

Taiwan
**Economic
Forum**

經濟新訊 NEWSLETTER

經建會法協中心

法規鬆綁

《營業祕密法》三讀通過

立法院院會三讀通過《營業祕密法》部分條文修正案，新增不法廠商及洩密者的刑事責任，強化智慧財產保護以鼓勵創新，將對台灣引入國外技術有「加分」作用。

經濟部智慧局表示，《營業祕密法》未修訂前，業界多認為僅以「民事責任」之損害賠償規範不當竊取商業祕密，很難產生嚇阻效果；此次修法後，加入刑事責任，同時也加重刑責，除可嚇阻國內科技業員工因被挖角，而將公司營業祕密帶到海外的情事外，也可讓國外廠商瞭解台灣捍衛智慧財產權的決心，鼓勵創新技術，進而帶動台灣與外商合作開發新技術或技術移轉。

根據修正條文，境內侵害營業祕密行為，將處 5 年以下有期徒刑，得併科新台幣 100 萬元以上、1,000 萬元以下罰金。此外，犯罪所得若超過 1,000 萬元，可在所得利益 3 倍範圍內酌量加重罰金。

如屬境外或域外侵害營業祕密行為，則增訂可處 1 年以上、10 年以下有期徒刑，得併科 300 萬元以上、5,000 萬元以下罰金。而犯罪所得利益若超過 5,000 萬元，也可依所得利益的 2 倍至 10 倍科罰。

智慧局說，營業祕密犯罪具有蒐證困難的特點，因此這次修法也特別訂定「窩裡反」條款。由於侵害營業祕密刑事責任為「告訴乃論」罪，只要洩密員工

坦承犯行，提出訴訟之公司可以不告自己的員工，僅對竊取祕密的廠商提告，以提高訴訟效率，節省司法資源。

醫農藥專利期延長放寬

新版《專利法》元旦起上路，智慧局為鼓勵業界持續研究開發生技新藥及提高投資意願，並維護專利權人權益，將放寬醫藥品及農藥品的專利權保護期延長之相關限制。

智慧局表示，現行法規規定，業者獲得醫藥品和農藥品專利後，尚須取得衛生署或農委會核發許可，才可以量產上市；因此，在實務上，可能產生藥品尚未上市，但專利已經開始生效，且專利保護期持續消耗的問題。

為維護專利權人權益，舊版《專利法》規定，專利權人取得醫藥品、農藥品或其製造方法專利後，因進行臨床實驗及等待衛生署核發上市許可，以致專利無法行使之期間，可以要求彌補；但此專利期間延長申請，需以 2 年為門檻，如補償期少於 2 年，即無法適用。

而元旦上路之新版《專利法》，則進一步放寬此專利期限延長規定，如因臨床實驗或查驗登記審核導致專利權無法實施之期間，即使只有 3 天，亦可提出專利期延長申請。智慧局表示，拿掉 2 年的門檻限制後，專利期間補償機制更符合公平正義原則。

不過，此專利保護期之補償計算，如有申請時間上之重疊，智慧局將予以扣除；如在國內、外進行不同臨床試驗期間重疊、臨床試驗與查驗登記審查期間重疊，或是申請人因其他原因拖延之期間，都無法納入計算。

外籍旅客小額退稅通關免驗

基於提高旅客消費意願，並進一步優化購物退稅品質，財政部、交通部預

告修正外籍人士機場小額退稅辦法，將改採「源頭管理」，避免旅客離境時因退稅查驗排隊久候。

現行外籍旅客購物退稅金額在新台幣 1 千元以下，雖可以申辦現場小額退稅，但旅客在出境時，仍應向海關申請查驗，海關再依風險管理機制，抽核審驗相關文件並查驗貨物，以致旅客須排隊等候退稅。

財政部統計，自 2011 年 7 月起實施的現場小額退稅制度，截至 2012 年 6 月止，外籍旅客共申辦 23 萬多件，退稅金額為 9,239 萬元。其中，經海關審查發現不合格件數為 1,947 件，占申請現場小額退稅查驗案件比率 1.21%，經海關審查發現不合格件數比例相當低。因此，未來外籍旅客辦理小額退稅，可免向海關申請查驗，以簡化流程。

同時，為掌握課稅，如 1 年內查到營業人 3 期末依規定開立現場小額退稅明細核定單，或有記載不實的情形，造成溢退或誤退稅款的件數，占各期開立表單總件數的千分之三，且誤（溢）退稅款金額達 3 萬元以上，除將廢止其現場小額退稅資格，該營業人 1 年內也不得再行提出申請。

