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Foreign Companies preferred entry modes and common issues faced in the Taiwanese market

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论文提要

这篇论文讨论了外国公司在台湾做生意时所面临的挑战以及采用哪种进入台湾市场的模式。由于台湾市场在很多方面具有不少的优势,比方说:良好地理位置、方便交通建设、发达的基础设施、人才资源等的方面,很多外国公司决定投入到台湾。并且,由于台湾与中国大陆分享同样的文化价值观,许多外国公司把台湾作为它们的试销市场而在那里建立它们的东亚总部。

虽然台湾是世界上最自由经济地区之一,但是从外国公司与外国投资者的角度来看,在不熟悉的市場做生意的情况之下,他们要面临的困难并不少。尤其是由于大部分的政府与联合国会员不认可中华民国的主权,台湾在国际环境之中扮演尴尬的角色。这个情况深刻地影响到台湾的国际商法,与其他国家的贸易关系以及业务,可见在台湾做生意更显得复杂。

这篇论文分四个部分:

- 一 台湾历史框架;
- 二 台湾法律框架尤其是国际商法与公司法;
- 三 外国公司采用进入台湾市场的模式;
- 四 外国公司与外国投资者面临的主要挑战。

这篇论文简要地介绍头两个方面而用大量篇幅解释最后两个。通过台湾历史总览,这篇论文想弄清为何台湾陷入了国际孤立以及这个情况对政治与法律方面造成了什么样的影响。台湾的孤立状况是由第二次国共内战(1945年至于1950年)的结果造成的。这个内战是中国国民党领导的中华民国国军与中国共产党领导的中国人民解放军之间为争夺中国统治权而进行的内战。由于共产党最终取得大陆地区绝大部分区域的统治权,还建立中华人民共和国,所以国民党逃到台湾,在那里建立了中华民国的基地。从那个时候起,两岸支持“一个中国”原则。刚开始,世界上的很多政府支持中华民国的主权,但是随着中国经济发展,一个接着一个与中国大陆建立外交关系使台湾陷入国际孤立,直到1971年中华人民共和国取代中华民国加入联合国。

从政治角度来看，这些历史事件在台湾社会之内造成了深刻的政治裂痕。这政治裂痕体现在台湾主要两个党派，也就是说中国国民党与民主进步党。前者支持“一个中国”原则，还希望未来可以于中国建立和平谈判，反之，后者不支持“一个中国”原则并代表台湾人独立的愿望。

从法律角度来看，由于中华民国希望得到越来越多国家的承认而在国际社会中加强自己的位置，台湾政府实施了法律制度改革以缩小其法跟国际法律的差距。尤其是，台湾进入 WTO 之后，中华民国的外交政策特别注意推动市场自由化。在这个开放环境之下，台湾签订了一些重要的协定，比如：两岸经济合作架构协议、服务贸易协定、亚洲太平洋经济合作组织什么的，还实施了放松管制政策以便吸引越来越多外商直接投资。

这篇论文的第二个部分讨论了台湾的暧昧国际地位对台湾法律制度有什么样的影响，受到影响最大的法律是商法与国际私法。这些法条的规定皆在以下法律中加以规定，比如说：民法、契约法¹、公平交易法及公司法等等。并且为了推动跨境商务，这些法规已完成与国际法的连接。拿契约法来说，按照国际业务，许多合同条款被修改好了。此外，争议解决条款也进入了修订程序。事实上，台湾的争议解决方式不像以前那样。现在业务伙伴可以通过仲裁法庭来解决他们的争议。

第三个部分介绍了外国公司采用进入台湾市场的模式。根据研究允许台湾市场的进入模式是：

- 一 商业协议
- 二 战略联盟与合夥组织
- 三 外商直接投资

第一模式包括：代理合同与经销合同，制造合同，供货合同以及内进出口活动。

第二个包括：许可合同，加盟合同，普通合伙以及有限合伙。

第三个包括外商办事处，外商分公司，子公司，合资企业以及海外并购。

¹ 中国大陆的合同法在台湾叫成契约法

各个进入模式有自己的优点与缺点。按照公司的控制权力度的要求，公司打算承办的商业活动以及公司的投资额，外国公司来选择最合适的进入模式。上面的进入模式是根据控制权力度从低到高来进行排序的。

虽然上面的模式都是进入台湾市场的普遍方式，但是外国投资者通常选择的还是子公司。按照台湾公司法的规定，在台湾四种子公司类型是可以建立的：无限公司，两合公司²，股份有限公司以及有限责任公司。根据研究，外国投资者通常建立的公司类型就是最后两个因为股份有限公司与有限责任公司的建立条件比较灵活并且外国公司在它们承办的商业活动方面的控制权力度也很强。尤其是有限责任公司的注册条款没有最低投资额与最低股东和董事人数的要求。

这篇论文的最后部分解释了外国公司与外国投资者在台湾做生意时所面临的主要问题。这些问题是从四个方面来分析的：

- 文化方面
- 两岸外交关系方面
- 法律限制方面
- 自然灾害方面

关于文化方面，去国外做生意时，面临的文化挑战并不少。每个国家有自己的语言，自己的沟通方式，自己的业务实践以及自己的文化价值观。台湾人的沟通方式比较内向，不太直接。他们说的语言就是国语也就是中国普通话的一种变体。很少的人的英文水平高。并且台湾的文化价值观体现在儒学观念，比方说：集体主义，孝顺，关系及面子等等。这些观念深刻地影响台湾人的实践及与别人相处的方式。学好中文一定带来一些好处，但是为了让商业在台湾很成功，最重要的是了解台湾文化因为由文化差距造成的问题是主要业务失败原因之一。

关于两岸外交复杂关系，“一个中国”原则对台湾与其他国家的交易关系也造成深深的影响。由于中国大陆陈述台湾地区属于中国的范围

² 两合公司：指一人以上无限责任股东，与一人以上有限责任股东所组织，其无限责任股东对公司债务负连带无限清偿责任；有限责任股东就其出资额为限，对公司负其责任之公司。

之内，它不愿意而不让别的国家直接跟台湾签订自由贸易协定，这样障碍台湾外商交易机会。

从法律角度来看，由法律限制造成的问题涉及到进口及外商直接投资方面。虽然台湾是世界上最自由经济地区之一，但是有一些规定限制一些产品的进口以及外国投资的项目。事实上，台湾政府实施了外国投资条例与华侨回国投资条例。按照这两个条例禁止的产业是：涉及国家安全、公共秩序、国家卫生和法律禁止的行业，如：农牧业、公交服务、邮政、广播及电视等行业。

除了这三个方面以外，别的业务中断的原因是自然灾害。台湾是一个易受自然灾害危害的地区。这些灾害包括地震、海啸、台风、风暴潮和洪水等。虽然政府正在积极地开发一个使用减灾技术的功能性应急管理系统，但这种事件仍在发生，并导致不同程度的业务中断。愿意在台湾做生意的外国公司一定要把这个因素考虑进去。

总之，台湾政府给外国公司及投资者许多不同进入市场模式的机遇。他们按照公司的控制权力度的要求，投入的投资额的意向以及承办的商业活动来选择最合适的进入模式。其中，有最灵活注册必要条件的进入模式是股份有限公司以及有限责任公司。即使成功地设立商业，在台湾的外国投资者也要面临不少的挑战。大部分的这些挑战是由文化方面、两岸外交关系、法律方面以及自然灾害危害造成的。因此，去台湾做生意的外国公司一定要注意上面说的一些方面。

Foreign companies preferred entry modes and common issues faced in the Taiwanese market

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Introduction

Taiwan is one of the freest economies in the world. Since its political separation from China in 1949, when the losing Nationalist party established a parallel government in the Republic of China, has undergone a continuous process of development of its economy, which made it one of the four Asian Dragons with a strong western capitalist business mentality. It is ranked 11th out of 189 in the 2017 World Bank's Ease of Doing Business Survey and attracts many investments from all over the world for several advantages and opportunities that the Taiwanese market offers. However, despite all the positive aspects that might intrigue foreign companies, running a business in a such peculiar economic area like Taiwan poses interesting problems. Thus, the main aim of this thesis is to discuss the foreign companies preferred entry modes and the key issues faced in the Taiwanese market. This topic is addressed under Taiwanese legal perspective, focusing in particular on Taiwan Company Law with its procedures for the establishment of a business entity and Taiwan commercial and Private International Law, whose closes and amendments are influenced by the peculiarities of Taiwanese international status. What makes Taiwan so unique? First of all, the political fracture with Beijing, that claims to be the sole government of China, relegated Taiwan in an ambiguous international status that resulted in a diplomatic isolation. In fact, most governments and United Nations members consider Taiwan as a part of Mainland China thus, recognizing People Republic of China as the sole legitimate government of China. This had a grave impact on Taiwanese political and trade relations, as well as on Taiwan international business legal framework. What contributes to the complexity of Taiwanese situation is the composition of the population of the island. As it will be discussed in the historical overview in the first chapter, Taiwan's population is mainly composed of four different ethnic groups: Holo, Hakka, Mainlanders and Austronesians. These groups have considerable influence on Taiwanese culture and are source of increasing debates and clashes about Taiwanese identity. Understanding Taiwanese ambiguous international status, its unique mixture of cultures, as well as all the consequences that derive from this situation is crucial for any company doing business in Taiwan. This is the reason why, before analyzing the possible entry modes and the business entities mostly chosen by foreigners, along with the common issues encountered by them while running a business in Taiwan, it will be provided an historical political insight of the island, as well as of Taiwanese legal framework, focusing on the effects of Taiwan condition of isolation and desperate need of international recognition.

The topic of this thesis is organized in five chapters. As previously mentioned, the first chapter gives a brief historical and political overview of Taiwan, providing the reader the tools to the understanding of Taiwanese present status of international ambiguity.

The second chapter presents Taiwanese legal framework focusing on the effects of Taiwanese peculiar situation on ROC trade relation policy, Private International Law (PIL) and Company Law. In order to attract the attention of other countries that do not recognize it, and increase trade relations with them, Taiwan government has undergone a reform process of its legal system, which is now enriched with western legal concepts as well as amendments and provisions aimed to ease economic cooperation and negotiations. Thus, reduction of trade barriers, agreements like ECFA, APEC and TiSA are the expression of such trade policy. This need of Taiwan's further integration into global economy has become even stronger when it has been admitted into the WTO, the only organization which admits Taiwan as a member because the statehood is not a compulsory requirement for the eligibility. However, the ROC was asked to implement a deregulation policy especially for those laws concerning foreign investments in order to align them to the international practices and create an attracting business environment for the other members. In this chapter, it is also shown how this process of harmonization of Taiwanese legal framework to the international business practices has strongly influenced Taiwanese PIL and Company Law. The third chapter describes the possible entry modes allowed to foreign investors or companies. The business typologies analyzed are grouped in three categories: commercial agreements, strategic alliances - partnerships and foreign direct investments. These entry modes are characterized by different degree of control, resources commitment required and risks. Their peculiarities and the reason why some of these typologies are preferred rather than others will be also discussed. The fourth chapter instead, aims to discuss the key issues that challenge foreign companies and investors while running a business in Taiwan showing how these problems might result in varying degrees of business disruption. These issues are usually due to cultural differences, political frictions, legal restrictions as well as natural disasters. The final chapter instead, is dedicated to the conclusion of this research and aims to shed some light on the Taiwanese business environment, opportunities and threats.

1. Brief Historical and political framework in Taiwan

1.1 Taiwan historical overview and its international ambiguity³

With a population of around 23 million people, Taiwan is one of the most populated area in the world. It is situated 130 km from the Chinese Province of Fujian on the eastern 2coast of the mainland China, and has its sovereignty on several smaller islands and archipelagos including the Penghu Islands, Matsu and Kinmen Islands. Known by the name of Republic of China (ROC) and founded in 1912 after the fall of Qing dynasty, Taiwan has always been governed as a separate territory since 1949 when the Nationalist Party, Kuomintang (KMT), being defeated by the Chinese Communist Party (CCP), fled to the island. This historical breaking point might be considered as the underlying reason of Taiwan ambiguous international status. Despite losing control of the mainland, Chiang Kai-Shek, appealing to the Constitution of the Republic of China adopted in 1946, stated that the Nationalist Government, was the legitimate Government of the whole China, whose new temporary capital was Taipei. Since then, both People's Republic of China (PRC) and ROC claim to be the sole China giving birth to the One China Principle.

The One China Principle⁴ has developed after the foundation of the PRC when the new Chinese government started to seek its international recognition but has changed its political meaning along with the following historical events. Both parallel governments followed the One China Principle. PRC claimed to be the sole Chinese government and that Taiwan was *de iure* and *de facto* part of mainland China. PRC appealed to the Cairo Declaration of 1943 according to which Japan had to return all the territories that it had occupied after the Sino-Japanese war, including Taiwan, previously ceded to Japan through the unequal Treaty of Shimonoseki. Since the sovereignty over Taiwan and the Penghu islands was indeed recovered by the mainland through the Potsdam Declaration (1945) and that the CCP had won the civil war in 1949, PRC believed that the Nationalist Party had no rights in ruling over Taiwan and that the only existing China, comprehensive of Taiwan and Penghu islands, was under the rule of the Communist Party⁵.

³ References of the paragraph:

- J.M. Henckaerts, *The International Status of Taiwan in The New World Order: Legal and Political Consideration*, Brill/Nijhoff, Netherlands, 1996;
- M. Scott, H. Tiun, *Mandarin-Only to Mandarin-Plus: Taiwan, Language Policy*, Springer 2007, p. 53;
- Australian Government Department of Foreign Affairs and Trade
<http://dfat.gov.au/geo/taiwan/pages/taiwan-country-brief.aspx>
- G. Samarani, *La Cina del Novecento*, Torino, Einaudi, 2008

⁴ Council of Foreign Relations - <http://www.cfr.org/china/china-taiwan-relations/p9223>

⁵ Embassy of the People's Republic of China in the United States of America - <http://www.china-embassy.org/eng/zt/twwt/White%20Papers/t36705.htm>

During the 30 and 40 years after the civil war, the Taiwan authorities did not recognize the PRC government as the legitimate representative of the whole China, but they did insist that there was only one China whose legitimate government was that established in Taipei.⁶ So, at the beginning the One China Principle was just a tool used by both communists and nationalists to claim their sovereignty over the whole China.

However, after 1978 with Deng Xiaoping as new president of PRC, the One China Principle changed its political meaning. It became the basis and the prerequisite for a peaceful reunification of China. In fact, he launched the “peaceful reunification and One Country, two systems” principles whose key points are: China will do its best to guarantee a peaceful reunification with Taiwan but at the same time it will respect the wish of Taiwan compatriots to govern themselves. In other words, while mainland China will continue with its socialist system, Taiwan will keep its capitalist system and will enjoy a high degree of autonomy. On this basis, in November 1992 both sides agreed on the so called “1992 Consensus” at a meeting held in Hong Kong by the Association for Relations Across Taiwan Straits (ARATS) of the mainland, and the Straits Exchange Foundation (SEF) of Taiwan⁷. According to this agreement, both sides of the Taiwan Strait agreed on the One China Principle which was orally explained leaving room for different interpretations. They indeed stated that Taiwan is part of China but both Beijing and Taipei are still in disagree on who’s the legitimate government of the whole China.⁸

Another factor that contributes to put Taiwan in this position of ambiguity is the composition of its population. It is possible to recognize four main ethnic groups who live on the island⁹:

- Holo (70%)
- Hakka 客家人 (10-15%)
- “Mainlanders” o waishengren 外省人 (13%)
- Austronesian descendent⁴ (2%)

The first three groups are descendants of Han (the major ethnic group of the mainland China) who came to Taiwan with the migratory waves from many Chinese provinces, in particular

⁶ *Embassy of the People’s Republic of China in the United States of America* - <http://www.china-embassy.org/eng/zt/twwt/White%20Papers/t36705.htm>

⁷ 人民网- *People* http://en.people.cn/200410/13/eng20041013_160081.html

⁸ *Council on Foreign Relation* - http://www.cfr.org/china/china-taiwan-relations/p9223_06/12/2016_20:25

⁹ R.Y. Liu, *Language Policy and Group Identification in Taiwan, Journal Compilation*, International Mind, Brain and Education Society and Blackwell Publishing 2012, Vol. 6, N. 2, p. 108-111

⁴ *When we talk about Austronesian people, we refer to a population group present in Oceania and in Southeast Asia who speak one of the Austronesian languages. Taiwanese aborigines belong to this group and they are divided in many tribes that differentiate themselves by language and culture.*
http://www.ourpacificocean.com/austronesian_people/

from Fujian and Guangdong. The Holo group represents the majority of Taiwanese population and is referred to those people born in Southeast China who moved to Taiwan about 400 years ago. Their mother language is the Taiwanese variant of “Min-Nan hua 閩南話”, known also as “Holo language” or “Hokkien”, today also called *Tái yǔ* 台語. The second big portion of the Taiwanese population is the Hakka group, also known as *kèjiā rén* 客家人, that is to say people speaking Hakka language.¹⁰ These people came mostly from the Guangdong Province around 400 years ago as well but a little later than Holo’s. The term “mainlanders” (waishengren 外省人) refers to all speakers of Chinese mandarin coming from the mainland China who moved to Taiwan between 1945-1949 because of the civil war between KMT and CCP.¹¹ Finally, the Austronesians are considered Taiwanese indigenous populations for they have been living on the island longer than the previous ethnic groups. Since these people mixed with the Han descendants, it is thought that they are almost all disappeared. However, there are still two Austronesian communities: the Kao-Shan and the Ping-Pu.

The Holo and the Hakka groups have been living in Taiwan for a long time so they consider themselves as Taiwanese people, while on the other hand many waishengren still identify themselves as Chinese and refer to the mainland China, rather than Taiwan, as their mother country. This may be true for the first generation of mainlanders who came to Taiwan during the civil war but, it might be not true for the second and third generations because they were born and grew up in Taiwan, so they feel more closely related to the island rather than to the Dalu 大陸 (mainland). In other words, they identify themselves as Taiwanese. Given this situation, the problem of the Taiwanese identity has been risen among the population of the island. In fact, people living in Taiwan have different opinions about “being Taiwanese”. Some of them, especially mainlanders of the first generation, consider Taiwan as a province that belongs to the mainland China, so according to them, being Taiwanese means being Chinese. On the other hand, others consider Taiwan as an independent Nation so the term “Taiwanese” is considered as an attribute of Nationality. There are two conflicting forces characterizing the Taiwanese society: one promotes the Only-One-China policy, the other one pushes for a *de jure* independent Taiwan. In the light of the fact that the Taiwanese society is permeated itself by dissonant voices concerning its international status, it is clear

¹⁰ A. Paoluzzi, *Lingua e politica a Taiwan - Il significato del taiyu nel contesto politico passato e presente*, *Mondo Cinese*, 2005, N. 122

¹¹ R.Y. Liu, *Language Policy and Group Identification in Taiwan*, *Journal Compilation*, International Mind, Brain and Education Society and Blackwell Publishing 2012, Vol. 6, N. 2, p. 108-111

how Taiwan finds itself in its ambiguous position. This ambiguity is reflected also in the political framework of the island.

1.2 Domestic Political Framework

There are two main political parties in Taiwan: The modern Kuomintang, which is the result of the evolution of the previous military government of the Nationalist Party and the Democratic Progressive Party (DPP), born from the pro-democracy movement of the 1970s and 80s.

The KMT has its support base in the North of Taiwan where the nationalists coming from the mainland, founded the new capital of the ROC, Taipei. Its political line focuses on a conservative free-market program, although It keeps on supporting state intervention in strategic sectors of the economy by establishing large state owned-enterprises under its leadership. It also supports the One China Principle and considers the “1992 Consensus” as a starting point for future pacific negotiations with the CCP¹².

The DPP instead, has its support base in the South of the island especially among the Holo and Hakkas, who established their communities prior to the arrival of the “waishengren” in 1949. Created during the Martial Law period, the DPP is the first Taiwanese-born Party whose main aim was that of changing the political landscape of the island that was strictly ruled by the Chinese nationalists. It is the current major opposition Party and it strives to ensure social and political justice within Taiwan promoting a fair system of government, which represents the will of the “Taiwanese”.¹³ It also refuses the existence of the consensus leaving an open door for a future independence of the island.

As a result of this political background, the changing in political power from KMT to DPP and vice versa, has of course its repercussions on the foreign politics adopted by the Taiwanese government and on relations between Taiwan and other countries. As matter of facts, under President Chen Shui-bian of DPP from 2000 to 2008, tensions with China were heightened because of the leanings towards independence of the Taiwanese government.¹⁴ From 2008 to 2016 instead, under Ma Ying-jeou of the KMT, economic ties with the Dalu were strengthened through several cross-Strait agreements and direct transport links.

¹²Australian Government – Department of Foreign Affairs and Trade, *Taiwan Country brief*
<http://dfat.gov.au/geo/taiwan/pages/taiwan-country-brief.aspx>

¹³ Council of Asian Liberals and Democrats - <http://cald.org/member-parties/democratic-progressive-party-of-taiwan/>

¹⁴ Australian Government – Department of Foreign Affairs and Trade, *Taiwan Country brief*

However, the government was accused of letting Taiwan becoming too economically dependent on the mainland. Thus, lead to the creation of a group of social activists, the Sunflower Movement, who gave birth to new several parties as the New Power Party.¹⁵

Last parliamentary and presidential elections, both held on January 2016, saw the victory of Dr. Tsai Ing-wen of the DPP, Taiwan's first woman president. Her political goals look to reduce Taiwan's economic dependence on China maintaining at the same time positive relationship with PRC, although keeping the status quo in cross-Strait relation, in line with the wish of Taiwanese public opinion.¹⁶

1.3 International recognition

Most governments and the United Nations (UN) consider Taiwan a part of the mainland China thus, recognizing the PRC as the sole legitim government of China. Since 1971, when ROC was replaced by the PRC in the UN, Taiwan has not been a member in any of the UN bodies, for it lacks one of the main requirements of eligibility: the statehood.¹⁷ For this reason, Taiwan is experiencing diplomatic isolation and it is currently recognized as the Republic of China only by 21 countries: Belize, Burkina Faso, Dominican Republic, El Salvador, Guatemala, Haiti, Holy See, Honduras, Kiribati, Marshall Islands, Nauru, Nicaragua, Palau, Paraguay, Sao Tome and Principe, Solomon Islands, St Lucia, St Kitts and Nevis, St Vincent and the Grenadines, Swaziland and Tuvalu.

However, Taiwan keeps unofficial relationship with countries that do not recognize the ROC. In fact, it has more than 100 representative offices in over 70 countries, including the Taiwan representative office in Rome, Italy while on the way round, in Taipei there is ITA and a representative office of Italy. These unofficial ties mainly focus on trade, investment and culture and despite the diplomatic isolation, Taiwan has become one of Asia's big traders and one of the world's top producer of computer technology.¹⁸

After 12 years of negotiation, on January 2001, Taiwan was allowed to accede to the World Trade Organization (WTO) as the "Separate Customs Territory of Taiwan, Penghu, Kinmen

¹⁵ *Australian Government – Department of Foreign Affairs and Trade, Taiwan Country brief* <http://dfat.gov.au/geo/taiwan/pages/taiwan-country-brief.aspx>

¹⁶ *A.D. Romberg, Tsai Ing-wen Takes Office: A new era in cross-Strait Relations*, China Leadership Monitor, no. 50, Tuesday, July 19, 2016 - <https://www.stimson.org/sites/default/files/file-attachments/Tsai-Ing-wen-Takes-Office-New-Era-Cross-Strait-Relations.pdf>

¹⁷ *Maysing H. Yang, Taiwan's Expanding Role in the International Arena: Entering the United Nation*, Routledge – Taylor and Francis Group 2015.

