

Trade and Investment in Taiwan - the Legal and Economic Environment in the Republic of China

David Simon

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TRADE AND INVESTMENT IN TAIWAN - THE LEGAL AND ECONOMIC ENVIRONMENT IN THE REPUBLIC OF CHINA. Edited by Herbert H. P. Ma, 2d ed. Taipei: Institute of American Culture Academia Sinica, 1985, 946 pp., U.S. \$39.50. (Distributed by China Material Center, 633 Post Street, Suite 251, San Francisco, CA 94109-8299.)

This second edition of *Trade and Investment in Taiwan*, edited by Herbert H. P. Ma with the assistance of In-Jaw Lai, is a welcome addition to the library of works on Taiwan's legal system. Grand Justice Ma, of the ROC Judicial Yuan, and Dr. Lai, Chairman of the Graduate School of Law of National Chunghsing University, have followed the basic format of the first edition¹ as far as practicable, deleting one chapter ("Marketing in Taiwan") in its entirety, and adding three new chapters: "Legal Problems of Parent-Subsidiary Corporations,"² "Legal Aspects of Technology Transfer into the ROC,"³ and "Exporting from Taiwan to the United States."⁴

Trade and Investment in Taiwan is a compendium of twenty-two essays intended for American businessmen, their legal counsel, and their economic advisors. The authors are all noted authorities; for example, Chen Sun, co-author of the chapter on Taiwan's economic development,⁵ is President of National Taiwan University and was formerly Vice-Chairman of the Council for Economic Planning and Development (CEPD), Executive Yuan, and his co-author Kao-chau Lee, is the Director of the Economic Research Development, CEPD. As a whole, the book is a detailed, practical account of the trade and investment environment of Taiwan, generally current through 1984.

The comprehensiveness of *Trade and Investment in Taiwan* is ap-

1. TRADE AND INVESTMENT IN TAIWAN — THE LEGAL AND ECONOMIC ENVIRONMENT IN THE REPUBLIC OF CHINA (R. Cosway, H.H.P. Ma, W. Shattock, ed., 1st ed. 1973).

2. Lai, *Legal Problems of Parent-Subsidiary Corporations*, in TRADE AND INVESTMENT IN TAIWAN — THE LEGAL AND ECONOMIC ENVIRONMENT IN THE REPUBLIC OF CHINA 745 (1985).

3. Lo and Wu, *Legal Aspects of Technology Transfer in the Republic of China*, in TRADE AND INVESTMENT IN TAIWAN — THE LEGAL AND ECONOMIC ENVIRONMENT IN THE REPUBLIC OF CHINA 785 (1985).

4. Torbett, Clubb, & Peele, *Exporting from Taiwan to the United States*, in TRADE AND INVESTMENT IN TAIWAN — THE LEGAL AND ECONOMIC ENVIRONMENT IN THE REPUBLIC OF CHINA 831 (1985).

5. Sun & Lee, *Economic Development of the ROC on Taiwan with Special Reference to ROC-US Trade and Investment Relations*, in TRADE AND INVESTMENT IN THE REPUBLIC OF CHINA 55 (1985).

parent from the subjects of its chapters, which include:

- an essay on general features of the ROC legal system (constitution, basic laws, judicial system, dispute resolution and legal profession),
- economic development of US-ROC trade, government environmental for trade and investment (investment policy, export promotion resources, import liberalization measures, foreign exchange management, and a description of principal government agencies involved in trade and investment),
- monetary and banking system,
- the role of customary international law and treaties,
- status of aliens and foreign corporations,
- encouragement of foreign investment,
- income taxes,
- contract law,
- law of sales and liability of sellers,
- choice of law (private international law),
- protection of intellectual property,
- company law,
- joint ventures,
- chattel security interest,
- export-import procedures,
- securities exchanges,
- parent-subsidiary corporation,
- technology transfer,
- exporting to the United States.

While it is impossible to critique each chapter in this review, the book is an excellent blend of general principles with practical advice, frequently emphasizing particularly indigenous legal principles that distinguish Chinese law from its European antecedents.⁶

Grand Justice Ma's chapter on general features of the ROC law and legal system describes the sources of ROC law; the separation of powers under the ROC constitution according to Sun Yat-Sen's

6. For example, Grand Justice Ma, discussing the Book of Rights over Things in the Civil Code, draws special attention the *Yung-t'ien* and *Dien*, the right to cultivate or to raise livestock permanently on the land of another by paying rent and the right to use an immovable of another and to collect fruits therefrom by paying a price and taking possession. Ma, *General Features of the Law and Legal System of The Republic of China*, in *TRADE AND INVESTMENT IN TAIWAN — THE LEGAL AND ECONOMIC ENVIRONMENT IN THE REPUBLIC OF CHINA* 15, n.52 (1985).

