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Recent regulatory developments

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Ma Ying-jeou's landslide victory in the 2008 general election has led to renewed interest in Taiwan from both domestic and international businesses and investors. While financial markets around the world, including the Taiwanese financial markets, recover from the weakening US economy, volatile oil prices and the prospect of an emerging global stagflation, President Ma's government has acted quickly in attempting to lay the groundwork for future Taiwanese economic development.

Whereas the previous administration's efforts were focused on reforming Taiwan's internal problems and weaknesses, such as the banking sector and securities laws enforcement reform, the new administration's policy focus thus far may be broadly characterised as expanding or enhancing Taiwan's growth prospects. Policies include the strengthening of business relations with mainland China, President Ma's iTaiwan infrastructure projects, and encouraging interest in alternative energy sources. These ideas, like the new developments that President Ma's administration has planned, indicate important fundamental changes in attitude to look forward to in the near future.

Loosening of limitations on investment into mainland China

Taiwanese businesses are some of the most active and experienced investors in mainland China, and the growth of the Chinese economy has made significant contributions to the global competitiveness of numerous Taiwanese companies. However, it must be noted that Taiwanese businesses have achieved much success in spite of cross-strait investment limitations, which have severely ham-

pered growth and the penetration of the mainland Chinese markets.

Of the numerous investment, tax and export regulations aimed at limiting the outflow of Taiwanese funds into mainland China, the most notorious has been the 40% investment limitation imposed by the cross-strait investments regulations. The new administration is moving quickly; the 40% limitation has been loosened to 60%, effective August 1 2008. While it is unclear whether this change will have significant impact, as recent Chinese labour regulations may have dampened enthusiasm for cross-strait investments, the speed and willingness of the new administration to alter the investment limitation signals more deregulation to come in the area of cross-strait business relations.

Increased travel between Taiwan and mainland China

In June 2008, one of the results of the formal talks between Taiwan and China was the agreement to expand charter flights across the Taiwan Strait. Also proposed was the idea for both sides to set up permanent offices with consular duties (such as issuing travel documents) in each other's territories. These agreements are seen as the first step in establishing a long-term peaceful relationship between Taiwan and China, and will also make for more efficient business relations. The first direct weekend flights took place in July 2008.

Possible re-awakening of capital markets

The Taiwanese capital markets have lain dormant for a number of years, due to a variety of factors such as general market conditions, political/policy instability and high-profile scandals. However, the relative health of the Taiwanese economy and the weakness of alternative listing venues such as Hong Kong and Singapore have created an atmosphere in which issuers are once again seriously considering local issues. In addition, a recently announced regulatory change that will enable Taiwanese public companies to apply 100% of the proceeds of overseas offer-

ings (such as ECBs and GDRs) to investments in China will likely spur activity in this area as well, as it represents a significant change from the former limitation of 20%.

Regulatory developments affecting financial institutions

The past year has brought many significant improvements in the financial services sector, especially in globalisation and liberalisation. Foreign banks present in Taiwan have enriched the market with their global business models and experience. To further improve banking, the government has received the following suggestions: enact a sound Financial Services Act, minimise negative impact from the Personal Bankruptcy Law and reduce the costs of regulatory compliance.

The Financial Supervisory Commission (FSC) has proposed a Financial Services Act (FSA) to provide for a functional regulatory framework. However, before the FSA can be implemented, there are still some draft provisions that cause concern and the following three revisions have been suggested by observers.

First, with respect to clients' data protection, financial service companies are required to obtain clients' prior written consent in order to provide their basic information to its marketing partners, with the exception of financial holding companies (FHCs) and their subsidiaries. However, this creates unnecessary differential treatment between FHCs and non-FHCs. It has therefore been recommended by observers that the exemption be extended to non-FHC companies to level the playing field.

Second, companies under the current draft of the Act are exposed to strict liability for their employees' failure to disclose proper information. However, under the Civil Code, employers are held jointly and severally liable but are allowed to prove that they have exercised proper care in hiring the employee and supervising his or her performance. It has been suggested that the strict liability provision be removed as there is sufficient protection for consumers in other laws.

