



## *Taiwan Updates*

*June 2016*

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### Legal Updates:

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

1. Tax avoidance means that taxpayers abuse the freedom to contract to intentionally reduce or be exempted from tax liability. Such taxpayers carry out abnormal legal actions in form to substantially achieve an economic effect that may also be achieved through normal legal actions in form, but the tax liability which shall be borne by taxpayers through such normal legal actions in form will be reduced or exempted. To carry out the "principle of fair and equal tax liability," the legal effect of tax avoidance shall be adjusted. In other words, the tax liability which taxpayers wish to avoid shall still be imposed on them. However, tax avoidance is still essentially a lawful conduct. Taxpayers may otherwise resort to deception, or violate their obligations of providing true and full statements according to tax provisions and thus hinder taxation authorities from determining whether the conducts of such taxpayers constitute tax avoidance. Unless any of the foregoing events exist, taxation authorities shall not hold that a taxpayer has evaded taxes intentionally or by negligence merely because the conduct of such taxpayer involves tax avoidance and further impose an administrative fine for engaging in tax evasion. (Supreme Administrative Court 2016 Decision No. 98)
2. In the event that a legal action conducted by an unauthorized agent in the name of an authorized agent is ratified by the principle afterwards, it shall bind the principle. Such ratification needs not to be done in a specific way, and has no difference as to whether it is made explicitly or impliedly (for example, to infer the intention of a person indirectly from the behavior of such person). (High Court 2015 Zhong-Shang-Tzu No. 67 Judgment)

#### **II. Labor Act**

Ministry of Labor ("MOL") of Taiwan's Executive Yuan promulgated Lau-Dong-Taio-2-Tzu Interpretive Letter No. 1050130327 on March 8, 2016 providing that female workers who do not need to breastfeed children at night may perform night shift work in accordance with Article 49(1) of the

Labor Standards Act by signing a declaration in person. The foregoing Interpretive Letter has been repealed on April 27, 2016 by the Lau-Dong-Taio-2-Tzu Interpretive Letter No. 1050130728. Thus, female workers who are pregnant or are breastfeeding children shall not work within the period from 10 pm to 6 am in the next morning pursuant to Articles 49(1) and 49(5) of the Labor Standards Act.

### **III. Corporate Act**

The first paragraph of Article 235-1 of the Taiwan Corporate Act prescribes that a fixed amount or ratio of profit of the current year distributable as employees' compensation shall be specified in the Articles of Incorporation. However, the company's accumulated losses shall have been made up. According to the explanations stated in the Taiwan Ministry of Economic Affairs' April 15, 2016 Ching-Shang-Tzu 10502409260 Interpretive Letter, the "accumulated losses" prescribed in the forgoing article means "the accumulated losses approved by the annual shareholders' meeting", and does not include the concurrent losses which are accumulating during the fiscal year when the shareholders' meeting is held. For example, when the profit of 2015 is being used to make up the accumulated losses, it refers to making up (1) the losses accumulated in 2014 and approved at the 2015 shareholders' meeting, and (2) the amount of "accumulated losses" which has to be adjusted according to the accounting treatment in 2015. Those losses which are not made up in 2015 should be handled in accordance with the aforementioned principles no later than 2016.

### **IV. Fair Trade Act**

Paragraph 1 of Article 14 of the Taiwan Fair Trade Act prescribes that: a concerted action means an act by or among enterprises which compete in the same production or sales level to mutually restrict the activities of enterprises, such as an act by an enterprise that enters into a contract, an agreement or any other forms of mutual understanding with other enterprises, and such arrangement is likely to affect the market function in respect of production, commodity trading and the supply and demand of services.

On May 12, 2016, Taiwan's Fair Trade Commission promulgated the Kung-Fa-Tzu No. 10515602811 Interpretive Letter stating that, in order to maximize a group's interest, an enterprise and its affiliates which share the same interest will conduct economic activities in accordance with the instructions given by the "same decision maker" in the group, and thus such enterprise and its affiliates are deemed to lack economic independence and self-decision making ability. As a consequence, acts by controlled enterprises that follow the "same determination" made by the "same management," such

as cross-selling activities participated by department stores held or run by the same group, shall be distinguished from "mutual understanding" concluded by or among enterprises which compete in the same production or sales level, and thus do not constitute a concerted action.

## V. **Intellectual Property**

In order to solicit support for Taiwan's entry into the TPP (Trans-Pacific Partnership, TPP), Taiwan's Intellectual Property Office ("TIPO") considers it necessary to propose amendments to the Taiwan Patent Act, Trademark Act and Copyright Act so as to reduce the differences between Taiwan's intellectual property laws and regulations and those of the TPP. The main points of the proposed amendments to the Taiwan Patent Act are as follows: (1) to extend the grace period of an invention patent to a 12-month period prior to the application date; (2) to amend the relevant provisions regarding prior use rights in line with the amendment to grace period; (3) to introduce a patent term extension mechanism for patents of which an examination review process is delayed by the competent authority; (4) to specify that a patent holder of new medicines may bring an infringement litigation against generic drugs during the application process for registration and market approval; and (5) to include a transitional provision that the amendments to the current Patent Act only apply to application filed after the effective date of such amendment, or is without retrospective effect.

