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Financial and corporate legislation in Taiwan

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Taiwan has undergone far-reaching financial reforms and has opened its markets since its entry into the World Trade Organization in 2002, and following the government's commitment under the General Agreement on Trade in Services. The aim was to strengthen the competitiveness of, and create a favourable financial environment for, Taiwan's financial institutions.

The most important corporate finance reforms include the adoption of the Financial Holding Company (FHC) Law in 2001, the Merger Law of Financial Institutions in 2001, and the Financial Assets Securitization (FAS) Law in 2002.

In addition, the Merger and Acquisition Law passed in 2002 offers incentives to encourage mergers and acquisitions of companies. And the Securities Exchange Law (SEL) was amended in 2002 to simplify the pre-tender offer procedure to facilitate mergers and the acquiring of companies, and to enable a public issuing company to conduct private placements, thus providing more finance-raising options.

Financial Holding Company Law

The FHC Law went into effect on November 1 2001. It is expected to make financial institutions more efficient, satisfying customers' demands for one-stop-shopping for financial services and following the global trend towards integration of banking, securities, and insurance industries.

Given these goals, the Law allows financial holding companies to own 100% of shares in banks, insurance companies, and securities firms, while the ROC Banking Law does not allow any other single entity to own more than 25% of a bank. Financial holding companies can also invest in other financial enterprises. To the extent allowed under the laws and regulations, subsidiaries of a financial company may cross-sell, share customer information and share business facilities and premises. In addition, a financial holding company may elect to jointly declare and report income tax with its 90%-owned domestic subsidiaries for the tax year in which such a shareholding in the subsidiary has existed for the entire 12 months of the tax year. However, financial holding companies are responsible for the financial soundness of their banking, securities, and insurance subsidiaries, and are obligated to help those subsidiaries in financial trouble.

Foreign financial holding companies that satisfy the conditions prescribed by the FHC Law and that are approved by the Ministry of Finance (Mof) are allowed.

Financial Assets Securitization Law

The FAS Law is the first legislation on securitization and the concept of special purpose vehicles (SPVs) in Taiwan.

Financial assets are defined as those possessed and disposed by the originator, including, but not limited to, chattel mortgages, real estate mortgages, credit card receivables, factoring receivables or other assets approved by Mof. Originators can be financial institutions and other institutions approved by Mof, though only financial institutions are allowed to be the originator at present.

While the ROC Civil Code necessitated notification to, and consent from, creditors, under the FAS Law, companies may transfer assets through public announcement without notification and consent. Moreover, unless Mof accepts the asset securitization plan, transfers of financial assets to SPVs are invalid against third parties.

The Law provides neither a definition as to what a true sale is (although some useful guidelines concerning true sales may serve to define a true sale) nor accounting criteria necessary in evaluating securitization structures. This issue remains subject to future practice and court tests.

Under the FAS Law, an SPV can issue any type of security as long as the Securities and Futures Commission (SFC) has already approved it. Moreover, SPVs can issue securities publicly or privately. But securitization issuances can only be rated by Mof-approved rating agencies.

After a financial asset securitization plan is approved, the Law allows for several tax breaks when transferring assets. In essence, the assets can be transferred tax-free between the originator and the SPV. There are similar tax breaks provided to the SPV and its beneficiaries. Also, through the FAS Law, an SPV is not hindered in how it hedges risks. The SPV only has to show how it intends to do this.

Merger and Acquisition Law

The M&A Law went into effect on January 15 2002. It has not only removed legal obstacles to M&A deals, but has also provided tax incentives to help restructure and globalize Taiwan's economy and has simplified government approval procedures.

One interesting new development is that Taiwanese companies can now merge or spin-off with foreign companies. Similarly, domestic enterprises can acquire, or be acquired by, foreign companies. The M&A Law specifies the conditions necessary for cross-border M&A and allows for some provisions dealing with local mergers and acquisitions to be applied to cross-border transactions.

