Guide to Regulations Governing Independent Directors

I. Independent Director System and Related Matters

In order to promote the sound practice of corporate governance, strengthen the independence of directors, boost the efficiency of the board of directors, and implement accountability for professionals and business operators, the government of the Republic of China (Taiwan), after reviewing practices and ordinances in other countries, amended the *Securities and Exchange Act* with the addition of Article 14-2 and introduced the independent director system from January 1, 2007.

A. Appointment of independent directors by listed companies

The competent authority, under authority of the *Securities and Exchange Act*, issued *Letter No. Financial-Supervisory-Securities-Corporate-1020053112*, requiring all Taiwan Stock Exchange (TWSE) and Taipei Exchange (TPEx) listed companies to specify in their articles of incorporation the requirement to appoint no less than two independent directors comprising no less than one-fifth of the number of director seats.

B. Qualifications of independent directors

1. Qualifications:

   Pursuant to Subparagraphs 1 to 3, Paragraph 1, Article 2 of the *Regulations Governing Appointment of Independent Directors and Compliance Matter for Public Companies*, an independent director of a public company shall meet one of the following professional qualification requirements, together with at least five years work experience:

   a. An instructor or higher up in a department of commerce, law, finance, accounting, or other academic department related to company business in a public or private junior college, college, or university.
   b. A judge, public prosecutor, attorney, certified public accountant, or other professional or technical specialist who has passed a

national examination and has been awarded a certificate in a professional capacity that is necessary for company business.

c. Having work experience in the area of commerce, law, finance or accounting, or otherwise necessary for company business.

2. Disqualifications:

Pursuant to Subparagraphs 1 to 3, Paragraph 2, Article 2 of the *Regulations Governing Appointment of Independent Directors and Compliance Matter for Public Companies*, a person having any of the following circumstances may not serve as an independent director, or if already serving in such capacity, shall *ipso facto* be dismissed:

a. Any of the circumstances in the subparagraphs of Article 30 of the *Company Act*.

b. Elected in the capacity of a government agency, a juristic person, or a representative thereof, as provided in Article 27 of the *Company Act*.

c. Any violation of the qualification requirements for independent director as set forth in the *Regulations Governing Appointment of Independent Directors and Compliance Matter for Public Companies.*

C. Criteria for determining the independence of an independent director

In consideration that the independence of an independent director should not end following his or her election to the board, the competent authority, having taken into reference the requirements of the New York Stock Exchange, provides that an independent director must meet the independence criteria both before the appointment and during the term of the appointment. Hence Paragraph 1, Article 3 of the *Regulations Governing Appointment of Independent Directors and Compliance Matter for Public Companies* provides that within the scope of execution of business, an independent director of a public company shall maintain independence, and may not have any direct or indirect interest relationship with the company, and further provides that during the two years before the date of being elected by a shareholders' meeting and during the term of office, an independent director of a public company and his or her relatives may not have any of the following connections with the public company:

1. Connection of the independent director with the public company
   a. An employee of the company or any of its affiliates.
   b. A director or supervisor of the company or any of its affiliates.

2. Connection of relatives of the independent director with the company
   a. A natural-person shareholder who holds shares, together with those held by the person's spouse, minor children, or held by the person under others' names, in an aggregate of one percent or more of the total number of issued shares of the company, or ranking among the top 10 natural-person shareholders in holdings.
   b. A spouse, or relative within the second degree of kinship, or lineal relative within the third degree of kinship, of an executive officer falling under Point 1.a. above, or of any of the persons in Point 1b. or 2a. above.

3. Corporate shareholder
   a. A director, supervisor, or employee of a corporate shareholder that directly holds five percent or more of the total number of issued shares of the company, or that ranks among the top five in shareholdings, or that designates its representative to serve as a director or supervisor of the company under Paragraph 1 or 2, Article 27 of the *Company Act*.
   b. If a majority of the company's director seats or voting shares and those of any other company are controlled by the same person: a director, supervisor, or employee of that other company.
   c. If the chairperson, general manager, or person holding an equivalent position of the company and a person in any of those positions at another company or institution are the same person or are spouses: a director (or governor), supervisor, or employee of that other company or institution.

4. Related party of a specified company or institution

   A director, supervisor, executive officer, or shareholder holding five percent or more of the shares, of a specified company or institution

that has a financial or business relationship with the company.

5. Professionals providing services to the company or its affiliate

   A professional individual who, or an owner, partner, director, supervisor, or officer of a sole proprietorship, partnership, company, or institution that, provides auditing services to the company or any affiliate of the company, or that provides commercial, legal, financial, accounting or related services to the company or any affiliate of the company for which the provider in the past 2 years has received cumulative compensation exceeding NT$500,000, or a spouse thereof. This restriction does not apply, however, to a member of the remuneration committee, public tender offer review committee, or special committee for merger/consolidation and acquisition, who exercises powers pursuant to the *Securities and Exchange Act* or to the Business Mergers and Acquisitions Act or related laws or regulations.

6. Non-application of certain restrictions with respect to concurrent service of independent directors in such capacity at a parent and its subsidiary or a subsidiary of the same parent

   Paragraph 2, Article 3 of the *Regulations Governing Appointment of Independent Directors and Compliance Matter for Public Companies* provides that Subparagraph 2 and Subparagraphs 5 to 7 of Paragraph 1 (i.e. points 1.b and 3 above), and Subparagraph 1, Paragraph 4, Article 3 of those *Regulations* do not apply to independent directors appointed in accordance with the *Securities and Exchange Act* or the laws and regulations of the local country by, and concurrently serving as such at, a public company and its parent or subsidiary or a subsidiary of the same parent.

7. Non-application of certain restrictions to a person who formerly served in any of the following capacities, but no longer does

   Pursuant to Paragraph 3, Article 3 of the *Regulations Governing Appointment of Independent Directors and Compliance Matter for Public Companies*, the provisions regarding "during the two years before being elected" do not apply where an independent director of a public company has served in any of the following capacities, but is currently no longer in that position:

a. An independent director of the company or any of its affiliates.
b. An independent director of a specified company or institution.

8. The term “specified company or institution” means an entity having any of the following relationships with the company:
   a. It holds 20 percent or more and no more than 50 percent of the total number of issued shares of the public company.
   b. It holds shares, together with those held by any of its directors, supervisors, and shareholders holding more than 10 percent of the total number of shares, in an aggregate total of 30 percent or more of the total number of issued shares of the public company, and there is a record of financial or business transactions between it and the public company. The shareholdings of any of the aforesaid persons include the shares held by the spouse or any minor child of the person or by the person under others' names.
   c. It and its group companies are the source of 30 percent or more of the operating revenue of the public company.
   d. It and its group companies are the source of 50 percent or more of the total volume or total purchase amount of principal raw materials (those that account for 30 percent or more of total procurement costs, and are indispensable and key raw materials in product manufacturing) or principal products (those accounting for 30 percent or more of total operating revenue) of the public company.

The terms "parent", "subsidiary", and "group" above have the meanings as determined under International Financial Reporting Standards 10. The term "affiliate" above means an affiliated enterprise under Chapter VI-1 of the *Company Act,* or a company for which consolidated financial reports are required to be prepared under the *Criteria Governing Preparation of Affiliation Reports*, *Consolidated Business Reports and Consolidated Financial Statements of Affiliated Enterprises* or under *International Financial Reporting Standard 10*. (Paragraphs 5 and 6, Article 3 of the *Regulations Governing Appointment of Independent Directors and Compliance Matter for Public Companies*)

9. Criteria for determining the performance quality of the independent

director

No independent director of a public company may concurrently serve as an independent director of more than three other public companies. Where an independent director of a financial holding company or of a TWSE listed or TPEx listed investment holding company concurrently serves as an independent director of more than one wholly owned subsidiary of that company, the number of such subsidiaries beyond one shall be included in the calculation of the above-stated limit on the number of subsidiaries at which the independent director concurrently serves. (Paragraphs 1 and 2, Article 4 of the *Regulations Governing Appointment of Independent Directors and Compliance Matter for Public Companies*)

D. Criteria for the voting, nomination, election, seats and special appointment of independent directors

1. In case a candidate nomination system is adopted by a company for the election of its directors, the adoption of such system shall be expressly stipulated in the articles of incorporation (Article 192-1 of *Company Act*), and shareholders shall elect independent directors from among a list of independent director candidates.

