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WHITE PAPER

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Taiwan Offshore Wind Farm Projects: Guiding Investors through the Legal and Regulatory Framework

The Taiwanese Government has set aggressive renewable energy targets, with a particular focus on the development of its offshore wind power capabilities. This exciting new market presents great opportunities for foreign investors. At the same time, it highlights the need for a local legal and regulatory framework that will foster the development of the market in an effective and efficient manner.

This Jones Day *White Paper* provides an overview of the current legal and regulatory framework for offshore wind farm projects in Taiwan, including the general procurement process, environmental approval process, grid allocation process, approvals/licensing regime, and other key considerations for offshore wind developers (i.e., foreign ownership limits, foreign exchange controls, etc.). The intention is to provide foreign investors with an early "heads up" of what to expect when seeking to undertake offshore wind energy projects in Taiwan.

TABLE OF CONTENTS

INTRODUCTION

Taiwan Profile

Taiwan is located in East Asia with Mainland China to the west, Japan to the northeast, and the Philippines to the south. It is referred to as one of the "Four Asian Tigers"[1] and is the seventh-largest economy in Asia. Taiwan is a member of the World Trade Organization ("WTO"), the Asia-Pacific Economic Cooperation ("APEC"), and International Chamber of Commerce ("ICC") and is an observer at the Organisation for Economic Cooperation and Development ("OECD"). Taiwan's primary trade partners include Mainland China, Hong Kong, the United States, Japan, and Singapore. Annex 1 provides an overview of the legal framework in Taiwan.

Diagram 1

Source: U.S Passport Service Guide

Taiwan Offshore Wind Farm Market

Taiwan is surrounded by sea. The geographic environment provides an abundance of wind energy to many areas along the coast of Taiwan and its offshore islands. On the west coast of Taiwan, where the majority of the offshore wind farm projects will be located, the average wind speed reaches up to approximately 11.24 meters per second (measured at 100 meters).[2] These wind speeds are far in excess of the neighboring coastal area of Hong Kong, with wind speeds of up to approximately 5.8 meters per second (measured at 105 meters).[3] The abundance of offshore wind resources in Taiwan presents a significant opportunity for investors in the offshore wind farm market.

The Taiwanese Government (the "Government") has set aggressive renewable energy targets, with a particular focus on the development of its offshore wind power capabilities. In 2016, electricity generated from renewable energy power plants accounted for 4.8 percent of the aggregate produced electricity and 9.4 percent of the aggregate installed capacity in Taiwan.[4] The policy of the Government is to progressively phase out nuclear power plants and have an energy mix containing 50 percent natural gas, 30 percent coal, and 20 percent renewable energy by 2025.[5] The achievement of this renewable energy target will focus on the development of solar photovoltaic ("PV") generation and offshore wind power. Refer to Annex 2 for a summary of the Government's renewable energy targets.

To achieve the Government's renewable energy targets, the Government announced on July 3, 2012, the "Thousand Wind Turbines Project" (the "Program"). The Program is divided into the following three phases:

1. **Demonstration Round (2016–2020)**

   Three projects were awarded contracts for the Demonstration Round with an aggregate capacity of approximately 360 MW. These projects include the Formosa Demonstration Project (expected capacity of 120 MW with 32 installed wind turbines), the Fuhai Demonstration Project (expected capacity of approximately 120 MW and 30 installed wind turbines) and the TPC Demonstration Project (expected capacity of approximately 108 MW and 22-36 installed wind turbines). The intention is for each of these projects to be under a 20-year PPA with fixed feed-in tariff pricing. While the Formosa Phase I Project (aggregate capacity of 8 MW) is operational, the other demonstration projects are expected to be operational by 2020 (including the Formosa Phase II Project).

2. **Transition Round (2019–2020)**

   In July 2015, the Bureau of Energy ("BOE") released 36 zones for potential development of future commercial wind farms. Those developers that have received preliminary approval of their environmental impact assessment ("EIA") may apply for developing the relevant zone. As of January 30, 2017, 24 offshore wind farm projects have received the Taiwanese Environmental Protection Administration's ("EPA") preliminary approval (including 11

projects that have obtained final approval). There are three offshore wind farm projects continuing to undergo the preliminary EPA review.

Recently, the BOE increased the offshore wind energy target for the Transition Round from 3 GW to 5.5 GW.[6] 3.5GW of projects will be guaranteed at a fixed feed-in tariff for 20 years. The remainder of the projects will go through a competitive auction to sell power at a lower price in a tender held by Taiwan Power Company ("Taipower"). Of the 5.5 GW of targeted capacity, the Government plans for 500 MW (with feed-in tariffs) to be operational by 2020, with the remainder to be operational by 2025.

Further details regarding the process for developers to apply for an allocation of the 5.5 GW of capacity is set out in "Grid Allocation Process" below.

3. **Zonal Development Round (2021–2025)**

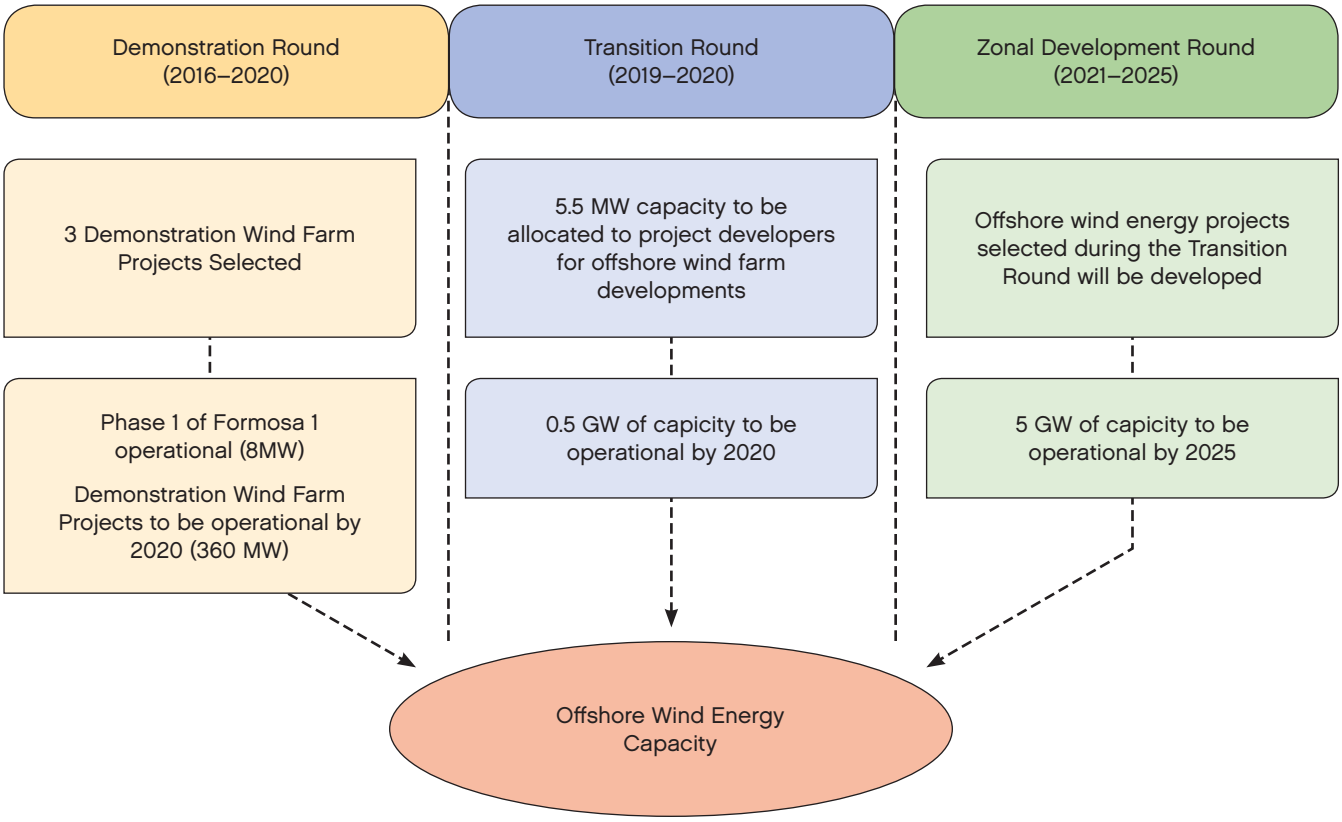
As part of this phase, the offshore wind farm projects with an aggregate capacity of 5 GW, as selected pursuant to the Transition Round, will be developed as self-sustaining projects and on a commercial scale.

