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The Regulatory Basis on Taiwan Depository Receipts (TDR) in the Securities and Exchange Act

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Abstract

Prior to the stipulation of Article 165-2 of the Securities Exchange Act on January 4, 2012, the securities authority Identified by itself that it has announced the Taiwan Depository Receipt was one of “other securities of foreign countries with investment nature”. However, some courts held that the Taiwan Depository Receipt issued by the depository institution in R.O.C. is still different from the “foreign securities” issued by the foreign company, although it is recognizing the securities in the account of the custodian institution which is issued by the foreign company. The major controversy is whether the securities authority has announced the Taiwan Depository Receipt (TDR) belong to the securities under Paragraph 1, Article 6 of the Securities Exchange Act. As for the amendment of Article 165-2 of the Securities Exchange Act on January 4, 2012 in Taiwan, it has been identified Article 6 of the Securities Exchange Act shall apply *mutatis mutandis* to the secondary listing or second cabinet of the securities which issued by the foreign com-

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pany. That is the public offering, issuing, management and supervision in R.O.C. shall apply mutatis mutandis to the Article 6 of Securities Exchange Act. Therefore, there is no dispute about the Taiwan Depositary Receipt become the securities in the Securities Exchange Act. In fact, there are some courts held that the Taiwan Depositary Receipt does not regulated by the Article 165-2 of Securities Exchange Law. This paper will clarify the core point of the practical disputes, and put forward the views from the perspective of interpretation theory to eliminate the mentioned disputes.

Keywords: Taiwan Depositary Receipt, Securities, Secondary Listing, Second Cabinet