

Parallel Report
on
ROC's Second Report
under the United Nations Convention
against Corruption

T N Soong Foundation



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I. Foreword

The fight against corruption, bribery, and other dishonest practices is gaining momentum around the globe. Last October, U.S. and British authorities ordered Credit Suisse to pay \$475 million to settle bribery and fraud charges against some of the bank's top executives in connection with the corruption scandal related to the Mozambique government. In April, the former Goldman Sachs bank executive was convicted by a jury of bribery and corruption charges. The prosecutors said the Goldman Sachs banker helped 1MDB raise US\$6.5 billion through three bond sales, but that US\$4.5 billion was diverted to government officials, other bankers, and their associates through bribes and kickbacks. "The harm to the people of Malaysia is immeasurable", the prosecutor of the case, Alixandra Smith, told jurors. "It is deeply unfair to everyone else who plays by the rules."

From the perspective of business management, if dishonest behavior is tolerated, it may lead to dishonest business culture, unexpected loss of funds, low operating efficiency, and other consequence affecting shareholders' rights and interests;

Furthermore, any dishonest conduct such as corruption, bribery, unfair competition or illegal donations, once occur and be disclosed, it will profoundly affect the trust from customers, suppliers, governments, shareholders and financial institutions of the company. The consequences could be trivial or tremendous, ranging from monetary fines to temporary cessation of business, which will bring severe and long-term damage to a company's goodwill and future business.

II. Executive Summary

The T N Soong Foundation ("the foundation") is dedicated to researching and developing professional knowledge and skills related to accounting and auditing standards in Taiwan's private sector, and anti-corruption has been a critical topic on which the Foundation focuses steadily.

In Taiwan, the second international review of the United Nations Convention Against Corruption ("UNCAC") will take place in August of this year, and Taiwan will demonstrate its achievements in the implementation of the UNCAC and its response to the first concluding observations to the Review Committee of International Expert. In ROC's Initial Report, the Review Committee essentially acknowledges that Taiwan's public sector institutions actively promote anti-corruption and anti-bribery activities. Still, the concluding observations suggested that Taiwan's private sector should play a more active role in promoting the goal of fighting corruption.

Therefore, the Foundation respectfully submits our report in parallel with the following reports published by the Agency Against Corruption of Taiwan (AAC): 《ROC's Second Report under the United Nations Convention against UNCAC implementation report》 ("ROC's Second Report") and 《Report on Concluding Observations from Review of the ROC's Initial Report under the United Nations Convention against Corruption》 ("Report on Concluding Observations").

This parallel report focuses on the implementation of UNCAC in Taiwan's private sector since 2018 and the follow-up implementation regarding the Review Committee's concluding observations in 2018. This parallel report is intended to serve as a reference for Taiwan's government authorities, private enterprises, and organizations in promoting fraud and corruption prevention and management in the future.

III. Observations and Recommendation – The preventive measures in Taiwan’s private sector.

UNCAC Article 12. Private sector
<p>1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, <u>to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector</u> and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.</p> <p>2. Measures to achieve these ends may include, inter alia: (a) <u>Promoting cooperation between law enforcement agencies and relevant private entities</u>; (b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including <u>codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses</u> and in the contractual relations of businesses with the State; (c) <u>Promoting transparency among private entities</u>, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities; (d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities; (e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure; (f) Ensuring that private enterprises, taking into account their structure and size, have <u>sufficient internal auditing controls</u> to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to <u>appropriate auditing and certification procedures</u>.</p>
The Concluding Observations
<p>[5] • As the preventive measures have focused mainly on the public sector, Taiwan <u>should devote more attention to preventive measures in the private sector</u> to meet the growing threat of private sector corruption.</p>

According to UNCAC Article 12(1), to prevent corruption in the Taiwan private sector, Taiwan should enhance accounting and auditing standards in the private sector. UNCAC Article 12(2) provides six applicable measures to achieve the ends. In the following paragraph, the foundation concludes with four observations regarding Taiwan's current implementation of Article 12, accompanied by our recommendations.

