



June 2013

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Primerus Business Law Institute Symposium – June 19th-20th, 2013

Primerus Members, Caroline Berube of HJM Asia Law and LiPu Lee of Formosan Brothers will be attending as speakers during the 2013 Primerus Business Law Institute Symposium held in Atlanta, Georgia. They join a panel of specialists to discuss the enforcement of foreign judgments, where LiPu will discuss Taiwanese aspects of foreign judgement, pertaining with matters in the United States, while Ms. Berube will provide a Chinese comparison to the dialogue of what typically happens after clients win a case in a foreign jurisdiction.

Hengtai Law Offices Provided Legal Services on Issuing Bonds

Partners Edward Sun and Hao Li of Hengtai Law Offices provided legal services for CCCC Third Harbor Engineering Co., Ltd on its issuance of private placement note in China Inter-Bank Bond Market and successfully helped it raise capital of RMB1.6 Billion in March 2013.

Italian Luxury Jewelry Retailer DAMIANI Retains Hengtai as Legal Counsel for Labor Affairs

DAMIANI is one of the most famous brands in the jewelry industry. Hengtai has been retained as outside counsel by DAMIANI for Chinese labor law issues.

Hengtai Partner Sanchuan Weng Teaches Legal Documentation Course for Graduate Students

At the invitation of the Shanghai Foreign Trade University's Law School, Hengtai's partner Sanchuan Weng has been teaching a legal documentation course for the school's graduate students this semester.

HJM Asia Law develops its Singapore practice

HJM Asia Law has focused on further developing its Singapore practice to complement its well-established China practice. In 2012, we assisted with all Singapore-related activities regarding the acquisition and re-organization of a Southeast Asian insurance group by a publicly listed French insurance company. We also assisted a variety of other companies with their corporate, employment, and intellectual property matters in Singapore.

HJM Asia Law continued to grow its China team with the addition of two Chinese-qualified Of Counsels – a labor and employment specialist and a senior corporate and commercial practitioner.

HJM Asia Law Seminar at the Association for the Development of Chemical Industry (ADICQ) – June 2013

Next month, Managing Partner, Caroline Berube, will lead a session on conducting

business safely in China with ADICQ, discussing the importance of having the right knowledge and understanding of the Chinese business and legal landscapes. Other topics such as knowing your business partners, and whether intellectual property is respected in China will also covered.

Legal Updates

Incentive to Establish Asian Business Center in Japan *Hayabusa Asuka Law Offices, Tokyo, Japan*



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The Act for Promotion of Japan as an Asian Business Center (the “Act”) came into force on November 1, 2012. The Act was passed in July 2012 with the aim of encouraging global enterprises to establish their R&D centers and Asian headquarters in Japan. Below is an outline of the support measures which the Act provides for certain types of business activities.

Targeted Business Activities

When a specified multinational enterprise as defined in the Act intends to establish a Japanese affiliated company for the purpose

of (i) conducting R&D business for the first time in Japan, or (ii) managing its business for the first time in Japan, the Japanese affiliated company can apply to obtain certification from the competent minister regarding its R&D plan or business management plan.

Under the Act, various types of support measures are given to Japanese affiliated companies which are established during the implementation of certified plans, and/or to specified multinational enterprises.

Tax Benefit

[Corporate Tax Incentive-tax deduction]
A Japanese affiliated company which meets the requirements under the Act is entitled to apply for an income deduction when it files its blue-tax return. The deduction is 20% of eligible income and will be applicable for 5 years. Consequently, it realizes an effective corporate tax reduction of approximately 7% for 5 years (from approximately 38% to 31%).

[Individual Tax Incentive-tax deferral]
When directors, executive officers, and employees of a Japanese affiliated company exercise stock options granted by the parent foreign enterprises which established the Japanese affiliated company in accordance with a certified plan, any profit earned upon the exercise of such tax option will not be taxable. Instead, it will be taxed as income tax when transferring the stock.

