

# 台灣新經濟簡訊

經建會法協中心

## 法規鬆綁

### ■ 公司法新制上路

《公司法》新修正條文於 7 月 1 日生效，本次修法依據公司治理精神，大幅鬆綁公司減資退股、收回特別股資金來源，以及員工薪酬制度等限制，強化企業財務運用之彈性。

經濟部表示，《公司法》原規定，公司減資退還股款只能以現金退還，而公司增資發行新股及股東出資，則可用其他資產如貨幣債權、技術或商譽抵繳；因此修法放寬公司減資時，也可用現金以外的財產來退還股款，使企業能依經營需求，靈活運用資本處理減資事宜。

經濟部進一步說明，為保障股東權益，公司減資退股方式仍須經股東會決議，以及收受股東的同意，而所退還財產的價值及抵充數額，也須經會計師查核簽證，以確保財產估價合理。

### 公司名稱侵權 可強制解散

此次《公司法》修正，另一項重要指標意義，為強化對著名商標的保護。經濟部表示，公司登記與商標登記分屬不同主管機關管轄，登記目的各不相同，過去即發生在未取得商標權人同意的情況下，業者以著名或註冊商標中的文字，做為自己公司名稱，造成侵權情形。

過去相關案例發生後，經商標權人提起訴訟，即便法院裁判商標侵權確定，如果侵權公司負責人執意不更改公司名稱，權利人必須進一步透過強制執行，才能排除商標侵害，主管機關對侵權公司無法進行處分。

為了保障商標權人的權益，《公司法》增訂第 10 條第 3 款，賦予主管機關處分侵權公司的權限。在公司名稱經判決確定不得再使用，業者未於 6 個月內主動辦理變更登記，且經要求限期辦理而未辦妥之情形下，主管機關可命令該公司解散。

此外，公司收回特別股，原規定限制僅可運用盈餘或發行新股的所得股款進行收回，現放寬公司可使用盈餘或現金以外的其他資金來源辦理。

同時，為讓企業獎酬員工的工具與國際接軌，便利企業吸引優秀人才，以提升企業競爭力，修正條文也允許企業經股東會特別決議通過，可發行限制員工權利的新股，至於發行數量、價格、條件等，仍須由證券主管機關規定。另為協助企業留住員工，法條增訂公司以員工庫藏股進行獎酬時，可限制員工在 2 年內不得再轉讓。

## ■ 保險業投資人民幣股債准了

行政院金融監督管理委員會表示，為了提升保險資金運用效率，並考慮保險業投資的彈性需求，修正《保險業辦理國外投資管理辦法》第 12 條，開放保險業投資香港以人民幣計價的特定有價證券，以擴大業者的投資標的範疇。

金管會表示，辦法修正後，保險業可投資以人民幣計價，在香港證券交易市場掛牌的紅籌股、國企股及恆生香港中資企業指數成分公司所發行的有價證券或指數型股票基金（ETF），以及包括點心債（Dim Sum Bonds）等的公司債及金融債券。

### 點心債

指在香港發行以人民幣計價的債券，取名「點心債」的原因之一，是此類債券在國際債券市場的發行量，相對而言非常少，如同點心一般，此外香港素以港式「點心」出名，所以才稱為「點心債」。

點心債發行人百分之百為中國政府、企業，或在中國大陸營運的國際企業，目前發行的單位包括大陸國家開發銀行、中國進出口銀行等，其中最受矚目的是麥當勞所發行的點心債。

根據 Bloomberg 統計，2010 年點心債共計發行 36 件、規模達 412.48 億人民幣，而今年迄 7 月份，發行量增至 122 件，規模亦創新高達 870.93 億人民幣，預估今年點心債的發行量將成長至 1,500 億人民幣。

此外，金管會補充，保險業者投資同一公司以人民幣計價的有價證券總額，不可超過金管會核定該公司國外投資額度的 1%，以及發行公司實收資本額的 10%；另有價證券及指數股票型基金的投資總額，以該保險業國外投資額度的 10% 為上限。

