

A Brief Introduction to Taiwan's Legislations to Promote Industrial Innovations of the Digital Economy



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I. Background

To encourage the development of digital industries in communications, information, cybersecurity, networking and communication, to centralize digital governance and digital infrastructure development and to assist in digital transformation of public and private sectors in Taiwan, the Ministry of Digital Affairs ("the MODA") was created on August 27, 2022 to spearhead the national digital development policy, communications and digital resources; the development of digital technology use cases and the environment for innovations and talents; policies and regulations governing digital economy industries, national cybersecurity, the government's digital services, open data and data governance, digital infrastructure, international exchange and cooperation and competence standards for the government's professional personnel in IT and informational security. The Administration for Digital Industries (ADI) and the Administration for Cyber Security (ACS) have been established as the MODA's subordinate agencies, to address challenges on all fronts in the digital wave.

As the central competent authority on the industrial development of the digital economy, the MODA may subsidize, incentivize or support innovative activities of digital economy industries in accordance with Paragraph 1, Article 9 of the Statute for Industrial Innovation and determine relevant matters in accordance with Paragraph 2 of the same article. Hence, the MODA promulgated the Subsidy, Reward and Assistance Regulations for Promoting Industry Innovation ("the Regulations") on December 23, 2022, to encourage innovation and R&D on software, services, integration and application in telecommunications, information, cybersecurity, networking, and communication. The purpose is to enhance the industry environment and to boost the industry competitiveness.

These Regulations serve as the MODA's flagship efforts in promotion of industrial innovations and highlights Taiwan's emphasis on digital economy industries. Below is a summary of the Regulations.

II. Scope

As stated in the overview described in Article 2, the Regulations aim to assist in the development of software products, digital services and infrastructure, system integration and vertical use cases in telecommunications, information, cybersecurity, networking and communication, so as to encourage innovations in digital economy industries such as ecommerce, digital contents, new types of digital services, communications and network deployment, to improve the industry environment and enhance the industry competitiveness.

In sum, the "digital economy industries" mentioned in the Regulations refer to software, digital services or digital infrastructure sectors in telecommunications, information, cybersecurity, networking and communication.

III. Policy measures

According to Paragraph 1, Article 3 of the Regulations, the MODA or its subordinate agencies may provide subsidies, rewards and assistance to the activities in digital economy industries such as promotion of innovation or R&D, supply of technologies and support in upgrade. This may involve the encouragement of creation of innovation or R&D centers by companies; assistance to establishment of innovation or R&D institutions; fostering of cooperation among industries, academia and research organizations; promotion of corporate engagement in talent development at schools and development of human resources in industries; support to innovations by local industries; advocacy of corporate use of big data and the government's open data; enhancement of communications network resilience and network infrastructure prevalence and other relevant matters.

Moreover, the Regulations provide details of the policy measures for subsidies, rewards and support as follows:

1. Subsidies

The relevant details are provided from Article 4 to Article 17 of the Regulations.

(1) Eligibility

According to Paragraph 1, Article 4 of the Regulations, subsidy recipients in principle shall be engaged in activities of digital economy industries, shall be either a sole proprietorship, partnership, limited partnership, or corporation registered in accordance with domestic laws or

a natural person who is national of the R.O.C., a natural person from Hong Kong or Macau or a foreign national with permanent residency and has never been listed as a refusal account by any bank. Flexibility can be granted in accordance with Paragraph 2 of the same article. If required for the development of digital economy industries, the MODA or its subordinate agencies may establish separate eligibility criteria for subsidy recipients. However, such eligibility criteria only take effect via public announcement and publication on the Executive Yuan Gazette.

Finally, according to Article 13 of the Regulations, no subsidy application may be submitted in event of violation of laws related to environmental protection, labor safety and health or food safety and hygiene during the most recent three years, as determined to be serious by central competent authority.

