我國股份收買請求權適用說明

我國公司法制上之股份收買請求權，相較於其他國家或地區，有其獨有之特色。本所茲就我國公司法、企業併購法、金融控股公司法(下稱「金控法」)上關於股份收買請求權之規定，包括其成立之要件及行使之方式，及相關重要函釋以及司法實務見解一併說明。

一、股份收買請求權之類型

目前台灣公司法制上股份有限公司股東得行使股份收買請求權之情形，可分為下列五種：

A 類型：公司法第 185 條公司為重大營業行為之情形。例如：鼎富證券股份有限公司於 2012 年 11 月間，將全部營業及資產讓與元大寶來證券股份有限公司，因鼎富證券股份有限公司從事公司法第 185 條所定之重大營業行為，該公司之反對股東得行使股份收買請求權。

B 類型：公司法第 317 條公司分割或合併之情形(含公司法第 316-2 條簡易合併之情形)。例如：李長榮化學工業股份有限公司於 2014 年 3 月的股東臨時會中，決議分割該公司橡膠事業處(台灣區)讓與予該公司既存且百分之百持股之子公司環球橡膠股份有限公司，李長榮化學工業股份有限公司之反對股東得行使股份收買請求權。

C 類型：企業併購法第 12 條公司進行併購(含合併、收購及分割)或股份轉換之情形(含企業併購法第 19 條公司簡易合併之情形)。例如：力成科技股份有限公司於 2014 年 8 月公告將依企業併購法第 19 條簡易合併聚成科技股份有限公司，聚成科技股份有限公司之反對股東得行使股份收買請求權。

D 類型：企業併購法第 11 條公司因併購，而以章程限制股東股份之轉讓或設質之情形。例如：上述三類型之例子中，若各公司以章程限制公司股東於一定期間內不得將股票轉讓與他人，則該公司之反對股東得行使股份收買請求權。

E 類型：金控法第 24、26、32 及 33 條，金控子公司營業讓與、股份轉換、簡易合併或分割之情形。例如：某金融控股公司之子公司，吸收合併其持有 90%以上已發行股份之另一公司之情形，被合併公司之反對股東得行使股份收買請求權。

二、股份收買請求權之成立要件

股份有限公司之股東，於一定之要件滿足時，始得行使股份收買請求權，試依前述類型，分別說明如下：

(一)於上述 A 類型之情形，**股東應於股東會為重大營業行為之決議前，以書面通知公司反對該項行為之意思表示，並於股東會已為反對者**，方能成立股份收買請求權(公司法第 186 條參照)。

(二)於上述 B 類型及 C 類型之公司併購之情形，**股東必須於作成併購或股份轉換決議之股東會之集會前或集會中，以書面表示異議，或以口頭表示異議經紀錄，並放棄表決權**，方得請求公司按當時公平價格，收買其持有之股份(企業併購法第 12 條參照)。惟應注意者有以下幾點：

1. 公司若進行企業併購法第 18 條第 6 項所規定之合併(所謂「非對稱式合併」，亦即存續公司為合併發行之新股，未超過存續公司已發行有表決權股份總數之百分之二十，且交付消滅公司股東之現金或財產價值總額未超過存續公司淨值之百分之二者)，此時存續公司股東無股份收買請求權。
2. 在公司法第 316-2 條或企業併購法第 19 條所定之簡易合併的情形，此時並無股東會決議而僅有董事會決議，股東無從於集會前或集會中表示異議，因此從屬公司董事會為前項決議後，**應即通知其股東，並指定三十日以上期限，聲明其股東得於期限內提出書面異議，請求從屬公司按當時公平價格，收買其持有之股份**。股東應依該期限提出異議方能成立股份收買請求權。且此時控制公司之股東無股份收買請求權。

(三)於上述 D 類型之公司因併購而限制股東股份之轉讓或設質之情形，與上(二)所述之原則相同，**股東必須於作成限制股東股份之轉讓或設質決議之股東會之集會前或集會中，以書面表示異議，或以口頭表示異議經紀錄，並放棄表決權，**方得請求公司按當時公平價格，收買其持有之股份。

(四)於上述 E 類型之情形：

1. 金控子公司簡易合併之情形(金控法第 32 條)，並無股東會決議而僅有董事會決議，因此董事會為前項決議後，**應指定三十日以上期限，聲明股東得於期限內提出異議。表示異議之股東，得請求各公司按當時公平價格收買其持有之股份。**
2. 金控子公司分割之情形(金控法第 33 條)，屬讓與主要部分之營業或財產者，準用公司法第 185 條至第 188 條之規定，亦即與上述(一)中所述之要件相同。

3. 營業讓與(金控法第 24 條)，屬讓與主要部分之營業或財產者，準用公司法第 185 條至第 188 條之規定，亦即與(一)中所述之要件相同。
4. 股份轉換(金控法第 26 條)，準用公司法第 317 條第 1 項後段之規定。

