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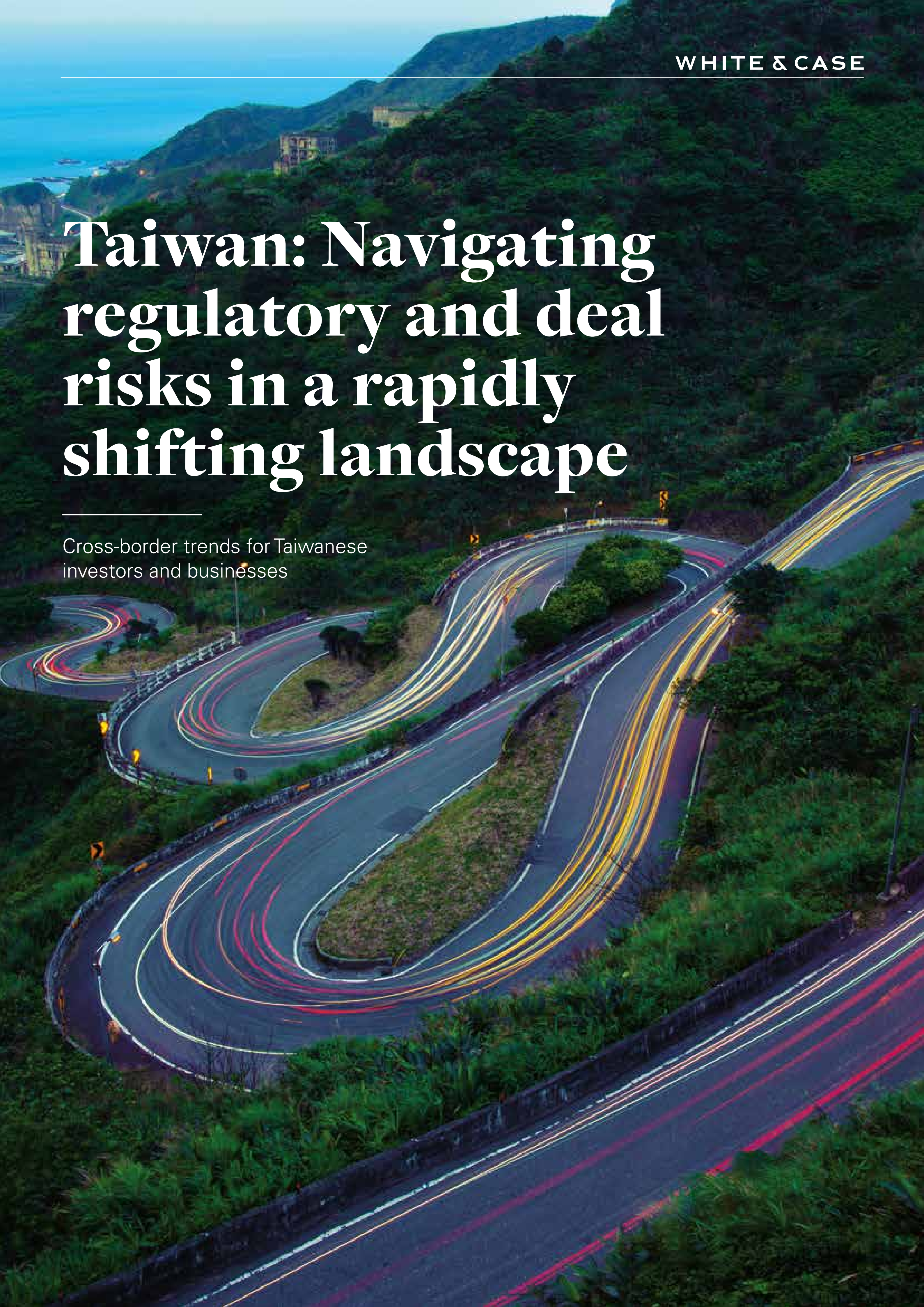


Taiwan: Navigating regulatory and deal risks in a rapidly shifting landscape

Cross-border trends for Taiwanese investors and businesses

Contents

Executive summary

Rapid shifts in global regulatory policies and deal trends are creating challenges and tantalizing cross-border opportunities for Taiwanese investors and companies

Halfway through 2018, the world's policy dramas and other disruptions show no sign of slowing. How will the latest global legal changes and market trends affect cross-border business and Taiwan in particular?

Our Taiwan report this year spotlights two appealing opportunities. First, Taiwan's emergence as an exciting energy investment destination may create new openings for Taiwanese companies far beyond the energy sector. In addition, Taiwanese businesses are poised to spend record amounts on overseas M&A transactions and further increase their presence in global M&A markets.

Even some obvious challenges still contain room for optimism. Prudent investment and supply chain strategies can reduce the impact of international trade upheavals on Taiwan-based exporters facing US and China trade policy changes. And Taiwanese businesses that understand shifting geopolitics and financing trends affecting deals in the Asia-Pacific region can unlock funding and capital opportunities.

Several US-centered developments also may be highly relevant for Taiwanese companies engaged in cross-border business. A rare court decision that clarified US merger control rules for vertical deals has provided judicial guidance for transactions involving companies with complementary businesses. A US clampdown on potential security threats is intensifying the scrutiny of cross-border M&A. And Taiwanese companies, already affected by US enforcement actions in recent years, can benefit from making sure all investment strategies and global operations include an assessment of the latest US economic sanctions and export control policies.

We hope you find this useful, and look forward to seeing Taiwanese businesses flourish worldwide in the months and years ahead.

