



Taiwan Updates

April 2016

Legal Updates:

Recent Important Decisions

1. When several manufacturers that appear to have a competitive relationship, prior to bidding on a tender, mutually agree that only one of them will bid or that the others will abstain or make bids with prices that are not competitive, and thereby create the false impression that they are competing for such tender, then this constitutes pseudo-competition.

The personnel who participate in a tender in this manner and thereby cause the award of tenders to have such incorrect result have violated Article 87(3) of the Government Procurement Act, which prohibits the use of fraudulent or other illegal means to cause tenders to have an incorrect result. Since this is enough to influence the fairness of the tendering process, the Public Construction Committee has found that such circumstances fall under Article 31(2)(viii) of the Government Procurement Act, which states that the procurement entity may provide in the tender documentation that the bid bond deposited shall not be refunded or returned to the tenderer and the refunded or returned bid bond shall be recovered if “the competent authority finds that there is a violation of laws and regulations which affects the fairness of the procurement.” (Supreme Administrative Court 2015 Decision No. 795)

2. Articles 20 and 57 of the Labor Standards Act state that, when a business entity is restructured or changes ownership, the new employer shall recognize the prior period of service of the employees to be retained and use such period to calculate their seniority.

The phrase “when a business entity is restructured or changes ownership” of Article 20, refers to the business entity that is a company and which, as a result of a merger or restructuring performed pursuant to the Company Act, is replaced by a new legal person. It also refers to an existing company transferring its assets and operations to a new company, even if the original company ceases actual operations but does not register its dissolution.

As for the “employees to be retained,” this does not only refer to the employees who the old and the new employers notify, orally or in writing, to continue to work for the new employer. It also refers to those employees who one can infer that the old and new employers intend to retain according to the move of a new or old employer or other circumstances. (Supreme Court 2015 Tai-Shang-Zi No. 2368 Civil Decision)

Labor Law

1. Article 7 of the Enforcement Rules of the Labor Standards Act stipulates that the start and end times of work, rest periods, holidays, etc, shall all be stipulated in the employment contract. On February 3, 2016, the Ministry of Labor of Taiwan’s Executive Yuan, promulgated Labor Article 2 Interpretive Letter No. 1050130162, which states that, because the law does not expressly prescribe whether the "annual paid leave" mentioned in Article 38 of the Labor Standards Act should be counted in half day units, this must be decided upon through consultation between employers and employees. If employers and employees mutually agree that paid annual leave should be counted in half days, and employees attended work during such half day leave, regardless of the work hours, employers shall pay half day wages in accordance with Article 39 of the Labor Standards Act.
2. Article 49(5) of the Labor Standards Act stipulates that an employer may not require female workers who are pregnant or are nursing to work during a night shift. The period during which such employee may not be required to work, in principle, lasts one year after the birth of the employee’s child. It does not apply only to women who are actually breastfeeding their children. It also applies to women who bottle feed their children. The Ministry of Labor has indicated that companies, in order to avoid breaking the law, have prohibited women from working nightshifts and that this has adversely affected women’s labor rights and interests. In order to respect the freedom and labor rights of female employees, the Ministry of Labor, on March 8, 2016, promulgated Article 2 Interpretive Letter No. 1050130327, which explained that women who do not have any nursing or similar needs that would prevent them for working at night may personally sign a declaration to that effect, in order to perform night shift work in compliance with Article 49(1) of the Labor Standards Act.

In addition, the employer has an obligation to prove that female employees who performed night shift work within a year of delivery did so in conformance with the relevant laws. Further, employers may not force female employees to sign the written declarations in question and then perform night shift work. If the female employee has a need to collect milk, the employer must abide by Article 52 of the Labor Standards Act and

provide the female employee who performs night shift with time for such collection.

Fair Trade Law

Article 14(1) of the Fair Trade Act stipulates that the term "concerted action" means that competing enterprises at the same production and/or marketing level, by means of contract, agreement or any other form of mutual understanding, jointly determine the price, technology, products, facilities, trading counterparts, or trading territory with respect to goods or services, or any other behavior that restricts each other's business activities, resulting in an impact on the market function with respect to production, trade in goods or supply and demand of services. The Fair Trade Commission of Taiwan's Executive Yuan, on March 1, 2016, promulgated Interpretive Letter No. 10515600941, which set forth its standard for minor violations that are not subject to punishment. Specifically, companies that participate in concerted action, if in the relevant market their total market share is less than 10%, then they are presumed not to have an impact on the market function with respect to production, trade in goods or supply and demand of services. However, the above does not apply to concerted action which mainly involves restriction of the price of products or services, production volume, trading counterparts or trading territory.

Intellectual Property

The Taiwan Intellectual Property Office commented on the recent decline in patent applications. On March 1, 2016, it convened a patent examination quality advisory committee of expert panelists to discuss: entering into cooperative agreements and establishing PPH with other countries to increase patent examination speed; providing English language search reports and examination comments, in order to reduce the application costs and serve as a basis for international examination; and, increasing the quality of examinations, and the Intellectual Property Office's plans to relax the foreign search system, which are to be implemented next year.

With respect to examination fees, because Taiwan's fees are already lower than those of other countries, the Intellectual Property Office is not considering lowering them any further. Also, the committee discussed improving the quality of patent trials. South Korea, following the example of Singapore and Hong Kong, is promoting the international IP Arbitration Centre Project, and has seen a 5% increase in invention patent applications. This means that South Korea is increasingly closing the gap with Japan. If Taiwan can offer a trial court of international quality, applicants will be more

likely to choose Taiwan as a forum for settling disputes. This will be a great encouragement to business and intellectual property industries will in turn flourish.

