



## *Taiwan Updates*

*December 2016*

---

### *Legal Updates*

---

#### **I. Recent Important Decisions**

1. To be defined as the "trade secret" as prescribed in the Trade Secrets Act, such information shall meet three criteria: the information shall be secret, the information shall be related to the business, and the owner of the information shall have taken proper measures to maintain the secrecy of the information. "Proper measures" means that the owner of the business or trade secret has the intention to protect its secrecy, has actively taken measures to maintain the secrecy, and has enabled other people to understand that the owner of the secret has the intention to treat such information as secret and to maintain its secrecy. In addition, the measures taken by the owner of the secret must be "effective" in maintaining the secrecy of the information. Whether proper measures have been taken does not necessarily depend on whether non-disclosure agreements were signed. As long as the owner of the secret has taken certain measures to enable other people to understand that the owner has the intention to treat such information as secret and to maintain its secrecy, and has made it difficult to access the information, it can be considered that proper measures have been taken. On the other hand, even if non-disclosure agreements have been signed, if anyone is able to easily access the information, it cannot be considered that proper measures have been taken to maintain the secrecy. (105-Hsing-Chih-Shang-Su-Tze No. 11 Criminal Judgment of the Intellectual Property Court)
2. The worker under an employment contract is defined as having the following characteristics: 1. Personality subordination, meaning that the employee is subject to the authority of his or her employers, and the employee is obligated to accept disciplinary action or sanctions within the employer's business organization. 2. Personal performance,

meaning the employee may not appoint a third party to perform the employee's duties. 3. Economic subordination, meaning that the employee is not working for his or her own business but is subject to others, working for the purpose of the others. 4. The employee is incorporated into the employer's production organization, and works in cooperation with his or her colleagues. In terms of labor protection, the court's standard for establishing the labor contractual relationship is not particularly stringent. As long as there is a certain form of subordination, the labor contractual relationship can be held to exist. Consequently, the working-relationship characteristics of working subordination, command, and supervision between worker and employer are not specific to the employment contract and can exist in other types of contract. Regarding contracts of labor services, if a certain contract has characteristics of labor subordination, it shall be considered a labor contract even though it also has characteristics of contract of hire of work or contract of mandate.

## **II. Company Law**

On November 18, 2016, the Taiwan Financial Supervisory Commission ("FSC") amended the Regulations Governing Public Tender Offers for Securities of Public Companies requiring that the public tender offeror make the payment of the purchase consideration in accordance with the schedule specified in the public tender offer prospectus. The public tender offeror shall not change the time, manner or location of such payment, except in case of force majeure. The amendment also requires the filing documents to be reviewed by an attorney, and a legal opinion on such filing documents shall be furnished. To verify financial status and ability of the public tender offeror to pay the amount of the public tender offer, the amendment mandates that the public tender offeror shall prove it is able to make the payment of the purchase consideration. In addition, the related financial consultant or CPA shall maintain independence and not have any interest in the public tender offeror. In order to increase the responsibilities of the acquired company's board of directors and acquisition review committee, the amendment requires that the board and committee shall verify the credibility of the critical information of the public tender offer, such as the identity and financial status of the public tender offeror. Under the amendment, the acquired company is obligated to assess the terms and conditions of the acquisition agreement and to ensure that such terms and conditions are reasonable. The acquired company must also assess the source of the fund the public tender offeror plans to use for the purchase. On the basis

of the above evidence, the acquired company shall render its assessment of the public tender offer for shareholders' reference. If the acquired company is unable to verify the credibility of the critical information of the public tender offer, it shall explain the specific reasons.

In addition, the Taiwan Legislative Yuan amended relevant articles of the Securities and Exchange Act on the same day. The new amendment stipulates that the public tender offeror shall prove he or she is able to pay the amount of the purchase consideration.

### **III. Labor Law**

The amended Article 52 of the Employment Service Act, which took effect on November 5, 2016, abolished the requirement that a foreign worker who has been working in Taiwan for more than three years shall depart from Taiwan for one day. Hence, after November 5, 2016, any foreign worker whose work permit has expired, and whose employer has applied for the extension of the foreign worker's work permit and obtained the approval, may remain in Taiwan for work without temporary departure from Taiwan.

Paragraph 5 has been added to Article 52 of the Employment Service Act, and prescribes that, in order to ensure that foreign workers use their vacation days, during the term of work permit, an employer may not refuse a foreign worker's request for leave to return to his or her home country. If any employer refuses such request and is ordered to make a correction but fails to do so, and such event is investigated and proved to be true, according to the Employment Service Act, an administrative fine will be imposed on the employer.

