



INTERNATIONAL LICENSING AND DISTRIBUTION TRANSACTIONS

FREQUENTLY ASKED QUESTIONS

TAIWAN

As of August 30, 2007

This document is intended as a basic checklist for international licensing arrangements, very broadly defined, and other commercial transactions the principal purpose of which is to ensure the distribution or commercialization of products in another country, state or jurisdiction. It is not intended to be construed as legal advice or as a substitute for consultation with local counsel in each relevant jurisdiction.

As such, the term “*international licensing*” will be used in this checklist so as to encompass all of such commercial transactions ensuring the distribution or commercialization of products in another country including, without limitation: (i) distribution arrangements, (ii) supply arrangements, (iii) licensing arrangements, (iv) franchising arrangements, (v) commercial agency/sales representation arrangements, and (vi) manufacturing and tolling manufacturing arrangements. Similarly, the term “*licensor*” will refer to the grantor of rights or supplier, and the term “*licensee*” will refer to the party receiving rights to distribute or otherwise commercialize products in its jurisdiction.

In addition, the term “*international*” is not only intended to cover arrangements whose parties or scope span across a particular country’s borders, but also arrangements which span across state, provincial or other political subdivisions of the same country to the extent that the state, provincial or other political subdivision of such country have enacted different legal or regulatory requirements than those at the national level. Similarly, the term “*foreign*” is not only intended to qualify parties from another country than that under consideration, but also parties from another state, province or other political subdivision of the same country to the extent that they are regulated differently from those from that state, province or other political subdivision.

1. Legislation directly affecting International Licensing and Commercial Transactions	
<p>1.1 Is there any legislation in your jurisdiction which directly governs the creation of an international licensing relationship, including restrictions on the contractual freedom of the parties? If so, identify the legal nature of each contract so governed (e.g. license, franchise, etc.) and which party faces restrictions.</p>	<p>Taiwan does not have any specific legislation which directly governs the creation of international licensing relationships. Generally, these agreements are governed by the provisions of the Civil Code which apply to all commercial contracts. In the Civil Code, there are provisions governing incapacity of minors and those with mental incapacity to enter into binding contracts. In addition, other laws such as the Fair Trade Act may affect certain arrangements, such as exclusivity, and agency relationships. Much depends on the specific facts and circumstances of the situation and, it is important to have legal counsel review such arrangements prior to entering any agreement.</p>
<p>1.2 Are there any pre- or post-grant disclosure requirements with respect to any international licensing rights to be granted in your jurisdiction? If so, do these requirements still apply if your jurisdiction is one of several forming part of the</p>	<p>Taiwan has no particular disclosure requirements with respect to international licensing rights, regardless of whether or not Taiwan is the only or one of several jurisdictions in which the rights are</p>

<p>territory in respect of which such international licensing rights are being granted?</p>	<p>granted. However, when licensing a patent or trademark rights, it would be advisable to register one's rights.</p>
<p>1.3 Are there any registration requirements with respect to any international licensing rights to be granted in your jurisdiction? If so, do these requirements still apply if your jurisdiction is one of several forming part of the territory in respect of which such international licensing rights are being granted? Please identify the legal nature of the contract (e.g. license, franchise, etc.) to which such registration requirements apply.</p>	<p>In general, Taiwan has no registration requirements with respect to international licensing rights. However, if the subject of an exclusive licence is a patent or registered trademark, the signed license agreement may be (but is not required to be) registered at Taiwan Intellectual Property Office if the licensee wishes to be able to enforce its rights against third party infringers. This applies whether Taiwan is the sole or one of several jurisdictions in which the right is granted.</p>
<p>1.4 Are there any statutorily- or court-imposed <i>implied</i> obligations in your jurisdiction which may affect an international licensing relationship, such as good faith or fair dealing obligations or the obligation to act reasonably in the exercise of rights?</p>	<p>Article 1 of the Civil Code states that, where there is no applicable law or regulations governing a question, the underlying principles of law and customary practice shall be applied. The obligations implied under this regime are not enumerated but include equivalents of the duty to act in good faith, the duty to act reasonably and the obligation of fair dealing. Furthermore, the Fair Trade Act may apply to business arrangements, the intent being to prohibit unfair practices, onerous business arrangements and to preserve a level-playing business field in Taiwan.</p>
<p>1.5 Is there any legislation in your jurisdiction that: (a) conditions or otherwise limits the right to terminate or not to renew an international licensing relationship? or (b) requires the payment of an indemnity or other form of compensation upon termination or non-renewal?</p>	<p>There is no legislation to this effect in Taiwan which specifically governs international licensing, however, depending on the facts, a party to an agreement may bring a civil action against the other party to a contract for damages suffered if the termination is the result of a breach.</p>
<p>2. Issues relating to Royalties and Other Payments / Currency Conversion / Taxes</p>	
<p>2.1 Is there any legislation in your jurisdiction which governs the nature, amount or manner or frequency of payments of royalties/other fees in an international licensing relationship, or which requires regulatory approval of the royalty rate or other fees payable by a licensee in your jurisdiction, to a licensor in the same or other jurisdiction?</p>	<p>There is no specific legislation of this sort in Taiwan.</p>
<p>2.2 (a) Is there any legislation in your jurisdiction governing the conversion of one currency into another? (b) Can a court render an enforceable judgment in your jurisdiction in a currency other than the official currency of your jurisdiction?</p>	<p>(a) Generally, local currency is freely convertible into foreign currency and there is no legislation in Taiwan governing the conversion of one currency into another, except that local currency is prohibited from being converted into Renminbi (RMB, the currency of the People's Republic of China, also known as Chinese Yuan). (b) A court in Taiwan can render an enforceable judgment in New Taiwan Dollars or any other currency apart from RMB.</p>
<p>2.3 (a) Are there any restrictions on transfer and remittance of currency in your jurisdiction? (b) Are there any reporting requirements to regulatory authorities in connection with any</p>	<p>(a) (i) Corporate Entities: A corporation may remit up to US\$50,000,000 per annum without special approval, provided any one remittance is not</p>