¹⁸ *BBC News Channel – Taiwan Country Profile*, 20 May 2016 <http://www.bbc.com/news/world-asia-16164639>

and Matsu" on the basis that, in contrast to other international organizations, the WTO does not require its members to be state.¹⁹ The WTO is the only international organization in which Taiwan participates as a full member while in others, for example the World Health Assembly²⁰ or the Assembly of the International Civil Aviation Organization (ICAO)²¹, it has roles as "observer" or "special guest".

In the next chapters, we will see how this politically ambiguous situation influences Taiwanese business relations and laws.

¹⁹ S. Charnovitz, *Taiwan's WTO Membership and its international implications*, GW Law Faculty Publications & Other Works, 2006.

http://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1436&context=faculty_publications

²⁰ Taiwan was invited to attend the WHA as an observer since 2009.

²¹ In September 2013, Taiwan was for the first time invited to participate to one of the ICAO activities under the title of "Chinese Taipei", on the occasion of the 38th assembly of ICAO in Montreal, Canada. *Australian Government – Department of Foreign Affairs and Trade, Taiwan Country brief* <http://dfat.gov.au/geo/taiwan/pages/taiwan-country-brief.aspx>

2. Taiwan Legal Framework

This chapter aims to give an insight of Taiwan legal framework focusing on how Taiwan ambiguous international status has affected its trade and business relations with other countries as well as its law system, in particular those laws that deal with business operations concerning foreign elements.

2.1 The ROC legal system: government and political structure

The law of Republic of China is mainly based on the civil law system, which means that judicial decisions are taken on the basis of code provisions rather than on precedents set by past decisions.²² Its legal structure is composed of six Codes:

- the Constitution 宪法 (xiànfǎ)
- the Civil Code 民法 (mínfǎ)
- the Code of Civil Procedure 民事诉讼法 (mínshì sùsòng fǎ) and related laws
- the Criminal Code 刑法 (xíngfǎ)
- the Code of Criminal Procedure 刑事诉讼法 (xíngshì sùsòng fǎ) and related laws
- the Administrative laws 行政法 (xíngzhèng fǎ).

Taiwan is still using the 1947 Constitution which was promulgated for the whole China by the National Assembly 国民大会 (guómín dàhuì) in Nanjing 南京 (nánjīng), although it has been subjected to numerous amendment for the ROC rules only over Taiwan and surrounding islands since 1950.²³ The Constitution reflects the Three Principles of the People 三民主义 (sānmín zhǔyì), formulated by Sun Yat-sen, that represent the philosophical basis on which the ROC is built. Moreover, along with the increasing trade relations with the other foreign countries, the Constitution has also been enriched with legal reforms as well as western legal concepts. The Constitution states the separation of the powers in five branches of the government known as “Yuans”²⁴:

- Executive Yuan – 行政院 (xíngzhèng yuán)

²² C. Fa Lo, *The Legal Culture and System of Taiwan*, Kuwer Law International, 2006

²³ D. Fell, *Government and Politics in Taiwan*, Routledge Research on Taiwan, Routledge, simultaneously published in USA and Canada, 2012

²⁴ Baker & McKenzie, *Taiwan: a legal brief*, Baker & McKenzie, Taipei, 1999

- Legislative Yuan – 立法院 (lìfǎyuàn)
- Judicial Yuan – 司法院 (sīfǎ yuàn)
- Examination Yuan – 考试院 (kǎoshì yuàn)
- Control Yuan – 监察院 (jiānchá yuàn).

The executive power, *Executive Yuan* - 中华民国行政院 (zhōnghuá míngúó xíngzhèng yuàn), is exercised by the Government. It is the highest administrative organ of the state and has a Premier, a vice premier, several ministers and chairpersons of commissions and councils, and other ministers without portfolio. It controls the following ministries²⁵:

- The Ministry of Economic Affairs (MOEA) 中华民国经济部 (zhōnghuá míngúó jīngjì bù) which is responsible for commerce, industry, agriculture, trading and foreign investments;
- The Ministry of Finance (MOF) 财政部 (cáizhèng bù), responsible for taxation, securities, banking, insurance and the national treasury;
- The Ministry of Interior (MOI) 中华民国内政部 (zhōnghuá míngúó nèizhèng bù) which is responsible for the country security, real estate, construction and elections;
- The Ministry of Transportation and Communication (MOTC) 中华民国交通部 (zhōnghuá míngúó jiāotōng bù) responsible for telecommunication, post and transportation;
- The Ministry of Defense 国防部 (guófáng bù);
- The Ministry of Education (MOE) 教育部 (jiàoyù bù);
- The Ministry of Justice 法务部 (fǎwù bù);
- The Ministry of Foreign Affairs (MOFA) 中华民国外交部 (zhōnghuá míngúó wàijiāo bù).

In 2012, Taiwanese government, has undergone a process of Reorganization of the Executive Yuan that, since 2016, has seen the introduction of four new ministries²⁶: The Ministry of Labor (MOL) 劳动部 (láodòng bù), Ministry of Health and Welfare (MOHW)

²⁵ Global Investment & Business Center, *Taiwan Business Law Handbook, Vol. 1, strategic information and basic laws*, International Business Publications, USA, 2016.

²⁶ Executive Yuan, Republic of China, 中华民国行政院 official website: <http://english.ey.gov.tw/cp.aspx?n=8A84304601DEC81E>

卫生福利部 (wèishēng fúli bù), Ministry of Culture (MOC) 文化部 (wénhuà bù), and Ministry of Science and Technology (MOST) 科技部 (kējì bù). By the end of the reorganization period, two more new ministries—the Ministry of Environment and Natural Resources and Ministry of Agriculture – will be established.²⁷

The Legislative Yuan 立法院(lifǎyuàn), is the highest legislative organ of the Country and according to the additional art. 4, it shall have 113 members whose mandate shall last four years and it is renewable after re-election. The main functions of the Legislative Yuan are: propose amendment for the Constitution, change national territorial boundaries, decide on budgetary bills, declaration of war as well as peace treaties²⁸.

The highest judicial organ is embodied by the Judicial Yuan – 司法院 (sīfǎ yuan) which is in charge of the courts of all levels, the Administrative Court and the Committee on the Discipline of Public Functionaries. It shall have 15 grand justice (Additional art. 5) appointed by the President of the R.O.C., whose mandate lasts no more than 8 years.²⁹ These justices are in charge of interpreting the Constitution, forming a constitutional tribunal to adjudicate matters as the impeachment of the President and Vice President and the dissolution of the parties that violates the laws of the ROC (Art. 78, Additional art. 5). It has a President and Vice President who shall be nominated and appointed by the President of the ROC with previous approval of the Control Yuan.

Taiwanese court system is based on the following types of courts:

- Supreme Administrative Court 最高行政法院 (zuìgāo xíngzhèng fǎyuàn)
- High Courts and High Courts branches 高等行政法院 (gāoděng xíngzhèng fǎyuàn): Taiwan High Court 台湾高等法院 (Táiwān gāoděng fǎyuàn) and Fujian High Court 福建高等法院 (Fújiàn gāoděng fǎyuàn);
- District Courts 地方法院 (dìfāng fǎyuàn)

²⁷ The ROC Constitution – *Executive Yuan Republic of China official website:*
<http://english.ey.gov.tw/cp.aspx?n=8A84304601DEC81E> 11/03/2017

²⁸ *Legislative Yuan powers and functions* – Legislative Yuan, Republic of China (Taiwan) official website:
http://www.ly.gov.tw/en/01_introduce/introView.action?id=8

²⁹ *Structure and Function of Judicial Yuan* – Judicial Yuan, governmental official website:
<http://www.judicial.gov.tw/en/>

- Administrative Courts 行政法院 (xíngzhèng fǎyuàn)
- Specialized Courts: The Taiwan Kaohsiung Juvenile Court 台湾高雄少年法院 (Táiwān gāoxióng shàonián fǎyuàn) and The Intellectual Property Court 智慧财产法院 (zhìhuì cáichǎn fǎyuàn).

As for The Examination Yuan - 考试院 (kǎoshì yuàn), its main functions relate to the examination, employment and management of all civil servants of the State (Art. 83). This branch of the government guarantees equal opportunities among candidates for governmental job position and is moreover in charge of settling standards, salaries and benefits throughout central government and local ones. It is composed by a President, vice President and other 19 members whose term of office might last six years at the end of which, they might be reappointed. Other organizations under the control of the Examination Yuan are: The Ministry of Examination, Ministry of Civil Service, Civil Service Protection and Training Commission, and Public Service Pension Fund Supervisory Board.³⁰

The Control Yuan – 监察院 (jiānchá yuàn) instead, is a separate body composed by 29 members and the National Audit Office – 审计部 (shěnjì bù). It exercises the powers of impeachment, censure and audit (Additional art. 7). It is also in charge of *<<receiving people's complaints against public servants or agencies, conducting relevant investigations and recommend penalization. as well as monitor the propriety of government organizations' expenditures and anti-corruption assignments>>*³¹.

2.2 Trade policy: multi and bilateral agreements, Taiwan and WTO

2.2.1 Trade policy framework

Taiwan trade policy focuses on the further integration of the ROC into global economy through its active participation to WTO and several free trade agreements and economic-cooperation agreements as well as negotiations for reduction of trade barriers in international markets. After the signature of the cross-strait Economic Cooperation Framework Agreement (ECFA) with PRC³², the ROC started to negotiate trade deals with the countries that do not recognize its diplomatic status like the Economic Cooperation Agreement signed

³⁰ The ROC Constitution – *Executive Yuan Republic of China official website*: <http://english.ey.gov.tw/cp.aspx?n=8A84304601DEC81E>

³¹ The ROC Constitution – *Executive Yuan Republic of China official website*

³² Cross-Straits Economic Cooperation Framework Agreement: <http://www.ecfa.org.tw/EcfaAttachment/ECFADoc/ECFA.pdf>

with New Zealand in 2013. The Taiwanese government also showed its interest in joining the Regional Comprehensive Economic Partnership (RCEP) promoted by the Association of South East Asian Nations (ASEAN) and the Trans-Pacific Partnership (TPP) that was once led by USA under Barack Obama's administration.³³ After the American presidency elections which saw the rise of Donald Trump, USA withdraw its commitment to the TPP, leaving room for a new leader that it is highly likely to be Japan.³⁴ These efforts in strengthening economic relations with other countries can be seen under Taiwanese government's key goal: diversify and promote its exports to emerging markets as well as create new business opportunities and attract FDI and multinational companies to establish their operational headquarters in Taipei so that Taiwan could finally stop suffering from economic and political isolation. Under this lead, from May 2008 to March 2014, Chinese Taipei government has already undertaken 904 actions to loosen economic and financial regulation in matters as finance and taxation, industry, human resources, cross-Strait economic affairs as well as easing the procedures of obtaining a multiple entry visa for businessmen from Mainland China³⁵.

The main Ministry that is in charge of trade policy formulation and implementation as well as concluding and signing trade agreements with trading partners, is the MOEA. MOEA's further operational functions include industrial development, water resources, investment, intellectual property, SMEs, energy, commercial affairs, national corporations, mining, standards and measurement.³⁶ Other governmental branches involved into formulation and implementation of trade policies are: MOEA's Bureau of Foreign Trade (BOFT) 經濟部国际贸易局(jīngjì bù guójì mào yì jú), whose main functions refer to participation to the activities of international organization such as WTO, Asian Pacific Economic Cooperation (APEC) and Organization for Economic Co-operation and Development (OECD), handling and coordinating negotiations, consultations and disputes; The Office of Trade Negotiations (OTN), founded in March 2007 as a coordination tool among the governmental offices to promote strategies for trade negotiations; other ministries and agencies involved are MOF,

³³ B. Hioe, The TPP, RCEP, and the question of the free trade agreements for Taiwan under a Tsai Presidency, Radical perspectives on Taiwan and the Asia Pacific, New Bloom
<https://newbloommag.net/2016/01/13/tpp-rcep-tsai/>

³⁴ Taiwan still wants to join the TPP: premier, Taipei Times, Jun 2017
<http://www.taipetimes.com/News/front/archives/2017/06/25/2003673242>

³⁵ Global Investment & Business Center, *Taiwan Business Law Handbook, Vol. 1, strategic information and basic laws*, International Business Publications, USA 2016

³⁶ Policy Goals and Guiding Principles – Ministry of Economic Affairs R.O.C. official website:
http://www.moea.gov.tw/MNS/english/content/Content.aspx?menu_id=190

Ministry of Health and Welfare, Financial Supervisory Commission, National Development Council, Council of Agriculture, Public Construction Commission, MOTC, Ministry of Justice, the Fair Trade Commission and the National Communications Commission.

2.2.2 Multilateral Agreements

Given the ambitious goals of Taiwanese trade policy, it is evident that in order to obtain outstanding achievements, Chinese Taipei had to ensure market access to its exports and stable trading relations. In this sense, it strived for signing trade agreements with other countries as those under WTO, topic that will be discussed further in a dedicated section of this chapter, APEC, the Cross-Straits Economic Cooperation Framework Agreement (ECFA), and Trade in Service Agreement (TiSA).

APEC

The idea of APEC was first conceived by Prime Minister of Australia Bob Hawke in 1989 during a speech in Seoul and then took a concrete form in November of the same year, in Australia where 12 Asia-Pacific economies met to found APEC. The founding members were: Australia, Brunei Darussalam, Canada, Indonesia, Japan, Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand and United States. China, Hong Kong and Chinese Taipei joined in 1991 and with the entry of Mexico and Papua New Guinea in 1993, Chile in 1994 and Peru, Russia and Viet Nam in 1998, the association reached the number of 21 participants.³⁷ The main goal of APEC is to promote and support sustainable economic growth and prosperity of the Asia-Pacific region by creating *<<a harmonious community through free and open trade and investments, promoting regional integration, encouraging economic and technical cooperation, enhancing human security>>*³⁸.

ECFA³⁹

The ECFA 两岸经济合作架构协议定 (liǎng'àn jīngjì hézuò jiàgòu xiéyì dìng) is the result of numerous negotiations between Chinese Taipei and Mainland China Beijing governments. Entered into force in September 2010, the ECFA serves as a tool for economic integration between the two parties that:

³⁷ *What is Asia-Pacific Economic Cooperation?* Asia-Pacific Economic Cooperation official website: <https://www.apec.org/About-Us/About-APEC>

³⁸ Asia-Pacific Economic Cooperation official website: <http://www.apec.org/aboutus/HowAPECOperates>

³⁹ For further info see Appendix: Cross Strait Economic Cooperation Framework Agreement

<<have agreed, in line with basic principles of WTO and in consideration with the economic conditions of both of them, to gradually reduce or eliminate barriers to trade and investment for each other, create a fair trade and investment environment and establish a cooperation mechanism beneficial to economic prosperity and development across the Straits>>⁴⁰.

The two parties in order to further encourage their reciprocal integration, have also agreed on four agreements concerning investment protection, trade in goods, trade in service and dispute settlement. Though Chinese Taipei government made 64 market-access commitments to mainlanders, including restaurants and hotels, social services, transport and wholesale commerce, strategic sectors like the ones concerning defense of Chinese Taipei, remain off-limits.

TiSA⁴¹

TiSA is an agreement which aims to improve and expand trade in services. Founded by USA and Australia, currently being negotiated in Geneva, TiSA can count on 50 participants that represent 70% of the world's trade in services. Its precursor is the General Agreement on Trade in Services (GATS) established in 1995 by WTO. Since services sector has become a dominant driver of the world economy, especially for economic growth of developing countries, TiSA is considered as the tool that gives all businesses a chance to be successful in global market and has a potential to create standard trade rules which reflect nowadays trade practices. It has the ability to reduce non-tariff barriers main obstacle for SMEs, for they depend mainly on digital trade to export their services and reach new customers, improve market access, guarantee the movement of data across borders.

2.2.3 Other FTAs and potential preferred agreements

Other FTA's include the ones reached with Guatemala (2005), Nicaragua, El Salvador and Honduras (2008) and, after the conclusion of ECFA, Taipei signed an Economic Cooperation Agreement (ECA) with New Zealand in 2013, first agreement with a country which doesn't recognize Taiwan's statehood.⁴² In 2013, Chinese Taipei also signed another ECA and a ASTEP⁴³ agreement with Singapore. Generally speaking, the goals of an ECA is the removal of most market access barriers within a certain period like tariffs for agricultural

⁴⁰两岸经济合作架构协议定, www.ecfa.org.tw/CrossStraitEconomicCooperationFrameworkAgreement

⁴¹ For further info see www.teamtisa.org

⁴² C. R. Irish, *New Directions in International Trade: Implications for Taiwan*, East Asian Legal Studies Center, University of Wisconsin, USA, October 2014

⁴³ The Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership (ASTEP)

and industrial products; opening of the services sector market; removal of foreign investment restrictions; align with international norms, regulations and policies regarding competition, IPR protection, standards, e-commerce, environmental protection.⁴⁴

The ROC is still considering concluding potential ECA with India, Indonesia and Philippines with which Taipei had concluded feasibility studies, and a potential Trade and Investment Agreement (TIFA) with United States whose negotiations had started in 1994, suspended between 2007 and 2013 and reopened in April 2014 at the 8th TIFA meeting in Washington.⁴⁵

The last but not least of potential agreements Taiwan is interested in, is the Trans-Pacific Partnership (TPP). The aim of this partnership is to establish a free trade market for twelve countries of Pacific Rim (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States of America and Vietnam) binding them through lower tariffs.⁴⁶ This partnership, product of years of negotiations started in 2002 and a key point of the foreign policy strategy of the previous president of United States, Barack Obama, has not been ratified yet. With the election of the new President of United States, Donald Trump, the reach of a common agreement among the countries of Pacific Rim has been compromised, for Mr. Trump stated formally that USA would abandon the Pacific trade deal⁴⁷. So, prior the American presidential election Taiwan had already several obstacles to overcome to be part of this partnership, for TPP entry requirements were demanding and Chinese political opposition had a great influence. Now with the withdrawal of USA from the partnership, the circumstances seem to be more critical for Chinese Taipei because Mainland China might substitute the role that the American party should have played.

Unilateral trade agreements

Taipei guarantees duty-free access to products of Least Developed Countries (LDC). However, it does not receive the same preferential treatment the way around.⁴⁸

⁴⁴ Global Investment & Business Center, *Taiwan Business Law Handbook, Vol. 1, strategic information and basic laws*, International Business Publications, USA 2016

⁴⁵ *Eight Round of TIFA Talks* – U.S.Taiwan Connect, The information Gateway to the U.S. – Taiwan Partnership - <http://www.ustaiwanconnect.org/Trade-Opportunities/TIFA/TIFA-8> n

⁴⁶ K. Granville - *What is TPP? Behind the Trade Deal that Died* - www.nytimes.com

⁴⁷ K. Granville - *What is TPP? Behind the Trade Deal that Died*

⁴⁸ Global Investment & Business Center, *Taiwan Business Law Handbook, Vol. 1, strategic information and basic laws*

2.2.4 Taiwan membership in WTO⁴⁹

As previously mentioned, the WTO is the only international organization that accepts Taiwan as a separate economic entity because the statehood is not a mandatory requirement for the accession process into the trade organization. Prior to become an effective member of WTO, Taiwan government had to implement a deregulation policy to make the laws and regulations more transparent and to amend those concerning foreign investment according to international practices, to liberalize investment activities and create an attracting business environment for the other members.

Taiwan accession was adopted on November 11, 2001, during the fourth session of WTO ministerial conference in Doha. Chinese Taipei noticed the acceptance of the Protocol of Accession on December 2nd of the same year and became a WTO member on January 1 2002⁵⁰.

In the Protocol of Accession are listed all the commitments undertaken by ROC for its accession to the trade organization. They include tariffs reductions on agricultural and industrial products, pre-determined annual tariffs reductions (zero-for-zero program) on certain products like liquors, pharmaceuticals, medical equipment, furniture, paper products, steel, beer and others, fixed tariffs rates to guarantee the harmonization of chemical products divided in three macro-categories (finished, intermediated and basic chemical products), an information technology agreement through which tariffs on technological product were eliminated. Taiwan has also eliminated restrictions applied to eighteen types of agricultural products, committed to referring to international standards concerning food safety and quarantine requirements and implementing sanitary measures that fully conform with the regulations of WTO. Moreover, the ROC removed restrictions in the import of automobiles substituting them with tariff rates and established a set of horizontal commitment and a set of sector specific commitments concerning the trade in services like business services, communication services, financial services, environmental services, health related a social services, tourism and travel services, transport services and others. In accordance with its accession agreement, the Taiwan Tobacco & Wine Monopoly Bureau (TTWMB) does not hold anymore the monopoly over the manufacture and distribution of tobacco whose

⁴⁹ For further info see:

- Report of the working party of the accession of the separate customs territory of Taiwan, Penghu, Kinmen and Matsu – WTO Ministerial Conference Fourth session Doha, 9-13 Nov 2001, www.docs.wto.org;
- Global Investment & Business Center, *Taiwan Business Law Handbook, Vol. 1, strategic information and basic laws*, International Business Publications, USA 2016

⁵⁰ Report of the working party of the accession of the separate customs territory of Taiwan, Penghu, Kinmen and Matsu – WTO Ministerial Conference Fourth session Doha, 9-13 Nov 2001, www.docs.wto.org

activities entered into a market-based system and had to conform the laws concerning the protection of intellectual property to those of the WTO agreement on Trade-Related Aspects of intellectual Property Rights (TRIPs).

2.3 Taiwanese Business Law 台湾商法 (Táiwān shāngfǎ)

Taiwan has been and it is still reforming its business laws, especially those related to foreign business activities, to guarantee its further integration in the global economy, attract foreign investments and contribute to the harmonization of business legal measures thus playing a more significant role in the international environment. Business transaction are mostly governed by the Civil Code which includes many provisions concerning contracts, agency as well as financial aspects of transactions. The matter concerning foreign investments is instead, regulated by the Statute for Investment by Foreign Nationals 外国人投资条例 (wàiguó rén tóuzī tiáoli) promulgated in 1954 which through twenty articles, covers the regulation of the protection, restrictions, and administration of such investments.⁵¹ Individuals and entities that want to do business in Taiwan are required to be licensed or registered under the Commercial Registration Act, while the formation and operation of business entities are covered by Taiwanese Civil Code 民法 (mínfǎ) and by statutes that concern specific organization like the the Company Law 公司法 (gōngsī fǎ).⁵² There are other matters which are regulated by their specific laws such as the Land Law, the Merchant Marine and Civil Aviation Law and so on.

