

## National Implementation of International Economic Law: Taiwan

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### I. Country background

Before recorded history, Taiwan was occupied by indigenous peoples of the Austronesian ethnic group. Between 6,000 and 7,000 BC, the first Neolithic groups arrived in Taiwan and the Penghu Islands.<sup>1</sup> Evidence demonstrates that seafaring around Taiwan began around 6,000 years ago.<sup>2</sup> The archaeological evidence suggests very intensive cross-regional trading activities between Taiwan, the Philippines, Borneo and the southern portion of Mainland Southeast Asia, since at least 400 BC.<sup>3</sup> Since then, interacting with overseas Austronesian-speaking communities, traders in Taiwan shared a common language family and preferred craft production methods, indicating significant connections with Southeast Asian regions, particularly southern Thailand, Vietnam and the Philippines.<sup>4</sup>

The written history of Taiwan began in the seventeenth Century. It was then, too, that Dutch and Spanish settlers established bases in Taiwan, with the Dutch East India Company establishing a base in 1624, followed by the Spanish doing so in 1626.

Traditionally, Taiwan's economy was based on agriculture. The Spanish settlers were ousted by the Dutch in 1642. Deer hides and sugar were the main products during the Dutch settlement.<sup>5</sup> The settlement was not long-lasting, however. In 1662, Zheng Cheng-gung expelled the Dutch and took control of Taiwan for the

Ming. The competing Qing Empire prevailed over Zheng's regime in 1683.

The next two centuries were ones of various power struggles on and for the island. While some were mainly family feuds, others came from abroad. The Hungarian commander Benyovszky fought when he landed in 1771, the British attempted to take Taiwan in the 1840s, and the French tried to invade in the 1880s. None, however, was successful in establishing control.

It was only when the Qing empire lost to Japan in the First Sino-Japanese War that Taiwan came under new foreign control. Taiwan was handed over to Japan under the 1895 Treaty of Shimonoseki. Taiwan's traditional economy began its modernization under Japanese colonial rule. Under Japanese rule, the Bank of Taiwan was established to help Japanese private investors finance large infrastructure projects on the island, including a rail system, dams and ports. The growth of agriculture, accompanied and contributed to by other developments, helped make Taiwan a major exporter of food. At the end of the nineteenth Century, tea became Taiwan's primary export, surpassing sugar and rice.<sup>6</sup> In the years leading to World War II, Taiwan also became a major industrial centre for the Japanese war effort.

The Japanese colonial period ended in 1945, at the end of World War II, and the government of the Republic of China started to exercise jurisdiction over Taiwan. The Republic of China was founded in China in 1912, and after the civil war was lost to the Chinese Communist Party, the government relocated to Taiwan in 1949.

In the early 1950s, the government adopted an import substitution policy, with an emphasis on the restriction of imports. In 1958, Taiwan adopted an export expansion policy. This policy laid the foundation for Taiwan's subsequent rapid economic growth and also formed the basis for Taiwan's open attitude towards international trade. Currently, Taiwan has become a leading producer of information and communication technology products worldwide. In particular, Taiwan is now an important link in the global supply chains for semiconductors,

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recording a global market share of 65 per cent in 2023, and among which, Taiwan Semiconductor Manufacturing Company (TSMC) holds the highest global market share of 53 per cent.<sup>7</sup> Semiconductors account for almost 40 per cent of Taiwan's exports.<sup>8</sup>

Given this historical background, the culture of Taiwan has developed under diversified influences. Therefore, Taiwanese culture has Chinese roots, and at the same time, it is also strongly influenced by Japanese culture. The legal structure and principles of the Taiwanese government is based on its Constitution of 1947 enacted in China and its revisions in Taiwan.

- **Head of state:** The President of the Republic of China (Taiwan). The President is directly elected every four years and may be re-elected for one additional term.<sup>9</sup>
- **Head of government:** The Prime Minister of Taiwan is the Chief of the Executive Yuan (the Cabinet) and the head of the government.<sup>10</sup> The Prime Minister is appointed by the President.
- **Form of government:** With the 'five branches of government' established, the Executive Yuan, or the Cabinet, is the highest administrative organ containing numerous agencies.<sup>11</sup> As of March 2022, the Executive Yuan supervises 30 agencies, including 14 ministries, nine councils, three independent regulatory agencies, the Central Bank and the National Palace Museum. In addition, the Executive Yuan may issue administrative regulations.<sup>12</sup>

The Legislative Yuan (the Legislature) is the unicameral congress and the highest legislative organ. Members are elected by nationwide popular vote and serve terms of four years, renewable after re-election. Beginning with the Seventh Legislative Yuan (2008–2012), the chamber has 113 members (down from 225).<sup>13</sup> The election of members of the Legislative Yuan is to be completed within three months prior to the expiration of each term.<sup>14</sup>

The highest judicial organ, the Judicial Yuan, oversees the adjudication of civil,

criminal, and administrative litigation<sup>15</sup> and establishes the courts, the organization of which is prescribed by law. Under the Judicial Yuan, the Constitutional Court (called the Council of Grand Justices until January 2022) exercises jurisdiction over the interpretation of the Constitution, the uniform interpretation of statutes, the impeachment of the President and the Vice President, and the dissolution of unconstitutional political parties. The courts responsible for civil and criminal cases are divided into three levels: the Supreme Court, the High Courts and their branches, and the District Courts.<sup>16</sup> Administrative Courts that exercise jurisdiction over administrative cases are also divided into three levels: the Supreme Administrative Court, the High Administrative Court, and the District Courts. In addition, the Intellectual Property and Commercial Court exercises jurisdiction over intellectual property disputes and certain commercial disputes. Judges hold office for life.

The Examination Yuan is responsible for the qualification and employment of civil servants,<sup>17</sup> while the Control Yuan is the national watchdog body, exercising the powers of audit and impeachment.<sup>18</sup> The President is empowered to appoint the head of the Executive Yuan and to nominate and, with the consent of the Legislative Yuan, to appoint the heads of Judicial, Examination and Control Yuans.

- **Form of state:** Unitary; democratic republic.<sup>19</sup> In addition to the central government, there are a number of local governments. These include six special municipalities, 13 counties and three autonomous municipalities.<sup>20</sup> All heads and representatives of local governments are popularly elected across Taiwan every four years.
- **Legal system:** Taiwan has a codified system of law through which the Legislative Yuan enacts laws using powers granted to it by the Constitution. The Japanese and German civil law systems heavily influenced the legal system, including the Constitution, four codes (civil, criminal,

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civil procedure and criminal procedures) and administrative regulations.

- **How legislation is passed:** Bill proposals may come from the other four branches of government or from the Legislative Yuan. The Secretariat of the Legislative Yuan sets the bill agenda. At the First Reading, the title of the bills shall be read out loud in the Yuan Plenary Sitting.<sup>21</sup> After general discussions, bills shall, upon resolution of the Yuan Plenary Sitting, be sent directly for the Second Reading or be referred to appropriate committees for examination. At the Second Reading, bills go through article-by-article discussions. Statutory and budgetary bills must go through the entire procedure, requiring three readings in the Legislative Yuan.<sup>22</sup> At the Third Reading, however, revisions are permitted only in situations in which unconstitutional issue is identified or conflicts with other laws.<sup>23</sup> Laws are passed by majority votes unless the Constitution provides a different quorum. Arguably, the President has veto power through the Executive. According to the Constitution,<sup>24</sup> if the Executive Yuan considers a resolution passed by the Legislative Yuan difficult to execute, it may, with the approval of the President, request the Legislative Yuan to reconsider the resolution. If a resolution is supported by two-thirds of the Legislative Yuan members present at a meeting, the Executive Yuan will follow it. Any bills passed by the Legislative Yuan will be sent to the President, who will sign and approve them within ten days of receiving them. The Freedom of Government Information Law requires that laws shall be made available to the public actively and timely.<sup>25</sup> The General Government Gazette is available.<sup>26</sup>

The Constitution can be amended. The citizens are entitled to exercise the power to ratify constitutional amendments through referendums. According to Article 12 of the Amendment of the Constitution of the Republic of China, an amendment to the Constitution can be proposed when one-fourth of the total members of the Legis-

lative Yuan make a proposal. This proposal must be passed by at least three-fourths of the members present at a meeting attended by at least three-fourths of the total members of the Legislative Yuan, and sanctioned by electors at a referendum, wherein the majority of electors vote in favour of the proposal.

