ROC's Second Report Under the United Nations Convention Against Corruption

Parallel Report

Presented by:

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Preface

Although Taiwan is not a member of the United Nations, we have voluntarily committed ourselves to the United Nations Convention against Corruption ("UNCAC") in 2016 for international cooperation against corruption. The Taiwan Institute of Ethical Business and Forensics ("TIEBF") is dedicated to promoting integrity and ethics in the private sector. Since 2019, the TIEBF has been invited to participate in the international review of the implementation of the concluding observations and state reports by various government agencies for three consecutive years. Therefore, we would like to present a parallel report on ROC's Second Report Under the United Nations Convention Against Corruption for the reference of relevant public and private sector organizations, with the hope of enhancing the effectiveness of Taiwan's private sector anti-corruption efforts.

Abstract

The public sector's efforts to promote anti-corruption in the private sector in Taiwan are currently focused on the integrity of for-profit organizations. In addition to extending legislation on combatting corruptions and imposing liabilities and punishments, by strengthening internal structural forces of organizations and guiding by external forces, the public sector also plays an effective role in creating a positive cycle for-profit organizations to form a culture of integrity management, either proactively or implicitly. This has led to the refinement and deepening of the concept and practice of corporate governance in Taiwanese enterprises. However, charitable organizations, which theoretically should be subject to more intense monitoring and oversight, have not received as much attention as for-profit organizations in the capital market, resulting in a stronger need to strengthen both the regulatory framework and the implementation.

Given that sound organizational governance is fundamental to the prevention of corruption, that information disclosure is the basis for effective internal and external supervision, and that the purpose of private sector organizations is no longer a dichotomy between for-profit and public welfare, we should apply our experience of developing and strengthening corporate governance, and take more efforts to guide public welfare organizations to establish internal rules conducive to integrity in operations. In addition, we should also consider establishing an open information platform for public access to the information of public welfare organizations and even a credible evaluation system for the public to distinguish between the good and the bad, thereby converging the power of the public to fill in the gap caused by the resource constraints of the public sector, so that the public and private sectors can work together effectively and promote the integrity operations of private sector organizations.

I. Introduction

Under the legal system of Taiwan, private sector organizations are divided into two types—associations and foundations: the former is constituted of people and the latter is constituted of property. Depending on the nature of their activities, associations in Taiwan are classified as either for-profit or for public welfare (charity), while foundations must be public welfare-oriented.[1] Companies are the most classic examples of a for-profit association. Public welfare organizations are social organizations under the Civil Associations Act, including those that culture, academic research, medicine, health, religion, charity, sports, fellowship, social service, or other public welfare, and those for the purpose of networking, such as clan associations, hometown associations, alumni associations, etc., as well as political organizations, i.e., political parties. They may also include occupational organizations for the purpose of coordinating industry peer relationships, promoting common interests and facilitating social and economic development, such as trade and commercial associations organized voluntarily, specialized occupational associations formed in accordance with specialized occupational laws, as well as farmers' associations, fishermen's associations, and various labor unions. There are also medical care associations and medical care foundations established under the Medical Care Act, long-term care association and long-term care foundations established under the Institutional Long-Term Care Juridical Entities Act, and school foundations established under the Private School Law. Resulting from the above categorization, except for the Company Act, most of the existing laws and regulations related to private sector organizations were established gradually after the lifting of martial law to open up and regulate the activities of the private sector; and to encourage the private sector to engage in public welfare activities, with various subsidies and tax breaks provided to public welfare organizations.

The global environment has been changing rapidly over the past 40 to 50 years. Although the regulations of private sector organizations in Taiwan were formulated relatively late, the related concepts proposed by the international community have been evolving, which has gradually revealed the inadequacies of our model in setting relevant regulations through the above classification. Due to a strong economic incentive to converge with the international business landscape, under the evolution of the corporate legal system and prevailing corporate governance concepts, profit-seeking enterprises no longer only focus on the interests of shareholders and creditors, but also seeks to develop corporate social responsibility, which requires them to adopt sustainable practices to protect the interests of all stakeholders. Organizations with public welfare objectives are no longer insisting on donations or contributions as the source of funding for their operations and activities, but are encouraged to adopt innovative business models in consistent with their public welfare objectives to provide for themselves, forming so-called social enterprises. As for-profit and for-public-welfare are no longer always distinguished, in this report we would compile the appropriate measures that the public sector has taken to prevent corruption and suggest for improvement in the supervision of private sector organizations, as well as explore future directions for further improvement.

The UNCAC addresses private sector organizations in Articles 12, 21, and 22; Article 21 deals with bribery among private entities, and Article 22 deals with theft and embezzlement of property by private sector entities. All of those issues fall within the scope of criminal law, which many scholars and experts have already covered in relevant literature and comments, and thus we do not intend to discuss them in this report. Only the issues raised in Article 12[2] are summarized herewith.

