application procedures for halting and resuming its stock trading operations, please refer to the following website:

 https://dsp.tpex.org.tw/web/listing/apply\_document.php

**Q21. Under what circumstances will the TPEx suspend TPEx trading in the shares of a foreign emerging stock company?**

**A21.** Provisions governing suspension of trading in the shares of emerging stock companies are set out in Article 38 of the TPEx Rules Governing the Review of Emerging Stocks for Trading on the TPEx. In addition to the provisions governing all emerging stock companies, the following provisions apply only to foreign emerging stock companies:

 1. It no longer has an agent for litigious affairs and non-litigious affairs with a domicile or residence in Taiwan.

 2. The financial reports that it has publicly announced and filed do not comply with the provisions of Article 31, paragraph 3 of the Taipei Exchange Rules Governing the Review of Emerging Stocks for Trading on the TPEx.

**Q22. Under what circumstances will the TPEx terminate TPEx trading in the shares of a foreign emerging stock company?**

**A22.** Provisions governing termination of trading of the stock of emerging stock companies are set out in Article 40 of the TPEx Rules Governing the Review of Emerging Stocks for Trading on the TPEx. Requirements for foreign emerging stock companies are in principle identical to those governing domestic firms.

**Q23.** **Are there other important matters foreign issuers must be alerted of in order to make early preparations and plans?**

**A23**. Foreign issuers need a comparatively longer time to prepare for the following. Plan accordingly and make necessary adjustments as soon as possible:

**1. Source a suitable candidate to assume the responsibilities of litigious and non-litigious representative**

According to regulations, foreign issuers must designate at least one litigious and one non-litigious representative with residence or domicile in Taiwan. Since the legal status of the litigious and non-litigious representative is considered to be the responsible person under the Securities Exchange Act within the R.O.C., they should not violate the negative qualification conditions as listed in Article 30 of the Company Act. Additionally, the foreign issuer must find a suitable candidate that understands the financial affairs and operations of the company, and has at least 5 years of business, legal, financial, or corporate work experience, in order to facilitate effective delivery of related documents and notification of coordinated transaction matters between the securities exchange and foreign issuers, adherence to the Securities Exchange Act of the R.O.C., matters pertaining to the TPEx' regulations and announcement, the Contract for TPEx Trading of Emerging Stock, and other matters. Additionally, In order to ensure the litigious and non-litigious representatives are not over-burdened by these responsibilities, the number of concurrent posts as litigious and non-litigious representative at other publicly listed or emerging companies should not exceed three.

**2. Source a suitable candidate to assume the responsibilities of spokesperson and deputy spokesperson**

In order to increase the validity and timeliness of publicly-disclosed information, and to establish clear communication channels between foreign issuers and investors, care should be taken to find and designate an appropriate candidate who has a comprehensive understanding of the company's finances and operations to serve as spokesperson. It is also recommended that the spokesperson and deputy spokesperson be well-versed in Chinese.

**3. Apply for enrollment in the electronic document exchange system (recommended)**

In order to establish smooth communication channels with foreign issuers, and for the effective and timely transmission of official documents, it is recommended that foreign issuers enroll in the financial market electronic document exchange system. It should be considered that to date, foreign issuers are required to have an office in Taiwan in order to apply for electronic credentials. Therefore, proper planning should be implemented as soon as possible.

For information regarding the application of electronic credentials, and opening of the financial market electronic document exchange system, consult the following websites:

MOEACA website: [https://moeaca.nat.gov.tw](http://moeaca.nat.gov.tw/opencardlist.html)

Organization and Group Authentication IC Card (XCA) website: [https://xca.nat.gov.tw/](http://xca.nat.gov.tw/)

Financial market electronic document exchange system website: <https://odxc.twse.com.tw/>

**4. Make appropriate manpower adjustments in the finance and accounting departments as needed for the issuance of quarterly financial reports each year.**

Foreign emerging stock companies must regularly file consolidated financial reports and make necessary disclosures (e.g. related party transactions, lending of capital, endorsements and guarantees, acquisition or disposal of assets, etc.). The deadline for the annual financial report is within four months after the conclusion of the fiscal year. For the second quarter report, the deadline is within 45 days after the end of the quarter. Foreign issuers should make appropriate adjustments in the finance and accounting departments so as to deal with the relevant reports.

1. **Advising/Recommending Securities Firms**

**Q24. What is an advising/recommending securities firm?**

**A24.** An advising/recommending securities firm is a recommending securities firm that has entered into a contract with an issuer to advise the latter during the process of obtaining an exchange or TPEx listing for its stock.