2. Period for acceptance of nomination and public notice requirements:
   a. A public company shall, prior to the record date to suspend title transfer registration for convening a shareholders' meeting, announce in a public notice the following matters:
      1) Period for accepting the nomination of independent director candidates.
      2) Seats slated for independent director.
      3) Place for accepting the nomination.
      4) Other necessary matters.
   b. The period for accepting the nomination of independent director candidates shall not be less than 10 days.

3. Methods of nomination:

   To ensure shareholders' nomination rights are protected, it is

provided that shareholders with a certain percentage of shareholding or higher as well as the board of directors may recommend candidates for independent director. The list of candidates is submitted to the shareholders' meeting for voting after the qualifications of these independent director candidates have been reviewed and accepted by the board of directors. Nomination methods include the following:

a. Any shareholder holding 1 percent or more of the total outstanding shares of the company may submit to the company in writing of a list of independent director candidates, provided that the total number of candidates so nominated does not exceed the seats slated for independent director.
b. The number of candidates for independent director submitted by the board of directors shall not exceed the seats slated for independent director.
c. Other methods of nomination as allowed by the competent authority.

E. Required information about the independent director nominees

1. In light of the specific power and responsibility of an independent director as compared with other members of the board of director, it is required that, when providing a recommended slate of independent director candidates under the preceding paragraph, a shareholder or the board of directors shall specify each nominee's name, educational background, and work experience, and submit therewith documentation that the nominees meet the requirements with respect to professional qualifications, and limits on concurrent service, and other documentary proof. (Paragraph 4, Article 5 of the *Regulations Governing Appointment of Independent Directors and Compliance Matter for Public Companies*)

2. Review of nominees

   To facilitate the election of qualified independent directors, it is provided that the board of directors or other conveners of shareholders' meetings shall review the nominees for independent directors and shall remove nominees having any of the following

circumstances from the final list of nominated candidates:

a. The list of nominated independent director candidates is submitted by the nominating shareholder outside the announced period for accepting nomination of independent director candidates.
b. The number of shares held by the nominating shareholder is less than 1 percent of the total outstanding shares of the company at the time when the share transfer registration is suspended by the company in accordance with the provisions set out in Paragraph 2 or 3, Article 165 of the *Company Act*.
c. The number of independent director candidates nominated exceeds the seats slated for independent director.
d. The relevant supporting documents as required in the preceding paragraph were not attached to the list.

If an independent director candidate included by a public company under the above provisions has already served as an independent director of the public company for three consecutive terms or more, the company shall publicly disclose, together with the results of the above-stated review, the reasons why the candidate is nominated again for the independent directorship, and present the reasons to the shareholders at the time of the election at the shareholders meeting.

3. Election of independent directors
   a. In the process of electing directors at a shareholders' meeting, unless it is otherwise provided in the company's articles of incorporation, the number of votes exercisable in respect of one share shall be the same as the number of directors to be elected. The total votes per share may be cast for one candidate or split among two or more candidates. A candidate to whom the ballots cast represents more votes shall be deemed a director elect (Article 198 of the *Company Act*).
   b. Independent and non-independent directors shall be elected at the same time, but the ballots will be tallied separately (Paragraph 7, Article 5 of the *Regulations Governing Appointment of Independent Directors and Compliance Matter for Public Companies*).

4. Seats of independent directors
    a. A public company required by the competent authority to appoint independent directors shall appoint no less than two independent directors that make up no less than one-fifth the total number of directors. A public company voluntarily appointing independent directors may, in view of its operational needs, provide in its articles of incorporation the numbers or percentage of independent directors (Article 14-2 of the *Securities and Exchange Act*).
    b. A public company that has established an audit committee shall appoint to the committee at least one independent director with expertise in accounting or finance (Article 14-4 of the *Securities and Exchange Act*).
    c. Where a company's board of directors has created the position of managing directors, then the managing directors shall include no less than one independent director, and no less than one-fifth of the managing director seats shall be held by independent directors (Article 8 of the *Regulations Governing Appointment of Independent Directors and Compliance Matter for Public Companies*).

5. Special appointment of independent directors

    Article 7 of the *Regulations Governing Appointment of Independent Directors and Compliance Matter for Public Companies* provides that in the case of a subsidiary whose issued shares are held entirely by the parent financial holding company, or a public company organized by the government or by one sole corporate shareholder, the independent directors of the company may be appointed by the financial holding company, the government, or the sole corporate shareholder, as the case may be; provided that such appointment shall be made in compliance with the provisions of the *Regulations*, excluding Article 5 thereof. However, the independent directors so appointed shall also meet the qualification requirements set forth in the *Securities and Exchange Act* and relevant subordinate legislation.

F. Term of office for independent directors

According to Paragraph 1, Article 195 of the *Company Act*, a director shall have a term of office of no more than three years, but he/she may

be eligible for re-election. As an independent director is a member of the board of directors, the term of office shall be of no more than three years, but he/she may be eligible for re-election.

If an independent director candidate included by a public company under the above provisions has already served as an independent director of the public company for three consecutive terms or more, the company shall publicly disclose, together with the results of the above-stated review, the reasons why the candidate is nominated again for the independent directorship, and present the reasons to the shareholders at the time of the election at the shareholders meeting. (Paragraph 6, Article 5 of the *Regulations Governing Appointment of Independent Directors and Compliance Matter for Public Companies*).

G. No switching of status between independent directors and non-independent directors during term of office

To ensure that independent directors uphold and maintain their neutral status in the performance of duties and to prevent disputes arising out of a change of status among the directors, Article 6 of the *Regulations Governing Appointment of Independent Directors and Compliance Matter for Public Companies* prohibits the change of status between independent director and non-independent director during the term of office as provided below:

1. If an independent director elected at a shareholders' meeting, or appointed by a financial holding company, the government, or a sole corporate shareholder under Article 7 of the above *Regulations,* is *ipso facto* dismissed during the term of office for reason of a violation of Articles 2 or 3 of the *Regulations*, it is prohibited to change the status of the independent director to that of a non-independent director in order to circumvent the dismissal.

2. A non-independent director elected at a shareholders' meeting, or appointed by a financial holding company, the government, or a sole corporate shareholder under Article 7 of the above *Regulations*, likewise may not be arbitrarily changed during his/her term of office from the original status of a non-independent director to that of an independent director.

H. The scope of authority and responsibility of independent directors

1. Board of directors

   Under the *Securities and Exchange Act* and the *Regulations Governing Procedure for Board of Directors Meetings of Public Companies*, a company shall submit the following items for discussion by the board of directors:

   a. Corporate business plan.
   b. Annual financial reports and, where subject to the requirement of audit and attestation by a certified public accountant, semi-annual financial reports.
   c. Adoption or amendment of an internal control system pursuant to Article 14-1 of the *Securities and Exchange Act*, and an assessment of the effectiveness of the internal control system.
   d. Adoption or amendment, pursuant to Article 36-1 of the *Securities and Exchange Act*, of handling procedures for financial or operational actions of material significance, such as acquisition or disposal of assets, derivatives trading, extension of monetary loans to others, and endorsements or guarantees for others.
   e. The offering, issuance, or private placement of any equity-type securities.
   f. The appointment or discharge of a financial, accounting, or internal audit officer.
   g. A donation to a related party or a major donation to a non-related party, provided that a public-interest donation of disaster relief for a major natural disaster may be submitted to the next subsequent board of directors meeting for retroactive recognition.
   h. Any matter required by Article 14-3 of the *Securities and Exchange Act* or any other law, regulation, or bylaw to be approved by resolution at a shareholders' meeting or board of directors meeting, or any such significant matter as may be prescribed by the competent authority.