Taiwanese business law includes also all the laws related to the protection of intellectual property and trade mark as Copyright Law 著作权法 (zhùzuòquán fǎ), Patent Law 专利法 (zhuānli fǎ) and Enforcement Rules 专利法施行 (zhuānli fǎ shīxíng xìzé) and Trademark Law. Moreover, companies that have business in Taiwan shall also be subjected to Taiwan Labor Union Law 工会法 (gōnghuì fǎ) and basic Labor Standards Act 劳动基准法 (láodòng jīzhǔn fǎ) as well as environmental laws.

⁵¹ About MOEAIC, The Investment Commission of Minister of Economic Affairs
<https://www.moeaic.gov.tw/about.view?type=atIo&lang=en>

⁵² C. Genzberger, E. Hinkelman, D.e. Horovitz, W. T. LeGro, J. W. Libbey, C. S. Mills, J. L. Nolan, S. S. Padrick, K. C. Shippey, K. X. Wang, C.B. Wedemeyer, A. Woznick, *Taiwan Business: the portable encyclopedia for doing business with Taiwan*, Edward G. Hinkelman, World Trade Press, California 1994.

Since the main topic of this thesis concerns the preferred entry modes of foreign companies in Taiwan, it is worth mentioning Taiwan's Contractual and Company Law, which are the main laws of direct concern to business men and foreign companies willing to establish their presence in Taiwan.

2.4 Contractual Law 契約法⁵³ (qìyuē fǎ)

According to Taiwanese law, there is neither distinct "Contract Law", neither any specific part of the Taiwanese Civil Code dealing exclusively with contracts and obligations. However, articles concerning obligations are spread throughout the Civil Code.

The Civil Code was enacted in 1929 when the headquarter of the government of the Republic was still on the Mainland China.⁵⁴ It is the basic law concerning all private relations between and among persons, with some exceptions which are regulated by other Laws like Company Law, Consumer Protection Law, Insurance Law, Maritime Law and so on.

The Civil Code is divided into the following five parts:

Part I: General Principles;

Part II: Debts or Obligations (divided in two chapters it includes many types of debts not only the contractual ones, but it is considered as the part that has the closest relationship to contractual obligation for it includes provisions on formation, performance and breach of contracts, damages and 27 kinds of different obligations);

Part III: Property;

Part IV: Family and

Part V: Inheritance.

Reading through the Civil Code can be found some important principles that govern contractual obligation:

1. Principle of good faith (or Bona Fide) and the prevention of misuse of ones' right, both included in art. 148 of the Civil Code. Bona fide means that the parties must show clearly what their real interests in drafting a contract are, without having a hidden agenda and that they will do their best to reach an agreement which will allow them to sign a future contract. The second principle provides that:
2. <<權利之行使，不得違反公共利益，或以損害他人為主要目的>>⁵⁵

⁵³ 契約法 is the Taiwanese variant of 合同法

⁵⁴ Y. Chen, W. Shan, W. Wang, *Private Law in China and Taiwan: Legal and Economic Analyses*, Cambridge University Press, 10 nov 2016

⁵⁵ 148 条民法，全國法規資料庫 <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=B0000001>

*No one shall exercise his own right to contradict public interest; neither should a right be exercised with the main purpose of causing harm to others;*⁵⁶

3. Freedom of Contracts: it is the freedom of private or public individuals or group to form contracts without any restrictions;
4. Change of circumstances (or *clausula rebus sic stantibus*): it refers to the unfairness of the performance of the contract where an unpredictable change occurs so, in light of this principle, the damaged party may apply to the court to alter his original obligations;
5. Pre-contractual liability: when a contract it is not written yet but one of the party believes that an agreement has been reached, the second party is responsible for any future damage to the first.

As seen previously, the second part of Taiwan Civil Code concerning obligations, is what can be considered having the closest connection with a contractual law. It was also mentioned that the obligation part enumerates different kind of obligations coming from different sources:

- Contracts;
- Conferring of Authority of Agency;
- Management of Affairs Without Mandate;
- Unjust Enrichment and
- Torts.

However, this chapter will discuss in detail the part concerning the obligations coming from contracts for they are fundamental tools of business activities.

According to articles of section I of obligation part of Taiwanese Civil Code, a contract is established when two or more parties has reached an agreement. This agreement is an expression of a common goal that the parties are willing to achieve and can be explicitly or implicitly expressed. Thus, both written and oral forms of agreement like written contracts, chats, messages or phone calls, are considered acceptable as the establishment of a contract. The most fundamental requirements for the formation of a contract are: coming to a meeting of minds, acting in good faith manifesting clearly what parties' really interests are without having and hidden agenda usually officializing everything through a letter of intent. Moreover, according to art. 154 of subsection I of the part two of Civil Code, an offer is also

⁵⁶ Chang-fa Lo, Changfa Lu, *The Legal Culture and System of Taiwan*, The Netherlands: Kluwer Law International, 2006

an expression of intent by a party that wants to enter into a contract with his counterpart, in fact:

<<契約之要約人，因要約而受拘束。但要約當時預先聲明不受拘束，或依其情形或事件之性質，可認當事人無受其拘束之意思者，不在此限。貨物標定賣價陳列者，視為要約。但價目表之寄送，不視為要約。>>⁵⁷
*A person who offers to make a contract shall be bound by his offer except at the time of offer he has excluded this obligation or except it may be presumed from the circumstances or from the nature of the affair that he did not intend to be bound.*⁵⁸

However, distinguishing between an offer or an invitation is a serious issue. If it is an offer, the party making such offer would be legally bound by his or her expression, but if it is an invitation to offer, it has no legal bound but it is just noticing his or her counterpart that there is a possibility to enter into a contract. For example, in a buying-selling situation, sending the pricelist to the other party does not create a binding condition.

There are several stages involved in contract drafting. After the negotiation and the signing of a letter of intent, the party may decide to write a preliminary contract through which the parties write down what they had agreed during the negotiation. This time the written document has indeed a binding effect.

With the conclusion of the contract drafting phase, the parties are obliged to carry out their own obligations according to what has been specified in the written contract. At this point the parties shall be responsible for their intentional performance failure. However:

<<因不可歸責於債務人之事由，致給付不能者，債務人免給付義務。債務人因前項給付不能之事由，對第三人有損害賠償請求權者，債權人得向債務人請求讓與其損害賠償請求權，或交付其所受領之賠償物。>>⁵⁹

*The debtor will be released from his obligation to perform if the performance becomes impossible by reason of a circumstance to which he is not imputed. If the debtor is entitled to claim compensation for the injury against a third party in consequence of the impossibility of the performance under the preceding paragraph, the creditor may claim against the debtor for the transfer of the claim for the injury, or for the delivery of the compensation he has received*⁶⁰

⁵⁷ 154 条民法，全國法規資料庫 <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=B0000001>

⁵⁸ Part II, subsection I, art. 154 Civil Code Part II Obligations Promulgated on November 22, 1929, Effective from May 5, 1930, amended on April 26, 2000

⁵⁹ 225 条民法，全國法規資料庫

⁶⁰ Art 225 Civil Code

<http://db.lawbank.com.tw/Eng/FLAW/FLAWDAT0201.asp?lsid=FL001351&beginPos=30>

If the performance does not become impossible but then the debtor fails fully or partially to carry on his duty, then he is responsible for not performing fully or at all his obligation and his counterpart shall seek for a compensation for damages. Normally parties have to perform their respective obligations in accordance with the terms of the contract, however the terms may be changed according to the art. on change-of-circumstances.

A party may also decide to rescind the contract if some criteria are met. Usually the parties are free to agree at any time to rescind the contract even without communicating further reasons. They can also include a clause on the conclusion of the contract specifying when and under which circumstances the contract may be rescinded.⁶¹ If the party fail, or simply did not reach any agreement about the recession of the contract, then one must look at the provisions listed in the Taiwanese Civil Code. For instance, the delay of the performance can be considered as a reason for rescinding the contract. In fact, art. 254 of Civil Code states that:

<<契約當事人之一方遲延給付者，他方當事人得定相當期限催告其履行，如於期限內不履行時，得解除其契約。>>⁶²

*When a party to a contract is in default, the other party may fix a reasonable period and notify him to perform within that period. If the party in default does not perform within that period, the other party may rescind the contract.*⁶³

2.5 Taiwan PIL and the applicable Law to contractual obligations involving foreign elements

The purpose of this paragraph is to discuss Taiwan Private International Law (PIL), the problems concerning the recognition and enforcement of foreign court judgements and arbitral awards showing how they have been affected by the process of legal harmonization to the international practices.

When a dispute among two or more parties arises, if no foreign elements are involved, then the applicable law to the contractual obligation is without any doubt the Taiwanese one. On the other hand, when one or more foreign elements are involved in civil cases, Taiwanese private international law help us in individuating the suitable law that must be applied.

Taiwanese PIL denotes an area of law that are used to solve civil cases involving foreign elements. It is however, a mere academic definition rather than a proper enactment. Most of

⁶¹ Chang-fa Lo, *The Legal Culture and System of Taiwan*, Kluwer Law International, The Netherlands, 2006.

⁶² 254 条民法，全國法規資料庫

⁶³ art. 254 Civil Code Part II Obligations Promulgated on November 22, 1929, Effective from May 5, 1930, amended on April 26, 2000

its rules are codified through different enactments that cover three macro-categories: jurisdiction, choice of law and recognition and enforcement of foreign court judgements or arbitral awards.

In Taiwan problems concerning the choice of law are dealt through the “Act Governing the Application of Laws in Civil Matters Involving Foreign Elements” (in Chinese 步法民事法律適用法) promulgated on 6 June 1953⁶⁴. The Act has undergone a process of revision which led to a final version, including sixty-three articles organized in eight chapters approved in 2010, and came to effect in 2011. Today it is known as Taiwanese PIL Act 2010.

According to the freedom of choice, art. 20 PIL Act 2010, the parties are free to indicate which law should be applied in case of dispute. However, in absence of choice how should the court or the arbitral tribunal individuate the applicable law?

Taiwanese PIL Act 2010 is a result of a lengthy process of revision which tried to facilitate international judicial harmony and to conform as much as possible to the provisions of Rome Regulation I which has not been adopted by Taiwan but has taken into consideration while revising the PIL Act.⁶⁵ According to this Act, if the parties’ agreement or intention on the choice of law cannot be proven, the conflict of rules is governed by two main principles: the closest connection and the characteristic performance. In fact, art. 20 of Taiwanese PIL Act 2010 states that:

<<法律行為發生債之關係者，其成立及效力，依當事人意思定其應適用之法律當事人無明示之意思或其明示之意思依所定應適用之法律無效時，依關係最切之法律。法律行為所生之債務中有足為該法律行為之特徵者，負擔該債務之當事人行為時之住所地法，推定為關係最切之法律。但就不動產所為之法律行為，其所在地法推定為關係最切之法律。>>⁶⁶

<<the applicable law regarding the formation and effect of a juridical act which results in a relationship of obligation is determined by the intention of the parties;

Where there is no express intention of the parties or their express intention is void under the applicable law determined by them, the formation and effect of the juridical act are governed by the law which is most closely connected with juridical act;

⁶⁴ J. Basedow, *General provisions in the Taiwanese Private International Law Enactment 2010*, in *Private International Law in Mainland China, Taiwan and Europe*, Mohr Siebeck Tubinbeck, 2014

⁶⁵ R-C. Chen, ‘*Taiwanese PIL Act 2010*’, in *Private International Law in Mainland China, Taiwan and Europe*, Mohr Siebeck Tubinbeck, 2014

⁶⁶ 第二十条修正涉外民事法律適用法，中華民國 99 年 5 月 26 日 華總一義字第

Where among the obligations resulting from a juridical act there is characteristic one, the law of the domicile of the party obligated under the characteristic obligation at the time he/she undertook the juridical act I presumed to be the most closely connected law; However, where a juridical act concerns immovable property, the law of the place where the immovable property is located is presumed to be the most closely connected law.>>⁶⁷

While it is true that the Taiwanese PIL Act 2010 reflects the provisions of Rome Convention, it has of course some discrepancies with the latter. For instance, according to paragraph 1 of art. 3 of Rome Convention, the choice of law must be expressed or demonstrated clearly through a contract or according to the circumstances while on the other hand, the Taiwanese PIL Act accepts only an expressed indication of the law as a valid proof. Moreover, while in the Rome Convention it is acceptable the splitting of the contract according to different laws chosen by the parties, this provision is neither reflected nor denied by the Taiwanese PIL Act. Another example can be found in the different criteria in individuating the closest connection. While the Taiwanese PIL Act indicates the domicile as the connecting point, the Rome Convention refers to the habitual residence.

2.6 Company Law 公司法 (gōngsī fǎ)

The formulation of a company act in Taiwan has undergone a protracted process which started in 1915 with the issuance of the Company Regulation later replaced by the code of Company Law in 1927. Because of the Sino-Japanese war, there was left no possibility to put effort into the development of a proper company law.⁶⁸ By the end of the war, the ROC was trying to answer to the need of recovery of the economy by passing an amendment of the company law in 1946 when in 1949 the outburst of the Chinese civil war forced the ROC to put aside its legal projects, slowing down one more time, the legislation process. With the election of a president coming from the DPP in 2000, there has been an economic downturn which urged the improvement of the legal environment for business. Moreover, looking at the scandals concerning bad corporate governance of Enron and WorldCom companies, Taiwan understood the importance of establishing a set of common good governance practices and the need of a high degree of transparency in business operations which would

⁶⁷ Art. 20 Taiwanese PIL Enactment 2010 in *Private International Law in Mainland China, Taiwan and Europe*, Mohr Siebeck Tubinbeck, 2014

⁶⁸ C.P. Shao, W.R. Tseng – *The Evolution of Taiwan Company Law: A Focus on the Blockholder-Centric Model* - (Draft for ASLEA 6/19/2014) – Taiwan National University

have helped the country to take part to the competition in world financial markets.⁶⁹ These were the reasons why Taiwan then strengthened the legal field of corporate governance through Taiwan amended Company Law, Corporate Governance Best-Practice Principles for TSEC/GTSM Listed Companies 上市上柜公司治理实务守则 (shàngshì shàng guì gōngsī zhǐlǐ shíwù shǒuzé) and Securities & Exchange Act 证券交易法⁷⁰ (zhèngquàn jiāoyì fǎ).⁷¹ While the Securities & Exchange Act governs the disclosure and transparency requirements for listed companies, the Company Law provides rules that protect present and future shareholders and creditors as well as information about the existing types of companies and regulations concerning the formation and dissolution of the company, the composition of the Board of Directors, the shares and their withdrawal, the liquidation, the modification of the articles of incorporation, the reorganization of the company and so on. It is divided in the following nine chapters:

- General Provisions
- Unlimited Company
- Limited Company
- Unlimited Company with limited liability shareholders
- Company Limited by shares
- Affiliated Enterprises (which cover two chapters)
- Foreign Company
- Registration and Recognition of Companies
- Supplemental Provisions.

Art. 1 of Company Law defines the company as:

<<本法所稱公司，謂以營利為目的，依照本法組織、登記、成立之社團法人。>>⁷²

*A corporate juristic person organized and incorporated in accordance with this Act for the purpose of profit making*⁷³

Moreover, the Company Law provides four classes of companies:

⁶⁹ *Corporate Governance in Taiwan*, Securities and Future Institute, 2007

⁷⁰ 台湾证券交易所 <http://twse-regulation.twse.com.tw/TW/law/DAT01.aspx?FLCODE=FL007009>

⁷¹ *Taiwan Corporate Governance* – Securities and Future Institute, 2007

⁷² 第一条公司法，全國法規資料庫 <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=J0080001>

⁷³ Company Act, Department of investment Services of MOEA, Taipei, March 2008

<<一、無限公司：指二人以上股東所組織，對公司債務負連帶無限清償責任之公司。

二、有限公司：由一人以上股東所組織，就其出資額為限，對公司負其責任之公司。

三、兩合公司：指一人以上無限責任股東，與一人以上有限責任股東所組織，其無限責任股東對公司債務負連帶無限清償責任；有限責任股東就其出資額為限，對公司負其責任之公司。

四、股份有限公司：指二人以上股東或政府、法人股東一人所組織，全部資本分為股份；股東就其所認股份，對公司負其責任之公司。

公司名稱，應標明公司之種類。>>⁷⁴

<<1. *Unlimited Company: which term denotes a company organized by two or more shareholders who bear unlimited joint and several liabilities for discharge of the obligations of the company;*

2. *Limited Company: which term denotes a company organized by one or more shareholders, with each shareholder being liable for the company in an amount limited to the amount contributed by him;*

3. *Unlimited Company with Limited Liability Shareholders: which term denotes a company organized by one or more shareholders of unlimited liability and one or more shareholders of limited liability; among them the shareholder(s) with unlimited liability shall bear unlimited joint liability for the obligations of the company, while each of the shareholders with limited liability shall be held liable for the obligations of the company only in respect of the amount of capital contributed by him;*

4. *Company Limited by Shares: which term denotes a company organized by two or more or one government or corporate shareholder, with the total capital of the company being divided into shares and each shareholder being liable for the company in an amount equal to the total value of shares subscribed by him. The name of a company shall indicate the class to which it belongs.>>⁷⁵*

Foreign investors generally choose limited companies and companies limited by shares when they set up subsidiaries in Taiwan.

The Company Act also recognizes foreign companies and allows them to set up branches and representative offices in Taiwan. There are significant tax advantages setting up a branch. As a result, it is quite common for foreign companies to set up either a branch directly under the home office or to first set up a subsidiary in a third country and then set up a Taiwan branch of that subsidiary.

⁷⁴ 第二條公司法，全國法規資料庫

⁷⁵ Company Act, General Provisions, art. 2

Generally speaking, there are no restrictions on the nationality on directors, managers, or representatives. Certain industries do restrict nationality or capital equity and special rules apply to citizens of the People's Republic of China.

As we go further with the reading of the Company Act, we might see that the basic regulatory model of corporation in Taiwan is based on a two-tier structure which consists of Board of Directors (BoD) 董事会 (dǒngshìhuì), Supervisor(s) 监督员 (jiāndū yuán) and Shareholders 股东 (gǔdōng). Shareholders, nominate directors and supervisors during the Shareholders' Meeting. This matter will be discussed in detail in chapter three concerning the foreign preferred entry modes.

2.7 Dispute Resolution in Taiwan

Given the principle of a harmonious society that rules the Chinese culture, it is clear how dispute resolution in Taiwan is a very delicate matter, especially if we talk about litigation brought in front of the court, seen as a disgrace and symbol of disrupting the social equilibrium⁷⁶. However, with the internationalization of the commerce, and after becoming an effective member of WTO in 2002, the ROC committed itself to a Law reform process in order to adhere to international disciplines and laws and establish a transparent legal framework to facilitate cross-border economic activities. In such climate of reforms, dispute resolution of civil and commercial matters, especially those containing foreign elements, became prior importance for the government's agenda. Thanks to the ROC commitment, nowadays litigation as well as alternative dispute resolution (ADR) methods, like mediation and arbitration, are broadly used in Taiwan for settling disputes. It has been a slow process for a public judgement 公断 (gōngduàn) was strongly preferred to the litigation: <<Kung Duan⁷⁷ was a process where a decision maker, usually a senior member of the local gentry or the head of a clan, heard the statements from the disputants and made a binding decision to resolve the dispute >>⁷⁸.

⁷⁶ V. Taylor and M. Pyles, *The Cultures of Dispute Resolution in Asia*, in *Dispute Resolution in Asia*, Kluwer Law International; third edition 2008.

⁷⁷ Kung Duan is written through the Wade-Giles romanization system, a variant of Mandarin romanization system. The most used it is in fact the Pinyin system, so kung duan is actually transcribed as gong duan.

⁷⁸ Angela Y. Lin and Nigel N.T. Li, *Arbitration in Taiwan, The Republic of China*, in *International Commercial Arbitration in Asia on February 1, 2013*.

The decision maker did not have to rely on any official law to support his decisions and convince the parties to cooperate but, his authority derived from his privileged status within the social hierarchy.

However, apparently, because of Western influence and the process of liberalization promoted by the government, there has been a change in the attitude toward law and legal process. Taiwanese people in fact, do not consider law as a mere second source of social order anymore, but they give it a significant role. Moreover, increase in internationalization and the need of compliance with contractual obligations made Taiwanese people understand the importance of the law and of a set of standardized regulations to be applied in case of foreign elements. Under this light can be seen the Statute for Commercial Arbitration, passed by the ROC in 1961 that, however, was still far from an international commercial arbitration statute. In fact, it was only in 1998 through the enactment of the new ROC Arbitration Act 仲裁法 (zhòngcái fǎ), whose provisions are strongly influenced by UNCITRAL Model Law promulgated by the United Nations on International Trade Law, that Taiwan was provided with a model of domestic arbitration legislation harmonized and uniformed with international arbitration standards.⁷⁹ With the Arbitration Act of 1998, the principle of party autonomy was finally introduced in Taiwan and the western idea of arbitration took root in ROC. Nowadays, Arbitration is one of the preferred mean of settling a dispute for its efficiency, flexibility and party autonomy. In one of the amendment of Commercial Arbitration Act, are also included some provisions regarding recognition and enforcement of foreign arbitral awards which refer to the New York Convention which counts 134 members⁸⁰. These provisions facilitate the recognition and the enforcement of foreign arbitral awards which otherwise would not be recognized for Taiwan is not allowed to become a contracting party of the New York Convention because it is not member of the United Nations whose main member requirement is the statehood. In Taiwan both Institutional and ad Hoc arbitration are allowed. The former kind may be conducted by international arbitration centers, such as the International Chamber of Commerce (“ICC”), or by the Arbitration Association of the Republic of China 中华民国仲裁协会 (zhōnghuá mínguó zhòngcái xiéhuì) (also known as the “Chinese Arbitration Association, Taipei;” “ROCAA”) that is one of the local arbitration centers in Taiwan. The latter instead, may be conducted by following the procedures indicated by the parties in the contract which

⁷⁹ A. Y. Lin and Nigel N.T. Li, *Arbitration in Taiwan, The Republic of China*

⁸⁰ Dr. Wu, Chen-Huan, *Recognition and enforcement of foreign arbitral awards in the Republic of China*, The Arbitration Association of the ROC, Taipei, 2005

are however subjected to the provisions of the Arbitration Act. The parties may for example, agree upon proceeding with arbitration in accordance with the UNCITRAL Rules of Arbitration. However, ad hoc arbitration is uncommon in Taiwan because it is unlikely that the parties might be able to anticipate each and every issue that could possibly arise during the entire arbitration process.⁸¹

According to the Arbitration Act, an arbitration agreement must be in written form. It can be referred to any document, certificate, letter, telegram, telefax and any kind of other similar types of communication, that could justify an inference of an agreement to arbitrate. This includes of course, also new forms of communication made possible by technological means. Moreover, the Arbitration Act does not make any difference between domestic and foreign law so when it says “in accordance with law”, in case the dispute concerns one foreign party, it is eligible for arbitration dispute resolution based on a foreign law, if the foreign law allows the parties to settle the dispute. The categories of claims which cannot be resolved by arbitration are the following: validity of Intellectual Property Rights, Antitrust and Unfair Competition, Consumer Protection, Securities Regulation and Employment Claims.

