



## 台灣新經濟簡訊

經建會法協中心

### 法規鬆綁

#### ■ 兩岸金融再鬆綁

行政院核定通過《台灣地區與大陸地區金融業務往來及投資許可管理辦法》修正，重點包括調整銀行進入大陸市場的主體及經營型態、強化風險控管機制及適度放寬兩岸金融業務範圍等 3 部分。

金管會表示，兩岸簽署「海峽兩岸經濟合作架構協議」(ECFA) 後，雙方金融往來更趨頻繁，此次依據兩岸金融協商進程，適時檢討放寬兩岸金融業務往來相關規範，以提升我國銀行業之競爭力。

金管會指出，此次鬆綁銀行進入大陸市場主體及經營型態，取消「2 擇 1」，即准許台灣地區銀行或第三地區之子銀行，均可赴大陸設置分行、子行或參股投資；同時，也取消「3 擇 2」，即台灣地區銀行或第三地區子銀行可自由選擇赴大陸地區設立分行、子銀行或參股投資，形式不受限；並取消銀行、金控公司參股投資大陸地區金融機構以 1 家為限的規定。

在強化風險機制方面，銀行及金控公司匯往大陸地區的營業資金及投資限額，改採全行（全集團）的控管機制；銀行及其子公司赴大陸地區所累積指撥的營業資金及投資總額合計數，不得超過銀行淨值的 15%；金控公司及其子公司赴大陸地區參股投資，投資總額不可超過其淨值的 10%。

另為建立總量暴險機制，新辦法規定銀行對大陸地區的授信、投資及資金拆存總額度，不得超過其上年度決算後淨值的 1 倍。金管會表示，計算方法將由金管會洽商中央銀行意見後另定之，另配合此項新措施實施，刪除原辦法中對於大陸地區分行授信總餘額倍數限制的規定。

此次修法也適度放寬兩岸金融業務範圍，包括開放台灣地區銀行的海外分支機構及國際金融業務分行（OBU）可承做大陸地區人民、法人的授信業務，對象不再侷限於大陸台商或大陸外商；此外，銀行的海外分行、OBU 及 DBU，與大陸地區人民、法人的業務往來，回歸一般性業務規範，採負面表列規定，業務範圍將比原來正面表列方式更為寬闊。

此外，參考中國大陸對外國銀行在陸分行收受當地居民人民幣存款的相關規定，新辦法也將陸銀在台分行收受自然人新台幣存款之門檻，由每筆新台幣 150 萬元之定期存款，調高為 300 萬元。

## ■ 留才——《科技基本法》修正

為加強支援產業界所需人才，提升產業競爭力，行政院會通過《科學技術基本法》修正草案，解除公立大專院校及政府研究機構的研究人員不得兼職、投資企業持股不得超過 10% 的限制；另放寬公立學校、機關之研發智慧財產權及成果技術移轉，可不受《國有財產法》限制。

國科會表示，現行公立學校、公立機關（構）或公營事業之科技研發工作與一般行政業務，皆依循同一套法令制度，而科技研發追求創新發展與成果運用，在前敘框架下，其發展不免有所窒礙，且技術移轉應用亦較曠日費時。為促使公立學校及機關（構）累積之豐沛研發能量，更順暢地釋放給國內產業，此次修法，放寬政府補助、委託或出資進行的科技研發，歸屬於執行研究單位

的智慧財產權及成果，其保管、使用、收益及處分，可不受《國有財產法》相關限制；但為避免智慧財產權及成果之歸屬及運用，產生利益衝突或相關爭議，修正條文也增訂利益迴避及相關資訊揭露之義務。

此外，根據現行公教人員相關法規，公立專科以上學校或公立研究機構的研究人員，因科學研究業務需技術作價投資的持股上限為 10%，出任董監事也有限制。為強化優秀科技人才留用，修法草案大幅放寬相關公立單位的研究人員，相關技術作價投資或兼職，可不受《教育人員任用條例》及《公務員服務法》等規定限制。至於從事研究人員的認定，可兼任之職務與數額、技術作價投資比例，以及其他應遵行的事項，未來將由行政院會同考試院訂定。