TIPO has sent the draft amendments to the Taiwan Patent Act, Trademark Act and Copyright Act to the Executive Yuan for its review.

### **Economic Updates:**

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#### **Taiwan's government will introduce five incentives for creating innovation and attracting talent**

Taiwan's new government administration recently unveiled an ambitious plan to cultivate the main innovation and R&D industries and attract new talent. The plan will implement five major incentives as follows: (1) to reduce salary income tax: compared with the corporate income tax rate, the equality of the existing individual income tax rate has been in doubt, and such circumstance is unfavorable for attracting and retaining talent; (2) to overhaul the Fundamental Science and Technology Act and encourage teachers and students to co-found enterprises; (3) to broaden the conditions for high-level and technology talent to obtain visa and immigration permissions; (4) to consummate Angel Investors and IPO mechanisms, and direct the National Development Fund to enhance investment in start-ups; and (5) to establish, under the National Development Fund, a quasi-sovereign

fund or a national investment company for industry development, aiming to invest in five main innovation and R&D industries and encourage private investment, and to introduce international talent to assist in selecting domestic and foreign investment targets.

### **Online shopping is boosting the number of trademark applications by Chinese businesses**

According to the TIPO's statistics, the number of trademark applications in the first quarter of 2016 is up to 18,033, with a growth rate of 3.76%. Among these trademark applications, the highest number is from China (1,110 applications) and the second and third highest are from the US (966 applications) and Japan (879 applications). An analysis of the growth rate shows that the annual growth rate of applications from China (31.05%) is substantially leading Hong Kong (13.52%) and South Korea (11.62%). TIPO stated that it is difficult to analyze which business types from China are keen to file trademark applications in Taiwan with statistics collected in only a single quarter. However, with cross-strait commercial activities heating up and online shopping increasing in popularity, most Chinese companies are promoting their products in Taiwan in the hope of introducing their trademarks to the world. One popular Taiwanese online shopping vendor pointed out that trademark applications in Taiwan are the prelude for Chinese businesses wanting to actively develop in the Taiwan market.

### **Government Updates:**

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#### **"Taiwan-Japan Communication Fellowship Association" gets established and Japanese Prime Minister's younger brother attends convention**

The Taiwan Legislative Yuan held the set-up convention of the Taiwan-Japan Communication Fellowship Association ("the Association") on May 6. The President of the Association, who is also the Legislative Speaker, Su Jia-chyuan (蘇嘉全) showed his warm greetings to the Japanese Prime Minister's younger brother, congressman Kishi Nobuo, and five other congressmen of the Liberal Democratic Party of Japan. Predecessors of the Association can be traced back to as early as the China-Japan Congressmen Fellowship Association, which was advocated by then-Legislative Speaker Wang Jin-pyng in 1992. The Association, which the Legislative Yuan set up and invited Wang Jin-pyng to serve as the President of Honor, is a combination of the Taiwan-Japan Communication Fellowship Association and the Taiwan-Japan Congressmen Fellowship Association. Su Jia-chyuan stated that the Association will bridge the communications between the

Taiwanese and Japanese congresses and advance the friendly relationship between Taiwan and Japan in order to promote interaction between the people and further benefit the two nations through congressional diplomacy.

### ***Cultural Updates:***

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#### **Yilan City blesses dragon boats by painting the dragon's eyes**

The Yilan Dragon Boat Championship is going to take place on June 8 and 9. The Yilan City Office will follow ancient customs by holding a ceremony to "paint the dragon's eyes" and pray for blessings for the dragon boats. Dragon boat racing is a custom for the Dragon Boat Festival (May 5 on the lunar calendar, and falls on June 9 on the regular calendar this year). The Dragon Boat Festival originated from a great patriotic poet drowning himself in the Mi-Lo River on May 5, and the local people rushed into their boats to search for his body. Their efforts are still commemorated today, and energetic dragon boat races are held everywhere on May 5 (lunar calendar) every year. Since the dragon boats need to be lifted from the bridge to the riverside, crowds of people are attracted to enjoy the sight when the dragon boats slowly descend from the sky. Moreover, photography contests and painting competitions centering on the theme of dragon boat racing will be held this year. With unique on-the-land boat sailing and other splendid performances, Yilan city is aiming to present a lively and diversified dragon boat race which is also meaningful in the historical aspect.

*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)