



# Anti-money laundering and counter-terrorist financing measures

## Chinese Taipei

Mutual Evaluation Report

October 2019





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## TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	5
Risks and General Situation.....	7
Overall Level of Effectiveness and Technical Compliance .....	7
Priority Actions.....	12
Effectiveness & Technical Compliance Ratings.....	14
MUTUAL EVALUATION REPORT OF CHINESE TAIPEI.....	15
Preface.....	15
CHAPTER 1. ML/TF RISKS AND CONTEXT.....	16
ML/TF Risks and Scoping of Higher-Risk Issues.....	16
Materiality.....	20
Structural Elements .....	22
Background and other Contextual Factors.....	22
CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION.....	28
Key Findings and Recommended Actions .....	28
Immediate Outcome 1 (Risk, Policy and Coordination) .....	29
CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES.....	35
Key Findings and Recommended Actions .....	35
Immediate Outcome 6 (Financial intelligence ML/TF).....	37
Immediate Outcome 7 (ML investigation and prosecution).....	47
Immediate Outcome 8 (Confiscation) .....	55
CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION.....	64
Key Findings and Recommended Actions .....	64
Immediate Outcome 9 (TF investigation and prosecution).....	66
Immediate Outcome 10 (TF preventive measures and financial sanctions) .....	71
Immediate Outcome 11 (PF financial sanctions) .....	74
CHAPTER 5. PREVENTIVE MEASURES.....	79
Key Findings and Recommended Actions .....	79
Immediate Outcome 4 (Preventive Measures).....	80
CHAPTER 6. SUPERVISION.....	90
Key Findings and Recommended Actions .....	90
Immediate Outcome 3 (Supervision) .....	91
CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS.....	106
Key Findings and Recommended Actions .....	106
Immediate Outcome 5 (Legal Persons and Arrangements).....	107
CHAPTER 8. INTERNATIONAL COOPERATION .....	114
Key Findings and Recommended Actions .....	114
Immediate Outcome 2 (International Cooperation) .....	115
TECHNICAL COMPLIANCE ANNEX.....	125
Recommendation 1 - Assessing Risks and applying a Risk-Based Approach.....	125
Recommendation 2 - National Cooperation and Coordination .....	127
Recommendation 3 - Money laundering offence.....	128
Recommendation 4 - Confiscation and provisional measures.....	130
Recommendation 5 - Terrorist financing offence .....	132
Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing.....	135
Recommendation 7 - Targeted Financial sanctions related to proliferation .....	139
Recommendation 8 - Non-profit organisations.....	142
Recommendation 9 - Financial institution secrecy laws.....	145

Recommendation 10 – Customer due diligence .....	146
Recommendation 11 – Record-keeping .....	151
Recommendation 12 – Politically exposed persons .....	152
Recommendation 13 – Correspondent banking .....	153
Recommendation 14 – Money or value transfer services .....	153
Recommendation 15 – New technologies .....	155
Recommendation 16 – Wire transfers .....	156
Recommendation 17 – Reliance on third parties .....	157
Recommendation 18 – Internal controls and foreign branches and subsidiaries .....	158
Recommendation 19 – Higher-risk countries .....	159
Recommendation 20 – Reporting of suspicious transaction .....	160
Recommendation 21 – Tipping-off and confidentiality .....	161
Recommendation 22 – DNFBPs: Customer due diligence .....	161
Recommendation 23 – DNFBPs: Other measures .....	163
Recommendation 24 – Transparency and beneficial ownership of legal persons .....	164
Recommendation 25 – Transparency and beneficial ownership of legal arrangements .....	169
Recommendation 26 – Regulation and supervision of financial institutions .....	172
Recommendation 27 – Powers of supervisors .....	175
Recommendation 28 – Regulation and Supervision of DNFBPs .....	177
Recommendation 29 – Financial intelligence units .....	179
Recommendation 30 – Responsibilities of law enforcement and investigative authorities .....	182
Recommendation 31 – Powers of law enforcement and investigative authorities .....	183
Recommendation 32 – Cash Couriers .....	184
Recommendation 33 – Statistics .....	186
Recommendation 34 – Guidance and feedback .....	187
Recommendation 35 – Sanctions .....	188
Recommendation 36 – International instruments .....	190
Recommendation 37 – Mutual legal assistance .....	190
Recommendation 38 – Mutual legal assistance: freezing and confiscation .....	192
Recommendation 39 – Extradition .....	193
Recommendation 40 – Other forms of international cooperation .....	195
Summary of Technical Compliance – Key Deficiencies .....	200
Glossary of Terms .....	205

## EXECUTIVE SUMMARY

1. This report provides a summary of the AML/CFT measures in place in Chinese Taipei as at the end of the on-site visit (16 November 2018). It analyses the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations and the level of effectiveness of Chinese Taipei's AML/CFT system, and provides recommendations on how the system could be strengthened.

### *Key Findings*

- 1) Chinese Taipei has pursued wide ranging reforms since early 2017, with very significant progress achieved in a short period of time. This reflects strong political commitment to AML/CFT reform, significant commitment of resources, effective coordination, and efforts to strengthen and deepen the culture and practice of money laundering / terrorist financing (ML/TF) risk management.
- 2) Chinese Taipei has a generally sound understanding of its ML/TF risks which is reflected in its public national risk assessment (NRA) and other assessments. National and agency-level AML/CFT policies and activities seek to address the risks identified in the assessments. Co-ordination and co-operation on AML/CFT issues at both the policy and operational levels has improved significantly since the last evaluation.
- 3) Financial intelligence and related information is used extensively in ML and predicate offence investigations and in tracing criminal proceeds. Law enforcement agencies (LEAs) are well-equipped and experienced in generating and using financial intelligence to follow money trails and uncover complex structures and networks. The Anti-Money Laundering Division of the MJIB (AML/D) - Chinese Taipei's financial intelligence unit (FIU) - produces good quality intelligence and adds value in financial investigations, particularly those involving international elements.
- 4) Law enforcement agencies (LEAs), including prosecutors, conduct complex ML investigations actively tracing money trails, lifting the corporate veil, unravelling layers of ownership and pursuing funds sent offshore. Prosecutors drive ML investigations and coordinate authorities according to expertise. The range of ML investigations and prosecutions is generally in line with the risk profile with the exception of relatively low numbers of ML related to drug trafficking and smuggling. However, authorities are not using the ML offence to the extent

necessary across a broad range of conduct in the context of Chinese Taipei. The conviction rate for ML is low and the penalties applied have not been dissuasive. Chinese Taipei has used a variety of tools in identifying, tracing and forfeiting criminal assets which operate well in practice. Chinese Taipei is successful in forfeiting a significant value of assets when compared to the size of its economy. Forfeiture appears to be consistent with Chinese Taipei's risk profile.

- 5) A number of financial investigations of suspected TF cases have been successfully undertaken. They involved intelligence sharing and ultimately uncovered conduct that was unrelated to TF. There have been no TF convictions, which is in keeping with Chinese Taipei's TF risk profile.
- 6) Chinese Taipei has strong policy and operational coordination mechanisms to support the implementation of targeted financial sanctions (TFS) to combat terrorism and proliferation of weapons of mass destruction (WMD). Authorities have issued guidance to all sectors and undertaken a great deal of outreach to all financial institutions (FI) and designated non-financial businesses and professions (DNFBP) sectors and have supported all sectors to have access to screening software to support implementation of TFS. FIs, especially banks, demonstrate a good understanding of TFS obligations and the implementation of customer and transaction monitoring to identify possible sanctions matches.
- 7) Implementation of TFS for DPRK-related designations has resulted in 81 freezing actions worth over USD 3.96 million. While there are minor shortcomings in the scope of TFS for proliferation financing (PF), the legal framework goes beyond FATF standards by also establishing a PF offence, related suspicious transaction reporting (STR) obligations and a domestic designation system for TFS. Chinese Taipei has designated a local and entities working on his behalf/at his direction linked to PF and subjected them to TFS, resulting in freezing considerable assets. A large number of PF-related STRs have been received and intelligence has been developed to identify possible networks of associates. Authorities have granted access to frozen funds for basic expenses in keeping with the standards.
- 8) Technical compliance elements for preventive measures are generally comprehensive. There has been a shift towards a risk-based approach in the banking sector since 2013, but this approach is newer in many other sectors. Sectoral supervisors have undertaken very significant amounts of awareness raising on AML/CFT obligations and ML/TF risks. Tailored guidance has been issued for each sector.
- 9) Chinese Taipei has a generally robust system of AML/CFT supervision for FIs. AML/CFT supervision of DNFBP sectors has only recently commenced. The sanctions imposed on banks, securities and insurance for AML/CFT breaches are relatively low and may not be wholly effective or proportionate. More broadly than the level of fines, overall the effects of supervisory actions have significantly influenced compliance in a positive way through remedial measures, enforcement actions and reputation damage.
- 10) Authorities have a mixed understanding of the risks associated with legal persons and legal arrangements. Authorities rely on CDD conducted by FIs and DNFBPs to obtain up to date

beneficial ownership information of legal persons and arrangements. LEAs and the AMLD demonstrated examples of using CDD information and investigative strategies to obtain information on the beneficial ownership and control of legal persons. The scope and quality of the information held on the company registry has greatly improved in the period prior to this assessment. There are a number of controls on legal persons to mitigate their risk of misuse related to nominee shares and nominee directors. Despite the large numbers of civil trusts formed in Chinese Taipei, there are few measures to support the transparency of trusts and capturing information on settlors or trustees.

- 11) Chinese Taipei provides good quality constructive assistance for international cooperation requests related to ML and asset restraint and forfeiture.

### *Risks and General Situation*

2. Chinese Taipei has a well-developed financial sector and stable economy which makes it an attractive venue for both domestic and foreign proceeds of crime to be laundered. The banking sector, including the well-developed sector of offshore banking units (OBU), presents the greatest risks and there are particular risks from informal remittance. Banks dominate the financial sector, handle a high volume of transactions, and are well interconnected with the international financial system. Chinese Taipei is subject to an array of predicate offences which generate significant proceeds. These offences to a large degree stem from organised crime, including drug trafficking, fraud and smuggling. Other predicate offences of note include corruption and bribery, and specific types of fraud including tax and securities-related crimes. Typical ML methods include the use of wire transfers to dummy accounts (including OBU accounts), cash couriers, underground remittance, foreign third parties, shell and front companies to conceal beneficial ownership and the purchase and sale of real estate. The high use of cash and the relatively large informal economy significantly increases the risk that illicit proceeds may be channelled into the formal economy.

3. There is no specific intelligence suggesting that Chinese Taipei is a likely target of terrorism, or evidence of foreign terrorist actors with connection to Chinese Taipei. The threat of financing domestic terrorism is low. Externally, there have not been any suspected cases of funds of designated persons or entities, or funds associated with terrorism cases entering or being sourced from the jurisdiction. Chinese Taipei has some links between certain segments of the community and regions affected by terrorism, which slightly increases the threat of TF, albeit within a low level.

### *Overall Level of Effectiveness and Technical Compliance*

4. Chinese Taipei has established a legal and institutional framework that is particularly strong in relation to technical compliance. Minor shortcomings include the scope of property subject to TFS for terrorism and WMD proliferation and some technical elements of the TF offence.

5. Chinese Taipei has implemented an AML/CFT system that shows a number of areas of effectiveness. Particularly good results are being achieved in the areas of understanding the ML/TF risks and pursuing domestic cooperation and coordination to address risks; the development and use of financial intelligence and related financial investigation for predicate offences and the restraint and confiscation of proceeds and instruments of crime; the implementation of TFS related to terrorism and protecting the non-profit sector from terrorist abuse; and co-operating internationally to support AML/CFT. Major improvements are needed to strengthen supervision and implementation of preventive measures and to prevent the misuse of legal persons and arrangements.

6. In the initial part of the 10 years since Chinese Taipei's last mutual evaluation little progress was made with AML/CFT reforms. However, since early 2017 very significant changes to policy and resource allocation have occurred which have supported comprehensive AML/CFT reforms and large scale implementation of the legal and institutional framework and the scope of implementation.

*Assessment of Risks, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33)*

7. Chinese Taipei demonstrated a generally sound understanding of ML/TF risks. This is reflected in the NRA process, which included a very wide range of government and private sector stakeholders and resulted in a public document, a slightly more comprehensive document for participating stakeholders and a great deal of associated outreach and awareness raising work on the findings of risk. Sectoral risk assessments and FIU strategic intelligence products have added to a shared understanding of risk. Overall AML/CFT policies and activities largely seek to address the risks identified in the NRA and other assessments.

8. National co-ordination and co-operation on AML/CFT issues at the policy and operational levels has improved significantly since the last evaluation. This is particularly evident in relation to policy level co-ordination among LEAs, however there are opportunities for deeper cooperation at operational levels.

*Financial Intelligence, Money Laundering & Confiscation (Chapter 3 - IOs 6-8; R.3, R.4, R.29-32)*

*Use of financial intelligence to investigate ML, TF, predicate offence and to trace assets (Immediate Outcome 6)*

9. The competent authorities, in particular LEAs, investigating prosecutors and the tax authorities regularly develop and use a broad range of financial intelligence and other relevant information to investigate predicate offences, ML and possible TF and to trace criminal proceeds. LEAs (especially the MOJ Investigation Bureau (MJIB)) and investigating prosecutors have very well-developed capabilities to utilise FIU-disseminated intelligence in financial investigations.

10. Chinese Taipei's FIU is the AMLD, which is located within the MJIB. The FIU has a well-developed analytical capability and has excellent IT resources and skilled staff. AMLD produces good quality financial intelligence. AMLD suffers, to an extent, from a lack of human resources as it also has a significant role in relation to outreach, risk assessment work, TFS support and international cooperation.

11. While the full range of FIs and DNFBPs are required to report STRs, there was an underreporting of STRs by higher risk sectors until recent reforms and enhanced risk-based outreach to all sectors.

*Investigating, prosecuting and sanctioning ML (Immediate Outcome 7)*

12. Chinese Taipei had not prioritised the pursuit of ML cases until 2017, at which time amendments were made to the MLCA which improved the ML offence. LEAs have very well-developed financial investigation and prosecution capacity; however the nature of the ML offence and a lack of policy priority prior to 2017 have meant that ML was pursued to a lesser extent. Results of ML prosecutions show low conviction rates and very low sentences applied. The level of prosecutions and convictions of ML has not been in keeping with its threats, risk profile and AML/CFT policies.



*Restraining and confiscating proceeds and instruments of crime (Immediate Outcome 8)*

13. Chinese Taipei pursues confiscation as a policy objective and competent authorities have confiscated approximately USD 457 million since 2014 using the Criminal Code and the Criminal Procedure Code (CPC) and had restrained approximately USD 191 million at the time of the onsite visit. Tax authorities have recovered considerable funds using their powers. Chinese Taipei has demonstrated its ability to recover assets across a range of crime areas in keeping with the risk profile. LEAs, including prosecutors, have well-developed asset tracing capacity and routinely pursue financial investigations to identify assets for the purpose of recovery.

14. Cash is seized at the border and the authorities have, to a certain extent, proactively targeted high-risk ports of entry. However, forfeiture applied in relation to breaches of the cross border declaration system is not applied proportionately in all cases. Overall, the extent of targeting threats posed by cash couriers has not been in keeping with the risk profile.

*Terrorist Financing and Financing Proliferation (Chapter 4 - IOs 9-11; R.5-8)**Investigating, prosecuting and sanctioning terrorist financing (Immediate Outcome 9)*

15. TF risks are low overall, but despite this, TF investigations are given a high priority. LEAs, prosecutors, the FIU and security intelligence authorities have well-developed investigation capacity, and standard operating procedures to respond to possible cases of terrorism or TF.

16. There have been a number of cases where authorities have proactively and systematically investigated TF alongside possible terrorism cases and, in two other incidents, investigated possible TF cases. In all of these cases, the conduct identified did not relate to terrorism or TF, but the investigations demonstrated the TF investigation capacity and the ability to thoroughly investigate in a coordinated joint agency context. The conduct of financial investigations is in keeping with Chinese Taipei's threats, risk profile and AML/CFT policies.

*Preventing terrorists from raising, moving and using funds (Immediate Outcome 10)*

17. In keeping with its profile, Chinese Taipei has not made any domestic designations pursuant to UNSCR 1373 or made a request or given effect to other countries' requests to take freezing action as appropriate. Chinese Taipei implements TFS without delay, communicating new UN listings to covered entities within one business day of UN listings. MJIB, Financial Supervisory Commission (FSC) and other authorities have undertaken a great deal of outreach and communication on TFS obligations and provided guidance. Implementation is supported by subsidising FI/DNFBP access to sanctions screening software to small enterprises to comprehensively screen for sanctioned persons and entities. Supervision of TFS implementation (offsite and onsite) has occurred across many sectors. While understanding of TFS is best developed amongst banks and bigger FIs, implementation is occurring amongst smaller entities.

18. Chinese Taipei has a good understanding of the TF risks associated with NPOs and applies a risk-based approach to mitigating those risks. There have been a number of recent improvements to the legal framework to promote transparency and a significant allocation of resources to support outreach to NPOs. Over the last two years charities regulators, AMLD and other LEAs have engaged regularly with the NPO sectors on CFT issues and have conducted extensive outreach and issued useful guidance. A graded range of risk mitigation obligations, guidance and supervision has been applied taking into account the relative risks of particular sub-sectors and the features and activities of individual NPOs. The charities regulators are able to support LEAs to investigate NPOs suspected of being abused by terrorist financiers.

19. Chinese Taipei also has a sound confiscation regime through which it can apply criminal and measures to deprive terrorists of their assets. Overall, Chinese Taipei's measures are generally consistent with its overall risk profile.

*Preventing persons or entities involved in the proliferation of WMD from moving and using funds (Immediate Outcome 11)*

20. Countering WMD proliferation financing is a strategic priority for Chinese Taipei and it has implemented domestic measures to meet and go beyond the FATF standards, including identifying and designating domestic persons and entities that may be linked to sanctions evasion and implementing TFS against them without delay. TFS designations are effective without delay in Chinese Taipei, entering into force within 24 hours of a designation by the UN. They are communicated on the same day to FI/DNFBP and other stakeholders. Chinese Taipei's use of its domestic designation mechanism to designate certain entities owned or controlled by the principal designee has partly contributed to overcoming the technical compliance gap in the scope of coverage of freezing obligations. Freezing actions have occurred in Chinese Taipei within 6 hours of new UN designations being made pursuant to UNSCR 1718.

21. Chinese Taipei has well-developed mechanisms for addressing PF in a co-ordinated fashion at policy and operational levels. MJIB, FSC and other authorities have undertaken a great deal of outreach and communication on TFS obligations and provided guidance. As with IO10, by making comprehensive sanctions screening software (TDCC) available to FIs/DNFBP at subsidised rates, both large and small FI/DNFBPs have the necessary tools and have been shown to actively screen for possible matches with UN sanctioned persons and entities. Supervision (offsite and onsite) has occurred across FI sectors on TFS implementation (Iran and DPRK sanctions). Regulators' outreach—combined with very active publicity of PF-related TFS—has supported improved understanding by FI/DNFBPs of their obligations. The understanding of obligations appears to be well-developed amongst banks and bigger FIs, and reasonably developed amongst smaller FIs and DNFBPs.

22. Chinese Taipei demonstrated 81 PF-related freezing actions with the equivalent of over USD 3.96 million frozen. These frozen assets are associated with two designated persons and six designated entities. Chinese Taipei has implemented publicly-known procedures for providing access to funds for basic expenses.

*AML/CFT Preventive Measures (Chapter 5 - IO4; R.9-23)*

23. Chinese Taipei has a large financial sector and moderately-sized DNFBP sectors. The level and types of ML/TF risks affecting individual FIs and DNFBPs vary, as do the ML/TF risks facing particular sectors. All of the entities performing activities covered by the FATF Standards (except casinos, which are illegal in the jurisdiction) are required to apply a range of risk-based AML/CFT preventive measures, which are generally consistent across all sectors.

24. AML/CFT compliance is not consistent across different categories of FI. While the numbers and quality of STRs has recently improved, there are concerns about the low level of STR reporting in many sectors, including some identified as being at high-risk, and challenges with the quality of STRs being filed. The banking sector plays a predominant role in the Chinese Taipei financial system, including nearly all of the formal remittance. Overall, the understanding of ML/TF risks and obligations and implementation of AML/CFT measures appears most developed among the banks which demonstrated awareness of their AML/CFT risks in line with many aspects of the NRA. Other large FIs (insurance providers, investment firms and wealth managers) display a reasonable understanding of risks and AML/CFT compliance requirements in their sectors; however, both banks and NBFIs, particularly smaller firms, have a mixed understanding of risk. The understanding

of ML/TF risk is much less developed among DNFBPs as the requirement for these entities to undertake a written risk assessment is very recent. A number of obligations on DNFBPs are very new or recently improved.

25. Implementation of AML/CFT measures is reasonable across FIs and has recently been enhanced amongst most DNFBPs. Over the last 1-2 years authorities and sectoral association have greatly increased their support to FI and DNFBP sectors to promote implementation, which has seen improvements in the application of many preventive measures. Since early 2018 when the NRA was issued and regulations were updated, implementation has increasingly been risk-based across a wider range of FIs and DNFBP sectors.

*AML/CFT fit and proper controls and AML/CFT supervision (Chapter 6 - IO3; R.26-28, R. 34-35)*

26. All of the relevant FI and DNFBP sectors covered under the FATF Standards are supervised for AML/CFT compliance. Casinos are illegal and trust and company service providers are not present in the jurisdiction as a separate sector. Generally, there are systems in place for background checks and on fitness and propriety of persons owning or controlling regulated entities, however there are weaknesses across the board with checking for associations with criminals.

27. FSC has a reasonable understanding of ML/TF risks, which is in line with the NRA. Their sectoral risk understanding is reasonable, but there are some challenges with their ability to develop an updated picture of sectoral risks and firm-specific risk level reflecting a need for a wider range of inputs from LEAs and the FIU.

28. The frequency scope and intensity of FSC's offsite and onsite supervision is increasingly based on the identified risks. Greater inputs from LEAs and the FIU are needed to guide risk-based supervisory choices, particularly in relation to higher risk scenarios. Other supervisors are still developing their supervisory capacity.

29. The quality of FSC's supervision appears to be relatively high. FSC has experienced supervisors who demonstrated good AML/CFT skills. The sanctions imposed on banks, securities, and insurance for AML/CFT breaches are relatively low and may not be wholly effective or proportionate. More broadly than the level of fines, the overall effects of remedial measures, enforcement actions and reputation damage appear to be significantly influencing compliance in a positive way.

30. Chinese Taipei authorities have undertaken a very large number of programs to promote a clear understanding of ML/TF risks and AML/CFT obligations in the recent years. This has included close cooperation between supervisors, sectoral associations, the FIU and LEAs.

*Transparency of Legal Persons and Arrangements (Chapter 7 - IO5; R. 24-25)*

31. A number of reforms to the company law were taken in 2018 to improve governance and transparency of legal ownership and control and governance of legal persons and to improve mechanisms to assist competent authorities to lift the corporate veil. Chinese Taipei acknowledges risks posed by corporate structures and, to a lesser extent, trusts and is taking some steps to mitigate these risks. Details of nominee directors and shareholders are publicly available on the registry. Bearer share warrants have been abolished since mid-2018, and some of the risks from bearer shares have been mitigated. There are limited transparency obligations on private express trusts, and competent authorities do not display a good understanding of risks they may pose and measures to identify and apply transparency controls of such legal arrangements.

32. Chinese Taipei has recently improved the regulatory framework for all FIs and DNFBPs to obtain and maintain beneficial ownership, but there is still some way to go before all reporting Anti-money laundering and counter-terrorist financing measures in Chinese Taipei 2019 @ APG 2019

entities are complying with these requirements. The context of Chinese Taipei sees relatively little professional intermediation in the establishment or continuing operation of legal persons, so FIs/DNFBPs may not consistently hold up to date and accurate information on beneficial ownership. LEAs can access any available beneficial ownership information collected by FIs and DNFBP through CDD in a timely fashion.

33. Authorities demonstrated regular use of a combination of investigative techniques, basic information and CDD data obtained from FI/DNFBPs to identify beneficial ownership and control of corporate structures. This has included international cooperation in sharing such information.

#### *International Cooperation (Chapter 8 - IO2; R. 36-40)*

34. In general, Chinese Taipei provides good quality, constructive and timely assistance for international cooperation requests related to ML, predicates and asset restraint and forfeiture. The assistance provided and sought by Chinese Taipei has included formal mutual legal assistance (MLA) as well as sharing financial intelligence, supervisory information, exchanges between LEAs and other forms of international cooperation. Chinese Taipei has made three outgoing extradition requests. Repatriation and deportation of wanted individuals has been achieved between Chinese Taipei and China under the Cross-Strait Joint-Fight against Crime and Mutual Legal Assistance Agreement (2009).

35. The efforts of LEAs in actively seeking international cooperation has resulted in perpetrators being prosecuted and convicted, along with criminal asset seizure outside of Chinese Taipei. Chinese Taipei seeks assistance in an appropriate and timely manner to pursue domestic predicates, however, it has not demonstrated sufficient proactive pursuit of international assistance on ML violations.

36. Chinese Taipei routinely uses other forms of international cooperation in a proper and timely manner and works hard to overcome the long-standing challenges it faces to ensure productive international cooperation. Chinese Taipei maintains a global network of LEA, MJIB and Customs representatives overseas who coordinate international cooperation on behalf of Chinese Taipei and have been able to assist and obtain assistance from foreign counterparts in a dynamic manner. Chinese Taipei shares basic and, as it can be identified, beneficial ownership information.

#### *Priority Actions*

37. The prioritised actions that Chinese Taipei should take include:

- a) Amend the CTF Act to address TC gaps in relation to TFS and the minor gaps in relation to TF.
- b) Increase the human resources available to the AMLD to ensure that financial intelligence is fully exploited and that it is able to continue to service the demands it faces in relation to outreach, information sharing, risk assessments, TFS coordination, etc.
- c) Institutionalise the strong coordination structure that was put in place ahead of the ME (the AMLO) to support ongoing priority actions to mitigate ML/TF/PF risk.
- d) Prioritise further comprehensive assessments of risk including: cash economy issues (including scope of the cash economy; cross-border movement of cash); ML risks with underground banking; foreign legal persons and arrangements in Chinese Taipei's offshore sector; organised crime involvement in third-party ML; emerging TF issues (including global trends on terrorism and TF). Pursue international cooperation to obtain inputs on such assessments.

- e) Further integrate interaction between AMLD analysts and MJIB and police at the stage of targeting high risk crime types, e.g. drug trafficking, smuggling and third-party ML networks.
- f) LEAs should increase the use of the ML offence including through enhancement of the quality of briefs of evidence, consideration of ML at an early stage of predicate investigations, and prioritisation of third party ML across a wider range of offences.
- g) Consider introducing AEA into asset management at the asset seizure stage or earlier, thereby relieving prosecutor's workload and effectively using AEA's expertise to manage proceeds of crime assets to preserve their value for forfeiture.
- h) Prioritise deeper implementation of ML risk management, in particular CDD, over higher risk sub-sectors among banks. Enhance liaison and engagement between supervisors and LEAs with the private sector, including industry associations and other sectoral groups. In particular, improved and more frequent inputs from LEAs on ML/TF/PF risks posed to FIs and DNFBPs subject to higher threats and vulnerabilities. Provide further risk-based guidance on beneficial ownership, taking into consideration Chinese Taipei's FI and DNFBP sectoral vulnerabilities.
- i) Supervisors (especially for DNFBPs) should increase capacity with regards to the number of specialist AML supervisory staff, supervisory tools, and training for risk-based supervision.
- j) FSC and LEAs should implement further measures to support information exchange on risk. The obligations on market entry fit and proper should be expanded and further implemented. This should include enhanced information sharing between agencies, including continuing international cooperation between supervisors.

## Effectiveness & Technical Compliance Ratings

### Effectiveness Ratings

<b>IO.1</b> - Risk, policy and coordination	<b>IO.2</b> - International cooperation	<b>IO.3</b> - Supervision	<b>IO.4</b> - Preventive measures	<b>IO.5</b> - Legal persons and arrangements	<b>IO.6</b> - Financial intelligence
<b>Substantial</b>	<b>Substantial</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Substantial</b>
<b>IO.7</b> - ML investigation & prosecution	<b>IO.8</b> - Confiscation	<b>IO.9</b> - TF investigation & prosecution	<b>IO.10</b> - TF preventive measures & financial sanctions	<b>IO.11</b> - PF financial sanctions	
<b>Moderate</b>	<b>Substantial</b>	<b>Substantial</b>	<b>Substantial</b>	<b>Substantial</b>	

Technical Compliance Ratings (*C – compliant, LC – largely compliant, PC – partially compliant, NC – non compliant*)

<b>R.1</b> - Assessing risk & applying risk-based approach	<b>R.2</b> - National cooperation and coordination	<b>R.3</b> - Money laundering offence	<b>R.4</b> - Confiscation & provisional measures	<b>R.5</b> - Terrorist financing offence	<b>R.6</b> - Targeted financial sanctions – terrorism & terrorist financing
<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>
<b>R.7</b> - Targeted financial sanctions – proliferation	<b>R.8</b> - Non-profit organisations	<b>R.9</b> - Financial institution secrecy laws	<b>R.10</b> - Customer due diligence	<b>R.11</b> - Record keeping	<b>R.12</b> - Politically exposed persons
<b>LC</b>	<b>LC</b>	<b>C</b>	<b>LC</b>	<b>LC</b>	<b>C</b>
<b>R.13</b> - Correspondent banking	<b>R.14</b> - Money or value transfer services	<b>R.15</b> - New technologies	<b>R.16</b> - Wire transfers	<b>R.17</b> - Reliance on third parties	<b>R.18</b> - Internal controls and foreign branches and subsidiaries
<b>C</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>LC</b>
<b>R.19</b> - Higher-risk countries	<b>R.20</b> - Reporting of suspicious transactions	<b>R.21</b> - Tipping-off and confidentiality	<b>R.22</b> - DNFBPs: Customer due diligence	<b>R.23</b> - DNFBPs: Other measures	<b>R.24</b> - Transparency & BO of legal persons
<b>C</b>	<b>LC</b>	<b>LC</b>	<b>PC</b>	<b>LC</b>	<b>LC</b>
<b>R.25</b> - Transparency & BO of legal arrangements	<b>R.26</b> - Regulation and supervision of financial institutions	<b>R.27</b> - Powers of supervision	<b>R.28</b> - Regulation and supervision of DNFBPs	<b>R.29</b> - Financial intelligence units	<b>R.30</b> - Responsibilities of law enforcement and investigative authorities
<b>PC</b>	<b>LC</b>	<b>LC</b>	<b>PC</b>	<b>LC</b>	<b>C</b>
<b>R.31</b> - Powers of law enforcement and investigative authorities	<b>R.32</b> - Cash couriers	<b>R.33</b> - Statistics	<b>R.34</b> - Guidance and feedback	<b>R.35</b> - Sanctions	<b>R.36</b> - International instruments
<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>C</b>	<b>PC</b>	<b>LC</b>
<b>R.37</b> - Mutual legal assistance	<b>R.38</b> - Mutual legal assistance: freezing and confiscation	<b>R.39</b> - Extradition	<b>R.40</b> - Other forms of international cooperation		
<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>		

## MUTUAL EVALUATION REPORT OF CHINESE TAIPEI

### *Preface*

1. This report summarises the AML/CFT measures in place in Chinese Taipei as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Chinese Taipei's AML/CFT system, and recommends how the system could be strengthened.
2. This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by Chinese Taipei, and information obtained by the evaluation team during its on-site visit to Chinese Taipei from 5 November 2018 to 16 November 2018.
3. The evaluation was conducted by an assessment team consisting of financial, legal and law enforcement experts:
  - Ms Ratcha Fuangprang (Thailand Anti-Money Laundering Office,)
  - Mr Mahmoud Karam Nasr (Egypt Money Laundering & Terrorist Financing Combating Unit)
  - Ms Ambarwati Retno Dewi (Indonesian Ministry of Finance)
  - Ms Miri Ryu, Deputy Director (Korea Financial Intelligence Unit)
  - Ms Jennifer Wallis (US Department of Justice)
  - Mr Umair Rathore (State Bank of Pakistan)
4. The assessment process was supported by David Shannon, Michelle Harwood and Gimo Laxamana of the APG secretariat.
5. The report was reviewed by the FATF Secretariat, Erin Lubowicz of the New Zealand Ministry of Justice and Grace Mason, AUSTRAC Australia.
6. Chinese Taipei previously underwent an APG Mutual Evaluation in 2007, conducted according to the 2004 FATF Methodology. The 2007 evaluation has been published and is available at [www.apgml.org](http://www.apgml.org).
7. The 2007 Mutual Evaluation concluded that Chinese Taipei was compliant with 7 Recommendations; largely compliant with 18; partially compliant with 13; and non-compliant with 11. Chinese Taipei was rated compliant or largely compliant with 5 of the 16 Core and Key Recommendations.
8. Chinese Taipei exited APG 2<sup>nd</sup> Round (transitional) follow-up in July 2017 ahead of the conduct of their 3<sup>rd</sup> APG mutual evaluation in 2018-19. At the point of exiting 2<sup>nd</sup> Round follow-up, Chinese Taipei was rated LC or C on 15 of the 16 Core and Key Recommendations.
9. USD equivalent figures are provided at the rate current at the time of the onsite visit. USD1 = NTD30.

### *ML/TF Risks and Scoping of Higher-Risk Issues*

10. Chinese Taipei is located in the East China Sea and covers an area of 36,193 km<sup>2</sup> encompassing the islands of Taiwan, Penghu (the Pescadores), Kinmen, Matsu, and a number of smaller islands. The total population was approximately 23.5 million as of October 2018. Chinese Taipei's GDP was measured at approximately USD 589 billion in 2018, which places it as the 22nd largest economy in the world.

11. Chinese Taipei is a parliamentary democracy with government divided into central, provincial/municipal, and county/city levels. The central government consists of the Office of the President and five branches (called "Yuan"), namely the Executive Yuan (EY), Legislative Yuan, Judicial Yuan, Examination Yuan, and the Control Yuan.

12. Executive power is exercised by the EY which consists of ministries and ministerial-level organizations. The EY has a president (usually referred to as the premier), a vice president (vice premier), a number of ministers, heads of commissions, and ministers without portfolio. The Legislative Yuan is constituted by popularly elected representatives who serve for four years and are eligible for re-election.

13. Chinese Taipei has a civil law legal system. The emphasis of the legal system is placed on statutes rather than case law. When trying to make a decision, the Courts look to what the Constitution states first and then to codes, statutes, and ordinances.

14. The chief powers of the Judicial Yuan (the judiciary) are to interpret the Constitution, to unify the interpretation of laws and orders, and to adjudicate civil, criminal and administrative matters. The judiciary has three levels: district courts and their branches that hear civil and criminal cases in the first instance; high courts and their branches at the intermediate level that hear appeals against judgments of district courts or their branches; and the Supreme Court at the highest appellate level, which reviews judgments by lower courts. Issues of fact are decided in the first and second levels, while only issues of law are considered by the Supreme Court. However, there are exceptions to this system. Criminal cases relating to rebellion, treason, and offenses against friendly relations with foreign states are handled by high courts, as the court of first instance; and appeals may be filed with the Supreme Court. Judges decide all cases; there is no provision for jury trials. There is a separate two-tiered administrative court for appeals of administrative rulings.

### *Overview of ML/TF Risks*

15. Chinese Taipei is subject to an array of predicate offences which generate significant proceeds. These offences to a large degree stem from organised crime, including drug trafficking, fraud and smuggling. Other predicate offences of note include corruption and bribery, and specific types of fraud including tax and securities-related crimes.

16. Fraud is estimated by the authorities to generate the most significant amounts of criminal proceeds. Fraud networks operate domestically and transnationally, and significant numbers of Chinese Taipei fraud offenders have been arrested in many countries. Chinese Taipei authorities estimate USD 1.14 billion in proceeds of fraud is channelled annually to China; Hong Kong, China; Macao, China; Indonesia; and Malaysia alone. Conversely, Chinese Taipei's strengths as a well-developed jurisdiction—including a well-established and open financial system, strong rule of law, stable economy, the persistence of cash transactions particularly in private consumption and a sizeable underground remittance sector—make it attractive for sophisticated criminal actors seeking



to benefit from illicit proceeds. In 2018, authorities estimated around 30% of ML activities in Chinese Taipei involved cross-border transactions. While the assessment team was unable to verify this independently, it is likely that this trend will grow as Chinese Taipei's economic linkages across the straits and throughout the Asia-Pacific continue to develop.

17. Corruption and bribery is a feature of the Chinese Taipei criminal environment. The 2018 NRA identified bribery amongst the eight very high-risk crimes affecting Chinese Taipei. The NRA, case studies and media reporting highlight risks of bribery and corruption amongst various levels of government. During the Panama Papers scandal that emerged in April 2016, of the 11 million documents released, over 16,000 had a connection to Chinese Taipei clients.

18. Risks from other predicate offences and related ML techniques are set out at the section on risk scoping below.

19. Chinese Taipei's risk of TF is relatively low. The 2018 NRA noted no acts of terrorism or TF threats to Chinese Taipei have been identified by so far. There are no public indications of terrorist actors active in Chinese Taipei, nor its misuse as a source for funds, recruits or materials to supply terrorist organisations in other jurisdictions. Nevertheless, there have been substantial efforts focussed on the prevention of terrorist actors and their associates' entry into Chinese Taipei and their repatriation upon positive identification, and developing capability to identify and respond to potential instances of terrorism or TF.

20. Chinese Taipei authorities have highlighted and taken action against a number of demonstrable PF risks facing Chinese Taipei related to the DPRK.

#### *Chinese Taipei's risk assessment*

21. Chinese Taipei undertook an NRA in 2017-18 with the participation of a wide range of representatives from government agencies and ministries and the private sectors. Chinese Taipei developed their own methodology, with input from external experts. The process identified and assessed ML/TF threats, vulnerabilities and risk mitigation controls. Predicate offenses were included in the NRA to represent threats. Vulnerabilities considered FIs, DNFBPs, legal persons, trusts, and non-profit organisations (NPO). Qualitative and quantitative data and information were used to reach conclusions on the gravity of the risks identified. Though the NRA undertook a reasonable process, assessors have identified some scope gaps with respect to the risk assessment of cross-border movement of cash and stored value cards.

22. The NRA identified Chinese Taipei is severely affected by eight very high-risk ML threats including drugs, fraud, organised crime, corruption, smuggling, securities crimes, third-party ML and taxation crimes. High-risk threats included intellectual property right crimes. The NRA highlighted domestic and transnational ML techniques through formal and informal sectors, including trade based ML (TBML), informal remittance, cash smuggling, use of front companies and other means.

23. Based on the authorities' detailed counter terrorism (CT) work, the NRA assessed that Chinese Taipei has a low level of TF risk (domestic and transnational). Factors of political stability and social harmony, coupled with terrorism prevention and detailed investigation contribute to the NRA's findings that the risk of home-grown terrorism is low. No domestic incidents have been found to be associated with terrorism. The NRA identified NPO sectors that may have some vulnerability to misuse for TF (civil associations, religious foundations and charity foundations) in order to support a risk-based approach to NPO sector regulation. Outside of the NRA authorities had assessed risks of Chinese Taipei being used as a transit economy for TF.

24. An earlier ML/TF sectoral risk assessment (SRA) was undertaken by the FSC in 2015. It focussed on information obtained from the FIU, FSC's own supervision and open sources. FSC has begun to take supervisory actions based on its findings.

25. Following on from publication of the NRA, authorities undertook a more in-depth assessment of risk of legal persons in Chinese Taipei and of the risk of abuse of NPOs for TF.

26. Authorities noted several occurrences of PF and highlighted contextual issues exposing the economy to a range of vulnerabilities for possible evasion of DPRK-related sanctions. Prioritised implementation of PF-related TFS has taken place in this context.

### *Scoping of Higher Risk Issues*

27. The assessment team identified those areas which required an increased focus through an analysis of information provided by the authorities, including the NRA, and by consulting various open sources.

28. **Organised Crime – domestic and transnational groups / networks** - The NRA and other sources identify the threat from organised crime as 'very high' and note the involvement of transnational organised crime across most crime types. The NRA does not mention the role of foreign organised crime groups in offences involving Chinese Taipei (e.g. laundering funds of foreign offences) and connections between domestic and foreign groups. Research indicates the influence of major organised crime groups across various crime categories and controlling a range of legitimate businesses. Major organised crime groups active in Chinese Taipei (e.g. Bamboo Union, 14K, Heavenly Alliance, Four Seas Gang and others) use underground banks, underground casinos and business operations to fund activities. Their laundering includes channels of underground remittance agencies, jewellery store operators, offshore casinos, and wire remittances through shell companies and dummy accounts. The scoping note also highlighted the role of organised crime in third-party ML, drug trafficking, fraud, corruption, illegal fishing, illegal logging, casino junkets, smuggling, kidnap for ransom/racketeering/arms trafficking/remittance, cash smuggling, and enforcing contracts.

29. **Fraud/cybercrime, transnational and domestic** – The NRA identifies fraud as 'very high risk', recognising the role of organised crime in facilitating transnational activity. The NRA highlights (1) general fraud (i.e. business fraud, insurance fraud, general scams), (2) internet and telecommunications fraud; and (3) Ponzi schemes. Generally Ponzi schemes and internet and telecommunications fraud involve organised crime groups. Methods of laundering fraud proceeds include wire transfers with associated layering to disperse risks and money mules who withdraw cash at ATMs across Chinese Taipei. More complex methods include the misuse of underground remittance services, jewellery stores and travel agents. The NRA also identifies the movement of proceeds of fraud through regional jurisdictions including China; Macao, China; Hong Kong, China; Indonesia and Malaysia. Risks from Offshore Banking Units (OBUs) are within scope.

30. **Drug trafficking** – The NRA identifies drug trafficking as 'very high risk'. The NRA and other sources recognise the role of transnational organised crime in the trafficking and distribution of drugs. Particular threats are from ketamine, amphetamines and their precursor ingredients, and heroin, with smuggling techniques including fishing boats and freight or air shipping containers from China or Southeast Asian countries. The NRA did not sufficiently consider the threats of organised crime seeking to launder the proceeds from foreign drug offences in Chinese Taipei. The scoping note focused on the various channels of laundering drug proceeds through formal and informal channels.

31. **Corruption** - The NRA identifies corruption as 'very high risk'. The NRA and other sources highlight threats from corruption at a range of levels and some cases of high-level corruption that have been successfully detected and prosecuted. The scoping note considered corruption as a proceeds generating offence and as a facilitation activity for ML or avoiding successful prosecution of crime. The NRA did not sufficiently consider risks of foreign bribery by Chinese Taipei firms and individuals, or foreign corruption proceeds being laundered through the Chinese Taipei economy.
32. **Tax offences** – The NRA identifies tax offences as 'very high risk'. The NRA and other sources highlight domestic and transnational ML of domestic and foreign tax offences as well as the channels and techniques used to launder funds. The risks from the use of OBUs, foreign companies and trusts, and the use of offshore financial centres are all considered 'very high'. The NRA notes that the investigation of transnational tax offences has revealed accounts being opened in offshore tax havens or funnelled to jurisdictions such as Hong Kong, China.
33. **Smuggling** – The NRA and other sources identify very high risks associated with smuggling, including organised crime networks with trans-national capacity. Particular risks are noted from smuggling gold, cigarette, cooking oil, Wildlife trafficking and other commodities. There are significant risks from bulk cash smuggling associated with proceeds of crime and informal remittance.
34. **Banking sector** – The NRA and other sources highlight various aspects of banking channels in ML schemes across the full range of high risk crime types. ML risks associated with Chinese Taipei's offshore centre (OBUs, foreign branches/subsidiaries) and also the roles of PEPs in the ownership/management of banking groups. The scoping note highlighted ML/TF risks of foreign branches and subsidiaries. Significant holdings in emerging markets and those with very significant ML/TF risks and/or weak AML/CFT controls.
35. **Jewellery/gold dealer sector** - The NRA and other sources note vulnerabilities for ML. Case studies and media coverage highlight illegal/informal remittance through jewellery/gold dealers and cases of connections to gold smuggling.
36. **Proceeds of foreign offences coming to (or going through) the Chinese Taipei economy** – The NRA estimates top inbound sources of criminal proceeds include China; Hong Kong, China; Macao, China; Vietnam; Philippines; and Indonesia. Estimated top destination jurisdictions of outbound proceeds are China; Hong Kong, China; Macao, China; Malaysia; the Philippines; Indonesia and Vietnam.
37. **Trade Based ML** - Various case studies highlight the abuse of trade finance/trade payment channels for ML. It is noteworthy that trading SMEs are a predominant part of the Chinese Taipei economy.
38. **Casino junkets (for movement of people and funds to /from foreign casinos)** – There is a sizeable sector of people and funds moving to and from foreign casinos via junkets. Studies note the role of organised crime in aspects of certain junket operations.

**Materiality***Nature of the economy*

39. In 2017, Chinese Taipei's nominal GDP was approximately USD 576.22 billion, of which exports accounted for around 55%. It has the third-largest foreign exchange reserves in East Asia—following China and Japan—amounting to USD 460.18 billion at the end of October 2018.<sup>1</sup>

40. Chinese Taipei has a strong external financial position built on a robust industrial base and international trade. Its current account surplus was USD 14.04 billion at end of Q3 2018. Foreign exchange capital flows that do not involve NTD transactions have been fully liberalized. SMEs are a significant feature of the economy and employ 80% of the workforce. Top individual export markets comprise of China (including Hong Kong, China), United States of America, Japan and the ASEAN member-countries<sup>2</sup>.

*Financial sector*

41. Chinese Taipei also features a well-developed financial sector with USD 2.86 trillion in assets in 2017 (equivalent to 495% of GDP that year) with 66.91% of these assets attributable to the banking sector.<sup>3</sup> As of September 2017, the financial sector was largely comprised of domestic banks (representing 54.4% of the financial sector's total assets), followed by life insurance companies (27.67%) and its postal institution (7.26%). Conversely, foreign bank branches represent only 3.29% of the financial sector's assets. Chinese Taipei's banking and insurance sectors are expanding to neighbouring markets, with significant holdings in China and across Asia.

42. Chinese Taipei has an offshore financial sector which provides financial services exclusively to foreigners and foreign-incorporated companies with tax incentives. Participating entities tend to be formed in tax haven jurisdictions. Chinese Taipei authorities assess the majority of the participants in the offshore sector are owned or controlled by Chinese Taipei residents. While the OBU sector has been operating for over 30 years, offshore insurance and securities are relatively new and less developed. OBUs are now subject to the full range of AML/CFT controls, however there were gaps in OBUs applying full AML/CFT controls until late 2017. FSC has initiated a number of enhanced control measures since that time.

*Financial inclusion and reliance on cash*

43. Chinese Taipei's informal sector remains significant.<sup>4</sup> While the adoption of electronic payment and cards continues to progress, with 91% of adults holding a bank account according to the Global Partnership for Financial Inclusion, authorities have acknowledged cash remains a significant means of settling transactions, particularly for private consumption. Chinese Taipei has a well-established financial infrastructure, where payments of large sums are usually handled by electronic means. Retail payments are supported by a range of payment systems, although this is not as well-developed as other comparable economies in the region. FSC, the Central Bank and other authorities are pursuing a number of strategies to reduce reliance on cash, including increasing the diversity of secure payment systems and promote financial inclusion.

*Exposure to trade and finance with the DPRK or Iran*

44. Trade with DPRK and Iran is closely regulated and accounts for a small part of total trade volumes. Trade with the DPRK was approximately USD 12.7 million in 2016, but reduced to zero in

<sup>1</sup> <https://www.the.Central.Bank.gov.tw/ct.asp?xItem=74550&ctNode=448&mp=2>

<sup>2</sup> Chinese Taipei Central Bank 2017 annual report, p15

<sup>3</sup> Comprising of domestic and foreign banks, credit cooperatives, a postal institution, bills finance and credit card companies.

<sup>4</sup> Estimated in 2012 to be equivalent to 28.1% of Chinese Taipei's GDP.

2018. Trade with Iran was approximately USD 1.5 billion in 2018. Authorities have identified sanctions evasion risks from parties associated with DPRK entities trading with Chinese Taipei.

45. **Table 1.1: Number and Size of FIs and DNFBPs in Chinese Taipei - September 2017**

Type of FI	Entities	Assets (USD millions)	fin. sector assets
Domestic banks	38	1,542,070	53.92%
Foreign bank branches in Chinese Taipei	29	95,190	3.33%
Postal service institution	1	209,839	7.34%
Credit cooperatives	23	24,024	0.84%
Bills finance companies	8	3,337	0.12%
Credit card companies	5	1,236	0.04%
Electronic payment institutions	5	92	>0.01%
Issuers of electronic stored value cards	4	468	0.02%
Financial leasing companies	34	14,375	0.50%
Securities firms	73	51,095	1.79%
Securities investment trust enterprises	39	1,646	0.06%
Securities finance enterprises	2	1,252	0.04%
Centralised securities depository enterprises	1	819	0.03%
Futures merchants	16	7,170	0.25%
Managed futures enterprises	1	10	>0.01%
Reinsurance companies	3	1,300	0.05%
Life insurance companies	28	799,830	27.97%
Non-life insurance companies	23	11,579	0.40%
Insurance brokers	336	228	>0.01%
Insurance agencies	296	330	>0.01%
ABT	1	26,520	0.93%
Farmers & fishermen's associations credit departments	311	68,240	2.39%
<b>Total Financial institutions</b>	<b>1,363</b>	<b>USD 2.86 trillion</b>	<b>100%</b>
<b>DNFBPs</b>			
Jewellery businesses	5,243		
Land Administration Agents	11,108		
Real Estate agencies	6,324		
Attorneys	16,866		
Notaries	224		

Accountants	7,432 <sup>5</sup>	<b>Total DNFBPs = 56,100</b>
Certified public bookkeepers, tax return filing agents	8,903	

### *Structural Elements*

46. The main structural elements for an effective AML/CFT system are in place in Chinese Taipei. There is political and institutional stability and accountability, integrity and transparency and an independent and efficient judicial system are all present. High-level political commitment to AML/CFT has been particularly notable following the US regulators' actions in 2017 to fine Mega International Bank for AML/CFT failings, with key government agencies demonstrating an awareness of and dedication to their respective AML/CFT roles. Chinese Taipei has an independent judiciary and well-functioning anti-corruption agencies. Systems are marked by respect for due process and the rule of law.

47. Media reporting on financial crime and AML/CFT matters appears to be robust in Chinese Taipei. There is a reasonable degree of in-depth public coverage of financial crime cases, which contributes to financial institutions and other stakeholders having an enhanced understanding of the risks and context of ML/TF.

48. In the 2017-18 World Economic Forum Global Competitiveness Report Chinese Taipei's ranking is very high overall (13th out of 140 economies)<sup>6</sup>. The ranking on institutions is somewhat lower (25th/ out of 40), but still relatively strong. The scoring within the pillar of institutions is based on seven governance categories. The Freedom House, Freedom of the World report for 2018 gave Chinese Taipei an index score of 1 out of 7 based on their continuing global assessments of political and civil liberties (N.B. 1 is the freest and 7 the least free)<sup>7</sup>.

### *Background and other Contextual Factors*

49. Chinese Taipei had its last mutual evaluation in 2007. Despite the many recommendations including in the 2007 MER, very few reforms measures were implemented until the start of 2017. This sudden change in policy setting appears to have largely been due to a significant AML/CFT related fine given to one of Chinese Taipei's largest banks, Mega International Bank, in the United States in 2017. Since then, AML/CFT has gained additional traction in Chinese Taipei and garnered increased political commitment to support implementation.

50. The legal and institutional progress and the amount of implementation that has occurred in the two-year period immediately prior to the mutual evaluation are significant. Many laws have been passed and implemented, the AMLO has been established, and an NRA undertaken amongst many other reforms. It is in this context that many of the effectiveness outcomes have been considered. Whilst the progress in the previous two years has been significant and had great impact, it is in contrast to the ten-year period following the previous MER.

### *AML/CFT strategy*

51. Chinese Taipei does not have an AML/CFT strategy. However, the government has given priority to implementing key reforms, particularly since 2017. The establishment of the AMLO led by a high-level officer of the Executive Yuan in 2017 demonstrated the priority the government has given to AML/CFT. Since then, AMLO has coordinated the preparation for ME and the NRA.

<sup>5</sup> This figure includes 7432 CPA certificate holders; 3,396 registered practitioners; 1,972 registered CPA firms

<sup>6</sup> <http://reports.weforum.org/global-competitiveness-report-2018/country-economy-profiles/#economy=TWN>

<sup>7</sup> <https://freedomhouse.org/report/freedom-world-2018-table-country-scores>

## Legal & institutional framework

### Co-ordinating bodies

52. **The AMLO** was established in the Executive Yuan in March 2017 to co-ordinate the NRA, to oversee and prepare for the mutual evaluation and to undertake broader AML/CFT policy reforms. There are a range of other policy and operational coordination bodies as outlined at IO1.

### Legal and law enforcement agencies

53. **The Prosecutors office** sits under the MOJ and is responsible for the investigation and prosecution of criminal matters in Chinese Taipei, leading and coordinating the investigation as well as freezing, seizing and confiscating assets. The three-tiered prosecution system includes: (a) Supreme Court prosecutors (SPO); (b) High Court Prosecutors (HPO); (c) District Prosecutors (DPO).

54. **The Ministry of Justice Investigation Bureau (MJIB)** is a criminal investigation and counter-intelligence agency within the MOJ. The MJIB investigates a wide range of criminal activity, in particular serious and economic crimes including ML.

55. **The National Police Agency (NPA)** is within the Ministry of the Interior and oversees all police forces. The NPA also investigates high profile and serious crimes and ML related to these cases.

56. **The Anti-Money Laundering Division of the MJIB (AMLDD)** is Chinese Taipei's FIU responsible to receive STRs, domestic threshold reports (CTR), international threshold reports (ICTR) and to analyse and disseminate financial intelligence to LEAs.

57. **Administrative Enforcement Agency (AEA)** is within the MOJ and is responsible for enforcing the execution of monetary payment obligations including taxes, fines and other obligations for payment in public law. It may also accept prosecutors' instructions to track and confiscate assets.

58. **The Agency against Corruption (AAC)** prevents and fights corruption by planning and implementing anti-corruption policies, corruption prevention (including administering wealth declarations) and investigations of a limited number of corruption matters and related ML.

59. **National Security Bureau (NSB)** is the principal intelligence agency responsible for coordinating intelligence with foreign counterparts, including in PF and TF matters.

60. **Office of Homeland Security (OHS)** is responsible for security strategies, policies & projects.

61. **National Immigration Agency (NIA)** is responsible for immigration matters.

62. **Coast Guard Administration of the Ocean Affairs Council** is an LEA under the Executive Yuan and is responsible for protecting the resources of the territorial waters of Chinese Taipei.

63. **Customs Administration (CA)** is responsible for border enforcement issues, including revenue collection, pursuit of smuggling and the cross border cash/BNI declaration regime.

### Financial and DNFBP sector bodies

64. **The Financial Supervisory Commission (FSC)** is responsible for the development, supervision, regulation, and examination of financial markets and financial service enterprises (banks, insurance, securities, NBFIs for prudential and AML/CFT as well as accountants and trust enterprises).

65. **Bureau of Agricultural Finance** is the regulator of agricultural FIs (FSC is commissioned to conduct AML/CFT examinations).

66. **Central Bank** supervises foreign exchange counters for AML/CFT.
67. **Department of Prosecutorial Affairs (MOJ)** supervises lawyers, including for AML/CFT.
68. **Department of Land Administration (MOI)** supervises (together with municipal governments) land administration agents and real estate brokers, including for AML/CFT.
69. **Department of Commerce (MoEA)** regulates and supervises jewellery businesses, including for AML/CFT.
70. **Civil Division of the Judicial Yuan** supervises notaries, including for AML/CFT.
71. **Taxation Administration (MOF)** regulates and supervises bookkeepers and tax filing agents, including for AML/CFT.

#### Proliferation financing

72. The NSB integrates and coordinates anti-proliferation projects that serve as a platform for combating proliferation and other import/export violations. Agencies involved in this platform include the HPO, MOJ, Coast Guard, Bureau of Foreign Trade, MJIB, NPA, NIA, Customs, MOF, Ministry of Transportation, Maritime and Port Bureau and the FSC. In specific instances such as the detection of particular activity, the MOJ convenes a TF Review Committee attended by members of seven major ministries and agencies to determine follow-up actions.

#### Financial sector and DNFBPs

73. When assessing the effectiveness of preventive measures and AML/CFT supervision, the assessment team gave the highest importance to banks, followed by the postal service institution, securities market intermediaries, agricultural FIs, then life insurance and other FIs. Amongst DNFBPs, real estate intermediaries were given particular importance, as well as lawyers and accountants. Jewellers were highlighted in the NRA, particularly in relation to underground remittance, rather than legitimate jewellers being a location for ML. In comparison to FIs, DNFBPs have significantly more reporting entities—around 56,100—albeit smaller volumes of transactions. Casinos and gambling are illegal in Chinese Taipei under the criminal code.

74. Chinese Taipei is an advanced financial centre, with 1,363 FIs encompassing a range of financial services across banking, securities and insurance. Domestic banks generally face higher inherent risks, due to their diverse range of customers, volume and speed of transactions, and as the only reporting entities in Chinese Taipei authorised to remit funds overseas. Domestic banks and foreign bank branches in Chinese Taipei are also the only entities authorised to establish OBUs, which the 2018 NRA identified as highly vulnerable to ML/TF risks. According to the Chinese Taipei NRA, OBUs accounted for 6.88% of the financial sector's assets, and around a third of the 2017 GDP. Offshore units for the securities and insurance industries were introduced only in 2014 and 2015 respectively, and their economic activity was equivalent to almost 1% of the 2017 GDP.

75. Foreign exchange counters are excluded from the MLCA, though they are subject to AML/CFT measures under their own set of regulations as well as TFS under the CFT Act.<sup>8</sup> Financial leasing companies were brought under AML/CFT supervision in 2018.

76. All DNFBPs present are covered for AML/CFT. Casinos are illegal, and trust and company service providers do not exist as separate businesses from lawyers or accountants. Chinese Taipei has gone beyond the FATF standards by including bookkeepers and tax return filing agents as DNFBPs.

<sup>8</sup> The Regulations Governing the Establishment and Administration of Foreign Currency Exchange Counters



*Preventive measures*

77. Chinese Taipei's AML/CFT system has been subject to rapid and significant reforms since 2016. These reforms encompass legislative and regulatory amendments. The centrepiece of the AML/CFT laws, the MLCA, was amended on 28 June 2017 and the CFT Act was further amended in November 2018. A series of regulations and directions pursuant to the MLCA were issued under the MLCA for each individual type of FI and DNFBP. These were further revised in November 2018.

78. Transition from a rules-based to a risk-based approach for AML/CFT supervision is ongoing. Competent authorities have obtained the close cooperation of industry associations to work with supervisors and regulators to prepare guidance and conducting training and awareness raising on risk-based AML/CFT implementation.

*Legal persons and arrangements*

79. All of the legal persons outlined below must register with the MOEA under the relevant statute. At the end of 2018 there were 764,572 legal persons on the register. During 2018, 42,695 new companies had been added and 31,547 had been dissolved or had their registration revoked.

**Table: Registered legal persons - 2018**

Type	Number (Nov. 2018)	Basis of incorporation	Basic characteristics & significance
<b>Limited company (LLC)</b>	534,260	Company Act	One or more shareholders - each liable in an amount limited to their contribution. Permit single shareholder and single director. Both can be non-resident. One can be a legal person
<b>Company limited by shares - private</b>	164,700	Company Act	Shares issued in public, close company, and non-close company
<b>Company limited by shares - public</b>	2,169	Company Act	Public company whose shares are publicly traded. Not privately-held
<b>Foreign companies</b>	5,656	Registered under the Company Act	Branches and representative offices may register. Both require resident directors/managers. Subject to statutory audit.
<b>Unlimited co.</b>	11	Company Act	
<b>Unlimited company with limited liability shareholders</b>	9	Company Act	Does not issue stock, it is formed both by a limited liability shareholder and a unlimited liability shareholder
<b>Limited partnerships</b>	32	Limited Partnership Act (Art 9) and Regulations	One of the partners must be a resident. Not subject to corporate tax, but subject to filing financial statements and personal income tax
<b>Foreign limited partnerships</b>	2	Limited Partnership Act	All foreign LPs' branches.
<b>Other corporate body types</b>	Foundations 6,054	Foundations Act	For example, government or private donated foundations
	Associations 51,679	Civil Code Art 59 - 61	
<b>Register size</b>	<b>764,572</b>		

80. An important contextual factor is that the legal and regulatory framework and market practice sees relatively little professional intermediation in the establishment or continuing operation of legal persons. There are no requirements for company service providers to form or

have a continuing role as an office holder or to have a role in filing returns. As such, few FIs/DNFBPs have a continuing relationship providing company services through the life of a company.

81. The Company Act underwent significant amendments in August 2018 with additional regulations being issued, a number of which are directly relevant to transparency and reporting measures. These include Article 22-1 which stipulates that board directors, supervisors and managers, as well as shareholders with at least a 10% stake in a company must declare their involvement in the entity and report to the registry any changes in their shareholding within 15 days. Powers and sanctions to enforce compliance with these and other obligations were strengthened. Additional regulations under that article extend to elements of enterprise risk assessments and other AML/CFT measures.

82. Trusts in Chinese Taipei include civil trusts, business trusts or charitable trusts. Business trusts require the trustee to be a trust enterprise, which are FIs and regulated by the MLCA and the Trust Enterprise Act and supervised by the FSC (considered in R.10 and IO4). Civil trusts (which are express trusts) may be established via legal arrangements between private individuals and are regulated under the Trust Law. Foreign trusts operate in Chinese Taipei. Both civil trusts and foreign trusts are considered at R.25 and IO5. The Trust Law has only limited requirements to support transparency of the beneficial ownership and control of legal arrangements. DNFBPs providing trust services to a foreign or domestic trust are regulated by the MLCA (Art 5) and regulations governing AML/CFT measures of the respective industry of DNFBPs.

83. Chinese Taipei has a large number of civil trusts. Information provided by the tax authorities indicate that civil trusts have registered assets (real property) valued at 1,948,622 million NTD (approx. USD 62.8 billion) in 2018. The actual number of civil trusts is not known by authorities, as there are no obligations on civil trusts to file with the tax authorities in the absence of income or for trustees to declare their status to FIs or DNFBPs. There are no details available on the numbers of foreign trusts that may operate or hold assets in Chinese Taipei.

### *Supervisory arrangements*

84. The FSC is the peak regulator for FIs, including for AML/CFT issues. It has four sub-bureaus, being the Banking Bureau (BB), Securities and Futures Bureau (SFB), Insurance Bureau (IB)—which are responsible for supervising banks, securities and insurance firms respectively—and the Financial Examination Bureau (FEB), which conducts offsite and onsite inspections on behalf of the FSC and other supervisory agencies.

85. Two other supervisors for FIs are the Central Bank and Bureau of Agricultural Finance (BOAF) of the Council of Agriculture. The Central Bank is the monetary authority of Chinese Taipei, and is also the supervisor for foreign currency exchange counters and regulator for foreign exchange businesses. The BOAF supervises agricultural financial institutions (AFIs), which include the ABT and credit departments of farmers' and fishermen's associations.

86. Each DNFBP sector is regulated and supervised for AML/CFT by a specific competent authority. These include: MOEA for jewellery businesses; MOI for land administration agents and real estate brokers; MOJ for lawyers; Civil Dept. of the Judicial Yuan for notaries; FSC for accountants; and the Tax Administration for bookkeepers and tax return filing agents.

87. Industry associations in Chinese Taipei perform important roles in AML/CFT, but have a very limited role as self-regulatory bodies. The associations play coordinating roles between government and their respective sectors, and have been quite active in the NRA, as well as the preparation and

dissemination of guidance subject, to regulatory approval. Industry associations have contributed significant resources to AML/CFT awareness raising, training and coordination activities.

### *International Cooperation*

88. Chinese Taipei authorities have placed a strong priority on obtaining and providing international cooperation in AML/CFT matters, in keeping with the risk profile. The NRA identifies a range of geographic risks and jurisdictions that share ML risks for both inbound and outbound criminal proceeds and related vulnerabilities. However, Chinese Taipei faces many challenges with obtaining international cooperation due to longstanding issues. Despite this, authorities have taken steps to overcome obstacles to international cooperation and have established numerous channels and initiatives to seek and to provide international cooperation in line with the risk profile.

## CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

### *Key Findings and Recommended Actions*

#### **Key Findings**

- 1) Chinese Taipei generally demonstrated a generally sound understanding of ML/TF risks. The 2018 NRA process was well coordinated and supported by a wide range of public and private sector representatives. The NRA adopted a reasonable methodology and process, but some scope gaps are noted with risks from cross border movement of cash and domestic trusts. The FSC conducted a sectoral risk assessment in 2015 and the FIU has conducted some strategic assessments. Further assessments of risk were undertaken in relation to legal persons and the NPO sector. Generally, FIs and DNFBPs appear to understand their risk as framed in the NRA and use it to inform their own risk assessments.
- 2) Chinese Taipei has not yet issued a national AML/CFT strategy, but authorities have pursued AML/CFT policies and programs in many areas that reflect risk assessment findings. Strong policy coordination has resulted in a significant shift in the culture and priority of AML/CFT efforts.
- 3) There has been a large increase in the allocation of resources to AML/CFT implementation across all relevant agencies, which has contributed significantly to the shift to risk-based approaches and priority implementation of AML/CFT reforms. Objectives and activities of the competent authorities and SRBs have been adjusted to be largely consistent with the identified ML/TF risks. Operational outcomes and relevant international cooperation approaches reflect a risk based approach by LEAs.
- 4) Enhanced measures have been applied for high vulnerability areas, though they may not sufficiently reflect trends in each sector. Mitigating measures for cash transaction risks (threshold reporting) are positive, but were not applied to higher risks identified in the real estate sector.
- 5) Coordination at the AML/CFT policy level is very strong, particularly since the creation of the AMLO. The AMLO has supported coordination and cooperation to finalize the NRA, and to adjust policy priorities across sectors and agencies. Policy cooperation and coordination is strong in the area of combating PF. While there are many strengths in operational coordination, some areas require further improvement, including between LEAs and supervisors on emerging ML/TF risks.
- 6) Authorities have worked closely with FI and DNFBP sectors and their associations on the NRA and sharing assessment findings to develop a shared understanding of risk. Significant resources were allocated to deliver programs that have led to FI / DNFBP sectors increased understanding of risk.

#### **Recommended Actions**

- a) Finalise and implement a national AML/CFT strategy and updated agency-level strategies.
- b) The strong coordination structure that was put in place for the ME should be institutionalised to support ongoing priority actions to mitigate ML/TF/PF risk.

- c) Prioritise further comprehensive assessments of risk including: cash economy issues (including scope of the cash economy; cross-border movement of cash); ML risks with underground banking; foreign legal persons and arrangements in Chinese Taipei's offshore sector; organized crime involvement in third party ML; trusts and; emerging TF issues (including global trends on terrorism and TF). Pursue international cooperation to obtain inputs on such assessments.
- d) At a policy level, closer examination should be given to the application of enhanced measures for higher risk scenarios and simplified measures for lower risk (e.g. consider applying threshold transaction reporting obligations to real estate sector)
- e) Continue to enhance operational level cooperation, including between LEAs and supervisors on sharing information on emerging ML/TF risks.

### ***Immediate Outcome 1 (Risk, Policy and Coordination)***

#### *Chinese Taipei's understanding of its ML/TF risks*

89. Chinese Taipei is subject to a number of significant ML threats, but few TF threats. The authorities have undertaken a number of assessments of ML/TF risks that support a reasonable understanding of key areas of risk, albeit with some relative strengths and weaknesses amongst the assessments.

90. Chinese Taipei has demonstrated a generally sound understanding of ML/TF risks through the 2017/18 NRA process and other agency-level assessments. A wide range of government agencies and private sector actors participated in the NRA, which was published in May 2018.

91. Prior to the NRA, the FSC conducted a sectoral risk assessment (SRA) which looked at a number of vulnerabilities of the financial sector, but only relatively cursory information on threats (sources of proceeds of crime, methods of ML/TF, actors undertaking ML/TF). The SRA was a preliminary basis to commence a number of moves towards a risk-based approach by the FSC, but did not serve as a broad basis to support FI/DNFBPs' risk-based approach.

92. The NRA methodology focused on the assessment of ML threats and vulnerabilities and included an independent assessment of TF risks. The NRA considered sources of proceeds, ML techniques, vulnerabilities to ML, etc. Sources of data on criminal activities included the number of STRs, cases disclosed by the FIU, cases processed by LEAs, and estimates of predicate offence proceeds. Assessments of TF risks considered both domestic and cross-border risks, domestic and foreign threats, and the risks of movement of people and funds through the jurisdiction (including possible transit of foreign terrorist fighters). Close consideration was given to elements of TF risks with foreign workers within the jurisdiction.

93. A total of 23 ML threat areas (22 predicate offences and third party money laundering) were assessed based on three factors: "actors' capacity", "scope of ML activity" and "estimated of proceeds of crime annually". The NRA classified the threats of ML/TF associated predicate offences into four categories as set out in the table below:

**Table 1.1: List of ML/TF threat profiles' overall ratings according to Chinese Taipei**

Low	Medium	High	Very High
Human Trafficking (migrant smuggling) Sexual exploitation Counterfeiting currency Murder, grievous bodily injury Robbery Extortion Piracy Terrorism (Terrorist Financing)	Illicit arms trafficking Illicit trafficking in stolen and other goods Theft Kidnapping, illegal restraint Environmental crime Forgery	Counterfeiting / product piracy, IPR crimes	Drug trafficking Fraud Smuggling Tax crimes Organised crime Securities crime Corruption / bribery Third-party ML

94. As for ML/TF vulnerabilities, the 2018 NRA assessed FIs and DNFBPs against five risk factors: sector's inherent characteristics; products and services; nature of business relationships; geographic reach, and delivery channels. Sources of data included the number and size of the sector, information on their product and service, geographical locations of clients and service activities.

95. The 2018 NRA gave overall vulnerability ratings for 31 sectors of FIs and DNFBPs. Two sectors were rated as very high (Offshore banking units and domestic banks). Twelve sectors were rated as high (Offshore securities units (OSU); branches of foreign banks; the post office; securities firms; offshore insurance units (OIU); jewellery businesses; accountants; lawyers; real estate brokers; credit depts. of agricultural & fisheries associations; ABT; Life insurance companies; securities investment trust enterprises). Twelve sectors were rated as medium and five as low (foreign exchange counters were notable amongst the low ratings). These assessments appear to be generally reasonable.

96. The earlier SRA and the NRA gave some consideration to ML techniques. The SRA noted dummy accounts as the main ML method from 2007 to 2013, accounting for a majority of all cases, followed by offshore remittances (8.8%) and use of relatives' accounts (7.5%). All other methods were below 5%. However, the 2018 NRA did not take into account such ML/TF techniques.

97. LEAs do not regularly produce written threat assessments of particular crime types. However joint agency sub-committees meet to share information on the risks of certain key crime types as trends change, including analysing crime statistics and sharing key cases. AMLD publishes various ML typologies reports and has produced a small number of high quality strategic analysis products on certain current and emerging risks. These are distributed to government and private sector stakeholders.

