



Taiwan  
Economic  
Forum

# 經濟新訊

# NEWSLETTER

## 台灣新經濟簡訊

經建會法協中心

### 焦點新聞

#### 兩岸金融市場再開放

金管會與大陸銀監會 4 月在台北舉行的「銀行業監理平台」第三次會議（簡稱金銀三會），雙方達成多項開放共識，包括陸方將開放台資銀行設立村鎮銀行，同時開放在特定地區設置同省異地支行；我方也同意放寬陸銀來台參股比重，並取消陸銀在經濟合作暨發展組織（OECD）國家設立分行滿 5 年才能來台設置據點之限制。

此次金銀三會達成之共識，包括大陸方面同意加速審核台資銀行申設同城支行，且同意符合條件者增設分行；此外，將開放台資銀行設立村鎮銀行、在特定地區設置同省異地支行，並鼓勵台資銀行到東北、中西部設立分支機構及開展業務。

中國大陸也同意，台資銀行在大陸設立子行後，可以申請辦理包括轉帳卡、信用卡在內的銀行卡業務，並支持兩岸銀行業股權合作，讓台資銀行加快大陸市場布局。

陸方此次更一進步放寬有關台資企業的定義，原規定台資企業須為台灣註冊之企業，現在擴大範圍，包括在第三地註冊之台灣企業。

而我方開放的主要項目則為放寬陸銀參股比重。依據現行規定，單一陸銀來台投資單一銀行，持股上限為 5%，如加計大陸合格境內機構投資者（QDII）則合計上限為 10%，未來將放寬大陸單一銀行可申請參股台灣上市櫃銀行、金控公司的比重至 10%，加計 QDII 則持股可達 15%；另放寬單一陸銀來台投資非上市櫃銀行及金控持股比重至 15%，參股金控公司子銀行之持股比重至 20%。

其他開放項目包括，同意在台已設分行的陸銀，符合一定條件者可申請增設分行（含國際金融業務分行）；取消陸銀來台設置據點需要在 OECD 國家設立分行滿 5 年以上之限制；准許銀聯公司來台設立分支機構；及開放具 QDII 資格的陸銀投資台股等。

金管會指出，此次協商結果有助台灣銀行業擴大中國大陸市場的布局及業務經營，同時，可進一步協助大陸地區台資企業發展，並吸引陸資銀行及企業來台投資，對於兩岸而言是雙贏。

## 法規鬆綁

### 擴大容積移轉 促進建設效能

為提升公共建設之財務效能，經建會與內政部、財政部、交通部等相關機關，積極推動公共建設與周邊土地多元整合規劃，並獲地方政府支持。其中，高雄市、台中市相繼鬆綁容積移轉相關規定，將可創造政府與民間雙贏局面。

高雄市日前修正「高雄市政府審查容積移轉申請案件許可要點」，將大眾運輸場站周遭適用容積移轉率 15% 的範圍，由原來之 600 公尺，擴大至 800 公尺；此外，將開放 800 公尺以外的都市土地，適用容積移轉 10%。

高雄縣在改制前未開放容積移轉，現在除高雄捷運站外，包括旗山、鳳山、岡山等地區的轉運中心，都將視同大眾運輸場站，適用高雄市法規。此外，高雄縣的 32 個都市計畫區，也能在不跨區移轉的前提下，在各自區域內進行容積移轉。

高市都發局指出，為避免影響公共環境空間，新規定也將適用容積移轉的建築基地面積門檻，從 500 平方公尺增加為 1,000 平方公尺，同時增列建築退縮設計、地下室開挖率及綠能設置等規定，以增加建築鄰棟間隔，同時兼顧採光及綠化。

依新規定，容積移轉採公共設施捐贈及繳交代金的「雙軌」方式進行，也就是轉換容積之中有一半可用公共設施用地捐贈抵換，另一半則須折算繳納代金。

台中市的新容積移轉規定於 5 月上路，台中市政府都發局表示，過去僅有「道路」用地可進行容積移轉，新規定則擴大適用範圍，將公園、兒童遊樂場、人行廣場、綠地至停車場等公共設施用地，及歷史建物、文化景觀、聚落等均納入。此外，台中市規劃更新之舊市區建地，如捐作開放空間使用，也可換取容積率。

