

**ROC's Initial Report  
under the United Nations Convention against Corruption**

**March, 2018**



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## **【General Discussion】**

### **I. Foreword**

The United Nations Convention against Corruption (“UNCAC”) was ratified by the UN on October 31, 2003, and entered into force on December 14, 2005. The goal of this Convention is to provide guidance and a legal and policy foundation for anti-corruption efforts by governments all over the world. The Convention covers corruption related preventive measures, criminalization, and law enforcement, international cooperation, asset recovery, and implementation of the UNCAC enforcement mechanism. The goal is to foster a joint commitment to anti-corruption issues in all countries worldwide. The purpose of the first Anti-corruption Report of the ROC government (“this Report”) is to bring national anti-corruption policies in sync with international trends as well as present and maximize anti-corruption effects.

Taiwan established the Agency Against Corruption in 2011 and is actively committed to the implementation and unification of anti-corruption related authorities and policies, coordination with relevant agencies, as well as guidance and compilation of anti-corruption reports. The UNCAC Conference of Parties established a review mechanism for the status of implementation of the convention by each party in 2009. Despite the fact that Taiwan is not an official party, it is still fully committed to conforming to international anti-corruption trends and relevant legal systems and implementation of various norms and regulations disclosed in the UNCAC. Taiwan publishes these reports on a regular basis pursuant to the regulations set forth in Article 6 of the Act to Implement United Nations Convention against Corruption to review the state of implementation of the UNCAC in Taiwan.

This report is divided into two sections; a general discourse and a detailed discussion and review of the implementation status of the UNCAC in Taiwan (“this Discussion”). Relevant data is mainly provided by the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Examination Yuan, the Control Yuan, the Ministry of Civil Service, the National Audit Office, the Ministry of Examination, the Ministry of the Interior, the Ministry of Foreign Affairs, the Ministry of Finance, the Ministry of Economic Affairs, the Ministry of Education, the National Development Council, the Mainland Affairs

Council, the Financial Supervisory Commission (“FSC”), the Coast Guard Administration of the Executive Yuan, the Public Construction Commission of the Executive Yuan (“PCC”), the Directorate-General of Budget, Accounting and Statistics of the Executive Yuan, the Directorate-General of Personnel Administration, the Central Bank of the Republic of China, the Ministry of Justice, the National Police Agency, the Customs Administration of the Ministry of Finance, the Investigation Bureau of the Ministry of Justice (“Investigation Bureau”), the Agency of Corrections of the Ministry of Justice, and Agency Against Corruption of the Ministry of Justice (“AAC”), while the AAC is in charge of data organization and report compilation. Thirteen experts and scholars were invited to serve as members of the review and consultation committee for the report. From July 17 to August 1, 2017, a total of 9 review meetings were convened for the first round of reviews, while a total of 5 meetings were convened from October 16 to 27 of the same year for the second round of reviews. Two finalization meetings were held from December 15, 2017, to January 3, 2018. The finalization reviewing meeting was held on February 26, 2018. The report was discussed and passed in the 20th Central Integrity Committee on March 12, 2018, after a total of 21 meetings, which incorporated opinions from all sides.

## **II. Environment**

The term “Corruption” as used in this report is based on the norms set forth in the UNCAC with reference to the definition of corruption by Transparency International. The term refers to the misuse of entrusted power in the public and private sector for improper gain. A large number of laws and regulations in Taiwan are related to anti-corruption, and relevant government tasks are jointly promoted and implemented by relevant government agencies. This chapter briefly describes the national legal framework and organizational system pertaining to anti-corruption and how Taiwan domesticates UNCAC regulations as well as important new measures adopted to ensure implementation of the UNCAC.

### **1. Domestication of the UNCAC**

Taiwan enacted and promulgated the Act to Implement United Nations Convention against Corruption on May 20, 2015, effective as of December 9 of the same year. In June 22 of the same

year, the president of Taiwan signed the document of accession to the UNCAC, which gives legal validity to the UNCAC regulations in Taiwan. Government agencies at all levels shall review the supervised laws and administrative measures pursuant to Article 7 of the Act to Implement United Nations Convention against Corruption to ensure proper implementation of the anti-corruption legal system and policies established by the UNCAC. In case of non-conformity to UNCAC regulations, new laws shall be enacted, existing laws shall be amended or abolished, and administrative measures shall be improved within three years upon enactment of the Act.

## 2. Legal framework pertaining to anti-corruption

Within the anti-corruption policy framework, Taiwan has enacted numerous relevant laws that form its anti-corruption legal framework. Since Taiwan has adopted a continental law system, the following material laws are applicable to criminal offenses: Criminal Code of Republic of China (“Criminal Code”), the Anti-Corruption Act, the Money Laundering Control Act, and other regulations governing criminal liability and penalties set forth in other special criminal acts. In the field of procedural law, the Code of Criminal Procedure and relevant procedural laws and regulations are applicable. Government agencies at all levels implement the anti-corruption legal system and policies set forth in the UNCAC pursuant to the National Integrity Building Action Plan. Anti-corruption related laws are shown in Table 1 below.

**Table 1. Anti-corruption related laws**

	Relevant laws
<b>Framework conventions and national constitution</b>	United Nations Convention Against Corruption, Act to Implement United Nations Convention against Corruption, and national Constitution
<b>Preventive measures</b>	<p><b>1. Public sector</b></p> <p>Criminal Code of the Republic of China, Anti-Corruption Act, Act on Recusal of Public Servants Due to Conflicts of Interest, Act on Property-Declaration by Public Servants, Lobbying Act, Political Donations Act, Legislators’ Conduct Act, Tax Collection Act, Presidential and Vice Presidential Election and Recall Act, Civil Servants Election and Recall Act, Political Party Act, Civil Servant Work Act, Civil Service Employment Act, Civil Service Protection Act, Civil Service Promotion and Transfer Act, Civil Service Pay Act, Civil Service Retirement Act, Public Functionaries Retirement Act, Public Functionaries Discipline Act, Civil Service Administrative Neutrality Act, Civil Service Training and Continuing Education Act, Government Procurement Act, Budget Act, Financial Statement Act, Account Act, Audit Act, the Freedom of Government Information Law,</p>



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Archives Act, Administrative Procedure Act, Judges Act, the Code of Criminal Procedure, Whistleblower Protection Act (Draft), Act of the Establishment and Management of the Government Employee Ethics Units and Officers, Statute Governing the Discharge and Survivor Relief of Political Appointee, Statute Governing the Discharge and Survivor Relief of Political Appointee, National Integrity Building Action Plan, Integrity Volunteer Implementation Plan of the Agency Against Corruption, Administrative Procedural Transparency Principles adopted by the Executive Yuan and Affiliated Agencies, Regulations Governing the Implementation of the Common Standard on Reporting and Due Diligence for Financial Institutions, the Anti-Corruption Informant Rewards and Protection Regulation, Employment Policy for Personnel of Business Organizations Affiliated to the Ministry of Economic Affairs, Policy for Transfer, Exchange, and Rotation of Customs Personnel During Terms of Office, Policy for Rotation of Revenue Officers at All Levels, Directions for Remuneration of Military, Public, and Teaching Personnel, Operating Guidelines for Registration and Review of Lobbying and Influence Peddling by the Executive Yuan and its Affiliated Agencies and Organizations, Regulations for Publication of Government Procurement Notices and Government Procurement Gazette, Standards for Time-Limits for Tendering, Standards for Qualifications of Tenderers and Determination of Special or Large Procurement, Important Notes for Implementation of Article 26 of the Government Procurement Act, Directions for Public Monitoring of Public Construction Control and Evaluation Procedures, Regulations for Preparing Central Government Medium-term Programming Budget, Annual Budget Preparation Principles and Budget Planning Regulations, Internal Auditing Regulations, Government Internal Control System Design Principles, Operating Guidelines Governing Government Internal Control and Monitoring, Operating Guidelines Governing the Signing of Statements on Internal Control by the Government, Regulation for the Implementation of the Self-discipline of Judges at the Courts of All Levels, Self-discipline Items Pertaining to Social Interactions and Financial Management of Judges, Code of Conduct for Judges, Prosecutor Evaluation Guidelines (officially rescinded on March 5, 2012), Regulations Government Prosecutor Duty Assessment, Prosecutor Evaluation Implementation Rules, Implementation Rules for Comprehensive Appraisal of Prosecutors, Ethics Guidelines for Civil Servants, Code of Ethics for other Professional and Procurement Personnel, Code of Conduct for Anti-Corruption Workers, Ethics Guidelines for Judges, Ethics Guidelines for Prosecutors, and Code of Ethics for Corrective Personnel of the Ministry of Justice.

## **2. Private Sector**

Company Act, Securities and Exchange Act, Certified Public Accountant Act, Foundations Act (Draft), Regulations Governing the Preparation of Financial Reports by Securities Issuers, Corporate Governance Best-Practice Principles for TWSE/GTSM Listed Companies, Corporate Governance Best Practice Principles for the Banking Industry, Corporate Governance Best Practice Principles for Financial Holding Companies, Corporate Governance Best Practice Principles for Bills Finance Companies, Implementation Rules of Internal Audit and Internal Control System of Financial Holding Companies and Banking Industries, Regulations Governing the Establishment of Internal Control Systems by Service Enterprises in Securities and Futures Markets, Regulations Governing Implementation of Internal Control and Auditing System of

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	<p>Insurance Enterprises, Regulations Governing Establishment of Internal Control Systems by Public Companies, Regulations Governing the Exercise of Powers by Audit Committees of Public Companies, Regulations Governing Meeting Procedures and Appointment of Independent Directors by Public Companies, National Integrity Building Action Plan.</p>
<p><b>Conviction and law enforcement</b></p>	<p><b>1. Public Sector</b></p> <p>Criminal Code of the Republic of China, Civil Code, Anti-Corruption Act, Witness Protection Act, Whistleblower Protection Act (Draft), Act for Mutual Legal Assistance in International Criminal Matters (Draft), Act on Recusal of Public Servants Due to Conflicts of Interest, Act on Property-Declaration by Public Servants, Lobbying Act, Political Donations Act, National Property Act, Civil Servant Work Act, Organic Act for Courts, Government Procurement Act, Local Government Act, Civil Servants Election and Recall Act, Immigration Act, Prison Act, Rehabilitation Protection Act, Human Trafficking Prevention Act, State Compensation Law, Law of Compensation for Wrongful Detentions and Executions, Civil Service Performance Evaluation Act, Civil Service Pay Act, Civil Service Employment Act, Public Functionaries Discipline Act, the Code of Criminal Procedure, Taiwan Code of Civil Procedure, Compulsory Enforcement Act, Administrative Procedure Act, Personal Information Protection Act, Futures Trading Act, Fair Trade Act, Medical Care Act, Medical Malpractice Act (Draft), Narcotics Hazard Prevention Act, Organized Crime Prevention Act, Employment Policy for Personnel of Business Organizations Affiliated to the Ministry of Economic Affairs, Enforcement Rules of the Personal Information Protection Act, the Anti-Corruption Informant Rewards and Protection Regulation, Reference Standards for Review of Parole Cases, Regulations Governing Performance of Duties and Collaboration by Prosecutors and Judicial Police Agencies, Ministry of Justice Agency Against Corruption and Investigation Bureau Collaboration Guidelines, Operating Guidelines Governing Investigation of Corruption Cases by the Agency Against Corruption in Coordination with Government Employee Ethics Units of Various Agencies, Regulations Governing the Secondment of Military Judges of the Ministry of National Defense for the Handling of Prosecutorial and Other Official Matters at Courts and Prosecutors' Offices at All Levels, Regulations Governing Information Security Management of the Executive Yuan and Organizations under the Executive Yuan, Regulations Governing Information and Communication Security Responsibility Levels and Classification of Government Agencies, Principles for the Dispatch of Personnel by the FSC Financial Examination Bureau to Assist in the Handling of General Cases by Judicial Organs, Directions for the Handling of Public Petitions by the Executive Yuan and Organizations under the Executive Yuan.</p> <p><b>2. Private Sector</b></p> <p>Criminal Code of the Republic of China, Civil Code, the Banking Act of the Republic of China, Company Act, Securities and Exchange Act, Financial Holding Company Act, the Credit Cooperatives Act of the Republic of China, Trust Enterprise Act, Securities Investment Trust and Consulting Act, Futures Trading Act, Trade Secrets Act, Insurance Act, the Act Governing Bills Finance Business, Administrative Penalty Act, Labor Standards Act, Occupational Safety and Health Act, Act Governing Food Safety and Sanitation, Water Pollution Control Act, Government Procurement Act, Regulations Governing Securities Firms, Regulations Governing Futures Commission Merchants, Ethical Corporate Management Best Practice Principles for TWSE/GTSM Listed</p>

	<p>Companies, Corporate Governance Best-Practice Principles for TWSE/GTSM Listed Companies, Corporate Governance Best Practice Principles for the Insurance Industry, Waste Disposal Act, Act for Mutual Legal Assistance in International Criminal Matters (Draft), Reward Guidelines for the Handling of Financial Violations Reported by Citizens by the Financial Supervisory Commission.</p>
<p><b>Money laundering and terrorist financing control</b></p>	<p>Criminal Code of the Republic of China, Anti-Corruption Act, Money Laundering Control Act, Terrorist Financing Control Act, Act Governing Bills Finance Business, Compulsory Enforcement Act, Business Entity Accounting Act, Taiwan Code of Civil Procedure, Regulations Governing Anti-Money Laundering of Financial Institutions, Directions Governing Internal Control Systems for Anti-Money Laundering and Countering Terrorism Financing of the Banking Sector, Electronic Payment Institutions and Electronic Stored Value Card Issuers, Directions Governing Internal Control Systems for Anti-Money Laundering and Countering Terrorism Financing of the Securities and Futures Sector, Directions Governing Internal Control Systems for Anti-Money Laundering and Countering Terrorism Financing of the Insurance Industry, Directions for Confirming Customer Identity in Domestic Remittance Operations of Financial Institutions, Directions Governing Banking Enterprises for Operating Foreign Exchange Business, Anti-Money Laundering Guidelines for Cross-border Declaration and Reporting, Regulations Governing VAT Refund Claims by Foreign Travelers Purchasing Goods Eligible for VAT Refund, Regulations Governing the Establishment and Administration of Foreign Currency Exchange Bureaus, Directions for the Administration, Consignment, and Use of Confiscated Criminal Proceeds from Money Laundering, Regulations Governing Anti-Money Laundering for Certified Public Accountants, Directions Governing Anti-Money Laundering for Certified Public Accountant and Model Directions Governing Anti-Money Laundering Formulated by Associations Affiliated to the Financial Supervisory Commission.</p>
<p><b>International cooperation and mutual judicial assistance</b></p>	<p>Law in Supporting Foreign Courts on Consigned Cases, Law of Extradition, Transfer of Sentenced Persons Act, Criminal Code of the Republic of China, Law Governing the Conclusion of Treaties, the Banking Act of the Republic of China, the Communication Security and Surveillance Act, Money Laundering Control Act, Business Entity Accounting Act, Government Procurement Act, Company Act, Act on Property-Declaration by Public Servants, the Code of Criminal Procedure, Enforcement Rules of the Code of Criminal Procedure, Narcotics Hazard Prevention Act, Act for Mutual Legal Assistance in International Criminal Matters (Draft), Agreement on Mutual Legal Assistance in Criminal Matters between the Taipei Economic and Cultural Representative Office and the American Institute in Taiwan, Agreement On Mutual Legal Assistance in Criminal Matters Between the Taipei Economic and Cultural Office In the Philippines and the Manila Economic and Cultural Office in Taiwan, Arrangement Between the Taipei Liaison Office in the Republic of South Africa and the South African Liaison Office in Taipei on Mutual Legal Assistance in Criminal Matters, Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement, Regulations Governing the Exchange of Tax Information under Tax Agreements, Regulations Governing Anti-Money Laundering of Financial Institutions, Taiwan-UK Memorandum of Understanding on Extradition of Zain Taj Dean, Arrangement between the Taipei Representative Office in the Federal Republic of Germany and the German Institute in</p>

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Taipei on the Transfer of Sentenced Persons and Cooperation in the Enforcement of Penal Sentences, Arrangement Between the Justice Authorities of Taiwan and the Authorities of the United Kingdom of Great Britain and Northern Ireland on the Transfer of Sentenced Persons, Agreement on Preventing and Combating Serious Crime between the Taipei Economic and Cultural Representative Office in the United States and the American Institute in Taiwan, Agreement on Joint Fight Against Transnational Economic Crimes Between the Taipei Economic and Cultural Office in Thailand and Thailand Trade and Economic Office in Taipei, Memorandum of Understanding on Joint Fight Against Transnational Crimes Between Taiwan and the Philippines, ROC Supreme Court Prosecutors Office and the Kingdom of Bahrain MOU on Cooperation in Combating Crime, Operating Guidelines Governing the Implementation of the Taiwan-US Agreement on Mutual Legal Assistance in Criminal Matters by Prosecution and Investigation Authorities, Operating Guidelines Governing Cross-Strait Investigations and Forensics, Directions for the Handover of Narcotics by Customs to Control Relevant Threats, Directions Governing Internal Control System of Anti-Money Laundering and Countering Terrorism Financing of Banking Business, Electronic Payment Institutions and Electronic Stored Value Card Issuers, Taiwan-Japan Agreement on Cooperation and Mutual Assistance in Customs Affairs, Guidelines for Cross-Straits Arrest and Expatriation of Criminal Convicts or Criminal Suspects, Directions Governing the Sale of Seized Property by Prosecutors' Offices in the Context of Investigation of Criminal Cases, Document Processing Manual.

