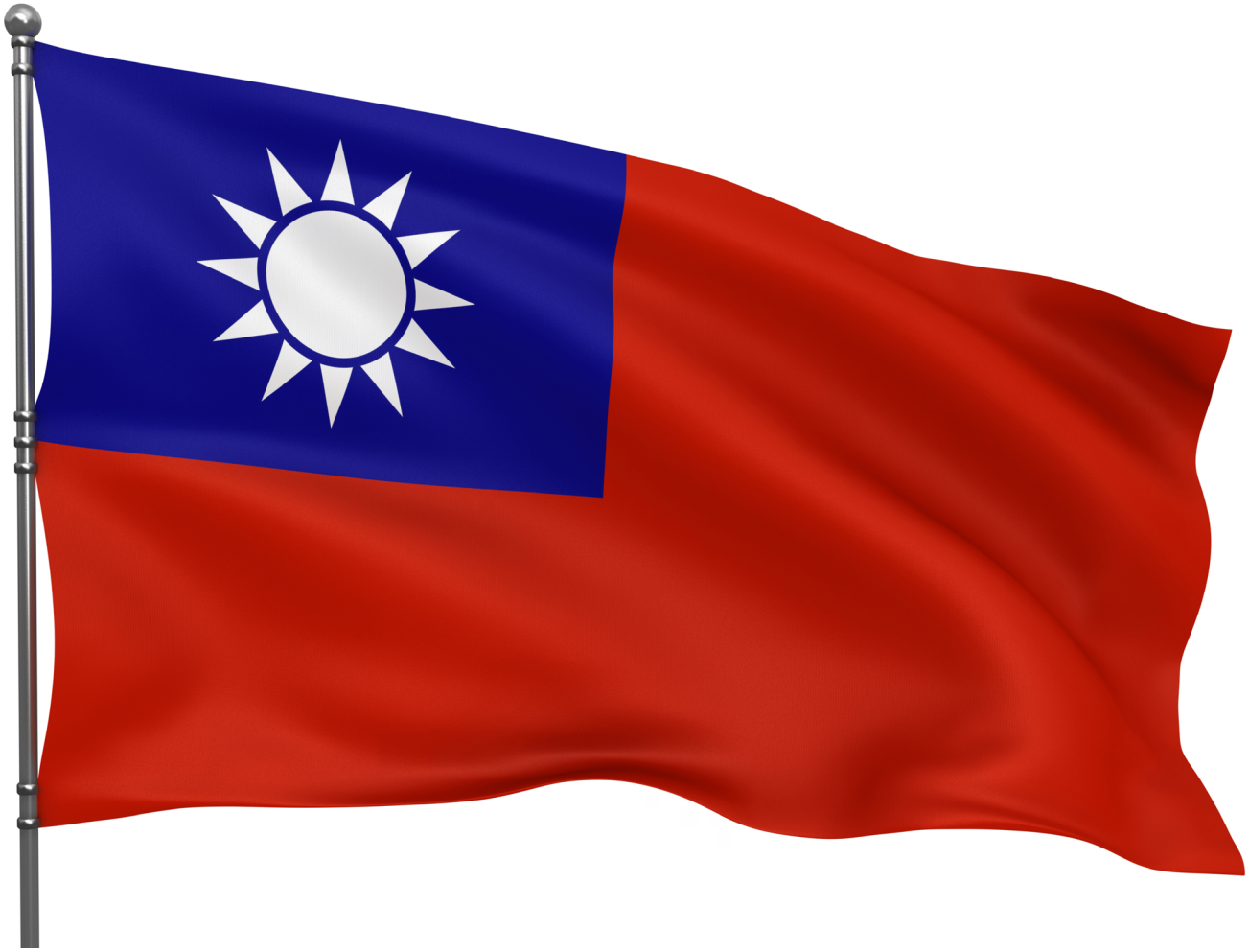
Taiwan



Chapter 1: Introduction

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Situated at the centre of the Asia–Pacific region, Taiwan has a strategically advantageous economic position. It is geographically linked to Japan, the world's third-largest economy, to the north; to ten ASEAN nations and India to the south; the United States, the world's largest economy, to the east; and Mainland China, the world's second-largest economy, to the west. Taiwan's well-developed infrastructure, robust industrial clusters and exceptional human resources have laid a solid foundation for its industrial development.

With an area of approximately 36,000 square kilometres and a population of around 23 million, Taiwan boasted a GDP per capita of TWD 36,833 in 2023, ranking 21st in the world. Its purchasing power parity (PPP) was approximately TWD $74,000 per person, placing it 20th in the world. Taiwan's exceptional economic freedom and competitive investment environment have earned international recognition. According to the 2021 Index of Economic Freedom by the Heritage Foundation, Taiwan ranks fourth globally. Additionally, the International Institute for Management Development (IMD) places Taiwan sixth in the world for competitiveness. Furthermore, in the Investment Environment Risk Assessment Report by Business Environment Risk Intelligence (BERI), Taiwan ranks 14th globally and fifth in the Asia–Pacific region.

Taiwan is globally renowned for its research and development (R&D), manufacturing and operational capabilities in the technology industry. Reports indicate that Taiwan's output in terms of the global foundry market is NTWD 80bn, accounting for a significant 77.9 per cent share (excluding integrated device manufacturers). Among these, TSMC or Taiwan Semiconductor Manufacturing Company Limited, holds a dominant 60 per cent of the global market share, solidifying its leading position. UMC and GlobalFoundries follow each holding about six per cent, securing third place. In the integrated circuit (IC) packaging and testing sector, Taiwan's output value reaches TWD$18.7bn, representing 52.6 per cent of the global market. For IC design, Taiwan's output value is TWD$35.2bn, accounting for 21.3 per cent of the global market, ranking second.

Recently, the Covid-19 pandemic has accelerated the global development of artificial intelligence (AI), leading to its widespread application across various industries. Taiwan, a critical production base for AI servers, plays an indispensable role in the AI arena. Enterprises such as TSMC, ASUS, Foxconn, ASE Group and Wiwynn all play crucial roles in the AI industry value chain, involved in diverse areas from chip manufacturing to the provision of server original equipment manufacturer (OEM)/original design manufacturer (ODM) services. With the booming AI market, Taiwan's prominence and influence have grown significantly, attracting investments from major international players like AMD, NVIDIA and Google.

Thanks to Taiwan's robust public health infrastructure and effective pandemic prevention policies, the island's economy was less affected by the Covid-19 outbreak than some other countries. To seize opportunities in the post-pandemic era and enhance Taiwan's role in the global economy,

the government has launched the 'Six Core Strategic Industries' policy. Building upon established industrial innovation programmes. such as those relating to 'Smart Machinery', 'Asia Silicon Valley', 'Green Energy Technology', the 'Biomedical Industry', 'National Defence Industry', 'New Agriculture' and the 'Circular Economy', this new policy encompasses emerging sectors, such as information and digital technology, cybersecurity, precision health, green and renewable energy, national defence and the strategic stockpile. The new government, inaugurated on 20 May 2024, has also prioritised the development of five key industries over the next four years: semiconductors, AI, defence technologies, security and next-generation communications. This strategy aims to reinforce Taiwan's pivotal position in global supply chains, while continually improving the investment environment.

Taiwan ranks second globally in regard to higher education attainment, providing a talent pool for developing high-tech industries. The country maintains a nationwide unemployment rate below 3.5 per cent, supported by a favourable public security environment. The New Taiwan dollar's exchange rate against the US dollar shows relatively stable fluctuations compared to Japan and South Korea, enhancing stability in foreign exchange and currency markets. Taiwan's stock market, tracked by the Taiwan Stock Exchange Capitalisation Weighted Stock Index (TAIEX), has reached new highs in 2024, peaking at 22,504 points in mid-June, reflecting positive economic prospects.

Chapter 2: The business environment

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2.1 Governance and political structure

Taiwan is a free and democratic country governed by the rule of law. Its central government comprises five branches, namely the President, Executive Yuan, Legislative Yuan, Judicial Yuan, Examination Yuan and Control Yuan, each exercising constitutional powers. The President and legislators are elected by the people, while the President of the Legislative Yuan is elected by and from among the legislators. The Premier of the Executive Yuan is appointed by the President. The presidents of other three yuans are nominated by the President and appointed with the consent of the Legislative Yuan. The Democratic Progressive Party (DPP) and the Kuomintang are Taiwan's two major political parties, with the DPP currently in power. Local county or city heads and councillors are directly e lected by the people for four-year terms, with county or city heads eligible for re-election once.

2.2 Legal system

Taiwan is a civil law jurisdiction, relying on codified laws. Its judicial system is widely recognised as highly independent and fair. At the top of this system is the Judicial Yuan, which is responsible for adjudicating constitutional disputes. Criminal and civil cases follow a 'three-level

and three-instance' structure, progressing through district courts, high courts, and ultimately the Supreme Court. The Intellectual Property and Commercial Court specialises in cases concerning intellectual property rights and significant commercial disputes. The administrative court system, following a 'three-level and two-instance' structure, handles public law cases.