三、股份收買請求權之程序應注意事項

(一)<u>股東即使於股東會為重大營業行為之決議前，已以書面通知公司反對該項行為之意思表示，仍應於股東會提出反對意見，否則即無股份收買請求權</u>(經濟部民國 92 年 3 月 24 日經商字第 09200524540 號函釋)。

(二)股東是否必須於股東會放棄表決權，或得以積極地參與議案表決並投下反對票，實務上曾有不同看法：

1.司法實務上(最高法院 89 年度台抗字第 348 號民事裁定)曾認為：「公司法第三百十七條第一項規定得放棄表決權，而放棄表決權股權，公司法並無規定應自發行股份總數扣除，亦即反對合併之股份數仍係算入應發行股份之總數，依此股東為表示反對合併之意思表示，除依書面表示反對或口頭反對表示並記錄為異議外，尚可經由參與表決堅強其表示反對之立場，此放棄表決權之立法意旨應在於股東既係反對公司合併，表決時自是投反對票，故法律用語為「得」而非「應」、「須」。是股東縱參與表決反對合併，仍得依該法條請求收買。」

2.企業併購法於民國 91 年立法，其第 12 條諸款規定中逕規定「放棄表決權」而非「得」放棄表決權。經濟部函釋(民國 96 年 12 月 13 日經商字第 09602431140 號)認為：「公司進行併購時，異議股東除需就該議案作成決議之『股東會集會前或集會中，以書面表示異議，或以口頭表示異議經記錄』外，尚以『放棄表決權』為要件。是以，『放棄表決權』之股東即『不得參加表決』，並進而類推適用公司法第 180 條第 2 項規定，該放棄之表決權數，不算入已出席股東之表決權數。惟具體個案事實之認定，允屬司法機關認事用法之範疇。」

前揭經濟部函釋認為「該放棄之表決權數，不算入已出席股東之表決權數」部分，於實務操作上可能造成極少數股東即可作成併購決議之情形，惟前述經濟部函釋之見解是否為法院實務所支持，仍有待觀察。

(三) 於上述二、(二)之情形，公司股東同時持有普通股及特別股者，需併同放棄表決權(經濟部民國 100 年 3 月 16 日經商字第 10002017840 號函釋)。

(四)<u>台灣之相關立法並未特別排除上市櫃公司股東之股份收買請求權，因此即使該上市櫃公司股東可透過集中交易市場賣出股票，仍可對公司主張股份收買請求權。</u>此時該等股票之買賣不受證券交易法第 150 條規定上市有價證券買賣應於

證券交易所開設之有價證券集中交易市場為之之限制(財政部證券暨期貨管理委員會民國 92 年 8 月 15 日台財證三字第 0920129564 號函釋)。

(五)公司對異議股東之股份應全部收買，尚非僅收買部分股份(經濟部民國 92 年 11 月 4 日經商字第 09202222990 號函釋)。

(六)公司合併時股份收買請求權，係保障股東之投資權益，是以公司無論經營上困難為何，依法有絕對收買之義務(經濟部民國 77 年 3 月 2 日商字第 05674 號函釋)。

四、股份收買請求權之行使方式與決定收買價格

(一)於前述 A 類型之股份收買請求權，股東應於決議日起二十日內，提出記載股份種類及數額之書面。股東與公司間協議決定股份價格者，公司應自決議日起九十日內支付價款，自公司法第 185 條決議日起六十日內未達協議者，股東應於此期間經過後三十日內，聲請法院為價格之裁定。

(二)於前述 B、C 及 D 類型之股份收買請求權，原則上因企業併購法第 12 條第 2 項準用公司法第 187 條規定，因此情形與上(一)同。例外在依企業併購法第 19 條所定之簡易合併的情形，此時並無股東會決議而僅有董事會決議，因此以董事會決議日作為計算期間之基準日；同條第 2 項及第 3 項規定，公司董事會應指定三十日以上期限，聲明其股東得於期限內提出書面異議，請求公司按當時公平價格，收買其持有之股份。企業併購法第 19 條規定與公司法第 316-2 條規定相同，但金融控股公司法第 32 條第 3 項所規定之時序似較為合理(請詳下述)。

(三)於前述 E 類型之股份收買請求權，原則上因金併法第 32 條及第 33 條均準用公司法第 187 條規定，因此情形與上(一)同。惟應注意者為，針對金控子公司之簡易合併，金融控股公司法第 32 條第 3 項規定，「表示異議之股東，得請求各公司按當時公平價格收買其持有之股份，並應自前項聲明異議期限屆滿之日起二十日內，提出記載股份種類及數額之書面為之」，亦即二十日期間自「聲明異議期限屆滿之日」起算，似較公司法第 316-2 條第 2 項規定與企業併購法第 19 條第 2 項及第 3 項合理。

(四)無論係何種類之股份收買請求權，其價格之決定均依照「先協議後司法」之原則，且應參考公平市價為之。所謂「公平市價」之決定方式，司法實務上未有一致見解，有法院判決尚且承認所謂「控制溢價」或「控制股溢價」之存在。