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### **3. Anti-Corruption System**

The main purpose of the anti-corruption system lies in the formation, planning, and implementation of anti-corruption policies. Anti-corruption work in Taiwan is planned, promoted, and executed by government agencies at all levels in accordance with legally defined responsibilities based on the principle of mutual coordination and collaboration. The anti-corruption system also exhibits the organizational structure of the government. The anti-corruption organizational framework is shown in Chart 1, while the division of duties is presented in Chart 2.

In the field of corruption prevention, the Agency Against Corruption is in charge of the planning of integrity policies and implementation of corruption prevention and directs and supervises the implementation and execution by the Government Employee Ethics Units of various agencies. Relevant tasks are jointly executed by the Control Yuan (property declaration by public servants), Ministry of the Interior (political donations and lobbying), Ministry of Economic Affairs and FSC (prevention of corruption in the private sector), National Audit Office (auditing of the financial affairs of the government and their subordinate institute), the Directorate-General

of Budget, Accounting and Statistics of the Executive Yuan (government internal control), Investigation Bureau (corruption prevention and election bribery inspections, money laundering and terrorism financing prevention, corporate corruption prevention), Anti-Money Laundering Office, Executive Yuan (overall planning of money-laundering control policies), and county/city governments. In addition, the Executive Yuan has established a Central Integrity Committee; integrity reports are issued by central and local agencies at all levels, meetings are convened on a regular basis, and experts, scholars, and impartial members of society serve as integrity committee members and provide counseling to strengthen the integrity mechanism.

In the field of criminal conviction, prosecutorial offices are established in accordance with instance levels of court. Prosecutors direct the Agency Against Corruption, Investigation Bureau, and police agencies personnel in the joint investigation of the UNCAC related crimes pursuant to the Code of Criminal Procedure and file public charges with courts. The Agency Against Corruption is exclusively responsible for corruption eradication in the public sector, while the Investigation Bureau is in charge of corruption control and election bribery investigation, prevention of serious economic crimes (including corporate corruption), and investigation and control of money laundering. Police agencies are responsible for the execution of police duties.

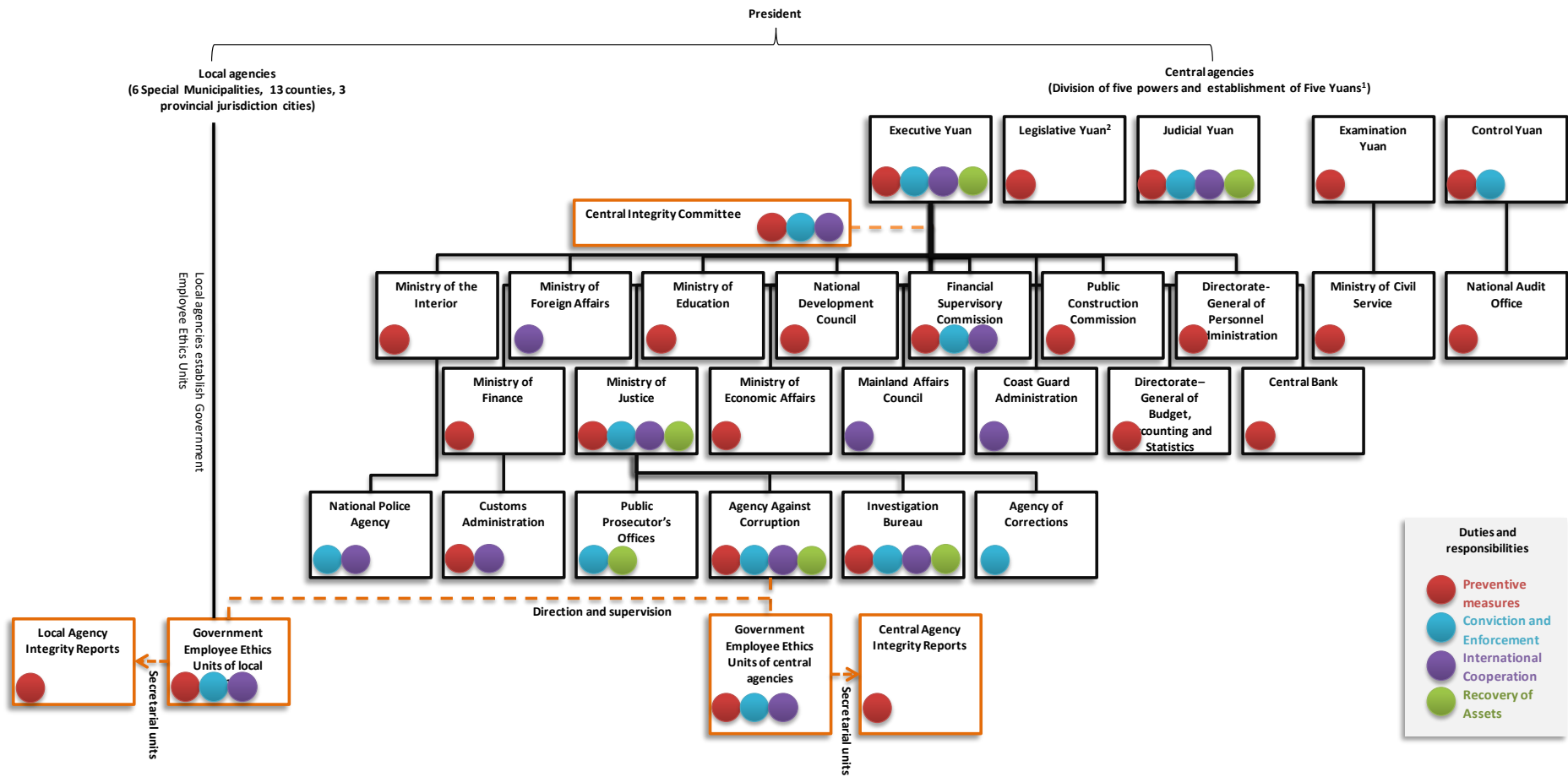
In the area of international cooperation in law enforcement and mutual judicial assistance, the Judicial Yuan, the Ministry of Foreign Affairs, the Ministry of Justice, the Financial Supervisory Commission, the Mainland Affairs Council of the Executive Yuan, the Coast Guard Administration of the Executive Yuan, the Agency Against Corruption, the Investigation Bureau, the National Police Agency of the Ministry of the Interior, and other relevant agencies are jointly committed to international collaboration in the field of anti-corruption.

**Table 2. Anti-corruption system – Division of duties**

Agencies	Preventive measures	Conviction and law enforcement	International cooperation and asset recovery
Executive Yuan			
Ministry of the Interior	Political donations, lobbying, determination of nomination and election criteria for civil servants, and transparency of campaign fund raising	Political donations, lobbying	
National Police Agency, Ministry of the Interior Ministry of Foreign Affairs		Crime investigations as prescribed in the UNCAC	International law enforcement cooperation
Ministry of Finance	Government financial management		International cooperation, mutual legal assistance, and extradition
Customs Administration, Ministry of Finance		Money laundering and terrorist financing control	International cooperation
Ministry of Education	The participation of society – Promotion of public education anti-corruption initiatives is incorporated into the programs of educational institutions at all levels.		
Ministry of Justice	Government information transparency, strengthening of the integrity of prosecutorial personnel, prevention of opportunities for corruption and malfeasance, formulation of codes of conduct, and money laundering control	Legislative policies, corporate liability, and witness protection in the context of crimes and criminal liability as defined in the UNCAC	International cooperation and mutual legal assistance, extradition, transnational transfer of sentenced persons, and asset recovery
Prosecutorial Offices		Investigation and filing of charges for crimes as defined in the UNCAC and overseas bribery prevention	Recovery of assets
Agency Against Corruption, Ministry of Justice	Direction and supervision of Government Employee Ethics Units, planning and adoption of preventive anti-corruption policies and measures, code of conduct for civil servants, government transparency, prevention of corruption in the public and private sectors, the participation of society	Investigation and handling of corruption and related crimes, prevention of overseas bribery, witness and informant protection, property declaration by public servants, recusal of public servants due to conflict of interest	International cooperation and mutual legal assistance, asset recovery
Investigation Bureau, Ministry of Justice	Prevention of corruption in the public and private sector, money laundering and terrorist financing control	Prevention of corruption and malfeasance and investigation of election bribery, prevention of overseas bribery, prevention of serious economic crime, eradication of corporate corruption, money laundering and terrorist financing control	International cooperation and mutual legal assistance, asset recovery
Agency of Corrections, Ministry of Justice Ministry of Economic Affairs	Prevention of corruption in the private sector	Parole for crimes as defined in the UNCAC	
National Development Council	Government risk management and freedom of information		
Mainland Affairs Council, Executive Yuan			Cross-border cooperation in the field of law enforcement

Financial Supervisory Commission	Prevention of corruption in the private sector (financial institutions), money laundering and terrorist financing control	Money laundering and terrorist financing control	International cooperation
Coast Guard Administration, Executive Yuan			International cooperation
Public Construction Commission, Executive Yuan	Government procurement		
Directorate-General of Budget, Accounting and Statistics, Executive Yuan	Government financial management and internal control		
Directorate-General of Personnel Administration, Executive Yuan	Recruitment, hiring, retention, promotion, and retirement system for civil servants		
Central Bank	Money laundering control		
Legislative Yuan	Resolution upon statutory and budgetary bills		
Judicial Yuan	Strengthening of the integrity of the personnel of judicial organs, prevention of opportunities for corruption and malfeasance, and formulation of codes of conduct	Trial of crimes as defined in the UNCAC	Mutual legal assistance and asset recovery
Examination Yuan			
Ministry of Civil Service	Recruitment, hiring, retention, promotion, and retirement system for civil servants		
Control Yuan		Impeachment, censure, corrective measures, asset declaration by public servants, recusal of public servants due to conflict of interest, political donations, lobbying	
National Audit Office	The audit of financial affairs of the government		

# Anti-Corruption Organizational Framework



<sup>1</sup> 12 ministries, 9 councils, 2 directorates-general, 2 administrations, 6 commissions subordinate to the Executive Yuan; Legislative Yuan; Judicial Yuan: Courts at all levels, administrative courts, and the Public Functionary Disciplinary Sanction Commission; Examination Yuan and its 4 subordinate agencies; Control Yuan and National Audit Office. The figure only shows the institutions who are responsible for practicing the mail legal content in Section 2-5 of the UNCAC.

<sup>2</sup> Resolution upon statutory and budgetary bills.



#### **4. Main actions taken following domestication of the UNCAC**

Reviews and amendments of laws and measures that fall short of the UNCAC regulations are carried out to bring the legal system in Taiwan in sync with international trends and ensure conformity to basic principles of the UNCAC. The main actions taken after domestication of the UNCAC can be summarized as follows:

##### **a) Strengthening of the National Integrity Building Action Plan and implementation of the UNCAC regulations**

With reference to relevant UNCAC and Transparency International (TI) proposals and initiatives, the Executive Yuan formally announced the National Integrity Building Action Plan, which clearly states the goals and strategies in the field of national integrity building. This action plan also integrates the “Well-formed Government Ethics Program,” “Action Plan of Anti-Corruption, Anti-Gang, and Anti-Bribery” and the follow-up promotion plan, as well as the “Anti-Corruption Action Plan” in an effort to establish national integrity development strategies and goals.

In response to the Act to Implement United Nations Convention against Corruption which was enacted on December 9, 2015, the Executive Yuan formally announced the revision and amendment of the National Integrity Building Action Plan on August 24, 2016, which would ensure conformity to and implementation of mandatory provisions. The following 9 concrete strategies have been formulated: “Strengthening of the integrity and responsibility system of all agencies and implementation of risk control,” “Promotion of openness and transparency and prevention conflicts of interest,” “Constant research of indicators and firm grasp of public opinion and international trends,” “Enforcement of a code of conduct for public servants and setting of a governance paradigm,” “Encouragement of the participation of society, promotion of transparency, and zero tolerance for corruption,” “Promotion of campus integrity and strengthening of character education for students,” “Strengthening of corporate integrity and building of an anti-corruption consensus in the private sector,” “Enactment and amendment of anti-corruption laws, strengthening of anti-corruption capabilities, and implementation of whistleblower protection,” and “Promotion of international cooperation and asset recovery and establishment of a mechanism of mutual benefit between nations.” These strategies, relevant

concrete enforcement measures, and performance measurement indicators facilitate the implementation of the UNCAC regulations by all agencies.

**b) Strengthening of confiscation policies**

Asset recovery is a basic principle of the UNCAC. A special chapter on confiscation was added to the ROC Criminal Code to uphold the spirit of no illegal benefits, eliminate the economic incentive of huge illegal benefits derived from crimes, and prevent criminals or any third parties from gaining illegal benefits. It has been clearly stipulated that “confiscation” has independent legal effect as of the date of enactment (July 1, 2016). The scope of confiscation has been expanded to eradicate crime. Where third parties gain benefits in an improper manner through malicious intent or illegal conduct by others, it would be unfair and unjust not to strip these parties of such benefits. Where third parties gain benefits through malicious intent or illegal conduct by others, confiscation shall be carried out as deemed appropriate to prevent legal evasion and remove legal loopholes in the field of sanctions.

Prior to legal amendment, confiscation cannot be requested and declared independently where the offender dies, escapes, or transfers assets to third parties unless a civil lawsuit is filed separately. This represents a loophole of the criminal code. After amendment, confiscation has independent legal effect and declaration thereof and can be made independently without being attached to a court ruling. Where the offender dies, a final verdict has been reached, or where no prosecution is initiated, the case is declined or dismissed, not prosecutable, the accused is found innocent, or court proceedings are suspended because the accused is unable to appear in court due to disease as stipulated in Article 19 of the Criminal Code, confiscation can be declared independently.

The scope of confiscation has been expanded to third parties to prevent the offender or third parties from enjoying illegal gains through transfer of such gains to third parties by the offender, which would be unfair and unjust.

**c) Strengthening of the money laundering control mechanism and expansion of the scope of confiscation**

The amended version of the Money Laundering Control Act was promulgated on December 28, 2016. The main purpose of this amendment lies in the restoration of order in the

field of cash flows, specifically in requiring the public and private sectors to strengthen the anti-money laundering system in Taiwan and bring Taiwan in-sync with international norms and regulations. The scope of specific crimes has been expanded and the criteria for identification of specific illegal gains have been widened. Punishments for the three stages of money laundering (placement, layering, and integration) have been clearly stipulated.

