

e-Tax alert

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Key Amendments to the Company Act in Taiwan

Since 2001, the Company Act in Taiwan has not been substantially revised. However, with innovation and entrepreneurship becoming a noticeable trend, the global economic and trade environment has changed rapidly. In response to the rise of these new economic developments, the Taiwanese government began a comprehensive review and revisited the Company Act about two years ago. Following various consultations with the business industries and scholars, the Legislative Yuan finally passed the Company Act Amendment on 6th July, 2018. We set out below the key changes:

In terms of capital formation, the key amendments are as follows:

Introduce "no par value" share system for non-public companies

Previously, the Company Act only allowed shares with "par value" and the shares to be issued cannot be issued at a discounted par value. Such not only made equity planning more challenging but also reduced the willingness for business to invest. The new Company Act allows a "non-public company" to adopt "no par value shares", making it more flexible in determining share issuance price. The amendment should help attract new investors and provide more flexibility for capital investment.

Increase types of "preference shares"

In the past, the Company Act stipulated that companies could only have preference shares that relates to dividends distributions and limitation of voting rights. In order to meet the needs of a company's management at different stages of its development, the new Company Act permits non-public entities to issue "preference shares" to have the following different rights and obligations": multiple voting rights, veto power over certain matters, protection of the right to be elected as director, restriction or prohibition of elected director or supervisors, conversion of multiple rights or transfer share restrictions etc.

Relax the restrictions on corporate bond issuance amount

The Company Act previously stipulated that the total amount of corporate bonds issued was limited to "total assets minus total liabilities and intangible assets". Post the amendments, the new Company Act now lifted the total debt limitation on corporate bonds issuance for non-public companies.

Relax the issuance of "convertible corporate bonds and corporate bonds with stock options"

In order to encourage the development of new ventures and loosen the funding restrictions, the new Company Act allows "non-public company" to also privately raise corporate bonds.

Regarding corporate governance, key amendments are as follows:

Adjustment to the statutory number of directors and supervisors

In the past, a company was required to have at least "three directors and one supervisor", which often resulted in disputes amongst the directors and the use of nominee directors. In order to resolve these issues, the new Company Act has removed this restriction and returned the autonomy back to the companies. Non-public companies may decide to have one or two directors via its articles of associations. For single corporate shareholder held companies, a supervisor will not be required.

New "written vote" mechanism for board meetings

Before, the Company Act only permits the board of directors meetings to take place through a video conference or physical attendance. However, such requirement as compared to the diversified ways in which the board meetings can be conducted in other countries appears to be more rigid. The new Company Act relaxes the rules by allowing directors of non-public companies to conduct board meetings and exercise their voting rights via "written" method.

Relax the convening period of the board of directors meetings

Before, the Company Act requires the Board of Directors to state the reasons for conducting a board meeting and to notify every director and supervisor 7 days beforehand. However, with the utilization of technology, the process could be shortened and shall be determined under the company's discretion.

Therefore, even though the new Company Act states that the directors and supervisors must be notified 3 days beforehand, the company may still extend such notification period, either to keep it at 7 days or to extend it to 10 days in its articles of association.

Comply with the "Anti-Money Laundering Regulations" (AML)

Before, there was no reporting requirement for companies in the Company Act on AML related matters. As to adhere to international money laundering prevention and anti-terrorism regulations, the new Company Act requires companies to electronically submit information on directors, supervisors, managers and shareholders with more than 10% of shareholdings onto the platform established by the central competent authorities annually or within 15 days of change. The concerned authorities shall examine the information regularly.

Abolish the "recognition regime" for foreign companies

A foreign company shall be considered as a legal entity regardless of whether or not it obtains the "recognition" in Taiwan. To strengthen the interactions between foreign and domestic companies, meet actual business needs and align with international legislative trend, the new Company Act abolished the recognition requirement for foreign companies. Going forward, foreign companies will no longer be required to obtain a separate recognition in Taiwan under the Company Act prior to accessing its rights or operate in Taiwan.

In terms of relaxing the regulatory control, key amendments are as follows:

Extend the qualifying persons scope for employee incentives

In the past, the Company Act restricted the persons qualify for employee incentives to the company employees only. Such limitation resulted in much

inconvenience for group operations. With the new amendments, non-public companies are now able to issue new restricted shares to employees. Further, it also allows for non-public companies to extend employee remuneration incentives to employees in controlled and subordinate entities provided such is specified in the company's article of association.

Relax the number of times to distribute earnings

Practically, a company may need to distribute dividends multiple times within a year. As such, the new Company Act allows the company to distribute dividends quarterly or semi-annually provided it is specified in the company's article of association. This is to allow shareholders to fully understand the company's operation status and can enjoy the operating return as appropriate.

Introduce “voting right /trusts agreements” mechanism

The use of voting right restrictions and trust agreements have been in place and used abroad for many years which provided for a positive effect to encouraging strategic alliances between companies and shareholders. The new Company Act now permits shareholders of non-public companies to exercise their voting right restrictions via agreement or trust arrangement without limitation.

Allow registration using foreign name

Before, the Company Act only allowed companies to register via Chinese names. However, with the rise of international trade and networking, English name has long been a must for most companies to grow their businesses. Therefore, the new Company Act permits companies to include its foreign name in its article of association, and the competent authority shall publicize it in the registration information inquiry system.

In terms of protecting shareholders' rights, the key amendments are as follows:

Mechanism allowing “Over 50% of shareholders” to convene a shareholders meeting

The Company Act allowed minority shareholders to request the board of directors to convene a shareholders meeting. However, where a shareholder holds more than half of the company's shares, such shareholder has a significant influence on the company's operations as well as in shareholders meetings. It would be unreasonable to convene shareholders meeting following the same process for the minority shareholders. Therefore, the new Company Act stipulates that shareholders who holds more than half of the shares of a company for more than three months can convene shareholders meeting.

Digitalize shareholders' proposals and video conferences for shareholders meeting.

In the past, shareholders' proposals can only be done via written documents, and the shareholders meeting must be held in-person, which are quite limited given the current technological development. The new Company Act allows shareholders to make proposals "electronically" and permit non-public companies to specify in the article of association to hold shareholders meeting via video conference.

KPMG Observations

Overall, the new law adopts a more pragmatic attitude and gradually moves toward focusing on different aspects of the corporate law for different company sizes. For startups or general non-public companies, the law focuses on increasing flexibility and relaxing of the law. For public issued companies, it focuses on strengthening corporate governance and the protection of shareholders' rights. It is believed that the new Company Act will bring a positive impact to all enterprises as well as the business environment as a whole. It is worth noting that after the implementation of the new Company Act, many provisions must be first be specified in the company's articles of association. Therefore, enterprises should review and amend the company's articles of association as and when appropriate, so as to benefit from the amendments on a timely basis.

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