2.7.1 Recognition and enforcement of foreign awards in Taiwan

Taiwan is not a signatory to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. Therefore, the Arbitration Act governs enforcement of foreign arbitral awards.

According to art. 47 of Arbitration Act:

<<在中華民國領域外作成之仲裁判斷或在中華民國領域內依外國法律作成之仲裁判斷，為外國仲裁判斷。

外國仲裁判斷，經聲請法院裁定承認後，於當事人間，與法院之確定判決有同一效力，並得為執行名義>>⁸²

<<A foreign arbitral award is an arbitral award issued outside the territory of the Republic of China or issued pursuant to foreign laws within the territory of the Republic of China.

A foreign arbitral award, after an application for recognition has been granted by the court, shall be enforceable.>>⁸³

⁸¹ A. Y. Lin and Nigel N.T. Li, *Arbitration in Taiwan, The Republic of China*, in *International Commercial Arbitration in Asia* on February 1, 2013.

⁸² 第 47 条仲裁法，全國法規資料庫 <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=I0020001>

⁸³ Chapter 7, Art. 47 Arbitration Act of the Republic of China.

The Arbitration Act treats foreign awards and domestic ones in a different way. To be enforceable, a foreign award must be recognized by Taiwanese court. To obtain the recognition of a foreign award a party shall submit to the court an application and the following documents:

- << 一、 仲裁判斷書之正本或經認證之繕本。
 - 二、 仲裁協議之原本或經認證之繕本。
 - 三、 仲裁判斷適用外國仲裁法規、外國仲裁機構仲裁規則或國際組織仲裁規則者，其全文。
- 前項文件以外文作成者，應提出中文譯本。>>⁸⁴

- <<1. *The original arbitral award or an authenticated copy;*
- 2. *The original arbitration agreement or an authenticated copy;*
- 3. *The full text of the foreign arbitration law and regulation, the rules of the foreign arbitration institution or the rules of the international arbitration institution which applied to the foreign arbitral award.*>>⁸⁵

If the above-mentioned documents are written in a foreign language, the party that wants to submit them to the court shall provide an authenticated copy in a Chinese Translation. After the submission to the court, this shall deliver the copies to the respondent.

The court is also empowered with the right of issuing a dismissal of the recognition of an award if the recognition or the enforcement of the award is contrary to the public order or good morals of the Republic of China and if the dispute is not arbitrable according the law of the ROC. Moreover, the Arbitration Act adopts the “reciprocity” principle in the recognition of foreign awards. Since Taiwan has not ratified the 1958 New York Convention, this requirement of reciprocity might create obstacles in recognizing a foreign award. However, the art. 49 of Arbitration At does not make this clause compulsory in fact, the court may decide under its own discretion, to recognize and enforce a foreign award even if the country where the award has been issued does not recognize Taiwanese Law, only for promoting international judicial cooperation.⁸⁶ Taiwan has in fact recognized and enforced

⁸⁴ 第 48 条仲裁法，全國法規資料庫

⁸⁵ Chapter 7, Art. 48, Arbitration Act of the Republic of China.

⁸⁶ Backer&McKenzie, *Recognition and Enforcement of Foreign Arbitral Awards in Arbitration Around the World – Taiwan*, 2016, http://www.bakermckenzie.com/media/files/insight/publications/2016/10/dratw/dratw_taiwan_2011.pdf?la=en

some foreign arbitral awards made in certain countries and jurisdictions, such as the United States, the United Kingdom, Hong Kong, France, Switzerland, Korea and Vietnam.

The court may also issue an order of dismissal of the recognition of a foreign award if <<*the country where the arbitral award is made or whose laws govern the arbitral award does not recognize arbitral awards of the Republic of China*>>⁸⁷.

After the analysis of the influence of Taiwan international ambiguity on its trade policy and relations as well as on its legal system, this thesis wants now to discuss in detail which business typologies and entry modes are allowed to foreign companies and investors.

⁸⁷ Chapter 7, Art. 49, Arbitration Act of the Republic of China

3. Foreign companies' entry modes typologies

3.1 Business typologies

When a company decides to enter in a new market, it can do it through three main activities: selling, buying and investing. The modalities adopted for the entrance are also usually grouped in three: commercial agreements, strategic alliances and partnerships and foreign direct investments (FDI).⁸⁸ These modalities are characterized by different degree of control over foreign operations, resources commitment and risks. The choice of one rather than another depends, of course, on which kind of activity the company wants to carry out in the foreign market, on the entity of the business and of the company itself as well as on the amount of resources that a company is willing to invest. Given Taiwanese government's goal to liberalize as much as possible its market, it is allowed to operate in Taiwan through all previous mentioned entry modes.

3.2 Commercial Agreements 商业协议 (shāngyè xiéyì)

Since a great number of Taiwanese firms belong to small- and medium-sized enterprises category active in the trading and manufacturing business, it is common to enter in⁸⁹:

- Agency/Distribution agreements 代理合约/经销合同 (dàilǐ héyuē/jīngxiāo héféng);
- Manufacturing agreements 制造合同 (zhìzào héféng);
- Supply agreements 供货合同 (gōng huò héféng).

Agency and distribution agreements are arrangements that have as their main purpose to act on behalf of a foreign company in selling the products of such foreign company. Even if the terms 'agent' and 'distributor' are used interchangeably, there is actually a difference between the two. An agent is simply someone who acts on the company's behalf in assuming contractual obligation working as an intermediate between the company and the customers.⁹⁰

⁸⁸ P. Lasserre, *Global Strategic Management*, Palgrave 3rd edition, 2012

⁸⁹ R. van Hoesel, *New Multinational Enterprises from Korea and Taiwan*, Routledge, 2013

⁹⁰ S. Sidkin, N. Miller, *Agency and Distributorship Agreements*, Fox Williams agent law 2001
http://www.agentlaw.co.uk/cms/document/Agency__Distributorship_agreements_.pdf

Agents are paid in commissions. A distributor instead, carries out buying-reselling activities and his income is calculated on the difference between the purchase and selling prices.

Through manufacturing agreements, a foreign company commissions a local company the production or the assembly of its product according foreign company's designs, formulas, and/or specifications.⁹¹

Supply agreements instead, are strictly related to agency and distribution contracts. This kind of agreement indicates the terms upon which the parties (supplier and buyer) agree to supply and purchase the product from each other remarking each party's responsibilities and obligations.⁹²

Taiwanese Law does not have specific laws that regulate each of the above-mentioned types of contracts but, they fall under the category of commercial obligations included in the Civil Code. In case a foreign company desired to engage in one of these agreements type with a local partner, it could rely on both public and private trade institutions' assistance. There are three possible sources of support which can assist foreigners in the arrangement of these kind of agreements⁹³:

- Chambers of Commerce;
- Taiwan External Trade Development Council (TAITRA) 中华民国对外贸易发展协会 (zhōnghuá míngúo duìwài mào yì fāzhǎn xiéhuì);
- Legal consulting companies;

Italian companies might seek assistance also from the Italian Trade Agency (ITA)⁹⁴ because Italy does not have its own Chamber of Commerce in Taiwan.

Import/Export 进出口 (jìn chūkǒu)

The sale of goods or services produced by a company based in one country to customers that reside in a different one can be considered the fastest way to reach a new market with the lowest commitment. A company may decide between two export formats:

- Indirect export: commercialization of its products or services in the foreign market through the intermediation of third parties;

⁹¹ R. Cavalieri, *Lecture di diritto cinese*, Cafoscarina, Venezia 2015-2016

⁹² *Product Supply Agreement Law and Legal Definition*, USLegal, <https://definitions.uslegal.com/p/product-supply-agreement/>

⁹³ Giuseppe Izzo, vice-chairman of European Chamber of Commerce in Taiwan, *Interview*, May 2017, Taipei

⁹⁴ Italian Trade Agency also known as Istituto Commercio Estero (ICE) which has branch offices all around the world

- Direct export: commercialization of its products or services through a company's own branch structure.

Through this entry mode, a company might achieve economies of scale, minimize financial risk and have full control over production.⁹⁵ In case of indirect export, it is important that the company put much effort in looking for expert intermediaries for the sale of its products trying to establish a solid relationship of mutual trust (关系 - guānxì), to be sure that its goods would be sold in the right way.⁹⁶ These experts of the Taiwanese market can be distributors, export management companies, export trading companies, brokers and so on. Usually, chambers of commerce or other institutions such as the Import and Export Association of Taipei or U.S. Agricultural Trade Office (ATO) in Taipei, provide foreign companies valuable information and assistance in the research of a good intermediary.⁹⁷

However, if the company wants to be sure to have the control also on the distribution modalities, it might choose the direct export format registering an export-oriented business subsidiary in an Export Processing Zones (EPZs) 加工出口区管理处 (jiāgōng chūkǒu qū guǎnlǐ chù)⁹⁸.

The first EPZ was established in 1966 because the island of Formosa was facing lack of technology, capital shortage and unemployment problems. Thus, Taiwan became the first Special Economic Zone (SEZ) and since then, it has attracted FDI, brought in the latest technology, expanded international trade and increase job vacancies. The trade relations are regulated by the Statute for Investment by Foreign Nationals 外国人投资条例 (wàiguó rén tóuzī tiáoli), Statute for Investment by Overseas Chinese 华侨回国投资条 (huáqiáo huíguó tóuzī tiáoli), by Foreign Trade Act 贸易法 (màoyì fǎ) and international treaties. Taiwan existing EPZs are: Gaoxiong EPZ 高雄加工出口区 (gāoxióng jiāgōng chūkǒu qū), Taizhong EPZ 台中加工出口区 (táizhōng jiāgōng chūkǒu qū) and Pingdong EPZ

⁹⁵ H. Lin, *Choice of Market Entry Mode in Emerging Markets*, in *Journal of Global Marketing*, volume 14, 2008

⁹⁶ A. Pontiggia, T. Vescovi, *Panni stesi a Pechino: Esploratori e pionieri nei nuovi mercati internazionali*, Egea, 2015

⁹⁷ C. Chang, *Taiwan Exporter Guide 2016*, USDA Foreign Agricultural Service, https://www.susta.org/downloads/files/REPORTSgains/Exporter%20Guide_Taipei%20ATO_Taiwan_12-14-2016.pdf

⁹⁸ Export Processing Zone Administration official website <http://www.epza.gov.tw/english/page.aspx?pageid=ecc3eefec73b3559>

屏東加工出口區 (píng dōng jiāgōng chūkǒu qū).⁹⁹

As showed in the following table, registering an export/oriented company in the EPZ is quite popular. Only in 2016 the capital invested in this sector amounted to around NT\$ 40 billion (around US\$1,5 billion) which is an impressive number for small island like Taiwan.

Items	Amount
Registration No. of Companies	604
Investment Amount (NT\$)	40.1 billion
Corporate Revenues (NT\$)	377.6 billion
Exports Amount (NT\$)	427.5 billion
Imports Amount (NT\$)	262.9 billion
Total Employees	81,904
Output Value Per Employee(NT\$/PerCapita/yr)	4.7 million
Unit Area Value (NT\$/ha/yr)	1.04 billion

Table 1 Important Statistics and Key Figures (in 2016)¹⁰⁰

source: The introduction of Taiwan's Export Processing Zones (EPZ's)

When applying for registration as exporter/importer, the application form shall be submitted either by original hard copy, facsimile or e-transmission.

Article 7-1 The Bureau of Foreign Trade has made the following information regarding registration of exporters/importers publicly available on its website¹⁰¹:

1. Chinese and English names
2. Business address in Chinese and English
3. Name of representative or person in charge
4. Telephone and fax numbers

If an exporter/importer had undergone a merger, a change of Chinese or English name, organization, representative, or place of operation, he or she shall submit relevant documents to the BOFT to effect the change of registration. The exporter/importer may continue to operate export/import business only after it has completed the process of changing its registration.¹⁰²

⁹⁹ 加工出口區，投資台灣人口網 <http://investtaiwan.nat.gov.tw/showPage?lang=eng&search=249>

¹⁰⁰ The introduction of Taiwan's Export Processing Zones (EPZ's)
<http://www.epza.gov.tw/english/page.aspx?pageid=ecc3eefec73b3559>

¹⁰¹ Art. 7. Regulation Governing Registration of Exporters and Importers, last amendment on June 10, 2014

¹⁰² Art. 8 Regulation Governing Registration of Exporters and Importers, last amendment on June 10, 2014

According to the Foreign Trade Act, most commodities can be imported freely, no permit or license is required with some exceptions concerning commodities listed on the restricted items list, which are subjected to import restrictions. The restricted item list includes items concerning national defense, social security, cultural protection, hygiene, moral, environmental and ecological issues, as well as those subjected to policy demands.¹⁰³ The items subjected to restrictions can be imported only with a special import permit obtained from the BOFT. High-tech commodities instead, fall under a special category which is regulated by the Regulations Governing Export and Import of High-tech Commodities 战
略性高科技货品输出入管理办法 (zhànlüè xìng gāo kējì huòpǐn shūchū rù guǎnlǐ
bànfǎ) promulgated on March 31, 1994 by MOEA.

The documents required for the application of the permit are¹⁰⁴:

- Letter of credit;
- Commercial invoice;
- Bill of landing or airway bill;
- Packing list;
- Certificate of origin for commodities such as sedan, other small passenger cars and chassis, tobacco and alcohol products and some agricultural products;
- Certificates of inspection or quarantine for agricultural products, plants, and animals issued in the country of origin and in Taiwan.

Despite the restricted items list, in order to comply with WTO regulations, Taiwanese import controls over 11,213 official import categories of items have already been reduced by 98,9%.¹⁰⁵ However, many products like chocolate confectionary and meter for medical equipment, if made in China, are still banned form Taiwanese market even the ECFA cannot avoid the banishment of such products. Moreover, banned good coming from China, if shown that are being produced somewhere else and did not undergo any “substantial transformation” (value added exceeding 35% of the final export value of the goods) can however be imported in Taiwan.¹⁰⁶

One of the cons that might dissuade a foreign company to export in a foreign country concerns the tariffs regulation for imported product. However, to further encourage

¹⁰³ Art. 11 Foreign Trade Act

¹⁰⁴ *Taiwan Import Requirements and Documentation*, <https://www.export.gov/article?id=Taiwan-Import-Requirements-and-Documentation>

¹⁰⁵ *Taiwan - Prohibited and Restricted Imports*, Taiwan Country Commercial Guide, US export governmental website, <https://www.export.gov/article?id=Taiwan-Prohibited-Restricted-Imports>

¹⁰⁶ *Taiwan - Prohibited and Restricted Imports*, Taiwan Country Commercial Guide

international trade, the ROC has signed many trade agreements with other countries reducing its import taxes and barrier. We might remember the trade regulations adopted by the ROC in order to have access to the WTO, or many other bilateral trade agreements made with ATA Carnet Countries which even if they lack diplomatic relation with Taiwan, they decided to agree to temporary entry regulation which would have facilitate the reciprocal trade exchange.¹⁰⁷ These agreements grant temporary customs exemptions for a wide range of products such as test instruments, scientific equipment, exhibition goods, etc., which are brought into Taiwan for sales promotion and exhibition purposes on a temporary basis. After that the event is concluded, the goods must leave the country in order to avoid the imposition of harbor taxes and tariffs. Moreover, if a foreign company decides to establish a subsidiary in one of the FTZs listed above, all the products imported by the enterprise for its own use, are exempt from custom duties.

Before starting an import/export business in Taiwan, one should check the tariff and duty rates that would be applied on the products. The information concerning each single product are available on the official website of Custom-Port Trade single window (CPT single window) 关港贸单一窗口 (guān gǎng mào dānyī chuāngkǒu) created by the Council for Economic Planning and Development (CEPD) 经济建设委员会 (jīngjì jiànshè wěiyuánhùi) in 2013 to simplify not only the gathering process of information concerning the import-export procedures but also the procedures themselves that should be conformed to international forms. The aim of this website is to integrate custom clearance, licensing, harbor information as well as information coming from government agencies and traders' database helping to obtain a real understanding of all kinds of import and export information.¹⁰⁸ Taiwan Tariffs system is based on the Nomenclature of the Harmonized system of Name and Codification of Goods¹⁰⁹, an internationally standardized classification system of trade products. The customs duties are calculated on the Cost, Insurance and

¹⁰⁷ *The Development of International Trade in the Republic of China (Taiwan)*, 经济部国际贸易局-经贸资讯网 - Bureau of Foreign Trade official website

¹⁰⁸ Baker&McKenzie, Taiwan – Single window to simplify Customs, port and trade procedures, International Trade Compliance Update, covering Customs and Import Requirements, Export Controls and Sanctions, Trade Remedies, WTO and Anti-Corruption. <http://www.internationaltradecomplianceupdate.com/2013/09/09/taiwan-single-window-to-simplify-customs-port-and-trade-procedures/> 21/04/2017 – 15:25

¹⁰⁹ Adopted in 1988, it has been developed by the World Customs Organization (WCO) an independent intergovernmental organization based in Brussels. *Harmonized Commodity Description and Coding Systems (HS)*, United Nations, International Trade Statistic, <https://unstats.un.org/unsd/tradekb/Knowledgebase/Harmonized-Commodity-Description-and-Coding-Systems-HS>

Freight (CIF) value and are defined on an ad valorem, specific or selective basis depending on the imported item.¹¹⁰ The average nominal tariff rate for industrial products was 4.23%, and 14.66% for agricultural products while the overall average nominal tariff rate for imported goods was 6.35% in 2016. Further information concerning customs duties and preferential rates can be found on Taipei Custom official website 财政部关务署, 台北关 (Cáizhèng bù guān wù shǔ, táiběi guān).¹¹¹

3.3 Strategic alliances 战略联盟 (zhànlüè liánméng) and Partnerships 合夥组织 (héhuǒ zǔzhī)

Strategic alliances are usually medium-long term agreements that help obtaining some benefits in the new target market which would never been achieved by a company on its own. The aim of the alliances is to enhance companies' competitive advantages or create new business by combining complementary capabilities, such as R&D, manufacturing and market access, among two or more companies.¹¹² There are several typologies of alliances but this thesis will discuss in detail the most important ones:

- Licensing 许可合同 (xǔkě hétóng)
- Franchising 加盟合同 (jiāméng hétóng)
- General and limited partnerships 普通合伙 (pǔtōng héhuǒ) and 有限合伙 (yǒuxiàn héhuǒ)

3.3.1. Licensing

A licensing agreement is a partnership between a party (licensor) that grants the use of its intellectual property such as trademarks, patents, copyrights, a certain technology as well as know-how, to another party (licensee) in exchange of an agreed royalty.¹¹³ It can be an exclusive licensing (IP licensed only to a single licensee) or non-exclusive (licensed to multiple licensees). It is usually adopted by companies that seek a quick market access, a

¹¹⁰ *Customs, Duties and Taxes on Import*, in Import Customs Procedure in Taiwan, Santander trade portal, <https://en.portal.santandertrade.com/international-shipments/taiwan/customs-procedures>

¹¹¹ Taipei Customs, Customs Administration Ministry of Finance – 财政部关务署, 台北关 <https://etaipei.customs.gov.tw/cp.aspx?n=D6BFF8B0FB538F5D>

¹¹² P. Lasserre, *Global Strategic Management*, Palgrave 3rd edition, 2012

¹¹³ - Alexander I. Poltorak, Paul J. Lerner, *Essential of Licensing in Intellectual Property*, John Wiley & Sons, 2004;

- P. Lasserre, *Global Strategic Management*, Palgrave 3rd edition, 2012

new pool of resources with low commitment. It can be also adopted during a merger or acquisition, or while negotiating a joint venture as contribution in kind.

Licensing in Taiwan is not regulated by a specific Act. In fact, there are no regulations that identify licensing agreements forms or its differences with franchise partnerships. It is indicated as a contract regulated by Taiwan Civil Code thus, an agreement involving any kind of intellectual property arrangement shall be acceptable under the laws of Taiwan.¹¹⁴

Other relevant laws that regulate licensing are those related to IP protection such as Patent Act 专利法 (zhuānlǐ fǎ), Trademark Act 商标法 (shāngbiāo fǎ), Integrated Circuit Layout Protection Act 集成电路电路布局保护法 (jī tǐ diànlù diànlù bùjú bǎohù fǎ), as well as Plant Variety and Plant Seed Act 植物品种及种苗法 (zhíwù pǐnzhǒng jí zhǒng miáo fǎ).

In the ROC, foreign companies are allowed to engage in international licensing contracts with local partners. There are no restrictions against a foreign licensor willing to enter a licensing agreement without establishing a subsidiary or a foreign branch; should the licensor desire to establish a subsidiary or a joint venture instead, he or she shall obtain the approval or consent from competent authority in charge of such industry.¹¹⁵

As a rule, before entering a licensing contract, a company should protect its IP in both home and host countries. However, in Taiwan there are no specific laws and regulations that prohibit the license of unregistered trademarks or other IP rights.¹¹⁶ This means that even if it is allowed to license unregistered IPR, the licensor would not be protected by Taiwanese IPR Acts.

License contract

Regardless whether it is international or local, a licensing arrangement can be reached through the writing of a contract following Taiwanese regulations related to contractual obligations. However, a licensor has the possibility to consult the Guidelines on Technology Licensing Arrangements promulgated by the Fair-Trade Commission, that include clarifications about many matters like the payment of royalties¹¹⁷

¹¹⁴ S. Hsiao, *Licensing in Taiwan*, Interview on Getting the Deal Through, 27 February 2017, <https://gettingthedealthrough.com/area/19/jurisdiction/45/licensing-taiwan/>

¹¹⁵ S. Hsiao, *Licensing in Taiwan*, Interview on Getting the Deal Through, 27 February 2017

¹¹⁶ *International Licensing and distribution transactions frequently asked questions Taiwan*, Pamir Law Group, 2007

<http://www.pamirlaw.com/files/pamirupdate/International%20Licensing%20and%20Commercial%20Transaction%20FAQ%20-%20Taiwan%20-%20100107.pdf>

¹¹⁷ S. Hsiao, *Licensing in Taiwan*, Interview on Getting the Deal Through, 27 February 2017,

3.3.2 Franchising

A Franchise is a type of license through which a party (franchisor) sells the right of use of its intangible assets such as trademark or trade name, know-how as well as business process and systems, to another party (franchisee) to sell a product or provide a service under the franchisor's name and according to standards and practices established by the franchisor.¹¹⁸

The franchising can be organized in two ways. One possibility sees the franchisor entering the foreign market by establishing a master franchise that has then the right to develop other sub-franchisees, while the other one consists in the franchisor dealing directly with individual franchisees.¹¹⁹ Through this entry mode, a company can get a quick access to the market keeping a high control of its goods or services qualities as well as marketing system and distribution procedures.