1. The cooperation between enforcement agencies and private entities (12(2)(a) UNCAC)

- A. Regarding the various types of anti-corruption cooperation between Taiwan's law enforcement agencies and the relevant private sector, the foundation affirms the achievements set forth on and under page 61 of ROC's Second Implementation Report. At present, the competent authority in Taiwan has established several laws and regulations governing the management, licensing, subsidies, and development of various industrial activities in the Taiwanese private sector. Among other things, the most important regulation is the *Regulations Governing Establishment of Internal Control Systems by Public Companies* ("RGEICS"), which aims to regulate how Taiwanese public companies should formulate, legally and explicitly, their internal control and compliance policy as well as the establishment of their internal control and risk self-assessment mechanism. The RGEICS specified that the internal control system of a listed company should cover the compliance matters of its industrial regulations (Article 7 RGEICS) and requires the department of internal audit to include the compliance of laws and regulations in the annual audit plan and audit it accordingly (Article 13 RGEICS). The Financial Supervisory Commission ("FSC") has also required the Taiwan Stock Exchange Corporation ("TWSE") and the Taipei Exchange ("TPEX") to enhance their level of scrutiny over the listed companies, particularly on the quality of the company's compliance and internal controls whenever TWSE or TPEX execute financial examinations.
- B. However, the foundation observes that, at present, when TWSE and TPEX implement an on-site examination concerning whether a TWSE/GTSM IPO company has established an efficient internal control system as required by RGEICS, they do not execute a targeted examination over the applicant company's internal control mechanism over the corruption. Therefore, the

foundation believes the current financial examination in Taiwan is insufficient to ensure all listed Taiwanese companies have efficient internal control over potential corruptive conduct. For this reason, the foundation recommended that a targeted examination of a company's internal control over corruptive behavior should be incorporated into the following regulations: (1) *Taiwan Stock Exchange Corporation Assessment and Auditing Procedures for Securities Underwriter Handling Initial Listing Applications* and (2) *Taipei Exchange Assessment and Auditing Procedures for Recommending Securities Firms Handling Applications for TPEX Listing of Stocks*, which will require the TWSE and the TPEX to pay more attention in the examination of whether a listed company's control over corruption is effective.

- C. In addition to the pre-IPO financial examination, we recommended that the competent authority conduct a regular and periodic post-IPO examination on a company's internal control over corruption. The foundation also suggests that a listed company should regularly publish the results of its annual auditing of potential corruptive practices and its signed annual statement against corruption. Moreover, given any deficiency in controls or corruptive practice is red-flagged or discovered by the competent authority in the quarterly examination, the examinee company should also report their remedial measures or decision in response to such deficiency in its following quarterly financial report.

2. The codes of conduct and good commercial practices (12(2)(b) UNCAC)

- A. Regarding the anti-corruption codes of conduct and good commercial practices in Taiwan's private sector, the foundation recognizes the achievements set forth on and under page 4 of the Report on Concluding Observations. Among those achievements, the foundation considers the most important is the enforcement of the *Ethical Corporate Management Best Practice Principles for TWSE/GTSM Listed Companies* ("ECMBPP for TWSE/GTSM") by the TWSE and TPEX on 23 May 2019. The *ECMBPP for TWSE/GTSM* requires each public company to disclose and make transparent the anti-corruption measures it has implemented each year. The critical part of the amendment includes that it requires each TWSE/GTSM listed company shall implement its version of ECMBPP with the approval of its board of directors, and establish an assessment mechanism for the risk of dishonest behavior, etc. The foundation especially recognizes the action that the Securities and Futures Bureau (SFB) brings the following indicator into the

7th (2020) Corporate Governance Evaluation: “*The reasons for the differences between the company’s ECMBPP rules and its actual implementation.*” This indicator faithfully and accurately reports the actual practice of each listed company’s ECMBPP and therefore avoids the relevant ethical codes not being implemented after they are formulated.

