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Taiwan
Investing In

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This country-specific Q&A provides an overview of investing in laws and regulations applicable in Taiwan.

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Taiwan: Investing In

1. Please briefly describe the current investment climate in the country and the average volume of foreign direct investments (by value in US dollars and by deal number) over the last three years.

The Taiwan government has put a lot of effort into attracting foreign direct investments. In recent years, the government has provided subsidy programs for key industries such as IoT, biotechnology and biopharmaceuticals, green energy, and 5G equipment. Financial support and guarantees from local banks and state-owned funds are offered to companies in the renewable energy industry. Furthermore, Taiwan has proven to be a global key player in the semiconductor supply chain, which has and will facilitate more foreign direct investments via relevant policies (such as providing tax incentives).

After the pandemic, there has been significant growth in foreign investors establishing local presences and plants in Taiwan. From 2021 to 2023, the average volume of foreign direct investments was US$10.68 billion with 2,529 filing cases per year. In the upcoming years, we believe Taiwan's economy will grow steadily and continue to attract the attention of investors around the globe.

2. What are the typical forms of Foreign Direct Investments (FDI) in the country: a) greenfield or brownfield projects to build new facilities by foreign companies, b) acquisition of businesses (in asset or stock transactions), c) acquisition of minority interests in existing companies, d) joint ventures, e) other?

- greenfield or brownfield projects to build new facilities by foreign companies,

Foreign investors typically establish Taiwanese subsidiaries for operating greenfield or brownfield projects to build new facilities.

- acquisition of businesses (in asset or stock transactions),

Foreign investors may acquire shares in Taiwanese companies (a) by directly holding the shares in the acquired companies, or (b) through Taiwanese subsidiaries incorporated by foreign investors. In terms of the acquisition of assets and businesses of other companies, foreign investors typically establish Taiwanese subsidiaries or branch offices in Taiwan to house and possess these assets and businesses.

- acquisition of minority interests in existing companies,

Foreign investors typically invest in minority interests of existing companies by (a) subscribing to the minority shares newly issued by the existing companies, or (b) purchasing the minority shares from existing shareholders in the relevant companies. In the case of startup or early-stage companies, foreign investors usually would demand to hold preferred shares instead of ordinary shares as the preferred shares can be structured to offer more superior and special rights than those of the ordinary shares.

- joint ventures,

Foreign investors taking part in joint ventures typically would form the joint venture companies as companies limited by shares because the form of companies limited by shares provide more flexibilities in terms of structuring corporate governance and shareholder right arrangements.

- other?

Not applicable.

3. Are foreign investors allowed to own 100% of a domestic company or business? If not, what is the maximum percentage that a foreign investor can own?

In general, foreign investors may own 100% of a domestic company or business in Taiwan. However, there are specific restrictions on the percentage of shareholding that foreign investors can own in certain specifically-prescribed industry sectors (*e.g.*, satellite broadcasting business, civil air transport business, etc.) due to national security, public order, environmental protection, or public health concerns.

4. Are foreign investors allowed to invest and hold the same class of stock or other equity securities as domestic shareholders? Is it true for both public and private companies?

Foreign investors may invest and hold the same class of stock or other equity securities as domestic shareholders. The rules apply to public and private companies as long as the foreign investors are not otherwise subject to restrictions on holding shares or other equity securities applicable to those specifically-prescribed industry sectors (*e.g., satellite broadcasting business, civil air transport business, etc.*).

5. Are domestic businesses organized and managed through domestic companies or primarily offshore companies?

Domestic businesses in Taiwan can be organized and managed through both domestic companies (by incorporating Taiwan subsidiaries) and offshore companies (by establishing Taiwan branch offices). A Taiwan subsidiary is an independent legal entity, under which the foreign investor/shareholder only bears a limited shareholder liability. A Taiwan subsidiary may possess property under its own name with the foreign company enjoying the protection of assets partitioning. Conversely, a Taiwan branch office is not an independent legal entity, and the liabilities of the Taiwan branch would be extended to the foreign company. The main differences between a Taiwan subsidiary and a Taiwan branch are as follows:

- compared to a subsidiary, a branch does not have its own articles of incorporation, and there is no decision-making body such as the board of directors;
- the foreign investment approval ("FIA") is not required for a foreign company to establish a branch, while it is required to set up a subsidiary;
- both the subsidiary and the branch are subject to the same corporate income tax at a rate of 20%;
- dividends declared by the subsidiary to its foreign shareholder will be subject to a withholding income tax at a rate of 21% or a lower tax treaty rate, if applicable. The profits of a Taiwan subsidiary for the current year not distributed by the end of the following year will be subject to a 5% retained earning tax; and
- since a branch is legally inseparable from its foreign home company, net profits realized locally by the branch are considered profits of the foreign home company, and thus repatriation of such profits will not be subject to any withholding tax. In addition, the requirements concerning the 5% retained earning tax do not apply to the branch.

6. What are the forms of domestic companies? Briefly describe the differences. Which form is preferred by domestic shareholders? Which form is preferred by foreign investors/shareholders? What are the reasons for foreign shareholders preferring one form over the other?

Under the Company Act of Taiwan, there are four types of companies: unlimited company, unlimited company with limited shareholders, limited company, and company limited by shares, among which limited company and company limited by shares are the most common ones in Taiwan.

A limited company is a company established by one or more member(s), with the members' liability limited to the respective amounts of their capital contribution.

A company limited by shares is a company established by two or more shareholders or by at least one governmental, juristic, or corporate shareholder, and its capital must consist of shares. The liability of each shareholder of a company limited by shares is limited to the amount of the share capital to which each shareholder subscribes. Only a company limited by shares can go public.

In 2015, the Company Act introduced a particular type of company limited by shares called "closed-end company", which is a private company limited by shares with no more than 50 shareholders. A closed-end company's articles of incorporation must impose restrictions on the transfer of its shares, which is an exception to the prohibition of any restriction on the transfer of ordinary shares provided under the Company Act.

Which form is preferred by domestic shareholders?

Limited company is the most common type of business vehicle adopted by domestic shareholders. One primary reason is that a limited company can be established by only one individual shareholder and has a simpler corporate governance structure, which makes it more attractive to the owners of small and medium-sized businesses in Taiwan.

However, if a business is formed by a joint venture or a domestic shareholder plans to expand and raise additional capital from new investors, a company limited by shares is usually preferred. This is because it allows more flexibility in structuring the voting rights, corporate governance mechanisms, and investment structures, such as preferred shares, convertible bonds, or equity warrants. In addition, if an investor plans to exit from its investment by transferring its interest in the company in the future, the transfers of interest in a company limited by shares and limited company are subject to different tax treatments, which the investor should take into consideration – a domestic shareholder of a limited company will be subject to capital gain tax, while the transfer of shares in a company limited by shares which have issued share certificates will be subject to a 0.3% securities transaction tax of the purchase price, subject to the alternative minimum tax (AMT). In the case where the AMT amount (with an exemption for basic income of NT$600,000 per annum) is in excess of the ordinary income tax amount calculated in accordance with the Income Tax Law, the difference is subject to AMT at the rate of 12%; provided, however, that starting from 1 January 2025, the AMT rate for large multinational enterprises (MNEs) subject to the OECD's Global Minimum Tax (GMT) is expected to increase to 15%.

Which form is preferred by foreign investors/shareholders?

Foreign investors and shareholders would prefer a company limited by shares and limited company, depending on factors such as shareholding structure, business scale, etc.

What are the reasons for foreign shareholders preferring one form over the other?

A foreign investor may prefer establishing a limited company particularly when the foreign investor is the sole proprietor of the business, given that a limited company has a simpler corporate governance structure but provides the same dividends expatriation capability as a company limited by shares. Even so, foreign investors may prefer a company limited by shares considering the flexibility in designing various investment structures and shareholders' rights. In addition, in terms of tax treatment in the event when a foreign investor wishes to exit from its investment by transferring its interest in the company, a limited company's foreign shareholder is subject to capital gain tax, while the transfer of shares in a company limited by shares which has issued share certificates is subject to a 0.3% securities transaction tax of the purchase price only.