**Q25.What qualifications are required to serve as an advising/recommending securities firm of a foreign enterprise seeking to register on Taiwan's Emerging Stock Board?**

**A25.** Provisions governing the qualification requirements to act as an advising/recommending securities firm for a foreign enterprise seeking to register on Taiwan's Emerging Stock Board are set out in Article 9 of the TPEx Rules Governing the Review of Emerging Stocks for Trading on the TPEx, and are no different from those applying to the advising/recommending securities firms of domestic enterprises. An entity seeking to act as an advising/recommending securities firm must be qualified as a securities underwriter, securities broker, and securities dealer, and must additionally satisfy the following conditions:

1. Must be a registered member of the Taiwan Securities Association.

2. Must be in compliance with Article 23 of the Regulations Governing Securities Firms

3. Its regulatory capital adequacy ratio, as defined in Article 59 of the Regulations Governing Securities Firms, must be 150% or higher.

4. Must currently be a securities firm that has entered into an advisory contract with the issuer, and the lead recommending securities firm must also be the lead advisory securities firm.

The aforementioned lead advising/recommending securities firm must meet the following conditions:

1. Has acted as lead securities firm within the past three years for at least three deals involving –

(1) an application for an initial exchange listing or TPEx listing of shares; or

(2) a cash capital increase; or

(3) issuance of convertible corporate bonds -- and in each case the listing of the securities to be issued in connection therewith has been approved by the competent authority.; or the head of its underwriting department and at last three underwriting personnel have the work experience of handling the aforementioned deals.

2. Must have at least 10 employees who are qualified and registered as underwriters.

**Q26. When filing a Checklist for Material Financial and Operational Events with the TPEx, what deadline is a foreign emerging stock company's lead advising/recommending securities firm expected to meet?**

**A26.** The lead advising/recommending securities firm of a foreign emerging stock company must file the Checklist for Material Financial and Operational Events (referred to as the “Checklist” hereunder) before the end of each month. If any of the material events listed in the Checklist has occurred, a foreign emerging stock company must immediately report it via an Internet reporting system designated by the TPEx, and, within five days of reporting, complete an audit and report the audit result via an Internet reporting system designated by the TPEx, and in addition, officially inform the TPEx by issuing a letter together with related information.

**Q27. Are the lead and co-advising securities firms all required to act as recommending securities firms for an emerging market stock?**

**A27.** In order to strengthen regulation of the Emerging Stock Board and ensure linkage between a securities firm's advisory operations and its market making responsibility for emerging market stocks, the lead and co-advising securities firms that have entered into an advisory contract with an emerging stock company are also required to act as recommending securities firms for the stock in question.

**Q28. What procedures is the lead advising/recommending securities firm required to carry out when the lineup of advising/recommending securities firms undergoes a change?**

**A28.** The Market Observation Post System (MOPS) Chinese-language website has a section (called "輔導專區") which is used by lead advising/recommending securities firms to report information relating to companies under advisory agreements. To facilitate oversight by the TPEx, a lead advising/recommending securities firm is required to use the "輔導專區" section to report any change in the lineup of recommending securities firms, and within three days of such a change must report to the TPEx. If there is a change to the lead advising/recommending securities firm, the procedures described above must be carried out by the succeeding lead advising/recommending securities firm, to facilitate regulation of the Emerging Stock Board.

**Q29. What procedures are the lead advising/recommending securities firms required to carry out when there is a change in the lead advising/recommending securities firm?**

**A29.** In order to prevent destructive competition in the underwriting market and enhance the market making function of underwriters, it is required that when an emerging stock company switches its lead advising/ recommending securities firm, the new lead advising / recommending securities firm must hold, at the time of switch, at least 1% of the total number of issuer’s shares traded TPEx, or at least 500,000 shares if 1% of the issuer’s shares traded TPEx exceeds 500,000 shares.

**Q30. Does a switch to a new lead advising/recommending securities firm affect the deadline by which the emerging stock company is required to obtain a primary TPEx or exchange listing?**

**A30.** A new lead advising/recommending securities firm must advise the emerging stock company for at least another six months before an application may be submitted for an TPEx or exchange listing. This requirement is intended to ensure that the lead advising/recommending securities firm can develop a good understanding of the emerging stock company's financial and operational status and thereby provide better advisory services.

**Q31. How does it affect the TPEx trading of an emerging stock company's shares if the company has no lead advising/recommending securities firm, or has only one advising/recommending securities firm left?**

**A31.** If an emerging stock company has no lead advising/recommending securities firm, or has only one advising/recommending securities firm left, TPEx trading in its shares must be suspended. The suspension period will last for a maximum period of three months during which the Emerging Stock company may take remedial measures. If the problem is not corrected within that period, TPEx trading of its shares will be terminated.