98. While the 2017/18 NRA covers ML risks associated with narcotics, fraud, human trafficking, corruption, tax, smuggling, gambling, more detailed assessments were not available on each crime type. Further assessments of corruption risks are needed to support authorities to follow the proceeds of corruption and bribery (proceeds from domestic and foreign corruption), particularly those that go offshore. A comprehensive understanding of threats of laundering proceeds of foreign offences was not sufficiently demonstrated.

99. The NRA included an assessment of legal persons and, to a lesser extent, legal arrangements. A more in-depth assessment of threats and vulnerabilities of legal persons was published in August 2018. The vulnerabilities included the ease of incorporation, professional engagement not being mandatory for company incorporation and no access to company beneficial ownership information. Data sources included companies under investigations, STRs and the geographic reach of legal persons. The NRA did not sufficiently assess the risk of foreign legal persons and arrangements and

how they are misused for ML or TF or the features of types of legal persons that make them vulnerable for ML or TF. The NRA and sectoral identified all relevant categories of legal persons and gave two ratings of their relative transparency and vulnerability. Non-public limited companies and those limited by shares were rated as having 'higher' vulnerability. Public companies limited by shares, limited partnerships and non-public unlimited partnerships were assessed as having 'lower' vulnerability. The NRA included an assessment of TF risks associated with NPOs. The assessment considered six categories of NPOs. The assessment found that TF risks were low overall. However, it identified three categories having some risks (civil associations, national religious foundations and social welfare charity foundations) and three having no or low risks (medical foundations, educational foundations and cultural foundations). ML/TF risk assessment of trusts and NPOs lacked details on risk factors, threats, vulnerabilities and data sources and processes used in assessing their risk.

100. The NRA considered risks from transnational movement of proceeds of crime. Authorities reasonably considered geographical risks including the main destination and source jurisdictions for illicit proceeds and identified China; Macao, China; Hong Kong, China and the Philippines as the common sources and destinations countries. The British Virgin Island, Samoa and Cayman Island were highlighted, given the threats arising from legal persons formed in those jurisdictions being active in Chinese Taipei's offshore financial sector and the sectors associated risks.

101. The authorities have not sufficiently considered the nature of risks associated with informal channels and cash. Consideration of cross border BNIs were not included in the NRA. Qualitative and quantitative data were used to assess ML/TF risks in most of the sectors; however, this was not the case in assessing trusts and NPOs. More in depth risk assessment is required of DNFBPs sectoral risks. Further, Chinese Taipei should continue to maintain an understanding of regional and global trends that might change the risk profile of Chinese Taipei for TF (refer to IO. 9).

102. The NRA did not assess the risk of virtual assets but did note that virtual currencies such as Bitcoins had been used for drug transaction payments that particularly involved marijuana trafficking. Virtual assets are intended to be included in future risk assessments.

103. In the period 2016-18 there was a significant policy focus on AML/CFT reforms, which included the formation of the AMLO as a leading body responsible for organizing, supervising and coordinating Chinese Taipei's AML/CFT efforts. This contrasts to the period of 2007 - 2016 in which there was very little progress with reforms, or implementation of Chinese Taipei's AML/CFT system.

104. Since 2017 Chinese Taipei has given a priority to policy reforms and a move to a risk based approach ahead of the ME, which has involved significant efforts of cooperation and coordination. The NRA sets out some policy directions and there is a clear plan to prepare a national strategy. AMLO and other agencies demonstrated work to prepare to adopt a strategy following the ME.

105. Authorities demonstrated their agency-level AML/CFT policies and activities that directly reflect risk assessment findings. Chinese Taipei has adopted some strategies and action plans relating to predicate threats, which include elements of AML/CFT. These include New-Generation Anti-Drug Strategy and the Strategic Anti-Drug Action Plans (July 2017); National Integrity Building Action Plan; and the Action Plan for Comprehensive Enforcement of Intellectual Property Rights Protection.

106. Sufficient resources and manpower are allocated for AML/CFT policies and activities. Significant additional resources were provided and other resources re-allocated to support priority policies and activities in response to the updated understanding of ML/TF risks.

### *Exemptions, enhanced and simplified measures*

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107. Results of assessments of risk have generally been used to support application of enhanced measures in higher risk scenarios. A risk based approach to the application of simplified measures for lower risk scenarios is generally well supported by available assessments. A reduced range of AML/CFT measures have been applied to foreign exchange counters. FIs and DNFBPs are only required to apply simplified measures to foreign government entities, domestic government-owned enterprises, domestic public companies, and foreign listed companies. However, this does not sufficiently consider PEP risks and other higher risk areas.

108. Taking into account the risks of a cash-based economy, Chinese Taipei has obliged FIs and most DNFBPs to report threshold transactions (CTRs) exceeding NT\$500,000 (USD 16700) to the MJIB. However despite the risks identified in the NRA, CTR obligations were not applied to transactions in the real estate sector.

### *Objectives and activities of competent authorities*

109. Regulatory and supervisory authorities' demonstrated that their objectives and activities are increasingly consistent with the results of the NRA and other assessments of risk. Supervisors, following the SRA, tended to focus on a sub-set of key threat areas and had not comprehensively adjusted their objectives and activities to take account of the wider set of priority threat areas. Since late 2017, the FSC has adjusted its priorities and activities in response to the NRA process findings. FSC and other supervisors have begun to increase their engagement on risk with AMLD and other LEAs and have increased the focus, frequency, scope and depth of supervision taking into account the updated understanding of risk.

110. LEAs and the prosecutors have mostly aligned their investigative priorities to the eight very high threats identified in the ML/TF NRA prior to and since the completion of that assessment.

### *National coordination and cooperation*

111. Coordination and cooperation on combating ML, TF and PF is strong overall at both policy and operational levels. There has been a significant shift in the culture of AML/CFT coordination. This area was previously viewed as a responsibility of specific competent authorities, but 'buy-in' has increased with greater awareness and priority evident across more relevant government agencies.

112. The EY has placed a strong priority on coordination and cooperation in the preparation of the NRA and for the ME process. The government has allocated significant resources to cooperation and coordination, both within the AMLO and through a wide range of joint agency processes. The establishment of the AMLO as the joint-agency coordination body for the NRA and ME preparation has seen contributions from different government departments and state owned corporations which has supported a much deeper whole-of-government approach to coordination.

113. A wide range of coordination and cooperation meetings and activities were held during the process of ML/TF NRA. Interagency cooperation and coordination meetings are periodically held and operationally on a case by case basis when necessary. For example in 2016, MOJ has collaborated with JY, MAC, MOFA, FSC, MOTC, NCC, CIB, MJIB, NIA, and HPO to establish the "Inter-Agency Platform against Cross-Border Fraud" to improve the effectiveness of combating cross-border fraud. Some competent authorities are responsible for coordinating national efforts relating to specific threats: NPA is coordinating cybercrime investigation; and NSB is responsible for coordinating TF efforts. Following the NRA, interagency communication meetings have been held among competent authorities and have led to increasingly coordinated efforts on most priority threats.



114. While there are examples of good cooperation leading to strong operational outcomes, the level of cooperation and coordination among LEAs, AMLD and prosecutors needs to be enhanced. Prosecutorial authorities expressed their interest in enhancing cooperation with AMLD in parallel financial investigations and in tracing illegal funds.

115. Structures and joint agency cooperation in relation to combating TF operate well at both policy and operational levels. The main CT and CFT coordination mechanism is the Homeland Security Policy Committee of the EY, which was established to formulate CT policies, review laws, approve plans and supervise operations. The members are generally at the level of ministers and heads of departments. The Committee meets at least annually. In addition, coordination meetings for Homeland Security Policy Committee are held every quarter. At the operational level, the Director of OHS organises regular working level meetings for specific issues with relevant agencies.

116. The NSB leads the coordination of TF efforts with MOJ, as the competent authority for TF investigations. While Chinese Taipei has generally low TF risks, there have been a number of cases where authorities have closely considered possible TF or terrorism matters and demonstrated good operational level cooperation. In these cases, national security and law enforcement agencies, including the FIU, were shown to coordinate well.

117. The central authority in charge of CT policy is the OHS which regularly exchanges information with national security, LEAs and administrative agencies through meetings of the EY Homeland Security Policy Committee. The level of information exchange is consistent with the TF risk profile.

118. Supervisory authorities demonstrate a degree of cooperation with LEAs and AMLD. However, there is a need for closer cooperation and information sharing to support supervisors to take a deeper approach to risk-based supervision and outreach.

119. Inter-agency processes have worked well to support the preparation and implementation of the legal framework and regulated implementation mechanisms for TFS to combat PF. Coordination on combating WMD, including PF, has involved a wider set of stakeholders than earlier AML/CFT coordination work. It is notable that Chinese Taipei has consulted closely with foreign partners and regional bodies when pursuing measures to give effect to UN and FATF obligations to combat the proliferation of WMD and PF. The additional measures to allow for additional PF-related domestic designations and TFS were supported by close coordination and an understanding of vulnerabilities.

#### *Private sector's awareness of risks*

120. FIs and DNFBPs, through their sectoral associations and individual firms, were closely involved in the conduct of the NRA and subsequent awareness raising on risk. The authorities included association representatives and senior managers of FIs and DNFBPs in the ML/TF NRA process. Results of risk assessments to related FIs, DNFBPs were shared through seminars, face-to-face meetings, and publication of guidelines.

121. AMLO played a vital role in the efforts to reach out to private sector and DNFBPs with the aim of raising their awareness on the results of ML/TF NRA. Significant resources (AMLD, FSC, AMLO, etc.) were allocated to help to ensure that respective FIs, DNFBPs and related sectors are aware of the results of risk assessments and increase their understanding of ML/TF risks. There was also widespread coverage of the NRA process and results in media and social media coverage.

122. Sectoral associations and private sector representatives demonstrated a reasonable understanding of findings contained in the NRA and an increasing understanding of risk. The private sector had lacked further specific details of key risks. Immediately prior to the ME onsite the FSC,

AML and LEAs held a number of compliance events with the private sector which included more detailed sharing of information on current and emerging risks.

2

*Overall Conclusion on Immediate Outcome 1*

123. Chinese Taipei demonstrated a reasonable assessment and generally sound understanding of ML/TF risks. Overall AML/CFT policies and activities largely seek to address the risks identified in the NRA and other assessments. National co-ordination and co-operation on AML/CFT issues at the policy and operational levels has improved significantly since the last evaluation. This is particularly evident in relation to policy level co-ordination among LEAs, however there are opportunities for deeper operational levels cooperation.

124. **Chinese Taipei has a substantial level of effectiveness for Immediate Outcome 1.**

## CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

### *Key Findings and Recommended Actions*

#### **Key Findings**

##### *Immediate Outcome 6 (Financial intelligence ML/TF)*

- 1) Financial intelligence and related information is used extensively to investigate ML, associated predicate offences, potential TF cases and for tracing criminal proceeds. LEAs are well equipped and experienced in using and generating financial intelligence in investigations to uncover complex structures and networks. AMLD adds value in complex financial investigations, particularly those involving international elements. LEAs actively generate and use financial intelligence, drawing on AMLD products and other data.
- 2) For the very few cases that involved elements of TF, AMLD demonstrated experience of providing related financial intelligence, including that obtained through Egmont channels.
- 3) The AMLD receives a large number of STRs and an even greater number of CTRs. AMLD demonstrated quality intelligence products produced by experienced and capable analysts. Despite having a database that scans for priority indicators, AMLD staff analyse each STR received and those CTRs screened as higher risk. In conducting their analysis, AMLD has access to a very wide range of information.
- 4) AMLD produces a reasonable number, range and quality of analysis reports with approximately 15% of STRs becoming analysis reports each year. MJIB is the predominant recipient of AMLD disseminations and, to a lesser extent NPA, Prosecutors and TA. Reflecting its role, AAC makes relatively little use of AMLD financial intelligence. Whilst STRs play a key role in financial investigations, fewer STRs generate new investigations.
- 5) FIU analysis and disseminations support the operational needs of competent authorities to a large extent. This includes AMLD's uses of Egmont Group information to support domestic and transnational investigations and to assist in overcoming difficulties LEAs face in obtaining international cooperation. The FIU cooperates extensively with other competent authorities to exchange information and financial intelligence. AMLD staff performs a wide range of crucial additional functions going beyond receipt, analysis and dissemination of STRs (including outreach, feedback, TFS administration, etc.). Despite high skills and ICT capabilities, with increased staffing the assessment team considers AMLD could achieve greater outputs.

##### *Immediate Outcome 7 (ML investigation and prosecution)*

- 1) Chinese Taipei's legal and institutional frameworks demonstrate compliance with the international standards with the exception of a small scope gap in the smuggling of migrants as a predicate offence. The small scope gap does not significantly impact on effectiveness.
- 2) LEAs demonstrated the ability to investigate complex financial crime cases and related financial investigations. Cases presented demonstrate complex financial investigations tracing money trails, lifting the corporate veil, unravelling layers of ownership and money being sent offshore. The role of the prosecutor in driving ML investigations and coordinating authorities according to expertise has been a strength. The MJIB and prosecutors have specialist economic crime units that assist in complex matters.
- 3) Authorities are not investigating and prosecuting ML in line with the overall risk environment and context (when compared to the significant number of profit generating

predicate offences occurring in Chinese Taipei). Of the cases of ML that have been investigated or prosecuted, these broadly align to the risk profile with the exception of drug trafficking and smuggling matters.

- 4) A clear incentive for prosecutors to apply ML charges was lacking until the MLCA was amended in June 2017. ML has been given greater priority since the amendment.
- 5) Authorities note that third party ML constitutes a high risk threat, however there have been very few third party ML investigations and prosecutions until more recently.
- 6) The rate of conviction for ML is low and the penalties applied have not been dissuasive.

#### *Immediate Outcome 8 (Confiscation)*

- 1) Chinese Taipei has a good legal framework for seizing and forfeiting criminal proceeds, instrumentalities and property of equivalent value. Chinese Taipei has heavily relied on criminal forfeiture to seize and forfeit criminal assets located in Chinese Taipei as well as the proceeds transferred overseas. Chinese Taipei does not have administrative forfeiture. All forfeiture must be adjudicated by a court order.
- 2) Efforts for forfeiture of criminal proceeds, instrumentalities, and properties of corresponding value have been enhanced by an expressed strategic direction and emphasis on the pursuit of forfeiture of proceeds of crime as a goal.
- 3) Chinese Taipei has appropriately used a variety of tools in identifying, tracing and forfeiting criminal assets. Provisional measures provided under the CPC operate well in practice.
- 4) Chinese Taipei is successful in forfeiting a significant value of assets comparable to the size of its economy. The amount forfeited arising from a range of predicate offenses appears to be consistent with Chinese Taipei's risk profile. Significant assets remain under restraint subject to ongoing actions.
- 5) Asset management at the stage of restraint is reasonably well supported by prosecutors.
- 6) Chinese Taipei has been able to obtain a domestic judicial order against criminal proceeds located offshore for enforcement and registration in a foreign court, which successfully restrained the criminally-linked assets in the foreign jurisdiction. Authorities have been able to seize locally-based funds relating to foreign predicate offences; however, Chinese Taipei is not able to share the proceeds where a final forfeiture order against the seized funds has not been entered.
- 7) MLCA amendments (2017) expanded the controls on declaration and possible seizure and confiscation cross border cash, which reflects the high risk of undeclared or falsely-declared cash smuggling of criminal proceeds to/from neighbouring jurisdictions. An increase in operational responses since the amendments was beginning to be demonstrated.

#### *Recommended Actions*

##### *Immediate Outcome 6 (Financial intelligence ML/TF)*

- a) Despite high performing staff, the AMLD would benefit from an increase in human resources to support: (i) increased strategic analysis outputs; (ii) greater use and analysis of the large amount of information available to the FIU; (iii) increased number of analysis reports to disseminate to LEAs; and (iv) greater support if needed to LEAs in their investigations.
- b) Further increase AMLD support for the operational needs of other LEAs and supervisors in order to: minimize the number of disseminations that do not proceed to full investigations;

support supervisors' market entry and supervisory activities; and allow tax authorities to access a greater range of CTRs to support their administrative and criminal justice activities.

- c) Further integrate interaction between AMLD analysts and MJIB and NPA at the stage of targeting high risk crime types, e.g. drug trafficking, smuggling and third party ML networks.
- d) Extend authorities' online access to include information such as foreign exchange transactions data and cross border wire transfer information from the Central Bank.
- e) AMLD is encouraged to focus strategic intelligence products on high-risk foreign proceeds and regional and domestic high risk crime trends.

*Immediate Outcome 7 (ML investigation and prosecution)*

- a) LEAs should increase the use of the ML offence including through enhancement of the quality of briefs of evidence, consideration of ML at an early stage of predicate offence investigations and prioritisation of third party ML across a wider range of offences and particularly the high risk crime types.
- b) Reconsider the penalty for ML, on the basis of statistics supplied, the sanctions applied against natural persons were not effective, proportionate or dissuasive.
- c) Prioritise pursuing legal persons and ML based on foreign predicate offences in line with the risk profile.
- d) Prioritise continued outreach and training to the judiciary to ensure an understanding of the complexity and importance of the ML offence and to ensure that sanctions applied are proportionate and dissuasive.

*Immediate Outcome 8 (Confiscation)*

- a) Chinese Taipei should consider designating AEA as an agency responsible for asset management from the moment of seizure (or earlier) and ensure they are able to manage or convert seized assets into cash, thereby relieving prosecutor's work load and effectively utilising AEA's expertise in asset management.
- b) Chinese Taipei should consider the proportional application of forfeiture by the Customs Administration to non-declared or falsely declared currency or BNI. Proportionality is particularly relevant if such currency or BNI can be proven to be derived from a legitimate source.
- c) Chinese Taipei should consider enacting an in rem forfeiture law, filling in the legal gaps where the existing non-conviction based forfeiture provision under the CPC may not convey the authority to pursue forfeiture.

125. The relevant Immediate Outcomes considered and assessed in this chapter are IO6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R.4 and R.29-32.

***Immediate Outcome 6 (Financial intelligence ML/TF)***

*Use of financial intelligence and other information*

126. The AMLD is a law enforcement style FIU sitting within the MJIB. FIU staff are trained judicial police officers and undertake their work using such powers. Financial intelligence is

developed by the FIU and disseminated to judicial police officers and prosecutors spontaneously or as required. Other LEAs and Prosecutors also develop their own financial intelligence in conducting parallel financial investigations alongside predicate offence matters. Financial intelligence is generated and used as a valuable tool in predicate offence and ML investigations by both AMLD and LEAs. It is pertinent to note that as AMLD officers are also MJIB staff, they operate with the same judicial police powers as other key LEAs.

3

127. Nevertheless, AMLD has access to a very wide range of financial information directly including STRs, ICTRs, CTRs, Financial Information Services Co (FISC) information, information from the private sector, information held by the Joint Credit Information Centre (JCIC), and the TWSE. It also may access household registration, criminal records, immigration records, vehicle/vessel/aircraft registration, labour insurance, national insurance, status of foreign workers, stolen item information, business registration, information on cases processed by the 165 anti-fraud platform, foundation registrations, taxi driver information, telephone numbers, indictments and court judgments. LEAs also have access to the above information with the exception of STRs, CTRs and ICTRs which they receive on request to AMLD.

128. To support the development of financial intelligence by the AMLD and various LEAs, Chinese Taipei developed an account opening information retrieval system, FISC, in 2001. The FISC provides information on whether a party under investigation has an account (either current or closed) with an FI. Based on MOJ Directions, the following LEAs have access to FISC: Prosecutors' Offices, NPA, Coast Guard Administration, MJIB, AEA and AAC. LEAs can obtain account information and transaction particulars. A new function for checking safety deposit box rentals (in line with findings of risk) was added to the system on 31 March 2018 with clear guidelines as to response times required of the FI.

129. Prosecutors are able to present requests to FIs electronically for account information. Requests may be made for digitized information of personal information on account holders and particulars of transactions that took place during a specified period. FIs are required to provide the requested information within 7 working days through the electronic platform. This new system went online for all prosecutor offices on 1 March 2018. For most other LEAs, information from the private sector is requested via "official letter".

130. LEAs have online access to a wide range of financial and non-financial data in order to develop parallel financial intelligence. Where online access is not available, official letters are widely used between authorities including AMLD to obtain information such as wire transfers and foreign exchange data transactions (including tax authorities, RTC, FSC etc.). One such database is the singular window interface developed by MOJ which is accessible by all MOJ authorities (prosecutors, MJIB, AMLD) and contains financial, administrative and law enforcement information. In addition to the singular window access, MJIB established closed internal systems accessible by MJIB agents (including AMLD). NPA has a similar online query systems available for its police force.

131. Statistics provided by Chinese Taipei as to the number of enquiries made by LEAs for various forms of financial and other information (such as CTRs, JCIC, criminal records, motor vehicle registration, entry and exit records, stolen item information etc.) through the singular window of the MOJ are significant. It is evident from this data that in particular the MJIB, AMLD and Prosecutors seek a wide range of readily available information.

**Table 3.1: Inquiries received by JCIC and FISC from 2015 to 2017**

JCIC Personal and corporate credit extension	Inquiring Agency	2014	2015	2016	2017	2018
	Courts	1,043	989	1007	925	811
	Prosecutors	105	392	681	925	157
	MJIB	90	436	587	325	111
	AAC	10	48	38	75	29
	AEA	2,215	2688	2541	2307	1,897

	NPA	15,790	17694	32950	39063	30,867
<b>FISC</b>	Courts	304	348	533	505	533
	Prosecutors	7,112	7946	7926	10174	9,359
	MJIB	4,515	4747	4413	6033	6,866
	AAC	1,497	1082	1253	2021	2,340
	AEA	20,567	14,491	23,434	20,517	13,837
	NPA	2,222	2707	4316	9366	10,795
	CGA	38	15	36	15	121
	Total (FISC)	36,255	31,321	41,911	48,631	43,851
	<b>Total (FISC + JCIC)</b>	<b>55,508</b>	<b>53,937</b>	<b>75,270</b>	<b>87,791</b>	<b>77,723</b>

Note: Inquiries made by NPA include information related to watch-listed accounts (including queries submitted online and through official letters; unit: number of inquired individuals)

132. LEAs demonstrate good use of financial intelligence in investigations with an enhanced ability to conduct financial analysis in financial investigations. This was demonstrated to a lesser extent by AAC and NPA. Authorities presented the team with many case studies of complex financial investigations that led to the arrest of wider networks and fugitives. The success of these matters was premised on the clearly advanced ability of LEAs to investigate and generate financial intelligence in their own investigations and to a lesser extent, information such as STRs from the FIU.

133. With respect to the AAC, it does not usually investigate complex corruption matters as these are investigated by MJIB. However, the team notes a need for increased cooperation between AAC and AMLD to uphold national efforts to deter corruption offences.

134. As discussed further in IO9, despite the low risk of TF in Chinese Taipei, authorities are well-placed to investigate potential instances of TF. AMLD in particular as the focal point for the Egmont Group plays a key role in financial investigations in TF matters. In relation to any potential TF investigation involving international elements, the AMLD is the competent authority for the receipt and exchange of information. AMLD demonstrated that requests from foreign counterparts were actioned in a timely manner.

#### **Case Example 3.1 - Financial investigation of potential TF in Chinese Taipei**

Two Chinese Taipei locals sought to cause explosions on the High Speed Rail in Chinese Taipei by placing two suitcases containing self-made explosives. Whilst the explosions didn't proceed due to faults in their design, the explosives were discovered and reported to authorities. AMLD commenced financial investigations on the two subjects and reached out to FIs urging them to share information concerning these individuals and received STRs from more than 10 FIs. AMLD conducted analysis of the STRs and related information. Analysts discovered that the suspects converted all of their assets into cash prior to the crime, to collate money to go short on the Chinese Taipei Index Futures on the Singapore Exchange on the basis that the explosions would cause unrest and have a negative impact on the market. The suspects were eventually charged with violations of the Futures Trading Act amongst other criminal offences.

#### *STRs received and requested by competent authorities*

135. AMLD receives STRs, CTRs and ICTRs relating to ML, predicate offences or TF. Cash transactions exceeding NTD 500,000 are required to be reported to AMLD by FIs, and some DNFBPs. CTRs are processed through for red flag indicators (such indicators change as risk profiles adapt). AMLD staff review and assign cases to analysts when red flags are identified. ICTRs are analysed by AMLD's database to ensure that the data is correct (the CTR database will automatically send a notice to the agency for rectification if it is not correct). The ICTR is then stored in the AMLD database where it is screened against certain red flag indicators for priority

(including amount, frequency and whether the individual has a criminal record). In these circumstances, cases are selected for further analysis. AMLD demonstrated a number of cases that originated from ICTRs. Financial analysis conducted by AMLD cross-references ICTRs, CTRs and STRs.

136. Once STRs are received and processed through the database for priority and based on risk indicators, the section chief will personally review each STR. High risk STRs are assigned to analysts for further analysis. Once assigned to an analyst, they will access the available databases and seek further information. Such information includes whether the individual has interests as a director or supervisor of a company, household registration, vehicle, taxation, immigration and other information. Most of this information is able to be obtained from the MOJ single window. Overall, approximately 15% of all STRs become analysis reports. Feedback from LEAs indicated that they find the product of AMLD intelligence to be useful however this is not necessarily borne out in the statistics.

**Table 3.2: CTRs and ICTRs received by the AMLD from 2014 to 2018**

	2014	2015	2016	2017	2018
<b>FIs – CTRs</b>	4,107,745	3,934,706	3,712,684	3,543,775	3,207,222
<b>DNFBPs – CTRs</b>	0	2	1	32	77
<b>Total CTRs</b>	4,107,745	3,934,708	3,712,685	3,543,807	3,207,299
<b>ICTRs</b>	17,781	27,727	33,555	196,822	337,467

**Table 3.3: STRs received and processed by the AMLD from 2014 to 2018**

	2014	2015	2016	2017	2018	Total
<b>FI</b>	6,890	9,656	13,972	23,605	35,767	89,890
<b>DNFBP</b>	0	0	0	46	102	148
<b>Total</b>	<b>6,890</b>	<b>9,656</b>	<b>13,972</b>	<b>23,651</b>	<b>35,869</b>	<b>90,038</b>
STRs used in analysis reports	938	1,415	2,178	3,873	4,339	12,743
% STR used in analysis reports	13.6%	14.7 %	15.6 %	16.4 %	12.1 %	14.2 %

**Table 3.4: Cases disseminated from AMLD to competent authorities**

	2014	2015	2016	2017	2018	TOTAL
Cases disseminated spontaneously by AMLD to competent authorities	288	524	619	1,129	1,808	4,368
Cases disseminated on request by AMLD to competent authorities	45	68	84	219	427	843
<b>Total</b>	<b>333</b>	<b>592</b>	<b>703</b>	<b>1,348</b>	<b>2,235</b>	<b>5,211</b>

137. STR filings from DNFBPs are low, which reflects their recent coverage for full AML/CFT measures; however the upswing in numbers of STRs filed by DNFBPs is a positive. The authorities did not explain why the statistic of approximately 15% of all STRs that lead to analysis reports has remained constant over a number of years. AMLD provides feedback to FIs on STRs including those which become financial intelligence reports every 3 months. It is not clear whether the quality of STRs or the feedback given to reporting entities has had an impact on the number of STRs that become analysis reports. AMLD has a dedicated channel for REs to query relevant reporting affairs, and AMLD communicates regularly with FIs who have filed an STR to continue to update them on its progress. As set out in IO4, outreach to reporting entities was significantly enhanced from 2017 in line with the increased priority afforded to AML/CFT and the amendments to the legislative framework. This explains the increase in the filing of STRs in 2018.

138. Whilst financial intelligence is used in investigations in Chinese Taipei, and LEAs appear to make use of AMLD data and to a lesser extent AMLD financial intelligence reports, it was not evident that STRs, by themselves initiate a large number of investigations. Authorities



demonstrated that this was in part due to LEAs capabilities with generating financial intelligence for their own use. Statistics demonstrate that LEAs seek a significant amount of data from AMLD including through the JCIC and FISC to enhance their investigations (see table below). Financial analysis reports sent spontaneously from the AMLD resulted in 2,237 criminal investigations (2014 – 2018).

#### *Operational needs supported by FIU analysis and dissemination*

139. Statistics provided by Chinese Taipei show that LEAs rely heavily on data from the AMLD, particularly in relation to CTRs. Statistics show regular inquiries from LEAs.

**Table 3.5: Statistics of inquiries received by AMLD for LEAs**

	2014		2015		2016		2017		2018	
	CTR	STR	CTR	STR	CTR	STR	CTR	STR	CTR	STR
MJIB	61,092	545	36,040	740	21,413	872	32,402	971	30,717	1,352
CIB, NPA	211	12	324	14	5,507	1,666	6,750	3	8,752	43
AAC	10,051	16	5,317	0	7,505	0	11,171	0	16,667	333
NIA	0	0	0	0	0	0	8	0	0	0
Prosecutor's Office	16,613	107	7,948	734	4,000	584	5,726	125	6,574	793
Courts	22	0	91	0	97	0	37	0	54	0
AEA	475	0	948	0	1,089	0	3,288	0	3,659	0
CGA	0	0	0	0	2	0	1,034	0	75	0
<b>Total</b>	<b>88,464</b>	<b>680</b>	<b>50,668</b>	<b>1,488</b>	<b>39,613</b>	<b>3,122</b>	<b>60,416</b>	<b>1,099</b>	<b>66,498</b>	<b>2,521</b>

140. The below table demonstrates the provision of financial analysis reports by the AMLD to LEAs. Though reports seem to contain relevant, accurate and useful information, for some LEAs a significant portion of reports result in cases being closed (i.e. AAC and NPA).

**Table 3.6: Financial intelligence reports spontaneously disseminated by AMLD**

Recipient authority and processing	2014	2015	2016	2017	2018	Total
<b>MJIB</b>						
AMLD dissemination reports received	223	379	464	727	964	<b>2,757</b>
Still undergoing processing/investigating	21	62	120	237	535	<b>975</b>
Completed investigation submitted to Prosecutors	125	208	236	352	292	<b>1213</b>
Case Closed	77	109	106	137	137	<b>566</b>
<b>NPA</b>						
AMLD dissemination reports received	37	49	66	110	151	<b>413</b>
Still undergoing processing/investigating	0	1	3	2	14	<b>20</b>
Completed investigation submitted to Prosecutors	7	13	9	5	9	<b>43</b>
Case Closed	30	35	54	103	128	<b>350</b>
<b>AAC</b>						
AMLD dissemination reports received	0	1	0	3	3	<b>7</b>
Still undergoing processing/investigating	0	0	0	1	3	<b>4</b>
Completed investigation submitted to Prosecutors	0	0	0	0	0	<b>0</b>
Case Closed	0	1	0	2	0	<b>3</b>
<b>Prosecutor's Offices</b>						
AMLD dissemination reports received	15	18	21	65	91	<b>210</b>
Still undergoing processing/investigating	0	0	1	12	30	<b>43</b>
Prosecution	12	12	12	36	43	<b>115</b>
Case Closed	3	6	8	17	18	<b>52</b>
<b>Tax authorities</b>						
AMLD dissemination reports received	55	136	156	375	928	<b>1,650</b>
Still undergoing processing	4	3	16	106	670	<b>799</b>

Penalty	28	76	76	174	142	<b>496</b>
Case Closed	23	57	64	95	116	<b>355</b>
<b>Other administrative departments</b>						
AMLDD dissemination reports received	3	0	1	3	4	<b>11</b>
Still undergoing processing	0	0	0	0	1	<b>1</b>
Reference	1	0	0	0	1	<b>2</b>
Case Closed	2	0	1	3	2	<b>8</b>

141. In relation to the high number of cases closed relative to disseminations (5048 disseminations vs. 1334 cases closed), it was explained by those agencies that the STRs did not enhance a current investigation but were filed away for future use. Whilst the MJIB also investigates corruption matters, the team sees utility in also sending all corruption related STRs and/or analysis reports to AAC to ensure that information is exchanged in a transparent manner between all parties.

142. Responses were mixed from LEAs as to the utility of disseminated STRs and the number of STRs that turned into investigations. NPA and AAC both noted that very few if any of the disseminations actually commenced an investigation (ML or predicate). They noted the utility of STRs that were provided to them on request during an already active investigation and in this regard the raw data, particularly with respect to CTRs was often considered by LEAs to be of high value. LEAs did not demonstrate regular requesting of information on ICTRs.

143. From April 2018 FIs/DNFBPs were required to include CDD data (that included beneficial ownership information) and transaction data as part of the STR filing. Since that time the quality of the STRs has increased which should add to greater quality of AMLD disseminations to support financial investigations. AMLD regularly uses its powers to obtain additional information from FI/DNFBP for its analysis work.

144. AMLD has 23 staff members all of whom come from within the MJIB. AMLD staff must have at least five years' experience in financial investigations or economic crime. AMLD staff are thus well experienced staff in financial investigations however, the workload and the large amount of information and demands placed on the FIU call for greater resources.

145. AMLD's use of Egmont channels and associated relationships are instrumental in serving operational needs of LEAs. As noted in IO2, the many successes in transnational investigations are credited to AMLD's use of Egmont network. AMLD has made a total of 540 requests to foreign partners between 2015 and June 2018. It has received a total of 551 requests for intelligence from foreign partners during this time.

146. **Strategic analysis** - AMLD does not have a separate strategic analysis division. Analysts conducting financial analysis also conduct strategic analysis alongside their operational intelligence work. Since 2012 the AMLD's strategic analysis has focused on emerging issues such as Union Pay Cards from China, virtual currencies, and vulnerabilities in the OBU sector and company incorporation loopholes. Whilst AMLD has produced some sound strategic analysis reports and held related workshops, it was not clear who was the intended audience of the reports. AMLD advised that most of the strategic analysis work is classified and only kept within government with the exception of some analysis that was published in annual reports. Strategic analysis statistics were not available, but samples of strategic analysis reports demonstrate their quality. AMLD advised that in practice they have conducted strategic analysis on key risk areas, including forged Union Pay cards, virtual currencies, OBU accounts, loopholes in capital auditing mechanisms, and others.

147. It was not clear that all strategic intelligence reports were used by policymakers or by regulators and supervisors to drive risk-based responses to emerging threats and typologies. However, authorities advised that in response to strategic analysis reports, deficiencies in legal frameworks were identified and rectified. The AMLD had not established a separate strategic analysis team with dedicated staff members undertaking such analysis. Having such a capability

would help to drive deeper risk-based actions on behalf of regulators and supervisors, and other LEAs and generate a greater understanding of risk in the private sector.

**Case Example 3.2 – STR commences a successful ML prosecution**

AMLDD received an STR in January 2015 which indicated that an OBU account of Company A received USD 1.12 million from Company B overseas having been inactive for almost one year. AMLDD conducted an analysis of the STR and concluded that the information might be related to an international business email compromise fraud case. A financial analysis report was disseminated to the MJIB to initiate an investigation.

The investigation found Mr. C was the director of Company A, registered in jurisdiction S, which had no actual business activities. In order to gain personal profit, Mr. C provided the OBU account of Company A to an international fraud group through Mr. L. The international fraud group then used email to deceive Company B overseas. As a result, proceeds of crime was remitted into Company A's OBU account. In order to disguise the proceeds of crime, Mr. C transferred these funds to several personal and legal persons' foreign currency accounts controlled by Mr. C. Some funds were exchanged and transferred to NTD currency accounts. Mr. C instructed a friend of his to withdraw NTD 3 million (approx. USD100,000) in cash from one account. Mr. C and Mr. L were indicted on the charge of violating the Criminal Code and the MLCA in May 2016.

**Case Example 3.3: Bribery within Company H**

AMLDD disseminated a financial analysis report and gave further assistance to DPO which was already conducting an investigation on the same subject, Mr L, related to complex financial transactions between Mr L and suppliers of Company H including cash remittance, securities transactions and joint investments. AMLDD analysed the flow of funds based on documents obtained from banks, securities brokers and the Central Bank.

Investigators discovered Mr L, as senior vice president of the company, was responsible for corporate resources, procurement and price monitoring of components and supplies. He was found to have been intimidating suppliers to pay secret commissions to remain a supplier and to secure eligible supplier status. The commissions totalled approximately NTD 160 million (USD 54 million) and were distributed between Mr H and Mr L. Assistance was provided by foreign FIUs though the ESW with reports disseminated to LEAs. Mr L confessed and was prosecuted for violations against the Securities and Exchange Act.

148. Statistics of the categories of criminal offences pertaining to financial intelligence reports disseminated by the AMLDD both spontaneously and upon request show that such disseminations largely reflect some categories of high risk offences as set out in the NRA. However the instances of drug trafficking, corruption and bribery and organised crime were low. The instances of intelligence dissemination upon request for tax evasion and gambling were also low given their risk profile in the NRA.

Table 3.7: AMLD disseminations and breakdown of related criminal offence categories

Categories of offences	2014		2015		2016		2017		2018	
	spontaneously	upon request	spontaneously	upon request	spontaneously	upon request	spontaneously	upon request	spontaneously	upon request
Drug trafficking	3	1	7	0	13	0	30	0	10	10
Fraud	34	6	48	5	73	13	87	25	97	47
Investment fraud	25	10	25	13	47	10	35	30	65	55
Corruption and bribery	9	5	27	4	43	6	24	18	24	38
Tax evasion	56	3	143	3	162	2	220	3	435	2
Insider trading, market manipulation, embezzlement, securities fraud	29	7	65	18	46	17	60	41	51	65
Underground banking	26	8	31	12	33	10	56	17	55	33
Organized crime	0	0	0	0	1	0	2	0	0	1
Smuggling	0	0	0	0	0	0	0	0	0	3
Counterfeiting & piracy of products; trade secrets violations	0	0	1	0	0	0	2	2	1	0
Breach of trust	6	0	12	2	14	4	16	6	11	17
Counterfeiting currency	0	0	0	0	0	1	0	0	1	1
Forgery	1	0	2	0	4	0	8	3	9	3
Violation of futures trading act	8	0	6	1	9	1	14	4	12	8
Usury, loan sharking	1	1	3	0	2	2	9	0	13	1
Criminal conversion	20	0	28	0	22	3	25	9	25	12
Violations of company act	18	0	63	4	80	1	178	26	227	32
Government procurement act violation	1	0	2	0	5	1	6	0	0	1
Murder, grievous bodily injury	1	0	1	0	0	0	0	0	0	0
Robbery	0	0	0	0	1	0	0	0	0	0
Gambling	28	0	36	0	50	0	70	0	48	0
Extortion	1	0	2	0	1	0	0	0	4	0
Terrorism (including TF)	0	0	0	0	0	0	0	0	0	0
Proliferation(including PF)	1	0	0	0	1	0	1	0	8	0
Kidnapping+	1	0	0	0	0	0	0	0	0	0
Theft+	0	0	0	0	0	0	0	0	0	0
Human Trafficking+	0	0	0	0	0	0	0	0	1	0
Professional ML+	0	0	0	0	0	0	0	0	0	0
Sexual exploitation (including Child)+	0	0	0	0	0	0	0	0	1	0
Other	19	7	46	6	66	13	359	35	729	127
<b>Total (N.B. 1 case may involve more than 1 crime type)</b>	<b>288</b>	<b>48</b>	<b>548</b>	<b>68</b>	<b>673</b>	<b>84</b>	<b>1,202</b>	<b>219</b>	<b>1,827</b>	<b>456</b>

149. TF is assessed as low risk in Chinese Taipei and there are very few examples of potential TF. In cases where potential TF has been identified, AMLD has demonstrated its ability to quickly respond to requests for assistance from foreign partners. LEAs have shown strong capacity to conduct financial investigations, generating and making use of financial intelligence.

#### *Cooperation and exchange of information/financial intelligence*

150. AMLD cooperates with other competent authorities on a case by case basis when there is an operational need, or through meetings held periodically to evaluate the level of cooperation, coordination and information exchange. AMLD provided the DPO with assistance on complicated funds flow matters 10 times each year on average over the last five years. Competent authorities were not able to provide exact data that captures the level of cooperation among competent authorities. However, LEAs provided many case examples where AMLD assisted complex investigations and it is evident that LEAs are generally independently able to conduct financial intelligence in complex investigations. In some circumstances for example where foreign assistance is required, LEAs call on the AMLD to assist and assistance was provided in a timely manner. It was difficult for the assessment team to measure the exact level of cooperation however this is likely due to the fact that LEAs demonstrated a very high capability of independently conducting investigations.

#### **Case Example 3.4: Olive Oil fraud**

In October 2013 a complaint was made that an olive oil company was using impure oil mixed with toxic compounds. Mr K was the responsible person for the company. AMLD investigated the case and discovered that employees of the company had withdrawn over NTD12 million (approx. USD400,000) in cash from a partner company. This indicated to authorities an intent for Mr K to hide illegal proceeds. They also discovered abnormal transactions of large amounts of funds between Mr K and his family. Mr K was sent to prison for 12 years and the company also received a penalty of NT38 million. Related financial accounts, real estate and assets of Mr K were seized.

#### **Case Example 3.5: Transnational telecom scam**

DPO investigations of the ML hub of a fraud organization identified a very large number of parties and complexity of transactions. DPO sought AMLD assistance in analysing financial flows. AMLD obtained and analysed account and transaction details and related vouchers from several dozen FIs as well as CTRs and foreign exchange records retrieved from Central Bank. AMLD obtained information from foreign FIUs via the ESW. AMLD disseminated analysis reports with funds flow charts, foreign exchange records, and other relevant documents to the DPO.

151. AMLD implements adequate measures to protect the confidentiality of information exchanged with domestic and with foreign counterparts. Measures include password protection to access the database; secure and sealed enveloped when exchanging information through official letters; and limiting ESW access to the AMLD Head, Deputy Head and one other officer. Accessing information databases online has enhanced the level of information exchanged among all competent authorities and safeguarded the confidentiality of information.

152. Contact points are designated for cooperation among AMLD and other competent authorities including CGA, AAC, NPA, TA, and CA. There are mechanisms for cooperation and coordination between AMLD and competent authorities. For example when competent authorities file requests, the head of AMLD, based on the urgency and complexity of cases, allocates available manpower and assigns designated personnel to participate in taskforce meetings to assist with seizures, or financial investigations into complicated transactions domestically and internationally. AMLD analysts are

encouraged to further integrate resources with MJIB and NPA in relation to the targeting and investigation of high risk crime types such as drug trafficking, smuggling and targeting third party ML networks.

153. AMLD and other competent authorities, to a great extent, exchange information with foreign counterpart FIU and competent authorities when necessary.

**Table 3.8: Intelligence exchanges through the Egmont Secure Web**

Year		2014	2015	2016	2017	2018	Total
<b>Request foreign FIU to provide assistance</b>	Case	20	49	34	21	23	147
	Report	70	228	165	87	107	657
<b>Foreign FIU spontaneously provided information</b>	Case	32	33	27	53	99	244
	Report	56	46	46	100	198	446
<b>Totals</b>	<b>Case</b>	<b>52</b>	<b>82</b>	<b>61</b>	<b>74</b>	<b>122</b>	<b>391</b>
	<b>Report</b>	<b>126</b>	<b>274</b>	<b>211</b>	<b>187</b>	<b>305</b>	<b>1,103</b>

#### *Overall conclusion for Immediate Outcome 6*

154. Competent authorities, in particular LEAs, investigating prosecutors and the tax authorities regularly develop and use a broad range of financial intelligence and other relevant information to investigate predicate offences, ML and possible TF and to trace criminal proceeds. LEAs - especially MJIB - and investigating prosecutors have very well-developed capabilities to develop intelligence, and make use of FIU-disseminated financial intelligence in investigations. The AMLD accesses a very wide range of data sources (although wire transfer and foreign exchange transaction data is indirectly obtained), including very active international cooperation. AMLD has well-developed analytical capability to produce good quality financial intelligence. The AMLD cooperates well with LEAs in assisting and facilitating investigations and makes good use of information available to it, however, AMLD could enhance cooperation through more interaction with LEAs when investigating proceeds of high threat predicate offences; and further establishing the operational needs of LEAs. AMLD has excellent IT resources and skilled staff, but it suffers to an extent from a lack of human resources that are needed to make it even more effective.

155. **Chinese Taipei has a substantial level for effectiveness for Immediate Outcome 6.**

***Immediate Outcome 7 (ML investigation and prosecution)***

156. Chinese Taipei's legal and institutional frameworks demonstrate compliance with the international standards with the exception of a small scope gap in the smuggling of migrants as a predicate offence and minor shortcoming with LEA powers. These small scope gaps do not significantly impact on effectiveness. However in order to comply with international standards and considering the risk profile of Chinese Taipei this gap should be addressed.

***ML identification and investigation***

157. Prior to 2017 the ML offence had some deficiencies as outlined in the 2007 MER. The amendment of MLCA in 2017 to bring the ML offence into compliance reflected only recent policy decisions of government to prioritise pursuing financial crime and ML.

158. All LEAs in Chinese Taipei are empowered to investigate ML. However, the prosecutor is the primary investigative body, and investigations are largely driven and co-ordinated by prosecutors with assistance from LEAs. In practice, when ML is identified by any of the LEAs, the case is often transferred to dedicated units of the MJIB or NPA (CIB) due to their investigative expertise. This includes ML cases relating to corruption. The LEA then brief prosecutors at the District Prosecutor level who are then requested to conduct the investigation to integrate resources.

159. The key role taken by prosecutors in driving ML investigations and in coordinating authorities according to expertise is a strength. The MJIB and prosecutors have specialist economic crime units that assist in complex matters. However, with the evolving nature of the ML offence and an anticipated increase in investigations, the ongoing success of prosecutions will be dependent on prosecutors' offices having sufficient resourcing.

160. Prosecutor's offices include both prosecutor investigators and trial prosecutors. Trial prosecutors appear before the Court, while prosecutor investigators play an investigating role and do not present cases to the court. There are 532 prosecutor investigators across all prosecutors' offices, of which 102 have an expertise in finance and economics. Additionally, there are 22 Supreme Court Prosecutors, 179 at the High Prosecutors Office across five branches, and 1165 at the DPO across 21 branches.

161. LEAs demonstrated the ability to investigate various types of financial crime cases. Cases presented include complex financial crime cases involving tracing money trails, lifting the corporate veil, unravelling layers of ownership, and tracing money sent offshore. In more complex ML cases LEAs draw on other authorities' expertise. Prosecutors noted the utility of using a combined approach to an investigation, using prosecutors and different LEAs, to cover all aspects and perspectives on a case. In some cases, AMLD is brought in to assist in complex financial investigations. In relation to matters at the airports, MJIB police officers are stationed at all airports and work with Customs to deal with any criminal matters that arise. In this regard the team noted good domestic cooperation and coordination in ML investigations which is largely driven by experienced prosecutors.

162. The below table represents the number of ML cases referred from LEAs to prosecutors' offices for investigation. Authorities were not able to provide statistics on the number of ML investigations opened by LEAs (whether they proceeded to referral to prosecutors or not).

**Table 3.9: ML matters referred from LEAs to Prosecutors**

Year	NPA	MJIB	AAC	Total
2014	12	29	1	42
2015	26	24	2	52
2016	31	35	3	69
2017	53	31	0	84
2018 (Jan to Jun)	127	20	4	151
<b>Total</b>	<b>249</b>	<b>139</b>	<b>10</b>	<b>398</b>

163. Whilst the authorities demonstrated credible and advanced techniques for ML investigation, the statistics of actual cases investigated is low when considering the large number of predicate offences investigated and the risk profile. Whilst some authorities indicated the low numbers of ML cases was due to previous shortcomings in the ML offence, however these shortcomings were identified in the 2007 MER and only rectified in 2017. One aspect of the identified challenges was that the ML offence previously had a threshold of proceeds of crime generated before ML could be charged. This was the case with respect to criminal fraud and some aspects of corruption involving procurement but not to other predicate offences.

164. Authorities are all able to access many rich sources of financial and other information to assist investigations (see IO6). Sources for ML investigation include information from field agents, predicate offence investigations, general public, AMLD, various government databases and other authorities. AMLD undertakes analysis of STRs that are deemed high-risk by red flags contained in the database and on the basis of analyst's judgement. Once the financial analysis report is completed it is then sent to LEAs for further investigation. Based on financial intelligence reports provided by AMLD to LEAs from 2014-2018 a total of 2237 criminal cases were opened. Of these cases, 565 are still in processing/under investigation, 859 were transferred to the DPO. Authorities advise that of these, 36 cases related to ML.

**Table 3.91: Money Laundering investigations and prosecutions by prosecutors**

	Investigation concluded*		Deferred Prosecution		Prosecuted	
	Cases	Participants	Cases	Participants	Cases	Participants
2014	54	150	3	28	15	38
2015	96	231	2	30	35	69
2016	66	244	2	3	13	52
2017	113	242	6	9	63	91
2018 (Jan to Jun)	429	529	3	3	356	398
<b>Total</b>	<b>758</b>	<b>1,396</b>	<b>16</b>	<b>73</b>	<b>482</b>	<b>648</b>



Table 3.92: Money Laundering prosecutions and convictions

Year	Prosecuted		The First Instance Judgement**				The Second Instance Judgement				The Third Instance Judgement			
	Cases	Participants	Cases***	Participants	Convicted persons	Others	Cases	Participants	Convicted persons	Others	Cases	Participants	Convicted persons	Others
2014	15	38	10	18	9	9	7	11	3	8	5	12	9	3
2015	35	69	11	28	9	19	5	15	8	7	2	2	1	1
2016	13	52	12	28	14	14	9	18	3	15	2	3	0	3
2017	63	91	22	24	16	8	11	20	14	6	4	6	2	4
2018	356	398	49	51	46	5	2	9	6	3	4	6	4	2
<b>Total</b>	<b>482</b>	<b>648</b>	<b>104</b>	<b>149</b>	<b>94</b>	<b>55</b>	<b>34</b>	<b>73</b>	<b>34</b>	<b>39</b>	<b>17</b>	<b>29</b>	<b>16</b>	<b>13</b>

### *Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies*

165. The conclusions reached in IO1 demonstrate that Chinese Taipei generally has a good understanding of its threats and risk profile. The NRA found that Chinese Taipei faces 8 high-risk threats including drug trafficking, fraud, organised crime, corruption and bribery, smuggling, securities crimes, third-party ML, tax crime. LEAs and prosecutors confirmed that the highest priority is afforded to these 8 high risk crime types and that direction had been given to ensure that financial investigations and consideration of ML was applied across the spectrum of these offences. This is still to be borne out in the statistics and as Chinese Taipei begins to more actively pursue ML in line with its risk profile and based on its amended offence.

166. Since 2017 there has been a significant drive from authorities on prioritising ML and related financial flows. However, prior to this there was not a clear incentive for prosecutors to apply ML charges. This was potentially due to many factors, including some limitations under the old MLCA and a weakness in the available sanctions. In light of the fact that the identified high risk crime types carry more significant sentences than that of ML, the very low penalties applied may have acted as a disincentive to prosecutors to undertake complex ML investigations. This may also account for a rather high rate of deferred prosecution in the past.

167. LEAs such as MJIB, NPA, and AAC have all introduced incentive systems for officers who investigate ML cases in line with the high priority afforded to ML by the government. Such initiatives have contributed to the increase in the number of ML investigations during the first half of 2018 as outlined in the table above.

168. From the statistics provided by the authorities, it is not possible to discern the number of ML investigations for each predicate offence. However, the aggregate number shows that the ratio of prosecution to investigation is low (for example there were 1396 participants investigated, of that number 648 were prosecuted and 149 participants received a first instance judgment in the period 2014 - 2018). This is notable when comparing the ratio of prosecution to investigation during the first half of 2018, to that of previous years as outlined in the table above. The number of ML investigations and prosecutions in Chinese Taipei, generally align to the risk profile, however overall the number of ML cases is not commensurate with the scale of ML-related predicate offences in Chinese Taipei.. Amongst 8 high risk crimes identified, the predicate offences leading to ML cases are fraud and drug trafficking, although there is still some way to go for both of these predicate offences.

**Case Example 3.6: Fire fighting equipment procurement corruption case**

The chief of a certain government agency abused his position to procure fire safety equipment during his tenure and in doing so collected bribes of over NT19.24 million (approx. USD0.64 million) from the winning bidder of the project. The winning bidder profited NT200 million (approx. USD6.66 million) from the project. MJIB investigators sought assistance from the AMLD to investigate the money flows.

AMLD's detailed comparison of the bank account records and CTRs of the Chief and other natural and legal persons connected to the case identified transactions between the chief, his family members and named companies. AMLD identified that accomplices had used multiple companies under their control to bid many times in the project. The project payments were transferred to bank accounts in Chinese Taipei and some offshore. The Chief retired from public office, and his accomplices then transferred more than NT20 million to his account. He then purchased 15 kilograms of gold in cash in Chinese Taipei. When this was discovered, authorities seized the gold, NT4 million in cash, foreign currencies, related accounts and real estate. Accomplices assisted authorities and wired back monies that were sent overseas. The defendants were indicted under the Anti-Corruption Act and the MLCA. They were sentenced to imprisonment of 6 months to 18 years and all assets were confiscated.

169. **Drug Trafficking** - the number of ML prosecutions arising from drug trafficking is low. There were only 5 drug-related ML prosecutions between 2012 and June 2018. The authorities explained that because Chinese Taipei does not produce drugs, most of the money is outbound and most transactions are undertaken in cash, hence the difficulty in tracing money flows. This may also be attributable to the high use of underground remittance services making it difficult for authorities to trace funds and prove criminal conduct. There is insufficient targeting of investigations on third party ML and laundering foreign proceeds, both of which are priority crime types.

170. **Fraud** - the ratio of ML prosecutions arising from fraud is higher than any other predicate offence, accounting for 40% of all ML prosecutions between 2012 and June 2018. The authorities have been able to pursue complex fraud-related ML cases successfully.

171. **Corruption** - 19 ML prosecutions arising from corruption between 2012 and June 2018. This number may seem relatively low when considering the number of prosecutions for corruption is 1786, however, case samples demonstrate that the corruption cases that have been pursued are highly sensitive, high level and complex ML cases. These demonstrate the strength of investigative skills and expertise. Investigating third party ML and laundering foreign proceeds is not sufficiently targeted in relation to this priority crime type.

172. **Organised crime** - the number of ML prosecutions and organised crime surged during the first half of 2018 (271 cases prosecuted), which is attributable to the legislative amendment to the Organised Crime Prevention Act. Investigating third party ML and laundering foreign proceeds is not sufficiently targeted in relation to this priority crime type.

173. **Tax crimes** - most are detected by the tax authorities who will refer the case to the MJIB to investigate. To date there have only been 2 ML cases arising from tax crimes. This may be because the number of ML prosecutions per predicate only reflects the predicate offence with the highest sentencing. However, when comparing the number of tax crimes, and the significance of the cash-based economy, the lack of ML prosecutions is not in line with the risk profile. Investigating third party ML and laundering foreign proceeds is not sufficiently targeted in relation to this priority crime type.

174. While the assessment team welcomes the increase in the number of ML investigation for 2018, the trend is most pronounced in regard to fraud, organised crime and third-party ML. Authorities

advised that they are prioritising the 8 high risk crime types as set out in the NRA however the results are still to be demonstrated.

### *Types of ML cases pursued*

175. Between 2012 – June 2018 prosecutions took place in 65 self-laundering cases, 409 cases of third party ML and 27 cases of ML based on foreign of predicate offences. Almost all of the cases of third party ML were prosecuted in the year immediately prior to the ME onsite. In 2017 legal persons were investigated in five cases for ML with one case filed for prosecution. In 2018, legal persons were investigated in 22 cases with 12 cases filed for prosecution.

176. The NRA highlights third-party money laundering as one of the eight high-risk threats. However, the NRA discusses elements of this laundering as including underground remittances and subsequent breaches of the Banking Act. Whilst many cases were shown to involve the use of underground banking channels to conduct ML, the NRA also notes that legitimate businesses use underground remittances to transfer funds from China to Chinese Taipei. Authorities also advise that the use of dummy accounts predominately by individuals looking to make money in exchange for allowing accounts to be set up and transacted upon in their names. It was not clear that authorities are actively targeting underground banking related to proceeds of crime rather than legitimate trade. Authorities advised that the spike in third party ML cases in 2018 relates predominately to dummy account cases. In light of the findings of the NRA and the typologies of various third party ML in Chinese Taipei this should remain a focus of authorities.

#### **Box 3.7 - Examples of different types of ML prosecuted in Chinese Taipei**

**Self-laundering:** An individual Mr C was a member of a scam syndicate and converted his and others fraud proceeds into Bitcoins and transferred them in and out of e-wallets repeatedly in order to avoid detection. He laundered NT50 million in one month using forged identity documents to apply for accounts. He then directed the Bitcoins to other members of the scam syndicate. Authorities investigated Mr C and a result of the investigation he was charged with offences against the MLCA. He was ultimately sentenced to 4 years and 6 months imprisonment.

**Third party ML:** A criminal Mr C established Group Y and claimed Y could provide high profit investments. Investors were recruited via various means. Some customers did in fact receive high value rewards and other perks. Group Y raised more than NT6.5 billion. To avoid detection, investors were required to pay in cash. With the assistance of a third party Mr T the funds were transferred through his accounts. Cash was hidden in other areas and some transferred offshore. In November 2018, both Mr C and Mr T were prosecuted for violations of the Multi-Level Marketing Supervision Act, Banking Act and the MLCA.

**ML based on foreign predicate offences:** A Japanese national (N) was suspected of embezzling company property in Japan due to the abuse of his power. N then purchased large amounts of expensive watches, jewellery and diamonds before fleeing to Chinese Taipei with his wife. The CIB received a notice from Japanese police requesting a joint investigation to apprehend the suspect and seize related assets. Chinese Taipei police located the suspect and uncovered luxury residences and found the couple were living an extravagant lifestyle. Assets were seized and N is current in the process of being prosecuted for ML in Chinese Taipei.

**Table 3.93: Types of ML crimes prosecuted (number of defendants)**

Category	2014	2015	2016	2017- June 2018	Total
Self-laundering	9	25	6	7	47
Third party ML	7	25	6	356	394
Predicate offences in foreign countries	2	5	0	3	10
<b>Total</b>	<b>18</b>	<b>55</b>	<b>12</b>	<b>366</b>	<b>*451</b>

177. The TC annex analysis of Recommendation 3 notes potential legislative challenges with prosecuting ML based on foreign predicate offences. Authorities confirmed that their interpretation of the law allowed them to charge ML based on foreign predicate offences and cases presented to the team demonstrated successful prosecutions (as outlined above). Nevertheless, for the avoidance of any future doubt, the MLCA was amended subsequent to the onsite visit.

178. Authorities face challenges with investigating ML relating to foreign proceeds of crimes and in receiving international cooperation generally (see IO2). Cases presented demonstrate novel and resolute efforts to overcome challenges with receiving international cooperation and authorities' success in this area is notable.

179. Authorities have undertaken numerous training sessions for relevant agencies focused on ML and amendments to the MLCA and the CFT Act. Between 2014 and June 2018 there were a total of 614 sessions with 23,985 participants. Participants included officials from MOJ (including Prosecutors Office), CGA, NPA, NIA, MJIB, AAC and Criminal Department of Judicial Yuan.

#### *Effectiveness, proportionality and dissuasiveness of sanctions*

180. Sanctions for ML are not applied effectively and dissuasively. The MLCA provides a maximum penalty of no more than seven years imprisonment and in addition, a fine of not more than NT5 million. The Act provides for a reduction of punishment for offenders who confess during the investigation or trial (Art.16). Despite the maximum period of imprisonment being seven years, the average sentence for first instance judgments was 11.89 months. For second instance judgments, the average sentence was 13 months. For third instance judgments, the average sentence was 11.19 months. During the first half of 2018, 44 out of 51 defendants received sentencing of less than one year (see table below). When taking into account the already high workloads for prosecutors, the incentive to charge ML may not be present.

181. The procedure for calculating an overall sentence in Chinese Taipei is for the judiciary to determine the penalty for the predicate offence and the penalty for the ML offence separately. Judges will then add the two sentences together and then generally determine an overall sentence that lies in between the sum total of the two offences.

182. The conviction rate for ML is also low. Between 2014 – 2018 there were 1396 persons who had concluded investigations for ML. Of these 1396 persons, 648 were prosecuted and of that 94 were convicted at first instance. The reason/s for the low conviction rate was not explained and may be due to the legislative requirements and/or training of judges.

183. Given that the identified high risk crime types carry more significant sentences than that of ML, the very low penalties applied may have acted as a disincentive to prosecutors to proceed with complex ML investigations alongside predicate offence investigations.

184. The Judicial Yuan promulgated sentencing guidelines and a sentencing manual for judges' reference in 2018 in order to ensure the appropriateness of sentencing. Authorities advise that the guidance to the judiciary is resulting in increased sentences for ML, citing one case in 2018 that attracted a penalty of 8 years and six months. In practice, amendments to the MLCA will take time to come through as new offences are charged under the amended legislation.

**Table 3.94: Average sentence given for ML**

Year	First Instance Court - Average Sentence (months)	Second Instance Court Average Sentence (months)	Third Instance Judgment Average Sentence (months)
2014	4	15	11.22
2015	18.11	19.75	30
2016	12.14	7.67	0
2017	40.87	10.22	9
2018 (Jan-Jun)	3.8	17.33	14
<b>Total</b>	<b>11.89</b>	<b>13</b>	<b>11.19</b>

#### *Other criminal justice measures*

185. Chinese Taipei authorities highlighted challenges in prosecuting ML in light of previous legislative deficiencies. Generally, apart from pursuing a prosecution of the predicate offence, it not apparent that authorities actively took further steps to apply other criminal justice measures. As noted in IO8, there were further challenges with freezing and seizing proceeds of crime prior to the legislative amendment in 2016. Amendments to the CPC now allow forfeiture of assets where a criminal has fled, died or due to other reasons where a criminal prosecution is unavailable. Since these amendments however authorities have in some instances embraced the opportunity to apply alternative measures in line with the new regime.

186. Authorities have in some instances taken novel approaches to pursuing matters in order to ensure punishment of offenders and the confiscation of proceeds of crime in very serious matters. One such example of the continued pursuit of offenders over a number of years and the application of new laws as they come into effect is demonstrated below.

**Case Example 3.8: Procurement of the Lafayette frigate**

This case relates to the purchase of a military frigate from a French company in 1989. At the time, the Chief of the Logistics Section, Ministry of Defence (Mr K) was suspected of receiving a commission from the transaction which was an offence against the Anti-Corruption Act. Authorities prosecuted Mr K along with Mr W who was an arms dealer. Mr K and Mr W were charged under Article 15 of this act which is the offence of “intentionally accepting, transporting, concealing, storing or knowingly purchasing property which is known to be the proceeds of any of the offences listed in Articles 4 through 6...”. Thus, the defendants in this matter were charged with an alternative charge that nevertheless covered much of the conduct of ML. The defendants in this matter transferred proceeds of crime overseas and authorities took action to freeze the proceeds. Approximately 1 billion USD has been frozen across 61 different accounts. Further, once the CPC was amended in 2016 allowing for a wider scope of confiscation and following the death of one of the defendants, Prosecutors returned to Court in this matter to confiscate the criminal proceeds totalling USD900 million. Authorities experienced many challenges in this case, including extremely significant sums of proceeds of crime, international cooperation challenges and limitations to the domestic legislative regime. Despite this, prosecutors were able to take a novel approach to ensuring criminal justice outcomes and the confiscation of proceeds of crime in order to provide restitution to the state and punishment of those involved.

187. Deficiencies in the old MLCA may have posed challenges for authorities to prosecute ML charges and in such instances legislation such as the Securities Exchange Act was used to prosecute for example in matters such as falsifying capital increases and illegal merger transactions.

*Overall conclusions on Immediate Outcome 7*

188. Chinese Taipei has not prioritised the pursuit of ML until quite recently. The focus on pursuing ML cases dates from amendments to the MLCA in 2017 when the offence was improved. LEAs have very well developed financial investigation and prosecution capacity, however the nature of the ML offence and a lack of policy priority has meant that ML was pursued to a lesser extent. Results of ML prosecutions have not been effective, with low conviction rates and very low sentences applied. Chinese Taipei is not yet able to demonstrate that its level of prosecutions and convictions of ML is in keeping with its threats, risk profile and AML/CFT policies.

189. **Chinese Taipei has a moderate level for effectiveness for Immediate Outcome 7.**

**Immediate Outcome 8 (Confiscation)***Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective*

190. Chinese Taipei has a generally effective legal framework for freezing, seizing and forfeiting criminally linked assets. The MLCA contains provisions for criminal forfeiture on conviction and also authorises for restraint and seizure of criminal proceeds in ML cases. The Criminal Code provides also for conviction based confiscation, this was expanded in 2016 as outlined below. Article 38-1 of the Criminal Code expressly permits forfeiture of properties of corresponding value and article 38 of the Criminal Code is a general provision allowing for forfeiture of instrumentalities. The CPC contains provisional measures such as seizing and freezing of assets and also includes some forfeiture provisions. The Narcotics Hazard Prevention Act and the Forest Act provide for specific forfeiture authorities against instrumentalities involved in the offenses governed by these Acts. Amendments to the Criminal Code in 2016 expanded the scope of property subject to forfeiture allowing the seizure and forfeiture of property in a third parties title or possession and forfeiture in cases where a defendant has died, fled or authorities are unable to prosecute.

191. Chinese Taipei does not have administrative forfeiture by LEAs. The Customs Administration (CA) is considered an administrative agency rather than a LEA. The CA has the authority to administratively seize and forfeit assets arising from violations of the Anti-Smuggling Act, including cross-border declaration violations. All forfeiture must be adjudicated by a court order.

192. LEAs and prosecutors place a high priority on forfeiture and seek orders forfeiting property of equivalent value generally as a policy objective. Extensive training has been provided to officers from relevant agencies. Between 2014 and 2017 almost 1000 training sessions were held including over 10,000 officers on forfeiture of criminal proceeds. The number and levels of participation increased year on year within that figure. Sessions included staff from the Criminal Department of the JY, MOJ (incl Prosecutors Office), CGA, Ocean Affairs Council, NPA, NIA, MJIB and AAC.

193. The 2017 MOJ “*Enforcement Guidelines for Pursuit of the Proceeds of Crime by Prosecutorial Authorities*” provides the basis for the HPO platform for information on the pursuit of proceeds of crime. The platform was designed to streamline communication between HPO and other relevant agencies. In addition, in 2017 MOJ published the “*Seizure and Confiscation Case Handbook*”, ensuring that prosecutors and LEAs are able to grasp the revised forfeiture system. Further information concerning seizure and appraisal of assets is placed on the MOJ website to enable prosecutors in the field to handle and manage seized assets. A real time look-up system for items to be auctioned on MOJ’s official website is also available in order to raise awareness of the auctioned assets and enhance transparency of the auction process.

194. The July 2015 revised “MJIB Directions for Investigations of Proceeds of Crime when Conducting Criminal Cases” directs the MJIB to expand pursuit of the proceeds of crime. Other LEAs including NPA, NIA, CGA and AAC include forfeiture of criminal assets in the respective agency’s policy and action plan, placing a clear emphasis and policy objective of pursuing forfeiture of criminal assets.

195. In the context of pursuing criminal assets, LEAs in Chinese Taipei implemented a performance evaluation system known as “incentive measures”. The “incentive measures” are a merit-based system to assess LEA officers’ performance, there is not in fact a direct consequential link between monetary compensation awarded to an officer and the amount of assets seized or forfeited. In evaluating an officer’s performance, many factors will be taken into consideration such as the complexity of the case, the effect of the investigation, whether or not it is a proactive investigation, the length of the investigation, evidence collection, and the presence of ML components. Although this system varies in its operation by each agency where points are given to the officer or whether a promotion or monetary compensation is awarded, it does not raise concerns of the risk of abusing

LEAs' seizure power. In particular, as stated above, Chinese Taipei does not provide for administrative forfeiture by LEAs, and all forfeiture must be premised on a court order. Furthermore, LEAs' seizure authority without a court order is limited to the three exceptions under CPC Article 133-1 and 133-2.

196. The high value of amounts forfeited reflects a policy to pursue proceeds of crime as well as the capacity of LEAs and prosecutors. A variety of training sessions has been provided to LEAs and prosecutors to support confiscation and forfeiture.

#### *Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad*

##### i. Proceeds of Crimes, Instrumentalities and Property of Corresponding Value

197. Chinese Taipei authorities heavily rely on criminal forfeiture to seize and forfeit criminal assets located in Chinese Taipei as well as proceeds transferred overseas. Its efforts in forfeiture of criminal proceeds, instrumentalities, and properties of corresponding value have been enhanced by an expressed strategic emphasis on the pursuit of forfeiture of proceeds of crime as a goal.

**Table 3.95: Confiscation pronounced by confirmed court rulings**

	2014	2015	2016	2017	2018 (1-6)	Total
<b>Cases</b>	5,592	5,029	6,938	16,434	7,986	41,979
<b>Value (USD)</b>	82,838,351	16,153,153	58,300,255	291,137,146	140,553,523	589 million

198. Chinese Taipei provides general provisions as well as specific authority to forfeit instrumentalities. There is statutory authority in Chinese Taipei which permits the conversion of instrumentalities seized into cash during the course of litigation. The statistics in the table below show the converted value from 2014-2018 of non-cash assets seized which included instrumentalities of the crimes. Chinese Taipei was unable however to provide separate statistics on instrumentalities seized and confiscated.

**Table 3.96: Converted Value of Non-cash Assets Seized incl. Instrumentalities of Crimes (USD)**

Year	2014	2015	2016	2017	2018 (Jan-Jun)	Total value of converted items
Vehicles	197,683	328,706	558,260	1,341,970	555,721	2,982,341
Precious metals & jewellery	52,336	0	7,950	29,774	9,408	99,468
Electronic products	5,233	43,970	194,485	76,091	49,907	369,687
Other	84,728	109,413	121,645	980,102	11,501	1,307,390
Annual total	339,981	482,090	882,340	2,427,938	626,538	4,758,888

199. Article 38-1 of the Criminal Code allows for the forfeiture of property of equivalent value. This provision has been used well in forfeiting properties of corresponding value located domestically and overseas. The following case study demonstrates Chinese Taipei's ability to seize the property of corresponding value as the property seized is not traceable to the criminal offenses, but existed prior to the commission of the accused criminal offense.



**Case Example 3.9: Forfeiture of Property of Corresponding Value**

In order to obtain raw edible oil at a “competitive” low price, Mr. W, former Chairman of Company W conspired with Mr. C, President of Company C, an oil production Co. to purchase contaminated oil at a low price from Company C. Mr. W then instructed Oil Production Co. C to manufacture the contaminated oil into olive oil and grapeseed oil for Company W, masked as Company W’s products “exclusive” or “golden ratio” blended oil. Mr. W and Mr. C falsely presented to the public that the companies used imported olive oil and grapeseed oil in making the products. As a result, the company gained NT\$150 million in illicit proceeds by selling the contaminated oil. Mr. W was indicted in October 2014 for fraud and convicted by the trial court. The appeal is presently pending. After the CPC was amended, the prosecutor’s office in July 2016 applied to the trial court for an order to seize a piece of land whose existence predated the criminal scheme however was seized on the basis that it was property of corresponding value.

## ii. Provisional Measures

200. Chinese Taipei is able to appropriately use a variety of tools in identifying, tracing, and forfeiting criminal assets. Case studies and other data demonstrate that restraint and seizures are performed in a timely manner. Provisional measures under the CPC appear to operate well in practice.

