



## *Taiwan Updates*

*August 2016*

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### Legal Updates:

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

1. Article 11(4) of the Labor Standards Act (the “LSA”) stipulates that an employer may, upon giving advance notice, terminate an employment contract, and shall pay severance in accordance with Article 17 of the LSA, if “a change of the nature of business necessitates the reduction of workforce and the terminated employees cannot be reassigned to other suitable positions.” The language “change of the nature of business” refers to the employer, because of operational decisions or the need to react to competition or the changing business environment, changing the method of operating the business or adjusting the business’s strategy and having to change the businesses structure or character.

Article 11(4) clearly indicates that, before the employer can dismiss the employee with severance pay, the employer has an obligation to determine if the employee can be placed elsewhere within the enterprise. Dismissal is a last resort. If the employer has made the appropriate efforts to offer the employee a new position, but the employer refuses to accept such position, based on the balance between the company's operational freedom and labor rights, it is not the intent of the legislators to force the employer to place the employees elsewhere in the enterprise. (Supreme Court 2016 Tai-Shang-Tzu No. 144 Civil Decision)

2. Since trademarks are composed of letters, symbols and the like, the distinctiveness test must consider the trademark as a whole. It may not consist of a compartmentalized examination of the trademark’s component parts.

The letters and symbols that compose a trademark may contain elements that are not individually recognizable. However, if, when taken as a whole, such letters and images are sufficient to enable the relevant consumers to recognize them as indicating or differentiating a product's origins, then such trademark has distinctiveness.

Thus, when deciding whether there is a likelihood of confusion between two different trademarks, and the strengths and weaknesses of such marks, one must first separately analyze each trademark as a whole, and then compare the respective strengths and weaknesses of the two marks in terms of distinctiveness. There is no need to separately conduct a compartmentalized analysis of whether the component parts of a trademark have distinctiveness (Supreme Administrative Court 2016 Pan-Tzu No. 231 Decision).

## **II. Tax Law**

On July 12, 2016, Taiwan's legislature adopted amendments to the anti-avoidance provisions of the Income Tax Act. In the future, foreign controlled companies based in low tax jurisdictions ("Controlled Foreign Companies" or "CFCs") and companies that have their place of actual management ("Place of Effective Management" or "PEM") in Taiwan shall be subject to a profit-seeking enterprise income tax on its surplus ("Business Income Tax"). The effective date of these new anti-avoidance provisions has yet to be announced.

In order to prevent CFCs from shielding retained earnings from taxation, tax evasion and tax deferral, paragraph I of Article 43-3 of the Income Tax Act has been amended. If the profit-seeking enterprise and its related personnel directly or indirectly hold shares or capital in related companies located in low tax jurisdictions or countries outside Taiwan and if such shares/capital amount to 50% or more of the related company or if they have a significant influence (i.e., are CFC), in addition to complying with this article, the profit-seeking enterprise must recognize as taxable income such related companies' yearly surplus profits, as well as its shares and capital ratio, and must include it in its annual income.

In accordance with Paragraph II of Article 43-3 of the Income Tax Act, low tax countries and jurisdictions are those that impose a profit-seeking enterprise income tax (or a substantially similar tax) rate of less than 70% of Taiwan's 17% rate (11.9%) or which only tax income that is generated in such low tax countries and jurisdictions.

The amended paragraph I of Article 43-4 stipulates that companies established according to foreign law but whose PEM is established within Taiwan shall be considered to be profit-seeking enterprises whose head office is within Taiwan for the purposes of the Income Tax Act and other relevant regulations. As such, the applicable Taiwan taxes will be levied on such companies' income. Paragraph III of the same article provides that a company's PEM is considered to be located in Taiwan if it meets the following conditions:

1. Significant management, financial, human resources decision makers are residents of Taiwan or the mechanism for such decision making is within a profit seeking Taiwan enterprise, or such decisions are made within the territory of Taiwan.
2. Financial statements, accounting record books, board of directors meeting minutes and shareholders meeting minutes are made or stored within the territory of Taiwan; and
3. Actual business activities are carried out within the territory of Taiwan.

In order to ensure that the implementation of the anti-avoidance measures does not adversely impact the national business environment, the Ministry of Finance of Taiwan's Executive Yuan has indicated that the implementation will depend on the execution of the Taiwan-China Cross Strait Tax Agreement and international (including Hong Kong and Singapore) acceptance of the Common Reporting and Due Diligence Standard ("CRS") and the automatic exchange of financial account information for tax purposes and finalization of a practical plan to implement the laws related thereto.

### **III. Labor Law**

According to Paragraph I of Article 30 of the Labor Standards Act ("LSA"), "the regular working time of employees may not exceed eight hours a day or 40 hours a week." This article has been in effect since January 1, 2016. Paragraphs II and III of Articles 30, and Item 1 of Paragraph I of Article 30-1 of the LSA together stipulate that the employer, after obtaining consent from the labor union or labor-management conference may adjust the work hours.

On June 21, 2016, the Ministry of Labor of Taiwan's Executive Yuan promulgated Labor Tiao-3-Tzu Interpretative Circular No. 1050131243, which states that the employer's extension of work hours under the LSA refers to the employee's work exceeding 8 hours per day or 40 hours per week. However, if the employee's work hours have been adjusted, the employer's extension of work hours under the LSA refers to the hours exceeding the adjusted work hours.