<p>transfer or remittance of currency?</p>	<p>greater than US\$1,000,000. Special approval for individual or annual remittances above these levels is available on prior application to the relevant government authority, which must be provided to the bank in question along with the payment. Prior approval from the appropriate government agency is also required for certain listed remittances, such as incoming investment to be made by a foreign individual or company. Remittances so approved are then not subject to the annual ceiling.</p> <p>(ii) Individuals: An individual may remit up to US\$5,000,000 per annum without special approval, provided any one remittance is not greater than US\$500,000. Special approval for individual or annual remittances above these levels is available on prior application to the relevant government authority, which must be provided to the bank in question along with the payment. Prior approval from the appropriate government agency is also required for certain listed remittances, such as incoming investment to be made by a foreign individual or company. Remittances so approved are then not subject to the annual ceiling.</p> <p>Note that there is no restriction on internal domestic transfers of currency.</p> <p>Apart from the restrictions above, other foreign exchange and tax restrictions and limitations may apply to the specific circumstances of a remittance.</p> <p>(b) For remittances requiring special approval (as above), banks in Taiwan are required to report to the Central Bank when the remittance is made.</p>
<p>2.4 (a) Does any legislation in your jurisdiction prescribe an interest rate for late payment or other late payment fee? (b) Are there restrictions on the nature or amount of interest or other late payment fees that can be charged on overdue payments?</p>	<p>(a) Interest charged on late payments is governed by Article 203 of the Civil Law 2007. In the absence of an agreement to the contrary, late interest rate is 5% per year.</p> <p>(b) Under Article 205 of the Civil Law 2007, the interest rate for late payments is capped at 20% per annum.</p>
<p>2.5 Are there circumstances in which a foreign licensor may be taxed on its income in your jurisdiction? If so: (a) would the foreign licensor be taxed on its worldwide income or only on the income generated in or from your jurisdiction? (b) are there tax credits, offsets or deductions available in your jurisdiction to a foreign licensor who is subject to taxation on the same income in more than one jurisdiction?</p>	<p>Yes, (a) The foreign investor would only be taxed on the income generated in Taiwan; and (b) This would depend on the nature of the transaction and/or double taxation treaties in place with the other jurisdiction in question which may serve to reduce the applicable income tax withholding rate or allow a tax credit.</p>
<p>2.6 Does your income tax legislation impose any obligation on a licensee in your jurisdiction to withhold tax on payments to a foreign licensor? If so: (a) describe the general nature of the payments subject to a withholding tax; (b) state the withholding</p>	<p>Yes, income tax legislation in Taiwan imposes an obligation on a licensee to withhold tax on payments to a foreign licensor. (a) Withholding tax is levied on almost all forms of payments to a foreign recipient,</p>