1. **CPA and Financial Reports**

**Q32. What are the qualification requirements for the CPAs of a foreign enterprise registered or seeking to register on Taiwan's Emerging Stock Board?**

**A32.** When a foreign enterprise applies to register on the Emerging Stock Board, and throughout the duration of such registration, audit (or review) reports must be provided by two ROC CPAs approved by the competent authority to attest financial reports of public companies, or auditing and attestation must be performed by an international accounting firm that has a cooperative relationship with the accounting firm to which the aforementioned CPAs belong, and an ROC CPA must produce audit (or review) reports without reference to the audit (or review) work of other CPAs.

**Q33.** **What requirements apply to the financial report disclosed by a foreign enterprise seeking to register on Taiwan's Emerging Stock Board?**

**A33.** When a foreign issuer applies for ESB registration, it should submit a CPA-audited consolidated financial report for the past fiscal year with period-on-period figures presented side-by-side. An applicant who applies during January and April may submit the CPA-audited consolidated financial report for the past fiscal year later. However such applicant should enclose the CPA-audited consolidated financial report for the year preceding the past year and the unaudited consolidated financial report for the past year. The CPA should also issue an audit report that does not make reference to the audit work of other CPAs. If 45 days after the two quarters of year have elapsed at the time of application, the applicant should submit in addition a CPA-reviewed consolidated financial report for the two quarters of the year.

If a foreign issuer seeks to register on Taiwan's Emerging Stock Board as a new company from the organization restructuring, the issuer should prepare consolidated financial report in accordance with the Accounting Research and Development Foundation's Q&A「IFRS 3 the Accounting treatment of business combination under common control」, October 26, 2018. According to the Q&A, a new company from the organization restructuring involves business combination under common control, which is substantially the extended entity of the original company. Therefore, the issuer should submit a consolidated financial report based on the original company’s book value of related asset and liabilities, and the new company should be regarded as an initial combination of the original company to be prepared period-on-period figures presented side-by-side without the limitation of establishment date.

**Q34. What legal provisions govern the preparation of financial reports by a foreign enterprise seeking to register on Taiwan's Emerging Stock Board?**

**A34.** When a foreign enterprise applies to register on the Emerging Stock Board, and throughout the duration of such registration, its financial reports must be prepared in accordance with the following requirements:

1. It should be stated in New Taiwan dollars (NTD) and should describe the method of converting foreign currencies into NTD and the benchmark exchange rates adopted under the notes to the financial statements.

2. Financial reports should be presented in Chinese. An English version may be provided, but the Chinese version will prevail.

3. Financial reports should be prepared on a consolidated basis in accordance with international financial reporting standards endorsed by the Competent Authority, US accounting standards, or the International Financial Reporting Standards. If the international financial reporting standards endorsed by the Competent Authority are adopted, the financial reports shall be prepared in compliance with the ROC Regulations Governing the Preparation of Financial Reports by Securities Issuers with period-on-period figures for two consecutive years presented side-by-side. Information on loans and endorsements/guarantees should be disclosed individually instead of on a consolidated basis.

4. Financial reports must be prepared for the consolidated entity.

5. If the financial report is not prepared in accordance with international financial reporting standards endorsed by the Competent Authority, the notes must include an explanation of how account disclosure in the period-on-period balance sheets and statements of comprehensive income differs from that in a financial report prepared in accordance with international financial reporting standards endorsed by the Competent Authority, including description of any material discrepancies and how they affect the reported dollar amounts. The independent auditor (CPA) must also describe in the audit report the accounting principles adopted by the foreign issuer and the differences between those principles and the international financial reporting standards endorsed by the Competent Authority, and include an index to the notes. The audit report must also contain a statement that the report has been audited in accordance with ROC Regulations Governing Auditing and Certification of Financial Statements by Certified Public Accountants and generally accepted auditing standards (or has been reviewed in accordance with Taiwan's Statement of Auditing Standards No. 65, “Engagements to Review Financial Statements.”)

1. For financial reports not prepared in accordance with the international financial reporting standards endorsed by the Competent Authority , the differences between the accounting principles adopted and the ROC accounting standards should be disclosed in a manner as described below:

(1) The CPA audit (review) report and notes to financial report should disclose the accounting principles adopted.

(2) The notes to financial report should describe material differences with the international financial reporting standards endorsed by the Competent Authority.

(3) Tabulate why the differences affect account disclosure in statements of comprehensive income and dollar amounts affected.