2.3 Foreign investment in Taiwan: an overview of the procedures and regulations

2.3.1 Foreign investment in Taiwan's listed and over-the-counter companies

Foreign investors investing in Taiwan's listed, over-the-counter (OTC) or emerging stock companies should register with the Taiwan Stock Exchange (TWSE), if acquiring less than a ten per cent equity stake in a single transaction, in accordance with the Regulations Governing Investment in Securities by Overseas Chinese and Foreign Nationals. If the transaction results in the acquisition of a ten per cent or higher equity stake, foreign investors should apply in advance to the Department of Investment Review (DIR) that sits within the Ministry of Economic Affairs (MOEA) by submitting an application form and relevant documents, in accordance with the Statute for Investment by Foreign Nationals (the 'Foreign Investment Statute'). Investors from Mainland China ('PRC Investors', as defined in Chapter 5) must comply with the Act Governing Relations between the People of the Taiwan Area and the Mainland Area and the Regulations Governing Investment in Securities and Futures by Mainland Area Investors.

2.3.2 Foreign investment in Taiwan's unlisted companies

Foreign investors ('non-PRC Investors') investing in Taiwan's unlisted companies must obtain approval from the DIR, in accordance with the Foreign Investment Statute. In cases involving the establishment of a new company, foreign investors are also required to apply to the MOEA for company incorporation registration after obtaining investment approval from the DIR. If the intended business activities of the new company concern a regulated industry, such investors must obtain permission from the relevant competent authority before applying for company incorporation registration. PRC Investors must comply with the Act Governing Relations between the People of the Taiwan Area and the Mainland Area and the Regulations Governing Investment in Taiwan by Mainland China Investors (the 'PRC Investment Regulations').

Chapter 3: Business and corporate structures

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3.1 Commonly adopted legal forms by foreign investors in Taiwan

According to the Taiwan Company Act, the different types of companies include: (1) unlimited companies, (2) unlimited companies with limited liability shareholders, (3) limited companies, and (4) companies limited by shares. Commonly adopted legal forms by foreign investors wishing to conduct business activities in Taiwan are discussed below.

3.1.1 Companies limited by shares

A company limited by shares may be established by a single government or corporate shareholder. If there are no government or corporate shareholders, it must be established by at least two individual shareholders. The total capital is divided into shares, with each common share having one voting right. The company may also issue preferred shares, which may have no voting rights or multiple voting rights. Shareholders' liability is limited to their subscribed shares. Additionally, Taiwan also recognises 'close companies', which are privately held companies with fewer than 50 shareholders and that have specific restrictions on share transfers stipulated in their articles of incorporation, as regulated by Article 356-1 and subsequent provisions in the Company Act.

3.1.2 Limited companies

A limited company is organised by one or more shareholders, who are liable in regard to the company to the extent of their capital contributions.

3.1.3 Branch offices

A branch office is not an independent legal entity. It is a branch institution controlled by a parent company. Foreign companies may incorporate a branch office to conduct business in Taiwan.

3.1.4 Representative offices

If a foreign company does not intend to set up a branch office for revenue-generating operations in Taiwan, but needs to conduct limited business activities, it may appoint a representative to incorporate a representative office in Taiwan. A representative office, however, is not an independent legal entity and is typically limited to carrying out certain specific activities, such as signing contracts, bidding, quoting, purchasing, negotiating prices and collecting market information.

3.2 Incorporation processes and requirements

Depending on the type of legal entity defined in the Company Act, the incorporation process varies. Additionally, Taiwanese authorities have adopted special regulations in regard to PRC Investors.

3.2.1 Requirements for incorporating a company

The general process for incorporating a company includes the following steps:

- checking and confirming the Chinese company name and scope of business;
- applying for foreign investment approval from the DIR;
- remitting the required capital, as approved by the DIR; and
- directing a certified public accountant to audit the remitted capital and submit the relevant application documents (eg, the application form for company registration, copies of the articles of incorporation and consent forms issued by the directors to act as a director, etc) with the competent authorities to complete the company registration.

3.2.2 Requirements for incorporating a branch office

Incorporating a branch office follows a process similar to that of incorporating a company, except that the foreign investment approval from the DIR is not required provided that the foreign investor is not a PRC Investor.

A foreign company may not conduct business in Taiwan under its own name without registering a branch office. Companies incorporating a branch office in Taiwan must allocate funds for its operations and appoint a representative as the responsible person in Taiwan. A failure to comply with these regulations may result in civil and criminal liabilities.

3.2.3 Requirements for incorporating a representative office

To incorporate a representative office, a foreign company must register with the Administration of Commerce of the MOEA (AOC). The required documents include:

- the application form;
- approval letters from the competent authorities (if applicable);
- a certificate of incorporation;
- an authorisation letter for the company's representative in Taiwan, along with their identification documents; and
- a consent letter from the landlord allowing the use of the leased premises as the registered office, and proof of ownership of the leased office by the landlord, etc.

3.2.4 Requirements for PRC Investors

If the investor intending to incorporate a company or branch office is a PRC Investor, the PRC Investment Regulations must be followed. The required procedures involve, among others, filling out an investment application form, attaching a detailed investment plan, providing a certificate of incorporation related to the investor (or its parent company in the case of setting up a branch office) and other relevant documents, and submitting them to the DIR for prior approval. Furthermore, investments to incorporate companies or branch offices are limited to industries listed in the 'List of Industries for Investment by Mainland Area Investors in Taiwan' (the 'List of Permitted Industries for PRC Investors'), as required by the PRC Investment Regulations.

If a PRC Investor intends to incorporate a representative office in Taiwan, it must apply for permission and register the representative office, according to the Measures Governing the Permit for the Incorporation of Branch Offices or Representative Offices in Taiwan by Profit-Seeking Enterprises of the Mainland Area, with the AOC.

3.3 Reporting requirements for changes to company registration details

For any changes to company registration details (eg, company relocation, changes in directors or supervisors, amendments to the articles of incorporation, increase or reduction in capital, etc), an application for change registration must be submitted to the competent authority within 15 days after the change has taken place. Non-compliance may result in administrative fines.

3.4 Management structure and corporate governance

3.4.1 Management structure

For a limited company, at least one director must be appointed to conduct business and represent the company, with a maximum of three directors permitted. For a company limited by shares, at least three directors and one supervisor are required. However, the articles of incorporation may specify the absence of a board of directors and instead appoint one or two directors, while still requiring a supervisor. For a company limited by shares organised by a single government or corporate shareholder, the articles of incorporation may allow for no board of directors, appoint one or two directors and dispense with the supervisor. Public companies and listed companies are subject to additional regulations by the TWSE or the Taipei Exchange (TPEx) concerning the composition of the board of directors, supervisors or audit committee.

Directors and supervisors must be elected at the shareholders' meeting. Foreign nationals are eligible to serve as directors or supervisors in a Taiwanese company. However, if a company should have a supervisor or supervisors as mandated by the relevant laws, at least one supervisor must have a domicile in Taiwan, while directors are not subject to this requirement.

The shareholders' meeting is the highest authority in the company. The board of directors manages daily operations by making resolutions or delegating authority to representatives. The board must

perform its duties in accordance with the relevant laws, the company's articles of incorporation and resolutions adopted at the shareholders' meetings.

3.4.2 Minority shareholders' protection

The Company Act includes several mechanisms to protect the interests of minority shareholders. Shareholders holding at least one per cent of the total shares issued are entitled to propose agenda items for the shareholders' general meeting. Additionally, shareholders who own at least three per cent of the total shares issued continuously for over one year may, in writing, specify proposed matters and reasons to request the board to convene a special shareholders' meeting. Under certain conditions, shareholders holding at least three per cent of the total shares issued may apply to the competent authority for permission to convene a shareholders' meeting independently.

3.4.3 Legal responsibilities of directors

According to Article 23 of the Company Act, a responsible person (including directors) in regard to the company owes a duty to faithfully and loyally conduct the company's business and to exercise the care of a good administrator in regard to business operations. If this duty is breached, resulting in damages to the company, they may be held liable for civil damages. Furthermore, they may be subject to criminal liability for breach of trust.

Additionally, directors are subject to several restrictions under the Company Act. Directors are prohibited from engaging in competitive activities in regard to the company, which includes conducting transactions on behalf of themselves or third parties that fall within the scope of the company's business activities. They are also restricted from participating in 'self-dealing', meaning that they cannot enter into transactions where the director or the juristic person they represent is a contracting party with the company. Moreover, if a director (or the legal entity they represent) has a conflict of interest in regard to an agenda item, the director shall disclose this interest and, under certain circumstances, abstain from voting on that agenda item.

If a company is a listed company, it must also comply with the Corporate Governance Best Practice Principles for TWSE/TPEx Listed Companies and related regulations stipulated by the TWSE and TPEx.

3.4.4 Remuneration of directors

According to the Company Act, the remuneration of directors, if not prescribed in the articles of incorporation, shall be determined at shareholders' meetings. Additionally, the Securities and Exchange Act (SEA) provides that all listed companies shall set up a remuneration committee comprising at least three members. This committee is responsible for regularly reviewing matters related to the performance and remuneration of directors, independent directors and managers.

