

## Trade

### Taiwan

#### 1. Export controls

- (1) Industrial Development Bureau officially abolished "Examination Directions of Export of Equipment for Semiconductor Production to the Mainland Area" effective on 26 June, 2015.

Accordingly, sale of semiconductor manufacturing equipment to China, defined as a "trade" (rather than "investment") activity will no longer be subject to an advance approval from the Bureau.

- (2) Following the EU's amendments to the EU Dual-Use List and EU Common Military List (EU No 1382/2014) in 2014, the Bureau of Foreign Trade (the "BoFT") issued the ruling to track the 2014 EU lists as the new SHTC Control List, effective on 26 May 2015.

The new list introduces more than 400 changes, including controls on new categories of items such as IT intrusion software or spyware, and telecommunications and internet surveillance equipment. This new list also intends to control the use of surveillance technology and cyber-tools that could be misused in violation of human rights. Also, this new list introduces additional "notes to the cryptography notes," which further addresses the application of cryptography exemption.

- (3) Starting from April 21, 2014, the SHTC Regulations, providing certain export permit exemptions for exports to the US and Japan.

Accordingly, if SHTC items are to be exported to the US or Japan under either of the circumstances listed below, and the overseas trader is not on the "black list," an export permit is not required:

- (a) Where the total value (FOB) of the same commodity subject to export control is less than NTD 300,000

[www.bakermckenzie.com](http://www.bakermckenzie.com)

For further information  
please contact

Chris Tsai  
Tel: +886 2 2715-7310\_  
[chris.tsai@bakermckenzie.com](mailto:chris.tsai@bakermckenzie.com)

- (b) Where an exporter is a certified Internal Control Program Exporter
- (4) Starting from December 25, 2015, Cuba is no longer listed as a controlled country

## Commerce

### Taiwan

#### 3. Cyber Security

Taiwan government introduced the Commercial Electronic Mail Management Act (“Bill”), an anti-spam bill. The Bill, which is still in the legislative process, defines unsolicited email or spam as email intended to market commercial products or services which are not based on an existing relationship between the sender and the recipient. The Bill seeks to reduce the burden of commercial emails by introducing (i) consumer consent and other requirements with which commercial email senders must comply with, and (ii) by giving spam recipients the right to recover damages.

Under this Bill, spam will be considered legitimate only if the recipient consents to receiving it. The law will authorize a sender (a legal entity, group or individual who initiates commercial email) to send an initial unsolicited commercial email, provided the email is clearly marked as a commercial advertisement, contains the sender’s name and business address and gives the recipient an opt-in option to receive subsequent messages from the sender. The recipient’s failure to respond to the sender’s initial email constitutes that recipient’s refusal to receive the sender’s subsequent messages. The Bill will also prohibit most forms of randomly generated spam, including those that harvest email addresses derived from alpha-numeric searches.

If passed and promulgated as expected, the Bill will give spam recipients a right to recover NT\$500 to NT\$2,000 (approximately US\$17 to US\$69) from the sender for each unauthorized commercial email. It will also authorize class action lawsuits by authorized organizations on behalf of at least 20 persons. An early version of Taiwan’s proposed anti-spam legislation was criticized because it imposed heavy obligations on internet service providers by requiring them to implement specific measures to prevent commercial email abuses.

As of today, this Bill is still under review by the commission of the Legislative Yuan. There is no new development on the Bill or its proposed amendments.

Further, the actual contents of the law may be different from the current Bill.

#### **4. Personal Data Protection**

Taiwan's Personal Data Protection Act ("PDPA") was further amended on December 31, 2015, and the amendment came into effect on March 15, 2016. The amendment mainly include:

**Sensitive personal information:** The collection and use of sensitive personal information, including medical records, medical treatment, genetic information, sexual life, health examination and criminal records are possible, but are subject to more stringent requirements. Basically, unless separately permissible under the laws or regulations, the data subject's consent is necessary.

**Negative consent:** Negative consent by the data subject is permissible, if the data subject has provide the personal information. The data collector has the burden of proof regarding the data subject's consent.

**Bases for collection and processing of personal information:**

- Existing contractual or quasi-contractual relation can be the basis but under the amendment the data collector also needs to have sufficient security measures.
- A new basis that the collection and processing has no adverse impact to the data subject is added.

**Purpose of use:** Only under exceptional situations the data collector can use the information outside of the intended purpose. The exception that the use is beneficial to the data subject is now added.

**Penalty:** The penalties for violations of the PDPA are imposed if the violator has intention to increase his/her illegal benefits or to damage the data subject's interests.

The PDPA imposes criminal (imprisonment for up to 5 years, detention and/or a fine up to NT\$1,000,000 (approximately US\$33,700)), civil (damage ompensationat NT\$500 to NT\$20,000 (approximately US\$17 to US\$674) per person per incident) and administrative (fine from NT\$50,000 (approximately US\$1,685) to NT\$500,000 (approximately US\$16,850), which may be imposed repeatedly until violation is cured) liabilities for non-compliance. In addition, other punishments under the Criminal Code of Taiwan and/or civil damages under the Civil Code of Taiwan in relation to protection of privacy and confidential information may also apply.

The PDPA does not apply to foreign entities not subject to

legal jurisdiction of Taiwan. However, if the foreign entity's collection, use, processing and/or transmission of personal data are facilitated by a local counterpart, that local counterpart will be held liable where the aforesaid act violates the PDPA.