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## CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

### 第7章-法人及法律協議

#### Key Findings and Recommended Actions

##### 重要發現及建議行動

##### Key Findings

###### 重要發現

- 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.  
有關中華臺北法人設立及類型的資訊可以公開查閱。有一個中央公開的登記機關，列出在中華臺北登記的公司基本資訊。
- 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.  
國家風險評估和在 2018 年年中更詳細的後續評估，使主管機關對一些與法人相關的風險有相當充分的理解。外國和國內明示信託所構成的風險沒有得到很好的評估，大多數機關對國內服務提供業者在形成或管理外國公司和信託方面的角色沒有很好的理解。
- 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.  
經濟部所持有資訊的品質是合理的，並受到監督和一些品質檢查的支持。近期的修法及執行活動，對登記機關所持有基本所有權資料的範圍和品質有所增加。但尚未開始對經濟部登記資料進行更全面的品質檢查。
- 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.  
即便有大量的民事信託在中華臺北成立，支持信託透明度並取得有關委託人或受託人資訊的措施很少。在實務運作上，外國信託不被禁止，並顯示出有一定數量的存在。
- 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.  
一些法人控制措施可以降低中華臺北代名股份及代名董事被濫用的風險。2018 年年中開始對無記名股票實施控制措施，但對既存無記名股票則存在一些落差。
- 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

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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.

對於中華臺北成立的民事信託或在中華臺北運作的外國信託，控制措施很少。在處理信託財產時，國內信託的受託人必須每年確定委託人和受益人。擁有國內或國外信託作為客戶的金融機構或 DNFBP 須要辨識和驗證信託所有的當事人。當 DNFBP 被聘僱於安排信託且不作為受託人時，存在一些落差。外國或國內信託的受託人沒有義務向金融機構或 DNFBP 揭露其信託地位。

- 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.

主管機關依賴金融機構和 DNFBP 進行的 CDD 來取得法人及法律協議之實質受益權資訊。如直接成果 4 (IO.4)所述，透過金融機構和 DNFBP 執行 CDD 以辨識客戶的實質受益人和控制人執行良好。沒有法定要求法人在公司登記機關披露或記錄其實質受益權資訊，或以其他方式由公司持有。

- 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.

執法機關和法務部調查局洗錢防制處以範例證明使用 CDD 資訊和調查策略，以在發展金融情報或進行金融調查過程中，取得有關法人實質受益權和控制權的資訊。

- 9) Authorities have sought and provided international cooperation in relation to transparency of legal persons and arrangements in specific cases.

主管機關在特定案件中尋求並提供有關法人和法律協議透明度的國際合作。

**Recommended Actions**

**建議行動**

- 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

確保防制洗錢/打擊資恐控制措施適用於在中華臺北提供外國公司成立、管理或信託服務的專業人員，並施以有效、合乎比例和勸阻性的裁罰。為強化抵減措施，對於未履行防制洗錢/打擊資恐有關的法規或指引的專業人員，主管機關應：

- 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.

加強經濟部在驗證登記資訊方面的活動，並考慮授予經濟部在該驗證過程中更積極主動的角色。

- 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.

中華臺北應採取可強制的措施，確保信託之受託人（國內和國外信託）在建立業務關係時，揭露其在信託中之地位，以協助 CDD 作業。

- d) Chinese Taipei should extend controls to enhance transparency on civil trusts.

中華臺北應擴大控制措施，以提高民事信託的透明度。

- e) Chinese Taipei should implement mechanisms to mitigate the risks from legacy bearer shares.

中華臺北應對採取機制來降低既存無記名股票的風險。

- 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.)

鎖定國際合作，以取得具有共同風險國家的法人和法律協議的實質受益權和控制權資訊，尤其是最常用被用於設立與 OBU 部門有關公司的司法管轄區（例如 BVI、薩摩亞、塞席爾、貝里斯、香港、中國大陸等）

418. 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.

本章審查和評估的直接成果為 IO.5。與本章節效能評估有關的建議為建議第 24 項和第 25 項。

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

#### **直接成果 5(法人及法律協議)**

419. 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.

在現地評鑑時，中華臺北法律承認多種類型的法人，包含社團（營利和公益）及財團（公益）。營利法人包括公司（無限公司、有限公司、兩合公司、股份有限公司）、合作社及有限合夥，非營利法人則可分為公益社團法人和財團法人。公司可以公開發行，並適用證券交易法而受到更高度的管理，而擁有外國股權的公司則有最低及最高允許股數的限制。外國公司也可在中華臺北設立，但有一些額外的要求和限制。各類型非營利法人，包括文化、宗教、社會慈善、醫療和教育型組織。

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420. 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.

