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The Recent Liberalization of Exchange Controls and Its Legal Impact on Doing Business in Taiwan

*William F. Atkin**

I. INTRODUCTION

By the end of 1987, the foreign currency reserves held by the Central Bank of China (Central Bank) of the Republic of China (ROC) were in excess of U.S. \$70 billion. These foreign currency reserves, which in relative terms are the largest in the world, are in large part the result of Taiwan's highly successful export-oriented economy coupled with its tradition of strict foreign exchange controls. These foreign exchange controls imposed severe restrictions on outward remittances and required all incoming foreign exchange to be converted into New Taiwan Dollars (NT dollars).¹

A recent report by the Joint Economic Committee of the United States Congress reviewed in detail the factors contributing to Taiwan's trade surplus and the problems resulting therefrom.² One of the problems now faced by Taiwan because of its economic success is world pressure to reduce its trade surpluses, particularly with the United States, which accounts for over eighty percent of Taiwan's merchandise trade surplus.³

In response to the mounting pressures on Taiwan from its trading partners, the ROC Central Bank promulgated regulations in March of last year that relaxed somewhat the strict exchange control rules.⁴ At the same time, however, in an attempt

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1. Foreign Exchange Control Act, arts. 6-1, 7, 13 and 14 [hereinafter Exchange Control Law].

2. Joint Economic Committee, *Restoring International Balance: The Taiwan Economy and International Trade*, 100th Cong., 2d Sess. (1987).

3. *Id.* at 12.

4. Central Bank of China, *Regulations Governing Outward Remittances for Invisible Trade Transactions* (March 12, 1987). These regulations substantially simplified the approval process for so-called "invisible trade transactions" which included: (1) incidental

to control the in-flow of foreign exchange intended for speculation on the appreciation of the NT dollar against the U.S. dollar.⁵ These regulatory developments constituted interim pressures only to the more substantial liberalizations on outward remittances and tighter controls on inward remittances which followed the ROC's Legislative Yuan's⁶ June 16, 1987 amendment to the Exchange Control Law.⁷

expenses involved in the export/import of products; (2) fees for shipping, insurance and other service industries; (3) remittances sent by foreigners or overseas Chinese employed in the ROC to their dependents abroad; and (4) compensatory payments for services rendered in the field of technical cooperation between ROC companies and foreigners or overseas Chinese. Pursuant to these Regulations, all applications for foreign exchange to be used for invisible trade transactions needed only to be filed with a designated foreign exchange bank ("designated foreign exchange banks" are those banks authorized by the Central Bank to handle foreign exchange transactions). These banks were authorized by the Central Bank to remit the foreign exchange for the transactions immediately after receiving the application even though these banks were still required to provide the Central Bank with copies of all applications and supporting documentation. The Central Bank reserved the right to request further documentation from the applicant and to punish the applicant if its application violated the regulations or other exchange control rules.

5. Central Bank of China, Governing Regulations for Private Inward Remittances (March 12, 1987). By the end of 1987, the NT dollar had experienced more than a twenty-five percent appreciation against the U.S. dollar in less than an eighteen-month period. Under the new regulations, recipients of foreign currency bank remittances or depositors of foreign negotiable instruments were required to have their bank notify the Central Bank of the remittance or the deposit. No Central Bank approval was required for any amount up to U.S. \$1 million earned from the export of goods, earned from shipping or insurance services, remitted in connection with a government-approved foreign investment or earned from a government-approved outward investment. Furthermore, Central Bank approval was not required for any individual remittance of U.S. \$10,000 or less. All other inward remittances required Central Bank approval before conversion into NT dollars.

6. A "yuan" is a branch of government.

7. The Legislative Yuan's amendment to the Exchange Control Law, article 26-1, which became effective on June 28, 1987, authorizes the ROC Executive Yuan (the equivalent of the Cabinet) to suspend the implementation of part of all of articles 6-1, 7, 13 and 14 of the Exchange Control Law. Article 26-1 allows the Executive Yuan to suspend these provisions of the Exchange Control Law in periods when the ROC maintains a long-term favorable balance of trade or has excessive foreign exchange reserves.

On July 9, 1987, the Executive Yuan, pursuant to the newly enacted article 26-1, formally declared the suspension of articles 6-1, 7, 13 and 14 effective as of July 15, 1987. These suspended articles imposed the following exchange controls and restrictions:

a) Article 6-1 requires importers and exporters needing or seeking to remit foreign exchange to inform the Central Bank, designated foreign exchange banks or other organizations appointed by the Central Bank of the actual amount and terms of the specific transaction prior to any foreign exchange settlement;

b) Article 7 requires the deposit of inward remittances of foreign exchange (for business purposes) or their sale through designated foreign exchange banks pursuant to regulations prescribed by the ROC Ministry of Finance;

c) Article 13 mandates that most outward payments and remittances involving for-

This article will focus on the three regulations which substantially affect legal entities and individuals dealing with foreign exchange in Taiwan, namely, the Inward Remittance Rules, the Outward Remittance Rules, and the External Debt Registration Rules.⁸ It will review in summary fashion these three new Central Bank regulations and then discuss the manner in which these rules have substantially simplified existing and future foreign business transactions involving Taiwan.

