

Corporate Governance Q & A - Strengthen the Independence of the Board of Directors and Supervisors

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***In case of any discrepancy between the Chinese version and the English one, the Chinese version shall prevail.**

1 . When a company files with the FSC retroactively the public issuance of its shares, is it required to satisfy the requirements set forth in Article 26-3 of the Securities and Exchange Act with respect to the company’s directors and supervisors?

A: When filing retroactively with the FSC the public issuance of its shares, the total number and qualification of directors and supervisors of a securities issuer shall satisfy the conditions specified in Article 26-3 of the Securities and Exchange Act and paragraph 2, Article 216 of the Company Act. That is, at the time of restorative filing of the public issuance, the company shall have at least 5 (five) directors and 2 (two) supervisors and the directors and supervisors shall meet the independence criteria specified in paragraph 2 to 4, Article 26-3 of the Securities and Exchange Act.

2 . What are the handling procedures for a company if it violates the regulatory requirement as set out in Paragraph 2, Article 26-3 of the Securities and Exchange Act stipulating that when the government or a juristic person is a shareholder of a public company, a representative of the government or juristic person may not concurrently be elected or serve as the director or supervisor of the company?

A:

1. Paragraph 2, Article 26-3 of the Securities and Exchange Act stipulates “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 Article 27, paragraph 2 of the Company Act shall not apply, and a representative of the government or juristic person may not concurrently be selected or serve as the director or supervisor of the company.” The aforesaid representatives include representatives of the government, or juristic person shareholder or a controlled entity or affiliated enterprise of the juristic person shareholder (including a judicial foundation or organization) as per Jin-Kuan-Zheng-Fa Interpretive Order No. 0990005875 issued on February 6, 2010.

2. In consideration that paragraphs 3 and 4, Article 26-3 and paragraph 2 of Article 26-3 of the Securities and Exchange Act were stipulated on the same legal basis and that the legal consequences for violation of the provisions of paragraphs 3 and 4 of the same Article are clearly stipulated in paragraphs 5 and 6 of the same Article; and to ensure the stability of the capital market and consistency of regulatory requirements, paragraphs 5 and 6 of Article 26-3 apply to the situation where paragraph 2 of the same Article is violated. That is, when a “representative” of the government or juristic person shareholder is elected or serves concurrently as the director or supervisor of a public company, that **supervisor** shall be subject to ipso facto dismissal.

3 . What are the handling procedures when directors or supervisors are in breach of the conditions set out in Paragraphs 3 and 4, Article 26-3 of the Securities and

Exchange Act?

A:

1. Upon enactment of the amendments to the Securities and Exchange Act on January 1, 2007, for a person serving as director or supervisor in violation of the provisions of paragraph 3 or paragraph 4 of Article 26-3 of the Securities and Exchange Act, that person shall be subject to ipso facto dismissal through the mutatis mutandis application of the provisions of paragraph 5 of the same Article. For example, when two brothers are elected as the directors of a company with the highest and the second highest votes, **that person of the second highest votes** shall be subject to ipso facto dismissal.
2. Any director or supervisor who, if upon taking office, is found to be in violation of the independence provisions of paragraph 3 or 4 of Article 26-3 of the Securities and Exchange Act shall be subject to ipso facto dismissal through the mutatis mutandis application of the provisions of paragraph 5 of the same Article.
- 4. When a company is organized by a single juristic person shareholder (e.g. the fully owned subsidiary of a financial holding company), is the election of its directors and supervisors bound by Paragraph 2, Article 26-3 of the Securities and Exchange Act, which stipulates that a representative of the government or juristic person may not concurrently be elected or serve as the director or supervisor of the company?**

A: A company organized by a single juristic person shareholder falls into the category of the entity defined in Article 128-1 of the Company Act, that is, “A company limited by shares which is organized by a single government shareholder or a single juristic person shareholder”. As such, directors and supervisors of the company shall be appointed by the government or the juristic person shareholder and not be bound by paragraph 2, Article 27 of the Company Act. The question regarding the applicability of paragraph 2, Article 26-3 of the Securities and Exchange Act is not relevant.

5 . May the representatives of a juristic person and its subsidiaries or affiliated enterprises be elected as the directors or supervisors of other companies?

A: Paragraph 2, Article 26-3 of the Securities and Exchange Act stipulates “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 Article 27, paragraph 2 of the Company Act shall not apply, and a representative of the government or juristic person may not concurrently be selected or serve as the director or supervisor of the company.” The aforesaid representatives include representatives of the government, or juristic person shareholder or a controlled entity or affiliated enterprise of the juristic person shareholder (including a judicial foundation or organization) as per Jin-Kuan-Zheng-Fa Interpretive Order No. 0990005875 issued on February 6, 2010.

6. Where a juristic person shareholder was not elected or does not serve as the director or supervisor of a company in accordance with paragraph 2, Article 27 of the Company Act, is the enforcement of paragraph 2, Article 26-3 of the Securities and Exchange Act prohibiting the representative of the juristic person to be concurrently elected or serve as the director or supervisor of the company required?

A: Paragraph 2, Article 26-3 of the Securities and Exchange Act stipulates “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 Article 27, paragraph 2 of the Company Act shall not apply, and a representative of the government or juristic person may not concurrently be selected or serve as the director or supervisor of the company.” As such, the provisions of paragraph 2, Article 26-3 of the Securities and Exchange Act do not apply where representatives of the government or juristic person are not elected in accordance with paragraph 2, Article 27 of the Company Act.