(4) Tabulate why the differences affect account disclosure in balance sheet and dollar amounts affected, and present a restated balance sheet if necessary.

(5) Disclose information on the basic EPS and diluted EPS calculated according to the international financial reporting standards endorsed by the Competent Authority.

(6) Disclose a condensed statement of cash flows prepared according to the international financial reporting standards endorsed by the Competent Authority.

1. If the issuer changes the generally accepted accounting principles (GAAP) adopted for the preparation of financial reports, for example, adopting non-international financial reporting standards endorsed by the Competent Authority in the preceding years but deciding to switch to the international financial reporting standards endorsed by the Competent Authority from now on, the TPEx allows the adoption of different accounting principles for financial reports prepared in prior years and those prepared in the year of applying for ESB registration. However the accounting principles adopted for the preparation of period-on-period financial statements and that adopted after ESB registration should be consistent.
2. The same as for domestic issuers, a foreign issuer is in principle not required to prepare significant account schedules for the consolidated financial report. However the TPEx may ask an applicant to produce such schedules if deemed necessary.

**Q35. What legal provisions govern the filing of financial reports by foreign emerging stock companies?**

**A35.** Foreign emerging stock companies are subject to the following provisions governing their filing of financial reports:

1. Within four months after the end of each fiscal year (and within 45 days after the end of each second quarter), a foreign emerging stock company must file a copy of a consolidated annual financial report, audited and attested by a CPA (and two copies of a consolidated second-quarter financial report, reviewed by a CPA) with the TPEx, together with information that must be publicly announced, as downloaded from a TPEx-designated information reporting website. If it prepares its annual financial reports in accordance with Taiwan's Regulations Governing the Preparation of Financial Reports by Securities Issuers and the International Financial Reporting Standards endorsed by the competent authority, it need not apply the provisions of Article 7, paragraph 1 of those Regulations concerning the preparation of annual parent company only financial reports, unless it otherwise is required to prepare parent company only financial reports by law or regulation of its country of registration, or it uses the parent company only financial report as a basis for distributing dividends, in which cases it shall additionally publicly disclose and submit its parent company only financial reports.

2. When a company has applied for a TPEx or exchange listing, during the period before it obtains the listing it must file a copy of its consolidated first-quarter and third-quarter financial reports (need not be reviewed by a CPA) with the TPEx, observing the same deadline that applies to TPEx-listed (and exchange-listed) companies, together with information that must be publicly announced, as downloaded from a TPEx-designated information reporting website. However, this information need not be filed if the applicant withdraws its application or the application is rejected.

3. Deadlines for public announcements and filings are in principle the same as those applying to domestic issuers, but the authoritative version of all announcements and filings is the Chinese-language version.

**Q36.What are the requirements for a foreign issuer’s fiscal year?**

**A36.**TPEx do not require foreign issuers to adopt the calendar year (from January 1 to December 31). A foreign issuer can adopt the calendar year or the non-calendar year as its fiscal year based on its operating concern.

1. Supervision of the Emerging Stock Board

**Q37. What legal provisions govern substantive reviews and periodic special audits by the TPEx of the financial reports of foreign emerging stock companies?**

**A37.** At least 35% of foreign enterprises listed on the Emerging Stock Board (not including foreign enterprises that already applied for IPO) should be selected randomly for substantive reviews and periodic special audits each year and the second quarter of each year. For every five-year period, any foreign enterprise listed on the Emerging Stock Board should be selected at least once, the key points of which are as follows:

1. If the Checklist for Material Financial and Operational Events filed with the TPEx by the lead advising/recommending securities firm indicates the existence of a material event, or if the conclusion of an audit is that there is a material irregularity, then the situation must be tracked to determine the impact upon the state of the company's operations.

2. Any material information regarding the company under audit or review must be fully understood in order to understand its impact upon the state of the company's operations.

3. If there are material differences from one period to the next in the dollar amounts recorded under the accounts in the period-on-period balance sheet and statement of comprehensive income, the cause of the change must be understood and a judgment made about the reasonableness thereof.

**Q38. What legal provisions govern the making of a determination by the TPEx about whether a foreign emerging stock company has experienced a material event?**

**A38.** Provisions regarding material events at emerging stock companies are set out in Article 10 of the Taipei Exchange Procedures for Regulation of Emerging Stock Company Finances and Operations. Most provisions are the same for both foreign and domestic enterprises, but failure by a foreign enterprise to have an agent for litigious and non-litigious matters who has either a domicile or a residence in the ROC, has been additionally listed as a material event.