(五)關於股份收買請求權之行使時程，請參照下列時序表。

五、股份收買請求權之行使時序表

(一)一般股份有限公司(非金融控股公司)之股份收買請求權行使時序表（以合併案為例）

時序表	程序及應採取之行動
R(基準日) (公司法第 185 條)	三分之二以上的股東支持董事會提出之合併計畫或董事會決議通過合併計畫之日(基準日)。
R(基準日) + 20 天 (公司法第 187 條)	異議股東應自股東會合併決議日起二十日內，提出記載股份種類及數額之書面為之。
R(基準日) + 30 天 (公司法第 316-2 條)	簡易合併時，從屬公司董事會為合併決議後，應即通知其股東，並指定三十日以上期限，聲明其股東得於期限內提出書面異議，請求從屬公司按當時公平價格，收買其持有之股份。 如股東未於此期限內提出異議，其收買股份之請求將失其效力。
R(基準日) + 60 + 30 天 (公司法第 187 條)	自股東會合併決議日起六十日內未達協議者，股東應於此期間經過後三十日內，聲請法院為價格之裁定，並於此期間屆滿日起，應支付法定利息。如股東未於此期限內向法院聲請價格之裁定，其收買股份之請求將失其效力。
R(基準日) + 90 天 (公司法第 187 條)	股東與公司間協議決定股份價格者，公司應自決議日起九十日內支付價款。
P(買回日)	公司自股東手中買回股份之日。
P(買回日) + 180 天 (公司法第 167 條)	公司收回或收買之股份，應於六個月內，按市價將其出售，屆期未經出售者，視為公司未發行股份，並為變更登記。
P(買回日) + 3 年 (企業併購法第 13 條)	消滅公司自合併後買回股東之股份於買回之日起三年內，按市價將其出售，屆期未經出售者，視為公司未發行股份，並辦理變更登記。

(二)金融控股公司之股份收買請求權行使時序表（以合併案為例）

(註：金控公司亦為股份有限公司，因此上(一)之時序表原則上於金控公司亦有適用；但由於金控法第 32 條針對金控公司子公司之簡易合併設有特別規定，因此排除公司法第 316-2 條之適用。)

時序表	程序及應採取之行動
R(基準日) (公司法第 185 條)	三分之二以上的股東支持董事會提出之合併計畫或董事會決議通過合併計畫之日(基準日)。
R(基準日) + 10 天 (金融控股公司法第 32 條和第 33 條)	公司(被分割公司)應於十日內公告決議內容及合併契約書應記載事項，並指定三十日以上期限，聲明股東得於期限內提出異議。
R(基準日) + 20 天 (公司法第 187 條)	異議股東應自股東會合併決議日起二十日內，提出記載股份種類及數額之書面為之。
R(基準日) + 30 + 20 天 (金融控股公司法第 32 條)	依該條進行簡易合併時，表示異議之股東，得請求各公司按當時公平價格收買其持有之股份，並應自前項聲明異議期限屆滿之日(上述三十日以上期限)起二十日內，提出記載股份種類及數額之書面為之。
R(基準日) + 60 + 30 天 (公司法第 187 條)	自股東會合併決議日起六十日內未達協議者，股東應於此期間經過後三十日內，聲請法院為價格之裁定，並於此期間屆滿日起，應支付法定利息。如股東未於此期限內向法院聲請價格之裁定，其收買股份之請求將失其效力。
R(基準日) + 90 天 (公司法第 187 條)	股東與公司間協議決定股份價格者，公司應自決議日起九十日內支付價款。
P(買回日)	公司自股東手中買回股份之日。
P(買回日) + 180 天 (公司法第 167 條)	公司收回或收買之股份，應於六個月內，按市價將其出售，屆期未經出售者，視為公司未發行股份，並為變更登記。
P(買回日) + 3 年 (企業併購法第 13 條)	消滅公司自合併後買回股東之股份於買回之日起三年內，按市價將其出售，屆期未經出售者，視為公司未發行股份，並辦理變更登記。