另外，實務上，由於常發生外籍旅客購物未完成申辦退稅作業，再次入境時要求退稅的爭議，修法後，購物後首次出境如未提出退稅申請，將不得於事後申請退還營業稅。

新聞快遞

GPA擴大開放採購市場

配合世界貿易組織（WTO）政府採購委員會採認修正「政府採購協定」（GPA），立法院 2012 年底通過新版 GPA 法律文件案，同意接受新版內容，同時附帶決議，請經濟部成立專案小組，協助整合廠商參與國際競標。

目前 GPA 計有 42 個國家參與，主要會員包括美國、加拿大、歐盟、日本、韓國及新加坡等。依 WTO 公布資料，現行 GPA 各會員承諾開放政府採購市場約 1.6 兆美元。我國於 2009 年 7 月成為 GPA 正式會員，得以分享該協定所帶來的龐大政府採購市場商機，同時也開放 GPA 會員參與國內政府採購。

依據 GPA 內容，簽署國應在 2014 年全部適用新版 GPA，進一步開放中央或地方政府採購市場，全球估計可望再增加高達 800 億至 1,000 億美元新商機。

工程會統計，自 2009 年至 2012 年上半年，外商參與我國政府採購，累計得標為 4,846 件，決標金額共新台幣 2,907.8 億元（約 98.57 億美元），占決標總金額 30%。工程會表示，雖然新北市政府、台中市政府、台南市政府雖還未納入 GPA 之適用，但部分採購案件已允許外國廠商參與。

另有鑒於我國多為中小企業，在參與國際標案上，不僅缺乏相關經驗且規模較小，常無法與其他國家企業競爭，因此立法院促請經濟部成立專案小組，協助整合國內廠商，爭取國際標案商機。

經濟部9億布局高值專利

經濟部鎖定六大新興及四大智慧產業等重點領域，5 年投入約新台幣 9 億元，落實高價值專利及前瞻策略，以擴大智財運用價值，打造產業發展防護罩，因應未來智財挑戰。

經濟部次長杜紫軍表示，過去關鍵專利技術多由國際大廠掌握，台灣產業發展不時受制於高額權利金及專利侵權威脅。為扭轉這樣的局勢，透過政府的政策及民間的產業力量，強化高價值專利及前瞻技術的專利布局，將可提升我國智財保護強度，並促進產業競爭力。

經濟部初步評估重點領域中具發展潛力的項目包括 OLED（有機發光二極體）、智慧電動車、智慧自動化、智慧聯網應用服務、下世代裝置的智慧使用

介面、高階醫材、AMOLED（主動式有機發光二極體）、智慧綠能電子／車電關鍵技術、智慧樂活與消費服務、智慧溫室工程等。

此外，工業技術研究院已於 2011 年成立創智公司，將協助國內產業進行技術檢視與專利分析，希望在未來一兩年內透過國內企業集資方式成立基金，藉由基金到國內外購買專利，以因應未來業界可能面臨的專利訴訟。

手機刷卡消費開放

智慧型手機將兼具信用卡消費功能！金管會已同意銀行公會訂定的《信用卡業務機構辦理手機信用卡業務安全控管作業基準》，即日起金融機構檢附營業計畫書等資料向金管會提出申請，即可開辦手機刷卡業務。未來信用卡資料存入手機 SIM 卡或 microSD 卡中，民衆透過智慧型手機可輕鬆消費。

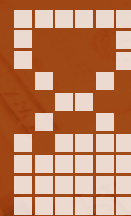
金管會表示，為保護消費者個資，已明定辦理該業務應符合的安全機制，包含訊息隱密性及完整性、來源辨識性、不可重覆性及金鑰管理（key management）等要求。

在試辦期間，國內已有 5 家銀行辦理小規模的手機信用卡業務，現在安控規範上路後，銀行皆可申請開辦這項業務。

金管會說，之前試辦時技術系統是採取背夾的方式，即只要更換手機，就不能再使用；未來消費者可以使用無線傳輸的方式，進行安全儲存媒介內軟體、參數設定、相關資料下載或更新，就沒有換手機就不能再使用的問題。

為了保障消費者的權益，健全市場發展，金管會 2010 年規定信用卡交易免簽名的單筆最高金額不可超過新台幣 3,000 元，手機信用卡因具有密碼等保護消費者的機制，交易金額可不受限。🔒

Taiwan New Economy Newsletter



Deregulation Progress

Legislature passes revised Trade Secrets Act

A partial revision of the Trade Secrets Act that the Legislative Yuan recently passed adds criminal liability for offending companies and those who leak secrets. By encouraging innovation through the reinforcement of intellectual property right protection, this change will help boost the introduction of technologies from overseas into Taiwan.

