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FAQ: Primary Listings by Foreign Issuers on Taiwan's TPEx

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1. **Issuers**

**Q1. What is the difference between listing on TWSE and TPEx?**

**A1.**Both Taipei Exchange (TPEx) and Taiwan Stock Exchange (TWSE) are main board markets with similar trading mechanisms and functions. Companies listed on TWSE are mostly mature firms. The TPEx on the other hand aims to foster high-tech companies and SMEs, and is the most suitable market for startups and enterprises with development potential. The TPEx has assisted more than 1,000 companies in listing their stocks on TPEx or TWSE since its establishment. Several dozens of current TPEx enlistees are companies with more than NT$10 billion in market capitalization. Because of the high price-earnings ratio and high turnover on TPEx, many mid-size and large enterprises choose to stay on TPEx instead of transferring to TWSE.

**Q2. Can equity-type securities issued by foreign issuers be purchased by ordinary investors in Taiwan on Taiwan's domestic securities markets?**

**A2.** Ordinary investors in Taiwan can buy on domestic securities markets three types of equity-type securities issued by foreign issuers: primary listed TPEx stock of foreign issuers; secondary listed TPEx stock of foreign issuers; and Taiwan depositary receipts of foreign issuers.

**Q3. What is "primary listed TPEx stock of foreign issuers"? How is it different from secondary listed TPEx stock of foreign issuers?**

**A3.** "Primary listed TPEx stock of a foreign issuer" is registered stock that a foreign issuer has listed on the TPEx in Taiwan without having listed it previously on any foreign securities market. "Secondary listed TPEx stock of a foreign issuer," in contrast, has already been listed on a recognized foreign securities market before being listed in Taiwan.

**Q4. Why allow foreign issuers to apply for primary TPEx listings in Taiwan?**

**A4.** The bylaws of the Taipei Exchange (TPEx) formerly provided that only domestically registered public companies could apply for a TPEx listing. Foreign issuers could apply for either a secondary TPEx listing of shares or a TPEx listing of Taiwan depositary receipts, but only if they were already listed on a TPEx-recognized foreign securities market; they were not allowed to apply for 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 issuers to apply in Taiwan for 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 issuers to apply for primary TPEx listings.

**Q5. Does a foreign issuer need to first register its stocks on the Emerging Stock Board before applying for primary listing on TPEx?**

**A5.** 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. But a foreign issuer that chooses to register its stock on the Emerging Stock Board must do so before it makes any application for a primary TPEx listing. It is not allowed to register its stock on the Emerging Stock Board after applying for a primary TPEx listing but before the TPEx listing becomes effective.

**Q6. What kind of foreign issuer can apply for a primary TPEx listing?**

**A6.** Companies limited by shares organized under the laws of a foreign country ( area ) that have not violated any applicable provisions of the Act Governing Relations Between the Peoples of the Taiwan Area and the Mainland Area can apply for a primary TPEx listing. "Not violating any applicable provisions of the Act Governing Relations Between the People 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.

**Q7. When a foreign issuer that meets the aforementioned conditions applies for a primary TPEx listing, what other conditions must it meet?**

**A7.** The requirements for a foreign issuer applying for a primary TPEx listing are in principle the same as those for a domestic applicant. However, the fact that it is a foreign issuer does mean that it is subject to certain special requirements, as follows:

1. It must be a company limited by shares organized under the laws of a foreign country (or area), and must not violate any applicable provisions of the Act Governing Relations Between the People of the Taiwan Area and the Mainland Area. It must obtain special permission from the Competent Authority if any person, juristic person, group, or other organization from the Mainland Area singly or jointly, directly or indirectly, hold more than 30% of its stock, have contributed more than 30% of its capital, or have the ability to control it. And the applicant must carry out public issuance of its stock in accordance with the Regulations Governing the Offering and Issuance of Securities by Foreign Issuers.

2. Any registered common shares that it issues must not have been previously listed on a foreign securities market.

3. Its total equity attributable to owners of the parent company as audited and attested by a CPA for the most recent period is equivalent to at least NT$100 million.

4. It must have registered its incorporation under the laws of a foreign country ( area ) at least two full fiscal years before.

5. It must prepare financial reports that meet certain requirements. "Financial reports" means consolidated financial reports, or if the issuer does not have a subsidiary, means individual financial reports.