**Table 3.97: Seizures by Prosecutors Offices**

Year	Number of cases	Amount NTD	USD equivalent
2013	5,119	1,796,926,204	59,897,540
2014	3,942	12,019,217,540	400,640,585
2015	3,598	1,274,215,530	42,473,851
2016	3,574	2,849,532,465	94,984,416
2017	2,525	5,417,755,292	180,591,843
2018	1,110	831,729,768	27,724,326
<b>Total</b>	<b>19,868</b>	<b>24,189,376,799</b>	<b>806,312,561</b>

201. Prosecutors have the sole responsibility for applying for seizure orders from the court and as such all statistics are attributed to them. However, each case involves multiple LEAs who are involved in investigating the matter. The amounts contained in the above table do not include the seizures made by the CA.

202. Chinese Taipei also provided statistics on seizures based on the various offenses. The below table shows that seizures grounded on specific predicate offense are generally consistent with Chinese Taipei’s risk profile.

**Table 3.98: Seizures - broken down by predicate offence (in USD)**

Criminal offense type	2014	2015	2016	2017	2018 (1-6)	Average
<b>Very high risk offences</b>						
Drug Trafficking	1,232,211	1,381,188	779,245	1,007,105	468,634	1,081,863
Corruption and Bribery	1,787,945	335,271	659,966	2,273,569	871,280	1,317,340
Fraud (incl. illegal fund raising)	4,248,279	2,496,422	28,597,152	5,237,655	5,699,803	10,284,291
Smuggling	18,900	0	10	624,162	110,474	167,455
Tax Crimes	2,360,350	1,766,531	25,694,427	3,523,107	12,633,739	10,217,368
Insider trading /market manipulation	17,076,744	8,352,429	637,771	7,666,103	4,899,529	8,585,017
Third Party ML	298,740	2,464,117	1,089,938	49,774	5,966,681	2,193,167
Organised Crime	61,792	67,300	66,080	551,178	62,297	179,699
<b>High risk offences</b>						
Intellectual Property Crime	17,233	0	143,540	512,271	18,616	153,702
<b>Medium risk offences</b>						
Illicit Arms Trafficking	40,617	60,263	1,777	413	75	22,921
Illicit trafficking -stolen & other goods	167	0	0	0	0	37
Environmental Crimes	30,692	116,652	42,940	360,919	346,666	199,526
Kidnapping	200	0	0	0	0	44
Theft	9,291	983	104,743	5,390	46,235	37,031
Forgery of documents, securities, ID	17,700	34,848	401,558	20,258	1,060	105,650
<b>Low risk offences</b>						
Counterfeiting currency	17,700	34,700	401,558	20,258	1,060	105,617
Trafficking in human beings (migrant smuggling)	13,826	37,680	48,612	1,838,111	11,007	433,164
Sexual Exploitation	1,660	13,840	20,316	5,663	4,190	10,149
Robbery	6,623	12,470	2,832	6,366	8,682	8,217
Murder	6,473	0	0	25,877	37	7,197
Extortion	688	14,657	0	3,802	335	4,329
<b>Total (USD millions)</b>	<b>27</b>	<b>17</b>	<b>58</b>	<b>23</b>	<b>31</b>	<b>35</b>

### iii. Domestic and Foreign Predicates and Property Moved Overseas

203. Chinese Taipei provided case examples demonstrating that it pursues forfeiture using all of the asset recovery tools at its disposal and in all contexts, including in cases involving domestic and foreign predicate offenses and proceeds which have been moved overseas. A breakdown showing amount of assets seized and forfeited based on domestic and foreign predicates is unavailable. However, Chinese Taipei provided the forfeiture amount based on a court order for each predicate offense from 2013-2018.

204. Chinese Taipei indicated that no legal impediments or other barriers preclude it from sharing forfeited assets with other countries; however, Chinese Taipei has not yet received such a sharing request. As such, asset sharing is untested. Chinese Taipei has successfully repatriated assets from overseas in a few occasions.

#### **Case Example 3.91: Seizure and Forfeiture against Proceeds Transferred Overseas 2018**

Two persons orchestrated a fraud scheme where many individuals in Chinese Taipei were promised a variety of benefits in exchange for their monetary donation/contribution. The investigation revealed that the fraud proceeds, totalled approximately USD277 million, and USD9 million transferred overseas including into jurisdiction U.

The Taoyuan District Prosecutor's office applied to the District Court for a restraining order against the assets owned or controlled by the two individuals as well as an entity owned by the two in jurisdiction

U in connection with the fraud schemes. The District Court granted the order. Taoyuan DPO sent an MLA request through MOJ to Jurisdiction U seeking enforcement of the District Court's order against the assets in jurisdiction U in the effort to preserve the availability of the assets for forfeiture. Jurisdiction U executed the MLA request and restrained the assets belonging to the individuals and the entity in question on behalf of Chinese Taipei.

205. Article 40 of the Criminal Code authorizes forfeiture of criminal assets without a conviction in the cases where a defendant has died fled, or due to other reasons where a criminal prosecution is unavailable.

206. Although there is no indication in the statutory language that an *in rem* forfeiture action can be brought under this article, in practice Chinese Taipei has used Article 40 to forfeit funds in an account solely premised on the fact that the funds in that account were criminal proceeds, without any criminal charge or prosecution.

**Case Example 3.92: Forfeiture of funds in the absence of a criminal charge or prosecution**

A hacker with an unknown identity and location, hacked into a bank account held at a bank in Chinese Taipei, and instructed a victim in a foreign jurisdiction to wire money into the account in Chinese Taipei. The account holder in Chinese Taipei appeared to be unaware of the criminal activities related to the account. Using Article 40 of the Criminal Code and Article 18 of MLCA, authorities seized and subsequently forfeited the funds fraudulently obtained in the account in Chinese Taipei. Since the criminal perpetrator was unknown, and the account holder in Chinese Taipei was not complicit, a criminal prosecution was not possible. USD 76,000 was forfeited in this case in June 2018.

207. The case study above demonstrates that a forfeiture action pursuant to Article 40 of the Criminal Code can be used as the functional equivalent to an *in rem* NCB proceeding. Chinese Taipei identified and discussed the difficulties and challenges in financial investigations in regards to the OBU accounts and forfeiture for accounts held by nominees. The hacker case referenced in the paragraph above represents one of scenarios how nominee accounts were used. No other similar cases were provided to the team to further demonstrate how well Article 40 has been applied in the use of the nominee accounts situation. Given the fact that Article 40 is under the Criminal Code, the evidentiary standard for any NCB proceedings in CT, presumably, is based on the criminal standard – beyond a reasonable doubt. Authorities were not able to give a clear indication as to the evidentiary standard of proof under Art 40. In some cases it may be very difficult to prove based on the criminal standard that the properties were derived, used, or intended to be used in committing crimes. As such, greater clarity through legislation, regulations or procedures regarding NCB in rem forfeiture would significantly ease these drawbacks and directly target criminal assets regardless of the owner of an account into which criminal proceeds were transferred or deposited.

208. Tax offenses with a fraud component such as an element of misrepresentation will be prosecuted by the prosecutors' offices, and any forfeiture of the fraud proceeds is adjudicated by a court. The statistics for tax offense forfeiture involving fraud has been included into the forfeiture figures by the district prosecutors' office. Tax cases are first decided by the National Taxation Bureau while enforcement is handled by the Administrative Enforcement Agency of MOJ ("AEA"). A small amount of money related to criminal assets has been able to be recovered by AEA using tax procedures where, for various reasons, criminal cases were not able to be brought or had failed.

209. Regarding tax recoveries that are proceeds of crime, the AEA is a specialised agency which works to recover major fines (including tax and other administrative fines and court orders) and manages associated assets. The team noted the considerable success of the AEA, but available

statistics mean that the team cannot discern which values have been recovered by the AEA that are proceeds of crime as distinct from tax fines or other recoveries. Some credit, if not in full, nevertheless, should be given to the efforts made by AEA's tax recovery.

**Table 3.99: Amounts recovered by AEA via the Tax System (NTD)**

Year/NTD	Amount recovered	Tax owed	Fines
2014	11,061,626,603	9,462,557,978	1,599,068,625
2015	10,521,115,466	9,120,579,986	1,400,535,480
2016	10,827,129,248	9,169,948,059	1,657,181,189
2017	10,091,469,683	8,738,088,821	1,353,380,862
2018 (Jan-Oct)	8,322,907,075	7,218,663,215	1,104,243,860
<b>Total</b>	<b>50,824,248,075</b>	<b>43,709,838,059</b>	<b>7,114,410,016</b>
<b>USD equivalent</b>	<b>USD 1.7 billion</b>	<b>USD 1.46 billion</b>	<b>USD 237 million</b>

#### iv. Asset Management

210. Management of seized assets is largely undertaken by prosecutors. Management of assets has been significantly eased by "mandatory" conversion provisions (Art141 CPC). Guidance for prosecutors to manage the seized assets is provided by a handbook. Prosecutors have an asset tracking and management case system which records details of all seized items with other information including the offence committed, category, delivery date of the case and a code for tracking. All seized assets are deposited into a warehouse. Procedures (Auction and destruction processes of seized/confiscated items by DPOs) are in place destruction of contraband items.

211. Several provisions under the CPC provide the authority to convert the seized assets into cash. In general, the conversion can occur based on a prosecutor's discretion or a defendant's consent. In the circumstances that a property owner does not agree to the conversion, the property owner has the right to appeal to a district court. In addition, a stakeholder may take back the seized assets upon the provision of a guarantee or security which has an equivalent value to the seized assets.

212. AEA appears to have the ability to manage large and complex assets; however, AEA does not have a role in asset management until a forfeiture judgment has been entered and it needs to be enforced against the seized assets. In order to better utilise the AEA, the DPO has been conducting auctions with the AEA to gather greater awareness. Between January 2017 – June 2019 the DPO sought assistance from the AEA in 42 cases with the equivalent of approximately USD1.4 million being realised at joint auctions. From January 2014 - June 2018, the DPO received the equivalent of approximately USD4.76 million in proceeds of crime assets realised at auction. There is the potential for the AEA to take a greater role in asset management on behalf of Execution Prosecutors in order to ease the burden on them to manage all proceeds of crime assets, given their expertise in this area.

#### *Confiscation of falsely or undeclared cross-border transaction of currency/BNI*

213. Cash or goods smuggling has been identified as a high risk, with inflows and outflows of proceeds of crime from neighbouring countries. Some steps including legislative measures have been taken to target cross-border movement of cash. Chinese Taipei has a significant cash-based economy.

214. Chinese Taipei has a legal framework in place for the declaration and identification of cross border movements of funds and BNI. A written declaration system is in existence for all travellers carrying cash over 100,000 NTD (about USD 3,333), \$10,000 USD or its equivalent in foreign currency, and the equivalent of \$10,000 USD in BNIs. Prior to the amendments of MLCA on June 28,

2017, no requirement for declaration of domestic currency, and only foreign currency was subject to the declaration requirement.

215. The requirement to make a declaration is included on arrival cards. Travellers with declaration responsibility will exit through a separate path from the travellers without declaration responsibility. Substantial signage was observed at the major international airport (Taoyuan Airport) putting travellers on notice of the declaration requirements.

216. Customs send the declaration reports to AMLD monthly. If a false or non-declaration occurs, a report of the instance will be sent immediately to AMLD. As discussed in IO6, ICTRs are scanned through a database for red flag indicators and analysed in AMLD investigations.

217. Screening is undertaken to detect cash smuggling. CA and CGA stated that all luggage was x-rayed at land and sea checkpoints. Security risk profiling is conducted on travellers, with selected passengers undergoing thorough physical checks and x-rays. Intelligence received from domestic and international partners feeds into CA's targeted screening of high risk travellers.

**Table 3.991: Total number of violations of cross-border movement declarations (USD)**

Estimated values	2014	2015	2016	2017	2018 (1-6)	Total
<b>Cross-border declaration reports</b>	19,750	30,345	33,470	196,682	157,401	<b>437,648</b>
<b>Cross-border declaration violations</b>	100	128	103	123	79	<b>533 violations</b>
<b>Value of undeclared /misdeclared (USD)</b>	11,660,304	12,627,748	8,360,403	5,894,171	1,993,078	<b>USD 40.5 million</b>
<b>Value of confiscated cash for undeclared /misdeclared (USD)</b>	1,147,187	1,537,938	2,574,790	2,693,094	1,516,187	<b>USD 9.5 million Confiscated</b>

\* The 2017 amendment to the MLCA expanded the obligation to declare to a wider range of assets including gold, diamonds, precious stones and platinum. However, authorities advise even after this amendment, declarations relating to this group of assets were not appraised and therefore aren't included in the above statistics.

218. Since 2015 Chinese Taipei authorities have seized goods and other items valued at over USD155 million in violations of the Customs Anti-Smuggling Act. This resulted in USD137 million from these detections.

219. The CA's powers and processes to seize and forfeit detected cash appear to be adequate after the MLCA's amendment on June 28, 2017. Several case studies further demonstrate that CA has detected and seized both undeclared cash and gold including through x-ray inspections at relevant entry and exit points. Investigative measures and agency coordination by ALMD and LEAs following detection are well pursued.

#### *Proportionality of sanctions for a failure to disclose or a false declaration*

220. Where there is a false or non-declaration of currency or BNI that exceeds the threshold, the amount over the threshold will be seized and forfeited pursuant to Article 12 of MLCA and Article 36 of the Administrative Penalty Act (APA). If there are indications that the currency was likely derived from an illicit source based on CA's initial investigation and other information, the carrier and the currency or BNI will be referred to LEAs for further investigation. In this case, the whole amount of the currency or BNI discovered may be seized at the discretion of customs. The case then proceeds through the usual course of a criminal investigation and ultimately decided by a competent court as to the forfeiture and penalties. In the event the carrier argues that the funds seized are legitimate

(despite not declaring or falsely declaring) the CA will still seize the amount exceeding the declaration threshold. The traveller has 30 days to bring a claim to a Review Committee under the MOF challenging CA's seizure. If not challenged within 30 days, CA's forfeiture decree of the seized currency or BNI becomes final. The Review Committee under MOF, once it receives a claim filed by the traveller, will examine both facts and law to determine whether CA's seizure is legal. If the Review Committee affirms CA's seizure, the traveller has two months to further challenge the ruling to an administrative court under the Judicial Yuan. The administrative court will review both facts and law in regards to the seizure. Although rare, the traveller does have an opportunity to have a further appeal to the Supreme Administrative Court within 20 days after the ruling by the administrative court. Neither the Review Committee under MOF nor the administrative court under the Judicial Yuan will look into the source of the money seized nor do they have the authority to alter the amount seized by CA. The Administrative Court's decision is final, and not appealable to a District Court.

221. As such, there is in fact no difference in forfeiture applied to non-declared or falsely-declared cash derived from illicit criminal proceeds or from legal sources such as immigrant workers' legitimate earnings. The assessment team notes the significant number of immigrant workers in Chinese Taipei. In cases where the source of the falsely-declared or non-declared currency or BNI is legitimate, full forfeiture of the amount above the declaration threshold appears disproportionate, in circumstances where there is evidence that the seized money is legitimate. In this respect, the team notes that forfeiture following a failure to disclose or a false declaration of carriage of currency or BNI is not applied proportionately.

*Consistency of confiscation results with ML/TF risks & national AML/CFT policies and priorities.*

222. Chinese Taipei considers its high risk domestic ML predicates to be drug trafficking, fraud, smuggling, tax crimes, organized crime, securities crime, corruption and bribery, and third-party ML. See IO1. From 2014- June, 2018, approximately USD323 million, 55% of the assets seized and forfeited relate to these key threats, indicating consistency with Chinese Taipei's assessment of its risks.

223. Chinese Taipei is successful in forfeiting a significant value of assets comparable to the size of its economy, and the amount forfeited arising from the predicate offenses appears to be consistent with Chinese Taipei's risk profile. This is demonstrated by the forfeiture statistics in the following table broken down by offenses.

**Table 3.992: Confiscations pronounced by confirmed court rulings (USD equivalent)**

Criminal offense type	2014	2015	2016	2017	2018 (Jan-Jun)	Average
Drug Trafficking	3,864,507	2,034,628	2,346,706	1,547,372	1,429,049	2,493,836
Corruption and Bribery	49,521,662	4,718,214	7,114,507	5,496,750	2,735,289	15,463,649
Fraud (incl illegal fundraising)	263,112	79,033	28,678,248	74,421,804	47,879,216	33,626,981
Smuggling	1,327	5,478	132,626	4,284,272	626,371	1,122,239
Tax crimes	419	0	36,272	629,710	1,641,370	512,838
Insider trading, securities market manipulation	16,879,296	293,270	4,584,441	50,619,648	1,010,770	16,308,317
Third Party ML	7,210,868	2,291,807	0	21,146	392,141	2,203,547
Organized crime	0	0	0	0	5,037	1,119
<b>High</b>						
IPR Crime	2,928	23,484	111,565	723,160	669,240	340,084
<b>Medium</b>						
Illicit arms trafficking	994,569	29,963	23,854	428,840	272,291	388,782

Criminal offense type	2014	2015	2016	2017	2018 (Jan-Jun)	Average
Illicit trafficking in stolen and other goods	4,007	167	87,895	139,701	34,407	59,150
Environmental crime	64,298	1,404	155,690	4,506,809	726,325	1,212,117
Kidnapping	0	0	0	40,167	0	8,926
Theft	457	687	738,918	10,344,719	1,954,634	2,897,648
Forgery of documents, securities, ID documents, or passports	17	29,247	280,254	10,020,985	3,224,738	3,012,276
<b>Low</b>						
Counterfeiting currencies	27	29,247	280,254	10,020,985	3,224,760	3,012,283
Trafficking in human beings (migrant smuggling)	17,102	16,457	21,731	441,737	81,818	128,632
Sexual Exploitation	203,485	157,053	211,169	1,095,300	500,939	481,766
Robbery	1,900	2,097	36,618	429,867	156,178	139,258
Murder	4,140	283	0	7,777	1,100	2,956
Extortion	950	17	24,100	359,667	348,813	163,011
<b>Total</b>	<b>79 million</b>	<b>9.7 million</b>	<b>44 million</b>	<b>175 million</b>	<b>67 million</b>	<b>83 million</b>

### *Overall conclusion on Immediate Outcome 8*

224. Chinese Taipei pursues confiscation as a policy objective. It has restrained and confiscated significant amounts across a range of crime areas in keeping with the risk profile. LEAs have well developed asset tracing capacity and routinely pursue financial investigations to identify assets for the purpose of recovery. Cash is seized at the border and the authorities have, to a certain extent, proactively targeted high-risk ports of entry. However, forfeiture for breaches of the cross border declaration system is not applied proportionately in all cases.

225. **Chinese Taipei has a substantial level for effectiveness for Immediate Outcome 8.**

## CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### *Key Findings and Recommended Actions*

#### **Key Findings**

##### *TF offence (IO 9)*

- 1) Chinese Taipei's assessed its TF risk in the 2017 NRA. The NRA found that Chinese Taipei is a low risk for TF which the team considers is a reasonable conclusion.
- 2) The CTF Act (2016) criminalises TF in accordance with most international requirements and was further amended in 2018.
- 3) The NSB is the highest intelligence authority and in practice coordinates efforts on TF investigations. NSB's December 2017 operational procedure for investigating cases involving terrorism (including TF) sets out operational responsibilities for each agency and has been used by LEAs involved in CFT matters (NSB, MJIB, AMLD).
- 4) A number of financial investigations of suspected TF cases have been successfully undertaken. They involved intelligence sharing and ultimately uncovered conduct unrelated to TF.
- 5) There have been no TF convictions in Chinese Taipei, which is in keeping with the TF risk profile.
- 6) The central authority in charge of counter-terrorism policy is the Office of Homeland Security (OHS) which regularly exchanges information with national security, LEA, and administrative agencies through meetings of Homeland Security Policy Committee of Executive Yuan.
- 7) There is no separate investigation unit for TF, however in the event of potential TF cases, the NSB coordinates efforts with LEAs, Prosecutors, AMLD and the OHS as needed. The authorities are well-equipped to conduct parallel financial investigations based on existing expertise and the sound framework for TF. Should TF arise in the future in Chinese Taipei, the authorities are well placed to investigate thoroughly and effectively.

##### *TFS related to TF and NPOs (IO 10)*

- 1) Chinese Taipei has strong policy and operational coordination mechanisms to support the implementation of a legal framework for implementing TFS to combat terrorism.
- 2) There are some technical compliance gaps with the freezing obligations and prohibitions – these do not extended to those acting on behalf of, or at the direction of, designated persons or entities.
- 3) The legal framework for CT-related TFS is being implemented without delay. The mechanism that would be used for 1373 designations has been used for domestic designations related to PF and has been shown to operate well.
- 4) Name-screening measures are being reasonably implemented by FIs and DNFBPs. Authorities have issued guidance to all sectors and undertaken a great deal of outreach to all FI and DNFBP sectors. All sectors have subsidised access to screening software to support implementation.
- 5) FIs, especially banks, demonstrate a good understanding on TFS obligations and the implementation of CDD measures and transaction monitoring to implement screening.



- 6) FSC and other supervisors have commenced supervision of TFS amongst FIs.
- 7) Chinese Taipei has undertaken elements of a domestic review of its NPO sector and has considered potential risks within the NPO sector to identify which subset of NPOs that might be of particular risk of being misused for TF.
- 8) Regulators and competent authorities have conducted outreach and awareness raising in relation to transparency, good governance, TF risks and related mitigation measures.
- 9) A graded range of risk mitigation obligations, guidance and supervision has been applied taking into account the relative risks of particular sub-sectors and the features and activities of individual NPOs.

#### *Proliferation financing (IO 11)*

- 1) Chinese Taipei has strong policy and operational coordination mechanisms to support the implementation of a legal framework for TFS to combat PF. The legal framework for PF-related TFS is being implemented without delay.
- 2) There are some technical compliance gaps with the freezing obligations and prohibitions – these do not extend to those acting on behalf of, or at the direction of, designated persons or entities. However, the legal framework for TFS goes beyond FATF standards by including a PF-related offence and related STR reporting obligations as well as establishing a domestic designation system to complement the obligations under Rec. 7. Chinese Taipei has used this domestic framework to designate certain natural and legal persons working on behalf of or at the direction of the principal designee, which goes some way to overcome the technical compliance gap.
- 3) TFS related to DPRK have resulted in over USD 3.96 million being frozen or seized, including assets indirectly owned or controlled. Chinese Taipei has implemented its additional domestic system and has designated a local and related entities linked to PF and subjected them to TFS, including freezing considerable assets. FIs have filed numerous PF-related STRs which have assisted LEAs to investigate possible networks associated with designated persons and entities. Authorities have granted access to frozen funds for basic expenses in keeping with the standards.
- 4) The name-screening measures are reasonably implemented by FIs. Chinese Taipei demonstrates its ability to freeze funds or other assets of designated persons/entities. Authorities have issued guidance to FIs and DNFBP and supported all sectors to have access to screening software.
- 5) FIs, especially banks, demonstrate a good understanding on TFS obligations and the implementation of CDD measures and transaction monitoring for sanctions matches. Authorities have undertaken awareness raising on PF to promote understanding of obligations on all FI/, DNFBPs and other sectors required to implement TFS. Challenges remain with obtaining sufficient detailed information on intermediaries associated with designated persons or entities. FSC and other supervisors have undertaken supervision of PF-related TFS amongst FIs.

#### ***Recommended Actions***

##### *TF offence (IO 9)*

- a) Chinese Taipei should continue to maintain an understanding of regional and global trends that might change the risk profile of Chinese Taipei to TF.
- b) Chinese Taipei should ensure that in the event of potential TF the CFT SOP and related measures

are able to be applied swiftly, whilst the nature of the matter (terrorist related or general criminality) is still being determined.

- c) The NSB should continue to strengthen and promote sharing of intelligence amongst security agencies, LEAs and to the private sector particularly in relation to external TF threats.
- d) In light of the findings in the NRA, authorities should conduct further analysis of the OBUs and DBUs to better understand their vulnerability to TF. Any relevant findings as part of this exercise should be shared with sectoral regulators and supervisors.

*TFS related to TF and NPOs (IO 10)*

- a) Address the remaining TC gaps with the CFT Act.
- b) Continue to conduct outreach and awareness raising to FI/DNFBP on possible sanctions evasion risk associated with emerging threats and actions to look for those working on behalf of or at the direction of designated persons/entities. Continue information sharing to FIs to assist in their work to monitor and screen for possible matches or sanctions evasion.
- c) Further promote and support transparency and good governance of the NPO sector, with particular support to the sub-sector of NPOs identified as carrying some risks for abuse for TF.
- d) Provide further information regarding possible TF risk to NPOs and their regulators to continue to refine risk-based implementation. This should involve MOFA and LEAs/NSB.

*Proliferation financing (IO 11)*

- a) Revise the CTF Act to rectify technical gaps identified, including ensuring freezing obligations clearly extend to all funds owned or controlled by persons or entities acting on behalf of designated persons or entities and comprehensive TFS are enforceable on all natural and legal persons.
- b) Continue to provide support to FIs/DNFBPs (guidance and outreach) with further information to assist screening for those working on behalf of or at the direction of designated persons/entities and to help to monitor and screen for possible sanctions evasion. This should be complemented by authorities assessing financial products and services that are likely to be abused or misused for sanctions evasion.
- c) Supervisors should continue to identify sectoral vulnerabilities to target off-site and on-site supervision of CPF TFS and provide additional case-specific information to the private sector.

***Immediate Outcome 9 (TF investigation and prosecution)***

*Prosecution/conviction of types of TF activity consistent with the Chinese Taipei's risk-profile*

226. Chinese Taipei conducted an NRA in 2017 that determined that TF is low risk in Chinese Taipei and that no substantial TF threat has been identified thus far. The team has considered Chinese Taipei's NRA report and in conjunction with its own findings and open source material considers that an overall rating of low risk for TF is reasonable.

227. The NRA considered the potential threat for TF based on the nature of foreign workers in Chinese Taipei. There are approximately 676,000 foreign migrant workers residing in Chinese Taipei, predominantly from Indonesia, Vietnam and the Philippines. LEAs had conducted financial

investigations of two potential instances of TF involving foreign workers, but ultimately did not identify TF conduct in Chinese Taipei.

228. The NRA considered TF risks amongst the NPO sectors and identified civil associations, religious foundations and charity foundations as having potential risks due to insufficient information being provided in anonymous donations and the scope of their operation. Whilst there has been no identified case of TF through NPOs, authorities maintain their vibrant NPO sector may be vulnerable. A discussion of actions taken with respect to NPOs is provided below in IO10. It is noted that the likely channels being used for TF will be the OBUs and Domestic Banking Units (DBUs).

229. The CTF Act was enacted in 2016 criminalising TF in accordance with most international requirements.

230. There are no TF convictions in Chinese Taipei. Thus far, the MJIB has investigated a total of 7 cases potentially related to terrorism or TF activities. Four of those cases have been closed and three cases remain under investigation. Based on current investigations, no TF case has actually been uncovered so far in Chinese Taipei.

#### *TF identification and investigation*

231. The NSB is the intelligence agency responsible for collecting and analysing intelligence or information related to national security and interests. The NSB is able to integrate and coordinate with other agencies such as the NIA, MJIB, AMLD and military agencies in cases of national security. In response to global threats, including the concern around foreign fighters and other matters, authorities in Chinese Taipei collaborated to introduce the “Investigation and Processing Operation Procedures for Cases Involving Terrorism” (the CFT SOP) in December 2017. The CFT SOP has been disseminated to and used by relevant LEAs involved in investigating terrorism (NSB, MJIB, AMLD). Relevant extracts of i. intelligence collection; ii. Intelligence investigation; iii. Prosecution/TFS; iv. Counter terrorism responses/strategies. The SOP includes strategies to investigate funds flows and to seek and provide international cooperation where relevant and provides for domestic cooperation.

232. There is no designated unit for TF investigations, however in cases where TF was suspected, the NSB coordinated efforts with LEAs, Prosecutors, AMLD and the OHS in line with the CFT SOP.

233. Prosecutors do not have designated sections devoted to TF (in line with the risk profile). However, in the event that TF occurred, the matter would be dealt with by a prosecutor working in the major criminal cases division of the HPO. In such cases, the Prosecutors have particular guidelines to abide by which require Prosecutors to ensure a speedy investigation, and all documents sent to court are marked red meaning it is an urgent case amongst other special measures.

234. TF matters that fall to MJIB to investigate are dealt with by the National Security Operation Division. This division has a wide range of functions regarding counter terrorism including PF and TF. In addition, the MJIB International Operations Division would also seek related intelligence from partners in other jurisdictions. TF or terrorism matters that come to the NPA are dealt with by the Intelligence Protection Division. In this instance, the NPA would initiate a nationwide investigation and such a case would be regarded as a major case.

235. The AMLD has demonstrated it plays a key role in TF investigations in the small number of cases that have been outlined. The AMLD demonstrated that it has actively supported Egmont Group exchanges of information relating to TF.

236. The NIA also plays a role in TF investigations and has provided details of cases in which they received intelligence regarding the potential involvement of a foreigner with IS who may have sought

entry into Chinese Taipei. In these cases, the NIA exercised its power under the Immigration Act and denied entry to this person.

237. Authorities are aware of their respective roles and responsibilities and are well-equipped to conduct parallel financial investigations based on existing expertise. Should TF arise in the future in Chinese Taipei, authorities are well placed to investigate thoroughly and effectively.

4

238. There have been no STRs from any domestic reporting institution involving TF in the past 3 years. However, the AMLD has conducted financial investigations on the basis of requests from Egmont partners. Once analysed by the AMLD the information is sent to the National Security Operation Division<sup>9</sup> (NSOD) of the MJIB, and other LEAs.

**Table 4.1: TF intelligence statistics provided by the NSB**

Counter-terrorism intelligence / year	2015	2016	2017	2018 (Jan-Jun)	Total
Number of Counter-Terrorism intelligence	12	19	*136	7	174
Number of specific intelligence relating to TF	0	2	0	0	2
Criminal investigations with TF links	0	2	0	0	2
Counter terrorism and TF intelligence distributed to other national security authorities (such as NPA, MJIB, NIA)	12	21	136	7	176
TF -related STRs	0	0	0	0	0

\* Note: The surge in 2017 relates to the Universiade event held in Taipei in which authorities undertook a significant amount of pre-event intelligence exchanges with foreign counterparts.

239. There has been one significant incident in Chinese Taipei involving a bombing of the high speed rail. In this matter the AMLD took initiative to conduct a financial investigation into the suspects based on media reports that led to the finding that the incentive behind the bombing was in fact market manipulation and not terrorism related.

#### **Case Example 4.1: 2013 bombings on the high-speed rail in Chinese Taipei**

On April 12 2013 bombs were placed on the High Speed Rail, which did not explode. NSB and OHS were informed and the criminal investigations were coordinated by the DPO. The NPA was responsible for investigating certain aspects of evidence such as the explosives, collection of evidence, questioning of suspects etc. The NSB coordinated the intelligence agencies. The suspects had travelled to China. NPA obtained cooperation from counterparts in China, which resulted in the suspects being returned to Chinese Taipei.

AMLD financial investigations commenced based on media reporting on the incident. AMLD notified FIs seeking further information and received emergency STRs from more than 10 FIs on the same day. Preliminary analysis showed that one of the suspects had converted all of his assets to cash prior to engaging in this conduct. He collected a significant amount of money in order to short the Chinese Taipei Index Futures on the Singapore exchange. This information was submitted to the DPO.

The DPO investigation identified the aim of the bombing was financial gain through the short position in the stock market prior to a bombing anticipating the stock price plummet in response to the bombings. The defendants were prosecuted for attempted murder, offences against public safety and violation of the Futures Trading Act. One defendant was sentenced to 20 years imprisonment and the other was

<sup>9</sup> The NSOD is a unit under the MJIB responsible for coordinating and organising investigations on cases related to terrorist activities, terrorist financing and PF. It receives and allocates intelligence received from AMLD relating to these matters.

sentenced to 10 years and 6 months imprisonment.

Authorities looked comprehensively into other possible connections and motives and concluded in this matter that it was not a terrorist incident. Under the Homeland Security Situation Determination Procedures, the competent authorities assess whether the case is in fact terrorist activity by reviewing the intent and other issues behind the crime.

240. As seen in the case study above, procedures are in place for authorities to determine whether or not in fact an event is a terrorist event. If it is determined to be connected to terrorism, then the CFT SOP will apply which outlines the responsibilities of each respective agency. Authorities should ensure that the Homeland Security Situation Determination Procedures do not prevent a swift response using all relevant powers and agencies prior to the determination being made.

241. It is evident that Chinese Taipei exchanges intelligence with supportive foreign counterparts regarding potential TF targets. This was demonstrated in live cases and regular international cooperation to prepare for possible terrorist cases. Chinese Taipei has taken preventative measures such as denying entry to potential financiers on the basis of foreign intelligence. However, authorities note that increased exchanges of intelligence with a variety of foreign partners would increase their ability to more effectively target foreign threats to Chinese Taipei.

#### *TF investigation integrated with -and supportive of- national strategies*

242. Chinese Taipei has good counter-terrorism policies in place organised by the OHS. The “Guidelines for Contingency Response Plans and Operations of Homeland Security of Executive Yuan” provide a basic framework for counter-terrorism. At a more operational level, underneath the OHS sits the “Response Team for Major Man-made Security Accidents or Terrorist Attacks” with designated agencies for each incident. The case studies identified above highlight how TF intelligence and related financial investigations have been supportive of national CT strategies. TF intelligence contributed to the CT preparations ahead of the 2017 Universiade event held in Taipei. As outlined in IO1, Chinese Taipei lacks a national CFT strategy and it will be important that CFT concerns by AMLD and LEAs are closely integrated with and supportive of national CT strategies.

243. The main counter terrorism and CFT mechanism is the Homeland Security Policy Committee of the EY, which was established to formulate CT policies, review laws, approve plans and supervise operations. At the operational level, the Director of OHS organises working level meetings for specific issues with relevant agencies and such meetings are also held regularly. The NSB is key for planning, regulation, supervising and integrating national intelligence for terrorism and TF. The OHS and NSB remain on alert to share counter-terrorism intelligence. The NSB integrates and assesses intelligence from all agencies, including from AMLD, to make a judgment about individual cases.

#### *Effectiveness, proportionality and dissuasiveness of sanctions*

244. There has been no prosecution of TF in Chinese Taipei. The available sentences for TF range from one to seven years (CTFA Art. 8). In the context of Chinese Taipei, such sentencing is commensurate with other serious offences such as human trafficking and kidnapping for ransom.

245. The CTFA provides for sentence remittance in the event that the offender voluntarily surrenders within six months after committing the crime. Because surrender refers to a situation where the authorities have no prior knowledge of a crime and is different from confession, authorities confirm that the remittance assists to initiate new investigations and uncover networks where they were previously unknown. The provision does not apply if the authorities are already aware of and investigating a suspect. In the absence of TF prosecutions, this provision has never been applied.

*Alternative measures used where TF conviction is not possible (e.g. disruption)*

246. Chinese Taipei has a low risk for TF and few instances have been detected. Despite this, Chinese Taipei is able to implement various measures where a TF conviction is not possible. Such measures include strengthening of border security, prosecuting other crimes where TF is not possible, and revocation of NPOs licence should it be identified as having been used for TF.

4

247. Chinese Taipei has signed a terrorist screening exchange agreement with the United States. This assists agencies to screen prior to travellers' arrival in Chinese Taipei. Further, due to the numbers of migrant workers in Chinese Taipei and the findings of the NRA, NSB very carefully vets all migrant workers seeking to enter Chinese Taipei to work. All workers are required to apply for a permit which is then vetted by the NSB and immigration agencies and if necessary, entry to Chinese Taipei is denied.

248. Chinese Taipei has taken significant efforts to disrupt and prevent potential TF. This was demonstrated in the recent Summer Universiade event in which the NSB managed potential threats including international cooperation with foreign partners to vet each person entering Chinese Taipei. In addition, Chinese Taipei repatriated a person suspected of possible IS recruitment, and has also denied entry as evidence of supporting terrorism was discovered (see following case study).

**Case Example 4.2: TF investigations**

In August 2016 Chinese Taipei received intelligence on migrant worker T suspected of possible IS recruitment. As a result of the authorities' investigation, T was repatriated from Chinese Taipei.

In December 2016 Chinese Taipei received intelligence on migrant worker D from Indonesia who attempted a bomb attack on the Indonesian President. D had been employed for home care in Chinese Taipei from 2013 to 2016. After Chinese Taipei intelligence authorities and LEAs conducted investigations the decision was made to deny entry future to D as evidence of supporting terrorism was discovered.

*Overall conclusion for Immediate Outcome 9*

249. Assessments confirm that terrorism and TF risks are low overall, however TF investigations are given a high priority. LEAs, prosecutors, the FIU and security intelligence authorities have well developed investigation capacity, and standard operating procedures to respond to possible cases of terrorism or TF. There have been a number of cases where authorities have proactively and systematically investigated TF alongside possible terrorism cases and, in two other incidents, investigated possible TF cases. The conduct of financial investigations is in keeping with the risk profile and CFT policies. Chinese Taipei has used immigration laws to keep possible terrorist financiers out of the jurisdiction where it is not practicable to secure a TF conviction

**250. Chinese Taipei has a substantial level for effectiveness for Immediate Outcome 9.**

### ***Immediate Outcome 10 (TF preventive measures and financial sanctions)***

#### ***Implementation of targeted financial sanctions for TF without delay***

251. The CTA was promulgated in July 2016 and amended in November 2018 to give effect to TFS under R. 6. Chinese Taipei has strong policy and operational coordination mechanisms to support the implementation of a legal framework for implementing TFS to combat terrorism. There are some technical gaps in the legal basis for TFS as freezing obligations and persons or entities that are not regulated FIs or DNFBPs under the MLCA to implement TFS (availability of an administrative sanction and clear requirement to report a freeze action or attempt to provide funds). The amended CTF Act applies to assets wholly or jointly owned or controlled, directly or indirectly, but not clearly to property derived from such property or to funds or other assets of persons and entities acting on behalf of or at the direction of designated persons and entities, except when those funds are also property or property interests of the designated person or entity.

252. TFS freezing obligations are being implemented without delay. The process for converting UN listings into binding domestic designations and updating domestic websites and publications with new names occurs within 24-36 hours following any UN updates. The competent authority (MOJ / MJIB) has dedicated personnel who check the UN sanction lists daily basis to ensure that sanctions list is up-to-date. The MJIB reports sanction lists of related UNSC resolutions from time to time to the MOJ.

253. MOJ is the competent authority responsible for designations pursuant to UNSCR 1373. The TF Review Committee (TFRC) is well established to implement UNSCR 1373-related designations should the need arise, either based on a domestic initiative or when considering foreign requests. In practice, Chinese Taipei has not used the TFRC for a 1373 designation, which is in keeping with the risk profile. Chinese Taipei demonstrated that the TFRC has operated well to consider and designate persons and entities associated with domestic proliferation financing, which utilises the same mechanisms and evidentiary standards, albeit in relation to financing of WMD proliferation.

254. A very large number of outreach and awareness raising sessions have been undertaken to FIs and DNFBPs regarding implementation of TFS against TF. Guidance has been issued to all FI and DNFBP sectors, which add to effective implementation. Both outreach and guidance are strongly supported by government authorities and all sectoral associations (see IO 4).

255. Sanctions screening by FIs and DNFBPs is being conducted reasonably well. Screening by banks appears to go beyond UN lists to include OFAC and other national lists. However, there has not been sufficient focus on sanctions evasion vulnerabilities through entities associated with designated persons (see IO 4), which reflects the gap in the legal framework. Despite this, the context of Chinese Taipei and its TF risk do not raise particular concerns in this regard for this immediate outcome. Authorities have good supported transaction and customer checking amongst FIs/DNFBPs through the subsidising the provision of TDCC system for TFS sanctions and PEP screening databases to ensure that even small business DNFBPs have access to comprehensive sanctions and PEP checking lists. Not all DNFBP use the TDCC, but the coverage is wide and increasing. FSC and TDCC maintain data on usage of the system and continue to encourage uptake of sanctions screening software.

256. Supervision of FIs for TFS compliance has taken place over a number of years. Supervision of DNFBPs for TFS has been limited, although more supervision has been undertaken with accountants. Reflecting high levels of outreach, FIs /DNFBPs demonstrate good understanding of their obligations and processes to respond to alerts received following each update to the government's TFS list.

257. No funds or other economic resources related to persons or entities designated by the UN have been located in Chinese Taipei. No cases of possible false positives have been reported to the authorities, although guidance has been sought from FIs. This is in keeping with the risk profile.

*Targeted approach, outreach and oversight of at-risk non-profit organisations*

258. Since 2017 Chinese Taipei has pursued a targeted, interagency coordinated approach to overseeing the whole NPO sector based on its assessment of TF risks.

259. Regulators demonstrated a good understanding of risks and vulnerabilities for TF. This was captured in the NRA and through further work by authorities in 2017-18 to identify the subset of NPOs that may be at risk and should be the focus of FATF standards/controls. Through this process regulators demonstrated a good comprehension of risks and vulnerabilities. While TF risks are low overall in Chinese Taipei, authorities have taken a reasonable approach to assess which sub-sectors of NPOs that meet the FATF definition may be vulnerable to being misused for TF by considering their legal form, governance and transparency; the focus nature and location of their work; and the collection and disbursement of funds. Of these, further emphasis has been given to those few sub-sectors which may undertake charitable work in riskier jurisdictions.

**Table 4.2: Chinese Taipei's assessment of the risk profile of NPO sectors (2017)**

	Civil Associations	National Religious Foundations	Social Charity Foundations	Medical Foundations	Educational Foundations	Cultural Foundations
<b>TF risk</b>	At risk	At risk	At risk	No risk	No risk	No risk
<b>NPOs</b>	16,277	192	236	58	1,025	202

260. A great deal of outreach and awareness raising has been undertaken to the regulators and to the NPO sector to ensure that the wider set of regulators and at-risk NPOs are aware of their obligations and potential TF risks. More detailed outreach and awareness raising has focused on those sectors MOFA and regulators have, in cases of NPOs working in or near to conflict zones, provided more targeted risk information.

261. Chinese Taipei demonstrates that it has, to a large extent, without disrupting or discouraging legitimate NPO activities, applied focused and proportionate measures to such NPOs which it has identified as being vulnerable to TF abuse, in line with the risk-based approach. A graded range of risk mitigation obligations, guidance and supervision has been applied taking into account the relative risks of particular sub-sectors and the features and activities of individual NPOs.

262. Chinese Taipei demonstrated that it has good controls to manage risks with charitable collection. There are strong transparency and good governance controls in place across various NPOs sub-sectors. A number of recent changes have further deepened these controls for NPOs carrying some TF risks. NPOs are covered by requirements for maintaining records, obtaining permission to undertake fundraising, as well as providing reports on programs, funding and expenditure. There are controls on programs, fundraising and expenditure of NPOs, with a particular focus on high risk jurisdictions as destinations following the principles of know your recipient NGOs. In a number of cases where there may be greater risks, authorities undertake onsite visits to charities to confirm the implementation of controls on programs, finances and personnel.

263. For civil associations, national religious foundations and social welfare charity foundations, more targeted outreach has been undertaken and sectoral and institutional risk assessments are required and are being conducted. The three regulators have been supported by AMLD and LEAs to commence more focused offsite and onsite monitoring of targeted NPOs.



**Table 4.3: NPO outreach and education on AML/CFT by competent authorities**

Competent authorities		2016		2017		2018 (Jan-Jun)	
		Sessions	Participants	Sessions	Participants	Sessions	Participants
MOHW	SFAA	2	239	1	37	2	181
	DMA	1	33	2	46	0	0
MOI	DCA	0	0	2	187	0	0
	CCAPO	0	0	2	350	0	0
MOE		7	691	4	261	2	314
MOC		2	140	0	0	0	0

264. Foundations Act amendments in 2018 included targeted controls for CFT. Article 10 requires foundations to have AML/CFT plans if branch offices are located in countries with particular ML/TF risks. Article 25 requires foundations to undertake and report on the findings of a risk report (along with work plans and budgets) if they are related to jurisdictions or areas with high risks of ML or TF.

265. Outreach, monitoring and supervision of NPOs and controls on charitable fundraising indicate that levels of compliance with obligations are reasonable. Chinese Taipei authorities have allocated significant resources to outreach and resources to monitoring and oversight. Implementation of these measures is proportionate to the risks faced by Chinese Taipei.

266. While police authorities have not identified or investigated NPOs exposed to terrorist and TF risks, this is in keeping with Chinese Taipei's risk profile. TF investigation capacity, information sharing and experience with international cooperation are in place to ensure any NPO-related TF investigations can be prioritised.

#### *Deprivation of TF assets and instrumentalities*

267. There have not been any cases of terrorists or terrorist financiers being deprived of their assets. As such there have not been any matters of restraining, seizing or confiscating any TF-related assets or instrumentalities. This is in keeping with the risk profile.

#### *Consistency of measures with overall TF risk profile*

268. The measures undertaken by Chinese Taipei are consistent with its overall TF risk profile. These conclusions were based on: statistics provided by Chinese Taipei, discussions with the NSB, AMLD, AMLO and LEAs; relevant risk and threat assessments; and case studies showing the close consideration of risks and potential cases and risk TF mitigation measures by LEAs and NPO regulators.

#### *Overall conclusions on Immediate Outcome 10*

269. Chinese Taipei demonstrated that it has implemented TFS, taken a targeted approach to overseeing NPOs of higher risk, and is prepared to deprive terrorists and terrorist financiers of their assets consistent with Chinese Taipei's risk profile. LEAs and intelligence services are vigilant to evolving TF risks. Chinese Taipei authorities have allocated significant resources to supporting the private sector to understand their TFS obligations, risks of sanctions evasion and practical measures to enhance the implementation of TFS. Authorities have also conducted significant levels of outreach and monitoring and oversight to support the NPO sector and to mitigate potential TF risks. Authorities have implemented a graded range of obligations and support to NPO sectors, depending on the TF risks.

**270. Chinese Taipei has a substantial level for effectiveness for Immediate Outcome 10.**

*Immediate Outcome 11 (PF financial sanctions)*

271. The Counter-Terrorism Financing Act was promulgated on 27 July 2016 and was amended with effect from 7 November 2018. The legal framework to prevent proliferation of WMD covers not only UN resolutions but also provides for elements of a PF offence, related STR reporting obligations and for Chinese Taipei to implement a domestic listing mechanism and related TFS. However there are some technical gaps remaining, especially the scope of funds to be frozen being held by those acting on designated persons' and entities' behalf or at their direction.

272. Chinese Taipei authorities have taken steps to understand the context of their exposure to possible sanctions evasion in relation to Rec 7. Trade conducted between Chinese Taipei and Iran has accounted for a very small amount compared to the overall amount of Chinese Taipei's total trade and trade with the DPRK is negligible since 2018. The management of trade in goods falls under the authority of the Bureau of Foreign Trade (BOFT) under the MOEA.

*Implementation of targeted financial sanctions related to proliferation financing without delay*

273. The MOJ-led mechanism implementing TFS against WMD proliferation is similar to that for TFS related to terrorism. It operates without delay and extends both asset freezing obligations and prohibitions to all persons and entities in Chinese Taipei. Individuals, legal persons, or entities designated by the relevant UNSCRs and any successor resolution on the prevention of proliferation of WMD referred to the UN (DPRK and Iran) regulations, and prohibitions including freezing-measures go into effect without delay upon designation by the UN. The process for converting UN listings into binding domestic designations occurs within 24 hours. The list is then published on the website of domestic authorities which brings it into effect immediately. The competent authority (MOJ/MJIB) has dedicated personnel who check the UN sanction lists of related UNSC resolutions daily, to ensure that their sanctions lists are up-to-date. Any updates are reported by MJIB through official letters. MOJ usually publishes related resolutions and sanction list in the dedicated AML/CFT section of the MOJ's official website within 24 hours, i.e. on the same day as MOJ receives the official letters.

**Case Example 4.3: Implementation of new UN designations without delay resulting in asset freezing actions**

On 30 March 2018 the UN Security Council designated one individual and 21 companies pursuant to UNSCR 1718. MJIB identified that the list of additional individual and legal persons included the offshore company Pro-Gain Group Corporation (place of registration: Samoa) and Kingly Won International Co., Ltd. (place of registration: Marshall Islands) that were wholly owned by Chinese Taipei local Tsang Yung-Yuan. The MJIB also discovered that Mr. Tsang Yung-Yuan had allegedly assisted North Korea in obtaining coal and crude oil illegally. The process of giving domestic effect to the new UN listings was done within 6 hours. The MOJ also issued official letters to competent authorities of FIs and DNFBPs and published a press release on the official website of the MOJ to urge implementation of TFS.

After publishing the sanction lists, FIs reported frozen assets of sanctioned persons and entities resulting in approximately 30 freezing actions with an estimated value of approximately USD 1.08 million.

274. The competent authority, regulators and LEAs utilize a range of communication channels to ensure all relevant persons and entities are aware of their TFS obligations, any updates to the lists, and possible threats of PF sanctions evasion. Mechanisms used include email subscription notifications from MJIB, subscription to MOJ RSS feeds, government letters to relevant agencies, publications, and briefings to media to ensure news coverage, and informal communication through social media. Chinese Taipei demonstrated comprehensive use of these mechanisms to help to ensure FIs and DNFBPs and other relevant parties are aware of PF threats, updated lists and conduct proper screening of the designated persons. As at the time of the onsite visit, there were approximately 500 subscribers to AMLD's TFS notification service. Moreover, most of the private sector uses the TDCC web portal for screening their customers against sanction lists.

275. At the time of the onsite in November 2018, relevant agencies did not report any inquiries from FIs or DNFBPs regarding possible false positives to potential designated persons or entities. Authorities indicated that this reflects the detailed information made available on the subjects of designations.

#### *Identification of assets and funds held by designated persons/entities and prohibitions*

**Table 4.4: Assets frozen related to WMD proliferation TFS 2018**

Freezing actions	Banks	Other FIs	DNFBP	Others	Total
Freezing actions	35	43	0	3	81
Individuals whose assets were frozen	2	2	0	1	5
Entities whose assets were frozen	5	1	0	0	6
Frozen assets value (USD equiv.)	1,521,752	2,446,014	0	*46	3,967,766

*\* Restrictions on real estate transactions*

276. While STRs related to possible PF matters had been filed since 2016, matches with designated persons and entities and associated asset freezing have all taken place in 2018. This reflects changes to the UN lists and domestic designations in early 2018 to include a number of persons and entities in or connected to Chinese Taipei. As of the time of the onsite visit, various assets (deposits, securities, credit cards, check deposits, and insurance policies) amounting to approximately USD 3,719,781 had been frozen. It is notable that assets have been frozen related to persons and entities controlled by the designated person.

277. Chinese Taipei has gone beyond the requirement under Rec. 7 to designate Chinese Taipei local Chen Shih-Hsien and related legal persons on the basis of their connection to PF.

#### **Case Example 4.4: Freezing funds associated with oil transfers to UN designated entities**

NSB, MOFA and MJIB received information by the end of 2017 regarding suspected trans-shipment of oil to DPRK vessels designated by the UN. The information showed Chen Shih-Hsien and associated legal persons under his control (BTGC), which was registered at the British Virgin Islands, and Billions Bunker Group Corporation (BBGC), registered at the Republic of the Marshall Islands. Both were connected to the evasion of the TFS against entities listed pursuant to UNSCR 1718.

The MOJ held multiple interdepartmental meetings with NSB, OHS, MOFA, MOEA, MOI, MOTC, FSC, and other relevant agencies in early January 2018 to share information and discuss countermeasures for Chen Shih-Hsien and others' suspected violation of UNSCRs.

In January 2018 the Minister of Justice convened the TFRC (in accordance with the CTF Act and the Regulations) with the heads of seven major ministries/commissions as committee members to review and reach a decision. The TFRC resolved to designate Chen Shih-Hsien, BTGC, BBGC, Oceanic Enterprise

Co. Ltd. and UMC Corporation Peru S.A.C.

After publishing the designations, FIs reported related frozen assets of sanctioned targets. Approximately 60 discrete assets in total included deposits, securities, credit cards, check deposits, and insurance policies, with an estimated value of NT\$90,150,870 (approximately USD2.88 million).

4

278. The CTF Act was amended in November 2018 to partly address gaps in the freezing obligation (especially in relation to property indirectly owned or controlled by designated persons / entities), however some gaps remain. The freezing obligation applies to assets wholly or jointly owned or controlled, directly or indirectly, but not clearly to property derived from such property of designated persons. The gap in the freezing obligation is only for funds or other assets of persons and entities acting on behalf of or at the direction of designated persons and entities, in cases where those funds are not also the property or property interests of the designated person or entity.

279. Chinese Taipei has used the domestic designation mechanism and related freezing actions to cover persons and entities acting on behalf of the principal designee. In the case of the designation of Chen Shih-Hsien highlighted above, MOJ designated a number of entities owned or controlled by or acting on behalf of Chen Shih-Hsien, which has served to overcome some elements of gap with the scope of coverage of TFS. Authorities also indicate that the criminal offence in section 9(1) of the CTFA (criminalisation of directly or indirectly collecting or providing any property or property interests for another natural or legal person in the knowledge that they are a designated person or entity) could be used to take action against the funds of persons acting on behalf of or at the direction of designated persons or entities, but this has not been tested in practice.

280. In cases where FIs do not have sufficient evidence to freeze funds under TFS, they have filed a STRs related to possible PF, which is done under the complementary controls that Chinese Taipei has taken to include PF-related STR reporting obligations on all FIs/DNFBPs. The numbers of STRs were particularly high following the domestic designation of a Chinese Taipei resident in early 2018.

**Table 4.5: STR statistics related to PF**

	2016	2017	*2018	Total
PF related STRs	5	27	261	293
Reports distribution to investigative authorities	1	7	161	169
Reports disseminated to foreign FIUs	0	5	3	8
Cases closed due to insufficient information	4	15	86	105

*\* Jan to Jun, 2018*

281. Relevant agencies demonstrated a focus on financial investigations in response to freezing actions in an effort to uncover possible networks involved in PF or related sanctions evasion. Chinese Taipei authorities have used cases of asset freezing and analysis of PF-related STRs (293 since 2016) to progress investigation and prevention actions to address WMD proliferation and PF vulnerabilities in real time. This reflects an integration of CPF controls and activities with broader efforts to combat WMD proliferation by assisting the authorities to identify possible networks of people working on behalf of or at the direction of designated persons and entities.

282. Access to frozen funds for basic expenses has been granted in keeping with the standards. MOJ, as the competent authority may set restrictions on access to frozen funds and MOJ has issued restrictions and publicly available procedures in relation to PF-related TFS.

*FIs and DNFBPs' understanding of and compliance with obligations*

283. A large number of outreach and awareness raising sessions have been undertaken for instructing FIs and DNFBPs to implementation of TFS against PF. Guidance has been issued, which adds to effectiveness implementation.

284. Authorities and sectoral associations have provided FIs and DNFBPs with a range of studies and resources to assist TFS implementation, by adding to their understanding of the context of WMD-related TFS and possible sanctions evasion trends. From January 2018 FSC shared various resource materials on PF risks with the private sector (through the Bankers Association) including UN Panel reports on DPRK (UNSCR 1874 expert group report, February 2017); U.S. Fin CEN report November 2, 2017; "Countering Proliferation Finance: An Introductory Guide for FIs" compiled by the Royal United Services Institute (RUSI); and "Study of Typologies of Financing of WMD Proliferation", King's College London. In addition, FSC issued a number of letters and held of seminars and workshops with various sectors.

285. FSC has developed a FAQs for banks, securities and insurance on TFS implementation for TF/PF, which recommends FIs regularly check the MJIB website frequently and be aware of frequent and spontaneous updates to its sanctions list.

286. The Model Guideline for DNFBP sectors urge DNFBPs to have measures to monitor whether any property in their possession/control is owned/controlled by or on behalf of UN or domestically sanctioned persons or entities. The guideline also advises DNFBPs to visit MJIB's website to obtain the list of persons and entities subject to TFS.

287. Based on COA instructions, the ABT has established an AML/CFT System for ABT and Credit Departments of Farmers' and Fishermen's Associations. The system has incorporated name checking modules to help to implement TFS. The system is updated to reflect changes to UN listings.

288. FIs and DNFBPs appear well aware of the TFS in place against Iran and the DPRK. Some FIs have developed in-house databases, derived from the MOJ's sanctions lists as well as commercial databases. Authorities have helped to ensure good support for transaction and customer checking amongst FIs/DNFBPs by making TDCC screening software for TFS sanctions at subsidised rates helps to ensure that even small business DNFBPs have access to comprehensive sanctions screening software. Not all DNFBP use the TDCC, but the coverage is wide and increasing. Usage data of the TDCC system is reviewed and authorities continue to encourage uptake of such systems.

289. Name checks are performed on customers and related parties, when a customer tries to establish a business relationship or conduct a transaction. Additionally, FIs conduct regular batch checks on their customers whenever their databases are updated. Banks' screening appears to go beyond UN lists to include OFAC and other national lists. There are several cases demonstrated by banks representatives where they have identified assets on the OFAC lists and have filed STRs which led to financial investigations.

290. In addition to name screening, most FIs utilized CDD measures and transaction monitoring to prevent and identify possible PF-related transactions, especially in their trade finance areas. Information on trade controls also assists FIs to detect suspicious transaction related to possible PF sanctions evasion.

291. FIs and DNFBPs face challenges with establishing associations with designated persons and entities in the absence of name matches. FSC has directed banks to the vulnerabilities for sanctions evasion, especially in trading with Chinese companies and/or their intermediaries. Additional focus is

need by FIs on sanctions evasion vulnerabilities through entities associated with designated persons, including obtaining sufficient information about such associations.

292. Chinese Taipei demonstrated a robust information-sharing mechanism among relevant authorities in charge of export control. The BOFT oversees export control matters and implementation of proliferation-related UNSCRs. The MJIB is the lead LEA responsible for investigating proliferation and PF cases. Its investigations may be initiated by their own sources, or from advice provided by the NSB. The BOFT, CA, NSB and MJIB are closely connected in sharing information to detect possible cases of illegal exports of strategic high-tech commodities (SHTC) and violations of UNSCRs.

293. Supervision of FIs' compliance with the Chinese Taipei sanctions regime is undertaken by the FSC and other supervisors. FSC has performed regular and ad-hoc onsite inspections to test implementation of PF-related TFS, understanding of obligations for asset freezing and reporting, sanctions. Screening policies and procedures for individuals and entities are tested during onsite examination. FSC has conducted thematic examinations on name-screening, to ensure FIs' databases correspond with sanctions lists, and that transaction monitoring and name-screening may promptly detect designated parties. Onsite supervision includes sample testing to confirm TFS implementation. Foreign exchange counters also conduct sanctions-screening utilising the TDCC database. Their implementation of TFS is supervised by the Central Bank. There are still some gaps in the legal framework to be able impose sanctions on foreign exchange counters which fail to implement all the TFS obligations (see Rec.7). Even though there are sanctions available under Article 9, the imprisonment or fines that can be imposed only with proof of that person or entity have intention to finance provide funds to a designated person or entity, gaps remain.

294. DNFBPs were only recently included in Chinese Taipei's AML framework and obligations regarding TFS on PF. Relevant authorities are continuing to raise awareness regarding their obligations. Many DNFBPs conduct sanctions screening through the TDCC database.

#### *Overall conclusions on Immediate Outcome 11*

295. The legal framework for PF-related TFS is being implemented without delay, however there are some technical compliance gaps with Rec 7. At the same time, the legal framework for TFS goes beyond FATF standards by including a PF offence and related STR reporting obligations as well as establishing a domestic designation system to complement the obligations under Rec. 7. Chinese Taipei has implemented TFS without delay to freeze significant assets related to a UN designation person and a number of UN designated entities. Chinese Taipei has also used its domestic designation framework to designate certain natural and legal persons working on behalf of or at the direction of the principal designee, which goes some way to overcome the technical compliance gap. TFS related to DPRK have resulted in over USD 3.96 million being frozen or seized, including assets indirectly owned or controlled. FIs have filed numerous PF-related STRs which have assisted LEAs to investigate possible networks associated with designated persons and entities. Authorities have undertaken efforts to raise awareness on PF-related TFS. FSC and other supervisors have commenced supervision of PF-related TFS amongst FIs to further ensure TFS implementation is occurring without delay.

296. **Chinese Taipei has a Substantial level of effectiveness on Immediate Outcome 11.**

## CHAPTER 5. PREVENTIVE MEASURES

### *Key Findings and Recommended Actions*

#### **Key Findings**

- 1) Most TC elements are in place, however the updated obligations on DNFBPs only came into force in late 2018, and as such effectiveness is yet to be demonstrated in those sectors.
- 2) The transition from a rules-based to a risk-based approach has been occurring in banking sectors in a preliminary manner since 2013, with more direct support since late 2015. The transition is newer in other sectors. Whilst important progress is being made, further work remains for each FI/DNFBPs' to more fully reflect enterprise risk assessment (ERA) findings in their risk based approach. Understanding of the rules is best amongst banks, generally good amongst other FIs and increasing amongst DNFBPs. FIs other than banks and DNFBPs have much further to go in relation to an understanding of risk.
- 3) Sectoral supervisors and the AMLD have undertaken very significant awareness raising on AML/CFT obligations and ML/TF risks. Guidance has been issued for each respective sector. Most FIs have completed an ERA, as have some DNFBPs. There is a need for more detailed inputs on risk to be made available to each sector to ensure that the ERAs reflect sector and enterprise-specific risks. Risk mitigation measures need to be more substantially based on the risk profile. This is particularly the case with enhanced measures.
- 4) Rules, guidelines, outreach and FSC supervision have greatly assisted FIs and DNFBPs to implement CDD, but challenges remain. In some cases regular CDD routines may rely too heavily on basic documentation. Enhanced CDD does not appear to apply a sufficiently targeted range of controls. Many FIs refuse business when CDD is incomplete, related STR filing is low in specific sectors and balancing potential de-risking by domestic banks needs to be closely managed. In practice, identification of beneficial ownership of domestic customers may be over-reliant on ownership documentation and declarations, despite obligations and guidance to FIs.
- 5) Identification of beneficial ownership of foreign customers is even more challenging from complex structures and foreign trusts. There are also significant risks from informal nominee arrangements to obscure beneficial ownership. Identifying controlling interests for offshore companies is particularly problematic for Chinese Taipei FIs, as for most banks globally. OBU present the greatest challenges in this regard, with significant legacy CDD gaps remaining. The depth and quality of recently updated CDD across the OBU sector is a concern.
- 6) A wide range of FIs/DNFBPs utilise PEP checklists. Most domestic banks and large NFBI establish their own risk management system to identify and monitor the activities of PEP clients. The availability of the TDCC system is a real strength. However, the focus on identification of foreign PEPs does not sufficiently reflect the risk profile. Foreign exchange counters are exempted from PEP obligations.
- 7) Record keeping obligations are well implemented. Controls on correspondent banking appear to be well implemented. Risk assessments of new technologies are well integrated with ERAs and FSC's risk based approach. The recent regulatory sandbox is an important development for assessing product AML/CFT risk and opportunities to balance financial inclusion concerns.

- 8) FIs' implementation of controls on wire transfers appear to be reasonably well supported.
- 9) Implementation of TFS controls appears to be reasonably well supported. The availability of the TDCC system greatly supports implementation by small and medium FIs/DNFBPs.
- 10) Application of jurisdictional risk is given a great deal of emphasis, with greater focus on jurisdictional-specific risks faced by Chinese Taipei being implemented since the 2018 NRA.
- 11) Overall the quality and quantity of STRs appear to have improved in the last 12 months, reflecting greatly increased outreach, red flags and typologies as well as a focus on monitoring. Even more focus needs to be given to customer profile and additional risk indicators to identify suspicion. DNFBP sectors still appear to be under-reporting.
- 12) Internal controls appear to be well developed. FIs have taken many steps and expended considerable resources to greatly enhance their internal controls in a short period of time. The information sharing gaps have been very recently addressed.

#### ***Recommended Actions***

- a) Continue outreach, awareness raising and training to priority sectors to reinforce understanding of obligations, risks and the risk-based approach to AML/CFT implementation.
- b) Address TC gaps in relation to TFS and consider extending PEP obligations to foreign exchange counters.
- c) Prioritise deeper implementation of ML risk management, in particular CDD, over higher risk sub-sectors among banks. OBUs and cross border risks present the greatest need in this regard.
- d) Enhance liaison and engagement between supervisors and LEAs and the private sector, including industry associations. In particular, improved and more frequent inputs from LEAs on ML/TF/PF risks posed to FIs and DNFBPs subject to higher threats and vulnerabilities.
- e) Provide further risk-based guidance, taking into consideration Chinese Taipei's FI and DNFBP sectoral vulnerabilities and balancing financial inclusion and de-risking concerns.
- f) Support continuing improvement of CDD and overall consideration of counterparty risks, moving beyond confirmation of customer identity.
- g) Support continuing shifts to proactive STR reporting based on customer profile and evolving risk indicators.

297. The relevant Immediate Outcome considered and assessed in this chapter is I04. The recommendations relevant for the assessment of effectiveness under this section are R9-23.

#### ***Immediate Outcome 4 (Preventive Measures)***

##### *Understanding of ML/TF risks and AML/CFT obligations*

298. Significant progress has been made by financial institutions in the shift to a risk-based approach over two years. While banks have been required to adopt a risk-based approach since 2013, findings from risk assessments and detailed guidance on risk mitigation were not available to FIs until late 2015. More in-depth findings on risk were made available through the 2017/8 NRA process. It is notable that authorities and the private sector have applied very significant resources to fast-track improvements in FIs' understanding of risks and obligations in a very short timeframe.



299. The move to a risk-based approach is even more recent among DNFBPs, but authorities and industry associations have prioritised AML/CFT activities and allocated significant resources to increasing awareness of risks and obligations. Supervisors have extensively communicated with respective DNFBPs on their AML/CFT obligations and risks. Associations have played a key role in coordinating outreach and education, developing guidance and supporting the move to a risk-based approach. Some DNFBPs have only recently been fully included in Chinese Taipei's AML/CFT regime. In particular lawyers, accountants, notaries, land administration agents and real estate brokers were only included since 28 December 2016.

300. Banks, securities, insurance FIs were particularly notable for their developed approach to understanding their ML risks and obligations, although challenges remain with dummy accounts and informal nominees. Those sectors have completed ERAs since 2016, and many reported updating their ERA since the NRA's completion. In contrast, other FIs require further support in this area. Those FI sectors recently brought into the AML/CFT regime are still catching up on education and outreach on their risks and AML/CFT obligations. These include financial leasing companies—which were brought into AML/CFT supervision in 2018—and credit departments of fishermen and farmers' associations as well as Chunghwa Post.

301. Banks identified their high-risk areas to be: cross-border wire transfers (particularly as they are the only RE which can remit funds overseas), deposit accounts and cash transactions, electronic banking, trade finance and correspondent banking. Securities firms have identified non-face-to-face account opening, grouped accounts or multiple accounts traded by a third-party. Life insurers have identified risks from products with high non-forfeiture value or cash value.

302. Some DNFBPs have completed ERAs, and some have also undertaken steps to risk rate their customers and transactions. While the NRA findings of DNFBPs appear reasonable, there were indications of divergent understanding in risk, threats and vulnerabilities. The NRA found accountants, lawyers, real estate brokers and jewellery businesses carry the greatest vulnerabilities. Meetings with supervisors and the sector did not illustrate detailed understanding of dynamics of risk facing each sector. In some cases, for example amongst jewellers, there are mismatches between sectoral understanding of elements of risk (e.g. the sector considers their small scale to reduce their risk as a vector for laundering funds, while the NRA and other assessments identified jewellery businesses as vulnerable to the proceeds of organised crime).

303. There are opportunities for further improvement with assessing and understanding risks. The assessment team had concerns about contrasts in FIs' understanding and assessments of their own risks, when compared with the findings of the NRA and SRA. Banks almost uniformly indicated their most significant threats were posed by fraud and proceeds from domestic offences. This is supported by FSC outreach and supervisory findings. Both contrasted with the 2017/8 NRA's finding that the banking sector is vulnerable to proceeds of a much wider set of crimes, including proceeds from foreign offences. FIs and their supervisors acknowledged understanding of organised crime and other very high level ML threats—as per the NRA—to be areas of improvement. Moreover FIs' assessments and understanding of risks from OBU customers and channels would benefit from a range of enhanced inputs on risk to strengthen risk-based approaches. To address this, the FSC has launched the AML/CFT Strategy Roadmap with comprehensive action plans specifically in response to NRA. With respect to the very high risk areas identified in the NRA, the FSC has been in close collaboration with AMLD, LEAs and relevant stakeholders to move forward with a variety of risk mitigation measures, which is a welcome development.

304. Two particular challenges include risks from corruption and also risks from informal sector (underground banking, cash economy related to ML). When considering corruption risk, FIs (and their supervisors) appear to significantly focus on identification of PEPs (whether domestic or foreign) and adverse media reporting. Banks do not focus on other elements of domestic and foreign corruption risk, including at-risk industries, geographic considerations, electoral funding issues and

so forth. ML risks particular to banks—including Chinese Taipei’s cash-based economy and cross-straits underground banking—are not well assessed by FIs nor factored into their risk mitigation.

305. Frequent and structured engagement between LEAs (including the FIU) and FIs/DNFBPs has commenced, but more needs to be done to assist FI/DNFBPs to deepen their risk-based approach. FIs participated in the NRA which contributed to a shared understanding and the FSC and LEAs have commenced new Compliance Forum meetings which started immediately prior to the ME onsite and are intended to be a regular occurrence for sharing risk information with FI/DNFBPs. Improved communication with NPA and Customs on the major crime types was identified by the FSC as an area for improvement. There is a need for sustained cooperation between the FIU, LEAs and the financial sector on sharing information on specific threats and vulnerabilities as well as risk trends.

#### *Application of risk mitigating measures*

306. FIs have begun to adopt mitigating measures to address many of their risks. Investment in AML/CFT compliance across major FIs, including human capital, enterprise and industry-wide efforts, is notable. Supervisory authorities have taken steps to track indicators of progress with the application of mitigating measures. FSC identified an increase of AML/CFT-related expenditure of more than 300% amongst banks, insurance and securities firms from 2014 to 2018. This equates to very significant increases in dedicated AML/CFT personnel, systems and training.

307. Mitigation measures involve restriction on products commensurate to risk levels, with a particular focus on restricting or declining business when there are doubts on customer identity or authenticity. The assessment team has concerns about these mitigations’ potential for de-risking.

#### *Offshore units*

308. Banks, securities and insurance firms are permitted to establish offshore units. Of these, OBUs are the most developed and carry by far the greatest risks. These units were particularly noted by authorities and FIs to have very high inherent risks, due to unverified client identities and unresolved ownership structures, the liquidity of their holdings, and the deployment of their capital offshore. FSC’s most recent supervisory information identified over 70% of BO of OBU customers are from Chinese Taipei. OBU accounts are not allowed to accept foreign-denominated cash payments, which they perceive reduces ML/TF risks. The NRA and SRA identified significant risks in the OBU sector, both from the nature of the sector and its customers and from the wholesale gaps in CDD prior to 2017.

309. From late 2017 the FSC has been pursuing a CDD remediation exercise with the OBUs, which is an important risk control. While this project has made important progress, implementation has further to go to complete the CDD remediation exercise and manage risks in the sector. FSC priority risk mitigation measures are welcome, particularly with the assistance of LEAs, AMLD and relevant stakeholders. Together they have provided Q&As, guidance on tax-related ML risks and TBML risk, focus group discussions with AMLD and tax authorities to enhance the understanding of risk and risk mitigation of OBUs.