1. **Emerging Stock Board Trading System**

**Q39. In what currency are the shares of a foreign emerging stock company traded?**

**A39.** The shares of foreign emerging stock companies are currently traded in NT Dollars, just like those of domestic emerging stock companies.

**Q40. How are the shares of foreign emerging stock companies traded?**

**A40.** The shares of foreign emerging stock companies trade through negotiated trading, as do the shares of domestic emerging stock companies.

**Q41. What is the settlement method for the shares of foreign emerging stock companies?**

**A41.** In principle, the shares of foreign emerging stock companies are settled T+2 (i.e. two business days after the transaction date), but the buyer and seller can agree to settle on the day of the transaction. This is no different from the method of settlement for the shares of domestic emerging stock companies.

**Q42. Are any eligibility restrictions placed upon natural persons who wish to trade in shares of foreign emerging stock companies?**

**A42.** To ensure that individual traders are properly familiar with securities market systems and procedures for brokered trading, when a securities firm accepts a customer's first order to “buy” shares of a foreign emerging stock company (the provision does not apply to “sale” orders placed by individual traders), in light of the risks involved, the securities firm is required to first check to be sure that the customer opened his/her brokerage account at least 3 months before and has completed at least 10 trades already, so as to be sure that the customer has a certain level of investing experience and ability.

**Q43. What information is included in the risk disclosure statement signed by an investor who trades in shares of foreign emerging stock companies?**

**A43.** In order to remind investors of the risks associated with trading in shares issued by foreign emerging stock companies, the latest version of the Emerging Stock Risk Disclosure Statement includes a newly added note to remind the investor that because the issuer of a foreign emerging stock is registered overseas, risks exist regarding the possibility of political and economic changes in the jurisdictions where it operates, legal changes in the jurisdiction where it is registered, and differences in information disclosure. Therefore an investor submitting his/her first order to trade shares of a foreign emerging stock company must first sign an Emerging Stock Risk Disclosure Statement, the same as for a first trade of shares of a local emerging stock company. When the investor signs the Emerging Stock Risk Disclosure Statement, the securities firm must assign an employee to explain the nature of the stock and the possible attendant risks, and when the risk disclosure statement is provided to the investor, the statement must be signed by the customer and the person responsible for providing the explanation, and then kept on file. However professional institutional investors are waived from signing the Emerging Stock Risk Disclosure Statement. Such investors include domestic and foreign banks, insurance companies, bills finance companies, securities firms, fund management companies, government investment corporations, pension funds, mutual funds, unit trust and securities investment trust companies, securities investment consulting firms, trust enterprises, futures commission merchants, futures service enterprises and other institutions approved by the competent authorities.

1. **Others**

**Q44. What is the review process of the Central Bank of the Republic of China (Taiwan) for issuing a letter of consent to a foreign issuer’s application for ESB registration ?**

**A44.** To shorten the review period of a foreign issuer’s application for ESB registration , the Central Bank agrees in principle to undertake parallel review. That is, when a foreign issuer applies for ESB registration , it can submit the application to the Central Bank and the TPEx simultaneously without first acquiring a listing qualification document from the TPEx before applying to the Central Bank for a letter of consent. If the application documentation is complete, the Central Bank will complete its review operation in 12 working days in principle.

**Q45. What are the provisions for proceeds from the disposal of stocks by the shareholders of a foreign emerging stock registrant?**

**A45.** Foreign shareholders of a foreign company whose stocks are traded on Taiwan’s market may now keep the proceeds from the disposal of stocks in the settlement account for other investments in Taiwan as a FINI (foreign institutional investor) or a FIDI (foreign individual investor). The cap of US$5 million for FIDI investment in Taiwan’s securities is now lifted.

**Q46. What is the procedure for an overseas enterprise to apply for a withholding agent tax ID?**

**A46.** Some overseas enterprises that list their stock in Taiwan need to apply for a withholding agent tax ID for the purposes of handling payment of securities transaction tax or opening a NTD account and securities trading account. When they submit an Application for Registration of Establishment and/or Alteration of Tax ID for Withholding Agencies to the local National Tax Administration or tax office for the application of tax ID, they sometimes encounter problem in the preparation of required documents because the National Tax Administration or tax office in different regions seem to have different documentation requirements. On this matter, Taipei National Tax Administration provides the following explanations:

When an overseas enterprise that lists in Taiwan applies for a withholding agent tax ID, its agent or representative (referred to as “agent” below) in Taiwan should submit the following documents to the local National Tax Administration or tax office:

1. Fill out an Application for Registration of Establishment and/or Alteration of Tax ID for Withholding Agencies in the following manner and affix the seals of the overseas enterprise, its responsible officer and the agent thereon.