Noah A. Brumfield
Taiwan Country Practice Head

Taiwan's energy renaissance: Seizing the opportunity

Taiwan has recently emerged as an exciting new investment destination for international investors and financiers in the energy sector

By Fergus Smith and Mikio Kobayashi

A recent groundswell of interest in Taiwan as an international energy investment destination may present new opportunities for Taiwanese companies far beyond the energy sector.

THE REGIONAL ENERGY CONTEXT

Asia's thriving economies need energy—and plenty of it. The sector continues to transform itself as seismic market forces fundamentally alter the landscape for investment. The increasing cost effectiveness of renewable energy and the emerging viability of battery storage technology have created a critical reflex point. In addition, the shifting market dynamic in the oil & gas sector has seen LNG-to-power emerge in Asia as a viable alternative to coal-fired power.

Lower barriers to entry in renewables have given rise to a new breed of more nimble developers and investors, who compete confidently against the traditional energy utilities and drive innovation in technology, development strategy and capital.

Yet a gap remains between ambition and practical delivery in the region. A flourish of government policy momentum may initially attract interest from international investors and financiers, but is often tempered by the familiar challenges in the region:

- Slow and opaque approval processes
- Lack of coordination among government authorities and
- A disconnect between perceptions of fundamental market practice and the risk allocation acceptable to relevant government entities

> **A key consequence of international involvement in the Taiwan offshore wind sector is the pursuit of limited-recourse project finance.**

Enter Taiwan and its ambitious plans to shake off its reliance on nuclear power.

TAIWAN EMERGES AS A KEY MARKET FOR ENERGY INVESTORS

By 2025, Taiwan is aiming to be nuclear-free, with 20 percent of its energy mix from renewable energy and 50 percent from natural gas. Offshore wind is a key component of this goal, with ambitions for 5.5 gigawatts of offshore wind capacity by 2025.

Interest from international investors and financiers in the Taiwan offshore wind sector has been intense, with market participants enthusiastically jockeying for position. A number of key factors that differentiate the Taiwan offshore wind sector from other markets in Asia have buttressed international interest:

- The investment-grade creditworthiness (AA-) of the offtaker (Taipower) is an important foundation for the industry
- Strong government commitment and drive
- Large-scale projects and a transparent pipeline of opportunity
- Attractive feed-in tariffs
- The potential for Taiwan to be a foothold for establishing a presence in other emerging offshore wind markets in Asia, including Japan and South Korea
- A legal system with a degree of familiarity to European players—the Taiwanese legal system is a civil law-based system that was influenced by the German and Japanese legal systems (which itself was influenced by the German and French legal systems)
- No competition from mainland Chinese firms (the largest offshore wind market in Asia and the third largest in the world)

A key consequence of international involvement in the Taiwan offshore wind sector is the pursuit of limited-recourse project finance. This means that financiers lend solely on the basis of the project and its cash flows, without additional financial guarantees from the project developer. This type of financing had not been widely practiced in Taiwan previously, and its techniques and structures are broadly unfamiliar in a Taiwanese context. Implementing limited-recourse project finance in Taiwan is being driven by specialized teams of financial advisors, bankers and lawyers, and supported by export credit agencies (ECAs)—mainly from Europe (driven by government policy initiatives to support their national technology providers, developers and contractors).

As with any new jurisdiction for project finance, Taiwan faces challenges. For example:

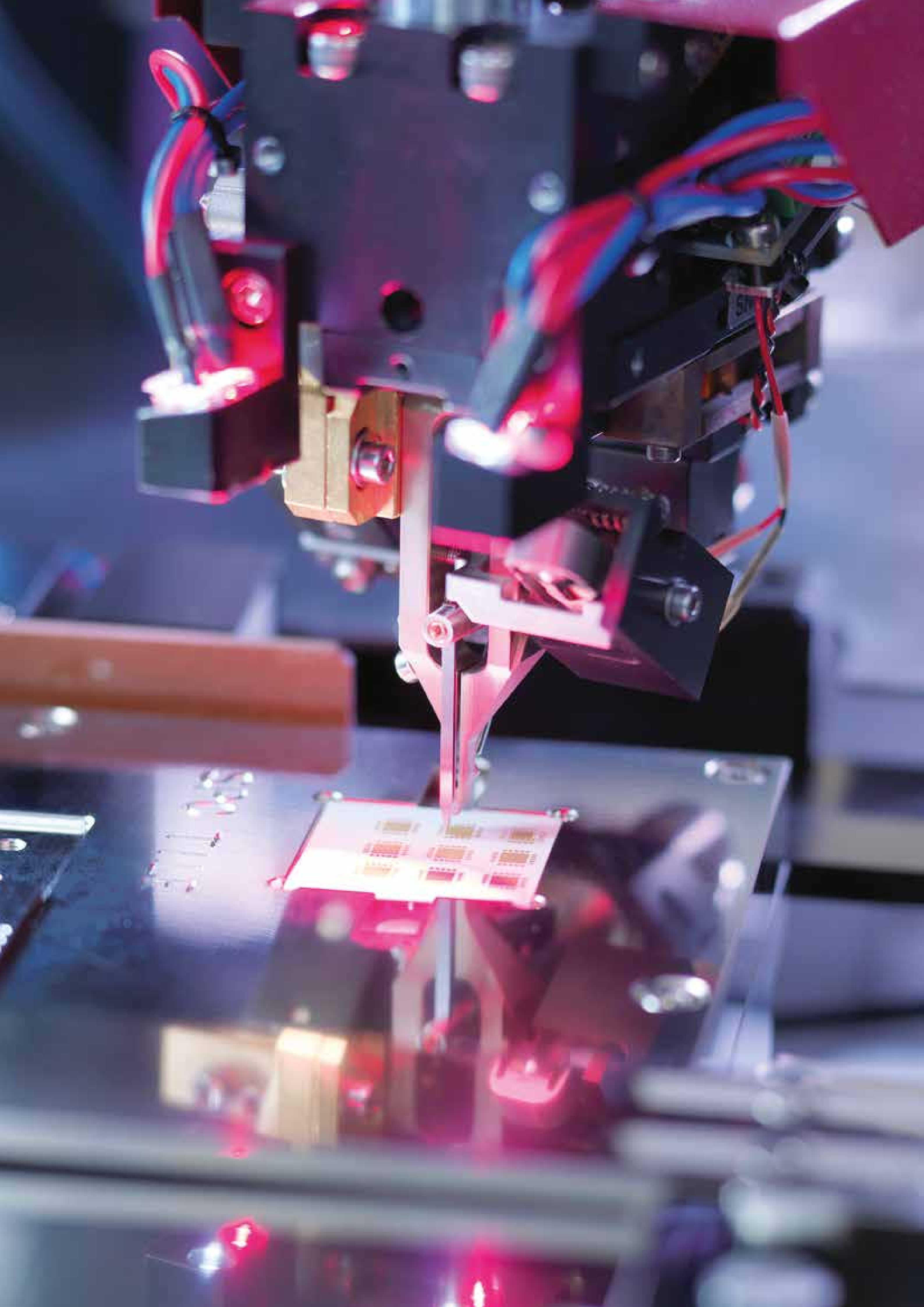
- The traditional approach to power purchase agreements (PPAs) in Taiwan lacks key elements that are important for project finance, and the extent of Taipower's willingness to negotiate PPA terms remains an open question
- Obtaining Taiwan dollar-dominated financing from local financial institutions is important, since PPA revenues are also denominated in Taiwan dollars. However, local financial institutions are relatively new to limited-recourse project financing, and they will need to partner with international commercial banks and ECAs to drive successful outcomes
- The participation of international financiers and ECAs means that the international environmental safeguards known as the Equator Principles will be applied to the projects in addition to Taiwanese environmental laws