- **Hierarchy of legal authority:** The Constitution is the final authority.<sup>27</sup> Any statute in violation of the Constitution shall be null and void. When there is doubt regarding whether or not a law is in conflict with the Constitution, interpretation thereon shall be made by the 15 grand justices under the Judicial Yuan. This ensures unified interpretations of laws.
- **How administrative law is managed:** The entities of the Executive Yuan may pass regulations to implement policies in the area of their jurisdiction. All administrative acts shall be governed by law and the general principles of law.<sup>28</sup> When drafting such regulations, the administration must ensure that the substance of the regulations is clear and definite<sup>29</sup> and that no differential treatment is permitted without good cause.<sup>30</sup>

There is an Administrative Procedural Law that governs administrative practices regarding regulation. According to this law, an administrative regulation may be created based on either a draft formulated by the administrative authority itself or on the basis of a written proposal submitted by the people or a civilian body.<sup>31</sup> The administrative authority shall make the proposal publicly available and widely known to the general public in an appropriate manner, such as through a government gazette or newspaper. Unless the circumstances is so urgent that prior announcement to the public is clearly impracticable, such a publication should provide a specified period for people to state their opinions.<sup>32</sup>

Taiwan has improved regulatory transparency by establishing formally defined standards for consultative procedures in the Administrative Procedure Law. The

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government recognizes that stakeholder involvement is the central pillar of smart regulation, making regulations more accessible, less influenced by interest groups, and therefore more open to competition, trade and investment.

In practice, several regulatory agencies have already implemented strong regulatory practices, including the early publication of regulatory activity, explicit justification of the need for government intervention, the introduction of a reasonable transition period and regular reviews of the regulation to ensure its necessity in light of ongoing technological developments.<sup>33</sup>

In addition, the National Development Council (NDC) established a public policy participation platform in 2015 as an additional channel for public participation in policy formation. As a result, the public can make direct comments on draft regulations, and Taiwanese citizens have been active in contributing their opinions through the functions of the online platform.<sup>34</sup>

Any regulation must be implemented in good faith and in a way that protects the legitimate and reasonable expectations of the people.<sup>35</sup>

Citizens are entitled to present petitions to competent authorities with respect to administrative regulation.<sup>36</sup> Administrative authorities shall establish operating rules and appoint officers to address petitions in a prompt manner. Where necessary, the authority in charge shall keep the petition in confidence and refrain from disclosing it to the public. In cases in which a petition is deemed by the relevant authority to be well grounded, it shall take appropriate action to address the issues; if the petition is deemed to be groundless, it shall give the petitioner notice with an explanation. It should be noted that a petition may not be acted upon if the petitioner is found to have filed identical petitions with multiple authorities.<sup>37</sup>

- **Relationship of legislation with international law:** The competent authorities may explain principles and potential dis-

putes to the Legislative Yuan and report to its related committees before finalizing the text of a treaty. Such communication often takes place in the context of the negotiations of international economic agreements.

Whether the Legislative Yuan has the power to approve international agreements concluded by competent administrative authorities depends on the format and content of the agreement. If a bilateral agreement carries the designation of ‘treaty’ or ‘convention’,<sup>38</sup> contains a ratification, acceptance, approval or accession clause,<sup>39</sup> involves Taiwanese people’s rights and obligations,<sup>40</sup> involves national defence, foreign affairs, financial matters, economic interests or other issues of national interest,<sup>41</sup> or if the agreement is inconsistent with domestic law or requires changes to domestic law,<sup>42</sup> the agreement must be submitted to the Legislative Yuan for approval<sup>43</sup> with a simple majority.<sup>44</sup> Ratified treaties hold the same status as laws.<sup>45</sup> As such, the Constitution is superior to treaties, but there is no *ex ante* control of their constitutionality. The procedures for the amendments, alterations, renewals, suspensions, terminations or withdrawals from treaties or agreements shall be applied *mutatis mutandis* to the procedures for the conclusion of treaties or agreements.<sup>46</sup>

The Legislative Yuan’s approval is not required, however, if the following conditions are met: (1) the agreement does not carry the name ‘treaty’ or ‘convention’, (2) the agreement does not contain a ratification, acceptance, approval or accession clause, and (3) one of the following conditions are satisfied: (a) the signing of the document is explicitly authorized by law; (b) the Legislative Yuan has approved the document in advance, or; (c) the document’s contents are identical to domestic laws.<sup>47</sup> In that case, Article 12 of the Conclusion of Treaties Act applies, and the bilateral agreement should be submitted to the Executive Yuan for review within 30 days of signing. If approved, the agreement enters into force, and needs to be published

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and submitted to the Legislative Yuan for reference.<sup>48</sup> The competent authorities are afforded wide discretion to determine which procedure applies to a specific bilateral agreement, but the decisions are subject to the confirmation of the Legislative Yuan.

- **Place of international treaties in the legal system:** No. 329 of the Grand Justice Interpretation stipulates that agreements ‘concluded under the designations of “Treaty”, “Convention”, or “Agreement” and containing ratification clauses must certainly be sent to the Legislative Yuan for parliamentary deliberation. Other international written agreements shall also be sent to the Legislative Yuan for parliamentary deliberation unless their contents were authorized by law or with the prior approval of the Legislative Yuan, or if their contents are identical to what has been provided by municipal laws’.<sup>49</sup>
- **Role of courts:** Courts could rule on whether an international treaty possesses direct effect. For example, a court applied the Paris Convention in a domestic patent design case.<sup>50</sup>

## II. Trade

### a. General

Taiwan ranked seventeenth in global merchandise exports and seventeenth in imports for 2022.<sup>51</sup> Due to China’s One China Policy, Taiwan’s statehood is not recognized by the majority of states.<sup>52</sup> As a result, the World Trade Organization (WTO) has become the only major international organization that allows Taiwan to become an official member, under the name of the ‘Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)’. Taiwan has been striving to negotiate FTAs with trading partners and concluded trade deals with New Zealand and Singapore in 2013. Taiwan is now strengthening regional partnerships through the New Southbound Policy enacted in 2016.

A number of governmental agencies play a joint role in administering international trade. The Office of Trade Negotiations (OTN)

under the Executive Yuan is responsible for negotiations regarding international trade and investment. The Bureau of Foreign Trade (BOFT) under the Ministry of Economic Affairs (MOEA) is in charge of the nation’s industrial policies. The National Security Council (NSC), under the chairmanship of the President, is the organ that supervises all security-related trade matters. In addition, the International Trade Commission (ITC) under the MOEA is mandated to make decisions regarding trade remedy measures.

In terms of trade in goods, the Chinese National Association of Industries (CNFI) is the leading industry association representing the manufacturing sector.<sup>53</sup> For decades, CNFI has played an important role in trade policy formation. In terms of trade in services, Taiwan’s Coalition of Service Industries (TWCSI) seeks to function as an umbrella organization in representing the voice of the service industry.<sup>54</sup> TWCSI has been active in establishing links with counterpart organizations around the world.

Taiwan joined the WTO in 2002. Since then, Taiwan has had seven cases as a complainant under the WTO Dispute Settlement System, mainly regarding trade remedies. Taiwan has been a third party in 134 dispute settlement cases and has never been a respondent.