<p>tax rate; and (c) does your jurisdiction typically enter into income tax treaties with other jurisdictions that may affect this rate ?</p>	<p>such as royalties, service charge payments, dividends, etc., unless an exception applies; (b) Withholding tax is levied at 20% on royalties and on service charge payments, and 30% on dividends (unless foreign investment approval is in place, in which case, the withholding rate would be reduced to 20%); and (c) Taiwan does not typically enter into income tax treaties with other jurisdictions that may affect these rates, although a few tax treaties do exist, such as with Labuan.</p>
<p>3. Anti-Trust or Competition Law Issues</p>	
<p>3.1 Are horizontally restrictive arrangements <i>generally</i> prohibited or regulated in your jurisdiction?</p>	<p>Horizontally restrictive arrangements are regulated by Article 11 of the Fair Trade Act which stipulates that any transaction which results in the resulting enterprise(s) together having one third of the market share; one of the resulting enterprises having one quarter of the market share; or any one of the resulting enterprises' sales for the preceding fiscal year exceeding a publicly announced threshold amount, shall be filed with the central competent authority at least 30 days in advance.</p>
<p>3.2 Are vertically restrictive arrangements <i>generally</i> prohibited or regulated in your jurisdiction?</p>	<p>Vertically restrictive arrangements are regulated by Article 11 of the Fair Trade Act which stipulates that any transaction which results in the resulting enterprise(s) together having one third of the market share; one of the resulting enterprises having one quarter of the market share; or any one of the resulting enterprises' sales for the preceding fiscal year exceeding a publicly announced threshold amount, shall be filed with the central competent authority at least 30 days in advance.</p>
<p>3.3 Are the following practices <i>generally</i> prohibited or otherwise regulated in your jurisdiction?</p> <ul style="list-style-type: none"> (a) Exclusive dealing (b) Resale price maintenance (c) Tied selling (d) Territorial, market sector, national or major account or other customer restrictions (e) Competitive pricing (that may be considered predatory) (f) Restriction on the sources of supply to licensees (g) Discrimination by a licensor among its licensees with respect to fees, royalties, payment for goods, services, etc (h) Refusal to deal (i) Non-competition covenants (j) Other practices 	<p>In each of the following events, we recommend that the details of the transaction and commercial arrangements be reviewed by counsel prior to entering into definitive agreements:</p> <ul style="list-style-type: none"> (a) Exclusive dealing is not generally prohibited or regulated in Taiwan, although achieving exclusive dealing which is likely to lessen competition or to impede fair competition, through coercion, inducement or other improper means, is prohibited under Article 19 of the Fair Trade Act. (b) Resale price maintenance is regulated by Article 18 of the Fair Trade Act, which stipulates that the trading counterpart of an enterprise, or a third party to whom goods are further resold, shall be permitted to decide their resale prices freely. (c) Tied selling is generally prohibited under Article 19 of the Fair Trade Act which sets out that any arrangement which limits a trading counterparts' business activity improperly by means of the

requirements of business engagement is prohibited, provided such tied selling is likely to lessen competition or to impede fair competition (Art. 19(6)).

(d) Territorial, market sector, national or major account or other customer restrictions are generally prohibited under Article 19 of the Fair Trade Act which sets out that any arrangement which limits a trading counterparts' business activity improperly by means of the requirements of business engagement is prohibited, provided such restrictions are likely to lessen competition or to impede fair competition (Art. 19(6)).

(e) Competitive pricing is generally prohibited under Article 19 of the Fair Trade Act: competitive pricing which is likely to lessen competition or to impede fair competition and which prohibits any enterprise from engaging in any acts which cause another enterprise to refrain from competing in price (Art. 19(4)).

(f) Restriction on the sources of supply to licensees is regulated Article 19 of the Fair Trade Act which states that, where it is likely to lessen competition or impede fair competition, causing another enterprise to discontinue supply, purchase or other business transactions with a particular enterprise for the purpose of injuring such particular enterprise is prohibited (Art.19(1)).

(g) Discrimination by a licensor among its licensees is regulated by Article 19 of the Fair Trade Act which prohibits treating another enterprise discriminatively without justification, provided such discrimination is likely to lessen competition or to impede fair competition (Art.19(2)).

(h) Refusal to deal is regulated by Article 19 of the Fair Trade Act which sets out that any arrangement which limits a trading counterparts' business activity improperly by means of the requirements of business engagement is prohibited, provided such refusal is likely to lessen competition or to impede fair competition (Art. 19(6)).

(i) Non-competition covenants are generally prohibited under Article 19 of the Fair Trade Act which sets out that any arrangement which limits a trading counterparts' business activity improperly by means of the requirements of business engagement is prohibited, provided such covenant is likely to lessen competition or to impede fair competition (Art. 19(6)).

