

A Company Executive's Liabilities And Risks in Taiwan

By James Hung

We all know about the principle of a company's limited liability protecting its shareholders from being sued for the company's liabilities. A Shareholder's maximum liability under Taiwan law goes as far as the value of his capital injection into the company. On the other hand, the directors and officers ("executives") of a company cannot be held responsible for the company's debts and liabilities as well. Shareholders, directors and officers are separated as different and independent legal persons from the company.

Nonetheless, the rule in the "lifting the corporate veil" exists to prevent shareholders' from abusing the limited liability shield. Executives can still be held accountable once they breach their fiduciary duty or certain substantive laws. The "corporate veil" can only be lifted under exceptional circumstances Taiwanese practice. However, it is very common in Taiwan to see directors and officers getting sued for corporate wrongdoings when performing their duties as executives in Taiwan.

The write up below demonstrates the usual cases where executives can be personally investigated or held liable when performing their duties under Taiwanese Law.

Criminal investigations:

It is not very difficult to initiate a criminal investigation against executives in Taiwan. Take copyright infringement as an example, the executives may be charged for a criminal offence if the company's operation is alleged to involve unauthorized software, oral or literary works, photos, video clips or music...etc. In Such cases, there is no need to prove how for monetary losses. Moreover, it is also a criminal offence if the executives breach their fiduciary duties intentionally even if they had not slipped a single cent into their own pockets.

The executive will usually be summoned in a SOP process once a complaint is filed against them. Moreover, he can be arrested via a warrant without first being served with a summons if he has no fixed domicile or residence in Taiwan or there are sufficient facts to justify an apprehension that he may abscond or destroy, forge, alter evidence, or conspire with a co-offender or witness provided that the accused is strongly suspected. In the aforementioned cases, the executive may be restricted from leaving Taiwan or detained in a detention center (similar to a jail). To ensure a forced

attachment of assets, a certain portion of the property of the suspect, accused, or a third party, may be seized with discretion as required.

Civil actions:

It is very common that the executives are all jointly claimed in most torts cases between the claimants and the companies in Taiwan. Even for contractual disputes, the claimants will usually try to build up an alternative action based on torts as far as they possibly can for the purpose of including the executives as joint defendants.

As the executives are usually responsible for decision making in their companies' operation, they are forced to clarify and show that they have done their job in a professional manner especially in the case of class actions. The claimants do not need to submit any additional court fee and most of the time they will not need to provide further facts/ evidences against the executives when litigating against the company and the executives altogether.

Administrative proceedings:

The legal representative and de facto person in charge of the defendant company may be restricted from leaving Taiwan in the cases below.

Tax disputes: if a company owns tax obligation accumulated in excess of NTD 2 million (approx. USD 67,000) or has a taxation dispute(s) accumulated in excess of NTD 3 million (approx. USD 100,000) and cannot provide sufficient security to a tax authority, the legal representative that company will be restricted from leaving Taiwan. Note that a "legal representative" of a company in the context of local Taiwanese jargon, really refers to the named person officially in charge of the company, and NOT its legal counsel.

Labor disputes: where a business entity delays the payment of retirement pension fund, severance pay, or wages to its workers in the course of implementing mass redundancy of workers, and further fails to make the payments within a time limit ordered by the competent authority, the Central Competent Authority, may by official notice, request the border control agency to prohibit the legal representatives of the company or any de facto persons responsible for the business entity from leaving the country. This applies to the business entity has more than 10 but fewer than 30 workers and the total delayed payment is up to NTD 3 million. The amount is to be raised per the scale of the business entity.

In summary, monetary awards of civil actions vary in different cases based on the evidences and facts. Administrative proceedings usually require the crossing of a threshold specific amount before further actions against the executives of the company will be taken. However, there is no threshold in pecuniary losses for criminal investigations and the executives may be deprived of their personal and property

freedom even if he/she is just a suspect before indictment and conviction as long as this satisfies the prosecutor's or judge's discretion.

Given the above, executives of a company in Taiwan cannot be too careful in monitoring and mitigating any possible threats with regards to their personal and property freedom under Taiwan's legal system from time to time.

The writer of this comprehensive write up hopes that this has been useful for your considerations.

PLEASE CONTACT the writer in the event of you are contemplating a possible case in Taiwan and have certain questions in mind before proceeding further.

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