Comparison of Decision-Making Analysis of Labor Rights Protection under Mergers and Acquisitions of Enterprises in Taiwan, Japan and Korea

Jun-yuan KUO
No. 1, Kainan Rd., Luzhu Dist., Taoyuan City 33857, Taiwan (R.O.C.)

Keywords: Mergers and acquisitions of enterprises, Labor rights protection, Integrated inductive method, Decision-making analysis.

Abstract. When enterprises conduct mergers and acquisitions, both the employers and the employees will face different problems. If the government is capable of overall coordination and planning, properly guides the enterprises and ensures the most basic rights for laborers, it will greatly boost the labor rights status in Taiwan. This study applies the integrated inductive method to explore the decision-making on labor rights protection of Taiwan, Japan and Korea during mergers and acquisitions of enterprises. It is found that after the mergers, acquisitions or reorganization of enterprises, the retaining and working conditions of the original employees are determined by the employers in Taiwan. However, in Japan and Korea, all the employees are retained while the working experience and conditions of the employees in the original enterprises are recognized. When employees agree to stay after the mergers and acquisitions but decide to leave in the future, they cannot request severance fees from the new employers in Taiwan. However, in Japan and Korea, it is stipulated that the new employers shall pay the severance fees. The above findings may serve as the reference for the Ministry of Labor of Taiwan in promoting the decision-making of the labor rights protection system.

Introduction

According to the Taiwan Mergers and Acquisitions Law, the mergers and acquisitions include mergers, acquisitions and divisions. The problems that may emerge in mergers and acquisitions can be divided into individual labor rights, collective labor relations (trade unions and group consultations), employee benefits, and repatriation after occupational disasters, which involve the elimination of the retained enterprise personnel, employee salary, enterprise training and other labor conditions as well as the elimination of the rights protection of retired and leaving personnel and the employment safety system after the mergers and acquisitions of enterprises.

Taiwan government plays a very important role in mergers and acquisitions of enterprises mainly because all the mergers and acquisitions are related to the laws. As the formulator and implementer of laws, Taiwan government directly affects the success or failure of mergers and acquisitions of enterprises. In response to changes in the current situation, some of the related mergers and acquisitions regulations remain to be improved. In addition, relevant labor rights regulations require an international outlook, while the merits of other countries need to be considered in order to improve the laws and regulations in Taiwan.

During mergers and acquisitions, both the employers and the employees will face different problems. If the government is capable of overall coordination and planning, properly guides the enterprises and ensures the most basic rights for laborers, it will greatly boost the labor rights status in Taiwan. This study compares the information about mergers and acquisitions of enterprises in Taiwan, Japan and Korea, and expects to provide relevant recommendations for the relevant agencies in formulating regulations and systems.
Literature Review

Information on Mergers and Acquisitions of Enterprises in Taiwan

Facing the rapid globalization processes, Taiwan has not kept up in industrial transformation, structural adjustment and regional economic integration. Therefore, assisting in industrial transformation and repositioning economic development is an important issue in Taiwan. As Taiwan enterprises are mainly small and medium-sized enterprises, they cannot survive in the global market by only striving alone. By economic integration, enterprises of the same or similar nature can work jointly and are more likely to compete with other international enterprises.

The mergers and acquisitions of enterprises in Taiwan has the following characteristics:

1. Relevant laws and regulations are separately formulated, establishing the basic legal system for the mergers and acquisitions of enterprises.
2. The procedures of mergers and acquisitions are simplified, which facilitate the mergers and acquisitions of enterprises.
3. The modes of mergers and acquisitions are diversified, avoiding the obstruction of current laws and regulations.
4. After the mergers and acquisitions of enterprises, the regulatory mechanism of labor relations becomes flexible.

Taiwan government has established dedicated laws for mergers and acquisitions of enterprises. By the end of 2018, there have been more than 3,500 mergers and acquisitions cases of enterprises in Taiwan, with an amount exceeding NTD 1,100 billion, which contributes a lot to improving corporate performance and increasing international competitiveness.

In addition, as the impact of enterprises on the whole society increases, the revision of laws and regulations in Taiwan in recent years has paid great attention to the social responsibilities of enterprises. Whether enterprises have fulfilled their social responsibilities during mergers and acquisitions, and ensured that employees’ rights are protected has become one of the characteristics valued by the mergers and acquisitions of enterprises in Taiwan [1].