(2) Subsidy limits

According to Article 5 of the Regulations, different programs come with different ceilings measured in percentage. In principle, the subsidized amount shall not exceed 50% of the program budget if it is for promotion of industry innovation or R&D or encouragement of corporate use of big data and the government's open data to develop and innovate commercial applications or service models. However, this does not apply to specific policy considerations or subsidy schemes above the budget and approved by the MODA or its subordinate agencies.

For example, the subsidized amount shall not exceed 50% of the course fees for corporate engagement in talent development on campus or enhancement of talent resources for industries. However, this limit does not apply to subsidies to indigenous people, persons with disabilities, low-income households, or the special circumstances approved by the MODA or its subordinate agencies.

Support schemes such as assistance to industrial technology and upgrade; encouragement of creation of innovation of R&D centers by companies; assistance to establishment of innovation or R&D institutions; fostering of cooperation among industries, academia and research organizations; support to innovations by local industries; enhancement of communications network resilience and network infrastructure prevalence and other projects shall be announced by the MODA or its subordinate agencies and published on the Executive Yuan Gazette.

(3) Subsidy programs

According to Articles 6 of the Regulations, there are no specific restrictions on subsidy categories, with two exceptions: (1) promotion of industry innovation or R&D – Subsidies are limited to six categories, i.e., innovation or R&D personnel expenses for approved projects; costs for consumables and raw materials; access and maintenance expenses for innovative or R&D equipment; introduction of intangible assets; commissioning and verification fees of research; and travel expenses. (2) advocacy of corporate use of big data and the government's open data to develop and innovate commercial applications or service models or enhancement of communications network resilience and network infrastructure prevalence - Subsidies are limited to three categories, i.e., fees for commissioned services; training & education fees; and promotional campaign expenses.

(4) Application submission

According to Article 7 of the Regulations, an applicant should submit the application form, the project plan and relevant data to the MODA or its subordinate agencies. If the contents of the project plan or documents fail to meet requirements, the MODA or its subordinate agencies may request missing materials before a deadline of up to one month. The MODA or its subordinate agencies may not accept applications without missing materials supplied before deadlines.

(5) Acceptance and review

According to Article 8 of the Regulations, the MODA or its subordinate agencies shall convene review meetings to review applications, changes and irregularities in the execution of subsidy programs. Applicants may be asked to provide explanations or Personnel may be sent to conduct on-site inspections. If necessary, relevant authorities or institutions may be commissioned assist in financial reviews.

Additionally, according to Article 9 of the Regulations, the period from document readiness by an applicant to notification of the completed review to the applicant may not exceed three months. This may be extended by one month if necessary.

Finally, according to Article 17 of the Regulations, subsidized projects, subsidy recipients, approval dates, subsidized amounts (including cumulative amounts) and relevant information shall be announced on the websites of the MODA or its subordinate agencies each quarterly unless the disclosure should be restricted or is not provided according to Article 18 of the Freedom of Government Information Law.

(6) Contract signing

Once reviewed and approved, the applicant must sign the subsidy contract with the MODA or its subordinate agencies within the time period specified by Article 10 of the Regulations. Unless extension has been agreed by the MODA or its subordinate agencies, the approval of the application loses validity if a contract is not signed before the deadline.

(7) Matters of adherence by subsidy recipients

Once the subsidy contract has been signed, an applicant becomes a subsidy recipient under the Regulations and must abide by relevant terms and conditions. First, the recipient shall establish a separate account for subsidy funds and maintain a separate account book, according to Article 11 of the Regulations. All of the interest generated from the subsidy account and any balance remaining after the project completion shall be fully returned to the national treasury via the MODA or its subordinate agencies. Meanwhile, to examine whether there are any duplications of application, the use of subsidy funds and the effectiveness of project implementation, the MODA or its subordinate agencies may dispatch personnel or commission a fair and just organization to inspect the relevant documents, account books and status of project execution. The subsidy recipient shall not refuse such an examination, is obligated to respond and shall submit work reports and details about the use of funds by following the agreed-upon schedule. In event of breach, the disbursement of subsequent funds may be suspended, under the terms and conditions of the subsidy contract.

