



# Construction

in 35 jurisdictions worldwide

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# 2014



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# Taiwan

**Helena H C Chen**

Formosan Brothers, Attorneys-at-Law

## 1 Foreign pursuit of the local market

If a foreign designer or contractor wanted to set up an operation to pursue the local market what are the key concerns they should consider before they took such a step?

To set up an operation to pursue the Taiwan market, all foreign contractors will be required to do the following:

- obtain approval from the relevant local authority;
- set up a local entity, which can be a subsidiary, branch or partnership, with proper company registration or business registration (as the case may be);
- obtain a construction enterprise registration certificate;
- join the association of the construction industry;
- maintain a specific amount of company capital (in the case of a subsidiary) or capital for operations in Taiwan (in the case of a branch) as required by law; and
- employ full-time professional engineers as required by law.

To set up a professional engineering consulting firm to pursue the Taiwan market, all foreign designers will be required to do the following:

- obtain approval from the relevant local authority;
- set up a local entity;
- obtain a registration certificate for the professional engineering consulting firm;
- join the national or a local association of engineering consultants; and
- maintain a certain number of licensed professional engineers in specific positions as required by law.

A foreign designer or contractor should also take into consideration local labour laws and regulations.

## 2 Licensing procedures

Must foreign designers and contractors be licensed locally to work and, if so, what are the consequences for working without a licence?

Any foreign contractors or designers intending to perform any work or to provide a service in Taiwan, must be properly licensed, and can only provide such work or service in accordance with the type of licence issued. Designers and contractors providing a service or performing work without a proper licence will be ordered to shut down business operations and will be fined by the relevant local authority.

For foreign architects and professional engineers to provide professional services in Taiwan, they are required to either obtain licences issued by the Taiwan authority or be qualified in a country that has reciprocal recognition arrangement with Taiwan.

## 3 Competition

Do local laws provide any advantage to domestic contractors in competition with foreign contractors?

Advantages provided to domestic contractors in competition with foreign contractors have been largely alleviated by Taiwan's accession to the Government Procurement Agreement (GPA), which came into force on 15 July 2009. Below are two examples:

- article 69 (2) of the Construction Industry Act provides that unless otherwise prohibited by law, convention or treaty to which Taiwan is a party, for any government public construction project exceeding 1 billion New Taiwan dollars, a foreign contractor must participate in a joint venture with a domestic general contractor. The GPA specifically prohibits this joint venture requirement; therefore, article 69 (2) of the Construction Industry Act will not apply to procurements covered by the GPA; and
- the Industrial Cooperation Programme (ICP) refers to an obligation imposed on a foreign contractor under a government procurement project to execute certain industrial or commercial activities such as local investment, local procurement, technology transfer, etc. The GPA has narrowed down the application of the ICP to a very limited scope, such as a few transitional measures regarding transport.

## 4 Bribery

If a contractor has illegally obtained the award of a contract, for example by bribery, will the contract be enforceable? Are bribe-givers and bribe-takers prosecuted and, if so, what are the penalties they face? Are facilitation payments allowable under local law?

Government construction contracts usually, if not always, provide that the procuring entity may terminate or suspend a contract when it is discovered that the award of the contract was illegally obtained. Both parties to a bribe are subject to criminal prosecution and penalties. Facilitation payments to a public official are also strictly prohibited and both parties will be subject to criminal punishment as well.

## 5 Political contributions

Is the making of political contributions part of doing business? If so, are there laws that restrict the ability of contractors or design professionals to work for public agencies because of their financial support for political candidates or parties?

Political contributions do not necessarily form part of the running of a business. Political contributions are regulated by laws and regulations, inter alia, the Taiwan Political Donations Act.

**6 Other international legal considerations**

Are there any other important legal issues that may present obstacles to a foreign contractor attempting to do business in your jurisdiction?

The government entities' and state-owned enterprises' reluctance to agree to arbitration is one of the most commonly complained obstacles to foreign contractors attempting to do business in Taiwan.

