

**PROTECTION OF TAIWANESE INVESTORS
UNDER THIRD PARTY BILATERAL
INVESTMENT TREATIES?
— WAYS, MEANS AND LIMITS OF “TREATY
SHOPPING” —**

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*“I’m learning to fly,
but I ain’t got wings.”*

(Tom Petty and the Heartbreakers, Learning to Fly)¹

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ABSTRACT

This paper deals with whether and to what extent Taiwanese investors may seek protection of their foreign investment under bilateral investment treaties (BITs) concluded by third parties. After a description of Taiwan's current system of bilateral investment agreements, the author points to the fact that pursuant to the People's Republic of China's "One-China Policy" Taiwan belongs to the PRC, a position which is not openly contradicted by most of the PRC's current 127 BIT contract partners. Accordingly, the author concludes that there are no convincing arguments why a Taiwanese investor should not be entitled to seek protection under the PRC's BITs. In addition, the author discusses classical "treaty shopping" and outlines ways, means and limits of such "treaty shopping". The article concludes that investors who seek protection of their investment abroad have more possibilities than simply relying on the BITs of their own home country, and that in particular for Taiwanese investors one strategic step of surprising simplicity might be to claim protection under the 127 BITs concluded by the PRC.

KEYWORDS: *abuse of arbitral procedure, bilateral investment treaties, bond of economic substance, corporate nationality, foreign direct investment, denial of benefit clauses, forum shopping, free trade agreements, genuine link test, International Centre for the Settlement of Investment Disputes (ICSID), investment protection, nationality of investor, One-China Policy, treaty shopping*

¹ "Learning to Fly" is a song by Tom Petty and the Heartbreakers written in 1991 by Tom Petty and Jeff Lynne for the album "Into the Great Wide Open".