(j) Other restrictive practices are broadly prohibited by Article 24 of the Fair Trade Act, which

	states that no enterprise shall otherwise engage in any deceptive or obviously unfair conduct that is capable of affecting trading order. Such conduct is further explained in the Technology Licensing Agreement Guidelines issued by the Fair Trade Commission of Taiwan. Note that Article 45 of the Fair Trade Act sets out that no provision of this Law shall apply to any proper conduct in connection with the exercise of rights pursuant to the provisions of the Copyright Law, the Trademark Law, or the Patent Law.
4. Intellectual Property Issues	
4.1 Trademarks	
(a) (i) Can a foreign licensor register a trademark in your jurisdiction? (ii) Is an original registration in the country of origin necessary prior to the registration of a foreign trademark in your jurisdiction?	(i) Yes, a foreign licensor can register a trademark in Taiwan. (ii) An original prior registration in the country of origin is not necessary.
(b) Are there particular requirements in your jurisdiction: (i) for the validity of a trademark license? (ii) to render a trademark license opposable to a third party? (iii) with respect to licensing an unregistered trademark?	(i) There are no requirements for the validity of a trademark licence. (ii) A trademark licence is only opposable to a third party if both the trademark and the licence have been registered at Taiwan Intellectual Property Office. (iii) The licence of an unregistered trademark is not registrable at Taiwan Intellectual Property Office and is not defensible against third party infringement under Taiwan's trademark laws.
(c) (i) Can a trademark licensee in your jurisdiction sub-license its use to a third party? (ii) If so, does the right to sub-license exist statutorily or must it be granted contractually? (iii) Can the licensee validly waive its right to sub-license?	(i) Yes, trademark licences in Taiwan can be sub-licensed to third parties. (ii) The right to sub-licence must be granted contractually. (iii) Yes, the licensee can validly waive its right to sub-licence.
(d) Can a foreign trademark owner or licensor institute proceedings against a third party for infringement in your jurisdiction without joining the licensee from your jurisdiction as a party to the proceedings?	Yes, a foreign trademark owner or licensor can institute proceedings against a third party infringer in Taiwan without joining the licensee as a party, provided that the trademark has a valid current registration at Taiwan Intellectual Property Office.
(e) Can a trademark licensee in your jurisdiction institute proceedings against an infringer of the trademark without the consent of the owner or licensor?	No, a trademark licensee in Taiwan cannot institute proceedings against a third party infringer without the consent of the trademark owner or licensor.
4.2 Trade Secrets, Know-How and Confidential Information	
(a) (i) Is there specific legislation in your jurisdiction that governs trade secrets or know-how? (ii) Is there a legal definition of trade secrets or know-how in your jurisdiction and how are they protected?	(i) Yes, trade secrets and know-how are governed by the Trade Secrets Act 1996 of Taiwan. (ii) Trade secrets are defined in Article 2 of the Trade Secrets Act 1996 as "any method, technique, process, formula, program, design, or other information that may be used in the course of production, sales, or operations, and also meet the following requirements: (1) It is not known to persons generally involved in

	<p>the information of this type; (2) It has economic value, actual or potential, due to its secretive nature; and (3) Its owner has taken reasonable measures to maintain its secrecy.”</p> <p>There is no separate definition of know-how in this Act but the common understanding of “know-how” falls under the definition of “trade secrets” above.</p> <p>Trade secrets are protected by Articles 10, 11 and 12 of the Trade Secrets Act 1996, which set out the definition of a misappropriation of a trade secret, the civil liability and civil remedies therefore, and the statutory limitation period.</p> <p>In addition to the Trade Secrets Act 1996, the Fair Trade Act provides administrative punishments as well as criminal liabilities for the protection of the trade secrets against the enterprise that violates the Fair Trade Act. Under Article 36 and Article 19 of the Fair Trade Act, should an enterprise acquire the secret of production and sales, information concerning trading counterparts or other technology related secret of any other enterprise by coercion, inducement with interest, or other improper means which is likely to lessen competition or to impede fair competition, such enterprise will be punished by the Fair Trade Commission to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order issued by Fair Trade Commission; and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take necessary corrective action, or after its ceasing therefrom, shall such enterprise have the same or similar violation again, the actor (in the most cases, the responsible persons, sometimes, the person in charge of that project and/or his supervisor may also be punished) shall be punished by imprisonment for not more than two years or detention, or by a fine of not more than fifty million New Taiwan Dollars, or by both.</p>
<p>(b) Can trade secrets and know-how be protected in your jurisdiction against (i) a licensee in an international licensing relationship? (ii) a third party with whom the owner or licensor has no contractual relationship?</p>	<p>(i) There is no special provision for the protection of trade secrets and know-how against a licensee in an international licensing relationship, but this would be covered under Articles 10, 11 and 12 of the Trade Secrets Act 1996.</p> <p>(ii) There is no special provision for the protection of trade secrets and know-how against a third party with whom the owner or licensor has no contractual relationship, but this would be covered under Articles 10, 11 and 12 of the Trade Secrets Act 1996.</p>
<p>(c) To what extent can “trade dress” be protected in your jurisdiction against (i) a licensee in an international licensing relationship? (ii) a third party with whom the owner or licensor has</p>	<p>“Trade dress” is protected in Taiwan by Articles 20 and 21 of the Fair Trade Act, which stipulate, <i>inter alia</i>, that “no enterprise shall have any of the</p>

