

1. INTRODUCTION

1.1 Please give a brief outline of the legal system in Taiwan. Is it based on common law, civil law, or some other system?

Similar to Japan, Taiwan is a civil law country with most of its laws and regulations being codified.

1.2 How are the courts organized in Taiwan?

The organization of the courts in Taiwan mainly depends on the type of dispute in question, i.e., whether it is a civil, criminal, or administrative matter. In particular, in regard to civil and criminal matters, the system consists of three levels and three instances: district courts, high courts, and supreme courts. Each district court and high court is further divided and allocates its manpower and resources to specialized courts such as the family law division, labor law division, juvenile courts, etc. As to administrative matters, since Taiwan employs a principle of petition before litigation (before bringing a suit, people must first file a petition to the administrative agency to express his/her opposition to the administrative agency's decision; if the administrative agency upholds its original decision, the person can then bring an administrative suit against the administrative agency), in regard to the adjudication of administrative matters, the system consists of two levels and two instances: administrative high courts and administrative supreme courts. Moreover, since July 2008, in order to speed up the process of adjudicating intellectual property cases, an intellectual property court has been established with the jurisdiction to preside over civil, criminal, and administrative matters arising from intellectual property disputes.

1.3 How are lawyers organized in Taiwan?

In order to be qualified as a lawyer in Taiwan, a person must pass a national examination and complete a five-month internship at a law firm, and a one-month intensive training course at the Taiwan Bar Association. A lawyer must be registered with the local bar association and the local

district court before he/she can start practicing. Currently, there are sixteen local bar associations, which together form the Taiwan Bar Association.

1.4 What types of legal fee arrangements are common in Taiwan?

Attorneys' fees in Taiwan are generally charged based on the agreement of the client and the attorney. There are in principle two common methods of calculating attorneys' fees in Taiwan. One method is to charge by the case, i.e., an attorney will charge a fixed amount for providing his/her legal services within the agreed scope (e.g., from the filing of a lawsuit until a judgment is rendered by the court of first instance). The other method is to charge by the hour, i.e., an attorney will charge based on the actual hours spent in providing his/her legal services within the agreed scope. Furthermore, in cases involving civil matters, an attorney can make an agreement with the client to also charge a certain percentage of the judgment awarded by the court upon winning the case (also called a contingency fee arrangement). However, a contingency fee arrangement cannot be made in respect of criminal cases, family law cases, or juvenile cases. Regardless of the method used for calculating attorneys' fees, actual expenses such as telephone calls, photocopies, transportation, etc. incurred by an attorney during the course of providing legal services can be charged separately, depending on the agreement reached between the attorney and his/her client.

2. STRUCTURES FOR DOING BUSINESS

2.1 Is it necessary to set up a business organization in Taiwan to provide services or sell goods in Taiwan?

A foreign company must (1) set up a subsidiary in Taiwan, or (2) establish a branch in Taiwan, which must be recognized by the competent authority, before it can engage in business activities such as providing services or selling goods in Taiwan. However, if a foreign company is not planning to set up operations in Taiwan but merely wishes to appoint a representative to carry out certain legal acts in the course of business on its behalf in Taiwan (which shall be limited to legal acts for the business operated by the foreign company and legal acts in Taiwan by the representative, for example, conducting negotiations or signing contracts to procure raw materials on behalf of the foreign company in Taiwan, or acts as a counsel or agent of the foreign company), it only needs to (3) establish the representative's office, which must be notified to the competent authority. The so-called subsidiary (as described in (1)) is a profit-seeking company registered and established pursuant to the Company Act of Taiwan and is an independent juristic person. A foreign branch (as described in (2)) is a branch of a foreign company set up for the purpose of carrying out business activities in Taiwan. A branch can begin its operations in Taiwan upon the recognition and approval of the competent authority according to the Company Act of Taiwan. A representative office (as described in (3)) is

established when a foreign company has no intention of setting up a subsidiary or branch within the territory of Taiwan and, therefore, appoints a representative to carry out legal acts in the course of business on behalf of the company within the territory of Taiwan.

If a natural person of foreign nationality wishes to engage in commercial activities in Taiwan, he/she may carry out business by way of sole proprietorship without setting up any business organization, or form a partnership with other natural persons. It should be noted, however, that currently a limited liability partnership (LLP) is not allowed in Taiwan.

2.2 What forms of business organizations can be set up in Taiwan?

As explained above, the forms of business organizations that a foreign company may set up in order to engage in commercial activities in Taiwan are a subsidiary, foreign branch, or representative office, and a natural person of foreign nationality may form a partnership with other people or carry out business by way of sole proprietorship in order to engage in commercial activities in Taiwan. In particular, a subsidiary can be further divided into an unlimited company, unlimited company with limited liability shareholders, limited company, and company limited by shares. Most subsidiaries are set up in the form of a company limited by shares.

2.3 What is the process, time required, and cost for setting up each?

2.3.1 Setting up a company (in the case of a company limited by shares)

- (1) Procedure: The procedure for setting up a subsidiary can be divided into five stages - application for registration of the company name and scope of business, application for investment permission, capital remittance, application for capital verification, and company registration.
- (2) Time required: The review of an application for registration of the company name and scope of business requires approximately four working days. The time required for the review of an application for investment permission and application for capital verification depends on the amount invested by the foreign company and the type of the industry invested in. The reference time frame is as follows: for an investment amount less than NT\$500,000,000, the review requires approximately two to four working days; for an investment amount over NT\$500,000,000, the review requires approximately three to five working days; and for an investment amount over NT\$1,000,000,000, the review requires approximately 14 to 30 working days. The review of an application for company registration requires approximately four working days.

- (3) **Cost:** The government fee charged for an application for registration of the company name and scope of business is NT\$300. There is no government fee required for an application for investment permission or an application for capital verification. The government fee for company registration depends on the total amount of capital stipulated in the Articles of Incorporation, whereby for every NT\$4,000 of capital, a fee of NT\$1 is charged. Where the amount of the fee calculated based on the total amount of capital is less than NT\$1,000, the government fee is NT\$1,000.

2.3.2 Setting up a branch

- (1) **Procedure:** The procedure for setting up a subsidiary can be divided into four stages - application for registration of the company name and scope of business, application for foreign company recognition and branch registration, capital remittance, submission of proof of capital remittance, and completion of recognition and registration procedure.
- (2) **Time required:** The review of an application for registration of the company name and scope of business requires approximately four working days. The review of an application for foreign company recognition and branch registration requires approximately four working days. The review of a submission of proof of capital remittance and completion of recognition and registration procedures also requires approximately four working days.
- (3) **Cost:** The government fee charged for an application for registration of the company name and scope of business is NT\$300. The government fee for an application for foreign company recognition and branch registration depends on the total amount of capital as stipulated in the Articles of Incorporation, whereby for every NT\$4,000 of capital, a fee of NT\$1 is charged. Where the amount of the fee calculated based on the total amount of capital is less than NT\$1,000, the fee is NT\$1,000.

2.3.3 Setting up a representative office

- (1) **Procedure:** There is only one stage - submission of an application for setting up a representative office.
- (2) **Time required:** Approximately four working days.
- (3) **Cost:** There is no government fee required.

2.3.4 Setting up a partnership business or sole proprietorship

- (1) Procedure: The procedure for setting up a partnership business or sole proprietorship can be divided into five stages - application for registration of the company name and scope of business, application for investment permission, capital remittance, application for capital verification, and business registration.
- (2) Time required: The review of an application for registration of the company name and scope of business requires approximately four working days. The time required for the review of an application for investment permission and an application for capital verification depends on the amount invested by the foreign company and the type of the industry invested in. The reference time frame is as follows: for an investment amount less than NT\$500,000,000, the review requires approximately two to four working days; for an investment amount over NT\$500,000,000, the review requires approximately three to five working days; and for an investment amount over NT\$1,000,000,000, the review requires approximately 14 to 30 working days. The review of an application for business registration requires approximately four working days.
- (3) Cost: The government fee charged for an application for registration of the company name and scope of business is NT\$300. There is no government fee required for an application for investment permission or an application for capital verification. The government fee for business registration is NT\$1,000.

2.4 Are there any fetters on the business activities that can be carried on by business organizations in Taiwan?

Apart from the general restrictions imposed on (1) investments, (2) loans of capital to others, and (3) guarantees on behalf of others, the Company Act does not impose any restrictions on the activities that a company may carry out, except to the extent of requiring the company to specify in its Articles of Incorporation those activities that require special permission from the competent authority (e.g., banking business).

The restrictions in (1) through (3) are established by the Company Act as follows:

- (1) Restrictions imposed on investments (Article 13 of the Company Act)

“A company shall not be a shareholder of unlimited liability in another company or a partner of a partnership enterprise. When a company becomes a shareholder of limited liability in other

companies, the total amount of its investments in such other companies shall not exceed 40% of the amount of its own paid-up capital unless it is a professional investment company, or otherwise provided for in its Article of Incorporation, or has obtained the consent of its shareholders or a resolution adopted by its shareholders' meeting in accordance with any of the following provisions:

- 1) In the case of an unlimited company or an unlimited company with limited liability shareholders: the unanimous consent of the unlimited liability shareholders;
- 2) In the case of a limited company: the unanimous consent of its shareholders; or
- 3) In the case of a company limited by shares: a resolution adopted, at a shareholders' meeting, by a majority of the shareholders present who represent two-thirds or more of the total number of its outstanding shares; provided that for a company whose shares have been publicly issued, in the event the total number of shares represented by the shareholders present at a shareholders' meeting of the company is less than two-thirds of the total number of its outstanding shares, the resolution may be adopted by two-thirds of the voting rights exercised by the shareholders present at the shareholders' meeting who represent a majority of the outstanding shares of the company."

(2) Restrictions imposed on loans of capital to others (Article 15 of the Company Act)

"Unless otherwise under any of the following circumstances, the capital of a company shall not be lent to any shareholder of the company or any other person:

- 1) Where an inter-company or inter-firm business transaction calls for such lending arrangement; or
- 2) Where an inter-company or inter-firm short-term financing facility is necessary, provided that the amount of such financing facility shall not exceed 40% of the amount of the net value of the lending enterprise."

(3) Restrictions imposed on guarantees on behalf of others (Article 16 of the Company Act)

"A company shall not act as a guarantor of any nature, unless otherwise permitted by any other law or by the Articles of Incorporation of the company."

As to partnerships and sole proprietorships, the Civil Code does not impose any restrictions on the type of commercial activities that a partnership may carry out.

2.5 What are the ongoing obligations in relation to each of the forms of business organizations?

A business organization must commence its operations within six months after registration. Once a business organization begins its operations, unless it has filed for business suspension, it cannot suspend its operations at will, otherwise, the competent authority may order its dissolution. Moreover, once a company is duly registered, if there is any change to the registered information, e.g., change in the amount of capital or change of director, the company must apply for a change of registration within 15 days (Article 15 of the Regulations Governing Company Registration and Recognition), otherwise the company is not entitled to defend itself based on such changes against a third party claim, and the competent authority may impose a fine of between NT\$10,000 to NT\$50,000 on the responsible person of the company (Article 387, paragraph 6 of the Company Act). Furthermore, a company must convene at least one shareholders' meeting per year. The company must produce a business report, financial statements, and proposals for surplus earnings distribution or loss setoff, and submit these documents for the approval of the shareholders or recognition by a shareholders' resolution. In addition, according to the provisions of the Tax Collection Act, a company must keep independent accounting books, and has an obligation to preserve all relevant proof of expenditure and income.

As to partnerships and sole proprietorships, according to the Tax Collection Act, they must maintain independent accounting books and have the obligation to preserve all relevant proof of expenditure and income.

3. CORPORATIONS

3.1 What types of companies are there in Taiwan?

There are four types of companies recognized in Taiwan:

1. Unlimited Company - a company established by two or more shareholders with joint and several unlimited liability.
2. Limited Company - a company established by one or more shareholders with liability limited only to the extent of the amount of their capital contribution.

3. Unlimited Company with Limited Shareholders - a company established by one or more unlimited liability shareholders and one or more limited liability shareholders. The unlimited liability shareholders are jointly and severally liable with the company while the limited liability shareholders are liable with the company only to the extent of the amount of their capital contribution.

