

# Chinese Investment in Taiwan Securities

## Client Alert

Taipei

BAKER & MCKENZIE

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## CHINESE INVESTMENT IN TAIWAN SECURITIES

### Overview

#### 概論

On 30 April 2009 Taiwan's Financial Supervisory Commission, Executive Yuan issued the Guidelines Governing Securities Investment and Futures Trading in Taiwan by PRC Investors (the "**Guidelines**"). The Guidelines now permit certain categories of individuals and entities from the People's Republic of China (the "**PRC**") ("**PRC Investors**") to hold and/or acquire and trade in securities listed on the Taiwan Stock Exchange ("**TSE**") or the Gre-Tai Securities Exchange (which operates the OTC market) ("**Gre-Tai**"). In doing so, the Guidelines largely overturn the previous prohibition on PRC investment in Taiwan securities. The Guidelines are focused on "portfolio investment" of below 10% of the issued share capital of a Taiwan listed company and certain other securities.

台灣行政院金融監督管理委員會（下稱「金管會」）於2009年4月公佈「大陸地區投資人來臺從事證券投資及期貨交易管理辦法」（下稱「證券投資管理辦法」），准許特定類型之大陸地區投資人（下稱「大陸地區投資人」）持有並/或取得在臺灣證券交易所股份有限公司（下稱「證券交易所」）上市或財團法人中華民國證券櫃檯買賣中心（下稱「證券櫃檯買賣中心」）（亦即透過店頭市場交易）上櫃買賣公司之有價證券。此措施大幅地改變先前對於陸資來台投資有價證券之限制。證券投資管理辦法主要著眼於在不超過上市(櫃)公司10%股份之「投資組合」及其他有價證券之投資。

The Guidelines also form part of various recent measures and proposed measures by the Taiwan Government and PRC Government to relax travel, transportation, trade, investment and financial restrictions between Taiwan and the PRC which have been in place since 1949 when the Kuomintang Nationalist Party retreated from Mainland China to Taiwan. These measures are a reflection of increasing warm cross-strait relations between the respective governments.

證券投資管理辦法亦屬台灣政府與大陸政府間，就國民黨政府於1949年自大陸撤退來台後對觀光旅遊、交通運輸、貿易、投資及金融所加諸之限制之開放，近來所做出之多

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樣化及草擬措施之一部分；而此些措施也反應海峽兩岸政府間關係之日趨和緩。

Baker & McKenzie Taipei has published a separate Client Alert on general investment by PRC Investors in Taiwan industries which summarises separate regulations which will govern investment in Taiwanese nonlisted companies, investment in listed companies attaining 10% of its issued capital and the establishment of subsidiaries, branches and representative offices in Taiwan.

國際通商法律事務所已另就大陸地區投資人來台從事一般投資規範於另行發佈之客戶通知中說明，其中並包括對非上市(櫃)公司之投資、對上市(櫃)公司投資達該公司已發行股份10%以上之情形及在台設立大陸公司之子公司、分公司及辦事處等相關規範之介紹。

The Guidelines took effect from 30 April 2009. We summarise the Guidelines as follows. 證券投資管理辦法已於2009年4月30日生效，茲簡介如后：

### Qualifying PRC Investors 合格之大陸地區投資人

PRC Investors permitted to acquire and trade securities and futures in Taiwan are limited to the following categories of investor:

大陸地區投資人來台從事證券投資或期貨交易，以下列各款之人為限：

- (a) PRC Qualified Domestic Institutional Investors (“QDIIs”) approved by the competent authority of the PRC Government for securities matters (ie. the China Securities Regulatory Commission);
- (a) 經大陸地區證券主管機關(即中國證券監督管理委員會)核准之合格機構投資者(下稱「機構投資人」);
- (b) PRC employees of TSE or Gre-Tai-listed companies who are granted securities by their employer in accordance with Taiwan’s applicable law and regulations (ie. Company Law or Securities and Exchange Law);
- (b) 上市或上櫃公司依法令規定(即台灣公司法及證券交易法)核給有價證券與大陸地區之員工；