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[1] In Taiwan, we have traditionally distinguished between intermediate organizations, which are organizations that do not fit into the criteria of for-profit organizations, and likewise do not perfectly fit into the criteria of public welfare organizations, such as occupational organizations and hometown associations. However, some others believe there is no need to specifically classify intermediate organizations as one category, but it would suffice to classify them as public welfare organizations because the difference between the two is only in the scope of community for whom they care. The latter view is adopted in Article 1 of the Notes on the Registration of Associations with Courts issued by the Judicial Yuan. It states that registration of associations with courts is limited to public welfare organizations; and there are professional organizations and hometown associations that have been registered with courts.

[2] Article 12 of the UNCAC Private Sector
"Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where

II. For-Profit Organizations - Companies

Conducts of for-profit organizations, except as governed by law, are primarily directed by corporate culture formed by the owners, banks and/or institutional investors that provide financing, and main customers on the supply chain. These can be a positive cycle. The latter two of these are particularly effective in correcting the behavior of profit-seeking enterprises, voluntarily and even proactively. In addition to prevention through extending legislation on combatting corruptions and imposing liabilities and punishments, the public sector also plays a role of guiding for-profit organizations to form an integrity corporate culture either proactively or imperceptibly in the positive cycle of integrity management.

(I) Strengthening of the Internal Structural Forces of Organizations

Private sector for-profit organizations in Taiwan must be associations, and most of them are companies.[3] Because a company's capital stock can be divided into shares, and it can absorb market

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appropriate, provide effective, proportionate and dissuasive civil, administrative, or criminal penalties for failure to comply with such measures.

Measures to achieve these ends may include, inter alia:

(a)Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honorable 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 and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, 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 licenses 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) ensure that private enterprises, consistent with their structure and size, have adequate internal audit controls to help prevent and detect corruption and that the books of account and required financial statements of such private enterprises comply with appropriate auditing and licensing procedures.

In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offenses established in accordance with this Convention:

(a)The establishment of off-the-books accounts;

(b) The making of off-the-books or inadequately identified transactions;

(c)The recording of non-existent expenditure;

(d) The entry of liabilities with incorrect identification of their objects;

(e)The use of false documents; and

(f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offenses established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct."

[3] Sole proprietorships and partnerships can also do for-profit business but they are not organizations. In addition to companies, limited partnerships and cooperatives are also considered for-profit organizations with judicial personality. As for medical care associations, the Department of Health, Executive Yuan (now the Ministry of Health and Welfare), which is in charge of the medical industry, issued Letter Wei-Shu-Yi-Zi No. 725382 dated June 3, 1988, interpreting that from the viewpoint of medical behavior, "healthcare is a non-profit industry, and people who are not qualified professionals may not do business involving medical treatment." However, the Medical Act provides that members of a medical care association may have equity interest in the association in proportion to the amount of their capital contributions, or transfer all or part of their interest to third parties, and enjoy the right to distribute any remaining balance; and there is no restriction such as that of medical corporations that the property remaining after dissolution and liquidation may not be vested in a natural person or a for-profit legal entity or group. The Taxation Administration of the Ministry of Finance issued Letter Tai-Shui-Fa-Zi No. 9504526550 dated July 13, 2006, explaining that "the balance of a medical care corporation can be distributed to its members in proportion to its capital contribution, and which is of a profit-making nature and should be a profit-making enterprise established in other methods as stipulated in Article 11,

capital through stock listing and trading, all large-scale enterprises incorporate as companies. Because equity holders (members or shareholders) of a for-profit association are entitled to profits of its business and surplus property upon the dissolution, a self-monitoring mechanism is built into the legal system. It is designed that shareholders and supervisors have the power and authority to oversee the directors; board of directors is responsible for appointment and review of managers. Major shareholders of a company usually have the incentive to supervise the company to safeguard their own financial interest, and can take appropriate measures, exercising their power over directors and supervisors, and managers and employees through directors and supervisors. Although there is always a question of whether the interest of minority shareholders are properly protected, the legislative policy does not contemplate an extra intervention in the cases where the public interest is not involved, but leaves it to the autonomy of equity holders by agreement (by-laws or shareholders' agreement) or by their representatives (board of directors, managers). For example, they may make their own decisions on whether corporate funds are used for political contributions or other donations, whether the majority of business profits are used to increase employee salaries or benefits, and whether to prosecute directors and/or officers for intentional or negligent violations of the law. The restrictions are set forth in generally applicable laws and regulations, such as penalties for bribery, breach of trust, embezzlement, and fraud, as well as the regulation of accounting documents, account ledgers and books, and the regulations on financial statements.

