

*This article was originally published in the eGuide, 1999.*

## **Taiwan as a Regional E-Commerce Location**

*By Robin Winkler*

Few countries in the world have a greater stake in the development of e-commerce than Taiwan.

The export-driven economy is betting on Internet appliances to move beyond the personal computer era, local manufacturers rush to incorporate themselves into the supply chains of foreign customers, and as Taiwan Internet IPOs hit the Nasdaq in the US, a third stock exchange is being created to develop e-commerce businesses. Internet access in the palm of every cellular phone user may soon become a reality in Taiwan.

In the meantime, Taiwan's already challenged legal system races to keep up with the ecommerce onslaught.

### **The Setting**

Taiwan is roughly the size of the Netherlands. The island's population of 22 million makes Taiwan the second most densely populated country in the world. Taiwan is located 130 kilometers off the coast of southern China, about equal distance between the Philippines and Okinawa, Japan, and is thus well placed in relation to Southeast Asia, Japan, and north Asia. Per capita income is expected to reach nearly US\$15,000 by the end of 2000.

The population is well educated and a high number of engineers have advanced degrees from the US, Japan and Europe. A large percentage of the population speaks English and Japanese. Although some differences exist in the written language, the national language of Taiwan, Kuo Yu, is almost identical to Putonghua, the national language of China, spoken in Chinese business communities throughout the Pacific Rim.

### **Economy and Politics**

After 50 years as a Japanese colony, Taiwan came under the control of the government of the Republic of China in 1945. The island became the capital of the Nationalist government in 1949 when China came under Communist control.

Taiwan has developed from a centrally planned and primarily export-oriented economy through the 1960s and 70s to one that is much more balanced in terms of imports and exports. In 1998, the country's gross national product was the world's 18<sup>th</sup> largest at US\$262.3 billion. Taiwan is one of the world's top 15 trading nations and its foreign reserves, at over US\$100 billion, rank among the world's top three. Foreign exchange controls are minimal. Foreign enterprises may invest in most sectors through wholly owned subsidiaries, and labour, tax and infrastructure policies are changing almost daily to encourage foreign investment and foreign participation in joint ventures with Taiwan companies.

Politically, Taiwan is a constitutional democracy. A hotly contested presidential election in March 2000 saw the second popularly elected leader in the nation's history. Two major political parties play an important role in the dynamism of the economy and have helped ensure that the move toward the rule of law continues unabated. Print and electronic media in Taiwan are among the least restricted in

the world.

### **Accession to WTO, China Policy, the APROC and NII Initiatives**

Any review of Taiwan's legal environment must take into account three macro policy issues: cross-strait relations between Taiwan and China; accession by Taiwan to the World Trade Organization (WTO); and aspirations to become an Asia Pacific Regional Operations Center (APROC).

China policy is the most sensitive and potentially divisive issue facing policy makers in Taiwan today. China claims sovereignty over Taiwan and does not hesitate to pressure Taiwan's trading partners to exclude Taiwan from international meetings and organizations. In the past, Taiwan's official policy was in agreement with China on the basic "One China" policy, however, policy has now evolved to account for the increasingly complex international situation. On the economic front, China presents the same attraction of major markets, and inexpensive sources of labour and materials to the Taiwanese as it does to the rest of the world. Taiwanese businesses, on account of a shared cultural and language background are in an excellent position to take advantage of this, and Taiwanese investment in China has skyrocketed. Taiwanese business continue to clamour for direct links, yet government leaders often voice concern about China's increasing ability to affect the local economy.

Taiwan is scheduled to enter the WTO this year after its application was submitted ten years ago, and following 26 grueling bilateral negotiations with major trading partners. Even before Taiwan joins the WTO, its leaders have voiced support for, and to considerable extent already applied principles of free trade, transparency and national treatment as the standard for Taiwan's economic legislation and administration regulations.

In the mid-1990s Taiwan adopted an official policy to become an Asia Pacific regional operations center. The APROC initiative aims to attract multinational businesses to establish regional headquarters in Taiwan. In support of this initiative the government has undertaken to revise laws and regulations, increase government efficiency, and proceed with the privatization of a significant portion of Taiwan's economy.

As part of its aim to become a regional telecommunications centre, Taiwan has embarked on constructing a National Information Infrastructure (NII), scheduled for completion in 2005 at an estimated cost of US\$10 billion. The current goals of the NII promotion task force are to have 3 million packet-mode Internet users by the end of 2000, the release of government information for value-added applications by the private sector, and the establishment of digital archives to facilitate content development.