Franchise agreements in Taiwan are popular for fast food restaurants, casual restaurants, convenience stores, health and drug stores, spa services, organic products stores, language schools, hair salons, real estate brokerage services, apparel stores, shoe stores, and sporting goods.¹²⁰ Although in Taiwan exist many franchising partnerships, there are no specific laws which deal with franchising activities. Many provisions concerning this type of agreements are regulated generally by Civil Code 民法 (mínfǎ) and some of them by Fair Trade Law 公平交易法 (gōngpíng jiāoyì fǎ). Regardless of whether it is an agreement which involves a foreign entity or a domestic arrangement, the laws and regulations concerning the intellectual property rights of international franchising are the same of those of domestic ones. Given the high capital commitment required by foreign franchisor, Taiwanese investors became more cautious in making the decision of entering in a franchising agreement with a foreign franchisor. However, franchising is really popular in Taiwan and many successful franchisors avail themselves of the use of professionals like lawyers and accountants for advice on the structure and implementation of franchising agreements. The terms and contents of the franchise agreements may vary, but there are some widespread clauses that can be found in most franchise agreements in Taiwan.

¹¹⁸ Rupert M. Barkoff, Andrew C. Selden, *Fundamental of Franchising*, American Bar Association, 2008

¹¹⁹ P. Lasserre, *Global Strategic Management*, Palgrave 3rd edition, 2012

¹²⁰ *Doing Business in Taiwan: 2016 Commercial Guide for U.S. Companies*, United State of America Department of Commerce, http://2016.export.gov/taiwan/static/get_file/2016%20TCG_Taiwan_Commercial_Guide_eg_tw_101613_295820.pdf

For instance, the following clauses concerning the drafting of franchise contract:

<<1.授权期限。

- 2.授权范围加盟店标语、标志、招牌、商标等。
- 3.权利金之交付及返还。
- 4.一定区域范围内不得再授予他人相同权利（商圈保障）。
- 5.竞业及保密条款。
- 6.终止及解约事由。>>¹²¹

1. Duration of the license;
2. The extent of authorization: for instance, franchise shop slogan, signs, trademarks and so on;
3. The payment of the license and its return;
4. Exclusivity clause;
5. Competition and confidentiality clauses;
6. Termination and extinction clauses.

In particular, the Fair Trade Commission has issued disposal directions on the business practices of franchisors to maintain the trading order in the franchise market and ensure fair competition among franchise businesses, analyzing patterns of conduct of franchisors that could be considered in violation of the Fair Trade Act. Among these directions there are information that clarify the disclosure requirements as follows¹²²:

- 加盟業主於招募加盟過程中，未於締結加盟經營關係或預備加盟經營關係之十日前或個案認定合理期間，以書面提供下列加盟重要資訊予交易相對人審閱，構成顯失公平行為，但有正當理由而未提供資訊者，不在此限
*Franchisor shall provide to the franchisee important franchise information in writing within 10 days or a reasonably determined timeframe prior to entering into the franchise operation relationship;*¹²³
- 簽約前未給予交易相對人至少五日或個案認定之合理契約審閱期間。
Prior to entering into a written contract regarding franchise operation, franchisors are required to allow at least 5 days or a reasonable timeframe determined in line with each case for trading counterparts to review the contract;

¹²¹ 论加盟契约, 高點律師司法官班 www.license.com.tw/lawyer

¹²² 公平交易委員會對於加盟業主經營行為案件之處理原則, *Fair Trade Commission Disposal Directions (Policy Statements) on the Business Practices of Franchisors* Passed by the 359th Commission Meeting on Jun. 2 1999 <http://www.ftc.gov.tw/internet/main/doc/docDetail.aspx?uid=167&docid=11795>

¹²³ 公平交易委員會對於加盟業主經營行為案件之處理原則, *Fair Trade Commission Disposal Directions (Policy Statements) on the Business Practices of Franchisors*

- 簽約日起三十日內，未交付契約予交易相對人。但因不可歸責加盟業主之事由，致交付契約遲延者，不在此限 [···]。

In cases under which the contract is not given to the trading counterpart within 30 days of signing, where a delay is caused by circumstances not attributable to the franchiser [...], shall not be subject to this restriction.

3.3.3 Partnerships 合夥组织 (héhuǒ zǔzhī)

ROC legal system gives also the possibility to enter in partnerships contracts with local partners. It allows two forms of partnerships: general partnership 普通合伙 (Pǔtōng héhuǒ) and limited partnership 有限合伙 (yǒuxiàn héhuǒ). In Taiwan, laws concerning partnership relations can be found in Taiwanese Civil Code, Company Law and the Limited Partnership Act.

General Partnership

According art. 667 of Taiwanese Civil Code <<Partnership is a contract whereby two or more persons agree to put contributions in common for a collective enterprise. The contribution may consist of money or other rights over property or of services, credit or other interests>>.

For the convenience of the management of the partnership, usually the parties decide to separate their own assets from those of the new entity. So, speaking of the legal ownership of the assets, the parties agree on the common holding of the contributed capital and other property. In fact, the law prohibits any partition of the partnership assets until the partnership itself goes into liquidation.¹²⁴

When two or more parties register their partnership in a new entity, all of its partners are personally liable for the debts and obligations of the partnership with some exceptions concerning debts and obligations resulting from their own negligence or fraudulence.¹²⁵ In fact, the money of the partnership are used first to repay the debt arising from the partnership affairs but, if the funds of the partnership are not enough to cover the debts, then all the parties are jointly liable for the deficit.¹²⁶ The partnership needs to be registered at the tax bureau, although from January 1, 2016, both partnership enterprise and partners are required to pay income tax separately.¹²⁷ Moreover, to ease the management of the new enterprise,

¹²⁴ See Civil Code art. 682, para. 1

¹²⁵ GoodEarth CPA Accounting firm - http://www.goodearth.com.tw/taiwan_company.php

¹²⁶ See Civil Code art. 681

¹²⁷ See Income Tax Act art. 71

the partnership has the right to act as party litigation, to open its bank account and having its own accounting books.

This thesis would like now to further describe some of the main characteristics of this form of partnership that might be useful for foreign investors willing to enter in a general partnership. Matters like the resignation and removal of the partner, the principle of partnership autonomy, the transfer of share and the introduction of a new partner as well as the dissolution and liquidation procedure will be discussed as follows.

Resignation and removal of the partner

According to art. 674 of Civil Code <<when one or several partners in the partnership, by agreement or by resolutions manage the affairs of the partnership, they shall not resign or be removed by the other partners except for a good cause>>¹²⁸. This has two important legal implications: the first one is that if one of the parties wants to resign, he or she cannot do it at will but he or she has to give proper motivations and submit the resignation to the other partners; the second one is that if one or more parties are not satisfied with one or more managing party, they cannot remove him at will unless the removal proposal is unanimously approved by the parties.¹²⁹

Transfer of share, introduction of new partner and withdrawal from partnership

The transfer of shares to a non-partner, as well as the introduction of a new partner, also require the unanimous approval of the parties.¹³⁰ Once the withdrawal of a party has been officialized, the law requires that the party will continue to be liable for all the debts of the partnership incurred before his withdrawal while on the other hand, the new joining partner will bear the same liabilities of the other parties, including those arose before he became a partner.¹³¹

Partnership autonomy

Despite the above regulations, the parties have the freedom to manage their internal affairs as they wish. This is true concerning the freedom of making their own rules about the profit and loss sharing, duty to contribute additional capital, resolution of partnership affairs and

¹²⁸ Civil Code art. 674

¹²⁹ See Civil Code art. 674 para. 1

¹³⁰ See Civil Code art. 683, 691 para. 1

¹³¹ See Civil Code art. 691 para. 2

the right to manage the partnership affairs. For instance, the parties are free to decide the profit-sharing ratio and, if it is not specified in the contract, then the capital contributed by each partner will be taken as model. Concerning the contribution of additional capital, the parties do not have any obligation, even when the partnership suffer losses, unless they stated it in the contract. Only when the creditors will claim the payment, then the partnership will jointly bear the further contribution to the assets if not sufficient to pay the debt.¹³²

Dissolution and liquidation of the partnership

The last part of the regulation on general partnership concerns the dissolution and the liquidation of the partnership, more in details how liquidators are appointed, how liquidators deal with and resolve the affairs, how to deal and repay creditors and how the remaining assets are distributed to partners.

The partnership can be dissolved when the following situations occur:

<< - *When the duration of the partnership agreed upon has expired;*

- *When the partners unanimously decide to dissolve it;*
- *When the object of the partnership has been achieved, or cannot be achieved.>>¹³³*

Once that the partners have decided to dissolve the partnership, then they will proceed with the appointment of the liquidators. If there are no liquidators specified in the partnership agreement, then all the parties become liquidators or they might decide to appoint some of them as liquidators unanimously. In the liquidation phase, if debts are still to be repaid, then the liquidators will set aside the needed amount to deal with the repayment or ask for a further injection of capital. If there are remaining assets after the pay back of the partnership debts, the liquidator will first distribute them according to the contributed capital, if not specified, and any remaining assets will be distributed to partners according to the profit-sharing ration.¹³⁴

Limited Partnership

A regulation concerning a limited partnership has been introduced and become effective since November 30, 2015, under the name of Taiwan Limited Partnership Act 有限合伙法 (yǒuxiàn héhuǒ fǎ). This Act, composed of 44 articles, has a relevant importance for it introduced a new type of business entity available under the Taiwanese Law in addition to

¹³² Civil Code art. 669

¹³³ Civil Code art. 692

¹³⁴ Civil Code art. 697 para.2, §698, §696

the traditional unlimited company, unlimited company with limited liability shareholders, limited company, sole proprietorship and partnership, as provided by the Company Act and under the Civil Code. Its enactment can be seen as a way to guarantee the integration of Taiwanese Law with the international business community by introducing a more flexible business entity.

A Limited Partnership shall be composed by at least one general partner and one limited partner.¹³⁵ The former is severally responsible for the partnership debts and obligations when it becomes insolvent and must provide further injection of capital to repay those debts. The latter instead, is a partner with liability limited to the amount of his or her capital contribution stated in the limited partnership agreement.¹³⁶ According art. 8 of the TLP Act, a company may become partner of a limited partnership and it is not subject to the restriction under art. 13, para 1 of Company Law, which states that a company shall not be partner to a partnership. A unique characteristic of this business entity is that the partnership is a legal person and it has its own capacity to own properties and incur debts and liabilities. Among its several characteristics, worth mentioning are those concerning flexibility in the types of capital contribution allowed, voting rights arrangement, and profit distribution which constitute the main advantages of this business entity, especially for entrepreneurs in start-up situations. Speaking of the kind of capital contributions, the Act allows the general partner to contribute capital in the form of cash, non-cash assets, credit, services or other benefits, while a limited partner may contribute capital in the form of cash or non-cash assets.¹³⁷ This allows investors with innovative ideas to participate in the partnership even if he might lack of capital. However, capital contribution in form of credit or other benefits cannot exceed a certain percentage of the total capital amount that must be agreed by the parties in the limited partnership agreement.¹³⁸

A limited partnership is not allowed to hire foreign employee but it is possible to establish a Foreign Limited Partnership. It would have the same rights and capacity of a ROC limited partnership but it would be necessary the affiliate registration.

Being a quite new business form, there are some information that are worth discussing in detail, like the transfer and the introduction of a new partner, dissolution and liquidation as well as taxation.

¹³⁵ Taiwan Limited Partnership Act §6

¹³⁶ Taiwan Limited Partnership Act §4

¹³⁷ Taiwan Limited Partnership Act art. 14

¹³⁸ *Limited Partnership Act* in Infrastructure/Government procurement, <http://www.leetsai.com/fyi/front/bin/ptdetail.phtml?Part=REG-E-00068&Rcg=100721>

Transfer of Partnership interest, introduction of a new partner

It is possible to admit additional limited partners, unless it is written the opposite in the partnership agreement.¹³⁹ Moreover, through a unanimous consent of all the partners, it is also allowed to admit an additional general partner and he or she will be liable for obligations of the partnership incurred prior his or her admission to the partnership.

A partner is also allowed to transfer his or her partnership interest to a third party upon unanimous consent of the partners, or through the regulations of the TLP Act. A partner is not allowed instead, to withdraw his or her interest from the partnership unless it is stated so in the partnership agreement. However, the withdrawal of the interest would not be possible if it would make impossible the ability of the partnership to perform its obligations.¹⁴⁰

Fiscal Affairs, Distributions of profits and Dissolution

The general partner is in charge of providing each partner with the annual business report and financial statements and seek for the approval of such business reports and financial statements from no less than two-thirds of the partners at the end of each fiscal year.¹⁴¹ He is also responsible for the submission of a proposal for allocation and distribution of gains or to the partners at the end of each fiscal year unless otherwise stated in the limited partnership agreement.

Concerning the distribution of the profits of the partnership, this must be done in proportion to the respective capital contribution of all the partners. However, no distribution should be made if it would cause the partnership to become insolvent or unable to pay the costs for the dissolution and liquidation of the partnership.

Reasons for the dissolution of a limited partnership are listed below:

- << - *occurrence of any termination event as provided in the limited partnership agreement, unless waived by a unanimous vote of the partners;*
- *expiration of the partnership's term, unless extended by a unanimous vote of the partners;*
- *a unanimous vote of the partners;*
- *bankruptcy; or*
- *no limited partner or general partner remaining.>>¹⁴²*

¹³⁹ Art. 32, Taiwan Limited Partnership

¹⁴⁰ See Taiwan Limited Partnership Act art. 18

¹⁴¹ Art. 41, Taiwan Limited Partnership

¹⁴² C. Hsieh, *Introduction of the Taiwan Limited Partnership Act*

Taxation

Limited Partnership Act does not specify the taxation criteria applicable to the limited partnership. Articles state that the limited partnership is considered by the Ministry as a separate legal entity, so investors that are going to use this kind of business entity might pay the 17% corporate income tax.¹⁴³ However, no clearly answers have come from the Ministry of Finance on the tax matter.

3.4 Foreign Direct Investment¹⁴⁴ 外商直接投資 (wàishāng zhíjiē tóuzī)

Since its entrance in WTO, Taiwan has strived to revitalize its economy through the attraction of foreign investments. As matter of fact, facilitations of FDI have been a key role of Taiwanese government foreign policy. FDI are mainly regulated by *Statutes for Investment by Foreign Nationals* and the *Statutes for Investment by Overseas Chinese*. For almost all the FDI it is required a pre-investment approval of Taiwan Investment Commission (TIC), which, with previous consultation of other institutions like the Central Bank of the Republic of China and Financial Supervisory Commission (FSC), reviews the investment application on a case by case basis.¹⁴⁵ Beside the TIC approval, foreign investors should be aware of the existence of a negative list of industries closed to investments which includes: public utilities, power distribution, natural gas, postal service, telecommunications, mass media, and air and sea transportation and a list of industries subjected to restrictions like railway transport, freight transport by small trucks, pesticide manufactures, real estate development, brokerage, leasing, and trade.¹⁴⁶ In the latter case, a foreign investor might invest in these industries only up to a specific level and with a specific approval of relevant competent authority. However, even if the investment meets all the requirements, the approval of TIC may not be guaranteed. Moreover, the ROC does not require foreign firms

¹⁴³ L. Chen, *The Limited Partnership Act gives entrepreneurs a new option in the choice of a business model*, Tsar&Tsai 帶在國際法律事務所 2015 <https://www.lexology.com/library/detail.aspx?g=c38c36f2-d097-4dd2-8685-56ddd13835d6>

¹⁴⁴ “*Foreign Direct Investment (FDI) flows record the value of cross-border transactions related to direct investment during a given period of time, usually a quarter or a year. Financial flows consist of equity transactions, reinvestment of earnings, and intercompany debt transactions. These flows can be in both ways, that is to say Inward and Outward. FDI flows are measured in USD and as a share of GDP*”. FDI flows, OECD data on <https://data.oecd.org/fdi/fdi-flows.htm>

¹⁴⁵ *Taiwan – Mergers&Acquisition 2017* – Global Legal Insight - <https://www.globallegalinsights.com/practice-areas/mergers-and-acquisitions/global-legal-insights---mergers-and-acquisitions-6th-ed./taiwan#chaptercontent4>

¹⁴⁶ The negative list of industries is available at http://www.moeaic.gov.tw/system_external/ctrl?PRO=LawsLoad&lang=1&id=32

to transfer technology, locate in specified areas, or hire a minimum number of local employees as a prerequisite to investment.¹⁴⁷

According to the Statute of Investments for Foreign Nationals, there are three main typical ways of investing in Taiwan:

<< 1. *Holding shares issued by an ROC company, or contributing to the capital of an ROC company;*

2. *Establishing a branch office, a proprietary business or a partnership in the territory of the Republic of China; and*

3. *Providing loan(s) to the invested business referred to in the preceding two Paragraphs for a period exceeding one (1) year.>>¹⁴⁸*

Under this Statute, the investment allowed are of the following kinds:

<< 1. *Cash;*

2. *Machinery and equipment or raw materials for own use;*

3. *Patent right, trademark right, copyright, technical know-how or other intellectual property right; and*

4. *Other property in which the investor may invest under the Competent Authority's approval.>>¹⁴⁹*

This thesis will focus on the following main business entities:

- Representative Office
- Foreign Branch
- Subsidiary
- Joint Venture
- M&As

3.4.1 Representative Office 外商办事处 (wàishāng bànshì chù)

A Representative Office is usually set up when a company or a foreign investor is interested in establishing a presence in Taiwan before starting his own business to conduct only limited,

¹⁴⁷ *Taiwan - Market Opportunities, Overview of best prospect sectors, major infrastructure projects, significant government procurements and business opportunities*, Taiwan Country Commercial Guide, Helping U.S. companies Export, U.S. official website <https://www.export.gov/apex/article2?id=Taiwan-Market-Opportunities>

¹⁴⁸ Statute for Investment by Foreign Nationals art. 4

¹⁴⁹ Statute for Investment by Foreign Nationals art. 6

non-commercial activities, like market research or promotional events, to make his potential customer aware of his products or services.¹⁵⁰ For this reason it cannot be considered as a proper FDI but it can be seen in the perspective of a potential investment that would be carried out by the companies in future. The RO has no legal status and it is not allowed to conduct any activity with the purpose to generate profits. The only permitted activities are the following ones:

- conducting market research
- provide customer assistance
- coordinate the activities of its head office's local agents and distributors
- conduct feasibility study
- serve as a liaison office during a negotiation deal
- serve as representative for legal litigation.

These limits to the activities of the RO are set to ensure that it would act on behalf of the parent company and not as a separate business entity. This is the reason why the contracts signed by the RO (such as the office lease) should be signed in the name of the parent company or one of its affiliates and not by the RO itself. Such contracts should also show an address outside Taiwan that refers to the foreign party. The name of the RO should contain the name of the country where the investor is registered, plus the name of the office.¹⁵¹ Since it is not allowed to carry out economic activities, no registered capital is required and it does not need to file corporate income tax or VAT returns.¹⁵² Prior to apply for the registration of the RO at the MOEA, the RO has to sign a tenancy agreement for it is one of the document required for the registration of the office. The parent company is moreover asked to appoint a Litigious and non-litigious agent to represent the RO to do all the compliance and maintenance in accordance with Taiwan regulation.

The required documents to apply for the registration of the RO are the following¹⁵³:

- *Document certifying the identity and residence of the representative*
- *Power of attorney, if the application will be filed by a lawyer or a Certified Public*

¹⁵⁰ J. Lo, *Doing Business in Taiwan*, Grant Thornton report, 2017 Taiwan

http://www.grantthornton.tw/globalassets/tw_images/publication-pdf/miscellaneous/2017-01.pdf

¹⁵¹ *Taiwan Representative Office Registration Package*, Kaizen CPA Limited website

<http://www.bycpa.com/html/news/20131/1787.html>

¹⁵² J. Lo, *Doing Business in Taiwan*, Grant Thornton report, 2017 Taiwan

¹⁵³ *Documents for the application for the setup of a representative office in the ROC*, Department of Commerce MOEA, Commerce industrial services portal 經濟部商業司-全國商工行政服務人口網 <http://gcis.nat.gov.tw/mainNew/English/subclassEnAction.do?method=getFile&pk=88>

Accountant (CPA)

- *Duplicate or photocopies of the documents certifying the establishment of the foreign company in its own country*
- *Power of attorney appointing the representative in the ROC*
- *A photocopy of the original house ownership certificate for the building of the representative office in Taiwan or a document to prove payment of the latest house tax; and a photocopy of the original house lease contract or an agreement issued by the house owner.*
- *Two copies of the registration card*
- *Application form*

If the documents are written in a foreign language, the parent company must provide Chinese translations of such documents. After that the RO has been registered, the agent has to report the unified business number of the RO to National Tax Administration and City/County Tax Office.¹⁵⁴ The documents required are an application form and a photocopy of property tax payment statement for the building where the company is located.

3.4.2 Branch Office 外商分公司 (wàishāng fēn gōngsī)

A foreign company may also apply for the establishment of a branch office to conduct general business activities like trading, sales, agency, marketing and consulting services. Establishing a branch office in Taiwan means that the foreign head office will be subjugated to the jurisdiction of the Taiwan courts.¹⁵⁵

A branch office in Taiwan has not legal entity for it acts on behalf of the foreign company and for this reason, it does not have shareholders, directors and supervisors. However, the head office of the foreign company shall appoint a branch manager who will act as agent of the company in representing it in litigious and non-litigious matters. The company might also decide to appoint two different individuals who will respectively cover the role of agent and branch manager but in either the cases, both individuals should reside in Taiwan.

Moreover, since it is not a separate legal entity, the concept of registered capital is not applicable. However, in practice, in order to register this business entity, the foreign company is required to state a particular of operating capital in the application form which would undergo a verification process before to be paid.¹⁵⁶ In addition, being under the

¹⁵⁴ *Taiwan Registration Representative Office Procedures*, Kaizen Certified Accountant Limited, <http://www.bycpa.com/html/news/20106/1467.html>

¹⁵⁵ See Company Act art. 375

¹⁵⁶ *Guide to Setting up a Branch Office in Taiwan*, Kaizen Certified Accountant Limited

laws of ROC the establishment procedures would be the same of those concerning a Taiwanese company as shown the scheme below and all the corporate documents must be prepared in Chinese for it is the only official language in Taiwan. The name of the branch office is also in Chinese.

3.4.3 Subsidiary 子公司 (zǐ gōngsī)

The subsidiary is generally applicable to those foreign companies willing to establish their presence in a foreign market keeping a high degree of control over their business activities. The Taiwanese incorporation procedures and requirements for this kind of entry modes are more complex than those required for a RO and a foreign branch. According to the Company Act previously described, there are four forms of subsidiaries that a company may choose:

- Unlimited company
- Unlimited company with limited liability shareholders
- Limited company
- Company limited by shares

However, almost all subsidiaries are incorporated through a Limited Company and a Company Limited by shares, while the first two forms are rarely adopted. Thus, this thesis will focus only on last two forms of business entities.

Before describing the peculiarities of the two foreign investors preferred subsidiary forms, information about the legal procedures for incorporating a new business enterprise would be provided.