7. What are the requirements for forming a company? Which governmental entities have to give approvals? What is the process for forming/incorporating a domestic company? What is a required capitalization for forming/incorporating a company? How long does it take to form a domestic company? How many shareholders is the company required to have? Is the list of shareholders publicly available?

Which governmental entities have to give approvals?

Forming a company requires (a) the FIA from the Department of Investment Review ("DIR"), Ministry of Economic Affairs ("MOEA"), (b) the injection of capital funds, (c) the adoption of articles of incorporation by the founding shareholders/promoters, and (d) the registration of incorporation with the corporate registry, and (e) the completion of business registration with the tax office, etc. Please refer to the details as follows.

Which governmental entities have to give approvals?

Forming a domestic company in Taiwan requires the FIA from the DIR and the approvals of all relevant company and business registrations. A typical case would include the relevant approvals and registrations from the following governmental entities in sequential order:

- Company name reservation: an application must be filed with the MOEA for pre-registration (reservation) of the Chinese corporate name and business scope of the invested enterprise.
- FIA: the DIR's FIA and the capital verification approval must be obtained.
- Incorporation registration: the incorporation registration must be made with the MOEA or agencies delegated by the MOEA. A company registration card is issued to record the registration and that the company is a duly established legal entity. If any of a company's business activities falls in a category that requires special permit, such as construction, pharmaceutics, banking, insurance, securities, or telecommunications, a special permit as such must be obtained from the competent government authorities, before such business activity can be undertaken by the company.
- Factory registration: factory registration is required if the company is to manufacture products. Depending on the location of the factory, the company must register with the MOEA at the central government level, the municipal government at the municipal level, and the county or city government at the

county or city level. An application for registration must be filed after a factory is established. A factory can begin manufacturing and/or processing goods only after the competent authority approves the registration thereof.

- Business registration: a company must also apply to the local tax office for business registration.
- Import/export registration: a company must register with the Bureau of Foreign Trade ("BOF") if the company is to import/export goods (including materials and finished products) in its own name.

What is the process for forming/incorporating a domestic company?

To kick off the process, an application must be filed with the MOEA for pre-registration (reservation) of the Chinese corporate name and business scope of the invested enterprise. After the DIR approves the FIA, the foreign investors may conduct the inward remittance of the approved capital fund, and then an application shall be filed with the DIR for verification of the remitted fund. Once the capital fund is duly remitted to the domestic company, the founding shareholders/promoters should enact the articles of incorporation with an unanimous consensus among all founding shareholders/promoters and elect directors and the chairman. After the enactment of articles of incorporation and the election of the directors and the chairman, the newly formed company should submit a filing for all relevant company, business, and other registrations as outlined above.

What is a required capitalization for forming/incorporating a company?

In principle, there is no minimum requirement for paid-in capital for a newly-incorporated Taiwan company engaged in non-regulated businesses. The shareholder is free to determine the initial paid-in capital amount, as long as it is sufficient to cover the start-up expenses and working capital needed. However, if a newly-incorporated company plans to hire a foreign national as the general manager, a minimum paid-in capital of NT$500,000 is required. If the company intends to employ any other foreign national(s), the minimum paid-in capital increases to NT$5,000,000.

How long does it take to form a domestic company?

In general, for a foreign investor to form a domestic company, it would take approximately eight (8) to ten (10) weeks to complete all the formation and incorporation steps, among which it may take around four (4) to six (6) weeks to obtain the FIA alone, assuming the foreign investor does not have any PRC element/background and the domestic company will not engage in sensitive business industries.

How many shareholders is the company required to have?

The required number of shareholders for a Taiwan company depends on its corporate type. When establishing a limited company, there must be at least one individual shareholder. A company limited by shares is required to have at least two shareholders; provided, however, that a sole shareholder who is a governmental agency or a juristic person can also incorporate a company limited by shares. Having said that, if a company limited by shares is a closed-end company, it cannot have more than fifty shareholders.

Is the list of shareholders publicly available?

The list of shareholders of a domestic company in Taiwan is not publicly available.

8. What are the requirements and necessary governmental approvals for a foreign investor acquiring shares in a private company? What about for an acquisition of assets?