- B.** After implementing the *ECMBPP for TWSE/GTSM*, the anti-corruption mechanism for listed companies in Taiwan entered an embryonic stage. However, there is much leeway given to each company as to how they execute the relevant principle in practice. In Taiwan, a typical scenario is that many Taiwanese companies announce their anti-corruption policies or declaration against corruption on their official websites without giving sufficient details on its implementation, relevant case analysis, or even the recourse mechanism. The foundation believes the actual practice of the *ECMBPP* still has room for optimization since most of them are still less concrete compared to other international companies around the globe.¹ To address the deficiency, the foundation found the structural framework of developing an anti-corruption ethics and compliance program provided by the OECD, UNODC, and World Bank will be an ideal starting point in aiding Taiwanese companies to develop more concrete and practical commercial practices against corruption. The 12 steps in the framework include (1) Support and commitment from senior management for the prevention of corruption, (2) Developing an anti-corruption program, (3) Oversight of the anti-corruption program, and (4) Clear, visible, and accessible policy prohibiting corruption, (5) Detailed policies for particular risk areas, (6) Application of the anti-corruption program to business partners, (7) Internal controls and record-keeping, (8) Communication and training, (9) Promoting and incentivizing ethics and compliance, (10) Seeking guidance – Detecting and reporting violations, (11) Addressing violations, (12) Periodic reviews and evaluations of the anti-corruption program.²
- C.** Among the 12 topics, one of the most complex tasks is developing and implementing anti-corruption compliance programs, i.e., designing an internal regulatory framework and controlling its effectiveness. This task requires designing a set of applicable standards, which may need to consider various regulatory requirements of different countries and the common requirements among those countries. On the other hand, in terms of the implementation, the

¹ Hsienwei Chang, Deloitte & Touche Taiwan, ‘The Implementation of Anti-Corruption Policies: The Perspective of *Ethical Corporate Management Best Practice Principles*’.

² OECD, UNODC, & World Bank (2013)., *Anti-Corruption Ethics and Compliance Handbook for Business*.

level of involvement of the board of directors is an important indicator, including the designation of a compliance and ethics committee to oversee the compliance program, a dedicated department to implement the compliance program, regular reporting to the board of directors, evaluation of the implementation and continuous improvement of the anti-corruption compliance program, and the responsibility of the board of directors to address non-compliance in the event of a report by a senior executive. According to the case analysis provided in the *Anti-Corruption Ethics and Compliance Handbook for Business*,³ a company was investigated by the prosecutor for bribery of its executives in foreign bidding practices. Its board of directors immediately suspended all senior managers involved in the case. The board of directors also actively participated in the external consultant's investigation meetings and agreed that the consultant could develop and review the relevant policies and anti-bribery mechanisms with reference to the company's business model and operation. The board of directors' support is an essential factor that enabled that company to implement the anti-bribery mechanism swiftly.

- D. Second, the management of conflicting interests is also a specific risk that should be identified in a corporation's anti-corruption compliance program. The foundation believes that the most important mechanism to prevent potential conflicts of interest is to require employees and suppliers to disclose their subjective knowledge of potential conflicts of interest to the company, especially for the staff responsible for financial, sales, marketing, procurement, and human resources. However, the foundation found that most listed companies' ECMBPPs only require employees and management to avoid conflicts of interest in general terms. Still, most companies do not include specific provisions on the possible scenario and patterns of conflicts, the threshold amounts that should be disclosed, the identity and scope of interested parties, the mechanism for recourse and reporting, and the corresponding penalties. The foundation recommends that the listed companies in Taiwan embody a more concrete risk assessment mechanism and action plan to resolve such conflicts and take appropriate control measures to reduce their negative impact.⁴
- E. Finally, since the *ECMBPP for TWSE/GTSM* was developed by TWSE according to the ISO37001 Anti-bribery management systems, the provisions of *ECMBPP* are not as stringent and complete as ISO37001, which is an international standard for anti-bribery management system issued by the

³ Ibid, 17.

