

# 評析臺灣地區與大陸地區人民關係條例 第 93 條之 1 修法與實務之若干議題

吳盈德<sup>\*</sup>

## 摘 要

臺灣地區與大陸地區人民關係條例自 1992 年 7 月 31 日制定公布，同年 9 月 18 日施行以來，先後歷經 16 次修正。鑑於目前出現大陸資金未經主管機關許可來臺從事投資，影響我國資本市場秩序，本次修法將調高陸資未經許可來臺投資之罰鍰上限，並將陸資投資事業規避主管機關檢查納入裁罰對象，以遏止陸資違法投資或違規之行爲，另考量實務上不乏小額投資違規態樣，宜由主管機關依違法情節輕重及比例原則進行裁處。

此次修正條文第 93 條之 1，將陸資未經許可來臺投資之罰鍰，由現行 12 萬元至 60 萬元，修正爲 12 萬元至 2,500 萬元，主管機關可依違法情節輕重及比例原則，處以罰鍰。另依據行政罰法第 18 條，若違法來臺陸資所得之利益，超過法定罰鍰最高額 2,500 萬元，相關機關可再加以裁罰，不受法定罰鍰最高金額之限制。另外，此次修法也新增限期改正，否則可要求其撤資，並得連續處罰至改正爲止，相信可適用於大部分的案件，未來特殊案件也可思考如何予以強化。

---

<sup>\*</sup> 中國文化大學法律學系教授；美國聖路易市華盛頓大學法律學博士。  
投稿日：2019 年 1 月 22 日；採用日：2019 年 2 月 20 日

關鍵詞：臺灣地區與大陸地區人民關係條例、陸資、違法投資、行政罰法、連續處罰

Cite as: 5 NCTU L. REV., September 2019, at 1.

# **Commentaries on Selected Issues of the Article 93-1 of Act Governing Relations between the People of the Taiwan Area and the Mainland Area**

Yen-Te Wu \*

## Abstract

The Act Governing Relations between the People of the Taiwan Area and the Mainland Area was established on July 31, 1992 and enforced on September 18th of the same year with 16 amendments. Recently Taiwan's financial market was in chaos due to unauthorized investments from China. To prevent such unlawful investments and transactions, this amendment will raise and maximize the fine for unauthorized investments from China, as well as set up an executive department responsible for putting the unlawful investors from China under investigation and making them liable. Considering the many actual cases involving illegal investments in small monetary value, it is most appropriate for the authority to determine the punishment based on the illegal action's level of significance.

This amendment of Article 93-1 shall change the scale of fines for unauthorized investments from China from the initial range of NT\$ 120,000 to NT\$

---

\* Professor, Chinese Culture University College of Law (Taiwan); J.D., Washington University School of Law (U.S.A.).

600,000 to become NT\$ 120,000 to NT\$ 25,000,000. The authorities who are found to be linked to said illegal investments will also be punished according to the degree of severity and proportion of the violations with a fine. In addition, based on Article 18 of the Administrative Penalty Law, whereas the benefits of the unlawful investment in Taiwan exceed the maximum legal penalty of NT\$ 25 million, the relevant organizations may impose additional punishments that are not limited by the stated maximum value of penalty. Moreover, the amendment also adds a time limit restriction for correction and if not satisfied, the investor will be demanded to withdraw their shares and be punished continuously until corrective action is done. This is believed to be appropriate for most cases. The article will be further amended in the future upon the occurrence of special cases.

**Keywords:** The Act Governing Relations between the People of the Taiwan Area and the Mainland Area, Funds from China, Illegal Investments, Administrative Punishments, Penalized Continuously