Information on Mergers and Acquisitions of Enterprises in Korea

The mergers and acquisitions in Korea refer to combination of enterprises, which means to transfer one enterprise to another enterprise. Mergers refer to merging multiple enterprises into one single enterprise while the acquisitions refer to acquiring the management or sales of the enterprise, which is commonly referred to as mergers and acquisitions in Korea.

There is no dedicated law in Korea to govern and manage mergers and acquisitions. Instead, Korea adopts multiple control means. For example, Article 24 of the South Korean Labor Standard Law stipulates the limitation of dismissal. The first item specifies that “Unless out of urgent operational necessity, employers shall not dismiss their employees due to operational causes”, which aims to protect employees from being dismissed due to mergers and acquisitions.

As the mergers and acquisitions cases of enterprises in Korea keep increasing, employment inheritance and industrial relations must be considered. However, in current Korea, when the mergers and acquisitions are involved, third-party intervention is commonly solicited, such as the Civil Defense Labor Relations Committee. On January 28, 2019, Korea invited local business groups to hold seminars on diagnosing violations of labor rights and seeking the social responsibilities of enterprises. The focus of the seminar was on the social responsibilities of enterprises in the process of mergers, acquisitions and restructuring, the protection of labor rights and related policy decisions [2].

Information on Mergers and Acquisitions of Enterprises in Japan

According to Article 5 of the Company Law in Japan, the mergers and acquisitions behaviors of enterprises include: organizational changes, mergers (including absorptive mergers and establishment mergers), division of enterprises (including absorptive division and establishment division), share exchanges and transfers.
The analysts from Mitsubishi UFJ Morgan Stanley Securities and Nomura Securities in Japan pointed out that due to the domestic economic maturity and population crisis in Japan, enterprises are actively seeking opportunities to acquire enterprises in Europe, the United States and other developed countries in order to improve investment efficiency and ensure revenue. Japanese Economic News reported on April 3, 2017 that it was common for Japanese enterprises to secure their revenue sources by acquiring advanced enterprises with high technological advantages, brand capabilities and access in developed countries. According to RECOF, a Japanese M&A consultant company, the amount of mergers and acquisitions on overseas enterprises in Japan in 2016 reached JPY 10,912.7 billion, and the number of mergers and acquisitions cases was 627, both hitting record highs [3].

To address the above issue, Japanese government has kept amending the regulations on mergers and acquisitions of enterprises. In 2016, the Ministry of Health, Labour and Welfare promulgated the Notice No. 318, which pointed out the matters that Japanese enterprises shall pay attention to during mergers and acquisitions or business transfer. For example, the transfer and inheritance of labor contracts shall be consented by the employees in order to smoothly implement the mergers and acquisitions as well as protect the employees [4].

**Integrated Inductive Method**

**Induction of laws**

As far as the structure of laws is concerned, Taiwan and Japan have formulated specific laws and regulations on the mergers and acquisitions of enterprises while Korea has no dedicated law on the mergers and acquisitions of enterprises, which are regulated by multiple laws. However, the legal provisions are inclined toward employers in Taiwan. For example, the working and retaining conditions of the employees are determined by the old and new employers while the employees have no right to speak. In addition, although the employees can receive severance fees when they do not agree to stay or are not retained, if the employees agree to stay but decide to leave due to personal factors such as poor adaptation to working environment, they cannot request severance fees. In comparison, the laws in Japan and Korea are inclined toward the protection of labor rights.

**Induction of mergers and acquisitions process**

The mergers and acquisitions process in Taiwan is compared with that in Japan and Korea. In Korea, during mergers and acquisitions, the Labor Relations Committee will invite enterprises and groups to jointly hold a seminar. In Japan, the mergers and acquisitions of enterprises above a certain size require the government intervention before the approval of mergers and acquisitions. In Taiwan, there is no third-party official or civil society organization involved in assisting in the mergers and acquisitions of enterprises.