截至 2018 年 7 月底，中華臺北有 698,769 家公司登記。其中，532,265 家是有限公司{受資本額限制}。還有 166,184 家股份有限公司，其中 2,169 家是公開發行公司，164,315 家是非公開發行公司。此外還有 20 家無限公司。

421. 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.

關於法律協議，中華臺北允許成立信託，可分為「民事信託」、「營業信託」或「公益信託」。民事信託（明示信託）可以通過私人之間的法律協議設立，並受信託法的規範。外國信託有在中華臺北運作。對於支持法律協議實質受益控制之透明度，信託法的要求有限。DNFBP 擁有信託客戶，包括向國內民事信託或外國信託提供信託服務，並受洗錢防制法（第 5 條）和 DNFBP 各業的洗錢防制法規的規範。但是，對於 DNFBP 提供信託服務而非其他交易的義務，法規和準則並沒有詳細規定。

422. 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).

中華臺北似乎有大量的民事信託存在。稅捐機關提供的資訊指出中華臺北申報營業信託財產金額有新台幣 8,638,838 百萬元，申報民事信託財產金額有新台幣 1,948,622 百萬元(約 650 億美金)。只有不動產的民事信託需要登記。營業信託要求受託人必須是信託業者，由於信託業都是金融機構，除受到洗錢防制法和信託業法的規範，並受到金管會的監理。（參 R.22 和 IO4）。

423. 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.

當民事信託獲取收益時，有義務向稅務機關提出申報，然而持有資產的民事信託數量可能較申報收益的信託數量更高。稅務機關無法提供有關申報收益的民事信託數量統計。根據稅捐稽徵法第 33（1）（5）條向稅務機關申報信託收益資訊的範圍包括受託人、受益人和委託財產清單。沒有關於可能在中華臺北持有財產的外國信託數量之詳細資訊。

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

公開獲得有關法人和法律協議設立及類型的資訊

424. 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.

營利法人設立及登記的資訊可由經濟部首頁「全國商工行政服務網(CISP)」公開取得。CISP 包括法人的詳細資訊，包括其形式和章程以及董事和股東，以及登記的代名人董事和股東。此外，經濟部還為執法機關及政府機關提供 CTP 入口網站，其中包括其他政府資料庫以及增強的搜尋功能，以瞭解法人的所有權和控制權。還有商業實體開發的「公開資訊觀測站」(MOPS)提供線上資訊，可以公開取得有關董事、監察人、經理人及主要股東變更及轉讓股票(股權)的資訊。有關設立法律協議的資訊可透過信託法取得。有關民事信託申報收益的詳細資訊可由稅捐機關取得。

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

##### *辨識、評估和瞭解法律實體的洗錢/資恐風險和弱點*

425. 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.

中華臺北已辨識和評估在中華臺北設立法人及法律協議的部分洗錢 / 資恐風險與弱點，以及外國法人和信託風險的部分因素。這是透過國家風險評估進行的，以及後續由經濟部對公司實體的洗錢風險進行更為詳細的評估（2018年8月更新）。國家風險評估發現股份有限公司和有限公司具有較高的風險。國家風險評估也有評估非營利法人。

426. 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.

風險評估並未辨識特定類型的法人或法律協議的特徵，或其成立的特性，或有助於或減輕洗錢/資恐風險的持續管理及控制措施。中華臺北評估法人被濫用的風險，包括：公司欠缺透明度、空殼公司、境外公司和境外金融服務，以及其他風險，包括專業人員隱匿實質受益人。主管機關認知這些風險，然而，政府內部對於與法人和法律協議相關的固有風險和剩餘風險，沒有一致和連貫的理解。外國信託構成的風險尚未得到很好的評估，大多數機關都不太了解國內服務提供業者在外國公司和信託的設立和管理方面的角色。部分執法機關對威脅有更佳的理解。

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427. 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.

主管機關尚未採取足夠措施以瞭解活躍於中華臺北境外金融部門（OBU、OSU、OIU），以及外國持有與控制國內資產的外國公司及信託的風險。國家風險評估辨識出 OBU 客戶的前五大登記地，即英屬維爾京群島、薩摩亞、香港、貝里斯和塞席爾。規範 OBU、OSU 和 OIU 的法規限於在外國成立的客戶（即外國公司）開戶，因此外國信託不允許直接持有帳戶。對於在 OBU/OSU/OIU 部門和中華臺北金融部門運作的外國公司，主管機關尚未辨識國內或國外信託對於該等公司在實質受益權和控制權的角色。實務上，外國信託並未被禁止。

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

#### *防止法人和法律協議被濫用的抵減措施*

428. 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.

