



## *Taiwan Updates*

*March 2016*

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### Legal Updates:

#### **Recent Important Decisions**

1. Dispatched labor refers to a dispatch company acting in the capacity of an employer to: arrange employment contracts for an employee; obtain the employee's consent to such contracts; maintain the original employment contractual relationship; and have the dispatched employee provide labor under the orders and the supervision of the dispatched entity (i.e., the workplace to which such employee is dispatched). There are limitations on the right of the dispatched entity to command the dispatched employee. However, it can decide the method by which the labor is carried out, the working hours and the location of such labor.

The dispatch system differs from ordinary direct employment, and constitutes a kind of indirect employment. An employment contract still exists between the dispatch company and the dispatched employee. The dispatch company transfers to the dispatched entity only the right to request that the dispatched employee provide labor. The dispatch company must bear the responsibility to direct and supervise the labor. Thus, the dispatch company still serves as the employer for the purposes of Taiwan's labor laws.

The dispatched employee may provide labor similar to the employees of the dispatched entity and the dispatch entity has the right to request that the dispatched employee provide labor. However, the dispatched entity is certainly not the employer for the purposes of the employment contract. Because the dispatched employee's employer, for the purposes of the contract, is the dispatch company, the dispatched entity need not provide the dispatched employee with the labor insurance of the Labor Standards Act, health insurance, other social security benefits, or salary. However, the dispatched employee must abide by the orders and supervision of the dispatched entity (Taiwan High Court 2014 Labor Decision Shang-Yi-Zi No. 5).

2. Article 101(1)(x) of the Government Procurement Act stipulates that, when a procuring entity finds the time limit for contract performance is seriously

delayed due to causes attributable to the supplier; the entity shall publish the facts and reasons related thereto in the Government Procurement Gazette.

After the conclusion of a procurement contract, the winning supplier must assume the obligation to perform its prestation pursuant to the purpose of such contract. Should the supplier fail to perform such obligation, and should such failure be attributable to the supplier and seriously delay the performance of the contract, the contract may be rescinded or terminated. The "causes attributable to a supplier" referred to in Article 101(1)(x) of the Government Procurement Act, need not be totally attributable to the supplier.

### **Securities Law**

In order to encourage venture capital companies to invest larger amounts in start-ups that are relatively high risk and will likely provide a return only after a long period of time has elapsed, and thereby help restructure domestic industry, the Taiwan Stock Exchange ("TWSE") has opened listing to venture capital companies. On January 15, 2016, the TWSE amended Article 20-2 of the Rules Governing Review of Securities Listings, which regulate the standards according to which sustainable venture capital companies may apply for listing and the obligations by which such companies must abide after they are listed.

Sustainable venture capital companies applying for listing on the TWSE must meet the standards prescribed for ordinary companies, and must also satisfy the following conditions:

1. At the time of applying for public listing, the paid-in capital is no less than NT\$ 2 billion (approximately US\$ 66.7 million), and the number of common stocks offered is no less than 100 million shares.
2. The company is not engaged in any business other than those prescribed in the "Regulations for Guiding the Venture Capital Businesses" (i.e., the company does not directly provide to the enterprises in which it invests, anything other than capital, or business operations, management or advisory services).
3. When applying for public listing, the shares held by the applicant company in a listed company shall not exceed 30% of the total issued and outstanding voting shares of such invested company.
4. When applying for listing, the total investment in any company shall not exceed 20% of the total assets on as set forth on the most recent financial

report of the applicant company.

5. The total amount of investment, as of the date of application for listing and as at the date of the financial reports of the two most recent fiscal years, is at least 60% of the applicant company's total assets.

Furthermore, in view of the nature of the venture capital industry, TWSE considers it necessary for venture capital companies to continually exercise proper management of their operation risks and to remind investors of such risks. Accordingly, the TWSE also amended Article 3 of the Procedures for Verification and Disclosure of Material Information of Companies with Listed Securities, which now requires that venture capital companies applying for listing shall publish prospectuses to continually disclose the earnings per share and certain information relating to the five largest investments made by such venture capital company.