This is similar to the tax treatment when Japanese enterprises are granted stock options by foreign parent companies.

Patent Benefit

[Patent Fee Reduction]

Patent fees for small and medium sized enterprises (“SME”) are reduced 50% when the patents are invented in accordance with an R&D business plan which is certified by the competent minister.

[Acceleration of Patent Examination]

Patent examination is accelerated for patent applications relating to technology invented as a result of R&D activities accredited by the Act. According to the performance records for 2011, the average examination waiting period was 22.2 months for regular cases while 1.9 months for accelerated cases.

Shortening of Investment Procedures

Under the Foreign Exchange and Foreign Trade Act, a foreign enterprise wishing to invest in Japanese companies in regulated industries must wait for 30 days after submitting a prior notification for inward direct investment. The Act grants a shortened waiting period of 2 weeks for a foreign enterprise investing in an accredited plan under the Act

Funding Support

SME are entitled to receive funding support from Small and Medium Business Investment & Consultation Co., Ltd.

**Please note that the Act provides more detailed conditions and requirements for each of the support measures. For further details, please feel free to contact us.*

Impact of the PRC Labor Contract Law Revision on Labor Dispatch

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The People’s Congress Standing Committee promulgated a revision on PRC’s Labor Contract Law (“**Revision**”) on December 28, 2012. The Revision mainly focuses on labor dispatch. The Revision will take effect from July 1, 2013.

Labor dispatch is a form of employment that an employee enters into an employment contract with a labor dispatch enterprise and is then dispatched to work in another company (“Accepting Entity”). Many employers favor dispatch model because it eliminates the direct employee- employer relationship, and may save more cost on employers in respect of certain employee benefits.

We now briefly discuss the impact of this Revision.

1. Strengthening the principle of Equal Work Equal Pay

This Revision further strengthens the principle that dispatched staff shall be paid the same as the Accepting Entity’s own staff is paid for equal work. The Accepting Entity shall adopt a unified remuneration system

towards dispatched workers and the Accepting Entity's own staff. Remuneration includes salary, overtime pay, bonus fringe benefits and etc.

2. Restriction on using dispatched staff

Under the previous dispatch model, there was widespread abuse of the law. Article 66 in the 2008 Labor Contract Law provides that labor dispatch services are normally used for positions that are temporary, auxiliary, or substitutive ("Three Categories). The use of the word "normally" is so ambiguous that dispatched employees may be used in areas other than the above Three Categories.

The Revision emphasize that labor dispatch is supplemental to direct employment. In the Revisions, the word "normally" has been deleted. This Revision has further specified the restrictions on using dispatched staff, i.e., temporary, auxiliary or replaceable. The temporary position refers to the position lasting for less than six months; the auxiliary position refers to non-main-business position which provides the service for main business position; and the replaceable position refers to the position that the previous occupant is off duty for certain period due to study, leave or other reasons. The temporary position shall be judged on the basis of both the working period and the character of position. Given that the non-main-business position is difficult to define; the auxiliary position is still ambiguous, which may be further clarified by the competent authority. In addition, this

Revision is also trying to limit the proportion of the dispatched staff in the Accepting Entity, although the specific proportion is not provided yet.

3. Transitional Period

According to this Revision, the Accepting Entity and the labor dispatch company may continue to perform the labor dispatch agreement signed before December 28, 2012 until the expiry of the labor dispatch agreement, even if the labor dispatch service provider has not obtained the labor dispatch qualification provided that, from July 1, 2013, the principle of "Equal Work Equal Pay" must be adhered to.

4. Penalty for violation

According to the Revision, violation of the Revision by the Accepting Entity may lead to a penalty of RMB5,000 to 10,000 with respect to each dispatched employee; the Accepting Entity shall also compensate the damages caused to the dispatched staff, if any.

We suggest that the employers who use dispatched staff review their agreements and contracts regarding labor dispatch and think about their overall employment strategy carefully before July 1, 2013. If using labor dispatch will become illegal after July 1, 2013, they can consider transmitting from labor dispatch into direct employment.