For projects not covered by GPA, there are additional obstacles to a foreign contractor. For example:

- for any government public construction project exceeding one billion New Taiwan dollars, a foreign contractor must participate in a joint venture with a domestic general contractor; and
- the government procuring entities may impose ICP obligations on a foreign contractor.

**7 Construction contracts**

What standard-contract forms are used for construction and design? Must the language of the contract be the local language? Are there restrictions on choice of law and the venue for dispute resolution?

The Public Construction Commission of the Executive Yuan has published model contracts for:

- construction procurements;
- turnkey projects;
- public construction professional service;
- public construction project management; and
- others.

The government entities may opt to use those model contracts for their projects. In addition, major procurement entities, such as Taiwan Area National Freeway Bureau, Taiwan Area National Expressway Engineering Bureau and the Department of Rapid Transit System of Taipei City Government, have their own standard contracts.

In terms of government procurement contracts, even though it is not required by law, the language used for these contracts is usually traditional Chinese and the governing law agreed by the parties is usually Taiwan law. In most cases, the government entities and state-owned enterprises are persistent about the venue for dispute resolution in Taiwan. Only in rare cases, will a state-owned enterprise agree to the venue for dispute resolution in a third country.

**8 Payment methods**

How are contractors, subcontractors, vendors and workers typically paid and is there a standard frequency for payments?

Cheques and bank transfers are the two most common methods of payment. Payments are usually made monthly or bi-weekly.

**9 Contractual matrix of international projects**

What is the typical contractual matrix for a major project in your jurisdiction in terms of the contractual relationships among the various construction project participants?

The owners usually contract directly with contractors.

**10 PPP and PFI**

Is there a formal statutory and regulatory framework for PPP and PFI contracts?

The Act for Promotion of Private Participation in Infrastructure Projects regulates projects equivalent or similar to PPP projects, such as BOT projects. But there is no formal statutory framework for PFI contracts in Taiwan.

**11 Joint ventures**

Are all members of consortia jointly liable for the entire project or may they allocate liability and responsibility among them?

All members of consortia are held jointly and severally liable for the entire project to a third party. However, internally, the members can allocate different portions of liability and responsibility among themselves.

**12 Tort claims and indemnity**

Do local laws permit a contracting party to be indemnified against all acts, errors and omissions arising from the work of the other party, even when the first party is negligent?

According to Taiwan tort law and the principle of contributory negligence, if the party claiming for indemnification was negligent and his or her negligence resulted in or aggravated the damages caused by the other party, both parties shall share the liability for the damages proportionately.

**13 Liability to third parties**

Where a contractor constructs a building that will be sold or leased to a third party, does the contractor bear any potential responsibility to the third party? May the third party pursue a claim against the contractor despite the lack of contractual privity?

Under Taiwan tort law, a contractor who, intentionally or negligently, has wrongfully damaged the rights of another is liable to compensate him or her for any injury arising thereof. Under such a situation, the third party may pursue a claim against the contractor under tort law, despite the lack of contractual privity.

**14 Insurance**

To what extent do available insurance products afford a contractor coverage for: damage to the property of third parties; injury to workers or third parties; delay damages; and damages due to environmental hazards. Does the local law limit contractors' liability for damages?

Various types of insurance are available to a contractor, including contractors' all risks (CAR) insurance, erection all risks (EAR) insurance, contractors' plant and machinery (CPM) insurance, contractors' liability insurance and so on.

Nonetheless, it is important to review the exclusions provided in the policy carefully. For example, in a contractors' liability insurance policy, damages caused by reasons attributable to contractors may be explicitly excluded.

Taiwan law does not limit a contractors' liability for damages, however, the parties may agree to a limit in respect of their liability to each other, provided that liability for wilful conduct or gross negligence shall not be released in advance.

**15 Labour requirements**

Are there any laws requiring a minimum amount of local labour to be employed on a particular construction project?

No laws exist compelling any employer or company to employ a minimum amount of local labour on a particular construction project.

