

## Cosway, Ma, Shattuck: Trade and Investment in Taiwan: The Legal and Economic Environment in the Republic of China

Tao-tai Hsia

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/mjil>

---

### Recommended Citation

Tao-tai Hsia, *Cosway, Ma, Shattuck: Trade and Investment in Taiwan: The Legal and Economic Environment in the Republic of China*, 1 Md. J. Int'l L. 130 (1975).  
Available at: <http://digitalcommons.law.umaryland.edu/mjil/vol1/iss1/11>

This Book Review is brought to you for free and open access by DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Journal of International Law by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact [smccarty@law.umaryland.edu](mailto:smccarty@law.umaryland.edu).

*Trade and Investment in Taiwan: The Legal and Economic Environment in the Republic of China.* Edited by Richard Cosway, Herbert H.P. Ma, and Warren L. Shattuck. Taipei, Republic of China: China Council on Sino-American Cooperation in the Humanities and Social Sciences, Academia Sinica, 1973.

---

Pp. xiv, 783. Bibliography, \$20.00. (Distributed by Mei Ya Book Co., Taipei)

by TAO-TAI HSIA\*

This is a timely publication and a valuable source of information on Taiwan's legal and economic environments as they relate to foreign investment. Before its publication, the English-speaking investor unable to use Chinese sources had to piece together information on investment in Taiwan from the few English-language booklets published by government agencies, such as the Board of Foreign Trade and the Industrial Development and Investment Center.<sup>1</sup> Typically, these booklets presented only a synopsis of the provisions of the relevant statutes or administrative measures. In addition to not considering their subject matter in its overall economic and legal context, the booklets failed to provide systematic analysis and scholarly discussion.

This collection of nineteen essays and a lengthy bibliography, however, contains extensive discussion by outstanding scholars of the Republic of China's laws on investment and trade and other subjects of interest to businessmen and their advisers, such as taxation, corporations, contracts, sales, stock transactions, trademarks, and patents. The book opens with an essay in which Herbert H. P. Ma defines some fundamental features of modern Chinese law, gives a brief overview of the Nationalist Chinese judicial system, and examines judicial and non-judicial dispute settlement.

John S.Y. Chiu gives a general description of Taiwan's economy. He then discusses the scope and prospects for trade between the U.S. and the Republic of China and considers the protections and inducements afforded by Taiwan's investment regulations. Chiu concludes with a review of the experience of foreign investors in Taiwan and a survey of the nature of the labor force, utilities, transportation, taxes, financial institutions, and the facilities of the Kaohsiung Export Processing Zone (p. 64).

\*Chief, Far Eastern Law Division, Library of Congress; Professorial Lecturer in Law, National Law Center, George Washington University.

<sup>1</sup>E.g., Law of November 19, 1955, as amended, *Statute for Investment by Overseas Chinese* (English-Chinese); Law of August 9, 1962, as amended, *Statute for Technical Cooperation* (English-Chinese); Law of September 10, 1960, as amended, *Statute for Encouragement of Investment*; and Law of July 14, 1954, as amended, *Statute for Investment by Foreign Nationals* (English-Chinese). The above statutes are published by the Industrial Development and Investment Center, Ministry of Economic Affairs, Taipei, Republic of China. Foreign investors may also find the following two publications in English by the Board of Foreign Trade, Ministry of Economic Affairs, Republic of China, useful: *FOREIGN TRADE DEVELOPMENT IN THE REPUBLIC OF CHINA* (1974) and *FOREIGN TRADE HANDBOOK* (1973, with annual supplement). In addition, the Industrial Development and Investment Center puts out a monthly news letter called *Taiwan Industrial Panorama* carrying recent information concerning economic development and investment in Taiwan.

Heh-song Wang examines current policies on investment and trade as well as policy implementing legislation, e.g., statutes for encouragement of investment, export promotion, import control, and management of foreign exchange. Wang also discusses the government mechanisms for industrial development, trade promotion, and foreign exchange management.

Price stability and adequate banking facilities are major concerns of prospective investors. In a survey of monetary aspects of Taiwan's development, Fu-chi Liu considers the supply and demand for currency, prevailing interest rates, and price levels. Liu also describes the banking system and other financial institutions.

Hungdah Chiu analyzes the status accorded to customary international law and treaties in Taiwan. That status is important to prospective investors and traders since it may affect the rights of aliens.

Chia-yi Liu focuses on selected legal problems relating to property rights of aliens in the Republic of China. An alien's right to acquire and utilize property and the State's right of expropriation and requisition are examples of topics discussed by Liu. He also considers the status of foreign corporations under Chinese law, and the legal status of American nationals under the Treaty of Friendship, Commerce and Navigation (p. 239).<sup>2</sup>

The late S. Francis Liu contributed two essays: one on encouragement of foreign investment, the other on income tax in the Republic of China. In the first he examines the major provisions of the Statute for Investment by Foreign Nationals (p. 221) and the Statute for Encouragement of Investment (p. 221). In the second essay Liu surveys Nationalist Chinese income tax laws and tax problems for foreign investors.

The law of contracts, sales, and seller's liability in China are discussed by Jen Yang, Werner Y.F. Ning and Chung-sen Yang respectively.

Chinese conflicts law is examined by Rongyung Ou. Since there is a limited amount of case and text material, Ou confines himself primarily to a discussion of the Law Governing the Application of Laws to Civil Matters Involving Foreign Elements (p. 417) which is the basic conflicts statute, and the conflicts provisions of other statutes and treaties.

Nationalist Chinese law on the protection of industrial property will interest businessmen considering transferring technology to Taiwan or undertaking manufacturing there. Teruo

<sup>2</sup> 63 Stat. 1299, T.I.A.S. 1871, 25 U.N.T.S. 69 (1949).