### b. Responsibility for trade policy

The OTN under the Executive Yuan is the agency that is responsible for negotiating international trade agreements on behalf of the government.<sup>55</sup> The OTN, led by a Minister without Portfolio in charge of trade policy coordination, is designed to oversee the government’s trade negotiations as well as shape the country’s negotiating positions. OTN’s main responsibilities include the following: (1) Participating in multilateral and bilateral trade negotiations. (2) Formulation of foreign trade policies and negotiations. (3) Implementation of strategies surrounding trade negotiations and cooperation. (4) Policy coordination and communication aiming to bring domestic regulations in line with international trade negotiations.<sup>56</sup>

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In addition, the BOFT under the MOEA is the competent authority for formulating Taiwan's industrial policies and implementing trade policies developed by the Executive Yuan. BOFT's primary responsibilities include promoting trade and managing trade-related operations such as enhancing bilateral trade relations, administering the import and export regime, promoting foreign trade and coordinating with the MOEA's overseas offices.<sup>57</sup>

### c. Structure of foreign trade agency

As indicated above, the Executive Yuan is in charge of developing trade policy, while the Ministry of Economic Affairs is responsible for implementing trade policy and formulating industrial policy.<sup>58</sup>

It should be noted that the NSC, which is directly under the chairmanship of the President, is the organ that advises on issues related to national security.<sup>59</sup> Given that trade and security matters are increasingly intertwined, the NSC is now actively involved in foreign trade policy. Members of the Council consist of the President, the Vice President, the Premier and Ministers of the Interior, Foreign Affairs, Finance, Economic Affairs, National Defence and Mainland Affairs. The President may appoint additional National Security Council Commissioners.<sup>60</sup>

In terms of trade remedies, the ITC under the MOEA is in charge of safeguarding, countervailing and anti-dumping cases. The ITC is mandated to coordinate with other agencies in making decisions regarding whether a domestic industry has been injured, whether or not an import relief measure should be adopted, and whether to terminate or extend trade remedy measures.<sup>61</sup>

### d. Subnational governments in the trade policy process

The OTN can negotiate and enter into pacts and/or agreements with foreign countries concerning external trade affairs. It must first consult and coordinate with other government

agencies if they are involved in the matter being negotiated.<sup>62</sup>

The Central Government shall have the power of legislation and administration on matters of foreign trade policies.<sup>63</sup> The local legislative body may formulate self-directions, which shall become invalid if contradictory to the Constitution, laws or central government regulations.<sup>64</sup> In the dispute concerning Taiwan's ractopamine pork import policy,<sup>65</sup> the Constitutional Court ruled that local government regulations requiring that food products be free of the veterinary drug ractopamine were in contravention of the central government's authority. In general, the central-local/municipal relationship is, to a large extent, determined by the political identity of the mayor and her/his attachment to the party in power.

### e. Non-governmental entities in the trade policy process

#### 1. Rights of participation in policy formation

The rules of the Administrative Procedural Law apply to trade policy regulations as it does to other administrative regulations. Thus, once the relevant authority completes the draft regulation, the agency must publish the text in a widely read publication and then grant a consultation period during which stakeholders can voice their opinions. The Administrative Procedural Law mandates early, extensive and systematic stakeholder consultations. To help encourage direct citizen participation, online public consultation mechanisms have been introduced.<sup>66</sup>

#### 2. Rights of comment on trade regulation proposals

Public consultation on regulatory proposals is formally regulated by Administrative Procedural Law. In practice, several regulatory agencies have already implemented strong regulatory practices, including public consultation and stakeholder engagement processes.<sup>67</sup>

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In addition, the NDC established a public policy participation platform in 2015 as an additional channel for public participation in policy formation. As a result, the public can make direct comments on draft regulations, and Taiwanese citizens have been active in contributing their opinions through the functions of the online platform.<sup>68</sup>

### 3. *Right to challenge trade regulations*

Citizens are entitled to present petitions to competent authorities with respect to administrative regulation.<sup>69</sup> Administrative authorities shall establish operating rules and appoint officers to address petitions in a prompt manner. When it is necessary to maintain confidentiality, the responsible authority should refrain from disclosing the petition to the public. In cases in which a petition is deemed by the relevant authority to be well grounded, it shall take appropriate action to address the issues; if the petition is considered groundless, it shall give the petitioner notice with an explanation. It should be noted that a petition may not be acted upon if the petitioner is found to have filed identical petitions with multiple authorities regarding the same matter.<sup>70</sup>

#### **f. The direct effect of trade agreements**

As a result of No. 329 of the Grand Justice Interpretation that requires parliamentary deliberation on most international treaties, agreements concluded following foreign trade negotiations, unless within the scope of the administrative discretionary power of the signing authority, are subject to ratification by the Legislative Yuan. Agreements with contents concerning the amendment of any existing law or enactment of a new law must become effective only after the completion of legislative procedures.<sup>71</sup>

#### **g. Responsibility for negotiation of FTAs/WTO**

OTN is the agency responsible for negotiations with respect to international trade. Currently, its main missions are to coordinate regional trade integration such as the Com-

prehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and digital economy agreements such as the Digital Economy Partnership Agreement (DEPA), implement the New Southbound Policy and restructure the economy through international trade negotiations and cross-border policy cooperation.<sup>72</sup> In June 2023, Taiwan and the United States signed the first agreement under the 21st Century Trade Initiative (US-Taiwan Initiative on 21st Century Trade First Agreement),<sup>73</sup> which contains eight chapters and creates bilateral obligations regarding customs administration and trade facilitation, good regulatory practices, services domestic regulation, anticorruption and small and medium-sized enterprises. The US-Taiwan Initiative on 21st Century Trade First Agreement has raised questions about whether such a trade pack requires US congressional approval.<sup>74</sup>

It should be noted that private organizations or bodies authorized by the OTN may negotiate and enter trade agreements with foreign countries on behalf of the government. In this regard, they must report to OTN for approval.<sup>75</sup>

#### **h. Management of FTA/WTO membership**

The functions and tasks of the OTN under the Executive Yuan include bringing domestic regulations in line with international trade negotiations. It is the government agency that represents the state in trade matters on the international level, including invoking and defending trade disputes.<sup>76</sup>

#### **i. How many FTAs?**

Taiwan only has two FTAs with countries that do not maintain diplomatic relations with it:<sup>77</sup> agreements with New Zealand (ANZTEC, 2013)<sup>78</sup> and Singapore (ASTEPA, 2014).<sup>79</sup> Taiwan has officially submitted applications to join the CPTPP.<sup>80</sup>

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**III. Investment****a. General**

Recognizing the importance of investment for domestic economic development, Taiwan's attitude towards foreign direct investment is positive overall. Taiwan's policy goal is to attract and promote inward foreign direct investment. Taiwan instituted the 'Statute for Investment by Foreign Nationals' in 1954<sup>81</sup> and the 'Statute for Investment by Overseas Chinese' in 1955.<sup>82</sup> Under these statutes, the MOEA is in charge of investment policy. Investments from the People's Republic of China (China) were treated differently from general foreign investments in Taiwan and were traditionally prohibited. The restrictions on Chinese investment have gradually loosened since 2009, but are still subject to more stringent scrutiny than foreign direct investments.<sup>83</sup>

The major sources of foreign direct investment (FDI) into Taiwan include China, British Overseas Territories in the Caribbean, the Netherlands, Japan, the US, Singapore, Denmark and Australia. Taiwan's finance, wholesale and retail, electronics and electricity supply sectors are the major targets of inward FDI. Taiwan's major outward FDI destinations include China, Singapore, Japan and Vietnam. The finance, electronics, wholesale and retail and transportation and storage sectors are the main targets for Taiwan's outward FDI.

**b. Responsibility for foreign investment policy**

Under the 'Statute for Investment by Foreign Nationals'<sup>84</sup> and the 'Statute for Investment by Overseas Chinese',<sup>85</sup> the MOEA under the Executive Yuan is responsible for Taiwan's foreign investment policy. In addition, MOEA is in charge of drafting and implementing administrative regulations covering foreign investment activities.

