



ICLG

The International Comparative Legal Guide to:

Fintech 2019

3rd Edition

A practical cross-border insight into fintech law

Published by Global Legal Group, with contributions from:

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Published by
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London SE1 3PL, UK
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Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
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Printed by
Stephens & George
Print Group
May 2019

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ISBN 978-1-912509-70-6
ISSN 2399-9578

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EDITORIAL

Welcome to the third edition of *The International Comparative Legal Guide to: Fintech*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of fintech.

It is divided into two main sections:

Two general chapters. These chapters provide an overview of artificial intelligence in fintech, and of the recent trends and challenges in the financing of cross-border fintech start-ups.

Country question and answer chapters. These provide a broad overview of common issues in fintech laws and regulations in 51 jurisdictions.

All chapters are written by leading fintech lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Rob Sumroy and Ben Kingsley of Slaughter and May for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and any notable fintech innovation trends of the past year within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications).

The Fintech sector has continued its development in Taiwan. In February 2015, Taiwan's Legislative Yuan passed the Act Governing Electronic Payment Institutions to govern E-payment business in Taiwan ("E-Payment Act"). Also, in April 2015, the Financial Supervisory Commission ("FSC") issued the Rules Governing the Administration of Electronic Payment Business ("E-Payment Rules") and other regulations to regulate the business management of E-payment institutions. The E-Payment Act and E-Payment Rules enable E-payment companies to legally conduct a third-party payment business in Taiwan. In addition to the E-Payment Act and E-Payment Rules, the FSC also issued the Fintech Development Strategy White Paper ("White Paper") in May 2016, and proposed the draft of the Financial Technology Development and Innovative Experimentation Act ("Fintech Innovation Act") on January 12, 2017, which was passed by the Legislative Yuan on December 29, 2017 and officially announced on January 31, 2018. The FSC also approved the Self-Regulation Guidelines Governing Business Cooperation Between Member Banks of Bankers Association of the Republic of China and Peer-to-Peer Lending Platform Operators ("P2P Self-Regulation Guidelines") on December 1, 2017.

According to the White Paper, the FSC highlighted the following key policy directions for fintech in Taiwan: E-payment; blockchain; investment in fintech companies; banking industry (use of tokenisation technology for credit card transactions); securities industry (online services, automated trading mechanisms such as robot-advisory services and consolidated internet sale platform of mutual funds, cloud services, Big Data application); insurance industry (online insurance purchase, investment in fintech innovation and new insurance products, Big Data); virtual and physical branches; identity verification mechanisms; regulatory updates; and risk management. Taiwan's Executive Yuan, the superior of the FSC, issued a press release in June 2017 announcing that the FSC will continue to support the development of fintech.

Under Taiwan law, conducting finance-related activities in Taiwan generally requires a licence from the FSC. However, similar to the "regulatory sandbox" concept raised by the Financial Conduct Authority in UK, the FSC will set up a fintech experiment

mechanism under the Fintech Innovation Act to provide a safe environment for the development and testing of fintech, exempt fintech innovation from the current licensing requirements for financial business and stipulate applicable regulations on fintech experiments. If a financial institution or non-financial institution plans to conduct fintech business in Taiwan, such institution may apply to the FSC for prior approval (the "Fintech Approval") for its financial innovation experiments in accordance with the Fintech Innovation Act. If the permitted innovation experiment has any result and such result passes the FSC's review, the institution may apply for the FSC's approval to conduct that business. According to the FSC's press release on September 18, 2018, the FSC granted its first Fintech Approval to KGI Commercial Bank Co., Ltd. on the same date in respect of its application for experimenting in using telecom mobile identity authentication technology in online credit card business.

Besides this, the FSC has instructed the Bankers Association of the Republic of China ("BAROC") to draft the P2P Self-Regulation Guidelines and the FSC approved such Self-Regulations on December 1, 2017. According to the P2P Self-Regulation Guidelines, the P2P lending platform operators should not act as lenders. However, banks mandated by the P2P lending platform operators may provide services such as running credit checks and providing cash flow, cash custody and credit documents custody services. Also, banks may cooperate with P2P lending platform operators on banks' lending businesses and advertising activities. Accordingly, P2P lending platform operators may provide their P2P lending service together with banks under the Self-Regulations.