To hire foreign labourers to work in Taiwan, the employer must obtain permits from the government in advance. Blue-collar foreign labourers can be employed only under exceptional conditions when all of the following conditions are met:

- the employer has tried to hire local labourers with reasonable terms but failed to solicit enough manpower;
- the project is of a large scale;

- the total number of foreign labourers cannot exceed 20 per cent of the number calculated by using certain manpower demand formulae announced by the Taiwan government; and
- the salary shall meet the minimum requirement set forth by the government.

The employer can employ white-collar foreign employees for specialised or technical work or for positions as directors, managers or executives of a business invested in or set up by overseas Chinese or foreigners with the authorisation of Taiwan government. There are statutory requirements for the qualifications of the employee as well as the employer, minimum salary, etc. For details, see: <http://www.cla.gov.tw/>.

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#### 16 Local labour law

If a contractor directly hires local labour (at any level) for a project, are there any legal obligations towards the employees that cannot be terminated upon completion of the employment?

The first step is to distinguish whether the contract entered into by the employer and the employee is either:

- a contract of employment; or
- a contract of mandate.

Employment contracts and contracts of mandate are treated differently under Taiwan law. The parties are entitled to agree upon the grounds of termination in a contract of mandate.

However, if the contract between the parties is an employment contract, mandatory provisions in the Taiwan Labour Standards Act apply. Employees under a non-fixed-term employment contract cannot be dismissed unless any of the grounds set forth in articles 11 or 12 of Taiwan Labour Standards Act exists.

Fixed-term contracts can only be used in temporary, short-term, seasonal or specific work. It is unresolved as to whether it is possible for an employer to conclude a fixed-term contract with an employee by arguing that certain construction project is considered 'specific work'.

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#### 17 Close of operations

If a foreign contractor that has been legally operating decides to close its operations, what are the legal obstacles to closing up and leaving?

The same laws apply to both domestic contractor and foreign contractor when they plan to wind up a business. There is no additional termination payments particularly assessed against a foreign contractor.

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#### 18 Payment rights

How may a contractor secure the right to payment of its costs and fees from an owner? May the contractor place liens on the property?

According to article 513 (1) of the Taiwan Civil Code, when the contract of hire of work is for the construction of buildings or other works on land or for vital repairs on such buildings or works, the contractor may demand that the proprietor or owner registers a right of mortgage on the existing buildings or works or on the buildings or works to be completed in the future.

Nonetheless, when the owner is a private company, the owner usually requires the contractor to expressly waive his or her right of the statutory lien provided in article 513 (1) of the Taiwan Civil Code.

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#### 19 Contracting with government entities

Can a government agency assert sovereign immunity as a defence to a contractor's claim for payment?

A government agency cannot assert sovereign immunity as a defence to a contractor's claim for payment.

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#### 20 Statutory payment protection

Where major projects have been interrupted or cancelled, do the local laws provide any protection for unpaid contractors who have performed work?

Article 511 of the Taiwan Civil Code provides that the 'proprietor may terminate the contract at any time before the completion of the work; however, he shall compensate the undertaker for any damages resulting from such termination'. Unless otherwise agreed by the parties, when an owner terminates the contract at will, the unpaid contractor may seek compensation against the owner pursuant to article 511 of the Taiwan Civil Code.

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#### 21 Force majeure and acts of God

Under local law are contractors excused from performing contractual obligations owing to events beyond their control?

Article 225 (1) of the Taiwan Civil Code provides that 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 attributable'. Under the Taiwan Civil Code, the general principle is that a party is responsible for damages or injury incurred from his or her wilful conduct or negligence. Construction contracts usually include a clause to define what constitutes a force majeure event or act of God and the steps that the parties are expected to take should a force majeure event or act of God happen.

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#### 22 Courts and tribunals

Are there any specialised tribunals that are dedicated to resolving construction disputes?

For the Complaint Review Board for Government Procurement of the Public Construction Commission, the Executive Yuan (CRBGP) has a committee comprised of experts with engineering, procurement or legal backgrounds, along with high-ranking Public Construction Commission personnel.

A contractor may file a complaint against the government procuring entity pursuant to the Government Procurement Act or the Act for Promotion of Private Participation in Infrastructure Projects. The CRBGP will assign its committee members to hear the compliant cases and render its decisions. In addition, the CRBGP also provides mediation services to assist the parties of government procurement contracts to resolve their disputes arising from the government procurement contracts.