Procedures for the establishment of a new business enterprise¹⁵⁷

In order to establish a new business enterprise, the company has to submit an application to the Department of Commerce of the MOEA in order to obtain the approval and reservation of the company name. This can be done through an online application on the one-stop service request website 公司与商业及有限合伙一站式线上申请作业 (gōngsī yǔ shāngyè jí yǒuxiàn héhuǒ yí zhàn shì xiàn shàng shēnqǐng zuòyè) or via post or in person.¹⁵⁸

¹⁵⁷ Overseas Chinese and Foreign Investment – MOEA official website:
http://www.moeaic.gov.tw/businessPub.view?lang=en&op_id_one=1

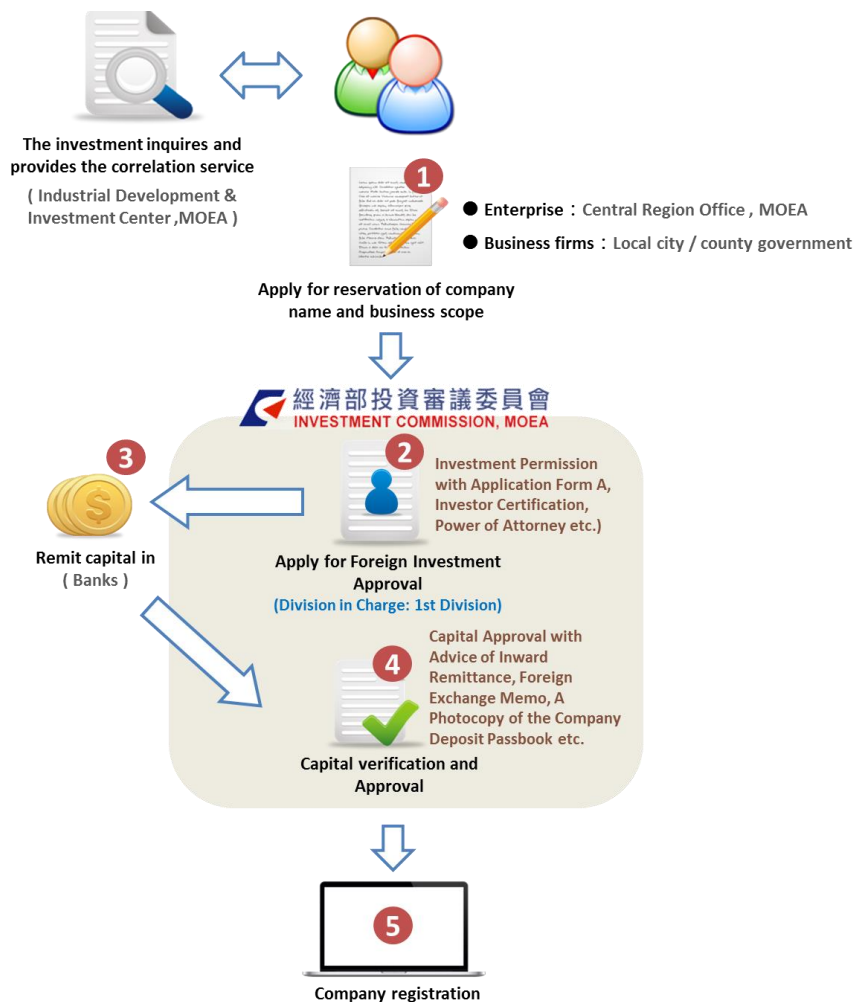
¹⁵⁸ - 開辦企業，公司與商業及有限合伙一站式線上申請作業，

<https://onestop.nat.gov.tw/oss/web/Show/engWorkflow.do>

- *Setting up a company in Taiwan*, ShieldGeo International employment made simple
<http://shieldgeo.com/setting-up-a-company-in-taiwan/>

Then the company has to apply to the Investment Commission of MOEA for a FIA. This is usually submitted by a local agent, resident of Taiwan, who must be elected by the foreign company.¹⁵⁹ Moreover, an examination of the components of the investment capital is required by the Investment Commission. Once obtained the FIA and remitted the investment capital in Taiwan, finally, the company may proceed for the registration of the new entity at the corresponding government agency in charge of company registration. In case the investor is interested in setting up a subsidiary company in export processing zone or science park, then the he would apply directly to the EPZA (Export Processing Zone Administration of the MOEA) or to the Science Park Administration of National Science Council (NSC).

Summary of the procedure for the establishment of a new business entity¹⁶⁰:



¹⁵⁹ *Setting up a company in Taiwan*, ShieldGeo

¹⁶⁰ Overseas Chinese and Foreign Investment – MOEA official website: http://www.moeaic.gov.tw/businessPub.view?lang=en&op_id_one=1

Company Limited by shares 股份有限公司 (gǔfèn yǒuxiàn gōngsī)

A company limited by shares is a profit-seeking company organized and registered according to the law of the R.O.C. It must have at least two shareholders, or one corporate shareholder, three directors and one supervisor. The shareholders appoint the directors and one of them should be elected as Chairman of the Board of Directors, and he or she will represent the company externally, being so the legal representative of the Company. In case of replacement of the director, a shareholders meeting is required, while a director may ask another director to act as his/her proxy for each directors meeting. The supervisor instead, elected by the shareholders, is in charge of supervising the management and the performance of the directors. He might also audit the books of accounts of the company but he or she cannot serve as a director, managerial officer or other employee of the company at the same time. At least one of the supervisors must be a resident in Taiwan.

As specified in the previous paragraph, being a corporation, the equity capital to be contributed to a company limited by share other than cash may be:

<<股东之出资除现金外，得以对公司所有之货币债权，或公司所需之技术抵充之；其抵充之数额需经董事会通过 [···].

in form of monetary credit extended to the company, technical know-how, good-will required by the company, provided that the amount of such substitutive capital contribution shall require a prior approval of the BoD>>¹⁶¹.

This thesis wants to give also some details concerning the shareholder meeting, Board of Directors and the Supervisor system. This information is valid for the Limited Liability Company too except for the minimum number for the composition of the Board and the supervisor system that is more flexible rather than the company limited by shares.

Shareholder meeting 股东大会 (gǔdōng dàhuì)

The shareholder meeting is of the following two kinds:

- Regular meeting of shareholders: held at least once a year;
- Special meeting of shareholders: held when necessary.

The regular meeting is usually held within six months after the closure of each fiscal year and the director who represents the company shall call the regular meeting within that time limit, otherwise he will be imposed a fine that goes from 10,000 NTD to 50,000 NTD. The shareholders should instead receive notice of the meeting no later than 20 days, while a

¹⁶¹ See Company Law art. 156, Sec. 2, general provisions

public notice should be given to holders of bearer share certificates no later than 30 days prior the scheduled meeting.¹⁶²

Shareholders shall also receive a notice to convene a special meeting no later than 10 days, while no later than 15 days to holders of bearer share certificates.

If the company is offering its share to the public, then a notice to convene a regular meeting shall be given no later than 30 days to each shareholder and no later than 45 days to the holders of bearer share certificates prior the scheduled meeting date.

The matter or the causes of a meeting of shareholders should be indicated in both individual and public notice to be given to the shareholders. An electronic transmission of the notice is perceived as a valid document.

According to art. 174 sec. 3 of Taiwanese Company Law

*<<Resolutions at shareholders' meeting shall, unless otherwise provided for in this Act, be adopted by a majority vote of the shareholders present, who represent more than one-half of the total number of voting shares>>*¹⁶³.

However, when the number of the shareholder present the day of the meeting does not reach the minimum quorum prescribed by art. 174 but it represents one-third or more of the total number of the issued shares, then it may be possible to pass a resolution a majority of those present. Such solutions, however, must be communicated to each shareholder through a notice and reconvene a Shareholders' meeting within one month.

As stated before, a shareholder may appoint a proxy to attend a shareholders' meeting in his/her behalf. However, if the proxy is acting on behalf of two or more shareholders, then the number of voting power represented by him/her shall not exceed 3% of the total number of the voting shares.¹⁶⁴

Board of Directors 董事会 (dǒngshìhuì)

As mentioned in the introductory paragraph, the BoD is composed of at least three directors elected by the shareholders' meeting. In case of public companies, the BoD should be at least composed by five directors.¹⁶⁵ In the past, to serve ad director, one should have been a shareholder himself. However, after the 2001 amendment, this limitation has been abolished,

¹⁶² See Company Law art. 170 Sec. 3, Shareholders' meeting

¹⁶³ Company Law art. 174 Sec. 3, Shareholders' meeting

¹⁶⁴ Company Law art. 177 Sec. 3, Shareholders' meeting

¹⁶⁵ art. 17 Supplementing Rules to TSE Listing Rules

now any person with disposing capacity can be nominated director of the board and his/her mandate shall last three years.¹⁶⁶

The Board Directors are in charge of guiding the strategic business of the company, ensuring the effective monitoring of management and accountability in accordance with the Articles of Incorporations, laws and regulations as well as decisions taken by the shareholders' meeting. They are moreover liable for any damage to the company caused by any resolution taken by BoD meetings. The BoD should establish rules concerning procedures for special transactions for instance M&A's and other capital transactions in the company. Since Taiwanese Law does not contain any specific rules concerning directors' fiduciary duty, criminal behaviors and misconduct cases prior amendment 2001 were a daily occurrence. With the 2001 amendment, it is clearly stated that

<<the responsible person of the company shall have the loyalty and exercise the due care of a good administrator in running the business operations>>¹⁶⁷.

Other functions that should be carried out by the BoD can be listed as follows¹⁶⁸:

- *reviewing and assessing internal control processes under §14-1 Securities & Exchange Act*
- *disposition or transfer of material assets, borrowing a substantial amount, establishment under §36-1 Securities & Exchange Act*
- *review directors/supervisors conflict of interest conflict of interest;*
- *review transaction of material assets or derivatives;*
- *review major borrowing, endorsement or guarantee;*
- *review raise capital, issue or private placement of securities with the nature of equity shares;*
- *appointment and discharge of internal auditor;*
- *review and assessing the appointment, independence of external auditor;*
- *review and assessing the appointment of directors of financial department, accounting department, and internal auditor;*
- *review other relevant businesses approved by the Competent Authority.*

Supervisor System 监督员制度 (jiāndū yuán zhìdù)

According to art. 216, Sec. 5 of Company Law, supervisors of a company shall be nominated by shareholders' meeting and among them at least one supervisor shall have a domicile within the territory of Republic of China. In case of public company, then shall be at least three supervisors. Before Amendment 2001, supervisors too had to be shareholder themselves in order to cover this role. However, as for directors, this limitation is not valid anymore. Their responsibility is monitor directors and management. The independence

¹⁶⁶ Company Law art. 192, Sec. 3 Directors and Borad of Directors

¹⁶⁷ See Company Law §3, Sec. 1 General provisions

¹⁶⁸ *Corporate Governance in Taiwan*, Securities and Futures Institute, 2007

factor is crucial for their role, since they have to ensure the smooth execution of business operation of the company and supervise directors' actions. For this reason, a supervisor shall not be at the same time director, manager or employ of the company.¹⁶⁹ In public companies in fact, there should be at least three supervisors who do not have any significant connection (family or business relationships) with directors. If more than two-third of them do have affiliation, than the company would lack of independence.¹⁷⁰

Other duties carried out by the supervisors can be listed below¹⁷¹:

- individually exercise duties as examine accounting books and documents, request the BoD to make reports, investigate the business and financial condition of the company;
- Act on behalf of the company when disputes between the company and directors arises;
- Convene shareholders' meeting
- Attend the Board of Directors.

Limited Liability Company (LLC) 有限责任公司 (yǒuxiàn zérèn gōngsī)

This business entity is mostly preferred by foreign investors for its flexibility and low administrative requirements. It is in fact used by multinationals in establishing a subsidiary of their foreign company in Taiwan. It can be registered with only one shareholder and one director, who can be both non-resident foreigners, and has no minimum registered capital requirement.

The shareholders of the company shall with unanimous agreement, draw and sign the Articles of Incorporation and keep one copy at the head office and make duplicates per each shareholder of the company. The Articles of a LLC must contain the following information¹⁷²:

- *The name of the company;*
- *The scope of business to be operated by the company;*
- *The name, domicile or residence of each shareholder;*
- *The aggregate of capital stock and the capital contribution made by each*

¹⁶⁹ See Company Law §222, Sec. 5 Supervisors

¹⁷⁰ *Corporate Governance in Taiwan*, Securities and Futures Institute, 2007

¹⁷¹ See Company Law articles: 218, 213, 214, 219, 245, 218-2

¹⁷² See Company Law art. 101

- shareholder;*
- *The ration or standards for profit distribution and loss apportionment among all shareholders;*
 - *The location of the head office and the branch office(s) if any;*
 - *The number of directors;*
 - *The causes of dissolution of the company, if any; and*
 - *The date of establishment of the articles of incorporation.*

According to art. 99 and 100 of Company Law, the liability of the shareholders to the company shall be limited to the extent of the capital contributed by each of them and shall be paid in full and not in instalments nor obtained through external financial sources. Usually the vote system does not take into account each shareholder contribution percentage to the capital of the company, that is, each shareholder holds one vote. However, the Articles of Incorporation may prescribe that the votes shall be allocated according to the portion of capital contributed by each shareholder.

A LLC head office should keep record of the following matter concerning its shareholders¹⁷³:

- *The amount of capital contributed by each shareholder and the serial number of the share certificate issued to him/her;*
- *The name or title, domicile or residence of each shareholder;*
- *The date of payment of share equity by each shareholder.*

After the registration, according to the incorporation procedures previously mentioned, a company shall issue documents concerning the following matters¹⁷⁴:

- *The name of the company;*
- *The date of incorporation;*
- *The full name or title of the shareholder and the amount of his contribution capital;*
and
- *The date of issue of the certificate of amount contributed.*

Increase in Capital contribution A plan for an increase in capital stock of the company shall be approved by the majority of the shareholders. However, if a shareholder agreed to

¹⁷³ See Company Law art. 103

¹⁷⁴ See Comapny Act art. 104

the capital increase, he is not obliged to contribute for the increased portion of the capital which is proportionally to the percentage of his/her original shares.¹⁷⁵

The shareholders of a LLC who disagree on the capital increase proposal plan, are however considered to be in agreement with the portion of amendment made in the Articles of Incorporation referred to such capital increase.¹⁷⁶

Other matters which are subjected to the unanimous agreement of all shareholders are: the joining of new shareholders, capital reduction and the conversion of the organization into a company limited by shares.

Regulations concerning Shareholder meeting, the BoD and Supervisors system of the LLC are the same that regulate the company limited by shares with the proper amendments concerning the minimum number of shareholder, directors and supervisors.

3.4.4 Joint Venture

A joint venture is an agreement among enterprises for the realization of a common economic purpose through the integration of complementary resources. The main aim of the parties who decide to enter in this kind of agreement is to have access to additional resources that they would not be able to access on their own.¹⁷⁷ Examples of resources acquired might be know-how, technologies, market access, a well-established distribution channel and so on. Through this kind of entry mode, companies can share risks and costs and increase their opportunities for business growth. On the other hand, reaching a total synergy with a partner is not simple. Parties may have to deal with different workplace cultures and management styles or either of the parties may lack of commitment thus, affecting the desired outcome of the business.

Joint ventures are not juridical entities in Taiwan, this means that the term 'joint venture' is not defined under any Taiwanese act. However, the establishment of a joint venture is subject to regulations concerning the merger control included in the Fair Trade Act and in the Enforcement Rules of the Fair Trade Act.¹⁷⁸ Foreign investors who wish to establish new enterprises in Taiwan through joint venture activities must apply for a FIA at the Investment Commission of the Ministry of Economic Affairs and follow all the previous mentioned procedures concerning the incorporation process.

¹⁷⁵ See Company Act art. 106

¹⁷⁶ See Company Act art. 106

¹⁷⁷ P. Lasserre, *Global Strategic Management*, Palgrave 3rd edition, 2012

¹⁷⁸ S. Wu, R. Hsiao, *Joint Venture under Taiwan antitrust law* in *Competition Law International*, April 2010 <http://antitrustasia.com/sites/default/files/33%20JV.pdf>

According to the *Private Foreign-Taiwan Joint Ventures: Key Legal/Practical Issues you must know* report, issued on 30th September 2014 by Baker&McKenzie 国际通商法律事務所 (guójì tōngshāng fǎlǜ shìwù suǒ) a foreign JV in Taiwan is commonly established under the form of a Company limited by shares. This means that all the regulations concerning directors and supervisors are the same of those of the company limited by share. Thus, it must have at least three directors and one supervisor. There are no requirements on the nationality of directors and supervisors but at least one supervisor should reside in Taiwan. There are neither nationality nor residency requirements for managerial tier and staff, but there may be visa restrictions against the employment of foreign staff. There is no minimum paid-in capital requirements and equity may be contributed in¹⁷⁹:

- Cash or debt;
- Machinery, equipment or raw materials for the company's own use;
- Patent, copyright, trademarks rights, technical know-how or other IPR; or
- Other property approved by the competent authority.

As for the rights of the shareholders and the Board representation, information is provided in the following table.

Level of Control	Shareholding Ratio/Percentage	Board seats
Super-Majority Control	$\geq 2/3$	$\geq 2/3$
Majority Control	$> 1/2$	$> 1/2$
Potential Grid-Lock	$1/2$	$1/2$
Substantial Minority with Veto Powers Over Significant Matters	$< 1/2$ but $> 1/3$	$< 1/2$ but $> 1/3$
Insider / Substantial Minority Financial Investor	$\geq 10\%$: (i) An insider in a listed company; (ii) can solicit proxy in a listed company	1 or 2 Seats as a director or an observe

Table 2 The Right Shareholding Percentages and Board Representations Overview

Sources: *Private Foreign-Taiwan Joint Ventures: Key Legal/Practical Issues you must know* report, Baker&McKenzie, 30 September 2014

¹⁷⁹ *Private Foreign-Taiwan Joint Ventures: Key Legal/Practical Issues you must know* report, Baker&McKenzie 国际通商法律事務所, 30th September 2014

3.4.5 Mergers and Acquisitions

According to Mergermarket research data, high-technology sectors occupied 88,7% of M&A's in Taiwan in 2016. In particular, 2016 saw prevalence of acquisitions in the semiconductor sector whose main deals were Netherlands-based ASML Holding's acquisition of Hermes Microvision for US\$3.1bn, and US-based Micron Technology's acquisition of Inotera Memories for US\$4.0bn.¹⁸⁰ The main statute regulating the matter of M&A's is the Business Mergers and Acquisitions Act, promulgated on February 6 in 2002 and amended first in 2004 and then in 2015. Mergers and Acquisitions are moreover governed by other relevant statutes like the Company Act, Securities and Exchange Act, the Fair-Trade Act, the Labor Standards Act and the Statute for Investment by Foreign Nationals.¹⁸¹

The main regulatory body of public M&A's transactions are the Securities Futures Bureau (SFB) of the Financial Supervisory Commission (FSC), the Fair-Trade Commission (FTC), the authority in charge of anti-trust clearance, and the Investment Commission (IC).

The 2015 amendment of the BM&A Act has been substantive. It offers more flexibility in matter of offer that the acquirer is allowed to make. The acquirer may now offer new shares to the shareholders of the target company in exchange of their shares in the target company so that, the acquirer may acquire the 100% shares of that company without obtaining the approval of each shareholder of the target company. According to the amendment of 2015, the consideration for a statutory share exchange can be made in cash, stock or a combination of both. Always in the same amendment, it has been restated the possibility of establishing a triangular merger.¹⁸² However, there has not been seen any actual case of triangular merger. The amendment of M&A Act has also introduced new provisions to protect shareholders' interests. In particular, if a listed company will be delisted or dissolved at the end of the conclusion of a M&A deal and the acquiring or new resulting enterprise is not a listed company, then before the company is delisted or dissolved, it is required the consent of shareholders who represent two-thirds or more of the total shares issued by such company.¹⁸³ To guarantee a smooth process of acquisition and protect the shareholders' interests, the

¹⁸⁰ M. Yang, J. Yang – *Taiwan: Merger and Acquisitions 2017* – Global Legal Insight - <https://www.globallegalinsights.com/practice-areas/mergers-and-acquisitions/global-legal-insights---mergers-and-acquisitions-6th-ed./taiwan#chaptercontent4> 1

¹⁸¹ Business Mergers and acquisitions Act art. 1

¹⁸² L. Mao, P. Lin, K. Tseng, R. Chang, *2017 Mergers and Acquisitions Report: Taiwan*, International Financial Law Review, 28 Mar 2017. <http://www.iflr.com/Article/3673261/2017-Mergers-and-Acquisitions-Report-Taiwan.html>

¹⁸³ M. Yang, J. Yang – *Taiwan: Merger and Acquisitions 2017* – Global Legal Insight - <https://www.globallegalinsights.com/practice-areas/mergers-and-acquisitions/global-legal-insights---mergers-and-acquisitions-6th-ed./taiwan#chaptercontent4>

amendment requires the public company to establish a special committee in charge of reviewing the fairness of the deal. The committee should release opinions concerning the reasonableness of the deal price and communicate them to the shareholders.

According to the BM&A Act, merger and acquisition include merger, consolidation, acquisition and division of a company.

Merger and consolidation refer to the fusion of one or more companies in one newly established company (merger), or to the dissolution of two or more companies while a new one is incorporated (consolidation) to generally obtain all the rights and obligations of the previously dissolved companies.

An acquisition instead, occurs when a company acquires shares, business or assets of another company in exchange for shares, cash or other assets.

According to art. 4 of BM&A Act *“division refers to an act wherein a company transfers all its independently operated business or any part of it under this Act or other applicable law to a surviving or a newly incorporated company as the consideration for that surviving company or newly incorporated company to give shares, cash or other assets to that company or shareholders of that company”*¹⁸⁴.

After analyzing the possible entry modes into Taiwan market allowed by the ROC, the focus of this thesis will now move on the main problematics that business men and foreign companies might face in operating on the Formosa Island.

¹⁸⁴ Business Merger and Acquisition Act, 2016 amendment, MOFA website
<http://gcis.nat.gov.tw/elaw/English/lawEnDtlAction.do?method=viewLaw&pk=174>

4. Common issues faced by foreign companies in Taiwan

Running a business in a foreign country always poses varying degrees of risks and challenges. Even though Taiwan is one of the freest economies in the world, foreign companies still have several problems to deal with. Most of the issues faced by foreign companies are caused by cultural differences, cross-strait diplomatic relations, legal restrictions and natural calamities. However, before going into the deep of the dissertation, this thesis wants to give first an insight of all the advantages that Taiwanese business environment offers to foreign investors.

4.1 Advantages in investing in Taiwan

Taiwan is the target of large investments coming from countries all over the world, especially from Mainland China, Japan, Europe (24.9 % of all foreign investment in Taiwan)¹⁸⁵ and United States for several advantages that the Taiwanese market offers. Let's see in detail what these advantages are.