保險事業發展中心統計，今年 4 月底止，國外投資總額度為新台幣 3.86 兆元，按 10% 計算，保險業可投資人民幣債券的總額度近 4,000 億元。

## ■ 廣電執照延為 9 年

立法院 6 月 14 日三讀通過《廣播電視法》部分條文修正，將廣電執照效期從現行 6 年延長至 9 年，並將營運計畫執行成果評鑑，由每 2 年 1 次改為每 3 年 1 次，藉由延長經營期限及評鑑間隔時間，提升業者投資之意願。

此次修法也排除《預算法》限制，授權國家通訊傳播委員會（NCC）基於公共利益，可採評審制、拍賣制、公開招標制或其他適當方式，彈性進行廣播電視釋照。

NCC 表示，由於廣播頻率是稀有、排他性資源，廣播電視頻道釋照方式改多軌進行，有助建立合理公平的無線廣播市場，NCC 將依據這項法源進行第 11 梯次廣播頻道釋照。

立法院審議通過修法草案時，另提出兩項附帶決議，第一，無線電視台頻道應有 10% 到 30% 做為藝術、文化、教育或公益頻道。NCC 預估未來釋出的總頻道有 155 個，其中 22 個將做為公益電台，供公益團體、社區和學校申請，採審議而非拍賣制；其他 133 個則採審議加拍賣制。

第二，立法院要求 NCC 須於修正案通過的 6 個月內，公告廣播電台釋照方式原則及期程，NCC 表示，相關規定報行政院核可後，最快明年第 1 季即可完成釋照。

## ■ 外生畢業可留台實習 1 年

為增進大學校院優秀畢業外籍學生與我國產、學、研等各界互動，擴大國際連結及厚植國際人才資源，教育部日前訂定《大學校院外國學生畢業後申請在台實習作業要點》，開放來台就學的優秀外籍學生畢業後在台實習。


該要點規定，學業成績優秀或獲得國際性、全國性競賽獎項的優秀外籍學生，經指導教授或系所主管書面推薦並取得實習機構同意實習文件後，向學校提出申請，並經教育部審查通過者，可在畢業後繼續留台實習，最長可達 1 年。

外籍生可實習的機構包含最近 1 年營業額達新台幣 1,000 萬元以上本國企業、僑外投資事業、外國公司在台分公司，或公司資本額達新台幣 500 萬元以上之新設本國企業、新設僑外投資事業，或採購實績達 100 萬美元以上之外國公司在台辦事處等。此外，外籍學生實習期間的工作內容須與實習內容相符，如欲轉換實習機構，也必須經學校報請教育部同意。

## ■ AEO 轉口貨重整免申請

為落實供應鏈安全管理，促進海關與業者之夥伴關係，財政部 7 月 25 日發布修正《海關管理貨櫃集散站辦法》，簡化優質企業進行轉口貨櫃重整之通關作業程序。

依原《海關管理貨櫃集散站辦法》規定，轉口櫃進行加裝、分裝、改裝、拆包、加貼標籤等重整作業，業者須事先提出書面申請，並經海關核准方可辦理。為吸引更多供應鏈業者申請為安全認證優質企業（Safety AEO），財政部擴大優惠措施，放寬取得認證的運輸業及倉儲業者，進行轉口貨櫃重整，僅須事先聯名向海關書面報備，即可於集散站或轉口倉庫內作業。

關稅總局表示，目前安全認證優質企業享有的貨物通關優惠包括：較低查驗比率、按月彙總繳稅、國貨復運進口可申請具結放行後再核銷原出口報單、報單完稅價格為新台幣 1 億元以上者，可免審免驗通關；此外，海關也設有單一窗口，協助業者解決未放行貨物的通關問題。





# Taiwan New Economy Newsletter

## Deregulation Progress

### ■ New revision of Company Act takes effect

A new revision of the Company Act, which became effective on July 1, greatly relaxes, in the spirit of corporate governance, the rules on return of paid-in capital for corporate capital reduction, sources of funds for the redemption of special shares, and employee salary systems. This provides more flexibility in the use of corporate funds.