II. SUMMARY OF THE IMPLEMENTING REGULATIONS

The July 15, 1987 suspension of exchange control rules was limited to a suspension of four articles only. The other provisions of the Exchange Control Law still remain in effect. For example, all foreign exchange transactions must still be handled through a designated foreign exchange bank⁹ and NT dollars generally cannot be circulated abroad.¹⁰ Furthermore, the suspension, while for an indefinite term, is simply that—a suspen-

foreign exchange be handled by designated foreign exchange banks pursuant to the Ministry of Finance regulations; and

d) Article 14 requires holders of "personally held foreign exchange" (*i.e.*, not required by Article 7 of the Exchange Control Law to be deposited in or sold to the Central Bank or designated foreign exchange banks) to apply to the Central Bank or designated foreign exchange banks for use or outward remittance as stipulated by article 13.

In response to the Executive Yuan's suspension of these key provisions of the Exchange Control Law, on July 13, 1987, the Central Bank issued a set of seven new regulations implementing the suspension of portions of the Exchange Control Law. The seven new Central Bank regulations are:

(i) Rules Pursuant to which the Central Bank of China Governs Appointed Banks Operating Foreign Exchange Business;

(ii) Rules Governing the Purchase and Sale of Foreign Exchange by Appointed Banks;

(iii) Noteworthy Points for Appointed Banks Operating Foreign Exchange Business;

(iv) Rules Governing Applications for Exchange Settlement of Private Inward Remittances (Inward Remittance Rules), replacing the March 12, 1987 regulations, *see supra* note 5; a copy of the Inward Remittance Rules is included as Appendix A;

(v) Rules Governing Applications for Exchange Settlement of Private Outward Remittances (Outward Remittance Rules), replacing the March 12, 1987 regulations, *see supra* note 4; a copy of the Outward Remittance Rules is included as Appendix B;

(vi) Rules Governing the Collection Business for Foreign Credit Cards; and

(vii) Rules Governing Registration of the Balance of Medium- or Long-Term External Debt by a Private Enterprise (External Debt Registration Rules), an English translation of which is included as Appendix C.

8. Of the seven regulations promulgated by the Central Bank in implementing the Executive Yuan's suspension of articles 6-1, 7, 13 and 14 of the Exchange Control Law, four deal principally with banks.

9. Exchange Control Law, art. 8.

10. *Id.* art. 9.

sion which may be revoked at any time by the Executive Yuan. Thus, exchange control issues still merit the careful attention of those transacting business in Taiwan.

A. Inward Remittance Rules

Under the Inward Remittance Rules, certain types of inward remittances may be made without the requirement of prior government approval and without a limitation on dollar amount. The Inward Remittance Rules define "inward remittance" as: (i) any payment to a payee in the ROC by any bank outside the ROC through a designated foreign exchange bank; and (ii) any payment by a designated foreign exchange bank to any payee in the ROC of a foreign draft.¹¹ Foreign exchange deposited and foreign currency sold is also deemed to be an inward remittance. In short, an inward remittance means the sale of foreign currency for local currency. Foreign exchange remitted into Taiwan but kept in its original form or converted to any currency other than local currency for deposit in a foreign exchange account is not considered an inward remittance. Funds remitted into Taiwan and then transmitted to other places in foreign exchange form are also not considered inward remittances.¹²

The following inward remittances are permitted pursuant to the Inward Remittance Rules:

1. Foreign exchange earnings

Foreign exchange earnings from the export of goods or from the rendering of certain services are entitled to be remitted and converted.¹³ The Application for Settlement of Private Inward Remittance of Foreign Exchange (Application for Settlement) identifies as examples of eligible service income, among others, shipping income, insurance premiums, overseas wages and salaries, commissions, agency fees, royalties, expenditures of foreign tourists in Taiwan, income from overseas construction, expenditures in Taiwan of foreign entities and tax payments of foreign nationals.¹⁴

11. Inward Remittance Rules, art. 2.

12. *Id.*

13. *Id.* art. 4(1).

14. Application for Settlement, *infra* app. A.

2. *Remittances to ROC residents*

ROC residents are entitled to receive remittances of up to U.S. \$50,000 annually.¹⁵ The Rules do not define "annual" for purposes of this provision, but authorities have since stated that the period for measuring the U.S. \$50,000 annual limitation will run from July 15 of one year to July 14 of the following year. An expatriate with a resident alien certificate will be considered an ROC resident for purposes of this provision.

3. *Other remittances*

Upon the approval of the Central Bank and the approval of the government agency responsible for certain types of investments, other private inward remittances in the form of certain investments may be permitted. Such remittances include foreign investment in Taiwan, return of an outbound investment, and working capital for the establishment or expansion of a branch of a foreign corporation, all of which require an approval letter from the Investment Commission of the Ministry of Economic Affairs.¹⁶

The Inward Remittance Rules have not made any provision for inward remittances intended as a capital contribution to an ROC company by a foreign investor when the foreign investor has not previously received Investment Commission approval. Whether this exclusion was intentional or merely an oversight by the Central Bank is not clear. As currently applied, however, the Rules do not permit foreign investment into an ROC company without prior Investment Commission approval, thus effectively eliminating a means of private foreign investment which was regularly used in the past.

