Client Alert

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Draft of AI Basic Law Forecasts a New Era of AI Regulation in Taiwan

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In brief

On 15 July 2024, Taiwan's National Science and Technology Council (**NSTC**) announced Taiwan's "Draft of AI Basic Law" online, marking a new era of AI regulation in Taiwan. This development follows the EU's formal adoption of the "EU Artificial Intelligence Act" on 12 May 2024, the world's first comprehensive AI Act, significantly influencing Taiwan's AI development given Taiwan's export oriented trading country.

In this issue

AI opens a variety of regulatory environmental impact assessments

Since the advent of various AI technologies, major countries and regions worldwide have enacted relevant regulations to address the challenges and opportunities brought by AI, in summary:

- OECD Recommendation on Artificial Intelligence (May 2019): Providing basic value principles and policy suggestions for member countries.
- Ethics Guidelines for Trustworthy AI (EU, 2019): Ensuring common ethical principles for AI development.
- EU Artificial Intelligence Act (2021 Draft, 2024 Adoption): Comprehensive regulation for AI in the EU.
- In the U.S., the Blueprint for an AI Bill of Rights was released (2022), and in 2023, the Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence was released, setting out the tasks of federal departments to promote the development of AI.
- Artificial Intelligence and Data Act (Canada, 2022): A proposed regulatory framework.

AI impacts numerous sectors such as climate change, environment, healthcare, finance, transportation, domestic affairs, agriculture, and public services. This puts immense pressure on business leaders in these sectors, making AI applications and their impact on the business ecosystem top boardroom agendas. Considerations include:

- Establishing AI corporate governance models.
- Enhancing employee capabilities through machine learning rather than replacing them.
- Navigating legal minefields surrounding intellectual property, data sources, regulation, and personal data protection.
- Balancing the potential of generative AI with cybersecurity and copyright risks.

In summation, this is an environmental impact assessment brought about by AI, encompassing both natural and non-natural environments. As practitioners at a multinational law firm, our goal is to help clients navigate evolving regulations, creating new opportunities rather than passively adapting.

Taiwan's "Draft of AI Basic Law"

The draft of AI Basic Law (**Draft**) in Taiwan is open for a 60-day public consultation following its release. The Draft comprises 18 articles aimed at enhancing Taiwan's government capabilities in AI R&D and application. It outlines seven principles, similar to existing international AI norms and guidelines (cf. Article 3 of the Draft):

1. Sustainable Development: Balancing social equity and environmental sustainability in AI R&D and application.
2. Human Autonomy: Respecting human autonomy and fundamental rights in AI development.
3. Privacy Protection and Data Governance: Adhering to privacy protection and data governance principles.
4. Cybersecurity and Safety: Implementing cybersecurity measures in AI R&D and application.
5. Transparency and Explainability: Ensuring appropriate information disclosure or labelling of AI-generated content to enhance trust.
6. Fairness and Non-Discrimination: Avoiding algorithmic bias or discrimination risks.
7. Accountability: Bearing corresponding responsibilities, including internal governance and external social responsibility.

The Draft also mandates the Ministry of Digital Affairs (**MODA**) to reference international standards or practices to promote an AI risk classification framework and to formulate risk classification norms accordingly (cf. Article 10 of the Draft). The government is also required to enhance trustworthy AI applications through various mechanisms and to establish regulations on AI application conditions, responsibilities, remedies, compensation, or insurance based on AI risk levels (cf. Article 12 of the Draft). Additionally, the Draft explicitly states that the government must safeguard labour rights to prevent adverse impacts on workers due to AI development (cf. Article 13 of the Draft).