It is anticipated that the projects will be developed according the following indicative timeline:

Year	Works
2021–2022	• Investigation and exploration • Cable laying • Ship and equipment design • Safety management • Ship construction
2023	• Wind turbine components production • Submarine cable laying • Tower and submarine foundation construction • Ship and equipment design • Safety management • Ship construction • Other uncompleted plan and preparation work
2024–2025	• Wind turbine components production • Wind turbine construction • Ship and equipment design • Safety management • Other uncompleted Phase 1 work

Source: Taiwanese Industrial Development Bureau

Diagram 2



In the period to 2025, the Taiwan Ministry of Economic Affairs ("MOEA") intends to invest NT$684 billion (US$22.74 billion) in order to achieve its onshore/offshore wind power targets. The MOEA hopes that this initial investment will stimulate the private sector to contribute NT$478 billion (US$15.92 billion) in the same period.

Lessons Learned from the Taiwan Onshore Wind Farm Market

While the offshore wind farm market in Taiwan is in its infancy, the onshore wind farm market is relatively mature. As of July 2017, there were a total of 348 onshore turbines in Taiwan situated mainly along the western coastline and in outlying Penghu County with a total capacity of 686.7 MW, accounting for 15.3 percent of installed capacity of renewable energy.[7] By 2025, the Government aims to have a total of 450 turbines, with an installed capacity of 1.2 GW.[8]

Since 2000, the Government, including the BOE and the MOEA, has actively promoted the development and application of onshore wind power development through resource exploration, technical guidance, research survey, and, particularly, by providing subsidies for the purchase of equipment.

While the Taiwan onshore wind farm market is reasonably developed, it is not without its challenges, including:

- projects located on government-owned land are given a nine-year lease, which may be renewed provided certain requirements are satisfied. This raises a bankability issue for any proposed limited or non-recourse financing for a period longer than the lease term;
- limited appetite of local banks for non-recourse project financing, impacting on costs;
- stringent environmental requirements making for a complicated and prolonged application and approval process; and
- onshore wind farms are saturated due to limited land space. Most onshore wind energy resources have been constructed or planned.

Some of the same issues will also be challenges for the development of the offshore wind farm sector in Taiwan. For instance:

- developers are already experiencing challenges with regard to the environmental application process; and
- as the revenues will be denominated in NT$, it will be important for developers to obtain financing from local financial institutions. The need to obtain domestic financing is also included as a key consideration in the selection criteria for grid allocation (*see* "Grid Allocation Process" below).

With regard to the necessary site leases for offshore wind energy projects, the National Property Administration has released a regulatory letter, specifically permitting the lease for an offshore wind farm project to extend beyond the nine-year limit placed on onshore wind farm projects on government-owned land and to instead remain effective for the period of the electricity license. Upon the expiry of the electricity license, the lease will remain effective with the consent of the Government.[9]

OVERVIEW OF THE LEGAL AND REGULATORY FRAMEWORK

From a foreign investor's perspective, an informed understanding of the legal and regulatory framework (including the general procurement process, environmental approval process, approvals/licensing regime, foreign ownership restrictions, environmental requirements, and foreign exchange controls) will be critical before making any investment decision regarding the Taiwan offshore wind farm sector.

The primary legislative instruments for the renewable energy sector in Taiwan include:

The Electricity Act ("EA"): The EA covers the establishment of power plants and the transmission and distribution of electricity. The EA was amended on January 26, 2017, with the aim of liberalizing the power market by:

- allowing the renewable energy generation industries to sell electricity through wholesale, wheeling, or direct sales;
- allowing renewable energy companies to be operated by corporate forms other than limited companies (e.g., cooperatives);

- fully releasing the users' power purchasing choices and allowing all users to choose either the electricity generated from renewable energy or from traditional energy sources; and
- clearly stating the target of being nuclear-free by 2025.

The Renewable Energy Development Act ("REDA"): The REDA was introduced in July 2009 as part of the Government's aim to increase the installed renewable energy capacity in Taiwan.

The REDA covers a mixture of obligations and incentives, including:

- **Fund Establishment**: Financed by the Renewable Energy Fund with revenues collected from power generators using fossil fuels and nuclear energy.
- **Feed-In Tariff Rates and Tariff Setting Method:** The feed-in tariffs regulated by REDA apply to solar, onshore/offshore wind, biomass, and hydro energy and are subject to annual review by a dedicated committee. When conducting its annual review, the dedicated committee will take into account any technology development, changes in costs, target accomplishment, and other relevant factors to determine the applicable feed-in tariffs.
- **Other:** Land-use requirements, demonstration/capital grants, mandatory grid connection, and power purchasing obligations (i.e., power purchase agreement).

In order to achieve the Government's aggressive renewable energy targets, the MOEA has proposed amendments to the REDA, which would require that large consumers of electricity are required to pay a fee or purchase renewable energy vouchers for their consumption of nonrenewable energy. Alternatively, those large consumers of electricity may install renewable energy generators to generate power proportional to their consumption of nonrenewable energy. This amendment was approved by the Taiwan Cabinet on January 11, 2018, and will now be reviewed by the Legislative Yuan.

In addition to the EA and the REDA, there are various other legislative instruments that govern the development and implementation of offshore wind farm projects. These are set out in Annex 1.

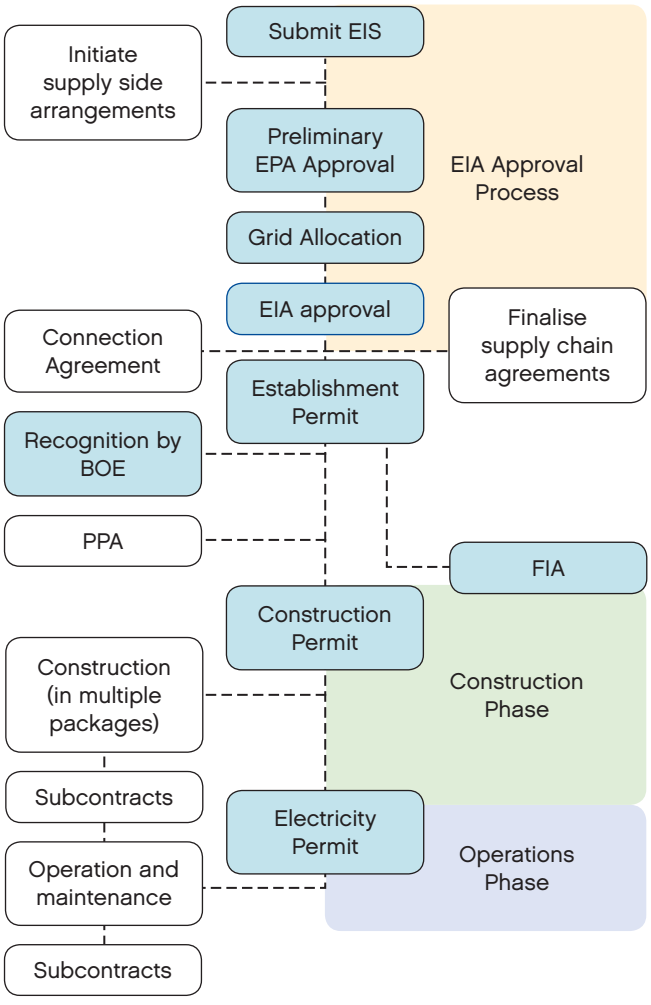
PROCUREMENT PROCESS FOR THE OFFSHORE WIND ENERGY PROJECTS

Overview

The process for implementing offshore wind energy projects in Taiwan is currently in its infancy. Diagram 3 below provides a high-level overview of the procurement process. At present, the market is developed only as far as the EIA approval, with the grid allocation the next hurdle to overcome.

The procurement process is considered in more detail in the following paragraphs of this section, with a particular focus on the processes currently being encountered by offshore wind power developers—the environmental approval process and the grid allocation process.

Diagram 3



Approval/Licensing Process

To operate an offshore wind farm project, the project developer must obtain an electricity license. There are six phases to be satisfied in order to obtain the electricity license:

1. **EIA Process:** The project developer is required to obtain the EPA's final approval of the EIA in order to obtain the Establishment Permit. Refer to "Environmental Framework" below for a detailed analysis of the process for obtaining the approval of the EIA.

2. **Obtain the Establishment Permit ("EP"):** The EP is issued by the BOE. It is a precondition to the EP that the final EIA approval has already been obtained. To obtain the EP, the applicant is required to obtain consent letters from various authorities, including the local government, the National Property Administration, and the Ministry of Transportation and Communications. Based on the practice in other sectors in Taiwan, the processing time for these consent letters varies and may be unpredictable.

   It is also necessary for the project developer to: (i) satisfy a capitalization requirement of at least 5 percent of anticipated capex; (ii) enter into a connection agreement with Taipower; and (iii) obtain letters of intent from financial institutions for the financing of the project.

   The EP is valid for a period of three years (and may be extended for a further two years).

   Annex 4 provides a detailed flowchart of the process for obtaining the EP.

3. **Recognition by the BOE:** After the project developer has obtained the EP, it is required to apply to the BOE for recognition that the project developer's energy facilities are renewable energy power facilities.