MOEA is the competent authority in charge of the implementation of investment screening under measures governing investment permits for the people of the Mainland Area. At the same time, the Mainland Affairs Council under the Executive Yuan is responsible for

the promulgation and implementation of policy concerning the relationship between Taiwan and China, which includes Taiwan's openness to Chinese investments.<sup>86</sup>

**c. Structure of investment agency/legislature**

MOEA is the competent authority that oversees foreign investment in Taiwan. Under MOEA, the Department of Investment Services (DOIS) InvesTaiwan Office is responsible for foreign investment promotion. The Investment Commission (MOEAIC) is the agency in charge of the screening and approval of foreign direct investment.

MOEA, including the InvesTaiwan system and MOEAIC, reports to the Legislative Yuan, which is the legislative branch in Taiwan. The Legislative Yuan is responsible for high-level investment policy through the adoption of investment-related laws and statutes. In addition, the foreign investment policies adopted by MOEA and the decisions surrounding individual investment proposals are frequent targets of criticism from members of the Legislative Yuan in their deliberations during the legislative assembly. In the Legislative Yuan, resolutions at the committee level have been passed to oppose specific investments approved by the investment agency.

As previously mentioned, the required approval process for bilateral investment agreements in Taiwan depends on the format and content of the agreement. The competent authorities are afforded wide discretion to determine which procedure applies to a specific bilateral agreement. In practice, competent authorities normally adopt the procedure under Article 12 of the Conclusion of Treaties Act for bilateral investment agreements, which is generally not challenged by the Legislative Yuan.

**d. Foreign investment law**

In Taiwan, there are three types of foreign investments: (1) foreign investments, (2) investments by overseas Chinese and (3)

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Chinese investments. The three types of foreign investments are governed under different rules. Taiwan's main foreign investment law is the Statute for Investment by Foreign Nationals. The Statute provides the definition, protection, restrictions and administration of investments by foreign nationals. There are two specific types of foreign investments that are governed under the other two statutes: investments by overseas Chinese are governed under the Statute for Investment by Overseas Chinese, and investments by Chinese are governed under the Regulations for Approval on Investment in Taiwan by People of Mainland Area. The content of the Statute for Investment by Overseas Chinese is almost identical to that of the Statute for Investment by Foreign Nationals, except that certain restrictions on investments applicable to foreign investors do not apply to overseas Chinese investors. The Regulations for Approval of Investment in Taiwan by People of the Mainland Area are much stricter, including the excluded qualification of investors, broader scope of prohibited sectors for investment and more severe penalties for violations.

#### e. Foreign investment promotion agency

The DOIS InvesTaiwan Office under the Ministry of Economic Affairs is responsible for foreign investment promotion. A newly established agency, InvesTaiwan Office is tasked with coordinating and integrating all governmental services for investment, promoting investment by providing single-window services for investment applications and implementing investment policy. The InvesTaiwan Office is a pyramid-structured system that comprises the InvesTaiwan Service Center, the MOEAIC (with the participation of 20 ministerial members under the MOEA) and the Department of Investment Services (with 24 main overseas units).

#### f. Foreign investment screening mechanism

Foreign direct investments and mergers and acquisitions are subject to a screening mech-

anism conducted by MOEAIC under MOEA. The approval of major investments requires deliberations in the Commission, the composition of which includes the following: The Chief Commissioner of the MOEAIC (the Vice Minister of MOEA), and Commissioners including the Deputy Director of National Security Bureau, Vice Minister of the Ministry of the Interior, Vice Minister of Ministry of Foreign Affairs, Vice Minister of Ministry of Finance, Vice Minister of Ministry of Health and Welfare, Vice Minister of Ministry of Culture, Deputy Minister of National Science and Technology Council and Deputy Administrator of Environmental Protection Administration, Executive Yuan, among others. In addition, the investor applying to invest in an industry in which investment is restricted by law or by an order given under the applicable law shall obtain approval thereof or consent thereto from the competent authority in charge of the industry in question.<sup>87</sup> Foreign investments can be prohibited based on national security, public order, public morals and public health reasons, or otherwise prohibited by law.<sup>88</sup> A negative list of industries is established for foreign investments, including electricity distribution, motor bus transportation, radio and television broadcasting, growing of rice and poster services.<sup>89</sup> However, even if a proposed investment is not on the negative list, it can still be blocked due to national security or other concerns.

Taiwan's attitude towards investments from China is different from its attitude towards general foreign investments. Chinese investments are subject to more restrictive rules and a rigorous screening process. Investment from China includes indirect Chinese investment through a foreign company if Chinese investors own more than 30 per cent of the foreign company investing or possess control over the company.<sup>90</sup> Taiwan has maintained a positive list of Chinese investments.<sup>91</sup> Chinese investments can otherwise be prohibited or restricted based on monopolistic market concerns, political, societal and cultural sensitivity, or national security concerns, as well as concerns over the investment's negative impact on domestic economic development or financial stability.<sup>92</sup>

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The broad scope of these restrictions demonstrates the special sensitivity of Chinese investments in Taiwan.

Because Chinese investments are considered more sensitive and are subject to more restrictive review, some may try to hide the origin of their investment and apply for approval as a general foreign investment. Therefore, the investment screening process pays special attention to identifying the sources of such funding.

- What is the impact?

As Taiwan adopts a welcoming attitude towards foreign investments, the screening mechanism does not constitute a substantial restriction on foreign investment inflows (other than Chinese investments). The review process is normally not lengthy, normally taking one to two months for uncontroversial cases. Generally, foreign investments do not encounter major obstacles from the screening mechanism. Criticism of Taiwan's investment screening includes an occasional lack of consistency, legal costs associated with the application procedure, a lack of transparency and excessive administrative discretionary power, the latter of which can lead to arbitrary rejection of applications. The lack of consistency results from a lack of consistent review standards. Political factors and social perceptions can also have a certain impact on the review results. Sometimes the reasons for additional required documents or rejections are not made clear. MOEAIC's decision is subject to administrative remedy procedures.

### **g. Subnational governments and foreign investment**

Foreign investments must comply with various rules at the local level. Even though it is not common, incidences have occurred in which local government obstructed the construction of factories by foreign investors that had been approved, which led to the withdrawal of the investments.

#### *1. Promotion: incentives*

Local governments can offer subsidies for foreign investments consistent with the general authority of the local governments.

#### *2. Screening*

The Committee of MOEAIC is composed of representatives from two of the local governments, that is, the Director General of the Department of Economic Development from the Taipei City Government, and the Kaohsiung City Government. Other than that, local governments are not involved in the screening mechanism.

### **h. Non-governmental entities and foreign investment policy making**

#### *1. Rights of participation in policy formation*

Non-governmental entities can make their voices heard in the legislation process, such as through participation in hearings related to the amendment of relevant investment laws. There are no specific participation rights for non-governmental entities in investment policy formation.

#### *2. Rights of comment on regulations of foreign investment*

There is a public notice and comment procedure for drafting administrative regulations.<sup>93</sup> Non-governmental entities can participate in that process, during which the public can provide comments on the draft regulations.<sup>94</sup> The practice of notice and comment procedures for draft laws prepared by administrative agencies has been in existence since 2016.<sup>95</sup>

- Right to challenge foreign investment regulations

Foreign investment regulations themselves are generally not subject to legal challenges in Taiwan.

### **i. Responsibility for IIA negotiations**

In Taiwan, the Office of Trade Negotiation is responsible for general IIA negotiations. For

negotiations with China, the Straits Exchange Foundation is responsible for negotiating with the Association for Relations Across the Taiwan Straits on investment issues.

#### **j. Policy of the state regarding IIAs**

Taiwan is actively pursuing negotiations and the finalization of IIAs.

##### *1. How many IIA memberships?*

The number of IIAs currently in force is 33.

##### *2. Model BIT?*

Taiwan does not have a Model BIT.