Introduction of the Design Patent Amendments in the New Patent Act

Formosan Brothers, Taiwan

The new Patent Act passed the third reading on November 29, 2011 and came into force on January 1, 2013. In the new Patent Act, other than the amendments to the original provisions, related provisions regarding “partial design”, “icon design”, “group design” and “derivative design” were also added according to international practices and industry development trends.

The original provisions stipulated that protected new design patents have to be the “overall design” of the entire appearance of the object. However, to avoid competitors in the market plagiarizing parts of the novelty features of products and easily avoiding the protection of design patents, in the amended Patent Act, it is stipulated that the applicant may file a design patent application for the “partial design” of partial components of an object like car lights, or parts of the features for the appearance of an object like the exterior patterns on sneakers.

Whereas filing an “overall design” patent application, the overall appearance of the drawing of the object in the specification shall be outlined with ink lines, when filing a patent application based on “partial design” of the object, the object to which the partial design applies shall be stated in the specification. In addition, “the parts in the drawing which the design intends to claim” and “the parts in the drawing which the design does not claim” shall be presented in a manner whereby the different parts can be clearly distinguished. For example, the appearance of “the parts in the drawing which the design intends to claim” of the patent application shall be specifically and realistically shown in solid lines, and “the parts in the drawing which the design does not claim” shall be shown in dotted lines or colored in grey or shown in a translucent manner to clearly distinguish “the parts in the drawing which the design intends to claim”

from “the parts in the drawing which the design does not claim”.

Computer Generated Icons (“CGI”) like ones used for click-to-action functions and Graphical User Interface (“GUI”) like function menus refer to types of drawings that are shown on display panels and monitors and only exist temporarily, and that cannot be constantly shown on objects like patterns or colors on wrapping paper or cloths. CGI include application icons that are used for click-to-action functions shown on the monitors of computer or electronic devices. GUI includes pull down function menus or function menus in different forms. However, with the amendment of the Patent Act, it has been determined that the “icon design” of CGI and GUI used for objects are also a type of creation used for the appearance of the object, and thus it may also be subject to the protection of design patents.

When filing an “icon design” patent application, since icon designs have to be shown through monitors, display devices, or various kinds of display panels, thus the object that shows the icon design has to be designated, the drawings of the CGI and GUI cannot be filed alone. Furthermore, other than still “icon designs”, icon designs that change in appearance like video game characters that transform or user interfaces that change through click-to-action functions can also be filed for a patent application for the several changes of the appearance of the icon designs during the show of use of the drawing.

In the original provisions, it is stipulated that when filing new design patent applications, the appearance of each object shall be filed for, i.e. “an application for each design”. However, when design industries are developing products, they often develop an entire creation for several objects that are

often sold or used at the same time to achieve a design that can produce an overall special visual effect after the combination of the several objects. As such, in the new Patent Act, it is stipulated that two or more objects that are classified as the same type and that are often sold or used in a group like spoons and forks or teapots and cups may be filed for one patent application as a “group design” to protect the design of the overall visual effects of the group. However, when exercising the rights of the design, the group design can merely be regarded as one design; the rights of each component of the group design cannot be exercised alone.

Furthermore, when developing new products, industries usually develop several similar product designs based on the same design concept, or develop similar designs due to improvements of the same product. In order to take into consideration of the similar designs developed based on the same design concept or due to improvements of the same product, which have the same value as the original design and thus shall be granted the same protection, in the new Patent Act, it is stipulated that when an applicant has two or more similar designs, the designs shall not be limited to the “first to file” condition, and the design after the second one may be filed as a “derivative design” patent application.

Compared to the “associated new design patent” of the original Patent Act, the deadline for filing a “derivative design” patent application is limited to when the applicant of the original design has filed a patent application (including the day that the patent application was filed) or before the patent examination of the original design. However, after the applicant of the derivative design obtains the patent rights, he/she may exercise the rights alone, and the derivative design shall not be classified as the original design and its effect shall be extended to the scope of similarity, thus the range of derivative designs is more independent and wider than the range of the original “associated new design patent”.