4. **Power Purchase Agreement ("PPA"):** Within six months of obtaining its EP and the required recognition from the BOE, the project developer is required to enter into a PPA with Taipower. Taipower is a 96.92 percent government-owned power entity providing electricity to Taiwan.

   The standard form PPA for the offshore wind energy sector was recently published by Taipower. Refer to "Power Purchase Agreement" below for Jones Day's preliminary comments on the PPA.

5. **Obtain the Construction Permit ("CP"):** The CP must be obtained from the BOE prior to the commencement of construction. An applicant may submit an application for an EP and CP in parallel; however, the CP may be granted only after the applicant has obtained the EP. The CP is valid for five years and is renewable.

6. **Obtain the Electricity License ("EL"):** The EL must be obtained prior to the commencement of operations. Annex 4 provides a detailed flowchart of the process for obtaining the EL.

While it may vary, the time period for the BOE to issue the EP, the CP and the EL usually takes a period of two to three months for each license/permit from the time of application.

Environmental Framework

Regime. The EPA is the agency responsible for the development of the environmental standards and coordinating action among the various other Governmental agencies. It has also been proactive in developing a legislative basis for environmental management in Taiwan.[10]

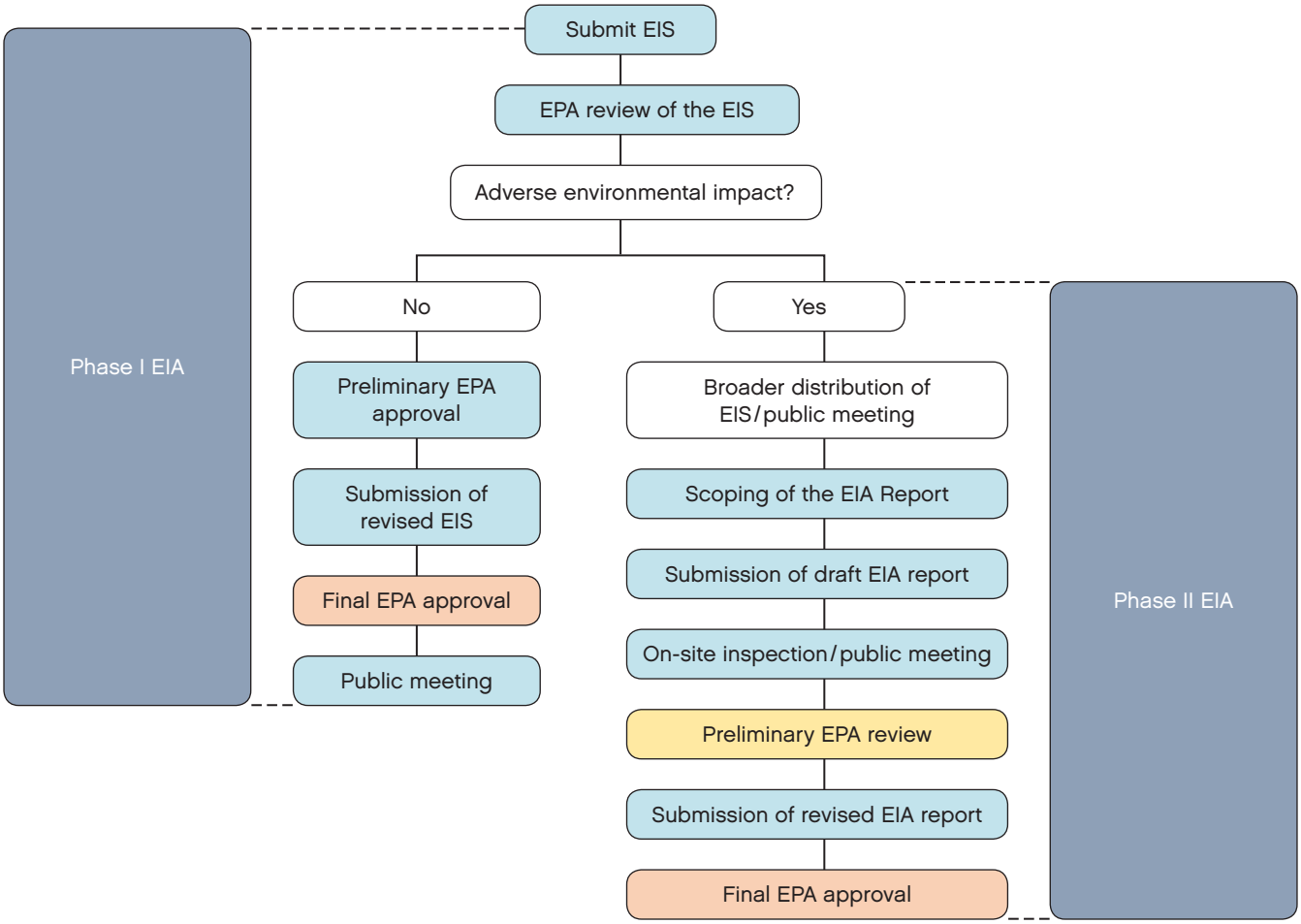
The Environmental Impact Assessment Act governs the EIA process. The EIA process is intended to prevent and mitigate adverse impacts of development activities (including pre-implementation planning, project implementation, and post-project facility use) to attain the goal of environmental protection.

EIA Process. A project developer for an offshore wind farm development is required to obtain the EPA's approval of the EIA in order to progress with the development of the project.

To date, the EIA process has proven to be a difficult barrier for offshore wind power developers. The Taiwan Strait is a heavily trafficked waterway, and the EPA is closely scrutinizing how offshore wind development will affect the ecology.

The process for obtaining the requisite EPA approval is summarized below (and illustrated in Diagram 4). The process may vary (depending on whether the project developer is required to conduct a Phase II EIA) and may take an extended period of time to complete.

Diagram 4



Phase I EIA

The Phase I EIA process includes the following:

1. **Submission of EIS:** The project developer submits an environmental impact statement ("EIS") to the MOEA. The MOEA will then provide the EIS to the EPA.

2. **EPA review of the EIS:** As part of the EPA's review of the EIS, the EPA will determine whether the development activities are likely to have a significant adverse impact on the environment. If the answer to this question is:

- No, the project developer will obtain preliminary EPA approval and will follow the subsequent steps described in this paragraph to obtain the final EPA approval.

- Yes, the EPA may require that the project developer conduct a Phase II EIA (see "Phase II EIA" below).

3. **Submission of revised EIS to the EPA:** The project developer will submit a revised EIS to the EPA, taking into consideration the EPA's conclusions communicated as part of the EPA's preliminary approval.

4. **On-site inspections:** The Environmental Impact Assessment Act expressly requires only that on-site inspections be undertaken as part of the Phase II EIA process. However, in practice, the EPA has also conducted on-site inspections as part of the Phase I EIA process. For

example, the below diagram illustrates the on-site inspection that was conducted for the Hai Neng Offshore Wind Farm Project.[11]

Diagram 5

Source: Taiwan EIA Inquiry System

5. **Final EPA approval:** If the EPA is satisfied that its requirements have been satisfied, the EPA will grant its final approval to the project developer.

6. **Public meetings:** After the final EPA approval has been obtained, the project developer must hold a public meeting to explain its development activities. This public meeting must be held prior to the commencement of construction and, in practice, is usually held after the project developer has obtained all necessary approvals for the project development.

Phase II EIA

At this time, there are no examples of an offshore wind farm project being required to conduct a Phase II EIA. The Fuhai Demonstration Project was initially suggested for Phase II EIA but was able to remain in Phase I EIA after minor amendments to the EIS. There are several examples of thermal and hydro power plants entering into the Phase II EIA.

If the EPA determines that the development activities are likely to have a significant adverse impact on the environment, the project developer will be required to satisfy the following:

1. **Broader distribution and communication of the EIS/public meeting:** The project developer must:

- distribute the EIS to the relevant government agencies;
- display/disclose the EIS at an appropriate location in close proximity to the development site for a period of not less than 30 days; and
- publish in the newspaper the details of the project and the location where the EIS (and review conclusions) may be reviewed.

Following the distribution and communication of the EIS, the project developer is required to hold a public meeting to explain the development activities.

2. **EPA determines the scope of the EIA report:** The EPA will invite the MOEA, local authorities, interested non-governmental groups, scholars and experts in relevant areas, and representatives of the local community for the purpose of determining the scope of the EIA report to be submitted by the project developer.[12] This includes the identification of feasible alternatives to the proposed development plan, identification of items to be considered in the EIA, and the identification of other matters related to the implementation of the EIA.

3. **Submission of draft EIA report:** The project developer must prepare the draft EIA report and submit it to the MOEA. The EIA report to be prepared by the project developer must incorporate the comments received as part of the EPA's scoping exercise referred to above.