International project finance is not one size fits all. Creativity and flexibility will be required in adapting international benchmarks to the local conditions and expectations of participants in Taiwan.

IMPLICATIONS FOR OTHER SECTORS IN TAIWAN

Pursuit of opportunities in the Taiwan energy sector has required the investment of significant resources from international investors and financiers to better understand the Taiwan market and its legal and regulatory system, build out teams on the ground and investigate structures to facilitate viable limited-recourse project finance in Taiwan. Many of these market participants have interest and appetite beyond the energy sector, and the principles of limited-recourse project finance are adaptable to other sectors. Once international project finance has taken hold in Taiwan offshore wind, its participants and methods can then be adapted to benefit other sectors where infrastructure investment is required.

With upfront market entry costs now sunk, there will likely be appetite for the pursuit of broader opportunities in Taiwan. For Taiwan developers and investors, this means there will be new opportunities to be seized.



Taiwanese firms expand their M&A horizons in Q1 2018

While Taiwan traditionally attracts global attention for its semiconductor assets, local firms are increasingly looking to move into markets overseas

By Noah A. Brumfield, Baldwin Cheng and Farhad Jalinous

Taiwanese companies are stepping up their presence in the global M&A market. The value of M&A transactions undertaken by local firms investing abroad in 2017 reached a record high, with US$7.25 billion spent across 28 deals. The first quarter of 2018 indicates another record annual deal value may be on its way, with US$2.63 billion already spent on overseas transactions.

While deal volume reached a peak in 2016 with 38 deals announced, 2017 still posted the third-highest annual volume figure on record with 28 transactions.

BIG DEALS, BUT CFIUS LOOMS LARGE

One deal notable for its ambition to build scale and diversify abroad is tech powerhouse Foxconn International Technology's US$866 million planned purchase of US-based Belkin International, announced in March. Through the acquisition, Foxconn will expand its access to brands within the PC/mobile accessories and smart home equipment industries. Foxconn is no stranger to using M&A as a tool to diversify its business. In 2017, the company initiated a US$3.1 billion takeover of Japanese display maker Sharp—the largest announced takeover of a foreign firm by a Taiwanese bidder ever recorded.

Press articles suggest that the Belkin deal will likely need approval from the Committee on Foreign Investment in the United States (CFIUS). The inter-agency committee is reportedly heavily scrutinizing inbound deals—particularly those targeting technology firms. President Trump recently blocked Broadcom's US$142 billion bid for Qualcomm on grounds of national security concerns.

TMT DRAWS OUT TAIWANESE DEALMAKERS

Taiwanese companies have traditionally attracted international attention for their prowess in the semiconductor space. Local firms are increasingly looking to gain their own global presence through M&A. In March, Netherlands-based NXP semiconductors sold a 40 percent stake in Suzhou ASEN Semiconductors Co., Ltd. to Advanced Semiconductor Engineering (ASE), a Taiwanese supplier of semiconductor services, for US$127 million. The joint venture deal gives ASE access to the rapidly growing global semiconductor assembly and test business.

While the TMT sector attracted the highest value of overseas deals from Taiwanese firms between 2016 and Q1 2018 (US$8.06 billion), it was the industrials and chemicals sector that generated the highest number of transactions (25) over the same period. In a further deal wherein a Taiwanese firm planned to expand into the US, Ta Chen Stainless Pipe Co. acquired a 95 percent stake in Empire Resources in March 2017 for US$177 million. Ta Chen hopes to enlarge the company's operational scale, efficiency and competitiveness in the industry.

