



## *Taiwan Updates*

*February 2016*

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### Legal Updates:

#### **Recent Important Decisions**

1. Article 18(1) of the Administrative Penalty Act states that “in the case of the imposition of a fine, consideration shall be given to such factors as the culpability of the act breaching the administrative law duty, the impact resulting therefrom and the benefits gained from such an act. Additionally, the financial ability of the person to be penalized may also be taken into account.” Such article means that the administrative agency imposing a fine may not arbitrarily exercise its discretion and the appropriateness of the penalties that it administers are subject to judicial review.

When an administrative agency has exercised its discretion to impose a fine in a particular case, if it failed to consider factors that should have been considered, or if it considered factors not relevant to the violation, then this constitutes an abuse of its discretion and the Administrative Court may revoke such penalty.

In this decision, a company was fined the maximum fine for its first time violation of Article 47(x) of the Act Governing Food Safety and Sanitation. This was not a case of the company having been fined multiple times in the past and not correcting its behavior. The severity of the punishment should have been in proportion with the seriousness of the violation and this was not a very serious violation. A review of food safety cases involving similar facts revealed that the administrative agency did not impose the maximum fine in such cases. As such, the administrative agency abused its powers of discretion when it imposed the maximum fine available according to Article 47(x) of the Food Safety Act. (Taiwan Supreme Court 104 Decision No. 723)

2. According to Article 2(iii) of the Labor Standards Act, wages means the remuneration which a worker receives for his/her services rendered, including wages, salaries and bonuses, allowances and any other regular payments regardless of their name which may be calculated on an hourly, daily, monthly and piecework basis, whether payable in cash or in kind.

The phrase “received for services rendered” refers to payments that constitute consideration for services. The phrase “regular payments” refers to payments that are normally made to the employee. The determination on whether a payment is "consideration for services" and/or a "regular payment" as per Article 2(iii) of the Labor Standards Act, shall be done in accordance with society's normal ideas, and the court will not concern itself with the formal name applied to such payment. If payment is made in consideration for services normally rendered by an employee and is normally paid to the employee on a regular basis, it should be considered to be wages and should be included in the basis for calculating an average wage.

In this case, mass transit drivers were awarded certain merit bonuses and special holiday subsidies if their monthly attendance exceeded a certain rate. The court held that, because such payments were made in consideration for services provided by the drivers and because they were paid on a regular basis, there can be no doubt that they constitute wages. (Taiwan High Court 104 Labor Shang-yi Decision No. 44)

### **Business Mergers and Acquisitions Act**

According to the Business Mergers and Acquisitions Act, public companies, before passing any resolution of merger or acquisition by the Board of Directors, shall form a special committee to review the fairness and reasonableness of the plan and transaction of the merger or acquisition, and then report the review results to the Board of Directors and to the shareholders general meeting.

The Financial Supervisory Committee of Taiwan’s Executive Yuan, in accordance with the Business Mergers and Acquisitions Act, has published the Regulations Governing the Establishment and Other Matters of Mergers and Acquisitions Special Committees (the “Regulations”), which came into force on January 8, 2016.

According to the Regulations, when a company establishes a special committee, it must prescribe the organizational rules for such special committee. A special committee must have a minimum of three members and must be composed of independent members of the board of directors’ or by personnel selected by such independent members. Special committee members may not be a related party of the target of the acquisition or have any other relationships serious enough to harm their independence.

The Regulations further require that independent experts appointed by members of the special committee may not be related parties of any of the

parties to the transaction or have any relation that is serious enough to harm their independence.

The Regulations also include provisions on confidentiality and avoiding insider trading. They stipulate that all parties who participate in or know of the plan of merger or acquisition shall sign a confidentiality undertaking, and may not divulge the information related to such plan to the public. As well, they may not, in their own name or the name of a third party, trade the shares of any of the companies involved in the merger or acquisition.

### **Personal Information Protection Act**

After the promulgation of amendments to Taiwan's Personal Information and Protection Act on May 26, 2010, there was skepticism towards the degree to which such amendments could be implemented. For this reason, the Personal Information Protection Act was amended again and the new amendments were promulgated by the President on December 30, 2015. The actual implementation date of the new amendments will be decided later by the Executive Yuan.

