Kaizen Certified Public Accountants Limited
21/F, Futura Plaza, 111 How Ming Street
Kwun Tong, Hong Kong
Tel: +852 23411444 Fax: +852 23411414
Email: info@bycpa.com

Shenzhen, China
Rooms 1210-11
Di Wang Commercial Centre
5002 Shennan Road East
Luohu District, Shenzhen
Tel: +86 755 8268 4480
Fax: +86 755 8268 4481

Shanghai, China
Room 603, Tower B
Guangqi Culture Plaza
2899A Xietu Road
Xuhui District, Shanghai
Tel: +86 21 6439 4114
Fax: +86 21 6439 4414

Beijing, China
Room 408A
Interchina Commercial Building
No.33 Dengshikou Street
Dongcheng District, Beijing
Tel: +86 10 6210 1890
Fax: +86 10 6210 1882

Taiwan
Room 303, 3/F., 142
Section 4, Chung Hsiao
East Road, Daan District
Taipei, Taiwan
Tel: +886 2 2711 1324
Fax: +886 2 2711 1334

Singapore
36B, Boat Quay
Singapore 049825
Tel: +65 438 0116
Fax: +65 6438 0189

Guide to Taiwan Closely-held Company Limited by Shares

On June 15, 2015, the Taiwan Legislative Yuan approved the amendments to the Company Act. A special section on "Closely-Held Company" ("**CHC**") was added to Chapter 5 (Company Limited by Shares) as a result of the amendments and the purpose is to encourage the growth of startups and small and medium enterprises and to accommodate the unique needs of tech startups. The amendments aim to create more autonomy for such companies and to increase the flexibility in share ownership arrangement and business operations of CHC. The amendment took effect on 1 July 2015.

Key features of CHC are briefed as follows.

1. Definitions

A close company is defined as a non-public company with no more than 50 shareholders, the articles of incorporation of which stipulate restrictions on transfers of its shares (Section 356-1). To maintain its 'non-public' status, a close company must be a company that has not attained 'public company status' and the number of its shareholders must be kept below 50, though this may be adjusted by the Ministry of Economic Affairs (MOEA), central governing authority for affairs under the Company Act in the future pursuant to social and economic status of the country and practical needs.

It should be noted that:

(1) The maximum number of shareholders applies throughout the life of a close company. Once the number of shareholders exceeds the limit, the company is required to amend its status to that of a normal company (Section 356-13);

(2) A close company cannot offer its shares to the public except through crowd funding platforms operated by securities firms authorized by the Securities and Futures Bureau, the central governing authority for securities and futures affairs (Section 356-4). However, the maximum number of shareholders still applies; and

(3) The maximum number of shareholders must still be maintained in the event that a bondholder exercises its right to convert to or subscribe for shares (Section 356-11).

In addition, to maintain its 'close' feature, the Amendment requires that there be a transfer restriction stipulated in the articles of incorporation. Such transfer restriction must be recorded on the share certificates, and if the company does not issue share certificates, on the documents delivered to transferees. The transferee must request that the company provide a copy of its articles (Section 356-5). The extent of this transfer restriction will be discussed below under 'Transfer Restriction'.

2. Establishment

(1) Share subscription of first issue: The promoters of a CHC should subscribe all the shares of the first issue.

(2) Contribution of capital: In addition to cash, the contribution of capital may be in the form of property which is necessary to the company, technical know-how, service and credit.

3. Shares

(1) Restriction on the transfer of shares: In order to maintain the 'lock-out' feature of a CHC, restrictions on share transfer shall be specified in the articles of incorporation or the share certificates of the company. In the absence of a share certificate, such restrictions must be specified in the relevant transaction documents.

(2) Par value: To increase flexibility for the promoters and shareholders in terms of share ownership arrangement, a CHC may decide to issue either par value shares or no-par value shares.

(3) Preferred Shares: In addition to existing types of preferred shares as prescribed in Article 157, the amendments added more types of preferred shares including "golden shares" (shares with multiple voting right or veto right) and those that allow one preferred share to be converted into several ordinary shares.

4. Shareholders meeting

(1) Convening of the shareholders meeting: In addition to convening a physical meeting, a shareholders meeting may be conducted through video conferencing or other means as announced by the competent authority. Also, if agreed by all of the shareholders, a resolution can be approved by the shareholders in writing without actually convening a meeting.

(2) Shareholders' voting agreement: With reference to Paragraphs 1 and 2 of Article 10 of the M&A Act, the shareholders of a CHC may enter into shareholders' voting agreements or agreements for shareholders' voting trust.

5. Accounting

Under the current Company Act, the distribution of surplus earnings or the offsetting of losses of an ordinary company limited by shares will be conducted after the end of each fiscal year. Pursuant to the amendments, the distribution of surplus earnings or the offsetting of losses of a CHC can be conducted after the end of each half fiscal year.

6. Offering and issuance of securities

(1) In principle, a CHC cannot issue or offer securities publicly. However, it should be permissible if the public issuance or offering is conducted through equity crowdfunding operated by licensed securities firms.

(2) A CHC may offer corporate bonds, convertible bonds as well as equity warrant bonds through private placement.

(3) When issuing new shares, in addition to cash, property which is necessary to the company, technical know-how, service and credit, the contribution of capital may be made by offsetting any debt of the company. In addition, when a CHC issues new shares, the requirements for the retention of current employees and the pre-emptive rights of original shareholders, which are prescribed in Article 267 of the Company Act, shall not apply.

7. Organizational restructuring

(1) A CHC may pass a special resolution to change its status to a non-CHC.

(2) A private non-CHC may change its status to a CHC if approved by all of its shareholders.

After the amendments, we can expect a new dimension to the structures of companies in Taiwan, and investors will have more investment options.