透過容積移轉，違建將有機會取得建照、使用執照，因而合法；此外，建物被判定具保留價值而不得拆遷改建者，其土地所有權人，可出售土地容積，如此一來，不僅土地所有權人的權益不受影響，歷史建物也得以保存。

不過，為避免建商利用移入容積，將建物超幅擴建，台中市新要點規定，建地臨接之已開闢道路寬度如未達 20 公尺，其移入容積不得超過基準

容積的 20%；建地臨接之道路寬度如超過 20 公尺，其移入容積可達 30%。

其次，捐贈道路用地最多僅可換取建築容積的一半，其餘必須用公園、綠地、停車場、排水道等公設用地來換取，以便政府加速取得公設用地。

## 保險業海外投資標的放寬

金融監督管理委員會 5 月 3 日公告修正「保險業辦理國外投資管理辦法」，放寬保險業可投資海外公司債的信評等級，並開放保險業投資海外不動產，以提高保險業資產配置之彈性。

金管會表示，為提高保險業資金運用效率，在兼顧投資風險之管控下，特將保險業海外投資範圍，由原本國外信用評等機構評為 BBB+ 以上的公司債，擴大至 BBB、BBB- 以及 BB+ 的公司債。

保險公司風險適足率（RBC）如達到 200% 以上，可投資 BBB 等級以上的債券；保險公司 RBC 如至 250% 及信評 AA 級以上，即可投資 BBB- 及 BB+ 等級的公司債。

相關規定包括，保險業投資 BBB、BBB-、BB+ 等級之債券，最高可達股東權益的 10%，特殊情形下也可個案申請超過此比率限制；若保險業投資 BB+ 債券，則尚須遵循投資額不超過金管會核定海外投資額度 2% 的規定。

此外，保險業者 RBC 如達 200%，且最近 2 年海外投資沒有重大缺失，同時董事會設有風險控制部門，則可經由特殊目的公司（SPV）投資國外及中國大陸地區不動產。

## 新藥上市流程縮短

為簡化新藥查驗登記流程，加速新藥上市，衛生署食品藥物管理局（TFDA）參考醫藥先進國家管理法規，公告訂定「已在十大醫藥先進國核准上市滿 10 年，但屬國內新成分新藥（不包括生物藥品）之查驗登記審查重點」。

依據「藥品查驗登記審查準則」規定，新成分新藥查驗登記申請文件，應附完整動物實驗相關毒理、藥理安全資料及三期人體臨床試驗、藥物製造品質管制資料等，以供 TFDA 審查其藥品品質、安全與療效。

在參考美國聯邦法規（Code of Federal Regulation, CFR）505（b2）之立法精神後，TFDA 決定接受廠商適當引用國外已上市藥品之公開資料，如文獻報告、他國公定書所記載資料或他國衛生主管機關的審查報告等，以取代該廠商藥品在我國核准上市所需的部分臨床與非臨床試驗參考資料。

TFDA 指出，已在他國核准上市藥品，通常已具備相當的技術性資料可供審查，且已獲他國法規單位認可其品質安全與有效性，因此，TFDA 公告，廠商申請新藥查驗登記時，在不侵害他人藥品專利前提下，如果尚未有同成分藥品核准上市，且該成分藥品已於十大醫藥先進國至少一國，核准上市滿 10 年者，廠商可檢附佐證資料供 TFDA 審查。

為使新藥審查機制與國際同步，TFDA 表示，未來將持續參考醫藥先進國家法規，訂定明確管理規範，以鼓勵新藥研發，促進藥品及早上市。

## 產業聘僱藍領外勞鬆綁

行政院勞委會公告修正《外國人從事就業服務法》第 46 條第 1 項第 8 款至第 11 款「工作資格及審查標準」部分條文，調整製造業申請外籍勞工

資格，未來廠商只要繳納額外之就業安定費，即可增聘 5%到 15%的外勞，將有助解決企業缺工問題。

勞委會表示，自 2010 年 10 月起，特定製造業具特殊製程之行業依產業型態不同分為 5 等級核配外勞僱用比率（簡稱 3K5 級制），但業者需為外勞繳交每人每月新台幣 2,000 元的「就業安定費」。依據勞委會職訓局統計，截至今年 3 月底止，適用 3K5 級制引進之外勞超過 18 萬人。