3.4.5 Shareholders' liability

The parent company bears full liability for its branch office. In both companies limited by shares and limited companies, shareholders' liability in regard to the company is typically limited to their fully paid-up shares or capital contributions. However, if a shareholder significantly abuses the company's legal entity status, causing the company to incur debts that it would have difficulty repaying, the principle of 'piercing the corporate veil' will apply. In such cases, the shareholder shall be liable beyond their capital contributions or shares.

Chapter 4: Takeovers (friendly M&A)

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This chapter mainly outlines the regulations that foreign companies need to pay attention to when conducting friendly mergers and acquisitions (M&A) in Taiwan. It introduces the Business Mergers and Acquisitions Act (the 'M&A Act'), public tender offers, private placements and mergers, as well as practical considerations for foreign companies merging in Taiwan.

4.1 The Business Mergers and Acquisitions Act

4.1.1 Overview of Taiwanese M&A regulations

The early Taiwanese M&A regulations were scattered across various laws. With Taiwan's economic development and the increasing corporate demand for M&A, the government enacted the M&A Act in 2002, as the main legal framework for corporate mergers. Other relevant regulations are found in the Company Act, SEA and Fair Trade Act. Additionally, mergers involving listed or OTC companies must comply with the Taiwan Stock Exchange Operating Rules and the Taipei Exchange Rules Governing Securities Trading on the TPEx. Mergers involving financial institutions must meet the requirements in the financial institution merger regulations.

4.1.2 Types of mergers under the M&A Act

The M&A Act regulates mergers, acquisitions and spin-offs, each with its own definitions and required statutory procedures. Only M&A activities that meet the criteria and follow the procedures outlined in the M&A Act can benefit from the streamlined processes and tax benefits. Both branches and subsidiaries of foreign companies in Taiwan are eligible, provided that at least one party to the M&A transaction is a Taiwanese company. For instance, the M&A Act would not apply to M&A transactions between two Taiwanese branches of foreign companies, due to overseas group restructuring.

4.1.3 Consideration for M&A transactions

According to the M&A Act, considerations for M&A transactions can be cash, shares or other assets. Share swaps can also be conducted using cash, facilitating the buyout of minority shareholders.

4.1.4 Employee-related matters

Under Taiwanese labour law, companies can only dismiss employees if one of the statutory grounds detailed in the law is met. The M&A Act stipulates that the surviving, newly established or transferee company must notify the employees of the target company who it wishes to retain and inform them of the relevant employment terms at least 30 days prior to the effective date of the transaction. Employees who receive retention notices must inform the new employer (ie, the acquirer) in writing, within ten days, whether they agree to the retention. For employees who accept the retention, including those who do not respond and are thus believed to be in agreement with the retention, their past service tenure with the target must be recognised by the acquirer. Employees who are not retained or who decline retention may receive a pension payment or severance pay from the target company, as the case may be.

The M&A Act does not apply to cases where cross-border group restructuring involves the merger of two Taiwanese branches of foreign companies. In such cases, according to the rulings promulgated by the Ministry of Labor, it is necessary to assess whether the case qualifies as the termination ground involving 'business unit reorganisation or transfer' under the relevant labour laws. Employees can only be terminated if this statutory ground is met.

Regarding the labour pension reservation fund, if there is an amount remaining after paying the pension payment or severance pay to non-retained employees, the target company and the acquirer can negotiate the transfer of the remaining funds from the target company's pension reserve account to the acquirer's pension reserve account to protect the employees' rights.

4.2 Private placements

4.2.1 Purpose

To expand corporate financing channels and facilitate strategic investments and rapid transformations through M&A, the SEA allows publicly traded companies to conduct private placements of securities without undergoing cumbersome capital increase procedures. Companies can raise funds through private placements in regard to specific entities and must report to the competent authority within 15 days of payment completion.

4.2.2 Eligibility criteria and procedures for private placements

Publicly traded companies conducting private placements must follow the procedures stipulated in the Directions for Public Companies Conducting Private Placements of Securities (the 'Directions for Private Placements'). Companies with after-tax profits and no accumulated losses may conduct

private placements under the specified conditions listed in the Directions for Private Placements; otherwise, they must issue securities through public offerings.

Eligible private placement subscribers are limited to: (1) banks, bills-related finance enterprises, trust enterprises, insurance enterprises, securities enterprises or other entities approved by the competent authority (collectively, 'Professional Institutional Investors'), (2) individuals, legal entities or funds meeting specified conditions, and (3) directors, supervisors and managers of the company or its affiliates. If subscribers do not fall under the category of Professional Institutional Investors, the total number of subscribers must not exceed 35. In cases where insiders or related parties are subscribers, the issue price of privately placed securities must not be less than 80 per cent of the reference or theoretical price.

Private placements involving equity or equity-linked securities require approval from the shareholders' meeting and cannot be proposed as a temporary motion. The shareholders' meeting notice must list the rationale behind the pricing and its reasonableness, the criteria for selecting subscribers, their relationship with the company and the necessity of conducting the private placement.

4.2.3 Restrictions on private placements

Investors acquiring privately placed securities are generally required to hold them for three years before they can be freely transferred. Exceptions specified by the SEA allow for transfers within the three-year period under certain circumstances. However, any subsequent transfers by the transferees remain subject to the transfer restrictions outlined in the SEA.

4.3 Public tender offers

4.3.1 Applicable regulations

Public tender offers are primarily regulated by the SEA and the Regulations Governing Public Tender Offers for Securities of Public Companies.

4.3.2 Mandatory public tender offers

Any individual or entity intending to acquire more than 20 per cent of a public company's total issued shares within 50 days, either independently or jointly, must do so through a mandatory public tender offer, extending the same acquisition terms to all shareholders.

4.3.3 Acquisition targets, considerations and periods

In a public tender offer, the acquirer may extend offers to purchase not only the ordinary shares and preferred shares of the target company, but also any securities with equity characteristics (eg, warrants, convertible bonds, corporate bonds with warrants, depository receipts, etc).

Consideration for the tender offer can be in the form of cash, securities of other listed companies, or the acquirer's stocks or bonds. While the regulations allow the use of foreign securities as consideration in public tender offers, the practical difficulties faced by the shareholders of Taiwanese target companies in holding foreign securities usually result in cash being the preferred choice. With few exceptions, the acquirer must provide proof of its ability to pay the acquisition consideration, such as certification from a financial institution confirming the availability of sufficient funds.

The tender offer period shall generally be no less than 20 days and no more than 50 days. However, in the case of a competing tender offer for the same target or other legitimate reasons, the acquirer may apply to the competent authority for an extension of up to 50 days, with only one extension allowed. Hence, the maximum tender offer period cannot exceed 100 days.

4.3.4 Reporting requirements for tender offers

Since 2002, Taiwan's tender offer regime has transitioned from an approval-based to a reporting-based regime. Unless the target company operates in a regulated sector (eg, financial institutions) or the acquirer is a PRC Investor, prior approval from the competent authority is not required. Instead, the acquirer must submit a filing with the Financial Supervisory Commission and make a public announcement before proceeding. To prevent information leaks that could impact stock prices, filings and announcements are typically made simultaneously. The filings must include the required documents as per the Regulations Governing Public Tender Offers for Securities of Public Companies and other applicable regulations. If additional regulatory approvals are needed (eg, merger clearance by the Fair Trade Commission), these necessary filings or applications must be submitted concurrently, and all approvals should be obtained before closing.

Chapter 5: Foreign investment

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5.1 Overview of Taiwan's foreign investment environment

In the past, Taiwan's foreign investment affairs were managed by the Investment Review Committee (IC). In response to a significant increase in reviews involving foreign and mainland Chinese investment cases and the need to enhance scrutiny, the Taiwan government undertook a restructuring process in 2023. This restructuring involved integrating the IC into the MOEA and establishing the DIR to replace the IC. Hence, the DIR now serves as Taiwan's foreign investment affairs watchdog, overseeing all foreign investment activities, in accordance with the Foreign Investment Statute and other relevant regulations. In recent years, Taiwan has experienced significant growth in foreign investments. In 2023 alone, a total of 2,310 cases involving foreign direct investments were approved, amounting to USD 11.255bn in investment. Over the past

eight years (2016–2023), despite challenges such as the Covid-19 pandemic and global economic uncertainties, foreign direct investment has continuously increased, nearly doubling the average annual investment compared to the period from 2008 to 2015.

5.2 Methods of foreign investment

Foreign investors must comply with the regulations stipulated in the Foreign Investment Statute if they intend to establish a subsidiary in Taiwan, hold shares or capital contributions in a Taiwanese company (including acquiring 10 per cent or more of the shares in listed, OTC or emerging stock companies in a single investment), establish a branch office, sole proprietorship, or partnership in Taiwan, or provide loans for over one year to the aforementioned enterprises.

Investment can be made in the form of cash, the provision of machinery, equipment, or raw materials, the licensing of specialised technology or intellectual property rights, or through the restructuring of claims, mergers, acquisitions and equity splits, as recognised by the competent authority.

For the aforementioned types of investments, foreign investors must first apply to and obtain approval from the DIR. However, foreign investors (excluding PRC Investors) intending to establish a branch office in Taiwan do not require prior approval from the DIR. They only need to register their branch office with the MOEA or the local competent authority.