First of all, Taiwan has a strategic geographical position which enables it to act as the perfect platform linking to the World. Its west neighbor is the world's second-largest economy, Mainland China. To the north of the island there's Japan, while to the East is United States. To the south are 10 of the ASEAN countries. As the center of global economy moves to East, most countries look at Taiwan as the ideal harbor where to settle down their business bases and expand it worldwide. This is in fact, one of the reason why Mainland China craves to keep on securing Taiwan in its vise. Moreover, with 18 airports (4 international), 5 international harbors, high speed railways spread out on the island and a MRT network in Taipei and Gaoxiong, Taiwan boasts a complete infrastructure system and a convenient transportation network, being the perfect location for multinationals Asia-Pacific headquarters.¹⁸⁶ As economic relations between Mainland China and Taiwan are getting closer, export opportunities for companies producing in Taiwan and willing to export in the Chinese market, are increasing, for Taiwan, after signing the ECFA, can enjoy a zero or lower-duty exportation of goods and better market access on services in China.¹⁸⁷

For its innovation oriented economy, Taiwan is also an ideal location for the establishment of multinationals' R&D bases. Taiwan in fact, has a high literacy rate (around 98%) and

¹⁸⁵ Invest in Taiwan – The Economic Division of Taipei Representative Office in Italy - <http://www.taipeieco.it/invest-in-taiwan.html>

¹⁸⁶ Invest Taiwan - 投資台灣人口網 -<http://investtaiwan.nat.gov.tw/showPage?lang=eng&search=advantage>

¹⁸⁷ Invest in Taiwan – The Economic Division of Taipei Representative Office in Italy

more than 25% of all university degrees are in engineering.¹⁸⁸ This gave to the island the possibility to develop a high skilled labor force which can surely satisfy the needs of multinational enterprises willing to approach the Asia-Pacific market. As a result, Taiwan has excelled in the manufacturing of mobile phones, computer hardware and electronic engineering, becoming the supply center of High-Technology Products. As matter of fact, giants like Nike, Apple and HP have established their manufacturing center right in Taiwan, while well-known brands such as ACER, ASUS, HTCP and Garmin, are in fact from Taiwan. Another positive aspect of running a business in Taiwan, is the high commitment to the protection of Intellectual Property (IP). The Taiwanese government has in fact assigned an IP Protection Police Squad responsible for law enforcement and since 2008, it has given birth to an IP court through which, IP trials can be carried out more professionally and carefully¹⁸⁹.

Moreover, Taiwan offers the opportunity to gain access to a large pool of Chinese's currency, Renminbi (RMB), similar to the extent that Hong Kong can offer.¹⁹⁰ Given these advantages and the fact that shares Mandarin language with China, Taiwan is used by numerous companies as a safe tasting ground for the Chinese market, being the perfect gateway to mainland China.

4.2 Insular mindset and lack of an international cooperation model

Although it might seem a quite internationalized area, especially after the entrance in the WTO which spurred the government to undergo a process of harmonization of Taiwanese law system with the international one, Taiwan lacks an international spirit. At first glance, Taiwan might seem a very welcoming place with a high level of international awareness, unlike Mainland China. It has no restrictions on the use of social media, it boasts an open-minded attitude towards some delicate matter such as homosexuality and religion, it has very elastic requirements for the obtainment of the working Visa and enjoys a variety of fashion apparel and styles coming from all over the world. However, one should not be deceived by all of this. First of all, Taiwan is an island and it is in some way cut off from the rest of the world. In fact, many people are not really aware of what happens in the outside world and

¹⁸⁸ M. Greenwald, *How Taiwan Is Reinventing Its National Culture from Manufacturing Efficiency To Innovation And IP*, *Forbes*, 7 Feb 2017, <https://www.forbes.com/sites/michellegreenwald/2017/02/07/how-taiwan-is-reinventing-its-national-culture-from-manufacturing-efficiency-to-innovation-ip/#259c713d6650>

¹⁸⁹ Invest Taiwan - 投資台灣人口網 -

<http://investtaiwan.nat.gov.tw/showPage?lang=eng&search=advantage>

¹⁹⁰ C. Wright, *Taiwan opens for Reminbi business; but also opens to Chinese banks*, *Financial Times*, Feb 2013, <https://www.ft.com/content/3c3c2774-c9e6-38a2-879b-6c3111b2d3f4>

their contacts with other cultures are really limited. This insular mindset is not only caused by the fact that Taiwan is not recognized as a country from the UN, but also by the fact that 98% of Taiwanese population is now represented by Han Chinese.¹⁹¹ Thus, Taiwanese society is still permeated by those traditional values that characterize the Chinese culture such as the hierarchy, filial piety, collectivism, male chauvinism, the concept of “guanxi” 关系, “networks” or “connections” of relationships, which constitute the base for any successful business, as well as the concept of “mianzi” 面子 also known as “the face”, meaning one’s reputation, and the importance given to actions that make you gain or lose face. Moreover, given the Confucianism as base of the Chinese culture, people live by their social duties. For example, the student’s duty is to study. Failure is source of shame for the student’s entire family, which would lose face. Instead, an adult’s duty is to work, support and respect his or her family. That is the reason why people are only interested in school and work. Apart from these social duties, an individual has little meaning during his or her life. It is known that culture, along with language, gives people’s identity. It shapes people’s beliefs and affects their behavior and mindset. Soaked with these values, Taiwanese society is still introverted, narrow-minded, closed off inside. People might be really helpful, but would still lock out the others from their intimate sphere.¹⁹² There is a thick dividing line between public and private life and people are not really willing to establish deep relationship with each other, especially with foreigners.

This aspect of the Taiwanese culture is of course reflected in the way Taiwanese do business and in the structure of Taiwanese companies. For instance, as the Vice Chairman of European Chamber of Commerce in Taiwan, Giuseppe Izzo, said, “you would never see a young foreigner covering the highest positions of a company”¹⁹³. He then continued saying that on one side the Taiwanese government pushes on the education and family level encouraging the population to open themselves to the outside world, while on the other side older generations are still firmly shaped by traditions. This is the reason why Taiwan has not developed an international cooperation model yet, which all the chambers of commerce in Taiwan are actively working on.

¹⁹¹ *Why Taiwanese need to think more open-minded and global in their business mindset* – Chinese Society, Language and Culture Blog - <http://translate.chinesecommunity.com/taiwanese-business-mindset/>

¹⁹² G. Melyan, Vice-president of Fuqua World Trade – Interview – Taipei April 2017

¹⁹³ G. Izzo, Vice Chairman of European Chamber of Commerce Taiwan – Interview – Taipei May 2017

4.3 Cultural Issues

Every culture has its unique features that define people's way of thinking, behavior and not verbal communication as well as paralinguistic. Being in a foreign country doing business always poses some interesting problems. The main questions one should ask himself are, for instance, how to act to be successful in the business? How different are the business practices commonly spread in the country of the targeted market? How to deal with clients or partners having diverse cultures? Since Taiwanese culture is pretty complex, trying to understand it and embrace it might be one of the first step to success.

First of all, one obstacle is constituted by the vehicle used to communicate: the language. Going in a foreign country knowing the local language is of course an advantage. However, it is not really common to find people that are able to speak fluently mandarin or have a level which enables them to have a conversation with Chinese speakers. Thus, communication in Taiwan might be a problem while trying to establish a business. Even if within Taiwanese big corporations or at a multinational level, English language (or other languages) is used as communication vehicle, people might not feel comfortable to speak in the said language. English is quite widespread in Taiwan, and it is a subject present in all students' education curricula. Although, Taiwanese English level is not really high, in fact, hiring companies in Taiwan merely require an average of 550¹⁹⁴ points on the Test of English for International Communication (TOEIC) which is a pretty low score if we compare it to 700 points required by South-Korean's companies in a 990 points test.¹⁹⁵ Moreover, at SME's level business, English is almost absent.¹⁹⁶ This would then require hiring an interpreter, especially during the negotiation and contract drafting phase, to prevent misunderstandings, thus increasing the costs bore by the company.¹⁹⁷

Another important thing that should not be underestimated is not to forget to show respect to partners or clients, whose English skills could not be really good, by addressing only those whose skills are better. One should be always respectful and try to make everybody part of the conversation.

Language and culture are strictly connected, so while talking to a Taiwanese, one should

¹⁹⁴ According to "2016 Report on Test Takers Worldwide: the TOEIC Listening and Reading Test" (ETS TOEIC), the average score of 2016 Taiwanese test takers amounts to only 534/990 points.
https://www.ets.org/s/toEIC/pdf/ww_data_report_unlweb.pdf

¹⁹⁵ C. Sheng-en, *Language deficiencies need to be addressed*, Taipei Times 2012,
<http://www.taipetimes.com/News/editorials/archives/2012/10/12/2003544967>

¹⁹⁶ E. Ek, *How to start a business in Taiwan* – Enspyre – May 2014 - Taiwan

¹⁹⁷ A. Asefeso MCIPS MBA, *CEO Guide to Doing Business in Asia: (Taiwan, Hong Kong and Macao)*, AA Global Sourcing Ltd, 2012

know that Taiwanese culture present a different degree of context. It is in fact a high-context culture, that is to say that there might be several meanings hidden behind speeches.¹⁹⁸ In each message, there is a great amount of meaning which is reflected in indirect communication and paralinguistic elements. This is the reason why it is crucial to pay attention to the context surrounding the words. Taiwanese prefer avoiding answering directly, especially if it is a negative answer. They would in fact prefer smiling and lying rather than ruining the relationship by saying what they really think.¹⁹⁹ Being successful in communicating with a Taiwanese requires learning how to understand what people are actually thinking, paying attention to non-verbal cues and act consequently.

An important concept of Taiwanese culture is the ‘guanxi’ 关系 which can be roughly translated as ‘relationship’ and refers to any kind of social relationship or connection.²⁰⁰ However, in business this term describes the reciprocal relationship of receiving and returning favors that is developed beyond the business sphere. It is a key business determinant of firm performance for, in any business, both foreign and local companies have to face the dynamics of guanxi.²⁰¹ As matter of fact, usually, any kind of business in Taiwan starts with the establishment of a solid friendship. It is a widespread custom to invite the future partner to a dinner for the purpose of getting to know each other and establish the basis for a flourishing long-term business relationship. For this reason, at the first meeting, business would not be the central topic but it would just be an opportunity to get a deeper understanding of each other partner. In some industries, going out for a dinner to drink and party, is part of the ceremony of the engagement in a new business activity as a sign of “hospitality”.²⁰²

Another important concept, previously mentioned, is ‘mianzi’ 面子 (or concept of ‘lian’ 脸) translated as ‘face’. This is one of the central social concept of Chinese²⁰³ culture which is determined by a person’s post, credibility, honesty, reputation, power, income, or network which greatly affect one’s personal success in the society.²⁰⁴ Taiwanese give much

¹⁹⁸ E.T. Hall, *Beyond Culture*, Anchor Books 1977

¹⁹⁹ E. Ek, *How to start a business in Taiwan* – Enspyre – May 2014 - Taiwan

²⁰⁰ E. Kaynak, Y.H. Wong, T. Leung, *Guanxi: Relationship Marketing in a Chinese Context*, Routledge, 2013

²⁰¹ Y. Luo, *Guanxi: principles, philosophies and implications*, Human Systems Management, IOS press 1997

²⁰² E. Ek – *How to start a business in Taiwan* – Enspyre – May 2014 - Taiwan

²⁰³ Here the adjective ‘Chinese’ is also addressed to Taiwanese culture since Taiwanese core values are rooted in the Chinese tradition

²⁰⁴ S. Ho Park, Y. Luo, *Guanxi and Organizational Dynamics: Organizational Networking in Chinese Firms*, Strategic Management Journal, 2001 Researchgate

importance to gaining, maintaining and losing face in all aspects of the societal environment. Losing face (丢面子 – diū miànzi) affects not only the individual but also one's environment, for example the family. Thus, causing someone the loss of face, even if unintentional, might be source of relationship damage.²⁰⁵ Given the fact that being humiliated or embarrassed in front of the others, especially during business meeting, is something unacceptable, Taiwanese would do anything to save their face, like blaming someone or something else, or even denying the evidence of a mistake, thus slowing down the ordinary course of the business.²⁰⁶ Both 'guanxi' and 'mianzi' are fundamental for the understanding of cultural and business interactions in Taiwan. These are concepts which are extended to relationships among firms and with governmental institutions.²⁰⁷ Knowing how to take advantage of these concepts it is useful to establish solid and trusted ties within Taiwanese business environment.

Culture shapes also countries' business practices. When doing business with Taiwanese, there are some rules that must be followed. First of all, business cards should be exchanged at the very beginning, and should be presented and received with two hands showing respect to the other person by carefully looking at the business card for 3-4 seconds.²⁰⁸ Usually the business card should be written in both English and Chinese -one version on one side, one version on the other side- to show willingness to approach not only to the business, but also to the counterpart's culture. So, while giving a business card, it should be done with the mandarin side facing the recipient. Never place the business card one is given to the back pocket, fold it or write on it because it is a sign of great disrespect. When someone arrives at the meeting place previously designated, it is a common thing offering a beverage, usually tea or coffee, and even if during events like conferences, seminars and weddings, people tend not to pay really attention to the opening time, in business meeting punctuality is fundamental.²⁰⁹ It might happen, in fact, that showing up late could even result in losing the business opportunity.

Another thing to be aware of is the way of giving away gifts. If decided to start a business

https://www.researchgate.net/publication/227722606_Guanxi_and_Organizational_Dynamics_Organizational_Networking_in_Chinese_Firms

²⁰⁵P. J .Buckley, J. Clegg, H. Tan, *Cultural awareness in knowledge transfer to China—The role of guanxi and mianzi*, Journal of World Business, Elsevier, 2006

²⁰⁶ Branch Manager of an anonymous company – Interview, 17/03/2017, Taipei. The above explained concept is the result of an interview with the branch manager of a company working in Taiwan who preferred not to reveal his/her name as well as the company's name he/she is working for.

²⁰⁷P. J .Buckley, J. Clegg, H. Tan, *Cultural awareness in knowledge transfer to China—The role of guanxi and mianzi*

²⁰⁸ Izzo, Vice Chairman of European Chamber of Commerce Taiwan – Interview – Taipei May 2017

²⁰⁹ Gary Melyan, Vice-presidente of Fuqua World Trade, Interview, April 2017, Taipei

relationship by giving away a present, one should make sure to wrap it and give it with two hands (like the business card) and remember that the Taiwanese counterpart would rarely open it in front of the giver.²¹⁰

Since hierarchy is really important in Taiwanese culture, one should always address the Taiwanese counterparts with the right title and greet first the oldest person in a group. Moreover, since a solid relationship is the basis of the way of doing business in Taiwan, one must not refuse invitations to an event after work or negotiations because, as previously mentioned, this is the way of Taiwanese business men of getting to know their counterparts. Moreover, it is also important to avoid talking about some sensitive topics while doing business in Taiwan. Two are the taboos foreign investors should not express their opinion about: Cross-strait relations and politics.²¹¹ Given Taiwan politically ambiguous status, it is clear how one should be careful while talking about China-Taiwan relationship. The vast majority of Taiwanese think that Taiwan is certainly not part of China and that they are not at all Chinese, but refer to themselves as Taiwanese.²¹² Thus, unless being favorable to the independence of the island, one should avoid talking about this matter and be very careful to avoid confusing Taiwanese people with Chinese because this might provoke resentments in the Taiwanese counterpart. As for politics, in Taiwan there are two main parties, the Kuomintang and the DPP whose respective goals and ideals, previously mentioned, are the exact representation of the clash on the “One China” principle. It is clear how delicate the political matter is and it is thus advisable that foreigners stay out of politics unless one is really close to the person talking to, or knows exactly on which side the person falls.

4.3.1 The importance of cross-cultural communication and organizational culture

Given the peculiarities which characterize Taiwanese culture, people who are willing to run a business in Taiwan with the establishment of a company should not underestimate the importance of a cross-cultural approach to the business, without regard to which type of business vehicle they would choose. In order to successfully get into contact with clients, partners and local employees, one must be well trained on how cultural differences might affect the normal running of the business. Learning Mandarin is certainly a plus that might help in conversations and staff/business meeting but, what really matters is improving

²¹⁰ E. EK – *How to start a business in Taiwan* – Enspyre – Taiwan 2014

²¹¹ R. Jennings, *Five discussion topics to avoid in Taiwan*, Forbes Asia, April 2016 <https://www.forbes.com/sites/ralphjennings/2016/04/17/five-discussion-topics-to-avoid-in-taiwan/#741023478ddb>

²¹² C. Schmidkonz, *Why Taiwan Matters: Implications of the results of Taiwan's Presidential Elections*, Munich Business School, University of Applied Science, 2016 <http://www.munich-business-school.de/insights/en/2016/why-taiwan-matters-en/>

intercultural competence and putting major efforts in cross-cultural knowledge training. What does this mean? It means learning the social appropriateness in using a language, understanding when to speak and when not to, what to talk about and about whom, when and where and in what manner;²¹³ it means understanding and accepting the differences in cultures, that there might be differences in perceptions, interpretations and evaluations of social situations and values as well as what customary is or not in certain circumstances. Even if both parties decided to use counterpart's language as vehicle of communication, there would still be room for misunderstandings and contradictions that might increase as time goes by, because of the cultural gap. This gap should be filled in order to communicate effectively and ease the business relationship as well as the running of the business in case of managing local staff. By understanding the host country culture and adapting to it, a company should establish a new enterprise culture which would fit both the native and the host one. As Jim Cumming ex-manager of Tait&Co said, when he took the company in 1980 there was a “*‘them and us’ culture, I worked hard over the following two years to change the culture of the company to work more harmoniously as a team*”.²¹⁴ Ignoring communication issues and failing to embrace cultural diversity are reasons for company failure. Managing cross-cultural challenges may or may not bring a successful outcome but not doing so would increase for sure chances of failure. Cross-cultural approach is even more crucial in international merger and acquisition. Managers should in fact allocate enough time and resources during the assimilation process in order to guarantee a successful integration. The acquisition of the money-losing mobile division of Germany's Siemens by the Taiwanese-based company BenQ is the right example of how cultural and communication issues might bring to unhappy ending.²¹⁵ The two companies were culturally incompatible and could not achieve synergy, failing to create more value than each company could have achieved alone. Through the acquisition of Siemens mobile division, BenQ wanted to get an easy and quick access to a mass market but the Taiwanese company did not take into account that the two companies had different national origin and corporate culture. This acquisition resulted in a such unsuccessful outcome (BenQ lost 500 million dollars in the acquisition process) that BenQ decided to stop pouring money in the operation and filed the bankruptcy

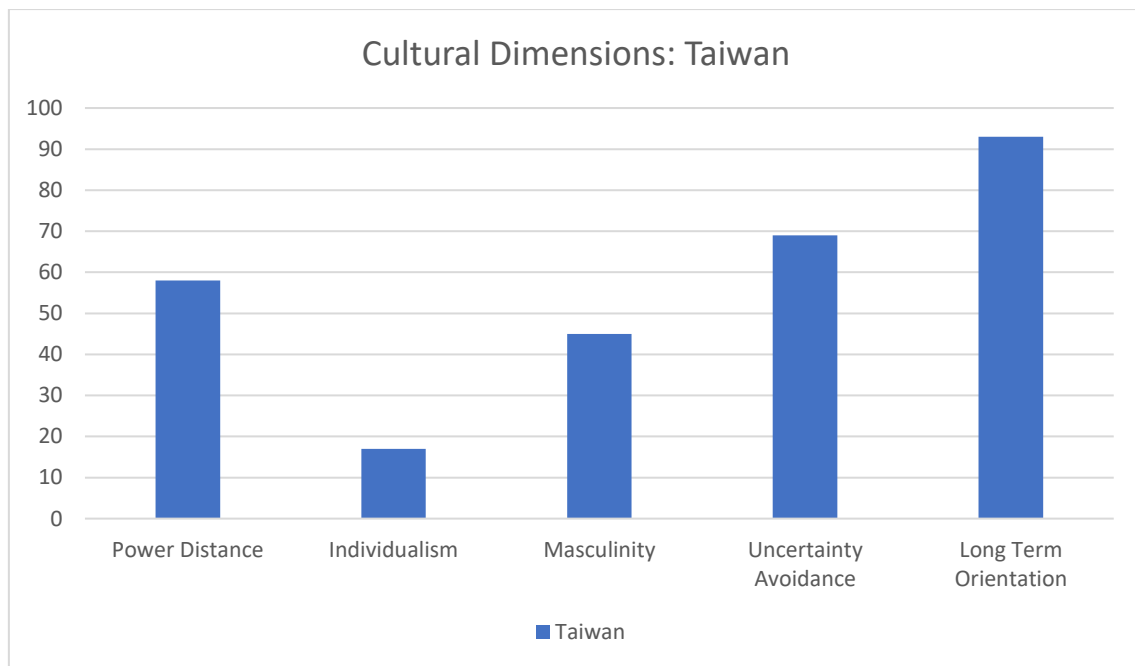
²¹³ Y. Xie - *Cross-cultural communication barriers between staff in overseas-funded enterprises and management strategies for overcoming them* – College of Foreign Languages, Hunan University of Commerce, Changsha - April 2012

²¹⁴ Jim Cumming – ex manager at Tait & Co. Ltd, Interview 4/05/2017 Taipei

²¹⁵ S.S. Cheng, M. W. Seeger – *Cultural Differences and Communication Issues in International Mergers and Acquisitions: A Case Study of BenQ Debacle* – International Journal of Business and Social Science, Vol. 2 No. 24 [Special Issue – December 2011]

protection in Germany.²¹⁶

To get a deeper understanding of differences in cultures in order to make the right adjustments to management style, Hofstede study (1980s) on the four dimensions of societal culture might be a starting point. Hofstede four dimensions are the following: power distance, individualism vs collectivism, uncertainty avoidance and masculinity vs femininity. These four dimensions plus the fifth, Confucian dynamism or long-term-short-term orientation, later added by Bond (1988), are present in all the cultures and the degree of them influences the communication styles as well as management style.



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Table 3 Cultural Dimensions: Taiwan

Source: The Hofstede Center <https://geert-hofstede.com/taiwan.html>

Power distance is the attitude of the culture towards the acceptance of the existence of inequalities among individuals in societies. From Hofstede study, we can see that Taiwan has a quite high score (58/100) on Power distance. This means that Taiwanese people feel comfortable with hierarchical levels with supervisors that tell them what to do at work. They accept their roles and fulfill it without questioning the order.²¹⁸ The dimension of individualism-collectivism, refers to how people value themselves and their

²¹⁶ S.S. Cheng, M. W. Seeger – *Cultural Differences and Communication Issues in International Mergers and Acquisitions: A Case Study of BenQ Debacle*.