由於部分 3K 行業確有缺工情形，引進外勞並非基於工資成本考量，勞委會因此修法新增「外加就業安定費附加外籍勞工配額機制」，廠商如果願意額外多繳交每人每月 3,000 到 7,000 元的「就業安定費」，則外勞核配比率可增加 5 到 15 個百分點，但最高不得超過 40%。

另為吸引投資，協助解決新增投資案缺工問題，此次修法也增列台商回流及新增投資案在一定資格要件及期間下，不需多付就業安定費，即可獲附加外勞配額，但期滿後仍須回歸原機制。

勞委會提醒，有意申請增額外勞的台商及新增投資案業者，都須先取得經濟部工業局之資格認定，才能據以申請。

另為吸引更多優秀外籍專業人士來台工作，勞委會也放寬外籍專業人士聘僱外籍幫傭之規定。外籍專業人士申請家庭幫傭，原先僅能申請我國已開放國家（含印尼、菲律賓、越南、泰國、馬來西亞、蒙古等）的外籍幫傭，辦法修訂後，外籍高階主管來台，如年薪達 200 萬元或月薪達 15 萬元以上，可申請聘僱其已於國外聘僱 1 年以上的外國幫傭來台。

## 新聞快遞

### 台日簽署漁業協議

台、日雙方簽署漁業協議，自 5 月 10 日起生效，我方漁船可在釣魚台周邊 12 浬外之廣闊海域合法作業，這是自 1996 年我國與日本就 200 浬經濟海域重疊部份展開漁業會談以來，雙方漁權談判之重大進展。

外交部長林永樂表示，台日漁業協議目的在解決雙方經濟海域重疊之漁業作業問題，雙方同意以經緯度為基準，配合台灣漁民的作業實務，劃設大範圍的「協議適用海域」。

根據協議內容，雙方在北緯 27 度以南與先島群島以北之間海域，增加 3 個作業區塊，面積約 4,530 平方公里。此 3 區域之漁業資源豐富，每年有 800 艘以上的台灣船隻在該水域作業，漁獲量超過 4 萬噸。林永樂指出，台日在這 3 個區塊達成協議，可共享漁業資源。

除擴大漁民作業範圍外，會談中也決定成立「台日漁業委員會」，做為制度化協商平台，我方由漁業署及台灣亞東關係協會，日方由水產省與日本交流協會，各自指派代表組成，每年舉行一次年會，並可召開臨時會，持續討論該協議未竟事宜及協助解決可能發生之爭端。此委員會已於 5 月 7 日成立。

自 1996 年起，台日雙方開始針對 200 浬經濟海域重疊部份的漁業作業權問題進行協商，歷經 17 年，終於在此次會談達成共識並簽署協議。



## 《專利法》翻修 新型與發明專利可並存

《專利法》第 32 條將翻修，未來申請人以相同創作同時申請「發明專利」與「新型專利」，申請人不會因為選擇「發明專利」而喪失過去新型專利生效期間的保護，可強化保障申請人的權利。

目前專利權有發明、新型與設計等 3 種類型，由於「發明專利」審查期長，申請人在保護產品競爭力及避免產品被人仿冒的考量下，多會同時申請審查期只需 4 到 6 個月的「新型專利」，以求在發明專利審查期間，仍能獲得專利的保護。

經濟部智慧財產局法務主任林清結表示，為避免重複保護，現行的《專利法》採取「自始不存在」原則，也就是說申請人同時申請發明與新型專利，在兩項申請都通過後，只能選擇其中一項權利。若專利申請人選擇發明專利，則必須放棄新型專利，同時放棄新型專利過去的保護，等於保障自始不存在。

各界意見則認為，新型專利權「自始不存在」規定有制度設計不足之處。現制可能會使新型專利的侵權人，在專利權人選擇取得發明專利後，要求專利權人退回原本侵犯新型專利的賠償金。為保障申請人權益，立法院提案修法改採「權利接續」原則。在發明專利核准後，若申請人選擇發明專利，新型專利自此才無效，並由發明專利接續保障。

