



## *Taiwan Updates*

*January 2016*

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### Legal Updates:

#### **Recent Important Decisions**

1. This case involves a defendant who purchased, and later resold, goods from an online shopping site, Taobao. The goods were advertised as genuine on Taobao's website and the defendant also believed they were authentic when purchasing them. However, generally speaking, merchandise that is for sale, regardless of its place of production, will always have outside packaging and labelling information displaying the name of the manufacturer. In this case, the defendant purchased the goods (i.e., some cards and stickers) online, not at a physical store. Even if a website says that the goods are genuine, the purchaser of such goods must still make written inquiries about such goods with the manufacturer or licensed dealer before reselling the goods. This is common practice when conducting business. Also, the defendant admitted that, when the cards and stickers were delivered, they were packaged in an ordinary transparent plastic bag, with no written indication of the manufacturer or licensor. The defendant should have, after receiving the goods, located genuine examples of such goods within Taiwan and compared the price and packaging. After making such comparison, the defendant could then decide whether it would be appropriate to place such goods on the rack of the defendant's rented Check Fun vendor's booth. Instead, the defendant after purchasing the art products, did not investigate the market price at all, was not concerned about the origins of the products, and did not seek to verify the identity of the manufacturer or licensed dealer. The defendant simply displayed the products for sale, priced them for NT\$10 each and sold approximately 100 items. In doing so, the defendant violated the law because the defendant knew when stocking the products that such products were not authentic. The defendant thus knowingly infringed on the copyright of another. (Intellectual Property Court 2015 Criminal Judgment Shang-Yi-Zi No. 49)
2. Article 104(1) of the Land Act states that when a building site is offered for sale, the lessee shall have a right of first refusal to purchase it on the same terms as are offered to any other person. The phrase "on the same terms" refers to the conditions (e.g., the object sold, the scope of the purchase, the

price, the method of payment, warranties for defects, and similar matters) on which the lessee may demand to become the purchaser of the building site. The right of first refusal is considered a "right of formation"; once it is lawfully exercised, the conditions on which the seller sought to sell the building site to the third party effectively form the conditions of sale between the seller and the lessee. In the absence of a specific applicable statutory provision or the consent of the parties, a court may not modify the price of such sale. (Supreme Court of Taiwan 2015 Tai-Shang-Zi Civil Judgment No 1433).

## **Labor Law**

Taiwan's law on the effectiveness of non-compete covenants has always been determined by court cases and has not been dealt with directly by legislation. This changed on November 27, 2015, when Taiwan's Legislative Yuan, in order to make Taiwan's labor law more comprehensive, adopted amendments to the Labor Standards Act that deal with non-compete covenants. According to the amended Article 9-1, employers seeking to conclude non-compete covenants with their employees must abide by the following requirements:

- (i) the employer must have a legitimate business interest in need of protection;
- (ii) the position occupied by the employee must involve such employee using or accessing trade secrets or other leading technologies of the employer;
- (iii) the scope of the non-compete covenant must be reasonable with respect to the time period imposed and the geographical region covered; and
- (iv) the employer must pay reasonable compensation to the employee for any harm that he / she suffers as a result of abiding by the non-compete covenant.

As well, in order to prevent employers from using a change in the location of a work place to force an employee to resign, further amendments have been made to the Labor Standards Act. The new Article 10-1 of this act now stipulates that an employer, when changing the location of a workplace, may not violate the employment contract and shall abide by the following principles:

- (i) the move must be based on a business operations need, not on an improper motive or purpose;
- (ii) unfavorable changes may not be made to the employee's salary or other conditions of employment;

- (iii) after the relocation, the work must be work that the employee is capable of performing in terms of the physical demands and technology involved;
- (iv) when the workplace has been moved to a distant location, the employer must provide necessary assistance to aid the employee in relocating; and
- (v) the changes must take into account the well-being of the employee and his / her family.

### **Business Law**

Article 14(1) of the Limited Partnership Act states that: "[a] partner may contribute cash, property, goodwill, service or other interests to the capital of the limited partnership, provided that the amount of the goodwill or other interests contributed by any limited partner shall not exceed a certain proportion of the total capital contribution of the limited partnership." The term "a certain proportion" refers to a specific number that is authorized by a decision of the competent authority.

On November 30, 2015, the Ministry of Economic Affairs of Taiwan issued a circular letter stipulating that, for limited partnerships with a total capital contribution of less than NT\$30,000,000, a certain amount refers to a contribution of credit or other interests not exceeding half of the total capital contribution. With respect to limited partnerships with a capital contribution of more than NT\$30,000,000, a certain amount refers to a contribution of credit or other interests not exceeding half of the first NT\$30,000,000 in capital contribution and three quarters of the capital contribution amount beyond NT\$30,000,000.

### **Intellectual Property**

Invention patent applications to Taiwan's Accelerated Examination Program ("AEP") must meet one of the following conditions:

- (i) the application's foreign counterpart has been granted under substantive examination by a foreign patent authority;
- (ii) the European Patent Office, Japanese Patent Office, or United States Patent Office initiated an Office Action during substantive examination and has not yet allowed the application's foreign counterpart;
- (iii) the invention patent is essential to commercial exploitation; or
- (iv) the invention application relates to green energy.

