

Q&A for Overseas Chinese and Foreign Investors

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1. How do foreign investors invest in the Taiwan markets?

Answer: There are two types of foreign investors, i.e. offshore foreign investors and onshore foreign investors.

- (1) **Offshore foreign investors** include offshore Overseas Chinese and foreign nationals and offshore foreign institutional investors (generally categorized as fund-based investors and non-fund-based investors). They are required to appoint a Taiwanese agent/custodian to register as foreign investors with the Taiwan Stock Exchange Corporation before opening a securities trading account with a securities firm for trading of securities.
- (2) **Onshore foreign investors** include onshore Overseas Chinese and foreign nationals and onshore foreign institutional investors. They are required to contact a securities firm to register as foreign investors with the Taiwan Stock Exchange Corporation before opening a securities trading account for trading of securities.

2. How to determine if a foreign investor may be permitted to invest in Taiwan?

Answer: To determine if a foreign investor may be permitted to invest in Taiwan, refer to the flowchart for details.

3. Neither foreign institutional investors nor their clients may be investors from the Mainland Area if they intend to invest in Taiwan. What is the definition of an investor from the Mainland Area?

Answer:

- (1) The non-fund-based foreign institutional investor or its client (who is the actual investor) shall not be an individual, juristic person, organization or any other institution from Mainland China or its third-area invested company.
- (2) Applicable laws and regulations:

- a. According to Article 73 of the Act Governing Relations between the People of the Taiwan Area and the Mainland Area ("Act"), unless permitted by the competent authorities, any individual, juristic person, organization, or other institution of the Mainland Area, or any company it invests in any third area may not engage in any investment activity in the Taiwan Area. The Investment Commission, Ministry of Economic Affairs and the Financial Supervisory Commission have separately established Measures Governing Investment Permit to the People of Mainland Area, and the Regulations Governing Securities Investment and Futures Trading in Taiwan by Mainland Area Investors pursuant to Article 73, paragraph 3 of the Act. The former governs Mainland Area investors' direct investments in Taiwan (including Mainland Area investor's acquisition of 10% or more shares of a listed company at the Taiwan Stock Exchange or Taipei Exchange in one or more direct investments), and the latter governs financial investments in Taiwan (less than 10%). According to Article 3 of the Regulations Governing Securities Investment and Futures Trading in Taiwan by Mainland Area Investors, Mainland Area investors that engage in securities investment in Taiwan shall be limited to qualified domestic institutional investors (QDII) approved by the competent authority of the securities, insurance and banking industries for the Mainland Area. In addition, for a listed company at the Taiwan Stock Exchange or Taipei Exchange having issued securities to its employees with household registration in the Mainland Area in accordance with law, and for foreign corporations listed at the Taiwan Stock Exchange or Taipei Exchange, holders of their shares who are organized and incorporated under the law of the Mainland Area or maintain household registration in the Mainland Area may sell these shares.
- b. Definition of a company in which an individual, juristic person, organization, or other institution of the Mainland Area invests in any third area ("Third-Area Invested Company"):
 - (i) According to the Measures Governing Investment Permit to the People of Mainland Area, Article 3, paragraph 2, the above

Third-Area Invested Company means a company in which an individual, juristic person, organization, or other institution of the Mainland Area invests in any third area to which one of the following applies: (a) the above investor directly or indirectly holds more than 30% of the shares or total capital contribution of the Third-Area Invested Company; or (b) the above investor has control over the Third-Area Invested Company; the Statute for Investment by Foreign Nationals does not apply to the investments by the Third-Area Invested Company in Taiwan.

(ii) For description and example of determination of a foreign Third-Area Invested Company as Mainland Area investor, visit the Investment Commission, Ministry of Economic Affairs' website (www.moeaic.gov.tw > Services > Overseas Chinese & Foreign Investment > Explanations > Form IV : The Interpretation of the Standard for Determining Whether a Third-Area Company Is an Investor of the Mainland Area).

(3) A non-fund-based foreign institutional investor who has registered as a foreign investor, e.g. security firm or bank, shall not conduct transaction on behalf of its client who is a Mainland Area investor to invest in Taiwan.

4. Will an offshore/onshore Overseas Chinese and individual, non-fund-based offshore foreign institutional investor or its client who is a Hong Kong or Macao investor be permitted to invest in Taiwan?

Answer:

(1) An offshore/onshore Overseas Chinese and foreign nationals, non-fund-based foreign institutional investor or its client who is a Hong Kong or Macao investor may be permitted to invest in Taiwan. Non-fund-based offshore foreign institutional investor, e.g. securities firm or bank, may conduct transaction on behalf of its client who is an individual, corporate, group or other institution in Hong Kong or Macao to invest in Taiwan.