智慧局尊重各界之修法建議，並將增訂配套措施，要求申請人應「主動聲明」一案兩請，否則審查官可不同意給予申請人權利接續之保障。

## 營所稅書面審核放寬適用

財政部核定發布 2012 年度營所稅擴大書面審核要點，新增 18 種適用書審之行業，相關行業除可以簡化營所稅結算申報作業外，並可以較低之純益率核計營業所得。



為簡化營所稅結算申報作業，財政部訂定營所稅申報結算書審制度，適用該制度的中小企業，可以最低 6%，最高 10% 的既定純益率計算所得；同時，適用書審的行業，將不列入財政部查帳對象，可降低政府查帳及企業配合成本。

2012 年度新增的 18 種行業中，適用書審純益率 6% 者，包括電腦週邊設備製造業、居家清潔服務業、人身保全服務業、其他資源回收處理等；適用純益率 7% 及 8% 的分別有廣告代理業及資訊供應服務業。至於適用 10% 純益率的其他教育輔助服務業（含教育檢定、評估、課程設計等），必須符合全年度營業收入淨額及非營業收入合計不超過新台幣 1,000 萬元的條件，才能以書審方式申報。

按財政部規定，經核定納入書審申報營所稅制度的行業，須符合全年度營業收入及非營業收入合計在新台幣 3,000 萬元以下，且須結算申報書表齊全，並有按時繳稅紀錄。

## 外商交流

### 經建會推政策透明化 助外商營運

經建會日前召開「歐洲商會 2013 年建議書協調會」，副主委吳明機特別促請各部會整合服務窗口，加速行政流程，同時參考國際做法，提升政策的透明化，以助外商在台營運之順暢。

2013 歐商建言重要的進展，在調和藥品費用方面，自今年起，衛生署開始試辦 2 年「藥費總額支出目標制」，以落實藥品費用之管理，同時健保局也同意研議縮短新制藥價審核流程，並調整召開會議的頻率。

在資產管理方面，勞委會與金管會決定共同組成勞退自選投資方案專案小組，就投資架構、自選投資商品類型、商品之審核與監理及如何引導勞工選擇適當商品等相關議題積極研議。

在改善稅務行政方面，財政部已擬具《所得稅法》部分條文修正草案第 60 條，增列可計算攤折的無形資產項目，包括其他法律規定之權利及商譽，並訂定攤折年限。

在化妝品廣告管理方面，衛生署已諮詢業界意見並參酌現行歐盟與東協法規制度，研擬修訂化妝品法規，積極調和以與國際化妝品管理法制接軌。

在強化酒品管理方面，財政部已將《菸酒管理法》第 32 條修正草案，送交立法院審議，未來本國產製或進口酒品均應標示產製批號，以利產品之追蹤管理。

此次會議另針對歐商關切之汽車耗能與二氧化碳排放管理標準進行討論，為整合我國在汽車產品的管理標準，能源局及環保署將共同研商，調和我國二氧化碳排放及燃油節約管制規範。

吳副主委指出，針對外商需求，政府有必要整合行政服務部分流程，成立單一窗口以簡化程序，提供外商在台更優質及效率的服務。此外，由於外國商會在資訊取得上比較容易產生落差，對政府政策不瞭解，因而可能產生經營上的疑慮，政府將加強政策透明化以協助外商瞭解政府施政。商會的建設性意見，政府將加強檢討不合時宜的法規，並專案協調涉及跨部會之外商投資營運問題，讓台灣整體經商環境能走向更為自由與開放。📍

# Taiwan New Economy Newsletter



## Focus

### Taiwan and mainland China agree to further opening of cross-strait banking business

At their third “Banking Supervision Platform” meeting, Taiwan's Financial Supervisory Commission (FSC) and the mainland's China Banking Regulatory Commission reached a number of conclusions on the further opening of banking business, including the mainland's agreeing for Taiwanese banks to open rural banks and sub-branches in designated areas of provinces where branches already exist. The Taiwanese side agreed to relax the equity ratio for mainland Chinese banks in Taiwan, and to abolish the requirement for mainland banks to have at least 5 years of prior operational experiences in OECD before setting up business locations in Taiwan.

The mainland also agreed to accelerate the approval of the establishment of same-city sub-branches and additional branches by Taiwanese banks, and encourages Taiwanese banks to set up branches and develop business in China's northeast and mid-west.

In addition, the mainland agreed that after Taiwanese banks establish subsidiaries in China, they can apply to engage in bank-card businesses including debit cards and credit cards. The mainland also encourages equity cooperation by banks so that Taiwanese banks can speed up growing their presences there.