6. In its financial reports prepared in accordance with international financial reporting standards endorsed by the Competent Authority, the net income before tax excluding net income (or loss) from non-controlling interests for the most recent fiscal year must be no lower than the equivalent of NT$4 million, and furthermore, its ratio to the amount of equity attributable to owners of the parent company must meet one of the following conditions:

(1) The ratio was at least 4% in the most recent fiscal year, and there was no accumulated loss in the most recent fiscal year.

(2) The ratio was at least 3% in each of the two most recent fiscal years.

(3) The ratio averaged at least 3% in each of the two most recent fiscal years, and profitability was better in the more recent year.

7. At least two securities firms must submit written recommendations in favor of the application, but one of the firms must be designated as the lead recommending securities firm, while the others are co-recommending securities firms. The recommending securities firms must enter into a stock listing advisory contract with a foreign issuer. During the fiscal year in which the issuer applies for its TPEx listing, and during the three fiscal years thereafter, the issuer must agree to continue retaining the lead recommending securities firm to help the foreign issuer comply with: (1) ROC securities laws and regulations; (2) TPEx rules, bylaws, and public announcements; and (3) the Primary TPEx Stock Listing Agreement for Foreign Issuers.

8. The applicant must have appointed a professional shareholder services agent in Taiwan.

9. The applicant must have appointed at least one litigious and non-litigious representative with a domicile or residence in Taiwan, whose main function shall be to facilitate effective delivery between the securities exchange and the foreign issuer of related documents and notifications of matters to be handled, to ensure compliance with ROC securities legislation, handling of matters pertaining to the TPEx regulations and announcements as well as the foreign issuer's primary TPEx listing contract, and other matters. 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 regarding the agent's educational background, work experience, or professional qualifications, nor is there a requirement for "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. However, a foreign issuer must give careful consideration to whether its litigious and non-litigious agent has the competence to perform the aforementioned duties(Please refer to the description of A28 below). A foreign issuer that applies to the TPEx for a primary listing must 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 in the authorization documents.

10.A period of not less than 6 months must have elapsed from the issuer's filing for TPEx-listing advisory guidance or from the registration for trading of its stock on the Emerging Stock Board (ESB) under the Emerging Stock Market (ESM) structure, 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. If there is any change in the lead advisory securities firm or Emerging-Stock lead advisory recommending securities firm, the issuer shall receive the required advisory services from the new lead advisory securities firm or Emerging-Stock lead advisory recommending securities firm, and then a further period of not less than 6 months must elapse from the filing for advisory guidance or from the trading of its stock on the ESM before it may submit its application for TPEx listing. However, a foreign issuer to which either one of the following subparagraphs applies may proceed in accordance with the applicable subparagraph, the provisions set out above notwithstanding:

(1) If a foreign issuer applying for primary listing on the TPEx is already trading its stock on a major foreign exchange, the foreign issuer is not required to have filed listing advisory guidance or meet the requirement specified in Article 4, paragraph 1, subparagraph 12 of the “[Taipei Exchange Rules Governing the Review of Foreign Securities for Trading on the TPEx](http://eng.selaw.com.tw/LawArticle.aspx?LawID=FL007424&ModifyDate=1100331)” before the listing application, but it is not applicable to foreign issuer its stock trading has been terminated on a major foreign exchange for more than six months.

(2) An applicant for a primary listing on the TPEx may apply for special approval to shorten the period for filing of listing advisory guidance or the period for trading on the Emerging Stock Board (ESB) under the Emerging Stock Market (ESM) if the applicant has already received approval for listing on a major foreign exchange and the approval is still valid. However the expedited time period shall not be less than two months and the applicant shall not change its lead advisory securities firm or lead recommending securities firm during the period.

11. The applicant must pledge as follows:

(1) It must pledge to abide by the ROC Securities and Exchange Act and related regulations, directives, and policies.

(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 TPEx-listed shares 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) During the fiscal year in which the issuer obtains its TPEx listing, and during the three fiscal years thereafter, the foreign issuer must agree to continue retaining the lead recommending securities firm to help it comply with: (1) ROC securities laws and regulations; (2) TPEx rules, bylaws, and public announcements; and (3) the Primary TPEx Stock Listing Agreement for Foreign Issuers.

~~(6) 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 TPEx listing.~~

12. Securities applied for listing on TPEx must be issued in dematerialized form, unless it is otherwise provided by the laws and regulations of the issuer's country of registration.

13. The Foreign Issuer TPEx Primary Listing Agreement 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.

14. Matters related to shareholder services shall be handled in accordance with the ROC Regulations Governing the Administration of Shareholder Services of Public Companies issued by the Competent Authority, unless otherwise provided by the laws and regulations of the issuer's country of registration.

