



Taiwan Updates

November 2016

20th Anniversary

The Hsinchu Office of Lee and Li recently celebrated a major milestone, as 2016 marks twenty years of successful operation and service to our clients. We are proud to recognize two decades of leadership and success and would like to thank our clients and friends in the business community for your hard work, guidance, and partnership over the past two decades. Without such great supports, we could not have achieved such growth and prosperity. We will continue our tireless efforts to provide the highest quality legal services for all our clients in the coming years and beyond.

Legal Updates

I. Recent Important Decisions

1. Share certificates are securities representing the shares, but not creating shares. Thus, regardless of whether a company limited by shares issues share certificates according to law or on its own discretion, before the issuance of share certificates is completed, the shareholders' shares is already in existence. Thus, in the absence of any statutory limitations or prohibitions on the transfer of shares, a shareholder is still able to transfer the shares according to the transfer agreement between the shareholder and the transferee. Shareholder's freedom to transfer shares shall not be restricted by the company's negligence or delay in issuing share certificates. If a company is required by law to issue share certificates, it cannot be determined that all transfer of shares must be made pursuant to Article 164 of the Company Act, i.e., endorsement on the share certificates, regardless of whether or not the issuance of share certificates has been completed (2016 Tai-Shang-Tzu No. 1323 Judgment of the Supreme Court).
2. The doctrine of change of circumstances stipulated in Article 227-2(I) of the Civil Code is designed to regulate the circumstances in which unpredictable events occur after the establishment of a contract, and to

achieve equitable distribution of contractual risks and unforeseen losses between the parties through the court's discretion. The determination of whether the unforeseen events could have been anticipated at the time of the establishment of the contract should be based on objective circumstances such as the general context of events and the overall socio-economic situation of the time. In the case of a court ruling fairly ex officio to enter a judgment increasing or reducing the payment, the court shall determine whether to increase or reduce the amount of a payment according to objective criteria, considering the loss suffered by the other party as a result of the change of circumstances, the gains of the other party arising from the change of circumstances, and other actual circumstances (2016 Tai-Shang-Tzu No. 1308 Judgment of the Supreme Court).

II. Labor Laws

The Ministry of Labor, Executive Yuan of Taiwan promulgated the amended "Enforcement Rules of the Labor Standards Act" on October 7, 2016, which took effect on October 9, 2016. Such reform is intended to comply with the non-compete provisions provided in the newly added Article 9-1 of the Labor Standards Act (including the requirements to set forth non-compete agreement, reasonable compensation and the limitation on the term of such non-compete agreements not to exceed two years). Important points of such reformed Enforcement Rules are as follows.

1. Non-compete agreements shall be made in writing.
2. The Enforcement Rules expressly set forth the standards to determine whether the period, area, prospective employer and scope of occupational activities of such non-compete agreements are reasonable, including:
 - (1) The period of the non-compete agreement shall not exceed the life cycle of the trade secrets or technology information that the employer desires to protect, with the maximum allowable period being two years.
 - (2) The area of the non-compete clause shall be limited to the area where the former employer conducts its actual business activities.
 - (3) The scope of prohibited occupational activities in respect of the non-compete clause shall be clear and specific and identical with or similar to the scope of the employee's former occupational

activity.

- (4) The scope of prohibited prospective employers in respect of the non-compete agreement shall be clear and specific and shall be limited to those businesses having a competitive relationship with the former employer that engage in a business identical with or similar to the former employer's business.
3. The Enforcement Rules expressly set forth that the employer shall provide reasonable compensation to the former employee for the damages the former employee suffers due to the non-compete clause. The following items shall be taken into account when calculating such reasonable compensation:
- (1) The amount of such compensation per month shall be no less than 50% of the former employee's average monthly wages at the time of such employee's departure.
 - (2) Such compensation shall be sufficient for such employee to support a living during the non-compete period.
 - (3) The amount of compensation shall be suitable for damages that the former employee suffers in the course of following the scope of the period, area, occupational activities and prospective employer in respect of the non-compete agreement.
 - (4) Other factors that shall be taken into account to determine the reasonableness of compensation.

The Enforcement Rules also expressly provide that, in respect of such reasonable compensation, the parties shall agree on whether such compensation shall be a lump sum payment or monthly payment.

III. Securities Laws

In keeping with the global trend toward increased corporate governance, the Taiwan Stock Exchange Corporation (TWSE) published the amended "Corporate Governance Best Practice Principles for TWSE/GTSM Listed Companies" (the "Principles") on September 30, 2016. The amended Principles, which took immediate effect, seek to align Taiwan's corporate governance with the G20/OECD Principles of Corporate Governance. The main points of the amendment to the Principles are as follows:

1. Recognizing that diversity of board members will help ensure the achievement of the board's functions, and that a director who is not also a manager of the same company can more objectively oversee the management from a neutral position, Paragraph 3 of Article 20 of the

Principles prescribes that the number of directors serving as managers for the same company should not exceed one-third of the number of board members.