### **Economic Updates**

---

#### **Taiwan retains 11-best ranking in World Bank's "Doing Business 2017"**

The World Bank released its "Doing Business 2017" on October 25, measuring ten areas to evaluate and compare the business environments of 190 countries/economies. New Zealand ranked first this year, taking over from Singapore. The overall ranking of Taiwan remained the same as last year, in eleventh place, and fifth in the Asia-Pacific region. Taiwan scored 81.09 points in the reports rating system, an increase over last year. The

report measures quantitative indicators on business regulations affecting ease of opening and operating a business in each country. Among the categories, Taiwan's highest ratings were in the categories of "getting electricity," ranking second in the world, and "dealing with construction permits," ranking third. The categories of "enforcing contracts," "registering property," and "starting a business" also ranked in the global top 20. On the downside, Taiwan garnered its lowest rating in the category of "obtaining credit," where it ranked sixty-second. Taiwan's Vice Chairman of the National Development Committee said that if the amendment to the Taiwan Company Act comes into effect next year, the convenience of doing business will be further improved by significant margin, enabling an anticipated increase in Taiwan's rating in the survey.

### **Cross-Strait CEO Summit Concludes; China to Review Barriers to Investment by Taiwan Businesses**

The Cross-Strait CEO Summit, the highest level of cross-strait economic exchanges, was held in Xiamen in November. The Chairman of the Cross-Strait CEO Summit, Mr. Vincent Siew from Taiwan, expressed the hope that Taiwan businesses be treated as equals compared to domestic enterprises in Mainland China. Mr. Yu Zhengsheng, Chairman of the Chinese People's Political Consultative Conference, said that cross-strait economic relationships will not be affected by politics. Mr. Yu further stated that he is willing to review the logistical, financial, and procurement eligibility requirements, and other investment barriers, which he hopes could be identified by the Taiwan businesses and then be studied and reduced in due course.

### **Government Updates**

---

### **Discussion on Maritime Affairs Between Taiwan and Japan; Parties Agree to Annual Meetings**

The first discussion between Taiwan and Japan on maritime affairs was held in Tokyo on October 31. Representing Taiwan, officers from Association of East Asian Relations, the Coast Guard Administration, Executive Yuan, Fisheries Agency, Council of Agriculture, Executive Yuan, the Ministry of Science and Technology and the National Security Council joined the discussion. Representing Japan, officers from the Interchange Association (Japan), the Ministry of Foreign Affairs of Japan, Japan Coast Guard, Japan

Fisheries Agency and the Ministry of Education, Culture, Sports, Science and Technology attended the discussion. Both parties discussed issues such as fishery collaboration, maritime rescue collaboration, and marine technology collaboration. This is the first exchange of views between the parties to eliminate the confrontation on the exclusive economic zone of Japan's southernmost "Okinotori" atoll (referred to as "island" in Japan). Although no specific consensus was reached, participants agreed to hold the Taiwan-Japan Dialogue on Maritime Affairs once a year with working group meetings on individual issues with the agreement of both parties, if necessary.

### ***Cultural Updates***

---

#### **Taiwan & Japan Renowned Printmakers Presents 31 Masterpieces**

Taiwan & Japan Renowned Printmakers is an event hosted jointly by the Taipei Economic and Cultural Representative Office in Japan and the Paris Foundation of Art. The event takes place at Toranomon Hills in Tokyo from November 4 to December 9. Printmakers from Taiwan and Japan will present 31 works of art at the event. In addition to the celebration of culture and art, the exhibition serves to promote the cultural exchange and mutual friendship of Taiwan and Japan, furthering the bilateral relationship between the two countries.

#### **Alishan New Year Sunrise Concert**

This year's Alishan New Year Sunrise Concert is hosted by the Chiayi County Government, the Taiwan Tourism Bureau, the Ministry of Transportation and Communications, and Alishan National Scenic Area Administration. Every year since 2000, the Alishan New Year Sunrise Concert has been the first choice of tourists from all over Taiwan and abroad to enjoy music, countdown to midnight, and watch the first sunrise of the New Year. The high-quality Concert presents the harmony between music and nature perfectly. The Alishan New Year Sunrise Concert attracts an audience of over 10,000 attendees, and the performance will take place in Alishan National Scenic Area with a relay of performances at the Gaoyue sunrise viewing platform, Zhushan bus shelter, the visitor center, and the Sianglin sacred tree area.

*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 on 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.*

Bo-Sen Von

Lee and Li, Attorneys-at-Law

Hsinchu Office

5F, 1 Industry E. 2nd Rd.

Hsinchu Science Park, 30075, Taiwan

Taipei Office

7F, 201 Tun Hua N. Road

Taipei 10508, Taiwan

Tel: 886-3-5799911 ext. 221

Fax: 886-3-5797880

E-mail: [bosenvon@leeandli.com](mailto:bosenvon@leeandli.com)