A focus of the Taiwanese government in 2018 is to promote industrial competitiveness abroad, with a particular emphasis on advanced manufacturing equipment, advanced electronics, integrated applications in smart systems and 5G. The government is also giving added attention to growth in healthcare, particularly pharmaceuticals and biotech. In support of the government's goal, local firms will continue to look abroad in order to scale up their capabilities and source innovative technologies.

Convergence between the industrials and tech sectors, spurred by the need to stay ahead of competition, should encourage Taiwanese firms to source even more M&A opportunities overseas.

US$7.25 billion

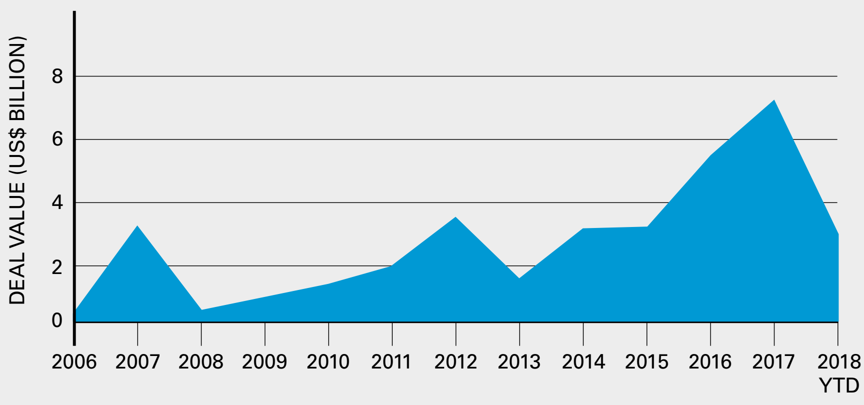
spent on 28 Taiwan M&A deals in 2017

US$2.63 billion

spent on overseas deals in just Q1 2018

M&A activity by value 2006 – 2018 YTD (excluding domestic deals)

Target location: Global **Bidder location:** Taiwan **Sectors**: All sectors



Weathering the storms

Investment and supply chain strategies for a volatile international trade environment

By Christopher F. Corr

After a year and a half of surprise US trade moves and growing global fears of overcapacity caused by China's aggressive industrial policies, multinationals today are like ancient sailors on a dark and perilous sea, navigating uncharted waters in capricious winds. The great merchant houses of prior centuries planned in advance for tempests and squalls by investing in more seaworthy fleets and establishing a network of safe harbors. Multinationals now must similarly plan for turbulent times by ruggedizing their investment and supply chain strategies.

The stormy trade climate has been stirred up by an unprecedented series of Trump administration trade actions in the past year, including:

- Unilateral import barriers imposed for national security reasons under Section 232, and retaliation by a number of US trading partners
- Threatened unilateral tariffs due to "unfair trade practices" by China under Section 301, and retaliatory tariffs by China and counter-retaliation by the US
- More aggressive use of trade remedies against imports under the antidumping, countervailing duty, safeguards and customs laws
- Threatened withdrawal from long-standing trade agreements like NAFTA, withdrawal from important regional agreements the US once championed such as the TPP, and shaking the foundations of the arbiter of the international trade order, the WTO

Today Chinese exporters face new barriers in the US and other major world markets; US exporters face retaliation by both China and traditional allies; and multinational companies in Taiwan and the rest of the world find themselves caught in the middle.

Taiwan exporters face not only the direct effects of new US and China barriers and indirect effects on downstream products, but also disruption of home (Taiwan) and third-country markets as goods blocked from access to one market are diverted to flood others.

WHAT CAN TAIWANESE COMPANIES DO TO ADJUST?

Like the mariners of old, Taiwanese companies must make their bases of supply more durable and flexible. To adjust to new and unpredictable trade hazards, they must contemplate investing in a multi-link supply chain with built-in "Plan B" options.

To maximize options and resilience: Invest in operations on the other side of the tariff wall

First, Taiwanese companies with an important stake in the US market should consider investing in US production or assembly—either via M&A or greenfield, to adapt to increasing protectionism in the US.

> **Taiwanese companies can make their bases of supply more durable and flexible to adjust to new and unpredictable trade hazards.**

Second, exporters should also assess investing in third-country operations—those outside the US and Taiwan—to further diversify their supply chains. This is especially important for Taiwanese companies, as it would:

- ***Obtain crucial FTA benefits***
  Taiwan is not now a party or in negotiations to enter regional FTAs such as the CPTPP and RCEP. The US quit the TPP, is not part of RCEP and may quit other trade agreements. Thus, to obtain the FTA preferences crucial to competitive supply-chain operations, Taiwanese companies must relocate within the preferential region
- ***Build in resilience***
  If Taiwanese exporters or their suppliers or customers face tariffs in important markets, investment in third-country production may afford flexibility to shift sourcing to unobstructed locations
- ***Provide "China insurance"***
  If concerns about China's massive support for sectors prioritized for growth (per the "Made in China 2025" industrial plan) prove true and Chinese exporters challenge the leadership or viability of

important companies in other countries, then increasing global countermeasures against Chinese companies seem inevitable. Taiwan, with its substantial investments in many sectors in China, could be caught in the crossfire. Prudent investment in third-country production offers insurance if this plays out.

What special trade-related due diligence measures should Taiwanese companies take to ensure these investments are successful?