   If a company has an independent director or directors, at least one independent director shall attend each board of directors meeting in person. In the case of a meeting concerning any of the above-listed matters required to be submitted for a resolution by the board of directors, each independent director shall attend in person. If an independent director is unable to attend in person, he or she shall appoint another independent director to attend as

his or her proxy. If an independent director expresses any objection or reservation about a matter, it shall be recorded in the board meeting minutes. When an independent director has a dissenting opinion or qualified opinion, it shall be noted in the minutes of board of directors' meeting. If the independent director cannot attend the board meeting in person to voice his or her dissenting or qualified opinion, he or she should provide a written opinion beforehand unless there are justified reasons not to do so. The written opinion furthermore shall be noted in the minutes of the board of directors' meeting.

2. Audit committee

   a. Functions of the audit committee

      To enhance the functions of the board of directors, the *Securities and Exchange Act* was augmented to allow the setup of an audit committee under the board of directors to help the board in decision making with its expertise and its independent stance, and to further enhance the independence of the board of directors and supervisors, and increases the accountability of relevant personnel against the falsification of financial reports.

      Article 14-4 of the *Securities and Exchange Act* provides that a company that has issued stock shall establish either an audit committee or a position of supervisor. For a company that has established an audit committee, the provisions regarding supervisors in the *Securities and Exchange Act*, the *Company Act*, and other laws and regulations shall apply *mutatis mutandis* to the audit committee (Paragraph 3, Article 14-4 of the *Securities and Exchange Act*).

   b. Composition of the audit committee

      The audit committee shall be composed entirely of independent directors with no fewer than three members, one of whom shall be the convener, and at least one of whom shall have accounting or financial expertise (Paragraph 2, Article 14-4 of the *Securities and Exchange Act*).

   c. The power and meeting procedure of the audit committee (Article 14-5 of the *Securities and Exchange Act*).

      Pursuant to Article 14-5 of the *Securities and Exchange Act*, for a

public company that has established an audit committee, the provisions of Article 14-3 shall not apply to the following matters, which are instead subject to the consent of at least a majority of all audit committee members and must be submitted to the board of directors for a resolution:

1) Adoption of or amendment to an internal control system pursuant to Article 14-1.
2) Assessment of the effectiveness of the internal control system.
3) Adoption or amendment, pursuant to Article 36-1, of procedures for financial or operational activities of material significance, such as acquisition or disposal of assets, derivatives trading, extension of monetary loans to others, or providing endorsements or guarantees for others.
4) A matter bearing on the personal interest of a director or supervisor.
5) A transaction involving material asset or derivatives trading.
6) A material monetary loan, endorsement, or provision of guarantee.
7) The offering, issuance, or private placement of any equity-type securities.
8) The hiring, dismissal or remuneration of an attesting certified public accountant.
9) The appointment or dismissal of a financial, accounting, or internal auditing officer.
10) Annual financial reports, and second quarter financial reports that must be audited and attested by a certified public accountant, which are signed or sealed by the chairperson, executive officer, and accounting officer.
11) Any other material matter so determined by the company or the competent authority.

With the exception of the abovementioned Subparagraph 10), any matter under the preceding paragraph that has not been approved by the consent of at least a majority of all the audit committee members may still be undertaken upon the consent by two-thirds or more of all members of the board of directors, without regard to the restrictions of the preceding paragraph. The resolution of the audit committee shall be recorded in the minutes

of the board of directors' meeting. The term "all audit committee members" and "all directors" as used in the *Securities and Exchange Act* shall mean the actual number of persons currently holding those positions. A company that has established an audit committee is not subject to the provisions of Paragraph 1, Article 36 of the *Securities and Exchange Act* requiring that its financial reports be recognized by a supervisor.

d. Key elements of the rules of procedure of the audit committee

1) Meeting of the audit committee:

a) General meeting: Audit committee members should meet at least once every quarter. The meeting notice which specifies the purposes of the meeting should be sent to each committee member no later than 7 days before the date scheduled for the meeting.

b) Emergency meeting: In case of emergency, a meeting can be convened at any time (Article 204 of the *Company Act*, Article 3 of the *Regulations Governing Procedure for Board of Directors Meetings of Public Companies*, and Paragraph 2, Article 7 of the *Regulations Governing the Exercise of Powers by Audit Committees of Public Companies*).

c) Special circumstances: If the audit committee meeting cannot be convened, with justifiable reasons, the matter for consideration may be undertaken upon the consent of at least two-thirds of all directors. Notwithstanding the foregoing, the matter specified in Subparagraph 10, Paragraph 1 of Article 14-5 of the *Securities and Exchange Act* still requires the opinion of the independent directors indicating their consent or dissent.

2) Convener: The audit committee members shall elect among themselves a convener and chairperson for the meeting. Where the convener is on leave or unable to call a meeting, he or she may appoint another independent director as deputy who acts on behalf of the convener. Where the convener fails to make such an appointment to act on behalf of the convener, then the other committee members will elect among themselves a deputy to chair the meeting (Paragraph 3, Article 7 of the *Regulations Governing the Exercise of Powers by Audit Committees of Public Companies*).

3) Minutes of audit committee meetings: Minutes of audit committee meetings shall record matters in accordance with Article 10 of the *Regulations Governing the Exercise of Powers by Audit Committees of Public Companies*.

4) Attendance and voting:

   a) When the audit committee meets, the company should set up a register book for the independent directors who attend the audit committee meeting to sign-in, and for future reference.

   b) Independent director members of the audit committee should attend the audit committee meeting in person. If personal attendance is not possible, however, then an independent director may by proxy appoint another independent director member of the audit committee. Audit committee members who attend the meeting by video conferencing are deemed as having attended in person.

   c) An audit committee member appointing an independent director member to attend a committee meeting as their proxy shall in each instance issue a written power of attorney for that specific meeting, which furthermore shall specify the scope of authorization with respect to the business to be transacted at that meeting. A member appointed as proxy may accept a proxy from one person only.

   d) Any resolution adopted by the audit committee shall have the consent of a majority of audit committee members. The outcome of a vote at the audit committee meeting shall be reported on the spot and be recorded accordingly.

5) If an independent director member of the audit committee has a personal interest in any agenda item, the independent director shall explain the essential content of the interest. If the independent director's personal interest is likely to prejudice the interest of the company, the independent director member may not participate in the discussion and voting, and shall recuse himself or herself during the discussion and voting, and also may not exercise voting rights as a proxy for any other independent director member.

3. Remuneration Committee

a. Functions of the remuneration committee

The remuneration system plays a critical role in corporate governance and risk management. To enhance corporate governance and ensure that a sound system is in place for the remuneration of company directors, supervisors, and executive officers, Article 14-6 of the *Securities and Exchange Act* requires all companies whose stock is listed on an exchange or traded over-the-counter to establish a remuneration committee. The remuneration committee's function is to evaluate, from an expert and objective standpoint, the company's policies and systems for the remuneration of directors, supervisors, and executive officers, and to make recommendations to the board of directors for the board's reference in decision making.

b. Composition and term of office of the remuneration committee

1) Composition: The remuneration committee members shall be appointed by resolution of the board of directors, and shall not be fewer than three members. A majority of the members shall be independent directors, and the entire membership shall elect an independent director to serve as the convener and meeting chair.

2) Term of office: The term of the remuneration committee members shall end at the same time as that of the board of directors that appointed the remuneration committee.

c. Powers of the remuneration committee

The remuneration committee shall exercise the care of a good administrator in faithfully performing its official powers, and shall submit its recommendations for deliberation by the board of directors:

1) Scope of powers:

a) Prescribe and periodically review the performance review and remuneration policy, system, standards, and structure for directors, supervisors and executive officers.

b) Periodically evaluate and prescribe the remuneration of directors, supervisors, and executive officers.

c) "Remuneration" includes cash compensation, stock options, profit sharing and stock ownership, retirement benefits or severance pay, allowances or stipends of any kind, and other substantive incentive measures. It scope shall be consistent with that of remuneration for directors, supervisors, and executive officers as set out in the *Regulations Governing Information to be Published in Annual Reports of Public Companies*.