The Taiwan Taipei District Court has a specialised unit composing of 13 judges for hearing construction disputes. This is an official unit and cases involving construction disputes will be assigned to judges of this unit.

The Chinese Arbitration Association, Taipei (CAA) announced a Roster of Chair Arbitrators for CAA Construction Arbitration for the general public's use and reference.

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#### 23 Dispute review boards

Are dispute review boards (DRBs) used? Are their decisions treated as mandatory, advisory, final or interim?

DRBs are used in certain construction contracts. Contracts providing the use of DRBs usually involve larger scale of work and sizeable contract sums, for instance, the contracts for the construction of the Taiwan High Speed Rail. The effect of DRBs' decisions varies with the terms of the contracts that the parties have agreed to.



In addition, the CAA also provides for the DRBs' service. For the parties' reference and inclusion to their construction contracts, the CAA provides for a model DRBs clause, a Panel of Dispute Review Board Members and CAA Construction Dispute Review Board Rules.

Under the CAA Construction Dispute Review Board Rules, if no party objects to the DRBs' decision in writing within 28 days from receipt of the decision, the decision becomes binding on the parties. Should any party discover new evidence that was not considered during the review proceedings and is important enough to have an effect on the decision, the party may, within seven days of the decision being made, request the board to reconsider the decision.

#### 24 Mediation

Has the practice of voluntary participation in professionally organised mediation gained acceptance and, if so, how prevalent is the practice and where are the mediators coming from? If not, why not?

The CAA Mediation Center, established in 2003, is the first private mediation centre in Taiwan. After the CAA Mediation Center's promotion of the concept of mediation over the years, the practice of voluntary participation in professionally organised mediation has gradually gained acceptance. However, there is still room for further improvement.

The CAA Mediation Center maintains its own panel of mediators. According to article 14 (5) of CAA Mediation Center Mediation Rules, parties agreeing to submit their disputes to the CAA Mediation Center can only appoint mediators from its panel of mediators.

#### 25 Confidentiality in mediation

Are statements made in mediation confidential?

Article 18 of CAA Mediation Center Mediation Rules states that, unless otherwise agreed by the parties or required by law, statements made during the mediation proceedings are confidential.

In terms of mediation conducted by the court, article 422 of the Taiwan Code of Civil Procedure provides that 'no guidance provided by the mediators or the judge and no representations or concessions made by the parties during the mediation proceedings may be admitted as the basis for making decisions in an action initiated (or resumed) as a result of an unsuccessful mediation'.

#### 26 Arbitration of private disputes

What is the prevailing attitude towards arbitration of construction disputes? Is it preferred over litigation in the local courts?

Generally speaking, the Taiwan government entities and state-owned enterprises prefer litigation to arbitration, while the contractors prefer arbitration to litigation because arbitration tends to be more time and cost efficient than litigation in local courts.

The Taiwan Arbitration Act (as last amended on 30 December 2009) provides a nine-month time limit on arbitration proceedings. In other words, unless otherwise agreed by the parties, the arbitration tribunal shall render an award within nine months from the date when the sole or third arbitrator is appointed. In contrast, it is highly unlikely that a party can obtain a final court judgment for construction disputes within nine months.

#### 27 Governing law and arbitration providers

If a foreign contractor wanted to pursue work and insisted by contract upon international arbitration as the dispute resolution mechanism, which of the customary international arbitration providers is preferred and why?

In principle, foreign contractors' first choice is usually the arbitration institution located in their own country or continent. For example, American contractors prefer AAA, English contractors prefer LCIA

and contractors from mainland Europe prefer the ICC International Court of Arbitration. Likewise, HKIAC and SIAC are often proposed by Asian contractors.

#### 28 Dispute resolution with government entities

May government agencies participate in private arbitration and be bound by the arbitrators' award?

When Taiwan government agencies enter into government procurement contracts, they can agree to arbitration clauses with the other party but they rarely do. However, once the government agencies agree to arbitration in government procurement contracts, the government agencies are bound by the arbitral award, unless the award is set aside by the court.