⁴ Hsienwei Chang (n 1).

International Organization for Standardization in 2016. ISO37001 provides a cornerstone for enterprises to establish a bribery prevention management system through the ISO PDCA framework. A company can identify potential bribery scenarios, perform bribery risk assessments, and design effective control methods for medium and high-risk factors. In order to encourage companies to implement ISO37001, the foundation suggests that the implementation of ISO37001 can be incorporated into the rubric of Corporate Governance Evaluation in Taiwan, either as an independent or a supplementary indicator.

3. The transparency of private entities (12(2)(c) UNCAC)

- A. The foundation acknowledges the relevant regulations and schemes to promote the transparency of corporate information in Taiwan as set forth on page 58 of the ROC's Second Implementation Report. However, we must also point out that even though Taiwan currently has the "Business Registration Public Information Inquiry Service" which provides the public with access to necessary and timely business registration information, and the "Platform for Reporting Information on Company Officers and Major Shareholders", and the *Securities and Exchange Act* which requires public companies to make public announcements of events that have a significant impact on shareholders' rights and interests or the price of securities,⁵ these regulations focus mainly on the disclosure of basic corporate registration information and information that is significant enough to affect the price of the stock. Whereas these information systems do not include the disclosure of information related to the quality and effectiveness of a company's internal control and risk management. No way for the public to know from the above systems whether a company has implemented internal anti-corruption controls and the effectiveness of such controls.
- B. Therefore, to enhance the transparency of private sectors, the foundation recommends Taiwan's public companies should disclose, in their annual reports and prospectus, their controls over corruption, as well as their plans for future improvement and test of the effectiveness of the relevant measures (especially for companies that have not designed the appropriate controls sufficiently or have not designed the suitable control measures at all). In addition, the foundation suggests that the public companies shall disclose, in their annual report or prospectus, the deficiencies of their internal control,

⁵ *Securities and Exchange Act* s 36(3)(2).

which were reported by the competent authorities during the year, and the specific details of the shortcomings. Public Companies shall also publish the results of any reported violation in their companies and the critical information of the breach in their annual report or prospectus (such as the department involved, the scheme of fraud, and the relevant disciplinary measures) so that the employees and the public will know the companies' attitude and commitment in anti-corruption and the effectiveness of their implementation. We also recommend that companies publish the number of hours of employee and management participation in the educational training of anti-corruption measures and the results of those training activities in their annual reports or prospectus.

- C. In addition, the foundation also observes that although Taiwan has passed the draft of the *Whistleblower Protection Act*, which contains preliminary regulations on the scope, procedures, and protection of the rights of whistleblowers in the private sector, the bill has not been enacted as of the date of this report. The foundation suggests that Taiwan's legislation should expeditiously promote the law's enactment so that Taiwan's private sector whistleblower oversight mechanism can be implemented as soon as possible. This is not only to fulfill Taiwan's commitment to point 28 of the Concluding Observation proposed by the UNCAC review committee but also the essential steps in enhancing the transparency of Taiwan's private entities.