The M&A Law also allows for several new types of transaction. For mergers, whale-minnow mergers and cash-out mergers are now allowed. A whale-minnow merger is where approval of the surviving company's shareholders is not necessary so long as: (i) the number of new shares issued does not exceed 20% of the surviving company's total shares issued; (ii) the value of cash or property to be tendered does not exceed 2% of the surviving company's net worth; and (iii) the dissolved company is not bankrupt.

A cash-out merger allows companies to use cash – or combine cash, shares, and other assets – as consideration in a merger.

The M&A Law provides clear guidelines on how mergers can take place, including how the property registration for assets of dissolved companies should be made. The Law permits bulk registration and specifies the registration procedures and periods.

For acquisitions, a short form of purchase is provided for acquisition by the subsidiary of its parent company's assets or business under certain conditions. One hundred percent share swaps are also allowed.

The M&A Law also protects the rights of creditors in both mergers and spin-offs. In mergers, under the new law creditors are not allowed to exercise their accelerated right of payment if: (i) the company establishes a payment trust; or (ii) the company establishes that the merger will not affect creditors' rights. Similarly, the Law forces companies carrying out spin-offs to make a public announcement and give their creditors a chance to voice dissent. If the company does not do this, or if any of the creditors makes a timely dissent, the company cannot use spin-offs as a defence against its creditors.

In acquisitions, the Law no longer requires a company to notify each obligor when transferring claims. Instead, companies can make public announcements. Also, companies no longer have to get the consent of creditors when transferring liabilities. This applies to cross-border acquisitions.

In terms of tax incentives, most of which can be applied to cross-border deals, under the M&A Law both the goodwill and expenses incurred from a merger or an acquisition may be averagely amortized for a period of years.

Securities and Exchange Law

Private placements have finally been allowed under the SEL. Offerees are limited to:

- banks, bills finance enterprises, trust enterprises, insurance enterprises, securities enterprises, or other juristic persons or institutions approved by the SFC (qualified investors);
- individuals, juristic persons, or funds meeting the conditions prescribed by the SFC; or
- directors, supervisors, and managerial officers of the company or its affiliated enterprises.

The total number of buyers under the last two points cannot exceed 35 persons. Also, any company intending to make a private placement must obtain shareholders' approval and must not make general advertisements or public inducements.

Banking

Recommended firms

Baker & McKenzie

Jones Day

Lee and Li

Russin & Vecchi

Taiwan Commercial Law Offices

Tsar & Tsai Law Firm

Alliance International Law Offices/Deacons

Ding & Ding

LCS & Partners

Yangming Partners

Capital markets

Recommended firms

Baker & McKenzie

Jones Day

Lee and Li

Alliance International Law Offices/Deacons

Russin & Vecchi

Squire Sanders & Dempsey

Tsar & Tsai Law Firm

Chen Shyuu & Pun Law Offices

Equitable Law Offices (Lee and Associates)

Formosa Transnational

Huang & Partners

Liang & Associates

Taiwan Commercial Law Offices

Insolvency and restructuring

Recommended firms

Baker & McKenzie

Lee and Li

Tsar & Tsai Law Firm

Formosan Brothers

Jones Day

Russin & Vecchi

Squire Sanders & Dempsey

Alliance International Law Offices/Deacons

Chen Shyuu & Pun Law Offices

Ding & Ding

Far East Law Offices

Formosa Transnational

Huang & Partners

Liang & Associates

Taiwan Commercial Law Offices

Mergers and acquisitions

Recommended firms

Baker & McKenzie

Jones Day

Lee and Li

LCS & Partners

Squire Sanders & Dempsey

Taiwan Commercial Law Offices

Tsar & Tsai Law Firm

Alliance International Law Offices/Deacons

Formosa Transnational

Winkler Partners

Yangming Partners

Project finance

Recommended firms

Baker & McKenzie

Lee and Li

Jones Day

Tsar & Tsai Law Firm

Baker & McKenzie

Baker & McKenzie's Taipei office is a first-rate outfit that dominates the market across the board, both on the banking and finance, and on corporate and commercial matters. This strength, highlighted by another year of roles on many of the choice deals, underlines the fact that it is one of only a handful of firms that has successfully made its presence in Taiwan a meaningful one.