1. Shareholder Level

However, in organizations where excessive fragmentation of shareholdings leads to higher agency costs, such as listed companies, it is not reasonable to expect public investors participating in stock market to take active supervisory actions due to the high degree of separation between operation and ownership. Moreover, the maintenance of order in the capital market also involves the public interest, so it is not appropriate to leave it entirely to the autonomy of the participants. Regulatory authorities in Taiwan have therefore adopted the following two approaches to strengthen public shareholders' power:

a. Establishing a quasi-governmental organization as the plaintiff in clss actions against listed companies on the main board of Taiwan Stock Exchange Corporation ("TWSE"), and the main board and emerging stock market listed companies on the Taipei Exchange ("TPEx").

In 2002, the Securities and Futures Investors Protection Center (hereinafter referred to as the SFIPC) was established by legislation with the power and authority to bring class-action lawsuits for the benefit of stock investors in the market and for the public interest in maintaining order in the capital markets. It may represent shareholders in requesting directors and supervisors to compensate the company for acts that are detrimental to the interests of the company, such as unconventional business transactions and special breach of trust, and may represent securities investors in requesting the investee companies, directors and supervisors to compensate victims for securities frauds such as misrepresentation of financial statements. The SFIPC may also exercise power on behalf of shareholders to request the court to dismiss unsuitable directors and supervisors as provided in the Company Act, and to assist public shareholders in effectively exercising the authority to monitor the conducts of directors. The amendment to Article 10-1 of the Securities Investor and Futures Trader Protection Act in 2020 expands the authority of the SFIPC to include managerial officers in the scope of class-action lawsuits filed by them, prevents directors and supervisors who are subject to dismissal proceedings brought by the SFIPC from being re-elected to avoid the effect of the dismissal decisions, explicitly states that the dismissal lawsuit may be based on wrong-doings that occurred during the defendant director’s previous term of office, and that within three years from the date of dismissal determined by the court, those dismissed are prohibited from serving as directors, supervisors, and representatives of corporate directors and supervisors of listed or emerging companies, so that the corporate governance mechanism can be implemented more effectively. In fact, the SFIPC plays a pivotal role in overseeing publicly-listed companies, especially in situations where the interests of public shareholders have been seriously compromised.

Paragraph 2 of the Income Tax Act." According to Article 44 of the Civil Code, it should be considered a profit-making corporation. In addition, the long-term care juridical entities are divided into those with a public welfare purpose and those with non-public welfare (for-profit) purpose. Medical care corporations and long-term care juridical entities will be analyzed in Parts III and IV of this report.

b. Guiding institutional investors to take active shareholder actions

In 2016, under the guidance of the Financial Supervisory Commission ("FSC"), which is in charge of securities exchange, the TWSE, together with the Taiwan Financial Services Roundtable ("TFSR"), the Taiwan Depository and Clearing Corporation, and the Securities Investment Trust & Consulting Association of the R.O.C., jointly published the Stewardship Principles for Institutional Investors with the expectation of utilizing the power of the regulatory authorities to promote institutional investors, including the long-term interests of asset owners (e.g. insurance, pension funds, etc.) who invest their own funds and/or pool the funds of their clients or beneficiaries, and asset managers (e.g. investment trusts, investment advisors, etc.) who assist their clients in managing and investing their funds, for the long-term benefit of the fund providers (which may include clients, beneficiaries or shareholders of the institutional investors themselves) to oversee the investee company. Institutional investors may use investment as an incentive to meaningfully participate in the corporate governance of the investee company through attendance at shareholders' meetings, exercise of voting rights, dialogue with the management of the investee company, and even making public notice of investor opinions and cooperation with other institutional investors to form a greater influence. In addition to participating in the regular corporate governance of investee companies, it also facilitates the flow of professional investors' opinions in the capital market and assists public investors in understanding relevant information, so as to actively exercise shareholders' supervision power over corporate operations. At the same time, the regulatory authorities require listed companies to disclose information on shareholdings of more than 5% of shareholders on a quarterly basis starting from 2020, and to vote on a case-by-case basis at shareholders' meetings, and to adopt a candidate nomination system for the election of directors and supervisors starting from 2021, as well as to strengthen the disclosure of relevant information so that institutional investors can take appropriate actions based on adequate information.