Financial institutions, finance lease businesses, jewelry stores, lawyers, accountants, land administration agents, real estate brokers, notary public, and trust and company service providers are required to establish an internal audit and control system, provide regular education and training, and assign dedicated personnel to ensure transparency of cash flow channels. At the same time, audit and execution mechanisms of the private and public sector have been strengthened. With a view to gradual demands for company transparency of the international society after the Panama Paper event, including but not limited to OECD, the Taiwan government has initiated the amendment draft of the Company Act and included the rule on the disclosure of beneficial ownership in companies, under which all companies, after implementation, must report information of its shareholders with over 10% to company's total issued shares or capital stock to the designated digital platform. For the improvement of accuracy and transparency of the companies, information of beneficial ownership on the designated digital platform may be accessed by law enforcement agencies and accessed by the obliged entities such as financial institutions and DNFBPs.

Article 18 of the Money Laundering Control Act expands the stipulated scope of confiscations. Where it is detected during investigation and seizure of illegally acquired property that the accused has other illegal gains of unknown origin potentially derived from illegal conduct, such property may also be confiscated to eradicate illegal cash flows even if specific illegal conduct cannot be identified.

**d) Strengthening of the international mutual legal assistance mechanism in criminal matters to combat crime**

In the field of international cooperation, Taiwan has concluded agreements on mutual legal assistance in criminal matters with the USA, South Africa, and the Philippines. In contrast to the Transfer of Sentenced Persons Act, which was enacted in 2013, the Law in Supporting

Foreign Courts on Consigned Cases and the Extradition Act have been outdated for a long time. In view of the rising frequency of incidents involving international mutual assistance in criminal matters, the contents of the latter two laws are no longer applicable. For instance, the Law in Supporting Foreign Courts on Consigned Cases stipulates mutual assistance including the provision of collected evidence and document delivery. Other provisions pertaining to the freezing of assets, search and seizure, and compulsory disposal of assets involving public rights and obligations are deemed insufficient or lacking. The amendment of the Law in Supporting Foreign Courts on Consigned Cases has therefore been merged with the draft of the Act on International Mutual Assistance in Criminal Matters and a revision of the Extradition Act is carried out as fast as possible. The Act on International Mutual Assistance in Criminal Matters was reviewed and ratified on January 31, 2018, by the Executive Yuan and the Judicial Yuan and sent to the Legislative Yuan for consideration. The main goal for the future is to complete the legislative process of a comprehensive and efficient legal framework for international mutual legal assistance including investigations into money laundering, predicate offenses, and terrorist financing as well as prosecution, indictment, and legal proceedings.

### **III. Assessment of corruption risk trends and implementation results**

This chapter starts by listing the outstanding achievements of Taiwan in the implementation of the UNCAC, which is followed by a description of follow-up improvements of deficiencies in the current legal system and policies.

#### **1. Results of the implementation of the UNCAC**

The following data illustrates trends of indictment for corruption crimes in Taiwan. The corruption indictment rate per 100,000 citizens in 2002 was 4.8<sup>1</sup> (in other words, 4.8 of 100,000 inhabitants were indicted for corruption). This rate rose to 6.4 in 2008, followed by a gradual drop to 3.3 in 2016. It reached a low of 2.3 in 2017. The conviction rate after indictment reached 70.38% in the accumulated period from July 2009 to December 2017 (tables presenting annual indictment statistics for corruption cases for each district prosecutor's office from 2002 to June 2017 and conviction rate statistics and trends can be found in Appendix 1 and 2, respectively).

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<sup>1</sup> Indictment rate per 100,000 inhabitants = Number of indictments / total population of 100,000

Taiwan received a score of 63 of 100 and was ranked 29<sup>th</sup> on a list of 180 countries and regions worldwide on the 2017 Corruption Perceptions Index released by Transparency International, which is in the top 20% of all assessed countries (83% of countries scored lower than Taiwan). The results of an integrity opinion survey conducted by the Agency Against Corruption in 2017 reveals that 61% of all respondents have zero tolerance for corruption on the part of public servants. 37.8% gave a positive rating to the integrity performance of the central government. However, respondents tend to be dissatisfied with the results of government efforts in the field of combating corruption. 55.6% were highly dissatisfied with investigation and prosecution of corruption in the government. This clearly shows that Taiwan has achieved certain results in the field of criminal investigation and conviction of corruption, but that there is still significant room for improvement.

Long-term promotion efforts and excellent achievements of Taiwan in the implementation of the UNCAC are briefly described below.

**a) Openness and transparency of procurement systems to implement anti-corruption**

The Government Procurement Act (GP Act) is in conformity with the Agreement on Government Procurement (GPA) of the World Trade Organization (WTO) and is enacted with the characteristics of openness, fairness, transparency, competitiveness, efficiency, decentralization, which merits promotion and corruption prevention. The requirements set forth in Article 9 of the UNCAC are incorporated into the GP Act. For instance, the GP Act stipulates that, for open tendering procedures or selective tendering procedures, an entity shall publish a notice of invitation to tender or qualification evaluation on the Government Procurement Gazette, and also make it available on the information network. A reasonable time-limit for tendering must be set so as to give potential tenderers sufficient time for the preparation and submission of tender documentation. Tenderer qualifications, evaluation criteria, award criteria, and bidding regulations shall be clearly specified in the tender documentation with the aim of making procurement decisions under the preset objective criteria. Where a supplier deems its rights or interests have been impaired by the breach of laws or regulations in the stages of the invitation to tender, the evaluation of tender, or the award of contract, the supplier may seek legal remedy pursuant to the complaint review system.

In 2017, the percentage of contracts conducted by open tendering procedures in Taiwan with a value not less than NT\$100,000 was 87.63% (the percentage of value of contracts was 82.31%). The percentage of value of contracts was higher than that in 2016 (for implementation results, please refer to Article 9 of the UNCAC “Government Procurement and Government Financial Management”).

**b) Strengthening of the governmental internal control mechanism to prevent corruption and malfeasance**

Internal control is the foundation of a clean and competent government and good public governance. A sound system of internal control not only ensures that the government is able to achieve its administrative goals, but also is conducive to fulfilling the functions of profit generation and corruption prevention. The Executive Yuan has been implementing and strengthening the system of internal control in the Executive Yuan and its affiliated agencies since 2010 and has formulated some regulations about how to design and monitor the system of internal control for compliance by government agencies.

The Executive Yuan has also formulated another regulation for preparation of the statement of internal control (SIC) to ensure that agency heads place higher emphasis on internal control. All agencies are required to assess the overall effectiveness of internal control in the respective year on an annual basis and issue the SICs with the goal of promoting self-management by agencies.

**c) Enhancement of corporate governance to prevent corporate corruption**

The Financial Supervisory Commission started to educate TWSE/TPEX listed companies on the importance of corporate governance since 1998 and then successively implemented various corporate governance related management mechanisms. Compliance norms for companies have been established through the formulation and enactment of relevant laws and self-regulation rules. Corporate Governance Best-Practice Principles for TWSE/GTSM Listed Companies have been formulated to assist companies in the strengthening of corporate governance. Corporate Governance Best Practice Principles for the Banking Industry, Corporate Governance Best Practice Principles for Financial Holding Companies, Corporate Governance Best Practice Principles for Bills Finance Companies, Securities Firms, Securities Investment

Trust Enterprises, Securities Investment Consulting Enterprises, and Futures Commission Merchants stipulate norms and regulations pertaining to legal compliance, sound internal management, safeguarding of shareholder rights and interests, strengthening of board competencies, optimal utilization of supervisors, respect for stakeholder rights and interests, and enhancement of information transparency.

The promotion and implementation of corporate governance relies on the joint effort of the government, NGOs, and companies, including the Taiwan Stock Exchange Corporation, Taipei Exchange, Securities & Futures Institute, and Securities and Futures Investors Protection Center. The joint pursuit of an enhanced corporate governance environment relies on the formulation of norms and regulations, organization of events and conferences, assessments and evaluations, actual participation in shareholders' meetings as shareholders, and monitoring of company operations. As of 2017, evaluations have been completed for all TWSE/TPEX Listed Companies (a total of 1,496) and a culture of active improvements in the field of corporate governance has been formed (for implementation results, please refer to the following sector of full discussion on Article 12 of the UNCAC "Private Sector").

In response to the rapid changes in the domestic and global business environment in recent years, Taiwan has been conducting an overall review of its Company Act with a view to further enhancing corporate governance and better safeguarding shareholder rights. The proposed amendments bring de facto directors and/or shadow directors of non-publicly traded companies with the remit of the Company Act, equating their liabilities for civil and criminal matters and administrative penalties as executive directors. The amendments provide for a system of corporate governance professionals to assist directors and supervisors in faithfully executing their business and fulfilling their obligations of being caretakers in good faith. Another new element in the amendments concerns shareholders of a limited company abusing the legal status of a company to make the company assume debts that prove difficult to repay. In serious cases, it may be necessary that the shareholders assume their responsibility to clear those debts (under the principle of Piercing the Corporate Veil). Other additions in the amendments include: raising the administrative fines for violations of the law by responsible persons of publicly-traded companies; and complying with international norms regarding the prevention

and control of money laundering. After taking into account opinions from industry, government, and academia, and numerous public hearings and inter-ministerial consultations, the draft amendments to the Company Act were reviewed by the Executive Yuan on 21 December 2017 and passed on to the Legislative Yuan for consideration.

The Financial Supervisory Commission has already deliberated relevant norms and regulations to incorporate whistleblower grievance channels and relevant protection mechanisms into the internal control and audit procedures of the banking industry, financial holding companies, and the securities and insurance industry as future inspection items in an effort to further strengthen corporate governance. The goal is to ensure proper handling of reports or grievances of whistleblowers by the financial services industry, safeguarding of whistleblower rights and interests, and accelerated implementation of corporate governance in the finance sector.

**d) All-out promotion of “The participation of society” and zero tolerance for corruption policies**

The Agency Against Corruption promotes “The participation of society” to raise public awareness and effectively prevent corruption. Education is expanded through the development of community relations and utilization of communication media to raise public awareness of the existence, seriousness, and dangers associated with corruption. Exchanges and interactions with the general public are intensified to raise their willingness to report corruption and illegal conduct and thereby create a culture of zero tolerance for corruption.

In 2011, the Agency Against Corruption adopted the Program for Promotion of Volunteer Services to encourage citizens to enlist as anti-corruption volunteers. Trained volunteers assist all agencies in anti-corruption work and uphold the spirit of public participation. By 2017, 65 Government Employee Ethics Departments nationwide formed a total of 31 anti-corruption volunteer task forces with a total of 1,646 participants. When agencies plan and conduct major public construction procurement projects, they can build anti-corruption platforms, which can be composed of government employee ethics units, prosecutors, investigation units, anti-corruption units, audit institutes, the Public Construction Commission as well as related businesses and stakeholders, for the establishment of a liaison and communication mechanism.



Mutual assistance and joint efforts by the private and public sectors enable public servants to perform their duties in a worry-free manner, help safeguard reasonable rights and interests of businesses and provide citizens with excellent public infrastructure, and facilitate adequate monitoring and audits by the government (for implementation results, please refer to the following section for a full discussion on Article 13 of the UNCAC, “The participation of society”).

**e) Financial institutions are required to prevent and monitor money laundering and terrorist financing**

Taiwan is firmly committed to the creation of a sound anti-money laundering mechanisms to safeguard social safety and stability. Amended regulations and directions (Regulations Governing Anti-Money Laundering of Financial Institutions, Directions Governing Internal Control Systems for Anti-Money Laundering and Countering Terrorism Financing of the Banking Sector, Electronic Payment Institutions and Electronic Stored Value Card Issuers, Directions Governing the Internal Control System for Anti-Money Laundering and Countering Terrorism Financing of the Securities and Futures Sector, Directions Governing Internal Control Systems of Anti-Money Laundering and Countering Terrorism Financing of Insurance Sector) as well as anti-money laundering guidelines formulated by affiliated associations establish clear norms and regulations for anti-money laundering operations, internal control procedures, and other relevant matters such as customer due diligence, record keeping, verification beneficial owner, and report of suspicious money-laundering and terrorist financing transactions and cash transactions above a certain amount. In addition, training and education of the personnel and customers of financial institutions have been strengthened, and assistance is provided for financial institutions in the implementation of anti-money laundering measures in an effort to create a perfect protective net. In addition, Taiwan will undergo a third round of mutual evaluations as a member of APG (Asia Pacific Group on Money Laundering). The Executive Yuan has established an Anti-Money Laundering Office, which is in charge of overall planning and integration of money laundering control policies and a framework for action to enhance anti-money laundering performance (for implementation results please refer to the following section of full discussion on Article 14 of the UNCAC “Money Laundering Prevention

Measures”).

In recent years, terrorism has posed a major threat to human rights in all countries. Funding terrorist activities, organizations, and terrorists is a criminal offense all around the world. Immediate freezing of assets of persons who fund terrorist organizations and their members or proliferate weapons is imposed to effectively prevent the spread of terrorism. Taiwan’s current legal system lacks relevant criminal punishment regulations and sanctions and therefore does not conform to the International Standards for Combating of Money Laundering and the Financing of Terrorism and Proliferation of Weapons of Mass Destruction promulgated by the Financial Action Task Force on Money Laundering (FATF). The APG has identified shortcomings confirmed by the FATF requiring Taiwan to implement legislative improvements in a rapid manner. The Terrorist Financing Control Act has therefore been formulated to perfect the system for combating terrorist financing with reference to the FATF standards and recommendations, the UN International Convention for the Suppression of the Financing of Terrorism, and the Resolution on Prevention of Terrorist Financing and Weapon Proliferation. The Act was promulgated in July of 2016.

## **2. Assessment of risks and planned advances and improvements**

Improvements and advances are deliberated with regard to current deficiencies of the legal system and institutions to ensure conformity to UNCAC norms and regulations and enhance anti-corruption effects. The goal is to complete the legal system and relevant institutions and establish appropriate mechanisms to solve problems at their roots. A brief summary of current directions and approaches is provided below.

### **a) Perfection of the anti-corruption legal system and effective combating of crime**

The two main laws regulating criminal corruption in Taiwan, namely the Anti-Corruption Act and the Chapter on Offenses of Malfeasance in Office of the Criminal Code are currently under review by scholars and practitioners. The origin of the Anti-Corruption Act dates back to its legislative background during the period of national mobilization for suppression of the communist rebellion. Despite numerous amendments, the law is still replete with unclear and vague legal concepts. In judicial practice, constitutive elements of crime not clearly defined in the law must be established and strict requirements regarding provision of evidence must be

applied, which in turn severely limits the applicability of the articles of the law. Numerous deficiencies involving overly harsh penalties out of proportion to the actual crime are present in this law. In 2017, a resolution was adopted by the National Conference on Judicial Reform of the Presidential Office (“National Conference on Judicial Reform”) to deliberate the merger of the Anti-Corruption Act and the Chapter on Offenses of Malfeasance in Office of the Criminal Code and thereby improve the anti-corruption legal system and effectively combat relevant crimes.

#### **b) Deliberation of a whistleblower protection mechanism**

Provisions pertaining to whistleblower protection in the public sector appear sporadically in a small number of laws in Taiwan. For instance, the Anti-Corruption Informant Rewards and Protection Regulation focuses on the granting of rewards but lacks clearly stipulated measures for the protection of whistleblowers. The Witness Protection Act contains provisions stipulating protection of witnesses in major criminal cases, but these provisions do not apply to whistleblowers exposing misuse of administrative resources by government agencies. The Civil Service Protection Act aims to safeguard the rights and interests of civil servants and stipulates the right to file for remedies, but lacks provisions stipulating identity confidentiality and protection of the personal safety of whistleblowers. These provisions are not applicable to exposure of corrupt conduct in government agencies by the general public. Most countries have enacted special whistleblower protection laws to underscore their commitment to clean and competent government (e.g., the Whistleblower Protection Act in Japan, the Public Interest Disclosure Act in the UK, the Protected Disclosures Act in New Zealand, the Anti-Corruption Act in Korea, and the Public Servants Disclosure Protection Act in Canada). All these laws encourage and protect disclosure of information pertaining to illegal conduct negatively affecting clean and competent government. Taiwan, therefore, pushes for the enactment of the Whistleblower Protection Act. A draft is currently under review in the Executive Yuan. The goal of this Act is to establish a sound mechanism guaranteeing informant protection, remedy, exoneration, and protection of working rights and encourage citizens to expose misconduct without the fear of retribution.