### **Economic Updates:**

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#### **The Taiwan-Japan Tax Agreement Comes into Effect in June, to Apply to as of 2017, Expected to Boost Bilateral Investment**

The Ministry of Finance of Taiwan's Executive Yuan has stated that the Taiwan-Japan Tax Agreement came into force in June of this year. Due to

the different fiscal years of the two countries, the tax incentives provided for therein will begin to become available in January 1, 2017 in Taiwan and April 1, 2017 in Japan.

The Taiwan-Japan Tax Agreement is Taiwan's 30th such agreement and is the first such treaty signed with a Northeast Asian Country. The International Financial Secretary of the Taiwan Ministry of Finance indicated that Japan is Taiwan's third largest trading partner and source of investment. The agreement will offer assistance to Taiwanese companies operating in Japan and will also encourage Japanese companies to invest in Taiwan. Further, the tax relief to be provided by the Taiwan-China Cross Straits Tax Agreement, which is already signed but not currently effective, is the most favorable among the 103 international tax treaties concluded by China. If used in conjunction with the Taiwan-Japan Tax Agreement, Japanese enterprises may establish regional headquarters in Taiwan as a means of obtaining benefits of the Cross Straits Agreement.

### **The 13th Joint Meeting between CIECA & SBF Took Place in Taiwan in June**

The 13th Joint Meeting between the Chinese (Taiwan) International Economic Cooperation Association ("CIECA") and the Singapore Business Federation ("SBF") was held in June.

Singapore was represented by the Chairman of the SBF, Teo Siong Seng, while Taiwan was represented by the Vice-Minister of Ministry of Economic Affairs, Yang Wei Fu, and the Chairman of Far Eastern Group, Douglas Hsu. Financial services, e-commerce, infrastructure and logistics, branch plant development opportunities and other issues were discussed. Both sides hoped to strengthen cooperation between Taiwan and Singapore. In 2013, Singapore and Taiwan signed the Economic Partnership Agreement (ASTEP). By 2015, Singapore had become Taiwan's fifth largest trading partner, with Taiwan exporting more than US\$ 20.5 billion to Singapore that year.

Teo Siong Seng stated that Taiwan and Singapore both occupy an important strategic geographic location, that Singapore is an important point of entry to the Association of Southeast Asian Nations ("ASEAN"), while Taiwan is a portal to China to access Japan, Korea, and other countries. He further stated that there is great potential for cooperation in shipping, infrastructure, and logistics and that Taiwan, through its strengths in manufacturing, science and technology and the efforts of its new government to strengthen ASEAN cooperation and investment, can cooperate with Singapore. The two sides can work together for developments in ASEAN, India, and other markets. Singapore is an ASEAN member and one of the 12 signatories of the Trans-

Pacific Strategic Economic Partnership ("TPP"). Taiwanese investment in Singapore can thus take advantage of opportunities to sell products in the TPP and ASEAN markets.

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

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#### **South China Sea Arbitration rules that Taiping Island is a Rock, the Different Sides React**

On July 12, the Hague Permanent Court of Arbitration decided the South China Sea case. On July 13, Taiwan's president issued a statement saying this decision, especially the identification of Taiping Island as a rock, has seriously harmed Taiwan's rights in the South China Sea islands and related territories.

The Taiwan Ministry of Foreign Affairs and the Ministry of the Interior issued statements indicating that the Taiping Island was originally not part of the Philippines statement of claim for this case. The arbitrators, however, took the initiative to enlarge the case and proclaim that Taiping Island was a rock, without ever formally inviting Taiwan to participate in the proceedings nor otherwise seeking its views. As such, this decision is not binding on Taiwan, and Taiwan does not accept it as a solution to the South China Sea issue.

It is the Taiwan government's position that the resolution of the South China Sea dispute should be achieved peacefully, through multilateral negotiations, based on equal consultation, with all countries involved acting together to promote peace and stability in the region. The Council of Agriculture of Taiwan's Executive Yuan also stated that the Ministry of Foreign Affairs and the Ministry of Defense will cooperate to implement fisheries management in the area and will not allow other countries to harm Taiwan's fishing or other economic interests in the area.

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

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#### **Taiwan Culinary Exhibition**

Under the auspices of the Ministry of Transportation and Communications of Taiwan's Executive Yuan, with the assistance of the Tourism Bureau, the Taiwan Visitors Association is organizing the 2016 Taiwan Culinary Exhibition. Established in 1989, the event is now in its 25th year. It is set to run from August 5 to 8 at the Taipei World Trade Center. This year's exhibition will be even bigger than the last, with an additional 200 exhibits

boosting the number to 820. The 2016 Taiwan Culinary Exhibition will feature exhibits in the six main areas of the art of food, cooking utensils, ingredients, food travel, food accompaniment, and food education. Taiwan's food culture will be explored from every possible angle. As well, there will be special exhibits on Taiwan brewing and cooking classes. This is one event that Taiwan's foodies can't afford to miss!

### **Hualian's Lilies Bloom**

Hualian's lilies will be in bloom from August 5 to September 19 only. Also known as the Neptune, this flower is known for its fleeting beauty. Chike Mountain in Yuli Township and Sixty Rock Mountain Fuli Township are the focal points of the glistening gold flowers which fill the fields. August is the perfect time to see these beautiful flowers, while taking in the beautiful scenery and fresh air.

*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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