15. A remuneration committee shall be established subject to the application, mutatis mutandis, of Article 14-6 of Securities and Exchange Act and related provisions..

16. 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.

17. If the industrial classification of the TPEx listing is the food industry, or revenue from food and beverages accounts for 50 percent or more of its total operating revenue for the most recent accounting year, the company shall meet the requirements in all the following items:

(1) It shall have set up a laboratory to conduct autonomous inspections.

(2) If product raw materials, semi-finished products, or finished products are to be outsourced for inspection, they shall be submitted to a laboratory or inspection institution certified or recognized by the Ministry of Health and Welfare, by the Taiwan Accreditation Foundation, or by an institution retained by the Ministry of Health and Welfare for the inspection.

(3) It shall retain independent experts to issue opinions on the reasonableness with respect to its food safety monitoring plan, inspection frequencies, and items to be inspected.

18. Its articles of incorporation shall specify the following matters:

(1) It shall adopt electronic means as one of the methods for shareholders to exercise voting rights.

(2) The candidate nomination system shall be adopted for the election of the company's directors and supervisors.

(3) An audit committee shall be established in place of supervisors. This requirement shall not apply, however, if the net worth for the most recent period as audited and attested or reviewed by a CPA is equivalent to less than NT$600 million at the time of application.

19. For a foreign issuer whose stock has been listed for trading on the Taiwan Innovation Board (TIB) of the Taiwan Stock Exchange Corporation (TWSE) for not less than 2 years pursuant to Chapter IV of the TWSE Rules Governing Review of Securities Listings, when the foreign issuer applies for TPEx trading of its stock, it shall satisfy the conditions set out in the subparagraphs of paragraph 1, except that the financial requirement in paragraph 1, subparagraph 6 only refers to meeting the "profitability" standard set out in item A and that the foreign issuer need not be subject to the restriction of paragraph 1, subparagraph 12.

**Q8. Can an enterprise with its main operations in Taiwan adjust its organizational structure and apply for a primary TPEx listing in Taiwan as an overseas holding company?**

**A8.** 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 listing as an overseas holding company, for it is tantamount to bypassing the established listing requirements for domestic enterprises.

**Q9. (Deleted)**

**Q10. If a foreign issuer has issued preferred shares, could such preferred shares be converted into common shares and become listed at the same time?**

**A10.** The treatment of preferred shares should first of all comply with the laws and regulations of the country (area) of registration. As to whether those preferred shares could be converted into common shares before listing and become listed at the same time as the common shares, the TPEx will examine the clauses of agreement on the preferred shares when they were issued and whether those issuing terms and conditions profit specific parties or damage the interests of non-specific shareholders, and then give overall consideration to whether those shares should be allowed to convert and listing at the same time as the common shares under application.

**Q11. To apply for a primary TPEx listing, is a foreign issuer required to establish independent directors or an audit committee?**

**A11.**The applicant company shall have at least five member seats on its board of directors, and shall be no fewer than one-half of the directors must be domiciled in Taiwan(If corporate shareholder is elected as a director, it is based on the beneficial owner’s domicile of the corporate shareholder). The board of directors shall have at least three independent director seats, and shall be no fewer than one-fifth of the director seats. At least two of the independent directors must be domiciled in Taiwan. ~~However, 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.~~ Prerequisites to serve as an independent director are as follows:

1. Must be substantively independent as set out in the Regulations Governing Appointment of Independent Directors and Compliance Matters for Public Companies.

2. At least one of the independent directors must be a CPA or have professional financial expertise.

3. Counting from the date on which the recommending securities firm enters into an advisory contract with the company, independent directors must complete at least three hours of professional coursework each year relating to law, finance, or accounting and obtain a proof document from an outside professional advanced training organization (other than a recommending securities firm) indicating that the holder of the document has taught a course, attended a course, or acted as a panelist at a panel discussion.

From 1 January 2018 onward, a foreign issuer applying for TPEx primary listing should establish an audit committee. The audit committee shall be composed of all independent directors with at least three members and one of them shall be the convener.

A foreign company with a primary TPEx listing should continue to set up independent directors and audit committees during the listing period.