5.3 Prohibited or restricted areas of investment

Taiwan adopts a friendly stance toward foreign investors and encourages their investment in the country. However, similar to many other nations, Taiwan imposes restrictions on foreign investment in specific industries. By issuing a negative list, Taiwan outlines ten categories of industries where foreign investment is completely prohibited (such as military chemicals and weaponry manufacturing, and public transportation) and 16 categories where investment is generally permitted but subject to certain conditions (such as telecommunications, electricity and gas supply industries).

5.4 Applicable incentives and protections

5.4.1 Tax incentives

Taiwan offers various tax incentives to attract foreign investors. For example, companies engaged in advanced R&D activities can benefit from R&D tax credits, allowing them to deduct R&D expenses from their corporate income tax. Additionally, companies importing machinery and equipment that is not locally produced may qualify for import duty exemptions.

Entities that reinvest undistributed earnings into substantial investments may also enjoy corporate income tax exemptions, subject to certain conditions. Furthermore, foreign professionals with specific expertise may qualify for a tax exemption on part of their salary income, subject to certain conditions. Companies in specific industries, such as biotechnology and pharmaceuticals,

emerging technologies, and those involved in private-sector participation in public infrastructure projects, can also enjoy corresponding tax benefits.

5.4.2 Legal protections for foreign investors

Taiwan offers foreign investors the same legal protections as domestic businesses, including comprehensive protection of intellectual property rights. Foreign investors legally investing in Taiwan are entitled to apply for the remittance of annual dividends or profits and a one-time remittance upon divestment. Additionally, for investments where foreign investors hold a 45 per cent stake or more, the law explicitly states that these businesses will not be subject to expropriation or acquisition by the government for military or other reasons.

5.5 Foreign exchange control

Taiwan implements foreign exchange controls on the New Taiwan dollar (TWD) to maintain stability in the foreign exchange market and safeguard national financial security. For foreign currency transactions involving TWD exchanges, any foreign exchange transaction amounting to TWD500,000 or more per transaction must be reported in accordance with the Regulations Governing the Declaration of Foreign Exchange Receipts and Disbursements or Transactions.

Companies with an annual cumulative exchange amount not exceeding US$50m, individuals (or groups) not exceeding US$5m and non-residents not exceeding US$100,000 per transaction. can directly proceed with exchanges through designated foreign exchange banks without prior approval. Transactions exceeding these amounts require supporting documents and approval from the Central Bank of China, Taiwan, via designated foreign exchange banks. Foreign currency transactions not involving TWD exchanges can freely flow in and out of Taiwan.

5.6 Mainland China capital investment

5.6.1 Regulations and definition of PRC investment

Given the unique relationship with Mainland China, Taiwan has specific regulations governing investments by Mainland Chinese investors (‘PRC Investors’), primarily stipulated in the PRC Investment Regulations. In the PRC Investment Regulations, ‘PRC Investor’ refers to PRC individuals, legal entities, organisations or other institutions or their ‘third-area companies’. A third-area company is deemed as a PRC Investor if more than 30 per cent of its shares are held by a PRC individual, legal entity, organisation or any other institution, or if the PRC individuals or entities have control over the said third-area company. Currently, investors from Hong Kong and Macau (including individuals and legal entities) are not categorised as PRC Investors under the PRC Investment Regulations. They are generally governed by the provisions in the Foreign Investment Statute, unless any PRC Investors hold more than 30 per cent of their shares (either directly or indirectly) or have control over them.

5.6.2 Restrictions on industries invested in by PRC Investors

For investments in Taiwan involving PRC Investors, whether establishing a company, a commercial partnership or a branch office, it is necessary to apply for investment approval from the DIR. Unlike the negative list approach used for general foreign investments (ie, non-PRC investments), which excludes certain investment items, Taiwan adopts a positive list approach for PRC investments, meaning that a PRC Investor is only allowed to invest in business items specified in the List of Permitted Industries for PRC Investors that have been approved and announced by the competent authority.

As of 2024, according to the latest List of Permitted Industries for PRC Investors published in 2012, Taiwan has 404 items available for PRC investment. These include categories in manufacturing, services and public infrastructure. Nonetheless, even if PRC Investors apply for investment in business items listed on the List of Permitted Industries for PRC Investors, approval from the DIR is not guaranteed. The DIR will still review each case based on its specific circumstances.

Chapter 6: Restructuring and insolvency

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This chapter focuses on reorganisation, liquidation and bankruptcy procedures in Taiwan.

6.1 Reorganisation procedures

6.1.1 Criteria for reorganisation

In 1966, the Taiwan Company Act first introduced reorganisation procedures. These procedures are only applicable to companies that have publicly issued shares or corporate bonds.

Under the Company Act, if a company that has publicly issued shares or corporate bonds has suspended its business due to financial difficulties or there is apprehension regarding such suspension, but there is a possibility for the company to be restructured or rehabilitated, the company's board of directors or interested parties (including shareholders holding ten per cent or more of the company's issued shares for over six months, creditors with claims equivalent to ten per cent or more of the company's total capital, labour unions or more than two-thirds of the company's employees) may file for reorganisation with the court.

6.1.2 Factors considered by courts in regard to reorganisation applications

Upon receiving a reorganisation application, the court shall assess the possibility of restructuring or rehabilitating the company. The court will seek opinions on the proposed reorganisation from the relevant authorities and the taxation authority. Additionally, the court may appoint an inspector with specialised knowledge or experience in the company's operations, who has no interest in or relationship with the firm, to conduct examinations and submit a report to the court. If the court determines there is no possibility for restructuring or rehabilitation and the company does not qualify for reorganisation, but the conditions for bankruptcy are met, it may dismiss the reorganisation application and declare the company bankrupt *ex officio*.

6.1.3 Emergency preservation measures in terms of company reorganisation

To ensure the company's financial condition remains viable during the reorganisation process, from the filing of the application to court approval, the court may impose emergency preservation measures. These include measures:

1. for the preservation of company assets;
2. that impose restrictions on business operations;
3. that impose limitations on obligations and claims against the company;
4. for the suspension of proceedings for bankruptcy, settlement or compulsory enforcement;
5. that prohibit the transfer of registered share certificates; and
6. for the determination of liabilities for damages of the company's responsible persons and the preservation of their assets.

6.1.4 Application of the equitable subordination rule (the 'Deep Rock Doctrine')

Article 369-7 of the Taiwan Company Act incorporates principles akin to the 'Deep Rock Doctrine' in US law. It addresses situations where a controlling company of an affiliated enterprise causes (directly or indirectly) its subordinate to engage in any abnormal or unprofitable business activities. If the controlling company makes a claim against the subordinate company, whether with or without a priority right, such claims will be settled in the order following all other obligatory claims during the subordinate company's bankruptcy or settlement proceedings under the Bankruptcy Act, or the reorganisation or special liquidation proceedings under the Company Act.

6.1.5 The effect of reorganisation

Upon the completion of a company's reorganisation: (1) any declared but unpaid claims, except those handled and assigned to the reorganised company in accordance with the reorganisation plan, will expire (including the undeclared ones); (2) any changes or reductions in the shareholders' shareholding resulting from the reorganisation will expire; and (3) bankruptcy, settlement, compulsory enforcement and relevant litigation procedures involving the company will become ineffective.

6.2 Liquidation procedures

In Taiwan, liquidation must follow the procedures stipulated by the Company Act, as there are no arbitrary liquidation procedures. For the liquidation of unlimited companies, limited companies and unlimited companies with limited liability, any dividends or bonuses will be declared and losses covered, according to their articles of incorporation after settling their liabilities. For companies limited by shares, the Company Act distinguishes between ordinary liquidation procedures and special liquidation procedures. The following situations will introduce these two liquidation procedures for companies limited by shares.

6.2.1 Ordinary liquidation procedures

Ordinary liquidation procedures are primarily led by the liquidator. If there are no special provisions in the company's articles of incorporation or if the shareholders' meeting does not appoint a liquidator, all directors of the company will serve as liquidators, according to the Taiwan Company Act. If a liquidator cannot be determined through the company's articles of incorporation, the shareholders' meeting or statutory methods, any interested party may petition the court to appoint a liquidator.

After the dissolution of a company limited by shares, ordinary liquidation procedures must first be carried out. If significant obstacles arise during the liquidation procedure (eg, the company has numerous interested parties or complex creditor–debtor relationships) or if there is suspicion that the liabilities of the company exceed its assets (eg, a company has fraudulent debts), the court may, upon petition by the liquidator, creditor or shareholder, or *ex officio*, order the company to initiate special liquidation procedures.

6.2.2 Special liquidation procedures

Compared to ordinary liquidation procedures, special liquidation procedures are court-led and impose restrictions on the powers of the liquidator. These procedures include a 'creditors' meeting' system, composed of all creditors, who can express their opinions on the reports compiled by the liquidator and the methods for implementing the liquidation. Under special liquidation procedures, many of the liquidator's powers generally require approval at the creditors' meeting (eg, disposing of company assets, borrowing money, initiating legal action, entering settlement or arbitration agreements, and waiving rights). Additionally, the creditors' meeting may adopt a debt settlement agreement if attended by more than half of the creditors and approved by creditors representing three-fourths or more of the total amount of claims. This resolution shall be approved by the court. Unless otherwise stipulated by law, the terms of the settlement agreement shall be equitable among all the creditors.