The Ministry of Economic Affairs (MOEA) notes that under the original provisions of the Company Act, return of paid-in capital for capital reduction had to be accomplished with cash, while capital increases through the issuance of new shares and equity injection by shareholders, could be made with other assets such as monetary credit, technology, or commercial goodwill. Under the relaxed rules of the revised law, the return of paid-in capital to shareholders for the purpose of reducing capitalization may be accomplished using property other than cash; this allows companies greater flexibility in using their capital, in accordance with their operating needs, to carry out capital reductions.

At the same time, to protect the rights of shareholders the revised provisions require capital reductions through returning paid-in capital to be approved by a shareholders' meeting; and, to assure a reasonable estimation of the value and offset amount of returned property must be assessed and signed off by a CPA, MOEA stresses.

The original stipulations required the redemption of special shares to be carried out only by using profits or issuing new shares. Under the new rules, companies can use sources of capital other than profits or cash.

At the same time, the revision brings Taiwan's corporate employee

compensation tools in line with international practice and allows companies to boost their competitiveness by attracting outstanding talent via the issuance of new shares to employees under limited conditions, so long as the issuance is authorized by a special resolution of a shareholders' meeting. The issuing quantity, price, and conditions will be stipulated by the competent authority for securities. To help companies hold onto their employees, a new provision allows enterprises to provide employee compensation in the form of treasury shares that cannot be sold within two years.

### Companies with trademark-infringing names may be compulsorily dissolved

Another important result of the Company Act revision is to reinforce the protection of prominent trademarks. The MOEA notes that company registration and trademark registration are under the jurisdiction of different agencies, and that the purpose of the two registrations differs. In the past a company would sometimes, without the permission of the owner, use the words in a famous or registered trademark as its own company name, causing infringement.

When such cases occurred in the past and the trademark owner initiated legal proceedings, and the court determined that infringement did in fact exist, if the proprietor of the infringing company still refused to change the company name, the trademark owner would have to resort to compulsory enforcement to stop the infringement. The competent authority itself would be unable to do anything to punish the offender.

### ■ Insurance firms may now invest in RMB securities

The Financial Supervisory Commission (FSC) reports that it has revised Article 12 of the “Regulations Governing Foreign Investments by Insurance Companies” to allow insurance firms to invest in designated securities denominated in renminbi (RMB) in Hong Kong. This relaxation will help insurance firms use their capital more efficiently and add flexibility to the scope of their investments.

The FSC indicates that its revision allows insurance firms to invest in RMB-denominated “red chip” shares listed on the Hong Kong Stock Exchange, H shares (of companies registered in mainland China), securities and exchange-traded funds (ETFs) issued by companies included in the Hang Seng China-Affiliated Corporations Index, and corporate and financial bonds, including “dim sum bonds” .

The FSC adds that the total amount that an insurance firm is allowed to invest in the RMB-denominated securities issued by a single company may not exceed 1% of its FSC-approved overseas investment ceiling or 10% of the issuing company's paid-in capital. Further, the total amount of securities and ETFs investment may not exceed 10% of an insurance firm's overall overseas investment amount.

According to statistics compiled by the Taiwan Insurance Institute, as of the end of April the total amount of overseas investment by Taiwanese insurance firms stood at NT\$3.86 trillion. Using the 10% ceiling, the

### Dim Sum Bonds

These are bonds issued in Hong Kong and denominated in mainland China's renminbi (RMB) currency. The amount of dim sum bonds in relation to all bonds issued in international bond markets is tiny—like the bite-sized pieces of the traditional dim sum snacks served in Hong Kong's restaurants.

All dim sum bonds are issued by mainland Chinese government units or enterprises, or by international enterprises operating in mainland China. Current issuers include the China Development Bank and Export-Import Bank of China, but the most eye-catching are the dim sum bonds issued by McDonald's.

According to statistics compiled by Bloomberg, a total of 36 dim sum bond issuances with a value of 41.2 billion RMB were carried out in 2010. By the end of July this year the numbers had increased to 122 issuances and 87.1 billion RMB. The total value of dim sum bonds issued is projected to climb to 150 billion RMB by the end of the year.



maximum amount that the island's insurance companies may invest in RMB-denominated bonds is almost NT\$400 billion.