4. The internal audit and Control against Corruption (12(2)(f) UNCAC)

- A. According to Articles 7 and 8 *RGEICS*, the internal control system of a public company should cover eight operating cycles and 17 internal controls. However, the foundation noticed the internal control measures provided by *RGEICS* do not include the prevention of corrupt practices by employees and management. We suggest that preventing corruption should be included in the current internal control system. In addition, public companies should establish a control mechanism to prevent employees from engaging in corrupt practices, such as the signature of the Commitment of Honest Cooperation by each employee and manager. Public companies should also specify the penalties for receiving kickbacks and bribes and establish a hotline for reporting violations and complaints connected to the relevant judicial authorities.
- B. In addition, in the purchase and payment cycle of Taiwan's companies, a prevalent corrupt practice that is not easily detected is that the staffs of a purchaser and the staffs of a supplier agree on the price privately, but then the

purchaser invoices for a higher amount of money. The cashier and salesman of the purchaser then collude to ask the supplier to pay the difference in cash as a kickback. To avoid such corrupt practices, the foundation suggests companies should establish a supplier evaluation system and update the historical price database every quarter, and compare the historical price to the actual market price from time to time. It is also recommended to establish an automatic evaluation, audit, and elimination system for suppliers with an unstable quotation or poor quality instead of relying on purchasing staff's subjective judgment of the reasonableness of the price or simply following the old transactional practice or custom between both parties. In addition, the authority responsible for anti-money laundering can also establish a monitoring and reporting system for the abnormal cash flow of private funds of the procurement or financial personnel of public companies so that public companies can detect the corrupt practice or transfer their work at an early stage and avoid breeding corruptive habits among of related personnel.

- C. Another common form of corruption in the assets management operation in Taiwan's private sector is the misappropriation of the company's inventory by employees while it is in storage. To avoid this kind of corruption, we suggest that Taiwanese companies use facial recognition systems or Radio Frequency Identification systems (RFID systems) to keep the high-value inventory of the company. Where the RFID system is adopted, whenever an inventory is moved out of the warehouse, it will automatically be recorded in the system and approved for release by another responsible supervisor remotely. Such a system provides a digital solution for managing a company's valuable assets.

IV. Observations and Recommendation – The social participation of Taiwan's private sector.

<p>UNCAC Article 13. Participation of society</p>
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<p>1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to <u>promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations, and community-based organizations,</u> in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes, and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (a) Enhancing the transparency of and promoting the contribution of the public to decision-making</p>

processes; (b) Ensuring that the public has adequate access to information; (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula; (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary: (i) For respect of the rights or reputations of others; (ii) For the protection of national security or ordre public or of public health or morals.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convent.

The Concluding Observations

[17] •The Taiwanese Chamber of Commerce, Federation of (sectoral) Industries, Small and Medium Enterprises (SMEs), among others, should participate more actively to combat corruption and promote good governance and combat corruption in the private sector.

According to UNCAC Article 13(1), to prevent corruption in the private sector, Taiwan should actively involve individuals and organizations outside the government, such as civic society, NGOs, and community-based organizations, in preventing and combating corruption. To this end, Article 13(1) identifies four measures that States Parties may take. The following are our observations and recommendations regarding the implementation of UNCAC Article 13 in Taiwan's private sector.

1. The accounting profession in Taiwan should participate more actively in the prevention of and the fight against corruption

- A. In response to point 17 of the concluding observation, since 2018, Taiwan has been actively promoting the development of relevant professional self-regulatory codes by chambers of commerce and other professional associations to promote anti-corruption. For example, the "*Self-Regulatory Code of Control for Soliciting and Underwriting Operations in Insurance Profession*" for life insurance and property insurance companies stipulates that insurance companies should require their salespersons to follow the

general ethics of the society, the principle of honesty and integrity, and the spirit of protecting the proposer, the insured, and the beneficiaries when soliciting life insurance products; the Taiwan Banks Association has also established the "*Self-Regulatory Convention for Members of the Banking Association of the Republic of China*" to urge its members not to improperly boycott other members' transactions, or obtain trade secret or personal information from others in an unethical manner. The foundation highly recognized these self-regulatory codes among the professions.⁶

