



## *Taiwan Updates*

*September 2016*

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### Legal Updates:

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

1. Article 188 of the Taiwan Civil Code, which provides that employers are jointly and severally liable for employees' torts, is meant to protect the injured party. The term "employee" should be interpreted in a broad manner. It is not limited to the party that signed the employment contract with the employer.

Generally speaking, anyone who is engaged by another person to perform work duties and is subject to supervision constitutes an employee.

An enterprise may lend its business name to another person, including by: (1) lending its credit or business qualifications to someone who lacks the same; or (2) attempting to avoid responsibility of an employer through illicit behavior. Regardless of which of the foregoing methods is employed, judging by external appearance, the lender has the right to decide whether to lend its business name to another person, and thus the lender still retains the right of selection. Further, the lender may also decide to discontinue lending its business name to the borrower, and therefore the lender's decision will constitute its supervision on the use of the name by the borrower's business. As such, there exists a relationship of selection, performance of service, and supervision between the lender and the borrower. Therefore, the relationship between the lender and the borrower is not dissimilar to that between an employer and an employee. Under the circumstances where the borrower causes damages to a third party, the lender shall be held liable as an employer.

(1997 Tai-Shang-Yi-Tzu No. 322 Civil Judgment of the Supreme Court)

(2016 Shang-Yi-Tzu No. 152 Civil Judgment of the Taiwan High Court)

2. Article 24 of the Labor Standards Act ("LSA") provides that employees must be paid additional wages for the extension of their work hours as requested by the employer.

Further, according to Article 32 of the LSA, any extension of the employee's work hours must be mutually agreed to by both the employee and employer. This shows that extension of an employee's work hours may not be determined unilaterally. Any such unilateral extension, made by either the employer or the employee, will be of no force or effect.

If the employee, without the consent of the employer, unilaterally extends the working hours, such extension is inconsistent with the rules governing overtime work, and such employee has no right to claim overtime pay. This is meant to prevent infringement on the employer's approval rights and human resource management rights.

(2016 Lau-Shang-Yi-Tzu No. 16 Civil Judgment of Kaohsiung Branch Court, Taiwan High Court)

## **II. Fair Trade Law**

On July 18, 2016, the Fair Trade Commission ("FTC") of Taiwan's Executive Yuan promulgated amendments to the "FTC Guidelines on Merger Filings." The key point of the amendments is that internal mergers of companies within the same group, even if they conform to the merger types under Article 10(I) of the Fair Trade Act, are not subject to an FTC filing requirement. This is because there exists an "economic unity" between the controlling and affiliated companies and the merger constitutes an internal restructuring of the organization that will have no actual impact on competition. As such, there is no practical benefit to controlling such mergers. Thus, the original Article 7(5), which dealt with the rules concerning filing procedures for controlling and affiliated companies, is repealed.

## **III. Intellectual Property Law**

On August 4, 2016, Taiwan's Executive Yuan adopted draft amendments to the "Patent Act." These amendments are mainly meant to bring Taiwan's IP legal system into alignment with the Trans-Pacific Partnership Agreement ("TPP") and demonstrate Taiwan's efforts to join the TPP.

After the completion of the legislative processes, the amendments should have a positive effect on encouraging patent protection for R&D results, as well as facilitating Taiwan's second round of negotiations on joining the TPP.

The key points of these amendments are as follows:

1. If the applicant, prior to applying for a patent, has disclosed its technology, and after such disclosure applies for the patent within the specified grace period, any disclosure made prior to the application will not prejudice the patentability of the invention. The amendments will extend the grace period and relax the reasons for disclosure. The amendments also abolish certain procedural requirements of requesting the grant of a grace period.
2. The term of patent protection begins at the date of application. In order to avoid unreasonable delay in the examination process, which reduces the period during which the patent holder may exercise his or her patent right, these amendments introduce a mechanism to apply for an extension of patent term due to delay of the examination process. In the future, if the examination of an application is unreasonably delayed, the patent holder can apply to extend the term of the patent rights.
3. Amendments to the Pharmaceutical Affairs Act stipulate that the holder of a patent for a new medicine can, during the generic drug license review process, file a lawsuit in order to claim a patent infringement.