<p>no contractual relationship?</p>	<p>following acts with respect to the goods or services it supplies:</p> <ol style="list-style-type: none">1. using in the same or similar manner, the personal name, business or corporate name, or trademark of another, or container, packaging, or appearance of another's goods, or any other symbol that represents such person's goods, commonly known to relevant enterprises or consumers, so as to cause confusion with such person's goods; or selling, transporting, exporting, or importing goods bearing such representation; or2. using in the same or similar manner, the personal name, business or corporate name, or service mark of another, or any other symbol that represents such person's business or service, commonly known to relevant enterprises or consumers, so as to cause confusion with the facilities or activities of the business or service of such person.” (Art. 20) <p>Similarly, “no enterprise shall make or use false or misleading representations or symbol as to price, quantity, quality, content, production process, production date, valid period, method of use, purpose of use, place of origin, manufacturer, place of manufacturing, processor, or place of processing on goods or in advertisements, or in any other way making known to the public. No enterprise shall sell, transport, export or import goods bearing false or misleading representations referred to in the preceding paragraph.” (Art.21) These provisions also apply to the provision of services.</p> <p>Consequently, (i) There is no special provision for the protection of “trade dress” against a licensee in an international licensing relationship, but this would be covered under Articles 20 and 21 of the Fair Trade Act; and (ii) There is no special provision for the protection of “trade dress” against a third party with whom the owner or licensor has no contractual relationship, but this would be covered under Articles 20 and 21 of the Fair Trade Act.</p>
<p>(d) Are confidentiality and non-disclosure / non-use obligations in international licensing agreements enforceable in your jurisdiction: (i) during the term? (ii) after termination or expiration of the contractual relationship?</p>	<p>(i) Yes, confidentiality and non-disclosure / non-use obligations in international licensing agreements are enforceable in Taiwan during the term of the agreements in question. (ii) Confidentiality and non-disclosure / non-use obligations in international licensing agreements are enforceable after termination or expiration of the contractual relationship in Taiwan, provided the contract imposes such obligation on the licensee and the information in question can still be deemed a trade secret according</p>

	to the definition in Article 2 of the Trade Secrets Act 1996 (e.g. the information is not in the public domain).
4.3 Patents	
(a) Are there particular requirements in your jurisdiction: (i) for the validity of a patent licence? (ii) to render a patent licence opposable to a third party?	(i) There are no particular requirements in Taiwan for the validity of a patent licence. (ii) In order to render a patent licence opposable to a third party in Taiwan, the licence must be exclusive and must be registered at Taiwan Intellectual Property Office (TIPO).
(b) Is there a compulsory patent licensing regime in your jurisdiction?	There is a compulsory patent licensing regime in Taiwan provided in Article 76 of the Patent Act. Article 76 provides that for patents which are to be used (i) to cope with national emergencies; (ii) in a non-profit-seeking manner for the enhancement of public welfare; or (iii) in the case of an applicant's failure to reach a licensing agreement with the patentee concerned under reasonable commercial terms and conditions within a considerable period of time, the Patent Authority may, upon an application, grant a right of compulsory licensing to the applicant to put the patented invention into practice, provided that such usage shall be restricted mainly to the purpose of satisfying the requirements of the domestic market. However, if the application for compulsory licensing of a patent right covers semiconductor technology, such application may be allowed only if the proposed usage is for a non-profit-seeking use contemplated to enhance the public welfare.
(c) Is your jurisdiction party to (i) the Paris Convention for the Protection of Industrial Property? (ii) the Patent Cooperation Treaty (PTC)? (iii) the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)?	Taiwan is not a party to (i) the Paris Convention for the Protection of Industrial Property nor (ii) the Patent Cooperation Treaty, but (iii) became a member of TRIPs on 1 January 2002 under the name "Chinese Taipei".
(d) Can a foreign owner or licensor of a patent institute proceedings against a third party for infringement in your jurisdiction without joining the licensee from your jurisdiction as a party to the proceedings?	Yes, a foreign owner or licensor of a patent can institute proceedings against a third party infringer in Taiwan without joining the licensee as a party, provided that the patent has a valid current registration at Taiwan Intellectual Property Office.
(e) Can a patent licensee in your jurisdiction institute proceedings against an infringer of the patent without the consent of the owner or licensor?	Yes, an exclusive patent licensee in Taiwan can institute proceedings against a third party infringer unless it is expressly stated in the licence agreement that the licensee cannot do so.
4.4 Copyright	
(a) Are there particular requirements in your jurisdiction: (i) for the validity of a copyright license? (ii) to render a copyright license opposable to a third party?	There are no particular requirements in Taiwan (i) for the validity of a copyright licence; or (ii) to render a copyright licence opposable to a third party in Taiwan.

