Frequently-asked Questions and Answers on "The Regulations on Industries Investment from Repatriated Offshore Funds"

Direct investment

1. Can the number of shares or capital contributions obtained from direct investment be used as pledge or guarantee?

Answer: According to Article 3 of "The Regulations on Industries Investment from Repatriated Offshore Funds" (hereinafter referred to as the Regulations), the full number of shares or capital contributions obtained by the investor shall be held for at least four years during which such an amount shall not be used as a subject of pledge or guarantee. Those violating the above mentioned provisions are deemed to apply the funds outside the scope of the approved investment plans; thus, shall be taxed in accordance with the provisions of Paragraph 3, Article 7 of the "The Management, Utilization, and Taxation of Repatriated Offshore Funds Act" (hereinafter referred to as the Act) (i.e., taxation at the rate of 20%, with a supplementary tax of 12% or 10%).

2. May the expenditures on buildings constructed or acquired with direct investment include the cost of land acquisition?

Answer: Paragraph 1, Article 4 of the Regulations explicitly provides the scope of expenditures for the applicable investment plans, including expenditures on the construction or acquisition of buildings for self-manufacturing or business operation; expenditures on the acquisition of software & hardware equipment, or technology for self-use; and other expenses related to the investment plan, except for the cost of land acquisition.

3. Can buildings constructed or acquired with direct investment be resold?

Answer: In accordance with the provisions of Paragraph 4, Article 4 of the Regulations, the buildings acquired by investment enterprises in

accordance with the provisions of Subparagraph 1, Paragraph 1, Article 4 of the Regulations shall be used and held for at least seven years – from the date the investment party's deposit of funds into a Segregated Foreign Exchange Deposit Account for Offshore Funds – during which the buildings shall not be used as a residence, leased, or transferred. Those violating the abovementioned provisions are deemed to apply the funds outside the scope of the approved investment plans; thus, shall be taxed in accordance with the provisions of Paragraph 3, Article 7 of the Act (i.e., taxation at the rate of 20%, with a supplementary tax of 12% or 10%).

4. May direct investment be convertible bonds of for-profit enterprises?

Answer: The legislative purpose of the substantive investment under the Regulations is to encourage new investments with inward remittances of overseas funds. Shares or capital contributions obtained as direct investments in accordance with the Regulations shall be newly-issued shares or additional capital contributions for the for-profit enterprises. That is, mergers & acquisitions and purchase of previously-issued shares or corporate bonds shall not be applicable.

5. Can a company apply for direct investment funds under the Regulations as well as under " Action Plan for Welcoming Overseas Taiwanese Businesses to Return to Invest in Taiwan "?

Answer: In accordance with the provisions of Paragraph 1, Article 4 of the Regulations, the scope of expenditures of the overseas capital investment plan includes expenditures on the construction or acquisition of buildings for self-manufacturing or business operation; expenditures on the acquisition of software & hardware equipment, or technology for self-use; and other necessary expenses related to the investment plan. The investment plan applied by a company for approval shall conform to the preceding provisions; whereas capital

shall not be withdrawn from the special foreign exchange account for the implementation of the investment plan until the submitted investment plan has been approved by the Ministry of Economic Affairs. In addition, the sources of funds for the investment plans under " Action Plan for Welcoming Overseas Taiwanese Businesses to Return to Invest in Taiwan " includes bank loans and proprietary funds. If the proprietary fund constitutes an overseas fund applicable to the Regulations, applicants may separately apply for funds under the Regulations as well as under the " Action Plan for Welcoming Overseas Taiwanese Businesses to Return to Invest in Taiwan ".

6. Can shares acquired from direct investment in for-profit enterprises be preferred stocks?

Answer: In accordance with the provisions of Subparagraph 3, Paragraph 2, Article 3 of the Regulations: (partially citation as) "… Individuals and for-profit enterprises (hereinafter referred to as the Investors) investing in business in accordance with the provisions of Paragraph 1, Article 7 of the Regulations shall undertake domestic investments in the following approaches: … III. The investors are to obtain the newly issued shares or capital contribution of for-profit enterprises with cash as consideration; whereas the for-profit enterprises are to execute the investment plan". The newly issued shares in the preceding paragraph may be preferred stocks; yet, the shares acquired by the investors shall conform to the provisions as stipulated in Paragraph 3 to 5, Article 3 of the Regulations.

7. When separate inward remitted overseas funds are deposited into different Segregated Foreign Exchange Deposit Account for Offshore Funds by an individual (or a for-profit enterprise) for direct investments, is the source of overseas funds limited to one special foreign exchange account?

Answer: The source of funds – if applicable to the Regulations - in the investment plan proposed by an individual (or a for-profit enterprise) may come from owned different foreign exchange accounts, provided that it is clearly stated in the application submittal. In accordance with the provisions of Paragraph 1, Article 5 of the Regulations, " The Investors investing in business in accordance with Paragraph 1, Article 7 of the Regulations shall apply to the Ministry of Economic Affairs - within one year from the date of depositing funds into the Segregated Foreign Exchange Deposit Account for Offshore Funds - for an approval letter for the investment plan along with the following documents: … Due to the difference in time relating to the deposit of several funds in a special account, please pay attention to the deadline for the application of the investment program."