中華臺北已採取的抵減措施包括提高法人資訊透明度、杜絕空殼公司的執法措施、特定步驟防止境外金融服務被洗錢/資恐濫用，以及防止專業人員隱匿實質受益人資訊。

429. 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.

如第 1 節所述，無論法律、管理架構以及市場慣例，在法人的設立或持續運作中，相對較少使用專業中介。沒有相關規定要求必須由公司服務提供者提供設立或繼續擔任辦公室持有人的角色，也無須在申報收益時發揮作用。因此，很少有金融機構/DNFBP 就提供公司服務保有持續性關係。

430. 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.

經濟部的統計數據證實，絕大多數公司沒有專業中介協助公司登記。大約 12% 的公司利用會計師的服務提交登記。所有中華臺北（營利）法人均可由任何自然人或會計師或律師代表法人向相關主管機關進行設立登記。公證人<sup>11</sup> 只在設立公司時提供諮詢服務，會計師和律師則可能是公司和其他法

<sup>11</sup> Notaries provide services including notarization and attestation. 公證人提供之服務含公證及認證。

人成立和管理的守門人，並且在法律上受到防制洗錢/打擊資恐預防性措施的規範。經濟部和其他法人的權責機關依賴會計師和律師提供的法人資訊。

431. 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.

中華臺北已有 CDD 義務，要求金融機構和 DNFBP 廣泛地收集實質受益權和控制權資訊，以符合 R10 及 R22 之規定。雖然自 2017 年以來 DNFBP 已經存在這些義務，2018 年 11 月又再進行多項強化。當律師和會計師提供公司和信託服務，而非僅將法人或法律協議當成客戶時，既有的規定不足以涵蓋前者的情況。DNFBP 需要額外的指引來進行信託和公司服務。

432. 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.

2018 年 8 月修訂公司法，採取一系列與防制洗錢/打擊資恐有關的抵減措施。公司必須向經濟部提供基本資訊，包括董事、監察人和主要股東（現持有 10% 或以上之任一方）。這些資訊必須由公司維護，並在有任何變更後 15 日內向登記機關申報（公司法第 22-1 條）。對違反行為的裁罰也加重處罰。其他營利性法人也有類似的要求。

433. 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.

2018 年修法廢除公司得發行無記名股票的規定，並限制得發行股票認股權證（包括無記名股票認股權證）的情況，以確保公司透明度。主管機關確認除受控情況外，公司無權發行股票認股權證。然而，既存的無記名股票仍然存在一些風險，因為對於以前發行的無記名股票或認股權證沒有明確的贖回或使其消失的時間。

434. 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 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.

公司法要求代名人董事和代名人股東進行登記。根據中華臺北的公司法，代名人董事和代名人股東沒有定義。但在實務上，以下這些功能即是代名者：以他人名義持有且沒有實際權力的董事或股東，投票協議和投票信託，代表法人股東擔任董事或監察人的自然人，提供借位(名)登記。公司法（第

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38.7 條) 和經濟部法規下具有約束力的申報規定，要求代名人董事、代名人股東以及代名人的委託人向經濟部登記。董事或監察人的歷史記錄和任何代名人也是公開的資訊，並可由主管機關的登記資料中進行查詢。經濟部的資料顯示，有 32,079 家公司有代名人董事和 32,371 家公司有代名人股東的登記紀錄。

435. 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.

如上所強調，中華臺北民事信託的財產申報金額超過美金 650 億，但對民事信託（國內）或外國信託的管制措施很少。在任何一種情況下，受託人都不須要向金融機構或 DNFBP 揭露其身分，這會降低 CDD 和 EDD 抵減濫用法律協議風險的能力。

436. 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.

信託收益的揭露義務（對財政機關）雖可增加透明度並有助於減輕某些風險，但尚不清楚是否採用積極主動的方法，在逃稅以外利用這些資訊來打擊利用民事或外國信託掩蓋洗錢。

437. 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.

信託法第 31 條要求受託人每年向委託人和任何可辨識的受益人報告信託財產記錄。這具有辨識信託各方當事人的效果。

438. 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.