In regard to special liquidation procedures, the court has greater intervention power. This includes the authority to order the liquidator(s) to report on the progress of the liquidation procedures and the status of the company's assets, conduct necessary investigations for supervising the liquidation at any time, implement asset preservation measures or prohibit the transfer of shares when deemed

necessary, and remove a liquidator for significant reasons. Furthermore, if it becomes impossible to reach a debt settlement agreement with creditors during special liquidation procedures or if such agreement cannot be effectively implemented, the court shall *ex officio* declare the company bankrupt and convert the liquidation procedure into a bankruptcy procedure.

6.2.3 Liquidation procedures involving a foreign company's Taiwan branch office

The Taiwan branch office of a foreign company wishing to close its business must undergo and complete liquidation before deregistration. The branch office must settle all its debts and obligations arising from its operations within Taiwan. Any unsettled debts shall be paid by the foreign company. Typically, the liquidator is either the foreign company's responsible person in Taiwan or the manager of the Taiwan branch office.

Additionally, a foreign company's property within Taiwan cannot be moved out of the country during the liquidation process and may only be disposed of by the liquidator for the purposes of liquidation.

6.3 Bankruptcy procedures

According to the Company Act, if a company's assets are clearly insufficient to offset its debts, the board of directors shall petition the court to declare the company bankrupt, unless there is a possibility of restructuring and rehabilitation and a reorganisation procedure is undertaken. During the liquidation process, if the company's assets are insufficient to pay off its debts, the liquidators shall also petition the court to declare the company bankrupt. Additionally, if a debtor is unable to repay his/her debts, creditors may petition the court to declare the debtor bankrupt.

When the court grants a bankruptcy declaration, it will appoint a bankruptcy administrator to oversee the proceedings, in accordance with the Bankruptcy Act. This includes convening creditors' meetings, managing the bankruptcy estate and proposing distribution for repayment. Once the bankruptcy process is concluded, all the debts of the bankrupt party will be released.

Chapter 7: Employment, industrial relations, and work health and safety

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The Labor Standards Act (LSA) establishes the essential government regulations that set the minimum standards and requirements for all employment relationships. These regulations are mandatory for employers whose business falls within the scope of the LSA. The terms and conditions of an employment contract must meet or exceed the minimum standards outlined in the LSA. The key requirements of the LSA and related labour laws and regulations are detailed below.

7.1 Employee statutory entitlements

7.1.1 Minimum wage

An employer must pay the wages as agreed upon by the employee and the employer, with the condition that the wages do not fall below the basic wage.

7.1.2 Regular working hours

The regular working hours cannot exceed eight hours per day and 40 hours per week. With the consent of the labour union, or the labour management conference if there is no labour union, the working hours of a workday within any two-week period can be spread over the same two-week period, as long as the total number of working hours in each workday over the same two-week period does not increase by more than two hours. For government-designated entities, the working hours can be spread over a four- or eight-week period. Employers are required to maintain sign-in books or timecards for workers to record their attendance, on a daily basis, down to the minute. These records must be kept on file for at least five years.

7.1.3 Overtime

An employer may request employees to work overtime after obtaining consent from the labour union or the labour management conference if there is no labour union. The maximum number of working hours per day, including regular working hours and overtime, cannot exceed 12, and the total extended working hours cannot exceed 46 per month. With the approval of the labour union or the labour management conference, the maximum number of overtime hours per month can be increased to 54, but not exceeding 138 (46 multiplied by three) per quarter. Additionally, if an employer has more than 30 employees, they must report to the local competent authority.

Employers are required to compensate employees for overtime work, according to statutory rates. For a worker's overtime work, work hours and wages on rest days will be calculated based on the actual hours worked. When calculating the maximum number of overtime hours, all hours worked on a rest day must be included, except for overtime hours in the event of a natural disaster, accident or other emergency. If an employee chooses to receive compensatory time off instead of overtime pay and the employer agrees, the hours of the compensatory time off will be based on the actual hours of overtime worked by the employee. The ratio of overtime hours to compensatory leave is 1:1. The timeframe for taking compensatory time off can be discussed and agreed upon by both parties. However, if an employee does not use all their compensatory leave during the agreed period, or if the employee is terminated before using all the time off, the unused hours of compensatory time off must be compensated through the payment of a salary, calculated based on the statutory rates for overtime pay and the employee's wages at the time the overtime work was performed.

7.1.4 Regular rest day(s) and fixed day(s) off

Employees are entitled to two days off every seven days, consisting of one fixed day off and a rest day. For employers who have adopted a four-week flexible working-hour system, they may provide two fixed days off every two weeks. The specific days for the fixed day off and rest day should be agreed upon by both the employer and the employees. Typically, Sundays are set as the fixed day off and Saturdays as rest days.

Employers have some flexibility in arranging the weekly fixed day off. Even if an employer is not eligible for the four-week flexible working-hour system, they may adjust the fixed day off every seven days, provided that (1) the approval of the relevant authority is obtained, (2) the employer is in an industry designated by the Ministry of Labor (MOL), and (3) the union or labour management conference (or a report to the local competent authority for employers with more than 30 employees) approves the adjustment. This means that the fixed day off can be freely assigned within a given seven-day period with such an adjustment.

7.1.5 Annual leave

The following rules apply to annual leave in Taiwan:

- workers who have been employed for more than six months but less than one year are entitled to three days of annual leave;
- workers who have been employed for one year or more, but less than two years, are entitled to seven days of annual leave;
- workers who have been employed for two years or more, but less than three years, are entitled to ten days of annual leave;
- workers who have been employed for three years or more, but less than five years, are entitled to 14 days of annual leave;
- workers who have been employed for five years or more, but less than 10 years, are entitled to 15 days of annual leave; and
- workers are entitled to one additional day of annual leave for each year of seniority over 10 years, up to a maximum of 30 days.

Employees have the right to determine when to take their annual leave, but employers may negotiate this arrangement with workers in cases involving urgent operational demand or for personal reasons. Employers must inform employees when they become eligible for annual leave and help them schedule it. Unused annual leave can be carried forward to the next year, subject to negotiation and agreement between employers and employees. If any portion of the carried-over annual leave remains unused at the end of the next year or if the employment contract terminates before the leave is used, the employee is entitled to compensation based on their salary at the end of the year in which the leave was accrued. When an employee requests time off, the annual leave carried forward into the following year must be used first. Employers must document the amount of annual leave each employee is entitled to and notify their employees of this information in writing every year.

7.2 Employer's obligations with respect to occupational injuries

If an employee dies or is injured, becomes disabled or ill due to an occupational hazard, they or their heirs are entitled to certain compensation, as follows:

- medical expenses compensation: the amount must be based on the expenses incurred;
- salary compensation during the medical treatment period: an employee who is unable to work while undergoing medical treatment is entitled to receive their regular salary before the incident occurred. If an employee does not recover after two years of medical treatment, has lost the ability to perform their previous duties and is not eligible for the disability compensation detailed below, the employer may provide the employee with compensation equivalent to 40 months' average salary and will thereafter be exempt from paying the employee salary compensation;
- disability compensation: an employee who is verified to be disabled upon termination of the medical treatment period is entitled to disability compensation, payable according to the Labor Insurance Act; and
- death compensation: the heirs of the deceased are entitled to receive death compensation equivalent to 40 months' average wages, plus compensation for funeral expenses, equivalent to five months' average wages.

7.3 Statutory causes for termination of an employee's employment contract

Under the LSA, an employer cannot unilaterally terminate an employee's employment contract unless one of the statutory causes provided in Article 11 or Article 12 exists. If the employer terminates the employment contract under Article 11 of the LSA (ie, lay-off), they must provide severance pay and give advance notice, according to the statutory notification period. If the termination falls under Article 12 of the LSA (ie, dismissal), the employer is not obligated to provide severance pay and/or give advance notice.

7.4 Retirement

An employee is eligible for retirement if they meet one of the following conditions: (1) has worked for at least 15 years and is at least 55 years old, (2) has worked for 25 years, or (3) has worked for at least ten years and is 60 years old. An employee may be required to retire upon reaching the age of 65 or if they are unable to perform their duties due to mental or physical disability.

7.4.1 The old pension scheme

Retirement benefits under the old pension scheme, as provided in accordance with the LSA, are calculated as follows: (1) for the first 15 years of service, 200 per cent of the eligible employee's average monthly wage for each full year of service accrued under the old pension scheme; (2) for each additional year of service, 100 per cent of the eligible employee's average monthly wage for each full year of service; (3) any fractional year of service of less than six months is counted as half a

year, and reaching six months or more is counted as a full year; and (4) the pension is capped at 45 times the average monthly wage. An employer is required to contribute on a monthly basis to the old pension scheme as a reserve fund for retirement benefits for employees.