4. **On-site inspection and public meeting held by EPA:** Within 30 days of the receipt of a draft EIA report, the EPA, in conjunction with the MOEA and other relevant agencies, will invite the relevant entities/persons mentioned above to conduct an on-site inspection and hold a public meeting. The scope of the on-site inspection will vary on a case-by-case basis depending on the specific environmental risks for the project.

5. **EPA to review the draft EIA report:** The EPA will review the EIA report, the inspection record from the on-site inspection, and the minutes from the public meeting and advise of its conclusions. The project developer will then have an

opportunity to revise the draft EIA report in accordance with the EPA's conclusions.

6. Final approval by the EPA of the EIA report: If the project developer satisfactorily addresses the EPA's review conclusions, it will obtain final approval by the EPA.

The approval of the EIS (if only a Phase I EIA is required) or the approval of the EIA report (if a Phase II EIA is required) is necessary for the project developer to proceed with the licensing/approval process described in "Approval/Licensing Process" above. If the EPA refuses to grant its approval, the project developer may file an administrative appeal and subsequent administrative lawsuit to challenge such administrative decision.

There is no prescribed time period for the completion of the EIA process. Based on our experience, the completion of the EIA process will generally take a period of one year or more.

As of February 2, 2018, 22 offshore wind farm projects have received the EPA's preliminary approval, of which nine projects have also received the EPA's final approval of the EIA. There are three projects that are still in the process of the EPA's preliminary review. The table below identifies the status of each offshore wind farm project in the environmental approval process.

#	Sponsors	Project	Status (2 February 2018)
i	Ai Gui Wind Energy One	Xinbei	Under preliminary EPA review
ii	EOLFI	Taihai Taoyuan (W1N)	
iii	Fuhai Wind Farm Corp Ltd.	Fuhai Demonstration	
iv	Asia Cement	Zhufeng	Preliminary EPA approval obtained
v	Swancor & Macquarie	Hai Neng	
vi		Hai Ding I	
vii		Hai Ding II	
viii		Hai Ding III	
ix	Ørsted	Southeast Greater Changhua	
x		Northeast Greater Changhua	
xi		Southwest Greater Changhua	
xii		Northwest Greater Changhua	
xii	China Steel Corporation	Power Generation Offshore Wind	
xiv	Taipower	TPC Demonstration	
xv	wpd	Taoxin	
xvi		Yunlin	
xvii		Taoyuan	Final EPA approval obtained
xviii	Swancor, Macquarie & Ørsted	Formosa	
xix	Yushan & Northland Power Inc.	Hai Long II	
xx		Hai Long III	
xxi	Copenhagen Infrastructure Partners	Changhua Changfang	
xxii		Xidao – TGC	
xxiii	Lealea	Site No. 27	
xxiv		Site No. 28	
xxv	Fofang Wind Power Generation	Changhua Fofang	

Enforcement. The Environmental Impact Assessment Act is administered by the EPA with support from the MOEA and in consultation with other relevant government agencies, non-governmental groups, scholars, experts, and representatives of local residents.

The project developer must faithfully implement the requirements of the EIS, the EIA, and the EPA's review conclusions during the performance of the development activities under the supervision and monitoring of the MOEA and the EPA. The MOEA and the EPA may periodically conduct on-site inspections and/or request documents to confirm the project developer's compliance with the approved EIS and EIA.

Grid Allocation Process

As mentioned above, the offshore wind energy target for the Transition Round is 5.5 GW. This is far in excess of the projects currently seeking to participate in the Transition Round (approximately 10.5 GW). The BOE propose to address this surplus in development capacity (relative to available capacity) by allocating the capacity to competing developers as set out below. Each project that is allocated capacity as part of the Transition Round will be required to provide performance bonds as guarantees.

Phase 1: Allocation of capacity using the Selection Criteria. 3.5 GW of capacity with a fixed feed-in tariff will be allocated to project developers using the Guidelines for Grid Allocation published by the BOE on January 18, 2018 (the "Selection Criteria").

The Selection Criteria comprise the following key considerations: construction capability, engineering design capability, operations and maintenance capability, and financial capability. Importantly, the BOE has made it clear that an emphasis will be placed on the promotion of local content (refer to "Local Content" below). Please refer to Annex 5 for the full details of each element of the Selection Criteria (including percentage weighting for each element).

The BOE will evaluate the project developers based on the Selection Criteria and allocate capacity as follows:

- 0.5 GW of capacity will be awarded based on the Selection Criteria and also taking into account the current status of the project developer's establishment permit application. These projects must be operational by 2020.
- 3 GW of capacity will be awarded based on the Selection Criteria only. These projects must be operational by 2025.

In terms of timing, it is anticipated that the bids will be evaluated in April 2018, with the allocation to be announced in late April or early May 2018.

Phase 2: Allocation of Capacity by Competitive Auction. Once the 3.5 GW is awarded, the remaining 2 GW of capacity will be allocated based on a competitive auction to sell power at a lower price in a tender held by Taipower. Only those project developers that applied as part of Phase 1 above and scored a minimum of 60 points will be eligible to participate in this Phase 2. There is no local content requirement as part of the competitive auction.

In terms of timing, the submission of bids for the competitive auction are expected to be submitted in late June 2018, with the allocation to be announced in July 2018.

Set out below is a summary of the indicative timeline for the allocation of capacity as part of the Transition Round.

Diagram 6

Local Content

With regard to local content requirements for the offshore wind farm market, the Government has expressed a desire to encourage technology transfer and cooperation to develop Taiwanese-made offshore wind turbines and to develop in-house capabilities to accumulate practical experience and export Taiwan services to the global offshore wind market.

As referred to earlier, the Selection Criteria for the allocation of 3.5 GW of capacity forming part of the Transition Round places significant emphasis on local content. The below table provides a summary of the local content considerations that will be taken into account for each element of the Selection Criteria. The full details of the Selection Criteria are set out in Annex 5.

Selection Item	Local Content Considerations
Construction Capability (25%)	No applicable local content considerations.
Engineering Design Capability (20%)	Local cooperation in engineering design, construction and installation.
Operations and Maintenance Capability (15%)	Local industry development plan. Local cooperation in operations and maintenance.
Financial Capability (40%)	Local financial institution participation

While it is clear that local content will be an important consideration for the selection of the winning projects, at this time, the BOE has not provided any further clarification as to the weighting that will be given to the achievement of the above local content requirements (with the exception of the domestic financing requirement).

Project developers have expressed concerns regarding the local content requirements, as Taiwan's manufacturers are new to offshore wind and do not yet have the experience or capabilities to provide key components to an international standard.

While local content considerations will play an important role in the selection of the winning projects for the 3.5 GW allocated pursuant to the Selection Criteria, there are no such local content requirements for the remaining 2 GW to be allocated as part of the Transition Round.

OTHER LEGAL CONSIDERATIONS FOR OFFSHORE WIND ENERGY DEVELOPERS

Overview

In this section, we have identified important legal considerations for offshore wind energy developers for the structuring of their proposed investment in the Taiwan offshore wind energy sector.

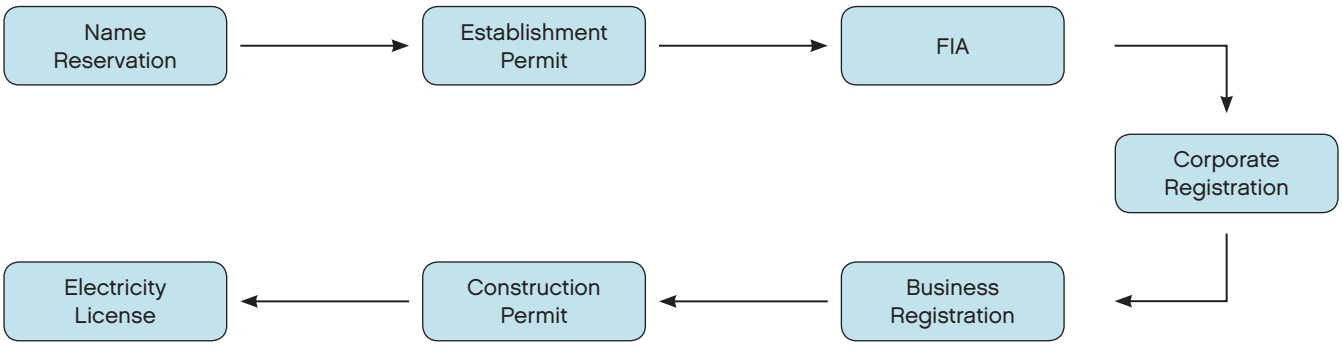
Corporate Requirements

For foreign investors wishing to participate in the offshore wind power sector in Taiwan, the investors may either establish an SPV in Taiwan or acquire shares in an existing Taiwanese company. In practice, market participants are adopting an approach of establishing an SPV for each wind site.