Under the Statute for Investment by Foreign Nationals ("SIFN") promulgated on July 14, 1954, and further amended on November 19, 1997, all foreign investment for acquiring interests in domestic companies requires FIA to be granted by the DIR in advance.

In Taiwan, foreign direct investment is allowed in most industries, except for specific businesses prohibited or restricted due to national security, public order, environmental protection, or public health concerns, such as aviation and telecommunications.

To provide a clear guideline on restricted and/or prohibited foreign investment, the DIR promulgated the "Negative List", which lists the sectors in which foreign investment is restricted or prohibited. Sectors not on the Negative List are open to foreign investment with no restrictions (other than obtaining foreign investment approval in advance). However, it is important to note that investors from the People's Republic of China ("PRC") are subject to different, stricter rules and regulations and more stringent regulatory scrutiny. Statutorily defined PRC Investor may only invest in certain permitted businesses on the "Positive List" promulgated by the DIR. A PRC Investor refers to a PRC individual, legal person, organization, other institution, or their third-area company. A third-area company is deemed a “PRC Investor” if a PRC individual, legal person, organization, or any other institution holds more than 30% of its shares, or the PRC individual, legal person, organization, or any other institution has control over the third-area company. This chapter focuses only on the foreign investment regime of the SIFN.

If the foreign investment only involves the acquisition of assets of a local entity, no FIA from the DIR is required.

9. Does a foreign investor need approval to acquire shares in a public company on a domestic stock market? What about acquiring shares of a public company in a direct (private) transaction from another shareholder?

Foreign investors wishing to invest in securities registered on the Emerging Stock Market (ESM) or listed on the Taiwan Stock Exchange (TWSE) or the Taipei Exchange (TPEX), must register with the TWSE before making any investment. Such foreign investors are commonly known as foreign institutional investors (FINIs) or foreign individual investors (FIDIs). With the identity of FINIs or FIDIs duly registered with the TWSE, no FIA is required for trading securities registered on the said domestic stock markets. Nevertheless, if a single transaction will cause the acquisition of 10% or more of the total issued shares of a public company, then a private transaction should be structured and proceeded outside of the stock market, where FIA is required.

10. Is there a requirement for a mandatory tender offer if an investor acquired a certain percentage of shares of a public company?

A mandatory tender offer is required if anyone, alone or in concert with others, proposes to obtain securities representing 20% or more of the issued shares of a public issuing company on the market within fifty (50) days; provided, however, that the mandatory tender offer rules do not apply to: (i) transfer of shares between the acquiror and its related party (such as an individual's spouse or a company's affiliates); (ii) acquiring shares from the corporate insiders by a qualified specific acquirer as promulgated by securities regulations; and (iii) acquiring shares in the public company through conducting share swap or share exchange.

11. What is the approval process for building a new facility in the country (in a greenfield or brownfield project)?

A factory registration is required if a company is to manufacture products. Depending on the factory's location, the company must register with the MOEA at the central government level, the municipal government at the municipal level, and the county or city government at the county or city level. A factory can start manufacturing and/or processing goods only after the competent authority approves the registration. Prior to submitting the application for factory registration, depending on the scale of the factory and the nature of development activities, the company should obtain the environmental permits and license. The approval process for building a new facility in Taiwan applies to both greenfield projects and brownfield projects.

12. Can an investor do a transaction in the country in any currency or only in domestic currency? a) Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay: i. in an acquisition, or, ii. to pay to contractors, or, iii. to pay salaries of employees? b) Is there a limit on the amount of foreign currency in any transaction or series of related transactions? i. Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country? ii. Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country? iii. Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

In Taiwan, investors can conduct transactions in any currency subject to the restrictions under the current foreign exchange control laws and regulations.

To remit funds overseas involving foreign exchange, a Taiwan company can purchase foreign exchange with New Taiwan Dollars and remit the same out of Taiwan for non-trade related purposes up to US$50,000,000 per calendar year by filing a report with the Central Bank of the Republic of China (Taiwan) (“CBC”). The wiring bank will handle the report, and no special approval from the

CBC is required. Foreign exchange purchases for non-trade related purposes exceeding the applicable ceiling require special approval from the CBC, which is discretionary and decided by the CBC on a case-by-case basis.