#### **Box 5.1: Background on Chinese Taipei’s offshore units (OBU)**

OBU were originally established in 1983 under the Offshore Banking Unit Act, partly in order to enhance Chinese Taipei’s attractiveness as a regional financial centre and access to foreign investment, but also due to restrictions on cross-strait investment and direct engagement with Chinese businesses. All OBU customers must be foreign individuals or foreign corporates. Currently more than 70% of OBU customers are subsidiaries of Chinese Taipei businesses. Offshore insurance and securities units (OIU and OSU) are relatively new (established in 2014/15). OBUs, OIUs and OSUs’ account for 7% of the financial sector’s total assets.

310. Banks, securities firms and life insurers have sought to mitigate offshore units' risks since the updated CDD requirements were issued by the FSC. Mandatory CDD remediation, focussed on the verification of customer identities and identifying ultimate beneficial owners and controllers, has been required since 2016. This process was undertaken on a rules basis and did not include updating enterprise risk assessment work, nor any guidance on risk elements. The project has been largely facilitated through customer self-disclosure and document review. Offshore units are notable in that EDD extends to site visits in addition to desk-based work. In the particular case of OBUs, mitigating measures have concluded with account closure, or restriction of new business and transactions until documents for CDD have been provided by clients.

311. For other categories of FIs, risk mitigation implementation includes declining business or restricting higher risk activities for accounts. Other mitigating measures have included increased frequency of periodic reviews based on assessed risk, and closer surveillance for suspicious transactions.

312. Most TC elements are in place for DNFBPs, but comprehensive obligations were very new at the time of the onsite visit. DNFBPs are the early stage of applying AML/CFT measures in keeping with the risks. While Chinese Taipei has recognised risks from the cash economy and requires cash transaction reports for most sectors, these controls were not applied to the real estate sector. This is despite clear identification of clear ML risks associated with cash transactions in the sector. Authorities noted that the basis for real estate being excluded was because the volume of reporting would be excessive. However concerns remain that this was not risk-based.

#### *Application of CDD and record keeping requirements*

313. Risk-based CDD has been a requirement since 2013. Record keeping obligations are well understood by FIs and implementation follows the international standards. LEAs and other competent authorities confirmed the availability of records and timeliness of their retrieval.

314. FIs, supervisors, and FIs' associations acknowledged some of the difficulties in performing CDD. There are challenges with resolving ultimate beneficial ownership or control, particularly in cases involving trusts, low-transparency jurisdictions, complex corporate structures and/or nominees in foreign corporate holdings.

315. The timing of CDD undertaken by FIs is, generally, in keeping with the rules. However it does not appear that FIs adjust the timing and intensity of their CDD work to reflect customer risk. CDD is now performed prior to on-boarding and periodically updated, but risk events do not sufficiently determine the timing of updating or ongoing CDD.

316. Based on feedback from supervisors, FIs' associations and FIs interviews, certain banks were able to demonstrate cases of very detailed CDD work, including in relation to relatively layered ownership and control structures. However, this appears to be most thorough in cases of significant credit lines being established and may focus on prudential rather than ML/TF risk. In some cases CDD may rely too heavily on basic documentation and customer identity verification, being overly reliant on checklists of documentation, account opening forms, self-declarations of beneficial ownership (obtaining certificates of good standing or incumbency) and source of funds.

317. The case of CDD remediation undertaken for OBUs, OSUs and OIUs since 2016 illustrates some challenges with the progress towards a risk-based approach to CDD and understanding of connections between CDD and suspicion of ML and possible STR reporting. The authorities required the banking sector to improve its CDD for OBUs through customer identity verification from May 2017, and to complete CDD remediation for all OBU account-holders by 31 December 2017. This

process led to a significant number of accounts being closed at account-holders' request. According to FSC, banks terminated relationships with 43,124 customers (23% of all OBU customers). Additionally, a third of OBU accounts were still held by banks but in a 'frozen' state due to customers being unwilling to provide sufficient documentation for OBUs to complete the CDD remediation. Very few STRs were reported arising from this work, which does not reflect the NRA findings on the sectoral risks and the OBUs' inability to complete CDD in many cases. The team has concerns regarding the depth and quality of recently updated CDD across the sector. While FSC stated the CDD remediation process was complete, in practice banks' efforts are generally ongoing.

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318. When applying EDD, FIs do not appear to apply a sufficiently targeted range of enhanced measures. Banks appear to be more willing to conduct EDD, particularly when there are cases of complex ownership structures or PEP concerns. In some cases bank staff may visit the premises of OBU account holders to verify the business and beneficial ownership.

319. Identification of beneficial ownership of foreign customers presents particular challenges from weaknesses in assessing customer risk and profile, complex and opaque structures (foreign legal persons and arrangements formed in secrecy jurisdictions). Identifying controlling interests for offshore companies is particularly problematic for OBUs, with very significant legacy CDD gaps remaining.

320. Despite requirements and guidance from the FSC, there are concerns that in practice FIs may relay too much on MOEA documentation for the identification of beneficial ownership of domestic corporate customers. The Company Act amendments in late 2018 may assist with CDD. There are also significant risks from informal nominee arrangements to hide BO. The threshold of 25% of share ownership may be too high in practice, in particular when applying EDD. In many cases banks go beyond the stated thresholds when establishing the ultimate beneficial owners or controllers, particularly for matters involving the management of credit risk, however concerns remain.

321. Guidance from authorities in relation to risk-mitigation considerations when refusing business when CDD is incomplete requires further development to ensure strengthened implementation overall. As mentioned above, the CDD remediation project for OBUs saw tens of thousands of accounts being closed for incomplete CDD, but FIs' consideration of STR filing led to STRs in only very limited circumstances. Banks were not sufficiently well guided to consider ML risk, in particular the types of scenarios that might give rise to suspicion and therefore STR filing.

322. Securities firms have a number of additional risk mitigation measures in place. These include limits to trading amounts opened remotely, grouping accounts with same designated third-parties, IP addresses or contact details, and undertaking EDD when third-party is trading securities. Securities firms have established daily monitoring to identify suspicious activity.

323. DNFbps have begun risk-based approach to CDD with the fuller requirements only entering into force in late 2018. Record keeping obligations are well understood by DNFbps and implementation follows the international standards. It is apparent most DNFbps take steps to identify customers, and take measures to conduct elements of CDD. DNFbps' CDD work is supported by sectoral guidance, however the CDD rules are new and the move to the risk based-approach for CDD is at a very early stage.

324. The timing of CDD undertaken by DNFbp is not yet clearly established and it is not yet clear that DNFbps adjust the timing and intensity of their CDD work to reflect customer risk. Based on feedback from DNFbp associations and interviews, certain DNFbps were able to demonstrate cases of detailed CDD work.

### *Application of EDD measures*

#### i. PEPs

325. Chinese Taipei authorities and sectoral associations have made high quality commercial databases for PEP screening available to FIs and DNFBPs at subsidised rates. This supports screening for PEPs and sanctions matches. There is a widespread use of commercial databases, supplemented by open source research, to screen for both domestic and foreign PEPs. TDCC's screening system and those of other commercial providers, have been widely taken up amongst FIs and DNFBPs to screen for PEPs, which adds to effectiveness. Guidance provided to FIs and DNFBPs also adds to effectiveness. However, there are limits overall on how well some FIs and many DNFBPs' identify wider family members and associates in their PEP screening.

326. FIs and DNFBPs require greater practical guidance on how PEPs screening should reflect and be moderated according to ML/TF risk. Guidance is available on this subject, but the risk based application of these controls is not yet well implemented. This is particularly the case with exposure to foreign corruption risks and also offshore structures (OBUs), noting the uptake of OBUs by domestic PEPs and their associates. Weaknesses with CDD and beneficial ownership add to the challenges to identify PEPs, including their associates.

327. FIs and regulators acknowledged that there are some challenges for FI and DNFBP with screening for possible Chinese PEPs. Banks, in particular, noted the challenges of identifying such PEPs through most commercial databases and other FIs face similar challenges. Banks were notable in their demonstrated efforts to mitigate cross-straits PEP risk through compilation of their own information holdings on local PEPs, through Chinese-language searches for adverse media reporting and online legal filings, and other initiatives. Further guidance and support is recommended to enhance this important area.

#### ii. Correspondent banking

328. Controls applied to correspondent banking appear to be relatively well implemented. Banks and supervisory findings did not highlight any major difficulties in implementing correspondent banking requirements under the AML/CFT rules and circulars. Due diligence practices across the FIs, including questionnaires and open source research, escalate as necessary according to jurisdictional risks. However, it is not clear that banks sufficiently consider correspondent banking risk in their ERAs.

#### iii. New technologies

329. Risk assessments of new technologies are well integrated with ERAs and the FSC is supportive of risk based approaches. The recent establishment of a regulatory sandbox is an important development to support FIs and the FSC develop new technology and manage AML/CFT risk. Authorities continue to place an emphasis on financial inclusion in their consideration of risk based approaches to regulation of new technologies.

#### iv. Wire transfer rules

330. FIs' implementation of controls on wire transfers appear to be reasonably well supported. Rules are applied without threshold and apply to domestic and cross border wires. This is supported by outreach and guidance and confirmed through supervision.

#### v. Targeted financial sanctions - TF

331. While there are technical compliance gaps for TFS (see R.6), guidance has been issued to all sectors and a great deal of awareness raising and outreach has been undertaken with FI and DNFBP

sectors. In addition, as discussed in IO3, this has been a major area for offsite and on-site supervisory focus.

332. Reflecting the outreach and guidance, FIs and DNFBPs appear to implement list-based screening without delay through automated screening software and manual processes. FIs and DNFBPs demonstrated a reasonable approach to receiving sanctions list updates through various channels including website, RSS, social media channels. As mentioned in relation to PEPs, TDCC software is subsidised to help to ensure that a very wide set of FIs and DNFBPs can make use of automated checking software TFS. Implementation of TFS controls appears to be reasonably well supported as outlined in IOs 10 and 11.

333. Routines for verifying positive matches, including escalating matches to the AMLD and continuing a freeze have been demonstrated through the implementation of Rec 7 (see IO 11).

#### vi. Higher-risk countries identified by the FATF

334. Application of jurisdictional risk is given a great deal of emphasis by FIs and DNFBPs, including a number of CPF and CFT related controls. Consideration of jurisdictional risk has been enhanced and better calibrated to reflect jurisdictional specific risks faced by Chinese Taipei since the 2018 NRA was completed.

### *Reporting obligations and tipping off*

#### FIs

335. STR reporting obligations have a minor TC gap for predicates, however in practice, FIs appear to be applying the international standards and screening for any STRs, including those related to PF. Most categories of FIs are also required to file CTRs which is an important additional control.

336. Overall the quality and quantity of STRs appear to have improved in the last 12 months, reflecting a number of factors. FI/DNFBPs involvement in the NRA has increased understanding of risk, and sectoral associations have produced much more detailed guidance in cooperation with the AMLD and regulators and these include both objective and subjective criteria for suspicion, which are tailored to particular sectors. FSC's supervision has focused on FIs' compliance with STR reporting obligations. AMLD has increased feedback to FIs reporting STRs to encourage improvements in quality and increases in the numbers of STRs filed. FIs internal controls for identifying possible matters of suspicion are generally operating well. These areas have seen significant improvements over the last 18 months. FSC highlighted findings of additional dedicated AML personnel and upgraded IT systems in many sectors, which has contributed to the volume and quality of STR filing.

337. AMLD confirmed that the quality of STRs has improved greatly within the last year. Since early 2018 AMLD has required STR filings to include more detailed information as part of the STR, including information that may have given rise to suspicion and all related CDD and transactional data associated with the matter. This has helped to improve the basis of AMLD analysis of STRs.

338. There is a mix of reactive and proactive reporting and FIs demonstrated suspicion being identified at various stages of business and arising from various lines of control within FIs. Assessors have some concerns that the final decision to file an STR may be too reliant on negative press reporting about the customer and/or objective criteria included in guidance, rather than concerns arising from the customer's profile and additional risk indicators arising from findings of risk assessments (this is despite clear obligations for the later).

**Table 5.1: STRs reported by FIs from 2014 to 2018**

<b>Financial Institutions</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
Domestic banks <sup>10</sup>	6,389	9,139	12,608	19,326	25,552
Foreign bank branches	22	24	31	33	75
Chunghwa Post	355	345	1,010	2,303	4,656
Credit cooperatives	34	43	70	700	1343
Credit card companies	3	5	10	13	30
E-payment service providers	-	-	-	6	24
Electronic stored value card issuers	-	-	1	17	28
Securities firms	6	5	11	115	717
Securities investment trust enterprises	4	2	6	17	73
Securities investment consulting enterprises	-	-	-	-	2
Securities finance enterprises	-	-	2	5	19
Centralised securities depository enterprises	21	20	19	24	23
Futures merchants	-	-	2	9	53
Reinsurance companies	-	-	-	-	-
Life insurance companies	39	59	164	789	1,757
Property insurance companies	2	-	17	10	23
Insurance brokers	-	-	1	-	17
Insurance agents	-	-	-	1	28
Farmers' associations' credit departments	15	14	20	224	1,186
Fishermen's associations' credit departments	-	-	-	10	40
Agricultural Bank	-	-	-	3	31
Bills finance companies	-	-	-	-	8
Foreign Exchange Counters					82
<b>Yearly total</b>	<b>6,890</b>	<b>9,656</b>	<b>13,972</b>	<b>23,605</b>	<b>35,767</b>
<b>Total STRs reported by FIs since 2014</b>	<b>89,890</b>				

339. The use of red flags and typologies are a strength for monitoring, but even more focus needs to be given to customer profile and additional risk indicators to identify instances of suspicion, in particular during ongoing CDD.

340. Foreign exchange counters have only just commenced STR reporting. While the risks of the sector are assessed as relatively low, there is a concern that more needs to be done to support the implementation of internal controls and monitoring to identify and file STRs.

341. Concerns remain with some elements of risk-based monitoring for possible STRs given the mismatch in threat assessment between NRA and FI ERAs. Assessors interviews with FIs and supervisors indicate that a significant number of STRs filed appear to be reactive or defensive, as opposed to proactive (e.g. from CDD or customer monitoring). A related example is the CDD remediation exercise with OBUs and relatively few STRs, despite tens of thousands of accounts for which CDD could not be completed. FSC reported that OBUs filed 367 STRs in 2016, 656 in 2017 and 276 in 2018 (from January to March), which shows an increasing trend, albeit from a very low base. Concerns remain about the relatively small number of STRs filed from higher risk sectors and this is not commensurate with the overall risks.

342. FIs generally appear to understand and apply measures to avoid tipping off. Consistent guidelines and training have been provided to inculcate the maintenance of confidentiality of STR and related information. According to regulators, FIs compartmentalise STRs and have been responsive to

<sup>10</sup> OBU STR filing is included within these figures  
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recommendations restricting access to a need-to-know basis. Tipping off by FI personnel has not been detected by LEA or supervisory authorities.

#### DNFBPs

343. Given the newness of the full coverage of DNFBP sectors in AML/CFT controls, the focus for the first year has been supervisory outreach and education and preliminary steps towards supervision. The second year since coverage has seen further supervision and steps towards enforcing the new obligations.

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**Table 5.2: STRs reported by DNFBPs since 2017 (year MLCA coverage commenced)**

DNFBP	2017	2018
Accountants	29	62
Land administration agents	11	12
Notaries	6	15
Lawyers	0	2
Bookkeepers / Bookkeeping and Tax Return Filing Agents	0	3
Jewellery Businesses	0	2
Real Estate Agents	0	3
Company Service Providers	0	3
<b>Yearly Totals</b>	<b>46</b>	<b>102</b>
<b>Total STRs reported by DNFBPs since 2017</b>	<b>148</b>	

344. Regulators and associations have disseminated prescriptive red flags to guide STR filing. These have included subjective and objective factors tailored to each sector and have contributed directly to a greater number of STRs being filed with increasing quality in many cases. However case studies tend to be due to suspicion based on customer profile and circumstances beyond typologies.

345. Apart from accountants (who have long been supervised by FSC and more closely involved in outreach at an earlier stage), STR filing is not yet commensurate with risks in most DNFBP sectors. Notably, there have been only four STRs filed by jewellery businesses or lawyers in 2018. Only 23 STRs were filed by land administration agents over the course of 2017-18. In response to the low numbers, the objective and subjective criteria for filing have been further tailored to each sector and to reflect NRA findings and feedback from AMLD.

346. There have been no cases identified of tipping off by DNFBPs. Guidelines require staff to maintain confidentiality. Uneven degrees of sophistication around how reporting is conducted. Bookkeepers and tax return filing agents will report STRs “by post” to maintain confidentiality. Consistent statements that internal controls and training pursuant to regulations prevent leaks.

#### *Internal controls and legal/regulatory requirements impending implementation*

347. Internal controls appear to be well-developed among FIs. Considerable resources have been allocated to internal controls since 2016 and almost all sectors have greatly increased their compliance departments and routines. This has extended to employee screening, AML/CFT policies and procedures, monitoring and systems, staff training, audit, etc. In addition, FIs are required to ensure their AML/CFT compliance officer make decisions independently to file STRs. There are, however, concerns that internal controls to ensure that compliance staff independently make decisions within banks to file STRs is undermined in practice. In some instances this may not be done independently by compliance staff, but is dependent on Bank President or other managers’ say-so. Internal controls amongst DNFBPs have been support by outreach, guidance and offsite supervision.



348. Group-wide compliance is improving, albeit from a low base. Supervision and outreach by FSC has given some focus to group-wide controls, which has supported implementation on that basis. Information sharing gaps have been addressed only very recently.

349. Sectoral associations have given some support to DNFBPs to assist them to develop internal controls and routines to support identifying and reporting STRs. This has been reinforced in outreach sessions by AMLD.

*Overall conclusions on Immediate Outcome 4*

350. TC elements for preventive measures are mostly comprehensive. The transition from a rules-based to a risk-based approach has been occurring in banking sectors since 2013 but is newer in other sectors. Detailed obligations for DNFBP are new and implementation has only recently commenced. FI/DNFBP Sectoral supervisors have undertaken very significant amounts of awareness raising on AML/CFT obligations and ML/TF risks. Guidance has been issued for each respective sector.

351. **Chinese Taipei has a moderate level of effectiveness on Immediate Outcome 4.**

## CHAPTER 6. SUPERVISION

### *Key Findings and Recommended Actions*

#### **Key Findings**

- 1) Chinese Taipei has a generally robust system of AML/CFT supervision in the financial sectors. The risk-based approach for AML/CFT supervision is still new in some sectors. FSC implementation of risk based supervision commenced in late 2015 however risk inputs were lacking at the initial stages.
- 2) DNFBP supervision has only recently commenced. The EY has allocated additional resources to DNFBP regulators, which has enabled them to greatly enhance outreach and take a number of steps towards risk-based supervision, including preliminary onsite examinations. There may be a need to enhance the powers of DNFBP sectoral supervisors.
- 3) FSC has taken various steps to maintain and further develop its understanding of ML/TF risks including an understanding of relative risks between different sectors and of individual institutions. FSC has risk information from FIs and sectoral assessments, however all supervisors need greater inputs from the FIU and LEAs to better support risk-based supervision and fit and proper controls. BOAF requires more information on risk to support risk-based supervision.
- 4) Licensing and related fit and proper requirements are applied to all FIs. FSC has controls in place to prevent criminals from entering the market by owning or controlling FIs. There are gaps in the scope of obligations (associates of criminals) and implementation needs to be deepened taking into account risks (including foreign currency exchange counters & agricultural FIs).
- 5) Limited market entry and fit and proper controls are in place across DNFBP sectors. Gaps include the scope and implementation of measures related to criminal and their associates.
- 6) The frequency, scope and intensity of offsite and onsite supervision is increasingly based on identified risks. Additional FSC supervisory resources need to be applied to higher risk scenarios.
- 7) The quality of FSC's offsite and onsite supervision appears to be relatively high. FSC supervisors have good AML/CFT skills and experienced staff. While the bulk of AML/CFT supervision has been done in combination with prudential supervision, increasingly stand-alone full scope AML/CFT supervision and thematic supervision is being conducted by FSC.
- 8) The fines imposed on banks, securities, and insurance for AML/CFT breaches are relatively low and may not be wholly proportionate. Going beyond fines, the overall effects of remedial measures, enforcement actions and reputation damage appear to positively influence compliance.
- 9) Authorities have undertaken a very large number of programs to promote a clear understanding of ML/TF risks and AML/CFT obligations in the recent years. This has included close cooperation between supervisors, sectoral associations, the FIU and LEAs.

#### **Recommended Actions**

- a) Supervisors (especially for DNFBPs) should ensure they have the full set of supervisory powers,

increase capacity (particularly the number of specialist AML/CFT supervisory staff), supervisory tools (manuals, etc.) and training for risk-based supervision. Relevant threat analysis from LEAs or the FIU should be provided to FI and DNFBP supervisors to benefit risk-based supervision. The FSC and LEAs should implement further measures to support information exchange on risk.

- b) Expand the obligations on market entry fit and proper and further implement the obligations. This should include enhanced information sharing between agencies, including international cooperation between supervisors.
- c) Continue to expand the use of stand-alone full scope AML/CFT supervision and the conduct of thematic onsite supervision to target persisting or emerging risk areas (e.g. trade finance areas).
- d) Strengthen remedial actions and sanctions regimes and increase the application of dissuasive and proportionate sanctions to ensure a risk-based compliance culture.
- e) Support the coordination and sharing of knowledge and information between FI and DNFBP supervisors.
- f) Further support continuing international cooperation with foreign supervisors on a risk sensitive basis (see IO2).

### ***Immediate Outcome 3 (Supervision)***

#### *Licensing, registration & controls preventing criminals and associates from entering the market*

##### *Banks, securities and insurance*

352. Licensing controls are generally robust in the financial sector. FSC has control measures in place to prevent criminals from owning or controlling FIs or holding a management function in financial holding companies, banks, insurers, securities firms, and other FSC-regulated FIs. Major shareholders and responsible persons for FIs are subject to fit and proper test. However, there are challenges in FSC obtaining sufficient information from LEAs and intelligence agencies (domestic and foreign) on possible associations with criminals in order to support a deeper approach to reviews.

353. Requirements are in place on the person or concerned party (including a third party acting on behalf of the same person or same concerned party in trust, by mandate or other legal arrangements) who intends to singly, jointly or collectively hold more than a certain threshold of outstanding voting shares (i.e. 10%, 25% and 50%) of a bank and insurance company. In such a case FSC's prior approval is required. For securities, firms must file a report with the FSC when there is a change in the total number of shares owned by those officers and shareholders who hold more than 10% of outstanding shares. In practice, FSC periodically reviews the list of shareholders to verify whether holding structures have reached reporting thresholds. However, more needs to be done to ensure that fit and proper checks are undertaken on the natural persons who ultimately own or control the FI regardless of the percentage of holding.

354. During establishment or any change of responsible persons in companies (including prospective directors, supervisors and general managers) and banks (directors, supervisors, general managers, and *de facto* responsible persons), the FSC implements prior approval reviews. These reviews comprise of both positive (i.e. competency and capacity) and negative tests (i.e. no disqualification criteria, such as implication or conviction for criminal activity).

355. FSC implements on-going review of any changes in shareholders list and responsible persons to ensure fit and proper major shareholders including beneficial owners and responsible persons of FI under FSC regulations.

356. From 2013 to 2017, the FSC handled 29 cases involving disqualification of 49 FIs' responsible persons or major shareholders (refer to Table below). The FSC has imposed sanctions thereon, including dismissals and suspension from duties.

**Table 6.1: Sanctions against office holders or major shareholders of FIs**

Type	Number of cases/persons					
	2014	2015	2016	2017	2018	Total
Financial holding company	1/1	0	0	4/4	0	5/5
Domestic banks	0	1/1	2/6	0	2/7	3/7
Credit cooperatives	0	1/1	0	2/3	0	3/4
Credit card companies	1/3	0	0	0	0	1/3
Electronic stored value card issuers	0	1/1	0	0	0	1/1
Securities firms	0	0	0	1/1	4/4	1/1
Securities investment trust enterprises	1/1	0	0	0	0	4/8
Securities investment consulting enterprises	1/1	0	1/2	2/2	0	4/5
Life insurance companies	¼	0	1/1	0	2/5	5/12
Non-life insurance companies	0	0	0	0	0	1/1
Insurance broker companies	0	0	0	1/1	0	1/1
<b>Grand total</b>	<b>5/10</b>	<b>3/3</b>	<b>4/9</b>	<b>10/11</b>	<b>8/16</b>	<b>30/49</b>

**Case Example 6.1: FSC rejection of application for establishment in the securities sector**

The applicant filed to establish a securities investment consulting corporation with the FSC on August 5, 2014. The FSC checked the Judicial Yuan's court decision database and further information and found that the promoters had once illegally operated a securities investment consulting business. In accordance with Article 68 of the Securities Investment Trust and Consulting Act, a person under the above circumstances shall not serve as a promoter.

**Table 6.2: No. of approvals/rejections for the establishment of FIs (head offices) (source: FSC)**

Type	2014			2015			2016			2017			2018			Total		
	Application	Approval	Rejection	Application	Approval	Rejection	Application	Approval	Rejection	Application	Approval	Rejection	Application	Approval	Rejection	Application	Approval	Rejection
Foreign bank branches	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	1	1	0
Credit card co.	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
E-payment	0	0	0	5	3	0	0	2	0	1	0	0	1	1	0	7	6	0
Electronic stored value card issuers	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
Securities firms	0	0	0	3	3	0	0	0	0	0	0	0	0	0	0	3	3	0
Securities investment trusts co	0	0	0	2	1	0	0	1	0	0	0	0	0	0	0	2	2	0
Securities investment consulting	3	2	1	4	1	1	6	5	2	2	2	1	6	5	1	21	15	5
Non-life insurance	0	0	0	1	0	0	1	1	0	0	1	0	0	0	0	2	2	0
Insurance brokers	4	2	0	4	4	0	1	3	0	4	2	0	6	4	0	19	15	0
Insurance agents	1	3	0	0	0	0	2	1	0	4	4	0	3	3	0	10	11	0
<b>Grand total</b>	<b>8</b>	<b>9</b>	<b>1</b>	<b>19</b>	<b>12</b>	<b>1</b>	<b>11</b>	<b>14</b>	<b>2</b>	<b>10</b>	<b>9</b>	<b>0</b>	<b>16</b>	<b>13</b>	<b>1</b>	<b>65</b>	<b>57</b>	<b>5</b>

### Agricultural FIs

357. Agricultural FIs include ABT, credit departments of farmers' and fishermen's associations. The responsible persons of ABT (including directors, supervisors, and managerial officers) must meet the eligibility requirements of the person in charge of the bank and provide information to the supervisors for review and approval.

358. COA has a review mechanism for the appropriateness of the persons in charge of ABT. COA undertakes daily supervision, which includes checks to determine whether the responsible persons in charge have violated relevant eligibility requirements. COA appoints and/or recommends the ABT's 15-person board of directors, of whom four are government representatives and five are independent directors. The remaining six directorships have been assumed by the secretaries-general of the farmers' or fishermen's associations after the competent authority's verification of their qualifications for appointment. Its chairman of the board is elected by the directors and further approved by EY. Besides, the selection of the general manager must also be reported to EY for approval.

359. Farmers' and fishermen's associations' local contexts are considered by regulators when identifying and managing fit-and-proper risks. COA and local authorities take steps to review whether applicants have committed a specific crime, have been convicted or have been proved to engage in or be involved in other dishonest or improper activities at the time a farmers' association or fishermen's association applies for their establishment or there is a change of the credit department director. In practice, they are discharged if any violations are found. COA also has a power to reject any applications to establish a credit department due to improper management.

360. In practice, COA conducts ongoing checks to verify the competency and capacity of farmer or fishermen's associations' secretary-generals or candidates aspiring to such a post. For example, a secretary-general of a fishermen's association was convicted by a criminal court in 2015, which prompted COA to order this association to dismiss him. Additionally COA may suspend directors, supervisors, and secretaries-general of the farmers' or fishermen's associations (including their credit departments), if they are proven to violate the law and articles of incorporation, or otherwise subject farmers' and fishermen's associations to harm. Despite controls in place to prevent criminals from holding or controlling agricultural FIs, improvements are needed in the area of fit and proper checks to ensure criminal's associates are unable to enter the market.

### Foreign Currency Exchange Counters

361. Regulations came into force in August 2018 that require a police criminal record certificate with no conviction record in Chinese Taipei whenever a foreign exchange counter is established or changes its person-in-charge. Existing foreign currency exchange counters are exempt from re-registering. However, the obligations over changes to persons-in-charge will apply to any changes to current license holders. The Central Bank appointed BoT to undertake documentary review of application of establishment of foreign currency exchange counters.

**Table 6.3 Applications to establish foreign currency counters**

Year	Applications	Approvals	Rejection
2013	34	34	0
2014	30	30	0
2015	45	45	0
2016	21	21	0
2017	37	34	3

362. The Central Bank's revision of related regulations is welcomed as an improvement to help ensure that criminals and their associates are prevented from entering the market. There are gaps with in-depth review of owners including the beneficial owner of foreign exchange counters and its person-in-charge. The Central Bank and BoT should not only review certificate submitted by applicants but should also consider information from relevant authorities e.g. FIU and LEAs.

#### DNFBPs

363. Jewellers are the only business without a licensing system. However, they are subject to the general negative qualifications under the Company Act. All other DNFBPs are subject to licensing, registration and other controls to prevent criminals being professionally accredited. However, the controls over DNFBPs regarding fit and proper are still limited and are not implemented on a risk-sensitive basis. Regulators do not pursue ongoing fit-and-proper review to ensure criminals and their associates are prevented from entering the market.

#### *Supervisors' understanding and identification of ML/TF risks*

364. FSC undertook its first sectoral risk assessment in 2015 to establish a baseline understanding of elements of ML risk. Supervisors demonstrate increased understanding of ML/TF risks since their participation in 2017/18 NRA. The NRA goes some way to identifying the sectoral vulnerabilities based on inherent factors; business characteristics, nature of products and services, nature of business relationship, geographical reach, and nature of delivery channels.

365. While FSC, as long-standing FIs supervisors, has the most robust mechanism to understand the risk of their supervised sectors as a whole as well as an understanding of relative risks between different sectors of individual institutions, other supervisors still have further steps to take to deepen their understanding of ML/TF risks of their supervised sectors.

#### Banks, securities and insurance

366. FSC takes various steps to maintain its understanding of ML/TF risks in support of their supervision. Before development of NRA in 2017-2018, the first financial Sector Risk Assessment (SRA) was conducted by FSC in 2015, with inputs from the private sector and AMLD. FSC categorizes the ML/TF risk of each sector, looking at the threat of ML/TF to each sector before coming up with a scoring (low/medium/high) for inherent risk, based on a number of factors such as size, volume, cash intensity, frequency of international transactions, of non-resident customers, of higher risk customers and the number of STRs reported. An assessment of a set of control factors (such as market entry, AML/CFT regulations, guidelines and enforcement mechanism in place) then results in a further rating, which is combined to produce an overall risk score for the sub-sector. SRA covered all of FSC-regulated FIs at that time (Chunghwa Post was included amongst domestic banks in the SRA).

367. FSC participated in 2018 NRA process and most NRA findings are in line with 2015 SRA, i.e. domestic banks and OBUs are rated higher risk sectors. FSC plans to update the SRA to take into account the findings of 2018 NRA.

368. FSC has a reasonable understanding of the nature of products, customers, delivery channels and geographical spread of their supervised sectors. Though there was some effort by FSC to address higher risks area, for example, requiring OBUs to re-do CDD of their customers, further works are needed especially threats analysis conducted together with FIU and LEAs to increase understanding of how each FI was used for ML or TF. There is a need for continuing work to consider FIs' risk exposure across the full range of priority threats identified in the NRA, for example a more detailed understanding to risks of proceeds from domestic and foreign corruption risks. There are also concerns that the dynamics of risk faced by the OBU sector is not sufficiently

well assessed in either the SRA or the NRA and could usefully be a focus of further updating risk assessments.

### Agricultural FIs

369. Apart from participating in the NRA, BOAF has yet to complete risk assessments of individual credit departments of the farmers' and fishermen's associations. BOAF has taken steps to increase its understanding of controls in the sector through an offsite questionnaire surveying 311 credit departments. BOAF has instructed all credit departments to complete an ERA and the BOAF plans to conduct a comprehensive risk assessment on all agricultural FIs once the ERAs are complete.

6

370. BOAF should continue to enhance its understanding of ML/TF risks and work closely with FSC, FIU and LEAs to improve inputs, with the objective of conducting deeper analyses of ML/TF risks. Additionally, FSC should consider sharing knowledge and expertise on supervision, reviews, and ERAs.

### Foreign exchange counters

371. The Central Bank assesses institutional level risk based on identified characteristics of each counter. These include higher volume of transactions, a counter's physical location, and the nature of the business which a counter is attached to (including high-value goods such as jewellery). The Central Bank has used this to identify higher risk counters as a focus of supervision.

372. The Central Bank takes relatively limited steps to obtain additional risk information to allow it to maintain an up to date understanding of risk and periodically review risk assessments. Risk information from the FIU, LEAs other supervisors of primary businesses, especially jewellers, is needed to maintain a more comprehensive view of ML/TF risk that each counter may pose.

### DNFBPs

373. In addition to the NRA's results, some regulators have used questionnaires to cover sectors to further develop the regulator's understanding of the sectors they supervise. However, developing in-depth analysis of sectoral risk remains a work in progress.

### *Risk-based supervision of compliance with AML/CFT requirements*

374. FSC has moved to a risk-based approach to supervision, with some initial steps since late 2015. Its internalisation of risk-based approaches has improved. The measures used by the FSC to understand and assess ML/TF risks of respective sectors and entities reflects a reasonable understanding of some of the threats and vulnerabilities. However there is a need for deeper consideration of a range of key threats and vulnerabilities. While the FSC supervisor has developed risk analysis tools to assess inherent risks of each sector (NRA and SRA findings and consideration of ERA), however the FSC has not sufficiently drawn on LEA and FIU information. The team welcomes the cooperation between FSC and AMLD but highlights a need for more structured regular interaction between FSC and AMLD to jointly consider AML/CFT supervisory choices (e.g. emerging risk areas, thematic supervision to enhance quality of STR filing, etc.). Overall ML/TF risk increasingly serves as a key input in determining the focus and intensity of supervision, although this is taking time to mature.

### Banks, securities and insurance

375. FSC has covered AML/CFT examination by conducting full-scope (prudential with element of AML/CFT) supervision, AML/CFT targeted examination (all AML/CFT measures), and thematic AML/CFT examination.



376. FEB is only bureau responsible for on-site examination of all FSC-regulated FIs. As of November 2018, there were 217 onsite examiners, with 45 AML/CFT specialists. FEB use a supervision manual to conduct AML/CFT targeted (thematic) or full scope on-site examination which covered every aspect of AML/CFT requirements. Time spent onsite, number of staff in the team, scope and sample size are based on individual FI's residual risk.

377. FSC has used findings of the SRA to determine priority and frequency of onsite examination plans for FIs under FSC's supervision. The SRA also contributed to determining the number of AML/CFT targeted examinations. From 2015 to Q3 2018, the banks are subject to FSC examination on AML/CFT at 69%, while ratio for securities and insurance sectors are lower, 22% and 9% respectively. The SRA itself did not provide detailed risk information about threats, but focused on a sub-set of vulnerabilities, so a number of the determinations may be lacking.

378. FSC takes a structured approach to identify ML/TF risks in individual institutions which comprise of 4 levels—very high, high, medium and low. These levels are based on FI's inherent risk level and level of satisfactory of control measures. The frequency of re-assessment is based on the individual FI's residual risk rating. FSC's approach is to use individual FI's residual risk is used to determining the frequency and sample size needed for each institute's on-site examination. The approach is used for every FSC-regulated sector.

**Table 6.4: Risk-based AML/CFT Examination in depth and frequency (FSC)**

Individual FI's residual risk	Reviewed Samples Needed	Frequency of Targeted Exam
<b>High</b>	+30% of benchmark	At least Biennially
<b>Medium</b>	Benchmark (e.g. new opening accounts needed to be reviewed)	At least Triennial (priority for FI with inferior compliance rating)
<b>Low</b>	-10% of benchmark	N/A

379. While in practice FSC did not strictly follow the timing set out in the banking sector risk matrix conducted in 2017, there are reasonable measures in place to target examinations. FSC examined all four banks rated with a 'high' level of risks in 2018. Four other banks rated with 'medium' risks, including those identified as having inferior internal controls relative to their peers, were selected for inspection in 2018. FSC indicated that all four banks that were determined to have 'high' level of risks have been examined in 2018.

380. Concerns remain that the pre-set samples size and frequency of bank supervision may not wholly reflect a risk-based approach. FSC has taken some steps to adjust the frequency and intensity of supervision based on both sectoral and institutional level of ML/TF risks. There is a remaining need for sectors such as domestic bank and OBUs which pose higher risk, to be subjected to more frequent and intense off-site/on-site visit tailored to the risks. Also, with more input regarding threats analysis FSC may focus more on area of products, services, locations, type of customers that pose higher risk. This may be included in thematic examinations underpinned by more detailed AMLD and LEA data.

381. FSC pursues a reasonable number of AML/CFT onsite examinations, with a balance between prudential plus AML/CFT and AML/CFT only assessments. The tables below illustrate that since 2015, on average 23% of all such supervision is AML/CFT-only (full scope or thematic). It is notable that higher proportions of full-scope AML/CFT visits are focused on higher risk areas (esp. OBUs).

382. The quality of FSC's supervision appears to be relatively high and the agency demonstrates that it has staff who are skilled and experienced in AML/CFT supervision. As of November 2018,

10.4% of FSC's manpower (91 people) was mainly focusing on AML/CFT. FSC may need to apply additional resources, mainly to higher risk scenarios.

383. Onsite supervision by FSC adopts well considered methodologies supported by comprehensive manuals. FSC examiners evaluate the adequacy and effectiveness of AML/CFT/CFP controls based on the bank's own business characteristics and its risk profile. Examiners consider documentation, interviews, sample testing, etc.

**Table 6.5: FSC's onsite examinations- All types**

(Including prudential examinations with AML/CFT elements and full scope AML/CFT examinations)

AML/CFT onsite examinations by the FSC	2014	2015	2016	2017	2018	Totals
<b>On-site examinations on banking, securities and insurance sectors (prudential incl. AML)</b>						
<b>Banking sectors</b>						
Domestic banks (including OBUs) (37 FIs)	56	53	58	71	75	313
OBUs	33	29	42	50	28	182
Foreign bank branches in Chinese Taipei (29 FIs)	15	10	12	14	18	69
Postal Office(1 FI)	1	10	1	6	7	25
Credit cooperative associations (23 FIs)	13	16	30	20	19	98
Bills finance companies (8 FIs)	7	4	4	6	5	26
Credit card companies (5 FIs)	3	1	2	2	3	11
Electronic payment institutions (5 FIs)	0	0	0	2	1	3
Electronic stored value card issuers (4 FIs)	1	0	1	2	2	6
subtotal	129	123	150	173	158	733
<b>Securities sectors</b>						
Securities firms (including OSUs)	11	30	13	23	17	109
Securities investment trust enterprises (39 FIs)	16	24	17	26	19	116
Securities finance (2 FIs)	2	0	2	1	1	6
Centralized securities depository (1 FI)	0	0	0	0	1	1
subtotal	29	54	32	50	38	232
<b>Insurance sectors</b>						
Life insurance (including OIUs, 23 FIs)	17	12	13	15	17	88
Non-life insurance (incl. reinsurance-22 FIs)	7	10	10	11	7	58
Insurance brokers (approx. 470 FIs)	0	1	0	2	4	7
Insurance agents (approx. 305 FIs)	0	0	0	0	2	2
Subtotal	24	23	23	28	30	155
<b>Annual total</b>	<b>182</b>	<b>200</b>	<b>205</b>	<b>251</b>	<b>226</b>	<b>1,064</b>
<b>Commissioned examinations performed by the FSC</b>						
Credit departments of farmers' associations (288 FIs)	100	93	91	116	81	481
Credit departments of fishermen's associations (28 FIs)	10	13	14	12	12	61
ABT (1 institution)	1	0	1	0	2	4
<b>Total examinations</b>	<b>111</b>	<b>106</b>	<b>106</b>	<b>128</b>	<b>95</b>	<b>546</b>

**Table 6.6: FSC's onsite examinations- AML/CFT only (including thematic)**

AML/CFT onsite examinations by the FSC	2015	2016	2017	2018	Total
Domestic banks (38)	8	17	30	27	82
OBUs (61units)	8	24	26	8	66
Foreign bank branches in Chinese Taipei (29 institutions)	-	3	-	7	10
Postal saving and remittance service provider (1 institution)	10	-	6	6	22
Credit cooperative associations (23 institutions)	6	18	7	8	39

<b>AML/CFT onsite examinations by the FSC</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>Total</b>
Bills finance companies (8 institutions)	-	-	2	2	<b>4</b>
Electronic payment institutions (5)	-	-	2	-	<b>2</b>
Electronic stored value card issuers (4)	-	-	2	-	<b>2</b>
Securities firms (including OSUs)	18	-	10	7	<b>35</b>
Securities investment trust enterprises (39)	-	-	5	6	<b>11</b>
Securities finance (2 institutions)	-	-	1	-	<b>1</b>
Securities investment consulting enterprise	-	-	4	2	<b>6</b>
Future commission merchants	-	-	-	3	<b>3</b>
Life insurance (including OIUs, 28 institutions)	1	-	5	5	<b>11</b>
Non-life insurance (incl. reinsurance-22)	1	-	2	-	<b>3</b>
Insurance brokers (331 institutions)	1	-	2	4	<b>7</b>
Insurance agents (294institutions)	-	-	-	2	<b>2</b>
<b>Annual totals</b>	<b>53</b>	<b>62</b>	<b>104</b>	<b>87</b>	<b>306</b>

384. Full scope supervision considers elements of assessing risks and related responses; CDD and EDD routines; ongoing monitoring and STR filing; TFS implementation (TF/PF); policies and procedures; and organisation and personnel. Focus areas include correspondent banking controls (policies/procedure and their implementation, 3rd party payments, foreign branches and subsidiaries, etc.).

385. FSC has begun to conduct thematic targeted supervision of banks, with some undertaken in response to trigger events, and some arising from findings of risk assessments. In 2015 FSC conducted targeted thematic examination of 8 domestic banks on their deposit account opening and related AML measures in response to FSC/FIU consideration of risks from the proceeds of telecom frauds. In 2016 and 2017 FSC conducted a number of rounds of targeted thematic supervision of OBUs implementation of CDD on beneficial ownership and control of customers. In the same years FSC did thematic targeted supervision on AML controls of foreign branches of domestic banks. In 2018 FSC conducted thematic supervision of TFS implementation on 15 domestic banks.

386. Off-site monitoring is conducted by each of the FSC bureaus and is well implemented. Offsite reviews consider whether policies, procedures and action plans of risk management formulated by FIs are reasonably commensurate with the outcomes of their enterprise-wide risk assessments. In addition, the FSC also evaluates if FIs have appropriate personnel and budgets to implement relevant controls, including their audit. In respect of reviewing methods, the FSC mainly requires FIs to submit relevant reports and conducts individual interviews of each entity in order to understand the FIs' AML/CFT mechanisms in place and the implementation thereof.

387. FSC has requirements for external auditing by an independent third party. In 2016, the FSC identified 12 banks of high risks, based on the size of total assets and OBU assets as well as onsite examination findings, and required them to have external auditing on the effectiveness of their enterprise-wide AML/CFT risk assessments and AML/CFT programs. For securities firms, in 2017 the FSC required an independent third party to examine the effectiveness of their enterprise-wide AML/CFT risk assessments and AML/CFT programs.

388. In 2018, the FSC required third parties to examine securities firms and increase the scope and intensity of external audit on banking sector and insurance sector. This included requiring all domestic banks, credit cooperatives, bill finance companies, life insurance companies and 2 non-life insurance companies to commission public certified accountants to conduct an examination on AML/CFT with assurance.

389. For insurance companies, the FSC selected 11 life insurance companies based on the same mechanisms outlined above and subjected them to examination similar to the examination of banks and securities firms (i.e. AML/CFT elements undertaken as part of onsite prudential supervision).

390. Moreover, although banking sector is under supervision of FSC, the Central Bank also conducts examination on wire transfer transactions which decision made on volume of transactions and is wholly rules based. Thus, in this area, the supervision reflects a mix of a risk-sensitive and some rules-based measures.

### Agricultural FIs

6

391. BOAF, has appointed the FSC FEB to conduct onsite examinations of agricultural FIs for both prudential and AML/CFT controls. FEB (FSC) conduct on-site AML/CFT supervision by following BOAF's risk analysis, rather than FSC's own risk assessment. Following FEB on-site examinations, the BOAF or local competent authorities are responsible for taking follow-up actions and help agricultural FIs to improve their AML/CFT compliance.

### Foreign currency exchange counters

392. The Central Bank identifies ML/TF risks of individual foreign currency exchange counters through the institutional risk assessments to guide its risk based supervision. It also considers findings from earlier supervision as well as the risk factors (geographical region, industry, exchange volume and deficiencies identified in previous inspections) in determining the frequency and scope of inspections for AML/CFT. Exchange volumes and previous inspection findings are given the greatest weight. Applying this methodology, the Central Bank identified 10% (45) of all the counters as high risk, with 35% (152) as medium risk.

393. The Central Bank completed operational inspections of each of the 45 high-risk counters between September 2016 and August 2018. In addition, the Central Bank also has an immediate check-up mechanism whereby operational inspection will immediately follow any filing of an STR by a the foreign currency exchange counter.

394. On-site inspection of foreign exchange counters focuses on adherence with the Foreign Currency Exchange Counter Regulations, which includes the covered requirements of AML/CFT. The Central Bank has taken follow-up actions including official request to improvements or written counselling and follow-up on deficiencies by BoT.

### DNFBPs

395. MLCA amendments in 2016-2017 clarified AML/CFT supervisory powers for DNFBPs regulators. Since that time, DNFBP supervisors have taken some steps to monitor AML/CFT compliance within their supervised sectors.

396. In mid-2017, the jewellery retailer supervisor has distributed questionnaires in advocacy activities to learn if the daily businesses and transactions in jewellery business complied with the laws, and to further identify and analyse customer types as well as the existence of large-amount currency transactions and cash payments. The on-site inspections on large-scale jewellers also conducted in 2017. It was found that 3 of them failed to report currency transactions above NT\$500,000 to the MJIB and failed to comply with the regulations regarding CTR and 4 of them have yet to receive trainings in AML and CFT. However, supervisor decided not to punish those who failed to comply with AML/CFT obligations but provided assistances punishments as the one-year assistance period had not expired at the time of the inspections.

397. Inspections of CPAs in the 12 months since coming under the AML/CFT regime, have focussed on AML internal control systems. FSC has adopted some risk-based inspection method, targeting the inspections on firms with higher risks according to factors like the scale of the firm, number of attestation cases, and types of clients as well as considering the deficiencies found in routine supervision. FSC also signed a collaborative inspection agreement with the Public Company Accounting Oversight Board (PCAOB) of the U.S. and has conducted numerous joint inspections. In 2018, 24 CPA firms were subject to off-site inspection include the 'big four' firms and 14 medium firms which were of higher inherent risks to be included in the inspections; 6 small firms were also included in combining higher inherent risks and noncompliance risks and considering related supervision information. The off-site inspection focus on understanding business and AML/CFT implementation. FSC plans to perform on-site inspections on 8 firms (from large to small firms) from July to December of 2018.

398. Lawyers, unlike other DNFBPs, are subject to long-established self-regulation. MOJ plans to conduct a form of on-site supervision with 20 selected law firms beginning in July 2018. This will be done in conjunction with the Bar Association. MOJ is working through a number of logistical issues with the sector, given sensitivities with the new obligations. The standard for selection of firms for on-site supervision are (1) off-site supervision results, those which are thought to have information disparity, or which have higher non-compliance risk index; (2) law firms with special business form (i.e., non-partnership alliance of independent lawyers); (3) random samples.

399. According to the 2018 NRA's sectoral vulnerability analysis, real estate brokerages have high levels of vulnerabilities while land administration agents have medium levels of vulnerabilities. DLA considered the availability of existing resources and selected the real estate brokerage sector with higher risks as the target for "offsite supervision" in this round and issued official letters to 40 real estate brokerages (those with the most branches) on April 10, 2018 to request them to fill out offsite supervision questionnaires, which were divided into "ML/TF risks" and "non-compliance risks". DLA conducted on-site inspections in August and September 2018 on 17 real estate brokerages following further review of the returned offsite questionnaires. In October 2018 DLA delivered on-site inspection results and recommended action reports to local governments, associations of land administration agents, real estate agents, and the inspected businesses. These reports urged the businesses to make improvement and strengthen awareness to avoid repeating the same mistakes.

400. Overall, the AML/CFT supervision on DNFBP sector is ongoing as they recently include in the regime. There are improvements needed especially on maintain an understanding of ML/TF risks within the sector and individual level and more detailed off-site and on-site examination in keeping with risk profile. Previously, AMLO assigned some resources to promote DNFBP's supervision. Therefore, DNFBP supervisors need more resources to strengthen their works on AML/CFT supervision.

#### *Remedial actions and effective, proportionate, and dissuasive sanctions*

401. FSC has a gradated range of remedial measures that it can impose on financial institutions. A variety of sanction measures in place, such as official requests for improvement, correction orders, reprimands, warning letters, restrictions of businesses, dismissals of directors or managers, among other means to adequately address the AML/CFT deficiencies found in FIs.

402. Amendment to the MLCA in 2016, increased fines available for failure to comply with AML/CFT obligations to a range of NT\$500,000 - \$10 million (previously, fines had ranged from NT\$200,000 to NT\$1 million). Insurance Act amended increased the upper limit of fines to NT\$12 million (from NT\$6 million) for deficiencies involving internal controls. Similar amendments are also planned for the Banking Act and the Securities and Exchange Act with planned increases of

from NT\$10 million to NT\$50 million, and from NT\$2.4 million to NT\$4.8 million for banks and securities firms, respectively.

403. Overall, the financial sanctions imposed on banks, securities and insurance are not proportionate to gaps identified, in particular with rules-based obligations. In some cases, the low quantum of fines available was a problem (for example the Mega International Bank case).

404. The fines imposed increased significantly from 2016 to 2017 due to the recent global supervisory focus. It is apparent that sanctions imposed mainly relate to deficiencies or breaches of CTR, CDD (including ongoing monitoring), STR and internal control requirements. Since 2017, FSC has identified more breaches with ongoing monitoring and STR mechanisms.

405. One of the most severe punishments imposed by supervisory authorities in the last three years includes the incident in which Mega International Bank was fined by the US DFS in 2016. The FSC imposed a range of sanctions as set out in the case study below.

#### **Case Example 6.2: Fines imposed on Mega International Bank's New York branch**

Onsite examinations by the New York State Department of Financial Services (DFS) in 2015 found that the New York branch had engaged in suspicious transactions with its Panama Branch, and failed to provide an adequate explanation. In 2016 Mega International Bank was fined USD 180 million by the DFS over its New York branch's inferior internal controls and failure to carry out exhaustive CDD, while the head office had failed to provide adequate oversight. This was the highest fine to have ever been imposed on the overseas location of a domestic financial institution.

FSC established an inter-agency taskforce, and found Mega Bank had exhibited multiple deficiencies with compliance, internal audits, independence and expertise of compliance officers, internal report procedures, and communication with competent authorities. The FSC imposed a maximum fine of NTD 10 million (approx. USD330,000), along with a correction order. It suspended the bank's application for the establishment of additional overseas branches until the deficiencies were completed rectified, and removed a director who was a representative of a legal person (a financial holding company). The FSC also ordered the bank to dismiss senior executives including its general manager, manager of the New York Branch, vice president, chief auditor, and chief compliance officer.

**Table 6.7: Sanctions levied by the FSC for AML/CFT failings**

Year		Fines	Measures other than correction orders	Correction orders	Official letter requesting improvement	Total
2014	Banking	1	0	0	96	97
	Securities	0	0	0	29	29
	Insurance	0	0	0	24	24
	Subtotal	1	0	0	149	150
2015	Banking	0	0	0	95	95
	Securities	0	1	3	56	60
	Insurance	1 (USD 80k)	0	0	24	25
	Subtotal	1	0	3	175	180
2016	Banking	17 (USD 1.63m)	10	10	131	168
	Securities	0	0	3	53	56
	Insurance	3	0	7	23	33
	Subtotal	20	10	20	207	257
2017	Banking	16 ( USD 1.05m)	1	28	124	169
	Securities	1 (USD 20k)	3	14	59	77

	Insurance	0	0	2	29	31
	Subtotal	17	4	44	212	277
<b>2018 (Jan/Sep)</b>	Banking	8 ( USD 90k)	0	18	99	125
	Securities	0	0	30	37	67
	Insurance	7 (USD 106,667)	2	30	23	62
	Subtotal	15	2	78	159	254
<b>Totals</b>		<b>54 (approx. USD 3 million)</b>	<b>16</b>	<b>145</b>	<b>902</b>	<b>1117</b>

406. For Agricultural FIs, prior to the implementation of the amended MLCA, violations were mostly punished by official letter requesting improvement, corrections, or other administrative penalties. Despite the implementation of amended MLCA and regulations commencing in June 2017, the BOAF focuses on providing guidance and assistance to increase the awareness and operations of agricultural FIs toward AML/CFT, rather than supervision. In case of breaches involving AML/CFT obligations, BOAF has mostly issued official letters to the local competent authorities to request more supervision for improvements and instruct the ABT to strengthen guidance and assistance. More needs to be done by supervisors to impose effective remedial actions or sanctions.

407. For foreign currency exchange counters, sanctions for AML/CFT are only available in the *Foreign Currency Exchange Counters Regulations*. These sanctions include official letter from BoT for remedial action or cancelling the approval for serious violations of regulations. No fines are available to enforce compliance. From 2014 to June 2018, the Central Bank inspected 465 foreign exchange counters and issued 398 official letters for AML/CFT violations and issued 439 letters requiring remedial actions. Only in one case were breaches serious enough to cancel the approval to operate.

**Table 6.8: Sanctions imposed for AML/CFT violations by foreign currency counters**

Year	Counters inspected	Issue official letter	Cancel approval
2014	64	49	-
2015	61	37	-
2016	80	69	-
2017	147	136	1
2018 (Q1 to Q2)	113	107	-
<b>Totals</b>	<b>465</b>	<b>398</b>	<b>1</b>

#### DNFBPs

408. DNFBPs were brought into the MLCA framework in June 2017. As such, fines had not yet been imposed, but some remedial actions had been taken, following an initial round of off-site and limited on-site inspections of some sectors. The efforts put in place by relevant authorities with each DNFBP sector is an important foundation for future supervision and promotion of risk-based AML/CFT implementation amongst the DNFBPs.

#### *Impact of supervisory actions on compliance*

409. The fines imposed on banks, securities, and insurance for AML/CFT breaches are relatively low and may not be wholly proportionate. However, it should be noted that fines and the publication of the fines and the negative findings, are contributing to significant changes in the culture and conduct of compliance in Chinese Taipei. The overall effects of remedial measures, enforcement actions and reputation damage appear to positively influence compliance.

Supervisory actions are, overall, having a very significant impact on compliance and a move towards a risk-based approach across the financial sector and, more recently, with DNFBBPs. According to off-site and on-site examination results in recent years, FSC stated that FIs have enhanced their understanding of the AML/CFT obligations, devoted significant amount of resources, and established systems and procedures to improve examination deficiencies. However, CDD measures (including the identification of beneficial owners and PEPs), ongoing CDD, and transaction monitoring are still challenging for FIs. The authorities, including AMLO and supervisors and SRBs stressed that their efforts have helped DNFBBPs to improve their awareness of ML/TF risks and obligations in each sector.

410. Given that the stakes of AML/CFT breaches are getting higher especially the cases of fines imposed by US authority, the industry-wide awareness of AML/CFT compliance in the financial sector is increasing and more resources have been dedicated by FI/DNFBBPs. For example, dedicated AML/CFT officers of domestic banks have increased to 1,079 at end-March 2018 from 171 at the end of 2014. The growth rate is over 500%.

#### *Promoting a clear understanding of AML/CFT obligations and ML/TF risks*

411. FSC's efforts promote a clear understanding among FIs of their AML/CFT obligations and ML/TF risks by establishing long-term partnerships and engaging in ongoing communications with sectors through their associations, holding meetings, coordinating the financial industry to hold training courses and advocacy sessions, and setting up dedicated AML/CFT webpages. FSC also advises on sectoral guidance issued by associations. FSC has an established long-term partnership and ongoing communication with the financial sector especially through the establishment of task-force and one-on-one communication to maintain understanding of AML/CFT obligations and discussion on emerging ML/TF risks.

412. In addition to the formation of AML task force in May of 2017 to plan for the amendments of regulations and enforcement of guidance and assistance, there are several follow-up actions on inspected agricultural FIs to ensure they have sound understanding of AML/CFT obligations. Competent authorities continue to hold educational trainings each year and since 2016, the AML/CFT subjects were incorporated into relevant courses. AML/CFT guidelines for agricultural FIs were issued and BOAF has established an AML/CFT Section on its website to provide the latest relevant regulations of AML/CFT and Q&A for reference.

413. The Central Bank conducted public engagements in 2017 and 2018 to explain the rationale for amendments made to relevant Regulations. The Central Bank has hosted seminars and training. In addition, BoT issued SOPs, Q&A and other guidelines for foreign currency exchange counters to understand their AML/CFT obligations. These are also available on website for the counters to review and download.

#### **DNFBPs**

414. Most DNFBBPs were involved in the drafting and provided their feedback on new obligations regarding AML/CFT. Many meetings between authorities, SRBs and senior officials were held prior to this round mutual evaluation. The competent authorities have consulted opinions from the associations on training, and composition of guidance, as well as on the amendments of related regulations.

415. Best practice Guidance Notes on Implementing Anti-Money Laundering and Countering the Financing of Terrorism for DNFBBPs" was developed by AMLO and supervisors. It has recently been implemented by all DNFBBPs to ensure they adopt consistent methods of AML and CFT, as well as ensure the supervisory authorities adopt consistent interpretations of the MLCA and the CTF Act.



416. However, in the near future, relevant authorities should consider developing the detailed guidelines for specific DNFBP sector to response to threats and risks regarding specific activity.

*Overall conclusions on Immediate Outcome 3*

417. Fit and proper checks by supervisors are generally sound, though there is a need to enhance controls against criminal associates, and implementation for select FI/DNFBP. A risk-based supervisory regime is in place for FIs and DNFBPs, though the latter have only been recently included and more needs to be done to improve both monitoring capabilities and regulatory transparency with respect to clearly-defined statutory powers. FSC's frequency scope and intensity of offsite and onsite supervision is increasingly based on the identified risks. Chinese Taipei's supervisory regime is holistic, encompassing close cooperation through private-public associations, through to graduated remedial measures towards ensuring AML/CFT compliance. However, there are opportunities for improvement including regular risk inputs from the FIU and LEAs. Fines imposed on FIs for serious AML/CFT breaches are relatively low and may not be wholly proportionate. Going beyond fines, the overall effects of remedial measures, enforcement actions and reputation damage appear to positively influence compliance.

418. **Chinese Taipei has a moderate level for effectiveness for Immediate Outcome 3.**

## CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

### *Key Findings and Recommended Actions*

#### **Key Findings**

- 1) Information on the creation and types of Chinese Taipei legal persons is publicly available. There is a central public register that lists basic information on companies registered in Chinese Taipei.
- 2) The NRA and a more detailed follow-up assessment in mid-2018 have led to some of the risks associated with legal persons being reasonably well understood by competent authorities. Risks posed by foreign and domestic express trusts have not been well assessed and the role of domestic service providers for formation and management of foreign companies and trusts is not well understood by most agencies.
- 3) The quality of the information held by MOEA is reasonable and has been supported by oversight and some quality checking. Recent legislative amendments and implementation activities have contributed to increases in the range and quality of basic ownership data available on the registry. More comprehensive quality checking of MOEA registry data had not commenced.
- 4) Despite the large numbers of civil trusts formed in Chinese Taipei, there are few measures to support the transparency of trusts and capturing information on settlors or trustees. As a practical matter, foreign trusts are not prohibited, and appear to have a meaningful presence.
- 5) There are a number of controls on legal persons to mitigate their risk of misuse related to Chinese Taipei nominee shares and nominee directors. Controls were put in place for bearer shares in mid-2018, but there are some gaps with legacy bearer shares.
- 6) There are few controls on civil trusts formed in Chinese Taipei or on foreign trusts operating in Chinese Taipei. Trustees of a domestic trust are required to identify the settlor and beneficiaries each year when dealing with trust property. FIs or DNFBPs who have domestic or foreign trusts as customers are required to identify and verify all parties to the trusts. There are some gaps when DNFBPs are employed to settle a trust and do not also serve as a trustee. There are no obligations on trustees of foreign or domestic trusts to declare their status to FIs or DNFBPs.
- 7) Authorities rely on CDD conducted by FIs and DNFBPs to obtain beneficial ownership information of legal persons and arrangements. As outlined in IO.4, CDD to identify the beneficial owners and controllers of customers by FIs and DNFBPs is reasonably well implemented. There is no statutory requirement for legal persons to disclose or record their beneficial ownership at the company registry, or to otherwise be held by the company.
- 8) LEAs and the AMLD demonstrate examples of using CDD information and investigative strategies to obtain information on the beneficial ownership and control of legal persons in the course of developing financial intelligence or conducting financial investigations.
- 9) Authorities have sought and provided international cooperation in relation to transparency of legal persons and arrangements in specific cases.

#### **Recommended Actions**

- a) Ensure that AML/CFT controls are applied to professionals in Chinese Taipei who provide services for the formation and management of foreign companies or trusts services and impose

effective, proportionate, and dissuasive sanctions. To enhance mitigating measures to professionals who fails to comply with regulation or guidelines related AML/CFT, authorities should impose

- b) Enhance MOEA's activities on the verification of information subject to registration, and consider granting the MOEA a more proactive role in that verification process.
- c) Chinese-Taipei should implement enforceable measures to ensure trustees, (for both domestic and foreign trusts) disclose their status when forming a business relationship to support CDD.
- d) Chinese Taipei should extend controls to enhance transparency on civil trusts.
- e) Chinese Taipei should implement mechanisms to mitigate the risks from legacy bearer shares.
- f) Target international cooperation to obtain BO and control information on legal persons and arrangements with countries with shared risks, esp. those jurisdictions most used for incorporation related to the OBU sector (e.g. BVI, Samoa, Seychelles, Belize, Hong Kong, China, etc.)

419. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The recommendations relevant for the assessment of effectiveness under this section are R.24 & 25.

#### ***Immediate Outcome 5 (Legal Persons and Arrangements)***

420. At the time of the onsite, Chinese Taipei law recognised a number of types of legal persons which are classified into associations (profit-seeking and public-welfare) and foundations (public-welfare). The number of profit legal person including companies (unlimited companies, limited companies, unlimited companies with limited liability shareholders, companies limited by shares), cooperative, and limited partnerships, while non-profit legal persons can be divided into public welfare association legal persons and foundation legal persons. Companies may be public with additional governance under the Securities and Exchange Act and have foreign ownership which has minimum and maximum allowable shares. Foreign companies are also permitted to be established in Chinese Taipei, but have some additional requirements and limitations. The various categories of non-profit legal persons including cultural, religious, social charity, medical, and educational organizations.

421. As of the end of July 2018, there were 698,769 registered companies in Chinese Taipei. Of these, 532,265 were limited companies {limited by capital}. There were also 166,184 companies limited by shares, of which 2,169 were public companies and 164,315 were private. In addition there were 20 unlimited companies.

422. For legal arrangements, Chinese Taipei permits the creation of trusts, which can be classified as "civil trusts", "business trusts" or "charitable trusts". Civil trusts (which are express trusts) may be established via legal arrangements between private individuals and are regulated under the Trust Law. Foreign trusts operate in Chinese Taipei. The Trust Law has only limited requirements to support transparency of the beneficial control of legal arrangements. DNFBP having trusts as clients, including providing trust services to a domestic civil trust or a foreign trust are regulated by the MLCA (Art 5) and regulations governing AML of the respective industry of DNFBPs. However, the regulations and guidelines do not go into detail regarding obligations on DNFBPs providing trust services as opposed to other transactions.

423. There appears to be a very large number of civil trusts operating in Chinese Taipei. Information provided by the tax authorities indicate that there are NTD 8,638,838 million assets from

business trusts and NTD 1,948,622 million (approx. USD65 billion) registered assets of civil trusts in Chinese Taipei. Only real property of civil trusts is obliged to be registered. Business trusts require the trustee to be a trust enterprise, which are FIs and regulated by the MLCA and the Trust Enterprise Act and supervised by the FSC (considered in R.22 and IO4).

424. There are obligations on civil trusts to file with the tax authorities when the trust earns income, however the numbers of civil trusts holding assets may be higher than those declaring earnings. Tax authorities were not able to provide statistics on the numbers of civil trusts filing earnings. Information filed with the tax authorities on the income of trusts captures trustees, beneficiaries, and lists entrusted properties in accordance with Article 33(1)(5) of the Tax Collection Law. There are no details available on the numbers of foreign trusts that may hold assets in Chinese Taipei.

#### *Public availability of information on the creation and types of legal persons and arrangements*

425. Information on the creation and registration of for profit legal person is publicly available from the homepage of the MOEA “Commercial Industrial Services Portal (CISP)”. The CISP includes details of legal persons, including their form and articles as well as directors and shareholders, and registered nominee directors and shareholders. In addition MOEA hosts the CTP portal for LEAs and government agencies which include other government data sets and enhanced search functions to understand ownership and control of legal persons. There is also online information available developed by commercial entity Market Observation Post System (MOPS) for the public to access information on changes of directors, supervisors, managers and major shareholders and share equity. Information on the creation of legal arrangements is available through the Trust Law. Information on filing details of income of a civil trust is available from the tax authorities.

#### *Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities*

426. Chinese Taipei has identified and assessed some of the ML/TF risks and vulnerabilities of legal persons and arrangements created in Chinese Taipei and some elements of risk arising from foreign legal persons and trusts. This was undertaken through the NRA and also a follow-up detailed assessment by the MOEA on corporate entities risk of ML (updated August 2018). The NRA assessed companies limited by shares and limited companies as carrying higher risks. The NRA also assessed not for profit legal persons.

427. The assessments of risk did not identify the characteristics of particular types of legal person or arrangement, or features of their establishment or ongoing management and control that would contribute to or mitigate ML/TF risk. Chinese Taipei assessed legal persons’ risk of misuse including: lack of transparency of the companies, shell company, offshore company and offshore financial service, and other risks including concealing of BOs by professions. Authorities acknowledge these risks, however there is no consistent and coherent understanding within the government of the inherent and residual risks associated with legal persons and arrangements. Risks posed by foreign trusts have not been well assessed and the role of domestic service providers for formation and management of foreign companies and trusts is not well understood by most agencies. Some LEAs have a better understanding of the threats.

428. The authorities have not yet taken sufficient steps to understand risks from foreign companies and trusts active in Chinese Taipei’s offshore financial sector (OBUs, OSUs, OIUs), and in foreign ownership and control of domestic assets. The NRA identified the top five places of registration of OBU customers, being British Virgin Islands; Samoa; Hong Kong, China; Belize; and the Seychelles. Regulations governing OBU, OSU and OIU limit accounts to foreign incorporated customers (i.e. foreign companies) and as such foreign trusts are not permitted to hold accounts directly. Authorities have not identified the extent to domestic or foreign trusts have a role in the beneficial ownership and control of foreign companies operating in the OBU/OSU/OIU sectors and in areas of Chinese Taipei’s financial sector. As a practical matter, foreign trusts are not prohibited.

*Mitigating measures to prevent the misuse of legal persons and arrangements*

429. Chinese Taipei has taken mitigating measure including enhanced information transparency of legal person, the enforcement measures to eliminate shell companies, certain steps to prevent offshore financial service from being misused by ML/TF, and prevention of professionals concealing the information of BOs.

430. As outlined in section 1, the legal and regulatory framework and market practice sees relatively little professional intermediation in the establishment or continuing operation of legal persons. There are no requirements for company service providers to form or have a continuing role as an office holder or to have a role in filing returns. As such few FIs/DNFBPs have a continuing relationship providing company services.

431. MOEA statistics confirm that a large majority of companies do not have an intermediary assisting with company registration. Approximately 12% of companies draw on the services of accountants for filing registrations. All Chinese Taipei's (for profit) legal persons can be established by any natural persons or by a CPA or attorney on behalf of the legal persons to undertaken registration with the relevant competent authority. While Notaries<sup>11</sup> only provide consultation-services in establishing companies, CPAs and attorneys may be gate-keepers in the creation and management of companies and other legal persons, and are legally subject to AML/CFT preventative measures. MOEA and other competent authority of legal persons rely on the information of legal persons provided by CPA and attorneys.

432. Chinese Taipei has CDD obligations in place requiring FIs and DNFBPs to collect beneficial ownership and control information generally in keeping with R.10 and R.22. While these obligations have been in place for DNFBPs since 2017, a number of enhancements were made in November 2018. The regulations for lawyers and accountants do not sufficiently cover scenarios where they provide company and trust services rather than simply having legal persons or legal arrangements as customers. Additional guidance is needed for DNFBPs undertaking trust and company services.

433. The Company Act was amended in August 2018 with a range of mitigating measures related to AML/CFT. Companies are required to provide basic information including directors, supervisors, and major shareholder (now any party with 10% or more) to MOEA. This information must be maintained by the company and reported to the registrar within 15 days of any change (Company Act Art 22-1). Sanctions for violations were increased. Similar requirements are in place for other for-profit legal persons.

434. The 2018 amendments removed companies' ability to issue bearer shares, and limited the instances where share warrants (including bearer share warrants) may issue to ensure their transparency. Authorities confirm that companies have no discretion to issue share warrants other than in the controlled instances. However, some risks remain from legacy bearer shares as there is no clear timeframe for previously issued bearer shares or share warrants to be redeemed or dematerialised.

435. The Company Act requires registration of nominee director and nominee shareholders. Nominee director and nominee shareholder are not defined under Chinese Taipei's Company Act, but in practice these function as nominees: directors or shareholders under other people's name who bear no actual power, voting agreements and voting trusts, natural person representing the Juris person shareholder acting as director or supervisor, and name borrowing registration The Company Act (Art 38.7) and binding filing requirements under MOEA regulation require nominee directors and nominee shareholders and the nominee's principal to be registered with the MOEA. Historical records

<sup>11</sup> Notaries provide services including notarization and attestation.  
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of directors or supervisors and any nominees are also publicly available information and searchable in the registry by authorities. MOEA data showed registration records for 32,079 companies having nominee directors and 32,371 having nominee shareholders.

436. As highlighted above, there are over approx. USD65 billion of registered assets for civil trusts in Chinese Taipei, but very few controls in place in relation to civil trusts (domestic) or foreign trusts. Trustees are not, in either case, required to disclose their status to FIs or DNFBPs, which may reduce the ability of CDD and EDD to mitigate the risks of misuse of legal arrangements.

437. Disclosure obligations (to fiscal authorities) on income of trusts adds to transparency and helps to mitigate some of the risks, but it is not clear that there is a proactive approach to using this information to target the use of civil or foreign trusts to obscure ML beyond tax evasion.

438. Article 31 of the Trust Act requires trustees to report annually on trust property records to the settlor and any identifiable beneficiaries. This has the effect of identifying parties to the trust.