Either the establishment of an SPV or acquiring shares in an existing Taiwanese company will require that the foreign investor submit an application for foreign investment approval ("FIA") from the Investment Commission ("IC") of the MOEA. Provided the foreign investor is not from Mainland China, the FIA should be issued as a formality.

The registration process for establishing an electricity enterprise in Taiwan is summarized in Diagram 7 below.

Diagram 7



Dividend Distributions

An offshore wind developer is not permitted to distribute dividends until after all taxes have been paid and 10 percent of profits have been set aside as a legal reserve.[13] With regard to the legal reserve:

- the requirement to set aside a legal reserve will cease to apply once the amount of the legal reserve is equal to the total authorized capital of the company;[14] and
- where a company incurs no (accumulated) loss, it may, pursuant to a special resolution adopted by a shareholders' meeting, distribute its legal reserve to its shareholders by issuing new shares or by cash but only to the extent the legal reserve exceeds 25 percent of the company's paid-in capital.[15]

Withholding tax of 21 percent is imposed on dividend distributions to foreign shareholders, which may be reduced to between 5 percent and 15 percent pursuant to bilateral tax treaties with certain jurisdictions.[16]

Foreign Ownership Restrictions

In Taiwan, foreign-owned companies engaged in certain industries are subject to foreign ownership limits and/or additional approval requirements. Fortunately for international investors in the offshore wind farm market, there are no such foreign ownership limits/approval requirements applicable for the sector.

If an offshore entity establishes a 100 percent foreign-owned SPV company for the implementation of an offshore wind farm project, such entity will be treated as a resident corporation in Taiwan.

Import/Export Restrictions

An import/export permit is required for transporting any items into or out of Taiwan. However, to promote the development of renewable energy projects in Taiwan, the importation of specified items[17] for the construction/operation of renewable energy power facilities is exempted from import tariffs.For the development of offshore wind power projects, this will mean that the importation of turbines and other construction/operation machinery will be exempt from import tariffs, provided such item cannot be domestically manufactured or supplied.[18]

Foreign Exchange

The Government has in place foreign exchange controls to restrict the inward/outward remittance of funds. In general, any foreign investment into Taiwan, regardless of the amount, will require the prior approval from the IC of the MOEA.

With regard to the outward remittance of funds:

- **Foreign Exchange Approval**: any transfer in an aggregate amount in excess of US$50 million requires the prior approval of the Central Bank of Taiwan; and
- **Foreign Investment Approval***:* any single transaction in excess of US$50 million invested overseas requires prior approval from the IC.

On this latter point, the approval of the IC is required only if the transfer overseas is for the purpose of a foreign investment. In practice, the approval from the IC tends to be a formality, provided there is no security issue and the investment is not into Mainland China. Where the approval of the IC has been obtained, such investment amount will not be included for the purposes of calculating the aggregate amount transferred

overseas and requiring approval from the Central Bank of Taiwan.

The Central Bank of Taiwan has progressively relaxed its controls on foreign exchange transactions. The key points of note are:

- no restrictions on inward and outward remittances related to the foreign trade in goods and services;
- no restrictions on foreign direct and portfolio investments approved by the competent authorities; and
- non-residents may open NT$ bank accounts but may only remit up to US$100,000 per transaction.

In 2013, Taiwan launched a new foreign currency clearing platform, which currently handles domestic clearing and settlements for U.S. dollar, Chinese yuan, Japanese yen, Australian dollar, and euro transactions. This mechanism aims to improve settlement efficiency for the most traded foreign currencies in Taiwan.

POWER PURCHASE AGREEMENT AND OTHER CONTRACT DOCUMENTS

Power Purchase Agreement

As referred to above, the project developer is required to enter into a PPA with Taipower. As of December 1, 2017, Taipower has published a standard form PPA specifically for offshore wind farm projects. The PPA provides for a 20-year fixed feed-in tariff that is set on the PPA signing date. This is calculated and announced by the MOEA on an annual basis. The 2018 fixed 20-year feed-in tariff is NT$5.8498/kWh (US$0.20/kWh). The PPA revenue will be denominated in NT$. To mitigate against the risk of currency fluctuations, it will be important for developers to finance some of the capex in local currency—for example, from local banks—or to be able to hedge. As noted in the "Introduction" above, local banks have limited experience in non-recourse project financing, which will present a challenge for developers.

We are informed by the BOE that the form of PPA is not negotiable and that it must be signed in accordance with the published standard form. This is an important point because there are a number of key bankability concerns with the current form of PPA, albeit very recently published, including:

- the PPA does not include indexation of the feed-in tariff by way of the Consumer Price Index or any other provision to address inflation risks;
- Taipower has the right to reduce the required electricity in circumstances beyond the control of the project developer, without any compensation or payment to the project developer;
- Taipower is obliged to make payments only for the electricity received. There is no concept of deemed commissioning to allow for payments if Taipower is unable to take the electricity produced;
- there is no right for the project developer to terminate for a Taipower default;
- there is no provision for the payment of compensation on termination of the PPA;
- there is no form of government guarantee, assurance, or other support to enhance the creditworthiness of Taipower as the sole offtaker/purchaser;
- there is no provision addressing the risk of force majeure; and
- the PPA does not contemplate lender consent/step-in rights.

We note that some of these concerns are addressed, to some extent, by the laws of Taiwan, including:

- the Taiwan Civil Code provides that the contractor will be relieved from the performance of its obligations to the extent it is affected by an event outside of the contractor's control (addressing the risk of a force majeure); and
- the Taiwan Civil Code provides a party with the right to terminate a contract when the other party defaults (addressing the lack of a contractual right to terminate for default).

While we are informed by the BOE that the form of PPA is not negotiable, it remains to be seen whether the influx of international developers/lenders will force the BOE to reconsider its position and to adopt a PPA more in line with international market expectations.

Forms of Contract Documents

The form of contract used for construction contracts in Taiwan is typically determined by the owner. In our experience, variations of the FIDIC[19] forms are commonly being used. However, we have also seen the use of other industry standard contracts, such as the AIA[20] form of contract.

Governing Law and Dispute Resolution

In theory, the parties to any contract with foreign elements can choose a foreign law as the contract's governing law, and such choice will generally be recognized by the courts in Taiwan. In practice, almost all contracts with Government or substantially Government-owned counterparties will be governed by Taiwanese law. This is not unusual in the renewable energy sector across the globe.

Foreign judgments and arbitral awards are also enforceable in Taiwan as long as certain requirements are met, including:

- the foreign court rendering the judgment has jurisdiction over the dispute in question according to Taiwanese law;
- the defendant responded to the action brought against him;
- the contents or litigation procedure of the foreign judgment is not contrary to Taiwan's public policy, morals, etc.;
- judgments given by Taiwan courts are reciprocally recognized; and
- in the case of the recognition of an arbitral award, the arbitration agreement is valid.

In our experience, the choice of the governing law and the dispute resolution mechanism will depend on the counterparties to the relevant agreement:

- **Counterparty Includes a Government Entity / State-Owned Entity**: The contract will be governed by the laws of Taiwan. Typically, disputes will be resolved by litigation, while arbitration may be allowed, when both parties agree. Prior to a dispute being referred to litigation / arbitration, the contract often requires that the parties attempt a process of conciliation under the guidance of a committee or dispute review board.
- **Counterparties Include a Non-Government Related Taiwanese Entity and a Foreign-Owned Entity**: The governing law and dispute resolution mechanism will be determined by the parties and will be reflective of each party's respective bargaining power. In our experience, it is common for construction contracts to be governed by Taiwan law and for disputes to be resolved by arbitration (either domestic or international).
- **Both Parties are Foreign Entities but the Works Are Being Undertaken in Taiwan**: Again, the governing law and dispute resolution mechanism will be determined by the parties and will be reflective of each party's respective bargaining power. As the place of performance is in Taiwan, we typically expect for the contract to be governed by the laws of Taiwan and for disputes to be resolved by arbitration (either domestic or international).

Where the contract provides for dispute resolution by domestic arbitration, the arbitration is commonly referred to the Chinese Arbitration Association, Taipei ("CAA"). The CAA may be conducted in the English language and heard by a foreign arbitrator, subject to the parties' agreement. Where international arbitration is used, ICC or HKIAC arbitration in Hong Kong or SIAC arbitration in Singapore are commonly used.