#### **c) Deliberation of a legal system for protection of public interest informants in the private sector**

The private sector encompasses fields affecting people's livelihoods, including environmental protection, food and drugs, hygiene, transportation, finance, communications, and manufacturing. The impact of illegal conduct in these areas on public rights and interests is no less severe than corruption in the public sector. Illegal conduct in the private sector tends to be more elusive, structural and professional. This type of misconduct can usually only be exposed through reports by employees in the private sector. The UK Public Interest Disclosure Act that was enacted in 1998 is a special law which represents a comprehensive system of provisions clearly stipulating the scope of public interest, reporting targets, and protection criteria. The US has also enacted relevant laws including the False Claims Act, the Wall Street Reform and Consumer Protection Act, and The Sarbanes-Oxley Act. Japan enacted its Whistleblower Protection Act to encourage internal personnel of organizations and enterprises to report illegal conduct in a spirit of public interest protection. The National Conference on Judicial Reform adopted a resolution in 2017 to accelerate legislative efforts and enactment of the Public Interest Informant Protection Act for the private sector in an effort to establish a sound protection mechanism for such informants. Operations with the goal of establishing a legal system for protection of whistleblowers in the private sector are currently in the planning stage. Upon solicitation of opinions from all involved parties, legislation will be carried out in form of a special law or by adding whistleblower protection provisions to individual laws and regulations.

#### **d) Deliberation of a mechanism for prevention and prosecution of bribery in the private sector**

In recent years, a large number of enterprises have been involved in malfeasance, including receiving kickbacks, false reporting of deliveries, and inflated reporting of payments. The ROC Criminal Code stipulates specific punishments for specific types of conduct involving seeking of personal gain by employees of private enterprises at the expense of the interests of the company. For instance, special punishments are stipulated for embezzlement, breach of trust, and leaking of confidential information in the Criminal Code, or for similar offenses in the Securities and Exchange Act, the Futures Trading Act, the Banking Act, and the Trade Secrets Act, but the force of regulation of bribery in the private sector is deemed insufficient. Article 21 of

the UNCAC emphasizes the serious consequences of acceptance of bribes by enterprises and demands the criminalization of bribery associated with business, financial, and commercial activities in the private sector. Taiwan continues to deliberate the establishment of a legal system for bribery in the private sector. Efforts are in progress to define as criminal offenses relevant conduct by TWSE/TPEX listed companies, corporations, or incorporated public welfare organizations during commercial transactions, such as pursuit of improper benefits for oneself or others, demand for, agreement on, or acceptance of bribes, and provision of unfair preferential treatment through improper means (or solicitation for, agreement on, or handing over of bribes and receipt of unfair preferential treatment by others through improper means). If the legislative process can be completed, these legal amendments will generate a significant deterrence on bribery in the private sector.

**e) Formulation of trading in influence regulations**

As for the regulations set forth in Article 18 of the UNCAC on Trading in Influence, Paragraph (b) of said article can be viewed as a legislative guide providing relevant legal terminology for the concept of trading in influence, while paragraph (a) offers provisions prescribing punishment for individuals offering improper benefits to the subject of the crime (public officials or others who abuse their influence or power) as defined in Paragraph (b). The article's stipulations refer to public officials accepting improper benefits in order that they or any other person abuse their real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage. The most unique characteristic of trading in influence is the existence of middleman B. Middleman B has real or supposed influence over public official C who carries out the actual administrative act. This influence is the key to the willingness of the provider of improper benefits A to trade Middleman B's perceived influence for improper benefits obtained from the public sector. Articles 4, 5, and 6 of Taiwan's Anti-Corruption Act contain provisions defining crime categories involving the offering and acceptance of bribes for personal gain. It is however controversial in legal practice whether Articles 4, 5, and 6 of the aforementioned Anti-Corruption Act should be applicable to Middleman B who has real or supposed influence. There is currently no consensus whether a statutory authority interpretation or actual influence interpretation shall be applied.

Based on *nulla poena sine lege* (“no penalty without a law”), future legislation efforts will focus on the merger of the Chapter on Offenses of Malfeasance in Office of the Criminal Code and the Anti-Corruption Act and carefully consider adding provisions pertaining to trading in influence in line with the resolution adopted by the “National Conference on Judicial Reform”.

The draft amendments of the Company Law stipulate that the non-executive directors of a company who control the personnel, finances or business operations of the company substantively as executive directors bear liability for civil and criminal matters and for administrative penalties identical to those of the executive directors. The amendments also newly stipulate that the companies must submit reports each month by electronic means regarding its actual beneficiaries to the information platform of the competent authority, which will regularly review the information provided to ensure that the information on actual beneficiaries is correct and up-to-date.

**f) Development of a mechanism defining criminal liability and accountability of legal persons**

Paragraphs 1 and 2 of the UNCAC Article 26 stipulate that the liability of legal persons for participation in the offenses defined in accordance with this Convention shall be established. Liability of legal persons may be criminal, civil or administrative. The ROC Criminal Code is based on the same legislative principles as the German code. It is stipulated in the code that criminal conduct can only be committed by, and punishments can only be imposed on, a natural person, with consciousness of self. Punishments are imposed for illegal acts committed by liable natural persons. As for legal persons, it is acknowledged in ancillary criminal law that they can be subjects of punishment. A total of 63 laws, including Article 127-4 of the Banking Act, Article 118 of the Futures Trading Act, Article 37 of the Fair Trade Act, Article 49 of the Act Governing Food Safety and Sanitation, Article 39 of the Water Pollution Control Act, and Article 47 of the Waste Disposal Act contain provisions stipulating punishments for legal persons.

In the field of legislation theory, there is no consensus in legislation examples or academic theories of different countries whether or not legal persons can be subjects of punishment. However, legislation theory should not be conflated with the interpretation of current ROC law. Criminal offenders (e.g., offenses of homicide) as defined in the current criminal code do not include legal persons. However, it is clearly acknowledged in the ancillary criminal law that legal

persons meet the criteria of subjects of punishment. Based on these provisions, fines may be imposed on legal persons. Judges have therefore no legal basis for summary denial of the criminal capacity of legal persons based on abstract theoretical principles. Identification of legal persons as subjects of punishment depends on legislative stipulations regarding respective crime categories.

In 2017, the National Conference on Judicial Reform adopted a resolution to review the possibility of criminal liability of legal persons and subjective and objective constitutive elements and standards. Further discussions and deliberations are required in the future on relevant regulations governing punishment methods and categories for legal persons in line with relevant definitions in the UNCAC.

#### **IV. Conclusion**

This report is the first of its kind. It was compiled over a period of more than 1 year. It has great significance for the establishment of anti-corruption mechanisms through a comprehensive inventory and review of anti-corruption work in Taiwan. Due to the fact that the contents were composed for the first time and the presentation method and covered scope is still imperfect, rolling reviews, adjustments, and improvements will be carried out in the future. Planned improvements and advances mentioned in this report will be actively implemented and executed, and relevant information will be made public in follow-up reports, on websites, or over other channels to maximize public monitoring effects through information transparency and accelerate the actual implementation of various UNCAC requirements in Taiwan.

Anti-corruption work is an inter-disciplinary and hierarchical systematic process that relies on the concerted efforts, mutual monitoring, and cross-sector collaboration of all circles of society, including the public, government agencies, scholars and experts, private enterprises, and NGOs. The government will continue to advance anti-corruption in Taiwan, adopt a multi-pronged approach, and make an all-out effort to prevent and combat corruption. The goal is to plant anti-corruption awareness firmly in people's minds and internalize relevant concepts as basic individual beliefs and values as well as intensify interactions and contacts with international anti-corruption initiatives.

## **【 Special Report: A Review of the Implementation of the United Nations Convention Against Corruption in Taiwan 】**

The United Nations Convention Against Corruption (hereinafter referred to as “UNCAC”) contains 71 articles in 8 Chapters. Further to Chapter I- “General Provisions,” Chapter VI- “Technical assistance and information exchange,” Chapter VII- “Mechanisms for implementation” and Chapter VIII – “Final provisions,” which are designed as general rules and regulations of the obligations of the signatories, Chapter II- “Preventive measures,” Chapter III- “Criminalization and law enforcement,” Chapter IV – “International cooperation,” and Chapter V- “Asset recovery” are indeed the very essence of the UNCAC. They are the guidelines for the governments all over the world for the institutionalization of applicable laws and policies and the construction of a global framework for the prevention of corruption. The UNCAC *States Parties* determined the first round of review in their meeting, which covered Chapter III and Chapter IV, should be held from 2010 to 2015, while the second round of review, which covered Chapter II and Chapter V, should be held from 2015 to 2020. Accordingly, we have attuned to the requirements of the UNCAC at relevant stages in accordance with the “*Act for the Implementation of the United Nations Convention Against Corruption*” (hereinafter referred to as “the Act”), and proceed to the review of the state of implementation of the provisions of the UNCAC in this report.

The provisions of the UNCAC entail obligations at different levels, which could be grouped into the following 3 categories: (1) mandatory provisions, which consist of obligations to legislate; (II) measures that States Parties must consider applying or endeavor to adopt; and (III) measures that are optional. Provisions which “must be adopted” refer to mandatory provisions and “consider applying” or “endeavor to adopting” refer to provisions that the States Parties must seriously consider or endeavor to adopt and determine whether they are congruent with domestic laws.<sup>2</sup>

### **Chapter I General provisions (Article 1 to Article 4)**

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<sup>2</sup> *Legislative guide for the Implement of the United Nations Convention against Corruption*, point 11, 2nd version, 2012 Edition.



1. Article 1 to Article 4 of the UNCAC cover the Statement of Purpose, the Use of Terms, Scope of Application, and Protection of Sovereignty under UNCAC without Mentioning the Substantive Matters of Implementation. (§1-4).
2. Although Taiwan has not been a member of the United Nations since 1971 and is in a unique position under the international environment, it does not separate itself from the international community. Nevertheless, the determination of Taiwan against corruption was manifested by her legislation of the Act for the Implementation of the UNCAC on May 20, 2015, in line with the global trend against corruption and gearing up with the international legal system for the effective prevention and eradication of corruption. This act came into full force on December 9, 2015. Likewise, the president of Taiwan also issued an intent of participation in the UNCAC on June 22, 2016 (unable to be delivered to the UN Secretary-General), which made the UNCAC an integral part of the legal system of Taiwan. According to Article 7 of the Act, governments at all levels shall review applicable laws and administrative measures under their jurisdiction for conformity to the requirements of the UNCAC and, after review, complete relevant legislation, amendments, or annulments of any non-conforming laws and make improvements of relevant administrative measures not in conformity to the UNCAC within three (3) years after the Act has come into full force for the proper implementation of laws and policies against corruption under the UNCAC. (§4)

## **Chapter II Preventive measures**

### **Article 5. Preventive anti-corruption policies and practices**

#### **3. Preventive anti-corruption policies and practices ( §5 I,II,III)**

##### **(1) “National Integrity Building Action Plan ”**

A. The establishment, amendment and the 9 substantive measures of this plan are exhibited in Unit a), Section 4, Chapter II of the General Discussion. This plan aims at the setup of a national anti-corruption development strategic objective, coordination of all government agencies in the proper implementation of anti-corruption measures specified in the UNCAC, the determination of the national leader in fighting against corruption, and reinforcement of international exchange and collaboration. (§5 I,II,III)

- B. The Executive Yuan tracked 46 measures for the implementation of this plan in 2016, of which 39 have attained the desired goals while 7 items have not yet achieved the desired goals. The attainment rate was 84.8%. We reviewed the result of implementation and reported to the Executive Yuan together with the performance objective value of 2017 in August 2017. The Executive Yuan approved our continued implementation of this plan for coordination with relevant ministries and commissions in the realization of anti-corruption policies and measures. (§5 I,II,III)
- (2) The “Act on Property-Declaration by Public Servants” requires administrators responsible for leadership, decision-making, supervision of other essential functions, or duties vulnerable to corruption, shall disclose their property for public inspection and respond to the examination and matching of the entities (institutions) for declaration. The transparency of the property of these personnel aims at the realization of monitoring by the people.
- A. In 2016, 60,807 people declared their personal properties to the Control Yuan, AAC, and other ethics units. The declarations of 8,192 people have been picked for public review at the random selection ratio of 13.74%. In addition, 1,365 cases were chosen for matching property declared in the previous year and the subsequent year to determine whether there were any unusual changes in the property of the declarants. The random picking ratio was 16.66% (the number of cases for comparison with the previous year and the next year ÷ the number of cases selected by random picking for review).
- B. From 2016 to August 2017, the Control Yuan’s Anti-Corruption Committee and the Ministry of Justice’s Public Servants Property Declaration Review Committee jointly reviewed 1,115 cases, of which 391 were subject to punishment with fines totaling NT\$64.44 million (same currency denomination below: New Taiwan Dollars, [NT\$]). About 4% of the cases for review as shown by the statistics were actually reviewed. Punishment was imposed for deliberate cheating in the declaration, failure to make the declaration by the deadline without justifiable reasons, and lack of explanation for the comparison of property between years without justifiable reasons. The term of office of some public servants may have expired, or, due to political appointment, promotion, transfer of duties or other factors, they may fall prey to violation of law and receive punishment due to their ignorance of applicable laws. For these reasons,

education classes have been held every year to help those public servants obliged to declare properties to complete their declaration successfully. (§5 I,II)

- (3) The “Act on Recusal of Public Servants Due to Conflicts of Interest” establishes public servant conflict of interest rules to effectively deter corruption and inappropriate use of one’s official position for personal gain. This law explicitly states that public servants shall voluntarily avoid any conflicts of interest as well as avoid taking advantage of their official position to gain profit for themselves or their associates or to seek favors for their associates. Further legislation has been enacted to prohibit business deals. From 2016 to 2017, the Control Yuan’s Anti-Corruption Committee and the Ministry of Justice’s Public Servants Property Declaration Review Committee jointly reviewed 155 cases, with punishments being meted out in 30 cases, and total fines amounting to NT\$220,950,000. (§5 I,II)
- (4) The “Political Donations Act” prohibits donations by enterprises which have large-sum procurement contracts with government agencies or major public infrastructure contracts as well as by for-profit enterprises which have accumulated losses. In addition, this law also explicitly sets limits on annual donation amounts by individuals, business entities and private groups to political parties and candidates. For further details of this law, refer to Article 7 of this paper. From 2016 to 2017, the Control Yuan Anti-Corruption Committee reviewed 719 cases related to political donations, with punishments being meted out in 588 cases, and total fines amounting to NT\$95,589,952 (including confiscation of NT\$9,055,324). (§5 I,II)
- (5) The “Lobbying Act” specifies the public and transparent procedures for lobbying to prevent the funneling of unjustified benefits and regulates the participation of democratic politics. The law covers the application, change, and termination of registration of the items for lobbying, the declaration of lobbying in treasury revenues and expenditures, the items of lobbying for registration, and the transparency of financial statements. In addition, this law also explicitly states that the president, vice president, the chief and the deputy chief of the special municipality governments, county (city) governments, or townships (town, city) who are the subjects of lobbying are not permitted to lobby for or request lobbying for government entities where they have served for five years and until three years has passed since their resignation, and this applies further to the representatives of the people at all levels. (§5 I,II)

The “Agency Against Corruption, Ministry of Justice Anti-Corruption Volunteers Program” was established in September 2011. As of 2017, 31 anti-corruption volunteer corps consisting of 1,646 volunteers were established nationwide (including the government ethics unit at the central government, special municipalities, and county (city) governments). The service will be centered on “assistance to government work” and “marketing and promotion of integrity.” This program aims at the training of volunteers for a better understanding of public affairs and applicable laws so that they may assist government institutions in anti-corruption education, allow for the entrenching of integrity on campus, enhancement of operational transparency, and supervision of anti-corruption by the people, and thereby encourage people and groups outside of government institutions to proactively participate in the prevention and combating of corruption. Details of the work are shown in Article 13 of the report. (§5 I,II)

