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Taiwan enhances penalties for trade secret misappropriation

[Formosa Transnational - Taiwan](#)

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On 11th January 2013 an amendment to the Trade Secrets Act passed its third reading in the legislature, adding regulations with significantly higher fines and longer prison terms, as well as enhanced penalties levied on cases involving misappropriation and delivery of trade secrets to overseas countries. The amendments are a bid to deter industrial espionage in the Taiwanese market as growing business ties across the Taiwan Strait and worldwide have made Taiwanese companies vulnerable to the threat of trade secret misappropriation.

The bill was first introduced by the Taiwan Intellectual Property Office in response to the lack of adequate penalties against the misappropriation of trade secrets, and was strongly supported by Taiwanese companies following a case of corporate espionage in which two former executives of AU Optroics Corp (AUO), who were believed to have passed highly sensitive technology information from AUO to a rival, were released by the prosecutor without bond in November 2012.

Under the amended act, the misappropriation of trade secrets covers the following four types of illegal activity:

- Acquisition of a trade secret by theft, embezzlement, fraud, coercion, unauthorised reproduction or any other improper conduct, or any use or disclosure of illegally obtained trade secrets.
- Unauthorised reproduction, use or disclosure of a trade secret.
- Failure to delete or destroy a trade secret or continuing to conceal a trade secret after being instructed by the trade secret owner to delete or destroy such secret.
- Acquisition, use or disclosure of a trade secret knowing that it was obtained illegally.

The amended act provides that the misappropriation of trade secrets for illicit gains or to the detriment of the trade secret owner is subject to imprisonment for up to five years and fines of between NT\$1 million and NT\$10 million (approximately US\$34,000 to US\$340,000). Moreover, if the illicit gains resulting from the conduct of misappropriation exceed the maximum fine of NT\$10 million, the amount of the fine may be increased by up to three times the amount of the illicit gains at the court's discretion.

In addition, those who misappropriate trade secrets with the intent to use such trade secrets in China, Hong Kong, Macau or another foreign country will face severe penalties of imprisonment of between one and 10 years and fines of between NT\$3 million and NT\$50 million (approximately US\$103,000 to US\$1.7 million). If the resulting illicit gains exceed the maximum fine of NT\$50 million, the fine can be exceeded by up to 10 times the amount of the illicit gains at the court's discretion.

The amended act also provides for heavy criminal fines to be imposed on employers whose representatives, agents or employees misappropriate trade secrets in the course of business, unless the employer has done its utmost to prevent the misappropriation of trade secrets from taking place in the first place. In other words, employers shall not be ignorant of the underlying risk associated with information provided by their employees and should take active measures to prevent its employees from conducting misappropriation of trade secrets in their course of duties.

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