<p>(b) Is a provision requiring the contractual assignment of copyright by the licensee to the licensor for any artwork, software improvements and other works advisable in your jurisdiction?</p>	<p>It is not permitted for a licensee to improve artwork, software or other works licensed to him in Taiwan, so this situation would not arise.</p>
<p>(c) Does your jurisdiction recognize what are internationally known as “moral rights” in copyrighted works? Can they be contractually assigned? If not, can they be contractually waived?</p>	<p>Yes, Taiwan recognises moral rights in Section 3 of the Copyright Act 2003. Moral rights cannot be contractually assigned or contractually waived.</p>
<p>5. Product Supply and Liability Issues</p>	
<p>5.1 Is there any legislation in your jurisdiction that may govern the price or mark-up of products sold to licensees or the terms and conditions of sale or delivery of products sold into your jurisdiction?</p>	<p>Neither the price or mark-up of products sold to licensees nor the terms and conditions of sale or delivery of products sold into Taiwan, are governed by any legislation. They are freely negotiable between the licensor and licensee.</p>
<p>5.2 Is your jurisdiction party to any international treaty that may affect the supply of products to your jurisdiction (e.g. United Nations Convention on the International Sales of Goods)?</p>	<p>Taiwan is not a party to the United Nations Convention on the International Sales of Goods or any other international treaty which may affect the supply of products to this jurisdiction. However, Taiwan has many regulations in place which mirror international treaty provisions in order that companies producing goods and services in this jurisdiction can compete in the international markets which are bound by such treaties.</p>
<p>5.3 Are there any import licensing requirements in your jurisdiction?</p>	<p>Taiwan has in place a list of commodities which are subject to import restriction and will be examined by Customs. To bring any such commodities into Taiwan, an import licence is required.</p>
<p>5.4 Are there any requirements in your jurisdiction that certain products, or certain of their components, must be manufactured in your jurisdiction?</p>	<p>No, there are no requirements that certain products or certain components must be manufactured in Taiwan.</p>
<p>5.5 Can a licensor be held liable by its licensee or a customer of its licensee in connection with the products sold or services rendered by the licensee in your jurisdiction?</p>	<p>Yes, a licensor can be held liable by its licensee or a customer of its licensee in connection with the products sold or services rendered by the licensee in Taiwan.</p> <p>Article 7 of the Consumer Protection Law 2003 sets out that (i) business operators (which could be licensor or licensee) who engage in the design, production or manufacture of goods or in the provisions of services shall ensure that goods and services provided by them meet and comply with the contemporary technical and professional standards of reasonably expected safety before the sold goods are launched into the market or at the time of rendering services; and (ii) where goods or services may endanger the lives, bodies, health or property of consumers, a warning and the methods for emergency handling of such danger shall be labelled in a conspicuous place. Business operators violating these two requirements and thus causing</p>

	<p>injury to consumers or third parties shall be jointly and severally liable therefor, provided that if business operators can prove that they are not guilty of negligence, the court may reduce their liability for damages.</p> <p>Article 8 of the Consumer Protection Law 2003 provides that business operators engaging in distribution of goods or services and sales shall be jointly and severally liable for damages with such business operators engaging in the design, production or manufacture of goods or services with respect to injury caused by such goods or services.</p>
<p>5.6 Must all product warranties be expressly stated in the sale agreement or are implied warranties recognized? If so, can implied warranties be limited or otherwise waived?</p>	<p>No, not all product warranties must be stated in the sale agreement. Two further warranties are implied. (1) Article 354 of the Civil Code 2002 provides that the seller of a thing shall warrant that the thing sold is free from any defect in quality which may destroy or impair its value, or its fitness for ordinary efficacy, or its fitness for the efficacy of the contract of sale; and (2) Article 7 of the Consumer Protection Law 2003 sets out that business operators who engage in the design, production or manufacture of goods or in the provisions of services shall ensure that goods and services provided by them meet and comply with the contemporary technical and professional standards of reasonably expected safety before the sold goods are launched into the market or at the time of rendering services.</p> <p>As regards limitation or waiver of these implied warranties; (1) under Article 366 of the Civil Code 2002, the Article 354 implied warranty can be limited or waived by agreement between the contracting parties unless the seller has prior knowledge of the defect or lack of fitness; and (2) under Article 10.1 of the Consumer Protection Law 2003, business operators cannot agree in advance to limit or waive their liability for damages under the Article 7 implied warranty.</p>
<p>6. Labour Issues</p>	
<p>6.1 Can a labour agreement between a licensee and a labour union be extended to other licensees of the same foreign licensor in your jurisdiction?</p>	<p>No, a labour agreement between a licensee and a labour union cannot be extended to other licensees of the same foreign licensor in Taiwan.</p>
<p>6.2 Are there any specific industries in your jurisdiction to which a mandatory collective bargaining agreement is applicable?</p>	<p>There are no specific industries to which a mandatory collective bargaining agreement is applicable in Taiwan, although such an activity would be permitted by law.</p>
<p>7. Assignment</p>	
<p>7.1 (i) Are there any statutory restrictions on the right of</p>	<p>(i) There are no statutory restrictions on the right of</p>