我國股份收買請求權適用說明中文精要版

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<tr><td>壹、股份有限公司進行公司合併(含簡易合併)、收購、分割或股份轉換</td><td rowspan="2">股東必須：
(1)於作成決議之股東會之集會前或集會中，以書面表示異議，或以口頭表示異議經紀錄；並
(2)放棄表決權。
(註：司法實務上有認為得參與議案表決並投下反對票而不需放棄表決權之判決)</td><td rowspan="4">(1)公司股東同時持有普通股及特別股者，需併同放棄表決權。
(2)即使該上市櫃公司股東可透過集中交易市場賣出股票，仍可對公司主張股份收買請求權。
(3)公司對異議股東之股份應全部收買，尚非僅收買部分股份。
(4)公司合併時股份收買請求權，係保障股東之投資權益，是以公司無論經營上困難為何，依法有絕對收買之義務。</td><td rowspan="3">(1)股東應該於決議日起二十日內，提出記載股份種類及數額之書面，請求公司收買。(但簡易合併時公司董事會應指定30日以上期限，聲明其股東得於期限內提出異議請求收買)
(2)股東與公司間協議決定股份價格者，公司應自決議日起90日內支付價款。
(3)自決議日起60日內未達協議者，股東應於此期間經過後30日內，聲請法院為價格之裁定。</td></tr>
<tr><td>貳、股份有限公司因併購而以章程限制股東股份之轉讓或設質</td></tr>
<tr><td>叁、股份有限公司締結、變更或終止關於出租全部營業，委託經營或與他人經常共同經營之契約</td><td rowspan="2">股東必須：
(1)於股東會為重大營業行為之決議前，以書面通知公司反對該項行為之意思表示；並
(2)於股東會為反對。
(註：於金控子公司股份轉換之情形，股東股份收買請求權之構成要件與上述類型壹及貳相同)</td></tr>
<tr><td>肆、金控子公司之簡易合併、分割、營業讓與或股份轉換</td><td>(1)原則同上
(2)針對金控子公司之簡易合併，董事會應指定30日以上期限通知股東表示異議，股東得自前項聲明異議期限屆滿之日起20日內，提出記載股份種類及數額之書面請求公司收買。</td></tr>
</table>

Summary Analysis of the Appraisal Right in Taiwan

The appraisal right as provided in the company-related laws in Taiwan has its unique features compared to that of other countries or jurisdictions. We hereby explain the laws and regulations relevant to the appraisal rights as provided for in the Company Act, the Business Mergers and Acquisitions Act, and the Financial Holding Company Act, including the constituent elements and the procedural requirement of the appraisal right, as well as important administrative rulings and court decisions related thereto.

I. The Types of Appraisal Rights

An appraisal right will be exercised by a shareholder of a company limited by shares in the following five categories:

Type A: The appraisal right can be exercised in the event that a corporation performs major operation activities that will materially change the course of business of the corporation pursuant to Article 185 of the Company Act. For example: In November 2012, Team Pro Securities Co., Ltd. (鼎富證券股份有限公司) transferred all of its business and assets to Yuanta Securities Co., Ltd. (元大寶來證券股份有限公司). This transaction constitutes a major operation activity of Team Pro Securities Co., Ltd. as set forth in Article 185 of the Company Act. Thus, the shareholders of Team Pro Securities Co., Ltd. opposing such transaction may exercise the appraisal right.

Type B: The appraisal right can be exercised in the event that a corporation is to be split up or to be consolidated or merged with another company pursuant to Article 317 of the Company Act (including the short-form merger pursuant to Article 317 of the Company Act). For example: In March 2014, the special shareholders' meeting of LCY Chemical Corp. (李長榮化學工業股份有限公司) passed a resolution to divide its rubber business division (in Taiwan) to its existing subsidiary, Global Rubber Corp. (環球橡膠股份有限公司), which is 100% owned by LCY Chemical Corp. The shareholders of LCY Chemical Corp. opposing such transaction may exercise the appraisal right.

Type C: The appraisal right can be exercised in the event that a company engages in mergers/consolidations and acquisitions (including mergers, consolidations, divisions and acquisitions) pursuant to Article 12 of the Business Mergers and Acquisitions Act (including the short-form merger pursuant to Article 19 of the same Act). For example: In August 2014, Powertech Technology Inc. (力成科技股份有限公司) announced that it will perform a short-form merger as provided for by Article 19 of the Business Mergers and Acquisitions Act and it will merge Macrotech Technology Inc. (聚成科技股份有限公司). The shareholders of Macrotech Technology Inc. opposing such transaction may exercise the appraisal right.

Type D: The appraisal right can be exercised in the event that a company, in the course of merger/consolidation and acquisitions, attempts to amend its Articles of Incorporation to prescribe restrictions on the transfer or pledge of shares it issued pursuant to Article 11 of the Business Mergers and Acquisitions Act. For example: In the examples listed above in Type A through Type C, if any of the companies amend its Articles of Incorporation to prescribe restrictions on the transfer or pledge of shares of the company, the company's shareholders opposing the amendment of the Articles of Incorporation may exercise the appraisal right.

Type E: The appraisal right can be exercised in the events that (1) transfer of business pursuant to Article 24 of the Financial Holding Company Act, (2) share swap pursuant to Article 26 of the Financial Holding Company Act, (3) a short-form merger is to be performed by a subsidiary of a financial holding company pursuant to Article 32 of the Financial Holding Company Act and (4) when a split-up is be performed by a subsidiary of a financial holding company pursuant to Article 33 of the same Act. For example: A subsidiary of a financial holding company decides to conduct a short form merger with its own subsidiary, the issued shares of which is more than 90% held by the financial holding company's subsidiary. The shareholders of merged company opposing such transaction may exercise the appraisal right.

II. The Constituent Elements for the Appraisal Right

Shareholders of company limited by shares may not exercise their appraisal rights until certain requirements are met. Below please find our explanation on such requirements for the said five categories:

(I) In Type A, a shareholder may not exercise his/her/its appraisal right unless **he/she/it serves a written notice in writing to the company expressing his/her/its intention to object to the major operation activities that will materially change the course of business of the company prior to the adoption of a resolution at a**

shareholders' meeting, and raises his/her/its objection at the shareholders' meeting. (Please see Article 186 of the Company Act).