Another issue worth noting is that the FSC issued a press release on June 26, 2018 stating its policy for digital-only banks. The FSC further amended the Standards Governing the Establishment of Commercial Banks (the "Bank Establishment Standards") on November 14, 2018 for digital-only banks. A digital-only bank may conduct the same business as conventional commercial banks without setting up any branches, and the minimum paid-in capital required is NT\$10 billion. The FSC schedules to accept applications for digital-only bank licences from November 15, 2018 to February 15, 2019 and expects to issue two digital-only bank licences.

1.2 Are there any types of fintech business that are at present prohibited or restricted in your jurisdiction (for example cryptocurrency-based businesses)?

Please refer to our advice in question 1.1 above. Currently, the FSC does not issue any regulations or rulings to expressly prohibit any

type of fintech business from financial innovation experiments under the Fintech Innovation Act.

In respect of cryptocurrency-based businesses, on December 30, 2013, both Taiwan's Central Bank and the FSC first expressed the Taiwan government's position toward "Bitcoin" by issuing a joint press release. According to the 2013 press release, the two authorities held that Bitcoin should not be considered a "currency", but a highly speculative digital "virtual commodity". In another FSC press release in 2014, the FSC ordered that local banks must not accept Bitcoin or provide services related to Bitcoin (such as exchange Bitcoin for fiat currency). In addition, a report issued by Taiwan's Central Bank on virtual currency in March 2016 and the FSC's press releases in January 2016 both considered Bitcoin to be a virtual commodity issued by private entities to be used and accepted by members of a specific virtual commodity community. However, since Bitcoin is not a legal currency, the FSC in its press release has a clear position that financial institutions are not allowed to accept or exchange Bitcoin and are prohibited from providing cryptocurrency-related services via bank ATMs.

Given the above, in light of the authorities' attitude, Bitcoin is not considered "legal tender", "currency" or a generally accepted "medium of exchange" under the current regulatory regime in Taiwan; instead, Bitcoin is deemed as a digital "virtual commodity". Please note that the Taiwan government's attitude stated in the abovementioned press releases only covers Bitcoin, instead of any types of virtual currencies/cryptocurrencies. But we tend to think that any virtual currencies/cryptocurrencies, if having the same nature and characteristics as Bitcoin, should also be considered as digital "virtual commodities". Further, currently there exists no required licence in Taiwan for (a) operating the services of exchange between virtual currencies or virtual currencies and fiat currencies, or (b) acting as a "money transmitter" and the like in Taiwan.

In addition, although the laws of Taiwan do not explicitly prohibit initial coin offering ("ICO") activities, according to the FSC's further press release issued on June 22, 2018, should an issuer offer tokens in the course of a public sale (i.e., an ICO), and such tokens are deemed as "securities" under the Securities and Exchange Act, which are determined on a case-by-case basis, such offering of tokens would be deemed as offering of securities to the public and a prior registration with the FSC would be required. However, the FSC has not addressed the case in which such tokens are deemed as a type of utility token but not a type of security.

2 Funding For Fintech

2.1 Broadly, what types of funding are available for new and growing businesses in your jurisdiction (covering both equity and debt)?

Aside from IPOs (see further the requirement for an IPO advised in the answer to question 2.3 below), as named in our chapter for the *ICLG to: Fintech 2017*, there are two crowdfunding options in Taiwan: "Gofunding Zone"; and "Go Incubation Board". The Gofunding Zone, which was established for non-equity-based crowdfunding, was terminated on May 10, 2018. Investors, however, may still consider the Go Incubation Board as an equity-based crowdfunding method. The Go Incubation Board provides an equity-based funding alternative to innovative enterprises. Enterprises listed on the Go Incubation Board of Taipei Exchange do not need to conduct an initial public offering. Instead, they are only required to, among other things, report the CPA audited financial statements (in the cases that: (i) the capital exceeds NT\$30 million; or (ii) although the capital is below NT\$30 million, the net income reaches NT\$100 million or the number of

insured labourers exceeds 100) and other material information, and are subject to simplified periodical report requirements.