The Taiwan Intellectual Property Office (TIPO), a unit of the Ministry of Economic Affairs, notes that prior to the revision most business people felt that the law provided for compensation for the illegal acquisition of trade secrets under civil liability, making it difficult for the law to produce a deterrent effect. The revised provisions add criminal liability and stiffen penalties. This will deter Taiwanese technology workers who are poached by foreign companies from taking trade secrets with them when they go to work abroad. It will also give foreign companies a better understanding of Taiwan's determination to guard intellectual property rights, encourage technological innovation, and stimulate cooperation between Taiwanese and foreign companies in the development or transfer of new technology.

Under the revised provisions, infringement of trade secrets in Taiwan subjects the violator to imprisonment of up to five years plus a fine of NT\$1 million to NT\$10 million. If gains from such illegal behavior exceed NT\$10 million, the fine can be increased to up to three times the illegal gains.

The penalty for infringement of trade secrets overseas will now be imprisonment of one to 10 years plus a fine of NT\$3 million to NT\$50 million. If the illegal proceeds of the misappropriation of trade secrets exceed NT\$50 million, the fine can be increased to two to 10 times the illegal gains.

TIPO notes that since it is difficult to collect evidence of trade secrets violations, the recent revision also contains a provision to deal with "internal violators." Since infringement of trade secrets is an "Antragsdelikt" (one that cannot be prosecuted without a complaint by the victim), if an offending employee admits to his or her guilt the employer may elect to bring charges not against the employee but only against the company that steals the secrets. This will enhance the efficiency of litigation and save judicial resources.

Patent extension rules relaxed for pharmaceuticals and agrochemicals

With the new version of Taiwan's Patent Act taking effect on January 1, the Taiwan Intellectual Property Office (TIPO) will loosen restrictions on extending the term of patent protection for pharmaceuticals and agrochemicals as a means of encouraging R&D and boosting willingness to invest in biomedicines, while upholding the rights of patentees.

TIPO points out that under current rules, after someone receives a pharmaceutical or agrochemical patent he or she is allowed to mass produce and market the product only after receiving a permit from the Department of Health or Council of Agriculture. In practice, this could result in a patent taking

effect, and the term of the patent being partially used up, before the patented product is put on the market.

The old version of the Patent Act allowed a patentee to apply for an extension of the patent term in case a patent for a pharmaceutical, agrochemicals, or manufacturing process thereof could not be used because of the need to carry out clinical trial or to wait for market approval from the Department of Health; but the minimum extension was two years, so this provision could not be applied if the period of redress was less than two years.

The new version of the Act relaxes the rules for extending the term of a patent that cannot be exploited because of the time needed to carry out clinical trials or registration, even if the time involved is no more than three days. The removal of the two-year minimum, TIPO says, brings the patent-term extension mechanism into conformity with the principles of fairness and justice.

If the period of patent extension overlaps with the period of application, TIPO will subtract the overlap. Any overlap between clinical trials carried out in Taiwan and overseas or between clinical trials and registration, or any delay by the applicant for other reasons, will not be included in the calculation of patent extension.

Tax refunds for foreign travelers to be exempt from examination

The Ministry of Finance (MOF) and Ministry of Transportation and Communications (MOTC) have issued a notice of proposed rulemaking

in regard to an amendment of the regulations governing value-added tax (VAT) refunds for foreign travelers. The amendment, which is designed to boost consumption and optimize the quality of the VAT refund experience, will provide for a shift to "management at the source" so as to avoid travelers having to spend time queuing in lines for tax-refund examination when they depart the country.

Foreign travelers buying items eligible for tax refunds are now allowed to apply for the refunds at the site of purchase, but they are still required to have the items examined by Customs when they depart the country. Customs applies a risk-avoidance mechanism and examines the relevant documentation and products on a random basis, making travelers line up and wait for their tax refunds.

MOF statistics show that since the implementation of the VAT refund system in July 2011, foreign travelers had applied for 230,000 refunds and received NT\$92.4 million in rebates. The number of ineligible cases uncovered by Customs examination during that time amounted to 1,947, or 1.2% of the total—a very low ratio. In the future, foreign travelers applying for the VAT refund will not have to undergo Customs examination.

If an authorized tax refund store fails to provide tax-refund assessment forms as required by the regulations, or if it provides fraudulent forms, and if the number of excessive or fraudulent tax refund forms amounts to 0.3% of the total number of forms issued and the amount of excessive or fraudulent tax refunds reaches NT\$30,000 or more, then that store's authorization to provide on-site refunds will be abolished and the store will not be allowed to reapply for authorization within one year.

The amendment addresses, in addition, the problem of disputes arising when foreign travelers fail to complete tax-refund procedures for their purchases prior to departure and then ask for a refund the next time they enter Taiwan. Following the revision, foreign travelers must apply for the refunds prior to departing Taiwan the first time after their purchases.