Second, according to Article 12 of the Regulations, if a recipient fails to execute the subsidized project as planned or the project experiences a significant delay in progress, or there is an overly large gap between the project results and the business plan, or the project fails to pass the review, inspection or acceptance by the MODA or its subordinate agencies and no improvement has been made before the

specified deadline, or there is a breach of the Regulations Governing Procurements for Scientific and Technological Research and Development if the subsidized amount exceeds 50% of the recipient's procurement and it meets the threshold for public announcements under the Government Procurement Act, the MODA or its subordinate agencies may suspend the next disbursement in accordance with the terms and conditions of the subsidy contract, claw back the disbursed subsidy and even stop any subsidy to the recipient for one to five years, depending on the severity of the circumstances.

Third, according to Article 14 of the Regulations, the MODA or its subordinate agencies must conduct a comprehensive assessment of effectiveness of subsidized projects and the recipient shall cooperate by providing data required for the assessment.

Fourth, according to Article 16 of the Regulations and unless otherwise specified by laws, if the subsidized amount exceeds 50% of the total budget for a technology project, the ownership and utilization of R&D results shall comply with the Government Scientific and Technological Research and Development Results Ownership and Utilization Regulation. In event of breach by the recipient violates, the MODA or its subordinate agencies may terminate the subsidy contract and shall refuse to accept any subsidy application from the recipient for five years from the date of completion of the innovation or R&D. If the reason is attributable to the recipient, the subsidy contract shall be canceled and the subsidies shall be refunded.

(8) Subsidy applications

According to Article 17 of the Regulations, a subsidy applicant shall declare to the MODA or its subordinate agencies the following:

- 1) No significant default in the execution of any government-sponsored science and technology projects during the past five years.
- 2) No suspension currently in force as a result of disciplinary actions in relation to execution of a government-sponsored science and technology project.
- 3) No tax incentives, rewards or subsidies for the same matter under other laws granted to the same subsidized project.
- 4) No taxes owed during the past three years. However, individuals who apply for the subsidy under Subparagraph 5 or 6, Paragraph 1, Article 3 are exempted.
- 5) No violation of laws related to environmental protection, labor safety and health or food safety and hygiene or the People with Disabilities Rights Protection Act during the most recent three years, as determined to be serious by central competent authority. However, this does not apply to circumstances that occurred prior to the enforcement of the Statute.

If the applicant refuses to declare the above, the MODA or its subordinate agencies may not accept the application. If any false statement is identified, the application may be rejected, or the subsidy may be withdrawn, the contract may be canceled and the disbursed funds shall be returned.

2. Rewards

According to Paragraph 1 of Article 18 of the Regulations, the MODA or its subordinate agencies will announce reward programs for digital economy industries with details on recipients, eligibility criteria, evaluation standards, application procedures, approving agencies and other related matters.

Moreover, reward applications are not accepted according to Paragraph 2 of Article 18 and the provisions of Article 13 and Article 15 shall apply mutatis mutandis. Article 17 regarding announcement of government information on subsidy applications shall also apply to reward applications.

3. Assistance

Relevant rules are primarily prescribed from Article 19 to Article 21 of the Regulations.

(1) Eligibility

According to Paragraph 1 of Article 19 of the Regulations, the rules prescribed in Subparagraph 1, Paragraph 1 of Article 4 also apply to the eligibility criteria for assistance to digital economy industries. In other words, assistance recipients in principle shall engage in activities of digital economy industries, either a sole proprietorship, partnership, limited partnership, or corporation registered in accordance with domestic laws or a natural person who is national of the R.O.C., a natural person from Hong Kong or Macau or a foreign national with permanent residency and has never been listed as a refusal account by any bank.