439. The relatively recent inclusion of DNFBPs, including lawyers and CPAs, in full AML/CFT obligations extended CDD obligations to cases where DNFBPs are providing trust services to a domestic civil trust or a foreign trust. However, authorities were not able to estimate the extent to which such DNFBPs serve in these roles and there are some technical gaps on how far CDD extends when the DNFBPs are settling a trust without also acting as a trustee. This is an important measure to help to prevent the misuse of legal arrangements, however as there is no obligation on civil trusts to use a DNFBP for trust services, it is not a widely applicable control.

**Case Example 7.1: EDD measures applied to customers with issued bearer shares**

A Borrower Investment company Y sought to open an account with a bank. After performing CDD, it was discovered that the company was able to issue bearer shares and it was immediately treated as a high-risk customer, noted in the IT system, and confirmed no transactions were permitted without the approval of the general manager.

*Timely access to adequate, accurate and current basic and beneficial ownership information*

440. Basic information, structure of company, shareholders, and for very simple holdings, BO information of a company can be ascertained through the information maintained by the MOEA and the company. This information is available to competent authorities and is generally timely. Until the 2018 amendment to the Company Act, companies were not required to report information on shareholders holding less than 25% of shares or total capital and the required timing of updating filings to MOEA did not support accurate or timely data being available, even on basic ownership. The 2018 amendments and regulations require information on all directors, supervisors, managers and shareholders holding more than 10% of shares or capital. The regulation also requires reporting to the information platform within 15 days of any change. At the time of the onsite visit there were transition arrangements in place, so MOEA holdings were improving.

441. Public companies have had similar obligations for some time under the Securities and Exchange Act. The Company Act obligations to report from 10% are a welcome development, but it does not go as far as the insiders' shareholding reporting requirements under the Securities and Exchange Act. In that act shareholdings for purpose of the 10% threshold include the shares held by the shareholder's spouse and minor children as well as the shares held under any other party's name (Article 25(3) of the Securities and Exchange Act). Article 2 of the Securities and Exchange Act Enforcement Rules regulates the shares held under the name of any third party.

442. CTP searching facilitated by MOEA includes a range of data provided by the TDCC (listed company information). CTP search supports multi-layer search. This cross references both filed

company ownership / directorship information, as well as public companies filings from listed companies, as well as tax information.

443. Competent authorities have access to beneficial ownership information collected by FI/DNFBP through CDD, with FI/DNFBPs taking reasonable measures to identify and verify the identity of BOs. Additional information can be obtained through official letters. CDD is done reasonably well amongst FIs, and while the obligations are new amongst DNFBPs, CDD information on BO may be available. CDD records are updated periodically under ongoing CDD requirements, while BO arrangements may have changed in the interim. Challenges in conducting CDD including in relation to nominee or front accounts or complex structures may limit the utility of CDD information in revealing ultimate beneficial ownership and control. As outlined in IO.3 & IO.4, there are as number of strengths and some weaknesses with the implementation of CDD obligations, but outreach and supervision of CDD has resulted in increased rates of compliance by banks and other FIs.

444. LEAs and the FIU demonstrated regular use of mechanisms to obtain CDD information to identify BOs of legal persons. Information requests allow LEAs and the FIU to access relevant data in a reasonable timeframe. The AMLD and LEAs have power to obtain CDD information collected from FIs or DNFBPs in order to understand the beneficial ownership or control of a legal person or arrangement. Authorities have powers to request all FIs to help them with identifying which FI or DNFBP has a particular legal person as a customer, however this all-institutions approach is rarely done in practice.

445. LEAs regularly take steps to obtain beneficial ownership information in the course of financial investigations. LEAs have demonstrated many instances of pursuing beneficial ownership of foreign corporates which hold accounts in OBUs. Significant challenges are noted in lifting the corporate veil in relation to foreign corporates which are at the heart of the business model of the OBUs in Chinese Taipei. FSC has led a significant push on CDD of existing and new OBU customers and LEAs and the FIU demonstrated actions to seek information from foreign partners on OBU customers.

**Case Example 7.2: Identification of ultimate beneficial owners of companies used in a market manipulation case**

FSC monitoring identified suspicions regarding a public company, Company C for possible false product transactions initially for approximately USD 4 million. MJIB compared tax records, information obtained from FIs to identify transactions between related companies inconsistent with regular practice and identified certain companies sharing directors, supervisors, or shareholders and similar addresses in the business registration information. AMLD financial intelligence confirmed a web of affiliate companies. In the course of further investigations, MJIB identified a fraud ring involving complex beneficial ownership to obscure the persons controlling over 15 domestic and 5 foreign companies. These were used to fabricate close to one thousand circular transactions, amounting to over USD 300 million (which were not actual transactions). The false transactions were used to window-dress financial reports disclosed to the public and mislead nonspecific investors to participate in stock investments of the stocks of Company A, Company B, and Company C.

446. LEAs have identified some cases where there is a need to obtain historical ownership information from MOEA to assist with understanding current beneficial ownership and control arrangements. These details were able to be obtained from MOEA in a number of instances. Arising from this, MOEA has plans to include access to historical basic information (date of approval, company name, capital, location of company, directors and supervisors, managers and other information) on its

website<sup>12</sup> to assist in the reconstruction of historical ownership and further assist with steps to uncover BO by FI/DNFBP and LEAs.

447. In relation to domestic trusts, the obligations at Article 31 of the Trust Act requiring trustees to report trust property records to the settlor and any identifiable beneficiaries annually should provide a basis to assist LEAs and other authorities identify aspects of beneficial ownership and control when investigating a trust. Related tax filings may also assist, particularly as professional trust service providers are not always used. Competent authorities did not demonstrate regular use of these powers to obtain information on parties to a private trust.

448. CDD information on trustees who are customers of an FI has been obtained by LEAs in some instances (particularly from trustee businesses). However, LEAs indicated that in their experiences, offshore trusts under legal agreements are risky and present particular challenges in investigation.

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<sup>12</sup> Available as of 21 December 2018.



*Effectiveness, proportionality and dissuasiveness of sanctions*

449. MOEA has taken a range of actions to implement its powers to strike off companies and other legal persons that have fail to file updated registration information. The statutory financial penalties for failure to keep ownership information up-to-date were previously not dissuasive, however amendments in 2018, including 22-1(4), of the Company Act has added to the dissuasiveness. At the time of the onsite MOEA had not commenced enforcement programs with the new obligations.

450. As outlined in IO.3, there are strengths in the implementation of CDD obligations by FIs supervised by FSC, but little checking of such implementation by DNFBPs. FSC has applied sanctions in cases of failures to undertake proper CDD or provide such material to competent authorities, and while the quantum of sanctions are low, they do support improved access to CDD information.

451. MOEA is an active registrar and, following the Company Act amendments in 2018, was beginning implement comprehensive enforcement frameworks for the new requirements. Existing controls were well enforced by the MOEA and the authorities were able to demonstrate a good track record of warning and striking off legal persons that failed to meet the disclosure obligations. At the end of 2018 there were 764,572 legal person on the registry. During 2018 42,695 new companies had been added and 31,547 had been dissolved or had their registration revoked. . During the same period MOEA identified approximately 2,000 companies with vacancies for directors, resulting in orders being given for re-election.

*Overall conclusions on Immediate Outcome 5*

452. Chinese Taipei has undertaken a number of reforms to the Company Law to improve governance and transparency of legal ownership and governance of legal persons and improved mechanisms to assist competent authorities to lift the corporate veil. Chinese Taipei acknowledges risks posed by corporate structures and, to a lesser extent, trusts, and is taking some steps to mitigate these risks. There are controls to ensure the transparency of nominee directors and shareholders measures and to manage risks of share warrants and, to some extent, bearer shares. There are limited transparency obligations on private express trusts and few measures to identify the control of such legal arrangements. The context of Chinese Taipei sees relatively little professional intermediation in the establishment or continuing operation of legal persons, so FIs/DNFBPs may not consistently hold up to date and accurate information on beneficial ownership. LEAs demonstrated regular use of a combination of investigative techniques, basic information and CDD data obtained from FI/DNFBP to identify beneficial ownership and control of corporate structures. This has included international cooperation in sharing such information.

453. **Chinese Taipei has a moderate level of effectiveness for Immediate Outcome 5.**

## CHAPTER 8. INTERNATIONAL COOPERATION

### *Key Findings and Recommended Actions*

#### **Key Findings**

- 1) Chinese Taipei provides good quality constructive assistance for international cooperation requests received in relation to ML, predicates and asset restraint and forfeiture. Such assistance is provided by Chinese Taipei generally in a timely fashion
- 2) The assistance Chinese Taipei provided and sought comprises of a variety of international cooperation requests, including formal MLA, financial intelligence, supervisory, LEA and other forms of international cooperation.
- 3) Chinese Taipei, to date, has not received any incoming extradition requests while it has sent three outgoing extradition requests. Chinese Taipei has an extradition treaty with twelve jurisdictions and the majority of the requests have been executed in the form of repatriation or deportation. Under the Cross-Strait Joint-Fight against Crime and Mutual Legal Assistance Agreement (2009), repatriation and deportation of wanted individuals has been achieved between Chinese Taipei and China.
- 4) The efforts of LEAs in actively seeking international cooperation including repatriation of locals has resulted in perpetrators being prosecuted and convicted along with criminal asset seizure outside of Chinese Taipei.
- 5) Chinese Taipei seeks assistance in an appropriate and timely manner to pursue domestic predicates, however, it is not sufficiently proactive with pursuing international assistance in ML matters.
- 6) Chinese Taipei routinely uses other forms of international cooperation in a proper and timely manner. Chinese Taipei maintains a network of LEA representatives overseas (including MJIB, Customs and FSC) who seek and coordinate international cooperation. This assists with overcoming long-standing challenges to obtaining assistance and has further contributed to Chinese Taipei authorities assisting and obtaining assistance from foreign counterparts in a more dynamic and effective manner.
- 7) Overall the assistance provided and sought through other forms of cooperation is consistent with the risk profile of Chinese Taipei. Chinese Taipei's LEAs play an active role in sharing information spontaneously with their foreign counterparts.
- 8) Chinese Taipei shares basic and BO information of legal persons and arrangements, however, it can only share information that is available under Chinese Taipei law. LEAs including the AMLD have actively sought international cooperation for beneficial ownership information from foreign counterparts in keeping with the risk profile.

#### **Recommended Actions**

- a) Continue to apply an increased focus on international cooperation, in particular in relation to LEAs actively transnational aspects of key risk areas of drug trafficking, smuggling and also underground banking channels.
- b) Consider proactively seeking information related to ML offences when a MLA request is sent to a

foreign jurisdiction regarding predicate offenses.

- c) FSC should further consider and respond to specific transnational risk when planning and undertaking international cooperation, including sharing risk information related to fit and proper checking and on the planning and conduct of supervision.

454. The relevant Immediate Outcome considered and assessed in this chapter is IO2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40.

### ***Immediate Outcome 2 (International Cooperation)***

455. Chinese Taipei has a sound legal framework and related mechanisms for international cooperation both through the formal and informal channels of cooperation. Assistance broadly covers evidence gathering, investigation, inquiry, prosecution, restraint/seizure and forfeiture of assets, provision and serving of documents, transfer of persons in custody for testimonial purposes, locating persons and other proceedings on criminal matters.

456. Chinese Taipei's assessments of risk have considered many elements of transnational threats, however there remain some weaknesses with understanding and consideration of foreign threats, including criminal proceeds from China (see IO 1). These gaps in understanding and responding to some aspects of transnational risks apply to criminal justice, financial supervisory and regulatory areas. This resulted in less-focused cooperation on drug and smuggling offenses and related ML.

457. An important contextual issue is that Chinese Taipei faces broad and long-standing challenges to receiving international cooperation from foreign jurisdictions. Chinese Taipei demonstrated wide ranging efforts to find practical ways to overcome these challenges. Chinese Taipei actively uses FIU international cooperation channels to help to improve cooperation with non-FIU foreign counterparts. A large number of Chinese Taipei LEA attachés or liaison officers are stationed globally to support international cooperation in many dimensions, which significantly increased the opportunities for direct engagement with foreign counterparts and enhanced the efficiency of international cooperation. FSC participates in a wider range of technical cooperation bodies, and provides further practical support through foreign liaison officers and regular foreign engagement.

### ***Providing constructive and timely MLA and extradition, seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements***

458. Chinese Taipei provides high quality constructive assistance for international cooperation requests related to ML and asset restraint and forfeiture.

459. MOJ's Department of International and Cross Strait Affairs is Chinese Taipei's Central Authority for providing and seeking formal international cooperation in criminal matters including extradition. A formal request under a mutual legal assistance treaty or agreement (MLAT/A) will be sent directly to MOJ, and in the absence of a MLAT/A, a written request via diplomatic channels on the basis of reciprocity can be sent to Chinese Taipei's Ministry of Foreign Affairs (MOFA). After the enactment of the Mutual Assistance in Criminal Matters Act on May 2, 2018, a written request based on the principle of reciprocity, if urgent, can be directly transmitted between MOJ and foreign courts or relevant prosecutorial or law enforcement authorities while a request that lacks urgency is still routed via both MOJ and MOFA. MOJ is also a member of ARIN-AP and the point of contact for Chinese Taipei in asset recovery work.

460. Chinese Taipei currently has MLAT/A with four countries and extradition treaties/agreements with 6 countries.

461. The assistance Chinese Taipei provided and sought comprises of a variety of international cooperation requests, including formal MLA, financial intelligence, supervisory, law LEA and other forms of international cooperation.

462. MOJ maintains a rudimentary electronic case management system and conducts request reviews on a priority basis. In placing priority on the requests, MOJ will take a number of factors into consideration. One example is if the request is urgent, assets seizure requests usually will be given priority since the assets may be dissipated quickly. Other factors include the level of severity of the offenses identified in the requests and the likely social impact of the case. The case management system handles both MLA and extradition requests.

463. Assistance provided by Chinese Taipei is generally timely. The duration of the time for responding to MLA requests varies, hinging upon the clarity of the incoming requests received from the foreign jurisdictions, the complexity of the issues, and the information sought or the action requested by other jurisdictions. The average timeframe to complete a MLA request for all cases including requests transmitted under a bilateral MLA agreement or via diplomatic channels is about 4.5 months. The majority of feedback from FATF and FSRB indicated that MLAs by Chinese Taipei were being provided in a timely manner.

464. A MLA request seeking coercive measures can only be executed if dual criminality is present while a lack of the dual criminality will not impact execution of a MLA request that does not seek coercive measures such as information on bank records. Asset restraint and seizure requests can be executed quickly by using domestic restraint/seizure statutes.

465. From the years 2013-2017, Chinese Taipei received 102 requests for assistance in criminal matters. Of these, 16 requests are related to ML offences and 56 related to ML predicates. 87% of the 102 requests have been fulfilled.

**Table 8.1: MLA requests received and sought (jurisdictions other than China)**

Type of Request	No. of Requests Received						No. of Requests made					
	2013	2014	2015	2016	2017	2018 (Jan-Jun)	2013	2014	2015	2016	2017	2018 (Jan-Jun)
<b>Total</b>	<b>15</b>	<b>17</b>	<b>25</b>	<b>29</b>	<b>16</b>	<b>23</b>	<b>29</b>	<b>32</b>	<b>52</b>	<b>51</b>	<b>47</b>	<b>35</b>
ML	2	3	3	3	3	2	1	0	5	5	0	2
Predicates	9	10	13	19	5	16	19	16	32	40	41	29
Requests Fulfilled	13	17	24	26	8	5	21	15	34	24	10	0
Refused	2	0	1	2	1	0	5	0	5	4	2	0

466. Chinese Taipei received and sought a large number of successful MLA requests with China, which is, to a degree, in keeping with the risk profile. Chinese Taipei’s MLA and extradition with China operates under the Cross-Strait Joint-Fight against Crime and MLA Agreement, which entered into force in June 2009. From 2015-2017, there were more than 100 MLA cases between Chinese Taipei and China related to joint investigation and evidence gathering. Chinese Taipei responded to 533 incoming MLA requests from China in the same period.

467. Chinese Taipei largely provides international cooperation in line with its risk profile. Below is a table reflecting the jurisdictions with which Chinese Taipei has sought and provided cooperation.

**Table 8.2: Jurisdictions involved in Chinese Taipei's MLA cases  
(not including cases with China)**

MLA provided by Chinese Taipei to foreign jurisdictions		Requests for MLA from Chinese Taipei to foreign jurisdictions	
Jurisdiction	No. of MLA cases	Jurisdiction	No. of MLA cases
USA	23	USA	74
Poland	13	UK	20
Vietnam	9	Philippines	19
Switzerland	8	Vietnam	14
Australia	6	Singapore	11
Germany	5	Australia	6
South Korea	2	South Africa	4
		Spain	3
<b>Total</b>	<b>66</b>	<b>Total</b>	<b>151</b>
Cases: ML, drug trafficking, corruption, taxation offences, forgery of documents, fraud, breach of trust, human trafficking		Cases: ML, drug trafficking, corruption, forgery of documents, fraud, obstruction of freedom, copyright Act, human trafficking.	

468. Chinese Taipei provided a number of case studies in which MLA was provided to high quality in a timely way. Some of these matters are still on-going and cannot be published.

**Case Example 8.1: Asset Recovery**

Chinese Taipei prosecuted its former President for corruption-related charges and ML. The former first family, with received bribe payments, used Hong Kong, China and Swiss bank accounts, British Virgin Island companies and a St. Kitts and Nevis trust to purchase two real properties located in the United States. The United States initiated two civil forfeiture actions and ultimately forfeited the properties as a result of a settlement. Chinese Taipei provided critical assistance ranging from information sharing via both MLA and law enforcement channels, witness interviews etc. After forfeiture, the United States sold the properties and obtained approximately \$1.5 million in proceeds, which was returned to Chinese Taipei in 2016.

469. Chinese Taipei has demonstrated, in various actual cases, that it has taken positive action on the request for assistance from other countries by freezing and seizing assets; searching for and seizing physical evidence; and extraditing the offenders. For example, in response to a MLA request from the United States, Chinese Taipei has seized over USD15 million in drug proceeds involved in large scale trade-based ML schemes. In another case, based on an MLA request from Australia related to drug smuggling, Chinese Taipei provided a wide range of assistance in aid of the Australian investigation, resulting in the arrest of a number of drug offenders including the main target in the case.

470. One untested challenge to the provision of constructive assistance is Chinese Taipei's ability to share forfeited assets based on a MLA request from other jurisdictions. Chinese Taipei has never shared forfeited assets with another jurisdiction as Chinese Taipei advised that it to date has not received a request for sharing.

471. Chinese Taipei, to date, has not received any incoming extradition requests while it has sent three outgoing extradition requests. Chinese Taipei has an extradition treaty with six countries and the majority of the requests have been executed in the form of repatriation or deportation.

**Case Example 8.2: Extradition/deportation of Murder Suspects**

In aid of a murder investigation in Hong Kong, China in the absence of a specific request from Hong Kong, China - Chinese Taipei spontaneously revoked three suspects Chinese Taipei's entry permits for deportation, and promptly notified the relevant authority in Hong Kong, China of their pending deportation. Chinese Taipei requested the Hong Kong, China authorities of to escort the suspects back to Hong Kong, China.

**Table 8.3: Extradition/Repatriation/Deportation from 2014-June 2018**

Type	Agency	2014	2015	2016	2017	2018 (Jan-Jun)	Total
Chinese Taipei locals repatriated	NPA	51	74	49	54	30	258
	MJIB	0	1	1	79	11	92
Foreigners reported	MJIB	1	1	2	4	1	9
	NIA	2	0	1	0	0	3

472. Under the Cross-Strait Joint-Fight against Crime and Mutual Legal Assistance Agreement, repatriation and deportation of wanted individuals has been achieved between Chinese Taipei and China. From 2013-2017, Chinese Taipei received 13 repatriation requests from China, 8 of which have been executed and completed; during the same period, Chinese Taipei has sent 730 repatriation requests to China, 220 which have been responded to.

473. Chinese Taipei seeks MLA in an appropriate and timely manner. Chinese Taipei provided seminars for prosecutors and law enforcement in regards to the use of formal MLAs; MOJ proactively contacts the district prosecutors' office if a MLA request is needed; After the enactment of Mutual Legal Assistance in Criminal Matter Act in May 2018, MOJ's website includes templates for MLA requests for various purposes and the information on the countries with which Chinese Taipei has a bilateral MLA or an extradition agreement.

474. The case studies provided by Chinese Taipei demonstrate that it seeks MLA requests generally in line with its risk profile – proactively seeking MLA assistance to pursue domestic predicates while less enterprisingly to pursue international assistance for ML violations. For instance, in 2017 Chinese Taipei sent 47 outgoing MLA requests, of which 41 related to ML predicates, however, none related to ML.

**Case Example 8.3: Prosecution of Corruption and Ongoing Asset Recovery Action**

Mr. W, an arms broker, and Mr. K, a Chinese Taipei military officer, obtained of kickbacks, approximately USD516 million, through a purchase of Lafayette frigate made by Chinese Taipei in 1989. Mr. K was prosecuted under the Anti-Corruption Act. Chinese Taipei sent a MLA request to Switzerland where Mr. K's corruption proceeds were located, requesting the restraint and later repatriation of the corruption proceeds. Switzerland executed the request and repatriated the assets back to Chinese Taipei who forfeited the assets upon Mr. K's conviction. Mr. W used his family members' accounts to launder the corruption proceeds and transferred the proceeds to various jurisdictions including Switzerland, Liechtenstein, Austria, Jersey, Luxembourg, and Isle of Man. Chinese Taipei sought MLA from the aforementioned countries to restraint the accounts. The jurisdictions froze funds amounting to USD1.084 billion. Chinese Taipei's court of first instance in 2017 issued a forfeiture judgment in the amount of approximately USD900 million.

475. Pursuant to the Joint-fight against Crime and Mutual Legal Assistance Agreement with China, Chinese Taipei has actively engaged in joint investigations with 5 provincial level entities in China including Shanghai, Guangdong, Fujian, Zhejiang and Jiangsu. From 2014-2017, the MJIB sent 30 requests to China regarding investigation and evidence gathering. Out of these requests, 24 cases involved telecommunications fraud, 1 case related to narcotics, and 5 cases related to other economic crimes.

*Seeking other forms of international cooperation for AML/CFT purposes*

476. Chinese Taipei regularly seeks other forms of international cooperation in an appropriate and timely fashion for AML/CFT purposes. Chinese Taipei maintains a global network of law enforcement attachés who seek and provide international cooperation as needed. These representatives were able to directly engage in communication and cooperation with their foreign counterparts, thereby resulting in a more dynamic and constructive process.

477. These attachés seek assistance for the investigations and prosecutions that are generally consistent with the risk profile of Chinese Taipei. Where multiple agencies’ efforts are involved and agencies’ jurisdiction on investigations overlap, the law enforcement attaché who started the investigation will usually take lead and guide a joint investigation. When the investigation is viable and ready, the law enforcement attachés will contact the relevant district prosecutors’ office and at that point the prosecutor assigned to the case will coordinate and direct the investigation.

**Table 8.4: Chinese Taipei’s Global Network in aid of International Cooperation**

Agency	Officers Assigned Abroad	No. of Jurisdictions/Region
MJIB	26	20
NPA	10	10
NIA	26	20
CGA	3	2
CA	2	2
FSC	6	2
MOEA	150	50

478. *FIU cooperation* - ALMD is a member of the Egmont Group, and plays an important international collaboration role for exchange of financial intelligence using the Egmont Secured Web (ESW) on behalf of domestic agencies. As of the onsite, Chinese Taipei has MOUs or agreements on AML/CFT intelligence exchange with 46 countries. Chinese Taipei advised that AMLD, on average, was able to complete each request within 22 days.

479. From 2014- to June 2018, AMLD engaged in 1,250 intelligence exchanges with 155 FIUs in 348 cases. Out of the 348 cases, AMLD received requests on 210 cases, made requests in 138 cases based on the needs for STR analysis or on behalf of domestic LEAs and prosecutors’ offices, and spontaneously shared intelligence on 96 cases. The majority of request were made to Hong Kong, China; the United States; and Singapore and predominately related to fraud and stock market crimes.

**Table 8.5: Statistics - Outgoing Requests by AMLD and LEAs**

Authority	Request/Execution	2014	2015	2016	2017	2018 (Jan-Jun)
<i>Financial Intelligence Unit</i>						
AMLD	Cases	20	49	34	21	14
	Requests made	70	228	165	87	60
	Granted(case)	20	45	32	21	13

	Denied (case)	0	0	0	0	1
	Pending (case)	0	4	2	2	2
<b>Law Enforcement Authorities</b>						
MJIB	Requests made (cases)	125	190	115	118	103
	Granted	101	156	46	74	76
	Denied	0	0	0	1	0
	Pending	24	34	69	43	27
AAC	Requests made (cases)	2	7	3	1	1
	Granted	2	7	3	1 processing	1 processing
	Denied	0	0	0	0	0
	Pending	0	0	0	0	0
NPA(CIB)	Requests made	68	127	125	130	56
	Granted	11	30	2	45	10
	Denied	14	16	14	3	3
	Pending	43	81	109	82	46
NIA	Requests made (cases)	6	4	11	6	
	Granted	6	4	11	6	
	Denied	0	0	0	0	
	Pending	0	0	0	0	

#### **Case Example 8.4: Prosecution achieved through other forms of International Cooperation**

In July 2016 a hacking occurred of an overseas branch of Bank F's computer system, which gained access to the bank's internal network and a specific model of ATM. Investigations found that an international criminal group comprised of 22 suspects from 9 countries were involved and a few members of the group arrived in Chinese Taipei after the initial hack and gained control of 41 ATMs in 22 branches of the Bank on July 10 and 11, 2016. The criminal activity caused the ATMs to automatically dispense cash bills, totalling NTD 83.27 million (approx. USD2.74 million). IB investigations led to the arrest of suspects in Chinese Taipei within 5 days.

MJIB identified the IP address of the unknown server in jurisdiction S that was used by the group to establish irregular connection with Bank F's overseas branch audio service mainframe to crack the access password. AMLD assisted MJIB investigating fund flows between related parties before and after the case, and monitored subsequent transactions. Money mules who were used in the case were foreign nationals. AMLD obtained cooperation from foreign FIUs through ESW to obtain criminal records, STRs or CTRs and financial records associated with the foreign suspects and shared the financial intelligence with MJIB. Chinese Taipei's intelligence resulted in the arrest of the main suspects in March 2018 in jurisdiction S and unravelled an international cybercrime group, a notorious Eastern European hacker group, who had hacked into the banking systems in multiple countries and then laundered funds. This group was wanted by the police in multiple countries.

In September 2016, Taipei District Prosecutors Office charged the 3 main suspects with various criminal offenses and issued circular orders to 19 money mules involved in the case. In January 2017, Taipei District Court sentenced the defendants to 5 years of imprisonment and an additional fine of NT\$600,000 (about USD20,000). They will be deported after serving their sentence.

480. Chinese Taipei is able to provide and seek various forms of assistance by LEAs and AMLD prior to transmission of a MLA request, and therefore, a mixed use of informal and formal forms of assistance in an appropriate and timely manner significantly enhanced the effectiveness of Chinese Taipei's international cooperation. MJIB made outgoing requests in 651 cases between 2014 and June 2018.



481. AAC has close collaboration mechanisms with foreign counterparts in 8 jurisdictions. Between 2014 and 2017 the AAC exchanged intelligence in 36 cases and made 13 outgoing requests. Case examples were provided to the team demonstrating the utility of these requests.

482. CGA makes regular use of its liaison officers stationed in Tokyo, Okinawa and Manila and has established communication channels with 16 agencies in 9 jurisdictions including China, the United States, Japan, New Zealand, Australia and a number of SE Asian jurisdictions. A total of 390 requests were made from CGA to China from 2014 to 2017.

483. CA has liaison officers in the United States and Japan. CA has entered into 7 agreements, 6 arrangements and 4 MOUs on customs cooperation with 16 countries or jurisdictions including the European Union (EU), and established and developed communication and cooperation with foreign customs authorities in over 20 jurisdictions. From 2014-2017, CA completed 1,013 cases related to customs investigations with 24 foreign partners. In particular, CA cooperated with the customs authority in 3 countries for drug trafficking cases and seized 144 kg of drugs, and 133.5kg of smuggled gold.

484. NIA has 27 liaison officers dispatched to various jurisdictions aligned with risk, signed 19 cooperation agreements/MOUs. NIA has completed intelligence exchanges in 27 cases with foreign immigration authorities.

485. *Tax Administration co-operation* - The MOF (Taxation) has entered into 32 tax agreements which provides for authority for information exchange. From 2014-2017, TA completed 13 cases of information exchange on tax matters with the competent authorities in 6 countries.

486. *FSC co-operation* - FSC has used a range of means to pursue information exchange. FSC has overseas representative offices in the United Kingdom and the United States. FSC has entered into 55 MOUs, EOLs, or protocols with 37 foreign supervisory authorities. FSC is a signatory to the IOSCO MMOU and IAIS MMOU. From 2014-2017, FSC, under various frameworks, completed 577 intelligence exchanges with foreign supervisory authorities of 25 jurisdictions and these appear to be comprehensive and timely. The most information exchanged with foreign banking supervisors are concern fit and proper tests of major shareholders or senior management of banks. Information exchange with foreign securities supervisors are generally related to securities frauds, insider trading, etc. FSC pursues regular exchange with foreign insurance supervisors. Processing time for its insurance sector to complete incoming requests ranges from 8 to 44 days depending on the complexity of the requests.

487. *BOAF and Central Bank cooperation* - any international cooperation sought in relation to records held by BOAF or the Central Bank would be obtained via either the FSC or AMLD and then provided to international partners.

#### *Providing other forms international cooperation for AML/CFT purposes*

488. Chinese Taipei is able to provide many forms of assistance before receiving a request for MLA through its network of LEA attachés posted abroad. Requests for ordinary investigative assistance and intelligence exchange can be made by foreign counterparts to the attachés who will in turn pass the information request to domestic agencies. Chinese Taipei LEAs play a very active role in information sharing as well as spontaneously exchange intelligence with their foreign counterparts. The table below shows the number of requests received and their execution by ALMD and each LEA from 2014-June, 2018.

**Case Example 8.5: Arrest and assets seized achieved as a result of both MLA and other forms of International Cooperation**

An investigation identified numerous remittances had been made to jurisdiction U and jurisdiction D. The LEA attaché stationed in jurisdiction D was tasked to monitor the movements of the individuals who made remittances. The DPO submitted MLA requests to jurisdiction U and jurisdiction D for relevant transactions. AMLD joined the investigation and issued letters to retrieve account information, transaction details, and related vouchers from several dozen of FIs. A lot of cash proceeds were found to have been transferred overseas. AMLD analysed CTRs and forex records retrieved from the Central Bank. AMLD also made a series of requests over ESW to foreign FIUs, and disseminated detailed analysis reports to the Prosecutors Office.

The investigation uncovered an overseas call centre established by fraud perpetrators in jurisdiction D. MJIB contacted jurisdiction D's judicial department for assistance. MJIB, CIB and the prosecutors visited jurisdiction D and reached agreement with the relevant authorities on cooperation, after which a formal MLA request was made to jurisdiction D. The investigation further discovered that the main suspect was also under investigation for ML by the jurisdiction D's prosecutors. In September 2017, jurisdiction D conducted search warrants on properties of the main suspect and his associates and arrested the phone scam suspects and seized key evidences including computers and training manuals. Four Chinese Taipei suspects in this case were escorted back to Chinese Taipei by the LEA officers. The case is still under investigation by authorities in charge of this case.

**Table 8.6: Incoming requests by AMLD and LEAs**

Authority	Request/Execution	2014	2015	2016	2017	2018 (Jan-Jun)
<b>Financial Intelligence Unit</b>						
AMLD	Cases received	32	48	50	60	20
	Requests received	89	144	168	168	71
	Granted (case)	32	48	50	60	21
	Denied (case)	0	1	0	0	0
	Spontaneous	6	9	26	45	10
<b>Law Enforcement Authorities</b>						
MJIB	Requests received (case)	77	129	91	129	119
	Granted	77	129	91	128	119
	Denied	0	0	0	1	0
	Spontaneous (case)	167	149	134	184	155
AAC	Requests received (case)	1	9	6	7	2
	Granted	1	9	6	7	2
	Denied	0	0	0	0	0
NPA (CIB)	Requests received	57	89	93	123	42
	Granted	57	89	93	123	25 (processing)
	Denied	0	0	0	0	0

489. Chinese Taipei's LEAs focus on offenses related drug trafficking and telecommunication fraud, and have conducted joint investigations with China, Hong Kong, China and other Southeast Asian countries in line with the risk profile identified by the NRA. The following is a table on the joint investigations by Chinese Taipei's LEAs and other jurisdictions. The team was provided details of the jurisdictions with which cooperation was provided in these cases and confirm that they are all in line with Chinese Taipei's risk profile.

**Table 8.7 – examples of assistance provided by MJIB and NPA to partner jurisdictions**

Year	Cases	Type of Offence	Suspects arrested
<b>MJIB</b>			
2014	9	Drug Trafficking, Pharmaceutical Affairs Act, Fraud	65
2015	6	Drug Trafficking	32
2016	11	Drug Trafficking, Securities and Exchange Act	29
2017	5	Drug Trafficking	35
2018 (Jan-Jun)	6	Drug Trafficking, Telecommunications Fraud	53
<b>NPA (CIB)</b>			
2014	13	Telecommunications fraud, Drug Trafficking	153
2015	23	Telecommunications Fraud, Drug Trafficking	372
2016	47	Telecommunications Fraud, counterfeiting, BEC fraud, drug trafficking	816
2017	25	Telecommunications Fraud and drug trafficking	335
2018 (Jan-Jun)	47	Telecommunications Fraud and drug trafficking	340

*International exchange of basic and beneficial ownership information of legal persons and arrangements*

490. Chinese Taipei shares basic and BO information of legal persons and arrangements, however, it can only share information that is available under Chinese Taipei law (see IO5). Basic information is publicly available on a website established by MOEA. MOJ, AMLD, MJIB, NPA, and TA have responded to requests related to BO information during the assessment period. MOJ's formal request related to the BO information from the information exchange by LEAs. LEAs' assistance provided on BO information includes their efforts in searching information available in public sources and law enforcement-sensitive portals, as well as issuance of a letter of request to the banks involved or the relevant governmental agencies requesting the BO information. If needed, LEAs can also provide BO assistance by requesting submission of voluntary interviews of individuals who may hold such information. Between 2014 to 2017 SFB/FSC responded to 33 requests related to BO information for regulatory enforcement of security market law with an average time frame for response ranging from 30 to 60 days. SFB/FSC's SOP requires SFB to provide BO information as well as the information regarding money flows when responding a BO-related request. TA provides assistance through public records search, and statements of business income tax filed by legal entities with TA, and such assistance in the tax-related matters was provided under tax agreements signed between Chinese Taipei and foreign jurisdictions.

**Table 8.8 Statistics on Requesting or Providing BO Information**

Authority/ Year		2014	2015	2016	2017	2018 (Jan-Jun)
MLA requests						
MOJ	Requests Received	0	1	1	0	
	Requests Made	2	1	4	1	
FIU						
AML	Requests Received	18	27	31	36	10
	Requests Made	14	30	16	15	10
LEAs						
MJIB	Requests Received	3	2	1	1	0
	Requests Made	10	7	6	1	1
NPA	Requests Received	6	2	4	3	3
	Requests Made	16	8	3	0	3
Supervisory Authority						
FSC	Requests Received	7	5	12	9	2
	Requests Made	9	5	6	6	3
Other Competent Authorities						
MOF (Tax)	Requests Received	3	1	0	0	0
	Requests Made	0	0	0	0	0



*Overall conclusion on Immediate Outcome 2*

491. Chinese Taipei authorities place a strong priority on obtaining and providing international cooperation in line with its risk profile despite the challenges it faces due to longstanding issues. Authorities have taken proactive and novel steps to overcome obstacles to international cooperation and have established numerous channels and initiatives to seek and to provide international cooperation in line with the risk profile to achieve operational outcomes.

492. **Chinese Taipei has a substantial level for effectiveness for Immediate Outcome 2.**

## TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis concerning the level of technical compliance for Indonesia with the FATF 40 Recommendations in their numerical order. It does not include descriptive text on the member's situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

### *Recommendation 1 - Assessing Risks and applying a Risk-Based Approach*

2. These requirements were added to the FATF Recommendations in 2012 and, therefore, were not assessed during Chinese Taipei's 2007 MER.

3. **Criterion 1.1** – FSC undertook a sectoral risk assessment (SRA) in 2015 which focused on threats and vulnerabilities in the financial sector. The SRA adopted a relatively simple methodology and included financial sector regulators, the FIU and a small number of private sector representatives.

4. Chinese Taipei's first ML/TF NRA was undertaken in 2017 and early 2018. The assessment was coordinated by the AMLO and involved 37 government agencies and 31 industry associations. The NRA report mostly presents the assessment of inherent risks before mitigation measures are taken into account. It is intended to support agencies implement possible follow-up actions and control measures.

5. The NRA adopted a reasonable methodology and appears to have been applied to identify and assess risks and draw generally sound conclusions. The NRA identifies a reasonable range of key threats from certain categories of crime, as well as the nature of certain actors associated with key ML and predicate crime threats (e.g. organised crime, 3<sup>rd</sup> party laundering). The NRA and other assessments considered geographic risk factors including illicit inflow and outflow of the proceeds of crime. The 2018 NRA also identifies a number of key sectoral vulnerabilities and extends to assessments of aspects of legal persons and NPOs. The NRA process included an assessment of the foreign exchange counters sector.

6. The NRA considered TF risks. Interagency processes demonstrate that Chinese Taipei has identified and assessed its TF risks. The methodology used to assess TF is reasonable and considers a wide range of domestic and transnational factors. Based on such factors, no substantial TF threat has been identified.

7. The NRA process resulted in a longer report available to participating stakeholders, and a slightly shorter published version. A follow-on, more detailed assessment of the risks of Chinese Taipei legal persons was prepared and published in mid-2018.

8. While LEAs and security intelligence agencies demonstrate that they identify and understand key risks, LEAs generally do not produce threat assessments to be shared with other agencies. There are some weaknesses in the NRA and other assessments in relation to identifying the nature and source of foreign proceeds of crime flowing through Chinese Taipei and the involvement of Chinese Taipei persons and entities involved in ML outside of the jurisdiction. There is also a need for further assessment of use of underground remittance and illegal gambling sectors.

9. **Criterion 1.2** - The AMLO is the designated statutory authority to coordinate assessments of ML/TF risks. AMLO's role is set by the Executive Yuan as per the Notes on Establishment of Anti-Money Laundering Office. Previously, such risk assessment and related actions was coordinated by MOJ. Agencies have responsibility for assessing elements of ML/TF risk relevant to their work.

10. **Criterion 1.3** - The NRA updated and greatly expanded the earlier SRA. The June 2018 vulnerability assessment of legal persons updated and expanded elements of the NRA. Chinese

Taipei has indicated that the NRA will be updated every 3 years. AMLO and other authorities have planned regular meetings and discussions on any changes in risk scenario or supply additional information on ML/TF risks, however, no further details were available on risk scenario changes that would require an update of the ML/TF NRA.

11. **Criterion 1.4** - The NRA was publicly launched in May, 2018. AMLO, along with MJIB and FSC held a large number of events for a wide range of government and private sector stakeholders to disseminate the NRA and discuss its findings. Authorities have used a wide range of channels to deliver the NRA and its findings to government and FIs/DNFBPs. The earlier SRA was widely shared with the private sector. The FIU shares findings of its strategic risk assessments with the private sector through outreach sessions. The Executive Yuan officially publishes and disseminates the results of NRA report through publication events and press releases. In addition, AMLO provides the NRA electronic file and the video of introduction on its website. .

12. **Criterion 1.5** - Authorities demonstrated a range of areas where there has been an enhanced allocation of resources to AML/CFT implementation which has, in a large part, been based on authorities' understanding of risk since the completion of the SRA and NRA. FSC used the findings of the 2015 SRA to support a move towards a risk-based approach to AML/CFT resource allocation and implementing measures to mitigate some of the identified risks. Further enhanced measures, based on identified risks, are required for some DNFBPs (e.g. jewellers and real estate) and agricultural FIs supervised by BOAF.

13. **Criterion 1.6** - Prior to the NRA Chinese Taipei authorities excluded foreign currency exchange counters from the MLCA, based on authorities judgement (SRA and other sources) that the sector faces lower ML/TF risks, when considering the nature, scope, turnover of permitted business (exchange is limited to only selling NTD, transactions limited to USD10,000 and a very low volume of the sector overall (equivalent to 0.66% of foreign exchange business of the banking sector). The 2017-18 NRA reassessed the risks faced by the sector and confirmed the sector faces lower ML/TF risks. Foreign exchange counters remained outside of the MLCA, but in 2018 certain CDD, STR and other AML/CFT obligations were extended to the sector through of regulations issued under the Central Bank Act. TFS obligations apply under the CFT Act. Overall, the sector's exclusion from the MLCA exempts them from PEP and higher risk jurisdiction requirements and certain risk-based internal controls, including an internal risk assessment. Though exempted, some points of concern arise relating to measures applied to PEPs, and customers from higher-risks jurisdiction, given the cash nature of transactions.

14. **Criterion 1.7** - Chinese Taipei has taken some measures to ensure that their AML/CFT regime addresses higher risks, including requiring most FI/DNFBP sectors to report cash transaction above a threshold. FIs are also required to verify customers identify when they make a domestic wire transfer above NTD 30,000 (approx. USD1000). BOAF has required agricultural financial institutions to apply enhanced measures for domestic PEPs, extending controls beyond the FATF definition of domestic PEPs to include lower-level local officials, reflecting their roles and possible vulnerabilities with agricultural FI.

15. **Criterion 1.8** - Each of the Regulations issued to FIs and DNFBPs under the MLCA allow some exemptions on identifying beneficial owners in certain low risk situations including customers that are domestic government entities, government-owned enterprises, foreign government entities, FIs from non-higher risk countries etc. Some simplified measures are also available for DNFBPs with some pre conditions, even though some of exemption rules may be in keeping with footnote 33 in FATF methodology. However, it is noted that the bookkeepers and tax return filing agents are allowed simplified measures in certain areas that are identified as high risks in the NRA.

16. **Criterion 1.9** - Supervisors of FIs and DNFBPs have undertaken awareness raising and outreach as well as offsite and onsite supervision to support to ensure that enterprise risk assessments and risk based approaches (to respond to higher / lower risks) are being taken.

17. **Criterion 1.10** - The Article 7 of the MLCA requires FIs and DNFBPs to comply with a risk-based approach. Article 2 of Article 6 of the AML Regulations for FIs defines risk based approach as identifying, assessing and understanding ML/TF risks by the FI, which is done in the form of an internal risk assessment (ERA). The obligation of conducting an ERA also covers various aspects of risks, for example, customer, products, delivery channels and geographic etc. The regulation also obliges them to keep the risk assessment up to date and share the outcomes with the regulators. The Regulations Governing Internal Controls of AML/CFT of Banking, e-payment and Stored Value Card Issuers elaborates in greater detail obligations to assess and document risks and have appropriate mechanisms to share risk findings with the competent authority. The various DNFBP AML/CFT regulations (issued November 2018) set out requirements for risk assessments, including a requirement to keep the assessments up to date. FSC and DNFBP sector supervisors have put in place mechanisms to notify these outcomes of the risk assessment to the regulators and SRBs. Each sector of FI and DNFBP has mechanisms with relevant authorities for REs to share information on risks identified in their ERA with the supervisor.

18. **Criterion 1.11**- AML/CFT regulations require FIs to set up policies, controls and procedures, which are approved by senior management, monitor the implementation of those controls, and take enhanced measures to manage and mitigate the higher ML/TF risk scenarios. The various AML/CFT regulations covering DNFBP sectors set out comparable requirements for internal policies, controls and procedures, but do not explicitly require DNFBPs to take enhanced measures to manage the risks where higher risks are identified.

19. **Criterion 1.12** - The various AML/CFT regulations covering FI and DNFBP sectors set out circumstances in which some simplified measures are permitted and confirm that FIs and DNFBPs are not allowed to apply these simplified measures when there is a suspicion of ML or TF.

#### *Weighting and Conclusion*

20. Chinese Taipei has taken important steps in relation to assessing and responding to ML/TF risks and supporting agencies and the private sector to move towards risk based approaches. There are some minor shortcomings in relation to identifying the nature and source of foreign proceeds of crime flowing through Chinese Taipei and the involvement of Chinese Taipei persons and entities involved in ML outside of the jurisdiction; and requiring DNFBPs to take enhanced measures to manage the risks where higher risks are identified. **Chinese Taipei is rated largely compliant with Recommendation 1.**

#### ***Recommendation 2 - National Cooperation and Coordination***

21. In the 2007 MER, Chinese Taipei was rated largely compliant with former R.31. There was no formal mechanism for ensuring cooperation among LEAs and support the development and promulgation of CFT measures. The current R.2 contains new requirements related to co-operation and co-ordination on combating PF that were not assessed in MER 2007.

22. **Criterion 2.1** - Chinese Taipei does not have a national-level AML/CFT policy, but authorities have pursued AML/CFT policies in a number of areas that directly reflect risk assessment findings (e.g. formation of AMLO, enhanced resource allocation, prioritised outreach and supervision, etc.). Some sector and issue-specific national policies appear to have elements of AML policy. Chinese Taipei intends to establish a national AML/CFT policy following the completion of the NRA and intends to review the policy every three years.

23. **Criterion 2.2** - Since 2017 the AMLO, which is under the Executive Yuan, has been designated to take charge of coordinating AML/CFT policies. Article 3 of the CTF Act (2016) designates the Executive Yuan as the policy coordination body for CFT issues, and the AMLO performs that function. While the operation of the AMLO has chiefly focused on overall AML/CFT policy priorities, coordination of the NRA process and ME preparation.

24. **Criterion 2.3** - The AMLO has served as a key AML/CFT policy development coordination mechanism. The AMLO includes representatives from a number of agencies and ministries certain state-owned corporations. Several committees/meetings bring together relevant stakeholders to coordinate and cooperate on elements of AML/CFT at both policy and operational levels. These include the "Economic Crime Prevention Implementation Meeting" consist of the Executive Yuan, NSB, AMLD, MOJ, and FSC; "Fight Against Transnational Fraud Crimes Inter-Agency Platform Meeting" include the Mainland Affairs Council (MAC), FSC, Ministry of Foreign Affairs, MOJ, NPA, MOI; "Coordination Meeting between Ministry of Justice and FSC" is organised for the MOJ and FSC; and "Cross-strait Joint-Fight against Crime and Mutual Legal Assistance Communication and Coordination Meeting" include the Executive Yuan, MOJ, MOI, NSB and the Mainland Affairs Council (MAC). However, there are some gaps in relation to operational level cooperation, for example, there is a need for closer cooperation between LEAs and the FSC to help to deepen risk-based supervision and for closer cooperation between AMLD from one side; and LEAs and public prosecutors on the other side.

25. **Criterion 2.4** - Chinese Taipei has a range of well-functioning mechanisms for cooperation and coordination on combating the financing of proliferation of WMD (CPF) at policy and operational levels. The NSB coordinates counter-proliferation projects, including CPF. The NSB holds annual and impromptu meetings on counter proliferation involving the High Prosecutors Office, MOJ, CGA, BFT, MJIB (including the AMLD), NPA, MOI, NIA, Customs Administration, MOF, Ministry of Transportation Maritime and Port Bureau, and the FSC. Case specific coordination on combating proliferation is coordinated by the MOJ as needed.

26. **Criterion 2.5** - The AMLO brings together relevant authorities to ensure the compatibility of AML/CFT requirements with other legal and governance regimes in Chinese Taipei, including rules related to data protections and privacy. Overall data protection and privacy obligations on competent authorities, FIs or DNFBPs do not impede the application of AML/CFT requirements.

#### *Weighting and Conclusion*

27. Chinese Taipei has a range of well-functioning coordination structures. AML/CFT policy priorities increasingly reflect findings of risk assessments. There are some gaps with the absence national level AML/CFT policy and a need, in some areas, for greater operational-level cooperation. **Recommendation 2 is rated largely compliant.**

#### **Recommendation 3 - Money laundering offence**

28. In its 2007 MER Chinese Taipei was rated PC with the former R.1 on the basis that the ML offence lacked some elements outlined in Article 3(1)(b)(c) of the Vienna Convention and Article 6 of the Palermo Convention. The threshold for what is considered a serious offence was deemed too high, terrorism and TF were not predicate offences, there was no provision permitting the intentional element of the offence of ML to be inferred from objective factual circumstances. It was further recommended that the terms "property" and "property interests" be defined. Finally, when proving property was proceeds of crime it was evident that a conviction for a predicate offence was required.

29. **Criterion 3.1** - ML is criminalised under Article 2 of the MLCA which is in line with the Vienna and Palermo Conventions. It defines the money laundering offence as:

- i. knowingly disguises or conceals the origin of the proceeds of specified unlawful activity, or transfers or converts the proceeds of specified unlawful activity to help others avoid criminal prosecution;
- ii. disguises or conceals the true nature, source, the movement, the location, the ownership, and the disposition or other rights of the proceeds of specified unlawful activity; or



iii. accepts, obtains, possesses or uses the proceeds of specified unlawful activity committed by others.

Article 14 of the MLCA also provides that an attempt to commit a money laundering offence is punishable, and the Article 28, 29 and 30 of the Criminal Code state that a person who aids, joins, solicits a crime will be punished.

30. **Criterion 3.2** - Predicate offences are termed “specified unlawful activity” under Art 3 of the MLCA which applies a combined approach. Specified unlawful activity includes any offence with a minimum punishment of imprisonment for a term of six months or more, as well as the list of offences such as corruption, bribery, forgery, fraud, illicit trafficking in stolen goods, smuggling, counterfeit and pirated products, environmental crime, tax crimes, insider trading and market manipulation, and terrorism financing. The smuggling of migrants however is not specified unlawful activity and therefore does not constitute a predicate offence to ML.

31. **Criterion 3.3** - Predicate offences are covered through a combined approach. Any specified unlawful activity constitutes a predicate offence, which includes any offence with a minimum punishment of imprisonment for a term of six months or more. Chinese Taipei also includes a list of predicates encompassing offences such as corruption, bribery, forgery, fraud, illicit trafficking in stolen goods, smuggling, counterfeit and pirated products, environmental crime, tax crimes, insider trading and market manipulation, and terrorism financing. However the smuggling of migrants is not a predicate offence in Chinese Taipei.

32. **Criterion 3.4** - Art. 4 of the MLCA provides that proceeds of specified unlawful activity means the property or benefits and interests of the property obtained or derived from the predicate offence. There is no value threshold stipulated. However, the term “property” has not been defined in the MLCA and hence it is not clear what types of property pertain to the ML offence. Chinese Taipei has provided case samples to demonstrate that a wide range of property has been construed by the court to be “property”. However the absence of the definition in legislation leaves the definition open to judicial construction.

33. **Criterion 3.5** - Art. 4, Paragraph 2 of the MLCA stipulates that when identifying the proceeds of specified unlawful activity, it should not be necessary that a person is convicted of specified unlawful activity. However as noted above, the term property has not been defined.

34. **Criterion 3.6** - The MLCA does not expressly include predicate offences that occurred in another jurisdiction. However, Article 4 of the Criminal Code states that where either the conduct or the result of an offence takes place within Chinese Taipei, the offence is considered as committed within the Chinese Taipei. Case samples were provided to demonstrate that the legislation has been interpreted to allow ML charges for foreign predicate offences. Chinese Taipei amended the MLCA after the onsite to reflect this for the avoidance of future doubt.

35. **Criterion 3.7** - Art 2 of the MLCA sets out three circumstances in which a person may commit ML. The first and third specifically refer to concealing or disguising the proceeds of unlawful activity that is committed by others. However, Art 2(2) notes that ML is committed when a person “*disguises or conceals the true nature, source, movement, location, ownership and the disposition or other rights of the proceeds of specified unlawful activity*”. It would therefore appear as though a person may commit ML for predicate offences which they undertake if they commit the specified activity in Art 2(2).

36. **Criterion 3.8** - Art 13 of the Criminal Code provides that “conduct is considered an intentional commission of an offence if the actor is aware that the act will accomplish the elements of the offense and if such accomplishment is not against his will.” Whilst the Criminal Code expresses subjective requirements of intent, the Supreme Court has confirmed the position that intent may be inferred from objective circumstances (Supreme Court Judgement 1999 No. 1421). In practice, judgments rendered by the court of third instance (the Supreme Court) are binding and followed by lower courts in principle.

37. **Criterion 3.9** - Art 14 of MLCA stipulates that anyone involved in money laundering activities shall be sentenced to imprisonment of not more than seven years; in addition, a fine of not more than NT\$5 million (approx. US\$160,000) shall be imposed. When considering penalties for ML across comparable jurisdictions, the maximum term of imprisonment for seven years may not be considered adequately dissuasive. However, in terms of the context of Chinese Taipei, the term of imprisonment for ML is more severe than many serious crimes such as financing terrorist attacks and some bribery offences.

38. **Criterion 3.10** - Criminal liability and sanctions for ML apply to legal persons and are without prejudice to the criminal liability of natural persons (Art 16 of the MLCA). The sanction for legal person convicted of ML is a fine no more than 5million NTD. This does not preclude parallel civil proceedings. However, a wide range of other forms of administrative penalties may also be imposed on legal persons, including disciplinary warnings, reprimands, restrictive and prohibitive actions.

39. **Criterion 3.11** - There are ancillary offences to the ML offence: Article 14 of the MLCA criminalises an attempt to commit ML, aiding (Art 30 Criminal Code), abetting (Art. 28) and Chapter 4 of the Criminal Code, and the Supreme Court Judgments 2005 No. 2822, 2009 No. 5199, 2012 No. 5199. Whilst the term 'conspiracy' to commit is not expressed this is covered by Article 28 of the Criminal Code 'acting jointly' and confirmed in the Supreme Court judgment 2009 No. 6924 and 2012 No 5199.

#### *Weighting and Conclusion*

40. Migrant smuggling is not a predicate offence to ML and the definition of property is not explicit although has been construed by courts widely. **Recommendation 3 is rated largely compliant.**

#### ***Recommendation 4 - Confiscation and provisional measures***

41. In its 2007 MER Chinese Taipei was rated LC with the former R3, based on the fact that there was no definition of "property" or "property interests" in the MLCA to ensure that the ML offence extends to all forms of property. It was further not clear whether instrumentalities used or intended to be used can be confiscated if they are under the name of a third party due to operation of Article 38 of the Criminal Code.

42. Chinese Taipei predominately relies upon the Criminal Code and Criminal Procedure Code (CPC) for confiscation and provisional measures. Whilst the MLCA inserted provisions regarding confiscation, in practice authorities rarely rely on those provisions given the wide powers contained in the CPC.

#### ***Criterion 4.1***

43. ***Property laundered, proceeds of crime, instrumentalities*** - Article 18 of the MLCA allows property or benefits of the property that is transferred, converted, concealed, obscured, accepted, obtained, possessed or used in ML offences to be confiscated upon conviction of money laundering.

44. According to Article 40 of the Criminal Code, if the offender is not prosecuted or convicted due to facts or legal reasons, the thing which may be confiscated independently may be pronounced separately.

45. ***For all other criminal offences***, - Article 38-1 of the Criminal Code allows proceeds of crime belonging to the offender to be confiscated. For property belonging to other natural or legal persons, it is able to be confiscated if it can be shown that they (a) knowingly obtained the illegal proceeds from the offender (b) obtained the illegal proceeds for free or not at a reciprocal cost and (c) the party benefitted from the illegal act. Proceeds of crime is defined as any property derived from or obtained directly or indirectly through the commission of an offence. However, property is not defined in legislation in Chinese Taipei.

46. Instrumentalities – Article 38 of the Criminal Code provides for confiscation of things used in the commission of or preparation for the commission of an offence or derived from or acquired through the commission of an offence, only if it belongs to the offender. It may be confiscated from other persons if obtained without proper reasons. Further, Article 18 of the Narcotics Hazard Prevention Act allows the confiscation and destruction of any Category 1 and 2 narcotics along with equipment for manufacturing or administering such narcotics. For Category 3 and 4 narcotics and related equipment shall be confiscated and destroyed if there is no justifiable reason for possession. Article 19 provides that items used by offenders committing certain narcotics offences shall be confiscated along with water, land and air transport vehicles used in certain offences. Other legislative provisions exist for the confiscation of instrumentalities of crime including for crimes committed under the Slopeland Conservation and Utilization Act (Art 34), the Soil and Water Conservation Act (Art 32) and the Forestry Act (Art 51).

47. Property of corresponding value - Article 38-1 of the Criminal Code provides that where confiscation of the proceeds of crime failed or is not appropriate, the value thereof shall be collected from the offender.

48. Property allocated for use in the financing of terrorist acts, terrorism or terrorist organisations – The provisions of the Criminal Code as outlined above apply (Art 38 of the Criminal Code).

#### **Criterion 4.2**

49. **4.2(a)** – Article 131 of the Criminal Code allows a public prosecutors or public prosecuting affairs official, judicial police officer, or judicial policeman police to search a dwelling without a search warrant under certain circumstances (to arrest or pursue accused persons or suspects, or under reasonable belief a person is inside committing an offence). This may also be done if there is probable cause to believe the circumstances are ‘exigent’ and there are sufficient facts to justify an apprehension that evidence may be destroyed, forged, altered or concealed within 24 hours unless the search is conducted immediately. The owner, holder or custodian of the items to be seized shall bring forward or deliver the items as ordered. Chinese Taipei state that LEAs use this provision allows LEAs to compel production of documents without a court order.

50. **4.2(b)** – Article 13 of the MLCA allows a prosecutor to request a court order to prohibit the withdrawal, transfer, payment, delivery and assignment or to make other necessary disposition of property for not more than six months. If the situation is urgent the prosecutor may stop transactions if required to ensure the integrity of the confiscated property or evidence. However a court order is required to be applied for within three days of such action failing which the freeze comes to a halt. The Court then may consider whether to issue a court order to continue the prohibition on the withdrawal, transfer, payment, delivery and assignment of such property. However, such orders can only be extended once for six months so their maximum period is 12 months. Whilst it is not expressed in the legislation that such orders may be made *ex parte*, authorities advise in practice that orders are applied for on an *ex parte* basis.

51. The CPC carves provides three exceptions for seizure without a judicial order. CPC Article 133 states that a thing which can be used as evidence or subject to confiscation may be seized. The term “thing” has not been defined. However in Chinese language the term takes on a very wide definition that would encompass all forms of property. In addition, Article 133-1 and 133-2 allow seizure without a court order by a prosecutor, prosecuting investigator, judicial police officer or judicial police under consent or exigent circumstances. However, the seizure shall be reported to the court within three days of execution if implemented by a prosecutor and shall be reported to the prosecutor and the court within three days of execution if implemented by a prosecuting investigator, judicial police officer, or judicial police. Seizure orders may prohibit collection from debtors or other sanctions and to prohibit the action of paying off for the accused or third party.

52. **4.2 (c)** - there are no express provisions allowing authorities to take steps to prevent or void actions that prejudice the Chinese Taipei's ability to freeze or seize or recover property that is subject to confiscation.

53. **4.2 (d)** - Chinese Taipei LEAs have a wide range of investigative powers under the CPC as outlined above and in R31 below. In particular, Art 122 of the CPC allows a search of a person, property, electronic record, dwelling or other premises of an accused or suspect where there is probable cause to believe that the property or electronic record subject to seizure is there.

54. **Criterion 4.3** - The Criminal Code prohibits confiscation of proceeds of crime obtained by *bona fide* third parties. Article 38-1 further confirms that proceeds of crime obtained by natural, legal or unincorporated bodies other than the offender are only confiscated when (a) knowingly obtained (b) they have obtained the proceeds for free or at a cost that is not reciprocal or (c) the party benefitted from the illegal act. Articles 455-12-29 of the CPC appear to provide protection of a bona fide third party. For instance, Article 455-12 allows a third party whose property is subject to confiscation to apply to the court for participation in the confiscation proceeding. Article 455-13 requires the prosecutors to give direct notice to a third party or include such intention into an indictment if a third party's property will be confiscated, depending on the timing of the public prosecution. Finally, even if a third party failed to participate in the confiscation proceeding due to his/her own cause and the third party's property has been ordered to be confiscated, the third party is still given the right to file a motion to vacate the confiscation judgment provided that such motion is filed within 30 days after the third party learned of the confiscation judgment (Article 455-29).

55. **Criterion 4.4** - The Criminal Code provides for circumstances where an asset is confiscated, ownership and rights in the property are transferred to the government on finalisation of confiscation. Once assets are seized, appropriate measures shall be taken to protect property against loss or damage (CPC Article 140). A person may be ordered to guard seized property which is inconvenient to transport or preserve or the owner or other person may be ordered to preserve it. Seized property may be sold at auction if it is determined that seized property will be damaged or if it is inconvenient to preserve it (i.e. if its storage costs are deemed expensive or it will be difficult to store). Seized property may be returned to the owner, possessor or custodian if they ask for return of it and undertake to preserve it (CPC Article 141-142). The Guidelines for prosecuting authorities to pursue proceeds from crime provides further advice on asset management.

56. According to Articles 4 and 12 of the "Notices for Prosecuting Authorities in Appraising Items Seized in Criminal Investigation", the prosecutor shall organize auctions in writing and deliver notices to the defendant or the nominal owner of the seized assets. The prosecutor shall also notify the defendant or stakeholders five days before the implementation of the auction or sell-off.

### *Weighting and Conclusion*

57. Chinese Taipei has comprehensive provisions for the seizure and confiscation of proceeds of crime. There are no express provisions allowing for transactions to be voided, property is not defined in the legislation and it is not expressed that applications to seize be made *ex parte*. There is a small scope gap in the application of R.4 to offences of smuggling of migrants. However, the legislative gaps in relation to the definition of property, and *ex parte* nature of seizure orders have been shown to operate in practice. **Recommendation 4 is rated largely compliant.**

### *Recommendation 5 - Terrorist financing offence*

58. In its 2007 MER Chinese Taipei was rated NC for the former SR II as at the time of the MER, TF had not been criminalized.

59. **Criterion 5.1 and 5.2** -Article 8 of the CTF Act notes that if a person “directly or indirectly” collects or provides property or property interests for another person in the knowledge that the other person prepares for specific plans or activities to commit any of the following offenses for the purposes of causing death or serious bodily injury to unspecified persons to intimidate the public or pressure the government, a foreign government, a foreign institution or an international organization they shall be subject to punishment for not less than one year but no more than seven years and a fine of up to NTD10 million. Further, Article 9 criminalises the financing of the following individuals (or groups)

- a. terrorists (individuals or entities designated under UNSCR 1267 or 1373); or
- b. a terrorist group that is formed with the purpose to commit any of the specified crimes in Article 8; or
- c. an individual, legal person or entity with a plan to intimidate the public or pressure the government, a foreign government, an institution or an international organization by way of committing crimes specified in Article 8; or

60. It is prohibited to directly or indirectly provide financing of property or property interests to an individual, legal person or entity as described above in the knowledge that such financing is provided for *terrorist training expenses*.

61. It is not necessary to prove that property or property interests were provided to carry out any specific terrorist acts. Attempts to commit the above are punishable.

62. There are some shortfalls in the TF offence under Art 8 of the CFT Act, specifically; (a) Art 8 does not criminalise self-financing of terrorism however self-financing may in part be covered by the ancillary offence of “preparing for” which is criminalized in relation to some criminal offences in Chinese Taipei such as murder (b) Art 8 has in effect combined Art 2(1)(a) and 2(1)(b) of the TF convention. In this regard, for a prosecution of TF to succeed, the prosecution must prove intent/knowledge on behalf of both the financier (“*in the knowledge*”) and the terrorist actor (“*to intimidate the public or pressure the government, a foreign government or another institution*”). Whilst not strictly in line with the TF convention, this is assessed to not be a shortfall under R5. Further analysis of the distinction between pure criminal offences and terrorism offences are discussed in IO9 and give credence to the fact that Chinese Taipei distinguishes between offences that are committed for terrorist vs other purposes.

63. As noted above, the text of Art 8 does not specifically set out Art 2(1)(b) of the convention (any other act intended to cause serious bodily injury or death) as the TF offence in Art 8 only relates to the offences listed. However the team notes that the scope of that gap may be minimal.

64. **Criterion 5.2bis** - Article 9 of the CTFA stipulates that a person who directly or indirectly provides, or attempts to provide, financing of property or property interests in the knowledge that such financing is provided for terrorist training expenses shall be punished. Art 9(1)(3) also provides an offence of financing a person who is conducting or planning to commit an offence specified in Art 8 by intimidating or pressuring the government or a foreign government, institution or international organization. This provision covers the gap in the above provision that only criminalises financing for training purposes.

65. **Criterion 5.3** Chinese Taipei adopts the term ‘property’ however it is not defined in relevant legislative provisions. Authorities, including lawyers from within the MOJ confirm that the term property is a general term and includes all personal property, real estate, cash, deposits, foreign currency, securities, claims or other property rights and other interests of economic value. The source of the property or property interests in the CTFA is not stipulated as either legal or illegal and the definition therefore covers all forms of property. The Judicial Yuan confirm that the term property is all encompassing and that the Court would interpret it widely.

66. **Criterion 5.4** - Article 9 stipulates that it is not necessary to prove that property or property interest were provided to carry out any specific terrorist acts. It does not specify that it is not necessary to prove the property was provided to *attempt* a terrorist act.

67. **Criterion 5.5** - the intent and knowledge required to prove the offence can be inferred from objective factual circumstances (see also criterion 3.8). This is because terrorist financing under Articles 8 and 9 are criminal offences and thus the Criminal Code also applies (Art 11 of the Criminal Code). Art 13 of the Criminal Code provides for the definition of criminal intent and established Supreme Court judgments confirm that objective circumstances can be taken into account when deciding on intent.

68. **Criterion 5.6** - An individual in violation of Article 8 of the CTF Act shall be sentenced to imprisonment of not less than one year but not more than seven years and a fine of not more than NTD 10 million (approx. USD 300,000); an individual in violation of Article 9 shall be sentenced to imprisonment of not less than one year but not more than five years and a fine of not more than NTD 5 million (approx. USD 160,000). A Chinese Taipei local may be punished for TF committed outside the jurisdiction. Reflecting the complexities in investigating and prosecuting TF, the CFTA provides for three levels of sentence reduction for offenders who confess their crimes, namely within 6 months of the act, after 6 months of the act, or during investigations or trial.

69. The CTFA provides for reduced sanctions in the event that the offender voluntarily surrenders within six months of committing the crime or reduced if they shall surrender after that time. Attempts to commit TF are expressly punishable in the CTF Act in which case Article 25(2) of the Criminal Code applies. That article notes that the punishment of an attempt may be reduced from that of an accomplished offence. In practice, the severity of the sentence is determined by the trial judge on a case by case basis taking into account all relevant matters.

70. In comparison to other jurisdictions, the period of imprisonment of 7 years (Art 8) and 5 years (Art 9) is at the lower end of the scale. However, the sentence for these offences is commensurate with other serious offences in Chinese Taipei, such as human trafficking, kidnapping for ransom and hijacking of an aircraft, participation in an organized crime group and tax evasion.

71. **Criterion 5.7** - Under Article 11 of the CTF Act, a legal person is held severally liable, apart from a natural person, for any offence set out in Article 8 or Article 9 of the CTFA. The fines applicable to legal persons range from NTD 5 million to NTD 10 million. In addition, civil liability does not preclude criminal liability of a legal person.

72. **Criterion 5.8** - An attempt to commit the TF offence is criminalised (Article 8 and Article 9 of the Counter Terrorism Financing Act). Participating as an accomplice in a TF offence or an attempted offence is criminalised under Article 28 of the Criminal Code which states that "Each of the two or more persons acting jointly in the commission of an offense is a principal offender". Anyone who organises or directs others to commit a TF offence or attempted offence, or contributes to the commission of one or more TF offences or attempted offence by a group of person acting with a common purpose is prosecuted (Supreme Court Civil Judgment No. 6924 of 2009; Articles 29 and 30 of the Criminal Code and the Supreme Court's Judgement No. 2822 of 2005). It is not evident that ancillary offences can be prosecuted for attempts as well as an established offence.

73. **Criterion 5.9** -TF offences are predicate offences for ML (Article 3 of the MLCA).

74. **Criterion 5.10** - Article 4 of the Criminal Code indicates where either the conduct or the result of an offense takes place within Chinese Taipei, the offense shall be considered as committed within Chinese Taipei. This would enable authorities to prosecute TF that was committed in Chinese Taipei, regardless of where the terrorist act is intended to occur.

*Weighting and Conclusion*

75. There are some minor gaps with the TF offence, it is not evident that self-financing is criminalised although such conduct may be prosecuted under an ancillary offences. Art 2(1)(b) of the TF convention (“any other act to intimidate or pressure a government”) is also not present as all offences are linked to listed terrorist offences. The term “property” is not defined in any laws or regulations although the team accepts that the term is construed widely by the courts. **Recommendation 5 is rated largely compliant.**

***Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing***

76. In its 2007 MER Chinese Taipei was rated NC for the former SRIII as there were no effective laws and procedures to freeze terrorist funds or other assets of entities designated by the UN1267 Committee or to freeze terrorist assets of persons designated in the context of UNSCR 1373.

***Criterion 6.1 -***

77. **6.1 (a)** - The MOJ is the competent authority in Chinese Taipei responsible for considering designations and related affairs (Art 2 of the CTF Act). In the event that Chinese Taipei identified a potential designation or assisted another jurisdiction to prepare a submission to the UN, the MOJ is identified as the competent authority. However, as Chinese Taipei is not a member of the UN there are impediments to it directly proposing entities and individuals for designation by the UN.

78. **6.1(b-e)** - Due to this unique position, Chinese Taipei has not expressly taken decisions reflecting the requirements set out in Rec 6.1 (b - e) in the CTF Act. Nevertheless, in theory the competent authority has been identified as the MOJ and there would be no barriers to following UN procedures.

***Criterion 6.2***

79. **6.2 (a)** - Chinese Taipei has legislated to issue designations pursuant to UNSCR 1373 through the CTFA. Ministry of Justice is the competent authority in Chinese Taipei responsible for considering designations and related affairs (Art 2 of the CTF Act). The TF Review Committee (TFRC) is established by Article 3 of the CTFA to review any proposal of listing or delisting individuals or legal persons or entities who meet the criteria of designation, whether within or outside Chinese Taipei. The TFRC may consider designations proposed by other jurisdictions (Art 4).

80. **6.2(b)** - Art 5 provides a mechanism to identify targets based on reports from the Investigation Bureau or under its own authority, the competent authority may seek listings based on the specified criteria. LEAs and the NSB have a number of operational mechanisms that may be used to identify targets. Article 5 confirms that the competent authority may act “under its own authority”.

81. **6.2(c)** - The TF Review Committee (TFRC) is established by Article 3 of the CTFA to review any proposal of listing or delisting individuals or legal persons or entities who meet the criteria of designation, whether within or outside Chinese Taipei. The TFRC may consider designations proposed by other jurisdictions (Art 4). The mechanisms and procedures support this being done promptly

82. **6.2(d)** - There is no evidentiary basis set out in the CTF Act. Article 4 of the CTF Act sets out the grounds upon which a person or entity may be listed on the sanction list. In particular, it specifies (a) an individual, legal person or entity suspected of committing a crime specified in Article 8, Paragraph 1, hereof with unspecified persons for the purpose of intimidating the public or coerce a government, a foreign government or institution, or an international organization.