B. However, the foundation believes that the accounting profession in Taiwan should play a more active role in promoting business conduct and professional ethics among private entities in Taiwan. Because accountants' professional independence and training in the audit equip them with the necessary skills to serve as the front line in combating and detecting corporate corruption activities at the very early stage before the involvement of law enforcement agencies. The foundation recommends that accounting firms in Taiwan be more active in Taiwan's anti-corruption blueprint. In addition to complying with current professional ethics and codes of professional conduct, such as the *Certified Public Accountant Act* and the *Regulations Governing Auditing and Attestation of Financial Statements by Certified Public Accountants*, the accounting profession in Taiwan should further establish pre-engagement risk management procedures and post-engagement auditing procedures for the prevention and detection of corrupt practices which might exist in the engaged clients' internal control. For example, Deloitte & Touche Taiwan has established a pre-engagement risk assessment procedure and an ongoing audit procedure to address its audit client's risk of fraud and corruption. The relevant procedures are outlined as follows.

1. The audit team should apply big data and AI software in the assessment of the risk of fraud, including the following mechanisms
 - a. Know Your Clients (KYC) procedure
 - b. Using data analysis, data mining, retrieval techniques, and robotic automation technologies in the data analysis platform to collect and retrieve customer information.
 - c. The financial information collected is automatically calculated and converted into financial ratios and relevant risk indicators to assess the risk of fraud and whether to accept the engagement.
2. Second, an accountant should perform fraud risk assessment procedures in

⁶ ROC's Second Report under the United Nations Convention against Corruption, 58.

the early stages of an audit to understand the auditee and its environment, the applicable financial reporting framework, and its internal controls. The risk assessment procedures should include

- a. Fraud inquiries with the management: That is to interview the relevant personnel of the auditee about the inquires in Statement of Auditing Standard No. 74 (including but not limited to) to understand how the governance unit of the respondent performs its controls over fraudulent behavior.
 - b. Identify relevant fraud risk factors and potential fraud schemes.
 - c. Hold an engagement team brainstorming discussion on fraud risks.
 - d. When assessing audit risk, the accountant should consider the possibility of management overriding controls.⁷
3. In addition, during the auditing, regardless of the results of the auditor's assessment of the risk of management overriding controls, the auditor should implement the following audit procedures:⁸
- a. Journal Entry Testing.
 - b. Evaluation of bias in accounting estimates.
 - c. Other Procedures, as applicable.
4. The accountant's audit team should perform independent fraud risk review procedures to address the risk of management overriding the control. The team should identify and understand whether the audited company has any control procedure to address the threat of management overriding the control to increase the likelihood of preventing, deterring, and detecting fraudulent financial reporting. Controls that may address the risk of management override include:
- a. Controls over journal entries and adjustments made in the period-end financial reporting process.
 - b. Controls over related party transactions.
 - c. Controls related to accounting estimates in significant accounts and disclosures.
 - d. Controls that address incentives for, and pressures on, management to falsify or inappropriately manage financial results.

Finally, the foundation emphasizes that although we encourage the accounting profession in Taiwan to establish risk assessment and audit procedures to address the risk of corruption and fraud, under the current *International Standards on*

⁷ Statement of Auditing Standard No.74, Article 31-33.

⁸ Statement of Auditing Standard No.74, Article 88-94.

*Auditing (ISA)*⁹ and *Statement of Auditing Standard* in Taiwan,¹⁰ the primary responsibility of the prevention and detection of corporate fraud lies with managers of companies. Even though an accountant may suspect or, in rare instances, identify the occurrence of company fraud, it is not appropriate for the accountant to make legal judgments about whether fraud has actually occurred. If an accountant identifies a suspected fraud, they should first confirm the requirements of the law or relevant professional ethics regulations, which may involve complex considerations and professional judgment; therefore, they should also consider obtaining the advice of a legal expert to understand the various options available and the implications of the particular option to be taken.¹¹

2. The public companies in Taiwan should participate more actively in the prevention of and the fight against corruption.