In addition to standard investment due diligence measures, Taiwanese companies considering offshore investment should:

- ***Conduct a risk assessment of a contemplated investment location's susceptibility to protective trade actions.*** With regard to assembly operations, investors must also analyze anti-circumvention rules to ensure that the nature of contemplated operations is rigorous and adds sufficient value so as not to fall prey to claims that they are improperly evading existing trade remedy measures or "transshipping" and thus should be subject to existing duties or other measures aimed at countries where key components are made
- ***Vet locations under national security investment controls.*** In the US, this includes risks under current CFIUS rules as well as pending amendments under FIRRMA that would expand the sectors deemed "sensitive" and thus subject to review. Outside the US, investors must be aware of the growing trend toward closer national security review of inbound investments in countries such as France, Russia, Germany, Canada and China
- ***Conduct an FTA analysis to ensure the investment is located where it will most benefit from trade preferences under existing or pending FTAs.*** As noted, Taiwan is not now party to important new FTAs, and its position in global supply chains could suffer as competitors located in FTA regions gain price advantages via FTA preferences
- ***Enhance compliance measures.*** Investing in operations abroad brings with it exposure to foreign restrictions on exports, tech transfer and embargoed countries and entities, among other legal mandates. The recent draconian US sanctions against ZTE, which affected many suppliers and vendors around the world (before settling), serve as a case in point. Taiwanese companies with multinational operations must ensure they have designed and implemented a world-class internal compliance system, including oversight of robust internal screening of customers, shipments and technology transfers, with related training and self-checks.

Waiting and hoping for more tranquil times is a risky strategy. President Trump's term runs until 2020—and if he is re-elected, his trade policies would continue until 2024. Further, the "Made in China 2025" industrial policies are likely to face strong headwinds as the 2025 target date approaches. Exporters must plan accordingly.

Taiwanese companies that adopt prudential investment and supply-chain strategies can not only survive but also thrive in these volatile and uncertain times. Failure to adjust could mean increasing isolation and diminishing market share.

Asia-Pacific financing trends: Key issues and opportunities for Taiwan

Changing geopolitics and financing flows impact deals in the region

By David Li and Baldwin Cheng

To help guide Taiwanese businesses and financial institutions, here are highlights of financing trends we are observing these days in the Asia-Pacific region.

IMPACT OF GEOPOLITICAL RISKS ON DEALMAKING

The US administration's protectionist foreign policies continue to drive most of the current geopolitical risks that are beginning to have a serious impact on the type and level of Asia-sourced deals. Coupled with China's countering foreign and domestic policies—such as the "One Belt One Road" initiatives, domestic state-owned enterprise (SOE) reforms and capital and outbound investment controls—in the last 18 months, they are dramatically reducing the number of Chinese companies' completed outbound investments and M&A transactions in the US, while deal activities in Europe and within Asia have increased year-on-year. For China, state actors, such as SOE banks, and established private sector companies are both redirecting their financings and investments toward these initiatives. For offshore financiers, this has yielded more opportunities for offshore financings of Chinese companies in jurisdictions that are less affected by these geopolitical challenges.

CHINA-RELATED INBOUND CAPITAL-RAISING

In the past 18 months, Chinese onshore credit tightening has resulted in an active market for raising offshore debt. For large, Chinese, privately owned enterprises and SOEs, many of these transactions are done by way of a keepwell deed or outbound State Administration of Foreign Exchange (SAFE)–registered guarantees. Anecdotally, the challenges we had seen in registering outbound guarantees with SAFE when the Chinese central government clamped down on outbound capital flows seem to have abated.

The Hong Kong Stock Exchange's (HKSE) reform of dual-class share capital—allowing new technology and other innovative companies to have weighted voting rights—and providing a regime for pre-revenue biotechnology companies to raise equity capital on the HKSE have generated pre-IPO investment activity in those sectors, in the form of both equity and convertible debt. It is no coincidence that the sectors that have generated the most event-driven capital-raising activity include the internet, smart manufacturing, environment protection and bio, healthcare and pharmaceutical sectors. However, this observation is made with the caveat that the capital raised is not exclusively for onshore uses and, in fact, using such proceeds seems to be encouraged.

> **"We are seeing a significantly high level of deals in North Asia being funded by alternative capital providers, such as private credit funds and asset management companies.**

PRIVATE EQUITY-SPONSORED DEALS

Record new fundraising by private equity firms for use in Asia means that private equity's war chest is full.

PE continues to be a staple of merger and acquisition activity in Asia. There is a lot of focus on Japan and Southeast Asia (in particular, India), while Australia continues to be active. Australia is the jurisdiction where we have seen the most aggressive debt capital-raising and leveraged buyout (LBO) structures; it is where the use of unitranche financing arrived in Asia.

We expect to continue to see aggressive terms for LBOs, especially for top-tier PE funds. In addition, many large PE houses are deploying their capital by way of both debt and equity, creating a more liquid mezzanine capital market for LBOs. There is no shortage of liquidity, as US and European investors look to Asia

for yield. If a deal has some US or European angle, and/or there is a strong credit story, attracting capital from the US and/or Europe with increasingly flexible terms will soon be a mainstay in Asia.

Large Chinese PE houses are also in the mix. Their access to the Chinese trade players often gives them a leg up in deals where there could be a China play and provides a competitive advantage.

RISE OF ALTERNATIVE CAPITAL PROVIDERS

We are seeing a significantly high level of deals in North Asia being funded by alternative capital providers, such as private credit funds and asset management companies. We attribute this to two main factors:

- China's deleveraging exercise and Chinese bank liquidity's flight to safer credits
- Increasing special situation transactions starting from the second half of 2017

Following record levels of corporate debt fundraising in the past three years, a significant amount of corporate debt will become due for refinancing in the second half of 2018 in North Asia, particularly China. And we are already seeing signs of alternative capital providers aggressively pursuing anticipated distress deals with creative and tailored financial solutions where underlying assets and businesses remain sound.