Improving the legal environment for Internet development is also part of the NII's mandate. The NII has targeted 22 laws for modification, and is participating in the drafting of both the Government Information Openness Act and Electronic Signature Act.

### **Use of the Internet**

The Internet has quickly become an important and popular resource for Taiwan's consumers and businesses. A January 2000 survey by Commonwealth magazine revealed that Taiwan had 2.91 million regular Internet users (17% of the population age 15 and over), including an on-line shopping population of 290,000. The survey also showed that 380,000 persons regularly use on-line financial services, primarily to follow investments. Taiwan's retail traders have flocked to the Internet, with on-line trading, as a percentage of total trades in Taiwan, rising from 0.7 percent in January 1999 to an expected 15 percent by the end of 2000.

In 1999, the government completed its goal of establishing computer classrooms with Internet access in all middle and primary schools. Intent on pushing Taiwan further into the information age, the mayor of Taipei has pledged to turn the capital into an "Internet city". Among services planned are free e-mail for all residents, a broadband network for the city, electronic ID cards, and implementation of an "e-government" plan that will allow residents to receive and send government documents

on-line.

Companies are quickly developing ecommerce strategies aimed at Taiwan's technology savvy consumers. For example, Internet-only newspapers have appeared and the convenience store chain 7-11 Taiwan plans to offer e-commerce payment and pickup service at its 2,300 stores - capitalizing on a hesitancy of consumers to divulge credit card information on-line. Meanwhile, cutting-edge Internet-to-mobile technologies are being tested with Taiwan cellular phone users, offering some services computers cannot match. Moreover, local companies are also aiming regional e-commerce strategies at the Chinese-speaking market around the world.

Long known for their quick adaptation to market trends, Taiwan companies are also rapidly moving into the business-to-business (B2B) e-commerce. According to the Institute for Information Industry, 20,000 companies are expected to account for US\$4.4 billion in e-commerce transactions, growing to US\$8.4 billion in 2001, making Taiwan one of the region's most exciting market for B2B solution providers.

The push to move onto the Internet is due in part to demands from multinational companies for their Taiwan suppliers to go on-line. The Taiwan government is promoting the process. In January 2000, the Ministry of Economic Affairs announced plans for a five year, US\$44 million plan to assist manufacturers to incorporate e-business into their operations. The plan's goal is transform the traditional Taiwan business model from original equipment manufacturing (OEM) to global logistics by including e-supply chain management linking 50,000 businesses by 2005.

The Taiwan government is also proposing a fundamental change in the island's economy. A February 2000 white paper by the National Science Council advocates that Taiwan, the world's third-largest producer of information hardware products, should move beyond the era of personal computers into the next stage of consumer technology - Information Appliances (IA). Under the plan, companies engaged in computers, communications and consumer electronics would be encouraged to generate software and focus on Internet TV, Internet communication devices and ecommerce facilities.

Taiwan's e-commerce infrastructure gained a boost in 1999 with the debut of broadband service. State-owned Chunghwa Telecom is also building a broadband network and the fast Internet access service market will soon be crowded with networks under development by private fixed-line telecommunication companies and cable television operators. With Taiwan a test market for Internet access over mobile phones, consumers will have unprecedented choices - fixed line, cable TV and mobile access.

Strong academic programmes focused on ecommerce, particularly in Taiwan's version of Silicon Valley in Hsinchu, are a further indication that the island will continue to enjoy a competitive advantage over regional rivals. Taiwan's engineering prowess is reinforced by close ties with top international IT companies, many of which will be represented at the 2000 World Congress on Information Technology to be held in June in Taipei.

### **Legal framework**

#### **Internet Management Law Nixed - "Let the Market Decide"**

In 1998, a comprehensive Internet Management Law was proposed both to foster the development of the Internet and to control the Internet content. The Directorate General of Telecommunications (DGT), the agency in charge of Internet service providers (ISPs), however, concluded that such a law was unnecessary in Taiwan. The DGT relied in part on the approach of developed countries, such as the US and Japan, which generally allow the Internet to develop free of government regulation.

The DGT also concluded that because it was merely concerned with the technical regulation of the Internet, it was not competent to supervise Internet content. Instead, it decided that provisions of the Criminal Code, Computerized Personal Protection Law, Copyright Law and Trademark Law should govern content.

### **Content - An End to Systematic Censorship**

There is no government agency or specific law that governs Internet content following the repeal of the Publishing Law in 1999. (Under that law, the Government Information Office had the powers to require prior registration and approval of websites and content.) The principle tools currently used to regulate content are provisions in the Criminal Code regarding pornography, libel and gambling. Taiwan authorities have taken several high-profile actions to shut down Taiwan-based websites that offer sexually explicit material.