For the wiring of the approved investment funds, repatriation of the dividends by a Taiwan company to its foreign shareholder or the profits of a Taiwan branch, or other trade payments, the Taiwan company or the branch only needs to present the required documentation to the wiring bank to initiate the wiring, which is a straightforward process and is not subject to any ceiling requirements.

Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay:

- **in an acquisition, or**
- **to pay to contractors, or**
- **to pay salaries of employees?**

If the use of foreign currency to acquire a company, pay contractors, or pay employees' salaries does not involve foreign exchange, there is no specific approval requirement for using foreign currency in such transactions. If, however, it does involve foreign exchange, the report to or approval by the CBC may be needed, depending on whether the purpose of the payment and foreign exchange is related to trade or not and the dollar amount concerned as summarized above.

Notwithstanding the foregoing, if the counterparty of the payment is a domestic company, the payment would usually be made by a foreign investor's Taiwan company in domestic currency.

Is there a limit on the amount of foreign currency in any transaction or series of related transactions?

In Taiwan, there is no limit to the foreign currency amount used in any transaction or series of related transactions if they do not involve foreign exchange. If, however, they involve foreign exchange, the report to or approval by the CBC may be needed, depending on whether the purpose of the transaction and foreign exchange is related to trade or not and the dollar amount concerned as summarized above.

Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country?

In Taiwan, no restrictions exist on the amount of foreign currency foreign investors can transfer into the country, as long as these transfers do not involve exchanging the foreign currency into New Taiwan Dollars, except if the purpose of the inward remittance is to be used as equity investments in Taiwan companies, a prior FIA shall be sought from the DIR.

Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country?

If a foreign investor uses the foreign currency remitted from overseas to Taiwan to buy domestic currency, which will be contributed as the approved equity investments by the DIR or be used to settle trade-related transactions, there is no separate CBC approval requirement and there is no limit to the amount.

If the domestic currency bought by a foreign investor's invested Taiwan company will be used for other purposes, the filing requirements and ceiling amount of foreign exchange of Taiwan companies will be subject to the current foreign exchange control laws and regulations in Taiwan. That is, Taiwan companies are limited to US$50,000,000 per calendar year for the settlement of foreign exchange without triggering special approval requirements of the CBC.

Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

Theoretically, there is no restriction from a Taiwanese law perspective prohibiting an investor from buying domestic currency outside of Taiwan and transferring it into the country to pay for an acquisition, to third parties for goods or services, or for employees' salaries. Practically, as foreign banks do not provide services for foreign investors to buy New Taiwan Dollars, foreign investors have to purchase New Taiwan Dollars through the foreign exchange in Taiwan, which is subject to the limitations and exemptions mentioned above.

13. Are there approval requirements for a foreign investor for transferring domestic currency or foreign currency out of the country? Whose approval is required? How long does it take to get the approval? Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country? Is the approval required for each transfer or can it be granted for all future transfers?

Whose approval is required?

If foreign currency transfers do not involve foreign exchange, foreign investors can transfer the foreign currency out of Taiwan without approval. If the transfer involves currency exchange from New Taiwan Dollars to foreign currencies, it will be subject to the aforementioned requirements under Taiwan's foreign exchange control and annual threshold for special approval from the CBC.

Realistically, foreign banks may not offer services for depositing New Taiwan Dollars in jurisdictions other than Taiwan. Therefore, investors would have to convert New Taiwan Dollars to another currency before transferring the domestic currency out of Taiwan. These investors are subject to the aforementioned requirements under Taiwan's foreign exchange control and annual threshold for special approval from the CBC.

How long does it take to get the approval?

For applications requiring approval, the CBC usually grants it within approximately seven (7) working days. If the transaction only requires reporting to the CBC through a domestic bank, the investor only needs to make a foreign exchange declaration through a domestic bank, which may take one (1) or two (2) days to get the clearance for such foreign exchange.

Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country?