EU Artificial Intelligence Act (AIA)

The EU's AIA, set to take effect in 2026, regulates AI as a commodity, adopting a risk-based regulatory approach. The AIA's principles and content not only guide Taiwanese enterprises engaging in global commerce but are also likely to be important references for subsequent Taiwanese legislation. Key points include:

1. Scope: The AIA applies to AI systems placed on the EU market or impacting individuals within the EU, regardless of whether the providers, deployers, importers, or manufacturers are located within the EU. This extraterritorial effect implies that non-EU entities must comply with the act if their AI systems affect the EU.
2. Regulatory Authorities: Member states must establish or designate one or more regulatory authorities to oversee AI system compliance. At the EU level, a European Artificial Intelligence Board will coordinate regulatory activities to ensure consistency and effectiveness across the EU.
3. Risk-Based Regulation: The AIA categorizes AI systems into four risk levels: unacceptable risk, high risk, limited risk, and minimal risk, with stricter regulations for higher-risk systems:
    (1) Unacceptable Risk: AI systems posing threats to public safety and fundamental rights, such as social scoring systems, behavior manipulation technologies, and real-time remote biometric identification systems, are banned within the EU.
    (2) High Risk: AI systems in critical areas like healthcare, transportation, labour, legal, and financial sectors must comply with risk management, data governance, record-keeping, transparency, monitoring, and human oversight requirements.
    (3) Limited Risk: AI systems interacting directly with users, such as chatbots, must adhere to specific transparency obligations, informing users they are interacting with an AI system.
    (4) Minimal Risk: AI systems like spam filters and AI-driven games are subject to minimal regulation, with developers encouraged to follow voluntary codes of conduct.
4. Obligations for AI Providers: AI system providers must ensure their systems meet the AIA's requirements. Post-market, providers must continue to monitor their AI systems.
5. Regulation of General AI: The AIA includes provisions for regulating "general AI," distinguishing between general-purpose AI and system-risk AI, and imposing different obligations on providers.

6. AI Governance Principles: Primarily targeting high-risk AI, these include:
    (1) Risk Management: High-risk AI systems must implement a comprehensive risk management process throughout their lifecycle.
    (2) Data Governance: Ensuring the use of high-quality, relevant, and representative data sets to prevent bias and discrimination.
    (3) Technical Documentation: Developers must prepare detailed technical documentation to ensure system transparency and explainability.
    (4) Monitoring and Record-Keeping: High-risk AI systems must have monitoring capabilities and maintain operational records.
    (5) Transparency and Disclosure: Users must be informed when interacting with AI systems, especially in limited-risk and high-risk applications.
    (6) Human Oversight: High-risk AI systems must be designed and operated to allow effective human oversight.
    (7) Accuracy and Cybersecurity: Ensuring high-risk AI systems are accurate, reliable, and replicable, with comprehensive backup plans.
7. Penalties: The AIA stipulates significant fines for violations. For breaches related to "unacceptable risk AI," fines can reach up to €35 million or 7% of the violator's global annual turnover, whichever is higher. For other regulatory breaches, fines can reach up to €15 million or 3% of global annual turnover, whichever is higher. For providing incorrect, incomplete, or misleading information to authorities, fines can reach up to €7.5 million or 1.5% of global annual turnover, whichever is higher.

Comparison and Commentary

The EU AIA is a comprehensive regulation with 113 articles, meticulously categorizing AI systems by risk level and imposing corresponding compliance requirements and monitoring obligations on providers, with stringent penalties. In comparison, Taiwan's recently announced Draft, with 18 articles, primarily sets out principle-based regulations but already proposes important governance principles such as data governance, transparency and explainability, cybersecurity, and fairness and non-discrimination, in line with international trends. The Draft's legislative reasons also mention promoting an AI risk classification framework, requiring the MODA to reference international standards or norms in this endeavour.

In summation, although the Draft lacks the comprehensiveness, detail, and regulatory mechanisms of the EU AIA, it indicates Taiwan's progression towards international standards in AI regulation. Nevertheless, it remains to be seen which specific agencies will oversee Taiwan's AI development and the concrete implementation details and regulatory mechanisms that will follow from the government, MODA, and NSTC. Meanwhile, the EU's experience can serve as a valuable reference for Taiwan to ensure safe and compliant AI development. Finally, as stated above, the EU AIA has an extraterritorial effect, and its implementation will undoubtedly impact Taiwanese tech enterprises. The government should closely monitor EU developments to assess the impact on Taiwanese businesses in future legislation.

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