### **Business Mergers and Acquisitions Act**

According to the provisions of the newly amended Business Mergers and Acquisitions Act, a merger or acquisition effected pursuant to this Act may use cash or other property as consideration.

Yet, on January 4, 2016, Taiwan's Ministry of Economic Affairs promulgated a circular letter explaining that, in the case of a new division or conversion of shares, if the newly established company uses cash or other property as consideration for such division or conversion, and does not issue any shares to the shareholders whose shares are being split or converted, it is thus unclear who are shareholders of such newly established company. Under such circumstances, it is impossible to use only cash or other property as consideration.

### **Intellectual Property**

According to the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation (ANZTEC), Taiwan and New Zealand will take the initiative to liberalize their trade relations, and will extend to each other the benefits of any trade agreements concluded with third parties. New Zealand recently notified Taiwan's Ministry of Economic Affairs that New Zealand's free trade agreement with South Korea, which just entered into force, removes restrictions on Taiwan's service industry. As such Taiwan's service industry companies will enjoy the same advantages as South Korean companies operating in New Zealand. This will enable Taiwanese companies to expand

their presence in the New Zealand service industry.

Some of the laws being relaxed or abolished relate to the legal services industry. For example, New Zealand is in the process of amending its laws to eliminate restrictions limiting the patent attorney qualification for foreigners to only those with English or Irish nationality. This bill is currently under consideration by the New Zealand parliament. If passed, it will allow Taiwanese nationals to act as New Zealand patent attorneys, and expand their services into the New Zealand patent services market.

### **Economic Updates:**

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#### **Investment Commission Approves TSMC establishing a wholly owned 12 inch wafer fab in China**

On February 3, the Investment Commission ("IC") of Taiwan's Ministry of Economic Affairs approved TSMC's application to establish a wholly owned 16 nanometer 12 inch fab in Nanjing. The total investment amount is approximately US\$ 3 billion and the factory is expected to become operational in the second half of 2018 with a monthly production capacity of 20,000 wafers. This constitutes the single biggest Taiwanese investment in China and is also the first instance of a Taiwanese company building a 12 inch fab in China.

The IC approved this investment on the basis that it conformed to the 5 point priorities of the Key Technology Team of the Industrial Bureau of the Ministry of Economic Affairs: the technology introduced to China by TSMC is at least one generation behind that used in Taiwan; TSMC will maintain control power; TSMC will continue to invest in research and development in Taiwan; this investment could achieve a globally dominant position; the next three years will see a growth in employees. To this end, TSMC promises that, during the next three years, it will invest US\$ 28.6 billion in Taiwan and to hire an additional 2,500 to 3,500 employees each year.

#### **Domestic Patent Applications Decline, Trademark Applications at an All Time High**

Taiwan's Ministry of Economic Affairs announced that last year's patent applications totaled 73,627, a decline of 5.6% from the previous year and a new low for the past 10 years.

The Intellectual Property Office has indicated that the amount of money invested into research and development has not declined and that the decline

in patent applications is mainly due to companies changing their IP policy to rely less on high numbers of applications. Currently the focus is on licensing patents and this has become an important tactic at a global level.

Further, the Ministry of Economic Affairs has indicated that it accepted 78,523 trademark applications in 2015, an increase of 3.4% over the previous year and an all-time high. Domestic and international applications both increased. Last year Chinese applications numbered 3,919, surpassing American and Japanese applications

The Intellectual Property Office indicated that the continued increase in trademark applications, including the pronounced increase in international applications, shows that domestic economic activity is still robust. The increase in Chinese applications reflects closer cross-strait economic relations and is spurring the development of related business services and products in Taiwan.

### *Government Updates:*

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#### **Power Changes in the Legislative Yuan for the first time in 68 years, Democratic Progressive Party (DPP) takes power**

Taiwan's Legislative Yuan convened a new session on February 1. New legislators have been sworn in and they have elected, each with 74 votes, DPP legislators Su Jia-quan and Cai Qi-chang as president and vice president of the Legislative Yuan respectively.