Likewise, if foreign currency transfers do not involve foreign exchange, there is no limit to the amount of foreign currency that can be transferred out of Taiwan. If the transfer involves converting New Taiwan Dollars to another foreign currency for repatriation of dividends, earning profits, or trade-related funds, only a report to the CBC for such remittance is required. The wiring bank will handle this report, and there is no limit to the amount. Non-trade purpose remittances will be subject to the requirements above under Taiwan's foreign exchange control and annual threshold for special approval from the CBC.

On the other hand, foreign banks may not offer services for investors to deposit New Taiwan Dollars. Therefore, realistically, investors would have to convert New Taiwan Dollars to another currency before transferring the domestic currency out of Taiwan. These investors are subject to the annual amount limitation under Taiwan's foreign exchange control, with the exemptions above on certain types of transactions.

Is the approval required for each transfer or can it be granted for all future transfers?

Depending on the nature of the transfer, certain foreign exchange transfer approvals can be granted for all future transfers for the same reason. For instance, payers can draw the foreign exchange needed to pay for the following expenses or activities from their foreign exchange deposit account designated by the CBC without additional approval or reporting obligations:

- Costs and expenses of merchandise approved for import;
- Expenses and obligations to be paid by shipping business, insurance business, or business of other trades because of trade or service received;
- Money sent to support families abroad by citizens or foreigners who work for a local business within the territory of Taiwan;
- Principal, interests, and net profits generated from investments of foreign investors;
- Payment for principal, interests, and guarantee expenses of government-approved foreign loans;
- Remuneration for foreign individuals for technical cooperation with local enterprises; and
- Government-approved foreign investment funds to foreign companies or loans extended to foreign borrowers.

14. Is there a tax or duty on foreign currency conversion?

There is no tax or duty on the mere conversion of foreign currency without any gains generated. On the other hand, exchange rate gains generated from the difference between the inward and outward foreign exchange (or vice versa) are subject to income tax.

15. Is there a tax or duty on bringing foreign or domestic currency into the country?

The act of remitting or bringing foreign or domestic currency into a Taiwanese bank account itself does not trigger any tax implication in Taiwan. Instead, tax implications should be evaluated based on the nature of the underlying transaction. For instance, if a foreign company transfers funds into a Taiwanese bank account as paid-in capital for the incorporation of a subsidiary in Taiwan, no tax will be incurred. However, if the remittance represents dividends paid by a foreign company to a

Taiwanese shareholder, such funds would be subject to Taiwan income tax.

16. Is there a difference in tax treatment between acquisition of assets or shares (e.g. a stamp duty)?

In general, asset sale transactions would trigger income tax, business tax (VAT), and stamp duty. In addition, if the transaction involves the transfer of real estate, it would also trigger land value incremental tax and deed tax.

On the other hand, capital gains from the sale of securities are currently exempt from income tax, provided that the share certificates have been duly issued. However, the securities transaction tax (SST) levied at 0.3% of the selling price of the shares will be borne by the seller and withheld by the buyer out of the payment of the purchase price. Furthermore, if the value of the target company's real estate accounts for more than 50% of the value of all the shares in the target company, the share sale transaction will be deemed the transaction of real properties and therefore be additionally subject to income tax.

17. When is a stamp duty required to be paid?

The common types of documents subject to stamp tax include:

- Receipts for monetary payments
- Contracts for the sale of movables
- Contractor agreements: referring to agreements executed for the performance and completion of specific work or tasks, for example, construction agreement
- Contracts for the sale of real property

18. Are shares in private domestic companies easily transferable? Can the shares be held outside of the home jurisdiction? What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder? Are changes in shareholding publicly reported or publicly available?

The transfer of shares in a private domestic company by a foreign investor requires FIA, which should not be unreasonably withheld by the DIR. Shares in private domestic companies in Taiwan are easily transferable.

Can the shares be held outside of the home jurisdiction?

The holding of shares itself is not subject to any restrictions on jurisdictions.

What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder?

FIA from the DIR is required for a foreign investor to transfer shares to another foreign or domestic shareholder.

Are changes in shareholding publicly reported or publicly available?

While the change of shareholders holding more than 10% of issued shares in a company requires online filing, the information reported is not publicly available.