²¹⁷ The Hofstede Center - <https://geert-hofstede.com/taiwan.html>

²¹⁸ S.S. Cheng, M. W. Seeger – *Cultural Differences and Communication Issues in International Mergers and Acquisitions: A Case Study of BenQ Debacle* – International Journal of Business and Social Science, Vol. 2 No. 24 [Special Issue – December 2011]

groups/organizations.²¹⁹ People that reflect individualistic values give much importance to self-actualization and career progress in the organization while in collectivist cultures people put a high value on their place in the societies, stress relationships and care about the maintenance of in-group harmony and social order. With a score of 17/100 Taiwan is clearly a collectivist culture which in managerial practices is translated into a highly centralized decision-making structure with a strong sense of belonging.²²⁰ Culture with a high score on masculinity dimension give much importance to competition, achievement and success. Self-actualization first in school and then at work is fundamental. Vice versa, in feminine society, people are driven by values like caring for the others and quality of life. With a 45/100 Taiwan is considered as slightly feminine, so from a managerial point of view, managers and superiors put much effort into obtaining consensus and guaranteeing people value equality, solidarity and quality in their working environments while conflicts are resolved through negotiation and compromises.²²¹ Uncertainty avoidance dimension refers to the extension to which people are comfortable in accepting that the future can never be 100% known. Dealing with the unknown it's not an easy task. The ambiguity brings anxiety and people with different cultures have learnt to deal with this anxiety in different ways. Taiwan scored 69/100, that is to say that it prefers to avoid this uncertainty of the future. In this kind of culture people have a strong need for rules, precision and punctuality as well as security. Innovation might not be so welcomed as in country were the uncertainty avoidance score is not so high. As in the BenQ-Siemens case study, the Chairman K. Y. Lee preferred to stop the financial bleeding by signing the bankruptcy sheet, putting an end to the acquisition of the mobile division of Siemens. Finally, Confucian dynamism is strictly associated with Confucian work ethics. It refers to long-term vs. short-term orientation of life so that cultures with high Confucian dynamism (long-term orientation), like the Taiwanese one, are more pragmatic, future oriented, thus are driven by values like dynamism and persistence, while cultures that have a low score on the Confucian dynamism (short-term oriented) place importance to personal steadiness and stability, protecting your face, respect for tradition, reciprocation of greetings, favors, and gifts, they are orientated towards the past and present, thus are

²¹⁹ M. Wu - *Hofstede's Cultural Dimensions 30 years Later: A study of Taiwan and the United States* – Western Illinois University - 2006

²²⁰ The Hofstede Center - <https://geert-hofstede.com/taiwan.html>

²²¹ The Hofstede Center - <https://geert-hofstede.com/taiwan.html>

more static.²²² For a short-term oriented culture, what matter is the time it takes to carry out a task, that is the reason why they give much importance to short-term objective. However, one must also be aware of the possible changes in cultural values that might follow political, societal and economic environmental changes over the time, because change in culture might result also in change in managerial practices. In fact, even if according to Hofstede's 1980s study, Taiwan was considered a medium-high power distance country, which means that it would have been advisable adopting a paternalistic leadership style characterized by a hierarchical structure with a thick line between manager and subordinates. Recent studies²²³ demonstrated that the value of the power distance has decreased consequently to the influence coming from U.S. which brought to a change in decision-making management and staff behavior. Now managers are encouraged to consult their subordinates before making decisions, to ask them opinions and delegate them important tasks. Moreover, although Taiwan has a collectivistic culture, the great influence of the western world and business mindset has spurred people to adopt a more individualistic attitude, developing individual creativity and personal initiative.²²⁴ That is the reason why managers should leave Taiwanese staff freedom to find the best way to carry out their tasks, giving them the chance to prove themselves and their abilities, instead of explaining in detail what they should or should not do.

4.4 China – Taiwan Relationship and the absence of FTA

Another issue that prevents and slows down the process of internationalization of Taiwan, as well as the harmonization of Taiwan with international trade practices, is its politically ambiguous status and its complex relationship with Mainland China. If, on one side, having advantageous trade agreement with China might be a positive aspect for those exporting from Taiwan to Chinese market, on the other side the close presence of the Mainland and its constant supervision has affected and it is still affecting Taiwan margin of manoeuvre on the international stage.²²⁵

This delicate relationship between China and Taiwan should not be underestimated by foreigners who are willing to operate in the Taiwanese market because it could influence their business as well. For instance, Taiwan has no Free Trade Agreement but with New

²²² Taiwan, The Hofstede Center - <https://geert-hofstede.com/taiwan.html>

²²³ M. Wu - *Hofstede's Cultural Dimensions 30 Years Later: A Study of Taiwan and the United States* – Western Illinois University - 2006

²²⁴ G. Izzo, Vice Chairman of European Chamber of Commerce Taiwan – Interview – Taipei May 2017

²²⁵ J. Hu, M. Vanhullebush, *Regional cooperation and free trade agreements in Asia*, Martinus Nijhoff Publishers, 2014

Zealand, Central America and Singapore.²²⁶ The EU is struggling to reach a FTA with Taiwan, but this is not an easy goal to achieve. China will not let any country directly sign a trade agreement with Taiwan, unless that country would sign first one with the Chinese government.²²⁷ FTA attempts have been made in 2008 through a study, conducted by the Copenhagen Institute, on the possible advantages that could come from FTAs between EU and Taiwan, but it all came to nothing to avoid the deterioration of the EU-China relationship. Another attempt has been made by Barack Obama, who wanted to conclude the Transatlantic Trade and Investment Partnership (TTIP) and the Trans Pacific Partnership (TPP), but, everything resulted again in failure. In fact, with the victory of Donald Trump at the presidential elections, US withdraw its support on the conclusions of these deals. The need for free trade agreements has been continuously underlined by the chambers of commerce operating in Taiwan, especially by the European Chamber of Commerce in Taiwan for EU is Taiwan's fourth largest trading partner. However, even if the EU recognizes Taiwan as an economic and commercial entity, it cannot engage any relationship of diplomatic nature, nor reach separate trade agreement with Taiwan without challenging EU-China relationship, for it supports the "One China" policy and recognize the People's Republic of China as the sole legal government ruling over the Middle Kingdom.²²⁸ As matter of fact, the ever-present Chinese shade in all relationships with the other countries Taiwan is engaged with is evident. Just think about the disapproval reaction of Chinese government to Cecilia Malmström's speech, EU Trade Commissioner, about the progress on trade and the need for debate in January 2016²²⁹, when she was announcing a set of negotiations on new trade agreements that should have been reached with countries in the vital Asia-Pacific region, including Hong Kong and Taiwan. Since Taiwan has no chance to find a way to reach quick agreements with other countries, foreign companies that want to conduct import/export activities in Taiwan have to face relative high tax barriers. Even if with the entrance in WTO Taiwan's customs tariff has been reduced, its major commercial partners, like EU, are still suffering high costs for they are unable to reach bilateral agreement with the Island. This is the reason why the EU Chamber of Commerce is actively working on the achievement of FTAs as well as BIA

²²⁶ T. Q. Minh, *Towards an FTA between Taiwan and the ASEAN: Opportunities and Approaches*, Vietnam Academy of Social Science 2010

²²⁷ *Taiwan's economic isolation desperately seeking space: A free-trade deal is greeted by China with a surprising lack of fuss*, The Economist, 13 July 2013

²²⁸ *Taiwan-Trade*, European Commission Official website: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/taiwan/>

²²⁹ C. Malmström - *Progress on Trade and the Need for Debate* - Welt Economic Summit, Berlin – European Commission Speech - 14 January 2016

(Bilateral Investment Agreement) thus obtaining easy market access.²³⁰

4.5 The Negative List of Investments

As previously mentioned, one of the goals that the Taiwanese government is trying to achieve is to establish a favorable investment environment for foreign nationals and overseas Chinese. Even if Taiwan is striving to improve Cross-strait relationship and simplify the procedure of application, reviewing and approving foreign investment, as well as providing better services to foreign investors, there are still several obstacles that entrepreneurs should be aware of.²³¹ As matter of fact, in Taiwan a negative list of investments, adopted since 1990²³², defines those prohibited or restricted economic areas of activities closed to foreign investments or subjected to some restrictions. This list contains 10 prohibited and 16 restricted activities.²³³ Considering that at the very beginning the Negative List contained more than 100 prohibited or restricted activities, it is clear how much effort the Taiwanese government has put in this ambitious project of opening as much economic areas of activities possible to increase inward investments. However, since the List is subjected to continuous reviews, one should periodically have a look to the MOEAIC official website in order to be always up to date to the latest changes. The areas involved in the Negative List are the ones as follow:

Prohibited activities²³⁴

<i>Code No.</i>	<i>Scope of Industry</i>	<i>Sub-item of Industry</i>	<i>Description</i>	<i>Competent Authorities</i>	<i>Remarks</i>
18	Manufacture of Chemical Material	1810 Manufacture of Basic Chemical Material	Manufacturing of nitroglycerin for military use (nitroglycerin used in explosive pillars involving public safety)	Ministry of National Defense	
			Soda-chloride factories operating with mercuric electrolyzers	Ministry of Economic Affairs	National Treatment
			A category of chemical products in accordance with the prohibition of chemical weapons of the United Nations	Ministry of Economic Affairs; Ministry of National Defense	National Treatment

²³⁰ G. Izzo, Vice Chairman of European Chamber of Commerce Taiwan – Interview – Taipei May 2017

²³¹ MOEAIC Official website: <http://www.moeaic.gov.tw/about.view?type=atImPn&lang=en>

²³² *Taiwan Business: The Portable Encyclopedia for Doing Business with Taiwan* - The World Trade Press editors – Taiwan 1994

²³³ Negative List for Investment by Overseas Chinese and Foreign Nationals (Amended on June 17, 2013)

²³⁴ MOEAIC official website: http://www.moeaic.gov.tw/businessPub.view?lang=en&op_id_one=1

			CFC, halon, methylchloroform, carbon tetrachloride	Environmental Protection Administration, Executive Yuan	National Treatment
19	Manufacture of Chemical Products	1990 Manufacture of Other Chemical Products	Gun powder fuse, agents of fire and fulminating mercury	Ministry of National Defense	
24	Manufacture of Basic Metals	2499 Manufacture of Other Basic Metals Not Elsewhere Classified	Cadmium smelting	Ministry of Economic Affairs	National Treatment
29	Manufacture of Machinery and Equipment	2939 Manufacture of Other General- Purpose Machinery	Firearms, weapons manufacturing, arms repair, ammunition and fire-control (for military use, exclusive of military aircraft)	Ministry of National Defense	
49	Land Transportation	4931 Motor Bus Transportation	including city passenger bus services and highway passenger services	Ministry of Transportation and Communication	Not prohibited for Overseas Chinese
		4932 Taxi Transportation			
		4939 Other Bus Transportation	Tour bus services		
54	Postal and Courier Activities	5410 Postal Activities		Ministry of Transportation and Communication	National Treatment
60	Programming and Broadcasting Activities	6010 Radio Broadcasting	Radio broadcasting industry; Radio television industry	National Communications Commission	
		6021 Television Broadcasting			

Table 4 Prohibited Activities

Source: MOEAIC official website:

http://www.moeaic.gov.tw/businessPub.view?lang=en&op_id_one=1

Restricted activities

<i>Code No.</i>	<i>Scope of Industry</i>	<i>Sub-item of Industry</i>	<i>Description</i>	<i>Competent Authorities</i>	<i>Remarks</i>
		6022 Cable and Other Subscription Programming			
64	Financial Intermediation	6415 Postal Saving and Remittance Services		Ministry of Transportation and Communication; Financial Supervisory Commission	National Treatment
69	Legal and Accounting Activities	6919 Other Legal Activities	Public notary services	Judicial Yuan	Not prohibited for Overseas Chinese
93	Sports Activities and Amusement and Recreation	9323 Special Amusement Activities		Ministry of Economic Affairs	

Table 5 Restricted Activities

Source: MOEAIC official website:

http://www.moeaic.gov.tw/businessPub.view?lang=en&op_id_one=1

About the investments coming from mainland China, despite the controversial relationship between China and Taiwan, the Taiwanese government has been gradually removing restrictions on PRC investments in many sectors. It has in fact opened more than two-thirds of industrial categories with 97 percent of manufacturing sub-sectors and 51 percent of construction and services sub-sectors open to PRC capital.²³⁵ However, a list of restricted or

²³⁵ 2017 Investments Climate Statements Report, June 2017 Department State, United Nations of America

prohibited industries remains valid only for PRC investors. Even after the signature of the Cross-strait Agreement on Trade in Services under ECFA, many PRC investments projects have been rejected because of public opposition. Moreover, PRC nationals are not allowed to cover the role of chief executive officer in a Taiwan company, although a PRC board member may retain management control rights.²³⁶

4.6 Prohibited and Restricted Imports

In order to comply with the regulations of WTO, Taiwan has eliminated about 98% of its control over 11,213 import categories.²³⁷ As matter of fact, from April 2017, 115 under Commodity Classification Codes (CCC) items need to get the approval of BOFT in order to be imported in the island, otherwise their entrance is not allowed, while 16 items are now allowed to be imported under certain conditions.²³⁸ The majority of the categories that require a permit refer to public sanitation and national defense, and include also some agricultural products and ammunition. However, with the signature of the ECFA that has been undertaken a process of liberalization of imports of products coming from mainland China, especially agricultural (1,721 allowed) and industrial (7,897 allowed) items, Taiwan maintains a lengthy list of 2000 banned items that cannot be imported from China. U.S. industry reports that these bans constitute an obstacle to their regional supply chain and prevent certain categories of products produced in China-based factories from entering in Taiwan. In the light of what we have seen, a foreign company who's willing to import products in Taiwan that could be both sold or used as raw materials for producing their products there, should be aware of prohibited and restricted items as well as import regulations which are continuously subjected to reviews. Since this process of liberalization of trade and harmonization with WTO enacted rules it is still going on, rules are changing really fast, so one should periodically have a look on Chambers of commerce position papers and Taiwanese BOFT updated import/export regulations and commodity classifications for Taiwanese inspections are really strict. In fact, it happened many times that some products/items arriving at a Taiwanese harbor were stopped and prevented from entering the island causing significant damages to those shipping them. As an example, a couple of years ago, dozens of cargos of kiwi were rejected by Taiwanese Port Authority because the modality of displacement of temperature sensors on the boat required by Taiwanese

²³⁶ 2017 *Investments Climate Statements Report*, June 2017

²³⁷ *Taiwan: Prohibited and Restricted Imports* – Governmental official websites of the Department of Commerce United States of America - 6/06/2017 - <https://www.export.gov/article?id=Taiwan-Prohibited-Restricted-Imports> 22/06/2017 – 18:22 Italy

²³⁸ *Taiwan: Prohibited and Restricted Imports*

government was changed²³⁹. Another example, which costed a further restriction over the import on olive oil, was founding banned coloring agent in olive oil coming from Spain and Italy by Food and Drug Administration in 2013.²⁴⁰

4.7 Taiwan: a natural disaster hot spot

Taiwan is an area with high risks for natural disasters. It is in fact periodically hit by natural hazards that cause severe economic losses. It is a seismically active zone and it is prone to frequent tremors and earthquakes. It is also subjected to seasonal typhoons, which intensity is increasing year by year. Taiwan has been even indicated as “*the most vulnerable to natural hazards on Earth, with 73% of land and population exposed to three or more hazards on Earth (Lin 2008)*”²⁴¹ in the report “Natural Disaster hot spots – A Global Risk Analysis” issued by the World Bank. The five main natural hazards in Taiwan are: typhoon, earthquake, landslide, flood and debris flow.²⁴² Even if the government is actively working on the development of a functional emergency management system with the use of hazard mitigation technologies, that should reduce disaster losses, such events are still happening and result in varying degrees of business disruption. Management has to effectively deal with such events in order to limit losses. Just think about February 6th, 2016. An earthquake at 6.4 Richter Scale hit Tainan City, in the southern part of the island.²⁴³ The area hit by the earthquake was the base of Taiwan Semiconductor Manufacturing (TSMC), an electronics hub, Apple’s only supplier. In that unfortunate event, the facilities of TSMC in charge of the production of iPhone 7 A10 processor were impacted, nearly causing delay for the whole production supply.²⁴⁴ Fortunately, many stocks of delicate wafers used to produce semiconductor did not suffer heavy damages, so only 1% of deliveries were expected to be delayed. This kind of natural disaster can have an impact not only on the supply chain but also on the production itself. In 2001, in fact, Typhoon Nari, with a torrential rainfall, caused

²³⁹ *Taiwan respinge decine di carichi di kiwi europei* - <http://www.freshplaza.it/article/70976/Taiwan-respinge-decine-di-carichi-di-kiwi-europei>

²⁴⁰ *Flawed olive oils imported from Spain, Italy banned from Taiwan*, Jan 2014, the China post <http://www.chinapost.com.tw/taiwan/national/national-news/2014/01/16/398474/flawed-olive.htm>

²⁴¹ Dilley, Maxx; Chen, Robert S.; Deichmann, Uwe; Lerner-Lam, Arthur L.; Arnold, Margaret; Agwe, Jonathan; Buys, Piet; Kjevstad, Oddvar; Lyon, Bradfield; Yetman, Gregory - *Natural disaster hotspots: A global risk analysis* – report 30/04/2005 - The World Bank official website <http://documents.worldbank.org/curated/en/621711468175150317/Natural-disaster-hotspots-A-global-risk-analysis>

²⁴² Yi-En Tso – *Emergency Management in Taiwan: Learning from Experiences* - Department of Public Administration at the University of North Texas, Denton, Texas.

²⁴³ Earthquake in southern Taiwan – the guardian - <https://www.theguardian.com/world/gallery/2016/feb/06/earthquake-in-southern-taiwan-in-pictures>

²⁴⁴ J. Webb - *The Taiwanese Earthquake That Nearly Flattened The Apple iPhone 7* – Forbes/ Business - <https://www.forbes.com/sites/jwebb/2016/02/29/the-taiwanese-earthquake-that-nearly-cancelled-the-apple-iphone-7/#d3517154da7a>

many landslides, rivers flowing out their banks, huge agricultural losses and damaged Metro Taipei (the mass transportation system), which could not restore its operations for one month and short of electricity supply.²⁴⁵ The Central business district in Taipei city was shut down because of shortage of electricity for one week, and many flights were cancelled or delayed. Even the stock exchange market was closed for several days. In the event of such a nefarious situation, every business could suffer unimaginable losses.

²⁴⁵ Yi-En Tso – *Emergency Management in Taiwan: Learning from Experiences* - Department of Public Administration at the University of North Texas, Denton, Texas.

5. Conclusions

Doing business in a foreign market always involves facing varying degrees of risks and challenges. The higher is the distance perceived in cultural and business differences, the thornier the problems to deal with are. Taiwan presents its market-related issues too, but its condition of diplomatic isolation on the international stage makes more complicated the running of a business there. The ROC condition of isolation influences many aspects of the Taiwanese society like culture, politics, laws as well as trade relations with other countries. Understanding this situation is fundamental for any organization willing to operate in Taiwan. As matter of fact, the need of international recognition spurred Taiwanese government to engage in several actions and reforms that would have eased market access procedures and created new business opportunities to attract FDIs and strengthen its international status. The ROC high commitment to this cause, can be seen in many trade agreements like ECFA, APEC, TiSA as well as deregulation policy adopted after the entrance in the WTO. All these agreements aim to loosen economic and financial regulation in matters as finance and taxation, industry, human resources, cross-Strait economic affairs, import/export. They also aim to liberalize investment activities and create an attracting business environment for the other countries, especially for those who do not recognize the ROC. Taiwan has moreover, undergone a process of legal reforms which resulted in a Constitution enriched with western legal concepts and in the enactment of new regulations that contribute to the harmonization of Taiwanese business legal measures to the international ones. Nowadays, the matter concerning foreign investments is regulated by the Statue for Investment by Foreign Nationals and the Statutes for Investment by Overseas Chinese that cover the regulation of the protection, restrictions, and administration of such investments. Taiwanese Private International Law had been enriched with many amendments too. These amendments resulted in the 2010 Taiwanese PIL Act which tries to facilitate international judicial harmony and to conform as much as possible to the provisions of Rome Regulation I that couldn't have been adopted by Taiwan because not a member of United Nations. It is interesting noticing how similar Taiwanese PIL provisions to those of Rome Regulation I are but, at the same time, present some differences like the criteria adopted for the choice of law, the ambiguity concerning the possibility to split the contract according different laws or the criteria chosen to individuate the closest connection. In addition, matters like dispute resolution and the enforcement of foreign awards have been revised. If several years ago the dispute resolution was a very delicate matter because it was seen as a disgrace and symbol of disrupting the social equilibrium, thanks to the ROC

commitment, nowadays litigation as well as alternative dispute resolution methods, like mediation and arbitration, are broadly used in Taiwan. Taiwanese people in fact, do not consider law as a mere second source of social order anymore, but they give it a significant role. In addition, along with the increase in internationalization and the need to comply with contractual obligations, Taiwanese people understood the importance of the law and of a set of standardized regulations to be applied in case of foreign elements.

Thanks to this process of legal harmonization to the international business standards, it is allowed to penetrate Taiwanese market through the common internationally used entry modes which can be grouped in three broad categories: commercial agreements, strategic alliances and partnerships as well as foreign direct investment. Each entry mode is characterized by its own risks, commitment requirements and degree of control over business activities. Foreign companies or investors willing to carry out a business in Taiwan, will choose the proper entry modality according to the typology of activities they want to carry out, the degree of control required, the sum they are willing to invest as well as degree of risk that they are willing to bare. According to the data gathered in this research, it is common for foreign companies engaging in commercial agreements like manufacturing, agency and supply arrangements, as well as import/export activities and franchise agreements. However, in case a company or an investor prefers to establish a commercial presence in Taiwan keeping a high degree of control over the business activities, then the most frequently chosen business vehicles are Company limited by shares and Limited Liability Company for the flexibility of the establishment requirements and the type of business activities they can carry out.

Despite all the advantages that the ROC government might offer to foreign companies to guarantee an attractive business environment, there are still several problems one should take in consideration prior engaging in business activities in Taiwan. This research demonstrated that the main sources of business disruption in Taiwan are caused by cultural differences, cross-strait relations and Mainland China political influence, legal restrictions as well as natural hazards. Issues deriving from cultural differences are always underestimated although cultural issues result to be / are one of the main reason of business failure. Failing to understand the culture of the host country and the way of communicating with local partner or clients would leave room for misunderstandings and contradictions which might affect negatively the running of a business. It is important that business men learn to give importance to cultural differences trying to overcome them and develop a new enterprise set of values suitable to the Taiwanese business environment.

Another aspect to be taken in consideration while running a business in Taiwan are the possible implications deriving from the worsening of the cross-strait relations. The Chinese economic dominance and the “One-China” principle prompt many countries to neglect Taiwan. This diplomatic isolation status strongly influences the ROC trade and commercial relations with other countries that pledged their loyalty to China. For this reason, being unable to reach fast trade agreement with Taiwan, foreign companies operating there are suffering from high import/export taxes.

From a legal point of view, the problems caused by legal restrictions are related to import activities and foreign direct investments. Although Taiwan is one of the freest economies in the world, there are provisions restricting imports of some products and foreign investment projects. As matter of fact, the ROC government has implemented the above-mentioned Statute for Investment by Foreign Nationals and the Statutes for Investment by Overseas Chinese that cover the regulation of the protection, restrictions, and administration of such investments as well as a negative list which indicates the sectors where it is not or to which extent it is allowed to invest. The prohibited industries are those relating to national security, public order, national Health and legal prohibitions, such as agriculture, public transport, postal services, radio and television. Since these lists are continuously under review, it is crucial to have a periodical look to verify if any changes have been made in order to comply with Taiwanese laws.

Finally, another source of business disruption are natural hazards. Taiwan is a region prone to natural disasters. These disasters include earthquakes, tsunamis, typhoons, storm surges and floods. Although the Government is actively developing a functional emergency management system using disaster mitigation technologies, such incidents continue to occur and cause varying degrees of disruption of business operations. Foreign companies willing to do business in Taiwan must take this factor into account because many companies have been and are being still affected by these unpredictable events.

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