B. Outward Remittances

The Outward Remittance Rules define "outward remittance" as any payment through a designated foreign exchange bank to be delivered outside of the ROC, or any purchase of foreign exchange for purposes of deposit or to be held in cash.¹⁷ Essentially, an outward remittance under the Rules is the mirror

15. Inward Remittance Rules, art. 4(2).

16. *Id.* art. 5; Application for Settlement of Private Inward Remittance of Foreign Exchange app. B.

17. Outward Remittance Rules, art. 2.

image of an inward remittance as defined by the Inward Remittance Rules. If the transaction is not made through a designated foreign exchange bank or does not involve the conversion of NT dollars, the transaction will not constitute an outward remittance for purposes of the Rules.

The following rules apply to outward remittances:

1. Unlimited remittances

There are no restrictions on outward remittances if a remitter makes payments for imported goods (or goods to be imported) or expenses of so-called invisible trade, such as shipping expenses, insurance premiums or settlements of insurance claims, expenses of overseas Chinese or foreign national employees, commissions, agent fees, compensation for technology, royalties, foreign business costs, construction payment expenses and expenses of foreign subsidiaries.¹⁸ Only an ROC-registered company, firm or association may remit funds in such categories.

2. Limited remittances

The Rules permit any ROC legal entity or resident to remit up to U.S. \$5 million annually without prior Central Bank approval.¹⁹ As with the case of the Inward Remittance Rules, the Outward Remittance Rules do not provide guidance as to whether the annual amount will be calculated on the basis of a calendar year, a company's fiscal year or some other basis. The current practice is to use the twelve-month period from July 15 of one year to July 14 of the following year.

3. Remittances requiring Central Bank approval

For a remittance of more than U.S. \$1 million in one application, the remitting bank must check the annual cumulative remittances of the remitter and cannot remit the funds until ten business days after the application date. In addition, if the Central Bank deems necessary, it may instruct the designated bank temporarily to suspend such remittance.

If a remittance would exceed the remitter's annual maximum of U.S. \$5 million, the applicant must provide documents to the Central Bank for its approval on a case-by-case basis

18. *Id.* art. 4(1).

19. *Id.* art. 4(2).

before the remittance can be made by a designated foreign exchange bank. Other ROC laws and regulations permit the remittance of certain funds out of Taiwan.²⁰ If the applicant has received approval under such laws, it must provide a copy of such approval to the Central Bank. In these cases, the Central Bank approval should be readily obtained.

C. External Debt Registration Rules

Any foreign currency loan to an ROC-registered company for which the repayment schedule exceeds one year must be registered with the Central Bank within ten days of the end of each calendar quarter.²¹ Registration of the loan as provided for in the Rules is necessary in order to retain the right to remit foreign exchange in the event the exchange controls are reimposed at some point in the future. The report to the Central Bank must identify the debtor, the creditor,²² and the amount of the debt.

III. IMPACT OF LIBERALIZATION OF FOREIGN ENTERPRISES OR INDIVIDUALS DOING BUSINESS IN TAIWAN

The implementation of the revisions to the ROC's exchange control rules and regulations on July 15, 1987 affected a majority of the legal considerations relevant to the doing of business in Taiwan by a foreign individual or enterprise. Since previous to these changes the exchange control rules and regulations were key considerations in most transactions in Taiwan involving foreign individuals or enterprises, the liberalization of strict outward remittance rules requires a careful review of all existing previous arrangements in Taiwan and provides a whole new set of alternatives for new foreign investments and transactions with Taiwan. Due to the newness of these changes, however, some details of how the new rules will be applied have yet to be developed. This article discusses the principal effects of these rules on foreigners doing business in Taiwan.

20. *E.g.*, Statute for Investments by Foreign Nationals (July 14, 1954; as amended May 14, 1986) [hereinafter SIFN].

21. External Debt Registration Rules, art. 4.

22. *E.g.*, foreign financial institution, parent company.

A. Blocked Currency

In the past, any and all foreign exchange payments out of Taiwan required governmental approval or compliance with relevant rules. Thus, a foreign-invested company in Taiwan was usually blocked from payment of certain debts to its parent or to an affiliated company, especially inter-company charges for allocation of management expenses, research and development costs or sales commissions. Moreover, a foreign investor whose investment was not made under the Statute for Investment by Foreign Nationals (SIFN)²³ was not permitted to repatriate its equity investment or profit derived therefrom. Because of the suspension of certain key provisions of the Exchange Control Law, all such blocked payments can now be made so long as these payments do not exceed U.S. \$5 million during the year. The examples discussed below demonstrate the effect of the newly promulgated regulations on certain transactions involving outward remittances.

1. Export commissions

Previously, local exporters were allowed to remit report commissions to foreign agents who referred customers to the exporters in accordance with the Regulations Governing Payment of Foreign Exchange Commissions. Under these regulations, an exporter without Central Bank approval was normally permitted to remit a maximum of five percent of the value of exported goods within one month after receipt of export proceeds. Exporters were usually required to obtain special Central Bank approval for any applications for export commissions exceeding five percent of the value of exported goods. This requirement of case-by-case approval dissuaded many exporters from applying for commissions over five percent. With the implementation of the Outward Remittance Rules, however, exporters may now apply directly to a designated foreign exchange bank for payment of export commissions as stipulated in the agency agreement, regardless of amount or payment schedule.