2. Director Level

Furthermore, board of directors is the core of the corporate governance. Taiwan’s Company Act follows the corporate framework in civil law system. In addition to the statutory authority of shareholders on major issues, board of directors and management are normally supervised by supervisors elected by shareholders at shareholders' meetings. However, since there is no requirement for the independence of supervisors under the laws of Taiwan, it is common that both directors and supervisors are conventional "representatives" of the same corporate shareholders, resulting in common dysfunctions.[4] In 2006, the Securities and Exchange Act was amended to introduce the independent director and audit committee system evolved in the common law system for the first time, and now all listed companies, at the request of the FSC, together with the TSWE and the TPEx, have set up audit committees to replace supervisors, and are responsible for reviewing the company's internal control system, matters involving a director's or a supervisor's own interests, and material transactions, etc., in order to clear conflicts of interest outside of the directors' recusal from voting. In fact, when the audit committee system was first adopted by listed companies in Taiwan, independent directors faced the same challenge of being a symbolic function as supervisors. But, without the driver of financially meaningful interest in the company's equity,[5] the strengthening of the regulatory power, especially the pressure of group litigation exerted by the SFIPC on independent directors as compared to other directors,does push them withhold approvals or raise objections, exerting their power to check and balance on corporate decisions proposed by the management's and/or other directors’ and to direct shareholders’ actions to some extent.

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[4] For such a long time Article 27 of the Company Act did not prohibit the same corporate shareholder from appointing more than one representative to be directors and supervisors during the same period of time until the amendment of paragraph 2 of the same article in 2002. However, it still allows a corporate shareholder to change its "representative" directors and supervisors appointed by shareholders at shareholders' meetings at any time. This constantly miscommunicates to the public who is the owner of director duties.

[5] According to Article 3 of the Regulations Governing Appointment of Independent Directors and Compliance Matters for Public Companies, an independent director may not be a person, together with his/her spouse, minor children and nominees, having 1% or more shareholding in the company, or ranking in the top 10 in shareholdings of the company. However, our laws and regulations do not completely prohibit independent directors from sharing profits of the company.

(II) Guiding by External Forces

In addition to strengthening the internal force of enterprises under the corporate governance structure, adopting anti-corruption measures in the private sector in Taiwan is also led by the vigorous promotion of regulatory powers, including the Ministry of Economic Affairs, which is in charge of small and medium-sized enterprises, the FSC, which is in charge of public companies, and the TWSE and the TPEx,.

1. Guiding the establishment of corporate integrity management rules

The Small and Medium Enterprise Administration of the Ministry of Economic Affairs has compiled the Handbook of Business Principles of Integrity for Small and Medium Enterprise; the TWSE and the TPEx have formulated the Corporate Governance Best Practice Principles for TWSE/TPEx Listed Companies, Sustainable Development Best Practice Principles for TWSE/TPEx Listed Companies, the Ethical Corporate Management Best Practice Principles for TWSE/TPEx Listed Companies, the Guidelines for the Adoption of Codes of Ethical Conduct for TWSE/TPEx Listed Companies, and the Template Procedures for Ethical Management and Guidelines for Conduct, etc. Both mandatory and guidance approaches have been adopted to promote the establishment of a practice guide for SMEs and listed and listed companies to operate with integrity. The Ethical Corporate Management Best Practice Principles for TWSE/TPEx Listed Companies, which is most closely related to anti-corruption, emphasizes internal auditing and control, education and training, performance rewards and punishments, and a reporting system, and also suggests that the selection and conduct requirements for suppliers are not only limited to tangible interests, but also cover intangible interests such as intellectual property, competitive interests, and insider information.

2. Corporate governance evaluations serving to motivate companies to optimize anti-corruption measures

In order to guide enterprises to strengthen their corporate governance and help investors and enterprises understand the effectiveness of corporate governance implementation, the TWSE and the TPEx have jointly commissioned the Taiwan Securities and Futures Institute ("SFI") to conduct corporate governance evaluations since 2014. The evaluation covers all listed companies, and the criteria include the composition and functions of the board of directors, information disclosure, and the establishment of internal control systems for specific issues, such as intellectual property management and anti-bribery systems, etc. Through the annual strengthening of the evaluation criteria, the standards of corporate governance are strengthened and the rankings are used to guide healthy competition among enterprises. The Corporate Governance Evaluation has entered its 9th year and has become an important guide for listed companies in Taiwan to improve their corporate governance and operate with integrity.

(III) Recommendations

Given the effectiveness of the corporate governance evaluation system, it is important to deepen the implementation of anti-corruption within listed companies in Taiwan through the system and leverage it as a driving force to guide SMEs to operate with integrity. According to practical observation, except for enterprises with a high degree of internationalization based on the requirements of foreign clients, many of the anti-corruption systems established even by larger-scale listed companies are still limited to the formulation of internal regulations in accordance with the Template Procedures for Ethical Management and Guidelines for Conduct promulgated by the authorities, and have not yet been effectively implemented in conjunction with the existing audit and control environment. The Asian Corporate Governance Association's Corporate Governance Watch 2020 report echoes our observations, recognizing the role of corporate governance assessment in urging listed companies to improve their corporate governance, but also pointing out the "template culture" in Taiwan. It is recommended that the Ministry of Justice, in conjunction with the FSC, promote the strengthening of the assessment of the actual activities of anti-corruption internal control and the quality of disclosure of relevant information by the assessment of corporate governance in Taiwan: from the current system or lack of a systematic approach, to further differentiate whether the enterprises make appropriate adjustments based on the risks of their own business activities, and evaluate the actual activities and the specific degree of disclosure of relevant

information for a differentiating evaluation,[6] so as to empower listed companies the incentive to improve the quality of their internal anti-corruption controls, and enable the investing public, citizen groups and authorities to identify and assist companies that are lagging behind, thus improving the effectiveness of the private sector's anti-corruption efforts in Taiwan and helping to reduce the chance of fraud at the source.

