

## *Taiwan Updates*

*October 2016*

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### Legal Updates

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

1. Item 5 of Paragraph 1 of Article 35 of the Labor Union Act stipulates that, "[a]n employer or supervisory employees who represent the employer in exercising the managerial authority shall not engage in the following practices: ...5. Improperly influence, impede or restrict the establishment, organization or activities of labor union." Such provision regulates the improper acts of management in order to prevent infringement by the employer upon the workers' right to organize. When the enterprise relies upon its large size and conducts economic activities in greater scale through its affiliates, the opponents faced by the laborers of those controlled subsidiaries exercising their union rights are not limited to the employers under the employment agreement. Those holding companies, which hold absolute control over economic conditions of the controlled subsidiaries and decide the working conditions of the labors, are also part of the management power faced by the laborers who exercise their union right. Therefore, the "employer" under Paragraph 1 of Article 35 of the Labor Union Act shall not be restricted to the direct employer under the private employment relationship. Those who actually exercise management rights over the employer shall be regulated as well. In order to effectively regulate collective employer-labor relationships, a controlled subsidiary should not be deemed as legally independent from the holding company, and the act of a controlled subsidiary against the labor union should not be a method to excuse the controlling company itself from the obligations of non-infringement of the labor union's rights. (Supreme Administrative Court's 2016 Pan-tze No. 389)
2. Paragraph 1 of Article 9 of the Company Act prescribes that penalties may be imposed if the share capital contribution has not been actually paid up by its shareholders, but is declared as having been paid up in such company's incorporation application. The purpose of such provision is to implement the principles of capital maintenance and capital determination. If, when filing the application with the

competent authority, the increased share capital, which has not been actually paid up, is fraudulently declared as having been paid up by means of a temporary loan and dummy shareholders, such act violates the principles of capital maintenance and capital determination. Regardless of the period, whether long or short, in which such loan is fraudulently presented to be the share capital contribution, such act violates Paragraph 1 of Article 9 of the Company Act. The defendant failed to actually pay up the share capital; instead, the defendant asked a third party to remit NT\$1 million to be presented as the share capital for the establishment of the company, and then returned such amount to the third party after capital verification, but declared that such share capital had been paid up. Such act is considered sufficient to constitute the crime of shareholder's failure to pay up share capital in full under Paragraph 1 of Article 9 of the Company Act (2016 Shang-Su-Tzu No. 536 Criminal Judgment of Taichung Branch Court, Taiwan High Court).

## **II. Corporate Law**

Article 12 (2) and (3) of the Business Mergers and Acquisitions Act stipulates that the dissenting shareholders may, within 20 days from the date of the resolution of the shareholders' meeting, request the Company in writing to purchase the shares held by them. On July 22, 2016, Taiwan's Ministry of Economic Affairs issued interpretative ruling Jing-Shang-Tzu No. 10502421440. This ruling provides that when the dissenting shareholders deposit the shares to the stock institution entrusted by the company, the transfer of such shares from the dissenting shareholders shall become effective. The ruling also states that shareholders who have been recorded in the shareholders' roster during the book closure period may receive dividends and bonuses or other interests. In order to avoid conflict between the two periods, the ruling suggests that distribution record date should not be within the time limit specified by Article 12 (2) of the Business Mergers and Acquisitions Act.

## **III. Labor Law**

1. Ministry of Labor ("MOL") of Taiwan's Executive Yuan promulgated interpretive letter Lau-Dong-Taio-3-Tzu No. 1050132134 in September of 2016, providing that the regular day off, provided in Article 36 of the Labor Standards Act that "*[an] employee shall have at least one regular day off in every seven days,*" shall be arranged once in each cycle. A

cycle shall be composed of seven days. Generally, employees shall not continue to work more than six days in a row. However, in any of the events listed below, employer may obtain employee's prior consent and adjust the original regular day off schedule within two weeks. The period between each regular day off shall not be longer than 12 days. Once the reason for adjustment to the regular day off schedule no longer exists, employees shall not continue to work more than six days in a row.

- (1) In the event that it is necessary for employees of butchery and transportation businesses to work more than six days in a row during new year holidays, memorial days, labor holidays or other national holidays designated by central competent authorities for public convenience.
- (2) In the event that it is necessary for an employee to work more than six days in a row due to the unique characteristic of the employee's working location (for example, locations on the sea, in the mountains or in a remote area), wherein transportation to and from such location is unusually time-consuming.
- (3) In the event that it is necessary for an employee to work more than six days in a row due to the work location of work of such employee being in a foreign country, on a ship or aircraft, in an examination preparation area, or during power plant annual inspections.

2. MOL promulgated to adjust the minimum wage on September 19, 2016. The minimum wage per hour will be raised from NT\$120 to NT\$126 effective October 1, 2016, and will be further increased to NT\$133 on January 1, 2017. In addition, the minimum wage per month will be adjusted to NT\$21,009 on January 17, 2017.

