

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, 3rd 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

TECHNICAL COMPLIANCE

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.

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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.

TECHNICAL COMPLIANCE

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.

TECHNICAL COMPLIANCE

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 SRII 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 CTF 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.

TECHNICAL COMPLIANCE

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.

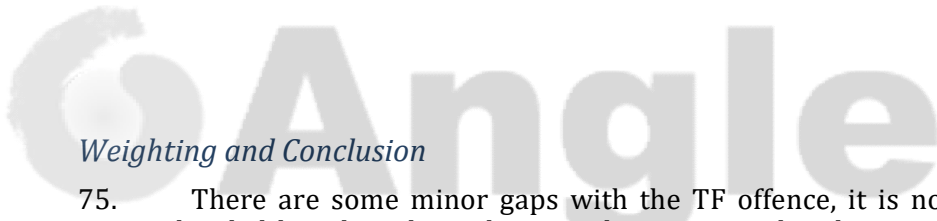
70. In comparison to other jurisdictions, the period of imprisonment of 7 years (Art 8) and 5 years (Art 9) is at the lower end of the scale. However, the sentence for these offences is commensurate with other serious offences in Chinese Taipei, such as human trafficking, kidnapping for ransom and hijacking 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.

TECHNICAL COMPLIANCE

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.

TECHNICAL COMPLIANCE

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 3rd 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

TECHNICAL COMPLIANCE

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 3rd 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 3rd party’s appeal may be raised under the Administrative Appeal Act and file for relief as the inadvertently affected 3rd 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.

TECHNICAL COMPLIANCE

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.

TECHNICAL COMPLIANCE

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

TECHNICAL COMPLIANCE

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 & DNFBNs

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 DNFBN 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
AML regulations of FIs
<ul style="list-style-type: none"> • Banks • Credit cooperatives • Postal office (Chunghwa Post) • Credit card companies • Trust enterprises
<ul style="list-style-type: none"> • Securities firms • Securities finance enterprises • Securities investment and trust enterprises • Securities investment consulting enterprises • Securities central depository enterprises • Futures commission merchants • Leverage transaction merchants • Future trust enterprises and managed futures enterprises (Art. 5 (18), MLCA) • Insurance companies • Reinsurance companies • Insurance agents - companies and natural persons • Insurance broker - companies and natural persons • Electronic stored value card issuers • Electronic payment institutions
AML regulations of Agricultural FIs
<ul style="list-style-type: none"> • Credit departments of farmers' associations • Credit departments of fishermen's associations • ABT
AML Regulations of Financial Leasing Enterprises
<ul style="list-style-type: none"> • financial leasing enterprises
Regulation on Foreign Exchange Counters
<ul style="list-style-type: none"> • Foreign exchange counters

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.

TECHNICAL COMPLIANCE

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).

TECHNICAL COMPLIANCE

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).

TECHNICAL COMPLIANCE

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 banking 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.

TECHNICAL COMPLIANCE

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.

TECHNICAL COMPLIANCE

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 or 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

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appropriate CDD and record-keeping measures in line with R.10 and 11. Art 7 of the Regulations Governing AFI 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 AFI 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 organizations¹³, (b) countries or regions where advice of international AML organizations are not followed or not fully followed, according to announcements issued by international AML organizations¹⁴.

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)).

¹³ Referred to public statement issued by FATF or other bodies.

¹⁴ Referred to the list of jurisdictions subject to FATF's global on-going AML/CFT compliance process or other lists.

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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.

TECHNICAL COMPLIANCE

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.

TECHNICAL COMPLIANCE

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.

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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.

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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

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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.

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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.

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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 interest¹⁵ for approval from FSC.

¹⁵ 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%).

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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

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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.¹⁶

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

¹⁶ 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.

TECHNICAL COMPLIANCE

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

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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 dissemination¹⁷. 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

¹⁷ 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 ICTRs; 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

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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

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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.

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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.

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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.

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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.

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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

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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 .

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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

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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.

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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.

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- 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.

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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.**