#### **k. ICSID membership**

Taiwan is not a member of ICSID.

#### **l. Defence of the state in ISDS**

MOEA is in charge of ISDS proceedings and, for individual investment arbitration cases, will be responsible for appointing arbitrators or exercising the right of consenting to the appointment in accordance with investment treaties/agreements.<sup>96</sup> In the event of investment disputes involving the authorities of other ministries and/or local governments, MOEA may form administrative coordinating teams whose members consist of personnel from relevant ministries and/or local governments to assist in preparing the defence.<sup>97</sup>

#### **m. The New York Arbitration Convention**

Taiwan is not a member of the New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

#### **n. Sovereign immunity**

Commercial activities of foreign governments may be subject to the jurisdiction of the civil courts in Taiwan.

#### **o. Investment insurance**

Investment insurance for political risk is provided through the publicly funded Export-Import Bank of the Republic of China. Taiwan is not a member of MIGA.

The investment insurance provides coverage against expropriation, war and wire transfer risks.<sup>98</sup> The insurance is only provided to domestic companies approved by or registered with MOEAIC. The maximum coverage for investment political risk insurance is 85 per cent of the insured value.<sup>99</sup>

The Export-Import Bank of the Republic of China has been profitable,<sup>100</sup> but its export insurance business, under which investment insurance is included, has not been profitable in recent years due to low insurance rates adopted under its policy function and its goal to increase the competitiveness of domestic exporters.<sup>101</sup> From 2019 to 2020, however, the export insurance business became profitable.<sup>102</sup>

### **IV. Financial regulation**

#### **a. General**

Taiwan's economy is highly oriented toward technology sectors. While the financial sector primarily plays a supportive role, it is well-developed. Indirect finance, notably bank loans, remains a primary source of funds for Taiwanese enterprises and citizens. As of 2022, the scale of bank credits in Taiwan had reached US \$1.22 trillion, which accounted for 162 per cent of Taiwan's GDP and may rank sixth among world economies.<sup>103</sup> That said, Taiwan's direct finance, notably the capital market, has also grown significantly. As of 2020, the market capitalization of companies listed in Taiwan had reached US \$1.73 trillion, which accounted for 249 per cent of Taiwan's GDP and may rank sixth among world economies.<sup>104</sup> Taiwan also has a highly developed insurance market. As of 2020, the insurance company asset to GDP ratio in Taiwan was 163 per cent, which ranked first among world economies.<sup>105</sup>

Taiwan's financial sector is generally a local market, leaving foreign financial institutions relatively marginalized. Taking depository

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institutions as an example, as of 2023, foreign banks only held 6 per cent of the overall bank assets in Taiwan. In contrast, domestic banks held 80 per cent of bank assets. Moreover, state-operated financial institutions, in particular, play a significant role. Among the domestic bank assets, 37 per cent were held by state-operated banks. Together with another 9 per cent of bank assets held by the Post Office, which is also a state-operated enterprise, state-operated financial institutions accounted for 46 per cent of Taiwan's overall bank assets.

### 1. Unitary regulator?

Before 2004, the Ministry of Finance was the primary financial regulator in Taiwan. The Ministry established the Bureau of Monetary Affairs, the Securities and Futures Commission and the Department of Insurance to be in charge of the supervision of the banking, securities and futures and insurance sectors, respectively. Notably, the Ministry of Finance, the Central Bank and the Central Deposit Insurance Corporation together handled the financial inspection of banks due to the limited human resources of the Bureau of Monetary Affairs. Accordingly, during that period, Taiwan adopted a sector-specific regulatory model.

In 2004, Taiwan moved towards the unitary regulator model by establishing the Financial Supervisory Commission ('FSC') to serve as the single financial regulator. This reform was in response to the emergence of financial conglomerates, notably, financial holdings in Taiwan. In 2001, Taiwan followed the international trend in permitting financial groups to conduct multiple financial businesses in the form of financial holdings. While this development introduced operational synergy, it also blurred the line between different financial sectors and thus resulted in the need to integrate sector-specific regulators. Since then, the FSC has served as the single financial regulator in Taiwan.

The global financial crisis ('GFC') did not affect Taiwan's unitary financial regulator model. Indeed, the impact of the GFC on Taiwan's financial sectors and the overall

economy was not as serious as in many jurisdictions. That said, two changes related to financial regulation followed the GFC. First, in 2012, the FSC underwent some organizational reforms. Following the reform, it is no longer an independent agency, and its operations changed from the initial committee system to a single-head system. Second, in 2012, the Financial Consumer Protection Act was promulgated. The FSC also established the Financial Ombudsman Institution to handle financial consumer disputes. These developments strengthened financial consumer protection in Taiwan.

Currently, the FSC is the single financial regulator in Taiwan, in charge of both prudential regulation and conduct regulation of all financial sectors. The FSC's mandates include promoting sound business management at financial institutions, maintaining financial stability, and facilitating financial market development.<sup>106</sup> Specifically, according to the Organic Act Governing the Establishment of the FSC, the FSC is the competent authority for the development, supervision, regulation, and examination of financial markets and financial service enterprises. The 'financial markets' include the banking market, the bills market, the securities market, the futures and derivatives market, the insurance market and their respective settlement systems. 'Financial service enterprises' include financial holding companies, the Financial Restructuring Fund,<sup>107</sup> the Central Deposit Insurance Corporation,<sup>108</sup> banking enterprises, securities enterprises, futures enterprises, insurance enterprises, electronic financial transaction enterprises and other financial service enterprises.<sup>109</sup>

The FSC has established four subordinate agencies to support its operations, including the Banking Bureau, the Securities and Futures Bureau, the Insurance Bureau and the Financial Examination Bureau.<sup>110</sup> The FSC also has 16 surrounding units in the form of corporations or foundations to support the FSC's operations, which are not governmental agencies per se but perform certain public functions. These units include the: Financial Ombudsman Institution, Central Deposit Insurance Corporation, National

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Credit Card Centre, Joint Credit Information Centre, Taiwan Academy of Banking and Finance, Financial Information Service Corporation, Taiwan Stock Exchange, Taipei Exchange, Taiwan Futures Exchange, Taiwan Depository & Clearing Corporation, Securities and Futures Investors Protection Centre, Taiwan Insurance Institute, Taiwan Insurance Guarantee Fund, Motor Vehicle Accident Compensation Fund, Taiwan Residential Earthquake Insurance Fund and Institute of Financial Law and Crime Prevention.

Taiwan's Central Bank, on the other hand, is primarily in charge of monetary policies. That said, its mandates include promoting financial stability, guiding sound banking operations, maintaining the stability of the internal and external value of the currency and fostering economic development within the scope of the above objectives.<sup>111</sup> To meet these mandates, the Central Bank also shares some financial regulation roles. For instance, it is the authority in charge of the bank payment system.<sup>112</sup>

## b. Banking

### 1. Status of central bank

Taiwan's Central Bank is not a *de jure* independent agency. The Organizational Act of the Executive Yuan, which enumerates several governmental agencies as independent agencies, does not include the Central Bank.<sup>113</sup> Additionally, the Central Bank of the Republic of China (Taiwan) Act does not identify the Central Bank as an independent agency. Accordingly, legally speaking, the Central Bank is not an independent agency and is subordinate to the Executive Yuan, Taiwan's highest administrative organ.<sup>114</sup>

That said, it is widely acknowledged that Taiwan's Central Bank possesses a significant level of *de facto* independence. In terms of personnel independence, both the Governor and two Deputy Governors have a fixed term of five years unaffected by elections, enhancing their ability to take independent decisions.<sup>115</sup> Financial independence seems slightly lower, with the budget estimate and financial statements of the Central Bank forming components

of the Executive Yuan's budget estimate and financial statements and thus subject to the review and audit of the Legislative Yuan and the audit authority.<sup>116</sup> Still, Taiwan's Central Bank is exceptionally profitable. It has paid more than NTD 180 billion (around USD 6.5 billion) of profits to Taiwan's treasury annually since 2009, representing nearly 10 per cent of its income. Perhaps because of this profitability, Taiwan's Government and the Parliament have refrained from interfering in the Central Bank's operations. Accordingly, in practice, Taiwan's Central Bank possesses a certain degree of operational independence.