2) Principles for performance of the committee' official powers:

a) With respect to the performance assessment and remuneration of directors, supervisors, and executive officers of the company, it shall refer to the typical pay levels adopted by peer companies, and take into consideration the reasonableness of the correlation between remuneration and individual performance, the company's business performance, and future risk exposure.

b) It shall not produce an incentive for the directors or executive officers to engage in activity to pursue remuneration exceeding the risks that the company may tolerate.

c) It shall take into consideration the characteristics of the industry and the nature of the company's business when determining the ratio of bonus payout based on the short-term performance of its directors and senior management and the time for payment of the variable part of remuneration.

d. Key elements of the rules of procedure of the remuneration committee

1) Convening of remuneration committee meetings

a) The remuneration committee shall convene at least twice a year.

b) In calling a meeting of the remuneration committee, a notice setting forth the subject(s) to be discussed at the meeting shall be given to each member at least 7 days in advance. In emergency circumstances, however, the meeting may be convened at any time.

c) The meeting agenda shall be provided to the committee members in advance.

2) Convener and meeting chair

a) In the case of a company that has independent directors on its board office and serving on the remuneration committee, the entire remuneration committee membership shall elect an independent director member to serve as the committee convener and meeting chair.

b) In the case of a company with no independent director, one member shall be elected as the convener and meeting chair by and from among the entire committee membership.

c) When the convener goes on leave or otherwise for any reason is unable to convene a meeting, the meeting shall be convened by another independent director of the committee designated by the convener as deputy; or if there is no other independent director on the committee, by another member designated by the convener as deputy; or if the convener does not designate a deputy, then by another member elected by and from among the other members of the committee.

3) Remuneration committee agenda and resolutions

a) Agenda: The remuneration committee meeting agenda shall be drawn up by the convener. Other members also may submit motions for deliberation by the committee.

b) Resolution: A resolution of the remuneration committee shall require the approval of one-half or more of all of the members. During voting, if the committee chair solicits and receives no dissents, the motion is deemed passed, with equivalent force as a resolution by vote.

4) Attendance by proxy

a) Remuneration committee members shall attend the committee in person. A member who cannot attend in person may appoint another member to attend as their proxy. Attendance via video-conference is deemed as attendance in person.

b) A remuneration committee member appointing another member to attend a committee meeting as their proxy shall in each instance issue a written power of attorney for that specific meeting, which furthermore shall specify the scope of authorization with respect to the business to be transacted at that meeting. A member appointed as proxy may accept a proxy from one person only.

5) Recusal to avoid conflict of interest

When a meeting of the remuneration committee will discuss the remuneration of any member of the remuneration committee, it will be clearly stated at the meeting. If there is likely to be any prejudice to the interests of the company, that member may not participate in the discussion or voting and shall enter recusal during the discussion and voting. The member also may not act as another remuneration committee member's proxy to exercise voting rights on that matter. (Article 9-1 of the *Regulations Governing the Appointment and Exercise of Powers by the Remuneration Committee of a Company Whose Stock is Listed on the Taiwan Stock Exchange or the Taipei Exchange*.)

6) Attendance by non-members as nonvoting participants

The remuneration committee may invite directors, executive officers of relevant departments, internal auditors, certified public accountants, legal consultants, or other personnel to attend meetings as nonvoting participants and provide relevant necessary information, provided that they shall leave the meeting when deliberation and voting take place. (Paragraph 4, Article 8 of the *Regulations Governing the Appointment and Exercise of Powers by the Remuneration Committee of a Company Whose Stock is Listed on the Taiwan Stock Exchange or the Taipei Exchange*)

e. Remuneration Committee Meeting Minutes

1) Content of the meeting minutes: The meeting minutes must record in a detailed and accurate manner all of the matters specified in Article 10 of the *Regulations Governing the Appointment and Exercise of Powers by the Remuneration Committee of a Company Whose Stock is Listed on the Taiwan Stock Exchange or the Taipei Exchange*.

2) If with respect to any resolution of the remuneration committee, any member has a dissenting or qualified opinion that is on record or stated in a written statement, the opinion shall be specified in the meeting minutes.

3) The meeting minutes shall bear the signature or seal of the meeting chair and the minute taker. The minutes shall be distributed to each committee member within 20 days after the meeting, and shall be submitted to the board of directors and

treated as important records of the company, and shall be preserved for 5 years.

f. Recommendations of the remuneration committee:

If the board of directors will decline to adopt, or will modify, a recommendation of the remuneration committee, it shall require the consent of a majority of the directors in attendance at a meeting attended by two-thirds or more of the entire board, which in its resolution shall specify the comprehensive consideration it has given to the matter, and shall specifically explain whether the remuneration passed by it exceeds in any way the recommendation of the remuneration committee.

g. Public disclosure of information:

1) When the remuneration committee is established and when there is any appointment (election) of, or change in, a member of the remuneration committee, the company shall, within 2 days counting from the date of occurrence of the event, publicly announce and report it on the information reporting website designated by the competent authority.

2) If with respect to any resolution of the remuneration committee, any member has a dissenting or qualified opinion that is on record or stated in a written statement, it shall, within two days counting inclusively from the date of occurrence, be publicly disclosed and reported on the information reporting website designated by the competent authority.

3) If the remuneration passed by the board of directors exceeds the recommendation of the remuneration committee, the circumstances and cause for the difference shall be publicly announced and reported on the information reporting website designated by the competent authority within 2 days counting inclusively from the date of passage by the board of directors.

II. Corporate Governance Best-Practice Principles for TWSE/TPEx Listed Companies and Reference on the Principles Regarding the Independent Directors of Listed Companies

A. Remuneration of independent directors

Pursuant to Article 196 of the *Company Act*, the compensation of directors, if not prescribed in the articles of incorporation, shall be determined by a meeting of the shareholders. Therefore, the remuneration of directors of listed companies should be prescribed by the articles of incorporation or the shareholders' meeting. The remuneration of independent directors should vary in consideration of their respective roles, functions and contribution. A company may set a reasonable remuneration for the independent directors that is different from that of other directors in order to provide a proper incentive for the independent directors to fulfill their functions, and the level of compensation is preferably planned and agreed upon ahead of time.

B. Continuing education of independent directors

Listed companies are encouraged to arrange continuing education courses for their newly elected or consecutive-term directors (including independent directors) and supervisors so that they can acquire new knowledge relevant to their roles and functions throughout their respective term of office. The continuing education of directors and supervisors may be undertaken under reference to the *Guidelines for the Continuing Education of Directors and Supervisors of TWSE/TPEx Listed Companies.*

1. Scope of application of continuing education:
    a. Newly elected: Persons serving as directors, independent directors and supervisors of TWSE/TPEx listed company for the first time
    b. Consecutively elected: Directors, independent directors and supervisors of TWSE/TPEx listed companies who serve a consecutive term of office
    c. Time-wise continuity or continuous appointment by the same listed company is not a requisite for qualification under "consecutive term of office."

2. Hours of continuing education:
    a. Newly elected: Preferably at least 12 hours in the same fiscal year of having been elected to the office, and at least 6 hours a year

thereafter.

b. Consecutively elected: Preferably at least 6 hours of relevant courses a year.

c. The hours of continuing education are counted accumulatively.

3. Scope of continuing education courses: Courses outside the specialty of the director or supervisor while relating to corporate governance in the areas of finance, risk management, business, commerce, law, and accounting, corporate social responsibility, or courses on internal control system and responsibility of financial reporting are recommended.