**Q12. When the independent director of a foreign issuer is registered just as a director due to the rules of the issuer's country of registration, will the independence of such independent director be prejudiced?**

**A12.** No. Take the example of a company registered under the Cayman Islands Companies Law. The Cayman Islands law does not distinguish between independent director and director. All directors are registered as director. But the TPEx Rules Governing the Review of Foreign Securities for Trading on the TPEx require independent directors to meet the conditions of substantive independence set forth in the Regulations Governing Appointment of Independent Directors and Compliance Matters for Public Companies. However the formalities of registration and nomination and procedural requirements relating to independent director do not prejudice the independence of independent directors of foreign issuers.

**Q13. When a foreign issuer applies for a primary TPEx listing, under what circumstances is such a listing prohibited?**

**A13.** For domestic issuers applying for a primary TPEx listing there are 12 circumstances under which such a listing is prohibited, while for foreign issuers there are eight, as follows:

1. Any of the circumstances in Article 156, paragraph 1, subparagraphs 1 to 3, of the Securities and Exchange Act.

2. It is not possible to draw a clear distinction between the applicant's financial or business matters and those of another party.

3. A significant trading irregularity has occurred and the matter has not been corrected as of the time of application.

4. The company or any director, general manager, or de facto responsible person at the time of application has done anything in violation of the principle of good faith within the past three years.

5. The board of directors of the applicant company is unable to independently perform its duties.

6. There has been serious deterioration in its business operation.

7. Where shares of the applicant company are held by a TPEx or TWSE listed company and furthermore any of the conditions listed below is met, and during the 3-year period before the application for TPEx listing, the TPEx or TWSE listed company, when taking any action to disperse its equity ownership in order to reduce its shareholding percentage in the applicant company, has failed to do so in a manner giving pre-emptive subscription rights to the existing shareholders of the TPEx or TWSE listed company or another manner not detrimental to the rights and interests of the shareholders of the TPEx or TWSE listed company:

(1)The applicant company is a transferee company of a demerger conducted by the TPEx or TWSE listed company.

(2)The applicant company is a subsidiary of the TPEx or TWSE listed company, and during the 3-year period before the application for TPEx listing, the TPEx or TWSE listed company has cumulatively reduced its shareholding percentage in the applicant company, including direct and indirect shareholding, by 20 percent or more.

8. The TPEx deems a TPEx listing inappropriate due to the scope or nature of the enterprise or other special conditions.

**Q14. Are there any special provisions that apply when the applicant for a primary TPEx listing belongs to an enterprise group?** **What are TPEx review rules for non-competition among companies within an enterprise group?**

**A14.** There is a special section in the Taipei Exchange Rules Governing the Review of Foreign Securities for Trading on the TPEx that deals specifically with members of enterprise groups. The Rules define what constitutes a member of an enterprise group and set out restrictions thereupon. The Rules apply equally to both domestic and foreign issuers.

If a foreign enterprise applying for primary listing on TPEx does not meet the requirements that its principal business or products (referring to those accounting for 30 percent or more of its total operating revenues in each of the most recent two fiscal years) are not in mutual competition with those of any other companies within the same group enterprise and it has the potential to market its business or product independently that the TPEx does not deem it qualified for listing, the TPEx may disapprove its listing application.

The term "mutual competition" shall be determined based on an overall assessment of general factors such as type of enterprise, product substitutability, and target customers.

If the businesses or products of the applicant and its affiliate are mutually competitive, the applicant may, in consideration of the materiality of business operated by the affiliate, undergo merger with the affiliate or spin-off to facilitate the listing application. With regard to the non-material businesses of the applicant's affiliates, the TPEx will examine whether the terms of trading with affiliates are reasonable and whether relevant information is fully disclosed.

**Q15. Can a foreign issuer apply as an investment holding company for a primary TPEx listing?**

**A15.** A foreign issuer can apply as an investment holding company for a primary TPEx listing. An "investment holding company" is an issuer with professional investing expertise that seeks to directly, or indirectly through a subsidiary, control the operations of subsidiaries by owning more than 50 percent of their issued voting shares or capital contributions. At least 70 percent of the consolidated operating income of an investment holding company must come from its subsidiaries, and a foreign investment holding company may have as few as one subsidiary.