There are no further details provided in relation to what constitutes “suspected of a crime” or an evidentiary standard.

83. However, as the decision to designate is an administrative decision of government, and authorities confirm that the Administrative Procedure Act applies in such cases. It provides that,

"in rendering an administrative disposition or carrying out other administrative acts, an administrative authority shall make a judgment of the truthfulness of the facts based on logical reasoning and the empirical doctrine after taking into consideration the statements presented and the conclusion reached upon the facts found and the evidence obtained, and shall then give the party a notice of its decision and reasons therefore."

Authorities indicate that the element of “logical reasoning” is paramount to having reasonable grounds.

84. When receiving such requests, based on the report from the MJIB or under the competent authority’s own authority, the competent authority must obtain approval from TFRC before including such individual, legal person and entity on the Sanction List. There is no requirement that designations are conditional upon the existence of criminal proceedings.

85. **6.2(e)**- When requesting another jurisdiction to give effect to the actions initiated under the freezing mechanisms, authorities confirm that there would be no barrier to provide as much identifying information, and specific information supporting the designation. Chinese Taipei information.

86. **Criterion 6.3** - Criminal justice mechanisms and investigation powers are available to carry out investigations or operate *ex parte* against a person being considered for designation. The MOJ is the competent authority and the MJIB (including the FIU) is, in practice, responsible for carrying out investigations pursuant to possible designations under the CTF Act. The MJIB has wide investigation powers and the MJIB Operation Regulation on Matters Relevant to AML and CFT confirms the scope of the MJIB to carry out investigations relating to matters under the CTF Act. The CPC confirms that criminal investigations shall not be disclosed to the public.

87. **Criterion 6.4** - The implementation of relevant provisions in the CTF Act ensures that designations made by the UN are able to take effect in Chinese Taipei within 24 hours of UN designation. The MJIB reports new UN designations to the MOJ for review in accordance with CTF Act Articles 4 and 5. The MOJ will then conduct a review of that designation and publish it formally rendering the designation effective in Chinese Taipei. For UNSCR 1373 designations, these are pronounced immediately upon the decision being made by the TFRC upon consideration of relevant evidence. If a request is made from another jurisdiction to give effect to a foreign designation, a meeting of the TFRC is convened, and the designation announced should the evidence reach the required threshold.

**Criterion 6.5**

88. **6.5(a)** -The CTF Act implements the TFS freezing obligation by establishing enforceable prohibitions on dealing with property of designated persons or entities. Article 7 of the CTF Act prohibits the following activities with respect to individuals, legal persons, or entities named on the sanction list (i.e. 1267 and 1373 lists):

7(1)(1) Making withdrawals, remittance, transfers, payment, deliveries or assignments related to the financial accounts, currency or other payment instrument of the designated individual, legal person and entity.

7(1)(2) Making transfers, changes, dispositions, use of, or taking any other measures which may change the quantity, quality, value or location of property or interests of the designated individual, legal person and entity.

7(1)(3) Collecting or providing any property or any property interests for the designated individual, legal person and entity.



89. Article 12 of the CTF Act includes an enforcement provisions for any FI or DNFBP that breach the prohibitions on dealing with property (*de facto* freezing provisions) at Article 7 (competent authorities may levy administrative fines ranging from NDT 20,000 to 1,000,000 (approx. USD 600 – 32,000) to enforce the prohibition). Article 9 of the same act includes a criminal penalty for all persons (natural and legal) who collect or provide any property or property interests for designated persons or entities. Chinese Taipei authorities argue that under their law the conduct outlined in 7(1)(1-2) is a subset of ‘collecting and providing any property or property interest’ and the wider enforcement provision would apply beyond FIs and DNFBPs. This interpretation is not clearly established.

90. There is no definition of property in the CTF Act or in most legislation related to any aspect of AML/CFT. Chinese Taipei authorities indicate that the courts interpret these terms very broadly and have, in other contexts, demonstrated freezing and confiscation of the widest range of property under provisions with the same terminology. In this regard, the above prohibitions cover most forms of funds and assets but it is not sufficiently clear that it covers the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities.

91. Chinese Taipei confirms that as notification is not required under the CTF Act, then the measures can be taken without notice. Sectoral regulators have issued guidelines to their respective entities outlining further information and obligations under Article 7.

92. **6.5(b)** –

(i) The CTF Act applies the freezing obligation to all funds or other assets that are owned or controlled by the designated person or entity, and not just those that can be tied to a particular terrorist act, plot or threat.

(ii) The obligation applies to assets wholly or jointly owned or controlled, directly or indirectly, but not clearly to property derived from such property of designated persons.

(iii) The obligation applies to the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities.

(iv) The freezing obligations do not apply to all funds or other assets of persons and entities acting on behalf of or at the direction of designated persons and entities, except when those funds are property or property interests of the designated person or entity.

93. **6.5 (c)** - Article 9 includes an enforceable prohibition on natural and legal persons who directly or indirectly collect or provide any property or property interests for another person in the knowledge that the other person is a designated person or entity. There is no clear prohibition on providing economic resources, financial or other related services to entities or persons controlled by or working at the direction of a designated person or entity.

94. **6.5(d)** – Chinese Taipei has a number of mechanisms for communicating designations and changes in designations (including de-listings) to FI and DNFBPs. Designations are published on the website as soon as they are made and FIs are informed via email. The FSC has issued Regulations Governing the Reporting of Properties and Property Interests of Sanctioned Parties by FIs’ providing guidance to FIs and similar regulations have been issued by other sectoral regulators.

95. **6.5 (e)** - Art. 7 of the CTF Act requires FIs and DNFBPs to immediately report any of the following circumstances discovered under its authority to the MJIB:

- a. That such institution holds or manages the property or property interests of a designated individual, legal person or entity.
- b. Places where the property or property interests of a designated individual, legal person or entity are located.

96. Regulations were issued to FIs on 14 November setting out obligations for internal controls on reporting freezing actions. That regulation allows FIs two days to file a report to MJIB, except in ‘obviously significant and urgent cases’ in which a report should be made as soon as possible. The obligation on FIs and DNFBPs to report attempted transactions related to TFS, but STR reporting obligations would capture most instances of an attempted transaction with a designated terrorist. Foreign exchange counters are not covered by the obligation on FIs to report cases of asset freezing, but would be required to report a TF related STR, including attempted transactions and a frozen transaction related to a designated terrorist.

97. **6.5 (f)** - There are protections in the criminal code (articles 21 & 22) for 3<sup>rd</sup> parties who freeze funds in good faith when they do so under article 7. It is not clear whether FIs or DNFBPs who receive payments into account from designated persons and entities are protected as Art 9 criminalizes the “collection” of funds.

**Criterion 6.6**

98. **6.6 (a)** - Chinese Taipei is not a member of the UN and is unable to submit de-listing requests to the relevant committee. Art 5 of the CTF Act confirms that individuals who are designated by the UN shall only be delisted according to the de-listing procedures of the UNSC.

99. **6.6(b)** - Provisions regarding de-listing under 1373 are found in Art. 6 of the CTF Act which confirms that the TF review committee shall de-list individuals, legal persons or entities designated pursuant to Art 4. The procedures for de-listing are contained in the Regulations Governing Operation of TF Review Committee, Sanction Exceptions and Restrictions.

100. **6.6 (c)** - Art 13 of the CTF Act confirms that parties who disagree with their listing may seek administrative remedy however it is not clear what such remedies are.

101. **6.6 (d)** Chinese Taipei is not a members of the UN and is unable to seek review from the 1988 Committee.

102. **6.6 (e)** - there are no procedures informing designated persons and entities of the availability of UN Office of the Ombudsperson to accept de-listing petitions from them, however Art 5 confirms that people listed by the UN may only be de-listed by the procedures of the UNSC.

103. **6.6 (f)** - there are no publicly known procedures to support unfreezing of funds for persons who are inadvertently affected by the process (i.e. a false positive). As the TFS are based on a *de facto* freeze (a prohibition on FIs/DNFBPs dealing with assets), however there is not procedure or guide for FIs/ DNFBPs to be assisted in the verification of false positives. Authorities indicate that in practice, as the designation is an administrative penalty, an appeal may be able to be raised under the Administrative Appeal Act. However, it is not clear how this practice would allow someone who was not actually designated to appeal against the decision to designate and the respective power of any administrative authority to provide relief when it is not altering any decision of government.

104. **6.6 (g)** - In practice, de-listings are announced on the MOJ website and FIs and DNFBPs may subscribe to the list and therefore receive updates as they occur. Chinese Taipei has issued Q & As for industry to guide them in this process.

105. **Criterion 6.7** - Article 6(1) of the CTF Act provides that the competent authority may permit access to funds:

6(1)(1) Exempting property or property interests necessary for maintaining the family life of a designated individual or dependents;

6(1)(2) Making reservations for expenses necessary for the management of property or property interests by a designated individual, legal person or entity;

6(1)(3) Permitting any payment made by a designated individual, legal person or entity to a *bona fide* third-party creditor, whose right is given before the sanctions were implemented.

106. Article 6(2) provides that competent authority may set restrictions and issue regulations as to how the exempted or reserved property or property rights shall be used by the individual, legal person or entity. MOJ has issued restrictions and publicly available procedures under these provisions in relation to PF-related TFS. The controls on access to funds for extraordinary expenses does not explicitly cover the elements requiring UNSC permission as considered in UNSCR 1452, however this requirement is not applicable, given Chinese Taipei's status with the UN.

### *Weighting and Conclusion*

107. Chinese Taipei has taken steps to legislate and implement many aspects of TFS. The scope of the freezing obligation is not clear in relation to funds and assets derived or generated from those assets owned or controlled by designated persons or entities. TFS do not extend to all assets held by persons acting on behalf of or at the direction of designated persons or entities. It is not clear that the freezing obligation is enforceable to all natural and legal persons in Chinese Taipei. There are no procedures for dealing with false positives and FIs and DNFBPs are only required to report attempted transactions in the context of TF-related STRs. **Recommendation 6 is rated largely compliant.**

### *Recommendation 7 – Targeted Financial sanctions related to proliferation*

108. TFS relating to the proliferation of WMD is a new Recommendation added in 2012.

109. **Criterion 7.1** - As with Rec 6, Chinese Taipei implements TFS relating to the prevention and suppression of WMD proliferation via the CTF Act. MOJ is the competent authority for TFS. MOJ forms a TF review committee to review listing proposals, delisting requests etc. Art 5(2) provides that the competent authority shall include all individuals, legal persons or entities designated by the relevant UNSCR and successor resolutions on the prevention of proliferation of WMD on the Sanction List.

110. The implementation of relevant provisions in the CTF Act ensures that designations made by the UN are able to take effect in Chinese Taipei within 24 hours of designation. The MJIB reports the designation to the MOJ for review in accordance with Articles 4 and 5. The MOJ will then conduct a review of that designation and publish it formally rendering the designation effective in Chinese Taipei.

#### **Criterion 7.2**

111. **7.2 (a)** - The CTF Act implements the TFS freezing obligation by prohibiting dealing with property of designated persons or entities. Article 7 of the CTF Act prohibits the following activities with respect to individuals, legal persons, or entities named on the sanction list (i.e. the UN and domestic lists related to WMD proliferation):

7(1)(1) Making withdrawals, remittance, transfers, payment, deliveries or assignments related to the financial accounts, currency or other payment instrument of the designated individual, legal person and entity.

7(1)(2) Making transfers, changes, dispositions, use of, or taking any other measures which may change the quantity, quality, value or location of property or interests of the designated individual, legal person and entity.

7(1)(3) Collecting or providing any property or any property interests for the designated individual, legal person and entity.

112. Article 12 of the CTF Act includes an enforcement provisions for FI and DNFBP that breach the prohibitions on dealing with property (*de facto* freezing provisions) at Article 7 (competent authorities may levy administrative fines ranging from NDT 20,000 to 1,000,000 (approx. USD 600 – 32,000) to enforce the prohibition). Article 9 of the same act includes a

criminal penalty for all persons (natural and legal) who collect or provide any property or property interests for designated persons or entities. Chinese Taipei authorities argue that under their law the conduct outlined in 7(1)(1-2) is a subset of 'collecting and providing' and the wider enforcement provision would apply beyond FIs and DNFBPs. This interpretation is not clearly established.

113. There is no definition of property in the CTF Act or in most legislation related to any aspect of AML/CFT. Chinese Taipei authorities indicate that the courts interpret these terms very broadly and have, in other contexts, demonstrated freezing and confiscation of the widest range of property under provisions with the same terminology. In this regard, the above prohibitions cover most forms of funds and assets but it is not sufficiently clear that it covers the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities.

114. Chinese Taipei confirms that as notification is not required under the CTF Act, then the measures can be taken without notice. Sectoral regulators have issued guidelines to their respective entities outlining further information and obligations under Article 7.

115. Article 9 penalises a person who directly or indirectly collects or provides any property or property interests for another person in the knowledge that the other person is a designated person or entity. The penalty is not less than six months and not more than five years imprisonment and a fine up to NTD five million (approx. USD 160,000).

116. **7.2 (b)**

117. **7.2 (b)(i)** The CTF Act applies the freezing obligation to all funds or other assets that are owned or controlled by the designated person or entity, and not just those that can be tied to a particular act, plot or threat of proliferation.

118. **7.2 (b) (ii)** The obligation applies to assets wholly or jointly owned or controlled, directly or indirectly, but not clearly to property derived from such property of designated persons.

119. **7.2 (b) (iii)** The obligation applies to the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities.

120. **7.2 (b) (iv)** The freezing obligations do not apply to all funds or other assets of persons and entities acting on behalf of or at the direction of designated persons and entities, except when those funds are property or property interests of the designated person or entity.

121. **7.2(c)** - There is a clear prohibition on property and property interest, which appears to cover economic resources, to designated entities or persons at article 9 of the CTF Act. However this does not clearly extend to person controlled by or working at the direction of a designated person or entity.

122. **7.2(d)** - Mechanisms for communicating designations to FI and DNFBPs include publication on the AMLD website as soon as they are made and FIs are informed via email. The FSC has issued Regulations Governing the Reporting of Properties and Property Interests of Sanctioned Parties by FIs' providing guidance to FIs and similar regulations have been issued by other sectoral regulators.

123. **7.2(e)** - Art. 7 of the CTF Act requires FIs and DNFBPs to immediately report any of the following circumstances discovered under its authority to the MJIB:

- That such institution holds or manages the property or property interests of a designated individual, legal person or entity.
- Places where the property or property interests of a designated individual, legal person or entity locate.

124. It is not clear whether FIs and DNFBPs are required to report attempted transactions to provide funds or other assets to designated persons or entities.

125. **7.2 (f)**—There are protections in the criminal code (articles 21 & 22) for 3<sup>rd</sup> parties who freeze funds in good faith when they do so under article 7. It is not clear whether FIs or DNFBPs who receive payments into account from designated persons and entities are protected as Art 7 criminalizes the “collection” of funds.

126. **Criterion 7.3** -FSC and other supervisory authorities adopt measures for monitoring and supervising compliance with TFS obligations and conducting outreach. Supervision of WMD-related TFS has commenced for both FIs and DNFBPs. Section 12 of the CTF Act provides administrative penalties for failures to freeze assets and/or to report cases of freezing to the MJIB. The available administrative fines for failing to freeze assets range from NTD20,000 up to NTD1 million (approx. US\$600-32,000). Criminal sanctions for providing funds to designated persons and entities extend to five year and \$160,000, which is proportionate and dissuasive. Sectoral regulators are responsible for enforcing compliance.

#### **Criterion 7.4**

127. **7.4(a)** - Chinese Taipei is not a member of the UN and is not able to submit de-listing requests to the relevant committee. However, Art 5 of the CTF Act confirms that individuals who are designated by the UN shall only be delisted according to the de-listing procedures of the UN Security Council.

128. **7.4(b)** - There are no procedures or guides for FIs/ DNFBPs to be assisted in the verification of possible ‘false positives’ for unfreezing of funds for persons who are inadvertently affected by the process. The authorities indicate that in practice, the publicly known procedures associated with the Administrative Appeal Act would be available to an inadvertently affected by the freeze, as the TFS designation is an administrative penalty, and a 3<sup>rd</sup> party’s appeal may be raised under the Administrative Appeal Act and file for relief as the inadvertently affected 3<sup>rd</sup> party is not the subject of the administrative penalty.

129. **7.4(c)** - Article 6 CTF Act allows for the following access to funds:

- Exempting property or property interests necessary for maintaining the family life of a designated individual or dependents;
- Making reservations for expenses necessary for the management of property or property interests by a designated individual, legal person or entity;
- Permitting any payment made by a designated individual, legal person or entity to a *bona fide* third-party creditor, whose right is given before the sanctions were implemented.

130. The competent authority may set restrictions as to how the exempted or reserved property or property rights shall be used by the individual, legal person or entity. MOJ has issued restrictions and publicly available procedures under these provisions in relation to PF-related TFS which are in keeping with the standards for basic expenses. The controls on access to funds for extraordinary expenses does not explicitly cover the elements requiring UNSC permission as considered in UNSCR 1452, however this requirement is not applicable, given Chinese Taipei’s status with the UN.

131. **7.4(d)** - Chinese Taipei has a number of mechanisms for communicating designations and changes in designations (including de-listings) to FI and DNFBPs. Designations are published on the website as soon as they are made and FIs are informed via email. The FSC has issued Regulations Governing the Reporting of Properties and Property Interests of Sanctioned Parties by FIs’ providing guidance to FIs and similar regulations have been issued by other sectoral regulators.

#### **Criterion 7.5**

132. **7.5(a)** – There is no coverage of interest or other earnings on account along with payments due under contracts may be added into accounts frozen as long as these payments continue to be subject to a freeze.

133. **7.5(b)** – Article 6(1)(4) provides that payments may be from frozen funds to a *bona fide* third-party creditor for agreements entered into prior to designation. Article 6(2) provides that the MOJ may ‘within the necessary scope’, set restrictions as to how the frozen property or property rights shall be used. Authorities indicate that it would be applied to ensure that the payment due is not related to any prohibited property or activity and that it is not directly or indirectly received by designated persons or entities. However Chinese Taipei has not yet had a circumstance of release of frozen funds to pay a bona fide creditor, so has not yet elaborated the additional restrictions. Given Chinese Taipei’s status, the expected process to submit prior notification of possible release of funds to the Security Council is not applicable.

*Weighting and Conclusion*

134. Chinese Taipei goes beyond Recommendation 7 and includes a basis for domestic designations of person and entities involved in WMD proliferation going beyond those listed at the UN, which is a positive. The scope of the freezing obligation is not clear in relation to funds and assets derived or generated from those assets owned or controlled by designated persons or entities. It does not extend to all assets held by persons acting on behalf of or at the direction of designated persons or entities. It is not clear that the freezing obligation is enforceable to all natural and legal persons in Chinese Taipei. There are no procedures for dealing with false positives. It is not clear whether FIs and DNFBPs are required to report all attempted transactions. **Recommendation 7 is rated largely compliant.**

**Recommendation 8 – Non-profit organisations**

135. In its 2007 MER Chinese Taipei was rated largely compliant with the former SRVII as outreach had not been undertaken to raise awareness of specific vulnerabilities in the sector with respect to TF risk.

136. The following table summarises the types, supervisors of NPOs and concerned legal instruments for governing NPOs in Chinese Taipei.

Types of NPO	Laws/Regulations concerned	Supervisors	Total (2018)
Associations	Civil Associations Act	CCAPO, MOI	51,679
Foundations	The Foundations Act (2018)	SFAA, MOHW, DCA, MOI, DMA, MOE, MOC	6,054

**Criterion 8.1**

137. **Criterion 8.1(a)** – Authorities have undertaken joint agency processes to reasonably identify which subset of organizations fall within the FATF definition of NPO, and used all relevant sources of information to identify the features and types of NPOs which by virtue of their activities or characteristics, are likely to be at risk of TF abuse in Chinese Taipei. The 2018 NRA took this approach and identified (1) civil associations, (2) national religious foundations and (3) social welfare charity foundations as the subset of NPO that may be at risk of TF abuse. The NRA highlighted that elements of TF arise from those NPOs’ contact with foreign institutions and foreign donations, and (2) gaps in competent authorities’ understanding including NPOs’ jurisdiction of origin, legal gaps to support competent authorities to request which jurisdiction they originate from and foreign donor information.

138. **Criterion 8.1(b)** – The NRA took a relatively high level approach to identifying the nature of threats posed by terrorist entities to the NPOs which may be at risk. Competent authorities (LEA, national security and NPO regulators) have shared information to consider and identify the nature of threats posed by terrorist entities to the NPOs which are at risk as well as how terrorist actors may potentially abuse those NPOs.

139. **Criterion 8.1(c)** - Arising from the 2018 NRA and preparation for the 2018 ME process, Chinese Taipei authorities reviewed the adequacy of measures, including laws and regulations and identified initial gaps in understanding and legislation. A number reforms to legal and institutional arrangements and regulatory programmes for higher risk NPO sectors were undertaken, most significantly being an amended Foundations Act which entered into force in August 2018.

140. **Criterion 8.1(d)** - The NRA indicates that the AMLO will update its assessment every three years, with the next NRA scheduled for 2021. NPO regulators and LEAs indicated ongoing processes to monitor and reassess TF risks, including vulnerabilities of particular sub-sectors of NPOs.

### **Criterion 8.2**

**Criterion 8.2(a)** - Chinese Taipei NPO regulatory authorities have articulated clear policies to promote accountability, integrity, and public confidence in the administration and management of NPOs. NPOs in Chinese Taipei are subject to a regime of detailed outreach, regulation and supervision, which includes rules and regulations and auditing requirements. NPOs' administrative controls on fundraising, under the Charity Donations Destined for Social Welfare Funds Implementation Regulations adds to the promotion of transparency and integrity.

141. Both associations and foundations are required to report annually to the authorities. The Regulations on Disposal of the Financial Affairs of Social Associations establishes social associations' financial reporting obligations, while Art 16 of Regulations on Supervision of Interior Business requires foundations to submit to the authorities their budget and business plans, as well as an annual report on the previous year.

142. Additional controls are placed on civil associations which conduct overseas humanitarian aid. They are required to seek approval from their competent authorities—who in turn consult with the Ministry of Foreign Affairs.

143. The MOI has developed accounting system software that has been disseminated to all social welfare organizations to assist them to establish accounting systems that can be audited by authorities.

144. **Criterion 8.2.(b)** - The Executive Yuan has allocated additional resources to support the full range of NPO sector regulators undertake a large number of AML/CFT-related outreach and educational programmes to NPO sectors during 2017 and 2018. This has been supported by the AMLO and other competent authorities to raise and deepen awareness among NPOs as well as the donor community about the potential vulnerabilities of NPOs to TF abuse and TF risks, and the measures that NPOs can take to protect themselves against such abuse. Outreach took place at in-person events, as well as teleconferences in an attempt to reach a wider range of NPOs across Chinese Taipei. NPO Regulators also undertook outreach to a number of NPOs working in foreign jurisdictions.

145. **Criterion 8.2(c)** - Competent authorities have pursued regular communication with NPOs, and provided guidance on best practices to avoid TF abuse. Authorities provided Chinese translations of FATF guidance and other resource documents to NPO stakeholders to assist them to understand their obligations and risks and to support best practice and enhanced risk-based controls.

146. Amendments to the Foundations act in 2018 put in place a number of risk-based controls to requiring Foundations to develop an AML/CFT plan and risk assessment, depending on their operational risk levels.

147. **Criterion 8.2(d)** - Authorities have encouraged NPOs to conduct business through banks and other regulated financial channels and to develop best practice controls when there are challenges with ensuring payments through those channels.

**Criterion 8.3**

148. Competent authorities have taken appropriate measures to promote effective supervision or monitoring in line with identified risk. Since the completion of the NRA in April 2018, authorities responsible for the regulation and supervision of the sub-set of NPOs that are more likely to face TF risks have worked to develop a risk matrix, for determining priority follow-up inspection methods, frequency, education and training. Prior to the publication of the NRA, competent authorities targeted overseas activities and foreign-related funds for monitoring. They also maintained local level controls on collection of charitable funds. Chinese Taipei also conducts risk assessment including identification types of major types of risk abused NPOs on risk project evaluation and countering measures (self-regulated risks management measures and the measures to control AML/CFT risks)

149. The Civil Associations and the Foundation act set out clear obligations requiring registration, maintenance of information on their purpose and objectives and the issuance of at least annual financial statements and information on office holders. Sub-sector regulators apply additional controls in relation to programs, funding, etc. There are close controls on charitable collection, with requirements for local registration and related oversight mechanisms.

**Criterion 8.4**

150. **Criterion 8.4.(a)** – Chinese Taipei authorities demonstrated supervisory activities, including offsite monitoring, onsite supervision and enforcement actions involving those NPOs in the sectors identified as having some TF risks. This extended to requirements for registration, maintaining information on NPOs purpose and objectives, financial activities and controls, programmatic requirements and transparency of charitable collection. A number of supervisors seek risk information from LEAs to guide their regulation and supervision.

151. There is a lack of an explicit legal basis for competent authorities to request a social charity foundation to provide details of the origin jurisdiction and donor details in the case of foreign donors. Some aspects of this gap may be able to be addressed by regulations yet to be issued under article 25 of the Foundations Act.

152. **Criterion 8.4. (b)** – Supervisors of NPOs can potentially impose sanctions for breach of requirements, including revocation of licenses, abolishment of a permit, fines, dissolution and administrative sanctions. However the range of sanctions is not sufficiently proportionate and dissuasive for violations by Civil Associations or persons acting on behalf of these NPOs. Recent amendments to the Foundations Act have ensured a greater of proportionate and dissuasive sanctions are available to relevant regulators. Art 58 of the Civil Association Act enables authorities to apply a graduated range of sanctions for civil associations. These sanctions range from warnings, to stopping whole or part of its business, and at worst referral to the Chinese Taipei courts for disincorporation. However, proportionate and dissuasive fines are not available. Articles 10, 11, 25 and 27 of the Foundation Act (2018) set out a range of administrative sanctions including limits on activities, dissuasive fines and withdrawal of registration.

**Criterion 8.5**

153. **Criterion 8.5(a)** –NPO sector competent authorities, LEAs, the FIU and other authorities have demonstrated regular and effective cooperation, coordination and information sharing. AML/CFT issues in the NPO sector were shared by relevant authorities during the national ML/TF risk assessment meetings, and education and training with NPO sectors. Information is shared on sub-sectoral risks and at-risk NPOs.

154. **Criterion 8.5.(b)** – The MJIB is the agency responsible for investigating financial crimes, including TF. The expertise and capability of the MJIB to conduct financial investigations is well established.

155. **Criterion 8.5.(c)** –MOHW (and SFAA and DAM), MOI (DCA and CCAPO), MOE and MOC can access records on NPOs, including their names, address and key personnel; NPO purpose, annual



financial reports; transaction records; and have the right to review NPOs' activities to ensure they are in line with their stated goals. All such information would be available to LEAs during an investigation of misuse of an NPO.

156. **Criterion 8.5.(d)** – The National Security Bureau (NSB) leads the coordination of TF efforts with MOJ, as the competent authority for TF investigations. There have been a number of cases where authorities have closely considered possible TF or terrorism matters and demonstrated good operational level cooperation. In these cases, national security and LEAs including the FIU, were shown to coordinate well. The central authority in charge of counter-terrorism policy is Office of Homeland Security (OHS) which regularly exchanges information with national security, LEA, and administrative agencies through meetings of Homeland Security Policy Committee of Executive Yuan.

157. **Criterion 8.6** - The MOFA and NPO regulators are responsible for international cooperation on CFT issues, including international requests for information regarding particular NPOs suspected of terrorist financing or involvement in other forms of terrorist support. MJIB is then responsible for coordinating with NPO regulators and other competent authorities.

158. Art 14 of the CTFA establishes that Chinese Taipei may—based on the principle of reciprocity and in order to prevent international TF activities—execute cooperative treaties or other international written agreements to counter TF with foreign governments, foreign institutions and international organisations.

#### *Weighting and Conclusion*

159. While NPO regulators have enforcement powers, the range of sanctions are not sufficiently proportionate and dissuasive for violations by civil associations or persons acting on behalf of these NPOs. **Recommendation 8 is rated largely compliant.**

#### **Recommendation 9 – Financial institution secrecy laws**

160. Chinese Taipei was rated compliant with the former R.4 in its 2007 MER.

##### **Criterion 9.1**

161. Under the MLCA, confidentiality provisions relating to FIs can be set aside in three specific circumstances: (i) STR and CTR reports, (ii) when supervisors order FIs and DNFBPs to provide relevant information, and (iii) when LEAs are suspect criminal conduct (Art 10). Article 11 of the Foreign Exchange Counter Regulation, foreign currency counters are exempted from confidentiality when filing STRs to their designated authority. MJIB staff, including AMLD, are deemed to be judicial police officers pursuant to Article 14 of the Organic Act for Investigation Bureau and are able to access information pursuant to the CPC (art 230) and the Administrative Procedure Act when they suspect an offence has been committed, which allows them to request information from any FI when conducting analysis. Information sharing between competent authorities, both domestically and internationally, is not impeded by confidentiality requirements.

162. While Art 48 (2) of the Banking Act establishes bank secrecy, it allows this to be lifted in circumstances as prescribed by the FSC. These 'other circumstances' include directions and regulations issued by the FSC. Art 18 of the Offshore Banking Act establishes offshore banking branches are under no obligation to disclose any information *unless otherwise required by court order or law*. This also applies to offshore securities and insurance branches. Bank secrecy is lifted in relation to CTRs, STRs FIU analysis (including CDD data obtained from the OBU) and LEA investigations. MLCA lifts the secrecy for sharing with authorities domestically and internationally. AMLD and other authorities are able to share information obtained with the FSC.

163. In relation to information between FIs as required by R.13, R.16 and R.17 needed, Article 48 (2)(a) of the Banking Act, gives banks an exemption from confidentiality obligations in other circumstances as prescribed by the competent authority. Other sectoral legislation has similar

provisions related to the competent authority. With respect to R.13, R.16 and R.17, the information sharing between FIs are required to fulfil their obligations under the Directions Governing Internal Control System of AML/CFT of Banking Business, Electronic Payment Institutions and Electronic Stored Value Card Issuers and the Regulations Governing AML of FIs". Given these Directions and Regulations are issued by the FSC, the competent authority of the Banking Act, the obligations under said Directions and Regulations constitute circumstances prescribed by the competent authority and override the confidentiality obligations under Article 48 of the Banking Act. Article 18 of the Offshore Banking Act indicates that 'Unless otherwise required by court order or law, offshore banking branches are under no obligation to disclose any information to third parties' however art 7 of the Regulations Governing AML of FIs and Art 3 & 5 of Regulations Governing Internal Audit and Internal Control System of AML/CFT of Banking Business and Other FI Designated by the FSC have explicit provisions for the exchange of information in response to R13, R16, and R17. These two regulations are applicable to OBUs as they are subsets of banks regulated under these two regulations. The regulations are duly issued according to the MLCA, so fall within "court order or law" as specified in Article 18 of the Offshore Banking Act.

### *Weighting and Conclusion*

164. **Recommendation 9 is rated compliant.**

### *Recommendation 10 – Customer due diligence*

165. In its 2007 MER Chinese Taipei was rated PC with the former R.5 due to a number of deficiencies including: the threshold for occasional cash transactions that triggered CDD obligations was too high (approx. US\$30,000); FIs were not required to take reasonable measures to check if a customer was acting on behalf of another person and to identify the beneficial owner. There was a gap in the scope of covered FIs (financial leasing). Only the securities sector had explicit requirements to obtain information on the purpose and intended nature of the relationship, no requirement for the securities or insurance sector to perform CDD when the previously obtained customer information was dubious and there was no obligation to verify identity using reliable information for the insurance sector. The CDD treatment of existing customers was not clear.

### *Legal Basis of requirements on FIs & DNFBPs*

166. The MLCA (articles 7, 8 & 10) and CTF Act (article 7) provides that the competent authority shall issue regulations governing additional requirements, procedure and processes to implement various preventive measures. The AML Regulations of FIs, AML Regulations of Agricultural FIs, AML Regulations of Financial Leasing Enterprises, and AML regulations for each of the DNFBP sectors were issued to give effect to these provisions of the MLCA and CTF Act. The Regulations Governing the Establishment and Administration of Foreign Currency Exchange Counters were issued under Article 35 of the Central Bank Act. All such regulations issued by the executive branch are subject to a disallowance process of the Legislative Yuan (under articles 60 and 61 of the Exercise of Legislative Powers Exercise Law), which ensures parliamentary oversight of the executive branch rule-making powers. As such, the relevant regulations are within the FATF's consideration of 'law' for the purposes of R. 10, 11 and 20.

### *FIs covered by CDD obligations*

167. All FIs are included in CDD obligations, albeit with some risk-based exclusions for certain measures (see Rec.1). Art 5 of the MLCA lists certain types of institutions and other FIs designated by the competent authorities in the definition of FIs. The AML regulations of FIs and the AML regulations of Agricultural FIs include explicit reference to these sectors, including the other types of FIs designated by the FSC. There are standalone obligations on leasing companies and foreign exchange counters.

Sectors obliged to undertake CDD
<b>AML regulations of FIs</b>
<ul style="list-style-type: none"> <li>• Banks</li> <li>• Credit cooperatives</li> <li>• Postal office (Chunghwa Post)</li> <li>• Credit card companies</li> <li>• Trust enterprises</li> </ul>
<ul style="list-style-type: none"> <li>• Securities firms</li> <li>• Securities finance enterprises</li> <li>• Securities investment and trust enterprises</li> <li>• Securities investment consulting enterprises</li> <li>• Securities central depository enterprises</li> <li>• Futures commission merchants</li> <li>• Leverage transaction merchants</li> <li>• Future trust enterprises and managed futures enterprises (Art. 5 (18), MLCA)</li> <li>• Insurance companies</li> <li>• Reinsurance companies</li> <li>• Insurance agents - companies and natural persons</li> <li>• Insurance broker - companies and natural persons</li> <li>• Electronic stored value card issuers</li> <li>• Electronic payment institutions</li> </ul>
<b>AML regulations of Agricultural FIs</b>
<ul style="list-style-type: none"> <li>• Credit departments of farmers' associations</li> <li>• Credit departments of fishermen's associations</li> <li>• ABT</li> </ul>
<b>AML Regulations of Financial Leasing Enterprises</b>
<ul style="list-style-type: none"> <li>• financial leasing enterprises</li> </ul>
<b>Regulation on Foreign Exchange Counters</b>
<ul style="list-style-type: none"> <li>• Foreign exchange counters</li> </ul>

*Detailed CDD requirements*

168. **Criterion 10.1** - Art 3(1,1) of the AML Regulations of FIs, the AML Regulations of Agricultural FIs and the AML Regulations of Financial Leasing Enterprises prohibit FIs from accepting anonymous accounts or accounts in fictitious names for establishing or maintaining business relationship. Art 4(1,1) of the AML Regulations of FIs, the AML Regulations of Agricultural FIs prohibit establishing business relationships or carrying out transactions with a customer suspected of opening an account, purchasing insurance or registering a stored value card under an anonymous account, fake name, or using a nominee/shell company.

*When CDD is required*

169. **Criterion 10.2** - Art 3(1,2) of the AML Regulations of FIs requires CDD measures to be undertaken when establishing business relations with a customer, or while carrying out occasional transactions through cards (worth NT\$500k or ~US\$16,300 or EUR14,000) or cross-border wire transfers (worth NT\$30k or ~US\$981), or if there is a suspicion of ML/TF, or if there is doubt about a customer's previously held identification information. Foreign exchange counters are required to apply CDD for each transaction. See Article 3 subparagraph 2, item 2, of both AML regulations of FIs and AML regulations of Agricultural FIs and article 3(2) of AML Regulations on Financial Leasing Institutions and article 10 of Regulation on Foreign Exchange Counters.

*Required CDD measures for all customers*

170. **Criterion 10.3** - FIs are required to undertake CDD to identify and verify customer identities using reliable, independent information (Article 3(4)(1) of AML regulations of FIs, article 3(3)(A) of AML regulations of Agricultural FIs, and article 3(3) of AML Regulations of Leasing Enterprises). Foreign exchange counters are also required to obtain and verify the identity of their customers using original passports or entry and exit permits (with photo) (Article 10 of the Regulation on Foreign Exchange Counters).

171. **Criterion 10.4** - FIs are required to verify persons acting on behalf of a customer is authorised to do so and identify and verify the identity of that person, using reliable and independent information (Article 3(4)(2) of AML Regulations of FIs and the Article 3(3)(B) of AML Regulations of Agricultural FIs, article 3(3)(2) of the AML Regulations of Leasing Enterprises). Under Article 10 of the Foreign Exchange Counter Regulation each transaction must be submitted by the customer 'in person', and as such persons are not able to purport to act on behalf of another person.

172. **Criterion 10.5** - FIs are required to identify and take reasonable measures to verify a customer's beneficial ownership, including the use of reliable information (art. 3(4)(3) of AML regulations of FIs; Art. 3(3)(C) of AML regulations of Agricultural FIs; and art. 3 of the AML Regulations of Leasing Enterprises). The definition of BO, under both mentioned regulations mirrors the standards.

173. Exemptions to identifying BOs may not apply to the circumstances that customers are from or in higher-risk jurisdictions or where there is a suspicion of ML/TF (Article 6, paragraph 1, subparagraph 3 of AML regulations of FIs and Article 6, item 3 of AML regulations of Agricultural FIs). Article 6, paragraph 2 notes that the abovementioned exception shall not apply if: (1) the customers are from or in countries and jurisdictions known to have inadequate AML/CFT regimes, including but not limited to those designated by international organizations on AML/CFT and other countries or regions that forwarded by FSC. However, this rule is not applied to electronic stored value card registration operations.

174. **Criterion 10.6** - FIs are required to understand the purpose and intended nature of a business relationship, and obtain relevant information when undertaking CDD (AML Regulations of FIs article 3(4)(4); article 3(3)(4) of the AML Regulations of Leasing Enterprises). Foreign exchange counters only conduct business with walk in customers and as such are not applicable to this criterion.

175. **Criterion 10.7** - Article 5(1) of the AML Regulations of FIs and equivalent articles in the AML Regulations of Agricultural FIs and the AML Regulations of Leasing Enterprises require FIs to conduct ongoing CDD on existing customers based on materiality and risk, and to perform CDD at appropriate times which take into account previous CDD and adequacy of data obtained. The regulations give examples of appropriate timing of CDD and some triggers for updating CDD. FIs must perform CDD over the course of a business relationship to ensure transactions are consistent with the FI's knowledge of the customer, their business and risk profile including source of funds. FIs must periodically review documents, data and information collected through the CDD process, particularly for higher risk categories of customers, and ensure they are up-to-date and relevant and at least annually.

*Specific CDD measures required for legal persons and legal arrangements*

176. **Criterion 10.8** - Article 3(1)(5) of the AML Regulations of FIs requires FIs to understand the business nature and 3(7)(1) requires the FI to understand the legal person or legal arrangement, its structure or trustees as well as beneficial ownership and control (see also Article 3 subparagraph 6, of AML Regulations of Agricultural FIs and article 3 of the AML Regulations of Leasing Enterprises).

177. **Criterion 10.9** - The requirements to obtain information in order to identify the customers that are legal persons or legal arrangements and verify their identity for FIs are prescribed in Article 3(5) of AML Regulations of FIs and Article 3(4) of AML Regulations of Agricultural FIs and article 3 of the AML Regulations of Leasing Enterprises. The types of information required are in line with the standards, i.e. name, legal form and proof of existence of customer or trust, the charter or similar power documents that regulate and bind the legal person or trust, names of relevant persons having a senior management position in the customer and the address of the register office of the customer, and if different, the address of its principal place of business.

178. **Criterion 10.10** - For legal persons and organizations, FIs have to obtain information to identify the BO of the customer and take reasonable measures to verify identity of such person by determining controlling ownership interest (as in c. 10.10 (a)). A controlling ownership interest refers to owning directly and/or indirectly more than 25% of the legal person's shares or capital.

179. Where there is a doubt of the controlling ownership interest or no natural person exerting control through ownership interests is identified, FIs shall consider the natural person(s), if any, exercising control of the customer through other means (as in c. 10.10 (b)). If FIs still cannot identify natural person(s) acting as BO, they shall identify the natural person who holds the position of senior managing official.

180. The obligations on FIs to take reasonable measures to verify identity by obtaining independent information mirror the standards.

181. **Criterion 10.11** - For customers who are trustees, FIs have to obtain the following information to identify the BO of the trust and take reasonable measures to verify identity of such person: (1) the identity of the settlor(s), the trustee(s), the trust supervisor (per trust laws of Chinese Taipei which is the same as trust protector), the beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, or (2) the identity of person(s) in equivalent or similar position. The regulations did not specify how to identify BO of other types of legal arrangement.

#### *CDD for Beneficiaries of Life Insurance Policies*

182. **Criterion 10.12**- FIs are required to identify and take reasonable measures to verify the beneficiary of a life insurance policy, investment-linked insurance policy or annuity insurance policy applied to insurance enterprise (Article 3(8) of the AML Regulations of FIs).

183. **Criterion 10.13**- FIs should consider a beneficiary as a relevant risk factor in determining whether to apply EDD measures. EDD measures apply if an insurance enterprise determines that a beneficiary who is a legal person or a trustee presents a higher risk (Article 6 of AML Regulations of FIs).

#### *Timing of verification*

184. **Criterion 10.14**- FIs shall verify the identity of customers before establishing a business relationship or conduct occasional transactions with the customer. Unless there are any circumstances listed as follow are met, data used to verify the identity of the customer and BO may be first obtained and verified following the establishment of a business relationship: (1) the ML/TF risks are effectively managed, (2) it is necessary to avoid disrupting normal conduct of business with a customer, (3) under reasonable and feasible conditions, the identity verification procedures for the customer and BO will be completed in an expeditious manner.

185. **Criterion 10.15**- As mentioned above, the ML/TF risks which should be effectively managed include the adoption of risk management procedures concerning the conditions under which a customer may utilize the business relationship prior to verification (Article 3(1)(9) of the AML Regulations of FIs, Article 3 (7) of AML Regulations of Agricultural FIs and article 3 of the AML Regulations of Leasing Enterprises).

*Existing customers*

186. **Criterion 10.16**– FIs are required to apply CDD on existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained (Article 5(1) of the AML Regulations of FIs and equivalent articles in the AML Regulations of Agricultural FIs and article 5 of the AML Regulations of Leasing Enterprises).

*Risk-based approach*

187. **Criterion 10.17**– FIs are required to perform EDD where the ML/TF risks are higher as specified. EDD measures include (1) obtaining the approval of senior management before establishing or entering an new business relationship; (2) taking reasonable measures to understand the sources of wealth and the source of funds of the customer; where the source of funds means the source which generate those funds essentially; (3) conducting enhanced ongoing monitoring of business relationship (see article 6 of the AML Regulation on FIs, article 6 of the AML Regulations of Leasing Enterprises and equivalent articles in the AML Regulations of Agricultural FIs).

188. **Criterion 10.18** - FIs may adopt simplified measures under relatively low risk scenarios and such simplified measures shall be commensurate with the lower risk factors. However, simplified CDD are not allowed in the following circumstances; (1) where the customers are from or in higher-risk countries and jurisdictions; or (2) where there is a suspicion of ML or TF in relation to the customer or the transaction (article 6 of the AML Regulations on FIs, article 6 of the AML Regulations of Leasing Enterprises and equivalent articles in the AML Regulations of Agricultural FIs). FIs are not required to identify and verify BO identity if:

(1) Customers or person having a controlling ownership interest in the customer is government entity (either domestic or foreign), government owned enterprises, Chinese Taipei supervised FIs and foreign FI that is subject to and supervised for AML/CFT requirements that are in line with FATF standards, public company or listed company and its subsidiaries, and employee stock ownership trust or employee saving trust (subparagraph 7 of Article 3, item 3 of AML regulations of FIs and subparagraph 6 of Article 3, C. of AML regulations of Agricultural FIs).

(2) When customer purchase property/accident/health insurance or insurance product that does not require policy value reserve (subparagraph 7 of Article 3, item 4 of AML regulations of FIs and subparagraph 6 of Article 3, D. of AML regulations of Agricultural FIs).

189. While the exemptions seem reasonable in a number of lower risk scenarios, there are concerns with exemptions in relation to beneficial owners of any public companies and of foreign FIs in cases outside of correspondent banking. For example, a Hong Kong, China securities broker may hold an account on behalf of Chinese Taipei-based customers, but not be subject to CDD on those customer accounts.

190. FIs do not have to request the powers that regulated and bind the legal person or arrangement when (1) those customers are included in the exemption to identify and verify the BO identity (2) when customer purchases property insurance, accident insurance, health insurance or an insurance product that does not require policy value reserve. These exemption shall not apply if there is any of the following circumstances: (1) the customers are from or in countries and jurisdictions known to have inadequate AML/CFT regimes, including but not limited to those designated by international organizations on AML/CFT and other countries or regions that forwarded by FSC.

*Failure to satisfactorily complete CDD*

191. **Criterion 10.19** - In the circumstances that FIs are unable to comply with CDD measures specified in Article 4 of AML Regulations of FI and AML Regulations of Agricultural FI, FIs should

decline to establish business relationship or carry out any transaction with the customer. FIs, therefore, should consider filing STR. If it is unable to be completed within a reasonable and feasible time frame, the business relationship must be terminated, in which case the customer shall be notified in advance in cases where an STR is not being filed (article 3(1)(9) of the AML Regulations of FIs; article 3(7) of the AML Regulation of Leasing Enterprises.

192. **Criterion 10.20** - If an FI forms a suspicion of ML or TF and reasonably believes that performing the CDD process will tip-off the customer, it is permitted not to pursue that process and file an STR instead.

### *Weighting and Conclusion*

193. There are minor gaps in relation to exemption on FIs identifying and verifying beneficial ownership in relation to certain types of customers. **Recommendation 10 is rated largely compliant.**

### *Recommendation 11 - Record-keeping*

194. In its 2007 MER, Chinese Taipei was rated partially compliant with the former R.10. FIs were not required to keep transaction records for any non-cash transaction, or cash transactions below NT\$1,000,000; no requirements to keep transaction records that would allow individual transactions to be reconstructed by FIs for evidentiary purposes; retention periods excluded the requirement to keep transaction records for five years following completion of a transaction. International transaction records were not captured, no requirement on FIs to keep account files or business correspondence and retention periods excluded the requirement to keep customer records for five years following termination of an account or business relationship.

195. The Regulations Governing AML of FIs were issued pursuant to MLCA Art 8(3), which is enforceable under articles 9 and 10 of the MLCA. The regulations covering foreign exchange counters are issued under art 35(2) of the Central Bank Act and enforceable via article 9 of the regulation. As discussed at Rec. 10, the regulations are issues pursuant to a parliamentary disallowance process, and are considered within the meaning of 'law' for the purposes of the FATF methodology.

196. **Criterion 11.1** - The primary record keeping obligation is set out in the MLCA. Article 12 of the AML Regulations of FIs and the article 11 of the AML Regulations of Leasing Enterprises and equivalent articles in the AML Regulations of Agricultural FIs requires FIs to keep records on customer transactions in hard copy or electronic form, for at least five years. Art 12 of the Regulations for Foreign Currency Exchange Counters extend parallel obligations to foreign exchange counters, but requires records to be kept for 10 years.

197. **Criterion 11.2** - Art 12(1,1) of the AML Regulations of FIs and the AML Regulations of Leasing Enterprises and equivalent articles in the AML Regulations of Agricultural FIs requires FIs to keep identification information, account records and business correspondence for a period of five years from the date a business relationship is ended, or after date of a transaction. Art 12 of the Foreign Exchange Counters Regulation requires foreign exchange memos (which capture CDD data) and STRs to be held for five years. Foreign exchange counters are not required to maintain analysis undertaken that may form the basis of an STR.

198. **Criterion 11.3** - Art 12(1,3) of the AML Regulations of FIs, article 11(4) of the AML Regulations of Leasing Enterprises and equivalent articles in the AML Regulations of Agricultural FIs requires FIs to maintain transaction records that are sufficient for reconstruction for criminal evidentiary purposes. Foreign exchange counters are required to keep all exchange memos which capture the necessary information to reconstruct transactions, i.e. each customer's name and date of birth, their home country/region, passport number or exit & entry permit number, transaction amount, etc. (Article 10(1) of Foreign Exchange Counters Regulation).

199. **Criterion 11.4** - FIs are required to swiftly furnish transaction and CDD information to authorities when requests are made (Art 12(1,4) of the Regulations Governing AML of FIs, article 11(4) of the AML Regulations of Leasing Enterprises and equivalent articles in the AML Regulations of Agricultural.) Article 4(2) of Regulations Foreign Exchange Counters require that foreign exchange counters shall not conceal or destroy related documents or circumvent, impede or refuse the inspection, which is in addition to the record keeping requirements to ensure that records are able to be swiftly provided.

#### *Weighting and Conclusion*

200. Foreign exchange counters are not required to maintain analysis undertaken that may form the basis of an STR. **Recommendation 11 is largely compliant.**

#### **Recommendation 12 - Politically exposed persons**

201. In the 2007 MER, Chinese Taipei was rated NC with R.6 as there was no legislation or specific guideline that required FIs to have appropriate risk management procedures for PEPs.

202. **Criterion 12.1** - Article 7(3) of MLCA together with Article 10(1) of AML Regulations of FIs, AML Regulations of Leasing Enterprises and Articles 3(1,7,A), 6(1,1) in the AML regulations of Agricultural FIs require FIs to implement risk management systems to determine whether a customer or the BO is a foreign PEP, obtain management approval, establishing the source of funds, and enhance ongoing monitoring. The scope of foreign PEPs is defined in Article 3 of Standards for Determining the Scope of Politically Exposed Persons Entrusted with Prominent Public Function, Their Family Members and Close Associates is in line with the standards (Standards for Determining PEPs).

203. **Criterion 12.2** - Controls on PEPs under Article 7(3) of the MLCA apply equally to domestic PEPs and persons who have been entrusted with a prominent function by an international organisation. The Article 10(1) of the AML Regulations of FIs, the AML Regulations of Leasing Enterprises and equivalent articles in the AML regulations of Agricultural FIs require FIs to determine whether a customer or the BO is a domestic PEP or a person who is or has been entrusted with a prominent function by an international organization. The scope of domestic PEPs and person who is or has been entrusted with a prominent function by an international organization indicated in Article 2 and 4 of the Standards for Determining PEPs. In cases when there is higher risk business relationship with such a person, FIs are required to adopt additional measures (management approval, establishing the source of funds, enhanced ongoing monitoring).

204. **Criterion 12.3** - The relevant measures must be applied to family members and close associates of PEPs, with terms defined in Article 7(3) of MLCA and Article 6 and 7 of Standards for Determining PEPs.

205. **Criterion 12.4** - Article 10, paragraph 3 of AML Regulations of FIs, requires insurance companies and post offices engaging in simple life insurance business to take reasonable measures to determine if the beneficiary of a life insurance policy, investment-linked insurance policy or annuity insurance policy (or their beneficial owner) is a PEP prior to payment of the benefit or cash surrender value. If higher risks are identified, they are required to inform senior management, conduct enhanced scrutiny of the whole business relationship with the policyholder, and consider making STR.

#### *Weighting and Conclusion*

206. **Recommendation 12 is rated compliant.**



### **Recommendation 13 – Correspondent banking**

207. Chinese Taipei was rated largely compliant with the former R.7 in its 2007 MER. Shortcomings related to implementation of new controls over correspondent banking.

208. Only banks, the post office and the ABT are permitted to conduct cross-border correspondent banking transactions. All are subject to the Directions Governing ICS of AML and CFT of Banking Business, Electronic Payment Institutions and Electronic Stored Value Card Issuers, which are enforceable, which applies to all banks including ABT. In practice, the post office does not maintain correspondent relationships. Banks and other FIs do not have other similar relationships to correspondent banking.

#### **Criterion 13.1**

209. The above mentioned enforceable Direction govern controls on correspondent banking in articles 4(1-8) and largely mirrors the wording of the standards.

210. **13.1 (a)** - Art 4(1,1) requires banks to gather sufficient publicly available information to understand a correspondent bank's business and determination of its reputation and quality of management, and whether it has been investigated or subject to AML/CFT regulatory action.

211. **13.1.(b)** - The same Directions require banking businesses to assess whether correspondent bank has adequate and effective AML/CFT controls.

212. **13.1.(c)** - The same Directions require banking businesses to obtain approval from senior management before establishing relationships with a correspondent bank.

213. **13.1.(d)** - The same Directions require banking businesses to document the respective AML/CFT responsibilities of each party. In practice, banks and the supervisor apply and interpret this obligation to document to include ensuring a clear understanding.

#### **Criterion 13.2**

214. **13.2 (a)** - The same Directions require banking businesses to satisfy themselves that the respondent bank has performed CDD on customers with direct access to their accounts.

215. **13.2 (b)** - The same Directions require banking businesses to satisfy themselves that the respondent bank can provide relevant CDD information on customers with direct access to their accounts upon request.

216. **Criterion 13.3** - The same Directions (i) prohibit entering into correspondent relationships with shell banks and (ii) require banks to satisfy themselves that respondents do not permit their accounts to be used by shell banks. The Direction and other regulations do not further define 'shell bank' but questionnaires (which have been the subject of FSC supervision) from Chinese Taipei Banks to identify respondents possible dealing with shell bank adopt the definition included in the FATF glossary.

#### **Weighting and Conclusion**

217. **Recommendation 13 is compliant.**

### **Recommendation 14 – Money or value transfer services**

218. In its 2007 MER, Chinese Taipei was rated LC with the former SR.VI, it was noted that there were no laws or regulations governing MVTS providers that operate outside banking channels, no remittance providers were licensed to operate outside of the banking sector and there was an identified need for structures and strategies to support increased update of remittance through formal channels. Underground banking vulnerabilities remained and need to be continuously assessed.

219. Banks and Electronic Payment Institutions are FSC regulated financial institutions under the MLCA. Global remittance companies (Western Union, MoneyGram, etc.) operate in Chinese Taipei as payment service providers of banks (based on approval of the Ministry of Economic Affairs). The national Postal Office (Chunghwa Post) provides international and domestic remittance through SWIFT (with a cooperative bank) and money orders through the international postal system. Domestic remittances within postal network are done via postal accounts or money orders.

220. **Criterion 14.1** - All natural or legal persons that provide MVTS are required to be licensed or registered. Only banks, the postal service and electronic payment institutions are allowed to provide money or value transfer services in Chinese Taipei. Banks are allowed to provide remittance services under Article 29 of the Banking Act. Electronic payment institutions are allowed to engage in the business of transferring funds between e-payment accounts pursuant to Article 3 and 44 of the Act Governing Electronic Payment Institutions. Chunghwa Post is permitted to provide domestic and international remittance based on the Postal Remittances and Savings Act. Chunghwa Post operates a large networks of post office branches, which, in the case of smaller branches, are often run by existing businesses. Articles 16 of the Regulations Governing Postal Remittances and Savings Operations requires Chunghwa Post to obtain yearly approval from the MOTC and FSC and update MOTC and FSC on their locations and activities.

221. There are clear penalties to operating an MVTS without license or registration, which appear to be proportionate and dissuasive.

222. **Criterion 14.2** - The registration / licensing authority, works with the MJIB and other LEAs to identify persons carrying out MVTS business without registration or license and to take sanctions against them. Chinese Taipei authorities demonstrated that both regulatory agencies and LEAs seek to identify cases on their own and also seek information from FIs remitters on possible case of illegal remittance in the market. Authorities have given some direction to FIs (based on 2006 MJIB Guidelines) to assist with the identified of possible underground remittance. Authorities demonstrated a number of instances where STRs and FIU analysis led to referrals of suspected underground banking to LEAs. In response to NRA findings FSC has sought greater LEA support to target underground banking. For the period 2015- 2018 (August), the police and MJIB uncovered 257 underground remittance cases involving 970 suspects and seized over NTD 237 million (approx. USD 8.5 million) in cash in those case. LEAs recognize that significant threats remain from illegal remittance and continue to target higher risk sectors. STR reporting and disseminations from AMLD to police assist in this work.

223. **Criterion 14.3** - FSC demonstrated that it is responsible for and has undertaken remittance-related monitoring of AML/CFT compliance by banks, electronic payment institutions and Chunghwa Post. This has included offsite and onsite supervision of head office and branches.

224. **Criterion 14.4**- The Chunghwa Post and banks' branch networks are not agents, but rather branches of the principle institutions. Agents for MVTS providers are not permitted in Chinese Taipei. Article 29 of the Banking Act sets out that, unless otherwise provided by law, any person other than a bank shall not handle domestic or foreign remittances. In this sense, there must be explicit provisions stipulated in law to enable a person to engage in MVTS in Chinese Taipei. Since the Electronic Payment Institutions Act does not have explicit provisions to permit an electronic payment institution to use an agent to provide its members' fund transfer services, it is illegal for any person acting as an agent of an electronic payment institution to provide MVTS. The Banking Act does not have explicit provisions to permit a bank to use an agent to provide its remittance services, it is illegal for any person acting as an agent of a bank to provide remittance services. Furthermore, remittances, as one of the core businesses of a bank, are not allowed for outsourcing since they are not specified in the purview of business items under Article 3 of the Regulations Governing Internal Operating Systems and Procedures for the Outsourcing of Financial Institution Operation. Rec. 14 does not apply to a bank when it is permitted to perform

MVTS under its banking license and already subject to full range applicable obligations under the FATF Recommendations.

225. **Criterion 14.5** - The Chunghwa Post and banks' branch networks are not agents, but rather branches of the principle institutions.

#### *Weighting and Conclusion*

226. **Recommendation 14 is rated compliant.**

#### **Recommendation 15 - New technologies**

227. In its 2007 MER, Chinese Taipei was rated largely compliant with the former R.8 although the report noted that banks lacked effective measures to monitor all individual transactions conducted electronically.

228. **Criterion 15.1** - FSC has established a 'regulatory sandbox' for experimentation involving innovative financial technologies, developing technology-based innovative financial products or services, facilitating the development of financial inclusion, and ensuring the protection of innovative experimentation participants and financial consumers. The Financial Technology Development and Innovative Experimentation Act (i.e. Fintech Sandbox Rule) (2018) regulates. Article 25 of the said Act explicitly stipulates that the provisions of the MLCA, CTF Act and related regulations, orders or administrative rules will still apply. Under these arrangements the FSC will identify the ML/TF risks associated with proposed products or activities and assess the adequacy and practicability of the proposed control measures. Furthermore, the FSC will hold a joint review meeting with all related agencies and experts to assess risks.

229. Outside of this 'regulatory sandbox, FSC takes a proactive supervisory approach to identify and assess the ML/TF risks in relation to the development of new business and products and the use of new technologies for both new and pre-existing business and products. FSC has applied this approaches with electronic payment institutions, digital deposit accounts, and on-line insurance applications and other FIs. While the Central Bank does not have a similar approach to foreign exchange counters, the nature of their products and business delivery mechanisms is essentially fixed and has not seen changes in products, practices, delivery mechanisms or technologies.

230. In relation to obligations on FIs, Art 5 of Directions for ICS of AML and CFT of Banking Business, EPI and ESVCI: Banking business, electronic payment institutions and electronic stored value card issuers are required to assess ML/TF risks before launching new products/services or new business practices, and establish relevant risk management measures to mitigate identified risks. Art 4 of ICS for AML and CFT of Securities and Futures Sector: Required to assess ML/TF risks before launching new products/services or new business practices, and establish relevant risk management measures to mitigate identified risks. Art 4 of the Directions Governing ICS of AML and CFT for Insurance Sector: Requires insurance enterprises to assess ML and TF risks prior to launch of new products with policy value reserve or cash value or money-related services or new businesses and establish relevant risk management measures to mitigate identified risks. Art 3(1) of Directions Governing ICS of Credit Departments of Farmers and Fishermen's Associations: Requires credit departments to assess ML or TF risks that may arise in relation to development of new products or services or new business practices and establish relevant risk management measures to mitigate those risks.

#### **Criterion 15.2**

231. **15.2(a)** - The articles referenced above require FIs to identify and assess associated ML and TF risks prior to launching new products/services, or engaging in new business practices.

232. **15.2(b)** - The articles referenced above require FIs to establish risk control measures to reduce risks identified in the assessment of ML/TF of new products and business practices.

*Weighting and Conclusion*

233. **Recommendation 15 is rated compliant.**

**Recommendation 16 - Wire transfers**

234. In its 2007 MER, Chinese Taipei was rated LC with the former SR.VII. There were no clear requirements in relation to AML/CFT controls on wire transfers.

235. **Criterion 16.1** - Art. 7 of Regulations Governing Foreign Exchange Business of Banking Enterprises, only banks, the ABT and Chunghwa Post may apply for approval to engage in outward and inward remittances in foreign currencies. Controls on wire transfers apply to all outgoing wire transfers, regardless of the remittance amount. Directions Governing Banking Enterprises for Operating Foreign Exchange Business ('Directions on FX'), point 4(1)(3)(1), require cross-border ordering FIs to include the required and accurate information of the originator and the required information of the beneficiary with outgoing wire transfer.

236. **Criterion 16.2** - Art 7 of the Regulations Governing Foreign Exchange Business of Banking Enterprises apply equally to individual cross-border wire transfers from a single originator and those that are bundled in a batch file for transmission to beneficiaries. The batch file should contain required and accurate originator information, and full beneficiary information, that is fully traceable within the beneficiary jurisdiction; and the financial institution should be required to include the originator's account number or unique transaction reference number.

237. **Criterion 16.3 and 16.4** - Chinese Taipei does not apply a *de minimis* threshold.

238. **Criterion 16.5** - Banks, the ABT and Chunghwa Post are able to conduct domestic wire transfers, whether in NTD or foreign currency. Credit cooperatives, credit departments of farmers' associations and credit departments of fishermen's associations are able to conduct domestic wire transfers in NTD only. If the wire transfer conducted in foreign currency, the Regulations Governing Foreign Exchange Business of Banking Enterprises apply. In the case of NTD domestic transfers, the Directions on Internal Control of Banking and Agricultural FIs regarding wire transfer require FIs to include information on the originator and the beneficiary accompanying the wire transfer, as indicated for cross-border transfer. Article 8(1 & 2) of the MLCA requires FIs and DNFBPs to maintain all necessary records on transactions, both domestic and international, made due to operating their business or practicing their profession. The transaction records shall be maintained for a period of at least five years after the date of the transaction, unless a longer record-keeping term is required by other laws. The aforementioned provisions are applied to domestic transfer in NTD.

239. **Criterion 16.6** - Apart from requirement mentioned above, FIs may choose to include the account number or a unique transaction reference number which permits the transaction to be traced back to the originator and the beneficiary. In this case, FIs shall make information available within 3 business days of receiving the request either from the beneficiary FI or from appropriate competent authorities i.e. the Central Bank, FSC and COA. However, LEA are able to compel immediate production of such information and FIs shall respond accordingly.

240. **Criterion 16.7** - Banking business and credit department are required to maintain all information on the originator and the beneficiary. Pursuant to Article 8 of MLCA, it requires FIs to maintain all necessary records on transactions, both domestic and international, for a period of at least 5 years after the date of the transaction, unless a longer record keeping term is required by other laws.

241. **Criterion 16.8** - When there are failures to comply with the abovementioned obligations, FIs are not allowed to engage in wire transfer business according to the abovementioned directions.

242. **Criterion 16.9** - Point 4(1)(3)(1) of the Directions on FX requires intermediary FI to retain all the wire transfer originator and beneficiary information accompanying the wire transfer.
243. **Criterion 16.10** - Where technical limitations prevent this with a domestic transfer, intermediary FI needs to keep record for 5 years with all of the information according to point 4(1)(3)(2) of the Directions on FX.
244. **Criterion 16.11** - Point 4(1)(3)(3) of the Directions on FX requires intermediary FI to take reasonable measures to identify cross border wire transfers that lack the required information.
245. **Criterion 16.12** - According to point 4(1)(3)(3) (where point 4(1)(2)(3) mutatis mutandis applies) of the Directions on FX required intermediary FI to have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking originator or beneficiary information, and when to take the appropriate action.
246. **Criterion 16.13** - Point 4(1)(3)(3) of the Directions on FX obliges beneficiary FI to take reasonable measures, including post-event monitoring or real-time monitoring where feasible, to identify wire transfers that lack the required originator or beneficiary information.
247. **Criterion 16.14** - Beneficiary FI of cross-border transfer shall verify the identity or primary registration data of the customer (which is the beneficiary) and ensure that supporting documents comply with the regulations on all cross-border transfers. The beneficiary FI is required to do so regardless of whether the identity of the beneficiary has been previously confirmed (according to point 4 of the Directions on FX). The retention period as same as c.16.7 is also applied.
248. **Criterion 16.15** - For foreign currency transfer (both domestic and cross-border), point 4(1)(2)(3) of the Directions on FX require beneficiary FI to have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking originator or beneficiary information, and when to take the appropriate action.
249. **Criterion 16.16 and 16.17** - Only banks are allowed to provide remittance services, both foreign and NTD currency, under Article 29 of the Banking Act and electronic payment institutions are allowed to engage in the business of transferring funds, in NTD only, between e-payment accounts pursuant to Article 3 and 44 of the Act Governing Electronic Payment Institutions. Both of them need to follow requirements in this recommendation as mention in previous criterions. As outlined in Recommendation 14, there are no other licensed MVTs providers in Chinese Taipei.
250. **Criterion 16.18** - In the context of conducting wire transfers, FIs are obliged to take freezing action and comply with prohibitions from conducting transactions with designated persons and entities under UNSCRs 1267 and 1373, and their successor resolutions, according to Article 7(1), of the CTF Act.

### *Weighting and Conclusion*

251. **Recommendation 16 is compliant.**

### *Recommendation 17 – Reliance on third parties*

252. In its 2007 MER Chinese Taipei was rated compliant with the former R.9.
253. **Criterion 17.1** FIs in Chinese Taipei are permitted to rely on third-parties to perform verification of customers, beneficial ownership and/or a potential business relationship's purpose. Art 7(1) of the AML Regulations of FIs states such FIs bear ultimate responsibility for these CDD measures. It also requires FIs to be able to (a) immediately obtain necessary CDD information, (b) should take adequate steps to satisfy that copies of identification and other relevant documentation for CDD requirements will be made available from the third-party without delay upon request, and (c) shall ensure the third-party is regulated, supervised and monitored, and has

appropriate CDD and record-keeping measures in line with R.10 and 11. Art 7 of the Regulations Governing AFIs requires Agricultural FIs to perform their own CDD, but if permitted by law 'or the Council' then they remain ultimately responsible for CDD measures and must comply with a set of provisions identical to Art 7(1) of the Regulations Governing AML of FIs.

254. **Criterion 17.2** - Art 7(1,4) of the Regulations Governing AML of AFIs requires FIs which rely on third parties to conduct CDD to ensure their respective jurisdictions are subject to AML/CFT regulations consistent with FATF standards. FSC issued an instruction to FIs stipulating what information on jurisdictional risk FIs are permitted to use as a basis for their own assessment of ML/TF jurisdictional risk. The FSC supervision handbook includes a regular check on whether FIs have considered jurisdictional risk as part of their ERA.

255. **Criterion 17.3** - FIs subject to consolidated/group supervision are banks, futures, insurance and securities, but there is no discrete procedure for third parties that are of the same financial group and as such FIs are not permitted to accord a different requirement with respect to third parties relied upon for CDD measures that are part of the same financial group.

#### *Weighting and Conclusion*

256. **Recommendation 17 is rated compliant.**

#### ***Recommendation 18 – Internal controls and foreign branches and subsidiaries***

257. Chinese Taipei was rated largely compliant with former R.22. Insurance and securities sectors were not explicitly required to pay particular attention to their branches and subsidiaries in countries which did not sufficiently apply the FATF Recommendations. There were no formal obligation on FIs relating to managing differences in AML/CFT requirements between home and host regulators.

258. **Criterion 18.1** - Article 6, paragraph 1 of MLCA requires FIs to establish their own policies and procedures against ML which shall include operational and internal control procedures against ML and TF, regular on-the-job training for ML prevention organized or attended by the FI, designation of personnel responsible for coordinating and supervising the implementation of the policies and procedures.

259. There are four regulations issued pursuant to Art.6, para.3 of MLCA which were enforced on 9 November 2018 namely the Regulations Governing internal Audit and Internal control system of AML/CFT of Banking Business and other FIs designated by FSC, Regulations Governing internal Audit and Internal control system of AML/CFT of Financial Leasing Enterprises, Regulations Governing internal Audit and Internal control system of AML/CFT of Securities Business and other FIs designated by FSC, and the Regulations Governing internal Audit and Internal control system of AML/CFT of Insurance companies, Post offices Engaging in Simple Life Insurance Business and other FIs designated by FSC ('Regulations for Internal Controls for Banking, Securities, Insurance and Financial Leasing Companies').

260. There is also a direction issued by COA on internal control system for AML/CFT of credit departments of farmers' and fishermen's associations. Item 9 indicates sanction of any violation of the direction as referred to Art. 33 of the Agricultural Finance Act.

261. The Regulations for Internal Controls for Banking, Securities, Insurance and Financial Leasing Companies (in Art.6 for Banking and Art.4 for other sectors) require that the AML/CFT internal control system of banking, securities and insurance sectors including financial leasing companies shall be approved by the board of directors (council) and the AML/CFT program should establish based on ML/TF risks and business size. The details of AML/CFT program should include (i) an appointment of compliance officer at the management level in charge of AML/CFT compliance matters, (ii) an employee screening and hiring procedure, (iii) an ongoing employee training program and (iv) an independent audit function to test the effectiveness of AML/CFT

systems. More detailed requirements are in Art.7 for Banking, Art.5 for financial leasing and securities and Art.6 for insurance sector, which require dedicated AML/CFT units and adequate staff. Art.9 for Banking, Art.6 for financial leasing, Art.7 for securities and Art.8 for insurance sector require FI to establish screening procedures to ensure high standards when hiring employees. The direction issued by COA contains equivalent requirements in Item 5, 6, 7 and 8.

262. Article 13 of the Regulation on foreign exchange counters include some element of criterion 18.1 (c). However, it is not reflect all requirements.

263. **Criterion 18.2** -According to Regulations for Internal Controls for Banking, Securities, Insurance and Financial Leasing Companies (in Art.6 for Banking and Art.4 for financial leasing and securities and Art.5 for insurance sector) require banking, securities and insurance sectors including financial leasing companies to establish a group-level AML/CFT programs to be implemented within the financial group. The program includes policies and procedures for sharing information within the group as required for the purposes of CDD and ML/TF risk management include information and analysis of transactions or activities which appear unusual and adequate safeguards on the confidentiality to prevent tipping-off.

264. **Criterion 18.3** - FIs are required to ensure that their foreign branches or subsidiaries apply AML/CFT measures consistent with the head office/parent company's requirements. Where the minimum AML/CFT requirements of the host jurisdiction and home jurisdiction are different, the branches or subsidiaries shall follow the criteria which are higher. If the host jurisdiction does not permit the proper implementation of AML/CFT measures consistent with the home jurisdiction requirements, appropriate additional measures should be taken to manage the ML/TF risks and report shall be made to FSC (Regulations for Internal Controls for Banking, Securities, Insurance and Financial Leasing Companies, Art. 6, para.5 for banking, Art.4, para.5 for financial leasing and securities and Art. 5, para.5 for insurance sectors). This criterion is not applicable to Agricultural FIs and Foreign Exchange Counters as they do not have foreign branches or subsidiaries.