4. Continuing education system:

   a. Professional training institutions include the Securities and Futures Institute, Accounting Research and Development Foundation, Institute of Internal Auditors Taiwan, Taiwan Economic Development & Research Academy, Computer Audit Association, Taiwan Academy of Banking and Finance, and Corporate Governance Association.

   b. Seminars, symposiums, forums, and courses offered by the following organizations (as organizer or sponsor) that touch upon the subjects under "Continuing education courses" are considered continuing education:

      1) Competent authority of the industry, central competent authority, TWSE, TPEx, Taiwan Depository & Clearing Corporation, and other institutions sanctioned by the TWSE or TPEx.

      2) Trade associations of securities firms, accountants and attorneys.

   c. Workshops, discussion forums and internal training offered by listed companies or their affiliates that address the subjects under the "Scope of continuing education courses" may be counted as continuing education hours. However such hours preferably do not exceed one-third of the recommended annual continuing education hours.

   d. Special lectures, seminars, and symposiums organized by international organizations such as the OECD or by major

securities markets around the world, attended by directors or supervisors, where the topic is in line with the scope of continuing education courses in point 3. above.

e. When a TWSE or TPEx listed company engages a foreign national to serve as a director or supervisor, the company shall, in addition to having a clear understanding of the substantive content of the person's continuing education undertaken abroad, provide a translation in English or the foreign national's native language of Taiwan's major laws and regulations related to economics, securities, TWSE or TPEx listing, and relevant industries for reference.

C. Independent directors' right to know

Independent directors enjoy the same level of right-to-know as that of other directors. Listed companies shall notify their directors within the statutory time period of matters required to be put up for resolution by the board of directors. Prior to convening a board of directors' meeting, a listed company shall provide the directors with sufficient information on the meeting agenda together with the meeting notice. If a director reckons that the meeting information is inadequate, he or she may ask the unit in-charge of the board of directors' meeting to supplement with more information. If a director considers that the information on the relevant motion or measure is inadequate, the deliberation of the motion or measure may be postponed with the consent of the board of directors (Article 5 of the *Regulations Governing Procedure for Board of Directors Meetings of Public Companies*).

Articles 14-2 and 178 of the *Securities and Exchange Act* were amended on April 25, 2018 to strengthen the independent director system. TWSE/TPEx listed companies are required to stipulate the scope of duties of the independent directors and empower them with manpower and physical support related to the exercise of their power. The company may not impede, refuse, or evade the performance of duties by the independent directors. As the independent directors deem necessary to the performance of their duties, they may request the board of directors to appoint relevant personnel, or may at their own discretion hire professionals to provide assistance. The related expenses will be

borne by the company. Under amended Article 178, administrative fines may be imposed for violations of the above provisions. These amendments strengthen the corporate government system and give independent directors a legal foundation to play a more vigorous role in corporate governance.

D. Chief corporate governance officer

TWSE and TPEx listed companies are advised to have in place, according to their size, business conditions, and management needs, qualified corporate governance personnel in an appropriate number and to appoint one chief corporate governance officer as the most senior executive for corporate governance affairs. A TWSE or TPEx listed company shall appoint a chief corporate governance officer if it has paid-in capital of NT$2 billion or more or if it is a financial or insurance enterprise that is so required by the competent authority. However, if its paid-in capital is less than NT$10 billion, it is allowed to complete the appointment of the chief corporate governance officer by June 30, 2021.

A chief corporate governance officer shall be a qualified, practice-eligible lawyer or certified public accountant or have served in a managerial position for at least 3 years in a securities, financial, or futures related institution or a public company in a unit handling legal affairs, compliance, internal auditing, financial affairs, stock affairs, or the corporate governance affairs specified in Article 21 of the *Taiwan Stock Exchange Corporation Operation Directions for Compliance with the Establishment of Board of Directors by TWSE Listed Companies and the Board's Exercise of Powers* and of the *Taipei Exchange Directions for Compliance Requirements for the Appointment and Exercise of Powers of the Boards of Directors of TPEx Listed Companies*.

The corporate governance affairs mentioned in the preceding two paragraphs shall cover, at a minimum, the following:

1. Handling of matters relating to board of directors meetings and shareholders meetings in compliance with law.
2. Preparation of minutes of the board of directors meetings and shareholders meetings.
3. Assistance in onboarding and continuing education of the directors and supervisors.
4. Provision of information required for performance of duties by the directors and supervisors.
5. Assistance in the directors' and supervisors' compliance of law.

6. Other matters described or established in the articles of incorporation or under contract.

Further specifics regarding the chief corporate governance officer can be found in Articles 20 to 25 of the *Taiwan Stock Exchange Corporation Operation Directions for Compliance with the Establishment of Board of Directors by TWSE Listed Companies and the Board's Exercise of Powers* and of the *Taipei Exchange Directions for Compliance Requirements for the Appointment and Exercise of Powers of the Boards of Directors of TPEx Listed Companies*.

E. Director liability insurance

Following the addition of Article 193-1 to the *Company Act* on August 1, 2018, express provisions were added to Article 16 of the *Taiwan Stock Exchange Corporation Operation Directions for Compliance with the Establishment of Board of Directors by TWSE Listed Companies and the Board's Exercise of Powers* and of the *Taipei Exchange Directions for Compliance Requirements for the Appointment and Exercise of Powers of the Boards of Directors of TPEx Listed Companies*, requiring TWSE and TPEx listed companies to purchase and maintain liability insurance for all directors and supervisors with respect to their legally required liabilities for damages arising from their performance of duties during the term of office. A listed company is required to report to the most recent board meeting on the insured amount, coverage, premium rate, and other important contents of the director liability insurance it has obtained or renewed for directors.

III. Guidelines for the Adoption of Codes of Ethical Conduct for TWSE/GTSM Listed Companies

A. Purpose and basis for establishing the Code of Ethical Conduct

To provide guidance to directors (including independent directors), supervisors and executive officers (including president or its equivalent, vice president or its equivalent, senior vice president or its equivalent, finance department manager, accounting department manager, and other managing personnel authorized to sign on behalf of the company) of a listed company so their conduct will conform to ethical standards, and to let stakeholders of the company have better understanding of the ethical standards adopted by the company, it is necessary for a company to adopt a code of ethics and professional conduct, and these Guidelines

are provided for this purpose.

It is advised that each TWSE and TPEx listed company set a code of ethics and professional conduct with reference to these Guidelines and related provisions, and separate codes of ethics may be set forth for different executive officers.

B. Contents of the Code of Ethical Conduct

A listed company can set its own code of ethics and professional conduct in view of its conditions and needs; however, its code of ethics and professional conduct shall include at least the following eight topics:

1. Avoiding conflicts of interest:

   A conflict of interest occurs when a person's private interest interferes or may interfere with the company's interest as a whole. For example, a conflict arises when a director (including independent director), supervisor or executive officer of the company is unable to perform his/her work objectively and effectively due to his/her personal interest, or when he/she, his/her spouse or relative within second degree of kinship receives undue benefits as a result of his position in the company. The company should pay particular attention to loans or guarantees of obligations provided to businesses that have any affiliation with the aforesaid persons, or major asset transactions, or business dealings (purchases and sales) with businesses that have any affiliation with the aforesaid persons. The company should have a policy in place to prohibit such conflicts of interest, and provide an appropriate means for directors (including independent directors), supervisors or executive officers to proactively communicate potential conflicts to the company.

2. Avoiding opportunities for self-dealing:

   A company should prevent its directors (including independent directors), supervisors or executive officers from:

   a. taking the opportunities discovered through the use of corporate property, information or position to benefit themselves;
   b. using corporate property, information, or his/her position for personal gain; and

c. competing with the company. When profit opportunities arise, directors (including independent directors), supervisors or executive officers have the responsibility to advance the legitimate and lawful interest of the company.

3. Confidentiality:

   Directors (including independent directors), supervisors, and executive officers are obligated to keep the information on the company and customers from/to whom the company purchases or sells confidential, unless the disclosure of such information is authorized or legally required. Confidential information includes all non-public information that may possibly be used by competitors or harmful to the company or customers if disclosed.

4. Fair dealing:

   Directors (including independent directors), supervisors and executive officers should deal fairly with the company's customers, competitors, and employees, and shall not reap illicit gains through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or other unfair dealing practice.