2.2 Are there any special incentive schemes for investment in tech/fintech businesses, or in small/medium-sized businesses more generally, in your jurisdiction, e.g. tax incentive schemes for enterprise investment or venture capital investment?

According to Articles 23-1 and 23-2 of the Statute for Industrial Innovation, if a venture capital enterprise invests in an innovative enterprise (established for less than three years), while its paid-in capital meets the standard of each year (at least NT\$300 million in the fifth year since incorporation) and the total amount invested in the innovative enterprise reaches 35% of the paid-in capital or NT\$300 million (whichever is lower), or if an individual whose investment in an innovative enterprise reaches NT\$1 million and such individual has held the shares in the innovative enterprise for more than two years, the venture capital enterprise or the individual would be entitled to some tax benefits in accordance with the Statute for Industrial Innovation.

2.3 In brief, what conditions need to be satisfied for a business to IPO in your jurisdiction?

There are two securities exchanges in Taiwan: Taiwan Stock Exchange; and Taipei Exchange. In addition to the non-listed crowdfunding option, Go Incubation Board, offered by Taipei Exchange as advised in question 2.1 above, the two exchanges' major listing conditions for a Taiwanese company are as follows:

1. Taiwan Stock Exchange.
 - Duration of corporate existence: Three years.
 - Company size: Paid-in capital or net worth reaches NT\$600 million or market capitalisation reaches NT\$1.6 billion.
 - Profitability: The cumulative net income before tax for the most recent three fiscal years reaches NT\$250 million, and the net income before tax for the most recent fiscal year reaches NT\$120 million and the issuer has no accumulated deficits. However, certain newly established companies which meet statutory requirements are exempted from this profitability requirement.
2. Taipei Exchange.
 - Duration of corporate existence: Two years.
 - Company size: Shareholders' equity reaches NT\$100 million.
 - Profitability: The ratio of income before tax to shareholders' equity shall meet one of the following requirements, and the income before tax for the most recent year shall reach NT\$4 million: (i) most recent fiscal year: the ratio shall exceed 4% and there shall be no accumulated deficit; or (ii) the last two fiscal years: the ratio shall exceed 3% in each year or averages 3% over the two years, and the ratio for the most recent year is better. However, certain newly established companies which meet statutory requirements are exempted from this profitability requirement.

2.4 Have there been any notable exits (sale of business or IPO) by the founders of fintech businesses in your jurisdiction?

As fintech is a new and developing area in Taiwan, to our knowledge, there has not been any case of notable exits (especially an IPO) by the founders of fintech businesses so far.

3 Fintech Regulation

3.1 Please briefly describe the regulatory framework(s) for fintech businesses operating in your jurisdiction, and the type of fintech activities that are regulated.

As advised in question 1.1 above, in February 2015, Taiwan's Legislative Yuan passed the E-Payment Act, and the FSC has granted its approval to five E-payment service providers (other than banks) to conduct E-payment business in Taiwan. Also, on December 1, 2017, the FSC approved the P2P Self-Regulation Guidelines of BAROC for P2P lending platform operators and banks to work together for P2P lending services. In addition, the Fintech Innovation Act, announced on January 31, 2018, is another piece of fintech legislation to offer a safe harbour for fintech service providers to experiment with financial technology innovations in Taiwan. As mentioned above, since the announcement of the Fintech Innovation Act, the FSC granted one approval to KGI Bank on September 18, 2018. Moreover, the FSC adopted policies to approve the establishment of digital-only banks and made corresponding amendments to the Bank Establishment Standards, issued on November 14, 2018. The FSC schedules to accept applications for digital-only bank licences from November 15, 2018 to February 15, 2019 and expects to issue two internet-only bank licences.