Finally, given that corporate violations are usually attributed to a lack of internal audit and inadequate control measures, and that the allocation of legal liability has the effect of driving investment in corporate resources, it is recommended to further explore the impact of civil, administrative, and criminal liability on the implementation of corporate governance in different contexts, whether it is imposed on corporate representatives, or on individuals such as chairmen, directors, or other persons in charge of the company who are intentionally or negligently involved[7]. In addition, the corporate governance of a company may have different degrees of impact on the financial incentive for the investing public to gather their combined power and motivate the company to focus on and refine its anti-corruption efforts.

III. For-Profit Organizations with Public Interest - Medical Care Associations And For-Profit Long-Term Care Associations.

Although the purpose of medical care associations and for-profit long-term care associations in Taiwan is public welfare in nature, the internal structure and operation of the organizations are similar to those of corporations, and they are characterized by a "for-profit" nature.[8] According to the Medical Care Act, a medical care association may specify in its articles of incorporation that its members shall have equity interest in the association in proportion to the amount of their capital contribution and may transfer all or part of their equity interest to third parties. A director or supervisor who is also a member having share in the equity interest of the association shall be automatically dismissed when he or she transfers all his or her shares to a third party. Also, earnings of the association may be distributed to its members. In addition, after the dissolution of an association, except for merger or bankruptcy, the vesting of its remaining property shall be subject to the provisions of its articles of incorporation, provided however that the remaining property shall not be vested in a natural person or a for-profit organization or group as provided in Article 33 of the Foundations Act. Article 7 of the Regulations Governing the Licensing of Social Organizations stipulates that it is not permissible for a group to vest all or part of its income in a specific private individual or for-profit organization, or to vest the surplus property in a natural person or a for-profit organization upon dissolution, or for heirs of members or beneficiaries to inherit their interests. The Institutional Long-Term Care Juridical Entities Act regulates for-profit long-term care associations in almost the same way.

(I) Internal governance and external supervision of organizations

In view of the attribution of interests, medical care associations and for-profit long-term care associations have characteristics similar to those of typical for-profit organizations, i.e., companies, and are different from public welfare organizations. Therefore, both the Medical Care Act and the Institutional Long-Term Care Juridical Entities Act follow the internal structure of corporate governance. It is required that medical care associations and for-profit long-term care association have a supervisor, and that a

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[6] At present, the corporate governance evaluation indicators only formally examine whether the company has set up a dedicated unit for integrity management, established an integrity management policy, and disclosed the implementation of such a system. It is recommended that specific, detailed risk-based controls be established, such as whether criteria are provided for determining improper gifts or receipts; whether operational guidelines are provided for each situation, such as reporting, returning, and handover to a dedicated unit; whether corruption risk assessments are conducted for suppliers; whether mechanisms are in place to ensure that corrupt vendors are not contacted; whether anonymous reporting is allowed; and whether appropriate reporting units are in place.

[7] In addition to civil liability, administrative liability may be imposed on all persons in charge of a company for intentional or negligent violations of the law. In practice, fines are generally imposed only on the individual chairman of a company. Except where special criminal laws apply, the penalties for corrupt practices in general criminal law are less than those for juridical persons. Although such a liability model is justified, it is not conducive to the use of financial incentives from investors to encourage companies to take improvement measures in cases where the illegal acts benefit the company as a whole.

[8] See Note 3.

director or supervisor who is a member shall automatically be dismissed when he or she transfers all of his or her shares to a third party; only the qualifications of directors and the composition of the board of directors are subject to more restrictions than those of a company. In addition, in exceptional cases, if a director fails to be re-elected upon the expiration of his or her term of office or fails to fill a vacancy, which obviously hinders the integrity of the board of directors, the central competent authority may elect a director to fill the position; if a director violates the law or the articles of incorporation, which is detrimental to the interests of the organization or its establishment or causes it to fail to operate properly, the central competent authority may dismiss one, several or all of the directors and convene the general assembly of the organization to re-elect them.

