

**Article 15 of the Law
Governing the Application
of the General Principles of
the Civil Code of Taiwan**

Appraisal

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Article 15 of the Law Governing the Application of the General Principles of the Civil Code of Taiwan

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The legal provision translated from Chinese into English:

When a person enters upon a juristic act with others in the name of an unrecognised foreign juristic person, the doer is jointly liable along with the foreign juristic person for such juristic act.

It is a matter of common international practice, for foreign (mother) companies to contract with Taiwanese parties by using either their local affiliated company, the representative of the latter, i.e. a natural person, or any other person as their representative or agent.

Thus, the issue of the above-stated law, which forces liability onto this agent or representative, has become a very important one on the agenda and in the realm of international legal and business relations.

Throughout the various legal systems, employing a local agent or representative when a foreign unrecognised company enters into a contract, does not entail any surprising or unforeseen consequences for the parties to the contract nor the agent/ representative. This is due to the fact that, where a case of liability arises, it is, as a general principle, only the parties to the contract – and not a third person - that can be held liable. Only where the agent or representative has acted outside his/her power instituted in him/her by the party s/he represents, the question of his/her liability arises.

The case then is dealt with according to the general principles governing the issue of representation or agency that are construed and understood very similarly by the various legal systems.

Looking at article 15, the aforementioned principles are not legal reality in Taiwan, however.

With the introduction of this law, the legislator added a further, unprecedented dimension to the principles of liability and agency.

Consequently, where an unrecognised foreign juristic person contracts with a Taiwanese party by using an agent or representative, the event of liability has the effect of the agent's/ representative's being held jointly liable, irrespective of whether s/he/it is a juristic or natural person.

This is a consequence rather unforeseeable when compared the international legal practice. Thus, entering into contracts oblivious of the law of article 15 and its effect could not even be seen as negligent behaviour.

Moreover, this joint-liability of the representative/agent conveniently creates a further jurisdiction for such claims against the representative/agent in Taiwan.

Notwithstanding the harsh criticism rendered by doctrine and legal practitioners in general, the Taiwanese courts continue to apply the provision.

While having the obviously intended effect of supplying the Taiwanese party to the contract with an additional debtor in the case of liability, especially one that can more easily be located and against whom judgments may be rendered in Taiwan and may also be more easily enforced, the application of article 15 could also have negative consequences for Taiwan not taken into account when drafting the provision.

As the effect of the provision becomes known fact on the international market, foreign investors will certainly refrain from employing local agents and resort to alternative means, such as sending a foreign agent or concluding contracts through the mail.

Should this, however, not serve their case in the particular matter; it is quite probable that such foreign investors will be hesitant to contract in Taiwan and rather orientate their investments towards other markets.

This would certainly pose a severe threat to the Taiwan market.

Therefore, while the application of the provision of article 15 constitutes an advantage to the individual contracting Taiwanese party, it also has a negative effect on a much larger scale by creating obstacles to international trade.

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