- (6) The Executive Yuan pronounced the “Principle of Transparency for the Administrative Procedures of the Executive Yuan and Subordinated Entities (Institutions) ” on December 21, 2016, which made the applicable legal rules, review standards, review processes, review progress and examples pertaining to the operating procedures of all government entities and institutions transparent and open to the supervision of public power to ensure transparency and reliability of the operations and decision-making processes of the government. As of 2017, the central and local governments have advocated 128 measures for the transparency of the administrative procedure. ( §5 I,II)
- (7) The “Advocacy of Integrity Assessment” is an instrument, effective from 2016 on, established by the AAC from commissioned research for the monitoring, assessment and analysis of anti-corruption and governance of the central and local governments nationwide. The dimensions of assessment include “the commitment of anti-corruption by entities and the support of leadership,” “entity transparency,” “responsibilities of the entities and the viability of the internal control system,” and the “integrity evaluation and the response of the entities.” The purpose is to allow for the self-examination of the entities internally and the participation of experts externally for the identification and assessment of risks to integrity, and thereby enhance the system and operational effectiveness of the entities for achieving the goal of anti-corruption. This study is expected to be complete by the end of 2018 with preliminary

installation of the “Scoring and Assessment Standard.” (§5 I,II)

- (8) “Corruption risk events and people database” is the mechanism developed by the AAC in integrity risk control and early warning. In addition to the annual review of the information on the assessment of the risk to integrity with compilation of the assessment report, the AAC will revise the assessment in light of new cases or evidence, and report to the entity chief. For persons involved in the risk, they will be transferred to other duties, supervised by the entity chief, and put under intensive supervision for reducing risk. In addition, a task force will be set up for managing the detail of risk and study on proper measures for recommendations in dealing with the risk. The status will be tracked by the integrity report meeting. In 2016, there were 3,082 cases involving integrity risk as assessed by respective entities. (§5 I,II)
- (9) The mechanism of “Supervision by the Public” has been active since 2002. A reporting system and responding mechanism on major public construction projects have been established under the joint effort of the central and sub-central governments. The effort of the private sector is also introduced into monitoring government administration and assisting government entities to promptly detect defective work and make improvements (performance statistics are shown in Table 3). The Public Construction Commission also conducted quarterly review and evaluation to praise entities and the public for outstanding performance. In addition, people with relevant expertise or with social justice will be chosen for rating under the “Guidelines of Oversight of Public Construction by the People.” People who are rated as outstanding or Class A will be awarded a prize (NT\$10,000 for the outstanding award, and NT\$3,000 for the Class A award) and a certificate. (§5 I,II)

**Table 3. Supervision performance statistics (of the public)**

Period	No. of cases	Average responding time	Satisfaction
2014	2,039	6.41 days	76.60%
2015	1,476	4.15 days	87.50%
2016	1,355	3.53 days	83.64%
2017	1,133	2.82days	85.09%

- (10) “Integrity Refinement” was advocated for the effective prevention of integrity risk. The AAC worked in coordination with other functional entities for the joint review of related measures for control. An example is the appointment of 6 special municipal governments and 4

county/city governments by the AAC in the participation of integrity refinement of police work in the case of police corruption, with the compilation of the “Result of Case Study on Integrity Risk Index Report (Police Administration).” In addition, the Government Ethics Unit also worked in coordination with the heads of Taichung City, Changhua County, Nantou County, and Miaoli County in holding the “Combining Resources of Taichung, Changhua, Nantou, and Miaoli in the Advocacy of Transparency in Anti-Corruption and Good Quality Governance.” The parties concerned jointly discussed and selected anti-corruption and integrity indices for construction projects, police administration, fire safety, construction management, funeral and burial services, river and gravel, land administration, and environmental protection. Some of the projects have substantial accomplishments. (§5 I,II)

(11) The Global Enabling Trade Index 2014, published by the World Economic Forum, ranks Taiwan No. 1 among 138 economic entities for the pillar titled “Efficiency and Transparency of Border Administration”—an achievement in no small part due to the CPT Single Window managed by the Customs Administration, Ministry of Finance, to offer streamlined and transparent processes for customs, port and trade procedures. Quite successfully and rather uniquely, Taiwan’s customs clearance has developed toward greater digitization, automation, administrative transparency and customer convenience. For its work to promote efficiency and civil service ethics, the Agency Against Corruption (AAC) has selected the CPT Single Window clearance system as a best practice case study to inspire greater administrative transparency around the country. In 2017, the AAC produced audio-visual study materials for the civil service online study platform, which public servants in any government agency around Taiwan may access for self-study. (§5 I,II,III)

(12) Addendum to Article 5-1 of the Tax Collection Act was promulgated in June 2017 to authorize the Ministry of Finance, based on the principle of reciprocity, to conclude a convention or an agreement to implement exchange of information (including financial account information) and provide administrative assistance to enhance tax cooperation with a foreign government or an international organization. “Regulations Governing the Implementation of the Common Standard on Reporting and Due Diligence for Financial Institutions,” promulgated on November 2017, requires that Financial Institutions in Taiwan perform due diligence starting in 2019, and

report reportable persons' financial account information in tax matters to the tax authorities starting in 2020. Taiwan's competent authorities in charge of tax treaties will reciprocally exchange the aforesaid information with treaty partners to enhance information transparency and prevent corruption. (§5 I,II)

#### **4. Participation in international or regional organizations (§5 IV)**

- (1) Taiwan has spared no effort in participating in international conferences on anti-corruption, such as the APEC Anti-Corruption and Transparency Working Group meetings, the annual conference of the IAACA, the ACT-EGILAT of APEC, and the general conference of TI and the IACC. In 2017, APEC held its "Workshop on Enhancing Whistle-blower Protection in Corruption Cases" in Taiwan with the discussion of the results of "APEC Guiding Principles for Whistleblower Protection." This is an extension of our work in the protection of informants of corruption across the border. (§5 IV)
- (2) The national Financial Intelligence Unit of Taiwan (Investigation Bureau, Anti-Money Laundering Department) is responsible for the international dissemination of intelligence pertaining to anti-money laundering in accordance with related treaties, agreements, or the Egmont Group code, and the principles of intelligence exchange in the sharing of financial intelligence with foreign FIUs, including information on corruption and malfeasance. (§5 IV)

### **Article 6. Preventive anti-corruption body or bodies**

#### **5. Preventive anti-corruption body or bodies (§6 I)**

- (1) The anti-corruption system of Taiwan is exhibited in Section 3, Chapter II of the General Discussion.
- (2) Taiwan established the Agency Against Corruption (AAC) on July 20, 2011, which performs the composite function of anti-corruption and investigation of corruption, the planning and implementation of the national anti-corruption policy, anti-corruption, prevention of corruption and investigation of corruption. This body is also responsible for the supervision of the establishment of government ethics units in central and local government entities (institutions) and public enterprises for the advocacy of anti-corruption. The government ethics units were established in the entities that allow for the timely prevention of corruption with early warning,

control of risk to integrity, and response to corruption and illegal activities. This is a unique body of Taiwan designed with distinctive characteristics. (§6 I)

- (3) The government ethics units are responsible for the “education and social participation of anti-corruption,” “design, advocacy, and execution of rules and regulations and preventive measures for anti-corruption,” “design, coordination, and advocacy of recommendations for anti-corruption,” and the “declaration of property by public servants, avoidance of conflicts of interest, and ethics of anti-corruption” pursuant to Article 4 of the “Act Governing the Establishment of the Government Employee Ethics Units and Officers.” (§6 I)
- (4) The Control Yuan (the declaration of property by public servants), Ministry of Interior (political donation, and lobbying), Ministry of Economic Affairs and Financial Supervisory Commission (prevention of corruption in the private sector), National Audit office (financial auditing of the governments and subordinated entities), Directorate-General of Budgeting, Accounting and Statistics of the Executive Yuan (internal control of the government), Investigation Bureau (investigation of corruption and bribery in elections, anti-money laundering and combating the financing of terrorism, and anti-corruption of private enterprises) are bodies for the advocacy of corruption prevention under their jurisdictions who work in a concerted effort. (§6 I)

#### **6. Increasing and disseminating knowledge about the prevention of corruption (§6 I (b) )**

- (1) All entities shall establish function of integrity reports with the government ethics units as the secretariats and presided over by the heads of the entities. Scholars and experts as well as unbiased members of the society shall act as the members of the committee against corruption in giving advice. They will study issues pertaining to anti-corruption and administrative transparency for the reinforcement of the prevention of anti-corruption. (§6 I)
- (2) The primary function of the government ethics units will be education in anti-corruption for the employees in the public sector, and social participation by parties with business interactions with the entities, professionals, schools, enterprises, communities, private organizations or the general public. Education in anti-corruption shall include the preparation of customized teaching materials and the pursuit of discussion and training with reference to the specific features of related risks inherent to the operation of the entities. Social participation shall include the recruitment of volunteers in the work of anti-corruption, education of ethics and



integrity on campus, advocacy of corporate social responsibility, and the encouragement of the institution of the codes of conduct so as to encourage the people to participate in anti-corruption. (§6 I)

- (3) Under the framework for promoting social participation, educational institutions at all levels establish a character and/or moral education taskforce, or allocate the task of moral education to a designated body already established, which taskforce or body designs a moral education program or plan that incorporates distinctive features of the educational institution. Character and/or moral education on campus is manifested in and promoted through everyday life skill education, physical education, arts and culture, environmental protection, scout, clubs, autonomous student activities, and community service activities. (§6 I)

## **7. Independence (§6 II)**

- (1) We initiated the system of “resident prosecutor,” whereby the Ministry of Justice appoints prosecutors to be stationed at the AAC for direct supervising in the investigation of corruption and related crimes to ensure cases can be independently investigated without interference in any form. In addition, the “advisory committee” was also introduced to perform the function of external monitoring. This board is organized by professionals of different fields in society to review any miscarriage of justice, delay, or concealment of reporting on the cases being closed for investigation. In addition, this board also proposes recommendation on the anti-corruption policy of Taiwan to bolster the independence and impartiality of the designated body for anti-corruption. (§6 II)
- (2) The officers of the government ethics units shall perform their duties and exercise their authority in accordance with the “Act of the Establishment of the Government Employee Ethics Units and Officers” and its enforcement rules, the orders of the head of the entities, or the superior body of anti-corruption. Article 8 of the Act explicitly states that the procedures for the appointment, dismissal, transfer and rotation of duties, the performance evaluation, routine evaluation, punishment and reward of government ethics unit officers shall be approved and finalized by the Ministry of Justice (AAC). As such, the Ministry of Justice is fully empowered for the command and supervision of officers of the government ethics units that allow for an independent and impartial position. (§6 II)

(3) The amendment to Article 9 of the “Act of the Establishment of the Government Employee Ethics Units and Officers” was drafted for ensuring the independence of the staffing and authority of the government ethics (anti-corruption) units and the explicit empowerment under law and resources for budgeting. Under this amendment, the government ethics officers can conduct administrative investigations and exercise their authority independent of interference of any kind. The draft of the “Anti-corruption Officials Power Exercise Act” was also prepared in the mid-to-long term so that they could be properly empowered in conformity to the principles of the rule of law and the spirit of this article of the UNCAC. (§6 II)

#### **8. Training of specialized staff (§6 II)**

Each year, basic professional training will be provided for new anti-corruption officers who passed the national examination (2 sessions annually). Lectures on the preventive anti-corruption and dissemination of related knowledge and seminars on case studies are also provided for anti-corruption officers on active status. The training program covers general education and human rights topics (such as justice policy and introduction to UNCAC), the program of government ethics (such as the introduction to the prevention and investigation of corruption), professional knowledge of government ethics (such as the Criminal Code and the Anti-Corruption Act, Criminal Litigation Act, and other special topics of law, special topics on procurement, practical work in anti-corruption, practical work in corruption investigation, and practice of government ethics enforcement). There were 90 such training sessions organized from 2013 to 2017. (§6 II)

### **Article 7. Public Sector**

#### **9. Recruitment, hiring, retention, promotion and retirement system (§7 I)**

(1) According to the “Civil Service Employment Act,” the employment of civil servants shall be based upon passing examinations and obtaining civil service employment qualifications or rank promotion qualifications as mandated by law. Persons at the age of retirement pursuant to Article 27 of the same law and the situations specified in Paragraph 1, Article 28 of the same law are not entitled to be employed as civil servants. Pursuant to Subparagraph 4, Paragraph 1, Article 28 of this law, persons who, while in a civil service position, have been convicted of graft

or corruption-related offences or are wanted for such offenses and whose prosecution is unresolved, may not be employed as civil servants. In addition, the recruitment system of the government shall be designed with flexibility for study on the legality of the people to be employed, and the regulations governing the entities in the employment of personnel shall be in place, such as the requirement of all entities to offer employment opportunities in transparency and fair competition among the candidates. (§7 I)

- (2) According to the “Civil Service Promotion and Transfer Act,” the promotion of civil servants shall be made under the principles of equal balance of seniority and performance, internal promotion, and supplementation from external human resources. Standards and scoring systems shall be explicitly stated along the hierarchy of promotion under the procedure of screening and open selection for fairness, justice, public and transparency in promotion. For personnel within an agency, the agency shall conduct transfer procedures conforming to their nature of positions and administrative requirements. The applicable transfer regulations shall be as determined by the supervisory agency. In addition, the “Ministry of Economic Affairs Regulations Governing the Recruitment of Personnel by Subordinated Entities,” “Regulations Governing the Transfer or Rotation of Duties of Customs Officers,” and the “Regulations Governing the Rotation of Duties of Taxation Officers at All Levels” provide explicit regulations governing the rotation of duties among their personnel. (§7 I)
- (3) The “Civil Service Pay Act” and the “Guidelines for the Remuneration to Military Personnel, Civil Servants and Teachers” explicitly stated for the remuneration to civil servants. In addition, the financial status of governments at all levels, the average GDP, economic growth rate, the change in consumer price index and the salary level of the private sectors will be taken into account for adjustment of remuneration to civil servants subject to the review and study of the “Military and Civil Service Remuneration Review Committee.” The results will be provided as reference to the Executive Yuan in making decisions for the adjustment of remuneration to the military personnel, civil servants, and teachers to ensure that they may live at a fair standard of living as well as reduce the risk of involvement in corruption and bribery. (§7 I)
- (4) According to the “Civil Service Retirement Act,” the application for retirement and retirement payment by civil servants are properly regulated. The application for retirement of civil servants

who have committed the crimes under the “Anti-Corruption Act” or malfeasance in office under the “Criminal Code” and who have been sentenced for imprisonment or a more severe punishment by a court of first instance and civil servants who have been referred for punishment in accordance with the “Public Functionaries Discipline Act” will be rejected. In addition, regulations governing the deprivation or reduction of pension payment or severance payment shall be instituted for civil servants who allegedly violated the “Anti-Corruption Act” or were guilty of malfeasance in office under the “Criminal Code” pending for suspension of (relief from) duties, or those not yet referred for punishment in accordance with the “Public Functionaries Discipline Act,” or those who are sentenced guilty after retirement, dismissal or resignation. The entitlement of monthly pension payment of the retired civil servants shall be suspended for the duration of imprisonment after being convicted and sentenced for the offenses in breach of the “Anti-Corruption Act” or malfeasance in office under the “Criminal Code,” or for those whose deprivation of civil rights has not be reinstated, or for those who are still wanted by the authorities. (§7 I)

- (5) The “Statute Governing the Discharge and Survivor Relief of Political Appointee” and the previous “Political Appointee Termination Pension Statute” are measures regulating the compensation of retired or resigned political appointees. Those who have committed crimes and were punished under the Criminal Code will be deprived of the right to receive termination pension. In addition, the president has also promulgated the amendment to the “Statute Governing the Discharge and Survivor Relief of Political Appointee ” on August 9, 2017, which explicitly states that political appointees in alleged violation of the “Anti-Corruption Act” or malfeasance under the “Criminal Code” who are found guilty by the court with sentence of imprisonment or higher punishment shall be deprived of the rights for requesting the withdrawal of the principal and interest of the public savings funds or the termination pension for retirement from duties so as to avoid political appointees from early resignations to evade subsequent responsibility. Political appointees who have committed crimes under the “Anti-Corruption Act” and/or malfeasance under the “Criminal Code,” or who have committed other crimes by taking advantage of their power, opportunity or means under their official position and were found guilty by the court will be deprived of the right for withdrawal of

principal and interest of public saving funds or termination pension for retirement from duties.  
(§7 I)