草案中另賦予公立學校、研究機構進行科技研發採購之彈性，公立學研機構接受政府委託或私人捐贈現金，辦理科學技術研究發展之採購，可排除適用《政府採購法》。

## ■ 市地重劃抵費地免奢侈稅

為鼓勵民間參與市地重劃，財政部發布奢侈稅解釋令，同意參與市地重劃的開發商與出資人，領回「抵費地」後，於 2 年內出售，可比照參與都市更新者獲配的不動產，免徵特種貨物稅（通稱「奢侈稅」）。

現行《特種貨物及勞務稅條例》規定，可排除課徵奢侈稅的貨物共有 11 類，但其中不含市地重劃後分配的土地。

參與市地重劃之原土地所有人，以土地折價抵付工程費用、重劃費用或貸款利息（即抵費地），而開發商或出資人在市地重劃完成後領回抵費地，其持有期間卻無法依原土地所有權人的持有期計算，若於 2 年內出售，將被加徵 10% 或 15% 的奢侈稅。

財政部表示，市地重劃與都市更新均具有改變市容、活化土地價值的作用，目前都市更新因權利變換取得更新後分配的房屋及土地者，已排除短期內出售須課徵奢侈稅，為鼓勵民間自辦市地重劃，因此同意參與市地重劃的開發商與出資人，領回抵費地後在 2 年內移轉買賣，也可免徵奢侈稅。

## ■ 金控赴陸設創投管理公司開放

為增加我國金融機構在大陸地區的多元獲利管道，降低投資風險，金管會宣布，開放金融控股公司可代百分之百持股之子公司，申請於大陸地區投資設立創業投資管理公司，但持股比例須超過 25% 以上。金管會說明，依據「銀行、金融控股公司及其關係企業投資大陸地區事業管理原則」規定，金控公司直接、間接持股百分之百的子公司，可投資大陸地區融資租賃公司或其他經主管機關核定之「金融機構以外之金融相關事業」，而創業投資管理公司以尋找案源及資訊蒐集為主要業務，並以收取手續費為主要收入來源，即屬於「金融機構以外之金融相關事業」的範圍。

不過金管會強調，金控公司透過旗下子公司所投資設立的大陸地區創業投資管理公司，不可直接或間接投資創投公司或一般企業，也不可參與其所管理的創投企業所進行的投資。

此外，該創業投資管理公司的投資金額，須納入《台灣地區與大陸地區金融業務往來及投資許可管理辦法》投資限額之控管。金管會表示，開放金控公司登陸設立創投管理公司，除可增加營收獲利來源外，並有利於即時掌握大陸地區投資資訊及商機，同時有助金控集團在大陸地區布局的完整性，提供更完整之金融服務。

## 新聞快遞

### ■ 4 年 450 億助全民築巢

行政院經濟建設委員會通過內政部提出之「2012 年至 2015 年整體住宅政策實施方案」，未來 4 年將編列新台幣 450 億元預算，改善住宅及社區環境，協助中低收入戶、弱勢、及青年成家，創造公平的租、購屋機會。

整體住宅政策實施方案以現金補貼為主，包括整合住宅補貼資源實施方案、青年安心成家住宅補貼、優惠購屋專案貸款等。根據內政部評估，整合住宅補貼每年可提供 6 萬 3 千戶中低收入家庭購置，與修繕住宅貸款利息補貼及

租金補助，協助其覓得適當的住宅；青年安心成家方案每年可協助 3 萬 5,000 戶青年家庭減輕居住負擔。

至於住宅興建方面，目前內政部已於機場捷運線 A7 站區規畫興建 3,900 戶「合宜住宅」，另在新北市板橋周邊地區規劃興建 5,000 戶，提供價格合宜的住宅，以減輕一般民衆購屋負擔；此外，台北市和新北市將興建 1,600 戶的「社會住宅」，提供弱勢家庭及外地就業青年居住。

另為提升居住品質，內政部也將建立住宅健康檢查制度，推動都會區老舊住宅及公有出租住宅整建修繕，並補助農村社區個別宅院整建；同時，將推廣無障礙住宅社區，而因應高齡化社會來臨，也將規劃高齡者住宅，提供便利及安全的適居環境。