### *Economic Updates:*

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#### **Taiwan Stock Exchange Plans to Diversify and Liberalize Examination Conditions for Listing**

The Financial Supervisory Commission ("FSC") of Taiwan's Executive Yuan has recently promoted the "Three-Power-Four-Support" project, which will use the three powers of financial capital, human capital, and location to support industry, entrepreneurship, innovation and employment.

In order to complement the FSC's four areas of "Support," the Taiwan Stock Exchange has instructed the relevant departments to gather information concerning the standards for stock listing of other jurisdictions. In order to be economically competitive with stock exchanges of other countries and attract foreign companies to list in Taiwan, the FSC plans to change the single-listing standard that has been in force for nearly 20 years (i.e., capitalization of at least NT\$600 million and pretax profit constituting at

least 6% of capital investment), and adopt diverse and liberal examination conditions for listing by taking the net profit and market value into account.

### **Taiwan's Purchasing Managers Index ("PMI") and Non-Manufacturing Index ("NMI") both Picking Up: Clear Signs of Economic Recovery**

In July 2016, Taiwan's Chung-Hua Institution for Economic Research published Taiwan's Purchasing Managers Index ("PMI") and Non-Manufacturing Index statistics. The PMI increased by 0.9 to 54.2 in July 2016, marking the fifth consecutive month of expansion and PMI levels above 50. Both PMI and NMI have expanded and remained above 50 for two months, seen by industry experts as a signal of gradual economic recovery anticipated for the second half of 2016. In particular, since the manufacturing sector has been above 50 for five months, the second half of 2016 holds promise for continued improvement over the first half of the year. Further supporting this view, Taiwan's Directorate-General of Budget, Accounting and Statistics announced that the economic growth rate for the second quarter of 2016 was a better-than-expected 0.69%. The annual growth rate for 2016 is expected to be at least 1%.

### **Government Updates:**

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### **Taiwan Executive Yuan's Objectives for 2017: Accelerate Industry Upgrading**

In August 2016, Taiwan's Executive Yuan adopted the draft "2017 Executive Yuan Policy Objectives." Taiwan will adopt a professional recruitment plan that is designed to increase the island's economic innovation and cement its position as Asia's Silicon Valley by attracting professionals in the areas of intelligent machinery, green energy, medical biotechnology, national defense and other major innovative industries.

In 2017, Taiwan will also amend corporate-related laws, and promote a "one fixed day off, one flexible day off" bill and Elderly Employment Stabilization Act.

With respect to cross-Strait (Taiwan-China) relations, the core policy objective is to maintain the status quo, continue peaceful development, and carry out good faith communications through cross-Strait (Taiwan-China) dialogue systems. Another important objective is to defend Taiwan's sovereignty in the South China Sea and actively settle the dispute.

### **Mid-Autumn Festival**

The Mid-Autumn Festival, which is also known as Mid-August or Moon Festival, will be observed on September 15 this year. The Mid-Autumn Festival is one of Taiwan's three major traditional holidays (the other two are the Dragon Boat Festival and Chinese New Year). This holiday has been an important time for family and friends to gather together, and thus has been greatly valued.

Mid-Autumn Festival originated in ancient times when the Chinese people may have worshipped the moon. References to the festival date back to the Rites of Zhou, an ancient Chinese text written circa 300 BC. As time went by, the Mid-Autumn Festival became an important annual holiday and its meaning and traditions developed to encompass the now familiar myths of Chang'e, Wu Gang, and the Jade Rabbit. In addition, the Mid-Autumn Festival is considered the birthday of Yuelao, a traditional Chinese deity representing the god of marriage, to whom unmarried Taiwanese will pray for help in finding true love.

Nowadays, watching the moon remains a continuing Mid-Autumn Festival custom. However, current food custom during the September holiday reflects a changing of the times. In addition to eating tasty "moon cake" pastries and a local fruit called pomelo, Taiwanese celebrating this holiday have adopted a more modern tradition of barbecuing meat with friends and family. This form of holiday celebration has become one of the major features of modern culture in Taiwan.

*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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