### *Weighting and Conclusion*

265. There are minor gaps in relation to internal control obligations for foreign exchange counters. **Recommendation 18 is largely compliant.**

### **Recommendation 19 – Higher-risk countries**

266. In its 2007 MER Chinese Taipei was rated non-compliant with the former R.21 as obligations were not in place.

267. **Criterion 19.1** -Article 11 of MLCA allows the competent authorities in charge of FIs to spontaneously or in response to reports submit by MJIB, apply further requirements on FIs proportionate to the risks from countries for which this is called for by the FATF. Article 11(2)(1-3) sets out that high-risk countries or regions include (a) countries or areas where major flaws are detected in its counter-ML and TF efforts, according to announcements issued by international AML organizations<sup>13</sup>, (b) countries or regions where advice of international AML organizations are not followed or not fully followed, according to announcements issued by international AML organizations<sup>14</sup>.

268. **Criterion 19.2** -Article 11 of MLCA includes an enabling provision for the competent authorities in charge of FIs to apply countermeasures proportionate to the risks. While not all possible countermeasures are set out in the act, there is a catch all provision for competent authorities to 'adopt other necessary preventive measures that are effective and proportionate to the risks' to meet the standard (MLCA Article 11(1)(3)).

<sup>13</sup> Referred to public statement issued by FATF or other bodies.

<sup>14</sup> Referred to the list of jurisdictions subject to FATF's global on-going AML/CFT compliance process or other lists.

269. **Criterion 19.3** - MJIB is the competent authority responsible for maintaining and promptly updating a list of countries mentioned in Article 11 of MLCA. MJIB forwards the list to the competent authorities for FIs and DNFBPs. Article 11(2)(3) allows MJIB and other competent authorities to identify other countries or areas where high risks of ML and TF are confirmed by sufficient evidence, which could apply to countries of concern going beyond the FATF lists.

#### *Weighting and Conclusion*

270. **Recommendation 19 is compliant.**

#### **Recommendation 20 – Reporting of suspicious transaction**

271. In its 2007 MER Chinese Taipei was rated partially compliant with former R.13 and non-compliant SR IV. There was no legal requirement to file STRs or attempted transactions, and TF was not covered. Chinese Taipei's progress on ML-related STR reporting was upgraded in APG follow-up to a level equivalent to LC in 2011. However, the deficiency still remained for TF-related STR reporting.

272. **Criterion 20.1** - Article 10 of the MLCA obliges FIs to report all suspicious transactions, including attempted transactions which may involve ML or unexplained wealth offences to the MJIB. With the exception of smuggling of migrants, all related predicate offences are provided for in the MLCA, including an explicit obligation to report suspicion of laundering the proceeds of terrorism or TF. While the obligation relates to suspicious transactions related to ML, there is no direct obligations to report suspicion that funds are the proceeds of criminal activity or relate to TF, even if no transaction has occurred.

273. Article 10(3) of the MLCA provides that the central competent authorities shall establish the regulations governing the scope, methods and procedures of the reporting of STRs required by paragraph 1. Article 10(5) of the MLCA imposes a fine of NTD 500,000 to 10 million on FIs (up to approximately USD 330,000) on breach of the obligation of 10(1), and the regulations issued in accordance with 10(3). The Regulation Governing AML of FIs gives effect to Article 10(3) of the MLCA. Article 15 of the Regulation references an obligation to file reports on 'suspicious ML/TF transactions'. The obligation in the regulation was demonstrated to cover TF, even in the absence of an explicit obligation to report STRs for TF in the MLCA.

274. The Regulation sets out the timeline for reporting, the form and nature of reporting, but does not add any further details regarding the nature of suspicion. The regulations oblige FIs to report the suspicion to the AMLD within two business days after approval by the chief compliance officer. Directions require reporting obligations to file related CDD and transactions data that may have formed part of or be related to the STR.

275. Article 11 of the Regulations Governing the Establishment and Administration of Foreign Currency Exchange Counters issued under the Central Bank Act require foreign exchange counters to file STRs related to some aspects of ML and TF. Art. 11 provides a range of objective and subjective factors as a basis for suspicion. However the obligation does not extend to all instances where a foreign currency counter suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to TF. The report is not made directly to the AMLD, but to the BoT (as the regulator) and the Regulation Governing the Establishment and Administration of Foreign Currency Exchange Counters requires the BoT to report it to the AMLD within 10 days upon the suspicious transaction is discovered by the foreign currency exchange counter. This timeframe does not satisfy the requirement of prompt reporting.

276. **Criterion 20.2** - FIs are required to report suspicious and attempted transactions. Article 9 of the Regulation requires FIs to monitor accounts or transactions for suspicion and provides some processes that would generate and make use of indicators of suspicion and patterns monitoring to allow FIs to identify cases of suspicion and to file 'suspicious of ML/TF transactions'. The Regulation is explicit that in the case of STRs generated from the monitoring processes set out



at article 9, then the STR should be filed regardless of whether the transaction was completed or not (this may be something other than attempted transactions). Additionally, there is no explicit provision for attempted transactions related to TF.

277. Article 11 of the Regulations Governing the Establishment and Administration of Foreign Currency Exchange Counters requires foreign exchange counters to report incomplete transactions that would otherwise be STRs and include a description of customers' special features and the transaction process.

### *Weighting and Conclusion*

278. While STR obligations do not appear to cover the proceeds of migrant smuggling, this is not given weight. While the obligation relates to suspicious transactions related to ML, there is no direct obligations to report suspicion that funds are the proceeds of criminal activity or relate to TF, even if no transaction has occurred. There are minor shortcomings with STR reporting on foreign exchange counters related to the prompt filing and incomplete transactions. **Recommendation 20 is rated largely compliant.**

### *Recommendation 21 – Tipping-off and confidentiality*

279. In its 2007 MER Chinese Taipei was rated compliant with former R.14.

280. **Criterion 21.1** - Paragraph 2 of article 10 of the MLCA confirms that FIs (including responsible persons, directors, managers, and employees of such institutions or businesses) are exempted from business confidentiality obligation when they report suspicion to the FIU. However, there is no explicit provision to support that the protection shall be made available even if the person filing the report did not know precisely what the underlying criminal activity was, and regardless of whether the illegal activity actually occurred. Article 11 of the Regulation on Foreign Exchange Counters exempts currency exchange counters from confidentiality obligations when reporting STRs. However, the regulation does not explicitly extend this safe harbour from liability to the directors, officers and employees.

281. **Criterion 21.2** - Article 17 of the MLCA prohibits disclosing or delivering documents, pictures, information, or objects relating to reported transactions. The range of sanctions are imprisonment not more than two years, detention, or a fine of not more than NT\$500,000. Article 12 of the Regulation on Foreign Exchange Counters establishes that information of customers gathered in the exchange business shall be kept confidential, unless otherwise provided by law. The regulation is not explicit that reporting of suspicion of ML to the FIU shall also be kept confidential. The prohibition does not extend to include officers and directors when they disclose that an STR is sent to the AMLD.

### *Weighting and Conclusion –*

282. While the MLCA and Foreign Exchange Counter Regulation extend safe harbour and elements of tipping off, there are minor shortcomings in relation to explicit prohibition on tipping off by foreign exchange counters. **Recommendation 21 is rated largely compliant.**

### *Recommendation 22 – DNFBPs: Customer due diligence*

283. In its 2007 MER Chinese Taipei was rated non-compliant with the former R.12 as dealers in precious metals and stones were the only category of DNFBPs covered under the MLCA. CDD and record keeping obligations only applied for cash transactions above US\$31,000. Requirements on those few covered DNFBP fell substantially short of the requirements in R 5, 6, 8-11 and 17.

**Criterion 22.1**

284. Eight new regulations covering CDD and other obligations for each DNFBP sector entered into force on 9 November 2018. These are referenced in each of the criteria below.

285. **22.1 (a)** - Casinos are prohibited under Chapter 21 of the Criminal Code.

286. **22.1 (b)** - CDD requirements are set out in *Regulations Governing AML/CFT for Land Administration Agents and Real Estate Brokerages*. MOI is the regulator of land administration agents and real estate brokerages. Under Art.7, land administration agents and real estate brokerages are required to verify the identity of the customers when conducting a real estate transaction, or establishing a business relationship, or discovering suspicious acts of ML or TF, or having doubts about the veracity of the previously obtained customer identification.

287. The regulations also contain some CDD requirements that partly in line with Rec 10. There are, however, some shortcomings. (1) The definition of 'business relationship' in Art.2,6. is limited to having conducted three or more real estate transactions for the same customers within 5 years. This means the obligation to understand and, as appropriate, obtain information on, the purpose and intended nature of the business relationship (c.10.6) and to conduct ongoing due diligence on the business relationship (c. 10.7) are required only when meet with such condition. (2) There are no explicit requirements to understand the nature of the customer's business and its ownership and control structure (c. 10.8). (3) There are no specific requirements regarding timing of verification (c. 10.14&10.15). (4) The regulation requires that land administration agents and real estate brokerages shall decline the transaction and file STR to MJIB concerning some circumstances (Art.9&15). However, there is no explicit requirement regarding incomplete CDD (c. 10.19) and tipping-off to be in keeping with c. 10.20.

288. **22.1(c)** -*The Regulations Governing the Implementation and Report of AML/CFT for Jewellery Businesses* contain CDD requirements when engaging in any cash transaction with a customer at NTD 500,000 or above (equivalent to USD/EUR 15,000) (Art.4, para. 2). There are major shortcomings regarding CDD requirements since the regulations require jewellery businesses to obtain the customer's identification and verify the identity of customer (Art. 4, 1.) and to obtain the agent's identification (Art. 4, 2.) only. Moreover, enhanced due diligence is only required in the case of PEPs and their family members or close associates instead of where there is a perceived high risk of ML/ TF. Some CDD obligations are not applicable as all business is conducted with occasional customers.

289. **22.1(d)** - Notaries, Attorneys, Certified Public Accountants and Certified Public Bookkeepers and Bookkeeping and Tax Return Filing Agents are required to implement AML/CFT measures according to MLCA (Art. 5,) when they prepare for or carry out transactions for their client concerning the following activities:

- buying and selling of real estate;
- managing of client money, securities or other assets;
- management of bank, savings or securities accounts;
- organization of contributions for the creation, operation or management of companies; or
- creating, operating or management of legal persons or arrangements

However, in the case of notaries, the obligation does not include when they create, operate, or manage a buying and selling of business entities.

290. The details of CDD related requirements are in the *Regulations Governing AML/CFT for Notaries (Regulations for Notaries)*, the *Regulations on AML/CFT Operations Matters Conducted by Attorneys (Regulations for Attorneys)*, the *Regulations AML/CFT for Certified Public Accountants (Regulations for CPA)* and the *Regulations on AML/CFT for certified Public Bookkeepers and Bookkeeping and Tax Return Filing Agents (Regulations for Bookkeepers and Tax Filing Agents)*.

291. The Regulations for Notaries contain some CDD requirements that partly in line with Rec 10. There are, however, some shortcomings namely (1) no explicit requirement on obtaining information on the purpose and intended nature of the business relationship (c.10.6), (2) no provisions regarding timing of verification (c.10.14-15) and existing customers (c. 10.16) and (3) It requires that notaries shall decline the transaction concerning some circumstances (Art.15). However, there is no explicit requirement regarding incomplete CDD (c. 10.19).

292. The Regulations for Attorneys indicate some requirements that are partly in line with Rec 10 including the requirement on identifying and verifying customer and person who acts on behalf of or authorized to conduct transaction for customer (c.10.3-4), some requirement to review customer identity and specific requirements regarding legal person and arrangement also requirement to obtain BO information of customer who is legal person and legal arrangement (c.10,5, 10.8-11). There are some circumstances that require attorneys to file STR to MJIB (Art.10) but the regulations are silent on other requirements regarding unable to complete CDD (c.10.19)..

293. The Regulations for CPA are mostly in line with Rec 10 while there are lack of requirements regarding timing of verification (c.10.14-15).

294. The Regulations for Bookkeepers and Tax Filing Agents contain some requirements on Rec 10. However, there are major shortcomings identified as it lack of the following requirements; (1) the requirements to obtain BO information is partially specified but not exactly in line with C.10.5, 10.10 and 10.11; (2) there is no obligation to understand and, as appropriate, obtain information on, the purpose and intended nature of the business relationship (c.10.6); (3) the requirement on on-going CDD is not applied to lower-risk circumstance which is not in line with c. 10.7 and 10.18; (4) the regulations are silent on requirements regarding timing of verification (c.10.14-15), existing customers (c.10.16) and tipping-off in keeping with c.10.20.

295. **22.1 (e)** - while the MLCA provides for coverage of TCSPs, at present there is no trust and company service provider sector beyond lawyers and accounts. As such separate guidelines have not been offered.

296. **Criterion 22.2-** MLCA obligations (art.8) analysed at Rec 11 apply equally to all covered DNFBPs.

297. **Criterion 22.3** - Article 7 of the MLCA obliges all DNFBP to apply a risk based approach to CDD of PEPs, their families and associates. Most of the related regulations mentioned in criterion 22.1 (except for Regulations for Jewellery Businesses and Regulations for Bookkeepers and Tax Filing Agents) contain specific requirement on the scope of the required CDD on PEPs, their family members and close associates. Those regulations, require DNFBPs to conduct EDD, obtaining information regarding the source of funds and continue to monitor transactions.

298. **Criterion 22.4** - Only land administrative agent and real estate brokerages and CPAs have requirements regarding new technologies Rec 15..

299. **Criterion 22.5** - Only CPA is permitted to rely on third party to conduct CDD. Art. 11 of the Regulations for CPA set the requirements that are in line with Rec. 17.

### *Weighting and Conclusion*

300. There are a number of shortcomings in relation to the scope of CDD DNFBPs which is given some weight. Controls on PEPs, record keeping and reliance on third parties are mostly covered. The gaps in relation to new technology are given weight, due to the nature of the sectors. **Recommendation 22 is rated partially compliant.**

### *Recommendation 23 – DNFBPs: Other measures*

301. In its 2007 MER Chinese Taipei was rated non-compliant with the former R.16 as only dealers in precious metals and stones were covered by AML/CFT requirements.

302. **Criterion 23.1** - Art 10 of the MLCA requires DNFBPs to report suspicious transactions to the MJIB on the same basis as FIs (a minor shortcoming related to smuggling of migrants). The findings of Rec 20 apply equally to DNFBPs. It should be noted that the MLCA adds an additional cash transaction reporting obligation on certain DNFBPs.

303. **Criterion 23.2** - Art 6 of the MLCA requires DNFBPs to comply with ICS requirements. Competent authorities have issued regulations under the MLCA, and related directions, to each DNFBP sector governing AML policies and procedures for DNFBPs. These extend to compliance management, screening staff, ongoing employee training and audit. At the time of the onsite visit, DNFBPs in Chinese Taipei did not have group structures or foreign branches and subsidiaries.

304. **Criterion 23.3** - Article 11 of MLCA is also applied to DNFBP (see analysis in R. 19).

305. **Criterion 23.4** - Paragraph 2 of article 10 and article 17 of the MLCA are applied to DNFBPs (see analysis in R. 21).

### *Weighting and Conclusion*

306. There are moderate shortcoming in relation to DNFBPs' STR reporting obligations. **Recommendation 23 is rated largely compliant.**

### ***Recommendation 24 – Transparency and beneficial ownership of legal persons***

307. In its 2007 MER Chinese Taipei was rated partially compliant with the former R.33. There were no obligations to maintain and make available beneficial ownership information for legal persons.

308. **Criterion 24.1** - the Company Act and the Regulations Governing Company Registration and Recognition provide the mechanisms to identify and describe different types, forms, and features of legal persons in Chinese Taipei. Information on these entities is available to the general public on MOEA website.

309. Legal persons are classified as either Associations or Foundations. Associations are generally profit-seeking or for the welfare of the public and include companies, banks, unions, agricultural associations, and other civil associations. Foundations are generally only for the public welfare and include general foundations and specific foundations such as medical foundations, private schools etc.

310. Four types of legal persons can to be formed under the Company Act:

- a) Unlimited company; a company organized by two or more shareholders who bear unlimited joint and several liabilities for discharge of the obligations of the company;
- b) Limited company: a company organized by one or more shareholders, with each shareholder liable for the company in an amount limited to the amount contributed by that person;
- c) Unlimited company with limited liability shareholders: a company organized by one or more shareholders of unlimited liability and one or more shareholders of limited liability; and
- d) Company limited by shares: a company whose shares have been issued in public, closed company, and non-closed company;

311. Foreign companies, which are formed under the laws of another jurisdiction, can be registered under Articles 373 and 374 of the Company Act to undertake business in Chinese Taipei.

312. Other forms of legal persons can be established under the Civil Code, Limited Partnership Act, and Regulations Governing the Application of Limited Partnership Registration as follows:

- a) Limited partnerships (see Article 9 of the Limited Partnership Act and Regulations governing the Application of Limited Partnership Registration), this includes foreign limited partnerships which are for-profit partnerships formed under the laws of any foreign jurisdiction and having the same rights and obligations as a domestic limited partnership. legal person (domestic or foreign) may be a general partner in a limited partnership provided that it shall designate a natural person as its representative to exercise, on its behalf, the duties of a general partner.;
- b) Government-donated foundations (Articles 59, 60 and 61 of the Civil Code); and
- c) Private-donated foundation.

313. The DOC Commercial Industrial Services Portal (CISP) is the company registry and provides detailed information on the legal basis and the process to form and register companies including foreign companies. The processes and procedures for obtaining and recording beneficial ownership information is not however publicly available.

314. **Criterion 24.2** - Chinese Taipei considered the risk of ML abuse through legal persons as part of its NRA. Some analysis was provided in relation to how a company may be abused for ML including the risk of offshore companies being established to conduct false transactions, the potential use of existing companies for underground remittances, establishment of shell companies and the conversion of foreign investment status to perform false transactions. Further to the NRA, the MOEA issued a more detailed assessment on corporate entities' risk of ML in August 2018. The assessment took into account input from industry (including lawyers, certified public accountants and bookkeepers and tax return filing agents) along with LEAs. Whilst the risk assessment discussed aspects of the risks of legal persons being used for ML, including offshore companies and OBUs, it did not consider the specific ML or TF risk associated with all types of legal persons that can be created in Chinese Taipei, in particular differentiating aspects of their transparency of ownership and control. FSC supplemented the understanding of risk with surveys to banks to ascertain their experience of bearer shares.

#### *Basic Information*

315. **Criterion 24.3** - the Company Act requires all companies to register details with the MOEA, which makes details of all company registration available to the public, including: name of the company; legal form and status; the address of the registered office; basic regulating powers; and the list of directors. For limited companies however the Articles of Incorporation only includes the number of directors, but not their names (Article 101). For companies limited by shares, the Articles of Incorporation must contain the name of the company, scope of business, total number of shares and par value of each share, location, number of directors and supervisors and their term of office, date of establishment.

316. Information of corporate registration is provided in the website of the competent authority, the Industrial Commerce Services Portal (article 387 of the Company Act and Form D issued under the same article).

317. Art 17 of Limited Partnership Act provides that the registered information shall be made open to the public by the central competent authority including: name of the limited partnership; location of the limited partnership; name of each general partner and capital contribution amount and liability type of each partner; branch(s) of a domestic limited partnership; name of the limited partnership responsible person.

318. For foundations, Articles 59-62 of the Civil Code require the purpose, name, principal and branch offices, total assets, date of licence, name and domicile of director or controller, name of the director who represents the juridical person, if any, and the period of duration. The Director of the Foundation shall submit the application for registration to the authorities concerned in the place of its principal and branch offices. A copy of its act of endowment or the will shall be annexed to the application.

319. Requirements for foreign companies are contained at Articles 370 – 386 of the Company Act. Foreign companies must obtain a certificate of recognition from the government under which it was incorporated and complete the process for branch office registration. A representative within Chinese Taipei must be designated to represent the company in all domestic matters (Art 372). A foreign company must keep a copy of its Articles of Incorporation in the office of its representative within Chinese Taipei.

320. In the event there are shareholders of unlimited liability, a roster of such shareholders shall also be kept. (Art 374). It is not clear what information is required in the Articles of Incorporation of a foreign company as that is likely to be dictated by the home jurisdiction in which it is registered. It is therefore not clear that for foreign companies operating in Chinese Taipei that all of the basic information as required by R.24.3 is obtained. They are however liable to an examination of their books, records and documents (Art 384).

321. **Criterion 24.4** - Art 393 as outlined above applies, however there are specific further provisions for each type of company as follows:

322. Unlimited company (including unlimited companies with limited liability shareholders) - Articles of Incorporation along with minutes of shareholder meetings, financial statements, shareholder rosters and the counterfoil of corporate bonds are required to be kept at the head office of each unlimited company (Art 40 – 41 Company Act). Fines are imposed on the shareholder or the director who is designated to represent the company for failure to comply. There is no requirement to hold a list of directors, however there is a requirement to maintain a list of shareholders, including shareholders who represent the company or are designated to conduct business operations of the company (art 41 & 115). There is no requirement to record the category and number of shares held by each shareholder.

323. Limited companies – are required to maintain the Articles of Incorporation (Art 98 Company Act) along with a shareholders roster at its head office which includes the amount of capital contribution made by each, name and residence of each shareholder (art 103). Basic information is contained in the Articles of Incorporation. Details of the elections of directors at general meetings (art 172) must be recorded in minutes and be available at the company (art. 210).

324. Companies limited by shares - Articles of Incorporation are required to include the name of the company, scope of business, number of shares, location of company, number and names of directors and supervisors and the date of the Articles of Incorporation. At the inaugural meeting, promoters shall report the Articles of Incorporation, roster of shareholders, total number of shares issued, name of subscribers, roster of directors and supervisors of the company including their residence. This information is to be maintained at a location notified to the registry (art 210). Article 169 provides that a shareholders roster shall be assigned and specify: a) the name or title and the domicile or residence of the shareholders; b) the number of shares held by each shareholder; and the serial number(s) of share certificate(s), if issued, by that shareholder; c) the date of issuance of the share certificates; d) the number of shares, the serial number of share certificate(s), and the date of issuance of the bearer share certificate(s), if bearer stocks are issued; and e) the words describing the type of special shares, if special shares are issued.

325. For a foreign company, after its recognition, it shall maintain a copy of its Article of Incorporation in the office of its representative for litigious and non-litigious matters or branch office within the territory of Chinese Taipei. In case there are shareholders of unlimited liability, a roster of such shareholder shall also be kept. See however comments raised above in R.24.3.

326. Finally, an amendment to Article 22 of the Company Act now requires all companies to provide to the registering authority the names, nationalities, dates of birth, number of shares held or equity contribution and other particulars of its directors, supervisors, managers and shareholders whose shareholding or amount of contribution exceeds 10% of total number of shares or capital stock every year and within 15 days of any change.

327. All companies are also required to maintain a roster of shareholders under Article 169 of the Company Act. The roster must contain the following information: 1.The name or title and the domicile or residence of the shareholders; 2.The number of shares held by each shareholder; and the serial number(s) of share certificate(s), if issued, by that shareholder; 3.The date of issuance of the share certificates; 4.The number of shares, the serial number of share certificate(s), and the date of issuance of the bearer share certificate(s), if bearer stocks are issued; and 5.The words describing the type of special shares, if special shares are issued.

328. Partnerships are required to name each general partner and capital contribution amount and liability type of each partner, this information is required to be held by the registry.

329. **Criterion 24.5** - Article 5 of the Regulations Governing Company Registration and Recognition requires any change in the particulars registered in a company or foreign company registration to be filed with the competent authority within 15 days of such a change. MOEA had commenced oversight and quality checking of new registration and filing requirements, however they were not well advanced at the time of the onsite visit.

#### *Beneficial Ownership Information*

330. **Criteria 24.6(a-b) are not applicable.**

331. **Criterion 24.6(c)** - Mechanisms to ensure that information on the beneficial ownership of a company is obtained or can otherwise be determined in a timely manner rely on FIs and DNFBPs CDD on beneficial ownership of legal persons. FIs/DNFBP are obliged to make such information available to authorities in a timely manner. Detailed obligations to obtain and verify CDD information in relation to beneficial owners of legal persons are in place, but as per the analysis contained in R.10 and R.22 there are specified circumstances in which collection of this information is not required, these exceptions apply to all FIs and DNFBPs and include when the client is a government owned entity or business entity or a foreign government entity, a public company or any of its subsidiaries and other circumstances. The context of Chinese Taipei sees relatively little professional intermediation in the establishment or continuing operation of legal persons, so FIs/DNFBPs may not consistently hold up to date and accurate information on beneficial ownership.

332. **Criterion 24.7** - There are requirements on all FIs and DNFBPs to obtain beneficial ownership information of their customers. However, the obligation on FIs to keep beneficial ownership up-to-date, which is in keeping with criterion 10.16, has limitations. The requirement to periodically update CDD on the basis of materiality and risk may result in an FI waiting a number of years in the absence of a risk-event, rather than updating CDD whenever beneficial ownership changes.

333. **Criterion 24.8** - Foreign companies are required to designate a representative within Chinese Taipei to represent the company and to serve as its responsible person (Art 372). Responsible persons are required to keep a copy of the company's articles of incorporation.

334. The rules regarding responsible persons of domestic companies are provided in Article 8 (1) of the Company Act. The responsible persons in charge of an unlimited company are the shareholders who conduct the business of the company or represent the company (Articles 45 and 46); the responsible person of a limited company is the chairman of the board (Article 108); the responsible persons in charge of an unlimited company with limited liability shareholders are the same as those of an unlimited company (Article 115); and the responsible person of a company limited by shares is the chairman of the board (Article 208 ). All responsible persons above are required to be included in company registration. Companies are required to file basic information of the responsible persons above with the Registrar.

335. In relation to limited partnerships, there is a requirement for the limited partnership to nominate a representative (Art 9) however it is not clear that the scope of their duties includes accounting to authorities for beneficial or basic ownership information.

336. **Criterion 24.9** -Article 94 of the Company Act requires account books, statements and documents relating to the business and liquidation affairs of the company to be kept for a period of 10 years from the date of filing a report to the court after completion of liquidation. The custodian of the materials shall be determined by a majority of shareholders. Articles 113 and 115 of the Company Act also apply this requirement to unlimited companies with limited liability shareholders and limited companies. The records required to be kept are those “relating to business and settlement affairs” and therefore are likely to mostly encompass those required by R.24. Art 332 applies this requirement to companies limited by shares.

#### *Other Requirements*

337. **Criterion 24.10** - Companies are required to disclose the registered (basic) information within a prescribed time. LEAs may access basic and beneficial ownership information held with FIs and DNFBPs, under the provisions of the CPC, when they have suspicion of a criminal offence. It is not clear that other competent authorities have all the powers necessary to obtain timely access to the basic and beneficial ownership information held by the relevant parties.

338. **Criterion 24.11** – Amendment of the Company Act in August 2018 removed the ability to issue bearer shares. The amendment to Article 447-1 requires companies to replace existing bearer shares with registered shares when bearer share holders exercise their rights as shareholders. The amendments did not set a timeline for this to be completed. While many bearer shareholders may come forward at general meetings, this is not mandatory.

339. Regarding bearer share warrants, under the Company Act, all preferred shares with warrants (or corporate bonds) and employee stock options issued in Chinese Taipei are registered, and all shares purchased will be registered when conversion rights are exercised. Authorities confirm that companies do not have discretion to include an ability to issue share warrants within their articles of incorporation.

340. **Criterion 24.12** -Article 27(2) of the Company Act includes some controls on nominee directors and shareholders. The article allows a juristic shareholder to assign representatives to be elected as directors. Information of both the nominated representatives and the juristic shareholder have to be registered to the Registrar. Registered information on the nominee and nominator is publicly available via the CISP for free access. .

341. **Criterion 24.13** - Article 210 of the Company Act imposes a fine of not less than NT10,000 and no more than NT50,000 (approx. USD18,000) on responsible persons for not making the Articles of Incorporation and register of shareholders and other information available at the company office. Various regulations on FIs and DNFBPs for CDD set out requirements to maintain beneficial ownership details of their clients who are legal persons and include minimal information-requirements pertaining to bearer shares. Breaches of regulations carry fines of between NT500,000 and NT10 million for FIs and NT50,000 to NT1 million for DNFBPs (see R.10 and R.22). The Company Act includes sanctions for a failure to keep information required in R24.3 and 24.4 up to date. Further penalties are found in the Administrative Penalty Act in which penalties for acts undertaken in breach of duty under administrative law is punishable by a maximum statutory fine of NT3,000.

#### **Criterion 24.14**

**24.14(a)** - *Facilitating access by foreign competent authorities to basic information held by company registries*; Chinese Taipei exchanges such information either through informal channels or supported by MOUs or based on the principle of reciprocity. However, in relation to basic information held with a company registry, this information is available online at the Commercial Industrial Services Portfolio

342. **24.14(b)** - *Exchanging information on shareholders* – Information on shareholdings greater than 10% and any details of nominee arrangements are included on the publicly available



registry. MOEA, the FIU and LEAs are able to facilitate exchanging information on shareholders when holdings are less than 10% and not filed with the registry.

343. **24.14(c) - Using investigative powers of competent authorities** – Chinese Taipei LEAs are able to use their investigative powers to obtain and share beneficial ownership information with and on behalf of foreign counterparts. In Chinese Taipei beneficial ownership is captured by REs through CDD. In this regard, cooperation and information exchange between supervisors is outlined at R.40.14. The AMLD or FSC are able to request relevant CDD records.

344. **Criterion 24.15-** Chinese Taipei predominately exchanges beneficial ownership information with foreign counterparts via Egmont Secure web. Per the analysis in R.40.10 feedback is exchanged amongst FIUs pursuant to the Egmont principles of information exchange. The MJIB Operation Regulations on matters relevant to AML/CFT further contains provisions for the FIU to provide feedback on information exchanges.

### *Weighting and Conclusion*

345. Chinese Taipei has assessed ML and TF risks for legal persons however the assessments do not cover all types of legal persons, particularly the differentiation in how each may be abused for ML or TF. There are requirements to keep basic ownership information up-to-date and accurate and a well-developed database for authorities to collate ownership information. While beneficial ownership details are not required to be kept by companies or the registry, CDD obligations extend to all FIs and DNFBPs and are well supported by guidance on lifting the corporate veil. However, there is relatively little professional intermediation in the establishment or continuing operation of legal persons, so FIs/DNFBPs may not consistently hold up to date and accurate information on beneficial ownership. LEAs can access any available beneficial ownership information collected by FIs and DNFBP through CDD in a timely fashion. Public registration of nominee directors or shareholders adds to transparency. Oversight of and enforcement to ensure accuracy of registration filing with MOEA had not commenced at the time of the onsite visit. Amendments to the Company Act in 2018 introduced measures to removed bearer share warrants, ceased the ability to issue bearer shares, but did not place a timeframe on mechanisms to convert bearer shares issued before August 2018 into registered shares. **Recommendation 24 is rated largely compliant.**

### ***Recommendation 25 – Transparency and beneficial ownership of legal arrangements***

346. In its 2007 MER Chinese Taipei was rated partially compliant with the former R.34. Competent authorities had only limited powers to have timely access to information on the beneficial ownership and control of trusts.

#### *Sources of trust law*

347. There are two laws in Chinese Taipei that primarily relate to ‘trust(s)’:

- a) Trust Law (also referred to as Trust Act); and
- b) Trust Enterprise Law (also referred to as Trust Enterprise Act).

348. Under the Trust Law (amended 30 December 2009) Article 1 defines the term "trust" as a legal relationship in which the settlor transfers or disposes of a right of property and causes the trustee to administer or dispose of the trust property according to the stated purposes of the trust for the benefit of a beneficiary or for a “specified purpose” (a specified purpose trust is a charitable trust).

349. The Trust Law establishes the legal foundation for the formation and settlement of all trusts in Chinese Taipei. Article 2 defines the legal relationship referred to in Article 1 as based on contract law: ‘...a trust shall be established by a contract or a will’ (testamentary trusts are not a

concern for R. 25). Effectively, by virtue of the two sections above-quoted, trusts in Chinese Taipei amount to third-party contracts, which qualify as 'legal arrangements' under the FATF definition.

350. Under the Trust Enterprise Law, a 'trust enterprise' is an institution approved by a competent authority pursuant to the provisions of that Act to conduct a range of financial services including managing real estate, leasing, collective investments, safe deposit box services, issuance of securities etc. (Chapter III, Art 16ff). Under Article 10 of the Act a 'trust enterprise can only be a company limited by shares.' The scope of 'trust agreements' are outlined in Article 19 and include financial products and services offered by financial institutions.

351. Under the 'Enforcement Rules of the Trust Enterprise Law', trust assets are assets of the trust enterprise (Article 2) and are not held in the name of the settlor or beneficiary, but on behalf of the beneficiaries. The rules provide for a range of discretionary and non-discretionary trusts for individually managed, and collectively managed, trust arrangements (Articles 5-7). Under Article 10 of the Enforcement Rules, the general provisions of the Trust Law (noted above) apply.

352. Trust enterprises consist of banks and other FIs but FI rules do not apply to trust enterprises when acting as trustees. Authorities also indicated that the majority of trusts in Chinese Taipei are settled under the Trust Law but governed under the Trust Enterprise Law.

353. AML regulations applying to FIs and DNFBPs cover instances where a client is a trustee, and in such cases require CDD on all parties to the trust (settlor, trustees, beneficiaries, trust property). MLCA or AML regulations do not extend requirements to collect such information when apply when an FI or DNFBP

354. This Recommendation does not cover 'charitable trusts', settled under the Trust Law (see R.8 for these). According art 72 Trust Law, a charitable trust shall operate under the supervision of the industry's regulatory authority.

355. Under the trust law, the court has a supervisory role over trusts formed under the Trust Law, including to intervene to interpret the trust deed in accordance with the Civil Code using provisions applicable to contractual relationships. There are limitations on confidentiality under a trust, as asset may either be registered or third party creditors may apply for the inspection of trust accounts if they are shown to be 'connected persons' (Article 32).

#### **Criterion 25.1:**

356. **25.1(a)** –Article 31 of the Trust Act requires trustees managing trust property to make a yearly report to the settlor and any beneficiaries able to be identified on a yearly basis. In this way, information is obtained on some parties to the trust. While AML Regulations covering lawyers, accountants (CPAs) and FIs (including trust enterprises) require the FI and DNFBP to understand the ownership and control structure of their customers who are trustees, and obtain details of the parties to the trust, there is no requirement for either DNFBPs or FIs to collect that information when they are hired to prepare a trust deed or to perform the role of a trustee.

357. **25.1 (b)** – There are no requirements on trustees (whether enterprise trustees or other trustees) to hold basic information on regulated agents or and service providers to a trust.

358. **25.1(c)** - There are no corresponding requirements in the Trust Law. There are obligations in the MLCA on DNFBPs providing trust services (lawyers and CPAs) to maintain any information obtained through CDD, which may include details of settlors, trustees and beneficiaries.

359. There are no AML/CFT requirements for foreign trusts operating in Chinese Taipei unless the foreign trustee interacts with a FI or DNFBP in which case the CDD measures as outlined in this report will apply.

360. **Criterion 25.2**– The obligations on the trustee (Trust Law art 31) to deliver a trust property inventory to the settlor and beneficiary (where known) at least once a year helps to ensure some information on parties to a trust is updated at least each year.

361. **Criterion 25.3-** When a trustee is a trust enterprise, there are provisions that require a declaration of trust property. For example, Article 28 of the Regulations Governing the Scope of Business, Restrictions on Transfer of Beneficiary Rights, Risk Disclosure, Marketing and Conclusion of Contract by Trust Enterprises requires that when a trust enterprise uses the trust asset to trade with others, the trust enterprise shall inform the counterparty explicitly that it is trading in its capacity as trustee and is not trading its own assets. There are no other requirements on trustees to an express trust to explicitly inform FIs and DNFBPs when forming a business relationship or carrying out transactions including for foreign trustees.

362. **Criterion 25.4** -There are adequate provisions requiring trustees to provide competent authorities with any information relating to the trust or to provide FIs and DNFBPs with information on the beneficial ownership (control) and the assets of the trust to be held or managed under the terms of the business relationship without being prevented by law or enforceable means. Chinese Taipei authorities assert that in the absence of a law preventing a trust enterprise from providing FIs and DNFBPs with information on the beneficial ownership and asset of the trust. Bank secrecy does not impede information sharing amongst each other – trust enterprise FI with another FI.

363. *Trust Enterprise:* Art 42 of the Trust Enterprise Act applies. Article 45 of the Banking Act mutatis mutandis, to the Competent Authority's examination of a trust enterprise or order a trust enterprise to prepare and submit relevant information and reports.

364. Art 45 Banking Act requires the Central Competent Authority (for trust enterprise it is the FSC) at any time, appoint a designee, entrust an appropriate institution or direct a local Competent Authority to appoint a designee to examine the business financial affairs and other relevant affairs, or direct a bank to prepare and submit within a prescribed period of time, balance sheets, property inventories or other relevant documents for examination. The Central Competent Authority may, when necessary, appoint professionals to verify statements, materials or affairs, and such professionals shall, in turn, present a report to the Central Competent Authority.

365. Art 56 Trust Enterprise Act provide that any of such violations shall be punishable by a fine of not less than Six Hundred Thousand NTD (NT\$600,000) but not more than Three Million NTD (NT\$3,000,000)

366. Art 82 Trust Law provide that the industry's regulatory authority can impose a fine of not less than NT\$20,000 and not more than NT\$200,000 on the trustee of a charitable trust if the trustee refuses, obstructs or bypasses the inspection of the industry's regulatory authority.

367. *Private Trust:* Art 60 and 61 Trust Law requires all trusts other than business trusts or charitable trusts to be executed under the supervision of the court. Upon application of the interested party or the prosecutor, the court may inspect the trust affairs as well as appoint and order an inspector to take any necessary official actions. A trustee who disobeys or obstructs the court inspection is imposed a fine ranging from NT\$10,000 to NT\$100,000.

368. **Criterion 25.5** -Judicial police and prosecutors are able to access information held by a trustee, FIs or DNFBP under broad powers in the CPC. This includes the ability to petition for a search warrant if needed.

369. In the case of trust enterprises the FSC may obtain information from trust enterprises under Art 42 of the Trust Enterprise Act *vis a vis* Art. 45 of the Banking Act.

370. There is no clear provisions requiring information held by trustees of private trusts or charitable trusts, and other parties are able to be obtained by a competent authority or LEA in a timely manner. However, as all trusts are executed under the supervision of the court, upon an application of an interested party or a prosecutor, the court may inspect trust affairs. The powers contained in the Trust Law in relation to charitable trusts allow the industry's regulatory authority to inspect the business and financial conditions of the trust.

371. **Criterion 25.6** -The CPC contains powers for LEAs to obtain relevant beneficial ownership information (require exact powers to force the submission of authenticated copies, written copies etc. as not provided). This applies to all trustees, whether they are a natural person, FI or DNFBP.

372. As outlined in R.37, the MACMA in conjunction with various mutual legal assistance agreements provides the basis for international cooperation in Chinese Taipei. The MACMA allows Chinese Taipei authorities to execute all relevant powers under the CPC on behalf of a requesting jurisdiction. There are no overly restrictive conditions to the provision of cooperation.

373. **Criterion 25.7** - For Trustees that are FIs or DNFBPs – failure to comply with the AML Regulation for FIs or the sectoral AML/CFT regulations for various DNFBPs result in penalties set out in the MLCA at articles 7 and 8. Art 7 contains penalties for failure to conduct adequate CDD (NT500,000 –NT10 million for FIs and NT50,000 – NT1 million for DNFBPs). Art 8 specifies penalties for not maintain records (fine between NT500,000-NT10 million on FIs or NT50,000 – NT1 million on DNFBPs).

374. There are however very limited requirements for trustees to disclose their status as trustee to FIs or DNFBPs and therefore no corresponding sanctions.

375. For private trustees, comprehensive AML CDD and record keeping obligations do not apply to private trustees and hence there are no penalties for breach of these requirements.

376. **Criterion 25.8** - There are sanctions (fine) to impose for failing to grant to competent authorities access to information regarding the trust, as follows:

377. *Trust Enterprise:* Art 56 Trust Enterprise Act confirms that Art 45 of the Banking Act applies mutatis mutandis and therefore that a failure of a trustee to prepare and submit relevant information and reports to the competent authority may result in a fine which is set out in the Banking Act (not less than Six Hundred Thousand NTD (NT\$600,000) but not more than Three Million NTD (NT\$3,000,000).

378. *Private Trust:* Art 61 Trust Law - a trustee who disobeys or obstructs the court inspection is imposed a fine ranging from NT\$10,000 to NT\$100,000. However, as stated above, it is not clear that such information would be held in the first place.

### *Weighting and Conclusion*

379. There are minimal measures in place to ensure that basic and beneficial ownership and control information in relation to trusts is available. Trustees have obligations to identify settlors and beneficiaries at least annually. While FIs have obligations to collect that information in some circumstances within the context of a customer relationship, when DNFBPs or trust enterprises act in the capacity of trustee they are not explicitly required to collect the information required under this recommendation. **Recommendation 25 is rated partially compliant.**

### ***Recommendation 26 – Regulation and supervision of financial institutions***

380. In its 2007 MER, Chinese Taipei was rated largely compliant with former R.23. Insurance agents and brokers were exempted from AML/CFT requirements and AML/CFT requirements had only recently been extended to the money changing sector.

381. **Criterion 26.1** - FSC is responsible for regulating and supervising banking business, electronic payment institution, electronic stored value card issuer, securities and futures business, insurance enterprise and financial leasing businesses on AML/CFT matters. According to Art. 2, para 1 of the Organic Act Governing the Establishment of FSC, the FSC is responsible for the development, supervision, management, and examination of the financial market and financial service industry including requirements for FIs in AML/CFT aspects.

382. BOAF is responsible for the management, supervision, inspections, assistance, and review of the business, finances, and personnel of agricultural financial institutions, according to the Article 7 of the Agricultural Finance Act. Chinese Taipei has adopted a unitary system in which the FSC's Financial Examination Bureau is responsible for all financial inspections of agricultural financial institutions.

383. The Central Bank is competent authority in charge of foreign exchange business (Article 3 of Foreign Exchange Regulation Act). According to Article 35, paragraph 1, subparagraph 2 of Central Bank Act, the Central Bank shall authorize and supervise banks and other enterprises engaged in foreign exchange operations. Paragraph 2 of the same Article prescribes regulations governing requirements of application, the examination procedure, approval of authorization, the scope of operations, withdrawal of authorization, and other matters which banks and other enterprises applying to engage in foreign exchange operations must comply with, shall be stipulated by the Central Bank.

384. **Criterion 26.2** - Core principle FIs namely banks, securities and insurance businesses are required to be licensed. FSC is their competent authorities who approve their license before commencing their business operation. Article 21 of the Banking Act, Article 44 of the Securities and Exchange Act and Article 137 of the Insurance Act refers. Other categories of FI are approved, registered, or designated by their competent authorities i.e. FSC or COA or the Central Bank.

385. **Shell banks:** The prohibition of licensing or operation of shell banks is not explicitly stated in law, however Articles 2 and 7 of the "Standards Governing the Establishment of Commercial Banks" require minimum paid-in capital and stipulates that the bank shall complete the computer linkage facilities for the deposit, loan and other businesses of the bank, of which the above facilities should be confirmed by the competent authority or the designated organization before starting its business. Approval for a bank's establishment is contingent on having physical presence (i.e. meaningful mind and management), so in practice no shell bank is allowed to operate in Chinese Taipei.

386. **Criterion 26.3** - FSC is able to remove or refuse appointment of the management of FIs in the following circumstances [Article 30 of the Company Act], which are general provisions applied to every company setting up in Chinese Taipei]

- Having committed an offence as specified in the Statute for Prevention of Organizational Crimes and subsequently adjudicated guilty by a final judgment, and the time elapsed after he has served the full term of the sentence is less than five years;
- Having committed the offence in terms of fraud, breach of trust or misappropriation and subsequently punished with imprisonment for a term of more than one year, and the time elapsed after he has served the full term of such sentence is less than two years;
- Having been adjudicated guilty by a final judgment for misappropriating public funds during the time of his public service, and the time elapsed after he has served the full term of such sentence is less than two years;
- Having been adjudicated bankrupt, and having not been reinstated;
- Having been dishonoured for unlawful use of credit instruments, and the term of such sanction has not expired yet; or

387. This does not comprehensively to criminals and their associates. It is not explicitly stated in the laws regarding the requirement to conduct fit and proper check against major shareholders or beneficial owners of the FIs. However, there are requirements to FI to declare persons who hold significant controlling interest<sup>15</sup> for approval from FSC.

<sup>15</sup> Significant controlling interest refers to the same person or same concerned party (including a third party acting on behalf of the same person or same concerned party in trust, by mandate or other legal arrangements) intends to singly, jointly or collectively hold more than a certain threshold of outstanding voting shares (i.e. 10%, 25% and 50%).

388. The FSC has laid down rules governing the FSC's prior or *ex post facto* approval mechanism and qualification requirements for responsible persons of banks, namely directors, supervisors, general managers, and *de facto* responsible persons. Where there is a new application for establishment of FSC-regulated bank or there is a change in the responsible persons, in addition to competence requirements, it has to be ensured that no disqualification criteria apply to the responsible persons concerned, such as any record of criminal involvement in organized crime. Where there is a breach of the disqualification requirement for the responsible person found by the FSC through its routine supervision after he or she assumes the position, the responsible person concerned shall *ipso facto* be discharged in accordance with the law.

389. *Credit departments of farmers' & fishermen's associations:* According to the articles of incorporation of credit departments of farmers' (fishermen's) associations, the general director of the credit department (branch department) is the person in charge of the credit department. Governors and supervisors are also considered to be persons in charge when they perform operations related to the credit department. Article 46-1 of the Farmers Association Act and Article 49-1 of the Farmers Association Act stipulate conditions under which the powers of personnel selected, appointed, and hired by farmers and fishermen's associations shall be suspended before the conclusion of criminal prosecution. Where a guilty verdict is rendered, the individual shall be discharged from his or her position; those sentenced to a fixed-term imprisonment, public security penalty, or reformatory penalty shall be discharged from his or her position.

390. ABT - Article 35-2 of the Banking Act applies *mutatis mutandis* to Article 26 of the Agricultural Finance Act and authorized the establishment of the "Regulations Governing Qualification Requirements and Concurrent Serving Restrictions and Matters for Compliance by the Responsible Persons of Banks" which specifies that where the person in charge of the ABT meets negative qualifications specified in Article 3 of the Regulations, related parties and the Agricultural Bank shall actively report the circumstance that constitutes ipso facto cause for dismissal to the competent authority. The competent authority shall actively impose sanctions in accordance with reported information.

391. *Foreign Exchange Counters:* Article 5(3-5) of Regulations Governing the Establishment and Administration of Foreign Currency Exchange Counters prescribe the foreign currency exchange counter shall provide the responsible persons' police criminal record certificates with no conviction record in Chinese Taipei when applying for the establishment of a foreign currency exchange counter or changing its responsible person.

392. According to Article 4 of the Standards governing the establishment of securities firms stipulates disqualified circumstances of the promoters of a securities company. As for the on-going fit and proper review, based on Article 4 of the Regulations Governing Securities firms, when there is a change in the total number of shares owned by a securities firm's directors, supervisors, general manager and shareholders holding more than 10% of outstanding shares, the firm must file the change with the FSC. The FSC will then examine the reason for the change in order to prevent criminals or other associates from holding a significant or controlling interest in the firm.

393. **Criterion 26.4** - Core Principles financial institutions are regulated and supervised mostly in line with the Principles set by the BCBS, IOSCO, and IAIS.

394. MVTS providers, namely electronic payment institutions and issuers of electronic stored value cards, are regulated and supervised by FSC. Foreign exchange counters are supervised by the Central Bank.

395. **Criterion 26.5** - FSC has commenced risk-based supervision and has begun to take increasing measures which support FSC determining the frequency and intensity of onsite examinations and offsite monitoring based on (1) institutional risks (2) sectoral risks and (3) institutional and group characteristics. FSC has taken a number of steps to more closely consider key risk management issues in determining the frequency and intensity of supervisions. FSC has

generally taken a reasonable approach to considering the ML/TF risks and the policies, internal controls and procedures associated with the institution or group, as identified by the supervisor's assessment of the institution's or group's risk profile. However, it is only beginning to closely consider the ML/TF risks present in Chinese Taipei (pending more inputs from the FIU and LEAs) and the characteristics of the financial institutions or groups, in particular the diversity and number of financial institutions and the degree of discretion allowed to them under the risk-based approach.

396. The Central Bank has completed sectoral and institutional risk assessment of foreign currency exchange counters. The sectoral risk assessment of the foreign currency exchange counters is based on five factors: the sector's inherent characteristics; nature of products and services provided by the sector; nature of the business relationship with the clientele; geographic reach of sector's activities; and the nature of delivery channels. The institutional risk assessments combine information collected from off-site supervision, including the areas where individual institutions are established, the primary business sector by classification, and the exchange volume, with the on-site supervision's operational inspection results as the four risk factors for assessment, with each factor differently weighted for its potential risk influence on the foreign currency exchange counters. The Central Bank and BoT do not sufficiently consider the ML/TF risks present in Chinese Taipei when determining the frequency and intensity of their supervision.

397. **Criterion 26.6** - FSC conducts risk assessments of each institution, as a basis for preparing its AML/CFT supervision. The major events or developments in the management and operations of FI or group are updated by FSC through the review of the BOD meeting minutes.

398. In general, the FSC will update the risk assessment annually based on the level of inherent risk and control measures of individual FI and then reach the overall rating (residual risk) of individual FI by a matrix. In addition, the FSC will keep informed of the changes in the risk profile of individual FI through daily supervision and update its risk profile when there are major events.

399. Credit departments of farmers and fishermen's associations shall complete ML/TF risk assessments by the end of August 2018 and the ABT will complete its first risk assessment report in July 2017. Agricultural financial institutions shall update their risk assessments periodically in 1 to 1.5-year intervals. BOAF shall complete the first risk assessments for credit departments of farmers and fishermen's associations and conduct a more comprehensive risk assessment on all agricultural financial institutions as the basis for the frequency and intensity of subsequent onsite inspections and remote supervision.

400. The Central Bank updates and examines the sectoral risk assessment of foreign currency exchange counters triennially, and institutional risk assessment annually. If any magnificent and serious risk event happens, the Central Bank will adjust the level of risk rating of the foreign currency exchange counter whenever necessary and conduct operational inspection on such foreign exchange counters promptly.

### *Weighting and Conclusion*

401. The Central Bank and BoT do not sufficiently consider the ML/TF risks present in Chinese Taipei when determining the frequency and intensity of their supervision. **Recommendation 26 is rated largely compliant.**

### *Recommendation 27 - Powers of supervisors*

402. In its 2007 MER Chinese Taipei was rated largely compliant with former R.29. AML/CFT requirements for foreign currency exchange sector only came into force recently and the related supervisory framework was unclear.

403. **Criterion 27.1** - FSC has powers to regulate and supervise banking business, electronic payment institution, electronic stored value card issuer, securities and futures business and insurance enterprise on AML/CFT matters. These powers are derived under the Organic Act

Governing the Establishment of the FSC, MLCA and regulation issued under those and relevant sectoral statutes. Also, the Executive Yuan on June 17, 2017 designated the FSC as the competent authority for AML matters of financial leasing business. According to Art. 2, para1 of the Organic Act Governing the Establishment of FSC, the FSC is responsible for the development, supervision, management, and examination of the financial market and financial service industry including requirements for FIs in AML/CFT aspects.

404. The Organic Act also empowers FSC to oversee the management, supervision, inspection, assistance, and review of the business, finances and personnel of agricultural FIs (Article 7 of the Agricultural Finance Act). The Central Bank is competent authority responsible for authorizing and supervising banks and other enterprises engaged in foreign exchange operations (article 35 of the Central Bank act), including AML/CFT aspects of foreign exchange counters. Article 38 empower Central Bank to undertake targeted examination of the foreign exchange business.

405. **Criterion 27.2** - FSC, BOAF, and the Central Bank have the authority to conduct inspections of their supervised FIs. Articles 4 & 5 of the Organic Act establishing the FSC provides that agency's authority to conduct supervision of FIs. Article 64 of the securities and exchange Act, Article 101 of the Securities Investment Trust and Consulting Act, and Article 98 of the Futures Trading Act provide general power to order securities or future trading firms to provide report or FSC may inspect their business if it is any concerns on public interest or to preserve order of the market. Article 148 of Insurance Act allow FSC to have appropriate agency or professional expert to conduct inspection instead.

406. According to Article 2 of the Act Governing Electronic Payment Institutions and Article 2 of the Act Governing Electronic Stored Value Card Issuers provides FSC, as the competent authority, with additional powers to conduct inspections over electronic payment institutions and stored value card issuers. Article 6 of the MLCA, the FSC is the designated AML/CFT competent authority of financial leasing companies and responsible for their AML/CFT supervision.

407. FSC is also the competent authority to supervise business operations of Chunghwa Post for remittance, in collaboration with the Central Bank which is responsible for supervising Chunghwa Post foreign-exchange business (Art. 38 of the Central Bank Act).

408. **Criterion 27.3** - The provisions mentioned in criterion 27.2 also empower FSC, BOAF, and the Central Bank to order their supervised FIs to compile relevant books, documents, financial or business reports or other related information. Article 5 of the Organic Act extends FSC's powers of supervision to include responsible persons and employees of an FI and the FI's affiliated enterprises (as defined in the Company Act). The Organic Act empowers the FSC to require an examinee to appear at an FSC designated office for questioning. In relation to ensuring access to the premises of an FI, the Organic Act empowers the FSC, in cases involving suspected financial crime, to present facts to a prosecutor seeking permission to file a motion in the court for a search warrant of an FI.

409. **Criterion 27.4** - FSC, as the competent authority for all FIs except for foreign exchange counters, is authorised to impose sanctions. There are a range of sanctions which can be applied if an obliged entity fails to meet its responsibilities under the MLCA and related statutes. Apart from imposing fines, the corrections and other measures such as requesting improvement within a specified period of time, restrictions of businesses, dismissals of directors, supervisors or managers, ordering to dissolve, revoke or cancel the permission and etc. Competent authorities for foreign exchange counters can call for remedial measure and can ultimately revoke or cancel the license when the Central Bank supervision identifies that a foreign exchange counter seriously violates AML/CFT regulations, however fines are not available to enforce compliance. The nature of the sector [stand-alone nature of business, their scope and scale] means that this gap is not material.



### *Weighting and Conclusion*

410. There are minor shortcomings in the Central Bank ability to sanction foreign exchange counters for AML/CFT failings. **Recommendation 27 is rated largely compliant.**

### ***Recommendation 28 – Regulation and Supervision of DNFBPs***

411. In its 2007 MER Chinese Taipei was rated non-compliant under the former R.24. The DNFBP sector was not covered by the national AML/CFT framework, with the exception of dealers in jewellery and gold.

412. **Criterion 28.1** - Casinos are prohibited from operating in Chinese Taipei under Chapter 21 of the Criminal Code.<sup>16</sup>

413. **Criterion 28.2** -Art 6 of the MLCA states central competent authorities are responsible for regular inspection and review of DNFBPs' AML policies and procedures. Chinese Taipei demonstrated that competent authorities for each DNFBP sector have commenced offsite AML/CFT inspections and, in some sectors onsite inspections. Based on coordination with AMLO and with sectoral associations, each DNFBP sector has systems and programs in place for monitoring compliance with AML/CFT requirements. This is done in coordination with the AMLO.

- *Real estate:* Point 5 of the Regulations Governing AML/CFT for Land Administration Agents and Real Estate Brokerages requires random inspection of real estate and land admin agencies' ICS for AML/CFT.
- *Jewellery businesses:* Point IV(2) of the Regulations Governing AML/CFT for Jewellery Businesses requires the MOEA to inspect/review AML/CFT operations and internal controls on an annual basis, though they are also allowed to delegate this inspection/review to others. (Article 4(3)). Art 4(1,2) of the Regulation requires the MOEA to dispatch officers to inspect and review operations and ICS of jewellery retailers annually.
- *Accountants:* Regulations Governing AML/CFT for CPA provide that the national association of CPAs can also be designated by FSC to conduct onsite and offsite inspection.
- *Attorneys:* While there some powers are provided in the Regulations on AML/CFT Operations Matters Conducted by Attorneys, it is not clear that this represents a system for monitoring compliance to ensure attorneys are subject to compliance with AML/CFT policies and procedures.
- *Notaries:* Art 6 of Regulations Governing AML/CFT for Notaries requires the Judicial Yuan to conduct spot inspections annually of ICS of court notary divisions and civil notary public offices. Spot inspections are carried out by the district court which the notary is registered to, or the local notary association to which the civil notary belongs to.

414. Article 6 of the MLCA authorises the central competent authorities in charge of relevant DNFBP sectors to inspect and review AML/CFT controls. Art 3 of the Real Estate Broking Management Act notes the MOI is the administrative office at the central governmental level, while municipal and county-level land administration offices oversee their respective real estate brokerages. CPAs are supervised by the FSC as the competent authority under Art 3 of the Certified Public Accountant Act. Art 3 of the Certified Public Bookkeepers Act establishes the MOF as the competent authorities for bookkeepers and tax return filing agents. The Department of Prosecutorial Affairs, MOJ is the competent authority responsible for attorneys.

415. **Criterion 28.3** -Bookkeepers and tax return filing agents are the other categories of DNFBPs subject to systems for monitoring compliance with AML/CFT requirements: Art 7, 9 and 11 requires bookkeepers and tax return filing agents to register with the MOF. Art 12 of the

<sup>16</sup> It is an offence to gamble in public, furnish a place to gamble or assemble persons to gamble, to operate lottery or 'prize-giving savings businesses', or acts in an intermediary for either.

Regulations Governing AML for Certified Public Bookkeepers and Tax Return Filing Agents authorises MOF National Tax Bureaus to investigate.

**Criterion 28.4:**

416. **28.4.(a)** - Overall, with the exception of CPAs and notaries, there are gaps in the powers of sectoral supervisors to monitor compliance. Article 6 (3-4) of the MLCA holds that the central competent authorities in charge of the relevant industries shall regularly inspect and review the implementation of the policies and procedures for AML/CFT and may delegate the inspection and review to another agency, institution, legal person or organization. A series of AML/CFT guidelines or directions have been issued for each sector which reference that the competent authorities will supervise for compliance with obligations in the MLCA and its regulations. However, only regulations for CPAs and notaries give a clear statutory basis for adequate powers to perform supervisory functions with DNFBPs, including powers to obtain records, enter premises, inspect systems, etc.

417. **28.4.(b)** - Overall, there do not appear to be provisions which prevent a criminal from holding a significant or controlling interest in a DNFBP. Additionally, there do not appear to be enforceable statutory instruments which prevent criminals' associates from being accredited, holding a significant/controlling stake, or holding a management role in a DNFBP.

418. *Real estate:* Under Art 6 of the Land Administration Act, a criminal who served more than a year in prison cannot be an agent. If they already are, then competent authorities must withdraw and cancel their license to practise. Art 6 of the Real Estate Broking Management Act excludes persons who are bankrupted, were managers of a nullified real estate brokerage, and those who are convicted of specified offences for which they served more than a year in jail from being registered as brokers. These offences include: fraud, breach of trust, misappropriation, Article 2 of Prevention of Sexual Aggression and Articles 3(1), 3(2), 6 and 9 of Prevention of Organised Crime. Art 31 of the Real Estate Broking Management Act sets out graduated sanctions for brokers. Being reprimanded thrice leads to their business being suspended for 6 months to 3 years, and a cumulative suspension time of 5 years leads to the broker's certificate being rescinded.

419. *Jewellery businesses:* are only subject to the Company Act's provisions (Art 108(4), Art 192(5) and Art 216 (4)) which is limited to barring criminals from a corporate directorship or a supervisory role in a company.

420. *Bookkeepers and Tax Return Filing Agents:* are Regulated under Art 4 of the Certified Public Bookkeepers Act. Art 4(1,1) prevents criminals who have served more than a year in jail from acting as a certified public bookkeeper. However, there are no provisions preventing criminals' associates from being accredited, holding a significant/controlling stake, or holding a management role in a bookkeeping or tax return filing business. MOF is their competent authority under Article 3.

421. *Attorneys:* Art 4 of the Attorney Regulation Act prevents anyone convicted of a crime and sentenced to more than a year in jail, involving a crime of 'moral turpitude that affects their moral fitness to practise law', and having been disbarred by the Attorney Disciplinary Committee from being an attorney.

422. **28.4.(c)** - Art 6(4) of the MLCA provides administrative fines of NTD 50k to 500k which can be applied by central competent authorities (or delegated agency/institution/legal person/organisation) in cases where DNFBPs avoid/refuse/obstruct *regular* inspections of their implementation of AML policies and procedures. In addition, other sanctions are available under the MLCA, CFT Act and sector-specific statutes which may be applied for AML/CFT failures and a lack of compliance with directions from competent authorities.

**Criterion 28.5:**

423. **28.5.(a)** - The various competent authorities responsible for DNFBPs, supported by the AMLO, have used recent NRA findings to establish and to commence the implementation of a risk-

based supervisory framework and risk assessment tools. This has included outreach, offsite supervision and, in some sectors, limited onsite supervision.

424. **28.5.(b)** – Commencing in 2018, DNFBs have been subject to limited risk-based supervision, which is derived from tools including national and sectoral risk assessments, and questionnaires. Reporting entities deemed to have lower risk are subject to education and training, while onsite inspections are initially being undertaken with those sectors or entities shown to be medium to high-risk.

### *Weighting and Conclusion*

425. In terms of prevention of criminals and their associates, there are some control gaps for the holding of significant/controlling interests in DNFBPs. Furthermore, there are deficiencies in controls around prevention of associates from accreditation and holding a management role. In terms of DNFBP supervision, there are steps towards a risk-sensitive basis. However a nascent DNFBP supervisory framework and tools, as well as limited risk inputs, are a challenge for the determination of intensity/frequency as well as individual entities' profiles for risk-based supervision. **Recommendation 28 is rated partially compliant.**

### *Recommendation 29 - Financial intelligence units*

426. In its 2007 MER, Chinese Taipei was rated compliant with former R.26. R.29 contains new requirements that were not assessed under the 2004 Methodology. The revised recommendation provides a clearer articulation of the three core FIU functions.

427. In 1997 the MLPC was established as an FIU under the MJIB. In 2008 the AMLD was formed as a law-enforcement type FIU, still located within the MJIB. The Regulations for the Departmental Affairs of the MJIB sets out the AMLD's FIU activities and responsibilities.

428. **Criterion 29.1** - According to the MLCA and the CTF Act, the AMLD is the competent central agency for receipt of STRs. The MLCA requires FIs and DNFBPs to report currency transactions and STRs to the AMLD which may relate to any of the predicate offences in the MLCA (Art 9-10). Article 9 of the Regulations for Departmental Affairs of MJIB confirms that the AMLD is in charge of receiving, analysing and processing suspicious transaction reports filed by FIs.

429. **Criterion 29.2** - The FIU is the central agency responsible for receiving disclosures from reporting entities in accordance with Article 9 of the Regulations for Departmental Affairs of MJIB. FIs and DNFBPs are required to file the following to the AMLD under the MLCA, CFT act and the Foreign Exchange Counter Regulation:

- a. STRs (Art 10 of the MLCA and Art 11 of the Foreign Exchange Counter Regulation)
- b. CTRs (FIs and jewellery businesses) equal to or above the applicable designated threshold – currently set at NTD 500,000 (approx. USD17,000) or value equivalent in foreign currency or above (MLCA Art. 9)
- c. International Currency and Securities Transportation Report (ICTR) made to Customs are provided to AMLD on a monthly basis (for batch reports) or without delay in case of a false declaration (MLCA Art. 12)
- d. Reports of frozen funds and assets of designated persons under various UNSCRs (Article 7 of the CTF Act).

430. **Criterion 29.3** - MJIB staff, including AMLD, are deemed to be judicial police officers pursuant to Article 14 of the Organic Act for Investigation Bureau and are able to access information pursuant to the CPC and the Administrative Procedure Act. AMLD requires FIs and DNFBPs to produce records in keeping with their role as investigators Article 230 of the CPC which confirms judicial police who suspect an offence has been committed shall initiate an investigation. Letters to reporting entities reference the existence of a possible ML investigation and references

an FSC order from 2006 (Jin-Guan-Yin-1 No. 09510002020). In other cases (e.g. DNFBP not regulated by FSC) AMLD relies on art 133 of the CPC, which allows judicial police to seize a thing which may be used as evidence or subject to confiscation and is used to obtain supplementary documents, including transaction records, accounting vouchers, CDD and detailed documents without a court order. Similarly, AMLD has access to a wide range of information on finance, administration, and law enforcement, (as per article 19(4) of the Administrative Procedure Act) including but not limited to household registrations, business registrations, immigration records, taxation (non-real time), motor vehicle registration, criminal offences, prosecution briefs, taxation (real-time), and labour insurance, or may send an official letter to institutions including but not limited to the Central Bank, Ministry of Education, the MOF, MOI, Ministry of Health and Welfare, local government at all levels, the Stock Exchange Corporation (TWSE), Taipei Exchange (TPEX), Financial Information Service Co., Ltd for seeking information.

431. **Criterion 29.4** - The AMLD conducts operational/tactical analysis on STRs and related information which come to the FIU. The AMLD has databases that identify priority STRs for analysis however staff at AMLD also analyse each STR that comes into the FIU for priority. AMLD has access to a wide range of information which it utilizes when undertaking analysis of STRs both proactively and reactively. This includes the provision of international cooperation from foreign counterparts.

432. The AMLD performs strategic analysis, combining when necessary with MOF and FSC to identify trends and typologies of financial crime. The requirement to conduct strategic analysis is based in Regulations under Art 5 of the MJIB Operation Regulations on Matters relevant to AML/CFT. The AMLD does not have a dedicated strategic analysis team, rather intelligence analysts undertake research as required. The research is generally disseminated within government and only occasionally is circulated more widely amongst the private sectors.

433. **Criterion 29.5** - Article 9(2) of the Regulation for Departmental Affairs of the MJIB provides a statutory basis for AMLD to receive, analyse and disseminate STRs. Article 9(3) provides a basis for receiving and maintaining CTRs and ICTR, but does not explicitly provide a basis for further dissemination<sup>17</sup>. Statistics provided to the team demonstrate that such information is however disseminated. Article 9(7) puts AMLD in charge of 'other AML related matters'. Article 5 of the MJIB Operation Regulations on Matters Relevant to AML/CFT allows AMLD to disseminate its product of analysis to competent authorities spontaneously or upon requests. AMLD disseminates operational financial intelligence products in written format labelled "classified". Art 5 of the Operation Regulations sets out further requirements for the information to be provided for information only, it shall be confidential and the competent authorities may not deliver the information to third parties without approval from the AMLD. In order to respond efficiently to requesting agencies, AMLD has established a secure and dedicated network with the competent authorities including MJIB, MOJ (Prosecutors' Offices, AAC, AEA) and NPA to request information. In other instances, the result of analysis is sent via hard copies labelled classified.

434. **Criterion 29.6** - Article 17 of the MLCA provides some obligation to the information security and data protection. Article 8 of the MJIB Operation Regulations on Matters Relevant to AML and CFT and the MJIB Maintenance and Operation Guidelines for IT Security Equipment contains procedures for handling, storing, disseminating, protecting, accessing, and safeguarding of all digital and non-digital information and files acquired, received and kept safely and securely.

435. Article 8 of the MJIB Operation Regulations on Matters Relevant to AML and CFT require personnel to exercise extreme caution when processing and using files and data which must be lawfully obtained, handled, and held in custody. AMLD personnel are furthermore required to observe all confidentiality and security measures and are prohibited from disclosing reporting entities, employees, or other personnel and information of personnel of such entities responsible

<sup>17</sup> An updated translation of Art 9(3) of the Regulation was subsequently provided to the assessment team immediately prior to the adoption of the report, however this was not able to be reflected in the final analysis.

for handling such data. The MJIB has rigorous regulations and principles regarding employment, stringent testing and evaluation measures. This includes ongoing evaluations by the personnel office, civil service ethics office and Inspection Division of the MJIB to scrutinize the integrity of agents.

436. The AMLD staff are all MJIB personnel with a minimum of 4 years' experience as an MJIB officer. MJIB staff hold relevant clearances. The CPC requires secrecy in criminal investigations with sanctions for any breach. The AMLD is located in a secure part of the MJIB with separate entrances that are not accessible by other MJIB members.

437. **Criterion 29.7** - The AMLD was set up in accordance with the Organic Act for Investigation Bureau, Ministry of Justice to execute FIU functions, and the AMLD Head is authorized to review and approve the handling, analysis, exploitation, and dissemination of related intelligence. In accordance with the regulations prescribed in Article 5 of the MJIB Operation Regulations on Matters Relevant to AML/ CFT upon approval by the Division Head, staff shall disseminate compiled operational or strategic financial intelligence in critical situations involving the stability of the financial system or national security. There are no requirements for further consent to be sought.

438. Article 21 of the MLCA empowers the government to sign AML treaties or agreements with foreign governments, agencies or international organizations on the basis of reciprocity. Article 9(5) of the Regulations for Departmental Affairs of the MJIB gives a statutory basis for AMLD to be in charge of 'liaison, planning, coordination and implementation of information exchange, personnel training and cooperation in investigating ML cases with foreign counterparts. Article 6 of the MJIB Operation Regulations on Matters Relevant to AML/ CFT enables the AMLD to make decisions autonomously on whether and how to share information with foreign FIUs, even with non-Egmont Group members. The MJIB Operation Regulations on Matters Relevant to AML/ CFT, MJIB can disseminate analysis results to the Prosecutor's Offices and LEAs spontaneously or upon requests.

439. Article 9 of the Regulations for Departmental Affairs of the MJIB gives a statutory basis for AMLD to be in charge of researching AML strategies; receiving and analysing STRs and disseminating analysis results; receiving and maintaining CTRs and ICTR; assisting domestic LEAs in matching data from the AMLD for investigating ML and coordinating/contacting on ML prevention; liaison, planning, coordination and implementation of information exchange, personnel training and cooperation in investigating ML cases with foreign counterparts operational analysis and strategic analysis of financial intelligence related to AML/CFT as well as assisting in, cooperating on, and conducting negotiations pertaining to domestic and international ML and TF investigations. AMLD is vested with the core responsibility of the operation of the statutory FIU core functions and operates independently. Its functions are explicitly different from the core functions of MJIB.

440. The AMLD staff are full-time investigators; while the MJIB nominally supervises the AMLD, the Director of the AMLD is fully authorized to review, determine, and disseminate all operational and strategic analysis of financial intelligence domestically and internationally. The AMLD budget forms part of the MJIB budget and budgetary requirements are submitted to the MJIB for consideration. Instances were cited where resources were sought, and granted from the MJIB.

441. **Criterion 29.8** - The MJIB has been a member of the Egmont Group since 1998.

#### *Weighting and conclusion*

442. AMLD is LEA-style FIU that is mandated to independently conduct operational and strategic analysis and disseminate to domestic and foreign partners. The AMLD shares information with domestic and foreign counterparts in a secure manner. There is not an express provision

allowing for the dissemination of ICTRs and CTRs however such information is included in analysis reports that are disseminated. **Recommendation 29 is rated largely compliant**

### *Recommendation 30 – Responsibilities of law enforcement and investigative authorities*

443. Chinese Taipei was rated largely compliant with former R.27 in its 2007 MER. Designated authorities did not have responsibility for the investigation of ML or TF; there had only been limited success in the recovery of proceeds of crime and there were limitations on special investigation techniques that could be used to conduct investigations in ML.