在健全不動產市場運作部分，內政部表示，未來將推動包括：建立不動產交易價格登記制度及發布機制，促進不動產資訊透明化；整合不動產資訊平台，提供住宅市場供需資訊，以做為政府研擬住宅政策以及各界瞭解住宅市場與價格發展趨勢；建立不動產物業管理機構管理機制，促進住宅租賃市場透明化，健全住宅租賃市場。

## ■ 台港簽署銀行 MOU

金管會與香港金融管理局 8 月 11 日完成簽署「銀行業監督管理合作瞭解備忘錄」(MOU)，內容包含資訊交換、定期會晤、持續聯繫及資訊保密等實質約定，雙方之監理合作將更為緊密。目前我國與香港皆已於對方境內互設銀行機構據點營業，我國銀行在香港設有 18 家分行、2 家代表人辦事處；而香港在台設立 3 家分行、2 家代表人辦事處，金融往來密切。

金管會此次與香港簽署銀行監理備忘錄，除可獲得國銀在香港的營運狀況等相關資訊，有利事前掌控防範異常狀況外，兩方之經理人若至對方境內任職，主管機關可向對方要求提供經理人的資歷等相關背景資料審核，對於雙方金融業人才交流具積極正面之意義。

金管會表示，全球金融危機爆發後，各國皆致力推動整體經濟及金融的永續成長，並強化金融監理，同時增進國際監理合作與協調。透過金融監理合作備忘錄，金融機構從事跨境經營業務時，母國監理機構與地主國監理機構可相互交換意見，協助彼此履行金融監理職責。

目前台灣與其他國家已簽署 46 個金融方面之 MOU，包含 44 個雙邊 MOU 及 2 個多邊 MOU。

### ■ 台美共啓 PPH 計畫

9 月 1 日起，台灣與美國啓動試行「專利審查高速公路（The Patent Prosecution Highway, PPH）計畫」，廠商在美國提出第一次專利申請並適用 PPH 計畫者，如符合一定的規定，在台灣的專利申請審查天數可望縮短至 82 天內，對科技發展變動迅速的資訊與半導體廠商而言，將是一大利多。

經濟部智慧財產局表示，PPH 係第二申請局利用第一申請局審查結果，加速審查相同發明專利申請案，將有助於專利積案的清理及提升專利審查品質。美國與日本在 2006 年開始試辦 PPH，2008 年正式推動，韓國與歐洲專利局均已陸續加入，我國智慧局是第 19 個加入美國 PPH 計畫的專利機構。

根據台美 PPH 約定，專利申請人向我智慧局或美國專利商標局（USPTO）第一次提出發明專利申請後，就同一發明向另一專利局申請專利並主張優先權，若其中至少有一項專利請求經第一受理申請局審查可准予專利，申請人則可請求第二申請局加速審查。不過，申請加速審查的專利範圍必須與第一申請局核准的範圍完全相同或更限縮；第二申請局也不必然須核准專利。

由於美國目前審查專利平均耗時約 24 個月，台灣則需 40 個月，因此實務上很多廠商會先向美國申請專利，再回台灣申請並主張優先權。智慧局表示，台灣廠商近 2 年向美國申請的專利量逾 1 萬 8 千件，在外國人申請專利中排名第 4，第 1 名是日本、第 2 名是德國、第 3 名則是韓國。這次是美方評估台灣專利審查水準後，主動邀請台灣加入。



# Taiwan New Economy Newsletter

## Deregulation Progress

### ■ Rules further relaxed for cross-strait financial dealings

A revision of the Regulations Governing the Banking Activity and the Establishment and the Investment by Financial Institution Between the Taiwan Area and the Mainland Area, approved recently by the Executive Yuan, includes three key points: adjustment of the type of entity and form of operation of Taiwanese banks entering the mainland Chinese market, reinforcement of the risk-control mechanism, and relaxation of the scope of cross-strait financial business.

The Financial Supervisory Commission (FSC) explains that following the signing of the Economic Cooperation Framework Agreement (ECFA) between Taiwan and mainland China, financial dealings between the two sides have become more intense and the current relaxation of the rules on financial dealings, carried out in accordance with the progress of crossstrait financial negotiations, will boost the competitiveness of Taiwanese banks.