5. Protection and proper use of company assets:

   Directors (including independent directors), supervisors and executive officers have the responsibility to protect the company's assets and ensure their use in corporate business be efficient and legal. Theft, omission or waste has a direct impact on the company's profitability.

6. Compliance with laws and regulations:

   The company should promote compliance with the *Securities and Exchange Act* and other laws and regulations.

7. Encouraging the reporting of any illegal or unethical behavior:

   The company should step up the propagation of ethical conduct and encourage employees to report to an independent director, supervisor, executive officer, head of internal audit, or other

appropriate personnel when they suspect or discover any conduct or behavior that violates laws or regulations, or the code of ethical conduct. To encourage employees to report such violations, the company is required to adopt a concrete whistle-blowing system, allow anonymous reporting, and ensure that employees know that the company will do everything it can to protect the safety of informants, in order to safeguard whistle-blowing employees from retaliation.

8. Disciplinary actions:

In the event a director (including independent director), supervisor or executive officer acts or omits to act in a manner that violates the code of ethical conduct, the company shall impose disciplinary action as provided in the code, and promptly post related information on the Market Observation Post System, including the date and circumstances of the violation, the code violated, and actions taken by the company. The company furthermore shall set up a related appeal system to provide the violator means of redress.

C. Procedure for waiver

The code of ethical conduct set forth by the company should provide that any waiver of the code of ethical conduct for directors (including independent directors), supervisors and executive officers must be approved by the board of directors and promptly disclosed on the Market Observation Post System, including the date of approval of the waiver by the board of directors, any dissenting or qualified opinions by independent directors, duration of the waiver, reasons for the waiver, and the code under which the waiver applies. The disclosure gives shareholders a chance to assess whether the decision made by the board of directors is proper so as to inhibit arbitrary or questionable waiver and assure that a waiver is accompanied by appropriate control mechanisms to protect the company.

D. Method of disclosure

A listed company should disclose its code of ethical conduct and any amendment thereof on its company website, in its annual report, prospectus, and the Market Observation Post System.

E. Implementation

The company's code of ethical conduct will be implemented after it is passed by the board of directors, given to all independent directors and supervisors, and submitted to the shareholders' meeting. This also applies to any subsequent amendment to the code.

IV. Essential Legal Knowledge to be Possessed by the Directors

A. Definition of, qualifications for, and basic rights of and responsibilities of the responsible person of a company

1. Introduction

   According to Article 8 of the *Company Act*, there are different types of "responsible persons":

   a. *Ipso facto* responsible persons:

      The directors of a company limited by shares are *ipso facto* responsible persons of the company.

   b. Responsible persons within the scope of duties:

      Executive officers or liquidators, promoters, supervisors, inspectors, reorganizers or the reorganization supervisor of a company limited by shares, acting within the scope of their duties, are also responsible persons of the company. Where a government agency or a juristic person acts as a shareholder of a company, it may be elected as a director or supervisor of the company. However, a government agency or a juristic person elected as a director or supervisor must designate a natural person as its proxy to exercise the duties on its behalf because a juristic person is not an actor entity and only a natural person is (Paragraph 1, Article 27 of the *Company Act*). Any authorized representatives of a company may, owing to the change of his/her functional duties, be replaced by another person to fulfill the remaining term of office (Paragraph 3, Article 27 of the *Company Act*). To uphold the security of trading, any restriction placed upon the power or authority of the authorized representatives of a government agency or a juristic person shall

not be set up as a defense against any bona fide third party (Paragraph 4, Article 27 of the *Company Act*). Where a government agency or a juristic person acts as a shareholder of a company, its authorized representative may also be elected as a director or supervisor of the company; and if there is a plural number of such authorized representatives, each of them may be respectively elected (Paragraph 2, Article 27 of the *Company Act*). However, when the government or a juristic person is a shareholder of a public company, then except with the approval of the Competent Authority, the provisions of Paragraph 2, Article 27 of the *Company Act* shall not apply, and the representative of such governmental or juristic person shareholder may not concurrently be elected or serve as a director or supervisor of the company, nor may the representative of any entity (including a foundation or association) that has a relationship of control or subordination with the governmental or juristic person shareholder be elected or serve as such (Paragraph 2, Article 26-3 of the *Securities and Exchange Act*, February 6, 2010 FSC *Interpretive Letter No. Financial-Supervisor-Securities-Corporate-0990005875*).

2. Directors and board of directors

   a. Board of directors

      The board of directors is a statutorily required collective executive body of a company limited by shares that is vested with the right to determine the execution of company business. The business operations of a company shall be executed pursuant to the resolutions to be adopted by the board of directors, except for matters the execution of which shall be effected pursuant to the resolutions of the shareholders' meeting as required by the *Company Act* or the company's articles of incorporation (Article 202 of the *Company Act*). The board of directors of a public company shall consist of at least five directors (Paragraph 1, Article 192 of the *Company Act*, Article 26-3 of the *Securities and Exchange Act*), who shall elect from among themselves a chairman who is chairman of the board and represents the company externally (Paragraphs 1, 2 and 3, Article 208 of the *Company Act*).

   b. Term of office of the directors

The term of office of a director should be appropriate. Under the *Company Act*, the term of office of a director shall not exceed three years, but he/she may be eligible for re-election (Paragraph 1, Article 195 of the *Company Act*). The term of office of a director shall furthermore be specified in the company's articles of incorporation (Article 129 of the *Company Act*). However, in circumstances where other provisions are separately prescribed by the competent authority, such provisions shall prevail. Furthermore, if the board of directors does not convene the regular meeting of shareholders to elect directors and supervisors for a new term in accordance with provisions, the Competent Authority may ex officio set a deadline for the meeting to be held. If the meeting is not held by the deadline, the entire body of directors and supervisors shall *ipso facto* be dismissed from the time of expiration of the deadline (Paragraph 8, Article 36 of the *Securities and Exchange Act*).

c. Qualifications of directors

1) Qualifications

Directors are elected by the shareholders' meeting from among persons with disposing capacity (Article 192 of the *Company Act*).

2) Disqualifications

a) To protect public interest and company interest, a person under any of the following circumstances may not serve as a director, or if already serving in such capacity, shall *ipso facto* be dismissed: (Paragraph 5, Article 192, and Article 30, of the *Company Act*):

i. Having committed an offence as specified in the Statute for Prevention of Organizational Crimes and subsequently convicted of a crime, and has not started serving the sentence, has not completed serving the sentence, or five years have not elapsed since completion of serving the sentence, expiration of the probation, or pardon;

ii. Having committed the offence in terms of fraud, breach of trust or misappropriation and subsequently convicted with imprisonment for a term of more than one year, and has not started serving the sentence, has

not completed serving the sentence, or two years have not elapsed since completion of serving the sentence, expiration of the probation, or pardon;

iii. Having committed the offense as specified in the Anti-corruption Act and subsequently convicted of a crime, and has not started serving the sentence, has not completed serving the sentence, or two years have not elapsed since completion of serving the sentence, expiration of the probation, or pardon;

iv. Having been adjudicated bankrupt or adjudicated of the commencement of liquidation process by a court, and having not been reinstated to his or her rights and privileges;

v. Having been dishonored for unlawful use of credit instruments, and the term of such sanction has not expired yet;

vi. Having no or only limited disposing capacity; or

vii. Having been adjudicated of the commencement of assistantship and such assistantship having not been revoked yet.

b) A supervisor shall not serve concurrently as the director of the company (Front section, Article 222 of the *Company Act*).

c) A civil servant shall not serve concurrently as the director of a private company (Paragraph 1, Article 13 of the *Civil Servant Service Act)*.

d) A commissioner of the Control Yuan shall not serve concurrently as the director of a private company (*Judicial Yuan Interpretation No. 81*).

e) A military serviceman on active duty shall not serve concurrently as the director of a company (Articles 24, 13 of the *Civil Servant Service Act*).