4. Company Limited by Shares - a company established by two or more shareholders or by the government or by a juristic shareholder. The capital must consist of shares and the shareholders are held responsible to the extent of the shares held by them.

3.2 What is the process of incorporation of a company?

Please refer to Section 2.3.

3.3 How can a minority shareholder protect its interests?

A company limited by shares is in principle managed by the shareholders and the board of directors by way of voting. However, in order to protect the minority shareholders, the Company Act specifically provides that where a minority shareholder holds shares for over a certain period of time, or where the number of shares held by a minority shareholder exceeds a certain percentage, that minority shareholder may exercise certain rights. The provisions of the Company Act in respect thereto are summarized in the following chart.

Shareholding Period	Shareholding Percentage	Articles and Contents
No restriction	No restriction	Article 186: A shareholder who objects to a special resolution regarding important matters such as the lease of the entire business at a shareholders' meeting may exercise its right to request a share buyback at the then prevailing fair price. Article 267 §3: In issuing new shares, the original shareholders may subscribe for, with a preemptive right, the new shares in proportion to their original shareholding. Article 317: When a company spins-off or is merged with another company, an objecting shareholder may exercise its right to request a share buyback at the then prevailing fair price.
No restriction	1% or more	Article 172-1: A shareholder may submit a proposal during the annual shareholders meeting.
No restriction	3% or more	Article 173 § 4: Under certain conditions, a shareholder may convene a shareholders meeting on his/her own after obtaining an approval from the competent authority. Article 200: In the case where a director has, in the course of performing his/her duties, committed any act resulting in material damages to the company, etc., a shareholder may file an action requesting a ruling to remove a director

		under certain requirements. Article 227: Article 200 shall apply <i>mutatis mutandis</i> to the supervisor*'s act.
6 months or more	10% or more	Article 11 : In the event of an apparent difficulty in the operation of a company or serious damage thereto, a shareholder may file a petition to the court for a ruling to dissolve. Article 282 §1: Where the suspension of business of a company which publicly issues shares, etc. seems likely due to financial difficulty, a shareholder may file a petition to the court for reorganization.
1 year or more	No restriction	Article 194: In case where a board of directors decides, by resolution, to commit any act in violation of the laws or the company's Articles of Incorporation, a shareholder may request the board of directors to discontinue such acts.
1 year or more	1% or more of Voting Rights	Article 369-4 §3: A subsidiary's shareholder may exercise, in his/her own name, the rights of the subsidiary company to claim against the controlling company for damages arising from the controlling company's unlawful management.
1 year or more	3% or more	Article 173 §1 §2: A shareholder may file a petition to convene a special shareholders meeting. If the board of directors fails to give a convocation notice for a special meeting of shareholders within 15 days after the filing of the request, the proposing shareholder may, after obtaining approval from the competent authority, convene a special meeting of shareholders on his/her own. Article 214 §1: A shareholder may request the supervisor in writing to file a suit against a director on behalf of the company. Article 227: A shareholder may request in writing the director to file a suit against a supervisor on behalf of the company.

* Under Taiwanese law, the term "supervisor" means a company auditor who supervises the execution of business operations of the company, and may at any time investigate the business and financial condition of the company, examine the accounting books and documents, and request the board of directors or managerial personnel to make reports thereon.

3.4 Are there any corporate governance norms?

In addition to the duty of loyalty and obligation of a bona fide administrator, and the non-compete obligations imposed on the directors, supervisors, and managers by the Company Act, there is also the Corporate Governance Best-Practice Principles for the Taiwan Stock Exchange and the GreTai Securities Market Listed Companies, which is applicable to all listed and over-the-counter ("OTC") companies. Different industries also have their own corporate governance rules. For example, in industries such as banking, insurance, futures, etc., there are corporate governance practice guidelines tailored pursuant to the special characteristics of the industry.

3.5 Are there any restrictions on a foreign-owned Taiwanese company from raising capital/debt from Taiwanese markets?

Provided the company is established pursuant to the laws of Taiwan, the source of funding (e.g., issuance of new shares, funding through corporate bonds, loans from banks, etc.) and relevant procedures in respect to the company must be made in accordance with the laws of Taiwan, regardless of whether the shares of the company are held by Taiwanese nationals or foreign nationals. As to the branch of a foreign company in Taiwan, although the branch may obtain funds through a bank loan or loan from companies in the same industry, unless the company issues TDR (Taiwan Depositary Receipts), it cannot issue new shares in Taiwan to raise capital.

3.6 Can a Taiwanese company appoint foreign nationals as directors?

The Company Act does not require that a director or chairman of a company limited by shares be a Taiwanese national. Thus, a foreign national can be a director of a Taiwanese company.

3.7 Are there any norms for the sharing of profits?

According to Article 232, paragraph 1 and 2 of the Company Act, a company may not pay dividends or bonuses unless its losses have been covered and a statutory reserve has been set aside. If there are no surplus earnings, in principle, the company must not pay dividends or bonuses. However, where the aggregate amount of the statutory reserve exceeds 50% of its capital, the company may share the excess portion as dividends and bonuses. According to Article 237, paragraph 1 of the Company Act, a “statutory reserve” refers to 10% of the surplus earnings after tax. Once the statutory reserve has reached the total amount of the capital, the company does not need to continue to set aside any amounts for its statutory reserve.

3.8 What type of shares can a company issue?

1. Should a company issue share certificates?

According to Article 161-1 of the Company Act, when the total amount of capital reaches the amount specifically fixed by the central competent authority (as of October 2010, NT\$500,000,000), the company must, within three months after having completed the procedures for company registration or for changes to company registration as required for the issuance of new shares, issue its share certificates. If the total amount of capital has not reached the amount fixed by the central competent authority, unless otherwise provided by the Articles of Incorporation, the company does not have to issue share certificates.

2. Should a company issue shares publicly?

Whether a company issues shares publicly is at the discretion of the company. If the company wishes to publicly issue shares, the company may, upon passing a board resolution, apply to the competent authority responsible for the public issuance of securities pursuant to Article 156, paragraph 3 of the Company Act.

3. Types of Shares

According to Article 156, paragraph 1 of the Company Act, the types of shares issued by a company can be separated into common and special shares. The holders of special shares are entitled to special rights to the distribution of dividends, the company's surplus earnings, and residual assets, which are different from the rights of common shares in the order and method of their distribution. The order in which shareholders of special shares shall exercise their voting rights, restrictions on voting rights, or that there are no voting rights can also be specified in the Articles of Incorporation.

3.9 Are there any requirements in relation to the frequency and mode of holding board meetings?

1. Method of Convening a Board Meeting

According to Article 205 of the Company Act, unless otherwise provided in the Articles of Incorporation that a director may be represented by another director by proxy, directors must attend board meetings in person. Where a director appoints another director to attend the board meeting on his/her behalf, he/her must each time issue a written proxy and specify therein the scope of authority with reference to the matters to be discussed during the meeting. However, where a director resides in a foreign country, he/she may register with the competent authority and appoint in writing another shareholder residing in Taiwan as his/her proxy to attend board meetings on a regular basis. Moreover, a board meeting may be held via video conference. Directors participating in the video conference are deemed to have attended the board meeting in person. Furthermore, according to Articles 207 and 183, meeting minutes for a board meeting must be made and be kept on record for as long as the company exists.

2. Number of board meetings

The Company Act does not directly regulate the minimum number of board meetings that a company must convene per year. However, according to Articles 170 and 171 of the Company Act, the board of directors must convene the annual shareholders meeting within six months after the end of each fiscal year. Moreover, according to Article 228 of the Company Act, at the end of each fiscal year, the board of directors must submit a business report, financial statements, and proposals for surplus earnings distribution or loss setoff to supervisors for his/her review 30 days before convening the annual shareholders meeting. Therefore, a board meeting must be held at least once a year, so as to make the resolutions for convening the annual shareholders meeting and for the proposals for surplus earnings distribution or loss setoff.

3.10 What responsibilities and liabilities do company directors have?

According to Article 192, paragraph 4 of the Company Act, unless otherwise provided in the Company Act, the relevant provisions on mandate under the Civil Code apply to the relationship between a company and a director. Therefore, in principle, a director undertakes obligations and responsibilities as a mandate under the Civil Code. Furthermore, according to Article 193 of the Company Act, the board of directors must act in accordance with the laws, the Articles of Incorporation, and the resolutions adopted by the shareholders meeting in carrying out its business. If the board of directors breaches this provision, and as a result of which the company suffers damage, the directors taking part in the adoption of such resolution are liable to the company. Moreover, according to Article 209 of the Company Act, if a director engages in an act for himself/herself or on behalf of another person that is within the scope of the company's business, the director must explain to the shareholders the essential details of such act and must secure the shareholders' approval before he/she can proceed therewith. If the director fails to take such procedure, there is a possibility that the income generated from the act for himself/herself or on behalf of another person will be deemed to be the income of the company. Lastly, according to Article 23 of the Company Act, if in the course of carrying out the company's business, a director violates the law as a result of which a third party suffers damage, that director is held jointly and severally liable with the company.

4. LIQUIDATION

4.1 Please give a brief outline of the procedure involved in the liquidation of a company in Taiwan. Are there any requirements specific to Taiwan?

4.1.1 Commencement of Liquidation Proceedings

Liquidation proceedings are the proceedings that must be carried out in order to extinguish the existence of a juristic person. Apart from merger, spin-off, or bankruptcy, a company must be dissolved and enter into liquidation if any one of the situations prescribed under Article 315, paragraph 1 of the Company Act occurs. The situations prescribed under this Article include: (1) the occurrence of an event of dissolution as specified under the Articles of Incorporation; (2) where the objective of the business undertaken by the company has already been achieved or cannot be achieved; (3) the adoption of a resolution to dissolve by the shareholders; (4) except where the company is established by a government agency or a juristic person, the number of shareholders of the registered shares is less than two (in Taiwan, characteristically, a company must be dissolved if the sole shareholder is a natural person, while a company may exist if the sole shareholder is a juristic person); and (5) an order to dissolve is issued by a competent authority or a judgment to dissolve is rendered by a court.

4.1.2 Liquidation Procedure

According to Article 322 of the Company Act, except as otherwise provided in the Company Act or in the Articles of Incorporation, or except where the shareholders have already appointed a liquidator, the liquidation of a company limited by shares must in principle be conducted by the directors, i.e., the liquidators. Moreover, according to Articles 326 to 334 of the Company Act, during the period of liquidation, the liquidator must inspect and liquidate the assets of the company and draft financial statements and an inventory of property, submit them to the supervisors for examination, obtain the approval of the shareholders' meeting, and file them with the court. The liquidator must, by means of public notice, urge the creditors of the company to declare their rights of claims and distribute the remaining assets to each shareholder according to the proportion of its contribution after having finalized the accounts of the company, collected claims, and repaid the debts (including tax obligations). Upon the completion of the aforementioned liquidation matters, the liquidator must draft an income and expenditure statement and a statement of profit and loss for the period of liquidation within 15 days, submit it together with all statements and records of accounts to the supervisors for its review, and submit them to the shareholders' meeting for confirmation. The shareholders'

meeting may appoint another inspector to examine whether the aforesaid statements and records of accounts are in order. The income and expenditure statement and the statement of profit and loss approved by the shareholders' meeting shall be filed with the court within 15 days after the approval thereof at the shareholders' meeting.

4.1.3 Period of Liquidation Proceedings

According to Article 93, paragraph 1 of the Company Act, the liquidator must, within 15 days after the shareholders' approval of the financial statements made during the liquidation period, report to the court in respect of the completion of the liquidation. Furthermore, according to Article 87 of the Company Act, the liquidator must complete the liquidation proceedings within six months. If an extension is required, the liquidator must petition the court for an extension thereof and specify the reasons for such extension.

4.2 Please give a brief outline of bankruptcy proceedings in Taiwan. Are there any requirements related to the filing specific to Taiwan?