The FSC further notes that the relaxation eliminates the “choose one of two” restriction on the investing entity and the “choose two of three” restriction on the form of investment, allowing both Taiwanese banks and their third-area subsidiaries free and unrestricted choice to set up branches or subsidiaries, or make equity investment, in mainland China. The revision also removes the provision that Taiwanese banks and financial holding companies may carry out equity investment in only a single financial institution in the mainland.

To reinforce the risk-control mechanism, the quota for remittances of operating and investment capital to the mainland by Taiwanese banks and

financial holding companies is switched to the bank-wide (group-wide) control mechanism. The total cumulative allocated operating capital and total amount of investment therefore combined in the mainland by Taiwanese banks and their subsidiaries may not exceed 15% of the banks' net worth, and the total amount of equity investment in the mainland by Taiwanese financial holding companies and their subsidiaries may not exceed 10% of their net worth.

The new Regulations also call for the establishment of a total-exposure mechanism by stipulating that the total amount of a bank's credit extension business, investment, and inter-bank loan and deposit in mainland China may not exceed its net worth following its final budget for the previous year. The FSC says that it will set the method of calculation following consultation with the Central Bank, and that it will eliminate the total loan outstanding of the branch of a Taiwan bank or third area subsidiary bank in mainland China that is contained in the original Regulations.

The current revision also expands the scope of financial business between the two sides of the Taiwan Strait by an appropriate amount, including the granting of permission for overseas branches and OBUs of Taiwanese banks to undertake loans to individuals and juridical persons in the mainland area, such loans are no longer being limited to Taiwanese and foreign-invested businesses. In addition, business between the overseas branches, OBUs, and DBUs of Taiwanese banks and mainland Chinese individuals and juridical persons will come under the scope of general business, and the negative list now used will make the scope of business broader and more convenient than the original positive list.

In reference to the rules imposed by mainland China on the mainland branches of foreign banks regarding RMB loans to local residents and other matters, the new Regulations raise the threshold on NT dollar loans to natural persons by the Taiwan branches of mainland Chinese banks to NT\$3 million, up from the original NT\$1.5 million.

### ■ Revision of S&T Act to help retain talent

The Executive Yuan has approved a revision of the Fundamental Science and Technology Act designed to boost support for industrial manpower acquisition and heighten industrial competitiveness by removing the restriction against the research personnel of public colleges and universities and government research institutions having second jobs or holding more than 10% of the shares in a business enterprise.

The revision also eases the application of the restrictions imposed by the National Property Act on the transfer of intellectual property rights and technology resulting from R&D work carried out in the aforesaid institutions.

The National Science Council notes that the R&D work and general administrative affairs conducted by public schools, government agencies, and state-run enterprises currently have to adhere to the same set of legal systems.

Under the framework mentioned above, the implementation of technological R&D in the pursuit of innovative development inevitably runs into obstacles, and the transfer and application of technology takes too much time.

To help public schools and government agencies release to domestic industries the abundant R&D capabilities that they have built up, the present

revision relaxes conditions for government subsidies for, commissioning of, and funding of technological R&D work. The custodianship of, utilization of, income from, and disposition of intellectual property rights and research results owned by the implementing research organizations will no longer be subject to the restrictions contained in the National Property Act. To prevent conflicts of interest or disputes from erupting over the ownership or application of intellectual property rights or research results, however, the revised law contains an added provision on the obligation to recuse and disclose related information in cases of conflict of interest.

In addition, under current laws governing public servants and teachers, the imposition of the 10% ceiling on shareholding through investment of technology by researchers in public schools at the junior college level and above or in public research institutions, also restricts them from taking up positions as company directors or supervisors. To strengthen the retention of outstanding technology personnel, the draft revision greatly relaxes the restrictions on researchers in public organizations, the use of technology for investment, and the taking of second jobs by exempting these matters from the limits imposed by the Act of Governing the Appointment of Educators and the Civil Servant Services Act. The determination of “researcher,” the types and number of jobs which researchers may concurrently hold, the ratio of investment using technology as capital, and other matters to be observed will be established by the Executive Yuan together with the Examination Yuan.