7. When juristic person shareholders of a public company merge, thus requiring the continuing juristic person shareholder to appoint representatives to serve as the company’s directors or supervisors, may the enforcement of paragraph 2, Article 26-3 be applied from the time of expiration of the term currently being served by the

directors or supervisors?

A: For the purpose of sound corporate governance, directors or supervisors of a public company shall be the representatives appointed by the company's respective juristic person shareholders. A director or supervisor who is a representative of a continuing entity due to a merger of two juristic person shareholders shall still be bound by the provisions of paragraph 2, Article 26-3 of the Securities and Exchange Act.

8. When a juristic person is the shareholder of public company, may its representative(s) be elected to take up all the directors' positions available in a company?

A: Paragraph 2, Article 26-3 of the Securities and Exchange Act stipulates that 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 Article 27, paragraph 2 of the Company Act shall not apply, and a representative of the government or juristic person may not concurrently be selected or serve as the director or supervisor of the company.”; the provisions of paragraphs 3 and 4, Article 26-3 of the same Article also stipulate that no more than a certain percentage or certain number of directors and supervisors of a company shall be in a spousal relationship or familial relationship within the second degree of kinship. As such, the representative of a juristic person shareholder of a company who is elected or serve as the director of the company shall satisfy the aforesaid condition.

9 . Paragraph 3, Article 26-3 of the Securities and Exchange Act stipulates that no more than half of the directors shall be in a spousal relationship or familial relationship within the second degree of kinship with each other. How is this calculated?

A:

1. Paragraph 3, Article 26-3 of the Securities and Exchange Act stipulates that except where the Competent Authority has granted approval, no more than half of a company's directors shall be in a spousal relationship or familial relationship within the second degree of kinship.
2. Example: Assume that a company has 7 (seven) directors, and a spousal relationship or familial relationship within the second degree of kinship exists among 3 (three) directors (A, B, and C respectively); a spousal relationship or familial relationship within the second degree of kinship also exists between 2 (two) directors (A & B) but the neither of the aforesaid relationships exist between directors A, B & C and directors A & B. In this situation, the provisions of paragraph 3, Article 26-3 of the Securities and Exchange Act have not been violated.

10 . Paragraphs 3 and 4, Article 26-3 of the Securities and Exchange Act stipulate that a company shall have more than a certain percentage or number of directors or supervisors among whom a certain familial relationship does not exist. Does this rule apply to the representatives of a juristic person director or supervisor?

A: Pursuant to paragraph 1, Article 27 of the Company Act, 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 provided that it shall designate a natural person as its proxy to exercise, on its behalf, the duties of a shareholder; and the provisions of paragraphs 3 and 4, Article 26-3 of the Securities and Exchange Act are designed to enhance the independence of the board of directors and supervisors. As such, the regulatory requirement applies to a natural director or supervisor as well as the representative of a juristic person director or supervisor.

1 1 . When a representative of a juristic person elected or serves as the supervisor of a company is a spouse or relative within the second degree kinship of an individual shareholder, are paragraphs 4, Article 26-3 of the Securities and Exchange Act applicable?

A: The provisions of paragraphs 4, Article 26-3 of the Securities and Exchange Act are designed to enhance the independence of the board of directors and supervisors, which stipulate that a company shall have at least one or more supervisors, or one or more supervisors and directors, among whom no spousal relationship or familial relationship within the second degree of kinship exists and this regulatory requirement shall apply to individual directors and supervisors and the representatives of juristic person directors and supervisors. As such, the company is in compliance with paragraphs 4, Article 26-3 of the Securities and Exchange Act if no spousal relationship or familial relationship within the second degree kinship exists

between at least one supervisor (natural person or representative of a juristic person) and other supervisors and directors.

1 2 . How is the term “the next shareholders’ meeting” used in paragraph 5, Article 14-2 and paragraph 7, Article 26-3 of the Securities and Exchange Act defined?

A: Pursuant to Jin-Kuan-Zheng Tze (1) Order No. 0960042004 published on August 6, 2007, the term “the next shareholders’ meeting” used in paragraph 5, Article 14-2 of the Securities and Exchange Act and paragraph 7, Article 26-3 of the same Act refers to the date of the next shareholders’ meeting resolved by the meeting of the board of directors of a public company where the dismissal of an independent director or director for specific reasons occurs after the date of the shareholders’ meeting and the date of resolution of the shareholders’ meeting previously resolved by its board of directors; where the articles of incorporation provide for a candidate nomination system, the nomination date or the date on which the number of directors to be elected must be resolved.

1 3 . Where the number of a company’s independent supervisors falls below the required number, shall the company hold a by-election?

A:

1. The Securities and Exchange Act does not contain provisions governing the institution of independent supervisors, but the qualification and conditions of independent directors are set

out in the “Regulations Governing Appointment of Independent Directors and Compliance Matters for Public Companies”. There have been legal guidelines for the institution of independent supervisors since the abolishment of Tai-Tsai-ZhengTze (1) Order No. 0920001468 and No. 0920003896 promulgated by the Financial Supervisory Commission (formerly the Securities and Futures Commission, Ministry of Finance) on April 8, 2003 and September 23, 2003, respectively, which provide the guidelines for the required qualification of directors or independent supervisors as of January 1, 2007.

2. Where an independent supervisor’s position of a company listed on the stock exchange or OTC-exchange becomes vacant, the decision of whether the company shall hold a by-election shall be determined in accordance with the Company Act.