A. On page 67, ROC's Second Implementation Report sets out in great detail the anti-corruption activities held by the companies and non-profit organizations in Taiwan since 2018, which includes many seminars, symposiums, and other educational activities of a similar nature, most of which are held under the promotion and encouragement of Ministry of Justice (MOJ), Ministry of Economic Affairs (MOEA), and other Taiwanese State-Owned Enterprises (SOEs). The foundation recognizes the excellent achievement of these activities in promoting community involvement in anti-corruption. However, the foundation also notices that Taiwan's anti-corruption community involvement is still at the "Government Initiatives" stage. From our observation, although some of the listed companies in Taiwan have been involved in the prevention and combating of corruption to some extent, such involvement is limited to participating passively in response to the government's initiatives, such as sending staff or managers to attend in seminars or to implement government's mandatory requirements (e.g., the implementation of *ECMBPP*). We believe that the current model should be gradually changed in another direction. Companies in Taiwan should play and are capable of playing a more proactive role in preventing and combating corruption. In other words, social participation in Taiwan should shift from "government initiative" to "company initiative".

⁹ *Responsibility for the Prevention and Detection of Fraud, International Standard on Auditing 240 The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements*, s 4.

¹⁰ *Statement of Auditing Standard No.74, Article 4.*

¹¹ *Statement of Auditing Standard No.74, Article 43, 113.*

- B. Therefore, the foundation recommends that Taiwan should, according to the capital size and scale of each listed company, make it mandatory for each listed company to set up and announce its internal and external whistle-blower channels. For example, through regular meetings of the employees with the Integrity Department of the company, or the provision of various complaint channels such as e-mail, telephone, and fax, entitling employees can have multiple and flexible channels to file their complaints. In addition to the investigation of the reporting facts of each case, the foundation believes the essential measure is the anonymity and encryption of the personal identity of the whistleblower. The access to each complaint's information should be limited most strictly and confidentially, and the retention and access of each complaint should be incorporated into the internal operating procedures and internal control system. The foundation recommends that the above measures be implemented in listed companies and should also be gradually extended to public utilities and government entities at all levels.
- C. In addition to the mandatory bylaws and policies, it is also important to shape the company culture and management's tone in anti-corruption. Therefore, the foundation recommends that the management of listed companies organize regular anti-corruption training on their initiative to convey its ethical standards and set the cultural tone from the top of the company. To speak to its employees and suppliers a clear message about what kind of behavior is corruption/fraud, how to report and recourse relevant incidents, and how to discover and implement remedial measures when a systemic loophole is prone to fraud/corruption may have existed in the company, etc. Such tone from the top is critical to enhancing the integrity awareness of employees and suppliers. More importantly, in addition to the whistle-blower protection mechanism established by government legislation, companies should also create a whistle-blower-friendly atmosphere to encourage whistle-blowers to come forward fearlessly and not be afraid of being retaliated for their reports on corruption loopholes. In ROC's Report on Concluding Observation, we noticed that some of the listed companies in Taiwan, such as Taiwan CPC and Taiwan Water Corporation, have held annual corporate integrity seminars and training sessions on their initiative and conducted case studies on possible cases of corruption risk violations in their procurement operations. Those activities invited internal employees, external contractors, and suppliers to participate in the panel discussion, enabling the participants to exchange opinions and communicate in a two-way manner to build a quality procurement environment. Such a practice of constructing an ethical procurement

environment is worthy of reference for other companies in Taiwan.¹²

¹² Report on Concluding Observations from Review of the ROC's Initial Report under the United Nations Convention against Corruption, 31.

V. Conclusion

To conclude, the foundation recognizes the achievements as outlined in ROC's Second Report and Report on Concluding Observation, as well as the government's commitment to fighting corruption more efficiently. Nevertheless, as discussed above, the foundation also considers that there is still room for improvement in Taiwan's private sector. At the end of this report, we summarize the crucial recommendations we discussed above and categorize them in the order of UNCAC articles.