The draft revision also gives public schools and research institutions flexibility of procurement for science and technology R&D by exempting such procurement

from the application of the Government Procurement Act when it is for R&D conducted under government commission or with a private cash donation.

## ■ Offset-expenditure land for urban land consolidation exempt from luxury tax

To encourage citizens to participate in urban land consolidation, the Ministry of the Interior (MOI) has issued an interpretation on the luxury tax, agreeing that developers and providers of funds who participate in urban land consolidation and who sell offset-expenditure land within two years after receiving it will be exempt, as are those who are allocated real estate for participation in urban renewal, from the specifically selected goods of tax (commonly called the “luxury tax” ).

The current Specifically Selected Goods and Services Tax Act provides an exemption from the luxury tax for 11 types of good, but does not include land allocated following urban land consolidation. Landowners who participate in urban land consolidation use their land to offset construction costs, consolidation expenses, or loan interest, and after the urban land consolidation is completed the developer or provider of funds takes over the offsetexpenditure land; but their period of ownership cannot be calculated in accordance with the period of ownership of the original owner, and if they sell the land within two years they are subject to an additional luxury tax of 10% or 15%.

The Ministry of Finance indicates that both urban land consolidation and urban renewal have the purpose of changing the face of the city and bolstering land prices. People who, because of the exchange of property rights, are

allocated land and buildings following urban renewal projects have already been exempted from the luxury tax on the sale of property after a short period, and to encourage people to carry out their own urban land consolidation project the same exemption is now offered to developers and providers of funds who sell offset- expenditure land within two years of taking possession of it.

## ■ FHCs may set up VC management firms in mainland China

To increase the diversity of profit channels for Taiwanese financial institutions in mainland China, and reduce their investment risk, the Financial Supervisory Commission (FSC) has announced the opening of applications by financial holding companies, on behalf of wholly owned subsidiaries, for investment in the establishment of venture capital management companies in mainland China. Shareholding in the mainland Chinese companies, however, must exceed 25%.

The FSC explains that according to the stipulations of the Directions for Investments in Mainland China Enterprises by Banks, Financial Holding Companies, and Their Affiliated Enterprises, subsidiaries that are wholly owned, either directly or indirectly, by financial holding companies may invest in financial leasing companies or other financial-related companies other than financial institutions that are approved by the competent authority. The main business of venture capital management companies is to seek out investment projects and collect information, and their main source of income is service fees. This puts them within the scope of “financial-related businesses other than financial institutions.”

The FSC emphasizes, however, that financial holding companies investing in venture capital management companies in mainland China through their subsidiaries may not invest, either directly or indirectly, in venture capital companies or general enterprises there. Further, the amount their venture capital management companies in mainland China invest there must be included in the quotas stipulated in the Regulations Governing the Banking Activity and the Establishment and the Investment by Financial Institution Between the Taiwan Area and the Mainland Area.

The FSC notes that investment in mainland Chinese venture capital management companies by Taiwanese financial holding companies can increase their customer base and help them earn fee income. It will also help them to gain timely information on investment and business opportunities in the mainland, expand their international vision, boost the internationalization of their business, and fill out their deployment in the mainland so that they can offer more comprehensive financial services.

## News Express

### ■ Government earmarks NT\$45 billion to ease housing burden

The Council for Economic Planning and Development (CEPD) has approved the “2012-2015 General Housing Policy Implementation Program” proposed by the Ministry of the Interior (MOI), which calls for the allocation of NT\$45 billion over the coming four years to improve Taiwan's residential and community

environment, help low-and medium-income earners, disadvantaged people, and the young to marry and raise families, and create fair opportunities to rent and purchase homes.

The program will operate primarily through the provision of subsidies, including an integrated housing subsidy resources implementation plan, housing subsidies for young married people, and low-interest home loans. The MOI estimates that the integrated housing subsidy plan will provide rental subsidies and interest subsidies for home loans and home-improvement loans for 63,000 low-income families annually, and that the young-married plan will help alleviate the housing burden for 35,000 young families every year.

To increase the supply of housing, the MOI has mapped out plans to build 3,900 affordable housing units in the area of Station A7 of the Taoyuan Airport Access MRT line and another 5,000 units in the suburbs of Banqiao in New Taipei City. This affordable housing will alleviate the burden of home-buying for the general public.