DNFBP（包括律師和會計師）相對最近才被納入全面的防制洗錢/打擊資恐義務，並已將其 CDD 義務擴展到為國內民事信託或外國信託提供信託服務的案件。但是，主管機關無法預估 DNFBP 在這些角色所扮演的程度，而且 DNFBP 在不擔任受託人的情況下委任信託時，CDD 延伸的程度存在一些技術遵循落差。這是幫助防止法律協議被濫用的重要措施，但由於民事信託沒有義務使用 DNFBP 的信託服務，因此它不是一種廣泛適用的管制措施。

#### **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.

#### **案例 7.1: EDD 措施適用於已發行無記名股票的客戶**

借款人 Y 投資公司試圖在銀行開立帳戶。執行 CDD 後，發現該公司能夠發行無記名股票，遂立即將其視為高風險客戶，並在資訊系統中註明，確認未經總經理核准不得進行任何交易。

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

*即時獲取適當、正確及最新之基本和實質受益權資訊*



439. 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.

公司的基本資訊、結構、股東，以及在非常單純持股下的實質受益人資訊，可透過經濟部及公司的維護的資訊確認。這些資訊可供主管機關取得，且通常是即時的。在 2018 年公司法修正之前，公司毋須申報持有 25% 以下股份或資本額的股東資訊，且規定向經濟部更新申報資訊的期限，無法支持提供正確或即時的資料，甚至是基本所有權資訊。2018 年的修法和法規要求申報所有董事、監察人、經理人及持有 10% 以上股份或資本額之股東資訊。法規還要求任何變更應在 15 天內向資訊平台申報。現地評鑑時正值於過渡期間，因此經濟部持有資訊的情況正在改善。

440. 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.

根據證券交易法，公開發行公司已有類似義務一段期間。公司法從 10% 以上申報的義務是一項令人樂見的發展，但它並未達到證券交易法規定的內部人持股報告的要求。在該法中，為 10% 門檻目的持股包括股東的配偶和未成年子女持有的股份，以及任何以他方名義持有的股份（證券交易法第 25（3）條）。證券交易法施行細則第 2 條規定以任何第三方名義持有的股份。

441. 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.

由經濟部推動的 CTP 資訊搜尋包括臺灣集中保管結算所股份有限公司提供的一系列資料（上市公司資訊）。CTP 搜尋支援多層次搜尋功能，並交叉引用經申報的公司所有權/董事資訊、上市公司的公開發行公司資訊以及稅務資訊。

442. 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.

主管機關可以取得 FI/DNFBP 透過 CDD 收集的實質受益權資訊，FI/DNFBPs 會採取合理措施辨識和驗證實質受益人的身份。其他資訊可以透過正式公函取得。金融機構執行 CDD 的表現良好，然而該

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義務對 DNFBP 仍是新的，CDD 實質受益人的資訊是可取得的。根據持續性 CDD 的要求，CDD 記錄應定期更新，然而實質受益人的安排可能在更新之前就發生變化。進行 CDD 的挑戰包括與代名人、前台帳戶或複雜結構相關，可能會限制 CDD 資訊在揭露最終實質受益權和控制權方面的效用。正如 IO.3 和 IO.4 所述，CDD 義務的實施具有多種優勢和一些弱點，但 CDD 的宣導和監理已使銀行和其他金融機構的遵循比率提高。

443. 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.

7 執法機關和金融情報中心顯示經常使用機制取得 CDD 資訊以辨識法人之實質受益人。資訊請求允許執法機關和金融情報中心在合理的時間範圍內取得相關資料。法務部調查局洗錢防制處和執法機關有權取得金融機構或 DNFBP 所收集的 CDD 資訊，以便了解法人或法律協議的實質受益權或控制權。權責機關有權要求所有金融機構協助確認那些金融機構或 DNFBP 的客戶為該特定的法人，然而在實務中，很少要求全體機構作確認。

444. 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.