**Q16. Can a foreign issuer apply as a technology-based enterprise or cultural or creative enterprise for a primary TPEx listing?**

**A16.** A foreign issuer that has received an assessment opinion from the Industrial Development Bureau of the Ministry of Economic Affairs, the Council of Agriculture of the Executive Yuan, or a TPEx-designated professional institution, certifying that it is a technology-based enterprise or cultural or creative enterprise and that its products or technologies are successfully developed and marketable (referred to as "technology-based enterprise" or "cultural or creative enterprise" hereunder) is not subject to the years of establishment and profitability restrictions if it meets the following requirements：

1. A technology-based enterprise：,

1. When applying for IPO, it's net value as reported in the financial report for the most recent fiscal period, audited and attested (or reviewed) by a CPA, must not be less than two-thirds of the value of the company's capital stock.
2. ~~The foreign issuer should continue to engage its lead recommending securities firm to assist it in the compliance with ROC securities laws and regulations, TPEx rules, bylaws and public announcements, and the Primary TPEx Stock Listing Agreement for Foreign Issuers in the year of listing and three fiscal years thereafter.~~

(2) The foreign issuer's directors, president, chief of research and development officer, shareholders holding more than 5% of total shares issued, and shareholders providing patent rights or technical know-how as capital contribution, holding a position in the company, and holding 0.5% or more of the total shares issued or at least 100,000 shares of the company at the time of application for listing on TPEx shall comply with the provisions for placement of shares under central custody and withdrawal from custody upon expiration.

2. A cultural or creative enterprise：

1. ~~The foreign issuer should continue to engage its lead recommending securities firm to assist it in the compliance with ROC securities laws and regulations, TPEx rules, bylaws and public announcements, and the Primary TPEx Stock Listing Agreement for Foreign Issuers in the year of listing and three fiscal years thereafter.~~
2. The foreign issuer's directors, and shareholders holding more than 5% of total shares issued, and shareholders providing patent rights or technical know-how as capital contribution, holding a position in the company, and holding 0.5% or more of the total shares issued or at least 100,000 shares of the company at the time of application for listing on TPEx shall comply with the provisions for placement of shares under central custody and withdrawal from custody upon expiration.

**Q17. What are the rules for a foreign issuer's employee stock option plan?**

**A17.** 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.

 When reviewing a primary TPEx listing application, the TPEx will conduct documentary review of the foreign issuer's issued but not yet exercised employee stock options to get a handle on the necessity and reasonableness of the issue. The review covers the issue period, employee eligibility, total number of options issued, the extent of equity dilution, basis for the setting of exercise price and whether the price is reasonable, terms and conditions for exercising the stock options, performance of contract and other important agreements. If the TPEx deems after conducting a review that the applicant's employee stock option plan contains significant irregularities or appears to be so unreasonable that it might impair the interests of ROC investors, the TPEx will ask the applicant and its lead recommending securities firm to re-evaluate the plan, and if deemed necessary, identify it as an important review item or discussion item to be considered in TPEx internal meeting and by the listing review committee. The conclusion made on the applicant's employee stock option plan will serve as a reference in the decision to approve or reject the listing application. That is, the TPEx will approve the listing application of a foreign issuer only it is determined that the issuer's employee stock option plan is free of situations that may cause material damage to the interests of ROC shareholders. A foreign applicant should disclose its issued but not yet exercised employee stock options in the prospectus and their diluting effect on shareholders' equity should be taken into consideration in the calculation of underwriting price.

The operational procedures and methods for the conversion, listing and information disclosure regarding issued but unexercised employee stock options of a foreign issuer that has been approved by the TPEx for primary TPEx listing are subject to applicable rules governing the issue of employee stock options by a domestic TPEx-listed company.

**Q18. Are there rules for the name and abbreviation of the name of a foreign issuer?**

A18. The TPEx does not require a foreign issuer applying for primary TPEx listing in Taiwan to have a Chinese company name, but the issuer should have at least an English company name. The principle of ticker symbol assignment for foreign TPEx-listed stocks is the same as that for domestic TPEx-listed stocks. But to help investors distinguish foreign 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 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 company 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".

**Q19. Is a foreign issuer required to establish relevant operations according to the ROC Regulations Governing Establishment of Internal Control Systems by Public Companies?**

**A19.** 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.

**Q20. Is a CPA report on internal control systems required when a foreign issuer applies for primary TPEx listing in Taiwan?**

**A20.** A foreign issuer applying for primary listing on TPEx should engage a CPA to issue an audit report with unqualified opinion on its internal control system. The period covered by the audit report should be the same as that for listing application by domestic enterprises. The aforementioned internal control audit report attached to the application documents for primary listing on TPEx may be substituted with internal control audit report of the most recent year issued by a CPA when the issuer carried out public issuance of stocks. In preparing an audit report on the internal control system of a foreign issuer, a CPA shall, in accordance with Article 37 of Regulations Governing Establishment of Internal Control Systems by Public Companies, particularly express opinions on the issuer's operational procedures such as acquisition or disposal of assets and engaging in derivatives transactions, and give an appropriate explanation thereof in a single separate paragraph in the audit report.

