



Taiwan Updates

December 2015

Legal Updates:

Recent Important Decisions

1. According to Article 11 of the Labor Standards Act, unless certain circumstances are present, an employer may not terminate an employment contract. According to Article 11(ii), an employer may terminate an employee when the employers' business suffers an operating losses or business contractions. The term "business contractions" refers to operations being poor for a considerable period, production and sales volume being significantly reduced, and the narrowing of the business' scope. The employer may rely on such business contractions to justify terminating an employment contract if: business operations contract due to an economic downturn, market changes, or other conditions; such contraction produces an excess in manpower; and the employer, in order to rationalize operations, must dismiss employees. Further, the employer, when relying on Article 11(ii), may only do so as a last resort. This means that the operating losses or business contractions have persisted for some time and there are no other means of improving the company's condition. Only then may the employer rely on the operating losses or business contractions as a justification to terminate the contract. (Taiwan High Court, 2014 Chong-Lao Shang Decision No. 39).
2. The Taiwan Arbitration Act states that, in order for such act to apply, a valid arbitration agreement must first exist between the parties. Whether a valid arbitration agreement exists between the parties and whether the proceedings of the arbitration tribunal violated such arbitration agreement are matters that must be investigated by a court hearing an appeal of such decision. No decisions made by an arbitral tribunal on these matters will be binding on Taiwan courts. (Taiwan Supreme Court 2015 Tai-Shang Decision No. 1853)

Tax Law

1. On November 5, 2015, the Ministry of Finance of Taiwan's Executive Yuan released a circular letter stating that equity contributed to closely held

companies in the form of service or credit constitutes "Other Income," as per the meaning of Article 14(1) of the Income Tax Act. If a company's articles of association stipulate a period during which such equity may not be transferred, then the income of the shareholder shall be calculated based on the current share price as of the day on which such period ends, and the income tax shall be levied accordingly. However, if the company's articles of association do not impose a period during which such equity may not be transferred, the value of the equity on the day that it was contributed to the company, as recorded in the company's articles of association, shall be used to calculate the shareholder's income, and the income tax shall be levied accordingly. "Current Price" refers to the latest share value set forth in a financial report certified by an accountant within one year of the disposition date. If no such financial report certified by an accountant within the previous year exists, then the net value of the assets of the company will be used to calculate the share value. Service and credit contributed to the company are exempted from withholding. However, the company must report such contribution to the collection authority before the end of January of the year following the disposition date, pursuant to Article 89(3) of the Income Tax Act.

2. Taiwan's Legislative Yuan has amended the Income Tax Act. As of January 1, 2016, the Securities Transaction Tax will not be levied on individuals. The Ministry of Finance has indicated that, since the implementation of the Securities Transaction Tax in 2013, poor global economic growth, the decline of Taiwan's exports, and other political and economic changes have led to insufficient volume in the stock market. In order to eliminate stock market uncertainty and simplify taxation procedures, the Legislative Yuan has decided to stop imposing the Securities Transaction Tax. However, losses incurred as a result of trading securities will no longer be deductible from income. The securities tax imposed on profit seeking enterprises (i.e., the Alternative Minimum Tax of the Income Basic Tax Act) will not change. The tax rate for securities trading remains at %0.003 of the value of the shares sold. However, it should be noted that, prior to the coming into force of the amendments, the individual Securities Transaction Tax will continue to remain in force in accordance with the relevant provisions of the Income Tax Act.

Business Law

Taiwan's Arbitration Act originally stated that foreign arbitral decisions, once recognized by Taiwan court decisions, will be enforceable, but did not stipulate whether such decisions constituted final judgements (res judicata).

The Legislative Yuan considers that, the judiciary, with respect to the recognition of foreign arbitration awards, should accept res judicata as its starting point. In 1958, the United Nations adopted the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), Article 3 of which states that "each contracting state shall recognize arbitral awards as binding and enforce them."

In order to conform to international standards, on November 13, 2015, Article 47(2) of the Arbitration Act was amended on the third reading as follows: "A foreign arbitral award, after an application for recognition has been granted by a court, as between the two parties, shall have the same effect as a final judgement rendered by a court and shall be enforceable."