## ■ Broadcasting license validity extended

A revision of the Radio and Television Act was passed by the Legislative Yuan on June 14, extending the validity of broadcasting licenses from six to nine years and lengthening the interval between assessments of the execution of operations plans from two years to three. These relaxed rules will make operators more willing to invest.

The revised law also cancels the restrictions imposed by the Budget Act and authorizes the National Communications Commission (NCC) to act flexibly in the release of radio and TV licenses, allowing it to use evaluation, auction, public tender, or other appropriate methods.

The NCC indicates that since the frequency spectrum is a rare and exclusive type of resource, the switch to the multi-channel release of radio and TV frequencies will facilitate the establishment of a fair and reasonable wireless broadcast market. The NCC will use this legal basis in carrying out the 11th release of broadcast frequency licenses.

When the Legislative Yuan passed the revised law, it affixed two associated resolutions. The first is that 10% to 30% of wireless TV channels should be for the arts, culture, education, or public benefit. The NCC estimates that 155 channels will be licensed in the future and that 22 of them will be public-benefit channels open to application by public-interest groups, communities, and schools. These channels will be awarded by the examination system rather than by auction. The remaining 133 channels will be released by the examination plus auction method.

In its second resolution, the Legislative Yuan asks the NCC to announce the principles and timetable for the release of licenses within six months after the passage of the resolution. The NCC indicates that the related rules will first be submitted to the Executive Yuan for approval, and that the awarding of the new licenses should be completed in the first quarter of 2012 at the earliest.

## ■ Foreign students allowed to intern in Taiwan after graduation

The Ministry of Education (MOE) has instituted a set of “Operating Guidelines for Applications by Foreign Students at Universities and Colleges to Remain in Taiwan for Internship after Graduation” with the aim of boosting interaction between outstanding foreign students and Taiwan's industrial, academic, and research sectors, expanding international linkages, and building up a pool of international human resources.

Under the Guidelines, foreign students who have outstanding academic records, or who have won awards in international or national competitions, and who can furnish written recommendations from their academic advisors or department heads as well as internship approval documentation from appropriate organizations, may submit applications to their schools. After the applications are reviewed and approved by the MOF, the applicants may remain in Taiwan to take up internships for up to one year after graduation.

The organizations in which foreign students may intern include domestic enterprises, foreign-invested enterprises, and Taiwan branches of foreign companies with a turnover of at least NT\$10 million in the most recent year; newly established domestic or foreign-invested enterprises with a capitalization of at least NT\$5 million; or Taiwan offices of foreign companies with a procurement record of at least US\$1 million. The work which foreign students perform as intern must conform to the content of their internship. If

foreign students wish to change their internship organization, they will have to apply to the MOE through their schools.

## ■ Only reporting needed for AEO processing of transit goods

On July 25 the Ministry of Finance (MOF) announced a revision of the “Regulations Governing the Customs Management of Container Terminals” designed to assure secure supply-chain management and simplify customs-clearance procedures for outstanding enterprises that undertake transit container resorting.

Under the original “Regulations Governing the Customs Management of Container Terminals,” operators wishing to carry out such goods resorting operations as bulk packing, separate packing, repacking, unpacking, or affixing of labels had to first submit a written application and receive approval from Customs. To attract more supply-chain companies to apply for Safety AEO (Authorized Economic Operator) status, the MOF has expanded the related incentives to make it easier for AEO shippers and warehouse operators to carry out transit container resorting; all they will have to do now is submit a joint written report to Customs in advance and then carry out their resorting in a container terminal or transit warehouse.

The Directorate General of Customs notes that Safety AEOs currently enjoy customs-clearance preferences including a lower inspection ratio, monthly payment of tariffs, the option to apply for release of Taiwan-made re-imports prior to cancellation of the original export declaration, and exemption from checks and inspections for the customs clearance of goods with a duty-paid price of NT\$100 million or more. In addition, Customs has set up a one-stop window to help operators resolve customs-clearance problems regarding unreleased goods. 