We expect alternative capital providers will become an established mainstream source of funding for mid-market businesses in Asia.

> “
> **Record new fundraising by private equity firms for use in Asia means that PE's war chest is full.**

Rare court decision clarifies US merger control rules for vertical deals

A recent US district court decision rejecting a US government challenge to the AT&T/Time Warner merger provides judicial guidance for deals involving companies with complementary businesses

By Noah Brumfield and Charles Miller[1]

A US court has provided a rare precedent that is likely to guide merger control for decades. Mergers involving suppliers, distributors and other complementary business partners have been subject to uncertain regulatory review for deals that affect US markets. Taiwanese companies considering such mergers should take note of the implications for their deals.

For the first time in four decades, the United States Department of Justice (DOJ) brought a "vertical" merger case to trial—but received a stunning defeat. The US agencies typically decide such mergers by negotiating remedies without any judicial oversight. This lack of oversight has added to uncertainty when planning deals. In an environment of unpredictable regulatory policy and unsettling global events, the court's decision provides new clarity for Taiwanese companies considering cross-border M&A deals involving complementary services, products and technologies.

The DOJ had sued to halt AT&T's proposed US$85 billion acquisition of Time Warner. The government alleged the deal would increase costs in the market for cable and satellite television content.

US regulators typically challenge as many as 30 of these "horizontal" mergers each year. By contrast, vertical merger challenges are much less common. US regulators typically average one to two vertical merger enforcement actions each year. Before AT&T/Time Warner, all of these vertical merger challenges had been resolved under threat of litigation by concessions negotiated outside a courtroom.

Mergers between companies that complement each other have the potential to offer significant efficiencies that can benefit consumers. And any consumer harm is usually indirect.

When US regulators object to a vertical deal, it generally is out of a concern that the target company offers something critical to competition. For example, controlling a critical supplier may allow the combined firm to reduce the ability of downstream rivals to aggressively compete with the combined firm.

Vertical merger enforcement can touch any industry. Recent examples of deals restructured by regulators have involved semiconductors, data services, movie theaters, petroleum and aviation.

The typical case is resolved with a mandate to alter business practices and sometime also by a divestiture. The DOJ sought divestitures in AT&T/Time Warner. In a recent acquisition involving rocket engines, the US Federal Trade Commission had required the acquirer to supply engines to rival rocket manufacturers on non-discriminatory terms.

Notably, the district court did not provide a green light for future vertical deals. It instead rejected the DOJ's challenge as presenting insufficient and unreliable evidence of harm. The Court's focus was on the potential for harm to US consumers, as opposed to harm to competitors. This means regulators

> **"Taiwanese businesses should still pay early, careful attention to understanding the broader efficiencies and potential allegations of harmful consumer effects from both types of mergers.**

“

This decision provides new clarity for Taiwanese companies considering cross-border M&A deals involving complementary services, products and technologies.

must show that consumers are likely to be harmed by increased prices or reduced quality or services. Even if the decision does not weaken the agencies' position in future vertical merger negotiations, it will certainly guide those negotiations and provide greater clarity as to the legal bases for a challenge and remedies.

Taiwanese companies can take this opportunity to reevaluate the business case for vertical deals in light of the court's focus on whether evidence of likely consumer harm exists—much as is done when competitors merge. Taiwanese businesses should still pay early, careful attention to understanding the broader efficiencies and potential allegations of harmful consumer effects from both types of mergers.

Merging parties should also take note of the DOJ's strong views on remedies. In the AT&T transaction, the DOJ rejected a party-proposed remedy that did not include divestitures. That DOJ view is not likely to change just because of the agency's loss in this case. In light of the DOJ's stance, companies may still want to consider the possibility of agency-imposed divestitures when negotiating deal breakup fees and other risk-shifting terms for especially high-risk vertical mergers.

1 JD expected 2019

Raising the bar for US security clearance of cross-border transactions

A clampdown on potential security threats has increased the scrutiny of participants seeking clearance for cross-border mergers and acquisitions

By Farhad Jalinous

With governments around the world placing foreign direct investment under ever-greater scrutiny, an increasing proportion of big cross-border mergers and acquisitions are being subject to national security review procedures. Keeping abreast of new laws and engaging early with national bodies have never been more important when navigating this new landscape.

NEW US LEGISLATION WOULD EXTEND INVESTMENT OVERSIGHT

The Committee on Foreign Investment in the United States (CFIUS) has the authority to review any transaction that results in foreign control of a US business. Under the Trump administration, there has been rising sensitivity toward in-bound investment and acquisitions by Chinese companies, as well as investment from traditional allies in certain sectors. Politicians have proposed strengthening the CFIUS process against emerging threats in sensitive technologies. In November 2017, US Senator John Cornyn and Representative Robert Pittenger introduced the Foreign Investment Risk Review Modernization Act of 2017 (FIRRMA), which intends to expand the scope of the CFIUS review process. As currently proposed, the legislation would extend the CFIUS review time frames, increase the scope of transactions subject to CFIUS's jurisdiction, make certain notifications mandatory, and establish a process for expedited review of certain transactions.

Taiwanese companies are not insulated from US export controls and economic sanctions

Today's integrated global supply chains meet enhanced US enforcement against even non-US individuals and entities

By Nicole Erb and Cristina Brayton-Lewis

The United States has long maintained economic sanctions and export controls that restrict transactions involving US–origin items or by US persons with certain parties or countries for foreign policy or national security reasons. In recent years, though, the US has increasingly relied upon existing and new laws to enforce US sanctions and export controls against non-US parties, effectively coercing non-US parties into upholding US foreign policy and national security interests abroad.