2. Service fees

Until the passage of the Outward Remittance Rules there was no legal provision governing the payment of service fees for

23. See *supra* note 20.

engineering, consulting or training services. As a result, approval from the Central Bank as well as the Industrial Development Bureau (IDB) was required. Obtaining such approval was a cumbersome process. Under the new regulations, ROC firms may freely remit such service fees.²⁴

3. Copyright licensing fees

Until the passage of the Outward Remittance Rules, the Central Bank handled applications for payment of copyright licensing fees on a case-by-case basis. With the promulgation of the new rules, however, companies remitting licensing fees abroad may apply directly to a designated foreign exchange bank.²⁵

4. Trademark royalties

Although royalties for trademark use may now be remitted without difficulty and without an amount limitation, the trademark license itself must still be registered with the National Bureau of Standards (NBS).²⁶ Without such registration, the trademark will be subject to cancellation.²⁷ The NBS has traditionally approved trademark royalties not in excess of 1.5% of gross sales. The NBS position toward the maximum permissible amount is still somewhat unclear, even though side payments might arguably be possible without the necessity of NBS approval. With respect to such side payments, however, the licensee may have difficulty in claiming such royalty fees as tax-deductible expenses if the payment is in excess of the NBS approved royalty.

5. Know-how royalties

Pursuant to the Statute for Technical Cooperation (STC),²⁸ royalties for patent licensing, technical know-how or manage-

24. Outward Remittance Rules, art. 5.

25. *Id.*

26. ROC Trademark Law, art. 26. This article provides that a trademark owner may not license the mark to anyone unless, *inter alia*, the trademark owner will supervise and control the quality of the goods made pursuant to a license, the licensed use of the trademark complies with the standards of the Ministry of Economic Affairs and the NBS approves the license.

27. *Id.* art. 31.

28. Statute for Technical Cooperation (August 9, 1962; as amended on May 29, 1964).

ment or operation of a franchise previously could be remitted only if the application for technical cooperation had been approved by the Investment Commission. Under the Outward Remittance Rules, such applications will no longer be required for remitting foreign exchange.

The ability to remit royalties to a foreign licensor without the need to obtain approval from the Investment Commission under the STC certainly is a disincentive to use the STC and to submit to the additional review and limitations imposed by the Investment Commission on licensing agreements under the STC.²⁹ In spite of these disincentives to approval under the STC, in the case of the licensing of a foreign-owned ROC trademark to a local licensee, the approval of the license agreement by the Investment Commission under the STC may still be necessary. According to guidelines issued by the Ministry of Economic Affairs, a trademark license agreement of an ROC-registered trademark entered into between the foreign owner/licensor and a local licensee will be approved only if it qualifies under one of the following criteria: (a) the licensor or its affiliated company has share ownership in the licensee's company equal to twenty percent or a higher rate as provided pursuant to the SIFN; (b) the licensor has entered into a so-called "technical cooperation agreement" (a licensing agreement under the STC) with the licensee and that technical cooperation application has been approved in accordance with the STC; or (c) the licensed trademarks are known worldwide, and the products which are covered by trademark have international markets.³⁰ If a foreign trademark licensor is not eligible under either (a) or (c), ap-

29. Although no written guidelines have even been issued, certain standard prohibitions or restrictions are imposed by the Investment Commission in its review of licensing agreements under the STC. In issuing approval letters, the Investment Commission often suggests modifications or deletions to the terms of the agreement submitted.

One of the unwritten, nonstatutory limitations imposed on licensing arrangements under the STC by the Investment Commission includes generally limiting royalties to a rate of three to five percent of "net sales" as narrowly defined by the Investment Commission. Other significant nonstatutory restrictions imposed by the Investment Commission include, *inter alia*, a limitation of the term of a license agreement (usually five to seven years or the life of the patent, whichever is less) and the prohibition against territorial limitations on the licensee's sale of products manufactured utilizing the licensed technology. The Investment Commission will also reject any clause requiring the purchase of raw materials or components from the licensor.

30. Ministry of Economic Affairs, *Guidelines for Screening Trademark License Applications Filed by Foreign Companies* (June 15, 1980; amended as of November 28, 1981).

proval of a license agreement under the STC is the only remaining basis for obtaining the NBS' approval of a trademark license agreement.

B. Tax Consequences

In the past, the tax authorities controlled foreign expenses principally through foreign exchange controls. For instance, interest, royalties and commission payments could be deducted as expenses only if they were permitted to be remitted pursuant to an express government approval or the prescribed Central Bank rules. In either event, the remitter had government approval documents which could be used to verify the transaction to the tax auditors. Now all such payments can be made freely without any governmental approval or limitations, and the tax authorities have lost one means of controlling the payment of these expenses.

While these payments may now be made without prior government approval, in some situations³¹ government approval may well be required to qualify the payment as a tax-deductible expense. For example, pursuant to tax guidelines, a royalty payment qualifies as a tax-deductible expense only if the payment has been granted approval by both the Ministry of Economic Affairs and the appropriate foreign exchange authority.³² The Ministry of Finance recently emphasized that the royalty payment would not be a deductible expense of the licensee unless the license agreement has been approved by the Ministry of Economic Affairs.