3.2 Is there any regulation in your jurisdiction specifically directed at cryptocurrencies or cryptoassets?

Under the newly amended Money Laundering Control Act on November 7, 2018, cryptocurrency platforms and the enterprises that conduct the business of trading cryptocurrency are subject to the requirements under the Money Laundering Control Act, including the adoption of certain KYC and AML measures and reporting suspicious transactions to the Investigation Bureau, MOJ. Aside from the anti-money laundering rules mentioned above, Taiwan has not promulgated any other laws or regulations specifically dealing with the rise of certain applications of blockchain technology, such as so-called "virtual currencies" or "cryptocurrencies". Taiwan's financial regulators have issued several press releases to announce their positions and attitude towards such developments, as well as to educate and warn the general public in Taiwan.

As advised in the answer to question 1.2, on December 30, 2013, both Taiwan's Central Bank and the FSC first expressed the Taiwan government's position towards Bitcoin by issuing a joint press release. According to the 2013 press release, the two authorities held that Bitcoin should not be considered a "currency", but a highly speculative digital "virtual commodity". In another FSC press release in 2014, the FSC ordered that local banks must not accept Bitcoin or provide services related to Bitcoin (such as exchanging Bitcoin for fiat currency). In addition, a report issued by Taiwan's Central Bank on virtual currency in March 2016 and the FSC's press releases in January 2016 both considered Bitcoin to be a virtual commodity issued by private entities to be used and accepted by members of a specific virtual commodity community. However, since Bitcoin is not a legal currency, the FSC in its press release has a clear position that financial institutions are not allowed to accept or exchange Bitcoin and are prohibited from providing cryptocurrency-related services via bank ATMs.

Given the above, in light of the authorities' attitude, Bitcoin is not considered "legal tender", "currency" or a generally accepted

"medium of exchange" under the current regulatory regime in Taiwan; instead, Bitcoin is deemed as a digital "virtual commodity". Please note that the Taiwan government's attitude stated in the abovementioned press releases only covers Bitcoin, instead of any types of virtual currencies/cryptocurrencies. But we tend to think that any virtual currencies/cryptocurrencies, if having the same nature and characteristics as Bitcoin, should also be considered as digital "virtual commodities". Further, currently there exists no required licence in Taiwan for (a) operating the services of exchange between virtual currencies or virtual currencies and fiat currencies, or (b) acting as a "money transmitter" and the like in Taiwan.

In addition, although the laws of Taiwan do not explicitly prohibit ICO activities, according to the FSC's press release further issued on June 22, 2018, should an issuer offer tokens in the course of a public sale (i.e., an ICO), and such tokens are deemed as securities under the Securities and Exchange Act, which are determined on a case-by-case basis, such offering of tokens would be deemed as offering of securities to the public and a prior registration with the FSC would be required. However, the FSC has not addressed the case in which such tokens are deemed as a type of utility token but not a type of security.

3.3 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested? Are there any regulatory 'sandbox' options for fintechs in your jurisdiction?

As advised in the answer to question 1.1 above, under the Fintech Innovation Act, the FSC will set up a Fintech experiment mechanism under the Fintech Innovation Act similar to the "regulatory sandbox" concept to provide a safe environment for the development and testing of fintech, exempt fintech innovation from the current licensing requirements for financial businesses and stipulate applicable regulations on fintech experiments. Both the financial institutions proposing to conduct fintech business and the non-financial institutions proposing to use the information, internet or other technologies to conduct fintech business in Taiwan, may apply to the FSC for the Fintech Approval to conduct financial innovation experiments in accordance with the Fintech Innovation Act. We believe this is a good indication of the Taiwan government's open-minded policy principles for fintech services.

3.4 What, if any, regulatory hurdles must fintech businesses (or financial services businesses offering fintech products and services) which are established outside your jurisdiction overcome in order to access new customers in your jurisdiction?

The Fintech Innovation Act does not stipulate that foreign fintech institutions can apply to the FSC directly for prior approval to conduct financial innovation experiments in accordance with the Fintech Innovation Act. Therefore, legally speaking, a foreign fintech institution may only handle relevant matters in accordance with the Fintech Innovation Act after it establishes a branch or a subsidiary in Taiwan.