4.2.1 Commencement of Bankruptcy Proceedings

According to Article 1 of the Insolvency Act, where a debtor cannot repay its debts, the debtor must settle its debts pursuant to the procedure prescribed under the Insolvency Act. The following persons have the right or obligation to petition the court for a declaration of bankruptcy:

- (1) The creditor or the debtor may petition for the declaration of bankruptcy;
- (2) Where the assets of a company are clearly insufficient to set off the debts, except in the case where reorganization proceedings are taken, the board of directors must file for bankruptcy (Article 211, paragraph 2 of the Company Act);
- (3) Where it is found that the assets of the company are insufficient to set off the debts, the liquidator must petition the court for a declaration of bankruptcy (Article 89 of the Company Act);
- (4) Where the court dismisses a petition for reorganization on the grounds that reorganization is not possible based on the company's operations and financial status (Article 285-1 of the Company Act) and where the bankruptcy requirements are satisfied, the court may at its discretion declare the company bankrupt; and

- (5) If, in the case where, after the commencement of special liquidation proceedings, there is no prospect of reaching an agreement or no prospect of an agreement of settlement being duly carried out (Article 355 of the Company Act), the court must ex officio make an adjudication of bankruptcy in accordance with the Bankruptcy Law.

4.2.2 Bankruptcy Procedure

Bankruptcy proceedings are a mechanism established so that in the event a debtor cannot repay its debt obligations, the majority creditors may receive compensation from the bankrupt's current assets. Thus, the main objective of bankruptcy proceedings is to group the bankrupt's assets as a bankruptcy estate, which will be auctioned or sold by the trustee elected by the court. Upon the deduction of the necessary costs, such as management fees of the estate, the assets are equally distributed among the majority creditors. Moreover, if the bankrupt does not have any assets, or if the assets are insufficient to pay the management fees of the trustee, or if there is only one creditor, the court will dismiss the bankruptcy petition pursuant to Article 63 of the Insolvency Act.

4.2.3 Completion of bankruptcy proceedings

After having organized the assets of the estate according to the aforementioned procedure and distributed the assets to the creditors in proportion to the amounts owed thereto, the bankruptcy trustee must submit a report to the court. The court will then declare the debtor bankrupt and complete the bankruptcy proceedings.

5. FOREIGN INVESTMENT REGULATIONS

5.1 What are the sources of law regulating foreign investment in Taiwan?

In order to promote economic development, Taiwan has been devoted to creating a friendly investment environment welcoming foreign investors to invest in Taiwan. The main laws and regulations governing foreign investments in Taiwan are the Statute for Investment by Foreign Nationals (the "Statute") and Regulations for Verification of Investment by Overseas Chinese and Foreign Nationals. In order to efficiently provide services and manage foreign investments, the government has specifically established the Investment Commission under the Ministry of Economic Affairs (<http://www.moeaic.gov.tw/>), which is equivalent to the Ministry of Economy, trade and Industry in Japan, as the competent authority for foreign investment matters. All investments made by foreign nationals within the territory of Taiwan must comply with the provisions of the Statute and receive

permission from the Investment Commission, provided that in order to establish a new subsidiary located in the Export Processing Zone or Science Park or to invest in an existing company located in these areas, a foreign national is required to obtain permission not from the Investment Commission but from the Export Processing Zone Administration or Science Park Administration of the Ministry of Economic Affairs. However, according to the Regulations Governing Investment in Taiwan by the People of Mainland China, if a person, juristic person, organization or other institution of Mainland China directly or indirectly holds more than 30% of the shares of a company located in the third area (which means the area outside Taiwan and China), contributes a total amount of more than 30% of the company's capital or has controlling power over the company (e.g., directly controls the human resources or finances of the company), then such company falls under an investor to which the Regulations Governing Investment in Taiwan by the People of Mainland China shall apply and the Statute shall not apply to investments made in Taiwan by such company. Therefore, such company shall separately receive permission from the Investment Commission in accordance with the Regulations Governing Investment in Taiwan by the People of Mainland China.

5.2 What are the various methods in which foreign investment in Taiwan is possible?

According to Article 6 of the Statute, investments by foreign nationals may be made pursuant to the following methods: (1) cash; (2) machinery and equipment or raw materials for their own use; (3) patent rights (which is equivalent to the aggregation of patent rights, utility model rights and design rights in Japan), trademark rights, copyrights, technical know-how or other intellectual property rights; and (4) other property the investment in which has been approved by the competent authority.

5.3 What is the current foreign direct investment policy?

In order to encourage foreign nationals to invest in Taiwan, the government adopts an open policy in respect to the business activities in which are allowed foreign nationals to invest in Taiwan, with a few prohibitions based on considerations of national security, public policy, social morals, and national health, or based on statutory provisions or international treaties and restrictions on certain special businesses. Therefore, according to the administrative ordinance "Negative List for Investment by Overseas Chinese and Foreign Nationals - the Prohibited or Restricted Industries," issued pursuant to Article 7 of the Statute by the Investment Commission, business activities in which foreign nationals are prohibited or restricted to invest in are regulated by way of negative lists. The investments that are prohibited include businesses such as post delivery, broadcasting, television, etc., and the investments that are restricted refer to specific industries that require the prior permission of the relevant competent authority, such as power supply, trusts and investments, passenger car rental and leasing, insurance, etc.

5.4 What are the circumstances under which regulatory approval is required?

The type of regulatory approval required depends on the type of business organization that the foreign national wishes to establish in Taiwan.

1. Where a foreign national wishes to establish a subsidiary or directly invest in an existing company

In principle, in order to establish a subsidiary or to directly invest in an existing company, a foreign national must apply to the Investment Commission of the Ministry of Economic Affairs for investment permission. However, if the subsidiary or existing company to be invested in is located within the jurisdiction of the Export Processing Zone Administration or Science Park Administration, he/she must apply to the Export Processing Zone Administration or Science Park Administration for investment permission and is not required to obtain permission from the Investment Commission.

2. Where a foreign national wishes to establish a branch

A foreign national wishing to establish a branch must apply to the Ministry of Economic Affairs for the recognition of a foreign company and registration of a branch according to Article 370 and related provisions of the Company Act, before the branch can begin its operations.

3. Where a foreign national wishes to appoint a representative to engage in legal acts for its business in Taiwan

A foreign national wishing to appoint a representative to engage in legal acts for its business in Taiwan must report to the Ministry of Economic Affairs for recordation pursuant to Article 386, paragraph 1 of the Company Act. If the said representative resides in Taiwan on a regular basis, the representative's office must be established and the foreign national must apply for recordation of the address of the office to the Ministry of Economic Affairs.

5.5 Can a foreign company set up a wholly owned subsidiary in Taiwan?

According to Article 98, paragraph 1 of the Company Act, which provides that "a limited company shall be organized by one or more shareholders," a limited company can be established by one shareholder who wholly owns such company. Moreover, according to

Article 128-1, paragraph 1 of the Company Act, a company limited by shares which is established by the government or by one juristic shareholder is free from the restriction regarding the foundation of a company that “a company limited by shares shall have two or more promoters” (Article 128, paragraph 1 of the Company Act). In this regard, a company limited by shares may be established by the government or by one juristic shareholder. In addition, there are no special provisions on foreign companies with respect to the application of the aforementioned provisions. In other words, a foreign company may establish a wholly owned or share-held subsidiary in Taiwan. The functional duties and power of the shareholders’ meeting of a company limited by shares which is organized by a single government shareholder or single juristic person shareholder shall be exercised by its board of directors, to which the provisions governing shareholders’ meetings as set out in the Company Act shall not apply (Article 128-1, paragraph 1 of the Company Act). Furthermore, the directors and supervisors of the aforementioned company limited by shares are not required to be elected and may be directly appointed by the government or juristic shareholder (Article 128-1, paragraph 2 of the Company Act).

5.6 How long do regulatory approvals take?

5.6.1 Setting up a subsidiary

- (1) Procedure: The procedure for setting up a subsidiary can be divided into five stages: application for registration of the company name and scope of business, application for investment permission, capital remittance, application for capital verification and company registration.
- (2) Time required for review by relevant government agency: The review of the application for registration of the company name and scope of business requires approximately four working days. The time required for the review of an application for investment permission and application for capital verification depends on the amount invested by the foreign company and the industry invested in. For an investment amount less than NT\$500,000,000, the review requires approximately two to four working days. For an investment amount over NT\$500,000,000, the review requires approximately three to five working days. For an investment amount over NT\$1,000,000,000, the review requires approximately 14 to 30 working days. The review of company registration requires approximately four working days.

5.6.2 Direct investment in existing company

- (1) Procedure: The procedure for direct investment in an existing company can be divided into three stages-application for investment permission, capital remittance, and application for capital verification. Once this procedure is finished, if there is any change to the directors or supervisors of the company invested in, a change of registration must be applied for within 15 days.
- (2) Time required for review by the relevant government agency: The time required for the review of an application for investment permission and application for capital verification depends on the amount invested by the foreign company. For investment amount less than NT\$500,000,000, the review requires approximately two to four working days. For an investment amount over NT\$500,000,000, the review requires approximately three to five working days. For an investment amount over NT\$1,000,000,000, the review requires approximately 14 to 30 working days.

5.6.3 Setting up a foreign branch

- (1) Procedure: The procedure for setting up a subsidiary can be divided into four stages - application for registration of the company name and scope of business, application for foreign company recognition and branch registration, capital remittance, submission of proof of capital remittance and completion of recognition and registration procedure.
- (2) Time required for review by relevant government agency: The review of the application for registration of the company name and scope of business requires approximately four working days. The review of an application for foreign company recognition and branch registration requires approximately four working days. The review of a submission of proof of capital remittance and completion of recognition and registration procedure also requires approximately four working days.

5.6.4 Applying for registration of representative or representative's office

- (1) Procedure: Only one stage is required - application to the Ministry of Economic Affairs.
- (2) Time required for review by relevant government agency: Approximately four working days.

5.7 Are there any restrictions on the land ownership by foreign nationals and foreign companies?

5.7.1 Principle of reciprocity

Article 18 of the Land Act provides that only those foreign nationals may acquire or create rights over land in Taiwan who are nationals of States that permit, according either to treaty or to their municipal Acts, Taiwanese nationals to enjoy the same rights in their respective countries. This provision adopts the principle of reciprocity. If the law of the foreign national's home country permits Taiwanese nationals to acquire or create rights over land of the said country, then the nationals of that country may claim the same right in Taiwan.

5.7.2 Restrictions on foreign nationals' acquisitions of land

According to Article 19 of the Land Act, foreign nationals may, for self use, investment or public welfare, acquire land for (1) residences, (2) businesses, office buildings, shops and factories, (3) churches, (4) hospitals, (5) schools for the children of foreign nationals, (6) diplomatic and consular buildings and office buildings of organizations for the promotion of public welfare, (7) cemeteries and (8) investments helping major infrastructure projects in Taiwan, overall economic development, or agricultural and animal husbandry industries, which have been approved by the central authority in charge.

Specifically, the investments helping major infrastructure projects in Taiwan, overall economic development, or agricultural and animal husbandry industries mentioned in (8) means the following:

- A. Investment in major infrastructure projects means investment in projects approved by the central government authorities concerned or reported to Executive Yuan (which is equivalent to the Cabinet in Japan) for approval.
- B. Investment in overall economic development means investments as listed below:
 - (a) Development of tourist hotels, entertainment and tourist facilities, sport centers or stadiums.
 - (b) Residences and buildings.
 - (c) Industrial plants or factories.
 - (d) Development of industrial zones, business and industry complexes, high technology scientific parks and other special zones.

- (e) Tidal land.
 - (f) Public infrastructure construction.
 - (g) Development of new cities/towns and new communities, or urban renovation.
 - (h) Other permissible investments announced by the central government authorities concerned.
- C. Investment in agricultural and animal husbandry industries means investments that comply with the categories and criteria of technical intensive and capital-intensive agriculture specified and announced by the Council of Agriculture of the Executive Yuan (which is equivalent to the Ministry of Agriculture Forestry and Fisheries in Japan).

5.7.3 Procedure of acquiring land by foreign nationals

According to Article 20 of the Land Act, if a foreign national wishes to acquire the aforementioned land, he/she must submit the relevant documents of proof to the municipal, county or city government for approval. The same applies in the event of a change to the land usage or transfer of land other than succession. Within 14 days of receipt of the application, the municipal, county or city government must render its decision of approval or disapproval and refer the matter to the central land administration (the Ministry of the Interior) for recording.