The preventive measures against corruption in the private sector (Article 12)

1. The cooperation between enforcement agencies and private entities

- A. FSC should require TWSE and TPEX to implement a pre-IPO targeted examination of public companies' internal control over corruption. The examination could be incorporated into the following regulations:
 - i. *Taiwan Stock Exchange Corporation Assessment and Auditing Procedures for Securities Underwriter Handling Initial Listing Applications* and
 - ii. *Taipei Exchange Assessment and Auditing Procedures for Recommending Securities Firms Handling Applications for TPEX Listing of Stocks.*
- B. FSC should require TWSE and TPEX to implement a post-IPO targeted examination of public companies' internal control over corruption.
- C. Listed companies should regularly publish the results of their annual auditing of potential corruptive practices and their signed annual statements against corruption.
- D. For any deficiency in their internal controls, listed companies should report their remedial measures in response to such deficiency in the following quarterly financial report.

2. The codes of conduct and good commercial practices

- A. Public companies in Taiwan should develop more concrete and practical commercial practices against corruption. To this end, the structural framework provided by the OECD, UNODC, and World Bank is an ideal starting point,¹³ which suggests 12 steps in developing an anti-corruption ethics and compliance program.
- B. Listed companies in Taiwan should embody more concrete and enforceable internal controls to resolve the risk of conflicting interests.

¹³ See n 2.

- C. Implementation of ISO37001 can be incorporated into the rubric of the Corporate Governance Evaluation.

3. The transparency of private entities

- A. Public companies should disclose, in their annual reports and prospectus, their controls over corruption, as well as their plans for future improvement and effectiveness of the relevant measures.
- B. Public companies shall disclose, in their annual report or prospectus, the deficiencies of their internal control, which are reported by the competent authorities during the year, and the specific details of the shortcomings.
- C. Public companies should publish the number of hours of employee and management participation in the educational training of anti-corruption measures and the results of those training activities in their annual reports or prospectus.
- D. In response to the concluding observation of the review committee, Taiwan's legislation should expeditiously promote the enactment of the law of whistle-blower protection so that Taiwan's whistleblower mechanism can be put in place as soon as possible.

4. The internal audit and control against corruption

- A. Internal control over corruption should be included in the *RGEICS* as a necessary element.
- B. Public companies should establish a control mechanism to prevent employees from engaging in corrupt practices, such as the signature of the Commitment of Honest Cooperation by each employee and manager.
- C. Public companies should stipulate the penalties for receiving kickbacks and bribes and establish a hotline for reporting violations and complaints connected to the relevant judicial authorities.
- D. Public companies should establish a supplier evaluation system and the corresponding historical price database and set an automatic evaluation, audit, and elimination system for suppliers.

The social participation of Taiwan's private sector (Article 13)

1. The accounting profession in Taiwan should participate more actively in the prevention of and the fight against corruption

- A. Accounting firms in Taiwan are encouraged to establish pre-engagement risk management procedures and post-engagement auditing procedures to

prevent and detect clients' corruption practices.

2. The public companies in Taiwan should participate more actively in the prevention of and the fight against corruption

- A. The mode of social participation in Taiwan should shift from “government initiative” to “company initiative”.
 - B. Board of directors and management of listed companies should set up a cultural tone from the top to prevent and combat corruption.
 - C. Companies should build a whistle-blower-friendly atmosphere on encouraging whistle-blowers to come forward fearlessly and not be afraid of being retaliated.
 - D. Companies are encouraged to hold periodic corporate integrity seminars or training sessions on their initiative and facilitate the report and discussion on the possible loopholes in their procurement operations.
 - E. Taiwan should, according to the capital size and scale of each listed company, make it mandatory for each listed company to set up and announce its internal and external whistle-blower channels.
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VI. Acknowledgement

The foundation wants to thank the AAC and the MOJ for this opportunity to contribute to the design and implementation of better policies and practices to fight corruption and build a better business environment for the benefit of the citizens of Taiwan.