In addition, if the foreign fintech institution is an E-payment institution and it proposes to conduct E-payment business in Taiwan, such foreign fintech institution shall establish an E-payment institution in Taiwan and apply for the FSC's prior approval under the E-Payment Act. If it proposes to cooperate with a Taiwanese E-payment institution for the Taiwanese E-payment institution to handle the payment and collection relating to local

fund flow on its behalf, the Taiwanese E-payment institution shall apply for the FSC's prior approval to cooperate with the foreign E-payment institution under Article 14 of the E-Payment Act.

4 Other Regulatory Regimes / Non-Financial Regulation

4.1 Does your jurisdiction regulate the collection/use/transmission of personal data, and if yes, what is the legal basis for such regulation and how does this apply to fintech businesses operating in your jurisdiction?

In Taiwan, the Personal Data Protection Act (the "PDPA") is the general law regulating the collection, processing and use of personal data, and all enterprises in Taiwan, including fintech enterprises, are subject to the PDPA. The main competent authority of the PDPA is the Ministry of Justice ("MOJ") which issues various rulings in accordance with the PDPA. In addition, each government agency may also issue its regulations under the PDPA to regulate the companies under its supervision. For example, the FSC also regulates local banks' compliance with the PDPA. The local regulators' interpretations of the PDPA are not binding upon Taiwan courts, but would usually be consulted as references by Taiwan courts in rendering their judgments.

4.2 Do your data privacy laws apply to organisations established outside of your jurisdiction? Do your data privacy laws restrict international transfers of data?

Under the PDPA, any non-governmental agencies, which include any natural persons, juristic persons and unincorporated associations other than government agencies, must comply with the PDPA when collecting, processing or using an individual's personal data within Taiwan. The PDPA also provides that any collection, processing or use of personal data of a Taiwanese individual by any non-governmental agency outside Taiwan should comply with the requirements of the PDPA.

In addition, according to a ruling issued by the MOJ on August 26, 2015, the collection, processing or use of an individual's personal data by a foreigner or a foreign company within Taiwan is also subject to the PDPA, regardless of whether such foreign national or entity is registered in Taiwan.

4.3 Please briefly describe the sanctions that apply for failing to comply with your data privacy laws.

Where a non-government agency violates the PDPA, the competent authority has the power to impose administrative fines and/or rectification orders on it. In addition, the following major breaches may lead to individual criminal liability of the violator:

- illegal collection, processing or use of personal data with the intent to make unlawful profits for itself or a third party, or with the intent to damage the interests of another, causing injury to another (Article 41 of the PDPA); and
- illegal change or deletion of personal data files or employment of any other illegal means with the intent to make unlawful profits for itself or a third party, or with the intent to damage the interests of another, thereby impeding the accuracy of personal data files and causing injury to another (Article 42 of the PDPA).

4.4 Does your jurisdiction have cyber security laws or regulations that may apply to fintech businesses operating in your jurisdiction?

The Security Control and Procedure Standards for Financial Institutions Handling E-Banking Business are the main regulations governing the security requirements applicable to banks which conduct E-banking business. Also, the Regulations Governing the Standards for Information System and Security Management of Electronic Payment Institutions are the main regulations governing the security requirements applicable to E-payment institutions. In addition, the Security Control and Procedure Standards for Financial Institutions Handling E-Banking Business are the main regulations governing the security requirements applicable to banks which cooperate with P2P lending platforms in respect of P2P business.

The Fintech Innovation Act does not clearly provide that fintech businesses are subject to the security requirements under said regulations. However, since a fintech enterprise must apply with the FSC for prior approval to conduct financial innovation experiments, we believe that the FSC will review the applicant's proposed security measures on a case-by-case basis in order to ensure that such measures can protect the transactions involved and the interests of its customers.

4.5 Please describe any AML and other financial crime requirements that may apply to fintech businesses in your jurisdiction.