執法機關經常在金融調查過程中採取措施以取得實質受益權資訊。執法機關已經證明對許多在 OBU 持有帳戶的外國公司追查實質受益權的例子。中華臺北對於以 OBU 為核心商業模式的外國企業，存有關於揭開企業面紗的重大挑戰。金管會已經大力推動對現有和新的 OBU 客戶的 CDD 措施，執法機關與金融情報中心並展現向外國合作夥伴尋求 OBU 客戶資訊的行動。

**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.

**案例 7.2：確認市場操縱案件中所使用公司的最終實質受益人**

金管會監控發現有關公開發行公司 C 可能涉嫌商品虛假交易，最初約為 400 萬美元。調查局比對稅務記錄，及從金融機構獲得的資訊，以辨識相關公司間不符合常規的交易，並發現某些公司在商業登記資訊中共有董事、監察人、股東和類似的地址。調查局洗錢防制處的金融情報證實關聯公司的網絡。在進一步調查過程中，調查局確定涉及複雜實質受益權的詐欺行為，以掩飾控制超過 15 家國內公司和 5 家外國公司的實際人員。這些架構被用於捏造近一千筆循環交易，金額超過 3 億美元（都不是實際交易）。經由利用虛假交易向大眾揭露美化的財務報告，欺騙非特定投資者參與 A 公司、B 公司和 C 公司的股票投資。

445. 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.

執法機關已經辨識一些需要從經濟部取得歷史所有權資訊的案例，以協助理解現有實質受益權和控制權的安排。這些細節已經在許多情況下能自經濟部取得。由此，經濟部計畫在網站上<sup>12</sup>提供歷史基本資訊（核准日期、公司名稱、資本額、公司所在地、董事和監察人、經理人和其他資訊），以協助重建歷史所有權，並進一步協助金融機構/DNFBP 和執法機關發掘實質受益人。

446. 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.

關於國內信託，信託法第 31 條規定受託人每年有義務向委託人和任何可辨識的受益人報告信託財產記錄，這應可於調查信託時提供基礎，以協助執法機關和其他機關辨識實質受益權和控制權。相關的稅務申報也是有所幫助，特別是專業信託服務提供者並不總是被使用。權責機關沒有證明經常使用這些權力來取得私人信託當事人的資訊。

447. 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.

某些情況下（特別是來自受託人業務），執法機關已經取得作為金融機構客戶的受託人之 CDD 資訊。然而，執法機關表示，根據他們的經驗，根據法律協議進行的境外信託存在風險，並對調查具有特別的挑戰。

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

#### *裁罰的有效性、合乎比例和勸阻性*

448. 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.

經濟部已採取一系列行動來執行其權力，以打擊未能提交更新登記資訊的公司和其他法人。之前對於未能保持所有權資訊在最新狀態的罰鍰不具有勸阻性，但 2018 年的修法，包括公司法的第 22-1 (4) 條增加了勸阻性。在現地評鑑期間，經濟部尚未開始執行新義務的強制計畫。

449. 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.

<sup>12</sup> Available as of 21 December 2018. 自 2018 年 12 月 21 日起可用。

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如 IO.3 所述，金管會監理的金融機構在履行 CDD 義務方面具有優勢，但很少有對 DNFBP 的此類措施執行檢查。金管會有對未能採取適當的 CDD 或向權責機關提供此類資料的情況施以裁罰，雖然裁罰的金額低，但它們確實支持改善 CDD 資訊的取得。

450. 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.

經濟部是一個積極的登記機關，在 2018 年公司法修訂後，開始為新的要求實施全面性強制架構。經濟部強制執行現有控制措施的表現良好，且主管機關已能展現良好的記錄，對於未能履行揭露義務的法人予以警告並解散。在 2018 年年底，共有 764,572 家法人登記。2018 年期間，新增 42,695 家公司，31,547 家公司遭解散或撤銷登記。在同一期間，經濟部發現有大約 2,000 家公司的董事職位懸缺，並命令公司進行改選。

### Overall conclusions on Immediate Outcome 5

#### 直接成果 5 之整體結論

451. 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.

中華臺北對公司法進行了部分改革，以改善法人所有權的透明度和法人治理，並改善機制以協助權責機關揭開公司面紗。中華臺北認知公司結構所帶來的風險，以及信託在程度上相對較輕的風險，並正採取一些措施來抵減這些風險。有一些控制措施可以確保代名人董事和股東的透明度，並管理股票認股權證的風險，並在某種程度上管理無記名股票的風險。私人明示信託的透明度義務有限，有少許措施得以辨識這種法律協議的控制權。中華臺北的在法人的成立或繼續運作中，相對較少使用專業中介，因此金融機構/DNFBP 可能無法持續掌握有關實質受益權的最新和正確資訊。執法機關證明經常合併使用調查技巧、基本資訊和從金融機構/DNFBP 取得的 CDD 資料，來辨識公司結構的實質受益權和控制權。這包括分享此類資訊的國際合作。

### 452. Chinese Taipei has a moderate level of effectiveness for Immediate Outcome 5.

中華臺北在直接成果 5 之評等為中度有效。