The accounting and financial systems of medical care associations and for-profit long-term care associations are also modeled after the corporate system, which, in addition, only requires that before the annual balance is distributed to the members, more than 10% is set aside for social services or social welfare such as research and development, human resources training, etc. (referred to as social welfare fund), and more than 20% is set aside as an operating fund to ensure that part of the balance is used for public welfare and financial stability. In addition, the Medical Care Act and the Institutional Long-Term Care Juridical Entities Act impose restrictions on medical and long-term care facilities; the entity may not dispose of, lease, lend, establish right in rem, change the use of, or establish right in rem of the equipment of its real estate property without the approval of the central competent authority. It also strengthens the supervision of the competent authority by granting the central competent authority the right to order the medical care association to submit financial and business reports or inspect its financial and business status at any time. In addition, the National Health Insurance Act and other related laws require medical institutions, including medical care associations, that receive a certain amount of insurance premiums to publish their financial reports and submit them for public oversight.

With regards to the Medical Care Act, in recent years, the Ministry of Health and Welfare ("MOHW"), the competent authority, has regularly commissioned private organizations to conduct visits to medical care associations and medical care foundations and examine their financial reports. One of the important objectives is to prevent the financial reports from being too rudimentary, which may lead to the underestimation and dilution of the amount of social welfare benefits that are part of the social assets of the nation.

(II) Recommendations

The number of medical care associations and for-profit long-term care organizations in Taiwan is quite large, and their impact on society may not be less than that of large enterprises; moreover, medical care associations and for-profit long-term care associations are entitled to the same government subsidies and tax benefits as medical care foundations and other long-term care organizations, and their members have interests in the organization's property, so it is inevitable that they are subject to moral and ethical risks. The demand for regulation is no less than that of medical foundations and other long-term care organizations. However, it is clear from the above description that the relevant laws and regulations in Taiwan do not seem to require the establishment of internal control systems for medical care associations and for-profit long-term care associations in accordance with certain standards, and do not seem to actively urge these organizations to establish and implement codes of conduct for integrity and honest operation, which are different from the integrity systems of companies, medical care foundations, and other long-term care organizations. In view of the government's limited human resources, it is not a feasible long-term solution to rely solely on the supervision of competent authorities. It is advisable to consider an open, transparent, and easily accessible way of information disclosure, such as disclosing the financial reports of medical care associations to the competent authorities on a regular basis, similar to medical care foundations, on the website of the competent authorities, so as to introduce public oversight and avoid creating loopholes for corruption in the private sector.

IV. Public Welfare Organizations (Non-Profit Organizations)

Public welfare organizations are also known as non-profit organizations ("NGOs") because their primary business purpose is not for profit. However, as mentioned above, a non-profit organization is not

defined as one that does not receive compensation for the provision of goods or services. Since the state encourages the private sector to engage in public welfare initiatives, which to some extent complements the government's function, NGOs are established or maintained through private funding, whether they are associations (or societies without juridical personality) or foundations, and are entitled to tax breaks and deductions. In order to limit the property of public welfare organizations and the resources invested by the government and the public to be used for the public good, Taiwanese law regulates public welfare organizations not to distribute the balance of income and expenditure or property to directors, supervisors, managers, employees or members, all of whom only have management authority and are not the owners of the organization's property.[9]

Because of the weak connection between the interests of the NGOs and the interests of its members, there is a relative lack of incentive to monitor the organization; on the other hand, NGOs usually receive public funds, government subsidies, and tax breaks, so it is necessary to strengthen organizational governance and external supervision to avoid corruption. Both internal governance and external supervision must be based on access to appropriate information. Therefore, it is important to promote openness and transparency of information for public interest organizations, and to make it easily accessible to the public.

(I) Internal governance and external supervision of the organization

Due to the broad scope of public interests under legal protection, there is a considerable difference in the regulation of various NGOs in Taiwan. Compared to for-profit organizations and other public welfare organizations, our laws and regulations have the lowest degree of supervision over occupational organizations such as industrial and commercial associations, specialized professional associations, various labor unions, and most social organizations, because the nature of these organizations is a combination of people, regardless of whether or not they are registered as juridical persons. Therefore, in principle, the traditional corporate governance model is adopted, with the general assembly or the annual general meeting of members (or representatives of members) as the supreme body, and with board directors and supervisors when deemed necessary. Unless otherwise required by special laws, there may be no supervisors, and unless otherwise provided by special laws, they may be re-elected. However, changes to the articles of incorporation should be approved by the competent authority; the competent authority may also supervise its business, and inspect its property status and whether it has violated the law. If a director or supervisor violates the law or the articles of incorporation to the extent of endangering the public interest or the interests of the organization, the competent authority may request the court to dismiss the director or supervisor and make other necessary arrangements. The competent authorities have also established generally applicable financial regulations for industry and commercial organizations and social organizations for their adoption, and require them to regularly disclose their financial income and expenses. For organizations that enjoy relatively more social resources, such as the Chinese Taipei Olympic Committee under the National Sports Act and other national sports organizations with full membership in international sports organizations, there are higher standards, such as the appointment of a CPA to audit the financial statements.