(2) Applicable laws and regulations:

- a. According to Article 4 of the Laws and Regulations Regarding Hong Kong and Macao Affairs, Hong Kong residents refer to persons who qualify for permanent residency in Hong Kong and who do not hold a travel document other than a British (Overseas) passport or a Hong Kong passport, and Macau residents refer to those who have the right of permanent residency in Macau and hold no travel documents other than the Macau passport; or those who do hold a Portuguese passport but obtained the document in Macau prior to the end of Portuguese rule.
- b. Article 31 of the above Regulations provide that the relevant regulations concerning foreign investment and remittance shall apply *mutatis mutandis* to investment in the Taiwan Area by Hong Kong or Macau residents, juridical persons, organizations or other institutions. Article 41-1 of the same Regulations further states that a company, which invested in Hong Kong or Macau by individuals, juridical persons, organizations, or institutions of the Mainland Area, under the circumstances of Article 73 of the Act Governing Relations Between Peoples of the Taiwan Area and the Mainland Area, may be governed by the relevant provisions in that Act in its dealing with investments or taxes in Taiwan.

5. What if a non-fund-based offshore foreign institutional investor who has registered as a foreign investor and invested in Taiwan becomes a Third-Area Invested Company due to change of shareholding?

Answer: If a non-fund-based offshore foreign institutional investor who has registered as a foreign investor and invested in Taiwan becomes a Third-Area Invested Company due to change of shareholding, it shall notify its Taiwanese agent/custodian to update information about its shareholders and sell the securities it is holding as soon as possible, during which period it will not be able to purchase any securities in Taiwan, except for purchases of borrowed securities for return in securities lending. After the securities account has no balance, it shall complete the procedure to cancel its foreign investor registration and to close securities trading account.

6. If the management company of a fund-based offshore foreign institutional investor is incorporated in the Mainland Area or is a Third-Area Invested Company, is it permitted to invest in Taiwan?

Answer:

- (1) If the fund management company of a public offering fund-based offshore foreign institutional investor is incorporated in the Mainland Area or is a Third-Area Invested Company invested by Mainland Area investor, and the Mainland Area investor has contributed more than 30% of the capital contribution of the public offering fund, it is not permitted to register as a foreign investor to invest in Taiwan.
- (2) If a private placement fund-based offshore foreign institutional investor is not a Third-Area Invested Company, it may be permitted to register as a foreign investor to invest in Taiwan.

Case 1

Public Offering Fund A registered in Luxemburg (Luxemburg Fund-A) intends to invest in Taiwan. Its management company is Asset Management Company B incorporated in Hong Kong (AMC-B), which is a subsidiary of Company V from the Mainland Area holding 51% of AMC-B. The Mainland Area investor has invested less than 30% of the capital contribution of Luxemburg Fund-A. In this case, Luxemburg Fund-A may be able to register as a foreign investor to invest in Taiwan.

Case 2

Public Offering Fund C registered in the UK (UK Fund-C) intends to invest in Taiwan. Its management company is Asset Management Company B incorporated in Hong Kong (AMC-B), which is a subsidiary of Company V from the Mainland Area holding 51% of AMC-B. The Mainland Area investor has invested more than 30% of the capital contribution of UK Fund-C. In this case, UK Fund-C will not be permitted to register as a foreign investor to invest in Taiwan.