#### 29 Arbitral award

Is there any basis upon which an arbitral award issued by a foreign or international tribunal may be rejected by your local courts?

Grounds for refusal of recognition or enforcement of a foreign arbitral award are provided in articles 49 and 50 of the Taiwan Arbitration Act (TAA).

Taiwan court acts ex officio to examine whether:

- the recognition or enforcement of the award would be contrary to Taiwan public policy or good morals; or
- the subject matter of the dispute is not capable of settlement by arbitration under the laws of Taiwan.

Should any of the above two grounds exists, the court shall reject the recognition of a foreign arbitral award (TAA, article 49 (1)).

The Taiwan court may reject the recognition of a foreign arbitral award if the court of the country where the arbitral award is made or whose laws govern the arbitration does not recognise or enforce Taiwan's arbitral awards (TAA, article 49 (2)).

By comparing paragraphs (1) and (2) of article 49 of the TAA, one can easily discover that the legislators in Taiwan have adopted a more pro-recognition approach than the generally accepted principle of reciprocity. The legislators intentionally use the word 'may', instead of 'shall', which invests the court with certain discretionary powers to determine whether to grant recognition to a foreign arbitral award, even when the court of the country where the arbitration took place or whose laws govern the arbitration refuses to recognise or enforce Taiwan's arbitral awards.

If any of the grounds stipulated in article 50 of the TAA (which mirrors article 36 (1) (a) of the UNCITRAL Model Law) exist, the opposing party may, within 20 days from receipt of the notice of the application, request the court to reject the recognition of a foreign arbitral award.

#### 30 Limitation periods

Are there any statutory limitation periods within which lawsuits must be commenced for construction work or design services and are there any statutory preconditions for commencing or maintaining such proceedings?

Yes, there are statutory limitation periods. Those statutory limitation periods cannot be extended and shortened by agreement of the parties or other judicial acts. Moreover, the benefit of prescription may not be waived in advance.

In terms of a contractor's claim for construction payments, the limitation period is ordinarily two years from the day when the contractor is entitled to claim. As for a contractor's claim for damages or right to rescind the contract under the Taiwan Civil Code, the limitation period is one year from the occurrence of the causes on which the contractor's claim or right is based.

## Update and trends

### Promotion of the use of turnkey contracts in government projects

Recently, the Public Construction Commission has been promoting the use of turnkey contracts in government projects.

In the past, turnkey projects could be awarded to the lowest bidder or the most advantageous bidder as designed and specified by the government procuring entity. However, in practice, turnkey projects were often awarded to the lowest bidder and, as a result, the quality of the projects completed might not have met the government procuring entity's expectation. As a part of the effort to promote turnkey contracts, article 4 of the Operational Notice for Procurement on a Turnkey Basis was amended in October 2012 to stipulate that all turnkey contracts must be awarded to the most advantageous bidder. In addition, according to the previous article 2 of the Regulations for the Implementation of Procurement on a Turnkey Basis, prior to conducting procurement on a turnkey basis, a procuring entity had to evaluate and justify that the construction period might be shortened without incurring additional cost. As a part of the efforts to promote the use of turnkey contracts, this article was amended in September 2012 to delete this requirement.

### Green building and green factory

The Green Building Certification System was established in 1999 by the Ministry of the Interior and has been well received. In addition, the Industrial Development Bureau of the Ministry of Economic Affairs (IDB) launched a Green Factory Certification System in April 2012. This is the world's first green certification system specially designed for factories. It is a dual certification system, which examines both 'green building construction' and 'clean production'. To obtain a Certificate of Green Factory Label, applicants must obtain both a Certificate of Green Building Label issued by the Ministry of the Interior and a Certificate of Cleaner Production Assessment from the IDB. The IDB amended the Operational Guidelines Governing the Promotion of Certificates of Green Factory Label in March 2013 to implement Taiwan's 'Energy Saving and Carbon Reduction Scheme'.