The Money Laundering Control Act imposes certain AML requirements on financial institutions and certain non-financial institutions (including enterprises and their employees where the business and transaction type make them easily used as a money laundering channel). This includes the adoption of certain KYC and AML measures and the reporting of AML suspicious transactions to the Investigation Bureau, MOJ. The MOJ announced on February 19, 2014 that third-party payment service operators will be subject to the requirements of the Money Laundering Control Act. In addition, under the newly amended Money Laundering Control Act dated November 7, 2018, cryptocurrency platforms and the enterprises that conduct the business of trading cryptocurrency are also subject to the requirements under the Money Laundering Control Act.

In addition, the Counter-terrorism Financing Act in Taiwan also requires institutions regulated by the Money Laundering Control Act to report to the Investigation Bureau, MOJ if they are aware (i) that they hold or manage the properties or property interests of any sanctioned person, or (ii) of the place where the properties or property interests of the sanctioned person are located.

The Fintech Innovation Act does not exempt an applicant from the application of the Money Laundering Control Act and the Counter-terrorism Financing Act. The financial institutions and the non-financial institutions proposing to conduct fintech business therefore shall still comply with the anti-money laundering and counter-terrorism financing laws and regulations issued by the FSC and other relevant government agencies.

4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction?

In addition to the Fintech Innovation Act, the FSC can amend the relevant laws and regulations to clearly provide that the relevant financial enterprises follow the Fintech Innovation Act to conduct

financial innovation experiments, which include the Banking Act, Insurance Act, Securities and Exchange Act, Futures Trading Act, E-Payment Act, Act Governing Issuance of Electronic Stored Value Cards, Securities Investment Trust and Consulting Act, Trust Act and Financial Consumer Protection Act. The FSC can also instruct BAROC to amend the P2P Self-Regulation Guidelines.

5 Accessing Talent

5.1 In broad terms, what is the legal framework around the hiring and dismissal of staff in your jurisdiction? Are there any particularly onerous requirements or restrictions that are frequently encountered by businesses?

The Labor Standards Act (“LSA”) and the relevant regulations govern the major employment requirements in Taiwan.

Employment terms and conditions agreed to by an employer and an employee should be no less favourable than the minimum/mandatory requirements set forth under the LSA and the relevant regulations, otherwise they are null and void and will be superseded by the corresponding provisions prescribed under the LSA. For employment terms and conditions not stated in an employment contract or the employer’s work rules/policies, the legal minimum/mandatory requirements shall apply. For employment terms and conditions provided in an employment contract or the employer’s work rules/policies which are more favourable than the legal requirements, such favourable terms and conditions shall prevail.

As to the termination of the employment contract, an employer should not terminate an employment contract unilaterally unless any of the events specified in Article 11 (layoff with advance notice and severance pay) or Article 12 (dismissal without notice or pay) of the LSA occurs.

In addition, Taiwan’s Legislative Yuan passed the amendments to the LSA on January 31 and November 21, 2018. The key points of the amendments to the LSA include: the removal of the implementation of a five-day work week; increase in the maximum working hours; permitting time off in exchange for overtime pay; reducing the rest time between shifts; allowing the regular leave adjustment for each cycle of seven days; and permitting unused annual leave to be postponed and used in the following year. The amendments have significant impact on employers’ costs and their human resource management.

5.2 What, if any, mandatory employment benefits must be provided to staff?

The main mandatory employment benefits provided under the LSA include salary, overtime pay, breaks, public holidays, annual leave, statutory leave with pay (such as wedding leave, funeral leave, pregnancy check-up leave, etc.), statutory social insurance (including Labour Insurance and National Health Insurance), statutory pension and compensation for occupational hazards.

5.3 What, if any, hurdles must businesses overcome to bring employees from outside your jurisdiction into your jurisdiction? Is there a special route for obtaining permission for individuals who wish to work for fintech businesses?

According to the Employment and Service Act, no foreigner may work in Taiwan without a work permit from the labour authority,

which should be applied for by his/her employer. In accordance with the regulations governing the employment of foreign employees, the Taiwan branch of a foreign company or a company invested in by foreigners with approval of the Investment Commission, Ministry of Economic Affairs may apply with the Ministry of Labour for the work permits required for employing foreign employees as technicians or managerial officers of the applicant company, provided that the requirements of the employer and the foreign employee set forth in the relevant rules and regulations are met. Therefore, work permits are required before those employees start working in Taiwan.