According to statistics of the Intellectual Property Office of Taiwan's Ministry of Economic Affairs, conditions (i) and (ii) above are the most common conditions under which domestic and foreign applicants apply. On the other hand, as of the end of November, 2015, there were a total of 126 domestic AEP invention patent applications filed based on condition (iii), while only one foreign application was filed based on this condition. Further, 36 invention patent applications were filed under the AEP pursuant to condition (iv), all of which were filled by domestic applicants. Clearly, conditions (iii) and (iv) are neglected by foreign applicants. Applicants seeking to apply for the AEP pursuant to condition (iii) may provide as proof photos of the finished product, a sales catalogue, or negotiated licensing agreements. Applications relating to energy saving and carbon reduction technologies and new energy sources may all be filed under the AEP pursuant to condition (iv).

### *Economic Updates:*

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#### **FTC Imposes Heavy Fines on 10 Capacitor Companies for Concerted Action; Fines Total NT\$5,796,600,000**

On December 9, 2015, the Fair Trade Commission of Taiwan's Executive Yuan imposed fines of NT\$5,796,600,000 on 10 American, Japanese, Hong Kong, and Taiwanese aluminum and tantalum capacitor companies.

#### **Chinese Investment in Taiwan's IC Design Sector: the Legislative Yuan Maintains the Prohibition**

China's Tsinghua Unigroup intends to acquire an equity interest in three large Taiwanese semiconductor packaging and testing companies. This has given rise to serious concerns on the part of Taiwan's competent authority and Taiwanese industry. On December 18, 2015, the Legislative Yuan adopted on the third reading the 2016 Central Government General Budget Proposal, the main contents of which are as follows. First, out of concern for protecting sensitive indigenous technology and the continued existence of Taiwan's semiconductor design industry, the government may not, at this current stage, remove the restrictions on Chinese investment in this industry. Second, the Ministry of Economic Affairs and related government entities must closely investigate the sensitive technology of the entire IC industry (i.e., not just the IC design sector), national security, industrial conditions, and the possible effects of Chinese foreign investment. The Investment Commission of the Ministry of Economic Affairs must first make a report to the Legislative Yuan before the Investment Commission may authorize any Chinese

investments or acquisitions in the IC industry. Third, the Ministry of Economic Affairs and relevant government ministries must seriously examine Tsinghua Unigroup's acquisition of an equity interest in three Taiwanese semiconductor packaging and testing companies (Powertech Technology Inc., Siliconware Precision Industries Co., Ltd., and ChipMOS TECHNOLOGIES INC.) by Tsinghua Unigroup. Such transaction may not be permitted before an impact assessment has been made and submitted to the Legislative Yuan.

### Government Updates:

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#### **Number of Countries Granting Taiwan Visa-Free or Visa-on-Arrival Access Reaches 161**

The Ministry of Foreign Affairs of Taiwan recently secured the agreement of several countries to extend visa-free or visa on arrival access to Taiwan passport holders. This brings the number of such countries to 161. The Ministry of Foreign Affairs has also continued to pursue with other countries initiatives for mutual recognition and exchange of driver's licenses. Currently, there are 85 countries that exempt holders of Taiwan driver's licenses from the requirement for a written or road test. Instead, such drivers may apply directly to exchange their licenses.

#### **Taiwan's EPA will Participate in the UN Climate Summit for the first time**

The 2015 United Nations Climate Change Conference (COP21) took place in Paris on November 30 2015. COP21 was the 21st yearly session of the United Nations Framework Convention on Climate Change. Wei Kuo-yen, the Minister of the Environmental Protection Agency ("EPA") of the Executive Yuan, was the first EPA Minister in the history of Taiwan to participate in a UN climate summit. The conference was also attended by representatives of other relevant Taiwan government ministries, including the Ministry of Economic Affairs, the Bureau of Energy, the Industrial Development Bureau, the Council of Agriculture, the Ministry of Transportation and Communications, the Institute of Transportation, the Ministry of Health and Welfare. This year, the parties to the United Nations Framework Convention on Climate Change UNFCCC Conference focused on six key points: mitigation, adaptation, loss and damage, capacity-building, finance, and technology development and transfer. The EPA will invite other Taiwan government ministries to participate in the joint development of policies.

### **Taipei New Year's Eve Celebrations**

On New Year's Eve 2015, every Taiwanese county and city hosted celebrations. Taipei's New Year's Eve celebration took place at the square in front of the Taipei City Government building. Taipei 101, Taiwan's iconic skyscraper, marked the final stages of the count down by illuminating each floor from bottom to top. Then, when the final second of 2015 passed by, Taipei 101 erupted in a massive and dazzling fireworks display. These spectacular fireworks, along with a host of other different activities, have made Taipei's celebrations Taiwan's most famous New Year's Eve event.

The crowds at Taipei's New Year's Eve celebration typically grow larger as the night wears on. Even cold weather cannot diminish the enthusiasm of the people to welcome the new year. The Taipei City Government, which sponsors the event, has a vision of transforming Taipei into a famous "New Year's City" that will be an axis of creativity. Since 1995, when Taipei hosted the first large scale New Year's Eve celebration in the history of Taiwan, its efforts have received a very enthusiastic response from citizens and intense coverage from the media. Since that time similar events have spread all over 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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