



## *Taiwan Updates*

*July 2016*

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### Legal Updates:

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

1. Principles of private law may not necessarily apply to acts of state as acts of state concern public interest. However, if the private law provision reflects general legal principle, which is compatible with public law, such private law provision may apply to public law relations.

Taiwan public law lacks laws or regulations expressly dealing with the creation of joint obligations. Yet, the provisions of Taiwan's Civil Code that deal with the creation of joint obligations express a general legal principle, which shall be compatible with the public law.

If the Taichung City Government Environmental Protection Bureau ("Taichung EPB") sought to impose upon a violating person joint obligations with other parties involved in the same violation to clean up industry waste, there must be either relevant laws or regulations that expressly address this point or it should have been expressly agreed to by such person and parties. However, because the Waste Disposal Act does not stipulate that companies involved in the same violation of environmental protection law shall be jointly liable for cleaning up and improving the environment, there is no basis for Taichung EPB's imposing such joint obligation on the parties involved. (Supreme Administrative Court 2016 Decision No. 203)

2. If the owner of an intellectual property right acts improperly, abuses such right or exercises it in violation of good faith principle, and in such a way that will affect the proper functioning of the market, this constitutes abuse of an intellectual property right and falls within the jurisdiction of the Taiwan Fair Trade Commission ("FTC"). The defendant company intended to plagiarize, and thus produced and has registered a trademark for a pattern nearly identical to the plaintiff company's work, "The Cat". The defendant company only sent warning letter to the dealers of the plaintiff company, but failed to also notify the plaintiff at the same time in accordance with the "Principles for Handling Warning Letters" as enunciated by the FTC. As a

result, the plaintiff was unable to immediately explain its side of the story to its trading partners. Typically, if a trading partner received a letter from a third party warning of trademark infringement, such trading partner will often act out of an abundance of caution and, in order to avoid being the subject of legal action, will refuse the transaction with the plaintiff. Such result is predictable according to the empirical rule.

The defendant's conduct to actively engage in cheating affected the proper functioning of the market. Such conduct would not be deemed legal just because the trademark at issue was registered. Thus, the defendant company's conduct violated Articles 19(1) and 24 of the Taiwan's Fair Trade Act that was then in force (the relevant provisions of the current version of this law are Articles 20(1) and 25). (Intellectual Property Court 2015 Civil Case Decision No. 5)

## **II. Company Law**

1. According to Article 210(2) of Taiwan's Company Act, a shareholder or a creditor of a company may request at any time, by submitting evidentiary documents to show its/his/her interests involved and indicating the scope of interested matters, access to inspect and to make copies of the company's Articles of Incorporation, meeting minutes of shareholders meetings, and accounting books and records, as referred to in paragraph 1 of the same Article.

On May 27, 2016, the Ministry of Economic Affairs of Taiwan's Executive Yuan promulgated Interpretive Letter Jing-Shang-Zi No. 10502415500 explaining that a company acts through its board of directors, which is of course composed of directors, and it is not only the chairman but also the director the responsible person of the company limited by shares. Thus, directors may inspect and copy the shareholder's roster. Further, even if the company's Articles of Incorporation and accounting books and records are prepared and kept by outside professional institutions, directors may still inspect and make copies of such documents.

2. The provisions regarding in-kind capital contribution to a closely-held company limited by shares ("Close Companies") are provided in 356-3(3)(iv) of Taiwan's Company Act, which states that "[e]quity capital to be contributed other than cash shall be agreed by all shareholders, and the kinds, amount of such capital contribution and the number of shares allotted to the subscriber by a company shall be explicitly described in its Articles of Incorporation."

On May 30, 2016, the Ministry of Economic Affairs of Taiwan's Executive Yuan promulgated Interpretive Letter Jing-Shang-Zi No. 10502415080, which explains that the aforementioned "all shareholders" includes existing shareholders prior to an increase in capital and the shareholders who contribute in such capital increase at issue. As well, if such Close Company convenes a meeting of equity capital, and the content of the meeting minutes has fully expressed the assent of all shareholders, such meeting minutes may be used as a substitute for the written consent of the shareholders.

### **III. Intellectual Property**

In late May of 2016, the Taiwan Intellectual Property Office released draft amendments to Articles 5 and 6 of the Regulations Governing Submission of Foreign Language Application Documents (the "Regulations").

The Regulations originally stipulated that priority documents and patent gazettes cannot be used to replace foreign language specifications. The reason for this is that priority documents and foreign patent gazettes are of a different nature from foreign language specifications. Yet, in reality, many foreign language specifications are only minor adjustments to priority documents and patent gazettes.

To be in line with international treaties and related national legislation, the new draft amendments abolish the restriction on using priority documents and patent gazettes to replace foreign language specifications, so long as the technical contents of the foreign language specifications and the amendments to the officially filed Chinese specification do not differ substantially from that of the priority documents and patent gazettes.

Further, the draft amendments to Article 11 of the Regulations Governing the Implementation of Filing Patent Applications and Services by Electronic Means are meant to encourage applicants to use electronic filing system to submit patent applications and end the reliance on paper. In the new provision, if applicants send priority documents to the responsible entity through TIPO's electronic filing system, they do not need to additionally send the original priority documents.

### **Economic Updates:**

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#### **Taiwan Manufacturing Steadily Recovers**

In May, the Ministry of Finance of Taiwan's Executive Yuan released customs import and export statistics showing a year over year decrease of

9.6% in exports. Global demand has been weak, and the exports of China, Korea, Singapore, and Japan have all declined. In fact, as of April of this year, Singapore's exports have declined for 20 straight months.