In addition, Taipei City and New Taipei City will build 1,600 social housing units for disadvantaged families and young migrant workers.

The MOI will also enhance residential quality by building up a “housing health examination system,” promoting the renovation of old residences and government-owned rental units in metropolitan areas, and subsidizing the remodeling of individual houses in rural communities.

At the same time, the MOI will promote barrier-free residential communities; with the advent of the ageing society, it will also plan out senior-citizen housing to provide a safe and convenient living environment.

In reference to healthy real estate market operations, the MOI says that it will establish a registration system and announcement mechanism of real estate transaction price to promote the transparency of real estate information; integrate real estate information platforms to provide information on supply and demand in the housing market for the government to use in formulating housing policy and to help the public understand price trends in the market; set up a mechanism for the governance of real estate management institutions, to promote transparency in, and improve the soundness of, the rental housing market.

### ■ Taiwan, Hong Kong sign MOU on banking supervision

On August 8 Taiwan's Financial Supervisory Commission (FSC) and the Hong Kong Monetary Authority (HKMA) signed a memorandum of understanding on cooperation in banking supervision, providing for the exchange of information, regular meetings, ongoing liaison, and information security.

The two sides already enjoy close financial relations, and Taiwan and Hong Kong have each set up banking units in the territory of the other party. Taiwan's banks now operate 18 branches and two representative offices in Hong Kong, while Hong Kong banks have established three branches and two representative offices in Taiwan.

Besides providing for the acquisition of more information about the status of Taiwanese banking operations in Hong Kong, which will facilitate early action to prevent abnormal developments, the new MOU allows for the banking authorities on one side to ask for the resumes and other background information on managers who are stationed there by banks on the other side. This is a highly

positive development for the exchange of financial personnel between the two sides.

The FSC points out that in the wake of the global financial tsunami, governments everywhere are striving to promote sustained overall economic and financial growth, the strengthening of financial supervision, and improved cooperation and coordination in international financial oversight. Under the new MOU, when financial institutions engage in cross-border business operations the regulators of the mother country and host country can exchange ideas about the operations and help each other fulfill their supervisory responsibilities. Taiwan has now signed 46 financial MOU—44 bilateral and two multilateral—with other countries.

## ■ Taiwan and U.S. inaugurate PPH

Taiwan and the United States began a pilot run of the Patent Prosecution Highway (PPH) on September 1. This means that companies submitting a first patent filing in the U.S. and using the PPH plan will, so long as they comply with the relevant rules, have the examination period for patent filings in Taiwan shortened to within 82 days. This is an important improvement for companies in the fields of information and semiconductors, where technology is developing at lightning speed.

The Taiwan Intellectual Property Office (TIPO), a unit of the Ministry of Economic Affairs, explains that under the PPH, the Office of Second Filing (OSF) can use the ruling from the Office of First Filing (OFF) to fast track the examination of corresponding claims in corresponding applications filed in the

OSF. This will help clear up the backlog of patent applications and enhance the quality of patent review. The U.S. and Japan initiated pilot PPH operation in 2006 and formal operation in 2008, and Korea and the European Patent Office are gradually implementing the PPH system. TIPO is the 19th patent office to join the U.S. PPH program.

According to the Taiwan-U.S. PPH agreement, after a patent applicant makes a first filing with TIPO or the U.S. Patent and Trademark Office, and then files an application for the same patent with the other patent office and asks for patent priority, the applicant can ask the OSF to fast track the examination so long as at least one claim filed in the OFF is patentable. The scope of a patent for which fast-track examination is requested, however, must be exactly the same as, or more restricted than, that of the scope approved by the OFF, and the OSF need not necessary approve the application.

Since a patent review currently takes an average of about 24 months in the U.S. and 40 months in Taiwan, many Taiwanese companies apply to the U.S. for a patent first and then apply in Taiwan, asking for patent priority. TIPO reports that Taiwanese companies have filed more than 18,000 patent applications in the U.S. during the past two years, ranking Taiwan 4th among all sources of foreign applications following Japan, Germany, and South Korea.

Taiwan was invited to join the PPH program following an assessment of the island's patent examination standards by the U.S. 