Since the ROC tax authorities take a very strict attitude towards the deductibility of foreign expenses, any payments made by a Taiwan subsidiary must be supported by documents to prove the necessity of such payments. The allocation of a parent company's management expenses to a domestic subsidiary is still not a deductible expense, but certain service fees may be deductible expenses. Thus, the characterization of the payment is important in assuring possible deductibility of the payment.

In the past, the tax authorities seldom used their reallocation of income authority under article 43-1 of the Income Tax

31. *E.g.*, royalty payments.

32. Ministry of Finance, *Guidelines for the Assessment of Income Tax Returns of Profit-Seeking Enterprises*, art. 87.

Law.³³ With the liberalization of exchange controls, it is likely that the tax authorities will utilize article 43-1 more frequently in the future. Any such adjustment might create the situation where an expense is not deductible in either of the jurisdictions involved and the income is realized in both jurisdictions.

The tax authorities may also concentrate on the withholding tax imposed on foreign payments. In the worst situation, a payment may require a withholding tax, usually twenty percent, but not be a deductible expense by the payor.

C. Investment Structure

A foreign-invested company is still entitled to certain privileges under the SIFN.³⁴ The major privileges under the SIFN are the foreign exchange privilege,³⁵ the waiver of the nationality requirement for shareholders and officers,³⁶ waiver of the public offering requirement,³⁷ and the waiver of the offering of shares to employees.³⁸ Whether an investment will be approved by the Investment Commission largely depends on the field of business³⁹ and is determined on a case-by-case basis.

33. Article 43-1 of the Income Tax Law states:

With respect to a profit-seeking enterprise which has an affiliated relationship with, or is directly or indirectly owned or controlled by another enterprise within or without the territory of the Republic of China, if it is found that arrangement of their mutual income, cost, expense, profit or loss distribution does not conform with regular business practice, and results in tax evasion or reduction, the collection authority-in-charge for the purpose of computing the accurate income of the enterprise may report to the Ministry of Finance to request approval to effect an adjustment in accordance with regular business practice.

34. *See supra* note 20.

35. SIFN, arts. 13, 14.

36. *Id.* art. 18(1). The ROC Company Law requires that at least one-half of the shareholders of an ROC-limited company, Company Law, art. 98(1), and more than one-half of the shareholders of an ROC company limited by shares, *id.* art. 128(1), be ROC nationals domiciled in the ROC. Furthermore, the Company Law requires that the chairman and the vice-chairman be ROC nationals domiciled in the ROC. *Id.* art. 208(5).

37. *Id.* art. 18(2). To qualify for the waiver of the public offering requirement found in article 156(4) of the Company Law, the foreign investment must constitute 45% or more of the total capital of the Taiwan company.

38. *Id.* As in the case of the waiver of the public offering requirement, a waiver of the requirement of offering shares to employees found in Article 267 of the Company Law is conditioned upon foreign investors owning at least forty-five percent of the total capital.

39. *Id.* art. 5. Certain business activities are ineligible for foreign investment approval (*e.g.*, freight forwarding). The government authorities are now working on a negative list of industries which may not be approved under the SIFN. Any investment other than those on the list would be entitled to approval under the SIFN.

Traditionally, a foreign-invested enterprise under the SIFN had to be incorporated in the form of an ROC company. Recent changes in the law, however, now permit a foreign investor to establish a branch under the SIFN if the branch will engage in manufacturing activities.⁴⁰ Withholding tax on dividends paid by such a domestic company or profits distributed by a foreign-invested approved (FIA) manufacturing branch is imposed at the rate of twenty percent.⁴¹ If an investment is not made under the SIFN, the withholding tax on dividends paid by a domestic corporation is thirty-five percent,⁴² but there is no withholding tax on a branch's profit distributed to its head office.

In the past, dividends paid or profits distributed by a company or a branch that did not enjoy a government-approved foreign investment could not be remitted out of Taiwan. Thus, the remittance and repatriation rights of government-approved foreign investments under the SIFN were one of the most attractive privileges of the SIFN. With the relaxation of the exchange controls, this privilege is no longer exclusively available to foreign investment approved entities. For several reasons, therefore, a non-FIA branch is now a more attractive structure for foreign enterprises establishing certain types of operations in Taiwan.

The principal advantages of operating in Taiwan through a branch as opposed to some form of subsidiary is that there is, with one exception,⁴³ no dividend tax payable on remittances by the branch of profits to its home office. The failure of such a branch to qualify for the SIFN privileges⁴⁴ is of no concern to a branch since a branch is not subject to these requirements.

The disadvantages of operating in Taiwan through a branch include, among others, a limitation on the types of permissible activities⁴⁵ and ineligibility for certain tax benefits.⁴⁶ In

40. Article 6 of the SIFN provides the following: "For a foreign company which intends to set up a branch office in the territory of the Republic of China for undertaking productive or manufacturing operations, the protection and disposition of its investment shall be governed by the provisions of this Statute *mutatis mutandis*."

41. Income Tax Law, art. 8(1); Guidelines Governing Withholding Rates for Various Kinds of Income issued by the Executive Yuan (October 21, 1982).