Flexibility can be granted outside the aforesaid limitations and in accordance with Paragraph 2 of Article 19. If required for the development of digital economy industries, the MODA or its subordinate agencies may establish separate eligibility criteria for assistance recipients via public announcement and publication on the Executive Yuan Gazette.

(2) Oversight of commissioned organizations

According to Article 20 of the Regulations, the MODA or its subordinate agencies may evaluate and assess the effectiveness of the assistance services provided by the commissioned organization(s) for recipients as an important basis for reviewing assistance projects.

(3) Establishment of a single contact window

The assistance unit may establish a single contact window to provide assistance and counseling services, according to Article 21 of the Regulations.

4. General provisions

In addition to specific rules, the general provisions prescribed from Article 22 to Article 25 shall apply to subsidies, rewards or assistance provided by the MODA and its subordinate agencies.

First, all the funds required for policy measures shall come from the budgets allocated by the MODA or its subordinate agencies, according to Article 25 of the Regulations.

Second, the MODA or its subordinate agencies may commission a legal person or a group to handle the application acceptance, review, approval, inspection, subsidy disbursement and claw-back, rewards, assistance and other relevant matters, according to Article 22 of the Regulations.

Furthermore, according to Article 23 of the Regulations, the incoming and outgoing of funds for subsidy, reward and assistance projects are managed as follows:

- 1) The same project applying for subsidies with two or more organizations should list the details of all expenses and the breakdowns and amounts of subsidies, rewards and assistance under application with each government agency. The subsidy, reward and assistance program shall be canceled and the disbursed funds shall be returned in event of concealment or false statements.
- 2) If the review by each government agency on the use of funds identifies poor results, utilization not consistent with the subsidy purposes, or inflated or dishonest numbers, the subsidy, reward or assistance recipient shall return the disbursed funds. Meanwhile, no subsidy shall be granted to the subsidy, reward or assistance recipient in question for one to five years, depending on the severity of circumstances.
- 3) If procurement is involved in the subsidy, reward or assistance budget, the subsidy, reward or assistance recipient shall adhere to the Government Procurement Act.
- 4) When reporting on expenses, the subsidy, reward or assistance recipient shall enumerate in detail the utilization of expenditures and the total amount of spendings. The same project subsidized by two or more organizations shall list the actual sum of subsidies, rewards and assistance.

Finally, according to Article 24 of the Regulations, the approval, disbursement and reimbursement of subsidies, rewards and assistance are processed as follows:

- 1) Disbursement based on project progress: The number of instalments, the method, the amount (percentage) are specified in the contract by the MODA or its subordinate agencies, depending on the project and the timetable.
- 2) Reimbursement shall be based on the Management Guidelines for the Disposal of Government Expenditure Vouchers, the Matters of Attention Regarding Budget (Donation) Implementations by Central Government Agencies for Private Groups and Individuals and relevant contractual provisions.

IV. Conclusions

To accelerate the innovation and development of digital economy industries in Taiwan, the MODA has promulgated the Subsidy, Reward and Assistance Regulations for Promoting Industry Innovation in accordance with Paragraph 1, Article 9 of the Statute for Industrial Innovation. It is hoped that the subsidies, rewards and assistance provided by the MODA helps to enhance the competitiveness of digital economy industries and the effectiveness of the digital economy development in addition to the Statute.

The Regulations set out detailed rules on policy measures e.g., subsidies, rewards, and assistance. Key matters such as eligible recipients, application procedures, review mechanisms, responsibilities and obligations are clearly defined but certain flexibility is reserved by exceptions. A contract-centric approach provides manoeuvrability in practice specific to project circumstances. It is hoped that the MODA and its subordinate agencies can utilize these Regulations once in force, to enhance the business environment of the digital economy industries and continue to drive industry innovations.

Chiang, Yu-Ling
Project Manager

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