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我國財務資訊不實刑事責任之法律適用疑義與重大性要件

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我國財務資訊不實之刑事責任規範條文，主要有證券交易法第 171 條 1 項 1 款、證券交易法第 174 條 1 項 5 款、商業會計法第 71 條及刑法第 215 條業務登載不實罪。上述四規範存有法條適用之疑義，如主觀要件的要求程度為何？客觀要件上各不實文書包含範圍為何？「其他財務業務文件」應如何解釋？證券交易法 171 條 1 項 1 款及 174 條 1 項 5 款皆設有「財務報告」之文書，但其二條文之刑度卻存有差異，則該如何適用，實務上亦有多爭議。此外，基於刑法謙抑性原則，我國就刑事罰與行政罰之間存有質與量差異之不同見解，又美國法上亦有在財務資訊不實規範中設有「重大性」規範，如美國證券交易委員會（SEC）提出之「幕僚會計公告」（Staff Accounting Bulletin: No. 99 (SAB 99)）中，提出質與量的綜合判斷標準。在量性指標部分，承認一經驗法則，認為若虛偽陳述之金額占財務資訊總數之部分低於 5%，可初步假設該虛偽陳述不具重要性。在質性指標部分，認為雖然虛偽陳述低於 5%，但該不實陳述影響法令規範之要求、契約之要求、或隱藏不法交易時，

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公司財務報告及有關業務文件不實行為，因法律解釋的疑義，造成法院適用上的困擾，亦使得我國企業動輒面臨刑事責任之危險，影響其商業經營。本文以「重大性」作為初步過濾之判準，區別行政與刑事不法，限縮刑事處罰範圍，以符合刑法謙抑性，並進一步提出在現行法制下，較為可行之解釋方法，供法院及企業參考。最後，提出檢討及改進證券犯罪相關規範之立法建議。

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亦可能認為屬重大之財務資訊不實。以重大性要件加以限縮處罰範圍，作為財務資訊不實刑事責任成立之初步篩選要件，通過之後又將面對我國證券交易法上重複立法及條文構成要件相似、刑度卻不同之問題，在修法前僅得在現行法下進行法學解釋，認為因證券交易法 171 條 1 項 1 款之刑度較同法 174 條 1 項 5 款為高，應限縮其適用範圍，故認為限於「公開說明書或其他應公告申報之事項」始適用證券交易法 171 條 1 項 1 款之處罰規定，而『「非公開說明書或其他應公告申報之事項」之「其他」財務業務文件』則為證券交易法 174 條 1 項 5 款之規範對象，以此加以區分適用範圍。我國刑法體系主要承自歐陸法系，惟在證券相關犯罪卻主要參考美國立法例，造成二體系融合時產生規範混亂之情形，實有待立法者對證券犯罪相關規範為通盤檢討及修正改進。

關鍵詞：財報不實、重大性、財務報告、財務業務文件、刑事責任。

The Materiality Element of Security Fraud and Misrepresenting Financial Information

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The criminal liability of misrepresenting financial information in Taiwan are regulated mainly in Article 171 Paragraph 1 Section 1, Article 174 Paragraph 1 Section 5 of the Securities and Exchange Act, Article 71 of the Business Entity Accounting Act, and Article 215 in the Criminal Code. Confusion arises when applying these four articles. For example, what are the *mens rea* requirements? What kinds of documents are included in these articles? How should "financial or business documents" be interpreted? Also, Article 171 Paragraph 1 Section 1 and Article 174 Paragraph 1 Section 5 of the Securities and Exchange Act subjects "financial reports" to regulation, but there is a disparity in the sentences of these two articles. These issues require clarification. Moreover, commentators believe that there should be differences in terms of both quantity and quality between criminal punishment and administrative penalty. In American law, an element of "materiality" is required to be found liable of the misstatement or omission of financial statement. In Staff Accounting Bulletin: No. 99 (SAB 99), the SEC proposed a mixed standard that requires an evaluation of both quantity and quality. The quantitative standard recognizes that if the misstatement or omission of an item falls under a 5% threshold of the total amount involved the financial statement, then the misstatement or omission is not material. The qualitative standard mandates that even when the misstatement or omission of an item falls under a 5% threshold, the material element may still be satisfied if such conduct impedes the fulfillment of legal and contractual obligations, or conceals illegal transaction. Using the material element as a filtering factor to the criminal

liability about the misstatement or omission of financial statements limits the scope of punishment. However, issues still exist on the application of Article 171 Paragraph 1 Section 1 and Article 174 Paragraph 1 Section 5 of the Securities and Exchange Act. These two articles share similar elements but provide different sentences. To reconcile between these two articles, this paper argues that Article 171 Paragraph 1 Section 1 should be limited to “the prospectus or other items that should be publicly declared.” On the other hand, Article 174 Paragraph 1 Section 5 should be limited to “other” financial or business documents. The Taiwanese criminal system inherits mainly from the European legal system, but the regulations of security related crimes are transplanted from the U.S. The legislature should be aware of the conflict between the two systems. A comprehensive review and a new proposal are needed to the future legal reform.

Key Words: Security Fraud, Financial Statement, Materiality, Business Document, Criminal Liability.