6. LABOR

6.1 What are the principal regulations governing rights and obligations of employees?

The rights and obligations between employees and employers (hereinafter “Labor Relations”) may, depending on the parties to the legal relationship, be divided into individual Labor Relations (i.e., employers and individual employees) and collective Labor Relations (i.e., employers or employers’ organizations and the labor union). The main law governing individual Labor Relations is the Labor Standards Act. Other important and relevant regulations include the Labor Pension Act, Gender Equality in Employment Act, Regulations on Leave-Taking of Workers. The main laws governing collective Labor Relations are the Labor Union Law, Collective Bargaining Agreement Act, and Settlement of Labor Disputes Law. Other important and relevant regulations include the Protective Act for Mass Layoff of Employees, Employees’ Welfare Funds Act, Labor Safety and Health Act, Labor Insurance Act, Employment Services Act, Protection for Workers Incurring Occupational Accidents Act, Employment Insurance Act, Business Mergers and Acquisitions Act.

6.2 Are there any maximum working hours prescribed for employees?

6.2.1 General provision

According to Article 30, paragraph 1 of the Labor Standards Act, in principle, the regular work hours of an employee must not exceed eight hours per day, and the total work hours must not exceed 84 hours per two weeks.

6.2.2 Maximum overtime

According to Article 32, paragraph 2 of the Labor Standards Act, the extension of work hours together with regular work hours must not exceed 12 hours per day and the total number of hours of overtime must not exceed 46 hours per month.

6.2.3 Flexible work hours regime

In order to allow for the flexible use of work hours, the Labor Standards Act also provides for two-week flexible work hours, four-week flexible work hours and eight-week flexible work hours regimes for a company to choose from. The regimes are further explained below.

(1) Two-week flexible work hours regime

According to Article 30, paragraph 2 of the Labor Standards Act, in respect to businesses specified by the central competent authority, an employer may, with the consent of the labor union (or with the approval of a labor-management meeting if there is no labor union), allocate the regular work hours of any two work days within two weeks to other work days, provided that the hours allocated must not exceed two hours per day and the total number of working hours must not exceed 48 hours per week. Moreover, the central competent authority, the Council of Labor Affairs (which is equivalent to the Ministry of Health, Labor and Welfare in Japan), announced on March 31, 2003, that this regime is applicable to all businesses to which the Labor Standards Act applies.

(2) Four-week flexible work hours regime

According to Article 30-1, paragraph 1, item 1 of the Labor Standards Act, in respect to businesses specified by the central competent authority, an employer may, with the

consent of the labor union (or with the approval of a labor-management meeting if there is no labor union), allocate the regular work hours within four weeks (i.e., 169 hours) to other work days, provided that the hours allocated must not exceed two hours per day.

(3) Eight-week flexible work hours regime

According to Article 30, paragraph 3 of the Labor Standards Act, in respect to businesses specified by the central competent authority, an employer may, with the consent of the labor union (or with the approval of a labor-management meeting if there is no labor union), allocate the regular work hours within eight weeks (i.e., 336 hours) to other work days, provided that the hours allocated must not exceed eight hours per day and the total number of working hours must not exceed 48 hours per week.

6.3 How can the services of an employee be terminated?

In respect to an employer's right to terminate the employment contract, the Labor Standards Act adopts a listed provision. The grounds for termination are provided under Articles 11 and 12 of the Labor Standards Act, which are summarized as below.

6.3.1 Article 11 of the Labor Standards Act (the termination of a labor contract with advance notice, which is equivalent to termination of employment under Japanese law)

Article 11 of the Labor Standards Act provides that no employer can, even by advance notice to a employee, terminate a labor contract unless one of the following situations arises: (1) the business ceases to operate or has been transferred; (2) the business suffers an operating loss or contraction; (3) business suspension for more than one month is necessitated by force majeure; (4) a change in the nature of the business requires a reduction of workers and the relevant workers cannot be assigned to another suitable position; or (5) a particular worker is clearly not able to perform satisfactorily the duties required of the position held.

6.3.2 Article 12 of the Labor Standards Act (the termination of a labor contract without advance notice, which is equivalent to disciplinary dismissal under Japanese law)

Article 12 of the Labor Standards Act provides that in any of the following situations any employer may terminate a labor contract without advance notice where an employee: (1) misrepresents any fact at the time of signing a labor contract in a manner which might mislead

his/her employer and cause him/her to sustain damage therefrom; (2) commits a violent act against or grossly insults the employer, his/her family member or agent of the employer, or a fellow worker; (3) has been sentenced to temporary imprisonment in a final and binding judgment, and is not granted a suspended sentence or permitted to commute the sentence to the payment of a fine; (4) is in serious breach of the labor contract or in serious violation of work rules; (5) deliberately damages or abuses any machinery, tool, raw materials, product or other property of the employer or deliberately discloses any technical or confidential information of the employer thereby causing damage to the employer; or (6) is, without good cause, absent from work for three consecutive days, or for a total of six days in any month. Where an employer desires to terminate a labor contract pursuant to items 1, 2, or items 4 to 6 of the preceding paragraph, he/she may do so within thirty days from the date he/she becomes aware of the particular situation.

6.4 Are there mandatory requirements for grant of leave or public holidays?

6.4.1 Holidays (in accordance with the provisions under the Labor Standards Act)

- (1) Regular Days Off: For every seven days, an employee is entitled to at least one day of rest, as a regular day off for the employee.
- (2) Holidays: Employees must be granted leave on commemorative holidays, Labor Day and other days that the central competent authority deems as holidays. According to the Interpretive Letter (77) Lao-Dong-Er-Zi No. 20123 issued by the Council of Labor Affairs on September 6, 1988, upon negotiation and agreement between the employer and the employees, holidays may flexibly be exchanged with or replaced by other work days.
- (3) Special Leave (which is equivalent to paid leave in Japan): Article 38 of the Labor Standards Act provides that, where an employee continues to work for the same employer or business entity (the “Company”) for a certain period of time, he/she is entitled to special leave on an annual basis. Where the employee has worked for the Company for more than one year but less than three years, the employee is entitled to seven days of special leave. Where the employee has worked for the Company for over three years but less than five years, the employee is entitled to ten days of special leave. Where the employee has worked for the Company for more than five years but less than ten years, the employee is entitled to 14 days of special leave. Where the employee has worked for the Company for more than ten years, for each additional year of service, the employee is entitled to an additional day of special

leave, provided that the aggregate number of days of annual paid leave does not exceed 30 days.

6.4.2 Leave

According to the provisions of the Regulations on Leave-Taking of Workers enacted pursuant to Article 43 of the Labor Standards Act, and Articles 14, 15 and 20 of the Gender Equality in Employment Act, an employee is entitled to the following leave up to the specified ceiling of each aggregate number of days.

- (1) Marriage leave: Where an employee is getting married, he or she is entitled to eight days of paid leave.
- (2) Bereavement leave: Employees are entitled to leave to attend a funeral in accordance with the following.
 1. Where the parents, adoptive parents, step parents or spouse of an employee is deceased, eight days of paid leave.
 2. Where the paternal or maternal grandparents, children, parents of the spouse, adoptive parents or step parents of the spouse of an employee is deceased, six days of paid leave.
 3. Where the siblings, paternal or maternal grandparents of the spouse of an employee is deceased, three days of paid leave.
- (3) Sick leave (which is equivalent to non work-related sick leave in Japan): Where an employee is required to be treated medically or to rest for injury, sickness or medical reasons, the employee may take sick leave pursuant to the provisions below. Where the aggregate number of days of sick leave taken in a year does not exceed 30 days, half-wages must be paid.
 1. Where the employee is not hospitalized, the aggregate number of permitted days of sick leave may not exceed 30 days in a year.
 2. Where the employee is hospitalized, the aggregate number of permitted days of sick leave may not exceed one year within a period of two years.
 3. The aggregate number of permitted days of sick leave for non-hospitalization and hospitalization may not exceed one year within a period of two years.

- (4) Leave for occupational accidents (which is equivalent to work-related sick leave in Japan): Where an employee is injured, disabled or sick as a result of an occupational accident, the employee must be granted leave during the period of medical treatment or rest.
- (5) Personal leave: Where an employee needs to take care of personal matters, the employee may take personal leave, provided that the aggregate number of days of personal leave taken must not exceed 14 days per year. Wages need not be paid during personal leave.
- (6) Leave for public duties: Where an employee must be granted leave for public duties pursuant to laws and regulations, the employee must be granted leave according to the actual number of days required, during which wages must be paid.
- (7) Menstruation leave: Where a female employee has difficulty carrying out her work as a result of menstruation, she may request menstruation leave for one day per month. The number of days of menstruation leave taken will be included in the calculation of days of sick leave. The calculation of wages is made pursuant to the provisions on sick leave.
- (8) Family care leave: Where an employee has to take care of a family member who requires a vaccination or who is seriously ill, or where an employee must personally attend to his/her family member for other important reasons, the employee may take family care leave. The number of days of family care leave taken will be included in the calculation of personal leave and may not exceed seven days per year. The calculation of wages is made pursuant to the provisions on personal leave.
- (9) Maternity leave and paternity leave: Please see the explanations under Sections 6.7 and 6.8.

6.4.3 Procedure for taking leave

Where an employee must take leave, he/she must specify the reason for taking leave and the number of days of leave to be taken orally or in writing in advance. However, in the case of sudden illness or emergency, the employee may ask others to complete the leave-taking procedure on his/her behalf. When taking leave, the employer may request the employee to submit the relevant documents of proof.

6.5 Can employment contracts contain restrictive covenants such as non-compete clauses?

Whether or not non-compete clauses can be included in an employment contract depend on the timing of the prohibition, i.e., whether competition is prohibited during the term of Labor Relations or whether competition is prohibited after the termination of Labor Relations.

6.5.1 Prohibition of competition during the term of Labor Relations

Since employment contracts are personal contracts, during the term of the Labor Relations, employees owe their employer a certain degree of loyalty. Thus, even if there is no explicit agreement between the parties, employees are still subject to a non-compete obligation.

6.5.2 Prohibition of competition after the termination of Labor Relations

Prohibition of competition after the termination of Labor Relations would directly restrict the freedom of employment of employees after they leave the company, which would impact their right to work and survival. Thus, in principle, only when the parties have explicitly agreed to the said prohibition (e.g., signed an agreement, waiver or consent letter, etc.) and where the prohibition is legitimate and reasonable, will employees be subject to a non-compete obligation. In practice, factors determining whether a prohibition is legitimate and reasonable include: (1) necessity of protecting the trade secrets of the former employer; (2) the title and position of the employee during the term of his/her employment; (3) whether the restrictions on the place of re-employment, period and area of non-compete are reasonable; (4) whether the former employer has provided adequate compensation to the dismissed employee during the non-compete period; and (5) whether the act of competition of the dismissed employee has violated the good faith principle.

6.6 Can the employment contract compel employees to work for an establishment for a minimum period of time?

The Labor Standards Act of Taiwan does not forbid the employer from requiring its employees to work for a minimum period of time. However, the minimum period of employment clause in a labor contract must comply with the following criteria before such clause is enforceable: (1) there must be some necessity and reasonableness for an employer to require its employees to work for a minimum period of time (e.g., whether there is any interest that the company is seeking to protect through the minimum period of employment clause, or considering all aspects, including the length of the

minimum period, training period, training costs spent by the company and replaceability of the employees, etc, whether the clause is reasonable); and (2) if the contract provides for a penalty, the amount of such penalty must be equivalent to the interests of the company to be protected, balanced against the ability of the employee to pay off such amount.

6.7 Are female employees entitled to maternity leave?

According to Article 50, paragraph 1 of the Labor Standards Act, before and after a female employee gives birth, she may cease work and be given eight weeks of maternity leave. Where a female employee is pregnant for more than three months and miscarriages, she may cease work and be given four weeks of maternity leave. Where the aforementioned female employee has been working for the Company for more than six months, full wages must be paid during maternity leave. Where the aforementioned female employee has been working for the Company for less than six months, half wages must be paid during maternity leave. Moreover, according to Article 15 of the Gender Equality in Employment Act, where a female employee is pregnant for more than two months but less than three months and miscarriages, she is to be given one week of maternity leave. Where a female employee is pregnant for less than two months and miscarriages, she is to be given five days of maternity leave.

6.8 Are male employees entitled to paternity leave?

According to Article 15 of the Gender Equality in Employment Act, when the spouse of a male employee gives birth, the employer must grant the said employee three days paid paternity leave.