<p>either party to assign its rights or obligations under an international licensing arrangement? If so, can such restrictions be waived contractually? (ii) Are contractual restrictions against assignment by either party enforceable in your jurisdiction?</p>	<p>either party to assign its rights or obligations under an international licensing arrangement in Taiwan. However, generally, a right may not be assigned if (a) the nature of the right does not permit the assignment; (b) the parties have agreed that the right shall not be assignable; or (c) the right cannot be the subject of a judicial attachment.</p> <p>(ii) Contractual restrictions against assignment by either party are enforceable in Taiwan.</p>
<p>7.2 In the absence of a contractual prohibition against assignment, can a party to an international license agreement in your jurisdiction: (i) assign its rights and obligations without the consent of the other party? or (ii) subcontract the performance of certain of its obligations to another?</p>	<p>In the absence of a contractual prohibition against assignment, a party in Taiwan (i) can assign its rights to a third party with only notification to the other contracting party, but cannot assign its obligations to a third party without the consent of the other contracting party; (ii) can subcontract the performance of certain of its obligations to a third party.</p>
<p>7.3 If an assignment is made, is the assignor released from performance of its future obligations or does the assignor remain jointly and severally (or solitarily) liable with the assignee?</p>	<p>In Taiwan, if an assignment is made, the assignor is released from performance of its future obligations.</p>
<p>8. Disclaimers of Liability, Damages and Limitation of Damages</p>	
<p>8.1 (a) Are disclaimers of liability generally enforceable in your jurisdiction? (b) Are there exceptions to the enforceability of such disclaimers in your jurisdiction?</p>	<p>(a) Yes, disclaimers of liability are generally enforceable in Taiwan.</p> <p>(b) There are exceptions to the enforceability of such disclaimers in Taiwan in Article 222 of Civil Code 2002, which states that responsibility for intentional or grossly negligent acts shall not be released in advance.</p>
<p>8.2 (a) What types of damages are available in your jurisdiction for breach of contract (i.e. direct, indirect, punitive, exemplary, etc.)? (b) Can the parties contractually agree to waive certain types of damages or limit them (e.g. set a maximum amount)?</p>	<p>(a) Only direct damages are available for breach of contract in Taiwan. Direct damages are defined in Article 216 of the Civil Code 2002 as those limited to the injury actually suffered and the interests which have been lost. Other types of damages and the amounts for each type need to be specified in contract, but if the agreed penalty is disproportionately high, the court may reduce it to a reasonable amount.</p> <p>(b) Yes, the parties can contractually agree to waive certain types of damages or limit them in any way that is not contrary to public policy or morals.</p>
<p>8.3 (a) What is the statute of limitation (or prescription) for claims of breach of contract in your jurisdiction? (b) Can the parties contractually reduce the statute of limitation or prescription period?</p>	<p>(a) In Taiwan a general claim for breach of contract will be extinguished by prescription if it is not exercised within fifteen years. There are different limitation periods for the breach of specific types of contract such as two years (for breach of a lease for failure to pay rent, breach of a contract to pay attorneys, certified public accountants and public</p>