Finally, the FSA provides that the FSC, under certain conditions, may enter into an administrative settlement with a financial services company, requiring said company to issue an undertaking to improve the matter under investigation, either take or not take certain action, and pay a certain settlement amount to the investor protection organisation designated by the FSC. However, the FSA provides neither a cap nor parameters for the settlement amount, and it has been suggested by observers that such things be provided to prevent the FSC from abusing its discretion.

The enactment of the Personal Bankruptcy Law caused concern at first among the major credit card and cash card issuers in Taiwan. However, the impact of the Personal Bankruptcy Law on the overall health of the banking industry is difficult to assess as during the past couple of years there has also been significant M&A activity in the banking sector. It may take some time yet for the real impact of the Personal Bankruptcy Law to be revealed.

Capital markets

Recommended firms

Tier 1

Baker & McKenzie
Lee and Li

Tier 2

Jones Day
LCS & Partners
Russin & Vecchi
Tsar & Tsai

Tier 3

Chen & Lin
K&L Gates
Lexcel Partners

Banking and project finance

Recommended firms

Tier 1

Baker & McKenzie
Lee and Li
Russin & Vecchi
Tsar & Tsai

Tier 2

Jones Day
LCS & Partners

Tier 3

Formosa Transnational
K&L Gates
Liang & Associates
Yangming Partners

Mergers and acquisitions

Recommended firms

Tier 1

Baker & McKenzie
Jones Day
Lee and Li
LCS & Partners

Tier 2

Lexcel Partners
Tsar & Tsai

Tier 3

Chen & Lin
Formosa Transnational
K&L Gates
Russin & Vecchi
Yangming Partners

Restructuring and insolvency

Recommended firms

Tier 1

Baker & McKenzie
Lee and Li
Tsar & Tsai

Tier 2

Formosa Transnational
Formosan Brothers
Jones Day
Russin & Vecchi

Tier 3

Huang & Partners
K&L Gates
LCS & Partners
Liang & Associates
Yangming Partners

A fever of optimism swept through the legal markets with the election and inauguration of Taiwan's new president, Ma Ying-jeou, in May 2008. Hopes are high: Ma's Kuomintang government promises liberalisation and the lifting of widespread restrictions imposed under the previous administration. The planned opening of cross-strait relations aims to bring more investment into Taiwan from mainland China, as well as vice versa.

One significant development that has already happened is the resumption, after more than 50 years, of charter flights between mainland China and Taiwan. Many in the market hope this will blossom into a successful tourist industry, bringing some of mainland China's newfound wealth into the Taiwanese economy.

The financial centre of Taipei has been reaping the benefits of this optimism. Company valuations, which had been low until the elections, have suddenly risen,

buoyed by foreign institutional investors. And domestic entities have reacted just as enthusiastically: for example, in August 2008 Hon Hai, the Taiwanese electronics company which produces Apple's iPod music player, announced an aggressive local spending plan of at least NT\$100 billion (\$3.2 billion).

The next steps, according to Ma, include such measures as bilateral tax agreements, joint oil-and-gas exploration, and the further liberalisation of financial-services relations between Taiwan and mainland China.

Baker & McKenzie

Baker & McKenzie is recommended as one of the few firms in Taiwan to be proficient in securitisation. "In Taiwan not many have securitisation experience," says one client, "and Bakers is among the top to handle these transactions." The size of the firm plays to the firm's advantage, as it has sufficient manpower to cover the jurisdiction's largest deals.

The firm recently made two lateral hires, Bobby Huang and Dennis Lee. Huang left THY Taiwan International Law Offices to join the firm and specialises in M&A and dispute resolution and Lee in Tax. M&A specialists Chris Tsai and Nicole Chu were both appointed to the partnership.

Partner Alex Chiang is described as "very flexible, and able to give clients very practical opinions". Clients also praise Chiang's judgement: "He generally provides solutions, not just the opinion."

A competitor of Baker & McKenzie is also impressed by partner Justin Liang: "He has a very intelligent attitude towards transactions which has been useful when we were on the other side."

Though restructuring and insolvency has not been extensively required in Taiwan, the firm has seen some instructions in relation to distressed assets. For instance, it acted for Singapore's DBS Bank in relation to the NT\$44.5 billion purchase of Bowa Commercial Bank's liabilities, assets and business.