42. *Id.*

43. Foreign investment approved manufacturing branches are required to pay a twenty percent remittance tax on all profits sent to their head offices.

44. *I.e.*, waiver of nationality requirements for directors and shareholders, waiver of the public offering requirement, and the waiver of the requirement to offer shares to employees.

45. *E.g.*, manufacturing, leasing and investment. As discussed above, however, it is

summary, it may be advisable to establish a branch rather than obtain approval under the SIFN under the following circumstances:

(1) the proposed activities are not prohibited from being conducted by a branch;

(2) the invested enterprise would not otherwise be entitled to certain tax privileges granted under the Statute for Encouragement of Investment even if it were established in the form of an ROC company; and

(3) the remitted profits as well as remittances other than for import-related activities will not exceed the U.S. \$5 million per year maximum under the Outward Remittance Rules.

D. Transactions Still Requiring Government Approvals

Even though most outward remittances of foreign exchange may now be freely made without prior government approval, there are several situations still requiring government approval.

1. Exemption from withholding tax

Pursuant to the Income Tax Law,⁴⁷ royalties paid by an ROC licensee to foreign companies for the use of patent rights, trademarks and other types of licensed rights in technology transfers or fees paid by important productive enterprises for the provision of technical services may be exempted from withholding tax (*e.g.*, the current withholding rate is twenty percent) if the licensing or service arrangement has been approved by the appropriate government authority (*i.e.*, the IDB for technical service fees, the NBS for trademark licenses or the investment

possible to obtain the approval of the ROC government to establish a manufacturing branch. *See supra* note 40.

46. However, many of these are only available to so-called productive enterprises anyway.

47. Income Tax Law, art. 4(21). Article 4(21) provides that the following are exempt from income tax:

Royalty paid to a foreign enterprise for the use of its patent rights, trademarks, and/or various kinds of special licensed rights in order to introduce new production technology or products, improve product quality, or reduce production cost under the approval of the competent governmental agency as a special case as well as remunerations paid to a foreign enterprise for the technical services rendered in construction of a factory for an important productive enterprise determined and approved as such by the competent governmental agency. . . .

commission for patent and know-how royalties). The Executive Yuan has established guidelines for screening the withholding tax exemption. If the licensor seeking exemption has obtained approval from the appropriate government authority the following royalties and technical fees may be exempted from the withholding tax: (a) trademark royalties, (b) patent royalties, and (c) know-how royalties paid by strategic industries (as specified by the Executive Yuan).⁴⁸

2. Trademark license

As discussed above,⁴⁹ a foreigner owning an ROC-registered trademark may license that mark to a local enterprise only if it meets certain criteria.

IV. CONCLUSION

The relaxation of the ROC's restrictions on outward remittances is perhaps the single most dramatic legal development affecting the way foreign companies do business in Taiwan, since the ROC government moved to Taiwan in the late 1940's. This development has ramifications in almost all transnational transactions involving Taiwan.

Any foreign company or individual currently doing business in Taiwan or which intends to do business in the future must carefully examine the impact that such changes have, or will have, on its business dealings in Taiwan. In most instances, these changes will simplify and permit more flexibility in the transaction. While the liberalization of the exchange controls does not rid Taiwan of all legal obstacles to doing business, this development goes a long way toward facilitating foreign business in Taiwan by removing burdensome government approvals and restrictions.

48. Guidelines for Screening Applications for Exemptions of Taxes on Royalties or Service Charges Received by Profit-Seeking Enterprises issued by the Executive Yuan in its May 20, 1980 letter to the Ministry of Economic Affairs, Ref. No. *T'ai* (69) *Tz'ai* 5731, May 29, 1980.

49. See *supra* text accompanying note 30.

Appendix A

RULES GOVERNING APPLICATIONS FOR
EXCHANGE SETTLEMENT OF PRIVATE
INWARD REMITTANCES

Amended and Promulgated July 13, 1987
by The Central Bank of China

[Translation]

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Article 1

For the purpose of maintaining financial stability, these Rules are promulgated in accordance with Article 5 Subparagraphs (2) and (4) of the Exchange Control Act and Article 35 Subparagraphs (2) and (4) of the Organic Act of the Central Bank of China.

Article 2

For purposes of these Rules, the term "private inward remittance" shall refer to: (1) any payment delivered to any private payee in the Republic of China through any bank appointed by the Central Bank of China ("CBC") to conduct foreign exchange business (hereinafter "Appointed Bank"); and (2) any payment in the Republic of China for the collection or, advance or reimbursement at the payee's request, by an Appointed Bank for any private payee of a foreign draft.

Foreign exchange deposits and foreign currency sales shall be deemed private inward remittances hereunder.

Article 3

In requesting an Appointed Bank to purchase any foreign exchange, a recipient or depositor shall complete an Application to Sell Foreign Exchange for Private Inward Remittance (in form as attached) and cause the application to be filed with the Central Bank of China through the Appointed Bank.

Article 4

A recipient or depositor of any of the following types of private inward remittances may proceed to sell the foreign exchange upon completing an Application to Sell Foreign Exchange for Private Inward Remittance:

- (1) Foreign exchange earnings from the export of goods or the rendering of services.
- (2) Inward remittance of not more than the annual copulative total of U.S. \$50,000 or the equivalent amount on any other foreign currency if the recipient is an individual at least 20 years of age residing in the Republic of China with either an ROC identification card or alien resident certificate.