### **Domain name registration**

In Taiwan, only the Taiwan Network Information Center (TWNIC) is currently authorized to register domain names ending in “.tw” and only companies incorporated in Taiwan will be granted “.com.tw” names. Only companies with Type II telecommunications licences (most telecommunications service providers other than basic carriers) will be granted “.net.tw” names. A foreign company may register a “.com.tw” domain name even if it does not have a registered office in Taiwan. However, such a registrant must appoint a lawyer in Taiwan as an agent to register the domain name on its behalf.

Entities in Taiwan are not restricted to using “.tw” names and may use “.com” and “.net” names approved by registration organizations authorized by the US government, such as Network Solutions. Still, Taiwan entities are advised to register both the general “.com” and the local “.com.tw” name to preclude others from obtaining the alternative designation.

In assigning domain names, Taiwan registers on a “first-come, first-served basis”. TWNIC seeks only to ensure that two entities do not use the same domain name. It does not perform any “likelihood of confusion” analysis with existing domain name registrations or trademarks. Thus, any entity may be able to register a domain name identical to a company name, trademark or other distinctive mark regardless of whether they are entitled to do so.

Although not recognized by TWNIC or the Internet Corporation for Assigned Names and Numbers (ICANN), registration of Chinese domain names is possible in Taiwan through an agent of i-DNS.net International. Similar to “.com.tw” domain names, Chinese domain names are administered on a first-come, first-served basis, and the agent checks to ensure that two companies do not use the same domain name. A company may apply for multiple Chinese domain names. As of now, only the Chinese equivalent of “.com” names are open to registration.

It is expected that disputes over domain names will be settled in Taiwan under trademark and fair trade principles, as they have in the US. In the only domain name case decided to date, the Fair Trade Commission (FTC) ruled on February 24, 2000 that Great Sun, a local computer company, violated Article 24 of the Fair Trade Law when it registered “Carrefour” as a domain name. Article 24 provides that: “An enterprise shall not engage in other deceptive or obviously unfair acts that are capable of affecting trading order.” Even though Great Sun did not create a website for the name, the FTC found that Carrefour was a generally recognized mark and that Great Sun was depriving the European-based hypermarket chain of an opportunity to engage in business with its customers through the Internet. The FTC ordered Great Sun to refrain from using the domain name.

### **Intellectual Property**

The Fair Trade Law’s general provision prohibiting “unfair acts that disrupt normal business practices” is expected to apply to other trademark-related issues, such as hyperlinking and the unauthorized use of meta tags, or “invisible infringement” in which popular trademarks of others are embedded in the hypertext markup language (html). Revisions to Taiwan’s intellectual property laws are expected to follow trends in Europe, the US and international conventions.

A proposed revision to the Trademark Law would extend the definition of “Use of Trademark” to include electronic signals, and advertising on the Internet of products and services using a mark will constitute “use of a mark”.

One Internet-related Copyright Law amendment is also awaiting legislative approval. A new article of

the law regarding “fair use” would allow the Intellectual Property Office to draft standards for multimedia and computer Internet use by libraries and for educational purposes.

### **On-line Transactions**

Existing laws that may come into play in Taiwan to govern transactions completed online include: restricting the capacity of minors to enter into contracts; provisions in the Consumer Protection Law such as the ineffectiveness of “boilerplate” terms if they are difficult to see (e.g. in very small print or attached as an apparently non-essential part of the agreement); and perhaps the seven-day “cooling off” rescission period for mail order and door-to-door sales agreements. Taiwan’s Civil Procedure and Criminal Codes already provide that “documentary evidence” includes “electronic records”, which should include digital data media such as disks used with computers.

The Taiwan government is also currently debating the passage of legislation to provide for the authentication of “electronic signatures”. On December 23, 1999, the Executive Yuan (cabinet) approved a draft “Electronic Signature Law”, but a competing proposal is also under consideration in the Legislative Yuan, and the issue of whether and how to regulate is the subject of scholarly and industry debate. There is already precedent for such a regime in Taiwan - Financial EDI (Electronic Data Interchange).

In November 1998, the government established the Financial Information Service Center (FISC), a private company whose shareholders include the Ministry of Finance and more than 40 banks and other financial institutions. The FISC is to act as a certification authority to provide the electronic signature system for consumers, businesses and the government to transfer funds electronically. The Ministry of Economic Affairs also recently announced the decision to implement an electronic certification system for companies to use to file corporate registrations and tax payments, with the system to be expanded in the future for government procurement and other business activities.