### Dispute resolution

Most government procuring entities, including major ones such as Taiwan Area National Freeway Bureau and Taiwan Area National Expressway Engineering Bureau, deleted the arbitration clause from their standard construction contracts approximately 10 years ago. As a result, the number of arbitration cases in Taiwan has declined significantly in recent years. After contractors' continuous efforts to lobby for the use of arbitration to resolve disputes arising from government procurement contracts, including infrastructure construction contracts, paragraph 2 of article 85-1 of the Government Procurement Act was amended in 2007 to introduce a med-arb mechanism into government procurement contracts. Pursuant to paragraph 2 of article 85-1 of the Government Procurement Act, in terms of construction procurement, where the Complaint Review Board for Government Procurement (CRBGP) has delivered a mediation recommendation or proposal in respect of the construction procurement, if the mediation is unsuccessful due to the dissent by the entity, the entity may not object to arbitration filed by the contractor. The new law provides an avenue for contractors to refer disputes arising from government procurement construction contracts to arbitration without a written arbitral agreement when the criteria set forth therein are met. However, the practice in the past couple years has shown that the CRBGP might tend to announce the mediation unsuccessful, instead of delivering any mediation recommendation or proposal. Without a mediation recommendation or proposal, contractors cannot submit the disputes to arbitration under paragraph 2 of article 85-1 of the Government Procurement Act. Therefore, contractors have lobbied for a further amendment to paragraph 2 of article 85-1 of the Government Procurement Act, under which the CRBGP shall make a mediation recommendation or proposal. However, it is unclear whether the draft amendment will be passed by the Legislative Yuan.

An owner's claim against his or her contractor for the repair of a defect, for the return of expenses made for the repair of a defect, for a reduction of the remuneration, for compensation for damages or for a rescission of the contract will be time-barred if it is not exercised within one year from the discovery of the defect.

The time limitation of a designer's claim for remuneration depends on the nature of the contract between the designer and the owner. If the contract is regarded as a contract of mandate, the limitation period of a designer's claim for remuneration as well as compensation are both 15 years. If the contract is defined as a contract of hire of work, the limitation period of a designer's claim for remuneration is two years and the limitation period of a designer's claim for compensation for damages is one year from the occurrence of the causes on which the designer's claim for compensation is based.

### 31 International environmental law

Is your jurisdiction party to the Stockholm Declaration of 1972? What are the local laws that provide for preservation of the environment and wildlife while advancing infrastructure and building projects?

Taiwan is not a party to the Stockholm Declaration of 1972. There are many environment protection laws and regulations in Taiwan, including the Basic Environment Act, the Water Pollution Control Act, the Marine Pollution Control Act, the Air Pollution Control Act, the Noise Control Act, the Waste Disposal Act and the Soil and Groundwater Pollution Remediation Act.

In terms of wildlife preservation, article 5 of the Taiwan Environmental Impact Assessment Act stipulates that environmental impact assessments must be conducted for certain development activities for which there are concerns of adverse impact on the environment. If a preliminary review indicates that the development activity may cause significant impact on the environment, for example,

when the development activity has a significant adverse impact on the habitat or survival of protected or rare animals or plants, the developer shall go through a phase two environmental impact assessment, which includes convening a public explanation meeting, etc.

### 32 Local environmental responsibility

What duties and liability do local laws impose on developers and contractors for the creation of environmental hazards or violation of local environmental laws and regulations?

The administrative penalties imposed on developers and contractors for the creation of environmental hazards or violation of Taiwan environmental laws and regulations include:

- monetary fines;
- compulsory suspension of work or business; and
- revocation of the licence.

Moreover, some of the acts, for example, the Water Pollution Control Act and the Waste Disposal Act, provide criminal punishment for certain types of serious violation.

### 33 International treaties

Is your jurisdiction a signatory to any investment agreements for the protection of investments of a foreign entity in construction and infrastructure projects? If so, how does your model agreement define 'investment'?

