



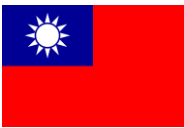
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**LEE AND LI, ATTORNEYS-AT-LAW**  
**ESTABLISHING A BUSINESS ENTITY IN TAIWAN**



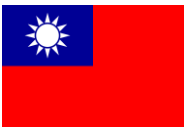
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## ESTABLISHING A BUSINESS ENTITY IN TAIWAN



***“Establishing a Business Entity in Taiwan”***

Mr. James Huang  
Partner  
Lee and Li, Attorneys-at-Law – Taipei



***“Establishing a Business Entity in Taiwan”***

Ms. Maggie Huang  
Associate Partner  
Lee and Li, Attorneys-at-Law – Taipei



***“Establishing a Business Entity in Taiwan”***

Mr. Andrew Mai  
Attorney  
Lee and Li, Attorneys-at-Law – Taipei

### Introduction to Taiwan

In less than 50 years starting from 1949, Taiwan went from an agriculture-based economy to be an economic powerhouse and leader in the field of high-tech goods. Its Gross Domestic Product (GDP) grew from US\$1.2 billion in 1951 to US\$589.5 billion in 2018. According to the World Trade Organization, in 2018, Taiwan was the 18th largest exporter and 17th largest importer of goods in the world. In terms of services, Taiwan ranked 27th and 26th for the export and import of commercial services, respectively. In the same year, its services sector accounted for nearly 63.19% of its GDP, while manufacturing and construction accounted for 30.77% and 2.52%, respectively. Taiwan, as a leader in the information and communications technology industry, is one of the world's largest semiconductor, computer and mobile phone providers, and one of the world's largest producers of computer monitors.

### 1. Types of Business Entities

- **Description of the types of entities available in each jurisdiction through which to conduct business**

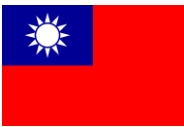
There are various legal forms for business that foreign entities can use to do business in Taiwan. We set out below a general and brief introduction to various forms of business entities under the Company Act, last amended on August 1, 2018, that foreign investors may choose from to do business in Taiwan. If a foreign investor desires to do business in Taiwan, it may establish a branch office or a new company.

#### Limited company

A limited company is a close company with one or more shareholders, and its capital is paid up by its shareholders. A limited company is managed by the directors elected by the shareholders and the profits are shared among the shareholders. The liability of shareholders is limited to the extent of the capital contributed by each of them, except where the shareholder abuses the company's status as a legal entity thereby causing the company to bear specific debts.

#### Company limited by shares

A company limited by shares must be organized by two or more shareholders, except where the company is incorporated by a single corporate or governmental shareholder. A company limited by shares may choose to issue all of its shares either with or without a par value. For the former, the capital of the company should be divided into shares of the same par value (other than preferred shares). For the latter, the amount paid for subscribing to such no par



value shares shall be fully set aside as equity capital, and the company may not convert the shares into par value shares. The liability of shareholders shall be limited to payment in full of the shares they have subscribed. Most foreign investors operate through companies limited by shares in Taiwan.

### **Branch**

A branch office is an extension of a foreign company conducting business in Taiwan. A branch office must be duly established before a foreign company conducts business in Taiwan in its name. Since a branch office is not an independent legal entity but a part of the foreign company, all the liabilities of the branch will be extended to the foreign head office if the assets of the branch are not sufficient to satisfy all its indebtedness.

### **Closely held company**

A closely held company is a private company limited by shares which may stipulate in its articles of incorporation a restriction on share transfer and can only have no more than 50 shareholders. A closely held company is a new corporate form added under the amendments to the Company Act on June 15, 2015. Closely held companies are designed to encourage the growth of startups, particularly tech startups and small and medium enterprises, by granting more flexibility in operating the companies. Since this entity form is seldom used by foreign investors, we will focus on the limited company, company limited by shares and branch below.

- **Matters to be considered when choosing a particular business entity type**

Various factors should be taken into consideration when determining the entity type to use, including tax, the kind of

business to be operated in Taiwan, etc. Although there is no strict rule, a few points below may be noted.

Generally speaking, compared to a branch, a subsidiary (either a limited company or company limited by shares) is subject to more tax burden in Taiwan such as withholding income tax on dividend repatriated to the foreign shareholders and retained earnings tax, and more corporate formalities such as the requirement to hold an annual meeting of shareholders.