Thus, in accordance with the newly amended Article 47(2), international arbitral decisions recognized by Taiwan courts will have the same force and effect as final Taiwan court decisions. Both the parties and the courts shall be bound by such arbitration decisions and may not dispute the decision or make further substantive holdings.

Intellectual Property

In order to increase the quality of Taiwan's patents and its patent professionals, the newly amended Patent Attorney Act and Patent Agent Professional Training Regulations will come into force on January 1, 2016. This will have the effect of tightening the rules on patent attorneys and patent agents engaging in professional patent work and their periodical on-the-job training. The amendments to the Patent Attorney Act mainly serve to revise the qualifications required of patent attorneys and patent agents engaging in professional patent work. They also add certain criminal penalties. For example, in order to establish a patent office, all partners must be either patent attorneys or patent agents. Those providing patent professional services must also have either the patent attorney or patent agent qualification. If a lawyer acts as the representative of a patent application, he/she must, according to the Patent Attorney Law, complete on-the-job training. Furthermore, it is an offense to solicit business for a patent agent office without possessing the patent attorney or patent agent qualification. With respect to defining the scope of patent professional services, the different stakeholders have not yet reached a consensus. Therefore, it remains to be seen whether the provisions of the amended Patent Attorney Law and the Patent Agent Professional Training Act can be fully implemented.

Cross-Strait E-commerce Exchange Promotes Third Party Payments

On November 5, the Taiwan Institute for Information Industry held the Cross-Strait E-commerce Cooperation & Exchange Conference to discuss points of cross-strait cooperation, innovative internet applications and E-commerce trends, and to explain the Chinese E-commerce Experimental Park policy.

Taiwan's third party payment law has already come into force. The Institute for Information Industry has adopted bilateral communication as a means of promoting cross-strait third party payment interface. According to a survey it conducted in 2014, the percentage of Taiwanese E-commerce businesses engaging or intending to engage in cross-border E-commerce has reached 61.8%. Of this figure, 76.7% prefer the Chinese market. Based on information from a Chinese E-commerce research center and Taobao's global purchasing research, it is projected that by 2018 China's E-commerce shoppers will exceed 35,600,000.

The Institute for Information Industry highlighted the following three points about the direction of Taiwan's E-commerce development. First, Taiwanese industry's innovation, the reliability of its products, its personnel, and Facebook marketing are the reasons why Chinese businesses are interested in cross-strait cooperation. Second, China has relaxed its requirements for an Internet Content Provider License for applicants that are 100% foreign owned. Also, there has been significant enhancement of Chinese links to Taiwanese purely E-commerce sites. Through industrial cooperation, Taiwan and China have signed 35 letters of intent, which have helped 11 Taiwanese platforms spur the development of over 600 businesses in the Chinese market. Third, Taiwan and China, as of June of 2015, have also agreed to increased efforts to help improve and expand the level and scale of cross-strait E-commerce industrial cooperation in newly established E-commerce Group of the Industrial Cooperation Group of the Cross-Straits Economic Cooperation Committee.

Executive Yuan Seeks to Assist Industry Win Overseas Business

On October 28, at the National Conference on Industrial Engineering Globalization, the President of Taiwan's Executive Yuan, Mao Chi-kuo stated that, before the end of the year, Taiwan will substantially reduce restrictions on the minimum wage threshold, and increase to 50% the weight given to the promotion of business and tourism in the evaluation of overseas

civil servants. It will also create a new large scale demonstration case for business development, implement a syndicated loan financing program, and fully support the engineering industry to secure overseas orders. The Taiwan government will further provide the engineering industry with investment financing and a NT\$566 billion (approximately US\$18.8 billion) M&A fund, while at the same time encouraging banking groups to cooperate to win overseas tenders.

Additional policy measures are meant to assist an industry concerned about the flow of cash, information, and human capital. They include: asking the Ministry of Finance to establish a systematic and comprehensive production and engineering syndicated loan platform; using the Export-Import Bank of the ROC as a portal; and pooling the resources of each bank for syndicated loans.