The mainland further expanded its definition of Taiwan-invested enterprises, from enterprises registered in Taiwan alone to include Taiwanese enterprises registered in third areas.

The main opening on the Taiwanese side is an expansion of the ratio of equity holding for mainland Chinese banks. Under current rules,

a single mainland bank investing in a single Taiwanese bank is limited to a shareholding of 5%, or a combined 10% when investment by qualified domestic institutional investors (QDIIs) is included. In the future, the ratio of equity held by a single mainland Chinese bank in a Taiwanese bank or financial holding company listed on the TWSE or OTC market will be raised to 10%, and to 15% when QDII investment is included. For a non-listed bank or financial holding company, the ratio of equity holding by a single Chinese bank will be set at 15%; for banks that are subsidiaries of financial holding companies, the ratio will be 20%.

Other achievements of the meeting include an agreement for Chinese banks with Taiwan branches to apply for more branches (including OBUs) in the country, permission for the China UnionPay card company to set up a branch in Taiwan, and the opening of investment in Taiwan stocks to Chinese banks that are QDIIs.

The FSC points out that the results of the meeting will help the Taiwanese banking industry expand its presence and business operations in mainland China, and facilitate the further development of Taiwanese enterprises in the mainland. The achievements will also encourage Chinese banks and companies to invest in Taiwan, bringing win-win opportunities to both sides.

## Deregulation Progress

### Boost construction performance with transfer of development rights mechanism

The Council for Economic Planning and Development (CEPD) is working with the Ministry of the Interior, Ministry of Finance, and Ministry of Transportation and Communications to boost public construction

performance by promoting the integrated planning of infrastructure facilities and surrounding lands, and local governments have given their support for the idea. Kaohsiung and Taichung cities have already revised their rules on transfer of development rights, creating win-win possibilities for the government and the private sector.

Kaohsiung City recently revised its “Kaohsiung City Government Guidelines for the Examination of Applications for the Transfer of Development Rights” , expanding the scope of the 15% floor area ratio transfer from the original 600 meters to 800 meters around public transportation stations. Urban land outside the 800-meter limit will be accorded a 10% floor area ratio transfer.

In addition to Kaohsiung MRT stations, places that Kaohsiung County did not open up to the transfer of development rights prior to its incorporation into Kaohsiung City, including the transport hubs at Qishan, Fongshan, and Gangshan, will all be viewed as mass transit stations in the application of Kaohsiung City regulations. In addition, the transfer of development rights may be carried out in the 32 urban planning districts in the former Kaohsiung County, so long as there are no transfers across district boundaries.

The Kaohsiung City Urban Development Bureau notes that to avoid affecting public space, the new regulations increase the minimum applicable building base from 500 square meters to 1,000 square meters. They also add provisions for setback design, basement excavation ratio, and green energy facilities with the aim of increasing the space between adjacent buildings while considering lighting and greenery.

The new rules adopt the twin-track approach, which is, up to half of the total transferred floor area can be exchanged-in with the donation of land



for public facilities, while at least half of the transferred area must be paid for with cash.

Taichung City's new rules for the transfer of development rights took effect in May. In times past, Taichung permitted transfer of development rights only for land to be used for roads; the new regulations expand the scope of application to include public facilities such as parks, children's playgrounds, pedestrian zones, green space, and parking lots as well as historic buildings, cultural sites, and settlements. The construction land in the old city area that Taichung City Government is planning to renew can also be donated for use as open space in exchange for development rights.

Through the transfer of development rights, illegal constructions will have a chance to become legal by obtaining building permits and usage licenses. In addition, the landowners of structures which are designated for preservation and thus may not be torn down and rebuilt will be able to sell their development rights. This will protect the rights of the landowners while allowing historic structures to be preserved.

To prevent excessive expansion of a single building by using transferred development rights, however, Taichung City's new rules specify that if existing roads adjacent to the construction site are less than 20 meters wide, the transferred-in floor area may not exceed 20% of the standard floor area; if the adjacent roads are more than 20 meters in width, then the transferred-in floor area may not exceed 30%.

In addition, up to half of the transferred floor area can be exchanged-in with the donation of land for road use, while the rest has to come from donating land for public facilities such as parks, green areas, parking lots, and drainage channels. This provision will help the government acquire land needed for public facilities.