**Q21. 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?**

**A21.** A foreign issuer that applies for primary TPEx listing in Taiwan 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. 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.

**Q22. 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?**

**A22.** For a foreign issuer that applies for listing as an investment holding company, it is suggested that the applicant disclose 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.

**Q23. What legal requirements govern the TPEx listing of new shares issued for a capital increase by a foreign issuer with a primary TPEx listing?**

**A23.** TPEx listing of new shares issued for a capital increase by a foreign issuer with a primary TPEx listing is subject to the following provisions:

1. When a foreign issuer with a TPEx primary listing files to issue within the ROC, for the purpose of cash capital increase, new shares, certificates of entitlement to new shares, certificates of payment for new shares, or other securities approved by the competent authority, after obtaining effective registration the issuer shall, by 5 business days before the new shares begin trading on the TPEx, report the issue and upload related documentation to the TPEx-designated information reporting website and pay the TPEx trading fees. However, if any circumstance set out in Article 156, paragraph 1, of the Securities and Exchange Act exists with respect to the issuer, the competent authority may restrict the trading thereof on the TPEx.
2. When a TPEx primary listed company applies for TPEx trading of its issued stock of a different class from its stock already traded on the TPEx, or of detached company warrants, it shall apply to the TPEx by submitting the Application for Trading of Securities on the TPEx, furnishing all required particulars, together with the required documents. However, applications for trading of different types of stocks or stock warrants after separation shall meet the requirements of items 4 and 5 of Article 30 of the “Taipei Exchange Rules Governing the Review of Foreign Securities for Trading on the TPEx”.
3. If the foreign issuer subsequently issues new shares in the nature of bonus shares and it is allocated to stocks that have been traded, 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.

**Q24. How do foreign companies with a primary TPEx listing hold shareholders meetings?**

**A24.** A foreign company with a primary TPEx listing 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.

A TPEx primarily listed company'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 the TPEx primarily listed company'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.

**Q25. What should a foreign issuer disclose in its prospectus with regard to "methods for exercising shareholder rights"?**

**A25.** 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 documents. 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.

**Q26. 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?**

**A26.**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":
2. 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.
3. 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.
4. 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.
5. 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.
6. A foreign issuer should stipulate in its articles of incorporation that the ROC Rules Governing the Use of Proxies for Attendance at Shareholders' Meetings of Public Companies are applicable.
7. 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 issued 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.
8. 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.
9. If a foreign issuer sets 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.
10. 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.
11. Under the most recently amended version of 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.
12. The system for assessing protection of shareholder rights and interests is based on a foreign issuer's country of registration at the time of application for a TPEx listing. 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 for a TPEx listing 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.

**Q27. 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?**

**A27.** 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.

**Q28.** **Are there other important matters foreign issuers must be alerted of in order to make early preparations and plans?**

**A28**. 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, foreign issuer's primary TPEx listing contract, 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](https://moeaca.nat.gov.tw/opencardlist.html)

Organization and Group Authentication IC Card (XCA) website: <https://xca.nat.gov.tw/>

Financial market electronic document exchange system website: [https:// odxc.twse.com.tw/](https://eweb.tse.com.tw/)

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

Primary TPEx 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.) each quarter. The deadline for the annual financial report is within three months after the conclusion of the fiscal year. For the first, second, and third quarter reports, the deadline is within 45 days after the end of each quarter. Foreign issuers should make appropriate adjustments in the finance and accounting departments so as to deal with the relevant reports.

**5. The foreign issuer can carry out advance planning pertaining to the conditions under which a TPEx-listed company is allowed to engage in margin trading in order to successfully obtain qualifications for margin purchases and short sales of securities.**

Six months after a foreign company with a primary TPEx listing, if an issuer meets the requirements with respect to matters such as paid-in capital and profitability related to the TPEx listing, as set out in the subparagraphs of paragraph 2, Article 8 of the Operating Rules for Securities Firms Handling Margin Purchases and Short Sales of Securities, the TPEx will announce that its shares are eligible for margin purchase and short sale.

