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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

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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 Notaries¹¹ 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

¹¹ Notaries provide services including notarization and attestation.
Anti-money laundering and counter-terrorist financing measures in Chinese Taipei 2019 @ APG

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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

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website¹² 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.

¹² 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.**