Since Taiwanese companies and individuals have been affected by such US enforcement actions in recent years, you should remain mindful of US export controls and economic sanctions as you devise investment strategies and conduct global operations.

IMPACT OF US SANCTIONS ON TAIWANESE BUSINESSES

US sanctions often prohibit transactions by non-US persons involving sanctioned countries or blocked parties if the transactions have a direct or indirect connection to the US or a US person. For example, a non-US person can be deemed to have violated US sanctions even by engaging in a transaction outside the US that involves only non-US persons—if the transaction is denominated in US dollars and clears through the US financial system.

In some cases, the jurisdictional nexus with the US can be less obvious. In February 2017, US authorities concluded that a Taiwanese company had violated US sanctions by conducting a ship-to-ship transfer with a vessel owned by the National Iranian Tanker Company. The US authorities used the Taiwanese company's participation in US bankruptcy proceeding as the jurisdictional hook where the vessel used in the Iran-related shipment was under the jurisdiction of the US bankruptcy court.

Recently, the US also has stepped up enforcement of so-called "secondary" sanctions, which can be enforced against non-US persons without any connection to the US or a US person. Secondary sanctions target "sanctionable activities" by non-US persons outside the US, such as trade with North Korea or dealings with designated Iranian parties. US authorities do not have jurisdiction to impose civil or criminal monetary penalties for violations of secondary sanctions, because the violation, by definition, lacks a connection to the US or US persons. But the enforcement measures can be just as serious, if not more so, than the imposition of monetary penalties. US authorities can blacklist the foreign violator, thereby closing or restricting the violator's access to US commercial and financial markets. Secondary sanctions thus operate as a powerful

SECONDARY SANCTIONS STATUTES

- **1996** Iran Sanctions Act of 1996 (ISA)
- **2000** Iran Nonproliferation Act (INA) Sanctions
- **2005** Iran and Syria Nonproliferation Act (ISNA) Sanctions
- **2006** Iran, North Korea, and Syria Nonproliferation Act (INKSNA) Sanctions

deterrent against dealings by non-US persons with US-sanctioned countries or blocked parties, even in the absence of any US nexus.

Since 2010, US secondary sanctions have increased both in scope and frequency of enforcement. In fact, the lifting of US secondary sanctions against Iran was a key issue in negotiating the Iranian nuclear deal, implemented in 2016. With the US's May 8 announcement that it is withdrawing from the Iran deal, secondary sanctions are expected to be re-imposed in full after November 4, 2018.

Taiwanese companies are no strangers to the dragnet of US secondary sanctions. Earlier this year, the US authorities added a Taiwanese individual and two Taiwanese companies to the US sanctions list pursuant to the Countering America's Adversaries Through Sanctions Act of 2017 (CAATSA), effectively locking them out of the US financial system. US authorities alleged that these Taiwanese parties were engaged in North Korean coal export and oil import deals with entities in Russia.

US EXPORT CONTROLS ADD A COMPLICATING TWIST

US export controls restrict the export or re-export of items and technology, including:

- US–origin items
- Items produced abroad containing greater than de minimis controlled US–origin content
- Items produced abroad using controlled US–origin technology
- Items located in the US—including technology stored on US servers

In light of today's integrated global supply chain, US export controls pose a greater risk to non-US parties than ever before. The impact of the recent enforcement action against the Chinese technology company, ZTE, on Taiwanese companies exemplifies the extent of this risk. The US Commerce Department's Bureau of Industry and Security (BIS) imposed its largest-ever penalty on ZTE in connection with the shipment of items to Iran. This penalty, which was part of a criminal plea agreement, included the imposition of a "denial order" that would prohibit ZTE from being involved in any transactions involving items or technology exported from the US. After negotiations, ZTE reached a settlement with BIS and suspension of a new denial order on June 7, 2018. The new denial order will not be lifted until ZTE pays the US$1 billion fine and places an additional US$400 million in an escrow account.

Other recent US enforcement actions bear out the US focus on enforcement of sanctions and export controls against non-US persons—including non-US persons located in Asia:

- In July 2017, CSE TransTel Pte. Ltd. (Transtel) and CSE Global Limited, both of Singapore, settled with OFAC for US$12,027,066 for "causing" US banks to export or re-export financial services for the benefit of parties in Iran. Transtel entered into contracts to provide telecom equipment to Iranian energy projects, sometimes using Iranian vendors. Payments occurred in US dollars and were routed through the US financial system, causing the US banks to unwittingly deal with Iran. In particular, OFAC noted that "[n]one of the transactions contained references to Iran, the Iranian projects, or any Iranian parties."
- In August 2017, a US court in New York sentenced a Chinese citizen to 36 months in prison in connection with an attempt to export carbon fiber to China without an export license, using unmarked boxes and falsified shipping documents.

THE ROAD AHEAD IS FRAUGHT WITH NEW RISKS

Notably, US lawmakers are attempting to block the new settlement with ZTE through legislative means as well as trying to push through more stringent export controls legislation. For example, two pieces of pending legislation—titled the Foreign Investment Risk Review Modernization Act of 2018 and the Export Control Reform Act of 2018—seek to expand US export controls involving "foundational technologies," joint ventures involving non-US parties, and emerging and critical US technologies, including AI and machine learning, semiconductors, unmanned aerial vehicles and solar cells.

With so much at risk, Taiwanese companies should make sure their investment strategies always include an updated assessment of the latest US sanctions and export control policies. This is particularly important any time your business expands into new jurisdictions or engages with new individuals and entities. By addressing any gaps in advance of new investments or new contracts, Taiwanese companies can prevent issues that may otherwise derail a transaction.