A. Under “Organization of withholding agent”, check “Foreign juristic person opens a NTD account (K).”

B. Under “Name of withholding agent”, enter the name of overseas enterprise as indicated on the approval document issued by the competent authority; if the approval document does not indicate the Chinese name of the enterprise, provide the Chinese name as an annotation.

C. Under “Address and house tax registration number of withholding agent”, enter the registered household address of the overseas enterprise in Taiwan, and enter the tax registration number of that address as the house tax registration number. If the overseas enterprise does not have a registered household address in Taiwan, enter its address at the country of registration, and enter the English alphabetic code for county (city) and “9” for all figures for the house tax registration number.

D. Under “Responsible person” and “Withholding agent”, enter the name of responsible officer of the overseas enterprise.

E. Under “Agent or representative in Taiwan”, enter the name of the agent.

F. Under “Seal of withholding entity, responsible officer and withholding agent”, affix the seals of the overseas enterprise, its responsible officer and agent.

2. A photocopy of letter of approval for TWSE/TPEx listing or registration on Emerging Stock Board issued by the securities competent authority.

3. The agent should provide a letter of appointment issued by the overseas enterprise and notarized by a ROC consulate or an institution sanctioned by the ROC government (Chinese translation required).

4. A photocopy of the ID document of both responsible officer and agent.

5. If the overseas enterprise has a registered household address in Taiwan, provide a photocopy of the latest house tax statement; if the overseas enterprise leases its office in Taiwan, provide a photocopy of the lease agreement.

**Q47. What are the tax risks associated with equity transfer in restructuring of investment framework for Taiwanese enterprises doing business in China and response measures?**

**A47.** The tax risks associated with equity transfer in restructuring of investment framework for Taiwanese enterprises doing business in China and response measures:

1. Taiwanese enterprises doing business in China typically hold the equity of their company in China through an offshore holding company established in, for example, British Virgin Islands or Cayman Islands. But when a Taiwanese enterprise in China plans to list its stock in Taiwan, it needs to restructure its investment framework and apply for listing in the name of a holding company in Cayman Islands. The equity transfer in the process of restructuring might be treated as proceeds from property transaction by the China authority. Pursuant to the “Circular on Issues Concerning Process of Enterprise Income Tax in Enterprise Restructuring Business” issued by China’s Ministry of Finance and the State Administration of Taxation (Cai Shui [2009] No. 59), the original shareholders of Taiwanese enterprises in China might face tax burden if their company undergoes restructuring. This concern might undermine the interest of Taiwanese enterprises in China to list in Taiwan.

2. The common patterns of restructuring investment framework by Taiwanese companies in China include establishing a Cayman Islands company in place of the original overseas holding company (e.g. a BVI or Samoan company) to gain direct control of the China subsidiaries and applying for listing in Taiwan in the name of the Cayman Islands company; and establishing a Cayman Islands company on top of the original overseas holding company (e.g. a BVI or Samoan company) and apply for listing in Taiwan in the name of the Cayman Islands company. The key to whether the proceeds from direct or indirect transfer of the equity of China subsidiaries are subject to tax is whether the restructuring of investment framework has “reasonable business purpose”? If it does, the proceeds from equity transfer are tax exempt. However China’s State Administration of Taxation has not provided any clear explanations on this issue. Enterprises should consult with CPAs about this issue.

3. The tax risks associated with equity transfer in restructuring of investment framework lie with the original shareholders or the original offshore holding company established by the Taiwan enterprise in China (e.g. a BVI or Samoan company). Whether the restructuring of investment framework by Taiwanese companies in China meets the tax exemption criteria set out in Cai Shui [2009] No. 59 is not clear. Securities firms should assist the Taiwan enterprises in China they advise to communicate with the local tax bureau in China as early as possible to clarify the issue of whether proceeds from equity transfer (for the purpose of listing in Taiwan) are subject to tax and advise the enterprises to engage the services of accountant to make proper tax planning.