Doi provides considerable information on these topics in his examination of the Republic of China's Patent and Trademark Law (p. 443). Doi's essay also includes a brief discussion of the protection afforded aliens under Chinese intellectual property laws.

Francis S.L. Wang examines the Company Law of the Republic of China (p. 481), the basic statute governing both the formation and activities of business enterprises in Taiwan. The major form of foreign investment in Taiwan is the joint venture with local business interests. Paul S.P. Hsu, Kwan-tao Li, and Francis S.L. Wang examine the Nationalist Chinese attitude toward joint ventures and the basic elements in planning and preparing a joint venture agreement.

Frederick Tse-shyang Chen discusses the Civil Code's provisions on security interests in personal property and the Chattel Secured Transactions Act (p. 567). Guy G. Gordon surveys Taiwan's environment for marketing and evaluates the foreign businessman's opportunities for investing or exporting products to Taiwan.

As one would expect, the Republic of China has a network of controls over imports and exports. David M. Huang describes the foreign trade regulatory process as set forth in Chinese law. Cheng-nan Wang examines the legal aspects of carrying out a transaction in listed securities in Taiwan.

The concluding chapter of the book is a valuable bibliography compiled by Takika S. Lee which lists books and articles in English and Chinese dealing with investment in the Republic of China and trade between the United States and the Republic of China. It also contains indispensable materials published only in German, French, and Japanese.

In early 1973 Taiwan's rapid economic progress since the 1960's reached its apex. However, Taiwan's growth may have been adversely affected by the energy crisis and the economic difficulties in the major industrialized countries. It is likely, then, that the legal and economic environment the Western investor would encounter in Taiwan has changed drastically since this book was published. Therefore, the reader should attempt to obtain more current information.<sup>3</sup>

<sup>3</sup> For a comparative view, see the standardized reports of the International Monetary Fund, INTERNATIONAL FINANCIAL STATISTICS (1971 Summary and March, 1975) especially the "National Accounts" section. Figures for 1974 are not yet available from the IMF. The reports of the Republic of China, although differing slightly from the IMF reports, clearly show the trends of recent months. See NATIONAL CONDITIONS: A BRIEF GRAPHIC VIEW, Statistical Bureau, DGBAS, Executive Yuan, Republic of China (Autumn, 1974), especially Graphs: "Gross National Product," at 1; "National Income," at 2; "Industrial Production Index," at 5; and Table: "Gross National Product . . . in Taiwan Area," at 11. 1971 Constant Prices is the standard of analysis which must be used with these graphs and table. The direction of these statistical indicators in recent months is down.

The book has certain shortcomings, probably resulting largely from the difficulties of coordinating the work of authors so widely separated geographically. First, the articles are not synchronized with respect to the cut-off date of the period covered, so that some contain more up-to-date information than others. In addition, the articles vary in the depth of treatment given to the topics under consideration. The book also retains the promotional tone that characterizes Republic of China government publications on similar subjects, and, a related problem, it does not adequately stress the problems the investor might encounter in Taiwan. The book's most obvious shortcoming, however, is the failure to discuss Taiwan's uncertain future in view of shifts in U.S and Communist Chinese policy.<sup>4</sup>

There are many points at which the book contains errors,<sup>5</sup> inconsistencies,<sup>6</sup> dated information<sup>7</sup> and other forms of inaccuracies. The reader should recognize imperfections in the book's treatment of its subject matter, so that interested persons will not formulate and attempt to implement plans without first consulting other sources.

Probably the most important statute for foreign investors is the Statute for Encouragement of Investment (Chapter 7). It is significant that articles 10, 12, 15, and 17 of that Statute were first amended on December 30, 1973, and articles 10, 12 and 17 were amended again on December 27, 1974.<sup>8</sup> Frequent revisions in Chinese law illustrate the importance of insuring that the statements in the book accurately reflect current policy.

Despite minor deficiencies, this pioneering work on trade and investment in Taiwan should be considered as required reading for all Westerners interested in investment and trade with the Republic of China.

<sup>4</sup>For this problem, see generally H. CHIU, CHINA AND THE QUESTION OF TAIWAN: DOCUMENTS AND ANALYSIS (1973) and R. CLOUGH, EAST ASIA AND U.S. SECURITY 134-43 (1975).

<sup>5</sup>The author states (p. 22) that "The judgment of the Administrative Court . . . is final and not subject to appeal . . ." It should be pointed out that there are exceptions to the finality of its judgments provided in Article 24 of the Law Governing Administrative Proceedings, promulgated Nov. 17, 1932, effective June 23, 1933, as amended July 27, 1942, in 6 COLLECTION OF CURRENT LAWS AND REGULATIONS OF THE REPUBLIC OF CHINA 6210 (Taipei 1970). The author's statement incorrectly gives the reader the distinct impression that there is no way to remedy decisions of the Administrative Court.

<sup>6</sup>Herbert H.P. Ma correctly defines the term "dien" as ". . . the right to use an immovable (emphasis added) of another person and to collect fruits therefrom by paying a price and taking possession of the immovable." (p. 10). In his treatment of mortgages and pledges, Frederick Tse-shyang Chen defines "dien" as the "right to possess and use another's movable (emphasis added) for a price." (p. 574).

<sup>7</sup>Mr. Ma does not include the newly-established Taoyuan district court in his list of the district courts in the province of Taiwan. (p. 20). Since there are many foreign and jointly-owned factories in the Taoyuan district, the area is one in which the potential investor would be interested, and its district court needs to be mentioned.

<sup>8</sup>See *Taiwan Industrial Panorama*, No. 1, vol. 3, Jan. 1, 1975, at 4 for the 1974 revisions.