19. Is there a mandatory FDI filing? With which agency is it required to be made? How long does it take to obtain an FDI approval? Under what circumstances is the mandatory FDI filing required to be made? If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked? If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction), could such a transaction trigger a mandatory FDI filing in your jurisdiction? Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

All foreign investments for incorporating new companies, acquiring interests in domestic companies, extending loans with a maturity of one year or more to its direct Taiwanese subsidiary, or divesting from the investment require advance FIA by the DIR.

With which agency is it required to be made?

FIA application should be filed with the DIR.

How long does it take to obtain an FDI approval?

It typically takes four (4) to six (6) weeks to obtain FIA for pure shares subscription or shares acquisition. For mergers and acquisitions or transactions that are considered significant investments of foreign investors, it may take as long as ten (10) to sixteen (16) weeks.

Under what circumstances is the mandatory FDI filing required to be made?

A mandatory FIA is required when a foreign investor contemplates incorporating a new company, acquiring interests in a domestic company, extending a loan with a maturity of one year or more to its direct Taiwanese subsidiary, or divesting from the investment.

If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked?

Not applicable.

If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction, could such a transaction trigger a mandatory FDI filing in your jurisdiction?

FIA is only required if the transaction involves a change of a direct investor of the domestic company. Therefore, a change of foreign investor's shareholder is not subject to foreign direct investment regulations in Taiwan so long as the acquirer is not a statutorily defined PRC Investor.

Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

In the foreign direct investment regime of Taiwan, the governmental authority exerts no power over the indirect transfer of control of the subsidiary; unless the acquirer is a statutorily defined PRC Investor.

20. What are typical exit transactions for foreign companies?

Foreign companies typically exit transactions through a direct or indirect transfer of shares to a transferee or through the merger and acquisition transactions conducted by the domestic companies and the acquirers.

21. Do private companies prefer to pursue an IPO? i. on a domestic stock market, or ii. on a foreign stock market? iii. If foreign, which one?

Private companies in Taiwan would prefer pursuing an IPO if they hope to attract a relatively large pool of funds from the public. The choice of the IPO stock market depends on elements such as the companies' scale, the industry sector, and the market focus. Most private companies in Taiwan go IPO on a domestic stock market. However, we start seeing in recent years, more successful cases going IPO through the standard process or de-SPAC transactions in the U.S., Japan and Singapore stock exchanges.

22. Do M&A/Investment/JV agreements typically provide for dispute resolution in domestic courts or through international arbitration?

In cross-border transactions, M&A/Investment/JV agreements typically provide for dispute resolution through international arbitration as opposed to court proceedings because international arbitration allows for more flexible procedures and choice of language, protects the confidentiality of the transaction more comprehensively, and provides more time-efficient resolution.

23. How long does a typical contract dispute case take in domestic courts for a final resolution?

Taiwan has a three-tiered court system (i.e., the district court, the high court, and the Supreme Court) with jurisdiction over civil litigation. Civil proceedings in Taiwan can be conducted at the district courts in the first instance, and a case can be appealed to the high courts and the Supreme Court in the second and third instances. The district courts and high courts are trial courts hearing factual and legal issues, whereas the Supreme Court, as the third instance, hears a case only when significant legal issues are involved.

It takes about one (1) to two (2) years for each court instance, but sometimes it can take longer, depending on the complexity and development of a case. However, as the Supreme Court may remand a case to the high court for re-trial and review the high court's decision rendered through the re-trial, in a more controversial dispute, it may take more than five (5) to eight (8) years to obtain a final court judgment.

24. Are domestic courts reliable in enforcing foreign investors rights under agreements and under the law?

Taiwan is a civil law jurisdiction. The civil procedures of Taiwan follow the inquisitorial system and place the leading role on the judge, who is responsible for directing the proceedings, investigating the evidence, finding the facts, and determining the legal consequences (such as assessing damages).