#### **IV. Intellectual Property Law**

Effective August 12, 2016, Taiwan Intellectual Property Office changed how it identifies a priority document. In summary, only a technical disclosure (which includes specifications, abstract, claims and drawings) of a first application can serve as the priority document. The subsequent divisional application and converted application cannot serve as the priority document. Moreover, if an application is filed in a language other than Chinese and a translated version in Chinese is submitted before the due date, then the filing date serves as the first filing date and the technical disclosure of the application serves as the priority document.

## *Economic Updates*

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### **Taiwan Financial Supervisory Commission (FSC) hosts Fintech Development Consulting Forum, Plans to Promote new Fintech Pilot Program**

In September, the Taiwan FSC hosted the Fintech Development Consulting Forum, which gathered legislators as well as representatives from government, industry and academia to discuss issues related to development of new financial technologies. FSC explains that it will support the Fintech Development Promotion Program, which includes ten policies: 1. increase the use and innovation of mobile payment technologies; 2. encourage banks to collaborate in development of P2P lending technologies; 3. promote solid development of crowdfunding; 4. encourage insurers to develop innovative products using new data-mining technologies (“big data”); 5. build an online fund-selling platform in order to develop online investment services; 6. promote fostering of financial technology specialists; 7. build a digitalized working environment for book entry of securities; 8. develop and apply new distributed ledger technologies; 9. build a Financial Information Sharing and Analysis Center (FISAC); and 10. build an Authentication and Identification Service Center.

### **Taiwan Ministry of Economic Affairs hosts Wind Power Investment International Conference and Exhibition**

Taiwan Ministry of Economic Affairs recently hosted its Wind Power Investment International Conference and Exhibition, attended by nearly a hundred alternative-energy companies from 22 countries. Dong Energy Wind Power, the largest offshore wind power company in the world, attended the conference and announced plans for sea-floor prospecting at four wind sites off the coast of Changhua County, home of Taiwan’s largest wind farm. Dong Energy further revealed plans to install 400 offshore wind turbines, with a total capacity exceeding 800 MW. At a cost of over NT\$100 billion, this will be the largest foreign investment in offshore wind power in Taiwan. Following Dong Energy’s lead, other wind power companies, most notably Siemens of Germany, Ve stas of Denmark, General Electric of the US, and Gamesa of Spain, are also considering investment in Taiwan’s wind power potential. Among domestic companies, Taiwan

Electricity has started construction of its offshore wind farm, also off the coast of Changhua County, investing NT\$19.3 billion in a project to install 22 offshore wind turbines, with capacity of over 110 MW. This project is scheduled to operate in 2021.

### *Government Updates*

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#### **Taiwan Executive Yuan Promulgates New Southbound Policy, Aims for Mutual Benefit with ASEAN, South Asia, New Zealand and Australia**

In September, Taiwan's Executive Yuan promulgated the New Southbound Policy, a plan for economic development with 18 nations including Australia, New Zealand, six South Asian countries and ten member states of ASEAN. The Executive Yuan's Office of Trade Negotiations will be responsible for policy negotiations and implementation. The plan focuses on four principles: economic cooperation, special talent exchange programs, resource sharing, and regional integration. In terms of economic cooperation, the plan is designed to change Taiwan businesses' previous tendencies to locate their subcontracting bases for export in the ASEAN nations and South Asia, enhance supply chain integration, improve connections with domestic markets, and cooperate with partner nations on infrastructure construction. In terms of special talent exchange programs, the plan seeks to attract talent by increasing scholarship budgets for students from ASEAN and South Asia, conditionally extending the residency periods for foreign workers, and cultivating future waves of immigrants to become effective conduits for Taiwan's relationships with its neighbors to the south. In terms of resource sharing, the plan aims to market Taiwanese culture and brands via movies, television, radio, and online games, loosen restrictions for tourist visa applications for visitors from ASEAN and South Asia, establish a welcoming environment for Muslim visitors, set up an international agricultural development company, and promote the "Taiwan" brand in overseas markets. In terms of regional integration, the plan aims to actively negotiate an Economic Cooperation Agreement ("ECA") or other respective items for economic cooperation with major partners of ASEAN and India, work in tandem with a third nation, such as Japan or Singapore, to promote the ASEAN, South Asia, New Zealand, and Australia markets, and enhance collaboration with private companies and Non-Governmental Organizations.

## *Cultural Updates*

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### **Taroko Music Festival**

Every autumn, Taroko National Park hosts the Taroko Music Festival. Now in its fifteenth year, the Festival will be held on October 29. Against the spectacular backdrop of Taroko Gorge, the musical performances bring a warm sense of cultural ambience to one of Taiwan's more adored National Parks. The Festival is based on a new theme every year. This year's theme, "The Rhythms of Taroko Protect the Mountain Forest," will be felt by the audiences as they gather amid the natural ambience of the Taroko Terrace to hear the heavenly voices in aboriginal song.

*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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