Case 3

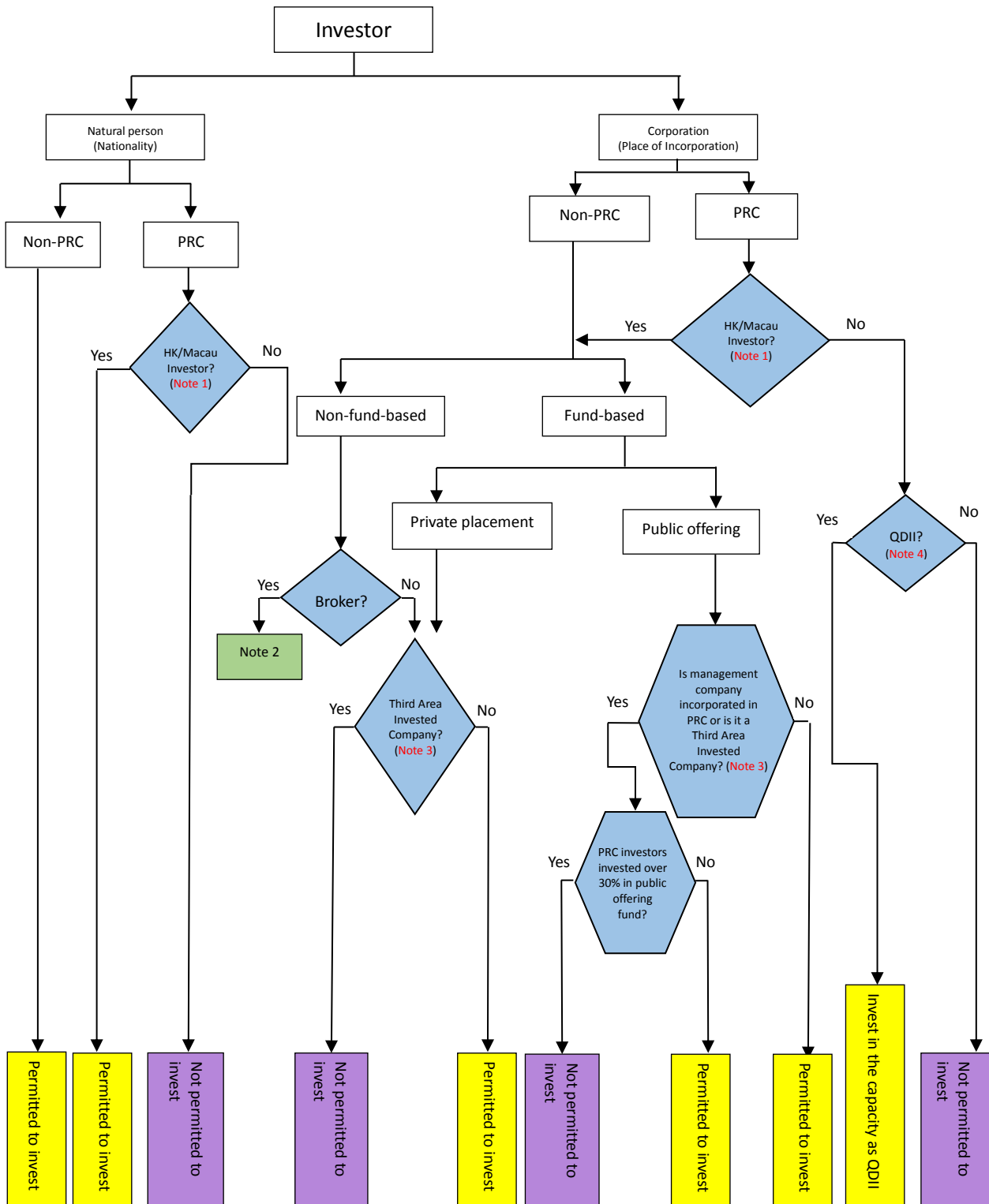
Private Placement Fund D incorporated in the US (US Fund-D) intends to invest in Taiwan. US Fund-D' shareholders including Mr. U, an individual from the Mainland, Company T and Bank S, companies incorporated in the Mainland Area, together have invested 45% of the of the capital contribution of US Fund-D (exceeding 30%) and US Fund-D is deemed a Third-Area Invested Company. In this case, US Fund-D will not be permitted to register as a foreign investor to invest in Taiwan.

- 7. As no part of funds used by Overseas Chinese or foreigners to invest in Taiwan may be from any sources in Taiwan, can any part of the funds of the client of an offshore foreign institutional investor, such as securities firm, bank and other financial institutions, be from a bank in Taiwan?**

Answer: No part of funds used by offshore Overseas Chinese, foreign nationals, non-fund-based offshore foreign institutional investors or their client (who is the actual investor) may be from sources in Taiwan. Funds from loans from an offshore banking unit of a Taiwanese bank are still deemed funds from sources in Taiwan.

Schedule:

How to determine if a non-ROC investor may invest in Taiwan's securities markets as Overseas Chinese or foreigner - Flowchart



Note 1: Individuals, juridical persons, organizations or other institutions in Hong Kong and Macao

1. According to Article 4 of the Laws and Regulations Regarding Hong Kong and Macao Affairs, Hong Kong residents refer to persons who qualify for permanent residency in Hong Kong and who do not hold a travel document other than a British (Overseas) passport or a Hong Kong passport, and Macau residents refer to those who have the right of permanent residency in Macau and hold no travel documents other than the Macau passport; or those

who do hold a Portuguese passport but obtained the document in Macau prior to the end of Portuguese rule.

2. Article 31 of the above Regulations provide that the relevant regulations concerning foreign investment and remittance shall apply *mutatis mutandis* to investment in the Taiwan Area by Hong Kong or Macau residents, juridical persons, organizations or other institutions. Article 41-1 of the same Regulations further states that a company, which invested in Hong Kong or Macau by individuals, juridical persons, organizations, or institutions of the Mainland Area, under the circumstances of Article 73 of the Act Governing Relations Between Peoples of the Taiwan Area and the Mainland Area, may be governed by the relevant provisions in that Act in its dealing with investments or taxes in Taiwan.

Note 2: Non-fund-based offshore foreign institutional investors are brokers, such as banks and securities firms, who are investing domestic securities on behalf of their clients. This determination procedure shall be referred to in determining if their client has an eligible status to invest in Taiwan.

Note 3: According to the Measures Governing Investment Permit to the People of Mainland Area, Article 3, paragraph 2, a Third-Area Invested Company means a company in which an individual, juristic person, organization, or other institution of the Mainland Area invests in any third area to which one of the following applies: (a) the above investor directly or indirectly holds more than 30% of the shares or total capital contribution of the Third-Area Invested Company; or (b) the above investor has control over the Third-Area Invested Company.

Note 4: According to Article 3 of the Regulations Governing Securities Investment and Futures Trading in Taiwan by Mainland Area Investors, a QDII is a qualified domestic institutional investor approved by the competent authority of the securities, insurance and banking industries for the Mainland Area.