schema; the outlines of the civil, procedural and other codes; the role of judicial precedent and custom; the structure of the ROC courts and judicial system; dispute resolution, including arbitration, reconciliation and compromise, and judgments; and the legal profession. The author is particularly deft at describing changes in the law within the context of social development. For example, in discussing revisions to the Chinese Company Law, he calls attention to the convergence of Chinese and Anglo-American law in regard to protection of individual and minority shareholders and separation of management from ownership.⁷ He also describes directions in which the law might evolve in some instances,⁸ sets forth divergences between law and practice,⁹ and offers occasional criticism.¹⁰ This chapter is valuable not only for its substantive content but for its melding of discrete legal principles with constitutional theory and uniquely Chinese approaches to the role of law.¹¹

Some of the limits of a book of this type are evident in the chapter, "Protection of Intellectual Property in the Republic of China," by Teruc Doi, Professor of Law, Waseda University, Tokyo.¹² The cutoff date for this article caused major revisions of copyright law to be only alluded to as "proposed revisions," while there is no discussion at all of the anti-counterfeiting regulations of the Board of Foreign Trade.¹³ Professor Doi's revisions also preceded the decision in the *Apple Computer* case,¹⁴ in which the ROC courts allowed a foreign corporation

7. *Id.* at 17.

8. For example, he cites a proposed revision to the Law of Negotiable Instruments to delete criminal sanctions for issuing a bad check. *Id.* at 18.

9. For instance, while labor enjoys the right to strike under prescribed conditions, the right has never been exercised. *Id.* at 24, n. 87. Similarly, although commercial arbitration is available to resolve disputes, it is rarely, if ever, invoked. *Id.* at 35.

10. For instance, he criticizes the excessive reliance on the lecture method of teaching law rather than the case method. *Id.* at 43.

11. This is especially evident in Grand Justice Ma's explanation of the dispute-resolution techniques of reconciliation and compromise, which "find their immediate origins in the German and Japanese codes . . . [but] conform well to the old Chinese tradition of settling disputes by peaceful means rather than by resorting to law and, therefore, are generally being encouraged by Chinese courts." *Id.* at 36.

12. Wang, *Company Law of the Republic of China*, in TRADE AND INVESTMENT IN TAIWAN — THE LEGAL AND ECONOMIC ENVIRONMENT IN THE REPUBLIC OF CHINA 511 (1985).

13. See, Liu, *Republic of China*, in V. KALLINOWSKI, WORLD LAW OF COMPETITION, §2.03[1][6](iii); Silk, *Legal Efforts of the United States and the Republic of China on Taiwan at Controlling the Transnational Flow of Commercial Counterfeit Goods*, 5 CHINESE Y.B. OF INT'L L. & AFF. 90, 11 ff. (1985).

14. *Apple Computer, Inc. v. Lee et al.* reprinted in, 2 CHINESE Y.B. OF INT'L L. & AFF. 263 (1982). See also, Silk, *supra* note 13, at 118, n. 126.

not licensed to do business in the ROC to self-prosecute infringers of copyrighted computer software. In a fast-changing area of law, a monograph treatment is quickly outmoded; in this instance, Professor Doi's work remains of interest for its comprehensive treatment of the subject matter, but must be supplemented to be useful for current applications.

The chapter on "Legal Aspects of Technology Transfer into the Republic of China"¹⁵ demonstrates the strength of this collection of monographs. It was prepared specifically for this second edition, and is up-to-date through the date of publication. Lo and Wu give a basic overview of the Statute for Investment by Foreign Nationals and the Statute for Investment by Overseas Chinese, and discuss both direct capitalization of technology and licensing under the Statute for Technical Cooperation. They then review the taxation of royalties for patent rights, of fees for technical sources, and of machinery and equipment sales. After a brief treatment of trademark licensing, Lo and Wu discuss such related areas as protection of technology under patent and copyright law; the importation of machinery and equipment; and technical training provided by foreign technicians in Taiwan.

This chapter is especially good for its movement from the general to the particular and its sense of "feel" for the evolution of the ROC's legal and economic stance toward technology transfer and for the underlying practicabilities of the transactions themselves. For example, the authors amply describe the risks and advantages of importing machinery and equipment under the Simplified Procedures adopted by the Machinery of Economic Affairs rather than under usual procedures.¹⁶ This sort of practical insight is particularly helpful to foreign investors; even if the regulations are subsequently amended, Lo and Wu provide the starting point for further research.

In conclusion, the second edition of *Trade and Investment in Taiwan* is of interest on several levels. As an introduction to other ROC's legal system, the book is comprehensive. As a current guide the book, as with any collection of monographs, is of utility in providing places to begin research. Overall, the editors have done a thorough job on mapping the legal environment for trade and investment in the ROC.

David Simon*

15. Lo & Wu, *supra* note 3.

16. *Id.* at 819-20.

* J.D., University of Maryland; Of Counsel to Davis Wright & Jones, Washington, D.C.