6.9 What are the requirements for the issuance of shares by a Taiwanese company to its employees/directors?

6.9.1 Employees' stock options

According to Article 167-2, paragraph 1 of the Company Act, unless otherwise provided by law or by the Articles of Incorporation, a company may, upon the resolution of a majority of the directors present at a board meeting attended by more than two-thirds of the total number of directors, enter into a stock option agreement with its employees whereby the employees may subscribe, within a specific period of time, for a specific number of shares of the company. Upon the execution of the said agreement, the company must issue a stock option certificate to each employee. The stock option certificate obtained by the employee can not be transferred, except to the successor of the said employee.

6.9.2 Employees' subscription to new shares issued by the company

According to Article 267, paragraph 1 of the Company Act, when a company issues new shares, unless otherwise approved by the central competent authority, the company must set aside 10% to 15% of the total number of new shares issued for subscription by its employees.

However, the same shall not apply to the company of which investment by foreign companies and nationals accounts for 45% or more of the total capital of a company.

6.9.3 Exclusion from application

Sections 6.9.1 and 6.9.2 are applied only to employers. Directors and supervisors of a company are excluded from the application of the aforementioned provisions. This means, in principle, that a stock option certificate shall not be issued to each director and supervisor and any new shares shall not be reserved for subscription by directors and supervisors. However, exceptionally, the same shall not apply to the case where a director has employee status at the company at the same time (on the other hand, there appears to be no such exception for supervisors because they are prohibited to be concurrently "a director, a managerial officer or other staff/employee of the company" pursuant to Article 222 of the Company Act).

6.10 Can employees of a Taiwanese company be granted employee stock options in a foreign company?

There is no explicit restriction imposed by the laws of Taiwan as to whether a foreign company may grant stock options to its Taiwanese employees. Thus, the determination of the legitimacy of such grant depends on the law under which the said foreign company is established.

6.11 Are employee stock options eligible for favorable tax treatment?

Income generated from the exercise of stock options by an employee is included in the calculation of the employee's personal income tax and there is no favorable tax rate. The calculation of the aforementioned income is the difference between the then-current price of the shares on the day the stock option is exercised and the price of subscription. The said amount is included in the amount of income earned in the year when the stock option is exercised, on which income tax is levied in accordance with the law. The so-called then current price refers to the price of the shares, if the shares are those of a publicly listed or OTC company (excluding those of a company listed in the emerging market), at closing on the

day the stock option is exercised. If the shares do not fall under those stated above, then the so-called then current price refers to the net value per share as determined by the most recent financial report audited and certified by an accountant issued prior to the day the stock option is exercised. The so-called day the stock option is exercised refers to the date when the company issuing stock options or its agent delivers the shares pursuant to the agreement. Where the company delivers the payment receipt for the subscription of shares first, the so-called day the stock option is exercised refers to the date when the receipt is delivered.

7. INTELLECTUAL PROPERTY

7.1 What types of intellectual property rights are protected in Taiwan?

According to the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter “TRIPS”) of the World Trade Organization (hereinafter “WTO”), intellectual property rights include: (1) copyright and the related rights of performance and production, (2) trademarks, (3) protection of undisclosed information, (4) patents, (5) industrial designs, (6) geographical indications, and (7) integrated circuit layouts. Currently, Taiwan has already enacted statutes relating to intellectual property rights, including: the Patent Act, Copyright Act, Trademark Act, Trade Secrets Act, Integrated Circuit Layout Protection Act, Plant Variety and Plant Seed Act, Optical Disk Act, Fair Trade Act.

7.2 Are there any international treaties regarding intellectual property that Taiwan is not a party to?

In view of the special status of Taiwan, in principle, Taiwan has not entered into most of the international treaties regarding intellectual property. However, Taiwan joined the WTO on January 1, 2002, and therefore, TRIPS is now one of the rare international intellectual property treaties that Taiwan must comply with. Through TRIPS, in principle, Taiwan must also comply with the relevant provisions of the Paris Convention for the Protection of Industrial Property (1967) and the Berne Convention for the Protection of Literary and Artistic Works (1971). Although Taiwan is not a signatory country of most of the international treaties regarding intellectual property, in order to protect such rights, the relevant intellectual property laws are essentially in line with the provisions of the international intellectual property treaties.

7.3 Are there any regulations or guidelines by public institutions, such as the Fair Trade Commission or some other competition authority, in regard to intellectual property licenses?

The Fair Trade Commission is the competent authority governing competition in Taiwan. The main law regulating competition is the Fair Trade Act (which is equivalent to the Antimonopoly Act in Japan), which prohibits businesses from creating monopolies, concerted action, and unfair competition. In order to further clarify the relevant provisions of the Fair Trade Act, the Fair Trade Commission enacted the Fair Trade Commission Guidelines on Technology Licensing Arrangements in respect to the licensing of intellectual property, the scope of which includes different types of licensing agreements such as patent licensing, specialized technology licensing, or a combination of the two. Article 6 of the Guidelines further provides examples of matters prohibited under the technology licensing agreements, forbidding competing parties to the technology licensing agreements to jointly decide on the price of the licensed products or to restrict the quantity, parties and areas of trade, fields of research and development, etc. through contract, agreement or any other method of mutual consent that seeks to bind the business activities of the parties so as to affect specific markets.

8. EXCHANGE CONTROL

8.1 Are there any restrictions on the amount of local currency that may be brought into or taken out of Taiwan?

According to the latest announcement issued by the Directorate General of Customs (as of October 2010), passengers may not carry in or out of Taiwan more than NT\$60,000. If the amount of New Taiwan dollars carried by a passenger exceeds the said limit, the passenger must apply to the Central Bank of Taiwan for its approval in advance. If the amount exceeding the limit is not approved, such amount must not be brought in to or out of Taiwan.

8.2 Are there any restrictions on the amount of foreign currency that may be brought into or taken out of Taiwan?

According to the above announcement, there is no limitation on the amount of foreign currency (excluding Chinese yuan) that passengers may bring into or out of Taiwan. However, where the amount of foreign currency exceeds US\$10,000 (or its equivalent in other foreign currencies), it must be declared to customs when entering or exiting Taiwan. Failure to declare or making a false declaration may result in the confiscation of the amount in excess of the limit. Passengers may not carry into or out of Taiwan more than 20,000 Chinese yuan. If the amount of Chinese yuan carried by

a passenger exceeds the said limit when entering Taiwan, it must be declared to customs and the amount exceeding the limit, which must not be brought into Taiwan, must be deposited with customs to be returned to the passenger when exiting Taiwan. On the other hand, if the amount of Chinese yuan carried by a passenger exceeds the said limit when exiting Taiwan, it must be declared to customs. Failure to declare or making a false declaration may result in the confiscation of the amount in excess of the limit.

8.3 Are there any restrictions on the inflow or outflow of foreign exchange?

There are currently regulatory measures on foreign exchange transactions exceeding a certain amount. The type of measure depends on the amount of the transaction.

8.3.1 Where the amount of a single transaction reaches the regulated amount

In accordance with Article 2 of the Regulations Governing the Declaration for Foreign Exchange Receipts and Disbursements or Transactions (the "Regulations"), all foreign exchange income, expenditure or transactions exceeding NT\$500,000 within the territory of Taiwan must be declared by the owner of the funds or by the person who needs the funds. In particular, in accordance with Article 5 of the Regulations, if a remittance by a company or business entity is more than US\$1,000,000, or a remittance by an organization or an individual is more than US\$500,000, or if a remittance is for direct investment or investment in securities as approved by the competent authority, or a remittance for transactions is conducted within the territory of Taiwan involving goods or services located outside the territory of Taiwan, documents of proof such as agreements related to the income, expenditure or transaction or approval letters must be submitted. Upon the bank's verification that the amount is the same as that specified in the application, the said amount can then be settled in the currency of New Taiwan Dollars.

8.3.2 Where the aggregate amount of the transaction reaches the regulated amount

In accordance with Article 6 of the Regulations, the bank must apply to the Central Bank of Taiwan for its approval prior to making a remittance in cases where the annual aggregate amount of necessary foreign exchange purchased or sold by a company or business entity exceeds US\$50,000,000, or where the annual aggregate amount of necessary foreign exchange by an organization or an individual exceeds US\$5,000,000. Moreover, the bank must also apply to the Central Bank of Taiwan for its approval before making a remittance in respect to the remittance of payments exceeding US\$100,000 for the payment for construction projects within the territory of Taiwan, performance bond and arbitration costs to be deposited

for legal proceedings, relevant payments obtained from self-use immovable property pursuant to laws, and payments obtained in accordance with laws such as inheritance, insurance payments and condolence payments by non-Taiwanese residents.

9. M&A

9.1 What are the various methods of mergers and acquisitions available to Taiwanese companies?

According to Article 4 of the Business Mergers and Acquisitions Act, the types of the restructuring of companies such as mergers and acquisitions may be classified into (1) mergers, (2) acquisitions (including transfers of business and share swaps), and (3) spin-offs, which are further elaborated below.

- 9.1.1 Mergers can be further divided into merger by consolidation and merger of existing companies. Consolidation refers to an act where the companies involved in the merger are dissolved and a new company is incorporated to assume all rights and obligations of the dissolved companies. Merger of existing companies refers to an act wherein one of the companies involved in the merger continues to survive after the merger and the surviving company assumes all rights and obligations of the dissolved company. The shares of the surviving or newly incorporated company or any other company, cash or other assets may be the consideration paid to the shareholders of the dissolved company.
- 9.1.2 Transfer of Business: Refers to the act of a company transferring the entire or a substantial portion of its business or assets to another company, and the transferee company receiving them.
- 9.1.3 Share swaps: Means a company transferring all its issued shares to another existing company as consideration for the payment of new shares issued by that company, or means a company transferring all its issued shares to a newly incorporated company as consideration for the new company's shares which the company subscribed for at the time of incorporation of the new company. As a result, a transferring company will become a wholly owned subsidiary of another existing company or of a newly incorporated company.
- 9.1.4 Spin-off: A company transfers all its independently operated business or any part thereof to an existing or newly incorporated company as consideration for that existing company or newly incorporated company's issuance of new shares to the company or the shareholders of the company.

9.2 What is the process and timing for each method?

9.2.1 Merger

In respect to mergers, regardless of the type, the key procedures are as follows.

(1) Written Merger Agreement

According to Article 22 of the Business Mergers and Acquisitions Act, the merger agreement must specify matters such as the name and capital amount of the merged company and the basis for the calculation of the share swap ratio by a listed or OTC company.

(2) Special Shareholders' Resolution

According to Article 18 of the Business Mergers and Acquisitions Act, in principle, a resolution for the merger of a company must be adopted by a special shareholders' resolution, i.e., it must be adopted by a majority vote at a shareholders' meeting attended by shareholders representing more than two-thirds of the total number of shares issued by the company (it should be noted that, under Japanese law, in contrast with Taiwanese law, a special shareholders' resolution must be made by two-thirds or more of the votes of the shareholders at a meeting attended by shareholders holding a majority of the votes). For a company whose shares have been publicly issued, if the total number of shares represented by the shareholders present at the shareholders' meeting is insufficient in quorum, the resolution may be adopted by two-thirds of the votes of the shareholders present at the shareholders' meeting who represent a majority of the total number of shares issued. In the aforementioned two situations, if the Articles of Incorporation adopts a higher criterion for the total number of shares of the shareholders present at a meeting and the total number of votes required for a resolution, the Articles of Incorporation will prevail. Moreover, where the merger is between a parent company and its subsidiary, according to Article 316-2 of the Company Act, if the parent company has in its possession more than 90% of the shares issued by its subsidiary, the parent company may merge with the subsidiary upon a resolution adopted by the board of directors of the parent company and by that of the subsidiary, by a majority vote of the directors present at a meeting attended by directors representing two-thirds of the directors of both companies. A shareholders' resolution is not required.

- (3) Notices and announcements to the creditors of the company

Article 23, paragraph 1 of the Business Mergers and Acquisitions Act provides that, upon the resolution approving a merger, a company must immediately specify a period of not less than 30 days within which a creditor may file its objection and notify and announce the merger, including such period, to each of its creditors. Article 23, paragraph 2 of the Business Mergers and Acquisitions Act provides that, in the case where the company does not make such notice and announcement, the merger may not be asserted against creditors who have objected to the merger, unless the company repays the debt obligation, or provides adequate securities thereto, establishes a trust for repayment of the debt obligation or provides proof that the merger will not impede the creditors' rights.