Since the related provisions for filing “partial design”, “icon design”, “group design” and “derivative design” patent applications passed the third reading on November 29, 2011 and was implemented on January 1, 2013; therefore the applications filed for “partial design”, “icon design”, “group design” and “derivative design” patents before January 1, 2013 could not be examined. However, for new design patent applications that have not yet been examined before January 1, 2013, the applicant may file for changing its patent application into a partial design patent application before March 31, 2013.

For associated new design patent applications that have not yet been examined before January 1, 2013, the applicant may file for changing its patent application into a derivative design patent application before March 31, 2013.

Furthermore, if the priority date claimed by applicants that file for “icon design” and “group design” patent applications after January 1, 2013 and that claim priority rights is earlier than the implementation date of the amendment of the Patent Act, which is January 1, 2013, the priority date shall be January 1, 2013.

Updates on the Personal Data Protection Act

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In October 2012, the Singapore parliament passed the Personal Data Protection Act 2012 (“PDPA”) that governs the collection, use and disclosure of personal data of an individual by organizations. It established Personal Data Protection Commission (“PDPC”) as a watchdog to ensure a baseline standard of protection for personal data across the economy. The organisations would have to comply with the PDPA, relevant regulations and guidelines as well as the common law and other relevant laws that are applied to the specific industry that they belong to. The public consultation on the positions proposed for the relevant regulations and guidelines was closed on April 1st, 2013.

The PDPA was introduced following acknowledgment by the government that there is a pressing need for a general data protection framework to ensure that individuals have more control over their personal data and are kept informed of the purposes for which organizations collect, use or disclose their information. This would also ensure that the collection, usage or disclosure of personal data would be for legitimate and reasonable purposes and would be advantageous to the organisations because practising good personal data management can increase business efficiency and effectiveness, boost customer confidence, and enhance its public image.

On 2nd January 2013, some the provisions came into effect as part of the government’s plan to implement them in phases. Provisions relating to Do Not Call registry allow individuals to opt out of unsolicited marketing communications, and the provisions relating to the protection of personal data will come into force in 2014. Under the PDPA, organizations would have to inform individuals of the purpose and obtain their consent for the collection, use and disclosure of the personal data unless the deemed provision(s) on consent or the circumstances specified in the schedule apply. The organizations would not, as a condition of supplying a products or services, require the individuals to consent to the collection, use or disclosure of personal data beyond what is reasonable for the provision of that products or services.

The PDPA also mandates that organisations would have to appoint at least one data protection officer to ensure compliance with the requirements that would include taking reasonable efforts to ensure that the personal data collected is accurate and complete and is secured from any unauthorized use. On a request from the individual concerned, organisations would have to ensure that any request for access is attended to and questions about the collection, use or disclosure of the personal data are answered unless the stipulated exceptions apply. If the request includes correction of an error or omission in the individual’s personal data, the organization shall, unless there are reasonable grounds not to do so, correct the data as soon as practicable. Any request for withdrawal of consent in relation to the collection, use or disclosure of all or some of the individual’s personal data for certain purposes would have to be attended to after explanation of the consequences of the withdrawal has been proffered.

If an individual suspects that a particular organisation is not following the rules of the

PDPA, he is encouraged by the PDPC to contact the organization concerned to find out more about its data protection practices, and clarify his doubts on whether his personal data has been misused. The individual may also lodge formal complaints with the organization concerned or PDPC. If PDPC finds that the organisation is in breach of any of the data protection provisions, it may direct the organisation to stop the illegal collection, usage or disclosure of personal

data, destroy the personal data collected illegally, provide access to the personal data or pay financial penalty of an amount not exceeding S\$1 million.

The PDPA will enhance Singapore's competitiveness and strengthen its position as a trusted business hub. It put Singapore on par with others that have already enacted data protection legislation, such as Canada, New Zealand, Hong Kong.