6 Technology

6.1 Please briefly describe how innovations and inventions are protected in your jurisdiction.

Innovations and inventions can be protected with intellectual property rights such as patents, copyright or trade secrets in Taiwan in accordance with the Patent Act, Copyright Act and Trade Secret Act. As to patents, an inventor may file an application with Taiwan’s Intellectual Property Office, and the patent right will be obtained and protected under the Patent Act once the application is approved. Local and foreign companies may also register their trademarks in Taiwan with the Intellectual Property Office under the Trademark Act. For copyright and trade secrets, there is no registration or filing requirement for protection under Taiwan law. However, certain requirements under the Copyright Act and the Trade Secret Act must be met in order to qualify as a “protected” copyright or trade secret, such as “originality” and “expression” for a copyright, and “economic valuable” and “adoption of reasonable protection measures” for a trade secret.

6.2 Please briefly describe how ownership of IP operates in your jurisdiction.

As to patents, if an invention is made by an employee during the course of performing his or her duties under employment, the right to the invention shall be vested in his or her employer and the employer shall pay the employee reasonable remuneration unless otherwise agreed by the parties. If an invention is made by a contractor, the agreement between the parties shall prevail, or such rights shall be vested in the inventor in the absence of such agreement. However, if there is a funding provider, the funding provider may use such invention.

As to trade secrets, if a trade secret is the result of research or development by an employee during the course of performing his or her duties under employment, it shall belong to the employer unless otherwise agreed by the parties. If a trade secret is developed by a contractor, the agreement between the parties shall prevail, or such rights shall be vested in the developer in the absence of such agreement. However, if there is a funding provider, the funding provider may use such invention.

For copyright, if a work is completed by an employee within the scope of employment, such employee is the author of the work but the economic rights to such work shall be enjoyed by the employer unless otherwise agreed by the parties. If a work is developed by a contractor, the contractor who actually makes the work is the author of the work unless otherwise agreed by the parties; the enjoyment of the economic rights arising from the work shall be agreed by the parties, or such rights shall be enjoyed by the contractor in the absence of such agreement. However, the commissioning party may use the work.

6.3 In order to protect or enforce IP rights in your jurisdiction, do you need to own local/national rights or are you able to enforce other rights (for example, do any treaties or multi-jurisdictional rights apply)?

As to patents, as advised in question 6.1 above, an inventor must file an application with Taiwan's Intellectual Property Office, and the patent right will be obtained once the application is approved.

As to trade secrets and copyright, as advised in question 6.1 above, there is no registration or filing requirements for a copyright or a trade secret to be protected under Taiwan law. Trade secrets will be protected under the Trade Secret Act if they satisfy the following constituent elements: (i) they contain information that may be used in the course of production, sales or operations; (ii) they have the nature of secrecy, with economic value; and (iii) they have adopted reasonable protection measures. However, a foreigner's trade secrets will not be protected under the Trade Secret Act if the foreign national's home country has not signed a bilateral trade secrets protection treaty or agreement with Taiwan or if they do not meet the "reciprocity" requirement. Since Taiwan's accession to the

WTO as of January 1, 2002, the trade secrets of natural or juristic persons of WTO members which satisfy the aforementioned constituent elements may likewise enjoy trade secret protection under the reciprocity principle.

For copyright, it subsists upon the completion of a work rather than the registration of the work. A foreigner's works may enjoy copyright protection under the Copyright Act if they meet either the "First Publication" or "Reciprocity" requirement. Since Taiwan's accession to the WTO, the works of natural or juristic persons of WTO members enjoy the same copyright protection under the reciprocity principle.

6.4 How do you exploit/monetise IP in your jurisdiction and are there any particular rules or restrictions regarding such exploitation/monetisation?

In local practice, generally, a patent, copyright or trade secret could be exploited/monetised by way of licensing or transfer to another entity.



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