

## 現行證券交易法對 臺灣存託憑證（TDR）之規範依據

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摘 要

在 2012 年 1 月 4 日增訂證券交易法第 165 條之 2 規定之前，證券主管機關雖認為臺灣存託憑證（TDR）係屬「外國之其他具有投資性質之有價證券」，但司法實務上亦有判決認為，存託機構在我國內所發行之臺灣存託憑證，雖是「表彰存放於保管機構之外國發行人有價證券」，仍與該外國發行人在外國發行之「外國有價證券」本身有別，導致證券主管機關是否曾依證券交易法第 6 條第一項規定之授權，將臺灣存託憑證核定公告為證券交易法上之有價證券，產生重大爭議。至於我國於 2012 年 1 月 4 日增訂證券交易法第 165 條之 2 規定後，因已對於來我國第二上市或第二上櫃之有價證券，明定其有價證券在中華民國募集、發行及買賣之管理、監督，準用證券交易法第 6 條規定，臺灣存託憑證成為我國證券交易法上之有價證券，應無疑義，

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但司法實務上竟有判決認為證券交易法第 165 條之 2 之規範對象與臺灣存託憑證無關。本文期能釐清實務爭議之所在，並從解釋論之觀點提出管蠡之見，以杜爭議。

關鍵詞：臺灣存託憑證、有價證券、第二上市、第二上櫃

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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