Economic Updates:

Ministry of Economics to actively attract foreign investment, with an annual target of US\$11 billion

In March 2016, the Ministry of Economic Affairs of the Executive Yuan announced that, during the second half of this year, it will target Europe, the United States, and Japan for investment with the goal of raising US\$11 billion, mainly in the four main industries of semiconductor equipment and materials, offshore wind power, rail vehicles, and electric buses. The three principles of the Ministry of Economic Affairs include: making an inventory of domestic business opportunities arising from major construction or investment plans; assessment of domestic production and industrial supply chain gaps, domestic producers being supplied through domestic businesses, and producers that cannot function completely indigenously and are searching for foreign investment in Taiwan; and improving domestic industrial capacity and better integration into the global supply chain.

With respect to semiconductor equipment and materials, for example, Taiwan is the world's single largest market, but is still lacking in exposure, etching and other technical equipment. The Ministry of Economic Affairs is hoping to attract investment in such areas and thereby create NT\$ 500 billion business opportunities. Further, the Ministry of Economic Affairs published data concerning the 2012-2014 letters of intent to invest. Such data indicated that the Investment Solicitation Committee and overseas investment groups signed 88 such letters and that the investment amounts equal NT\$ 318 billion (approximately US\$ 106 billion) with an implementation rate of 92.87%.

Results of Limited Partnership Structure are Poor; Ministry of Economic Affairs to Amend Law

Taiwan's Executive Yuan has been promoting innovative business structures for the past six months.

Taiwan currently has more than 70 closely held companies registered, approximately half of which are start up companies. However, to date, no limited partnerships have been registered. The Ministry of Economic Affairs has stated that the main reason is that limited partnerships are not exempt from the business tax exemptions. However, the benefit of such exemptions

will be provided when the Industrial Innovation Act is next amended.

As for closely held companies, they provide no tax incentives. However, because the original shareholders equity interest is better protected and pressure on cash contribution is reduced, for example, plural voting rights, conditional relaxation of the restrictions on contribution of capital in the form of technology or services, this attracts start up entrepreneurs and is favored by those who would like to secure ownership of their business.

Government Updates:

Taiwan's President-elect Tsai Ying-wen has officially named Lin Chuan as Premier

Taiwan's president-elect, Tsai Ying-wen in March announced that Lin Chuan, who previously served as minister of finance, would assume the office of premier on May 20, after which point the government will begin to select the other cabinet ministers. The selection process will be completed in April.

Lin Chuan was born in 1951, and earned a doctorate in economics at the University of Illinois. He has served as the head of the finance department of the city of Taipei, the Minister of the Directorate-General of Budget, Accounting and Statistics of the Executive Yuan, the Minister of Finance, a national policy advisor to the president, and Chairman of the Board of Directors of Vanguard International Semiconductor. He currently serves as the executive director of the New Frontier Foundation, and as an adjunct professor in the department of economics at National Taiwan University.

The CPPCC Stresses the 1992 Consensus as basis for Cross Strait Relations, Underscores work must be done with Taiwanese Youth

In March, China convened the 12th Chinese People's Political Consultative Conference ("CPPCC") National Committee, where Chairman Yu Zhengsheng stressed that the 1992 consensus is still the political basis of cross-strait relations, and said it would "expand exchange programs for Taiwan's youth, and conduct research targeting Taiwanese students studying and working in China." Association for Relations Across the Taiwan Straits Vice President, Sun Yafu has stated that cross strait relations are at a critical moment and much over the next four years will depend on Tsai Ying-wen, who will assume office on May 20.

Hakka Tung Blossom Festival

The Hakka Tung Blossom Festival was established in 2002 by the Council for Hakka Affairs of the Executive Yuan. This festival combines Hakka culture, tourism, ecology, and industry. Every April and May, in Northern and Eastern Taiwan, in particular in Hakka villages throughout Taoyuan, Hsinchu, and Miaoli, one can enjoy the beauty of the beautiful white fields of tung blossoms, which are referred to as "May snow."

The seed of the tung tree can be used to produce industrial oil and its fruit can be used to produce paint oil. Also, its wood can be used in furniture. Tung blossoms were once an important economic resource for Hakka. Nowadays, however, the economic value is much diminished and the Hakka Affairs Council hopes to use the Hakka Tung Blossom Festival to help foster a new Hakka culture.

The 2016 Kaohsiung Neimen Song-jiang Battle Array will Take place from April 2 to April 10

Since 2001, the Kaohsiung Neimen Song-jiang Battle Array has mainly been organized by the Tourism Bureau of the Ministry of Transportation and Communication. The activity takes place in the spring of each year, so as to coincide with the birthdays of two deities, Gaun Yin and Matsu. Neimen is home to a number of cultural activities, which have earned this district the reputation as a cultural center. In particular, the Song-jiang Battle Array involves street parade performances by 18 different troupes, the highest number in the country.

This activity can trace its origins back to the Qing Dynasty, when Neimen, which is located in remote mountains, was plagued by robberies. To protect themselves, each village formed their self-defense Kung Fu forces to fight off bandits. The current activities blend together this martial arts tradition with the pilgrimage to Guanyin Buddha at the Neimen Zizhu temple, and also draw on the famous Chinese Novel, "Outlaws of the Marsh." The performance involves both martial arts and cultural elements. The cultural elements involve many motifs from traditional Chinese culture, including traditional drumming, and dragon and lion dances.

The religious element of the activities manifest themselves in the pilgrimages to Guanyin that occur at the local temple, where the faithful pray for

happiness and safety, worshipping their gods, and engage in lively performances. Other associated activities include contests and a grand banquet.

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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