Another distressed banking deal saw the firm act as local counsel to Bank of Taiwan in relation to the financing of the \$900 million acquisition of a controlling stake in Cosmos Bank by SAC Capital and GE Money. The firm also counselled the shareholders of Fu Sheng in relation to the company's acquisition by Oaktree Funds, a take-private transaction totalling \$911 million.

Leading lawyers

Lindy Chern
Alex Chiang
Justin Liang
Michael Wong

Jones Day

Jones Day this year acted on several noteworthy acquisitions of non-performing loans for banks and institutions. To illustrate, the firm helped Capmark Financial Group to acquire NT\$1.5 billion non-performing loans of Taiwan Development Corporation. The firm also acted for Shinsei Bank on its acquisition of non-performing loans of the Bank of Taiwan amounting to NT\$15.8 billion.

Jones Day's list of highlight capital markets deals includes representing Super Micro Computer in relation to its \$59.5 million IPO in the US. In July 2007, JP Morgan consulted the firm in connection with Financial One Corp's IPO and listing on the Singapore Stock Exchange, raising \$202 million. The firm completed 2007 by advising Uni-President Enterprise Corp on its IPO and listing on the HKSE, followed by a global rights offering under Rule 144A. The total value was HK\$3.7 billion (\$474 million).

Partner Raymond Wang routinely works on the firm's key banking deals, which this year include acting for CLSA Capital Partners on its NT\$5.7 billion financing by Taishin International Bank to fund a real-estate investment. Fubon Securities engaged the firm's M&A expertise in relation to its role as financial advisor to Taiwan Mobile Co on its offer to acquire a 90% interest in Taiwan Fixed Network Co, valued at \$1.7 billion. In keeping with the firm's popularity among technology companies, BenQ Corporation enlisted Jones Day's services on the spin-off of its brand business from its original equipment manufacturer (OEM) business, a deal worth \$110 million.

Leading lawyers

William Bryson
Jack Huang

LCS & Partners

LCS & Partners has particular expertise in corporate law. For example, the firm has attracted mandates on notable M&A deals such as representing Carlyle on its \$652 million acquisition of Tachong Bank. On the private-equity side the firm acted for Fu Sheng Group in relation to its sale to Oaktree Capital. The deal won *International Financial Law Review's* awards for the Asian private-equity deal of the year in 2008. LCS & Partners also represented Bowa Commercial Bank on the sale of its liabilities, assets and business, totalling NT\$44.5 billion, to Singapore's DBS Bank.

The firm also acts on equity issuances on the capital markets. In July 2007, leading lawyer Rich Lin acted for Stella International

Holdings on its Hong Kong IPO, raising \$387 million.

Although it is not well-known for banking work, the firm has acted for reputable financial institutions such as Lehman Brothers Commercial Corporation Asia, which it advised in relation to a loan facility to finance the Taiwan south-north high-speed rail project. David Chuang led LCS & Partners' team on the NT\$65.5 billion deal. Chuang also recently advised Chailease Finance Co on the securitisation of the special-purpose trust entrusted by Land Bank, totalling \$188 million.

The firm has been busy expanding its team this year with the recruitment of eight associates, a demonstration of the firm's success in taking a growing slice of the market.

Leading lawyers

Amy Chin
David Chuang
Rich Lin

Lee and Li

"I think Lee and Li is really the most professional law firm in Taiwan," says a client of the firm. The view is echoed throughout the market, as the firm is praised by competitors and clients for its roles on the market's most complex and innovative transactions.

The firm's recent capital markets deals include advising Motech Industries in relation to its offering of GDRs totalling \$215 million. Similarly, the firm acted for InnoLux Display Corporation in its GDR offering valued at \$1.3 billion. The deal is one of the largest initial GDR offerings in Taiwan. Lee and Li is also highly active on the debt side, and this year acted for Asia Cement Corporation on its issuance of \$210 million convertible bonds.

Partner Abe Sung is held in high regard by many of the firm's clients in the area of securitisation. "He's very professional, very experienced in this area," says one client. "He has a very good relationship with the regulators, the bank bureau and the securities bureau so we can consult his opinion on regulations so it is quite helpful." The firm advised Citibank Securities on the securitisation of a special-purpose trust established by HSBC's Taipei branch. The deal had a value of NT\$19.7 billion.