**Q48.** **If a foreign issuer with investments in Mainland China that registers its stock on the Emerging Stock Board (ESB) has shareholders of ROC nationality, what legal requirements govern applications or filings to be submitted by those shareholders to the Investment Commission, MOEA before the application for ESB registration and after the application for ESB registration?**

**A48.** Article 4 of the Regulations Governing the Approval of Investment or Technical Cooperation in Mainland China ("Approval Regulations") as amended by the Investment Commission, MOEA per an order dated 16 January 2013 (Order No. MOEA-Investment-10204600200) includes provisions to the effect that Taiwan area citizens, juristic persons, organizations, or other institutions (hereinafter, "investors of ROC nationality") must apply to or file with[[1]](#footnote-1) the Investment Commission, MOEA to obtain approval or registration of investments they engage in in the Mainland Area, as follows:

1. In order to coordinate with the Financial Supervisory Commission’s policy of expanding the size of Taiwan’s securities markets and actively encouraging overseas enterprises to list in Taiwan, the Investment Commission, MOEA wishes to avoid discouraging investors of ROC nationality from purchasing shares listed in Taiwan by foreign issuers, which is precisely what might result when investors of ROC nationality, through trading on a public market in Taiwan (the Emerging Stock Board, TPEx, or TWSE), obtain shares in an overseas enterprise that has investments in the Mainland Area, and are therefore seen to have invested indirectly in the Mainland Area, with the result that they are required to apply to or file with the Investment Commission, MOEA to obtain approval or registration in order to avoid a legal infraction. The Investment Commission, MOEA has therefore added a new paragraph 3 under Article 4 of the Approval Regulations to expressly provide that when an investor of ROC nationality obtains a foreign issuer’s stock that is listed on the TWSE or TPEx or registered on the Emerging Stock Board, and the foreign issuer has investments in the Mainland Area, an investor of ROC nationality that meets certain conditions (does not serve as a director, supervisor, or managerial officer of the foreign issuer and holds less than 10% of its shares) will not fall in the category of a party that has investments in the Mainland Area as referred to in the Approval Regulations, and will not be subject to the Approval Regulations.

2. In addition, Article 4, paragraph 2 of the Approval Regulations has also been amended to meet the needs of investors. The pre-amendment paragraph 2 required that when an investor of ROC nationality invests directly or indirectly in a company or enterprise[[2]](#footnote-2) of a third jurisdiction, if the third-jurisdiction investee has not engaged in any of the activities set out in paragraph 4 of the Approval Regulations but it **subsequently** does engage in one or more of the activities set out in paragraph 4 of the Approval Regulations and the investor from the Taiwan Area has the ability to control or influence the management of the third-jurisdiction company or enterprise, the investor of ROC nationality will still be deemed to have invested in the Mainland Area. As for the criteria for determining the aforementioned "ability to control or influence," in order to prevent disputes from arising in practice, the Investment Commission, MOEA has amended Article 4, paragraph 2 of the Approval Regulations to expressly provide that when an investor of ROC nationality invests directly or indirectly in a third-jurisdiction company or enterprise and serves as a director, supervisor, managerial officer, or in an equivalent position in that entity, or the investor owns more than 10% of its stock or has contributed more than 10% of its capital, then the investor also will fall in the category of having investments in the Mainland Area as referred to in the Approval Regulations.

Also, pursuant to a letter from the MOEA Investment Commission dated 26 March 2013 (Letter No. MOEA-Investment-10204601600), the following supplementary clarification is provided regarding the entities subject to the Approval Regulations and follow-up application procedures:

1. When an investor of ROC nationality **invests for the first time** in a third-jurisdiction company or enterprise that has already invested in the Mainland Area, if the investor was already a shareholder before the foreign issuer registered its stock on the Emerging Stock Board, then the investor will fall in the category of having invested in the Mainland Area as referred to in the Approval Regulations regardless how many shares the investor holds, and will be required to apply to or file with the Investment Commission, MOEA to obtain approval or registration.

2. When an investor of ROC nationality invests directly or indirectly in a third-jurisdiction company or enterprise and that third-jurisdiction company or enterprise **has not yet** made an equity investment in a company or enterprise in the Mainland Area, then when that third-jurisdiction company or enterprise **subsequently** makes an equity investment in a company or enterprise in the Mainland Area, if the investor of ROC nationality serves as a director, supervisor, managerial officer, or in an equivalent position in that third-jurisdiction company or enterprise, or if that investor holds more than 10% of the shares of that third-jurisdiction company or enterprise, then the investor will fall in the category of having invested in the Mainland Area as referred to in the Approval Regulations, and will be required to apply to or file with the Investment Commission, MOEA to obtain approval or registration.

3. The term "managerial officer or in an equivalent position" means a party that is a shareholder or capital contributor of the third-jurisdiction company or enterprise, or is a shareholder of the overseas issuer, and holds a position there that confers decision-making ability—such as general manager, president, chief officer, chief executive officer—or an equivalent position.