The Ministry of Foreign Affairs and the Ministry of Economic Affairs will assist in the establishment of overseas information gathering centers, to collect information on overseas market conditions, and middle and long-range construction projects, in order to benefit Taiwanese businesses and help them conduct business overseas. There will also be a gradual cancelling of work restrictions on international students and overseas Taiwanese who return to Taiwan to study so that both categories of students may more easily remain in Taiwan. It is hoped that this will help Taiwan break into the Southeast Asian market. Other measures target the cultivation of second generation immigrants in Taiwan.

Government Updates:

Ma-Xi Meeting: the First Meeting of Cross-Straits Leaders Since 1949

Taiwanese President, Ma Ying-jeou, met with Chinese President, Xi Jinping, on November 7 in Singapore. This is the first meeting of the presidents of Taiwan and China since 1949. The main purpose of the meeting was to promote an exchange of ideas on the continued development of peaceful cross-strait relations. Both sides reiterated the 1992 consensus but did not sign an agreement or release a joint statement.

KMT 2016 Presidential Election Candidate Replaced by Party Chairman, Eric Chu

The ruling Kuomintang party ("KMT") decided, in a provisional party congress on October 17, to revoke the presidential election nomination from Vice President of the Legislative Yuan, Hung Hsiu-hu, who had won the

nomination during the presidential primaries. The current mayor of New Taipei and chairman of the KMT, Eric Chu has been named the party's new nominee. In addition to Eric Chu, the 2016 presidential election will also be contested in January by Tsai Ying-wen of the Democratic Progressive Party ("DPP") and James Soong of the People First Party ("PFP"). The Central Election Commission will host 4 televised election debates, three for the presidential candidates and one for the vice presidential candidates. The debates will begin on December 25 and conclude within three weeks.

Cultural Updates:

2015 Cross-Straits Grand Cultural Seminal

Taiwan's Ministry of Culture held a Cross-Straits Cultural Seminar in Taipei on November 11 and 12. Representatives of industry, government, academia, from both sides of the Taiwan Straits and from Singapore will gather together to discuss cultural industries, development of the arts, and governance of humanities and social science and culture. This discussion will have as its goal strengthening the roots of cross-straits culture and a path for future development.

The Ministry of Culture's secretary of cultural exchange, Peggy Chou, stated in a speech that both sides of the Taiwan straits are linked by a common kinship and culture. In recent years, with increasingly close cross-strait exchanges, sparks have been created that have made Taiwanese and Chinese strengthen bilateral awareness and understanding of cross-straits cultural issues. The common mission of both sides is to make cultural particularities coalesce together so as to create a new cultural energy.

The content of the discussion sessions will cover opportunities for cross-straits cultural exchange in film and television, management of arts venues and cultural parks, mechanisms for cross-strait cooperation in the arts, community development experiences, and issues relating to environmental and cultural governance. All participants in the talks have an interest in the current globalization of culture and in the impact of new technology on cultural and creative industries.

The Chiayi City International Band Festival

From December 18 to January 1, Chiayi City will host the International Band Festival. Chiayi City's wind band festival is the longest running event of the Formosa Arts Festival, which takes place in every city and county in Taiwan. In the past, wind bands from the following countries have been invited to

participate: the United States, Canada, Germany, Japan, Australia, Hong Kong, Russia, Kazakhstan, South Korea, China, the Philippines, Malaysia, Thailand, Singapore, and others.

Through the planning of a wide variety of events, a smorgasbord of wind bands have been assembled. The festival has succeeded in narrowing the distance between ordinary people and wind band music, so that wind band music can become a part of ordinary people's lives. The festival has made Chiayi City a "Cultural City" and the "Capital of Band Music." Wind band music now shapes the city's urban culture and is important for marketing the city and promoting international exchanges.

The Taiwan Updates content on Taiwanese law and regulations is meant to provide an overview of the latest legal developments in Taiwan. Due to the generality of this overview, the information contained herein may not be applicable in all situations and should not be acted or relied upon without special legal advice. For more information or advice on specific legal issues, please contact Lee and Li directly. Our contact information is provided below.

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