7.4.2 The new pension scheme

Under the Labor Pension Act (effective from 1 July 2005), an employer must contribute at least six per cent of each employee's monthly pensionable salary to their individual pension fund accounts each month, along with any voluntary contributions made by employees (up to six per cent of their monthly pensionable salary).

Chapter 8: Tax law

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Taiwan does not adopt a single tax code system; instead, it employs separate tax acts to collect various taxes. This chapter provides a high-level introduction to the principal taxes in Taiwan.

8.1 Income tax

Generally, domestic corporations in Taiwan are taxed on their worldwide income, while foreign corporations are taxed only on income sourced in Taiwan. Taiwan resident individuals are taxed solely on their Taiwan-sourced income, while non-Taiwan resident individuals are subject to withholding tax on their Taiwan-sourced income. Corporate income is taxed at a flat rate of 20 per cent on taxable income, whereas individual income is taxed at a progressive rate of five per cent, 12 per cent, 20 per cent, 30 per cent and 40 per cent.

Additionally, income tax is supplemented by a basic income tax (also known as the alternative minimum tax or AMT). If the regular tax amount for a Taiwan resident individual or enterprise equals or exceeds the basic tax amount, the income tax for that individual or enterprise must be calculated according to the Income Tax Act (ITA) and other relevant laws. However, if the regular income tax amount is less than the basic tax amount, the income tax payable must include the balance of the basic tax amount and regular income tax, in addition to the amount calculated in accordance with the ITA and other relevant laws.

Taiwan does not impose capital gains tax. Typically, capital gains are subject to income tax, with the exception of gains from the sale of land and Taiwan securities and futures.

8.1.1 Capital gain from the sale of land

Although capital gain from the sale of land is not subject to income tax, it is still liable to land value increment tax (LVIT). The LVIT rate is 20 per cent, 30 per cent or 40 per cent of the increase in government-assessed value (usually lower than the actual transaction value) during the period from the date of the purchase to the date of the sale of the land. Starting from 1 January 2016, capital gain from the sale of the following buildings and/or land is subject to income tax: (1) buildings and/or land acquired after 1 January 2016 and (2) buildings and/or land acquired after 1 January 2014 and owned for less than two years prior to sale.

8.1.2 Capital gain from securities transactions

Starting from 1 January 2016, capital gains from the sale of Taiwan shares are not subject to income tax, regardless of the seller's status (individuals, Taiwan business entities, foreign business entities with or without a branch or business agents in Taiwan) and the type of securities sold. However, domestic and foreign corporations with a fixed place of business or a business agent in Taiwan may be liable for the AMT. Similarly, capital gains from the sale of bonds are exempt from income tax, regardless of the seller's status. However, domestic and foreign corporations with a fixed place of business or business agents in Taiwan may be subject to the AMT. For a foreign company without a branch or business agent in Taiwan, capital gains from such sales are exempt from income tax and AMT.

8.2 Sales tax

According to the Value-added and Non-value-added Tax Act (BTA), business tax is levied on the sale of goods or services within the territory of Taiwan and the importation of goods. There are two types of business tax: (1) value-added tax (VAT) and (2) gross business receipts tax (GBRT). The current rate of VAT is five per cent for most VAT operators. Trust and investment enterprises, securities and futures enterprises, short-term bills and commercial paper enterprises, and pawn shops are subject to a GBRT rate of two per cent on their exclusively authorised business income and five per cent on their non-exclusively authorised business income. Banking and insurance enterprises are subject to a five per cent GBRT rate on their revenue, except that the business tax rate for the reinsurance premium income of insurance enterprises is one per cent. However, non-life insurance enterprises can deduct the amount of retained claims from their exclusively authorised business income when calculating the five per cent business tax.

Businesses are obligated to provide government uniform invoices (GUIs) to their buyers when selling goods or services, as per the Table of Limitations for Issuing Sales Invoices by Businesses under the BTA. However, businesses with special operations or those classified as small businesses may be exempt from issuing GUIs and can instead issue ordinary receipts for sales. A business entity must, by the 15th day of each alternate month (January, March, May, July, September and November), declare to the tax office in its location the sales amount for the previous two months and the business tax payable or overpaid during that time. Any outstanding business tax must be paid to the National Treasury first; the receipt for the tax payment can then be submitted to the tax office for review. Business tax on imported goods is levied by customs. The collection procedures and administrative

relief for business tax are governed by the provisions in the Customs Act and the Customs Smuggling Prevention Act.

8.3 Land and building tax

Landowners registered with the Land Registry Office as of 31 August of each year must pay an annual land tax. This tax is assessed in November of each year and is based on the total declared land value of the land owned by the landowners in the same city or county, as well as the starting cumulative value of land in that city or county.

Building owners must pay an annual building tax based on the number of months of building ownership in the taxable year. This tax is assessed in May of each year and is calculated using the government-assessed current building value (after depreciation) of the building. The city or county land authorities determine the rate, ranging from three per cent to five per cent for commercial buildings and one per cent to 4.8 per cent for residential buildings.

8.4 Estate and gift tax

If a deceased person was a Taiwan citizen and had constant resided in Taiwan, estate tax is payable on their estate, regardless of whether the estate is located within or outside of Taiwan. If the deceased was a Taiwan citizen but did not reside in Taiwan constantly or was not a Taiwan citizen, estate tax is payable only on the estate located within Taiwan. Estate tax is payable at a progressive rate of ten per cent, 15 per cent and 20 per cent based on the net amount of an estate after subtracting any and all deductions and exemptions.

Gift tax is payable on any gift from a donor who is a Taiwan citizen and resides in Taiwan constantly, regardless of whether the gift is located within or outside of Taiwan before being given. If the donor is a Taiwan citizen but resides outside of Taiwan constantly or is a non-Taiwan citizen, gift tax is payable only if the gift is located within Taiwan before being given. Gift tax is payable at progressive rates based on the total value of the gifts, with an annual exemption of TWD2,440,000 that can be deducted from the total value of gifts for each donor.

8.5 Commodity tax and customs duty

All commodities, whether manufactured domestically or imported, that are listed in the Commodity Tax Act are subject to taxation at rates established by the law. For domestically manufactured taxable goods, the respective manufacturers or producers are responsible for paying the tax. Additionally, consignees or holders of bills of lading for imported taxable goods are also considered taxpayers.

Customs duty is only applicable to specific imported goods. Consignees and holders of bills of lading or commodities are accountable for paying import duty and dues. Unless goods or importers are eligible for a duty exemption, import duty and dues are calculated based on the duty-paying value, according to the prescribed tariff rates. The ‘duty-paying value’ is, in general, calculated based on the transaction price of the imported goods. The ‘transaction price’ is the price actually paid or payable on imported goods that are sold in, or exported to, Taiwan.

Chapter 9: Intellectual property

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9.1 Patents and industrial know-how

The Patent Act was enacted in 1944 and most recently revised in 2022. There are three types of patents: inventions, utility models and design patents. An 'invention patent' can refer to either an invention that is an object or a method/process invention that involves high-level technical concepts utilising natural rules. A 'utility model patent' involves the creation or improvement of an object's form, construction or fitting. A 'design patent' refers to the creation of the shape, pattern, colour or combination thereof, which can be visually appraised.

Inventors, utility model creators, designers, or their assignees or successors are eligible to file a patent application. An employer can apply for and own a patent for an invention completed by its employee through the performance of their duties, unless otherwise specified in contracts. The term of exclusive rights granted to each type of patent is 20 years for invention patents, ten years for utility model patents and 15 years for design patents.

According to the Foreign Investment Statute, a foreign investor may invest in a company incorporated in Taiwan that has industrial patent rights and/or know-how, including industrial information, methods or knowledge that can improve the invested company's abilities in regard to research and development, management, production, manufacturing or sales. Patent licensing can be exclusive or non-exclusive, and sublicensing is permitted. A licence or sublicence cannot be enforced against a third party if it is not recorded with the Intellectual Property Office (TIPO). Similar to the patent holder, an exclusive licensee may demand that a person who infringes or is likely to infringe on the patent right stop or prevent such infringement and claim damages for any losses.

9.2 Trademarks and trade names

The Trademark Act was enacted in 1930 and most recently revised in 2023. According to the Trademark Act, a trademark is defined as any word, device, symbol, colour, sound, three-dimensional shape or combination thereof. Additionally, a trademark must be distinctive enough for consumers of goods or services to recognise it as a mark indicating those goods or services and to distinguish them from goods or services provided by others. A trademark registered with the TIPO is protected under the Trademark Act. A party seeking trademark rights to indicate its goods or services must apply for trademark registration with the TIPO. The TIPO typically takes between eight to 12 months to decide on a trademark registration application. The Trademark Act allows a trademark rightsholder to license another party to use its trademark related to all or part of the designated goods or services. The Trademark Act also requires that licences are registered with the TIPO and the same applies when a licensee sublicenses a trademark to another party with the consent of the trademark rightsholder. Even if a licence is not registered with the TIPO, it is still

valid and effective between the parties before registration. However, the licensee cannot assert its rights against third parties.