**Empirical research**

According to Table 1, after the mergers, reorganizations or transfer of enterprises, the working and retaining conditions of the employees are decided by the old and new employers in Taiwan. However, in Japan and Korea, all the employees shall be retained. Regarding the working experience of employees in the original enterprises, Taiwan, Japan and Korea stipulate that the new employers shall recognize the working experience of employees in the original enterprises. According to Table 1, when the employees agree to stay after the mergers and acquisitions of enterprises but decide to leave in the future, they shall not request severance fees from the new employers according to the regulations in Taiwan. However, in Japan and Korea, it is stipulated that the employees shall be given severance fees.
Table 1. Comparison of legal provisions on mergers and acquisitions of enterprises in Taiwan, Japan and Korea.

<table>
<thead>
<tr>
<th>Related laws in Taiwan</th>
<th>Legal provisions in Taiwan</th>
<th>Legal provisions in Japan</th>
<th>Legal provisions in Korea</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 16 of Corporate M&amp;A Law</td>
<td>After the mergers and acquisitions, the new employers determine the retained employees and the working conditions, and then notify the employees in writing. The new employers shall recognize the working experience of the retained employees in the original enterprises.</td>
<td>After the mergers and acquisitions, the new employers shall recognize all the working experience and conditions of the employees in the original enterprises, and the working conditions shall not be arbitrarily changed.</td>
<td>After the mergers and acquisitions, the new employers shall retain all the employees and recognize all the working experience and conditions of the employees in the original enterprises (shall not arbitrarily dismiss employees).</td>
</tr>
<tr>
<td>Article 17 of Corporate M&amp;A Law</td>
<td>After the mergers and acquisitions, the employees who are not retained or reject retention shall be paid pensions or severance fees. The employees who agree to stay but decide to leave in the future due to personal reasons shall not request the new employers to pay the severance fees.</td>
<td>For the employees who agree to stay during mergers and acquisitions but decide to leave due to poor adaptation to new working environment or personal reasons, the new employers shall still pay severance fees.</td>
<td>For example, in Japan, even if the employees agree to stay, they can also request the new employers for the severance fees when leaving the enterprise in the future.</td>
</tr>
<tr>
<td>Article 20 of Labor Standard Act</td>
<td>When a public organization is reorganized or transferred, the old and new employers determine the retained employees, and the employees who are not retained shall terminate the contract and receive severance fees. The working experience of the retained employees shall be recognized by the new employers.</td>
<td>When a public organization is reorganized or transferred, all the employees shall be retained. The employees who do not stay shall terminate the contract and receive severance fees. The working conditions and experience of the retained employees shall be recognized by the new employers.</td>
<td>When a public organization is reorganized or transferred, the retention, working conditions, and experience of employees shall be fully recognized. The employees who do not stay shall terminate the contract and receive severance fees.</td>
</tr>
</tbody>
</table>

Source: [5],[6],[7]

Conclusion and Suggestions

Although the current legal provisions in Taiwan protect the original working experience of the employees after the mergers and acquisitions of enterprises, the working and retaining conditions of the employees are decided by the old and new employers. The employees can only passively agree or reject, and have no right to voice their opinions. Although it might be difficult to change the legal provisions in reference to the system in Japan and Korea, Taiwan government may consider adding the labor agreement in the process so that the affected employees can participate in the negotiation process by individuals or trade unions, and express their opinions, rather than let the employers decide their future.

If the employees agree to stay, they may not be able to request severance fees in the future when they decide to leave. It is recommended to set a consideration period, such as one month, so that the employees can consider whether to stay in the new enterprise after the mergers and acquisitions. During the period, if they find it difficult to adapt to the new environment and decide to leave, they can still request severance fees. After the period, the current legal provisions in Taiwan shall prevail.

In addition, the current mergers and acquisitions of enterprises in Taiwan are mainly based on both employers and employees, which does not involve third parties as in Japan or Korea. It is suggested that the government can send professionals or teams to participate but not intervene in the
mergers and acquisitions after receiving a notice on mergers and acquisitions for the purpose of understanding whether the enterprises comply with the regulations in the process of mergers and acquisitions, and providing related labor information and legal counseling, etc.

Acknowledgement
This study is part of A Study on International Comparative Analysis and Case Study of Labor Rights and Interests in Enterprise Mergers and Acquisitions, Institute of Labor, Occupational Safety and Health, MOL, 2019.

References
[1] Director Zhang, Department of Commerce, MOEA, Personal Interview Content, 2019.08.28.