(II) In Type B and Type C (when a company engages in mergers/consolidations and acquisitions), a shareholder may not request the company to buy back all of his/her/its shares at the then prevailing fair price unless **he/she/it has expressed his/her/its objection, in writing or verbally with a record before or during the meeting and waived his/her/its voting right** (Please refer to Article 12 of the Business Mergers and Acquisitions Act). Please note that:

1. If the company performs the merger pursuant to Paragraph 6, Article 18 of the Business Mergers and Acquisitions Act, which is the so-called "asymmetric merger" wherein the number of shares issued as a result of the merger/consolidation will not exceed 20% of the total number of issued voting shares of the surviving company and the total amount of cash or the total value of the assets delivered to the shareholders of the dissolved company will not exceed 2% of the net value of the surviving company, then the shareholders of the surviving company may not exercise an appraisal right.
2. If the company performs the short-form merger pursuant to Article 316-2 of the Company Act and in Article 19 of the Business Mergers and Acquisitions Act, then only a board of directors meeting rather than a shareholders' meeting will be held, and therefore the shareholder has no way to express his objection before or during the (shareholders') meeting, and so **after adoption of the resolution by the board of directors of the subsidiary company, a notice shall be given to each of its shareholders and shall state therein that any shareholder who has an objection against that resolution may, within 30 days or a longer period, submit a written objection requesting the subsidiary company to redeem, at a fair price, the shares of the subsidiary company he holds**. Only those shareholders who act accordingly may exercise the appraisal right thereafter. Please note that the shareholders of the controlling company do not have an appraisal right.

(III) In Type D, where a company, in the course of merger/consolidation and acquisitions, attempts to amend its Articles of Incorporation to impose restrictions on transfer or pledge of the shares it issued, the applicable rules are the same as the general rules set forth in (II) above. A shareholder may not request the company to buy back all of his/her/its shares at the then prevailing fair price unless **he/she/its has expressed his/her/its objection, in writing or verbally with a record before or during the meeting and waived his/her/its voting right.**

(IV) In Type E:

1. In a short-form merger to be performed by a subsidiary of a financial holding company (Article 32 of the Financial Holding Company Act), only a board of directors meeting rather than a shareholders' meeting will be held, and therefore **after adoption of the resolution by the board of directors of the subsidiary company, a notice shall be given to each of its shareholders and shall state therein that any shareholder who has an objection against that resolution may, within 30 days or a longer period, submit a written objection requesting the subsidiary company to redeem, at a fair price, the shares of the subsidiary company he/she/it holds**. Only those shareholders who act accordingly may exercise the appraisal right thereafter.
2. In a split-up to be performed by a subsidiary of a financial holding company (Article 33 of the Financial Holding Company Act), if the whole or any essential part of the subsidiary's business or assets will be transferred, then Article 185 through Article 188 of the Company Act shall be applied mutatis mutandis, and therefore the procedures described in (I) above shall be followed before the shareholder could exercise his/her/its appraisal right.
3. If the whole or any essential part of a company's business or assets will be transferred, then Article 185 through Article 188 of the Company Act shall be applied mutatis mutandis, and therefore the procedures described in (I) above shall be followed before the shareholder could exercise his/her/its appraisal right.
4. In the case of a share swap, Paragraph 1, Article 317 of the Company Act shall be applied mutatis mutandis.

III. Procedural Requirements in Exercising the Appraisal Right

(I) **Even if a shareholder had served a notice in writing to the company expressing his/her/its intention to object to the major operation activities that will materially change the course of business of the company prior to the adoption of a resolution at a shareholders' meeting, he/she/it still has to raise his/her/its objection at the shareholders' meeting, or otherwise he/she/it may not exercise his/her/it appraisal right.** (Ruling of the Ministry of Economic Affairs ("MOEA"), reference number: Jing-Shang-Zi-09200524540 dated March 24, 2003)

(II) Regarding whether a shareholder must waive his/her/its voting right before he/she/it could exercise his/her/its appraisal right or he/she/it may otherwise positively cast his/her/it vote against the proposal without affecting his/her/its appraisal right, the court decision and the administrative ruling are divided:

1. A Supreme Court judgment (reference number: 89-Tai-Kang-Zi-348) holds that: "Paragraph 1, Article 317 of the Company Act provides that a shareholder may waive his or her voting right to execute to his or her appraisal right, but the Company Act does not requires the shares with voting right waived be deducted from the total number of the company's outstanding shares, therefore the shares with voting right waived are still counted as the company's outstanding shares. Therefore, a shareholder who is against the merger/consolidation may, in addition to express his or her objection in writing or verbally with a record, cast his or her votes to express his or her disagreement on the merger/consolidation. The legislative intent could be seen by the literal reading of Article 317 of the Company Act, which stipulates that "a shareholder 'may' waive" rather than "a shareholder 'should' or 'must' waive" and the dissenting shareholder of course will cast his or her votes against the merger/consolidation. Therefore, even if a shareholder cast his or her votes against the merger/consolidation resolution, he or she may still request the company to buy back all of his shares at the then prevailing fair price.
2. The Business Mergers and Acquisitions Act was promulgated in 2002 and the various subparagraphs of Article 12 of the Act require that the appraisal right could be exercised "… if a shareholder 'waives' his voting right…" rather than "…a shareholder '*may* waive' his voting right…" (as is provided for in Article 317 of the Company Act). The ruling of the MOEA (reference number: Jing-Shang-Zi-09602431140 dated December 13, 2007) stipulates that: "Where a company engages in a merger/consolidation, a dissenting shareholder shall express his objection, in writing or verbally with a record before or during the meeting. In addition, he must waive his voting right (or otherwise he could not exercise his appraisal right)." The shareholder who waives his voting rights may not cast his votes. In this case, Paragraph 2, Article 180 of the Company Act shall be applied by analogy, and therefore the voting rights which have been waived shall not be counted in the number of votes of shareholders present at the meeting. However, a specific case should be subject to the judicial review on a case-by-case basis.

The abovementioned MOEA ruling provides that "The voting rights which have been waived shall not be counted in the number of voting rights of shareholders present at the meeting." However, this ruling may lead to the result that the minority shareholders in a corporation may exclude the majority shareholders and pass a resolution regarding mergers/consolidations and acquisitions of the corporation. In this regard, whether the legal opinion interpreted in this administrative ruling will be upheld in court is subject to further review by the court.

(III) In situation II. (II) mentioned above, if a shareholder owns the common shares and the preferred shares of the company at the same time, the voting rights of both kinds of shares shall be waived all together. (MOEA ruling, reference number Jing-Shang-Zi-10002017840 dated March 16, 2011)

(IV) **The company-related laws in Taiwan do not specifically exclude the appraisal right of shareholders of stock of companies listed in a stock exchange or in the over-the-counter market. Therefore, even if the shareholder of such stocks may sell the stocks in a centralized securities exchange market, he may still exercise his appraisal right and sell the stocks to the company.** In this situation, the sale of the stocks is not subject to the rule stipulated in Article 150 of the Securities and Exchange Act, which states that "The trading of listed securities shall be conducted on a centralized securities exchange market operated by a stock exchange." (The Securities and Futures Commission, Ministry of Finance ruling, reference number Tai-Cai-Zheng-San-0920129564 dated August 15, 2003)

(V) The company shall purchase all the stocks owned by the dissenting shareholders, rather than only part of the stocks owned by him. (MOEA ruling, reference number Jing-Shang-Zi-09202222990 dated November 4, 2003)

(VI) The shareholders' appraisal right triggered by a company's engagement in mergers/consolidations is an absolute right in order to protect the shareholders' benefits. The company is required to purchase the stocks correspondingly regardless of whether there are any difficulties in the company's operation. (MOEA ruling, reference number: Jing-Shang-Zi-05674 dated March 2, 1988)

IV. The Methods of Exercising the Appraisal Right and the Determination of the Purchase Price

(I) In order to exercise the appraisal rights of Type A as mentioned above, the shareholders shall tender their requests in writing within 20 days after the adoption of resolution under Article 185 of the Company Act, stating therein the kinds and number of shares. In case an agreement on the price of shares is reached between the shareholder and the company, the company shall pay for the shares within 90 days from the date on which the resolution was adopted. In case no agreement is reached within 60 days of the date on which the resolution was adopted, the shareholder may, within 30 days from the date on which the said 60-day period expired, apply to court for a ruling on the price.

(II) In order to exercise the appraisal rights of Type B, Type C and Type D as mentioned above, the procedure is essentially the same as that delineated in (I) above, since Article 187 of the Company Act shall be applied mutatis mutandis in situations stipulated in Article 12 of the Business Mergers and Acquisitions Act. The last sentence of Paragraph 2 of the said Article 12 provides that, for any summary merger/consolidation proceeded under Article 19, the date as resolved by the Board of Directors shall be the reference date for any transaction (because there is no shareholders' meeting in this situation). Paragraph 2 and 3 of Article 19 of the Business Mergers and Acquisitions Act stipulate that "after adoption of the resolution by the board of directors (of the subsidiary company), a notice shall be given to each of its shareholders and shall state therein that any shareholder who has an objection against that resolution may, within 30 days or a longer period, submit a written objection requiring the company to purchase his shares at a fair price. This schedule is the same as that provided for in Article 316-2 of the Company Act, but the schedule stipulated in Paragraph 3, Article 32 of the Financial Holding Company Act seems more reasonable (please see below for further explanation).