2010
- Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA)

2012
- Iran Freedom and Counter-Proliferation Act of 2012 (IFCA)
- Iran Threat Reduction and Syria Human Rights Act of 2012 (TRA)
- Section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA)

2014
- Ukraine Freedom Support Act of 2014 (UFSA)
- Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 (SSIDES)

2016
- North Korea Sanctions and Policy Enhancement Act of 2016

2017
- Countering America's Adversaries Through Sanctions Act (CAATSA)
  - Title I (Iran)
  - Title II (Russia)
  - Title III (North Korea)

Global

Noah A. Brumfield
Taiwan Country Practice Head
Partner, Silicon Valley/Washington, DC
T +1 650 213 0395
+1 202 626 3698
E nbrumfield@whitecase.com

Americas

Nicole Erb
Partner, Washington, DC
T +1 202 626 3694
E nerb@whitecase.com

Farhad Jalinous
Partner, Washington, DC
T +1 202 626 3691
E farhad.jalinous@whitecase.com

Cristina Brayton-Lewis
Associate, Washington, DC
T +1 202 729 2407
E cbraytonlewis@whitecase.com

Asia-Pacific

Baldwin Cheng
Partner, Hong Kong
T +852 2822 0405
E bcheng@whitecase.com

David Li
Partner, Beijing
T +86 10 5912 9789
E dli@whitecase.com

Fergus Smith
Partner, Singapore
T +65 6347 1323
E fergus.smith@whitecase.com

Christopher F. Corr
Counsel, Beijing/Washington, DC
T +86 10 5912 9600
+1 202 626 3613
E ccorr@whitecase.com

Mikio Kobayashi
Associate, Singapore
T +65 6347 1376
E mikio.kobayashi@whitecase.com

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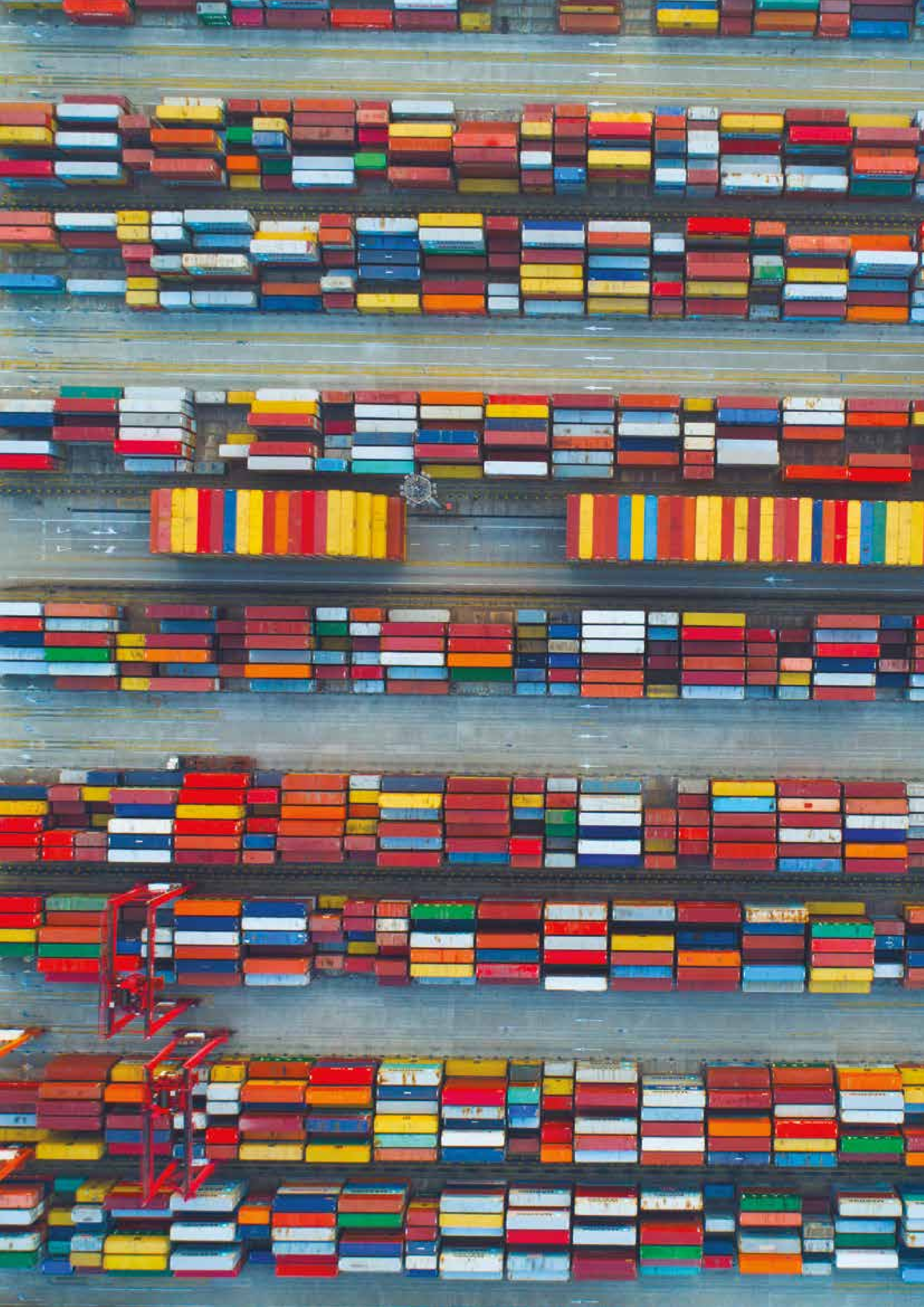

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