David Yang and Justin Liang head up the banking and finance practice, which now comprises six partners and seven associates following the recruitment of one new associate, Wei-Hsuan Szu, in June 2003

One of the firm's main strengths in the banking field is on distressed asset deals, and in this area it has advised Chinatrust Commercial Bank (CCB) on two major transactions over the past year. In July 2003 it advised CCB on refinancing the acquisition by the Lone Star Funds group of two non-performing loan portfolios acquired from First Commercial Bank and Chang Hwa Commercial Bank. At NT\$6.5 billion (\$194 million), this was the largest non-performing loan financing in Taiwan to date.

And in the second deal, in December 2003 Baker & McKenzie represented CCB, as lender, in connection with financing the acquisition by Colony Capital of a portfolio of non-performing loans acquired from Taiwan Business Bank. The firm's role involved establishing the loan and security structure on a non-recourse basis and preparing and negotiating the loan and security documentation for two loan facilities – a NT\$2.17 billion senior debt term loan and a NT\$805 million mezzanine debt term loan. The deal was the second non-performing loan financing in Taiwan, and the first to involve senior debt and mezzanine debt components. In other distressed asset work, in December 2003 the firm advised Land Bank of Taiwan on a NT\$22 billion public auction of a portfolio of non-performing loans.

Baker & McKenzie also solidified its position as a leading light in Taiwan's nascent real estate investment trust (Reit) market. A team led by Lindy Chern and Kevin Liao advised Fubon Construction, in its capacity as sponsor and management company, on the first true Reit to take place in Taiwan. The Reit involves two office buildings and one serviced apartment with a value of NT\$6 billion and will be listed on the Taiwan stock exchange.

The firm also has an impressive projects practice, in a market where only a few firms do most of the work. Among the year's highlights, the firm acted for the Bank of Taiwan in relation to a NT\$1.98 billion syndicated term loan facility provided to Kaohsiung Rapid Transit Company to finance the construction and operation of the Kaohsiung rapid transit system. This project is the first mass-transit build-operate-transfer project based on a specifically designed quasi-government guarantee.

Michael Wong and Kevin Wang take care of the firm's excellent corporate practice, which boasts eight partners and 18 associates. The team has expanded considerably over the past year, with the hire of no less than seven new associates. In July 2003 Baker & McKenzie advised Grand Commercial Bank and Uni-President Group (respectively, the target and selling shareholder) in connection with a NT\$19.9 billion competitive bidding process for Grand Commercial Bank. This was only the second time that an international-style sell side bid process has been undertaken for a bank transaction in Taiwan. As a result of this landmark transaction, Grand Commercial Bank will become a wholly owned subsidiary of Chinatrust Financial Holdings, thereby creating the largest private bank, and fifth largest bank overall, in Taiwan by assets.

The year's other standout M&A deals included advice to Lucky Cement Corporation in connection with the disposal of its equity interest in two companies incorporated in the Philippines to Union Cement Corporation, a Philippines company, and advice to Aegon International on its acquisition of 50% of the capital stock of Taishin Insurance Agency.

Key contact partners

Justin Liang
Michael Wong
David Yang

Leading lawyers

Justin Liang
Michael Wong
David Yang

Jones Day

Jones Day's Taipei office is managed by the "all-round expert" Jack Huang, who has experience of practice in New York and Hong Kong as well as Taiwan. In last year's *IFLR1000* the market noticed the firm had made substantial inroads into the Taiwanese market, and this trend has continued over the past year, winning the firm some roles on a number of big deals in the country.