Taiwan enacted its current constitution in 1948 and this is the first time that full control of both the presidency and legislature have been transferred to the DPP. During his inauguration, Su Jia-quan said that many reforms will be initiated: an online petition for the public to propose new bills will be established; citizen reporters will be allowed into the legislature to conduct interviews and the powers of committees will be strengthened; the Legal Affairs Bureaus and other bodies will be made more professional; and the legislature will be also become more open and professional so as to better meet the needs of society.

The Executive Yuan will also send to the legislature for consideration new bills on the Cross Strait Supervisory Agreement, the mutual establishment of representative offices pursuant to the Act Governing Relations between the People of the Taiwan Area and the Mainland Area, and the reduction of working hours as prescribed by the Labor Standards Act.

## **12 Countries Sign the TPP for Asia-Pacific Integration, Taiwan Seeks Admission**

On February 4, the 12 member countries of Trans-Pacific Partnership Agreement ("TPP") signed the agreement in New Zealand. Taiwan's Ministry of Economic Affairs has stated that the ratification should be completed within two years of signing and that Taiwan will make its best efforts to gain admission within two years.

The TPP countries account for 34.3% of Taiwan's exports and 18.9% of Taiwan's foreign investment. If Taiwan fails to join the TPP its businesses will face discriminatory tariffs and other investment barriers, in particular in the three key industries of textiles, machine tools, and automotive components.

According to the Ministry of Economic Affairs' assessment report on joining the TPP, if Taiwan does not join the TPP, its imports and exports will be reduced by about US\$ 400 million and US\$ 600 million respectively, and its total industrial output may be reduced by up to US\$ 1.2 billion. According to the same report, should Taiwan join, its total industrial output should rise by US\$ 17.5 billion and employment would increase by 65,000. Accordingly, the Executive Yuan seeks to accelerate the revision of outdated laws and regulations. The Ministry of Economic Affairs will send a delegation to visit the TPP members, seek to determine the exact contents of the TPP and engage in negotiations, while continuing to take advantage of opportunities for multilateral and bilateral relations with officials from member states, in order to support Taiwan's entry into the TPP.

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

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#### **The 2016 Yilan Green Expo will Take Place from March 26 to May 15**

Yilan County Government hopes that Yilan County will transition from a traditional agricultural county to one centered on culture and lifestyle. To this end, it has sought to promote economic restructuring by promoting and marketing local industries and tourism. The Yilan County Government used the experience garnered from the successful Yilan Children's Folklore and Folkgame Festival to organize a Green Expo dealing with agriculture and environmentalism. The Green Expo now takes place every spring. In 2016 the Green Expo will enter its fifteenth year and will continue to promote a friendly symbiotic existence with the environment, sustainable development, the timeless wisdom of traditional ways of life, and other topics including

organic farming, low-carbon tourism, environmental protection, green architecture. While exploring the Green Expo, tourists will also experience the comforts of Yilan's relaxed rural life.

### **2016 Ali Shan Youth Concert to be Held on March 10 to April 10**

The Ali Shan National Forest Creation Area continues to become a Taiwan tourism hotspot, hosting more than 2.7 million tourists during 2015. Ali Shan's misty beauty is in full view when the cherry blossoms bloom from February to April. During this period, the visual pleasure of the cherry blossoms is complemented by the auditory delights of the Ali Shan Youth Concert. Further, readings by renowned Taiwanese poets, such as Yu Guan-zhong, Zheng Chou-yu, Yin De, and Xi Mu-rong, will further enhance the atmosphere by adding a literary element. When gazing upon the beautiful scenery, one can see amongst the endless multitude of Japanese cedars, beautiful flowers including rose trees, windowsill orchids, wisterias, alocasias, Hall crabapples, magnolias, and hydrangeas. During the winding train ride through Ali Shan, the misty mountain peaks, pink cherry blossom leaves flowing in the wind, and other colors of the mountains all form a romantic moving mosaic.

*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