- (4) After the implementation of a merger agreement, the surviving company or the newly incorporated company proceeds with the registration of the change or registration of the merger.

9.2.2 Transfer of Business

- (1) The parties enter into a written transfer agreement, specifying the rights and obligations of the parties.
- (2) Special shareholders' resolution

According to Article 27 of the Business Mergers and Acquisitions Act, a resolution for acquisition or transfer of the whole business or assets of a company must be adopted by a majority vote at a shareholders' meeting attended by shareholders representing more than two-thirds of the total number of shares issued by the company. For a company whose shares have been publicly issued, the resolution may be adopted by two-thirds of the votes of the shareholders present at the shareholders' meeting who represent a majority of the total number of shares issued. In the case where a subsidiary acquires all or a substantial part of its parent company's business or assets, where specific requirements are complied with (e.g., where a subsidiary is its parent company's wholly owned subsidiary company or where a subsidiary issues new shares to its parent company as consideration for the value of the business or assets transferred by its parent company), the subsidiary may proceed without a shareholders' resolution.

- (3) According to Article 27 of the Business Mergers and Acquisitions Act, the notice to debtors with regard to the assignment of claims may be issued by way of public notice. On the other hand, the approval of creditors is not required to assume the debt.
- (4) In the case where the transferee company acquires the business or assets of the transferor company, the transferee company assumes the debt obligations thereof.

9.2.3 Share swap

- (1) Enter into written share swap agreement

The parties enter into the agreement specifying matters such as the ratio of the share swap and the basis for the calculation thereof.

- (2) Special shareholders' resolution

According to Article 29 of the Business Mergers and Acquisitions Act, a resolution for a company's share swap must be adopted by a special shareholders' resolution, i.e., it must be adopted by a majority vote at a shareholders' meeting attended by shareholders representing more than two-thirds of the total number of shares issued by the company. For a company whose shares have been publicly issued, if the total number of shares represented by the shareholders present at the shareholders' meeting is insufficient for a quorum, the resolution may be adopted by two-thirds of the votes of the shareholders present at the shareholders' meeting who represent a majority of the total number of shares issued. In the aforementioned two situations, if the Articles of Incorporation adopts a higher criterion for the total number of shares of the shareholders present at the meeting and the total number of votes required for the resolution, the Articles of Incorporation will prevail.

9.2.4 Spin-off

- (1) The board of directors makes a proposal for spin-off.
- (2) Special shareholders' resolution

According to Article 32 of the Business Mergers and Acquisitions Act, a resolution for

the spin-off must be adopted by a majority vote at a shareholders' meeting attended by shareholders representing more than two-thirds of the total number of shares issued by the company. For a company whose shares have been publicly issued, the resolution may be adopted by two-thirds of the votes of the shareholders present at the shareholders' meeting who represent a majority of the total number of shares issued. In the case where a subsidiary acquires all or a substantial part of its parent company's business or assets, where specific requirements are complied with, the subsidiary may proceed without a shareholders' resolution. If the Articles of Incorporation adopts a higher criterion for the total number of shares of the shareholders present at the meeting and the total number of votes required for the resolution, the Articles of Incorporation will prevail.

(3) Notice and announce to the creditors of the company

Article 32, paragraph 5 of the Business Mergers and Acquisitions Act provides that, upon the passing of a resolution to spin-off, a company must immediately specify a period of not less than 30 days within which a creditor may file its objection and notify and announce the spin-off, including such period, to each of its creditors. Article 32 also provides that, in the case where the company does not make such notice and announcement, the spin-off may not be asserted against creditors who have objected to the spin-off, unless the company repays the debt obligation, provides adequate securities thereto, establishes a trust for repayment of the debt obligation, or provides proof that the spin-off will not impede the creditors' rights.

(4) Spin-off in respect to the business, assets and debts of the company

According to Article 32, paragraph 6 of the Business Mergers and Acquisitions Act, the existing or newly incorporated recipient company, unless the liabilities existing before the division may be severed, shall within the scope of contribution made by the recipient company assume joint and several responsibility of discharging the liabilities incurred by the divided company prior to the division. However, the creditors' right to claim for the performance of the joint and several liability shall become extinguished if not exercised by the creditors within two years from the reference date of division.

9.3 What are the criteria for determining which method is most suited to a particular case?

Different methods regarding the restructuring such as mergers and acquisitions have different

advantages and disadvantages. It is therefore difficult to set out the criteria for determining which method is most suited to a particular case (since it is on a case by case basis.).

9.4 What are the additional requirements, if any, if one of the companies involved in the restructuring is listed in Taiwan?

9.4.1 Special provisions of the Business Mergers and Acquisitions Act

In the case where a listed or OTC company in Taiwan is involved in either of the following restructuring procedures, special provisions on the Business Mergers and Acquisitions Act shall apply.

- (1) In the case where the company is involved in a share swap (in the case where the company is acquired through a share swap and becomes its parent company's wholly owned subsidiary company)

In accordance with Article 31 of the Business Mergers and Acquisitions Act, in the case where a listed or OTC company is acquired by another existing or newly incorporated company through a share swap pursuant to Article 29 of the Act and becomes its wholly owned subsidiary company, the shares then traded on the stock exchange or OTC market shall be terminated upon the completion of the required procedure of the stock exchange or OTC market. In this case, when the existing or newly incorporated acquiring company is found to be compliant with the requirements set forth for a listed or OTC company, it may become a listed or OTC company.

- (2) In the case where the company is involved in a division

In accordance with Article 32, paragraph 7 of the Business Mergers and Acquisitions Act, where a listed or OTC company is divided, when the existing or the newly incorporated recipient company after the division is found to be compliant with the requirements of division and the relevant listing or OTC rules, it may continue or start to offer its shares on the stock exchange or OTC market upon completing the procedures specified for such division and procedures of the stock exchange or OTC market, while the listed or OTC company before the division may continue to remain as such.

9.4.2 Disclosure obligation of a listed or OTC company

In addition to 9.4.1, from the viewpoint of the protection of investors, a listed or OTC company in Taiwan that is involved in restructuring shall have the obligation to disclose certain information regarding the restructuring as follows for each time certain events, such as a resolution of board of directors, occur.

(1) Listed companies

A listed company in Taiwan that is involved with the restructuring shall have the obligation to disclose certain material information related to the restructuring in accordance with the Taiwan Stock Exchange Corporation Procedures for Verification and Disclosure of Material Information of Companies with Listed Securities designated by the Taiwan Stock Exchange Corporation (the “Procedures for Disclosure of Material Information of Listed Companies”).

Specifically, in accordance with Article 2, paragraph 1, item 11 of the Procedures for Disclosure of Material Information of Listed Companies, in the case where it is resolved at a board of directors meeting to carry out a capital reduction, merger or consolidation, spin-off, acquisition, exchange or conversion of shares or transfer of shares from another company, dissolution, issue of new stock for capital increase, issue of corporate bonds, issue of employee stock option certificates, issue of other securities, private placement of securities, participation in the establishment of or conversion into a financial holding company or investment holding company or subsidiary thereof, or any material change in any of the above matters, such resolution shall fall under the material information to be disclosed and the content or explanation of such material information shall be input on the website designated by the Taiwan Stock Exchange (the current website is “the Market Observation Post System” at the following URL: <http://mops.twse.com.tw/index.htm>) before the commencement of trading hours of the trading day following the date of occurrence of the event pursuant to Article 3 of the Procedures for Disclosure of Material Information of Listed Companies; however, where a prior press release is issued, it shall also be input on the website stated above at the time of issuance of the press release. Where foreign laws or regulations impose time constraints concerning material information that a listed company is required to report on under the Procedures for Disclosure of Material Information of Listed Companies, the listed company may accommodate the time constraints under foreign laws or regulations and make the disclosure simultaneously therewith. Moreover, with respect to a resolution by the board of directors to carry

out a merger or consolidation, spin-off, acquisition, or transfer of shares from another company, if the counterparty is a foreign company, in accordance with Article 2, paragraph 3 of the Procedures for Disclosure of Material Information of Listed Companies, the listed company shall promptly, completely, and accurately disclose information related to the resolution for, process and method of, the merger or consolidation, acquisition, or transfer of shares from another company.

(2) OTC companies

On the other hand, where an OTC company in Taiwan is involved with the restructuring, the Gre Tai Securities Market Procedures for Verification and Disclosure of Material Information of OTC Companies designated by the Gre Tai Securities Market shall apply and the company shall have the obligation to disclose information that is similar to the aforementioned obligation of a listed company (Article 2, paragraph 1, item 11, Article 2, paragraph 3 and Article 3 of the Procedures for Disclosure of Material Information of OTC Companies).

9.5 What are the regulations restricting the acquisition of a certain percentage of shares in a company, and when do compulsory takeover regulations apply?

9.5.1 Restrictions on investment ratio

According to the Summary Table of the Restrictions on the Ratio of Foreign Investments in Securities in Taiwan (<http://sfb.fscey.gov.tw/bulletin/8-980218.doc>, as of October 2010), which was publicly notified by the Financial Supervisory Commission, currently the main industries subject to restrictions on the ratio of foreign investments are air and transport, public services such as railways, telegraph, telephone, waterworks, gas, electricity and postal, trust business, and radio and TV broadcasting, etc. The contents of the restrictions on the ratio of foreign investments are different for each of the aforementioned industries. There is a range of maximum limits in respect to the investment ratio for these industries, for example, 20% for cable radio and TV broadcasting and 100% for the postal services and non-cable radio and TV broadcasting. However, the most common maximum limits are between 49% and 50%.

9.5.2 Takeover Bid (TOB)

In the case where the acquirer wishes to purchase a certain ratio of shares in Taiwan for the purpose of obtaining control of the target company, the takeover bid system shall apply. In

theory, the takeover bid system in Taiwan is a system that mandatorily requires that, where the acquirer wishes to purchase a certain ratio of shares from a number of unspecified remaining shareholders of the target company for the purpose of obtaining control of the target company, it shall employ a takeover bid after clarifying the desired purchase price in accordance with the procedure specified by laws. In order to introduce an American-style takeover bid (public tender offer), Article 43-1 of the Securities and Exchange Act was newly created at the time of the amendment of the Act in 1988. Article 43-1, paragraph 3 of the Securities and Exchange Act provides that “where any person independently or jointly with another person(s) proposes to acquire a certain percentage of the total issued shares of a public company, it shall make the acquisition by means of a takeover bid, unless certain conditions are satisfied.” Moreover, with regard to the said certain percentage, Article 11 of the Regulations Governing Takeover Bids for Securities of Public Companies, which was enacted by the Financial Supervisory Commission as the competent authority, pursuant to the aforementioned Article, provides that “any person who individually or jointly with another person(s) intends to acquire within 50 days shares accounting for 20% or more of the total issued shares of a public company shall employ a takeover bid to do so.”

9.6 Would the above forms of restructuring also be available to foreign companies?

9.6.1 Application of the Statute for Investment by Foreign Nationals

According to Article 1 of the Statute for Investment by Foreign Nationals (the “Statute”), matters relating to investments made by foreign nationals within the territory of Taiwan shall be governed by the Statute. In addition, according to Article 4 of the Statute, the investments as referred to in it shall be (1) holding shares issued by a Taiwanese company or contributing to the capital of a Taiwanese company; (2) establishing a branch office, proprietary business or partnership in the territory of Taiwan; and (3) providing loan(s) to the invested business referred to in the preceding two paragraphs ((1) or (2)) for a period exceeding 1 year. Therefore, most of the cases where a foreign company is involved in restructuring in Taiwan will be governed by the Statute (as for the Statute, please refer to Section 5.1).

In particular, Article 8, paragraph 1 of the Statute provides that an investor who makes an investment in accordance with the Statute is required to submit an investment application, together with his/her investment plans and relevant documents, to the Investment Commission of the Ministry of Economic Affairs for approval, and that the same shall apply if and when his/her investment plan changes. Therefore, if a foreign company intends to enter into restructuring targeting Taiwanese companies that will change the number of the shares of

Taiwanese companies held by the foreign company, it needs to obtain approval from the Investment Commission in advance.

