



August 2009

www.klgates.com

**Authors:****James Jeng-Yang Chen**

james.chen@klgates.com

886.2.2326.5155

**Sin Khai Tan**

sin-khai.tan@klgates.com

886.2.2326.5111

K&L Gates is a global law firm with lawyers in 33 offices located in North America, Europe, Asia and the Middle East, and represents numerous GLOBAL 500, FORTUNE 100, and FTSE 100 corporations, in addition to growth and middle market companies, entrepreneurs, capital market participants and public sector entities. For more information, visit [www.klgates.com](http://www.klgates.com).

## First Listings of Foreign Companies in Taiwan

In recent times, Taiwan has seen a spate of gradual economic policy changes. Its domestic and international airports witnessed direct commercial flights to and from the mainland, limitations against investments by Taiwan enterprises into the mainland were measurably relaxed, and avenues were opened for various degrees of investments by the mainland into Taiwan. Although these changes were perceived to have been made largely with a view to improving trade and warming ties across the straits, there has been an opening up of the investment environment and markets generally.

### Regulatory changes

In 2008, regulations came into effect that changed the scene of the corporate finance markets in Taiwan. Whereas previously only Taiwan companies could list their securities in Taiwan and foreign companies wishing to do so had to issue depository receipts by way of secondary listings, foreign companies are now permitted to list their securities directly on the Taiwan securities exchanges. One way to directly list its shares is for a foreign company to apply for a portion of its existing shares to be traded on the Taiwan Emerging Stock Market (“ESM”) and, after a prescribed period of six months of trading, the company would be eligible to apply for listing on and launch an initial public offering through the Taiwan Stock Exchange (“TSE”) or the GreTai Securities Exchange (“GTSM”). Alternatively, the foreign company may, instead of applying for its shares to be traded on the ESM, formally engage a lead manager in Taiwan as its guiding consultant. After a six month engagement period, the foreign company may apply for listing on the TSE though not on the GTSM.

### In what jurisdictions may the foreign company be established?

The listing vehicle can be incorporated in any jurisdiction, other than the People’s Republic of China. It is expected, though, that the regulators will take into account the practice of international stock exchanges when considering the suitability of the jurisdiction in which the applicant is established.

### Corporate restructuring and Bylaws

Each share of the listing vehicle must have a par value of NT\$10. As a result of this requirement, some form of reorganization or restructuring of the listing vehicle or its share capital is generally necessary prior to admission to any of the ESM, TSE and GTSM. Further, the constitutive documents of the listing vehicle would have to be amended and restated to provide, to the extent permitted, for the requirements under Taiwan corporate law and stock exchange regulations.

When these are completed, the application is submitted along with supporting documents which include the prospectus or offering memorandum that attaches audited consolidated financial statements prepared under Taiwan GAAP, for the most recent financial year in the case of an application to the ESM and for the most recent two financial years in the case of an application to TSE or GTSM

### Process of Review by ESM

When an application for admission to the ESM is submitted, assuming the documents are complete and in order, the regulator undertakes to clearly indicate within three business days of receipt of the documents its approval or non-approval of admission of the shares for trading. If approval is granted, general details of the corporate profile of the company will be publicly announced on the ESM's designated website for five or more business days.

### Currency and Securities transaction tax

Trading of securities on the ESM, TSE and GTSM is currently in the local currency of New Taiwan Dollars only and is subject to securities transaction tax in Taiwan.

### Why Taiwan?

In our experience, the regulators have taken a very pragmatic approach and shown themselves to be very receptive in the application process. To the company seeking a listing, importantly, the application process in Taiwan is more straightforward relative to stock exchanges elsewhere, rendering the process time short and keeping costs low. Compliance requirements are not more onerous than those of exchanges in other jurisdictions.

The technology and electronics industry has traditionally been an economic powerhouse for Taiwan and attracts much investor interest. Taiwan has great potential as a listing venue for this industry wherever in the world operations are situated. Additionally, businesses not limited to such industry and which are managed, owned or otherwise invested in by Taiwanese interests have been exploring and will be drawn towards a primary listing in Taiwan. Indeed, these are the groups that the regulators have targeted and that will be inclined toward this route.

### K&L Gates Taipei acted in first listings

A team of lawyers from the K&L Gates Taipei office acted as general counsel to the first foreign company to have its shares traded on the ESM and as counsel to the lead manager of the second foreign company to do so. The first, Array Inc. (ticker: 3664), which provides enterprise secure application delivery and universal access solutions for SSL VPN and application acceleration markets and has principal operations in Silicon Valley and the mainland, saw its shares commence trading on the ESM in May 2009. The second company, lead-managed by Horizon Securities, was Cowealth Medical (ticker: 4745), a distributor of medical products and devices. K&L Gates Partners James Chen and Sin-Khai Tan, both from the firm's Taipei office, acted in these cases.

Anchorage Austin Beijing Berlin Boston Charlotte Chicago Dallas Dubai Fort Worth Frankfurt Harrisburg Hong Kong London Los Angeles Miami Newark New York Orange County Palo Alto Paris Pittsburgh Portland Raleigh Research Triangle Park San Diego San Francisco Seattle Shanghai Singapore Spokane/Coeur d'Alene Taipei Washington, D.C.

K&L Gates is a global law firm with lawyers in 33 offices located in North America, Europe, Asia and the Middle East, and represents numerous GLOBAL 500, FORTUNE 100, and FTSE 100 corporations, in addition to growth and middle market companies, entrepreneurs, capital market participants and public sector entities. For more information, visit [www.klgates.com](http://www.klgates.com).

K&L Gates comprises multiple affiliated partnerships: a limited liability partnership with the full name K&L Gates LLP qualified in Delaware and maintaining offices throughout the United States, in Berlin and Frankfurt, Germany, in Beijing (K&L Gates LLP Beijing Representative Office), in Dubai, U.A.E., in Shanghai (K&L Gates LLP Shanghai Representative Office), and in Singapore; a limited liability partnership (also named K&L Gates LLP) incorporated in England and maintaining offices in London and Paris; a Taiwan general partnership (K&L Gates) maintaining an office in Taipei; and a Hong Kong general partnership (K&L Gates, Solicitors) maintaining an office in Hong Kong. K&L Gates maintains appropriate registrations in the jurisdictions in which its offices are located. A list of the partners in each entity is available for inspection at any K&L Gates office.

This publication is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

©2009 K&L Gates LLP. All Rights Reserved.