Article 5

A recipient or depositor of any private inward remittances other than those enumerated in the preceding Article may sell the foreign exchange by filing a completed Application to Sell Foreign Exchange for Private Inward Remittance and the following documents with an Appointed Bank, but not until the Application has been approved by the Central Bank of China:

- (1) The original exchange memo (with respect to the foreign exchange remitted previously out of Taiwan) issued by an Appointed Bank for the specific overseas investment, if the inward remittance represents the principal amount of or return on capital invested outside of Taiwan.
- (2) The document issued by the competent authority approving the specific foreign investment if the inward remittance represents capital remitted into Taiwan by overseas Chinese or foreign nationals for their investment in the Republic of China.
- (3) Other relevant document related to the inward remittance.

Article 6

Upon completing the sale of an inward remittance, an Appointed Bank shall cause the following information and other required documents to be delivered to the Central Bank of China:

- (1) The Application to Sell Foreign Exchange for Private Inward Remittance, if the case is handled in accordance with Article 4 hereof; and
- (2) The specific letter of approval issued by the Central Bank of China, if the case is handled in accordance with Article 5 hereof.

Article 7

Any applicant who misrepresents any fact in filing an application or any other acts which violate any of the provisions hereof shall be handled in accordance with the applicable laws and regulations.

Article 8

These Rules shall take effect as of July 15, 1987.

[TRANSLATION]

*Application for Settlement of Private
Inward Remittance of Foreign Exchange Application*

1. Application Date: _____
2. Applicant: _____
3. Company, entity, group or individual Uniform Serial Number.

_____ Company or entity: Uniform Serial Number _____

_____ Group: Uniform Serial Number _____

(if no Uniform Serial Number is available)

establishment and registration authority _____

registration certificate number _____

_____ Foreign national:

Alien resident certificate number _____

Birth date _____

Issue date of resident certificate _____

(if no alien resident certificate is available)

Nationality _____

Passport number _____

4. Purpose of sale of foreign exchange:
(if for more than one purpose, list the amount for each purpose)

_____ income from exported goods

_____ income from services rendered (give details of purpose, please refer to explanatory note 1)

_____ inward remittance other than the above-mentioned items (give details of purpose, please refer to explanatory note 2)

5. Sales amount: _____

The undersigned certifies that the above information is accurate.

Submitted to the Central Bank of China.

Signature and seal of the Applicant and its responsible person.

Address:

Telephone:

Items below for purposes of the Appointed Bank.

Application serial number: Appointed Bank and date of seal:

Serial number of exchange memo:

1. Examples: shipping expenses income, insurance premiums or settlement of insurance claims, overseas wages and salaries, commissions, agent fees, royalties, expenditure of foreign tourists in Taiwan, income from overseas construction, expenditures in Taiwan of foreign entities, tax payments by foreign nationals, etc.
2. Examples: inward remittance of capital and profit on overseas investments, investment by overseas Chinese or foreign nationals, foreign loans, and gifts, etc.

Note:

Any alterations to this application shall render the document void unless signed and sealed, at the place of such alterations, by an authorized person.

Appendix B

RULES GOVERNING APPLICATIONS FOR
EXCHANGE SETTLEMENT OF PRIVATE
OUTWARD REMITTANCES

Amended and Promulgated July 13, 1987
by The Central Bank of China

[Translation]

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Article 1

For the purpose of maintaining financial stability, these Rules are established in accordance with Article 5 Subparagraphs (2) and (4) of the Exchange Control Act, and Article 35 Subparagraph (2) and (4) of the Organic Act of the Central Bank of China.

Article 2

For purposes of these Rules, the term "private outward remittance" shall denote any payment requested by a private remitter through a bank appointed by the Central Bank of China ("CBC") to conduct foreign exchange business (hereinafter called an "Appointed Bank") and delivered to any payee outside the Republic of China by a bank outside the territory of the Republic of China. Any foreign exchange purchase for the purpose of deposit or to be held as cash is regarded as a private outward remittance hereunder.

Article 3

In requesting an Appointed Bank to purchase foreign exchange, an applicant for outward remittance shall complete an Application to Purchase Foreign Exchange for Private Outward Remittance (in form as attached) and cause the application to be filed with the Central Bank of China through the Appointed Bank.

Article 4

A remitter of any of the following types of private outward remittances may proceed to purchase the foreign exchange upon completing an Application to Purchase Foreign Exchange for Private Outward Remittance:

- (1) Foreign exchange payment for import of goods or foreign exchange payment for expenses relating to invisible trade transactions of companies, entities or group whose establishment and registration have been approved by the ROC government.
- (2) Outward remittance of not more than the annual cumulative total of U.S. \$5,000,000 or the equivalent amount in any other foreign currencies if the remitter is a company, entity or group whose establishment and registration have been approved by the ROC government or an individual of 20 years or more of age residing in the Republic of China either with an ROC identification card or an alien resident certificate, provided, however, the exchange settlement of any outward remittance at any time exceeding U.S. \$1,000,000 or the equivalent amount in any other foreign currencies shall not be made until ten business days after the date the application is filed.