(III) In order to exercise the appraisal rights of Type E as mentioned above, the procedure is essentially the same as that delineated in (I) above, since Article 187 of the Company Act shall be applied mutatis mutandis in situations stipulated in Article 32 and Article 33 of the Financial Holding Company Act. Please note that, regarding a short-form merger conducted by a subsidiary of a financial holding company, Paragraph 3, Article 32 of the Financial Holding Company Act stipulates that "Dissenting shareholders may, upon request made in writing within twenty days from the expiry of the above dissent period, state therein the type and number of shares and request the respective companies to buy back their shares at the prevailing fair value." The 20-day period begins after the expiry of the dissent period notified by the board of directors in Paragraph 3, Article 32 of the Financial Holding Company Act, which seems to be more refined and reasonable than Paragraphs 2 and 3 of Article 19 of the Business Mergers and Acquisitions Act and Paragraph 2, Article 316-2 of the Company Act.

(IV) Regardless of the type of the appraisal rights, the price of the stocks shall follow the principle of "Agreement comes before court rulings," and the fair market price shall be used as a reference. Regarding the determination of the fair market price, there is no uniform standard developed in court practice and many factors shall be taken into consideration. Moreover, there are some court decisions recognizing the existence of the "control premium."

(V) Regarding the chronological order of the exercise of the shareholder's appraisal right, please see the timeline summarized below.

V. Timeline

(I) Timeline for general companies limited by shares (non-financial holding companies)(in the merger scenario)

Timeline	Procedures or actions
R (Date of Resolution or "Resolution Date") (Article 185 of the Company Act)	The date on which the supermajority (two thirds) of shareholders in shareholder meeting agree on the merger plan proposed by the Board of Directors or the date on which the Board of Directors agree on the merger plan, as applicable.
R + 20 days (Article 187 of the Company Act)	The dissenting shareholders' request of share purchase shall be bought in writing within 20 days after the adoption of resolution on the merger plan, stating therein the kinds and number of shares.
R + 30 days (Article 316-2 of the Company Act)	After adoption of the resolution by the board of directors, a notice shall be given to each of its shareholders and shall state therein that any shareholder who has an objection against that resolution may, within 30 days or a longer period, submit a written objection requesting the subsidiary company to redeem, at a fair price, the shares of the company he holds. The request of a shareholder shall become null and void, if he or she fails to submit the written objection within the specified limited period for the redemption of shares by the company.
R + 60 + 30 days (Article 187 of the Company Act)	In case no agreement is reached within 60 days of the date on which the resolution was adopted, the shareholder may, within 30 days from the date on which the 60-day period expired, apply

	to court for a ruling on the price. The company shall pay legal interest on the price ruled by the court from the date of expiration of the 30-day period from the date on which the 60-day period expired. The request of a shareholder shall become null and void, if he or she fails to apply to court for a ruling on the price the 30-day period from the date on which the 60-day period expired for the redemption of shares by the company.
R + 90 days (Article 187 of the Company Act)	If an agreement is made on the price of shares between the shareholder and the company, the company shall pay for the shares within 90 days from the date on which the resolution was adopted.
P (Date of Purchase or "Purchase Date")	The date on which the company purchased the shares from the dissenting shareholders.
P + 180 days (Article 167 of the Company Act)	The shares bought back by the issuing company in accordance with the provisions of Article 186 of the Company Act (appraisal right) shall be sold at the then current market price within six months.
P + 3 years (Article 13 of the Business Mergers and Acquisitions Act)	Any shares purchased from shareholders of the dissolved company should be sold at fair market price within three years from the date of redemption or bought back. If the shares so redeemed or bought back remain unsold after expiry of the foregoing time limit, such shares shall be deemed as the shares which have never been issued by the company; and under such circumstance, the company shall apply for an alteration of the entries of the then existing corporate registration in respect of such shares accordingly.

(II) Timeline for financial holding companies (in the merger scenario)

Note: A financial holding company is also a company limited by shares, so the timeline described in (I) will apply to a financial company, too. However, Article 316-2 of the Company Act shall not be applicable when a subsidiary of a financial holding company conducts a short-form merger with its own subsidiary since Article 32 of the Financial Holding Company Act has specifically provided the regulation related thereto.

Timeline	Procedures or actions
R (Date of Resolution or "Resolution Date") (Article 185 of the Company Act)	The date on which the supermajority (two thirds) of shareholders in shareholder meeting agree on the merger plan proposed by the Board of Directors or the date on which the Board of Directors agree on the merger plan, as applicable.
R + 10 days (Article 32 and 33 of the Financial Holding Company Act)	Board of directors shall, within 10 days of merger resolution approval, make a public announcement of the contents of the resolution and the items to be specified in the acquisition or merger agreement, and designate a period no less than 30 days during which shareholders may express their dissent thereto.
R + 20 days (Article 187 of the Company Act)	The dissenting shareholders' request of share purchase shall be bought in writing within 20 days after the adoption of resolution on the merger plan, stating therein the kinds and number of shares.
R + 30 + 20 days (Article 32 of the Financial Holding Company Act)	When a short-form merger is conducted pursuant to Article 32 of the Financial Holding Company Act, the dissenting shareholders may, upon request made in writing within 20 days from the expiry of the 30 days (at least, see above) dissent period, stating therein the type and number of shares, request the respective companies to buy back their shares at the prevailing fair market value.
R + 60 + 30 days (Article 187 of the Company Act)	In case no agreement is reached within 60 days of the date on which the resolution was adopted, the shareholder may, within 30 days from the date on which the 60-day period expired, apply to court for a ruling on the price. The company shall pay legal interest on the price ruled by the court from the date of expiration of the 30-day period from the date on which the 60-day period expired.