2. Recognizing that board members shall fulfill their responsibilities effectively, and that the performance of a board member could be hampered by concurrently serving on too many boards, Paragraph 2 of Article 24 of the Principles prescribes that it is inappropriate for an independent director to concurrently serve as a director (including an independent director) or a supervisor on the boards of more than five TWSE/GTSM listed companies.
3. In following the principles of the board secretary (also known as company secretary or chief of corporate governance) applied in the United States, England, Hong Kong, Singapore and other areas, and in consideration of the scale and complexity of corporate governance of companies, the newly added Article 3-1 of the Principles prescribes that a company may consider establishing a unit or department whose sole duty or partial duty relates to corporate governance.
4. In alignment with the Corporate Governance Evaluation Indicator, the amended Paragraph 2 of Article 6 of the Principles prescribes that the majority of board members (including at least one independent director) and at least one supervisor of the company shall attend the Shareholders' Meeting in person.

IV. Intellectual Property Laws

Taiwan Intellectual Property Office released statistic on the third quarter patent application and issue.

A total of 18,121 applications were filed submitted for invention, utility model, and design patents in the third quarter of 2016, representing a 0.34% increase over the same period a year ago. These included 10,849 invention patents and 5,045 utility model patents, representing declines of 0.89% and 1.75% respectively from the third quarter of 2015, and 2,227 design patents, which is an increase of 12.59% above the same period last year. Of the applications for invention patents, Taiwanese applicants accounted for 4,066 cases, while non-Taiwanese applicants accounted for 6,783 cases, representing declines of 0.59% and 1.06% from last year. The non-Taiwanese applicants for invention patents included applicants from Japan (3,069 cases, the highest), the U.S.

(1,753 cases), Korea (442 cases), China (335 cases), and Germany (314 cases).

Among Taiwanese invention patent applicants, the companies comprising the top five most-active applicants are TSMC with 211 cases, Foxconn (88 cases), ITRI (66 cases), AUO (59 cases), and Acer (46 cases).

Among non-Taiwanese invention patent applicants, the top five companies are Intel with 220 cases, Qualcomm with 168 cases, SEL (119 cases), Nitto (83 cases), and Tokyo Electron, with 71 cases.

As to the number of issued patents, there were 17,811 cases in the third quarter of 2016, down 9.06% from the same quarter of the previous year. These included 11,320 invention patents, 4,739 utility model patents, and 1,752 design patents, representing decreases from the previous year of 3.93%, 17.88%, and 13.74% respectively. Among the issued invention patents, Taiwanese applicants accounted for 4,874 cases and non-Taiwanese applicants accounted for 6,446 cases, both figures down from the prior year by 4.99% and 3.11% respectively. Among non-Taiwanese applicants of issued invention patents, 2,894 cases are from Japan, 1,722 from the U.S., 505 are from Korea, 336 are from China, and 263 cases involved applicants from Germany.

Among Taiwanese applicants for issued invention patents, the top five corporate applicants are Foxconn (284 cases), TSMC (169 cases), ITRI (137 cases), AUO (109 cases), and Wistron (103 cases).

Among non-Taiwanese applicants for issued invention patents, the top six corporate applicants are Intel (203 cases), SEL (156 cases), Tokyo Electron (110 cases), LG Chemical (92 cases), followed by Apple and Samsung with 84 cases each.

Economic Updates

The Department of Investment Services of the Ministry of Economic Affairs (MOEA) hosts 2016 Taiwan Business Alliance Conference, welcomes 66 foreign companies with investment interest

Taiwan's MOEA recently held its 2016 Taiwan Business Alliance Conference, which included 66 foreign companies having key technologies and demonstrating their intentions to invest in Taiwan. The total investment amount will be around NT 166 billion, with 20 of the companies signing

letters of intent on investments totaling NT 105 billion. These investments will create 15,458 job opportunities. Nearly 60% of those 66 companies are in the “five innovative industries” designated by the Taiwan government, which includes green energy centers, offshore wind farms, center of Internet of Things and related applications, and research, development and manufacturing of industrial robots.

Government Updates

Tenth Taiwan-U.S. TIFA meeting held in Washington D.C.

The tenth Taiwan-U.S. Trade & Investment Framework Agreements (TIFA) meeting was recently held at the Office of the United States Trade Representative (USTR) in Washington D.C. The negotiator for Taiwan was Mei-hua Wang, Deputy Minister of the MOEA, while the U.S. was represented by Robert Holleyman, Deputy USTR. The issues discussed included agriculture, regional politics, multilateral coordination and intellectual property. For intellectual property, Taiwan and the U.S. agreed to streamline the mechanism of the Electronic Priority Document Exchange in order to simplify the procedures for patent application, and promote the MOU of Deposit of Biological Materials in order to ease the burden of repeated deposits for applicants. In addition, the U.S. expressed its concerns about the amendment of the Taiwan Copyright Act. The representatives from both sides will continue discussions with the aim of signing a Taiwan-U.S. Intellectual Property Memorandum of Understanding in order to enhance cooperation in the fight against IP-infringement.

Cultural Updates

Taroko Gorge Marathon

The Taroko Gorge Marathon has been held every year since 2000 and takes place in the Taroko National Park, near Hualien on Taiwan’s east coast. In 2016, the Taroko Gorge Marathon was hosted by the Hualien County Government on November 5, with more than 10,000 runners participating. Known around the world for its magnificent gorge and cliff topography, Taroko attracts tourists from all over Taiwan and abroad. The marathon not only promotes Hualien to the world, but also enables thousands of runners to

enjoy the magnificent scenery with a vehicle-free environment during the running event.

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.

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