### 2. National and/or subnational regulators

There are no subnational regulators of financial service providers.

### 3. Role of the legislator in international standard setting

The Legislative Yuan does not play an active role in introducing international banking standards into domestic legislation. The FSC, however, has incorporated international banking standards into domestic regulations from time to time.

### 4. IMF representation

Currently, Taiwan is not a member or observer of the IMF.

### 5. Targets of the central bank

As stipulated in the Central Bank of the Republic of China (Taiwan) Act, the Central Bank's mandates include promoting financial stability, guiding sound banking operations, maintaining the stability of the internal and external value of the currency and fostering economic development within the scope of the above objectives.<sup>117</sup>

### 6. Membership of the Bank for International Settlements (BIS)?

Currently, Taiwan is not a member of BIS or the Basel Committee on Banking Supervision (BCBS). Despite this, Taiwan voluntarily adopts many of the Basel Core Principles

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(BCPs). For instance, the FSC's Banking Bureau has established a research team that continuously studies related BCPs and stipulates or amends Taiwan's domestic regulations in accordance with updated BCPs, for example, the Basel III. Domestic regulations in Taiwan that follow the BCPs include the Regulations Governing the Capital Adequacy and Capital Category of Banks, Regulations Governing the Consolidated Capital Adequacy of Financial Holding Companies, Standards Implementing the Liquidity Coverage Ratio of Banks, and so on.

### c. Insurance

#### 1. National and / or subnational regulators?

The FSC is the unitary financial regulator in Taiwan, which regulates and supervises all financial markets and financial enterprises, including the insurance market and insurance enterprises.

Additionally, Taiwan's Insurance Act requires insurance enterprises to make contributions to establish a stabilization fund to preserve the policyholders' basic interests and maintain financial stability,<sup>118</sup> which resulted in the creation of the Taiwan Insurance Guaranty Fund.<sup>119</sup> The primary mandates of the Taiwan Insurance Guaranty Fund are to handle the liquidation of troubled insurance enterprises,<sup>120</sup> to protect the interests of the insured and to maintain stability.

#### 2. Role of the legislator in international standard setting

The Legislative Yuan does not play an active role in introducing international insurance standards into domestic legislation. The FSC, however, has incorporated international insurance standards into domestic regulations from time to time.

#### 3. Membership of the International Association of Insurance Supervisors (IAIS)?

Taiwan is a founding member of IAIS and has participated in IAIS's activities since its

incorporation in 1994. Currently, the FSC represents Taiwan in the IAIS. In general, Taiwan accepts the ICPs and progressively incorporates ICPs into domestic regulations.

### d. Pensions, investment, special funds authority and sovereign wealth funds

Taiwan has not established a sovereign wealth fund thus far. That said, the Taiwanese government controls the so-called 'Four Funds', which may serve specific policy functions. These Four Funds include the Public Service Pension Fund, the Labour Insurance Fund, the Labour Pension Fund and Postal Savings. Besides the Four Funds, the National Development Fund also plays a significant role in supporting Taiwan's industrial policies.

The Public Service Pension Fund is administered by a special management board established under the Examination Yuan, which is an executive organ separate from the Cabinet (named the Executive Yuan). As of 2022, this fund administered US\$23 billion of funding. In contrast, the Labour Insurance Fund and the Labour Pension Fund are administered by the Bureau of Labour Funds, established under the Ministry of Labour. As of 2022, these two funds respectively administered US\$25 billion and USD 147 billion of funding. Last but not least, Postal Savings are essentially savings at the Post Office. While the Ministry of Transportation and Communications is the competent authority for the Post Office, the FSC may also exercise supervisory power over the savings business of the Post Office. As of 2021, savings at the Post Office had reached US\$231 billion. In addition to the Four Funds, the NDC administers the National Development Fund to support industrial transformation and innovation, including start-up businesses. As of 2022, the net value of the National Development Fund was US\$33 billion.

In light of the scale of the above funds, the Taiwanese government controls enormous financial resources to serve certain policy needs. In practice, the Taiwanese government often uses the Four Funds to stabilize

the stock market when the market undergoes severe fluctuations.

### e. Stock exchanges

#### 1. Number of stock exchanges

Taiwan has two stock exchanges: the Taiwan Stock Exchange and the Taipei Exchange. The Taiwan Stock Exchange is a securities exchange incorporated under Taiwan's Securities Exchange Act, which receives securities exchange approval to handle the centralized trading of listed securities in Taiwan. On the other hand, the Taipei Exchange does not have a clear legislative mandate and does not receive securities exchange approval. However, to the extent that it handles the centralized trading of over-the-counter securities in Taiwan, it is also a centralized exchange and is, *de facto*, a stock exchange.

#### 2. Regulator

The FSC is the unitary financial regulator in Taiwan, which regulates and supervises all financial markets and financial enterprises, including the securities market and securities enterprises.

#### 3. Role of the legislator in international standard setting

The Legislative Yuan has no direct role in introducing international securities standards into domestic legislation. The FSC, however, has incorporated international securities standards into domestic regulations from time to time.

#### 4. Membership of the International Organization of Securities Commissions (IOSCO)?

Taiwan has been an official member of IOSCO since 1987.

##### a. Who represents the country in the IOSCO?

Currently, the FSC represents Taiwan in the IOSCO.

### f. FinTech

As mentioned above, Taiwan's financial market is well-developed. Therefore, Taiwan is less plagued by issues of underbanked and underinsured populations. Against this backdrop, Taiwan's FinTech policy is more closely related to enhancing the overall efficiency of financial services than supporting the underbanked.

Limited by its regulatory resources, the FSC is inclined to take a wait-and-see approach in regulating innovative FinTech products or services. It thus refrains from exercising its jurisdiction over new areas unless a regulatory need surfaces. Therefore, several FinTech services, such as peer-to-peer lending platforms and third-party service providers, are available to Taiwanese consumers with no requirement that their providers obtain a financial license in Taiwan.

Taiwan's early regulatory effort in the area of FinTech focused on electronic payments. Traditionally, only banks may operate remittance services in Taiwan.<sup>121</sup> In 2009, the Act Governing Issuance of Electronic Stored Value Cards was promulgated, marking the commencement of non-banks' chance to be licensed to operate e-money services in the form of stored value cards in Taiwan. In 2015, the Act Governing Electronic Payment Institutions was promulgated, permitting more non-banks to be licensed to engage in electronic payment services. The Act also exempted small-scale third-party payment service providers which merely collect and make payments for real transactions as agents from obtaining a license. In 2021, Taiwan further integrated the above two Acts, formulating a unified regulatory environment for non-bank electronic payment service providers. As of 2023, there were ten electronic payment institutions in Taiwan, handling US\$118 billion of stored value and US\$317 billion of electronic payments.

Another regulatory effort surrounding FinTech concerned robo-advisors. 'Robo-advisors' under Taiwanese laws refer to the online provision of consultation services on customers' investment portfolios with little to no human intervention. Under this definition, robo-advisor

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service providers use algorithms instead of human advisors to provide investment advisory services. The FSC has characterized robo-advisor services as a securities investment consulting services. Therefore, robo-advisor service providers in Taiwan are required to obtain investment consulting licenses. In 2017, the Securities Investment Trust and Consulting Association promulgated the Guidelines for Securities Investment Consulting Services of Securities Investment Consulting Enterprises (SICEs) with Automated Tools (Robo-Advisor) to govern robo-advisor service providers. Robo-advisor markets grew significantly in Taiwan during the COVID-19 pandemic. As of September 2023, there were 16 robo-advisor service providers in Taiwan, handling US\$0.24 billion in assets.