News Express

Expansion of GPA bidding opportunities

Following the adoption of a revised Government Procurement Agreement (GPA) by the Committee on Government Procurement under the World Trade Organization (WTO), the Legislative Yuan passed a bill at the end of last year agreeing to accept the new version. An accompanying resolution asked the Ministry of Economic Affairs to set up a task force to help integrate participation in international bids by local companies.

Forty-two economies have currently signed on to the GPA, including the U.S., Canada, the EU, Japan, Korea, and Singapore. According to the WTO, the government procurement markets which the signatories are committed to opening up amount to a total of approximately US\$1.6 trillion. Taiwan became a GPA member in 2009, gaining access to the huge government procurement opportunities it offers and opening its own market to other signatories.

The signatories are required to adopt the new version of the GPA in its entirety by 2014, further opening the procurement markets. This will add new

business opportunities worth an estimated US\$80 billion to US\$100 billion throughout the world.

According to statistics compiled by Taiwan's Public Construction Commission (PCC), from 2009 through the first half of 2012 foreign companies won 4,846 government bids with an accumulated value of NT\$290.8 billion (about US\$9.8 billion) in Taiwan. This was about 30% of the value of all government procurement bids awarded during the period. The PCC notes that although the city governments of New Taipei, Taichung, and Tainan do not yet come under the GPA, foreign companies are permitted to bid on some of their government procurement projects.

The Legislative Yuan asked the Economics Ministry to set up a task force to integrate bidding on international government procurement projects by domestic companies because most of them are small- or medium-sized enterprises that, on their own, lack both the experience and size needed to compete with companies from other countries in international bidding projects.

MOEA earmarks NT\$900 million for high-value patents

The Ministry of Economic Affairs (MOEA) plans to pour about NT\$900 million into high-value patents and forward-looking strategies for Six Key Emerging Industries and Four Major Intelligent Industries over five years. The aim is to expand the value of intellectual property utilization, create a protective shield for industrial development, and cope with the intellectual property challenges of the future.

Vice Economics Minister Tyzz-Jiun Duh notes that in the past patented technologies were mostly controlled by big international companies, leaving Taiwan's industrial development, at times, restricted by expensive patent royalties and the threat of patent-infringement action. This situation needs to be turned around; government strategy along with the power of private industry can be used to reinforce the deployment of high-value patents and forward-looking technologies, strengthening Taiwan's intellectual property rights protection and boosting the competitiveness of its industries.

Preliminary evaluation by the MOEA has pinpointed these key industries with strong potential for development: organic light-emitting diodes (OLEDs), smart electric vehicles, intelligent automation, smart Internet application services, smart user interface for next-next-generation devices, advanced medical devices, active matrix organic light-emitting diodes (AMOLEDs), smart green electronics, smart LOHAS and consumer services, and smart greenhouse engineering.

In 2011 the Industrial Technology Research Institute (ITRI) set up the Intellectual Property Innovation Corporation (IPIC) to help domestic industries carry out technology review and patent analysis in the hope that, within a year or two, local firms will raise capital and set up a fund to purchase domestic and foreign patents, placing them in a better position to deal with patent litigations that might arise in the future.

Mobile credit cards coming to Taiwan

Smart phones are about to become credit cards in Taiwan! The Financial

Supervisory Commission (FSC) has approved the "Security and Control Operating Guidelines for Credit Card Organizations Engaging in the Mobile Credit Card Business" as formulated by the Bankers Association, allowing financial institutions to apply to the FSC for operating the mobile credit card business. Mobile phone users will only need to put their credit card information on their SIM or microSD cards, and then swipe their phones to make credit purchases.

According to the FSC, it has stipulated a security mechanism to which operators of this business must conform to protect the personal information of consumers. This mechanism includes the privacy and integrity of information, the identifiability of its source, its non-duplication, and key management.

Five domestic banks are already engaged in the trial operation of the mobile credit card business on a small scale. After the safety guidelines are implemented, all banks will be allowed to apply for this business.

The FSC notes that, with the back clip system used during the trial period, a user could not use the new mobile phone as a mobile credit card after changing his or her phone. In the future, a user will be able to use wireless transmission to carry out installation of secure element software, parameter setup, and data downloading and updating. This will eliminate the problems associated with changing phones.

Back in 2010 the FSC moved to protect the rights of consumers and provide for healthy development of the market by setting a ceiling of NT\$3,000 on single signature-free credit card transactions. Thanks to the passwords and other security mechanisms that are used to protect mobile credit card users, this ceiling will not apply to mobile transactions. 