The key points of these new amendments are as follows:

1. Prior to the new amendments, "medical records" did not constitute special personal information which, in principle, could not be collected, processed, or used. However, in practice, it was difficult to differentiate medical records from "medical treatment, genetic information, sexual life, health examination." According to the new amendments, medical records, and medical treatment, genetic information, sexual life, health examination, and criminal records, in principal all constitute special personal information that may not be collected, processed, or used.
2. The new amendments revise the exceptions to the collection, processing, and use of special personal information. Such exceptions include obtaining the party's written consent; and, such collection, processing and use being necessary for public authorities to carry out their statutory duty or for non-public organisms to carry out their legal duty, provided that appropriate safety measures are taken before and after.
3. In view of the complexity and diversity of contemporary society, the new amendments relax the rules governing the method of obtaining consent to the collection, processing and use of personal information; it is no longer necessary for this to be done in writing.

4. Prior to the new amendments, Article 54 of the Personal Information Protection Act stipulated that a party shall be informed of all indirectly obtained personal information within one year of implementation of such amendments. However, because this provision was overly strict, it was not implemented. The new amendments contain a relaxed version of this provision, which provides that when collectors want to process or use personal information not provided by the party, they must only notify such party prior to use, in accordance with Article 9 of the Personal Information Protection Act.

### **Intellectual Property**

In order to strengthen collaborative relations between Taiwan and Korea, streamline priority claims and increase the efficiency of the examination process, Taiwan on January 1, 2016 began implementing the Taiwan Korea Priority Document Exchange ("PDX") Project (the "PDX Project"). The PDX Project is a joint project between the Taiwan Intellectual Property Office ("TIPO") of the Ministry of Economic Affairs and the Korean Intellectual Property Office ("KIPO"), which is meant to use PDX to process the documents for priority patent claims filed in both Taiwan and Korea. The PDX Project applies only to invention and utility model patents, not to design patents.

Under the PDX Project, an applicant who first files an invention or utility model patent application with the TIPO and then files another application with the KIPO may file a request with KIPO for electronic priority document exchange and use such documents to claim priority for the earlier Taiwan application, i.e., such request can effectively replace the paper documents. In turn, an applicant having first filed a patent application with KIPO and then with TIPO may file a request with TIPO for electronic priority documents to be deemed to have provided priority documents. This program also extends to applicants with PDX requests for priority claims within 16 months prior to the launch of this program on January 1, 2016.

Upon the request of the PDX Project applicants, the two participating offices will directly exchange documents electronically. This will save time and the costs normally associated with paperwork. This will significantly streamline the procedure for applications filed in respective offices. Also, the PDX Project enables patent examiners to quickly obtain electronic documents to expedite examination and increase administrative efficiency.

### **Economic Updates:**

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#### **Nationwide Labor Inspections Start; Electronics Component Companies**

## **to Undergo Comprehensive Investigation**

The Occupational Health and Safety Administration ("OSHA"), Ministry of Labor, of Taiwan's Executive Yuan has indicated that it will launch a nationwide labor inspection covering various industries, including finance and insurance, logistics, medical institutions, temporary employment agencies, security, and student part-time work. This will also target a comprehensive investigation of 284 companies in the electronics component industry.

The inspection planned by the OSHA will unfold as follows: during the national holidays, the OSHA will target mass transportation drivers; from February to March, it will audit the storage and distribution, logistics, and trucking industries; from April to May, OSHA will audit private day cares and the insurance industry; from May to June, it will target the logistics industry and nursing homes; from July to August, the OSHA will focus on temporary employment agencies, finance and insurance industries; from July to September, it will investigate the various different industries in which students work part time; and then, from September to October, the OSHA will specifically target the electronics component industry.

The OSHA has indicated that in last year's audit the three most frequently violated labor laws included overtime not being paid in accordance with the law, the staff record of attendance not being properly prepared or containing errors in its records, employees working more overtime than the statutory limit of 46 hours per month.

As well, the OSHA has also sent out a reminder to local governments to strengthen their regular labor inspections targeting four areas: (1) the six large industries that often violate the rules, including wholesale and retail trade, manufacturing, accommodations and catering industry, customer support services, transportation and storage, and health care and social services; (2) industries that often hire disadvantaged people, for example nursing homes, students working part time, and temporary workers; (3) the information technology research and development industry, news media industry and financial planning and other knowledge intensive industries; and (4) companies with three or more breaches of the key points of the investigation within three years.

## **Academia Sinica forecasts that Taiwan's economy will grow at 1.74% in 2016**

Taiwan's Academia Sinica Economic Institute has indicated that Taiwan's

2015 economic growth was impacted by the global economic slowdown, which resulted in low levels of investment and poor export performance. Taiwan's GDP declined in the third and fourth quarters of last year.

The prospects for economic recovery in 2016 remain uncertain. The current forecast Taiwan's economic growth in 2016 is only 1.74% with a contraction of 0.15% in the first quarter. The Central Bank will likely cut interest rates again in an attempt to prevent a recession. It is still possible that the second quarter of 2016 could see further economic contraction.