	The request of a shareholder shall become null and void, if he or she fails to apply to court for a ruling on the price the 30-day period from the date on which the 60-day period expired for the redemption of shares by the company.
R + 90 days (Article 187 of the Company Act)	If an agreement is made on the price of shares between the shareholder and the company, the company shall pay for the shares within 90 days from the date on which the resolution was adopted.
P (Date of Purchase or "Purchase Date")	The date on which the company purchased the shares from the dissenting shareholders.
P + 180 days (Article 167 of the Company Act)	The shares bought back by the issuing company in accordance with the provisions of Article 186 of the Company Act (appraisal right) shall be sold at the then current market price within six months.
P + 3 years (Article 13 of the Business Mergers and Acquisitions Act)	Any shares purchased from shareholders of the dissolved company should be sold at fair market price within three years from the date of redemption or bought back. If the shares so redeemed or bought back remain unsold after expiry of the foregoing time limit, such shares shall be deemed as the shares which have never been issued by the company; and under such circumstance, the company shall apply for an alteration of the entries of the then existing corporate registration in respect of such shares accordingly.

<u>Essential Summary of the Appraisal Right in Taiwan</u>

<table>
<tr><th>Types</th><th>Constituent Elements</th><th>Procedural Requirements</th><th>Pricing & Exercising the Right</th></tr>
<tr><td>I. When a company limited by shares engages in mergers (including short-form mergers), acquisitions, divisions, or share swap)</td><td rowspan="2">A shareholder may not request the company to buy back the shares unless he/she/it:
(1)Has expressed his/her/its objection, in writing or verbally with a record before or during the shareholders' meeting; and
(2)Waived his/her/its voting right.
(Note: There is a court decision which opined that a shareholder may also cast his/her/its vote against the proposal without affecting his/her/its appraisal right.)</td><td rowspan="3">(1)If a shareholder owns both the common shares and the preferred shares of the company, the voting rights of both kinds of shares shall be waived all together.
(2)Even if the shareholder of the stocks may sell the stocks in a centralized securities exchange market, he/she/it may still exercise his/her/its appraisal right and sell the stocks to the company.
(3)The company shall purchase all the stocks owned by the dissenting shareholders, rather than only part of the stocks.
(4)The shareholders' appraisal right triggered by a company's engagement in mergers and acquisitions or major business activities is an absolute right in order to protect the shareholders' benefits. The company is required to purchase the stocks</td><td rowspan="3">(I)In order to exercise the appraisal rights, the shareholders shall tender their buy-back requests in writing within 20 days after the adoption of resolution, stating therein the kinds and number of shares. (In case of a short-form merger, a notice shall be given by the board of directors to the shareholders and shall state therein that the shareholder may submit a written objection requiring the company to buy back the shares within 30 days or a longer period.)
(2)In case an agreement on the price of shares is reached between the shareholder and the company, the company shall pay for the shares within 90 days from the date on which the resolution was adopted.
(3) In case no agreement is reached within 60 days of the date on which the resolution was adopted, the</td></tr>
<tr><td>II. When a company limited by shares, in the course of mergers and acquisitions, attempts to amend its Articles of Incorporation to prescribe restrictions on the transfer or pledge of its shares</td></tr>
<tr><td>III. When a company limited by shares enters into, amends, or terminates any contract for lease of the company's business in whole, or for entrusting its business, or for regular joint operation with others</td><td>A shareholder may not request the company to buy back the shares unless he/she/it:
(1)Serves a written notice in writing to the company expressing the intention to object to the major operation activities prior to the adoption of a resolution at the shareholders' meeting; and</td></tr>
</table>

<table>
<tr><td></td><td rowspan="2">(2)Raises his/her/its objection at the shareholders' meeting
(Note: When a subsidiary of a financial holding company engages in a share swap, the constituent elements of its shareholder's appraisal right are the same as those of Type I and II stated above)</td><td rowspan="2">correspondingly regardless of whether there are any difficulties in the company's operation.</td><td>shareholder may, within 30 days from the date on which the said 60-day period expired, apply to court for a ruling on the price.</td></tr>
<tr><td>IV. When a subsidiary of a financial holding company engages in a short-form merger, a division, a transfer of business, or a share swap</td><td>(1) The pricing and exercising of the appraisal right are essentially the same as stated above.
(2) In case of a short-form merger of a subsidiary of a financial holding company, a notice shall be given by the board of directors to the shareholders and shall state therein that the shareholder may submit a written objection within 30 days or a longer period, and may, within 20 days from the expiry of the above dissent period, tender their buy-back requests in writing, stating therein the kinds and number of shares.</td></tr>
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