Huang has taken the lead on two of the stand-out M&A deals of the year. In July 2003, he led a team that represented General Mills in connection with its acquisition of a 50% interest in Haagen-Dazs Taiwan, which is a joint venture between General Mills and a Taiwanese partner, Namchow Chemical. The transaction resulted in Haagen-Dazs Taiwan

being wholly owned by General Mills. And a few months later, in October, he advised Yulon Motor Co in its \$530 million restructuring and new joint venture with Nissan Motors, achieved through the division of Yulon Motor Co into two separate companies. The joint venture – 40% owned by Nissan and 60% owned by Yulon – will concentrate on the development of Nissan-brand cars in Taiwan and Asia.

In the area of distressed assets, partner William Bryson has been busy advising, among others, Morgan Stanley International Real Estate funds in respect of the acquisitions of non-performing loan (NPL) portfolio assets in China from China Huarong Asset Management Corporation, one of the four state-owned asset management corporations in China, and Shinsei Bank in the acquisition of NT\$13.3 billion (\$394.4 million)-worth of NPLs from Hua Nan Commercial Bank. Bryson also advised Colony Capital in connection with its NT\$3 billion purchase of a portfolio of Taiwan specific non-performing loans. This was a particularly unusual deal in that it was achieved using a leverage buyout, through both Chinatrust Commercial Bank's senior term loan facility and a mezzanine term loan facility. The use of the leveraged buyout structure to finance the purchase of non-performing loans resulted in lower funding costs for both Chinatrust Commercial Bank and Colony Capital and is considered a break-through precedent in Taiwan, in terms of both its cross-border scope and financial engineering. The structure also introduced a few exotic financial techniques to the Taiwan market in terms of the participating element and the design of waterfall distribution.

It is Jones Day's capital markets practice, however, that it the jewel in the firm's crown in Taiwan. With five partners and 19 associates handling capital markets work, the firm is able to cope with a high volume of work, as well as being able to tackle the most complex deals around. On the debt side, leading capital markets partner Ian Liao advised HannStar Display Corporation twice last year – in July 2003 in connection with its offering of \$175 million global depositary receipts, and in October 2003 on its offering of \$250 million euro convertible bonds. And fellow partner Chung-Ping Liu was busy in January 2004, acting for Ya Hsin Industrial Co in connection with its \$120 million convertible bond issue lead managed by Chinatrust Commercial Bank, and representing Microlife Corporation on its \$30 million convertible bond issue, this deal being lead managed by President Securities (Hong Kong).

Jones Day has also carved out a bit of a niche for itself in the securitization market, advising the ratings agencies on various transactions. In December 2003 Shirlie Pai advised Standard & Poor's on the issuance of \$230 million secured floating rate notes originated by Cosmos Bank of a revolving pool of consumer loan receivables in Taiwan; this transaction was Taiwan's first ever cross-border securitization. And in March 2004 Pai acted for Taiwan Rating Corp, a subsidiary of Standard & Poor's, on the domestic issuance of NT\$4.28 billion mortgage-backed floating rate certificates, in the first residential mortgage-backed securitization to be completed in Taiwan.

Key contact partners

William Bryson
Jack Huang

Leading lawyers

William Bryson
Jack Huang

LCS & Partners

LCS & Partners was formed in 1998, but already has made a name for itself in the competitive Taiwanese market, being considered a real up-and-comer in corporate and financial law. The firm's lawyers are experienced in the fields of M&A, securities law, derivatives transactions, technology matters and tax law. It was appointed as the ROC Securities and Futures Commission's legal counsel for the Commission's project to facilitate M&A in Taiwan, and also represented United Microelectronics Company in its five-to-one merger project.

Lee and Li

Few would argue that Lee and Li is among the best – if not, *the* best – local law firm for corporate and financial advice. The recipient of *IFLR's* Taiwan law firm of the year, for the third year running, this outstanding firm has 46 partners and 189 associates in the Taipei office, with further lawyers working out of satellite offices in Hsinchu, Taichung, Tainan and Kaohsiung.