The Ministry of Justice has been actively promoting the regulation of foundations based on the basic framework of the Civil Code and finally completed the legislation of the Foundations Act in 2018. The corporate governance structure of an foundation is also centered on the directors, and there is no supervisor

[9] Although there has been a draft law on social organizations for many years, up to now, the legal source of government regulation of social organizations remains the Civil Associations Act. According to the Ministry of the Interior's regulations on the licensing of social organizations, a public welfare organization may not benefit a specific private person or a profit-oriented organization with all or part of its income; upon dissolution, the remaining property may not be vested in a natural person or a for-profit organization, but in the local self-governing body or an organization designated by the competent authority; the rights and interests may not be inherited; and its mission may not be a profit-seeking in nature. In addition, according to the Political Parties Act, political parties are not allowed to engage in profit-making activities other than the sale of publications or promotion or the granting or transfer of rights for the purpose of promoting their ideas or activities; the remaining property after dissolution and liquidation is returned to the state treasury.

except as required by special laws. Since the foundation is composed of property and has no members, it is not supervised by the stakeholders and must be managed by the competent authorities. The Foundations Act stipulates that if the total amount of property or annual income of a foundation registered with the court reaches a certain amount, it shall establish an internal control and audit system and report to the competent authority for examination. Foundations shall have their financial statements certified by a CPA and stipulate a code of ethics in management according to the competent authority's guidance. Based on the authorization and responsibility of the Foundations Act, each respective agency has established accounting standards and financial reporting standards for foundations under its jurisdiction according to their nature, requiring the foundations to disclose their financial statements and commissioning CPAs to audit their financial statements; and actively promoting the transparency of financial information and organizational governance of foundations.

The special cases are medical care foundations, long-term care foundations and private schools. These large health care and educational institutions have the function of extending the government and receive long-term and continuous subsidies from the government in various methods. For example, a significant percentage of the income for health care services comes from the national health insurance fund, long-term care institutions are subsidized by the long-term care fund established under the taxation system, and a significant percentage of the funding for private schools receives incentives and subsidies from the Ministry of Education, which all enjoy high tax benefits. Therefore, there is a need for higher levels of organizational governance and oversight to protect the sustainable operation of organizations and the continuity of public policy. The Medical Care Act, the Institutional Long-Term Care Juridical Entities Act, and the Private School Law have a particularly high level of regulatory supervision by design and in principle. For example, the MOHW requires all financial statements of medical corporations to be audited by CPAs and disclosed on the Ministry's website. The MOHW also commissions private organizations to provide counseling and visit medical corporations and examine their financial reports, and provide education and training to strengthen directors' knowledge of organizational governance. The Ministry of Education, in accordance with the Private School Law and other relevant regulations, requires private school endowment corporations to appoint CPAs to audit and disclose their financial reports, and to set up a public platform for college and university affairs to facilitate public oversight and monitoring of the finances of private colleges and universities. This is conducive to bringing in public resources and professionals to supervise foundations in collaboration with the competent authorities. The competent authorities have also formulated implementation rules and templates for the reference of foundations, so that the establishment of the ethical code of conduct and internal control procedures can be more generally implemented in organizations. These efforts are a demonstration of strong efforts by the public and private sectors to prevent corruption in the private sector, and deserve recognition. However, the legislation of the Foundations Act has come relatively late, and in view of the many problems observed in the practical operation of the Foundations Act. In comparison, the Medical Care Act and the Institutional Long-Term Care Juridical Entities Act, which follow the rules set forth by the Medical Care Act, have been enacted earlier and have more stringent regulations on other foundations. Under such circumstances, the inconsistencies between the provisions of the Medical Care Act, the Long-Term Care Juridical Entities Act, and the Foundations Act, which have priority in application as special laws, are worth further consideration as to how to coordinate and amend them to avoid any imbalances.[10] In addition, as mentioned above, medical care associations and for-profit long-term care associations are classified as for-profit organizations in terms of governance and supervision, and are not subject to the same regulatory measures as medical care foundations, non-for-profit long-term care associations and foundations.

(II) Recommendations

[10] For example, the Ministry of Justice explained in its Interpreting Letter Fa-Lu-Zi No. 10903517190 dated December 15, 2020, "the re-election of directors of medical corporations has been specifically provided for in Article 33, Paragraph 2 of the Medical Care Act, which excludes the application of the relevant provisions of the Foundations Act, and should be reviewed by the MOHW in accordance with the relevant provisions of the Medical Care Act." The Foundations Act stipulates that the shareholding of foundations in a single company shall not exceed 5% of the registered capital of that company. In accordance with the Medical Care Act and the Long-Term Care Juridical Entities Act, the MOHW has set the maximum investment in a single company at 20% of the company's paid-in capital.