8. Can an individual (or a for-profit enterprise) apply for consolidated approval while processing inward remitted overseas funds and planning to undertake direct and indirect investments?

Answer: Direct investment and indirect investment fall under different application matters. Please apply separately in accordance with the provisions of the Regulations as well as the filing format of the application forms.

Indirect investment

1. Can the domestic venture capital enterprises or private equity funds in policy-targeted industries be invested indirectly in listed stocks or over-the-counter stocks, or be engaged in the merger and acquisitions of listed companies at stock exchange market or over-the-counter market?

Answer: According to the regulation "the amount of fund invested in the unlisted companies of aforementioned policy-targeted industries" in

Subparagraph 1, Paragraph 1, Article 10 of the Regulations, i.e. indirect investment is restricted to purchase listed company stocks or OTC company stocks by way of domestic venture capital business or private equity funds, including any cash replenishment, purchasing stocks of listed companies and over-the-counter companies due to the requirement of merger and acquisition and so on.

2. **As to Article 10 of the Regulations on indirect investment, can the fund invested in the policy-targeted industries include investing in companies operating in Taiwan but established overseas?**

Answer: According to Article 9 and 10 of the Regulations, it is stipulated that the domestic venture capital or private equity funds invested in unlisted companies or business of the policy-targeted industries should be limited to the business established in the domestic area, but not overseas.

3. In the indirect investment, how to identify the qualification of the private equity funds?

Answer: In accordance with the regulation of Paragraph 2, Article 11 of the Regulations, "as to…the identification of the private equity funds, the ministry should invite the Ministry of Finance and the Financial Supervision and Administration Commission to assist", therefore, if the application accepted by the Ministry belongs to domestic private equity funds, the qualification of the funds should be reviewed jointly by the ministry and the invited Ministry of Finance as well as the Financial Supervision and Administration Commission.

4. **While the domestic venture capital or private equity funds always get registered after finishing fundraising, therefore, does it have to be a**

registered company when applying for approval of indirect investment?

Answer: According to Paragraph 2, Article 10 of the Regulations, "…the domestic ventures refers to those venture capital business that complies with the venture capital investment enterprises regulated in Article 3" and, according to the regulation of Subparagraph 2, Paragraph 1, Article 11, when applying to the approval of the ministry, the applicant should attach the "update registered copy of domestic venture capital business or private equity fund or limited partnership". Therefore, when trying to be applicable to the indirect investment in domestic venture capital or private equity funds, companies or limited partnership should be registered domestically. As to acquiring the applicability, the initial capital can be less than NT$200 million, but after foreign funds for personal and profit-making business are in place, the capital should be above NT$200 million.

5. Can the indirect investment in domestic venture capital or private equity funds invest (purchase) the old stocks in the enterprise?

Answer: According to Subparagraph 1, Paragraph 1, Article 10 of the Regulations, "the sum of investing the unlisted companies in the aforementioned policy-targeted industries …" and Subparagraph 2 "investing in other domestic industries besides the former investment fund should be limited to unlisted business". The investment modes in those two Subparagraphs should be restricted and cannot buy the equity of the original shareholders of domestic enterprises (i.e. old shares). If it is violated, it refers to violate the regulation of Paragraph 1 and 2, Article 8 for moving the funds to other usage. The violator should pay supplementary tax (i.e. at a rate of 20% and an additional tax of 12% or 10%).

6. Can the indirect investment in domestic venture capital or private equity funds invest in the special shares and bonds issued by domestic companies?

Answer: According to the Article 10 of the Regulations, when the investor puts his funds in investing domestic venture business or private equity funds, the venture or fund should invest in the equity issued by domestic industries (it is limited to the shares newly issued by domestic business, no matter if it is special shares or not), but it cannot purchase bonds (regardless whatever form of bond).

7. Can the indirect investment in domestic venture capital or private equity funds first invest in a certain holding company; then, reinvest in industries in key domestic policy areas?

Answer: When the indirect investment in domestic venture capital or private equity funds first invest in a certain holding company; then, reinvest in industries in key domestic policy areas, it does not comply with the scope of investing in industries in key domestic policy areas stated in Paragraph 1, Article 10. The sum of the investment cannot be counted into the proportion of investment in industries in important domestic policy areas.

8. If the indirect investment in domestic venture capital or private equity funds violates the latter-part regulations stated in the 1st Item, 10th Article of the Regulations, should the violator pay taxes in accordance with the proportion of funds that violate the regulations?

Answer: According to Paragraph 4, Article 10 of the Regulations, those who does not comply with the latter-part regulation of Paragraph 1, Article 10 belong to those who violate the regulation of Paragraph 1 and 2,

Article 8 to move the investment for other usage. The investor should pay the tax based on the full amount of the investment in the indirect investment case in accordance with relevant regulations (i.e. at a tax rate of 20% and supplemented with a tax of 12% or 10%).