9.6.2 Application of the special provisions related to foreign companies of the Business Mergers and Acquisitions Act

In principle, the aforementioned provisions of the Business Mergers And Acquisitions Act shall be applied *mutatis mutandis* to the case where a foreign company is involved in restructuring in Taiwan (Article 22, paragraph 2, Article 27, paragraph 4, Article 28, paragraph 2, Article 30, paragraph 3, and Article 33, paragraph 3 of the Act). Thus, in principle, foreign companies may use any restructuring method permitted by the Act.

However, there is also Article 21 of the Act, which is a special provision to be applied only to the restructuring in which foreign companies involved. The following are provided for in Article 21, paragraphs 1 and 2:

1. The following requirements shall be fulfilled in the case of any merger of a domestic company with a foreign company: (1) the foreign company, pursuant to the law of the country where the foreign company is incorporated, shall be a company limited by shares or a limited company and shall be duly allowed to be merged with other company; (2) the merger agreement has been duly resolved by a shareholders' meeting, board of directors of that company or otherwise, pursuant to law of incorporation; and (3) the surviving company or newly incorporated company after the merger shall exist only in the form of a company limited by shares.
2. The foreign company shall designate before the reference date of the merger a representative for any service of documents made within the territory of Taiwan.

It should be noted that this Article 21 of the Act shall be widely applied *mutatis mutandis* to the case where a foreign company is involved in restructuring in Taiwan by methods other than merger (Article 27, paragraph 4, Article 28, paragraph 2, Article 30, paragraph 3, and Article 33, paragraph 3 of the Act).

9.7 Is there any legislation or other form of regulation which applies to restrict the potential anti-competitive results of a sale or acquisition of a business or company within Taiwan?

9.7.1 The Fair Trade Act

In respect to the management and maintenance of just and reasonable competition in the market, Taiwan enacted the Fair Trade Act. The contents of the Fair Trade Act can be divided into two main parts. The first is the limitation on competition, i.e., regulations on monopolies, mergers and concerted actions of businesses so as to prevent these actions from having the effect of limiting competition. The second is the limitation on unfair competition, i.e., regulations on improper actions of businesses such as false advertisements, passing off, and malicious attacks on the business of another so as to prevent these actions from having the effect of unfair competition.

9.7.2 Cases where approval from the Fair Trade Commission is required

A merger and acquisition falls under the business combinations specified in Article 6 of the Fair Trade Act. According to Article 11-1 of the Act, any merger and acquisition that falls under the following circumstances shall be filed with the Fair Trade Commission for approval:

- (1) Where, as a result of the merger and acquisition, the enterprise(s) will have one third of the market share;
- (2) Where one of the enterprises involved in the merger and acquisition has over one fourth of the market share; or
- (3) Where the sales for the preceding fiscal year of one of the enterprises involved in the merger and acquisition exceed the amount publicly announced by the Fair Trade Commission.

Where the merger and acquisition of the companies falls under the aforementioned business combinations to be filed, the merger and acquisition shall not be permitted unless examined and approved by the Fair Trade Commission.

10. TAX

10.1 What determines the extent of a company's liability to pay Taiwanese income tax?

According to Article 3 of the Income Tax Act, for any profit-seeking enterprise having its head office within the territory of Taiwan, profit-seeking enterprise income tax (which is equivalent to corporate tax) will be levied on its total profit-seeking enterprise income derived within or outside of the territory of Taiwan; whereas for any profit-seeking enterprise having its head office outside of the territory of Taiwan but having income derived from sources in Taiwan, profit-seeking enterprise income tax will be levied on its profit-seeking enterprise income derived within the territory of Taiwan.

10.2 How is residence treated for tax purposes?

Residence tax under Japanese law is different from income tax, and for which there is no equivalent in Taiwan. For any individual having income from sources within the territory of Taiwan, income tax will be levied in Taiwan on his/her income from those sources. Specifically, in the case of an individual residing in Taiwan, income tax will be levied on the amount that remains after deducting certain items from his/her consolidated income from sources within the territory of Taiwan (excluding income that is exempt from tax) at a progressive tax rate from 6% to 40%. On the other hand, in the case of an individual not residing in Taiwan, income tax will be levied on his/her income from sources within the territory of Taiwan at the prescribed flat rate (20% at present).

According to Article 7, paragraph 1 of the Income Tax Act, an "individual residing in Taiwan" refers to (1) a person who has domicile within the territory of Taiwan and resides at all times within the territory of Taiwan; or (2) a person who has no domicile within the territory of Taiwan but stays in the territory of Taiwan for a period of more than 183 days during a taxable year. Therefore, if a foreign national stays in the territory of Taiwan for a period of more than 183 days, according to Article 2, paragraph 1 of the Income Tax Act, the foreign national must file a personal income tax return.

10.3 What is the corporate tax rate and how is it applied?

According to Article 5, paragraph 5 of the Income Tax Act, the minimum taxable amount, tax brackets and rates for profit-seeking enterprise income tax are as follows:

1. If the total taxable income of a profit-seeking enterprise is NT\$120,000 or less, the profit-seeking enterprise is exempt from tax.

2. If the total taxable income of a profit-seeking enterprise is more than NT\$120,000, the income tax rate is 17% in principle. However, if the income tax calculated by this tax rate exceeds one half of the portion of taxable income over NT\$120,000, the income tax shall be the amount of the excess over the one half of the portion of taxable income over NT\$ 120,000.

10.4 What is the tax rate applicable to foreign companies on their income earned in Taiwan?

The method by which a foreign company makes corporate income tax payments levied in Taiwan depends on whether the foreign company has established a fixed place of business in Taiwan or not.

10.4.1 Where a foreign company has a fixed place of business in Taiwan

The Statute for Upgrading Industries provided relevant tax incentives for foreign investments; however, it was abolished on December 31, 2009. In response to its abolition, and in order to continuously promote foreign investments in Taiwan, Article 5, paragraph 5 of the Income Tax Act was amended accordingly on May 27, 2009. As of January 1, 2010, the corporate income tax rate has been reduced from 25% to 20%. In addition to the amendment in 2009, the proposed amendment of the aforementioned provision with regard to the corporate income tax rate was approved. As a result, the corporate income tax rate has been reduced from 20% to 17% retroactively from January 1, 2010. Please refer to the explanation in Section 10.3 for details on this provision.

10.4.2. Where a foreign company does not have a fixed place of business in Taiwan

According to Article 88, paragraph 1, item 2 of the Income Tax Act, income paid to a foreign profit-seeking enterprise having no fixed place of business or business agent within the territory of Taiwan is subject to withholding tax. According to Article 92, paragraph 2 of the same Act, the tax withholders must, within ten days from the date of withholding, effect payment to the national treasury of all the taxes withheld from income paid to the taxpayers (i.e., foreign profit-seeking enterprise). Afterwards, the tax withholders shall submit withholding certificates to the local collection authority in charge for verification, and shall issue the certificates to each of the taxpayers (i.e., foreign profit-seeking enterprise).

10.5 What other taxes are payable in Taiwan?

According to Article 4 of the Subdivision of Financial Income and Expenditure Act, there are two types

of taxes payable in Taiwan, national taxes and local taxes. Please see the following list of some of the key taxes under each category.

1. National Taxes

National taxes include personal income tax, corporate income tax, estate and gift tax, customs, commodity tax, tobacco and alcohol tax, business tax, futures transaction tax, securities transaction tax, and mineral tax, etc.

2. Local Taxes (including county, city and other local governments)

Local taxes include land value tax, land tax, land value increment tax, license tax, stamp tax, housing tax, entertainment tax, and deed tax, etc.

10.6 Is there a tax on dividends?

According to Article 14 of the Income Tax Act, “income from profit-seeking activities” is included in the calculation of personal income tax. Furthermore, the so-called “income from profit-seeking activities” include the gross dividends received by each shareholder of a company, the gross surplus profit received by each member of a cooperative, the gross surplus profit payable each year to each partner of a profit-seeking partnership, the gross surplus profit derived each year by a sole proprietor from the operation of an enterprise invested solely by him/her, and the surplus profit derived by an individual from incidental trading activities. Therefore, income tax will be levied on dividends as “income from profit-seeking activities.”

10.7 Are payments subject to withholding tax?

10.7.1 Income subject to withholding tax

According to Article 88 of the Income Tax Act, income subject to withholding tax can be divided into two categories as follows.

- (1) Net dividends distributed by a company to an individual not residing in the territory of Taiwan or profit-seeking enterprise having its head office outside the territory of Taiwan; or the net surplus profits distributed by a cooperative, partnership or a wholly-owned organization to its member, partner or sole investor not residing in the territory of Taiwan.

- (2) Salary, interest, rental, commission, royalty, cash award or prize given in a contest or game competition, lottery prizes, retirement pay, severance pay, separation pay, resignation pay, life-time pension, old-age pension not covered by insurance benefits, reward for information or accusation, income from transactions in structured products, and fees for professional practices paid by any organization, institution, school, enterprise, bankruptcy estate, or practitioner of profession, and the income paid to a foreign profit-seeking enterprise having no fixed place of business or business agent within the territory of Taiwan.

10.7.2 Method of withholding

According to Article 92 of the Income Tax Act, the tax withholders must, within the 10th day of each month, effect payment to the national treasury of all the taxes withheld in the previous month, and, before the end of January of each year, issue withholding certificates and submit them to the local collection authority in charge to verify the amounts of tax withholdings from the taxpayers in the preceding year, and issue a receipt of the withholding certificates to each of the taxpayers before February 10 of each year.

In the case of a non-resident individual or a profit-seeking enterprise without a fixed place of business in Taiwan but having income as enumerated under Article 88, the tax withholder must within ten days from the date of withholding, effect payment to the national treasury of all the taxes withheld, issue withholding certificates to the taxpayer after submitting them to the local collection authority in charge for verification. The same shall apply in the case of net dividends or earnings received by a profit-seeking enterprise having its head office outside the territory of Taiwan but having a fixed business place within the territory of Taiwan.

10.8 Is capital gains tax payable in Taiwan?

10.8.1 Personal income

According to Article 14 of the Income Tax Act, “income from property transactions” is included in the calculation of income tax. The method of calculating the amount of the aforementioned income from property transactions is as follows: (1) where the property or right was originally acquired at a price, the amount of the income is the transaction price after deduction of the original cost and all expenses necessary for acquisition, improvement and ownership transfer of that asset; (2) where the property or right was originally acquired through succession or donation, the amount of the income is the transaction price after deduction of the value prevailing at the time of succession or donation and all expenses necessary for acquisition,

improvement and ownership transfer of that property or right; (3) one-half of the amount of income of an individual derived from transactions in registered stocks or registered corporate bonds issued by a company limited by shares, or public bonds issued by governments of all levels, or development bonds issued by banks under the approval of government, if the individual has held such stocks or bonds for a period of one year or longer, is considered a part of his income in the taxable year, while the other one-half is exempted from income tax.

However, it should be noted that where the object of the property transaction involves goods such as land, shares, and futures, according to Articles 4, 4-1 and 4-2 of the Income Tax Act, the income generated therefrom is exempted from income tax.

10.8.2 Corporate income tax

According to Article 24 of the Income Tax Act, the amount of income of a profit-seeking enterprise is the net income calculated by deducting all costs, expenses, losses and taxes from the gross yearly income. Thus, if there is any surplus after the deduction of the relevant costs such as the costs of purchasing assets and transaction expenses from the proceeds generated from the property transaction, the amount of surplus is included as taxable income.

However, it should also be noted that where the object of the property transaction involves goods such as land, shares, and futures, according to Articles 4, 4-1 and 4-2 of the Income Tax Act, the income generated therefrom is exempted from income tax.

11. DISPUTE RESOLUTION

11.1 Please give a brief outline of the civil procedure in Taiwan.

The objective of civil litigation proceedings is to resolve disputes in relation to personal property, e.g., purchase and sale disputes, damages, etc., or rights and obligations arising from one's identity, e.g., divorce, confirmation of parental relationship, etc. Litigation can be divided into four steps: initiation of litigation, determination of litigation procedure, adjudication of the court and judgment and appeal, which can be further elaborated as follows.