With a first-tier reputation in M&A and private-equity, the firm's most notable transaction was representing Oaktree in its \$911 million acquisition of Fu Sheng, a deal whose innovation and complexity won it an award from *International Financial Law Review* in 2008.

Funds operated by CVC Capital Partners, and other joint investors, engaged the firm to act on the financing of their \$681 million acquisition of Nien Made Enterprise Co in October 2007. SAC Capital, another private-equity fund, also sought Lee and Li's counsel in relation to the financing of its \$900 million acquisition of Cosmos Bank Taiwan. Partners Sherry Lin and Lilian Kou are particularly noted for their "years of experience dealing with the banking and securities market".

Leading lawyers

CT Chang
Lilian Kou
Abe Sung

Lexcel Partners

One client holds Lexcel Partners in the "highest regard", describing reputable lawyer Echo Yeh as "an outstanding extraordinary corporate lawyer", adding: "Her advice is absolutely spot on."

Yeh's team has seen involvement in some of the most interesting deals in Taiwan. Global Viewcomp Company received Lexcel's counsel in connection with a NT\$1.5 billion loan facility granted by Taipei Fubon Bank. The firm acted for the same company over three additional loans, valued at NT\$11.5 billion, \$180 million and \$83 million respectively, granted by three separate banks.

The firm is frequently asked to advise on regulatory issues for leading financial institutions. For Citigroup Global Markets, the firm advised in relation to the demerger of part of its business to set up a subsidiary securities firm. Lexcel also acted for Lehman Brothers in the demerger of its securities business. Another leading bank, HSBC, sought the firm to act on its successful NT\$47 billion bid for distressed bank Central Deposit Insurance Corporation.

Although the practice is small, clients say its performance is a match for its larger competitors. Says one client: "The firm's execution and quality of work was up to expectations and up to international standards."

Leading lawyers

Echo Yeh

Russin & Vecchi

Partner Thomas McGowan of Russin & Vecchi is praised extensively by peers and clients: "He has been in the industry for many, many years and when it comes to banks, everybody knows him - especially people in the industry."

The firm frequently engages in the country's largest banking deals, which this year

include acting for the lenders in relation to the \$681 million financing for the acquisition of Nien Made Enterprise by CVC Capital Partners. Acting opposite Lee and Li, the firm again represented the lenders in connection with Oaktree Capital's \$725 million acquisition of Fu Sheng in July 2007.

The firm's expertise ranges from general corporate transactions and technology transfers to securities and mutual funds. The firm regularly services Chinese and other international clients in the financial sector.

Leading lawyers

Thomas McGowan

Silicon Integrated Systems Corp in relation to a \$269 million spin-off.

Tsar & Tsai

Tsar & Tsai's recent capital markets experience includes its involvement as counsel to Goldman Sachs in relation to the offering by TSMC of \$2.5 billion ADRs on the NYSE. The firm also acted for China Development Industrial Bank on its subscription to Qisda shares with a total value of NT\$3 billion.

Another of the firm's strengths is banking, and it was active on a number of deals in the sector this year. The firm advised Yuanta Commercial Bank and Cathay United Bank, for example, in relation to syndicated loans.

The firm frequently retains financial-sector clients for M&A instructions. In one such deal, HSBC consulted the firm in relation to its acquisition of \$1.6 billion assets from a distressed local bank. In November 2007 the firm assisted the Longreach Group in its investment into Entie Bank, acquiring a majority shareholding in the bank worth \$630 million.

Leading lawyers

CY Huang

Jackie Lin

Other notable firms

Chen & Lin is building up its reputation as a strong contender in the Taiwanese legal market. The firm recently represented the lenders of a \$37 million syndicated loan extended to Advance Materials Corporation and AMC Holding. King Yuan Electronics Co also sought the firm to advise on its securing of syndicated facilities worth \$164 million.

Chen & Lin's capital markets work includes advising Sunrex Technology Corp on its issuances of GDRs worth \$43 million. Several other technology companies have sought the firm's counsel on matters such as ITE Technology's \$240 million simultaneous acquisition of Afa Technologies, SMedia Technologies Corporation and Chip Advanced Technology. The firm also acted for