f) Legislators or commissioners of the Control Yuan shall not serve concurrently as the director of a state-owned enterprise (*Judicial Yuan Interpretation No. 24*).

d. Election of directors

1) Electoral body

a) Electoral body for the first-term directors

If a company is established by means of promotion, the first-term directors will be elected by the promoters (back section of Paragraph 1, Article 131 of the *Company Act*). If a company is established by means of offering, the first-term directors will be elected at the inaugural meeting (front section, Paragraph 1, Article 146 of the *Company Act*).

b) Electoral body after the establishment of the company

After a company is established, the directors will be elected at the shareholders' meeting, and the company's articles of incorporation shall not contain clauses that mandate the election of directors to another entity or any third party, or clauses that require the resolutions adopted in the shareholders' meetings concerning elected directors be consented by any third party.

c) Resolution on elected directors

To make sure that director candidates supported by minority shareholders have a chance to be elected, the *Company Act* prescribes a cumulative voting system. That is, in the process of electing directors at a shareholders' meeting, the number of votes exercisable in respect of one share shall be the same as the number of directors to be elected (shares held * number of directors to be elected = votes held by the shareholder). The total number of votes per share may be cast for one candidate or split among two or more candidates. A candidate to whom the ballots cast represent a larger number of votes shall be deemed a director elect (Article 198 of the *Company Act*). The cumulative voting system applies to the election of directors after the company has been established, as well as the election of first-term directors.

2) Election method

If a company adopts the candidate nomination system for election of the directors of the company, the adoption of such system shall be expressly stipulated in the Articles of Incorporation of the company, and the shareholders shall elect the directors from among the nominees listed in the roster of director candidates. However, a public company that reaches

certain conditions of scale, number of shareholders, shareholder structure, or other essential factors provided by the competent authority in charge of securities affairs shall be required to adopt the candidate nomination system and such adoption shall be expressly stipulated in the Articles of Incorporation of the company. Furthermore, the Financial Supervisory Commission on 25 April 25, 2019 ordered all TWSE and TPEx listed companies to adopt the candidate nomination system for election of directors and supervisors beginning from 2021

e. Obligations of a director

1) Obligations arising from a mandate

The relationship between a director and a company is a non-gratuitous mandate. Thus a director shall exercise due diligence as a good administrator in the performance of company business (Article 535 of the *Civil Code*). Otherwise, the director will be held liable for damages sustained by the company as a result.

2) Non-competition obligation

a) Content of non-competition

A director is a member of the board and participates in company operations. If a director were to conduct activities that are within the scope of company business whether on behalf of himself/herself or others and freely compete with the company, there is reasonable concern that the director might take advantage of his/her position to make personal gains or gains for others at the cost of company interest. To prevent such conflict of interest, directors of a company have the obligation not to engage in business that may be competitive vis-à-vis the company.

b) Waiver of the non-competition obligation

If a director explains to a meeting of shareholders the essentials of activities within the scope of company business that he/she plans to engage in outside the company on behalf of either himself/herself or others, then the shareholders' meeting may consider and grant a waiver to the director's obligation of non-competition by a special resolution adopted by a majority of shareholders who

represent two-thirds or more of the total outstanding shares; or, if stricter criteria for such vote are specified in the articles of incorporation, such stricter criteria shall govern (Paragraphs 1 and 2, Article 209 of the *Company Act*).

c) Violation of the non-competition obligation

In case a director engages in any activity either for himself/herself or on behalf of another person in violation of the non-competition obligation, the meeting of shareholders may, by a resolution, consider the earnings in such an act as earnings of the company (Paragraph 5, Article 209 of the *Company Act*). This no longer applies, however, after one year has lapsed since the realization of such earnings by the director.

3) When a director discovers any possibility that the company will suffer substantial damage, the director shall report to the supervisors immediately (Article 218-1 of the *Company Act*).

4) Obligation to declare shares held

Each director shall, after having been elected, declare to the competent authority the number of shares of the company held at the time of election (fore part, Paragraph 1, Article 197 of the *Company Act*). Upon creation or cancellation of a pledge on company shares held by a director, a notice of such action shall be given to the company, and the company shall, in turn and within 15 days after the date of such pledge creation/cancellation, have the change of pledge over such shares reported to the competent authority and declared in a public notice, unless otherwise provided for in rules or regulations separately prescribed with respect to public companies by the authority in charge of securities affairs. If a director of a public company has created a pledge on shares of the company held by the director in an amount exceeding half of the number of company shares held by the director at the time of the director's election, the voting power of that excess portion of pledged shares shall not be exercised and that excess portion shall not be counted in the number of votes of shareholders present at the meeting (Article 197-1 of the Company Act).

f. Responsibilities of a director

1) Responsibility towards the company

The *Company Act* stipulates that the responsible person of a company shall conduct company business in good faith and exercise due diligence of a good administrator, and if he/she has acted contrary to this provision, he/she shall be liable for the damages sustained by the company there-from (Paragraph 1, Article 23 of the *Company Act*). In case the responsible person of a company does anything for himself/herself or on behalf of another person in violation of the above provisions, the meeting of shareholders may, by a resolution, consider the earnings in such an act as earnings of the company unless one year has lapsed since the realization of such earnings (Paragraph 3, Article 23 of the *Company Act*). The board of directors is the executive body of a company. Circumstances in which a director violates his/her obligations in the execution of company business and causes injury to the company can general be divided into the following three categories:

a) Acting in accordance with the resolution of the board of directors:

When the board of directors adopts a resolution that violates laws or regulations, or the company's articles of incorporation, or violates a resolution adopted in a shareholders' meeting and causes injury to the company, directors who are involved in the decision-making shall be held liable for damages. However, dissenting directors whose dissent can be proven by minutes or written statements are not held liable (Article 193 of the *Company Act*).

b) Failure to act in accordance with resolutions of the board of directors:

Directors are board members and shall observe the resolutions adopted by the board in the performance of their duties. Thus, if a director fails to exercise due diligence of a good administrator by failing to conduct business in accordance with resolutions of the board of directors, he/she should be found liable for damages sustained by the company (Article 544 of the *Civil Code*).

c) Overstepping a director's authority

Because of the non-gratuitous mandate between a director and a company, a director shall be held liable for damages sustained by the company from an act of his/hers that oversteps his/her authority (Article 544 of the *Civil Code*).

2) Responsibility towards third parties

The *Company Act* provides that if the responsible person of a company (a director is the responsible person of a company limited by shares) has, in the course of conducting company business, violated any provision of the applicable laws and/or regulations and thus caused damage to any other person, he/she shall be liable, jointly and severally, for the damage to such other person (Paragraph 2, Article 23 of the *Company Act*).

3) A non-director of a company who de facto conducts business of a director or de facto controls the management of the personnel, financial, or business operation of the company and de facto instructs a director to conduct business shall be liable for the civil, criminal and administrative liabilities as a director in this Act, provided, however, that such liabilities shall not apply to an instruction of the government to a director appointed by the government for the purposes of economic development, promotion of social stability, or other circumstances which can promote public interests (Paragraph 3, Article 8 of the *Company Act*).

g. Powers and authority of the board of directors

1) Board of directors is empowered to decide the execution of company business:

The business operations of a company shall be executed pursuant to the resolutions adopted by the board of directors, except for matters the execution of which shall be effected pursuant to the resolutions of the shareholders' meeting as required by the *Company Act* or the company's articles of incorporation (Article 202 of the *Company Act*).

2) Internal supervision

The board of directors is empowered to supervise the actual execution of company business by the chairman, vice chairman or managing director(s). To put into effect the power of the

board of directors with respect to internal supervision, the *Company Act* empowers the board of directors to appoint and dismiss the chairman, vice chairman and managing director(s) (Paragraph 1, Article 208 of the *Company Act*).