### **Foreign Investment**

As noted above, in most industries foreign investors may operate in Taiwan through a branch of a foreign company or invest in a local company. Internet service providers (ISPs) are classified as type II telecommunications enterprises for which there are no foreign ownership restrictions. For Type I telecommunications (fixed line, mobile and satellite communications) there is a 60 percent limit on foreign investment, of which only 20 percent may be direct investment. For cable system operators the law restricts foreign ownership to 20 percent direct ownership, and the total direct and indirect foreign ownership must be less than 50 percent.

Fueling the interest in foreign investment in Internet-related businesses was a 1999 amendment to the Cable Television Law that removed a prohibition on cross investment between cable television and telecommunications enterprises.

### **Internet Security**

Revisions to Taiwan's Criminal Code in 1999 added a number of provisions to address computer related crimes. Hacking and other destruction of electronically stored data is now a criminal offence. Also, computer data is now included as a kind of chattel or “movable property” and its unauthorized acquisition may therefore be subject to criminal sanctions. Data in computers is considered to be a kind of “document”, subjecting persons who engage in unauthorized editing to the crime of “forgery”. The maximum penalty for most of these crimes is up to five years incarceration. Nevertheless, many in the industry state that Taiwan still lacks adequate deterrents for computer hacking and other related crimes.

### **Capital Markets**

The February 2000 listing of broadband network operator Gigamedia on the Nasdaq - the first Taiwan company ever to list directly in the US - signaled a wave of Taiwan Internet-related companies set to list overseas. Government regulators have made significant modifications to local listing requirements to encourage the rising market stars to remain in Taiwan by removing regulations that prohibited firms with unprofitable track records from listing.

On November 18, 1999, a new listing framework was announced for firms engaged in services related to the Internet. Under the plan, these firms could be approved as "Science and Technology Enterprises", thereby qualifying under special listing classifications on both the Taiwan Stock Exchange and Over-the-Counter market. As such, they will be exempt from profitability, gross revenue, and operating history requirements. In addition, a third market aimed at young high-technology companies is scheduled to be launched in April 2000. The TIGER market will have lower paid-in capital requirements and no profitability standards.

The growing use of the Internet has also raised issues regarding the relationship between offshore securities firms and Taiwan investors. Questions are yet unresolved whether offshore websites providing information to individuals in Taiwan would constitute a securities dealing business in Taiwan, and whether an offer of particular services may be regarded as a public offer and therefore require the registration of a prospectus. Factors in such a determination may hinge on whether only certain investors who have acquired access passwords could access the websites. The Securities and Futures Commission, however, has ruled that companies that send out e-mail newsletters providing investment news and recommending prices for securities transactions are engaging in investment consulting, and therefore must receive approval pursuant to the Securities Exchange Law.

### **Banking**

While the on-line brokerage business has boomed, the development of e-banking has stalled as Taiwan banks await guidelines from the Ministry of Finance on what on-line banking services will be allowed. On-line banking regulations have also been criticized as being too strict. The regulations, for example, would probably limit access to one registered computer per account, thereby preventing customers from accessing their accounts from multiple computers.

The NII task force has suggested several changes be made to better protect consumers using on-line banking. One such change follows the US rule where banks are required to provide evidence of hacking, and there is a maximum amount for which bank customers can held liable for hacking.

### **Taxation**

While Taiwan does charge customs tariffs on overseas deliveries of goods ordered over the Internet, the country has agreed to follow current international practice by exempting digital products downloaded over the Internet from tariffs.

Moreover, on February 15, 2000 the Executive Yuan announced that Taiwan companies are entitled to tax credits for capital investments made to computerise their businesses to offer e-commerce services. Under the ruling, such investment made from July 1 to December 31, 1999 may be eligible for a 20 percent investment tax credit as provided in the Statute for Industrial Upgrading - Taiwan's principle collection of incentives for domestic and inbound investment. The investment tax credit rises to 25 percent for investments made starting in 2000.

### **Conclusion**

While a leading country in the development of e-commerce in Asia, Taiwan still trails the US and Europe by several years. Likewise, Taiwan's legal framework governing this booming industry also lags behind those of advanced countries. Still, given the important role e-commerce and the Internet are playing in Taiwan, the island is committed to rapidly developing its laws and regulations by drawing on trends in the US, Europe and international conventions.

*For more information, please direct an email to Robin Winkler at [rwinkler@gilinlaw.com](mailto:rwinkler@gilinlaw.com).*

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