On a separate note, a foreign entity may acquire real property if and when necessary for the business operations of its Taiwan branch, provided that its home country shall grant the same rights and privileges to Taiwanese nationals and companies. In addition, approval of the Ministry of Interior must be obtained before the foreign company acquires real property. This approval requirement does not apply to a subsidiary as it is a Taiwanese company.

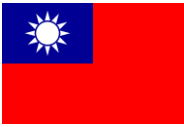
## **2. Steps and Timeline to Establish**

- **Brief overview of steps to incorporate/constitute each**

### **Branch**

Briefly speaking, to establish a branch office in Taiwan, the foreign company should file an application with the Ministry of Economic Affairs (MOEA) to apply for branch registration. Subsequently, the branch must apply for business registration and tax registration before it may start conducting business in Taiwan. Usually, it will take about 5 to 7 weeks to complete all the registrations.

The branch office is required to appoint a branch manager as well as a representative to represent the foreign company (can be the same person). If the branch manager



and/or the representative is a foreigner, a work permit and an Alien Resident Certificate should be obtained before he/she can work in Taiwan pursuant to the Employment and Service Act.

### **Limited company**

A limited company must have at least one shareholder. There is no nationality restriction on the shareholder(s). If any of the shareholders is a foreign national, it must apply with the Investment Commission (IC) for foreign investment approval. Then, the foreign investor should file an application with the MOEA to apply for incorporation registration.

There is no minimum capital requirement, but the capital of a limited company must be fully paid up by the shareholders; the capital cannot be paid in installments. A limited company can determine any capital amount as long as such amount is sufficient to cover the cost of the incorporation of the company. An audit report issued by a certified public accountant (CPA) is required when the company applies for the incorporation registration. However, certain regulated businesses may require a minimum amount of capital. In addition, if such company intends to hire expatriates other than the general manager to work in Taiwan, the minimum paid-in capital should be NT\$5,000,000. If the paid-in capital amount is insufficient to cover the cost of the incorporation of the company, the government authority will not approve the incorporation registration.

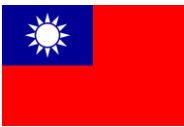
If the company engages in a manufacturing business, it must complete the registration of its factory before it may commence the manufacturing and processing of its products.

Usually, it will take about 7 to 8 weeks to complete the IC approval and registrations described above.

### **Company limited by shares**

A company limited by shares is required to have at least one corporate or two individual shareholders as its promoters. The company must first reserve a corporate name with the MOEA. If any of the shareholders is a foreign national, it must apply with the IC for foreign investment approval. Then the shareholders must subscribe to the shares and pay the subscription price. For a company with more than one shareholder, the promoters are required to convene a shareholders' meeting to elect the director(s) and the supervisor(s). If a company has only one corporate shareholder, the sole shareholder must appoint representatives to act as the director(s) and supervisor(s). The director(s) so elected or appointed must then hold a board meeting to elect a person from among themselves to serve as the chairman of the board. In addition, a business registration and tax registration must be filed with the local tax authority before the company may commence its business operations. The capital requirement for limited companies as mentioned above also applies to a company limited by shares. Similarly, if the company engages in a manufacturing business, it must complete the registration of its factory before it may commence the manufacturing and processing of its products.

Usually, it will take about 7 to 8 weeks to complete the IC approval and registrations described above.



### 3. Governance, Regulation and Ongoing Maintenance

- **Brief summary of regulation of each type and ongoing maintenance, reporting requirements**

#### **Limited company**

##### Directors

A limited company must have at least one and not more than three directors elected by two-thirds or more of the shareholders from among themselves to conduct business and represent the company. If there is more than one director, the articles of incorporation of a limited company may stipulate that a chairman be elected from among the directors by a majority of the directors, to be the responsible person of the company. There is no requirement for a limited company to hold meetings of board of directors.

##### Financial audit

At the end of each fiscal year, the directors shall prepare the following statements and records and shall send the same to each shareholder for approval:

- a. business report;
- b. financial statements; and
- c. proposal for earnings distribution or making up losses.

If a company has paid-in capital of NT\$30,000,000 or more, net operating revenues of NT\$100,000,000 or more, or hires one hundred or more employees with labor insurance coverage, its financial statements must be audited and certified by a CPA.

If no objection is raised by any shareholder within one month, the statements and

records shall be deemed to have been approved by all shareholders.

##### Annual reporting

A company shall report annually the names, nationalities, birthdays, or the dates of its incorporation registration, identification numbers, capital contribution, and other items as required by the central competent authority of its directors, supervisors, managerial officers, and shareholders holding more than 10% of the paid-in capital of the company to the information platform established or designated by the central competent authority by way of electronic transmission. If there is any change to the above items, the company shall, within 15 days after such date of change, report such change to the information platform.