- (6) According to the “Civil Service Training and Education Act,” the competent authority shall be responsible for the professional training of civil servants or shall appoint their subordinated entities to provide the training. Beginning in 2017, courses on anti-corruption and ethics were included in the training of all civil servants with the requirement of specific hours of training for each person annually. (§7 I)
- (7) The “positions considered especially vulnerable to corruption” as stated in Article 7 of the UNCAC shall be identified in the future through an analysis of cases on public officials involving corruption for reinforcement of the selection, training, and rotations of these positions to prevent corruption. (§7 I)

**10. Criteria concerning candidature for and election to public office (§7 II)**

The “Presidential and Vice Presidential Election and Recall Act” and “Public Officials Election and Recall Act” specify the qualifications and standards for the election to office of civil servants. It is explicitly stated that persons who have committed crimes of corruption and bribery in elections may not be registered as candidates for election. It is also explicitly stated that candidates who won the majority of the votes shall be elected to office. In single-candidate election or election where the number of candidates falls below the number of positions, the votes won by the candidate must match certain ratio of the total number of voters in the electoral district. In the election of legislators from non-electoral districts and overseas compatriots, the candidates shall be elected to the seats when winning 5% of the votes on the list of the political party by order of the number of votes earned with protection for female candidates at the ratio of no less than 1/2. The seats for female candidates in the election of local representatives shall also be protected. (§7 II)

**11. Transparency in the funding of candidatures for elected public office and the funding of political parties (§7 III)**

- (1) According to the “Political Donation’s Act,” public officials who intend to participate in elections or have already registered for candidacy in elections may accept political donations. The same law provides measures governing the transparency of political donations, including: means of

acceptance (the recipients shall open a special account at a financial institution and report to the Control Yuan for permission; political donation in cash shall be deposited into the special account within 15 days after acceptance), means of donation (donation under the title of a third part, or donation exceeding NT\$10,000 in alias is prohibited; donation in cash exceeding NT\$100,000 shall be paid by check or remittance through a financial institution), bookkeeping on the transactions, means of declaration (the recipient shall do bookkeeping on the transactions with compilation of accounting reports; the benefactor and recipient in donation in excess of NT\$30,000 shall be tracked subject to the audit of a certified public accountant and declaration to the Control Yuan), the transparent means (the account settlement statement of the accounting report shall be disclosed on the website and accessible via the Internet; the information on account balance shall be available for viewing). The law also specifies fund raising of political parties in transparency whereby political parties may accept political donation under certain measures of transparency. In order to strengthen the transparency of information on political donations, an amendment clause that aims to make entire content of accounting reports public through computer networks was proposed and submitted to the Legislative Yuan on December 1, 2017. (§7 III)

- (2) According to the “Political Parties Act”, the transparency of the financial position of political parties (political party subsidies, political donation, party member fees) shall be realized by the reporting to the Ministry of the Interior of the asset status and the account settlement reports of the political parties. The said account settlement reports shall be subject to the audit of certified public accountants with certification and presented before the party conference or the conference of the party representatives for ratification. The Ministry of the Interior shall publish the said account information on the government gazette or newspapers and disclose them over the Internet. (§7 III)

## **12. Promotion of transparency and prevention of the conflicts of interest (§7 IV)**

The “Act on Recusal of Public Servants Due to Conflicts of Interest” was instituted for regulating public officials in avoiding conflicts of interest and the effective prevention of corruption and funneling of unjustified benefits. In addition, the “Act on Property-Declaration by Public Servants,” “The Freedom of Government Information Law,” the “Lobbying Act,” “Administrative

Procedure Act,” “Civil Servant Service Act,” “Public Functionary Administrative Neutrality Act,” “Government Procurement Act,” and the “Ethics Guidelines for Civil Servants” also help to regulate the prevention of the conflict of interest with enhancement of transparency. The Executive Yuan announced the “The Principles for the Executive Yuan and Subordinated Entities (Institutions) in the Advocacy of Transparency in Administrative Procedures” on December 21, 2016, to ensure that the operation and decision processes of government agencies is transparent and reliable. (§7 IV)

## **Article 8. Code of Conduct for Public Officials**

### **13. Promotion of integrity, honesty and responsibility of public officials (§8 I,II)**

- (1) The “Ethics Guidelines for Civil Servants” explicitly state the rules for civil servants in the taking of valued gifts, invitations to dinners, requests for making an intercession, and other events related to ethics and integrity, and the procedure for reporting and registration. This set of guidelines also specifies that related entities (institutions) may establish stricter rules and regulations where necessary. Civil servants as referred to in this context are the personnel governed by the “Civil Servant Service Act” whereas temporary employees of the entities shall also be governed by these rules and regulations, or, the guidelines shall be included as an integral party of the employment contract at the time of entering into agreement. (§8 I,II)
- (2) The “Executive Yuan and Subordinated Entities and Institutions Guidelines for Requesting for Intercession Registration and Review” requires all ethics units to establish a window for registration of requesting for intercession as well as establish a special zone on the website for this purpose, and intensify education on the prohibition of requesting for intercession. From 2016 to September 2017, there were 47 cases of requests for intercession at entities and institutions at all levels with 32 selected at random for review; 4 cases were referred to judicial investigation (investigation in progress). Administrative disciplinary action has been imposed on 2 persons in 2 cases, while 4 cases were under study or in revision in related operation processes. (§8 I,II)
- (3) Codes of conduct for individual public officials has also been established, such as the “Legislative Yuan Member Behavior Act,” “Ethic Code of Conduct for Anti-Corruption Officers,”

“Regulation for the Implementation of the Self-discipline of Judges at the Courts of All Levels,” “Ethic Code for Judges,” “Code for the Self-Regulation of Judges in Social Interaction and Wealth Management,” “Regulations Governing the Evaluation of Prosecutors in Performance of Duties,” “Enforcement Rules for the Regulations Governing the Evaluation of Prosecutors in Performance of Duties,” “Ethic Code of Conduct for Prosecutors,” “Regulations Governing the Overall Evaluation of Prosecutors,” “Professional Code of Conduct for Correctional Officers of the Ministry of Justice,” and “Ethics Regulations for Procurement Personnel” to ensure the integrity of public officials. (§8 I,II)

**14. The code of conduct for public officials was implemented in consideration of the relevant initiatives of regional, interregional and multilateral organization (§8 III)**

The “Ethics Guidelines for Civil Servants” was established with reference to the code of conduct in public service advocated by the OECD and the ethics of public service advocated by APEC.

- (1) As stated in 1, civil servants of the Executive Yuan and its subordinated functionaries shall be clean and impartial in performing their duties in accordance with applicable laws and maintaining the image of a clean and competent government. This is relevant with the content of the front section of Article 3 of the “International Code of Conduct for Public Officials” passed by the 51<sup>st</sup> General Assembly of the United Nations on December 12, 1996, whereby public officials shall be whole-heartedly fair and impartial in the performance of their duties. (§8 III)
- (2) As stated in 3, civil servants shall perform their duties fairly in accordance with the law for the public interest, and may not take advantage of their authority, means, or opportunity granted by their public positions for the unjustified interest of their own or a third party. This section is relevant with the latter section of Article 1 of the International Code of Conduct where it states that the terminal loyalty of public officials shall be the public interest of the state manifested by the democratic system of the government. (§8 III)
- (3) As stated in the front section of 4, civil servants may not request, expect or accept valuable gifts from stakeholders with an interest in their assigned duties. This part is relevant with the requirement in Article 9 of the International Code of Conduct whereby public officials may not directly or indirectly request or accept gifts or other forms of donation that may influence their



exercise of authority, performance of duties, or making of fair or unfair judgment. The requirements and standards of both are consistent. (§8 III)

#### **15. System for reporting acts of corruption (§8 IV)**

- (1) According to Article 240 of the “Code of Criminal Procedure,” any party suspicious of committing crimes shall be reported. Article 241 of the same law also specifies that civil servants suspicious of committing crimes in performing their duties shall be reported. According to Article 13 and Article 14 of the “Anti-Corruption Act,” supervisor officers who provide haven or decline to report on proven corruption by their subordinates and personnel engaged in the work of monitoring, accounting, auditing, criminal investigation, supervision, and anti-corruption with evidence shall be punished. This is the system in Taiwan for regulating the reporting of corruption. (§8 IV)
- (2) “The Anti-Corruption Informant Rewards and Protection Regulation” provides that informants who report on undetected corruption and malfeasance will be rewarded when the sentence given by the court is guilty. (§8 IV)
- (3) Corruption crimes have a covert nature. For encouraging those who acknowledge crimes of this nature to speak up for reporting, we have drafted the “Whistleblower Protection Act,” whereby the identity of the informants of corruption and malfeasance in the public sector will be protected, their personal safety will be guaranteed, and their right for employment will be protected. In addition, mitigation of criminal liability and responsibility of standing witnesses with evidence are also regulated to build up a viable system of protection. Furthermore, the law for the protection of informants on corruption in the private sector is also under way and will be referred to the legislature after the opinions of all social sectors are compiled. (§8 IV).

#### **16. Declaring conflict of interest to appropriate authorities (§8 V,VI)**

- (1) For information on the system of the prevention of the conflict of interest, refer to 12 of Article 7 of the report. According to the “Act on Recusal of Public Servants Due to Conflicts of Interest,” personnel who should avoid the conflict of interest are representatives of the people, public officials, and heads of government agencies; they shall report on (declare with) relevant public bodies, relevant instructions, the superior body or the Control Yuan in accordance with their status of public service with respect to the conflict of interest. (§8 V)

- (2) As explicitly stated in the “Act on Property-Declaration by Public Servants,” senior public officials and public officials whose assigned duties may involve the funneling of unjustified interest shall declare their property as possessed. This will be necessary for the control of possible unusual increase of their property or the situation where the property is obviously not compatible with their incomes. Also stated in Paragraph 2, Article 12 of the same law: after matching the property of the declarant of the current year and the previous year, if the result indicates that the total income of the person, spouse, underage children varies by more than 100% without justifiable reasons, that public official shall be subject to a fine. This provision regulates the unjustified property of public officials (§8 V)
- (3) For information on the “Enactment of Lobbying Act,” refer to Article 5, 3. (5) of the report.
- (4) The “Act on Property-Declaration by Public Servants,” “Act on Recusal of Public Servants Due to Conflicts of Interest,” and the “Enactment of Lobbying Act” are also applicable to the heads of publicly elected local officials and the representatives of the people. Likewise, heads of public elected local officials shall duly observe rules governing recruitment and appointment of personnel, government procurement, ethics, and integrity. (§8 II,VI)

## **Article 9. Public procurement and management of public finances**

### **17. establishment of a transparent procurement system for the effective prevention of corruption (§9 I)**

The Government Procurement Act (GP Act) is in conformity with the Agreement on Government Procurement (GPA) of the World Trade Organization (WTO) and is enacted with the characteristics of openness, fairness, transparency, competitiveness, efficiency, decentralization responsibility, merit-based promotion, and corruption prevention. The GP Act also sets out many anti-corruption measures. (§9 I):

#### **(1) The public distribution of information relating to procurement procedures and contracts (§9 I (a) )**

A. According to Article 27 of the GP Act, for open tendering procedures or selective tendering procedures, the entity shall publish a notice of invitation to tender or of qualification evaluation on the Government Procurement Gazette while also making it available on the

Government E-Procurement System. The content of a notice, the number of days for publication, and means of publication shall be governed by the “Regulations for Publication of Government Procurement Notices and Government Procurement Gazette.”

- B. According to Article 28 of the GP Act, for tendering procedures, an entity shall prescribe a reasonable time-limit for tendering from the date of publishing a notice of invitation to tender or the date of inviting suppliers to tender until the deadline for submission of tender or the deadline for receipt of documents. The minimum of the time-limit for the various tendering procedures by different thresholds is prescribed by the “Standards for Time-limits for Tendering” stipulated under the authorization of this Article.
- C. According to Article 29 of the GP Act, tender documentation and the documents for qualification evaluation for open tendering procedures and selective tendering procedures conducted by a public announcement shall be made publicly and freely available or for sale on site or via mail, from the date of publication to the deadline for submission of tender or the deadline for receipt of documents. The documentation shall include all the information required for the submission of tenders by tenderers. Procurement conducted by a public announcement shall be governed by the provisions of electronic procurement prescribed in Article 93-1 that the entity may provide the electronic files of tender documentation on the Government E-Procurement System for the bidders to acquire tender documentation electronically.
- D. According to Article 61 of the GP Act, for a procurement of a value reaching the threshold for publication (NT\$1 million), except for extraordinary circumstances, an entity shall publish the outcome of an award on the Government Procurement Gazette and notify all tenderers in writing after award of contract (the same procedure for the contract cannot be awarded). According to Article 62, for a procurement of a value not reaching the threshold for publication but exceeding one tenth of that threshold (NT\$100,000), an entity shall also send the award data to the Government E-Procurement System.
- E. In 2017, the number of contracts awarded with a value not less than NT\$100,000 was 187,089, and the total value of those contracts was NT\$1,372.5 billion, of which 163,953 contracts (87.63% by the percentage of number of contracts) and NT\$1,129.8 billion (82.31% by the

percentage of the value of contracts) were conducted via open competition. In comparison to 2016, the percentage of value of contracts that were conducted via open competition increased slightly (the percentage of number of contracts was 88.10%, and the percentage of value of contracts was 81.05%).

**(2) The establishment, in advance, of conditions for participation (§9 I (b) )**

- A. Procurement entities shall prescribe qualifications of tenders, pursuant to Article 36 and Article 37 of the GP Act and the “Standards for Qualifications of Tenderers and Determination of Special or Large Procurement” in the tender documentation. An entity may not restrain competition unduly and shall only prescribe the qualifications essential to contract performance.
- B. When conducting procurement, an entity shall set the technical specifications pursuant to Article 26 of the GP Act and Article 24 to Article 25-1 of its enforcement rules, as well as the “Precautions to the Execution of Article XXVI of the Government Procurement Act,” and shall not be in a view to, or with the effect of, creating unnecessary obstacles to competition.
- C. The principles for evaluation of tender and award of contract have been clearly prescribed in Articles 50 to 52 of the GP Act, including the review of submitted tenders in accordance with the requirements set forth in the tender documentation, the circumstance of not opening or not awarding a contract, the award criteria, and the lowest tender or the most advantageous tender specified in the tender documentation.

**(3) The use of objective and predetermined criteria for public procurement decisions (§9 I (c) )**

- A. According to Article 52 of the GP Act, the principle for the award of contract is the tenderer whose tender meets the requirements set forth in the tender documentation, the lowest or the most advantageous of which shall be the winning tender.
- B. According to Article 56 of the GP Act where the procurement is awarded to the most advantageous tender, the evaluation criteria set forth in the tender documentation shall be used to determine the most advantageous tender by comprehensively evaluating the technology, quality, function, commercial terms, or price of the tenders with ranking or score.
- C. In 2017, the number of contracts awarded to the most advantageous tender was 48,980 (the percentage of number of contracts was 26.18%), and the total value of contracts was

NT\$339.6 billion (the percentage of value of contracts was 24.75%). In comparison to 2016, the percentage of number of contracts awarded to the most advantageous tender increased slightly (the percentage of number of contracts was 24.81%, and the percentage of value of contracts was 20.09%). Take the procurement of engineering services for example, the percentage of number of contracts awarded to the most advantageous tender increased from 91.09% in 2016 to 92.95% in 2017, and the percentage of value of contracts awarded increased from 97.80% in 2016 to 98.44% in 2017.