Although the traditional jurisprudence in Taiwan considers that public welfare organizations should be subject to more stringent regulation, since for-profit organizations are related to the order of the capital market, both the government and the private sector have invested more resources in regulating for-profit organizations, and the related system has developed more rapidly. In contrast, public welfare organizations have long lacked institutional management of organizational governance and sustained public attention, relying only on the limited human resources of the competent authorities. In addition, in addition to the difference in the degree of regulation between public welfare organizations, social organizations and foundations, there is also a problem with the reasonableness of the intensity of regulation between foundations due to the difference of capacity among the competent authorities.

Since organizational governance is a fundamental part of ethical operations, and as mentioned in the introduction of this report, there is no clear distinction between profit and public welfare, the regulation of NGOs in Taiwan should be based on the corporate governance model. If the size of the property and the number of members of the group are limited, the group shall operate autonomously under the framework of its general assembly meetings, board of directors meetings, or the supervisory board meetings, except in cases where government subsidies, grants, or tax benefits are provided. Organizations that do not have effective internal control measures should be disqualified; for organizations with a larger property, larger group members, broader social influence, or those that enjoy continuing government subsidies, grants, or tax benefits, they should be required to establish open and transparent financial and business practices. In order to qualify for government subsidies, grants, or tax incentives, the organization must have an appropriate internal control system and an integrity management system in place, so as to verify the effectiveness of the system and the quality of information disclosure through an impartial third-party organization.

As an inspiring model, U.S. NGOs must file an annual Return of Organization Exempt from Income Tax form(Form 990) with the Internal Revenue Service (“IRS”) in order to maintain tax-qualified status. The density of information disclosure varies depending on the size of the organization's property and income, and includes not only tax information and financial information, but also the current status of the organization's governance, such as whether a conflict of interest rules are explicitly established, whether whistleblower protection rules are explicitly established, whether important organizational governance rules have changed since the previous Form 990 was filed, and whether key employees or management compensation is determined by independent personnel or objective information. The Form 990s submitted by non-profit organizations can be downloaded from the IRS website. Over the years, a large database on the governance and finances of non-profit organizations has been accumulated in the United States, and many private organizations have been created to monitor non-profit organizations. Based on the results of their own interviews, the relevant private organizations present their indicators of non-profit governance, effectiveness, finance, and fundraising in a concise manner on the website platform, which serves as a basis for the public to evaluate whether to donate. For example, the BBB Wise Giving Alliance has designed a one-page website for each non-profit organization to establish a platform that can clearly present the governance, effectiveness, financial and fundraising indicators of each charity organization, so that the public can judge the governance profile of the organization at a glance, including conflict of interest prevention, fundraising solicitation costs, budget planning and other indicators to meet certain standards. If the public has a need for further information, they can click on the relevant column to obtain further information, such as the specific proportion of the donation amount to the cost of the solicitation, etc. It will serve as a basis for the public to consider their donation, which in turn will lead to healthy competition among public welfare organizations and proactive improvement of organizational governance and ethical operation.

Drawing on the U.S. experience, for the supervision of NGOs, the public authorities in Taiwan may also consider promoting an information disclosure platform to disclose the financial information and certified financial reports, as well as other key governance information of non-profit organizations. Credible evaluation mechanisms can be set up by establishing objective and progressive indicators, similar to the corporate governance evaluation model, which can be strengthened year by year. The results of the evaluation can be used by government agencies to evaluate whether to approve various grants, subsidies

or tax incentives, and at the same time, make it easier for the public to access and compare information on the governance of non-profit organizations, as well as to introduce public oversight and work with the public sector to promote sound governance of non-profit organizations.

V. Conclusions

Traditionally, the governance and regulatory system of private sector organizations in Taiwan have been based on a differentiated design that distinguishes between profit-making and public welfare. However, with the increasing scale and influence of for-profit organizations and the development of the concept of corporate governance, the relationship between corporate profits and the environment and social welfare are now intertwined. After the entry of larger enterprises into the capital market, the government has adopted a public-private partnership model to improve the information disclosure system and the allocation of resources and responsibilities, which has led to the further sound development of the capital market. In contrast, the governance and supervision of public welfare organizations are dwarfed by the limited resources of the government.

In view of the fact that non-profit organizations are an indispensable part of the private sector's anti-corruption efforts, although the enactment of the Foundations Act and related sub-laws has been successful in recent years, it is recommended that the competent authorities make further efforts to promote the quality of information disclosure of public welfare organizations and the accessibility of information to the public, as well as to consider establishing an evaluation system for public welfare organizations based on the experience of corporate governance evaluation models. This serves to introduce public oversight and promotes healthy competition among non-profit organizations, so that the public and private sectors can work together to promote the ethical operation of for-profit organizations and public welfare organizations.

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