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- (c) PRC shareholders of offshore companies which has its shares or depositary receipts listed on the TSE or Gre-Tai; and
- (c) 股票或表彰股票之憑證於證券交易所或證券櫃檯買賣中心上市或上櫃買賣之海外公司，其在大陸地區之股東。
- (d) Others approved by the Taiwan Financial Supervisory Commission.
- (d) 其他經金管會核准者。

Currently, only PRC QDII in category (a) are permitted to buy and sell (ie. trade) securities. PRC employees in category (b) are only permitted to receive, hold and sell securities given to them by their Taiwanese employers and PRC shareholders in category (c) are only permitted to sell shares or depositary receipts of the offshore company and neither may buy additional securities on the TSE or Gre-Tai.

目前只有前述項目(a)之大陸地區機構投資人得買賣有價證券（即交易）。前述項目(b)之大陸員工僅得獲配、持有或出售其自台灣雇主處所取得之股份，而前述項目(c)之大陸籍股東僅得出售其海外公司之持股或存託憑證，且不得於證券交易所或證券櫃檯買賣中心認購額外之證券。

### Qualifying Securities

#### 合格有價證券

Qualifying PRC Investors are permitted to invest in the following categories of securities (“Qualifying Securities”):

合格之大陸投資人得投資以下有價證券（下稱「合格有價證券」）：

- (i) Securities issued in Taiwan. These include:

台灣地區證券之範圍包括：

- (a) securities issued by TSE or Gre-Tai listed companies;  
上市或上櫃公司之有價證券；
- (b) beneficiary receipts issued by Taiwanese securities investment trust enterprises;  
證券投資或期貨信託基金受益憑證；

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- (c) government bonds, financial bonds, or corporate bonds issued by public companies;  
政府債券、金融債券或公開發行公司發行之公司債；
- (d) beneficiary receipts or asset-backed securities under the Financial Assets  
Securitisation Act  
or the Real Estate Securitisation Act;  
依金融資產證券化條例或不動產證券化條例規定發行之受益證券或資產基礎證  
券；
- (e) warrants; and  
認購（售）權證；及
- (f) other securities approved by the Financial Supervisory Commission;  
其他經金管會核定之有價證券；
- (ii) Corporate bonds issued offshore by Taiwanese issuers through public offering or private  
placement;  
投資由臺灣地區發行公司在國外發行或私募之公司債；
- (iii) Depositary receipts issued offshore by Taiwanese issuers through public offering or  
private placement;  
投資由臺灣地區發行公司參與在國外發行或私募之存託憑證；
- (iv) Stocks issued and traded offshore by Taiwanese issuers through public offering or private  
placement; and  
投資由臺灣地區發行公司在國外發行、私募或交易之股票；及
- (v) Beneficiary certificates issued and sold offshore by Taiwanese securities investment trust  
enterprises.  
投資由臺灣地區證券投資或期貨信託事業發行並於國外銷售之信託基金受益憑證。

### **Local Agent and Registration Requirements** 台灣地區代理人及登記規定

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PRC Investors are required to appoint an agent in Taiwan to attend to investor registration with the TSE, opening of a securities account with a securities firm, conversion (if securities are convertible), subscription of shares, tax reporting and the exercise of shareholding rights on behalf of the PRC Investor. Note that these general requirements apply to all Qualifying Securities even if they are issued offshore.

大陸地區投資人應指定一台灣地區代理人以於證券交易所辦理投資人之登記、於證券商開戶、證券轉換（若該證券屬可轉換）或認購股份、稅捐之申報、代表大陸地區投資人行使持股之權利。應予注意者乃此等一般性規定適用於所有合格有價證券，即便該等證券係於海外發行。

In addition, for the investment in Qualifying Securities issued in Taiwan (ie. category (i) above), PRC Investors must also designate an agent in Taiwan to open a NTD bank account with a custodian bank in Taiwan for the purpose of buying and selling securities and to remit to Taiwan sufficient foreign currency, which must then be converted into NTD, to effect securities purchases. The NTD bank account will be supervised by the custodian bank and may only be used for the purpose of settling securities transactions and receiving dividends from and the proceeds of sale of securities.