However, in May, Taiwan's exports of solar cells increased by 13.7%, while exports of integrated circuits similarly increased by 0.4%, the first positive movement in 12 months. The decline of electronic components also slowed, indicating a rise in demand for semiconductors. The Chung-Hua Institute for Economic Research also released in May its Purchasing Managers Index (PMI) of 54.9%. This figure has expanded steadily for the past three months and is a clear indication of an uptick in Taiwan's manufacturing.

### **Financial Supervisory Commission Proposes Mezzanine Financing and Angel Investor Projects**

Taiwan's Financial Supervisory Commission ("FSC") chairman, Ding Kehua, after assuming office made two proposals regarding mezzanine financing and angel investors. Mezzanine financing is an intermediary between debt and equity financing. It allows for banks to contract with enterprises for the right to, after a certain fixed period, convert a certain portion of a loan into an equity investment (i.e., subscription loans (capital call)).

With respect to acting as an angel investor, a bank may set aside a certain portion of its after-tax profits for investment into newly established small-scale businesses and in start-up funds.

The Banking Bureau of the FSC has indicated that, according to provisions of the Banking Act, bank investments in non-financial enterprises are limited to 10% of the value of the bank's net assets. The value of the net assets of Taiwan's banks is NT3.3 trillion. Banks have already invested NT\$60.3 billion in non-financial enterprises and can still invest an additional NT\$269.7 billion, which is enough to spur the development of new businesses through mezzanine financing. The FSC plans to continue discussing the above idea with all circles.

### **Government Updates:**

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#### **The Legislature has 21 Priority Bills this Session**

The Legislative Coordination Council held by Taiwan's Executive Yuan and the Party Caucus of Taiwan Democratic Progressive Party has decided that this legislative session will give priority to 21 bills, which fall into four main

categories: economic, social, governmental, and cross straits relations. The economic bills include the Nuclear Free Homeland Bill, Electricity Industry Bill, Anti-Media Monopoly Bill, Agricultural Foundation Bill, and amendments to the Architecture Act and the anti-evasion provisions of the Income Tax Act. The social bills include the Meetings and Processions Bill, Housing Bill, Private School Bill, and the Long-term Care Bill. The political bills include the Public Officials Election and Recall Bill and the Referendum Bill. The cross straits category consists of the Cross Straits Agreement Supervision Bill.

Notably, the Nuclear Free Homeland Bill has set the goal of making Taiwan a nuclear power free zone by 2025. As well, after the Cross Straits Agreement Supervisory Bill becomes law, the Executive Yuan will apply it when dealing with the Cross-Strait Service Trade Agreement and resume, at the right moment, the negotiation on cross-straits trade in goods.

### **New Government's Southern Drive Policy**

The Ministry of Economic Affairs of the Executive Yuan has indicated in its report that while the Association of Southeast Asian Nations ("ASEAN") represents Taiwan's second largest export market, the bilateral trades between Taiwan and the six South Asian countries have great potential for growth. For this reason, Taiwan's new government will promote a New Southern Policy, which aims to make the six South Asian countries, including India, the focus of Taiwan's offshore development.

The Office of President has established a New Southern Policy Office, which will convene regular inter-departmental meetings, review the implementation of the Southern Policy, and assist with the strengthening of exchanges with Southeast Asian and South Asian countries. The Tourism Bureau of the Ministry of Transportation and Communications also hopes to turn to these two regions to bolster Taiwan's dwindling supply of Chinese tourists. The Ministry of Foreign Affairs indicated in its written report that the key emphasis in the future works for the New Southern Policy include actively participating in regional economic integration and encouraging the ASEAN and South Asian tourists to visit Taiwan. As such, the Ministry of Foreign Affairs will look into the relaxation of its visa policies for Southeast Asian visitors. The Ministry of Education also hopes to increase educational exchanges with these countries.

### **Cultural Updates:**

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#### **Hualian County Aboriginal Harvest Festival**

The Aboriginal Harvest Festival is a joint effort by the six largest aboriginal tribes of Hualian County, the Amis, Kavalan, Sakizaya, Taroko, Sediq and Bunun. It is meant to be an expression of thanks and celebration of a bountiful harvest. It is a major cultural event in Hualian, and the county government is hoping that this festival can serve as a vehicle to perpetuate this age-old ceremony to future generations, so as to preserve unique aboriginal performances and cultural characteristics.

Hualian County's Aboriginal Harvest Festival is the largest of its kind in Taiwan. In addition to serving as a vehicle for aboriginal spiritual traditions, the festival will also celebrate aboriginal coexistence and harmony with nature. Taking place from July 22 - 24, 2016, the festival will attract many visitors, both domestic and foreign, to Hualian. It promises to be a wonderful showcase of Hualian's natural beauty and the traditional arts of its indigenous people. In anticipation of the event, a large scale dance competition was conducted in April of this year.

### **Taiwan International Balloon Festival**

The 2016 Taiwan International Balloon Festival will take place from July 1 to August 7 in Luye Township, Taidong. The theme of this year's festival is hot air balloon animals. There will be balloons in 15 different shapes, including an aquarium themed balloon from the United States, a Noah's Ark balloon, a fox balloon from Thailand, an octopus and a carp from Japan, a kiwi bird from New Zealand, and a rooster from the Netherlands. When the balloons take flight from the Luye plateau they will form the largest ever formation of animal themed balloons. They will be accompanied by a special music and lights show, which visitors may enjoy as they watch these beautiful balloons float across Taiwan's clear blue sky.

*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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