Another FinTech development that received regulatory attention is virtual banks. In 2018, the FSC amended the Standards Governing the Establishment of Commercial Banks to permit the incorporation of virtual banks. In 2019, the FSC approved three virtual bank licenses. As of 2023, virtual banks received US\$3.43 billion in deposits. Based on the experience of virtual banks, the FSC is currently contemplating the licensing of virtual insurance firms and virtual securities firms.

With regard to crypto-asset and crypto-asset service providers, in principle, Taiwanese laws do not require crypto-asset service providers to obtain a financial license unless the crypto-asset involves securities tokens. Under this exception, issuers and related service providers are subject to securities regulations. In 2021, the FSC followed the Recommendations of the Financial Action Task Force and promulgated the Regulations Governing Anti-Money Laundering and Countering the Financing of Terrorism for Enterprises Handling Virtual Currency Platform or Transaction to impose AML/CFT obligations upon several crypto-asset service providers, such as crypto-asset trading platforms, custodial wallet providers and underwriters.<sup>122</sup> As of February 2024, the FSC had approved the AML/CFT compliance of 25 crypto-asset service providers.

Parallel to the above regulations, Taiwan introduced the regulatory sandbox in 2018 to

permit experiments in FinTech innovation. The Financial Technology Development and Innovative Experimentation Act was promulgated in 2018, permitting both financial and non-financial institutions to apply for innovative experiments for FinTech products or services. As of 2023, the FSC had approved nine sandbox applications, and all of them had completed the experiments. In addition to the regulatory sandbox, the FSC has permitted financial institutions to apply for business pilots since 2019, starting with banks and moving to insurance firms and securities and futures firms. As of 2023, the FSC had approved 71 applications, and 45 of those had completed the pilots and launched their businesses.

## V. Tax

### a. General

Taxes in Taiwan can be broadly classified into income tax (e.g., personal income tax and business income tax), property tax (e.g., land tax and house tax), consumption tax (e.g., business tax) and others (e.g., tariff). Among these taxes, income tax plays a major role. In 2023, Taiwan collected US\$111 billion from taxation, and income tax accounted for 53 per cent of this figure. Among the income tax, business income tax accounted for 59 per cent, while personal income tax accounted for the remaining.

Tax authorities do not have the general authority to offer foreigners any special tax treatment. Nonetheless, to attract foreign special professionals, the Act for the Recruitment and Employment of Foreign Professionals provides that a foreign special professional who meets specified conditions may enjoy special income tax treatment for five years. Specifically, in computing their total income for assessing income tax, the component of their salary income above NTD 3 million in each tax year may be halved.<sup>123</sup>

According to the general understanding, Taiwan is not considered a tax haven.<sup>124</sup>

### b. Tax regulator

Taxes in Taiwan include national taxes and local taxes. The Ministry of Finance is the

national tax authority in charge of tax affairs in Taiwan and collects national taxes with the support of five national taxation bureaus<sup>125</sup> under its supervision. In addition to the Ministry of Finance, each local government has a revenue service office or tax bureaus for collecting local taxes, amounting to 22 local tax authorities<sup>126</sup> in Taiwan.

#### **c. Member of a regional tax organization?**

Taiwan is not a member of most regional tax organizations. The main regional tax organization that Taiwan has joined is the Study Group on Asian Tax Administration and Research ('SGATAR'), an annual forum for tax administrators to enhance cooperation, improve administration, and discuss issues related to tax administration. Taiwan joined the SGATAR in 1996.

#### **d. Role of the legislator in international standard setting?**

The Legislative Yuan has no direct role in introducing international tax standards into domestic legislation. However, the Ministry of Finance has introduced international tax standards into domestic regulations from time to time.

#### **e. Double taxation avoidance agreements**

As of 2023, Taiwan had entered into comprehensive double taxation agreements with 35 jurisdictions. Additionally, Taiwan had entered into double taxation agreements on shipping or air transport with 13 jurisdictions.<sup>127</sup>

#### **f. Membership of the Base Erosion and Profit Shifting Project (BEPS)?**

Taiwan is neither a member of the Inclusive Framework on BEPS of the Organisation for Economic Co-operation and Development ('OECD') nor a party to the MLI Convention. However, Taiwan has voluntarily implemented related international anti-avoidance tax measures. A self-assessment indicates that most of

Taiwan's comprehensive DTAs, as mentioned above, meet the BEPS Minimum Standards.<sup>128</sup>

#### **g. The Mutual Administrative Assistance Convention**

Taiwan has not signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. Nonetheless, when enacting the Regulations Governing the Exchange of Tax Information Concerning Agreements on Tax Matters in 2017, the Ministry of Finance employed references from the templates of the said Convention to enhance the predictability of Taiwan's exchange of tax information concerning tax agreement matters for parties entering into tax agreements with Taiwan.<sup>129</sup>

#### **h. Patent boxes**

Taiwan has not adopted patent boxes.

### **VI. Artificial intelligence (AI)**

The NDC has developed the 'Asia-Silicon Valley Development Plan' to transform Taiwan into an Asian Silicon Valley through the development of the Internet of Things (IoT) industry sector. The plan is focused on the linkage of Taiwan and the IoT clusters to promote R&D innovation, and to upgrade the entrepreneurship ecosystem in the region.<sup>130</sup>

Together with the Ministry of Science and Technology's (MOST) AI strategy, the Executive Yuan's AI Action Plan aims to stimulate AI development in Taiwan. Guided by a vision of a digital infrastructure package that will foster AI applications, the Executive Yuan has also approved action plans for 5G technology in Taiwan, with the ultimate goal of building Taiwan into a suitable environment, conducive to innovative uses of 5G. The project targets main areas, such as data security, digital inclusion, open government and SMEs' digital transformation, with a focus on developing Taiwan's strategic industries in the post-pandemic age.<sup>131</sup>

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Moreover, Taiwan's first legislation on AI research and experimentation, the Autonomous Vehicles Technology Innovative Experimentation Law, became effective in 2019. The objective of the law is to ease restrictions on AI technologies, create a pro-innovation legal environment to build connections with local industries and create industrial ecosystems for AI developments. This covers autonomous vehicles on land, at sea, and in the air. In addition, Taiwan's CAR (Connected, Autonomous, Road-Test) Lab, a restricted area designed for testing autonomous vehicles, has been opened for use to offer experimental grounds.<sup>132</sup>