#### **Company limited by shares**

##### Directors and supervisor(s)

A company limited by shares shall have at least three directors to form its board of directors and one supervisor. A company owned by a single corporate shareholder may have no supervisor and have one or two directors in lieu of the board of directors. A non-public company that is not owned by a single corporate shareholder may have one or two directors in lieu of a board of directors, if so specified in its articles of incorporation, but it must have at least one supervisor. A company with a board of directors must elect a chairman of the board and may also elect managing directors, if the number of directors is more than nine, and the company may delegate certain functions to the board of managing directors. If a company so wishes, a vice chairman of the board may also be elected from among the directors at the board meeting.



### Financial audit

At the end of each fiscal year, the board of directors shall prepare the following statements and records and shall forward the same to supervisors for their verification not later than 30 days prior to the date of a general meeting of shareholders:

- a. business report;
- b. financial statements; and
- c. proposal for earnings distribution or make up losses.

The CPA audit requirement for limited companies as mentioned above also applies to a company limited by shares.

The board of directors shall submit such financial statements and records to the general meeting of shareholders for recognition. Once the documents are recognized, copies of recognized financial statements and the resolutions on the proposal for earnings distribution or making up losses shall be distributed to each shareholder.

### Shareholders' meeting

Only companies with more than one shareholder have shareholders' meetings; in the case of single-shareholder companies, the functions of shareholders' meetings are assumed by board meetings. A general meeting of shareholders must be convened within six months after close of each fiscal year, unless otherwise approved by the competent authority for good cause shown. Special meeting of shareholders may be held when necessary.

### Annual reporting

A company shall report annually the names, nationalities, birthdays, or the dates of its incorporation registration, identification numbers, numbers of shareholding, and

other items as required by the central competent authority of its directors, supervisors, managerial officers, and shareholders holding more than 10% of the total shares of a company to the information platform established or designated by the central competent authority by way of electronic transmission. If there is any change to the above items, the company shall, within 15 days after such date of change, report such change to the information platform.

#### • **Requirements for local directors/supervisors**

There is no nationality or residence restriction on the directors and supervisors except that a People's Republic of China (PRC) national cannot act as either a director or supervisor of a Taiwanese company. The supervisor cannot be a director, an employee, or a managerial officer of the company.

#### • **Minority shareholders' rights and protection**

#### **Limited Company**

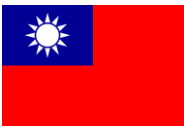
##### Supervision

Each of the shareholders who does not conduct business (i.e., not being a director) may exercise the right of supervision to request the company to provide information on the business condition of the company and examine its assets, documents, books and statements from time to time.

#### **Company limited by shares**

##### Right to make a proposal at the annual shareholders meeting

Shareholders holding 1% or more of the issued and outstanding shares of a company are entitled to submit one written proposal each year for consideration at the annual general shareholders' meeting in accordance



with the requirements under the Company Act.

#### Right to convene a shareholders' meeting

Shareholder(s) continuously holding 3% or more of the total issued and outstanding shares in a company for a period of one year or longer may, by means of a written proposal with reasons stated therein, request the board of directors to convene a shareholders' meeting. If the board of directors fails to give a notice for convening a shareholders' meeting within 15 days of receiving the request, the shareholders may apply to the local government for permission to convene a shareholders' meeting themselves.

#### Appraisal right

Dissenting shareholders are entitled to appraisal rights to ask the company to repurchase their shares at a fair market price in certain major corporate actions such as a proposed merger, amalgamation or disposal of all or substantially all of the assets by the company. If agreement on the fair market price cannot be reached, the company shall repurchase all of the shares from the dissenting shareholders at the fair market price acceptable to the company first and then seek a court order to determine the fair market price. Shareholders may exercise their appraisal rights by serving written notice on the company prior to or at the related shareholders' meeting and/or by raising and registering an objection at the shareholders' meeting.

#### Right to cancel shareholders' resolutions

Shareholders have the right to sue for the annulment of any resolution approved at a shareholders' meeting where the procedures were legally defective within 30 days after the date of the shareholders' meeting.

However, if the court is of the opinion that such violation is not material and does not affect the result of the resolution, the court may reject or dismiss the shareholder's lawsuit. If the substance of a resolution adopted at a shareholders' meeting contradicts any applicable law or regulation or the articles of incorporation of the company, a shareholder may bring a suit to determine the validity of such resolution.