 If, before registering its stock on the Emerging Stock Board, a foreign issuer has shareholders of ROC nationality, it must first confirm whether the provisions of Article 4 of the aforementioned Approval Regulations apply to those shareholders. If those Regulations do apply, then the foreign issuer must fulfill its duty to notify those shareholders; provided, however, that for a shareholder to which certain provisions apply (serves as a director, supervisor, managerial officer, or in an equivalent position, or holds more than 10% of the stock), the foreign issuer, in addition to fulfilling its duty to notify the shareholder, must also require the shareholder to complete the procedures for application or registration with the Investment Commission, MOEA. Its advisory recommending securities firm must also confirm during the advisory process that the foreign issuer is in compliance with the aforementioned provisions.

 A foreign issuer or advisory recommending securities firm that is unsure about the applicability of the aforementioned Regulations should inquire with the Investment Commission, MOEA and properly notify shareholders of ROC nationality to duly complete application or registration procedures.

**Q49. Before foreign issuers apply for registration on Emerging Stock Board, what is the procedure for applying for exemption of articles of Securities and Exchange Act?**

**A49.** Before foreign issuer applies its common stock for Emerging Stock Board registration, If ROC’s Securities and Exchange Act’s mutatis mutandis provision is in contradiction with registered country’s mandatory regulation, the issuer should fill out application form for project approval, and send it to TPEx with related documents. TPEx will issue opinion and then send it to the competent authority. After the competent authority announces the scope of foreign issuer’s exemption of articles of Securities and Exchange Act, TPEx will notify the foreign issuer.

 For foreign issuers apply for project approvals announced by the competent authority as special exemption scope of articles of Securities and Exchange Act according to previous procedures, after TPEx’ examination, TPEx will notify the foreign issuer.

**Q50. When a foreign issuer files for retroactive handling of public issuance procedures and simultaneously applies to registers its stock on the Emerging Stock Board, what are the key focal points of the attorney who evaluates whether its shareholders of Mainland nationality have acted in compliance with the Mainland Area’s Circular of the State Administration of Foreign Exchange (SAFE) on Foreign Exchange Administration of Overseas Investments and Financing and Round-Trip Investments by Domestic Residents via Special Purpose Vehicles (SAFE Circular 37 of 2014)?**

**A50.**

 1. When a Mainland shareholder of a foreign issuer meets certain criteria (works for the issuer as a director, supervisor, managerial officer, or in an equivalent position, or holds more than 10% of its stock), the foreign issuer, in addition to fulfilling its duty to notify the shareholder, must also require the shareholder to complete registration with the Department of Foreign Exchange for offshore investment in foreign exchange before it applies to register its stock on the Emerging Stock Board.

 2. With respect to Mainland shareholders who are not insiders of the foreign issuer, the issuer must fulfill its duty to notify those shareholders to register with the Department of Foreign Exchange for offshore investment in foreign exchange.

**Q51. The Notes Regarding Applications to List in Taiwan Submitted by a Mainland Area Enterprise Via a Holding Enterprise Established in a Third Jurisdiction require that, if an original Mainland Area investor(s) transfers equity to a non-Mainland party(ies) (with the result that Mainland equity holdings drop below 30%), attention must be paid to any change in business performance during a specified operating period following the transfer. What does the phrase "specified operating period following the transfer" mean?**

**A51.**

 1. The business observation period must span at least "one entire fiscal year."

 2. The business observation period must be counted from the actual completion date of the contract for the transaction by which a Mainland party(ies) transfers its equity to the extent that it drops below 30%, i.e. from the date on which "equity held by Mainland parties has dropped below 30%" and "registration of transfer of title to shares" and "payment for shares" have all been completed.

 3. However, when such equity is transferred to a Taiwan national(s) and the Taiwan national(s), due to the limit imposed by the Investment Commission, MOEA on the cumulative amount of investments in the Mainland during a single year, must pay for the shares in installments in order to avoid exceeding the yearly limit, the "date of payment of the first installment of the share payments for the transaction by which equity held by a Mainland party(ies) is to be transferred to the extent that it drops below 30%" may be treated as the "date of completion of payment for shares". However, all the payments for shares must have actually been completed in full before the application for registration on the Emerging Stock Board is submitted.

1. Article 7 of the MOEA Investment Commission's Regulations Governing the Approval of Investment or Technical Cooperation in Mainland China provides that if the combined value of total investments is less than a certain amount, it is sufficient to merely file a registration. [↑](#footnote-ref-1)
2. When a foreign issuer registers its stock on the Emerging Stock Board in Taiwan, investors of ROC nationality who hold that foreign issuer's stock may possibly satisfy the provisions governing investing in a third-jurisdiction company or enterprise. [↑](#footnote-ref-2)