## **FSC expands scope of overseas investment by insurance firms**

The Financial Supervisory Commission (FSC) announced an amendment to the Regulations Governing Foreign Investments by Insurance Companies on May 3, relaxing rules on the credit ratings of overseas corporate bonds in which insurance companies are allowed to invest, and allowing them to invest in overseas real estate. This will boost the flexibility with which insurance companies allocate their assets.

The FSC explains that the relaxation is designed to heighten the efficiency of capital utilization while continuing to assure the control of risk by lowering credit rating requirement of overseas corporate bonds in which insurance firms are allowed to invest from the original minimum of BBB+ to include BBB, BBB-, and BB+.

In the future, insurance firms with a risk-based capital (RBC) ratio of at least 200% will be able to invest in bonds with a minimum rating of BBB, and those with an RBC ratio of at least 250% and a credit rating of AA or above will be allowed to invest in bonds rated BBB- and BB+.

Other rules will limit investment by insurance firms in bonds rated BBB, BBB-, and BB+ to 10% of shareholders' equity; in special cases, however, they will be able to apply for permission to exceed that percentage. If they invest in bonds rated BB+, they will still have to comply with the FSC's rule limiting such investment to 2% of the amount of overseas investment approved by the FSC.

Further, if an insurance firm's RBC ratio exceeds 200% and it has no record of major flaws in its overseas investments during the past two years, and if its board of directors has established a risk-control unit, then it will be allowed to invest in real estate in foreign countries and mainland China through a special purpose vehicle (SPV).

## Government shortens process for new drug application

The Food and Drug Administration (TFDA) of the Department of Health has moved to simplify the new drug registration process and speed the entry of new drugs onto the market by formulating new review regulations for drugs that have been approved for sale in 10 major pharmaceutically advanced countries for 10 years or more but are new chemical entities (excluding biopharmaceuticals) in Taiwan.

Under the provisions of the Regulations for Registration of Medicinal Products, documents for new drug application should include complete technical data covering preclinical study concerning pharmacology, toxicology, three phases of human clinical trials, and chemical manufacturing control, and so on, to provide evidence of quality, safety and efficacy.

In consideration of the spirit of the U.S. Code of Federal Regulation, Section 505(b2), the TFDA decided to allow pharmaceutical companies to submit applications for new drugs which are already on the market in other countries, with public information such as reports, data recorded in the official compendiums, and review reports by the health authorities of other countries, as a substitute for some clinical and non-clinical trial data that were required for drug approval in Taiwan.

The TFDA points out that drugs that are already on the market in other countries generally have substantial technical data, and have been verified in their quality, safety and efficacy by the regulatory authorities. Therefore, the TFDA has announced that, in the premise of not infringing patent rights, a company can submit an application for a new drug which has been on the market in at least one of the 10 pharmaceutically advanced countries for 10 years or more, and no other drugs with identical ingredients have been approved in Taiwan, with evidentiary data mentioned above.

To bring Taiwan's new drug registration in step with international practice, the TFDA indicates it will continue to establish clear regulations in reference to those of the pharmaceutically advanced countries, with the aim of encouraging new drug development and promoting quick product launch.

### **Rules for the hiring of blue-collar foreign workers further relaxed**

The Council of Labor Affairs (CL A) has amended the “Reviewing Standards and Employment Qualifications for Foreigners Engaging in the Jobs Specified in Items 8 to 11, Paragraph 1 to Article 46 of the Employment Service Act” to allow manufacturing enterprises to hire more foreign workers upon payment of an extra employment security fee. This will help alleviate Taiwan's laborshortage problem.

The CLA notes that beginning in October 2010, jobs involving special production processes in specified manufacturing industries are divided into five tiers for the designation of foreign worker ratios, with employers being required to pay a monthly employment security fee of NT\$2,000 per worker. Statistics compiled by the CLA's Bureau of Employment and Vocational Training reveal that more than 180,000 workers had been brought into Taiwan under this system by the end of March this year.

Since there are indeed labor shortage in some industries covered by this system, the bringing in of more foreign workers is not based on considerations of labor cost. The CLA, therefore, revised the rules to include a new provision for the imposition of extra employment security fees for additional foreign worker quotas. Employers who are willing to pay an extra monthly fee of NT\$3,000 to NT\$7,000 per worker can have their foreign worker ratios increased by 5 to 15 percentage points. The maximum ratio, however, may not exceed 40%.