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## Notes

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  77. See *supra* note 60. As of December 2022, Taiwan has signed FTA with Panama (2003), Guatemala (2006), El Salvador and Honduras (2008), Eswatini (2018), Paraguay (2018), Eswatini (2019) and Belize (2022). Taiwan terminated a previous FTA with Nicaragua in 2022.
  78. The Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation (ANZTEC). Text and Annexes are available at <https://www.nzcio.com/en/anztec/about-anztec/>.
  79. The agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership (ASTEP). Text and Annexes are available at <https://fta.trade.gov.tw/ftapage.asp?k=2&p=9&n=456&a=329>.
  80. For the information of all the FTAs Taiwan signed with trade partners, see <https://fta.trade.gov.tw/?fbclid=IwAR1DwV3EATGj5s-vYavMvkmAFdZrWVvEYol50tLz24MF3zkW4yCYmsFvy0>.
  81. Statute for Investment by Foreign Nationals, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0040002>.
  82. Statute for Investment by Overseas Chinese, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0040001>.
  83. Measures Governing Investment Permit to the People of Mainland Area, <https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=Q0040015>.
  84. Statute for Investment by Foreign Nationals, art. 2 ¶ 1.
  85. Statute for Investment by Overseas Chinese, art. 2 ¶ 1.
  86. Act Governing Relations between the People of the Taiwan Area and the Mainland Area, art. 3-1, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=Q0010001>.
  87. Statute for Investment by Foreign Nationals, art. 7, ¶ 2.
  88. Statute for Investment by Foreign Nationals, art. 7, ¶ 1.
  89. The negative list of investment sectors (February 8, 2018), <http://www.moeaic.gov.tw/download-file.jsp?do=BP&id=ZYi4SMROrBA=>.
  90. Measures Governing Investment Permit to the People of Mainland Area, art. 3, ¶ 2.
  91. Measures Governing Investment Permit to the People of Mainland Area, art. 8, ¶ 1.
  92. Measures Governing Investment Permit to the People of Mainland Area, art. 8, ¶ 2.
  93. For administrative regulations, Administrative Procedure Act, art. 154, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030055>.
  94. For administrative regulations, Administrative Procedure Act, art. 154 ¶, 1(4).
  95. Decree No. 1050175399 by Secretary General of the Executive Yuan on September 5, 2016.
  96. Directions for Conducting Arbitration and Enforcing Arbitral Awards under Investment Treaties or Agreements, art. 3 ¶1(3).
  97. Directions for Conducting Arbitration and Enforcing Arbitral Awards under Investment Treaties or Agreements, art.3, ¶ 2.
  98. The Export-Import Bank of the Republic of China, Investment Insurance Coverage, <https://www.eximbank.com.tw/zh-tw/FAQ/ECI/OII/Pages/2008-8-6-11.aspx>.
  99. The Export-Import Bank of the Republic of China, Investment Insurance, <https://www.eximbank.com.tw/zh-tw/BankService/ECI/Pages/OICI.aspx>.
  100. 2020 Annual Report of the Export-Import Bank of the Republic of China 72, <https://www.eximbank.com.tw/zh-tw/FinanceInfo/AnnualReport/SiteAssets/Pages/default/%E4%B8%AD%E5%9C%8B%E8%BC%B8%E5%87%BA%E5%85%A5%E9%8A%80%E8%A1%8C109%E5%B9%B4%E5%B9%B4%E5%A0%B1.pdf>.
  101. 2020 Budget Report of the Export-Import Bank of the Republic of China 3, [https://www.ly.gov.tw/File/Attach/196154/File\\_264774.pdf](https://www.ly.gov.tw/File/Attach/196154/File_264774.pdf).
  102. 2020 Annual Report of the Export-Import Bank of the Republic of China 76–77.
  103. According to the survey of GlobalEconomy.com, the six economies outperforming Taiwan in this category include Macao (326 per cent), Hong Kong (264 per cent), China (185 per cent), Cambodia (177 per cent) and South Korea (176 per cent). *Bank Credit to the Private Sector – Country Rankings*, the Global Economy.com, [https://www.theglobaleconomy.com/rankings/Bank\\_credit\\_to\\_the\\_private\\_sector/](https://www.theglobaleconomy.com/rankings/Bank_credit_to_the_private_sector/).
  104. According to the survey of GlobalEconomy.com, the five economies outperforming

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- Taiwan in this category include Hong Kong (1,769 per cent), Iran (599 per cent), Saudi Arabia (347 per cent), South Africa (313 per cent) and Switzerland (266 per cent). *Stock Market Capitalization, Percent of GDP – Country Rankings*, the GlobalEconomy.com, [https://www.theglobaleconomy.com/rankings/Stock\\_market\\_capitalization](https://www.theglobaleconomy.com/rankings/Stock_market_capitalization).
105. *Insurance Company Assets – Country Rankings*, the GlobalEconomy.com, [https://www.theglobaleconomy.com/rankings/insurance\\_company\\_assets/#:~:text=Insurance%20company%20assets%2C%20percent%20of,90%20countries%20was%2025.41%20percent](https://www.theglobaleconomy.com/rankings/insurance_company_assets/#:~:text=Insurance%20company%20assets%2C%20percent%20of,90%20countries%20was%2025.41%20percent).
  106. Organic Act Governing the Establishment of the Financial Supervisory Commission, art. 1 (Taiwan).
  107. The Financial Restructuring Fund is a fund established by the Taiwanese government in 2001 to support the increasing number of distressed financial institutions in Taiwan in the 1990s. The funding source of the Fund includes specified tax revenues and increased deposit insurance premium. The Fund may use its finance to repay the deposit and non-deposit debt of distressed financial institutions. In 2011, as the local financial crisis in the 1990s has been under control, the Fund suspended its operation in 2011. In these ten years, the Fund has supported 56 distressed financial institutions and repaid around USD 9.5 billion of debt for these institutions.
  108. The Central Deposit Insurance Corporation ('CDIC') is a corporation incorporated by Taiwan's Ministry of Finance and Central Bank in 1985 to offer deposit insurance services. Since 1999, all Taiwanese banks are required to join the deposit insurance scheme offered by the CDIC.
  109. *Ibid.* art. 2(1) and (2).
  110. *Ibid.* art. 4.
  111. The Central Bank of the Republic of China (Taiwan) Act, art. 2 (Taiwan).
  112. Organic Act Governing the Establishment of the Financial Supervisory Commission, art. 2 (2) (Taiwan).
  113. Organizational Act of the Executive Yuan, art. 9 (Taiwan).
  114. Constitution of the Republic of China (Taiwan), art. 53 (Taiwan).
  115. The Central Bank of the Republic of China (Taiwan) Act, art. 9(1) (Taiwan).
  116. *Ibid.* arts. 40 and 41.
  117. The Central Bank of the Republic of China (Taiwan) Act, art. 2 (Taiwan).
  118. Insurance Act, art. 143-1(1) (Taiwan).
  119. Regulations Governing Management of Insurance Guaranty Funds, art. 2 (Taiwan).
  120. Insurance Act, art. 143-3(1) (Taiwan).
  121. Banking Act, art. 29 (Taiwan).
  122. Regulations Governing Anti-Money Laundering and Countering the Financing of Terrorism for Enterprises Handling Virtual Currency Platform or Transaction, art. 2 (Taiwan).
  123. Act for the Recruitment and Employment of Foreign Professionals, art. 20.
  124. World Population Review, Tax Haven Countries 2022, <https://worldpopulationreview.com/country-rankings/tax-haven-countries>.
  125. These five bureaus include those of Taipei City, Kaohsiung City, the Northern Area, the Central Area and the Southern Area.
  126. These 22 local tax authorities include New Taipei City, Taipei City, Taoyuan City, Taichung City, Tainan City, Kaohsiung City, Yilan County, Hsinchu County, Miaoli County, Changhua County, Nantou County, Yunlin County, Chiayi County, Pingtung County, Taitung County, Hualien County, Penghu County, Keelung City, Hsinchu City, Chiayi City, Kinmen County and Lianjiang County.
  127. For a list of these DTAs, see Ministry of Finance, R.O.C., Treaty Network, <https://www.mof.gov.tw/singlehtml/264?cntId=82780>.
  128. Ministry of Finance, R.O.C., A Glance at Taiwan's Position, explained by reference to the 'Template Reservations and Notifications under the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting', <https://www.mof.gov.tw/Eng/singlehtml/264?cntId=84076>.
  129. Ministry of Finance, R.O.C., Press Release re the Promulgation of the Regulations Governing the Exchange of Tax Information Concerning Agreements on Tax Matters (Dec. 7, 2017), <https://www.mof.gov.tw/singlehtml/384fb3077bb349ea973e7fc6f13b6974?cntId=dot77053>.
  130. See, e.g., Asia Silicon Valley Program, National Development Council, available at <https://www.ndc.gov.tw/en/>.
  131. AI Taiwan Action Plan, Executive Yuan, <https://english.ey.gov.tw/News3/9E5540D592A5FECD/1dec0902-e02a-49c6-870d-e77208481667>.

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132. As of March 2022, 11 experiments have been approved under the Unmanned Vehicles Technology Innovative Experimentation Law. See [https://www.moea.gov.tw/MNS/doctype/content/Content.aspx?menu\\_id=34406](https://www.moea.gov.tw/MNS/doctype/content/Content.aspx?menu_id=34406).