3) Powers and authority of the board of directors as enumerated in the *Company Act*

Aside from providing a general description of the power of the board of directors in Article 202, the *Company Act* also enumerates powers and authority of the board in other clauses, mainly, to decide the appointment, discharge and the remuneration of the executive officer (Subparagraph 3, Paragraph 1, Article 29), to propose a motion that will bring material change to the company's operation or property to the shareholders' meeting (Paragraph 5, Article 185), to call and convene the shareholders' meeting (Article 171), to elect the chairman, vice chairman and managing directors among themselves (Paragraphs 1 and 2, Article 208), to distribute cash dividends as authorized by the articles of incorporation of a public company (Paragraph 6, Article 240), to offer corporate bonds and request subscribers to pay up (Articles 246 and 254), to issue new shares (Paragraph 2, Article 266), and to apply to the court for reorganization of the company (Article 282).

h. Obligations of the board of directors

1) Obligation to call shareholders' meetings

Unless it is otherwise provided by the *Company Act*, calling shareholders' meetings is a power of the board of directors (Article 171 of the *Company Act*). The board of directors is also obligated to call a special shareholders' meeting in any of the following two circumstances:

a) In case the loss incurred by a company aggregates to one half of its paid-in capital, the board of directors shall make a report to the next meeting of shareholders (Paragraph 1, Article 211 of the *Company Act*).

b) When the number of vacancies in the board of directors of a company equals one-third of the total number of directors, the board of directors shall call, within 30 days, a special meeting of shareholders to elect succeeding directors to fill the vacancies. However, in the case of a company whose

shares are issued to the public, the special meeting of shareholders for electing succeeding directors shall be convened by the board of directors within 60 days (Paragraph 1, Article 201 of the *Company Act*). When all independent directors have been dismissed, the company shall convene a special shareholders meeting to hold a by-election within 60 days from the date on which the situation arose (Paragraph 6, Article 14-2 of the *Securities and Exchange Act*).

2) Obligation to report to the shareholders' meeting

According to the *Company Act*, the board of directors has the obligation to report to the shareholders in any of the following circumstances:

a) In case the loss incurred by a company aggregates to one half of its paid-in capital;

b) In case of a public company, after the distribution of cash dividends as authorized by the articles of incorporation;

c) After issue of corporate bonds, reporting the reasons for the issuance of the corporate bonds as well as other relevant matters.

3) Obligation to file bankruptcy for the company

In case the assets of a company are insufficient to set off its liabilities, unless proceeding in accordance with Article 282 of the *Company Act*, the board of directors shall apply to the court for declaration of bankruptcy (Paragraph 2, Article 211 of the *Company Act*).

4) Obligation to notify shareholders of the dissolution of company

When a company is to be dissolved, the board of directors shall forthwith notify each of the shareholders and make a public announcement if bearer shares have been issued, unless the company is dissolved due to bankruptcy.

i. Meetings of the board of directors

1) Meaning

The board of directors is a meeting body where any decisions made by the board must be effected by convening a meeting, i.e. the meeting of the board of directors. The board meeting

shall be called by a person empowered to convene according to an established procedure.

2) Convening

a) Meetings of the board of directors shall be convened by the chairman of the board, except for the first board meeting of each term of the board of directors which shall then be convened by the director who received a ballot representing the largest number of votes at the election of directors. The first meeting of each term of the board of directors shall be convened within 15 days after the re-election. However, in case the re-election of directors was conducted prior to the expiration of the term of office of the directors of the proceeding term, and a resolution was adopted not to discharge the directors of the preceding term until the expiration of the term of their offices, then the first meeting of the newly elected directors shall be convened within 15 days after the expiration of the term of office of the directors of the proceeding term (Paragraphs 1 and 2, Article 203 of the *Company Act*).

b) Convening procedure

In calling a meeting of the board of directors of a public company, a notice setting forth therein the subjects to be discussed at the meeting shall be given to each director and supervisor no later than 7 days prior to the scheduled meeting date. However, in the case of an emergency, the board of directors' meeting may be convened at any time (Article 204 of the *Company Act*, Paragraph 2, Article 3 of the *Regulations Governing Procedure for Board of Directors Meetings of Public Companies*). A meeting notice must be sent in writing and specify the subjects to be discussed at the meeting. Telephone or verbal notice of an upcoming board of directors' meeting is not allowed (Ministry of Economic Affairs July 17, 2009 *Letter No. Jing-Shang-09802090850*). However, the notice may be given by means of electronic transmission, after obtaining prior consent from the recipient(s) thereof (Paragraph 2, Article 204 of the *Company Act*, Paragraph 3, Article 3 of the *Regulations Governing Procedure for Board of Directors Meetings of Public Companies*).

3) Holding a meeting

a) The chairman of the board of directors shall preside over the meeting of the board of directors (Paragraph 3, Article 208 of the *Company Act*). Each director shall attend the meeting of the board of directors in person, unless it is otherwise provided for in the articles of incorporation that a director may be represented by another director. In case a director appoints another director to attend a meeting of the board of directors on his/her behalf, he/she shall, for each board meeting, issue a written proxy and state therein the scope of authority with reference to the subjects to be discussed at the board meeting. In case a meeting of the board of directors is conducted via video conferencing, directors taking part in such a video conference shall be deemed to have attended the meeting in person. A director residing in a foreign country and who is unable to attend every board meeting in person, may appoint in writing a shareholder residing domestically as his/her proxy to attend the meetings of the board of directors on a regular basis. However, the appointment of the proxy, and any change thereto, shall be registered with the Ministry of Economic Affairs (Article 205 of the *Company Act*).

b) Further specific provisions regarding the content of deliberations of board meetings of public companies, meeting procedures, matters required to be recorded in the meeting minutes, public announcement, and other matters for compliance can be found in the *Regulations Governing Procedure for Board of Directors Meetings of Public Companies*.

4) Resolutions

There are two kinds of resolutions made by the board of directors: (1) a general resolution adopted by a majority of directors present at a meeting attended by a majority of the directors (Paragraph 1, Article 206 of the *Company Act*); (2) a special resolution adopted by a majority of directors present at a meeting attended by at least two-thirds of directors.

A director who has a personal interest in the matter under discussion at a board meeting shall explain to the board meeting the essential contents of such personal interest (Paragraph 2, Article 206 of the *Company Act*). Additionally, a

director who has a personal interest in the matter under discussion at a meeting, which may impair the interest of the company, shall not vote nor exercise the voting right on behalf of another director. Where the spouse, a blood relative within the second degree of kinship of a director, or any company which has a controlling or subordinate relation with a director has interests in the matters under discussion in the meeting of the preceding paragraph, such director shall be deemed to have a personal interest in the matter (Articles 206, and 178 of the *Company Act*).

5) Minutes

All directors are bound by the resolutions adopted by the board of directors. To preclude disputes at a later date, minutes shall be taken of the proceedings at the meeting of the board of directors (Article 207 of the *Company Act*). The minutes shall be detailed and accurate, and shall bear the signature or seal of both the meeting chair and the minutes taker. A copy of the minutes shall be distributed to each director and supervisor within 20 days after the meeting and the minutes shall be well preserved as important company records during the existence of the company (Article 17 of the *Regulations Governing Procedure for Board of Directors Meetings of Public Companies*).

B. Restriction or prohibition against competition and dual agency

Articles 209 and 32 of the *Company Act* are general provisions on non-competition by insiders. Article 51 of the *Securities and Exchange Act* provides a special provision where a director, supervisor, or executive officer of a securities firm shall not serve concurrently in any position at another securities firm. This provision aims to ensure that insiders of securities firms shall focus on their business operation and prevent conflict of interest. However, when there is an investment relationship, a director, supervisor, or executive officer may serve concurrently as the director or supervisor of the invested securities firm with the approval of the competent authority (Article 51 of the *Securities and Exchange Act*).

C. Exercise of the right of disgorgement against directors, supervisors, executive officers and major shareholders and prohibition of insider trading, and the duty of directors, supervisors, executive officers and major shareholders to file reports of and publicly disclose changes in their shareholding and pledges on their shareholding (see the *Compliance Brochure for Directors and Supervisors of TWSE/TPEx-Listed and Emerging Market Companies*)