A trade name or corporate name is the official name under which a company conducts business. In Taiwan, an application must be filed with the MOEA to reserve a Chinese corporate name and scope of business before establishing a company. According to the Regulations Governing Review of Applications for Reservation of Corporate Names and Scopes, no business may use a corporate name that is the same as another's registered trade name. Whether two corporate names are the same depends on an overall view of the 'specific parts' of the two names. If the 'specific parts' of the two names are not the same, they will be considered different. However, even if two corporate names contain the same 'specific parts', they will still be regarded as different if one corporate name contains other characters indicating a different type of business or any characters distinguishing one corporate name from the other. When reserving a corporate name, the MOEA will not check whether the proposed name is identical to a registered trademark. In other words, a company may reserve and register a trade name identical to another trademark. However, if a trademark is a well-known mark, such action may constitute a trademark infringement or a violation of the Fair Trade Act (FTA).

Both the Trademark Act and the FTA provide specific protection for well-known marks, including the right to prevent another from registering a similar mark that will likely cause confusion or diminish the distinctiveness or reputation of the well-known mark, the right to prevent another from using a similar mark that will likely cause confusion or diminish the distinctiveness or reputation of the well-known mark, and the right to prevent another from using the distinctive elements of a well-known mark as the corporate name, trade name, domain name or other indication of source if such use will likely cause confusion or diminish the distinctiveness or reputation of the well-known mark. Taiwan does not maintain a separate register of 'well-known marks'. Instead, the determination of whether a trademark is a well-known mark is made on a case-by-case basis by the TIPO, the courts, the Fair Trade Commission (FTC) and so on.

9.3 Copyright

The Copyright Act was enacted in 1928 and most recently revised in 2022. The term 'work' under the Copyright Act refers to a creation within the literary, scientific, artistic or other intellectual domain. The protection of works is based on 'creation' rather than registration, as the copyright registration system has been abolished in Taiwan. An author has moral rights and economic rights to their work and will enjoy copyright protection upon completion of the work without any form of registration. Economic rights last for the author's lifetime and 50 years after the author's death. Economic rights to works authored by a juristic person last for 50 years after the work's public release.

The economic rightsholder can license others to exploit the work. This licence can be exclusive or non-exclusive. Based on the principle of freedom of contract, the economic rightsholder (ie, licensor) is free to negotiate with the licensee on the territory, terms, content, method of exploitation and other details of the licence (such as the amount of the royalties and reports from the licensee on the sales of the licensed product(s) for royalties calculations) in a licence agreement. If any right is not clearly covered in the agreement, it is assumed not to have been licensed. A non-exclusive

licensee may not sublicense the rights inherent in the licence to any third party for exploitation without the licensor's consent. An exclusive licensee may, within the scope of the licence, exercise rights as an economic rightsholder and may perform litigious acts in its own name. The licensor may not exercise rights within the scope of an exclusive licence.

Chapter 10: Financing

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In Taiwan, companies can receive funding through various methods as outlined below.

10.1 Shareholders' fund

Shareholders can inject funds into a company by providing equity (increasing capital by issuing new shares), credit/financing facilities (such as shareholders' loans) or quasi-equity (like convertible bonds).

A decision to increase the share capital must be approved by more than half of the total shareholders of a limited company or by a majority vote at a board meeting attended by two-thirds or more of the directors of a company limited by shares. Unless otherwise specified by law or approved by a competent authority, a company limited by shares must set aside 10 per cent to 15 per cent of the newly issued shares for its employees. Existing shareholders have the right to subscribe to the new shares in proportion to their current shareholding.

There are no specific requirements for a shareholders' loan, except if the offshore loan exceeds US$50m in a calendar year, in which case approvals from the DIR and the Central Bank of Taiwan are necessary. To issue corporate bonds, a board resolution must be adopted by a majority vote at a board meeting attended by two-thirds or more directors. However, the company may not issue corporate bonds in certain adverse financial situations, such as when in breach of contract or in default. The total amount of secured corporate bonds cannot exceed the company's total assets after deducting the total liabilities and intangible assets, while the total amount of unsecured corporate bonds may not exceed 50 per cent of this remainder.

10.2 Third-party loans

Businesses can obtain short-term, medium-term and long-term loans, as well as other credit facilities from banks, often requiring personal guarantees or collateral, such as real estate. However, if a company wishes to borrow from another Taiwanese company, the lending company can only do so under the following circumstances: (1) when an intercompany business transaction necessitates the lending arrangement or (2) when an intercompany short-term financing facility

(less than one year) is needed, as long as the amount does not exceed 40 per cent of the net asset value of the lending company.

10.3 Capital market

A company that has publicly offered shares or is listed on the TWSE or TPEx can raise capital from capital markets by issuing shares or bonds. The Financial Supervisory Commission (FSC) is the regulator for the securities market.

The TWSE, established in 1961, is the primary equities market in Taiwan, known for maintaining an orderly market and cost-effective trading capabilities. TPEx, founded in 1994, has actively assisted emerging and high-tech industries, as well as small to medium-sized enterprises, in regard to listings and fundraising, expanding Taiwan's securities market. To apply for a public offering or listing of shares, a company must comply with the TWSE/TPEx listing rules, the SEA and other applicable laws and regulations issued by the FSC. Only after obtaining public offering status can a company issue shares or bonds to public investors through a public offering or private placement.

Chapter 11: Privacy laws and data protection

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The Personal Data Protection Act (PDPA) is the main law that governs the collection, processing and use of personal data in Taiwan. Originally known as the Computer-Processed Personal Data Protection Act, it was first enacted in 1995 and underwent an overhaul in 2010, with the amendments taking effect on 1 October 2012. The PDPA Enforcement Rules offer further guidance on interpreting and implementing the PDPA. The PDPA's framework is similar to the data protection laws in the European Union (EU), as the 2010 amendments were primarily influenced by the Data Protection Directive (Directive 95/46/EC), enacted in 1995.

The PDPA currently lacks an independent supervisory authority dedicated to personal data protection, which is enforced by various ministries, commissions and local governments. However, in order to establish an independent supervision mechanism for data protection by August 2025 (as mandated by the Constitutional Court's *111-Hshien-Pan-13* judgment), the Legislative Yuan passed amendments to the PDPA on 16 May 2023. Article 1-1 of the amended PDPA specifies that the Personal Data Protection Commission (PDPC) will serve as the competent authority for the PDPA and will consolidate the enforcement powers currently held by ministries, commissions and local governments from the date of the PDPC's establishment.

After six months of preparation, the Preparatory Office of the PDPC was set up on 5 December 2023. In addition to finalising the enactment of the PDPC's organic statute and officially establishing the PDPC, the Preparatory Office of the PDPC is also responsible for initiating the Phase 2 amendments

in the PDPA. Like the 2010 amendments, the Taiwan government continues to look to the EU's data protection legislation, specifically the General Data Protection Regulation (GDPR), as a significant point of reference for drafting amendments to the PDPA. While the Preparatory Office of the PDPC has not yet released the draft bill for public comment, it is anticipated that the amended PDPA will be more closely aligned with the GDPR.

This chapter provides a high-level summary of the main requirements set out in the PDPA.

11.1 Legal bases for processing

Under the PDPA, a data controller may collect and process personal data only if (1) the data is necessary for serving a specific purpose and (2) such collection or processing is based on a statutory ground (eg, a contractual relationship exists between the data collector and the data subject, or informed consent has been obtained from the data subject). Furthermore, the PDPA prohibits the processing of personal data with regard to a data subject's medical history, medical treatments, genealogy, sex life, health check results and criminal record, except in specific exceptional circumstances.

11.2 Transparency requirements

Under the PDPA, a data controller must inform a data subject of the following details at the time of data collection:

1. the entity collecting their personal data;
2. the purpose(s) for which the data is being collected;
3. the type of personal data to be collected;
4. how, where, by whom and in what manner the data will be used and for how long;
5. the rights the data subject may exercise regarding their personal data and how to do so; and
6. how their rights or interests would be impacted if they choose not to provide the data. In practice, data controllers typically include such information in their privacy policy or statement, thereby meeting the transparency requirements outlined above.

11.3 Data security

The PDPA mandates that data controllers implement appropriate measures to prevent personal data from being stolen, altered, damaged, destroyed, lost or disclosed. The PDPA Enforcement Rules further provide specific technical and organisational measures that data controllers may consider adopting based on the principle of proportionality, taking into account the quality and quantity of the personal data involved.

Strictly speaking, neither the PDPA nor the PDPA Enforcement Rules require data controllers to have specific security measures in place. It is at the discretion of data controllers whether to adopt

a particular security measure. However, the PDPA empowers central competent authorities to designate one or more industry sectors under their supervision and require them to establish a security maintenance plan for personal data files by promulgating data security regulations, which would include more detailed security requirements. The designated business operators would then be obligated to implement specific security measures.

11.4 Supervision of data processors

Pursuant to the PDPA Enforcement Rules, if a data controller wishes to engage a data processor to collect, process or use personal data on its behalf, the data controller must implement appropriate supervision measures in regard to the data processor. Additionally, the data controller must regularly verify that the data processor is implementing these measures and maintain a record of the results of such verification.