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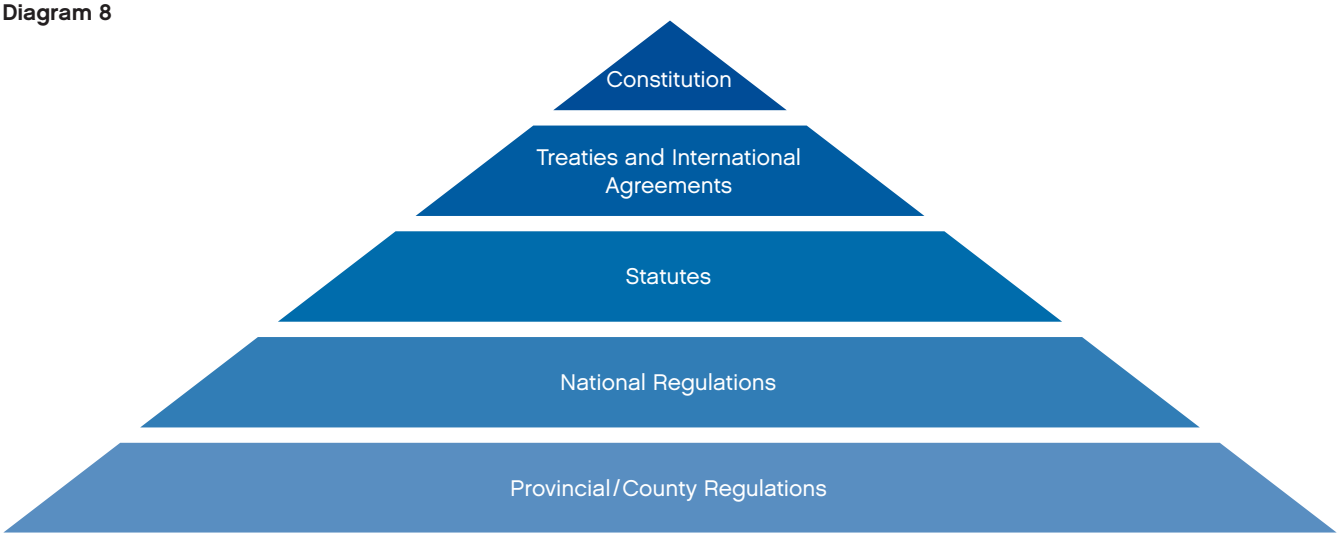
ANNEX 1: BRIEF OVERVIEW OF THE LEGAL FRAMEWORK

Civil Law System

The legal regime in Taiwan is based on the civil law system, and all of the rules are generally codified. Following the Japanese terminology, the main legislation is referred to as the "Six Codes," including the Constitution, the Civil Code, the Code of Civil Procedure, the Criminal Code, the Code of Criminal Procedure, and the Administrative Laws. Only the Constitutional Court and the Judicial Yuan have the power to interpret the Constitution or unify interpretations of statute and regulations.

The courts in Taiwan, when making a decision, will first apply the relevant Codes. However, the relevant Code will be applied only to the extent it does not violate the Constitution. Diagram 8 below illustrates the order of priority of the legal and regulatory instruments in Taiwan.

Diagram 8



As a civil law jurisdiction, Taiwan does not accord formal binding authority to all judicial decisions in subsequent cases. Instead, Supreme Court decisions are subject to a screening process, in which certain decisions are selected as "precedent" for guiding future cases. Taiwan also recognizes, to varying degrees, other sources of law, including emergency orders, court decisions and orders and interpretations by government agencies, customs, treaties, and legal principles.

Government

Taiwan has a multiparty democratic political system, with government administration divided into central, provincial, and county levels, each with well-defined roles and powers. Central government power is divided among the Office of the President and five independent "Yuans" (i.e., Departments)—the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Examination Yuan, and the Control Yuan.

In recent years, the Government has adopted a policy of deregulation to increase the transparency of laws related to foreign investment.

Legislative Instruments for the Renewable Energy Sector in Taiwan

The primary legislative instruments for the Renewable Energy Sector in Taiwan are the Electricity Act and the Renewable Energy Development Act.

Electricity Act ("EA"). The EA covers the establishment of power plants and the transmission and distribution of electricity. An electricity enterprise is required to be a company limited by shares and to have at least two independent directors, which constitutes no less than one-fifth of the directorship. A Government approval is required when the electricity

enterprise intends to terminate or suspend its business or to undertake any merger or acquisition activity. An electricity-generating enterprise must obtain an establishment permit and a construction permit to start building or expanding its infrastructure facilities. Depending on the scope of the electricity enterprise's business, such application may require an EPA approval.

The EA was amended on January 26, 2017, with the aim of liberalizing the power market by, among other things, allowing renewable energy providers to directly sell electricity to users.

Renewable Energy Development Act ("REDA"). The REDA covers the power purchase agreement and government subsidies in connection with the renewable energy sector. Under the REDA, if a power developer installs any self-usage power generation equipment that reaches a certain level of capacity, it must pay a certain amount into a fund every year according to the non-renewable energy portion of its total power generation. The fund is used by the Government to support other renewable energy projects.

The power utility, which operates power grids at the location of the renewable power generation equipment, must provide grid integration, power purchase, and back-up electricity during any maintenance period or other outages of the renewable power generation equipment. Without the MOEA's permission, the power utility cannot refuse to provide the above support, unless the cost is unreasonable and without economic justification. The tariff under such power purchase must be the same as the feed-in tariffs publicized by the MOEA, or lower under some special circumstances (e.g., the equipment has been operated for more than 20 years).

Other Relevant Legislative Instruments. In addition to the EA and the REDA, there are various other legislative instruments that govern the implementation of offshore wind farm projects. These are set out in the table below.

Coverage	Legislative Instrument
Wind power generation (general)	• Regulations for Installation and Management of Renewable Energy Generator • Electricity Enterprise Registration Rules • Guidelines for Reservation of Offshore Wind Power Generation Site • Guidelines for Taiwan Power Company's Purchasing of Renewable Energy • Regulation Governing Power Generation Equipment
Subsidies for wind power	• Regulations for Application of Supporting Documents for Tariff Exemption and Instalments of Renewable Energy • Regulations for Rewards of Offshore Wind Power Demonstration Generation Site System
Electricity Transmission	• Guidelines for Distribution of Capacity of Offshore Wind Power Generation Site • Guidelines for Taiwan Power Company's Parallel Renewable Energy on Power Generation
Environmental requirements	• Environmental Impact Assessment Act • Standards for Determining Specific Items and Scope of Environmental Impact Assessments for Development Activities • Environmental Impact Assessment Enforcement Rules • Guideline of Environmental Impact Assessments for Development Activities • Guidelines for Reservation of Offshore Wind Power Generation Site
Building Code Requirement	• Standards for Renewable Energy Facility Installation's Exemption Certificate for Miscellaneous

Enforcement of Contracts in Taiwan

Contracts in Taiwan can generally be enforced by the courts in accordance with their respective terms. In circumstances of breach of contract, the available remedies to the nondefaulting party include:

- compensation for the injury suffered;
- rescission;
- restoration of the parties to their position had the breach not occurred;
- return (double amount) of the earnest money; and
- penalties or liquidated damages.

As part of the court's consideration of a claim for breach of contract, the court may take into account:

- whether there has been a change in circumstances that could not have been foreseen at the time of entering into the contract;
- whether the performance of the original obligations under the original contract will become obviously unfair;
- whether the original contract is for the purpose of injuring any person; and/or
- whether the performance of the original obligations under the original contract will harm the public interest.

Dispute Resolution

If disputes are brought to the court, the courts are obliged to follow the codified rules and render a reasoned judgement. The cases are heard and presided by judges.

Taiwan has a three-tiered court system, comprising (in order of authority):

- the Supreme Court;
- the High Court; and
- the District Court.

Arbitration, as a dispute resolution mechanism, is available under the Taiwan Arbitration Act, which was enacted by reference to the UNCITRAL Model Law. All foreign arbitral awards must seek recognition by the Taiwan court before the enforcement may take place in Taiwan. It should be noted that Taiwan is neither a signatory to the "ICSID Convention" nor a signatory to the "New York Convention." Notwithstanding the above, foreign arbitral awards rendered by major international arbitration institutions, such as the International Chamber of Commerce, Hong Kong International Arbitration Centre, or Singapore International Arbitration Centre will, in general, be recognized by a Taiwan court, subject to a few regulatory exceptions and the typical New York Convention-style requirements (e.g., public policy and reciprocity).

ANNEX 2: RENEWABLE ENERGY TARGETS

Renewable Energy Targets

Type	Power Capacity (MW)			Electricity Generation (TWh)		
	2016	2020	2025	2016	2020	2025
Solar PV	1,210	6,500	20,000	1.1	8.1	25.0
Onshore Wind	682	800	1,200	1.4	1.8	2.6
Offshore Wind	-	520	5,500	-	1.9	20.0
Geothermal	-	150	200	-	1.0	1.3
Biomass	741	768	813	3.6	5.6	5.9
Hydropower	2,089	2,100	2,150	6.6	4.7	4.8
Fuel Cell	-	22.5	60	-	0.2	0.5
Total	**4,722**	**10,861**	**29,923**	**12.7**	**23.3**	**60.1**

Source: "Developments in Taiwan's Electricity Market", Bureau of Energy, Taiwan, August 1, 2017 (as amended by the recent announcement by BOE to increase the offshore wind energy target to 5.5 GW).