1. **Recommending Securities Firms**

**Q29. What are the qualification requirements to act as recommending securities firm for a foreign issuer applying for a primary TPEx listing in Taiwan?**

**A29.** A recommending securities firm for a foreign issuer applying for a primary TPEx listing in Taiwan must be a registered member of the Taiwan Securities Association, must be qualified in the ROC as a securities underwriter and TPEx securities dealer, and must be in compliance with Article 23 of the Regulations Governing Securities Firms. However, for a foreign issuer that has filed for listing advisory guidance at least six months previously, has not had its shares traded on the Emerging Stock Market, and is applying for an initial TPEx listing, a firm that is qualified only as an underwriter may act as the recommending securities firm. In addition, the relationship between a recommending securities firm and the foreign issuer must not include any of the circumstances set out in Article 26 of the Regulations Governing Securities Firms, and the two parties must not be members of the same enterprise group.

**Q30. When an overseas subsidiary of a domestic TWSE/TPEx listed company applies for primary listing on TPEx, what are the things a recommending securities firm should evaluate in details?**

**A30.**When an overseas subsidiary of a domestic TPEx/TWSE listed company applies for listing on TPEx, the recommending securities firm should carry out necessary evaluation and examination and evaluate the following matters in details:

1. The legality of the decision-making process of the domestic TPEx/TWSE listed company, any material adverse impact (of the listing of subsidiary) on the operations and finance of the company, and response measures the company plans to take.

2. Whether the move of ownership dispersion taken by the domestic TPEx/TWSE listed company to lower its shareholding in the overseas subsidiary will impair the interests of its own shareholders or fail to give pre-emptive subscription rights to the existing shareholders of the TPEx/TWSE listed company during the 3-year period before the application for TPEx listing. The term "impair the interests of its own shareholders" means the move of ownership dispersion taken by the domestic TPEx/TWSE listed company in terms of targets of ownership dispersion and method of price determination violate relevant provisions or are apparently unreasonable that the rights and interests of its own shareholders are impaired.

**Q31. After a foreign issuer has been listed on TPEx, how long should the issuer continue to retain the service of its lead recommending securities firm and for what purposes?**

**A31.** During the fiscal year in which the foreign issuer obtains its TPEx listing, and during the three fiscal years thereafter, the foreign issuer must agree to continue retaining the lead recommending securities firm to help it comply with: (1) ROC securities laws and regulations; (2) TPEx rules, bylaws, and public announcements; and (3) the Primary TPEx Stock Listing Agreement for Foreign Issuers. ~~(If the foreign issuer is a technology-based enterprise or cultural or creative enterprise, the lead recommending securities firm should be retained in the year of listing and three fiscal years thereafter).~~ Domestic issuers are not subject to this requirement.

1. **CPA and Financial Reports**

**Q32. What requirements apply to the CPAs that certify a foreign issuer's financial reports?**

**A32.** 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 stated without reference to the audit (or review) work of other CPAs.

TPEx' review of the CPA's working papers submitted along with the application for primary TPEx listing focuses on verifying whether the ROC CPA has conducted the audit work in accordance with the Rules Governing Auditing and Certification of Financial Statements by Certified Public Accounts and the Generally Accepted Auditing Standards as corroborated by the working papers.

**Q33.** **What requirements apply to the financial report disclosed by a foreign enterprise applying for a primary TPEx listing in Taiwan?**

**A33.** When a foreign issuer applies for primary TPEx listing, it should submit two copies of CPA-audited consolidated financial report for the preceding two fiscal years; if 45 days after the end of the first ,two or the third quarter of the year have elapsed at the time of application, the applicant should submit in addition two copies of review quarterly financial report for the preceding quarter. The CPA audit (review) report should not make reference to the audit work of other CPAs.

【Example 1】

If a foreign issuer applies for primary TPEx listing in June 2013, the issuer is required to submit CPA-audited consolidated financial reports for 2011 and 2012, and consolidated financial report for the first quarter of 2013, which however needs be reviewed by a CPA.

【Example 2】

If a foreign issuer applies for primary TPEx listing in October 2013, the issuer is required to submit CPA-audited consolidated financial reports for 2011 and 2012, and consolidated financial report for the second quarter of 2013, which also needs to be audited by a CPA.

If a foreign issuer applies for primary TPEx listing in Taiwan 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 issuer applying for a primary TPEx listing?**

**A34.**

 1. In its application for a primary TPEx listing, and in the financial reports that it is required to issue publicly, a foreign issuer must state all monetary amounts in New Taiwan dollars (NTD).

 2. The Chinese version shall prevail, but it may be accompanied by an English version.

 3. Financial reports should be prepared in accordance with the international financial reporting standards endorsed by the Competent Authority, US accounting standards, or the International Financial Reporting Standards.