11.5 Cross-border data transfers

The PDPA generally allows for the cross-border transfer of personal data without needing an additional legal basis. There is also no requirement for data localisation under the PDPA. However, the PDPA grants central competent authorities the power to restrict cross-border data transfers by issuing announcements in specific circumstances.

For instance, the National Communications Commission (NCC) issued a blanket order, on 25 September 2012, prohibiting telecoms and broadcasting operators from transferring their subscribers' personal data to the People's Republic of China (PRC) due to inadequate personal data protection laws in the PRC. Similarly, the Ministry of Health and Welfare (MOHW) and the MOL issued blanket orders on 21 January 2022 and 20 February 2023, respectively, prohibiting social worker offices and human resources agencies from transferring personal data to the PRC for the same reason.

Chapter 12: Competition law

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The FTA is the primary competition legislation in Taiwan, which regulates enterprises' restrictive business practices and unfair trade practices. Restrictive business practices include monopolies and the abuse of dominance, combination (merger control), concerted actions (cartel), the fixing of resale prices and other such practices (eg, boycotts, discriminatory treatment, solicitation of trading counterparts by improper means, tying and other restrictions imposed on trading counterparts' business activities without justifiable reasons). Unfair trade practices cover counterfeiting, false advertisements, damage to business reputation, illegal multi-level sales, and other deceptive or obviously unfair conduct capable of affecting trading.

12.1 Monopolies

The FTA defines a monopoly as a situation in which an enterprise faces no competition or possesses such significant market power that it can inhibit competition in a relevant market. If two or more enterprises do not engage in price competition as a whole, they will be considered monopolistic enterprises.

An enterprise meeting any of the following criteria may be deemed monopolistic, unless its market share is below ten per cent or its total sales in the preceding fiscal year are less than the amount announced by the FTC: (1) the enterprise's market share in a relevant market reaches 50 per cent; (2) the combined market share of the enterprise and other enterprises in a relevant market reaches two-thirds of the total; or (3) the combined market share of the enterprise and two other enterprises in a relevant market reaches 75 per cent. An enterprise that does not meet any of the above criteria may still be considered monopolistic if its establishment, goods or services are subject to legal or technological restraints, or if other circumstances affect the market's supply and demand and impede others' ability to compete.

While being a monopolistic enterprise is not illegal per se, it is prohibited from abusing its dominant position by using unfair practices to exclude other enterprises from the market, improperly determining, maintaining or changing prices, requiring preferential treatment without proper cause, or engaging in any other acts that abuse its dominant market position.

12.2 Mergers and combinations

Under the FTA, a pre-combination notice must be submitted to the FTC if a combination meets the thresholds specified in the FTA.

12.2.1 Types of notifiable combination

Pursuant to Article 10 of the FTA, a 'combination' includes:

1. a merger;
2. holding or acquiring at least one-third of the total voting shares of, or interest in, another enterprise;
3. transferring or leasing all, or a substantial part of, an enterprise's business or assets;
4. having an arrangement with another enterprise for joint operation on a regular, ongoing basis, or managing another enterprise's business based on a contract of entrustment; or
5. having direct or indirect control over the operation or personnel of another enterprise.

12.2.2 Filing thresholds

According to Article 11 of the FTA, if any or all of the parties to a combination meet any of the following thresholds, a pre-combination notification must be filed with the FTC before the proposed transaction closes: (1) as a result of the combination, any of the enterprises will acquire at least one-third of the market share; (2) any of the enterprises participating in the combination holds a market share of at least one-fourth of the total before the combination; or (3) the preceding fiscal year's turnover of an enterprise participating in the combination exceeded the amount set forth by the FTC.

12.3 Concerted actions (cartel)

Concerted actions refer to the coordinated behaviour of any competitive enterprises at the same stage of production and/or marketing, achieved through contracts, agreements or other forms of mutual understanding. This coordination is aimed at jointly determining the price of goods or services, or imposing limits on the quantity, technology, products, facilities, trading partners or trading territory related to such goods or services. As a result, it restricts the business activities of the involved enterprises, impacting the market's functioning in terms of production, trade in goods, or supply and demand for services.

The existence of a mutual understanding in regard to a concerted action can be inferred from various factors that provide credible evidence, including market conditions, the nature of the product or service, consideration of the costs and revenue and the economic rationale of the enterprises. The FTA prohibits all concerted actions, except those that are beneficial to the national economy and public interest, or those that fall within certain categories approved by the FTC.

12.4 Unfair trade practices

Articles 20 to 25 of the FTA impose criminal and administrative penalties on enterprises engaged in unfair competition practices. These practices include causing harm to another enterprise by discontinuing supplies, purchases or other business transactions; imposing improper restrictions on trading counterparties; using names or symbols that cause confusion with other entities; engaging in false or misleading advertising; and other deceptive or obviously unfair acts that are sufficient to impact trading order.

Certain restrictive trade practices are not only subject to legal consequences under the FTA, but are also punishable under the Criminal Code. For instance, individuals who obstruct the transportation or sale of agricultural or industrial products, leading to a shortage in market supply, may face penalties under Article 251 of the Criminal Code. Additionally, misrepresentation on a commodity label is subject to penalties under Article 255 of the Criminal Code, while spreading rumours or using fraudulent means to damage another person's credit can result in penalties under Article 313 of the Criminal Code.

Chapter 13: Dispute resolution

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Taiwan follows a 'three-level and three-instance' system for civil proceedings, with the District Court, High Court and Supreme Court comprising the three levels. Cases are initially heard at the District Court (first instance) and may be appealed to the High Court (second instance) and further to the Supreme Court (third instance), if applicable. The first and second instances address a case's factual and legal issues, while the third instance only reviews erroneous applications or violations of laws and regulations. Appeals to the Supreme Court are limited to cases where the judgment is in violation of laws and regulations and are subject to a value threshold in terms of the subject matter.

Arbitration and mediation are the most commonly adopted alternatives for civil dispute resolution. Mediation may be initiated as a result of a party's motion or the court's recommendation before or during litigation proceedings. Nonetheless, for certain matters like labour disputes, mediation is legally required before the commencement of litigation proceedings. The Code of Civil Procedure (CCP) is the main law governing civil court proceedings in Taiwan, covering general commercial disputes and personal affairs. such as marriage, family relationships, guardianship and declarations of death. Different procedural requirements apply based on the plaintiff's claims, and the CCP also provides rules on provisional measures and judgment enforcement. The Compulsory Enforcement Act and other supplemental regulations also apply to civil court procedures.

Taiwan's court system accommodates foreign companies and individuals. For instance, if a foreign party does not understand Mandarin, the court must provide an interpreter to safeguard the party's rights and benefits. Nevertheless, all briefs and documents submitted to the court must be in traditional Chinese.

13.1 Interim remedies and court proceedings

Interim remedies, such as provisional attachments, provisional injunctions and injunctions for maintaining a temporary status quo, are available before a trial. A provisional attachment is used for monetary claims or those that can be converted to monetary claims, while a provisional injunction is for non-monetary claims. An injunction for maintaining a temporary status quo is used to prevent material harm, imminent danger or similar events.

Under the CCP, the court will only grant a provisional attachment or a provisional injunction if it is impossible or extremely difficult to satisfy the claim through compulsory execution in the future. In cases of preventing material harm, imminent danger or similar circumstances, a petition may be filed for an injunction to maintain a temporary status quo in a legal dispute. To obtain these interim remedies, the applicant must meet specific requirements, including concerning the type of claim and the urgency and necessity of securing the claim.

The CCP also includes provisions for interim measures for evidence preservation. If evidence is at risk of being lost, destroyed or difficult to be adduced for the court, a party can request the court to preserve the evidence with the opposing party's consent. Additionally, to protect legal rights and interests, a party can request expert testimony, inspection or preservation of documentary evidence to determine the current status of a matter or object. The request for evidence preservation can be made before or after filing a lawsuit.

There are no specific time limits for the court to conclude litigation, interim measures or appeals. Typically, it takes approximately 12 to 24 months to complete litigation proceedings for the first and second instances, and 12 to 18 months for third-instance proceedings. Obtaining interim measures usually takes around two to three weeks for a provisional attachment and one to two months for a provisional injunction and an injunction for maintaining a temporary status quo. However, the duration can vary, based on the complexity of the case.

13.2 Recognition of foreign judgments

A Taiwanese court can recognise and enforce a final and irrevocable foreign court judgment or decree. According to Article 402 of the CCP, a foreign court's final and binding judgment will be recognised unless the following circumstances apply:

- the foreign court lacks jurisdiction under Taiwan law;
- a default judgment is rendered against the losing defendant, unless the notice or summons on the initiation of action had been legally served in a reasonable time in the foreign jurisdiction, or had been served through judicial assistance provided under Taiwan law;
- the content of the judgment or the related litigation procedure is contrary to Taiwan's public order or good morals; or
- there is no mutual recognition between the foreign jurisdiction and Taiwan (ie, where judgments given by the courts in Taiwan are not reciprocally recognised by the concerned foreign courts).

In Taiwan, the principle of reciprocity is generally applied by the courts. The presence of diplomatic relations is not the sole determining factor for reciprocal recognition. The recognition and enforcement of foreign judgments in Taiwan are contingent upon the court trial process.