此外，在台灣發行之合格有價證券之投資（即前述項目(i)），大陸地區投資人必需指定一台灣地區代理人以在台灣之保管銀行申請開設新台幣帳戶，供買賣證券之用，且應先匯入足夠之外幣再轉換成新台幣以完成交易。該新台幣銀行帳戶將由保管銀行監控，且應僅供證券交易之交割及收取證券買賣相關之利得之用為限。

### Restrictions on Shareholding Percentage and Amount 持股成數及金額之限制

PRC Investors, individually or in aggregate, may not acquire more than 10% of the total issued share capital of any TSE or Gre-Tai-listed company without the prior approval of the Taiwan Government. The relevant governmental agency is the Investment Commission under the Ministry of Economic Affairs.

大陸地區投資人未經台灣政府之事前許可，不得單次或累計投資取得上市或上櫃公司10%之股份。此處所指之相關政府機關即指經濟部投資審查委員會（下稱「投審會」）。

In addition, the Financial Supervisory Commission is authorised to determine and promulgate a maximum investment amount for investments by PRC Investors although there has not yet

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been any public announcement of such maximum investment amount.

此外，金管會亦被授權決定並頒佈大陸投資人對台投資之限額，惟截至目前為止，金管會尚未有關於此投資限額之公告。

### Restrictions on Certain Transactions

#### 特定交易之限制

PRC Investors are prohibited from conducting the following transactions:

大陸地區投資人禁止從事下列交易：

- (a) margin trading (ie. PRC Investors cannot finance their purchases or use the securities as collateral);
- (a) 從事證券信用交易(即大陸地區投資人就其不得為融資交易或用其證券作為擔保品)
- (b) short sales of securities;
- (b) 賣出尚未持有之證券；
- (c) using the funds for purchase of or proceeds from the sale of the securities for making a loan or creating any security interest over the securities; or
- (c) 為放款或以證券提供擔保而使用資金買受證券或利用證券交易之所得；或
- (d) deposit their securities with any institution other than an authorised custodian bank or the centralized securities depository.
- (d) 委託保管機構或證券集中保管事業以外之法人或個人代為保管證券。

### Restrictions on Acquiring Securities in Certain Sectors

#### 取得其他產業之證券的限制

Additional restrictions, requirements for approval and requirements for reporting may apply to the purchase of securities in certain sectors.

關於取得不同產業證券之情形，可能適用其他額外的限制、許可要求及申報要求。

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### Restrictions on Voting, Management and Control 表決權、經營及控制之限制

PRC Investors may exercise voting rights on TSE or Gre-Tai-listed shares they hold but must do so through delegating their local agent to exercise the voting rights on their behalf. 儘管大陸地區投資人得就其所持有之上市上櫃公司之股份行使表決權，惟其表決權之行使應由台灣區代理人出席為之。

Furthermore, there is a general restriction against PRC Investors exercising control or otherwise affecting the operation or management of companies in which they hold shares. 再者，大陸地區投資人不得有實質控制或影響影響公司經營管理之情事。

For more information, please contact:  
如須更多資訊，請聯絡：

#### Nicole Chu

Tel: +886 2 2715 7280

Fax: +886 2 2716 9250

[nicole.chu@bakernet.com](mailto:nicole.chu@bakernet.com)

#### Murray Bowler

Tel: +886 2 2715 7391

Fax: +886 2 2716 9250

[murray.bowler@bakernet.com](mailto:murray.bowler@bakernet.com)

#### [www.bakernet.com](http://www.bakernet.com)

Baker & McKenzie  
15/F, 168 Tun Hwa North Road  
Taipei 105, Taiwan, R.O.C.

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