To attract more investment and help solve the problem of worker shortages for new investment projects, the revised rules also add a provision for obtaining additional foreign worker quotas for a certain period without the need to pay the extra employment security fee for returning overseas Taiwanese businesses and other new investment projects, so long as certain conditions are met. Once the specified period has expired, however, the original system will be resumed.

The CLA reminds returning overseas Taiwanese businesses and companies engaging in new investment projects that they must obtain qualification certification from the Economic Ministry's Industrial Development Bureau before applying for the extra worker quotas.

The CLA has also moved to attract more outstanding foreign professionals to work in Taiwan by relaxing rules on the hiring of foreign domestic workers. Under the old rules, foreign professionals were allowed to apply for domestic workers only from countries that had already been opened for such hiring: Indonesia, the Philippines, Vietnam, Thailand, Malaysia, and Mongolia. Now, high-ranking foreign managers earning salaries of at least NT\$2 million per year or NT\$150,000 per month may apply to bring in foreign domestic workers that they have already employed overseas for at least one year.

## News Express

### Taiwan and Japan sign milestone fishery agreement

A historical fishery agreement signed by Taiwan and Japan became effective on May 10, allowing Taiwanese fishing vessels to operate in the vast seas outside a 12-nautical-mile limit around the Diaoyutai (known as Senkaku in Japan) Islands. This is a major advance in fishing rights talks

since the two sides began negotiating on overlapping exclusive economic zones (EEZs) in 1996.

Taiwan's Minister of Foreign Affairs, David Lin, notes that the objective of the new agreement is to settle the issue of fishing within overlapping EEZs. The two sides have agreed to use geographic coordinates, along with the operating practices of Taiwanese fishermen, to delineate a large "agreement zone."

The agreement provides for the addition of three operating blocks south of 27 degrees north latitude and north of the Sakishima Islands, covering a total of 4,530 square kilometers. The three blocks are rich in fishery resources; more than 800 Taiwanese fishing boats operate there every year, harvesting over 40,000 tons of fishery products. With the new agreement, Minister Lin points out, both sides can share the fishery resources there.

In addition to expanding the area of operation for Taiwanese fishermen, the recent talks also resulted in a decision to set up a Taiwan-Japan Fisheries Committee to serve as a negotiating platform made up of representatives from Taiwan's Fisheries Agency and Association of East Asian Relations on the Taiwan side, and the Fisheries Agency of Japan and Interchange Association on the Japan side. The Committee will meet once a year, with extra meetings being called when necessary, to discuss matters not yet covered in the Agreement and help resolve any disputes that might arise. The Committee was formally established on May 7.

Taiwan and Japan began negotiating on fishing rights in the overlapping maritime EEZs in 1996. After 17 years, the most recent round of talks resulted in a consensus and the signing of the new Agreement.

## Patent Act revision boosts protection for patent applicants

With the overhaul of Article 32 of the Patent Act, an applicant who files for an invention patent and utility model patent for the same creation at the same time, and chooses “invention patent,” will no longer lose patent protection during the time of validity of a utility model patent granted previously. This will give stronger protection to the rights of applicants.

There are currently three kinds of patents: invention, utility model, and design. Since an invention patent review takes such a long time, many applicants will file applications for invention and utility model patents at the same time in order to protect the competitiveness of the product involved and avoid its copying by others. The utility model patent takes only 4~6 months to review, and provides protection while the invention patent application is still under examination.

Lin Ching-chieh, director of the Legal Council Office of the Taiwan Intellectual Property Office (TIPO), notes that to avoid redundant protection the current Patent Act adopts the principle of “nonexistence from the beginning.” This means that after patent applications that have been submitted for an invention patent and utility model patent at the same time have both been approved, the applicant must make a choice between the two types of patent. If “invention patent” is chosen, then the utility model patent must be abandoned along with the protection that it provided in the past. Accordingly, the protection is deemed “non-existent from the beginning.”