**(4) An effective system of domestic review (§9 I (d) )**

- A. The complaint review system specified in Chapter VI of the GP Act is in compliance with the GPA.
- B. According to Article 75 of the GP Act, a supplier may file a protest in writing with an entity if the supplier deems that the entity is in breach of laws and regulations in the stages of the invitation to tender, the evaluation of tender, or the award of contract which impair the supplier's rights or interests in a procurement.
- C. According to Article 76 of the GP Act, where the value of procurement reaches the threshold for publication, a supplier may file a written complaint with the Complaint Review Board for Government Procurement (CRBGP) as established by the responsible entity or the municipal or the county (city) governments, depending upon whether the procurement is conducted at the central or local government level, within fifteen days from the date following the date of receipt of the disposition if the supplier objects to the disposition, or from the expiry of the legal period if the entity fails to dispose the case within the period.
- D. According to Article 83 of the GP Act, a review decision prepared by Complaint Review Board for Government Procurement shall be deemed as a decision on an administrative petition. If the supplier still objects to the review decision, they may file an administrative litigation to the Administrative Court in accordance with the Administrative Litigation Law.
- E. In 2017, a total of 433 complaints were handled and 436 complaints were settled by the Complaint Review Board for Government Procurement of the Public Construction Commission, with an average resolved rate of 100.7% (the number of settled cases included cases handled before 2017); in addition, in 2016, a total of 427 complaints were handled and 498 complaints

were settled, with an average resolved rate of 116.6% (the number of settled cases included cases handled before 2016).

**(5) Measures to regulate matters regarding personnel responsible for procurement (§9 I (e) )**

- A. Article 15 of the GP Act specifies the principle of withdrawal for procurement personnel. According to Article 16 of the GP Act, entreating or lobbying received shall not be used as reference in the evaluation of tenders, and is preferred to be in writing or recorded.
- B. According to Paragraph 1 of Article 95 of the GP Act, it is preferred that an entity conduct its procurement by professional procurement personnel. The training of the procurement personnel is prescribed pursuant to Paragraph 2 of the same article. The Public Construction Commission entrusts several institutions for basic training and advance training of professional procurement personnel. On average, around 10,000 participants join the courses annually and about 7,000 participants pass the training. Such training aims at enriching the knowledge of the procurement personnel, upgrading procurement efficiency and quality, and preventing deficiencies in procurement.
- C. The “Ethics Regulations for Procurement Personnel” and Article 112 of the GP Act specify prohibited conduct for procurement personnel and the measures to be applied in the event of violation of the regulations.

**18. Promotion of transparency and accountability in the management of public finances (§9 II)**

- (1) With respect to treasury management at the government level, the accuracy of budgeting and internal auditing are included as essential indicators. Possible risk is in the inability of respective government agencies to prepare the budget without following the designated limits or standards that affected the accuracy of the budget and write-offs of spending that are not in accordance with requirement or procedure. These will affect the accuracy of the internal audit. In the future, the diversity in the mode of payment will prevail, such as the impact from electronic payment and the simplification of the write-off procedure. (§9 II)
- (2) According to the “Accounting Act,” the “Criteria for Internal Auditing,” and “The Freedom of Government Information Law,” the government should proactively disclose its budget (account settlement of budget) and accounting report. Respective entities shall also disclose their own budget (account settlement of budget) and related supporting documents at designated

websites at regular intervals for the viewing of the public so as to enhance the transparency of financial information of the government. Under the framework of the “Budget Act,” the Executive Yuan promulgated the “Regulations Governing the Budgeting of the Central Government for Mid-Term Plan,” “Regulations Governing the Principles and Methods of Annual Budgeting” as the fundamental rules and regulations for overall budgeting and the construction of a complete operation system to interweave all plans and budgets. Competent authorities of all functions and at all levels shall follow the administrative guidelines, principles of budgeting, and method of budgeting of the Executive Yuan and thereby map out the administrative plan under respective jurisdictions and provide the estimate of annual revenue and expenditure for the review of the Executive Yuan. Relevant entities will work in conjunction with the government in reviewing the budgets for the implementation of the plan in consideration of national development and financial stability by order of importance and actual effects that may yield of these plans with caution, and finalize the master budget of the central government for referral to the Legislative Yuan for ratification. The “Financial Statement Act” also requires that the financial statements of the central government and of the subordinated functions covering the previous fiscal year shall be compiled in each fiscal year, and the semi-annual balance statement of the central government and of the subordinated functions in account settlement shall be disclosed in the semi-annual balance statement for transparency of financial information and the trust of the people. (§9 II)

- (3) Duties and functions of auditing are governed by the “Audit Act”: To supervise the implementation of budget, to examine financial activities, to certify annual financial reports, to inspect irregularities and dereliction of duties concerning financial activities, to evaluate the performance of financial activities, and to judge financial responsibilities. From the beginning of 2016 to the end of December 2017, the auditing agency has discovered evidence of irregularities or dereliction of duty committed by individuals of an organization; it reported 4 cases to the Control Yuan for action and referred 7 cases to judicial investigation (also reported to the Control Yuan) pursuant to Article 17 of the “Audit Act” for enhancing the transparency and accountability of the government in treasury management. (§9 II)
- (4) The Executive Yuan encouraged the proactive use of risk management in all agencies to prevent

or reduce risk and mitigate the influence of risk. In addition, all agencies are encouraged to establish and execute internal control whereby agencies conduct routine supervision, self-assessment and internal audit, and evaluate the effectiveness of the overall system of internal control annually with the publication of the SICs for reasonable achievement of the objectives of internal control in the aspects of administrative performance, reliable information, assurance of compliance, and asset security. As of the end of 2017, the Executive Yuan has completed the SICs of 650 agencies, and urged the Executive Yuan and all subordinated functions to publish the SICs in 2018 to materialize self-governance of the agencies. (§9 II)

## **Article 10. Public reporting**

### **19. Enhancement of transparency in the public administration (§10)**

- (1) “The Freedom of Government Information Law” establishes an institution for the publication of government information; it facilitates the sharing and fair utilization of government information, protection of the people's right to know, furthering of people's understanding, trust and overseeing of public affairs, and encouragement of public participation in democracy. Pursuant to Article 5 of this law, the government shall disclose its information proactively with the Law (the items for disclosure are specified in Article 7 of the law), or provided as requested by any person. (§10)
- (2) According to Article 46 of the “Administrative Procedure Act,” the request of the parties concerned or stakeholders to an administrative authority for examining, transcribing, copying, or taking photographs of relevant materials or records shall fall within the scope of the disclosure of government information. (§10)
- (3) The “Archives Act” regulates the management of government archives and facilitates the disclosure and use of these archives. In addition, this law also allows for the proper functioning of the use of archives and realization of the disclosure of government information. (§10)
- (4) The Executive Yuan announced the “Principles for the Advocacy of Administrative Process Transparency for the Executive Yuan and all subordinated entities (institutions)” on December 21, 2016, to ensure the external monitoring of the operation and decision-making process of the executive branch of the government as well as its reliability. As of the end of 2017, the



central and local governments have unveiled 128 measures for the advocacy of administrative transparency by type of business, including 87 in the area of application, 12 in the area of subsidy, 7 in the area of the execution of major or special budgets, 2 in the area of external donation, and 20 in other areas. (§10)

- (5) The “data.gov.tw” website was established as the portal for access to government information of Taiwan. All institutions will continue to disclose related information for the free access of the public. Likewise, the public may also give feedback through a variety of channels for the demand of information and suggestion for improvements to the quality of information and decisions of the entities. Open Knowledge International of the UK conduct ratings for 94 countries on the intensity of information disclosure in 15 categories under the Global Open Data Index by the level of disclosure and overall ranking. Taiwan was ranked as a global champion from 2015 to 2017, particularly in 12 categories, including “government budget” in 2017 with full marks in that score. As of December 24, 2017, more than 33,300 items of information were disclosed, including information on transportation, weather, and environment. There were more than 34.87 million visits to the websites with a download volume of more than 7.59 million. (§10)
- (6) The National Development Council conducts public opinion surveys on emerging social problems or major government issues annually since 1988. The survey will be conducted internally and by external contractors. The questions in the survey are prepared by the council in consultation with the competent authority or the opinions of scholars and experts. The findings from the survey will be forwarded to related ministries and commissions as reference for decision and policy making. The topics of the survey include “state of social participation by the public, public opinions towards eGovernment, satisfaction of the public on the service quality of the government, the opinions of the public on quality of life, the opinions of the public on the performance of the government after elections,” which will be conducted at regular intervals or at any time as needed. (§10)

**20. Report on risk of corruption in the public administration (§10 (c) )**

- (1) According to Article 6 of the “UNCAC Implementation Act,” the government release reports on anti-corruption at regular intervals. The content of the reports covers the anti-corruption

environment, risk and trend analysis with assessment on the effectiveness of anti-corruption policies in 2018. Taiwan released the national report for the first time under the framework of the UNCAC with full-range review on the state of implementation of anti-corruption in Taiwan, including legal rules, effect of implementation, and policies for the future. For the integrity, refinement, and reliability of this report, representatives from all branches of the government are invited to discussion. Scholars in the disciplines of law and administration are also invited in the review. Scholars and experts from foreign countries are also invited to Taiwan for international review to ensure the proper implementation of the UNCAC. (§10)

- (2) The Executive Yuan Central Integrity Committee presents the “Analysis of the Current State of Anti-Corruption” report at regular intervals. The content includes the analysis of the situation of anti-corruption in Taiwan, the state of the pushing of anti-corruption work, and important implementation on anti-corruption, which is published on the network site of the Ministry of Justice and Agency Against Corruption. In addition, the central and local governments also hold integrity report for reviewing and refining cases exposed to potential risk of corruption or proven corruption. (§10)
- (3) For the effective prevention of risk factors of corruption, the AAC will disclose certain cases on the website providing analysis on the causes of corruption and review of the system capable of preventing corruption and related control measures to avert the recurrence of corruption on condition that such disclosure causes no violation of the principle of non-disclosure in the course of investigation. (§10)

## **Article 11. Measures relating to judicial and prosecution services**

### **21. Strengthening of the integrity and preventing opportunities for corruption among members of the judiciary ( §11 I,II)**

- (1) In 2017, the National Congress on Judicial Reform adopted a resolution calling for enhancing the independence of Judges and Prosecutors Evaluation Committees and strengthening the competences of the Judges and Prosecutors' Evaluation Committees to raise their efficacy. The Ministry of Justice plans to propose and promote amendments to the Judges Act, including increasing the diversity of external members of these evaluation committees and increasing the

number of academics and outstanding members of society from 4 to 6; expanding the disqualifying restrictions and recusal regulations of evaluators; strengthening the investigation authority and mechanisms of the evaluation committees such that when committee members learn of a circumstances that may warrant an evaluation, three or more members may jointly propose such an evaluation and, after consent of more than half of the committee, initiate an evaluation investigation and review; extending the validity of evaluations to five years from two years; making the evaluation and review process litigious, for instance allowing persons to be transferred to hire a lawyer, state their case in person, and request investigation of evidence; appointing two full-time staff members to assist with evaluation matters. (§11 I,II)

(2) Judges and Prosecutors Evaluation Committees

A. The Judges Act provides comprehensive rules on the evaluation of judges and the removal of incompetent judges and establishes a Judges Evaluation Committee, which includes external members to enhance the committees' objectivity and impartiality. In addition, Article 35 of the same Act allows parties involved in individual cases and victims of criminal offenses to submit a written request to the organs and groups specified in Paragraph 1 of the article to request a case evaluation by the Judges Evaluation Committee. Therefore, it is necessary to elevate the normative basis for the internal and external conduct of judges to a legal level to better implement the goal of combating corruption. (§11 I,II)

B. In 1994, Taiwan promulgated the Regulation for the Evaluation of Prosecutors (annulled 5 March 2012), clarifying that in serious circumstances, where prosecutors abuse their power, infringe human rights, are lacking in moral integrity, professional spirit, proper attitude in case handling, harm the credibility of the judiciary, seriously violate case procedures, have shown structural inadequacy in their duties, or violate regulations regarding their duties, may warrant evaluation. Because the outside world tends to mistrust and criticize the judiciary's internal supervision mechanism of self-regulation, the Judges Act was promulgated in 2011, which also applies to public prosecutors, and which introduced a mechanism of diversified external committee members consisting of judicial, prosecutorial, defense, and academic members as well as upright members of society. In 2012, a new evaluation system for prosecutors was implemented, with fair and objective evaluation procedures to disqualify any

incompetent prosecutors. Prosecutors under evaluation are given ample procedural safeguards to prevent improper interventions through abusive evaluations that could jeopardize their vocational independence.

- (3) Article 7 of the Anti-Corruption Act stipulates that “If a person who is in charge of investigation, pursuit or trial of a case commits the offense of Item 5, Paragraph 1, Article 4 or Item 3, Paragraph 1, Article 5, the penalty shall be increased by a half.” On this basis, judges or prosecutors found to be corrupt in administering justice are sentenced to severe penalties. (§11 I,II)
- (4) Regulation for the Implementation of the Self-discipline of Judges at the Courts of All Levels, Code of Conducts for Judges, Regulations for the Self-discipline of Judges in Social and Financial Dealings, Best-Practice Principles for Judges, Regulation for the Evaluation of Prosecutors, Enforcement Rules for the Evaluation of Prosecutors, Ethical Norms for Prosecutors, Enforcement Rules for the Comprehensive Evaluation of Prosecutors provide judges and prosecutors with norms to follow as well as guidelines for their supervision and punishment. The Control Yuan may remove from office judges and prosecutors that have engaged in unlawful conduct or negligence, and transfer them to the Court of the Judiciary for trial. (§11 I,II)
- (5) The low conviction rate of corruption due to insufficient collection of prosecutorial evidence is a focus of our country's reform efforts, and we are taking measures to raise the conviction rate. Also, overly severe punishment standards for corruption have resulted in disproportionate punishments, which in turn have made the court extremely strict with regard to evidence. Therefore, the National Congress on Judicial Reform in 2017 has proposed reviewing the necessity of the penalty sections of the Anti-Corruption Act and the Criminal Code. In addition, with respect to legislation, merely closing gaps in the much-criticized Anti-Corruption Act may be insufficient to solve these issues. Therefore, streamlining the penalty sections of the Anti-Corruption Act and the Criminal Code is being pursued in accordance with the proposals of the National Congress on Judicial Reform, which includes introducing international norms in anti-corruption legislation relating to influence trading. (§11 I,II)

## **22. Statistics of the Judges Evaluation Committee and Prosecutor Evaluation Committee (§11I,II)**

- (1) From 2012 through December 2017, the Judges Evaluation Committee produced 53 resolutions, which are not all related to corruption. Among these, 21 requested were granted (of these, 12 were transferred to the Control Yuan and 9 were handed to the Personnel Review Commission), 22 were not granted (of these, 7 were punishments of professional supervision and 15 were other punishments), 5 were not evaluated, and there were 5 in the other category (withdrawal, etc.).<sup>3</sup>
- (2) From September 2012 through December 2017, the Prosecutors Evaluation Committee produced 48 resolutions, none of which are related to corruption. Of the granted requests, 9 were transferred to the Control Yuan, and 3 were handed to the Personnel Review Commission. Of the 19 requests not granted, 17 were rejections of requests for evaluation. (§11 II)

## **Article 12. Private sector**

### **23. Prevention of corruption in the private sector (§12 I,II,III)**

- (1) Paragraph 2, Article 14 of the Securities and Exchange Act forms the basis for the Regulations Governing the Preparation of Financial Reports by Securities Issuers, which sets norms for the content, scope, and compilation of financial statements and other matters to be followed in that regard. It publicizes the disclosure standards for financial statements submitted [to the Financial Supervisory Commission]. Paragraph 3 of the same article requires that the financial statements must bear the signature or seal of the chairman, manager, or head of accounting to vouch that the financial statements do not contain false or deceptive statements. They bear civil and criminal liability for such unlawful acts as false and deceptive statements under the Securities and Exchange Act. This law also contains guidelines for the preparation of financial reports to be followed by the securities and futures industry, as well as penalty provisions for violations. The Securities and Exchange Act and the Certified Public Accountant Act also set out the norms and the civil, criminal, and administrative liabilities regarding untruthful financial reporting and accountants' signatures. (§12 I)

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<sup>3</sup>The resolutions can be viewed at the webpages of the Judicial Evaluation Committee (<http://www.judicial.gov.tw/evaluation/analysis.aspx>).