	<p>notaries, for example), and five years (for breach of a contract to pay interest, dividends, rentals, maintenance, pensions, and other periodical payments falling due at stated intervals of one year or less, for example).</p> <p>(b) The parties cannot contractually reduce the statute of limitation or prescription period in Taiwan.</p>
<p>8.4 Can the parties contractually agree to liquidated damages (or a penal clause) in your jurisdiction without necessity of proving the actual damages suffered by the claiming party? If so, do the courts have any authority to revisit the agreed-upon amount of liquidated damages (or the penal clause) in certain circumstances?</p>	<p>Yes the parties can contractually agree to liquidated damages (or a penalty clause) in Taiwan without necessity of proving the actual damages suffered by the claiming party. The courts have authority to revisit the agreed-upon amount of liquidated damages (or the penalty clause) if the agreed penalty is disproportionately high. The court may reduce it to a reasonable amount.</p>
<p>9. Bankruptcy</p>	
<p>9.1 What is the impact of the bankruptcy of the licensee on the international license relationship in your jurisdiction?</p>	<p>In Taiwan, the trustee in bankruptcy appointed by the court shall apply the court to avoid the international license if such license is prejudicial to the creditors' rights. If the international license is not avoided by the trustee in bankruptcy, the performance of the license shall be carried by the trustee in bankruptcy with the concurrence of the inspector appointed by the court.</p>
<p>9.2 If the licensee has granted sub-licenses in your jurisdiction, what is the impact of the licensee's bankruptcy on the rights of the sub-licensees?</p>	<p>In Taiwan, the trustee in bankruptcy appointed by the court shall apply the court to avoid the sub-license if such sub-license is prejudicial to the creditors' rights. If the sub-license is not avoided by the trustee in bankruptcy, the performance of the sub-license shall be carried by the trustee in bankruptcy with the concurrence of the inspector appointed by the court.</p>
<p>9.3 Can the licensor structure its international license agreement so as to cause the termination of such agreement prior to the licensee's bankruptcy and thus remove the licensee's rights under such agreement from the bankruptcy trustee's jurisdiction?</p>	<p>Yes, in Taiwan the licensor can structure its international license agreement so as to cause the termination of such agreement prior to the licensee's bankruptcy and thus remove the licensee's rights under such agreement from the bankruptcy trustee's jurisdiction.</p>
<p>9.4 If not, can the international license agreement contain any other provision which could come into application immediately upon such bankruptcy of the licensee (e.g. payment terms for products purchased from licensor or its supplier convert to C.O.D. (cash on delivery) without notice) and be enforceable against the bankruptcy trustee in your jurisdiction?</p>	<p>N/A – see 9.3 above.</p>
<p>10. Dispute Resolution</p>	
<p>10.1 Are there any restrictions in your jurisdiction against an international licensing arrangement being governed by the laws of another jurisdiction chosen by the parties?</p>	<p>No, there are no restrictions in Taiwan against an international licensing arrangement being governed by the laws of another jurisdiction chosen by the parties.</p>

<p>10.2 Can the parties contractually agree to arbitration of their disputes instead of resorting to the courts of your jurisdiction? If so, must the arbitration proceedings be conducted in your jurisdiction or can they be held in another jurisdiction?</p>	<p>Yes, parties can contractually agree to arbitration of their disputes instead of resorting to the courts of Taiwan. The arbitration proceedings can be conducted in another jurisdiction (though see the answer to 10.4 below regarding reciprocal enforceability of arbitral awards in the Republic of China).</p>
<p>10.3 Is your jurisdiction party to: (a) the Hague Convention on Service Abroad of Judicial or Extrajudicial Documents in Civil or Commercial Matters? (b) the Hague Convention on Taking Evidence Abroad in Civil or Commercial Matters?</p>	<p>Taiwan is not a contracting state to either the Hague Convention on Service Abroad of Judicial or Extrajudicial Documents in Civil or Commercial Matters or the Hague Convention on Taking Evidence Abroad in Civil or Commercial Matters.</p>
<p>10.4 Would a judgment of a court of another jurisdiction, or an arbitration award from another jurisdiction, be enforceable in your jurisdiction? In particular, is your jurisdiction party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards?</p>	<p>Yes, a judgment of a court of another jurisdiction, or an arbitration award from another jurisdiction, would be enforceable in Taiwan, (Article 47 of Arbitration Law 2002 respectively), except as follows:</p> <p>(i) for judgments: (a) where the foreign court lacks jurisdiction pursuant to the laws of Taiwan; (b) where a default judgment is rendered against the losing defendant, except in the case where the notice or summons of the initiation of action had been legally served in a reasonable time in the foreign country or had been served through judicial assistance provided under the laws of Taiwan; (c) where the performance ordered by such judgment or its litigation procedure is contrary to Taiwan's public policy or morals; or (d) where there exists no mutual recognition between the foreign country and Taiwan (Article 402 of Civil Procedure Law 2007).</p> <p>(ii) for arbitral awards: (a) where the recognition or enforcement of the arbitral award is contrary to the public order or good morals of Taiwan; (b) where the dispute is not arbitrable under the laws of Taiwan; or (c) if the country where the arbitral award is made or whose laws govern the arbitral award does not recognize arbitral awards of Taiwan (Article 49 of Arbitration Law 2002).</p> <p>Taiwan is not a contracting state to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards nor to the New York Convention on Enforcement of Foreign Judicial Decisions.</p>
<p>10.5 Is injunctive relief available? If so, can it be waived contractually?</p>	<p>Injunctive relief is available in Taiwan. It cannot be waived contractually.</p>
<p>10.6 Are jury trials possible for contractual dispute? If so, can they be waived contractually?</p>	<p>There is no jury trials system in Taiwan.</p>