444. **Criterion 30.1-** Public Prosecutors are the primary investigative body in Chinese Taipei. Under Article 228 of the CPC, public prosecutors shall immediately begin an investigation if they have a suspicion that any criminal offence has been committed. Prosecutors instruct judicial police (MJIB, NPA, AMLD), who assist the Prosecutors in obtaining evidence throughout the investigation (Art 229 – 231 of the CPC). When judicial police suspect that an offence has occurred, they are also able to initiate an investigation and report the results thereof to the prosecutor. The prosecutor considers whether sufficient evidence has been gathered and guides the judicial police officer through the criminal investigation process. Certain officials including police officers, military police officers, and other authorized persons may act as a judicial police officers in assisting the public prosecutor to investigate an offence. However, as stated above they may also initiate investigations themselves and report the results to the prosecutor (CPC Article 230).

445. **Criterion 30.2 -** Prosecutors and judicial police officers are the predominant criminal investigators in Chinese Taipei with the power to investigate both predicate offences and ML/TF under provisions of the CPC. Prosecutors and judicial police officers are able to conduct financial investigations of predicate offences, ML and TF.

446. **Criterion 30.3 -**Prosecutors are the key body tasked with seizing and freezing proceeds of crime. However, under the CPC, judicial police authorities, including prosecutor investigators, the Coast Guard Administration, NPA, NIA, MJIB, AAC, and regional military police are able to seize property that should be confiscated or is suspected of being proceeds of crime. The seizure is temporary until the prosecutor applies to the court.

447. **Criterion 30.4 -**A number of authorities that are not LEAs handle financial investigations involving money laundering, terrorism financing, and predicate offences that occur within their scope of operations. These include the Ministry of Labour, Environmental Protection Administration (EPA), the Central Bank, Taxation Administration (MOF), Intellectual Property Office (MOEA) and the FSC. These authorities may refer to a prosecutor and judicial police authorities (Articles 240 and 241 of the CPC). Customs may survey, search, seize and obtain witnesses, testimonies and evidences related to smuggling; articles 10, 12, 17-22 of the Customs Anti-smuggling Act.

448. As non-LEAs are not granted related authorities by the CPC, they may only investigate related information within their scope of operations. If they discover illegal activities in their investigation, they shall lodge an accusation with a prosecutor and judicial police (officer) in accordance with Article 241 of the CPC. Non-law enforcement agencies may assist prosecutors and judicial police in carrying out criminal investigations in related cases. In this case however, the prosecutor would take over the task of managing the criminal and the proceeds of crime case.

449. **Criterion 30.5 –** the AAC is the designated anti-corruption body in Chinese Taipei and is able to, under the supervision of the public prosecutor, conduct searches, seizures and collect evidence; Articles 128-1, 130~131-1, 137, 152 of the CPC. In practice, both the AAC and MJIB officers investigate ML/TF offences arising from or related to corruption and each have powers of criminal investigation, and in any event work alongside prosecutors.

*Weighting and Conclusion*

450. **Recommendation 30 is rated compliant.**

***Recommendation 31 - Powers of law enforcement and investigative authorities***

451. In its 2007 MER Chinese Taipei was rated compliant with the former R.28.

***Criterion 31.1:***

452. **31.1(a)** Competent authorities (all judicial police officers including MJIB, AMLD, NPA, AAC) in Chinese Taipei are able to compel the production of records, this is done via provisions in the CPC requiring the seizure of things which may be used as evidence or which are subject to confiscation (Art. 133). For requests to other domestic agencies compelling the production of documents, Art. 126 of the CPC applies. In practice, authorities may obtain details regarding bank account openings from FAIS, however this does not provide transaction records. LEAs therefore consult FAIS initially for details of current bank accounts of suspects and then obtain transaction details from the relevant bank. Art 138 of the CPC provides that if the owner, possessor or custodian of property which should be seized refuses to deliver or surrender it without justified cause, force may be used to compel production of the property.

453. **31.1(b)** Art 122-132-1 of the CPC allows for the search of the person or property of an accused person, and the search of property, dwelling or premises, or electronic record of a third party where there is probable cause to believe that the accused or suspect, property or electronic record subject to seizure is there. The owner, possessor or custodian of the property subject to seizure may be ordered to surrender or deliver a thing that may be seized. Seizure may be executed by a public prosecutor, judicial police officer or judicial police. Property found at a search that is subject to seizure may be seized even if it is not named in the search warrant.

454. **31.1(c)** CPC Art 196-1 allows judicial police officers to summons a person to appear for questioning. Customs officers may also compel witnesses to attend and give evidence under Art 17-22 of the Customs Anti-Smuggling Act.

455. **31.1(d)** CPC Art 133 provides that a thing which can be used as evidence or is subject to confiscation may be seized. The owner, possessor, or custodian of the property subject to seizure may be ordered to surrender or deliver it. Property that is discovered during a seizure or search as above shall be seized even if it is not present on the warrant (Art 137).

***Criterion 31.2:***

456. **31.2(a) - Undercover operations** - Competent authorities are able, in limited circumstances, to use undercover operations (Articles 12 and 13 of the Police Power Exercise Act). The Police Power Exercise Act allow police to select a third party to secretly collect data on a suspect who is suspected of violating criminal laws. This use of informants only applies in limited circumstances in which police seek the assistance of others to operate undercover.

457. **31.2(b) - Intercepting communications** -The Communication Security and Surveillance Act allows for communication surveillance in relation to certain predicate offences and includes utilizing wired and wireless telecommunication equipment to send, store, transmit or receive symbols, texts, images, sound or other types of information, mail and letters, speeches and conversations. Art 5 provides for interception warrant with sufficient evidence that the accused is involved in listed crimes including all offences punishable with a minimum of a three year fixed-term of imprisonment. There is a small number of predicate offences that are not covered, however ML under the MLCA is covered. While amendments to the MLCA were not been reflected in cross references within the Communication Security and Surveillance Act, assessors accept the authorities advice that in the spirit and purpose of the legislation, courts will still grant interception warrants for ML and related predicate offences. Interception warrants for ML would allow use of the Act for ML related to predicates that are not expressly captured under the Act. The

Communication Security and Surveillance Act allows for surveillance to be conducted on organisations with the aim of operating international or cross-border terrorist activities, or a member of such organization (Art 7, 8 &9). Authorities demonstrated that security intelligence agencies have an additional statutory basis for their electronic surveillance and telecommunications interception for instances where Chinese Taipei residents may be suspected of involvement in matters related to security of the "...economy, technology, social or major security issues". This would cover intelligence collection for aspects of ML, TF and certain predicates.

458. **31.2(c)** - *Accessing computer systems* – Articles 122 of the CPC allows an examination of mobile phones or computer devices and Articles, 133 through to 153 of the CPC allow data captured from devices such as a computer system or conversation records of messaging software stored in such device to be analysed.

459. **31.2(d)** - *Controlled delivery* - In drug matters, articles 32-1 and 32-2 of the Chinese Taipei Narcotics Hazard Prevention Act allow for controlled delivery in certain narcotics cases. Further detail on controlled deliveries is provided for in the Operational Guidelines for Customs Enforcement of Controlled Delivery of Narcotics which regulates methods for conducting controlled deliveries. Controlled delivery is only available in drug matters under the legislation outlined above.

460. **Criterion 31.3** - As outlined above, competent authorities have the powers to access information from the private sector under the CPC to further their financial investigation of assets (predominately Articles 126 and 133 of the CPC). In practice, the competent authorities are able to use the FAIS to obtain account information provided by a financial institutions and are not required to notify any person in advance in order to conduct a criminal investigation. There are no requirements outlined in the above provisions with respect to conducting investigations that require notice to the owner.

461. **Criterion 31.4** - The competent authorities may seek all relevant information or analysis held by the AMLD. This is done pursuant to the provisions of the CPC that require documents to be produced in the course of a criminal investigation. This is undertaken either electronically (for example the NPA/prosecutors/AMLD) however also occurs via official letter.

### *Weighting and Conclusion*

462. Chinese Taipei has broad provisions allowing for the collection and production of documents and evidence in criminal proceedings. However, there are restrictions on authorities' ability to conduct undercover investigations and intelligence gathering. There is a minor scope gap in relation to intercepting communications for a small number of predicate offences and to conduct controlled delivery in predicates other than drug matters. The gaps with controlled delivery are not given weight. **Recommendation 31 is rated largely compliant.**

### **Recommendation 32 – Cash Couriers**

463. In its 2007 MER Chinese Taipei was rated PC with the former SRIX. There was a lack of resources available to the Customs Service to enforce the declaration system; deficiencies in the sanctions available for non-compliance with the declaration system; and a lack of implementation of specific sanctions for cash smuggling.

464. **Criterion 32.1** - Chinese Taipei has a declaration system for cross-border transportation of currency and BNIs, which extend to all physical cross-border transportation, Article 12 of the MLCA confirms that passengers or crew members entering or leaving Chinese Taipei must declare certain items to customs: (1) cash in foreign currency over USD10,000; (2) cash in NTD over NTD100,000; (3) negotiable securities with a face value of more than USD10,000; (4) gold in an aggregate value over USD20,000; (5) other items with a total value over the applicable threshold that might be used for ML (defined as diamonds, precious stones and platinum not for personal use). This includes the



delivery of such items through mail or other similar means, across the border. Regulations have been issued pursuant to Art 12 of the MLCA designating the applicable thresholds and providing further requirements on declarations including clarification of the definition of negotiable securities. Art 4 of the AML Guidelines for Cross Border Declaration and Reporting (Cross-Border Guidelines) requires passengers entering and departing the jurisdiction to fill out customs declaration forms and present them to customs for approval. For items sent by mail or other means, procedures are prescribed in the Customs Act and relevant Regulations. For currency issued by China being transported across the border, the above thresholds apply for declaration. Further statutory provisions set out requirements that coins and notes issued in China may not be brought into or taken out of Chinese Taipei above amounts prescribed by the FSC. Above those amounts, a declaration and deposit is required to Customs, and repayable on departure (Art 38). Violation of this provision results in confiscation by Customs of the amount exceeding the required declaration amount (Art 92). Article 16 of the Customs Act requires all imported goods to be declared to customs within fifteen days following the arrival date of transportation carrying such goods. Exporters shall also declare exported goods before departure (Art 3-4 Cross-Border Guidelines).

465. **Criterion 32.2** - Chinese Taipei has a written declaration system for all travellers carrying cash over the thresholds outlined above (Art 12 MLCA and Reg. 3 of the Cross-Border Guidelines).

466. **Criterion 32.3** - Chinese Taipei adopts a written declaration system.

467. **Criterion 32.4** - Article 11 of the Customs Anti-Smuggling Act allow a customs officer when they deem that carriage of an article might violate the Act to order that person to hand the article over. Article 12 of the same act allows them to interrogate a suspect. In practice, MJIB officers operating at the border would also be able to investigate the matter under their criminal justice powers.

468. **Criterion 32.5** - Penalties for failure to disclose are present in Art 12 of the MLCA. Foreign currencies not declared to customs are subject to confiscation. In the event of a false declaration in which the value of the currency is misrepresented, the part over the amount declared shall be confiscated by customs. Failure to declare the value of negotiable securities, gold or items transported or a false declaration will lead to a fine equivalent to the value of the negotiable securities, gold or items that are not declared or are falsely declared. Upon discovery of NTD that exceeds the restricted amount, the cash cannot be transported into or out of Chinese Taipei. When it is not declared, the cash is confiscated and in the event of a false declaration, the amount of cash not declared shall be confiscated. For those that have not been declared in full, the undeclared portion shall be confiscated. Separate legislation prohibits cross-strait movement of coins and notes in Chinese RMB. Penalties for non-compliance are dissuasive however may not be proportionate in certain circumstances (see IO8).

469. **Criterion 32.6** - information obtained by customs are reported to AMLD monthly (Art 12 MLCA and Art 5 Cross-Border Guidelines). The information obtained through the declaration process and information regarding false declaration or failure to report are all transmitted via manual delivery in encrypted forms. As AMLD is responsible to receive and process ICTR, it has direct access to this information.

470. **Criterion 32.7** - various coordination meetings are held between port and customs authorities, immigration, aviation police and district prosecutor's office to communicate inspections of traveller baggage and cash reports for inspection work for international ports and airports in Chinese Taipei. In particular as there are MJIB officers stationed at each port, there is a close working relationship between Customs and MJIB on all matters that arise at the border. In relation to cargo, the MOI, MOF, MOJ and Coast Guard Administration coordinate to divide relevant work and cooperate. Platforms are in place such as the joint criminal proceeds investigation coordination meetings, Executive Yan Investigation on Smuggling and Human Trafficking Coordination meetings, Drug Enforcement Coordination Meetings and Customs Affairs Coordination Meetings.

471. **Criterion 32.8** - Article 11 of the Customs Anti-Smuggling Act allows customs officers to demand an item be handed to officers for investigation if they suspect violation of that act. Art 36 of the Administrative Penalty Act stipulates that a thing that may serve as evidence or be forfeited may be seized which enables Customs to seize items. However, there is no definition of what a “thing that may be forfeited” is. In practice, authorities say that it has a wide interpretation.

472. **Criterion 32.9** - Declarations exceeding the threshold or false declarations are reported to the MJIB who are required to keep copies of all accepted files and information for a minimum of five years (Art 3 of MJIB Operation Regulations). Further, CA are required to keep all original data or electronic files for a minimum of five years (Art 5 and 6 of the Cross Border Guidelines). This data would be available to LEAs in the event of suspicion of ML or TF.

473. **Criterion 32.10** - Art. 12 of the Customs Act deems information from customs declaration to be confidential except in expressed circumstances which includes dissemination to relevant agencies. Those in violation of Art 12 may be subject to disciplinary action or if the criminal law shall be handed to relevant authorities for investigation. Controls are in place for the disclosure of personal information by government agencies in the Personal Information Protection Act (Art 15-18). Safeguards are in place to restrict improper use of information, including sanctions against tip-offs.

474. **Criterion 32.11** - Persons carrying out a physical cross-border transportation of currency or BNIs that are related to ML/TF or predicate offences are subject to prosecution for ML under the MLCA (Art 2). The prosecutor may request the court to order the prohibition of withdrawal, transfer, payment or delivery or any other disposition of property if they believe an offender has committed ML and similar powers are available under the CPC as outlined in R.4. Under the MLCA, ML is punishable by imprisonment of not more than seven years and a fine of not more than NT\$ 5 million. For currency or BNI or other items that are falsely declared, the amount exceeding the required declared amount is able to be confiscated. Under Art 18 of the MLCA, all property relating to ML is able to be confiscated. Article 36 of the Administrative Penalty Act allows a thing that may be forfeited to be seized. Noting the comments in IO8, the team considers that the penalties are dissuasive and proportionate in the event that a person is involved in ML, TF or a predicate offence.

### *Weighting and Conclusion*

475. Chinese Taipei has a robust declaration system for incoming and outgoing cash, BNI and other goods. Whilst customs officers have the power to seize items on suspicion, they may only seize “things that may be forfeited or may serve as evidence”. There is no definition of a thing which may be forfeited however authorities advise that this is construed widely. These are minor gaps. **Recommendation 32 is rated largely compliant.**

### *Recommendation 33 – Statistics*

476. In its 2007 MER, Chinese-Taipei was rated largely compliant with former Recommendation 32. There were discrepancies in statistics of penalties arising out of ML prosecution; SRIII actions; and for MLA / extradition.

#### **Criterion 33.1:**

477. **33.1 (a) STRs, received and disseminated** -Chinese-Taipei maintains statistics regarding STRs including STRs and other reports received and disseminated which are kept by MJIB. Art. 2 of the MJIB Operation Regulation on AML/CFT provide that file and information (refer to documents, electronic records, and other information accepted in accordance with Art 9 (CTR), 10 (STR), and 12 (cash courier) of the MLCA and Art 7 CTFA (assets and property/ property interest of names on the sanction list) that are recorded or stored at the investigation bureau (MJIB) shall be retained for at least five years from the acceptance date to the reporting date.

478. **33.1(b) ML/TF investigations, prosecutions and convictions** - Chinese Taipei maintains statistics on ML cases including ML/TF investigations by prosecutors, LEAs, prosecutions, and convictions which are kept and compiled by MOJ from district prosecutor's office for all predicate offences and ML investigations. Chinese Taipei does not however maintain statistics on ML investigations that are opened by LEAs prior to being referred to prosecutors. Competent Authorities keep statistics on particular ML/TF investigations and predicate offences: MJIB (drug trafficking, corruption, TF, financing of proliferation, securities crimes, fraud embezzlement, tax crime, Ponzi schemes, underground banking, ML, etc.), NPA (drug trafficking, organized crimes, fraud, crimes in violation of environmental protection, kidnapping, underground banking, loansharking, ML, etc.), AAC (corruption, bribery, and ML, etc.), Coast Guard Administration, Ocean Affairs Council (drug trafficking, smuggling, arms trafficking, alien smuggling), and NIA (human trafficking).

479. **33.1(c) - Property frozen; seized and confiscated** - Chinese Taipei maintains statistics on property restrained and confiscated. MOJ is responsible for keeping the records of frozen, seizure, and confiscation of properties. Other competent authorities also keep statistics: the AEA keeps and compiled the records of enforcement against properties (mainly tax evasion and offences), the CA keeps the statistics on confiscation of no/false declarations of currencies, negotiable securities with value over reporting threshold (AML Guidelines for cross border declaration and reporting article 4 - 6 AML). Under article II juncto III the MJIB Regulations provide that file and information (assets and property/ property interest of names on the sanction list (art 7 CTFA) that are recorded or stored at the MJIB shall be retained for at least five years.

480. **33.1(d) Mutual legal assistance or other international requests for co-operation made and receive** -MLA statistics are kept and compiled by MOJ and Judicial Yuan, while statistics of other forms of internal cooperation are kept and compiled by: AMLD, supervisory authorities, LEAs and the MOF.

### *Weighting and Conclusion*

481. Chinese Taipei maintains a wide range of statistics pertaining to the requirements of R.33 however it does not keep detailed statistics on ML investigations that are opened by LEAs prior to being referred to prosecutors. **Recommendation 33 is rated largely compliant.**

### **Recommendation 34 - Guidance and feedback**

482. In its 2007 MER Chinese Taipei was rated partially compliant with the former R.25. The MLPC did not provide feedback on or acknowledge the receipt of STRs and STR cases that had been completed.

483. **Criterion 34.1:** Supervisors have issued comprehensive guidelines on assessment of ML/TF risks and adoption of prevention programs and model guidelines regarding AML/CTF policies and procedures to a wide range of FI's on a sector-specific basis.

484. To establish guidelines, financial supervisors also actively participate in seminars organized by the MIJB and related agencies of the FSC. Financial supervisors have provided further lectures on relevant AML/CFT policies such as CDD measures, maintaining transaction records, and reporting STRs.

485. Supervisors also provide feedback by holding seminar and information session, conferences, inspections, interview, onsite visit, as well as AMLD who provides reporting institution with feedback on the number and analysis results of related reports every six months, or assigns agents to FIs and DNFBPs from time to time to share and analyse actual past cases and use case studies to describe suspicious signs and characteristics of STRs. AMLD also organizes seminars for personnel responsible for AML operations and person in charge and invites financial supervision competent authorities from time-to time to discuss the latest trends in AML operations and exchange opinions.

486. AMLD publishes relevant information on its website including regulation and laws, international standards, annual reports, case studies, etc., standardized forms related to AML/CFT reporting, and a link to the UN consolidated sanction list. The website of the FSC further responds to questions or recommendations from audit personnel, publishes industry-specific AML/CFT examination manuals, announces critical deficiencies or common discrepancies found in inspections and provides guidance on improvement to establish continuous communication channels with FIs.

487. AMLD has a dedicated telephone number for REs to query relevant reporting affairs such as STRs. The AMLD further provides feedback to REs who provide STRs that lead to criminal investigations and recommends appropriate rewards to the relevant staff members. They also inform the relevant institution's supervisor of such matters.

488. Most sectors' self-regulatory bodies have issued AML/CFT guidelines. In this regard, the FSC issues guiding principles to facilitate the implementation of laws, FSC's regulations and directions issued by FSC. As to the practical implementation, the FSC requires related self-regulatory organizations, such as financial industry associations, to issue model guidelines or best practices, following the direction of the FSC, after extensive discussion with public and private sectors. These guidelines or best practices are required to be approved by the FSC. Although the guidelines with regard to practical implementation are issued by self-regulatory organizations, the FSC has fully engaged and proactively participated in the discussion for developing those guidelines.

489. With respect to DNFBPs, relevant DNFBPs competent authorities have cooperated with AMLO to publish DNFBP guidance notes for their reference.

490. According to article IX (2) MJIB Operation Regulations, MJIB may provide feedback for reporting institution, enterprise, or professional regarding domestic and foreign ML/TF case studies as well as AML/CTF guidance and related information.

### *Weighting and Conclusion*

491. Chinese Taipei issues comprehensive guidelines and provides feedback to reporting entities on their AML/CFT obligations. **Recommendation 34 is rated compliant.**

### *Recommendation 35 – Sanctions*

492. Chinese Taipei was rated largely compliant with the previous R.17 in its 2007 MER. The type and nature of sanctions actually imposed by the FSC were inadequate in view of the many AML/CFT non-compliance findings for the banking sector.

#### **Criterion 35.1:**

493. *Rec 6:* Article 12 of the CTF Act stipulates that any FI that violates Article 7, paragraph 1 (TFS) or paragraph 2 (reporting obligations), of the CTF Act will be fined between NT\$200,000 and NT\$1 million (around USD6500 to 32,000).

494. *Rec 8:* There are fines ranging between NTD30,000 and 500,000 (around USD970 to 16,000) for AML/CFT breaches (2018 Foundations Act). Under the Civil Code, the director or controller of a licensed legal person who disobeys the supervising order of, or obstructs the inspection by the authorities concerned, may be fined under NTD 5,000 (around USD160); the authorities concerned may apply to the court for dismissing the director or controller's position and make other necessary arrangements. If a legal person violates any conditions under which the license has been granted, the authorities concerned may revoke the legal person's license (Article 33 of the Civil Code). Where a civil association violates a law or its constitution or encumbers public welfare, the regulating authority may warn it, cancel its resolution, or stop whole or a part of its business, and order it to improve within a specified time limit. If improvements are not made within the time limit or in serious circumstances, the punishments may be executed such as recall of the personnel, setting a time limit for correction, abolishment of the permit and disincorporation. If the

director or controller set forth in the preceding paragraph violates the act, regulation, or bylaw to such an extent that may endanger interests of the public or the legal person, the authorities concerned may apply to the court for dismissing his position and make other necessary arrangement. The legal persons' licenses may be revoked, as the competent authority may order a civil association to cease operations, dismiss personnel, or revoke its license (Articles 34 and 58 of the Civil Associations Act).

495. *Rec 9:* Fines of NTD 2 to 10 million apply (Art 45 of the Banking Act). Security and future enterprise and insurance enterprise also have similar provisions. In the case of agricultural FIs, a competent authority may order them to provide information and reports. FIs that fail to comply shall be fined NTD 2 to 10 million. (Article 7, paragraph 2 of the Agricultural Finance Act). Farmers' and fishermen's associations shall be fined from NTD 150,000 to NTD 1,800,000 (Article 48 of the same Act). Tax authorities are able to conduct and request information, and impose a fine of no less than 3,000 and no more than 30,000 NT dollars (Articles 30 and 46 of the Tax Collection Act).

496. *Rec 10 to 12, 17, 19, 20, 22 and 23:* FIs that violate the requirements may be fined between NT\$500,000 and NT\$10 million (USD 16000 to 325,000), while DNFBPs may be fined between NT\$50,000 and NT\$1 million (USD 1500 to USD 32,000) (Articles 7-10 of the MLCA).

497. *Rec 13, 15, 16, and 18:* The competent authorities are able to issue corrections, order improvements within time limits, terminate operations, or implement other necessary measures (Article 129 of the Banking Act, Articles 167-2, 167-3 and 171-1 of the Insurance Act; Article 48 of the Act Governing Electronic Payment Institutions, Article 31 of the Act Governing Issuance of Electronic Stored Value Cards, Article 178 of the Securities and Exchange Act, and Article 50 of the Agricultural Finance Act). For money exchangers, the BoT is able to revoke or cancel its approval (Articles 10-14 of the Money Exchanger Regulation). There are requirements for banks, electronic payment institutions and electronic stored value card issuers to have compliance management arrangements, employee screening, training programmes and independent audit functions (Article 7 of Directions Governing ICS of AML/CFT of Banking Business, Electronic Payment Institutions and Electronic Stored Value Card Issuers). Breaches of internal control requirements shall be subject to administrative fines of NTD 2 million to NTD 10 million (around US 66,000 to 330,000). Additionally, breaching these requirements may be sanctioned by the FSC (Article 11 of the same Directions), including through a graduated range of measures (Article 61-1 of the Banking Act).

498. *Rec 21 to 23:* There are sanctions in place, with an imprisonment of not more than three years for public officials and not more than two years or a detention or a fine of not more than NT\$ 500,000 for non-public officials, which includes employees of DNFBPs; article 17 of the MLCA.

499. **Criterion 35.2** - Competent authorities are able to apply sanctions to FIs and their directors and senior management (Article 61-1 of the Banking Act; and Articles 26, 33 of the Agricultural Finance Act, Paragraph 1, Article 149 and Article 164-1 of the Insurance Act, Article 6 subparagraph 13 of the Regulations Governing Qualification Requirements and Concurrent Serving Restrictions and Matters for Compliance by the Responsible Persons of Banks, Article 104 of the Securities Investment Trust and Consulting Act, Articles 56, 66 of the Securities and Exchange Act and Article 101 of the Futures Trading Act, Article 3, subparagraph 14 of the Regulations Governing Required Qualifications for Responsible Persons of Insurance Enterprises, Article 25 of the Act Governing Issuance of Electronic Stored Value Cards). With regard to DNFBPs, the competent authorities are able to impose a fine ranging from NT\$ 50,000 and NT\$ 500,000 for the violation of AML policies, and a fine from NT\$ 50,000 and NT\$ 1 million for the violation of CDD, record keeping, CTR and STR obligations (Articles 6-10 of the MLCA). With the exception of tipping off provisions, it is not explicit that sanctions extend to DNFBPs' senior management.

### *Weighting and Conclusion*

500. While a range of criminal, civil and administrative sanctions are available, the range of monetary penalties available to regulators and supervisors are not proportionate or dissuasive. It is

not clear that fines can be levied against DNFBP directors or senior management except in the case of tipping off failings. **Recommendation 35 is rated partly compliant.**

### *Recommendation 36 - International instruments*

501. In the 2007 MER, Chinese Taipei was rated partially compliant for R.35 and non-compliant for the former SRI. Chinese Taipei had not become a party to the Vienna, Palermo or TF conventions nor had they fully implemented the conventions. It was noted that Chinese Taipei lacked effective laws and procedures to implement UNSCR 1267 and 1373.

502. **Criterion 36.1** - As Chinese Taipei is not a member of the UN it has not been able to become a party to the Vienna Convention, the Palermo Convention, the Terrorist Financing Convention or the UN Convention against Corruption.

503. **Criterion 36.2** - Chinese Taipei has enacted laws and taken measures in an effort to fully implement the obligations contained within the UN conventions.

504. Chinese Taipei has now criminalized participation in an organised crime group (Organized Crime Prevention Act). The OCPA applies to all predicate offences (except smuggling of migrants which is not a predicate offence to ML in Chinese Taipei).

505. ML is now criminalized largely in line with Palermo Convention (see R.3). Art 7 of the Criminal Code deals with criminal offences committed by nationals of Chinese Taipei abroad however this does not satisfy the requirement at Art 6 of the Palermo Convention. With implementation of the MLCA, Chinese Taipei has a comprehensive domestic regulatory and supervisory regime in place for banks and non-bank FIs requiring implementation of relevant AML/CFT measures. A reasonable cross-border declaration regime is in place however deficiencies are noted at R.32.

506. Chinese Taipei has predominately implemented Art 12 and 13 of the Palermo Convention with the noted minor deficiencies identified in R.4 and R.38. With respect to extradition, Chinese Taipei has largely implemented the extradition requirements with minor deficiencies noted in respect of R.39 below and minor deficiencies with respect to Art 16 (consideration of enforcing a sentence domestically).

507. As noted in R.5, Chinese Taipei now has a largely compliant TF offence.

508. Chinese Taipei has not criminalised the smuggling of migrants and the definition of property is not provided in any statute. It is not expressed that predicate offences extend to predicates that occurred in another jurisdiction although as noted above this has occurred in practice.

### *Weighting and Conclusion*

509. Chinese Taipei has largely implemented international instruments despite not being a party to the relevant conventions. Only minor deficiencies are noted in relation to ML and TF offences, in particular the smuggling of migrants is not a predicate offence to ML and the term “property” is not defined in statute. Chinese Taipei’s inability to join the UN conventions is given very little weight. **Recommendation 36 is rated largely compliant.**

### *Recommendation 37 - Mutual legal assistance*

510. In the 2007 MER, Chinese Taipei was rated largely compliant with the former R.36 and non-compliant with SRV. MLA with jurisdictions without a mutual legal assistance agreement could only be done through court orders or letters rogatory. In relation to SRV, TF and other terrorism offences had not yet been criminalised.

511. **Criterion 37.1** - Chinese Taipei can provide MLA on four different bases (1) agreed treaties; (2) the MACMA; (3) the Law in Supporting Foreign Courts on Consigned Cases (the Law Supporting Foreign Courts) and (4) the MLCA.

512. *Agreed treaties* - where there are agreed treaties between Chinese Taipei and the foreign jurisdiction, the provision of MLA is governed by the terms of the specific agreement.

513. *Assistance under the MACMA* – the MACMA allows a wide range of assistance to be provided on the principle of reciprocity. Assistance is provided via the Ministry of Foreign Affairs and then to the Ministry of Justice in a formal Letter of Request (LOR). The MACMA confirms that the domestic laws of Chinese Taipei apply in the provision of requests and thus noting the findings of R.4, a wide range of seizing, freezing and confiscation measures are able to be applied. However, the MACMA does allow for urgent requests to be implemented directly through the MOJ as long as a LOR is filed within 30 days (Art 8). The MACMA applies in relation to all “criminal matters” including ML, TF and predicate offences.

514. *Assistance under the MLCA* - the MLCA also provides a basis for assistance when the request applies to specified unlawful activities as defined under Art. 3 of MLCA. Assistance includes the provision of information concerning declarations, reports or investigation results gathered under the MLCA (Art.21) and assistance with seizing and confiscation (Art.18).

515. *The Law Supporting Foreign Courts* – since implementation of the MACMA, all criminal matters are now governed by the MACMA however this legislation enables the exchange of information in relation to civil matters.

516. **Criterion 37.2** - Chinese Taipei’s central authority is the MOJ (Art 3 of the MACMA). However, the MACMA confirms that all MLA requests are to be made to the Ministry of Foreign Affairs via a letter of request (LOR). The MOFA will in due course send the LOR with relevant documentation to the MOJ for action. For jurisdictions that have agreements with Chinese Taipei, the MOJ will deal directly with the competent authority of the other jurisdiction.

517. The MOJ also has a Department of International and Cross-Strait Legal Affairs which has established the ‘International and Cross-Strait Mutual Legal Assistance Registration System’. This system records requests and monitors progress for matters between China and Chinese Taipei.

518. MOJ maintains a rudimentary electronic case management system and conducts request reviews on a priority basis. In placing priority on the requests, MOJ will take a number of factors into consideration. One example is if the request is urgent, assets seizure requests usually will be given priority since the assets may be dissipated quickly. Other factors include the level of severity of the offenses identified in the requests and the likely social impact of the case. The case management system handles both MLA and extradition requests.

519. **Criterion 37.3** – Art 10 of the MACMA sets out two circumstances in which the MOJ shall deny assistance none of which are unreasonable or unduly restrictive. At Art 10(2), circumstances are provided for in which the MOJ may deny assistance including where it violates reciprocity, the absence of dual criminality, where the wrongdoings violate martial law rather than criminal law, where it interferes with ongoing proceedings in Chinese Taipei, where the alleged wrongdoings have been subject to a decision not to prosecute in Chinese Taipei. In such circumstances, the decision not to provide assistance is discretionary and this decision may be reviewed after further material or documents have been provided by the requesting jurisdiction. In this regard, the conditions upon which Chinese Taipei may provide assistance are not subject to unreasonable or unduly restrictive conditions. The Law Supporting Foreign Courts does not specify any conditions of assistance apart from that of an agreement for reciprocity.

520. **Criterion 37.4** – As provided for at 37.3 above, the conditions upon which assistance may be refused do not include that the offence is considered to involve fiscal matters nor on the grounds of secrecy .

521. **Criterion 37.5**– any information relating to the request and its implementation is confidential unless it is necessary for implementing the request, upon the consent of the parties or otherwise provided by law (Art 14 MACMA). As requests for assistance are carried out under the provisions of the CPC, provisions in that Act apply as to confidentiality in criminal matters including the requirement that criminal investigations not be made public. Further confidentiality provisions are present in agreements made between Chinese Taipei and other jurisdictions.

522. **Criterion 37.6** - Art 10 provides circumstances in which the MOJ may deny assistance including where the acts or omissions described in the request do not constitute an offence in Chinese Taipei. A requesting parties request for assistance for coercive measures as outlined in Art 6 (3-7) which includes search and seizure, freezing of assets, restitution of proceeds of crime etc. is only able to be accepted where there is dual criminality (Art 22 of the MACMA). Therefore, whilst the dual criminality requirement is still discretionary, the act expresses circumstances in which it will apply, inferring that in non-coercive measures the discretion is not likely to be exercised. Chinese Taipei authorities confirm that for non-coercive measures, dual criminality does not impact Chinese Taipei's execution of a request, whether under the MACMA or a MLA agreement.

523. **Criterion 37.7** – as stated above, dual criminality is not mandatory, under the MACMA it is a discretionary requirement. However, there is no commentary provided in either laws or implemented agreements as to what constitutes dual criminality. Chinese Taipei advise that in practice, the MOJ would consider international precedents and common practice when considering whether to give effect to a request for assistance.

524. **Criterion 37.8** - requests for assistance must be implemented in accordance with the laws of Chinese Taipei and only if there is no conflict with domestic laws (Art 12 of the MACMA). This provides all of the powers available to authorities under the CPC whilst noting the deficiencies contained in R.31. Nevertheless, Art 6 of the MACMA outlines the types of assistance that is able to be provided and includes obtaining evidence, service of documents, search, seizure, immobilisation of assets, implementation of final and irrevocable judgments or orders of confiscation, restitution of proceeds of crime and other types of assistance that are not contradictory to the laws of Chinese Taipei. The Law Supporting Foreign Courts confirms that “the evidence of criminal cases for which a court is consigned by a foreign court to help investigate shall be duly handled according to evidence investigation in the Code of Civil or Criminal Procedure”.

### *Weighting and Conclusion*

525. Chinese Taipei has largely implemented the requirements relating to R.37. However, there are minor shortfalls in the powers of LEAs (see R.31) which apply to R.37. In some instances, dual criminality may be required for non-coercive measures. **Recommendation 37 is rated largely compliant.**

### ***Recommendation 38 – Mutual legal assistance: freezing and confiscation***

526. In its 2007 MER Chinese Taipei was rated largely compliant for the former R.38, as LEAs were not able to utilise controlled delivery provisions.

#### ***Criterion 38.1:***

527. *Assistance under the MLCA* - article 18 of the MLCA allows for the provision of assistance in seizure and confiscation in the following circumstances:

- a) If the request is made by foreign governments, institutions or international organisations based on agreed treaties or agreements in accordance with Art.21; or
- b) On the principle of reciprocity;
- c) If the criminal activity involved constitutes an offence stipulated in Art 3.



528. Offences under Art. 3 encompass ML, TF and all predicates with the exception of smuggling of migrants (see R.3). In addition, Article 13(V) of MLCA authorizes MLA requests that seek assistance prohibiting the withdrawal, transfer, payment, delivery or assignment of property for six months. Transactions may be prohibited in the event the situation is urgent.

529. Assistance in relation to the provision of records such as CTRs, STRs and incoming and outgoing cross border declarations may be provided (Art.21).

530. The assistance should be provided even if the investigation or trial does not take place in the jurisdiction of the requesting jurisdiction. In the event that the offence is not one involving ML or a listed predicate offence then the provisions of the MACMA apply. Therefore, assistance under the MLCA only applies for ML and predicate offences (with the exception of smuggling of migrants) in circumstances of dual criminality. Assistance for identifying assets is limited under the MLCA to the provision of STRs, CTRs and ICTRs however broader assistance in identifying assets is able to be provided under the MACMA.

531. *Assistance under the MACMA* – the MACMA allows a wide range of assistance to be provided on the principle of reciprocity. Assistance is provided via the Ministry of Foreign Affairs and then to the MOJ in a formal Letter of Request (LOR). The MACMA allows for cooperation on the obtaining of evidence, search, seizure, implementation of final judgments or order of confiscation or collection of proceeds value relating to an offence, and other types of assistance not contradictory to law of Chinese Taipei (Art.6). The MACMA confirms that the domestic laws of Chinese Taipei apply in the provision of requests (Art.12) and thus noting the findings of R.4, a wide range of seizing, freezing and confiscation measures are able to be applied (including the seizure and confiscation of property of corresponding value). For urgent requests, these may be implemented directly through the MOJ as long as a LOR is filed within 30 days (Art 8).

532. **Criterion 38.2** - Art 12 of the MACMA confirms that requests for assistance shall be implemented in accordance with the laws of Chinese Taipei. In its domestic law, Art.40 of the Criminal Code allows for confiscation in circumstances in which the offender is not prosecuted or convicted due to facts or legal reasons. In this scenario, confiscation of “a thing used in commission of or preparation for the commission of an offence or a thing derived from or acquired through the commission of an offence may occur if it belongs to the offender or if belongs to another person without proper reason”. Further, proceeds of crime under Art. 38-1(1-2) may be confiscated independently. Chinese Taipei confirm and case studies demonstrate that Art 40 applies in the event the offender is unknown.

533. **Criterion 38.3** - The Ministry of Justice is responsible for coordinating seizure and confiscation actions with other countries. This has been demonstrated throughout various cases evidencing cooperation with other jurisdictions. Art 140 and 141 of the CPC along with the Notices for Prosecuting Authorities in Appraising Items Seized in Criminal Investigation also provide further provisions for management of seized property as outlined in R.4 above.

534. **Criterion 38.4**– Chinese Taipei is able to share confiscated property with other countries (MLCA Art. 19 and Art 33 of MACMA.)

### *Weighting and Conclusion*

535. Chinese Taipei is able to extend comprehensive assistance to other countries in relation to the restraint and confiscation of assets. As the system for assistance in seizing and confiscation reflects their domestic regime, some shortcomings, as outlined at R.4, may apply. In practice, these shortcomings are minor. **Recommendation 38 is rated largely compliant.**

### **Recommendation 39 – Extradition**

536. In the 2007 MER, Chinese Taipei was rated largely compliant with the former R.39. The MER noted that Chinese Taipei did not have any process in place to cooperate with another

jurisdiction when prosecuting a Chinese Taipei suspect. TF offences had not been criminalised and they were not extraditable offences.

537. Chinese Taipei relies on different laws, regulations and agreements when conducting extradition. For countries with which Chinese Taipei has signed an extradition treaty, extradition procedures are handled in accordance with the relevant treaty. Chinese Taipei confirm that there are currently twelve jurisdictions that have agreed extradition treaties (the Dominican Republic, Malawi, Grenada, Saint Vincent and the Grenadines, Marshall Islands, Swaziland, Paraguay, Commonwealth of Dominica, Federation of Saint Kitts and Nevi, Palau, South Africa and Costa Rica). In the absence of an extradition treaty, matters are handled in accordance with the Law of Extradition. Chinese Taipei also has special arrangements in place in relation to China (the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement) and Hong Kong, China and Macao, China (“Laws and Regulations Regarding Hong Kong and Macao Affairs”).

538. The Law on Extradition notes that “Extradition shall be effected in accordance with treaties. Where there are no treaties or no provisions applicable to a case in existing treaties, the provisions of this law shall prevail.”

**Criterion 39.1** - ML and TF are extraditable offences – the Extradition Law confirms that an offence is an extraditable offence where the maximum punishment for the offence in Chinese Taipei is a minimum of one year (Art.2). All offences specified in the MLCA and the CTF Act comprise of crimes punishable by a maximum of more than one years imprisonment and are thus extraditable. In relation to those countries with which Chinese Taipei has extradition treaties, it is stipulated that extraditable offences are those that are punishable under both the laws of Chinese Taipei and the jurisdiction seeking the requisition by a maximum penalty of more than one year’s imprisonment. The only minor gap is in relation to the absence of smuggling of migrants as a predicate offence to ML.

539. When cooperating with China, Chinese Taipei conducts repatriation procedures rather than extradition, owing to special agreements in place. Point 5 of the Cross-Straight Mutual Assistance Agreement confirms that Chinese Taipei and China agree to apprehend and repatriate criminals and criminal suspects. Point 6 provides further details as to how the repatriation is to take place.

540. In relation to Hong Kong, China and Macao, China, Art 56 of the Regulations Regarding Hong Kong and Macao Affairs confirms that mutual judicial assistance is provided on a reciprocal basis. In practice, the Extradition law would therefore apply to these jurisdictions.

541. **39.1(b)** - Chinese Taipei has had very few cases of extradition. For those that have been received, the MOJ has a MLA Management Information System. The system classifies cases by the type of crime in determining priority for implementation. The Extradition law contains procedures and responsible competent authorities executing an extradition request. Where urgency justifies, the law permits correspondence to be made seeking arrest or detention of an individual prior to submission of a formal extradition request (Art. 12). In facing competing extradition requests from multiple jurisdictions seeking the same individual, Article 6 specifies the factors of priority assigned. In practice, CT, to date has received no extradition requests.

542. **39.1(c)** - Chinese Taipei does have conditions on the execution of extradition requests however these are not unduly restrictive. Some examples of the conditions of extradition in the Extradition Act include: if the offence is of military, political or religious nature; or if the person requested has committed another offence and is currently before a Court in Chinese Taipei, they shall not effect extradition until after legal proceedings have been completed.

543. **Criterion 39.2** - Chinese Taipei does not extradite its own nationals (Article 4 of the Law on Extradition) however it does note that in the event that extradition is refused on this basis, the person shall be referred to a Court which has jurisdiction over the case for trial. However, in some of the extradition agreements between Chinese Taipei and other jurisdictions lack the obligations to refer such person to a court which has jurisdiction over the case for trial. This only applies to 5 jurisdictions. In relation to the special agreement with China, there is no requirement to extradite to

China. Chinese Taipei advise that in practice, the competent authorities would open an investigation under the CPC in this case and refer the case to the court.

544. **Criterion 39.3** - Dual criminality is required in Chinese Taipei however the Law on Extradition and the extradition agreement with China only require the underlying conduct of the offending to be punishable to both countries (Art 2 of the Law on Extradition “if the offence is punishable”). Chinese Taipei confirm provisions in extradition treaties mirror the requirements in the Law on Extradition.

545. **Criterion 39.4** - For jurisdictions with which Chinese Taipei has not signed an extradition treaty, the Law on Extradition provides that in the case of emergency, a foreign government may request the immediate arrest and detention of a person to be extradited (Article 12). For those that Chinese Taipei has signed agreements with, similar provisions are in place reflecting the requirement at Article 12 of the Law on Extradition. For example, there is a clause allowing a person to voluntarily relinquish procedural safeguards for extradition in the agreement signed with Palau. Chinese Taipei is able to receive urgent extradition requests from the China in the form of a telephone call, fax, email or other means provided that a written request is provided within 10 days.

#### *Weighting and Conclusion*

546. In some circumstances where Chinese Taipei does not extradite its own locals, there are no obligations to refer them to a domestic court for trial. There is a gap with smuggling of migrants. **Recommendation 39 is rated largely compliant.**

#### **Recommendation 40 – Other forms of international cooperation**

547. In its 2007 MER Chinese Taipei was rated partially compliant with R.40 and non-compliant with SR.V. There were no measures in place relating to international cooperation on TF.

548. **Criterion 40.1**– Chinese Taipei has many provisions allowing international cooperation. The MLCA provides a basis for cooperation on ML and predicates at Art 21, allowing authorities to enter into treaties or agreements on combating ML with foreign governments, institutions or international organisations on the principle of reciprocity. Information gathered in investigations under the MLCA (specifically, cross border declarations, STRs and CTRs) may be provided on the basis of reciprocity. Article 14 of the CTFA allows authorities to execute cooperative treaties or other international written agreements in relation to TF with foreign governments, institutions or organisations on the basis of reciprocity.

549. Art 21-1 of the Securities and Exchange Act, Art 175-1 of the Insurance Act, Art 5-1 of the Tax Collection Act and Art 6 of the Futures Trading Act enables authorized agencies to enter into a cooperative treaty or agreement with foreign governments, agencies or organisations on the basis of reciprocity. On the basis of the agreement, the competent authority may then compel authorities or agencies to provide information in order to be exchanged pursuant to the agreement. The assistance that may be provided is wide and includes investigation assistance and the ability to compel production of documents from authorities or FIs. Art 5 of the Act to Implement United Nations Convention Against Corruption requires authorities to cooperate with foreign governments, international governmental organisations, and anti-corruption bodies. Art 3 and 5 of the Human Trafficking Prevention Act allow international cooperation on human trafficking matters. Examples of implementation of these laws are as follows:

- LEAs exchange information generally through diplomatic channels on the basis of reciprocity.
- The AMLD exchanges information with foreign FIUs based on Art.6 of the MJIB Operation Regulation on matters relevant to AML/CFT which allows the AMLD to share all files, information and related intelligence with foreign financial intelligence units.
- The MJIB and NPA exchange information through liaison officers stationed overseas, through signed MOUs.

- Chinese Taipei is also a member of the Asset Recovery Interagency Network Asia Pacific (ARIN-AP) which allows for information sharing.
- Information is able to be freely exchanged by the Taxation authorities under the Taxation Act. The Taxation authorities have wide powers to obtain information from entities within Chinese Taipei including private institutions. The taxation authorities have 32 bilateral tax agreements with other jurisdictions which also facilitates information exchange.
- LEAs (including judicial police (MJIB, NPA) and prosecutors may exchange information with China on the basis of the Cross-Strait Joint Fight against Crime and MLA Agreement and the related Guidelines for Cross Strait Investigation and Evidence Collection. This provides a broad basis to cooperate in the exchange of information and intelligence on the basis that certain (reasonable) conditions are met.
- The FSC utilises the International Association of Insurance Supervisors (IAIS) and International Organisation of Securities Commissions (IOSCO) MMOUs. They have entered into a further 55 MOUs or protocols with 37 foreign supervisory authorities.
- The MJIB has entered into ML/TF intelligence exchange MOUs or agreements with 44 jurisdictions.
- The CA has signed 7 customs mutual assistance agreements, 6 customs cooperation arrangements and 4 customs cooperation MOUs with 16 jurisdictions.

**Criterion 40.2:**

550. **40.2 (a)** - As outlined above, the MLCA and CFTA and other provisions cited in R40.1 provide a legal basis for cooperation by authorities relevant to ML and TF.

551. **40.2 (b)** - The terms of the relevant treaties, laws, MOUs and guidelines allow for a wide range of cooperation to take place without obtrusive procedures required. Case studies were provided to the team to demonstrate efficient cooperation.

552. **40.2 (c)** - The FIU exchanges information with foreign FIUs using the Egmont Secure Web, for non-Egmont members, the use of secure channels and gateways are provided for in the relevant MOUs that are signed. The FSC exchanges information through stationed liaison officers in the US and UK, and for other countries the terms of the MOUs signed with IAIS and IOSCO govern the gateways for exchange of information. The Chinese Taipei Principles for the FSC in providing information, financial examination assistance, and investigative assistance to foreign financial supervisory authorities further require the FSC to securely exchange information with foreign counterparts. The MJIB exchanges information through 25 liaison officers stationed overseas and other MOUs entered into with other countries. The MJIB Operation Regulations on matters relevant to AML and CFT provides for the use of a secure network to carry out inquiries within a specific timeframe. Information exchanges take place according to the principles enshrined in the MJIB Operation Regulations on matters relevant to AML/CFT. The NPA, Coast Guard, AAC, Customs, MOF and NIA all rely on stationed officers overseas and bilateral and multi-lateral agreements. All staff stationed overseas by Chinese Taipei competent authorities transmits information through encrypted telefax systems, encrypted files/emails or diplomatic bags to ensure security.

553. **40.2(d)** - The FIU has a SOP on the exchange of intelligence and monitoring timelines. Other agencies such as the FSC, MJIB, Ocean Affairs Council, Coast Guard Administration and NIA have SOPs which include handling priorities. The NPA prioritises requests according to the priority attached to the request. Customs Administration has a SOP which covers priority and time control over information exchange depending on the urgency of the matter.

554. **40.2 (e)** - Chinese Taipei advise that all authorities act with the principle of mutual benefit and confidentiality when conducting information exchange.

555. **Criterion 40.3**- It is clear from the legislative provisions cited above that Chinese Taipei authorities have the authority to sign agreements with the widest range of foreign counterparts and

that this has been implemented as demonstrated in 40.1 above. There are no barriers to being able to sign the agreements in a timely way.

556. **Criterion 40.4**– AMLD provides feedback on information exchanges pursuant to the Egmont principles. The MJIB Operation Regulations on Matters Relevant to AML/CFT also includes a provision for feedback to be provided in accordance with follow-up processing under lawful premises. The SOP in place for the FSC on information exchange requires that the FSC provide feedback where requested, in a timely manner to competent authorities from whom the FSC has received assistance, on the use and usefulness of the information obtained. LEAs do not have specific provisions however advise in practice that feedback is provided to foreign agencies particularly on the accuracy and quality of the information obtained. For example, in successful cases, certificates or medals of gratitude are provided to the foreign agency. The Regulations Governing the Exchange of Tax Information Concerning Agreements on Tax Matters require a feedback letter in English describing the usage and effectiveness of the information.

557. **Criterion 40.5** – There are no unreasonable or unduly restrictive conditions placed on the ability of Chinese Taipei authorities to enter into the exchange of information. Laws expressly provide that FIs for example must provide documents where a request is made pursuant to an agreement or MOU. The MOUs signed by various agencies do restrict information exchanges that contradict domestic laws or go against national security however these are not unduly restrictive conditions. The MJIB Operation Regulations on matters relevant to AML/CFT confirms that in relation to requests sought of the MJIB (FIU); those that violate the reciprocity principle or harm security or public interests should be rejected, such provisions not being unreasonable. In practice, no competent authority of Chinese Taipei has ever refused a request for assistance.

558. **Criterion 40.6**– Chinese Taipei has put controls in place to ensure that information received is used only for authorized purposes. For example, the FIU has implemented SOPs based on Egmont principles for the controls on use of information. All agreements and MOUs signed by the AMLD include terms regarding information access controls, protection of documents and prior consent. The FSC has SOPs in place confirming that information may only be used for the purpose for which it was requested or provided. LEAs take the approach of indicating on documents that are exchanged that the documents are for intelligence purposes only, and that contents cannot be disclosed to third parties without consent. The regulations on tax exchange specify that prior authorization must be obtained and that information exchanged may only be used for the purpose based on which the information was requested. Finally, the MJIB Operation Regulation on Matters Relevant to AML/CFT confirm that with the delivery of financial intelligence, it shall be specified that it is provided for information only and cannot be used as evidence. Further, that the intelligence is kept confidential and agencies may not deliver the information to third parties without approval from the Bureau.

559. **Criterion 40.7** – the relevant guidelines and principles for the respective authorities outlined above have provisions that require the confidentiality of documents exchanged. For example, the MOF Regulations on the exchange of tax information specifies that information received shall be kept confidential, and follow domestic laws relating to information protection. The Personal Information Protection Act requires confidentiality of information relating to personal information provided, and Art 245 of the CPC requires that criminal investigations are not made public. There is no provision to allow a refusal to provide information on the basis of confidentiality concerns although in practice this could occur.

560. **Criterion 40.8** – The basis for cooperation by Chinese Taipei authorities is generally under provision of agreements, MOUs and through membership of groups such as Egmont, ARIN-AP etc. The legal provisions enabling such agreements all allow wide cooperation on the basis that the matter relates to the authority's area of competence and is authorized by Chinese Taipei law. Such agreements and provisions allow for wide cooperation and are not restrictive. In effect, authorities are therefore able to conduct inquiries on behalf of foreign counterparts.

561. **Criterion 40.9**–The MLCA and CTFA provide a legal basis for cooperating on ML and TF. The Organic Act for Investigation Bureau, MOJ confirms that the MJIB (in which the AMLD sits) is responsible for coordination and correspondence between related overseas institutions, international collaboration, national security investigations involving a foreign jurisdiction and assistance in investigating and tracking international crimes. The MJIB Operation Guidelines on Matters Relevant to AML and CFT also provide details of how the MJIB should approach international requests.

562. **Criterion 40.10** – As a member of Egmont, the FIU is required to provide feedback in compliance with the Egmont Principles for Information Exchange between FIUs.

563. **Criterion 40.11** – The AMLD acts in accordance with the Egmont principles for information exchange. Further, the MJIB Operation Regulations on AML/CFT at Art 6 confirms that the AMLD may implement international transmission for investigations, inquiries or ruling of criminal cases. It confirms that the MJIB may actively share files, information and related intelligence materials with foreign financial intelligence units. Whilst the provisions are broad and don't directly align with the requirements of R40.11, there do not appear to be any barriers to undertaking the activities described on behalf of another jurisdiction.

564. **Criterion 40.12**– The FSC is able to cooperate internationally in keeping with Article 3 of the Organic Act governing the Establishment of the FSC which allows FSC to conduct international supervisory cooperation and exchange of supervisory information. The FSC also has broad power to direct banks and related parties to provide information and reports under Art 45 of the Banking Act. Article 21-1 of the Securities and Exchange Act allows Chinese Taipei authorities based on the principle of reciprocity to enter into treaties or agreements with foreign governments, agencies or international organisations to facilitate information exchange and investigation assistance. Similar provisions exist in the Futures Trading Act and the Insurance Act. Whilst the Central Bank does not have provisions enabling direct exchange of information, in the event that there was an international request for information then that could be undertaken via the Central Bank and FSC agreements to share information. The FSC would then be able to share that information on their behalf. Similarly, AMLD would also be able to obtain information from the Central Bank to share with foreign FIUs.

565. **Criterion 40.13** – the FSC has a SOP in place relating to cross-border supervisory cooperation – the Principles for the FSC in providing information, financial examination assistance and investigative assistance to foreign financial supervisory authorities. The SOP confirms that the FSC may provide information on the basis of agreements and in the absence of agreements on the basis of reciprocity. However, where requests are made outside of the IOSCO MMOU or IAIS MMOU, the information is not provided, in principle, unless allowed by Art18 (1)(3,6,7,9) of the Freedom of Government Information Law. Thus far the FSC has signed 57 written agreements regarding cooperation with 38 countries which provide wide-ranging power to exchange information with foreign counterparts including information on shareholders, senior management of FIs, supervisory information exchange, and information relating to predicate crimes of securities frauds, insider trading and market manipulation. Art 45 of the Banking Act allows the FSC to order banks to prepare and submit reports or other relevant documents and would use this provision in the event of a request for assistance.

566. **Criterion 40.14** - the FSC is able to exchange a wide range of information with foreign supervisors including regulatory information; prudential information and AML/CFT information (see 40.8).

567. **Criterion 40.15** - The FSC has entered into agreements and MOUs with foreign counterparts that allow for the host financial supervisor to allow a home supervisor or its agents to conduct cross-border on-site inspections in the host jurisdiction's territory, and with the consent of both parties the home supervisor may conduct onsite inspections either alone or accompanied by the host financial supervisors.

568. **Criterion 40.16** - The FSC has joined the IOSCO MMoU and is a signatory member of the IAIS. These agreements have explicit provisions regarding prior authorization of disclosure of information in place. The FSC has compliant provisions in its MOUs with foreign supervisors. In the absence of an MOU with such terms, the Principles for the FSC in providing information, financial examination assistance and investigative assistance to foreign financial supervisory authorities applies.

569. **Criterion 40.17** - The MLCA enables competent authorities to exchange information concerning STRs, CTRs and customs declarations with foreign authorities on the basis of reciprocity and information relating to assistance on seizures or freezing requests under Art 18. The MJIB is able to exchange information with foreign counterparts as outlined above. As stated above, NPA utilises relationships in order to enable the sharing of information. Where difficulties occur, such information would usually be sought from the AMLD through Egmont channels. Many examples of such assistance were provided to the ME team some of which are outlined at IO2.

570. **Criterion 40.18** - Chinese Taipei exchanges information through platforms such as Egmont Group and adheres to the agreements in place with respect to such exchanges. Chinese Taipei has a wide basis upon which it is able to exchange information and conduct investigations (on the basis of reciprocity). In these circumstances, provisions of agreed MOUs or MLA agreements, the MACMA, MLCA and other provisions apply. For example Art 6 of the MACMA confirms authorities are able to assist on obtaining evidence, search, seizure etc. Requests shall be implemented in accordance with the laws of Chinese Taipei (Art 12). Provisions of law restrict the use of any information obtained in the course of a criminal investigation as outlined in R37.5.

571. **Criterion 40.19** - provisions of the MACMA broadly allow for joint investigations in allowing foreign authorities to participate in the investigative process (Art 17). Art 18 specifically allows persons from the requesting party to appear at the scene of implementation of the request on consent of the assisting body. Chinese Taipei has provided examples of situations in which joint investigation teams have been implemented successfully with other jurisdictions.

572. **Criterion 40.20** - Chinese Taipei is able to exchange information indirectly with non-counterparts. This is done through treaties and other agreements reached and outlined above, diplomatic staff stationed in overseas missions. The AMLD conducts transmission of a wide range of material on behalf of other domestic authorities through the Egmont Group channels and pursuant to the MJIB Operation Regulation on Matters Relevant to AML/CFT. The FSC is able to exchange information provided by domestic and foreign competent authorities including the BOAF and the Central Bank.

### *Weighting and Conclusion*

573. Chinese Taipei is able to exchange a wide range of information with foreign counterparts through the use of MOUs, agreements, officers stationed overseas and the use of Egmont Channels and other platforms. Given Chinese Taipei's heavy reliance on MOUs it should continue to agree MOUs with a wider range of jurisdictions. Some agencies don't have direct information exchange agreements with foreign counterparts, however other domestic agencies may provide that information on their behalf. **Recommendation 40 is rated largely compliant.**

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	LC	<ul style="list-style-type: none"> <li>Enhanced and reduced measures are not sufficiently based on identified risks</li> </ul>
2. National cooperation and coordination	LC	<ul style="list-style-type: none"> <li>Chinese Taipei does not yet have explicit national level strategies</li> <li>There are some minor gaps in elements of operational level cooperation</li> </ul>
3. Money laundering offence	LC	<ul style="list-style-type: none"> <li>Smuggling of migrants is not a predicate offence to ML</li> <li>The definition of ML in cases of self-laundering is not comprehensive</li> </ul>
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> <li>No express provisions allowing for transactions to be voided or applications to seize to be made <i>ex parte</i>.</li> <li>Proceeds and instruments related to smuggling of migrants is not covered.</li> </ul>
5. Terrorist financing offence	LC	<ul style="list-style-type: none"> <li>There are some minor gaps with the TF offence, it is not evident that self-financing is criminalised although such conduct may be prosecuted under an ancillary offences.</li> <li>Art 2(1)(b) of the TF convention (“any other act to intimidate or pressure a government”) is also not present as all offences are linked to listed terrorist offences.</li> <li>The term “property” is not defined in any laws or regulations although the team accepts that the term is construed widely by the courts.</li> </ul>
6. Targeted financial sanctions related to terrorism & TF	LC	<ul style="list-style-type: none"> <li>The amended CTF Act applies TFS to assets wholly or jointly owned or controlled, directly or indirectly, but not clearly to property derived from such property of designated persons.</li> <li>The freezing obligations do not apply to funds or other assets of persons and entities acting on behalf of or at the direction of designated persons and entities, except when those funds are property or property interests of the designated person or entity</li> <li>Freezing obligation are not clearly enforceable on natural and legal persons who are not also FIs or DNFBPs.</li> <li>No protection for parties implementing TFS obligations in good faith.</li> <li>There are no clear procedures for dealing with false positive designations, other than administrative appeal procedures.</li> <li>It is not clear whether FIs and DNFBPs are required to report attempted transactions that would be prohibited under TFS.</li> </ul>
7. Targeted financial sanctions related to	LC	<ul style="list-style-type: none"> <li>The amended CTF Act does not clearly apply TFS to assets or property derived from property of designated persons or entities.</li> </ul>



Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
proliferation		<ul style="list-style-type: none"> <li>▪ The freezing obligations do not apply to funds or other assets of persons and entities acting on behalf of or at the direction of designated persons and entities, except when those funds are property or property interests of the designated person or entity</li> <li>▪ Freezing obligation are not clearly enforceable on natural and legal persons who are not also FIs or DNFBPs.</li> <li>▪ No protection for parties implementing TFS obligations in good faith.</li> <li>▪ There are limited procedures for dealing with false positives.</li> <li>▪ It is not clear whether FIs and DNFBPs are required to report attempted transactions that would be prohibited under TFS.</li> <li>▪ No clear provisions allowing interest or other earnings to be added nor any payments due under contracts, so long as the account remains frozen.</li> <li>▪ No legal protections to ensure payments made to a frozen account under contract do not relate to prohibited items or activity.</li> </ul>
8. Non-profit organisations	LC	<ul style="list-style-type: none"> <li>▪ Sanctions available to enforce obligations for transparency and accountability amongst NPOs are not sufficiently effective, proportionate and dissuasive for violations by civil associations or persons acting on behalf of these NPOs</li> </ul>
9. Financial institution secrecy laws	C	<ul style="list-style-type: none"> <li>▪ The recommendation is fully met</li> </ul>
10. Customer due diligence	LC	<ul style="list-style-type: none"> <li>▪ Minor gaps in relation to exemption on identifying and verifying beneficial ownership in relation to certain types of customers.</li> </ul>
11. Record keeping	LC	<ul style="list-style-type: none"> <li>▪ Gaps with foreign exchange counters keeping records of analysis leading to STRs</li> </ul>
12. Politically exposed persons	C	<ul style="list-style-type: none"> <li>▪ The recommendation is fully met</li> </ul>
13. Correspondent banking	C	<ul style="list-style-type: none"> <li>▪ The recommendation is fully met</li> </ul>
14. Money or value transfer services	C	<ul style="list-style-type: none"> <li>▪ The recommendation is fully met</li> </ul>
15. New technologies	C	<ul style="list-style-type: none"> <li>▪ The recommendation is fully met</li> </ul>
16. Wire transfers	C	<ul style="list-style-type: none"> <li>▪ The recommendation is fully met</li> </ul>
17. Reliance on third parties	C	<ul style="list-style-type: none"> <li>▪ The recommendation is fully met</li> </ul>
18. Internal controls and foreign branches and subsidiaries	LC	<ul style="list-style-type: none"> <li>▪ There are minor gaps in relation to internal control obligations for foreign exchange counters.</li> </ul>
19. Higher-risk countries	C	<ul style="list-style-type: none"> <li>▪ The recommendation is fully met</li> </ul>

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
20. Reporting of suspicious transaction	LC	<ul style="list-style-type: none"> <li>Weaknesses in the STR obligations on foreign exchange counters</li> <li>STRs don't clearly cover cases of suspicion that funds are the proceeds of a criminal activity, or are related to TF, even if no transaction has occurred.</li> <li>STR obligations do not appear to cover the proceeds of migrant smuggling</li> </ul>
21. Tipping-off and confidentiality	LC	<ul style="list-style-type: none"> <li>No explicit prohibition on tipping off covering foreign exchange counters.</li> <li>No explicit requirement to keep reporting of suspicion of ML to AMLD to be kept confidential. No explicit requirement to include officers and directors and prevent them from disclosing an STR has been sent to AMLD.</li> </ul>
22. DNFBPs: Customer due diligence	PC	<ul style="list-style-type: none"> <li>A number of shortcomings in relation to the scope of CDD and other risk-based preventive measures covering various DNFBPs.</li> </ul>
23. DNFBPs: Other measures	LC	<ul style="list-style-type: none"> <li>There are minor gaps with obligations to file STR related to proceeds of migrant smuggling</li> <li>no explicit provision to support that the protection shall be made available even if the person filing the report did not know precisely what the underlying criminal activity was, and regardless of whether the illegal activity actually occurred</li> </ul>
24. Transparency and beneficial ownership of legal persons	LC	<ul style="list-style-type: none"> <li>Not all ML/TF risks were assessed with respect to all types of legal persons able to be created in Chinese Taipei.</li> <li>Oversight of and enforcement to ensure accuracy of registration filing with MOEA had not commenced at the time of the onsite visit.</li> <li>Controls do not fully mitigate risks posed by bearer shares issued before August 2018</li> <li>There is relatively little professional intermediation in the establishment or continuing operation of legal persons in Chinese Taipei, so relying on CDD information obtained by FIs/DNFBPs may not ensure that information on the beneficial ownership of a company is can be otherwise determined in a timely manner</li> </ul>
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> <li>Trustees of civil trusts are not required to obtain and hold accurate and current details of parties to the trust and any other natural person who may be exercising effective control over the trust</li> <li>Trustees of civil or foreign trusts are not required to declare their status to FIs and DNFBPs when establishing a relationship</li> <li>There are few requirements requiring trustees to hold basic information on regulated agents of and service providers to the trust</li> </ul>
26. Regulation and supervision of	LC	<ul style="list-style-type: none"> <li>The Central Bank and BoT do not sufficiently consider the ML/TF risks when determining frequency and intensity</li> </ul>

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
financial institutions		for supervision on foreign exchange counters
27. Powers of supervisors	LC	<ul style="list-style-type: none"> <li>There are shortcomings in the supervisor's ability to sanction foreign exchange counters for AML/CFT failings</li> </ul>
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> <li>Gaps with controls to prevent criminals' associates from being accredited, holding a significant or controlling stake, or a management role in a DNFBP.</li> </ul>
29. Financial intelligence units	LC	<ul style="list-style-type: none"> <li>The AMLD shares information with domestic and foreign counterparts in a secure manner. There is not an express provision allowing for the dissemination of ICTRs and CTRs however such information is included in analysis reports that are disseminated.</li> </ul>
30. Responsibilities of law enforcement and investigative authorities	C	<ul style="list-style-type: none"> <li>The recommendation is fully met</li> </ul>
31. Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> <li>There are restrictions on authorities ability to conduct undercover investigations and to intercept communications in relation to some predicate offences</li> <li>Controlled delivery only applies in relation to drug offences</li> </ul>
32. Cash couriers	LC	<ul style="list-style-type: none"> <li>There is no requirement to retain declarations when there is a suspicion of ML or TF</li> <li>Customs officers have the power to seize items on suspicion, but may only seize "things that may be forfeited" which is undefined (but appear to be construed widely).</li> </ul>
33. Statistics	LC	<ul style="list-style-type: none"> <li>Chinese Taipei does not maintain statistics relating to ML investigations that are opened by LEAs prior to being referred to prosecutors.</li> </ul>
34. Guidance and feedback	C	<ul style="list-style-type: none"> <li>The recommendation is fully met</li> </ul>
35. Sanctions	PC	<ul style="list-style-type: none"> <li>The range of monetary penalties available to regulators and supervisors are not proportionate or dissuasive.</li> <li>It is not clear that sanctions can be applied to directors and senior managers of DNFBPs who are legal persons.</li> </ul>
36. International instruments	LC	<ul style="list-style-type: none"> <li>Chinese Taipei are not a party to the UN Conventions however implement their requirements to a large extent.</li> <li>The smuggling of migrants is not a predicate offence for ML.</li> <li>There are minor gaps in the TF and ML offence.</li> </ul>
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> <li>There are shortfalls in the powers of LEA, dual criminality is required for non-coercive measures</li> </ul>
38. Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> <li>MLA will not be able to apply in relation to the proceeds of the smuggling of migrants.</li> <li>As the provision of MLA is restricted by that which is able to be carried out domestically, the minor gaps in relation</li> </ul>

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		to R.4 apply.
39. Extradition	LC	<ul style="list-style-type: none"> <li>▪ In circumstances where Chinese Taipei does not extradite suspects, there are no obligations to refer them to a domestic court.</li> <li>▪ The scope gap relating to the smuggling of migrants affects Chinese Taipei’s ability to provide extradition in a very minor way.</li> </ul>
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> <li>▪ Given Chinese Taipei’s heavy reliance on MOUs it should continue to agree MOUs with a wider range of jurisdictions.</li> <li>▪ Some agencies don’t have direct information exchange agreements with foreign counterparts, however other domestic agencies may provide that information on their behalf.</li> </ul>

### Glossary of Terms

<b>AAC</b>	Agency Against Corruption, MOJ
<b>ABT</b>	The Agricultural Bank of Taiwan
<b>AEA</b>	Administrative Enforcement Agency, MOJ
<b>AMLD</b>	Anti-Money Laundering Division, MJIB (Chinese Taipei's FIU)
<b>AMLO</b>	Anti-Money Laundering Office, EY
<b>BOAF</b>	Bureau of Agricultural Finance, COA
<b>BOT</b>	Bank of Taiwan
<b>CA</b>	Customs Administration, MOF
<b>CCAPO</b>	Cooperative & Civil Association Preparatory Office, MOI
<b>CIB</b>	Criminal Investigation Bureau, NPA, MOI
<b>CPF</b>	combating the financing of proliferation of WMD
<b>DCA</b>	Department of Civil Affairs, MOI
<b>DLA</b>	Department of Land Administration, MOI
<b>DPO</b>	District Prosecutors office
<b>EY</b>	Executive Yuan
<b>ERA</b>	Enterprise risk assessment
<b>FISC</b>	Financial Information Service Co
<b>FSC</b>	Financial Supervisory Commission
<b>HPO</b>	High Prosecutors Office
<b>JCIC</b>	Joint Credit Information Centre
<b>JY</b>	Judicial Yuan
<b>MAC</b>	Mainland Affairs Council
<b>MJIB</b>	Investigation Bureau, MOJ
<b>MLCA</b>	Money Laundering Control Act
<b>MOE</b>	Ministry of Education
<b>MOEA</b>	Ministry of Economic Affairs
<b>MOF</b>	Ministry of Finance
<b>MOFA</b>	Ministry of Foreign Affairs
<b>MOHW</b>	Ministry of Health and Welfare
<b>MOI</b>	Ministry of the Interior
<b>MOJ</b>	Ministry of Justice
<b>MOTC</b>	Ministry of Transportation and Communications
<b>MPB</b>	Maritime Port Bureau
<b>NIA</b>	National immigration Agency, MOI
<b>NPA</b>	National Police Agency, MOI
<b>NRA</b>	National Risks Assessment
<b>NSB</b>	National Security Bureau
<b>NSC</b>	National Security Council
<b>OBU</b>	Offshore Banking Unit
<b>OHS</b>	Office of Homeland Security
<b>OIU</b>	Offshore Insurance Unit
<b>OSU</b>	Offshore Securities Unit
<b>SFAA</b>	Social and Family Affairs Administration, MOHW
<b>SPO</b>	Supreme Prosecutors Office
<b>SRA</b>	Sectoral risk assessment
<b>TA (MOF)</b>	Taxation Administration, Ministry of Finance
<b>TDCC</b>	Depository & Clearing Corporation
<b>TFRC</b>	TF Review Committee