Taiwan is a signatory party to more than thirty investment agreements for the protection of investments of foreign entities. The definition of 'investment' varies from agreement to agreement. Generally, investment may include (but is not limited to):

- moveable and immoveable property and other property rights;

- shares, capital contribution, and other forms of equity participation in an enterprise;
- monetary claims or other claims to any performance that have economic value;
- intellectual property rights, enterprise names and trade names, goodwill;
- turnkey, construction, management, production, revenue-sharing, and other similar contract rights;
- concessions, including those for breeding and cultivation as well as those for exploration, mining, extraction, or exploitation of natural resources; and
- all types of secured bonds, debentures, loans, and other forms of debt.

#### 34 Tax treaties

Has your jurisdiction entered into double taxation treaties pursuant to which a contractor is prevented from being taxed in various jurisdictions?

Taiwan has entered into double taxation treaties with several countries. Please see the webpage below for a list of those countries: [www.dot.gov.tw/en/home.jsp?mserno=200912160006&serno=200912160009&menudata=EnMenu&contlink=content/roc.jsp&level2=Y](http://www.dot.gov.tw/en/home.jsp?mserno=200912160006&serno=200912160009&menudata=EnMenu&contlink=content/roc.jsp&level2=Y).

#### 35 Currency controls

Are there currency controls that make it difficult or impossible to change operating funds or profits from one currency to another?

There are no currency controls in Taiwan that make it difficult or impossible to change operating funds or profits from one currency to another, provided that, in exceptional situations, for example, when the domestic or foreign economic disorder might endanger the stability of the domestic economy, the Executive Yuan may decide and announce with a public notice to close the foreign exchange market or suspend or restrict all or some foreign exchange settlements.

There are some regulations and procedures to be followed. For example:

- under the Money Laundering Control Act, for a currency transaction exceeding 500,000 New Taiwan dollars the bank shall report the customer's identity and the transaction records to the Investigation Bureau, Ministry of Justice, Taiwan;
- a settlement of foreign exchange against the New Taiwan dollar involving any of the following foreign exchange transactions may not be processed until the bank has confirmed that the declaration statement is consistent with relevant contracts and letters of approval evidencing the foreign exchange transactions in question:

- a single remittance by a company or a firm with an amount over US\$1 million;
- a single remittance by an association or an individual with an amount over US\$500,000;
- remittances approved by the competent authorities for direct investment, portfolio investment or futures trading;
- remittances for transactions conducted within the territory of Taiwan involving goods or services located outside the territory of Taiwan; and
- other situations as required by the Central Bank, Taiwan (Central Bank); and
- a settlement of foreign exchange against the New Taiwan dollar involving any of the following foreign exchange transactions may not be processed until the customer has submitted the declaration statement along with evidencing documents through banks and received an approval from the Central Bank by banking enterprises:
  - essential remittances by a company or a firm whose accumulated amount of foreign exchange within one year has exceeded US\$50 million; or essential remittances by an association or an individual whose accumulated amount of foreign exchange purchased or sold within one year has exceeded US\$5 million;
  - a single remittance with an amount over 500,000 New Taiwan dollars by a Taiwan citizen less than 20 years of age;
  - the following remittances where a single remittance by a non-resident exceeds US\$100,000 in foreign exchange:
    - payments received from construction projects within the territory of Taiwan;
    - deposits and arbitration fees as a result of pending legal matters within the territory of Taiwan;
    - funds relevant to real estate for self use within the territory of Taiwan that has been legally acquired or approved by the competent authorities; and
    - inheritance, insurance claims, and pensions legally acquired within the territory of Taiwan; and
  - other essential remittances.

#### 36 Removal of profits and investment

Are there any controls or laws that restrict removal of profits and investments from your jurisdiction?

There are no controls or laws that restrict removal of profits and investments from Taiwan. However, the regulations mentioned in the answer to the previous question should be borne in mind.

✱ 寰瀛法律事務所

**FORMOSAN BROTHERS  
ATTORNEYS-AT-LAW**

**Helena H C Chen**

**helena@mail.fblaw.com.tw**

8F, No. 376, Sec. 4, Jen-Ai Road  
10693 Taipei  
Taiwan

Tel: +886 2 2705 8086  
Fax: + 886 2 2701 4705  
www.fblaw.com.tw



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