Wind Energy Targets

Target	Current Capacity	Mid-Term (2020)	Long-Term (2025)
Onshore Capacity (MW)	682MW	800MW	1,200MW
	Number of installed turbines		450 turbines
Offshore Capacity (MW)	8MW	520MW	5,500MW
	Number of installed turbines		More than 600 turbines
Total Capacity			**6,700MW**
Total installed turbines			**More than 1,050 turbines**

Source: "Developments in Taiwan's Electricity Market", Bureau of Energy, Taiwan, August 1, 2017 (as amended by the recent announcement by BOE to increase the offshore wind energy target to 5.5 GW).

ANNEX 3: POLICIES ON OFFSHORE WIND FARM

Overview

Announced on July 3, 2012, the "Thousand Wind Turbines Project" (the "Program") is intended to encourage the industry to build offshore demonstration wind farms through the provision of Government subsidies. The Program is divided into three phases: Demonstration Round, Transition Round, and Zonal Development Round.

Phase 1: Demonstration Round (2016–2020)

The objective of Phase 1 of the Program was to have two demonstration turbines commissioned by 2016 and three demonstration offshore wind farms completed by 2020. See below for further details on these demonstration projects.

Under the Program, the Government provides subsidies for both the equipment and development processes:

- **Incentive Fee for Demonstration Wind Turbines:** The Government subsidizes up to 50 percent of the installation expenditures (feed-in tariff advances/interest–free loan).
- **Incentive Fees for Demonstration Wind Farm:** The Government subsidizes up to NT$250 million (US$8.33 million) for capital expenditure of the two pilot turbines.

In May 2017, two turbines (Formosa 1, Phase 1) with an aggregate capacity of 8 MW were commissioned and are currently operational. Three demonstration offshore wind farms (set out below) are under development with an aggregate capacity of approximately 360 MW.

Selected Demonstration Wind Farm Projects

Formosa Demonstration Project

Location:	Off the coast of Zhunan Township, Miaoli County
Offshore:	1~5 kilometers, water depth: 15~30 metres
Wind Turbines:	32 installed wind turbines
Capacity:	Expected to grow to 120 MW by 2019
Sponsors:	Ørsted (35%), Macquarie Capital (50%), Swancor (15%)
Phases:	Phase I (8MW) and Phase II (120MW)
Status:	Phase I has been fully commissioned. In May 2017, Phase I of the Project (two 4 MW wind turbines) obtained the first commercial operating license for an offshore wind farm project in Taiwan. However, delays have been experienced as a result of the failure to obtain the necessary environmental permits. According to the Taiwan EIA Inquiry System, the Formosa Demonstration Project has received the final EPA approval. On 10 November 2017, Swancor issued a request for proposal to banks (including Societe Generale, Cathay United Bank, CTBC Bank, BNP Paribas, EnTie Commercial Bank and Credit Agricole) for the financing of Phase II of the Project. Financial close is expected in early 2018.

Fuhai Demonstration Project

Location:	Off the coast of Fangyuan Township, Changhua County
Offshore:	8˜12 kilometers, water depth: 20˜45 metres
Wind Turbines:	30 installed wind turbines
Capacity:	Approximately 120 MW
Sponsors:	Fuhai Wind Farm Corp Ltd., a subsidiary of Taiwan Generations Corporation ("TGC")
Status:	Construction of the project is delayed due to environmental concerns. The environmental impact assessment for the project was submitted to the EPA in August 2017. Various environmental protection groups protested as the location of the project is close to a dolphin habitat and protected reefs. The EPA requested that Fuhai Wind Farm Corp Ltd. provide additional data on the project and the environmental impact assessment. On January 3, 2018, the EIA Review Committee recommended that the project should not be developed on the basis that: (1) the delays in the development of the project; (2) the insufficiency of the expected economic benefits of the project; and (3) no communication had been made with the potentially affected fishermen. The project is still undergoing preliminary EPA review.

TPC Demonstration Project

Location:	West side sea area of Fangyuan Township, Changhua County
Offshore:	5˜8 kilometers, water depth: 15˜25 metres
Wind Turbines:	22˜36 installed wind turbines
Capacity:	Approximately 108 MW
Sponsors:	Taipower
Status:	Construction of the project is delayed due to fisheries compensation issues. The EPA requested Taipower to provide additional data on the project and the environmental impact assessment. On 17 January 2018, it was concluded in the meeting held by the EIA Review Committee that the project would be given the EPA final approval provided the required documentation (being, technical documents) were submitted to Taipower within the required time. The tender for construction has failed three times and a fourth tender was announced November 14, 2017.

Phase 2: Transition Round (2019–2020)

In July 2015, the Bureau of Energy released 36 zones of potential ("ZoP") for development of future commercial wind farms. Interested wind farm developers (the "Applicants") were required to submit an EIA to the BOE.

The objective of this Phase 2 is for the Applicants to have obtained their preliminary EIA approval by December 31, 2017, and establishment permit by the end of 2019.

If a particular ZoP has two or more applications, the first application to obtain final EIA approval will have priority for obtaining the establishment permit for developing the relevant ZoP.

Phase 3: Zonal Development Round (2021–2025)

As part of this phase, offshore wind energy projects will be developed as a self-sustaining industry and on a commercial scale.

Incentives. There are a number of incentives intended to drive the growth of Taiwanese renewable energy projects and foster the achievement of the Government's renewable energy targets, including:

Dispatch Priority, Direct Sales. The Electricity Act was amended (January 11, 2017) to provide for:

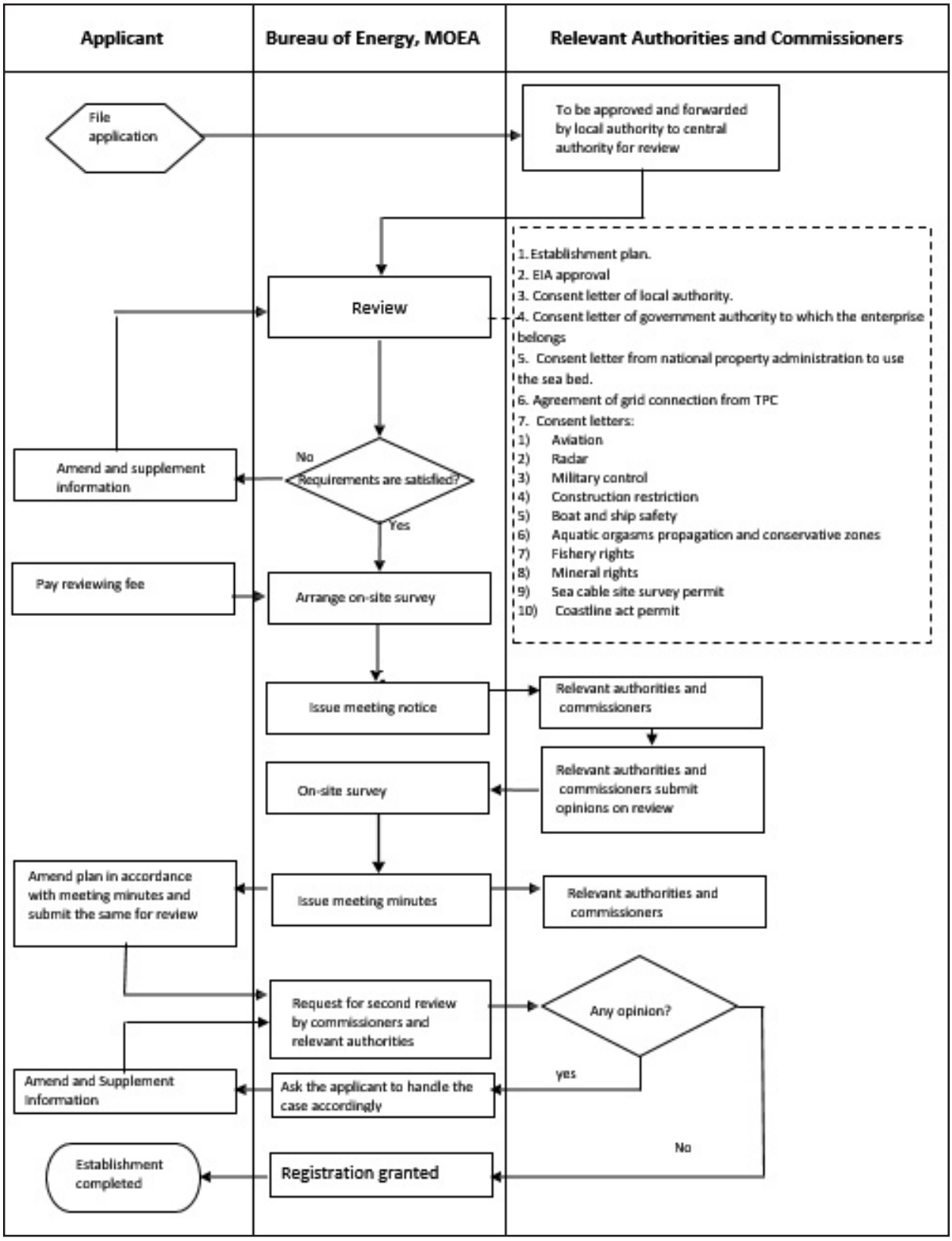
- **Direct Sales:** Nonrenewable energy generators are unable to sell electricity directly to end users. Instead, they may sell electricity only to retailers or the grid operator (Taipower). However, renewable energy generators are allowed to sell power directly to end users, either through their own transmission and distribution lines or through the Taipower grid.
- **Dispatch Priority:** The grid operator (Taipower) must prioritize the connection and distribution of renewable energy, subject to ensuring safety and stability of the power system.
- **Feed-In Tariffs:** Utility prices are closely monitored and regulated by the Government, and Taiwan is moving from a subsidy system to a feed-in tariff system. The 2018 feed-in tariffs for electricity generated from onshore and offshore wind energy are as follows:

Wind Energy	Volume	Feed-in Tariffs
Onshore	1-30W	NT$ 8.6685 (US$ 0.296)/kWh
	More than 30W	With LVRT: NT$ 2.7669 (US$ 0.095)/kWh
		Without LVRT: NT$ 2.7315 (US$ 0.093)/kWh
Offshore	More than 1W	Option #1: NT$ 5.8498 (US $0.200)/kWh for 20 years
		Option #2: NT$ 7.1177 (US$ 0.243)/kWh for the first 10 years NT$ 3.5685 (US$ 0.122)/kWH for the next 10 years

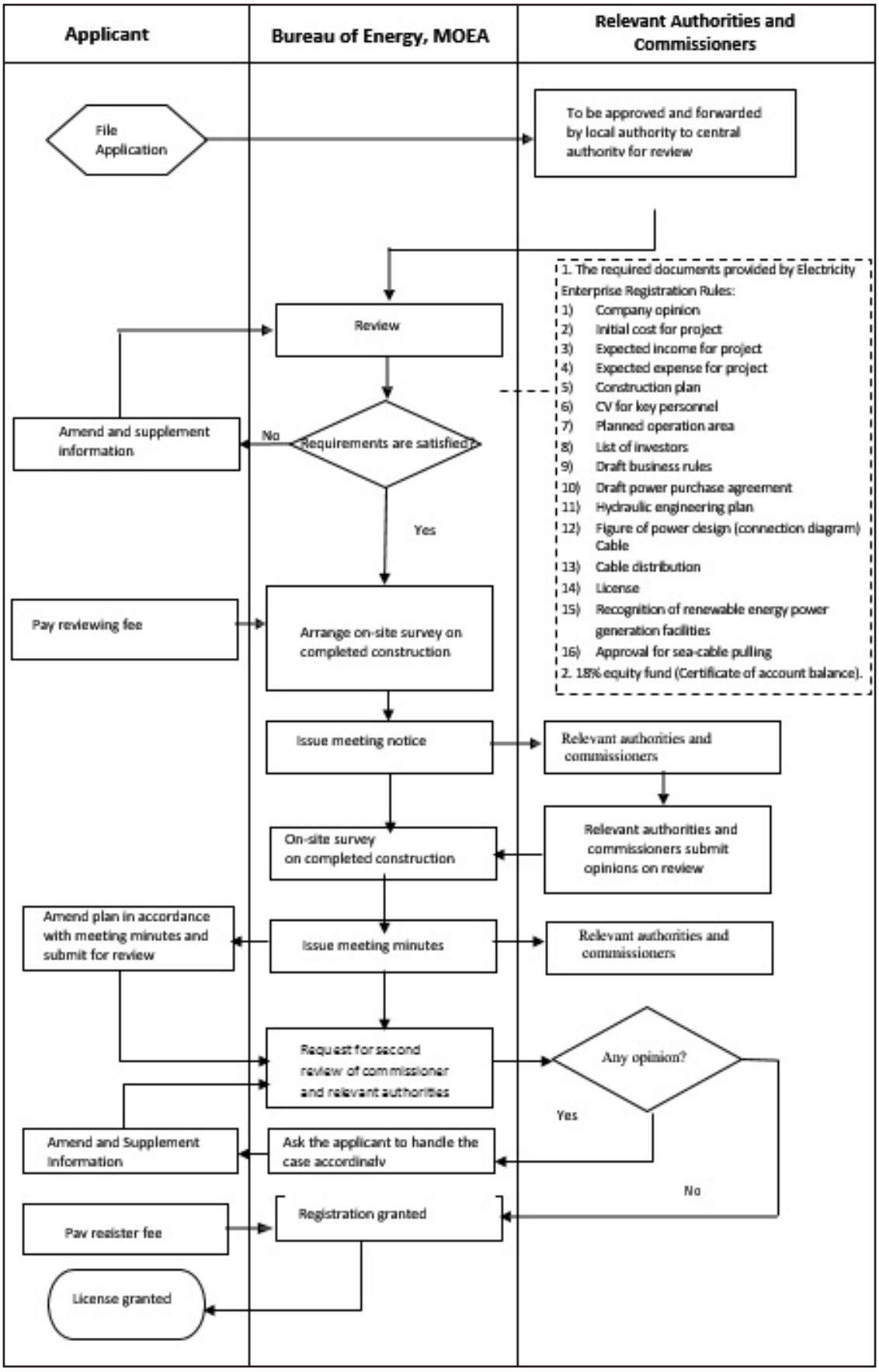
Source: Bureau of Energy announcement on "2018 Feed-in-Tariff for renewably energy".

ANNEX 4: PROCEDURE OF APPLICATION AND REVIEW FOR RENEWABLE ENERGY POWER GENERATION (OFFSHORE WIND POWER)[21]

Flowchart of Establishment Review Process



Flowchart of Electricity License Review Process



ANNEX 5: SELECTION CRITERIA FOR GRID ALLOCATION

Criteria	Sub-Criteria	Weighting	Key Considerations
Technical Capabilities (60)	Construction Capability	25	• Team composition and performance • Construction completion schedule
	Engineering Design Capability	20	• Engineering design and procurement plan (including local participation plan, if any) • Construction and installation plan (including local participation plan, if any)
	Operation and Maintenance Capability	15	• Operation and maintenance plan (including local participation plan, if any) • Local industry development plan
Financial Capabilities (40)	Financial Soundness	30	• Financial plan • Risk management and insurance plan
	Connection to Taiwanese Financial Institution	10	• Local financial institution participation (10 points will be awarded if 20% or more of the financing is sourced from local financial institutions)

ENDNOTES

1 Singapore, Hong Kong, and South Korea are the other three.

2 Pei-Chi Chang, Ray-Yeng Yang, and Chi-Ming Lai, "Potential of Offshore Wind Energy and Extreme Wind Speed Forecasting on the West Coast of Taiwan," Energies (published February 27, 2015).

3 Id.

4 Taiwan Energy Statistics 2017 Year Book, Bureau of Energy, Ministry of Economic Affairs.

5 Article 95 of the Electricity Act provides that nuclear energy power generation facilities will stop running by 2025.

6 Project Finance International, "AP: Taiwan—New wind energy target for 2025," January 16, 2018.

7 Kelly Her, "Fair Winds," Taiwan Today, January 1, 2017.

8 Bureau of Energy, *Thousand Wind Turbines Promotion*.

9 Generally, the Government will consent to the lease remaining effective provided the conditions that were satisfied in the project obtaining the electricity license remain effective.

10 Taiwan has enacted and implemented more than 400 environmental laws and regulations, including the Basic Law of the Environment, the Air Pollution Control Act, and the Environmental Impact Assessment Act.

11 The sponsors for this project are Swancor and Macquarie.

12 The entities that are invited to discuss the scope of the EIA report depends on the nature of the development project. As an offshore wind project normally involves matters of fishery and sailing, the EPA would invite the Fisheries Bureau and the Maritime Port Bureau.

13 The Company Act.

14 Article 237 of The Company Act.

15 Article 241 of The Company Act.

16 Currently, Taiwan has bilateral tax treaties with Germany, Luxembourg, Malaysia, Netherlands, Singapore, Belgium, Switzerland, and the United Kingdom, among others.

17 Items include construction or operation machinery, equipment, special means of transport for construction use, training materials, and other required components.

18 Article 16, Renewable Energy Development Act.

19 Fédération Internationale Des Ingénieurs-Conseils.

20 The American Institute of Architects.

21 Based on the flowchart released by BOE.