A foreign investor, as a party concerned with the investment agreement, may initiate a court proceeding to file a complaint if there is any dispute arising from it. A judgment made by the district court in the first instance may be appealed to the high court in the second instance, and a second appeal to the Supreme Court is available only for controversies involving a claim over NT$1,500,000. No jury takes part in the proceedings. In addition, a temporary injunction is also available for foreign investors to secure their rights in the interim of the litigation proceedings, though the courts usually would review a temporary injunction case with higher scrutiny, particularly if the concerned damages can be compensated by money.

The judicial system in Taiwan is governed by the rule of law and is considered impartial and just.

25. Are there instances of abuse of foreign investors? How are cases of investor abuse handled?

The Taiwanese government is dedicated to offering comprehensive incentives to attract and support investors, and aims to create a favorable investment environment and provide benefits to companies to enhance their competitiveness. The incentives include tax benefits, subsidies for research and development expenditures, government involvement in investments, and incentives for investing in industrial parks, etc., and are equally available to domestic and foreign investors. Subject to relevant foreign investment laws and regulations, land laws, and free trade agreements, foreign investors are generally safeguarded against any mistreatment, abusive treatment, harassment, coercion, duress, or abuse of power by the government. No cases of abusive treatment towards foreign investors in Taiwan have been reported.

26. Are international arbitral awards recognized and enforced in your country?

Taiwan is not a party to the New York Convention. A foreign arbitral award can be enforceable in Taiwan if it is recognized by a court in Taiwan. The court in Taiwan may only dismiss a petition for recognition of a foreign arbitral award under certain statutory circumstances as set out below.

The court will dismiss a petition for recognition of a foreign arbitral award on any of the following grounds:

a. The recognition and enforcement of the arbitral award is contrary to the public order or good morals of Taiwan; or
b. The subject matter of the arbitral award lacks arbitrability under the Taiwan laws.

The court may further dismiss a petition for recognition of a foreign arbitral award, upon the request of the respondent, if any of the following occurs:

- The arbitration agreement is invalid due to a party's incapacity under the applicable laws;
- The arbitration agreement is invalid under the governing law of the arbitration agreement chosen by the parties, or in the absence of laws chosen by the parties, under the laws of the place where the arbitral award is made;
- One of the parties was not duly served with the notice of appointment of arbitrator or of any other matter required in the arbitration proceeding, or there is any other situation giving rise to lack of due procedure;
- The arbitral award is irrelevant to the subject matter of the dispute covered by the arbitration agreement, or beyond the scope of the arbitration agreement, unless the inconsistent portion can be severed from and would not affect the remainder of the arbitral award;
- The composition of the arbitral tribunal or the arbitration procedure contravenes the parties' agreement or, in the absence of such an agreement, the laws of the place of arbitration; or
- The arbitral award has not yet become binding on the parties or has been revoked or suspended by a competent authority.

In addition, if there is no reciprocity in the recognition and enforcement of arbitral awards between Taiwan and the country where the award is made or whose arbitration rules are followed, the courts in Taiwan may dismiss the petition for the recognition.

Although Taiwan is not a party to the New York Convention, the statutory grounds on which a Taiwan court could dismiss the petition for recognition of a foreign arbitral award as set out above generally align with Article V of the New York Convention. In this regard, the enforcement of a foreign arbitral award in Taiwan has no material difference compared to other countries that are party to the New York Convention.

27. Are there foreign investment protection

treaties in place between your country and major other countries?

Taiwan has signed agreements on the promotion and protection of investments or free trade agreements with many countries in Asia, America, Europe, Africa, the Middle East and the Pacific Area; below are the major treaties:

- The United States ("*Agreement Dealing with Guaranty of American Investment of Private Capital in Taiwan*");
- Japan ("*Arrangement between the Association of East Asian Relations and the Interchange Association for the Mutual Cooperation on the Liberalization, Promotion and Protection of Investment*");
- Mainland China ("*Cross-Strait Bilateral Investment Protection and Promotion Agreement*");
- Singapore ("*Agreement between the Industrial Development & Investment Center in Taipei and the Economic Development Board in Singapore on the Promotion & Protection of Investments*" and "*Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership*"); and
- India ("*Bilateral Investment Agreement between the Taipei Economic and Cultural Center in India and the India Taipei Association in Taipei*").

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