#### Right to sue and remove directors or supervisors

One or more shareholders who have held 1% or more of the issued and outstanding shares of a company for a period of six months or longer may require a supervisor to bring a derivative action on behalf of the company against a director as a result of the director's unlawful actions or failure to act.

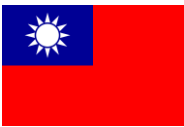
One or more shareholders who have held 3% or more of the issued and outstanding shares may institute an action with a court to remove a director/supervisor who has materially violated the applicable laws or the articles of incorporation of the company or has materially damaged the interests of the company if a resolution for removal on such grounds has first been voted on and rejected by the shareholders and such suit is filed within 30 days of such shareholders' meeting.

#### Right to review and receive financial reports and statements

The shareholder shall have the right to review and receive the annual financial reports and statements prepared by the board of directors, audited by the supervisor (s) and accepted at the shareholders' meeting.

#### Right to inspect the business, accounts, property, particular item of the company





One or more shareholders who have held 1% or more of the issued and outstanding shares for six months or longer may request a court to appoint an inspector to examine the books, accounts and financial conditions of the company. The court may, if it deems necessary based on the inspector's report, order the supervisor to convene the shareholders' meeting.

#### 4. Foreign Investment, Thin Capitalisation, Residency and Material Visa Restrictions

- **Any significant barriers to entry for an offshore party**

In 1988, the government of Taiwan promulgated a set of guidelines called the "Negative List", which was last amended on June 17, 2013. These guidelines set forth the sectors in Taiwan in which foreign investment is either restricted or prohibited. Sectors not on the Negative List are open to foreign investment without any restriction. Foreign investors are legally granted the right to remit their entire annual investment return out of Taiwan. If a foreign investor transfers its investment upon government approval, the investor is guaranteed by law to repatriate 100% of its total equity investment.

According to Article 40-1 of the Act Governing Relations between the People of the Taiwan Area and the Mainland Area, a PRC entity is required to obtain approval from Taiwan competent authorities and establish a branch or representative office in Taiwan before it may conduct any business activities in Taiwan. Subject to the IC approval, PRC investors may also invest in a company in Taiwan. However, the business scope of Taiwan branch of a PRC-invested entity or the Taiwanese company invested by PRC investors shall be limited to the

permitted businesses on the list promulgated by the IC from time to time.

- **Any capitalisation obligations**

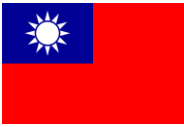
In general, a branch/company (either a limited company or company limited by shares) is not subject to any minimum capital requirement as long as (i) its capital is sufficient to cover the costs and expenses for incorporating and operating the branch/company; and (ii) it does not operate any of the businesses to which specific minimum capital requirements applies. Please note that a branch/company must have paid-in capital of at least NT\$500,000 if its branch manager/general manager is a foreign national and is on its payroll. If a branch/company wants to employ any foreign national other than the branch manager/general manager, it must have minimum paid-in capital of NT\$5,000,000.

- **Any special business or investment visa issues**

According to the Employment Services Act, which was promulgated on May 8, 1992, and last amended on November 28, 2018, no foreign national may work in Taiwan without a work permit, which must be applied for by his/her employer. The employer may apply to the competent authority for a work permit for a foreign employee whose work falls within the prescribed categories, such as specialists and/or technical personnel, or officers in enterprises invested by foreign investors and duly approved by the IC.

- **Foreign exchange regulations**

Only certain inward and outward remittances, other than items (1) to (5) below and any inward or outward remittances exceeding the prescribed ceilings noted below, would require the



approval of the Central Bank of the Republic of China (Taiwan):

- (1) Inward and outward remittances for foreign trade in goods;
- (2) Inward and outward remittances for services;
- (3) Direct investments and portfolio investments approved by the competent authorities;
- (4) Inward or outward remittances made by a company or firm of an aggregate amount not exceeding US\$50 million in a calendar year, or by an organization or individual of an aggregate amount not exceeding US\$5 million in a calendar year; and
- (5) Inward or outward remittances made by a foreign individual who does not have an alien residence certificate or a person from a jurisdiction not recognized by Taiwan government as allowed to do business in the country, of an amount per transaction not exceeding US\$100,000.

- **Withholding tax**

Since a branch is legally inseparable from its foreign company, net profits realized locally by the branch are considered profits of the foreign home company, and thus repatriation of such profits will not be subject to further withholding tax, while dividends declared by a subsidiary (either a limited company or company limited by shares) to its foreign shareholders shall be subject to a withholding income tax at the rate of 21% or a lower tax treaty rate if applicable.