 4. Financial reports should cover all consolidated entities and provide period-to-period comparisons. Each financial report must include a balance sheet, a statement of comprehensive income, statement of cash flows, statement of changes in equity, and notes. The notes to a financial report should indicate the accounting principles adopted. If a financial report is prepared in accordance with the international financial reporting standards endorsed by the Competent Authority, then it shall be prepared in compliance with the ROC Regulations Governing the Preparation of Financial Reports by Securities Issuers, and information on loans, endorsements, and guarantees should be disclosed separately for each consolidated entity, and not simplified through consolidation. If a financial report is not prepared in accordance with the international financial reporting standards endorsed by the Competent Authority, the notes must include an explanation of how account disclosures in the balance sheets and statements of comprehensive income (presented with period-on-period comparisons) differ from those in a financial report prepared in accordance with the international financial reporting standards endorsed by the Competent Authority, including descriptions of any material discrepancies and how they affect the reported dollar amounts.

 5. The auditor (CPA) must describe in the audit(or review) 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 Attestation 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.”)

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

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

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

(3) List the account disclosure differences in the statements of comprehensive income, explain the reasons, and note the dollar amounts.

(4) List the account disclosure differences in the balance sheets, explain the reasons, note the dollar amounts, and present a restated balance sheet if necessary.

(5) Disclose information on the basic earnings per share (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.

7. 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 international financial reporting standards endorsed by the Competent Authority from now on, the TPEx allows the adoption of different GAAP for financial reports prepared in prior years and those prepared in the year of applying for primary TPEx listing. However the GAAP adopted for the preparation of period-on-period financial statements and that adopted after listing on TPEx should be consistent.

8. 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.

9. The reporting dateline of financial report is the same as domestic issuers.

**Q35.What are the requirements for a foreign issuer's fiscal year?**

**A35.**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. **Others**

**Q36. 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 primary TPEx listing application?**

**A36.** To shorten the review period of a foreign primary TPEx listing application, the Central Bank agrees in principle to undertake parallel review. That is, when a foreign issuer applies for primary TPEx listing, 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.

**Q37. What are the provisions for proceeds from the disposal of stocks by the shareholders of a foreign TPEx-listed company?**

**A37.** Foreign shareholders of a foreign TPEx-listed company may now keep the proceeds from the disposal of stocks listed on our market 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.

**Q38. What is the procedure for an overseas enterprise to apply for a withholding agent tax ID?**

**A38.** 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.

**Q39. What are the tax risks associated with equity transfer in restructuring of investment framework for Taiwanese enterprises doing business in China and response measures?**

**A39.** 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.

**Q40.** **If a foreign issuer with investments in Mainland China that applies for a primary TPEx listing 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 to list on the TPEx and after the application to list on the TPEx?**

**A40.** 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 on 16 January 2013 per an order dated 16 January 2013 (Ref: 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 companies to list in Taiwan, the MOEA Investment Commission wishes to avoid discouraging domestic investors 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 MOEA Investment Commission 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, 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 that 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 a foreign issuer that will apply for a primary listing on the TPEx has already registered its stocks on the Emerging Stock Board, and if it already had shareholders of ROC nationality prior to its Emerging Stock Board registration, then 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. If the foreign issuer has not registered its stock on the Emerging Stock Board, then before it applies for a primary TPEx listing 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 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.

**Q41.** **Before foreign issuers apply for primary TPEx listing, what is the procedure for applying for exemption of articles of Securities and Exchange Act?**

**A41.** Before foreign issuer applies its common stock for primary TPEx listing, 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.

**Q42. The Notes Regarding Applications to List in Taiwan Submitted by a Mainland Chinese Enterprise Via a Holding Company 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?**

A42.

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 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, has to 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"; provided, however, that payment for shares must be made in full by the time the application for a TPEx listing is submitted.

4. A company applying for a TPEx listing must undertake the following:

(1) That it will extend its internal control audit report period to three years after its TPEx listing.

~~(2) That it will agree to continue retaining the lead recommending securities firm for three years after its TPEx listing to help it comply with ROC securities laws and regulations.~~

(2) That it will, as necessary depending on the case, require that the assignees of any shares that are or were transferred from Mainland investors prior to its application for TPEx listing be included within the scope of expanded centralized custody.

(3) Undertake that the shareholdings of Mainland investors will not be allowed to exceed 30%, and that such investors will not be allowed to gain ability to control the applicant.

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)