### ***Government Updates:***

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#### **January 2016 Taiwan concludes its Third Democratic Transfer of Presidential Power and First Change of Control of Congress**

The fourteenth presidential and vice presidential elections of the Republic of China and the ninth legislative elections were both held on January 16, 2016. Tsai Ying-wen of the DPP won the presidential election. The DPP previously controlled the presidency from 2000-2008 under Chen Shui-bian. Tsai Ying-wen is Taiwan's first female president.

Tsai Ying-wen won approximately 6,894,000 votes, approximately 56.12%. The DPP won 68 seats in the legislature. This is more than half of the total seats available and the DPP is now, for the first time ever, the largest party in the legislature. The KMT won 35 seats. The New Power Party, a new political party that originated from the March 2015 Sunflower Student Movement, won 5 seats and thereby became the third largest party in the legislature.

#### **AIIB Officially Begins Operations, Taiwan scheduled to Apply to Join**

The Asian Infrastructure Investment Bank ("AIIB") officially began operations on January 16. With respect to Taiwan's application to join the AIIB, the AIIB president, Jin Liqun stated that Taiwan "lacked sovereignty and could not apply in the capacity as an independent country" and that Taiwan should apply through "a member country responsible for carrying on international relations." Taiwan's Mainland Affairs Council noted that under Article 3(ii) of the 2 AIIB agreement, Asia Development Bank ("ADB") members that did not join the AIIB by way of signing its agreement may still become members by way of a special majority vote of the AIIB council. Taiwan is an ADB member and can rely on this rule to apply to for admission to the AIIB. Taiwan could apply as Chinese Taipei, which is the name under which it participates in APEC and the WTO. Names such as

"Taipei, China" will not be acceptable.

### Cultural Updates:

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#### **Hotel Chinzano Tokyo of the leading Japanese Hotel Group, Fujita Kanko, opens new kaiseki restaurant "Kinsui Taipei" on January 21**

Japanese hotel group Fujita Kanko owns and operates many different kinds of hotels and has a long and distinguished history. The Ryotei Kinsui restaurant at its Hotel Chinzano Tokyo has been awarded 5 red stars (the highest possible score) by the Michelin Guide for 9 consecutive years.

Now the Ryotei Kinsui has been introduced to Taiwan, where its first overseas location, Kinsui Taipei, officially opened its doors on January 21. In addition to offering a selection of carefully chosen seasonal dishes and delicacies, the restaurant exudes classical Japanese culture.



Address: Taipei City, Zhongshan District, Yequn Third Street, No. 299, 5F (EAT-T Building, 5<sup>th</sup> Floor)

#### **2016 Taiwan Lantern Festival to Take Place from February 22 to March 6 in Taoyuan**

This year's Taiwan Lantern Festival will take place from February 22 to March 6 at the main square in front of the High Speed Rail station in Taoyuan, at Qing Tang Park, and at the Taoyuan International Baseball Stadium.

Beginning in 1990, the Taiwan Lantern Festival is held in coordination with the Tourism Bureau of the Ministry of Transportation and Communications and is a unique international activity which, for the past 24 years, has attracted tourists from around the world. The early Taiwan Lantern Festivals

were held at a fixed site, the Chiang Kai-shek Memorial Hall in Taipei. However, since 2001, the site has rotated to different countries and cities across Taiwan.

The main stylistic themes of the lantern are inspired by the Lunar New Year, which overlaps with the festival. As well, local customs of the place where the festival is being held are also incorporated. There is cooperation with local schools and other institutions to help supply additional lanterns and thereby facilitate local participation in the festival and ensure a diverse array of artistic expressions.

In 2007, the Discovery Channel recommended the Taiwan Lantern Festival as one of the world's best festivals. This year's Taiwan Lantern Festival promises to be an extremely exciting event where one can enjoy the beautiful lanterns and performances from talented performers both from Taiwan and abroad.

The Taiwan Lantern Festival also coincides with a traditional Chinese holiday, Yuanxiao (better known in English as "Lantern Festival"), which takes place on the 15th day of the 1st month of the Lunar Solar Calendar (i.e., February 22, 2016). On Yuanxiao Taiwanese families all across the island will set off firecrackers and fireworks, set up small lanterns and torches. Yet amidst all the boisterous celebrations there is peace and prosperity across the land, which the people celebrate by eating rice balls, a tasty traditional Chinese treat which is associated with the good fortune that we all hope the new year will bring.

*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.*



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)