Opinion from many quarters feels that the “non-existence from the beginning” rule for utility model patents has problems of deficient system design, since, when a patentee chooses “invention patent,” a patent infringer might be able to demand that the patentee return compensation

that had been paid for infringement of a utility model patent. To prevent this kind of abuse, the Legislative Yuan proposed the amendment in order to switch to the principle of succession of rights under which if an applicant chooses “invention patent” after it is approved, the utility model patent will lose its validity and be succeeded by the protection provided by the invention patent.

TIPO respects the suggestions of all sectors regarding regulatory revision, and will add accompanying measures asking that applicants make a statement of double application for the same creation. If an applicant fails to do so, the patent examiner may decline to afford “succession of rights” protection.

## **Expanded use of documentary review for business income tax**

The Ministry of Finance (MOF) has released guidelines for the expanded documentary review of business income tax statements, adding 18 new types of business to the documentary-review list. This will simplify tax filing by those businesses, and allow the use of a relatively low net income ratio in the calculation of business income.

To simplify the filing of business income taxes, the MOF has established a documentary review system for the filing of tax statements under which small and medium businesses can calculate their income at a fixed net income ratio of 6% to 10%. Businesses that use documentary review will not be included on the list of businesses to be audited by the MOF, reducing auditing costs for both the government and the businesses concerned.



Of the 18 new types of business added in 2012, those subject to the 6% rate include computers and peripheral equipment manufacturing, home cleaning services, private security services, and other resource recycling services. Those subject to a 7% or 8% rate include advertising agencies and information service activities. Other educational support activities (including educational certification and evaluation, and curriculum design), to which the 10% rate applies, must not have a combined net annual business income and non-business income of more than NT\$10 million if they want to use documentary review.

The MOF specifies that types of business approved for documentary review of tax statements must not have combined annual business and non-business income of more than NT\$30 million, must submit all of the required filing documents, and must have a record of on-time payment of taxes.

## Foreign Business Interchange

### CEPD pushes policy transparency to help international companies

At a European Chamber of Commerce Taiwan (ECCT) Position Papers Coordination Meeting convened recently by the Council for Economic Planning and Development (CEPD) concurrent Deputy Minister Wu Ming-Ji\* called on the different ministries and commissions to integrate their service windows, speed up administrative procedures, and heighten policy transparency in reference to international practice in order to smooth the operations of foreign companies in Taiwan.

Major progress made on the issues raised in the ECCT 2013 Positions Papers include one supporting the initiation this year of a two-year trial drug expenditure target system by the Department of Health (DOH) with the aim of managing drug costs. At the same time, the Bureau of National Health Insurance agreed to consider shortening review process of drug prices and increasing the frequency of meetings called under the new system.

On the issue of asset management, the Council of Labor Affairs and Financial Supervisory Commission decided to set up a joint task force on the member choice platform to study the investment structure, types of retirement savings products, screening and supervision of investment products, and the guidance for workers in choosing appropriate products.

To improve tax administration, the Ministry of Finance (MOF) has drafted a partial amendment to Article 60 of the Income Tax Act to add quantifiable items of intangible assets, including goodwill and rights provided in other laws, and stipulating the period of amortization.

In regard to the management of cosmetics advertising, the DOH has consulted with businessmen and referred to the systems used in the European Union and the Association of Southeast Asian Nations, and has revised Taiwan's relevant regulations to bring them into harmony with the international cosmetics regulatory system.

The MOF has moved to reinforce the management of alcoholic products by formulating an amendment of Article 32 of the Tobacco and Alcohol Administration Act and submitting it to the Legislative Yuan for deliberation. In the future, both domestically made and imported alcoholic products will be required to carry production lot numbers to facilitate their traceability.

The meeting also addressed motor vehicle fuel economy and carbon dioxide emissions standards, issues about which the ECCT is also concerned, and the Bureau of Energy and the Environmental Protection Administration have jointly worked to harmonize Taiwan's carbon dioxide emissions and fuel-conservation rules.

Wu pointed out that the government needed to set up one-stop windows to simplify procedures and provide higher-quality, more efficient services to foreign companies in Taiwan. And, since it is likely for foreign chambers of commerce to have information gaps or misunderstandings about government policy that produce concerns about their operations, the government will work to improve its policy transparency. The government will also strengthen its review of outdated regulations in response to the constructive opinions of foreign chambers of commerce by carrying out inter-ministerial coordination on investment and operational issues of concern to foreign companies, thereby making Taiwan's overall business environment freer and more open. 