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Legal Commentary



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SARFT's New Rules: Taiwanese Films No Longer Subject to Imported Film Quota Restrictions

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On January 17, 2013, the State Administration of Radio, Film, and Television of the People's Republic of China ("China" or "PRC") ("SARFT") promulgated *the Measures on Strengthening Cooperation and Management of Cross-Strait Films* 《国家广电总局电影管理局关于加强海峡两岸电影合作管理的现行办法》 (the "Measures") to implement the commitments regarding Taiwanese access to the Mainland China film industry in the Economic Cooperation Framework Agreement ("ECFA"), which has been in effect since September 12, 2010.

The Measures include rules on the import of Taiwanese films, co-produced films by Mainland China and Taiwan, as well as Taiwanese investments in movie theaters. With regard to the import and co-production of films, Taiwanese investors will enjoy similar preferential treatment compared to Hong Kong and Macau. However, regarding investments in movie theaters, Taiwanese investors shall comply with the policy applied to normal foreign investors. The details of the Measures are as follows:

Definition of Taiwanese Films

Taiwanese films refer to those films made by production entities that are set up or established in accordance with the relevant laws of Taiwan, and own more than 50% of the copyrights of the films concerned. Taiwan residents should comprise more than 50% of the total principal personnel in the films concerned.

Import of Taiwanese Films

Imported foreign films (including films produced in Hong Kong, Macau, and Taiwan) that may be exhibited in China are subject to a quota restriction, and only a limited number of foreign films are allowed to be imported and distributed per year. In addition, foreign films can only be

imported by designated film importers (namely China Film Group Film Import & Export Corporation), and be distributed by designated film distributors (namely China Film Group Film Distribution & Exhibition Corporation and Huaxia Film Distribution Co., Ltd.) in China.

After the release of the Measures, Taiwanese films will be imported, approved, and distributed as foreign films, but on a quota-free basis.

Co-produced Films by Mainland China and Taiwan

Under PRC law, any organizations or individuals from abroad may not independently make films within China. Only cooperation between a foreign entity and a PRC entity in film production (including Joint Production, Co-production through synergy, and Co-production through commission) is allowed. Moreover, the employment of any foreign principal creative personnel¹ shall be approved by SARFT, and the foreign leads shall not exceed two thirds of the total number of leads. The development and post-production of the negatives and samples of a Sino-foreign jointly produced film shall be completed in China. If such development and post-production are to be completed outside China due to special technical requirements, an application shall be filed with SARFT for approval.

Pursuant to the Measures, for co-produced films by Mainland China and Taiwan, when referring to the regulations related to Sino-foreign cooperation in film production, the following rules shall apply:

- 1) In regards to Joint Production films, the plots and leading characters must be related to Mainland China or Taiwan;
- 2) In regards to Joint Production films, the employment of foreign principal creative personnel shall be approved by SARFT. Except for requiring at least one third of the leads to come from Mainland China, there is no restriction on the percentage of foreign principal creative personnel;
- 3) Subject to the approval of SARFT, the development and post-production of the negatives and samples of co-produced films may be completed in Taiwan, without being limited to only special technical requirements;
- 4) Films co-produced by Mainland China and Taiwan are treated as domestic films for the purpose of distribution in Mainland China pursuant to the applicable PRC laws.

Taiwanese Investments in Movie Theaters

Under PRC law, foreign investments in movie exhibitions are restricted, and foreign investors may not hold more than 49% of the equity interests in any PRC movie theater company. In a

¹ Creative personnel refer to individuals performing the roles of director, screenwriter, cinematographer, and leads.

Sino-foreign joint venture movie theater company established in one of the trial cities, Beijing, Shanghai, Guangzhou, Chengdu, Xi'an, Wuhan, and Nanjing, the foreign investor shall not hold more than 75% of the equity interests. Notwithstanding the foregoing, "Hong Kong and Macau service providers" may construct or renovate movie theaters for film exhibition by taking the form of joint ventures or wholly owned enterprises.

According to the Measures, Taiwanese investors that invest in movie theaters shall comply with the restrictions applied to normal foreign investors, which require the shareholding percentage of Taiwanese investors in the joint venture to not exceed 75% in trial cities and not exceed 49% in other cities.

Important Announcement

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