The provision in subparagraph (2) may be temporarily suspended by the Central Bank of China, if it deems necessary, by notice to the Appointed Banks.

Article 5

A remitter of any private outward remittances other than those enumerated in the preceding Article may purchase his foreign exchange by filing a completed Application to Purchase Foreign Exchange for Private Outward Remittance and the following documents with an Appointed Bank, but not until the application has been approved by the Central Bank of China:

- (1) The approval documents issued by the relevant government authorities, if the outward remittance is intended as overseas investment, and
- (2) Relevant documents for other outward remittances.

Article 6

Upon completing a purchase of an outward remittance, an Appointed bank shall cause the following information and other required documents to be delivered to the Central Bank of China:

- (1) The Application to Purchase Foreign Exchange for Private Outward Remittance if the case is handled in accordance with Article 4 hereof; and
- (2) The specific letter of approval granted by the Central Bank of China, if the case is handled in accordance with Article 5 hereof.

Article 7

Any applicant who misrepresents any fact in an application, or who violates any of the provisions hereof, shall be processed in accordance with the applicable laws and regulations.

Article 8

These Rules shall take effect as of July 15, 1987,

[TRANSLATION]

*Application for Settlement of Private
Inward Remittance of Foreign Exchange Application*

1. Application Date: _____

2. Applicant: _____

3. Company, entity, group or individual Uniform Serial Number.

_____ Company or entity: Uniform Serial Number _____

_____ Group: Uniform Serial Number _____

(where no Uniform Serial Number is available)
establishment and registration authority _____
registration certificate number _____

_____ ROC National: Identification card number _____
Birth date _____

_____ Foreign national: Alien resident certificate
number _____
Birth date _____
Issue date of resident
certificate _____

4. Purpose of sale of foreign exchange:
(if for more than one purpose, list the amount for each purpose)

_____ price of imported goods
_____ payment of expenses for invisible trade by
company, entity or group (give details of
purpose, please refer to explanatory note 1)

_____ outward remittance other than the above-
mentioned items (give details of purpose, please
refer to explanatory note 2)

5. Purchase amount: _____

The undersigned certifies that the above information is accurate.

Submitted to the Central Bank of China.

Signature and seal of the Applicant and its responsible person.

Address:

Telephone:

Items below for purposes of the Appointed Bank.

Application serial number: Appointed Bank and date of seal:

Serial number of exchange memo:

Explanatory note:

- (1) Examples: shipping expenses, insurance premiums or settlements of insurance claims, expenses of overseas Chinese or foreign national employees, commissions, agent fees, compensation for technology, royalties foreign business costs, construction payment expense, expenses of foreign subsidiaries, etc.
- (2) Examples: outward remittance of capital and profit by investors who are foreign nationals or overseas Chinese, purchase of foreign real estate, purchase of foreign stocks and bonds, foreign deposits, overseas loans, payment of principal and interest of foreign loans, gifts, etc.

Note:

Any alterations to this application shall render the document void unless signed and sealed, at the place of such alterations, by an authorized person.

Appendix C

RULES GOVERNING REGISTRATION OF THE BALANCE
OF MEDIUMS OR LONG-TERM EXTERNAL DEBT BY A
PRIVATE ENTERPRISE

Amended and Promulgated on July 13, 1987
by the Central Bank of China.

[Translation]

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Article 1

These Rules are promulgated in accordance with Article 5(5) of the Exchange Control Act and Articles 35(5) and 39 of the Organic Act of Central Bank of China.

Article 2

The term "Balance of Medium — or Long-Term External Debt by a Private Enterprise" shall refer to any outstanding foreign currency loan, from any of the following persons to a private enterprise the registration of which has been approved by the ROC government, for which the repayment term exceeds one year:

- (1) a loan from an overseas financial institution (including branches of foreign financial concerns located in the Republic of China)
- (2) an import credit from a foreign supplier repayable in installments; or
- (3) a loan from the enterprise's foreign parent company.

Article 3

The private enterprise shall apply to the Central Bank of China to register the balance of its medium-or long-term external debt in accordance with these Rules. Any unregistered debt shall not be characterized as the private external debt of the ROC.

Article 4

A private enterprise shall complete a "Quarterly Report on the Medium-or Long-Term External Debt of a Private Enterprise"

(in form as attached) to report the balance of its medium or long term external debt and shall file the same with the Foreign Exchange Department of the Central Bank of China within the first ten days of the month following the end of each quarter.

Article 5

The application for registration shall state the amounts of the outstanding foreign currency debt by the nature of the creditors.

Article 6

The currency stated in the above registration shall be the currency that is actually loaned.

Article 7

These Rules shall take effect as of July 15, 1987.

[TRANSLATION]

Quarterly Report on the Balance of Medium- or
Long-Term External Debt of A Private Enterprise

Name of Enterprise:

Unit: Yuan

Type of Creditor	Amount	___ year ___ quarter balance of debt	Note
foreign financial institutions (including branches of foreign financial concerns located in the ROC)			
foreign suppliers (payment by installments)			
foreign parent company (loan investment)			

Note: Currency registration shall be in the currency that is actually loaned.

Signature and seal of responsible person