11.1.1 Initiation of Litigation - Jurisdiction

The first thing that must be dealt with in the initiation stage is to determine the jurisdiction. According to Article 1 of the Code of Civil Procedure, in principle, a defendant may be sued in the court of the place of the defendant's residence or domicile. If the defendant is a public

juridical person, the defendant may be sued in the court where its principal office is located, and if the defendant is a central or local government agency, the defendant may be sued in the court for the jurisdiction where such office is located. If the defendant is a private juridical person, the defendant may be sued in the court where its principal office or principal place of business is located. Moreover, Articles 3-9 and 11-20 of the Code of Civil Procedure provide special provisions in respect to different types of civil disputes (e.g., contractual disputes, disputes involving negotiable instruments, tort disputes, succession disputes, etc.), whereby if there are multiple courts with jurisdiction over the same matter, a plaintiff may freely choose to initiate the litigation in any one of them. However, it should be particularly noted that, for the convenience of evidence investigation, or for other public interest consideration, the Code of Civil Procedure includes “exclusive jurisdiction” provisions for specific matters, for example, where the litigation involves immovable property rights, the court of the place in which the land is located has exclusive jurisdiction (Article 10 of the Code of Civil Procedure), or where the litigation involves the determination of whether an adoption relationship exists, the court of the place where the foster parents are located, or the place where the foster parents reside at the time of his/her death has exclusive jurisdiction, etc. (Article 583 of the same Code)

11.1.2 Determining Litigation Procedure

11.1.2.1 Different litigation proceedings for different amounts of claims and different types of cases

In Taiwan, the ordinary proceedings of a civil litigation apply to claims where the amount of the claim is over NT\$500,000; small claims proceedings apply to claims where the amount is less than NT\$100,000; and, summary proceedings apply to claims where the amount is between NT\$100,000 and NT\$500,000. Summary proceedings shall apply to the following actions irrespective of the amount of the claim (please refer to Article 427, paragraph 2 of the Code of Civil Procedure):

- (1) Actions arising from disputes over a fixed-term lease of a building or other structure, or from a fixed-term lender-borrower relationship;
- (2) Actions between an employer and an employee arising from an employment contract with an employment term of less than one year;
- (3) Actions between a guest and the owner of a hotel or the owner of a food and beverage store, or a carrier arising from food/accommodation, freight costs or deposit of baggage or money/property;

- (4) Actions arising from the protection of possessions;
- (5) Actions arising from the fixing of the boundaries or the demarcation of a real property;
- (6) Actions arising from claims in a negotiable instrument;
- (7) Actions arising from claims in a cooperative association;
- (8) Actions arising from claims in interest, bonus, rent, alimony, retirement/severance payment or other periodical payments;
- (9) Actions arising from the lease of personal property or a lender-borrower relationship with respect to the use of personal property;
- (10) Actions arising from the guarantee for the claims provided in the first to the third subparagraphs inclusive and the sixth to the ninth subparagraphs inclusive; and
- (11) Actions in which the parties agree to apply summary proceedings in writing.

The Code of Civil Procedure provides small claims proceedings and summary proceedings in which the procedure, court structure and court members are simplified more than the ordinary proceedings for the purpose of conducting a speedy trial.

11.1.2.2 Requirements to appeal to the Supreme Court under the Code of Civil Procedure

An appeal to the Supreme Court may be made only when the following two requirements are satisfied:

- (1) The appeal is made on the grounds that the judgment in the second instance is in contravention of the laws and regulations.

The scope of adjudication of the district court and high court includes not only the application of laws but also fact findings, while that of the Supreme Court is limited to the application of laws.

- (2) The amount of the claim is more than NT\$1500,000.

11.1.2.3 List of the summary of the proceedings

Please see below for a summary of the aforementioned proceedings.

	Small Claims Proceedings	Summary Proceedings	Ordinary Proceedings	
	Claim Amount <NT\$100,000	Claim Amount NT\$100,000 – NT\$500,000	Claim Amount NT\$500,000 – NT\$1,500,000	Claim Amount >NT\$1,500,000
First Instance	District Court Single Judge (Facts, Law)	District Court Single Judge (Facts, Law)	District Court 3-Judge Panel (Facts, Law)	District Court 3-Judge Panel (Facts, Law)
Scope of Adjudication				
Second Instance	District Court 3-Judge Panel (Law)	District Court 3-Judge Panel (Facts, Law)	High Court 3-Judge Panel (Facts, Law)	High Court 3-Judge Panel (Facts, Law)
Scope of Adjudication				
Third Instance	N/A	Supreme Court 5-Judge Panel (Law) * An appeal may be made only when the claim amount is more than NT\$1500,000 and summary proceedings apply based on the type of case.	N/A	Supreme Court 5-Judge Panel (Law)
Scope of Adjudication				

11.1.3 Court Adjudication

The adjudication of a case mainly consists of preparatory proceedings, evidence investigation and oral arguments. Preparatory proceedings seek to confirm the claims of the parties and the relevant arguments put forward in relation thereto and to assist the court in clarifying the issues in dispute so as to facilitate the adjudication process. As to evidence investigation, in addition to the investigation of evidence submitted by the parties in accordance with the methods as prescribed by laws, where necessary, the court may also engage institutions, schools or other organizations to conduct necessary investigations. Oral arguments refer to the procedure where the parties present their case to the court in respect of the facts and evidence.

11.1.4 Judgment and Appeal

The structure of a judgment can be divided into the holding of the court and the reasoning of the court. On the day when the court renders its judgment, the court will only read the holding of the court out loud. If a party disagrees with the result of the judgment, the said

party may file an appeal within 20 days after the day following the delivery of the original copy of the judgment. If a party fails to file an appeal within a 20-day period, the judgment is deemed final and binding and the parties cannot further dispute the case in respect to the holding of the court of the judgment.

11.2 How are foreign judgments enforced in Taiwan?

In order to enforce a foreign judgment in Taiwan, the enforcing party must initiate an action for the application for leave to execution pursuant to Article 4-1 of the Compulsory Execution Act. The foreign judgment only becomes enforceable if the court examines whether the foreign judgment does not fall within any of the situations prescribed under Article 402 of the Code of Civil Procedure and permits upon judgment the compulsory execution of the foreign judgment.

The provisions of the aforementioned Article 4-1 of the Compulsory Execution Act, and Article 402 of the Code of Civil Procedure state the following.

1. Article 4-1 of the Compulsory Execution Act

“Where a party petitions for compulsory execution based on a final and binding judgment rendered by a foreign court, the judgment is compulsorily executed if none of the situations prescribed under Article 402 of the Code of Civil Procedure arises and upon the judgment of a court in Taiwan permitting the compulsory execution thereof. The court in the location of the debtor’s residence has jurisdiction over the aforementioned petition for compulsory execution. Where the debtor does not have any residence in Taiwan, the court in the location where the object of the execution is located, or the location where the execution is to be carried out shall have the jurisdiction.”

2. Article 402 of the Code of Civil Procedure

“A final and binding judgment rendered by a foreign court shall be recognized, except in case of any of the following circumstances: 1. where the foreign court lacks jurisdiction pursuant to Taiwanese laws; 2. where a default judgment is rendered against the losing defendant, except in the case where the notice or summons of the initiation of action was legally served in a reasonable time in the foreign country or was served through judicial assistance provided under Taiwanese laws; 3. where the performance ordered by such judgment or its litigation procedure is contrary to Taiwan public policy or morals; or 4. where there exists no mutual recognition between the foreign country and Taiwan. The provision of the preceding paragraph shall apply *mutatis mutandis* to a final and binding ruling rendered by a foreign

court.”

11.3 What are the alternative methods of dispute resolution available in Taiwan?

In addition to bringing law suits in court, the alternative methods of dispute resolution available in Taiwan include proceedings such as mediation and arbitration.

11.3.1 Mediation

(1) Mediation of Litigation

Apart from the matters subject to mandatory mediation as prescribed under Article 403, paragraph 1 of the Code of Civil Procedure, petition for mediation may also be made to the court in other civil cases prior to the initiation of the litigation. The effect of a successful mediation has the same binding force as a final and binding judgment pursuant to Article 416, paragraph 1 and Article 380, paragraph 1 of the Code of Civil Procedure.

(2) Judicial Mediation in Prefectures, Towns and Cities (the unit of the local administration)

In respect to civil cases or criminal cases where no trial may be commenced without complaint, according to the Statute for Judicial Mediation in Prefectures, Towns, and Cities, a party may also apply to the mediation committee of the prefecture, town or city for mediation. Within 10 days after the date of a successful mediation, the committee must transfer the mediation decision to the court with jurisdiction for its approval. Upon the approval of the court, a civil mediation decision has the same binding force as a final and binding civil judgment. Upon the approval of the court, the parties to a criminal mediation decision may not initiate any complaint or private prosecution (Article 319, paragraph 1 of the Code of Criminal Procedure permits the private prosecution by which the victim of a crime may file a prosecution him/herself under certain requirements) in respect to the matter. Where the mediation decision concerns a certain amount of money payment or other fungible things or valuable securities, the mediation decision may be enforceable.

(3) Special Mediation Proceeding

Certain special laws may enact special mediation proceedings as the matters governed by the laws may be of a special nature. For example, in government procurement cases, where the government agency and the supplier cannot reach an agreement in respect to a dispute arising from contract performance, a party may apply to the Complaints Review Board for Government Procurement (please refer to Article 85-1, paragraph 1, item 1 of the Government Procurement Act). In addition, special mediation proceedings are also provided for cases such as consumer disputes or intellectual property rights related disputes, e.g., integrated circuit layout or copyright.

11.3.2 Arbitration

According to Articles 1, paragraph 1 to 3 of the Arbitration Law, for almost all disputes that can be resolved by settlement, the parties may enter into an arbitration agreement in writing designating one arbitrator or an odd number of arbitrators to constitute an arbitration tribunal so as to resolve disputes by way of arbitration. Moreover, according to Article 37, paragraph 1 of the Arbitration Law, the arbitral award shall have the same binding force as a final and binding judgment. Currently, the main arbitration institutions include the Arbitration Association of the Republic of China, Taiwan Construction Arbitration Association, and Chinese Construction Arbitration Association.

11.4 How are arbitral awards enforced in Taiwan?

According to Article 37, paragraph 2 of the Arbitration Law, an arbitral award may not be enforced unless a competent court has, on application, granted an enforcement order. However, if the arbitration concerns a certain amount of money payment or other fungible things or valuable securities, or the delivery of specific movable property, where it is provided in the written arbitration agreement between the parties that the arbitral award may be mandatorily enforced without court order, the arbitral award may be mandatorily executed.

11.5 What are the grounds on which an arbitral award can be challenged in the courts in Taiwan?

Although an arbitral award has the same binding force as a final and binding judgment, where any of the situations listed under Article 40, paragraph 1 of the Arbitration Law occurs, a party may apply to the court to set aside the arbitral award:

1. Any of the circumstances prescribed under Article 38 of the Arbitration Law.
2. The arbitration agreement is nullified, invalid, or has yet to come into effect, or has become invalid prior to the conclusion of the arbitration proceedings.
3. The arbitral tribunal fails to give any party an opportunity to present its case prior to the conclusion of the arbitration proceedings, or if any party is not lawfully represented in the proceedings.
4. The composition of the arbitral tribunal or the arbitration proceedings is contrary to the arbitration agreement or the law.
5. An arbitrator fails to fulfill the duty of disclosure prescribed in Article 15, paragraph 2 of the Arbitration Law herein and appears to be partial, or has been requested to withdraw but continues to participate; provided that the request for withdrawal has not been dismissed by the court.
6. An arbitrator violates any duty in the entrusted arbitration and such violation carries criminal liability.
7. A party or any representative has committed a criminal offense in relation to the arbitration.
8. If any evidence or content of any translation upon which the arbitral award relies, has been forged or fraudulently altered, or contains any other misrepresentations.
9. If a judgment of a criminal or civil matter, or an administrative ruling upon which the arbitral award relies, has been reversed or materially altered by a subsequent judgment or administrative ruling.

The foregoing items 6 to 8 are limited to instances where final conviction has been rendered or the criminal proceedings may not be commenced, or continue for reasons other than insufficient evidence (Article 40, paragraph 2 of the Arbitration Law).

The foregoing item 4, concerning circumstances contravening the arbitration agreement, and items 5 to 9, are limited to the extent sufficient to affect the arbitral award (Article 40, paragraph 3 of the Arbitration Law).

(As of October 31, 2010)

This article is intended to provide only general, non-specific legal information and does not purport to give a legal opinion or advice on specific facts.