Sherry Lin heads the banking and finance practice, which has been boosted recently by a couple of senior-level hires: Li-Fu Chen joined the team from his position as senior legal counsel of Hon Hai Precision Co, and Taipei District Court judge Jessica Chen also joined as a senior associate. In September 2003 the firm acted for Chinatrust Financial Holding Company on its acquisition of Grand Commercial Bank through a 100% share swap under the ROC Financial Holding Company Act, and the following month the firm advised Kaoshiung Business Bank and its statutory receiver, Central Insurance Deposit Corporation on the sale of a portfolio of non-performing loans of Kaoshiung Business Bank – the first instance of a disposal of assets of a distressed bank.

On the capital markets side Lee and Li has advised Taiwan Semiconductor Manufacturing Company on its issue of 100 million American depositary shares, acted for China Steel Corporation and First Financial Holding Co on their respective issues of global depositary receipts, and, in August 2003, guided Hon Hai Precision Industry Co through its \$450 million issue of zero coupon convertible bonds. And in March 2004 the firm advised on the Taiwanese law aspects of the first residential mortgage-backed securitization deal to take place in Taiwan – the NT\$4.57 billion (\$135.5 million) issue of trust certificates issued through First Commercial Bank 2003 Special Purpose Trust, backed by a pool of first-ranking mortgage loans secured over residential properties in northern Taiwan.

The corporate practice is run by Echo Yeh and comprises seven partners and 35 associates, including new recruit Trisha Chang, who joined in December 2003 from her position as senior manager at AXA. The practice has had a strong year in the M&A market, advising Unilever on its \$49 million purchase of Ajinomoto from the joint-venture companies, Wyse Technology on Smart Infotech's NT\$2.1 billion purchase of 20% of shares in Wyse through a tender offer, and working on the acquisition of KG Telecommunications. General corporate work has included advice to Citigroup on its internal restructuring, which allowed it to concentrate its shares in Fubon Group to one subsidiary of Citigroup; to Spean Bridge Group, a global cinema business, in connection with the restructuring of its group organization and shareholding; and to Unilever Group in the restructuring of its shareholding in Unilever Taiwan and Unilever Bestfoods (Taiwan) and its dissolution of Best Foods.

Key contact partners

Sherry Lin
Echo Yeh

Leading lawyers

Chao-Tung Chang
Joyce Fan
Paul Hsu
Laurence Lin
Sherry Lin

Taiwan Commercial Law Offices

With four partners, three senior counsel and three associates, Taiwan Commercial Law Offices (TCLU) has a broad practice that covers banking and finance, securities law, and corporate matters, as well as other areas (including litigation and employment) that fall outside the focus of the *IFLR1000*. Christina Yang is the managing partner of this solid local firm, whose impressive list of clients includes multinationals in Taiwan and local consortia to private companies and trade associations. The firm is also counsel to several local and international banks, securities firms and insurance companies.

TCLU recently acted as Lone Star's local counsel on Chinatrust Commercial Bank's NT\$6.5 billion (\$194 million) refinancing of the acquisition by the Lone Star Funds group of two non-performing loan portfolios acquired from two Taiwanese Banks, First Commercial Bank and Chang Hwa Commercial Bank. This was the largest non-performing loan financing in Taiwan to date, and only the third non-performing loan financing ever in Taiwan.

Recently, the firm has also been heavily involved in the energy sector, advising on power purchase agreements and telecommunication practices.

Key contact partner

Christina Yang

Tsar & Tsai Law Firm

A solid domestic practice, with roles on some notable deals over the past year, Tsar & Tsai is still considered to be a local firm that is successfully fending off fierce competition from younger firms and the few international firms that have been successful in Taiwan. The capital markets team is traditionally strong, but the firm's stand-out deal of the year was a role advising on Unilever's \$49 million purchase of Ajinomoto from the joint-venture companies.

The firm is home to a number of experienced lawyers, in particular partner C Y Huang, who peers recommend as an able corporate and commercial lawyer.

Leading lawyer

C Y Huang