- (2) With regard to situations where disclosed financial statements of private enterprises violate financial reporting standards, accounting standards, and other laws and regulations, the Taiwan Stock Exchange Corporation (TWSE) and the Taipei Exchange (TPEX; formerly the GreTai Securities Market) conduct reviews of the reporting procedures of listed companies and transfers any cases of untruthful endorsements and financial statements and unconventional transactions to the judiciary. (§12 III)
- (3) Article 14-1 of the Civil Servant Work Act stipulates that a civil servant may not serve as a director, supervisor, manager, business-running shareholder, or consultant of a for-profit enterprise directly related to his duties within five years, and until three years after his resignation. Violations are to be penalized with fixed-term imprisonment of up to two years and a fine of up to NT\$1 million, to prevent public officials from relying on their relationships with those entities after leaving the agency, obtaining personal gain from improper dealings, or using knowledge from their civil service position to assist for-profit enterprises engage in unfair competition. It also aims to prevent civil servants from developing secret, private connections with for-profit enterprises after they have left the civil service, which may lead to conflicts of interest. (§12 II)
- (4) Article 20 of the Company Act stipulates that if the capital of a company exceeds a certain amount (by current public notice, paid-in capital of NT\$30 million), the financial statements must be reviewed and signed off by a certified public accountant and the competent authority may send personnel at any time to conduct inspections or order a filing by a certain deadline. However, as they have an impact on society, companies with low paid-in capital but economic activity of a certain scale must also have their financial statements reviewed and signed off by a certified public accountant, under an addition in the draft amendment of the Company Act (“companies with paid-in capital below a certain amount but with a certain scale of economic activity”) (§12 II, III)
- (5) Paragraph 3, Article 25 of the draft of the Foundations Act sets forth the proactive disclosure obligations of foundations, which includes information to be submitted to the competent authority for review under paragraph 2 of the same article, subsidies received during the preceding year, a list of donations and grants, a list of donations (only disclosing subsidies,

donations, and grants, names of the donating persons, names of donating organizations and their subsidies or grants, plus amounts), and other information necessary for public oversight, all to be submitted to the competent authority for review, which will publish it within the statutory timeframe. This open and transparent method facilitates public oversight. This draft is currently examined by the Legislative Yuan. (§12 II)

- (6) Study of legal norms relating to bribery in the private sector (Article 21 of the report)
- (7) To strengthen the protection mechanism for investors and raise the capabilities of shareholders and to collect evidence of unlawful activity and trading influence, the draft amendment to the Company Act expands the scope of inspector's examinations to include specific transaction documents within companies. In addition, the draft amendment adds [a definition of] the duties of director of limited companies, [the right of the competent authority to] inspect, transcribe, or photocopy documents concerning the company's business and its financial position. Companies must not circumvent, obstruct, or refuse to comply with these norms. (§12 II,III)
- (8) The Investigation Bureau of the Ministry of Justice established an Enterprise Anti-Corruption Section on July 16, 2014, in charge of the investigation of corruption cases of companies throughout the country. From July 2014 to December 2017, the section investigated and transferred 384 cases of corporate corruption, details of which are shown in Table 4. (§12 I)

**Table 4. Investigated and transferred cases of corporate corruption**

Type	Number of cases	Number of transferred suspects	Amount of Crimes (NT\$)
Stock market crime	169	828	52,376,757,639
Financial corruption	13	82	7,486,242,116
Asset depletion	151	532	5,435,956,443
Trade secret infringement	60	140	8,249,531,186
Total	393	1,582	196,632,091,384

Source: Ministry of Justice Investigation Bureau

#### **24. Strengthening of corporate governance (§12 I,II)**

- (1) Encourage TWSE/TPEX listed companies to comply with the amended Corporate Governance Best Practice Principles for TWSE/TPEX Listed Companies and strengthen their corporate

governance. (§12 I)

- (2) Amend the Corporate Governance Best Practice Principles for the Banking Sector, Corporate Governance Best Practice Principles for Financial Holding Companies, Corporate Governance Best Practice Principles for Bills Finance Companies, Code of Conduct for Securities Firms, Code of Conduct for Securities Investment Trust Enterprises and Securities Investment Consulting Enterprises, and the Code of Conduct for Futures Commission Merchants to stipulate norms and regulations pertaining to legal compliance, sound internal management, safeguarding of shareholder rights and interests, strengthening of board competencies, optimal utilization of supervisors, respect for stakeholder rights and interests, and enhancement of information transparency. (§12 I)
- (3) Stewardship Principles for Institutional Investors was announced in 2016. By the end of 2017, 38 institutional investors had signed it. Market trends make companies focus more and more on corporate governance and corporate social responsibility. (§12 II)
- (4) The management of public shareholdins focuses on “urging invested companies to comply with laws and regulations, establishing and implementing internal controls and internal auditing systems, emphasizing the rights of shareholders and stakeholders, strengthening the functions of the board of directors, fulfilling the prosecutorial (Audit Committee) functions, and promoting greater transparency in information disclosure. (§12 II)
- (5) By April 2017, corporate governance reviews of 1,496 TWSE/TPEX-listed companies conducted in 2016 were published. (§12 II)
- (6) Strengthening the supervision of the financial, business, and internal control systems of TWSE/TPEX-listed companies under the National Integrity Building Action Plan, and supervising the truthfulness reviews of the quarterly financial reports and audits of the internal control systems of TWSE/TPEX-listed companies conducted by TWSE and TPEX. By 31 December 2017, 469 financial reports from 2016 through Q3 of 2017 had been reviewed and the internal control systems of 252 companies had been audited. (§12 II)
- (7) In order to strengthen corporate governance and safeguard shareholders' rights and interests, the draft amendment to the Company Act amends Article 8 to regulate de facto directors and/or shadow directors to be no longer limited to companies with publicly traded stocks but



also to apply to companies with non-publicly traded stocks. To prevent shareholders of limited companies and joint-stock limited companies from avoiding their liabilities through using the separate legal personhood of their companies, the principle of Piercing the Corporate Veil, which thus far had only applied to joint-stock limited companies, is also included in the draft amendments to the Company Act. (§12 II)

## **25. Promotion of corporate integrity and social responsibility (§12 I,II)**

- (1) The Agency Against Corruption organizes business ethics forums, symposiums, and specialized courses to promote corporate integrity and ethics, raise awareness among business owners of the importance of controlling corporate governance risks, encourage enterprises to formulate suitable ethical norms and monitoring mechanisms, and disseminate the concepts of preventing bribery of foreign public officials. From 2012 to 2017, a total of 118 corporate integrity events have been held. (§12 I)
- (2) The draft amendment to the Company Act adds a second paragraph to Article 1, requiring company operations to comply with laws and ethical norms; it also introduces the concept that companies should fulfill their corporate social responsibilities (CSR) for the public interest. Also, to foster social enterprises, CSR and social enterprise exchange and matchmaking events have been held to link social enterprises and enterprise resources. Lastly, awards were given out to government organs, state-owned enterprises, and private enterprises with outstanding performance in the procurement of products from social enterprises as part of the mechanism to reward outstanding performance in the procurement of products from social enterprises and as a way of coaching social enterprises to enter into joint supply contract procurement. (§12 I)
- (3) The strategic goal of the National Integrity Building Action Plan is the concrete implementation of “strengthening corporate integrity and forging anti-corruption consensus in the private sector,” which includes promoting CSR, strengthening information disclosure, and urging TWSE/TPEX-listed companies to draw up CSR reports. TWSE/TPEX-listed companies with paid-in capital between NT\$5 billion and NT\$10 billion are obligated to publish an annual CSR report from 2017 onward. The number of such companies publishing mandatory CSR reports over 2017 is 293, a 42% increase from 2016 (206 companies). In addition, non-listed companies are also encouraged and assisted to publish CSR reports voluntarily. Integrity management and CSR

are also integrated into the assessment criteria of company awards. CSR-related seminars and training events are regularly held and international norms are studied to enable enterprises to understand the latest trends and good practices in CSR at home and abroad. (§12 II)

- (4) The Investigation Bureau of the Ministry of Justice (MJIB) proactively develops relationships with enterprises to remind them to take internal control, internal audits, and education and training seriously. Once the MJIB finds an enterprise engages in unlawful conduct, it may make an early intervention and conduct a swift investigation. In addition, the MJIB used case studies to hold corporate corruption experience exchanges with enterprises belonging to major industrial and commercial groups. As of 2017, 482 events had been held, attended by 36,668 personnel members of 8,965 companies. (§12 I,II)

## **26. Establishment of internal control and auditing systems (§12 II)**

- (1) Article 6 of the Implementation Rules of Internal Audit and Internal Control System of Financial Holding Companies and Banking Industries stipulates that financial holding companies and the banking industry establish a self-regulatory system. The Regulations Governing the Establishment of Internal Control Systems by Service Enterprises in Securities and Futures Markets and the Regulations Governing Implementation of Internal Control and Auditing System of Insurance Enterprises set out norms for securities and futures traders and insurance companies that require them to have appropriate internal control and auditing systems. The Regulations Governing Establishment of Internal Control Systems by Public Companies requires public companies to publish events such as major deficiencies in their internal control system, serious misrepresentations in their financial reports or major violations of law, and major fraud or suspected fraud. The Financial Supervisory Commission (FSC) may order a company to commission an accountant to review the company's internal control system and submit a review report to the Financial Supervisory Commission (FSC) for further review. In 2016 and 2017, the FSC imposed penalties in 186 cases of financial institutions for breaching internal control and auditing systems, for a total penalty amount of NT\$245,040,000. Legal persons and industry associations under the remit of the FSC held 790 training events on internal control in financial institutions to urge and enable them to improve their internal control systems. (§12 II)
- (2) In recent years, the Investigation Bureau of the Ministry of Justice (MJIB) has endeavored to

make companies aware of the importance of internal control and auditing systems. The MJIB has also actively investigated cases to drive the development of internal control and auditing systems in Taiwan, including: (1) Improving the selection mechanism for independent directors: Amendments to the Regulations Governing the Exercise of Powers by Audit Committees of Public Companies, the Regulations Governing Procedure for Board of Directors Meetings of Public Companies, and the Regulations Governing Appointment of Independent Directors and Compliance Matters for Public Companies; (2) Strengthening internal whistle blowing: Financial institutions have amended their corporate governance norms and added whistle blowing mechanisms; (3) Establishing anti-corruption departments within companies: Companies set up internal corruption prevention departments and draw up “norms to combat employee corruption and eradicate corrupt behavior; (4) Implementing protection of business secrets: The industry has established a supervisory staff system to investigate movements of key personnel who have already resigned and prevent them from leaking trade secrets. (§12 II)

## **Article 13. Participation by society**

### **27. Encouragement of participation by society (§13I)**

The National Integrity Building Action Plan contains specific strategies such as “encourage society to participate and facilitate a consensus regarding transparency and zero tolerance of corruption” and “promote campus integrity and deepen students’ character education.”

- (1) Encouraging society to participate: government agencies at all levels have set up civil service ethics commissions comprising experts, scholars, and upright civil citizens to be the consultants of the civil service ethics reports and strengthen corruption prevention mechanisms. The Enforcement Rules of the Act on Property-Declaration by Public Servants set forth the obligations of civil servants to declare their assets. Increased transparency of civil servants’ assets enables the public to have greater trust in the integrity of administration by their government. (§13)
- (2) Encourage educational institutions at all levels to implement education on corruption prevention and the rule of law on campuses, develop distinctive anti-corruption education programs, and integrate integrity, moral character, and incorporate zero tolerance of corruption

as topics into course materials for teaching about government integrity. (§13)

- (3) As for promotion of work of anti-corruption volunteers, please refer to Article 5 of this report. From 2012 to 2017, 11,520 clean government volunteer storytelling sessions were held involving 14,861 volunteers. (§13)
- (4) Uphold the concepts of cross-boundary governance and public-private sector collaboration. All agencies planning procurement for major public construction cases may use the national integrity platform to invite members of the public and private sectors such as prosecution, inspection, civil service ethics, and auditing organizations, engineering associations, manufacturers, and stakeholders to develop a communication process. Through the national integrity platform, we invite from time to time accountants to provide their opinions on potential civil service integrity risks related to such major projects as the Taiwan Railways Administration Overall Procurement and Replacement of Rolling Stock Project (2015-2024) and the Taipei Railway Station C1D1 Area (East Concourse) Development Project. (§13)
- (5) Develop communication with domestic enterprises and professional organizations to combine social forces so that every member of society may understand the seriousness of corruption and work together to prevent it. From September 2014 through 2017, the Ministry of Justice Investigation Bureau established connections with over 1,500 contact windows at the organizations mentioned above. (§13)
- (6) For the mechanism of “Supervision by the Public”, please refer to Article 5 of this report.
- (7) Encourage government agencies/organizations, for-profit organizations (i.e., companies) and non-profit organizations, and non-governmental organizations to hold such events as anti-corruption seminars and symposiums to encourage society to participate in anti-corruption work. (§13)

## **28. Public knowledge of anti-corruption agencies and providing access for reporting (§13 II)**

Various district prosecutors offices, the Agency Against Corruption, Ministry of Justice, Investigation Bureau, and Financial Supervisory Commission have set up online public information resources and free-of-charge reporting channels such as hotlines, postal and email addresses, and counters for whistleblowers to report cases. (§13 II)

## **Article 14. Measures to prevent money laundering**

### **29. Management and supervision of money laundering prevention (§14 I-IV)**

- (1) In 2018, Taiwan will participate in the third round of mutual evaluations of the Asia/Pacific Group on Money Laundering (APG). The Executive Yuan has established the Anti-Money Laundering Office to create an integrated program of anti-money laundering guidelines and initiatives to enhance the prevention and control of money laundering and combat the financing of terrorism. (§14 I)
- (2) The amended Money Laundering Control Act was released on December 8, 2016, to prevent money laundering, combat crime, stabilize the financial order, increase transparency of money flows, and strengthen international cooperation. Please refer to Unit b), Section 3, Chapter IV of the General Discussion. (§14 I)
- (3) Taiwan promulgated the Financing of Terrorism Control Act on 27 July 2016 to prevent the financing of terrorist activities, organizations, and elements, and to protect national security, protect basic human rights, and strengthen international cooperation in the prevention and control of the financing of terrorism in order to make its prevention and control system for fighting terrorism more comprehensive. The act took reference from the International Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation (AML/CFT) Standards published by the Financial Action Task Force (FATF), the International Convention for the Suppression of the Financing of Terrorism and United Nations resolutions regarding AML/CFT and proliferation of weapons. (§14 I)
- (4) For the purpose of strengthening corporate transparency and echoing international collective efforts on anti-money laundering activities as the latest EU AML Directive, the Taiwan government has taken several measures. It has drafted article 22 bis to the Company Act setting up the rule on the disclosure of company beneficial ownership in which all companies, after implementation, must report the information of its shareholders with over 10% to company's total issued shares or capital stock to the designated digital platform. The beneficial ownership information on the designated digital platform can be accessed by law enforcing agencies and by the obliged entities, such as financial institutions and DNFBPs. Second, companies will not be able to issue bearer shares for crystalizing the ownership belonging and avoiding the misuse

or manipulation of corporate legal person. At the same time, this legislative amendment demonstrates Taiwan's determination and efforts to counter money laundering and accord with international collective efforts. (§14 I)

(5) Other legal norms and measures

A. In December 2016, Taiwan amended its Directions Governing Anti-Money Laundering and Countering Terrorism Financing of Banking Sector (amended to Directions Governing Internal Control System of Anti-Money Laundering and Countering Terrorism Financing of Banking Business, Electronic Payment Institutions and Electronic Stored Value Card Issuers on June 28, 2017). This amendments include: (A) Internal control and governance: It is stipulated that the board of directors and senior management officials of banking institutions should fully understand AML/CFT risks as well as how their AML/CFT plan operates and adopt measures to create a strong emphasis on a culture of AML/CFT compliance throughout the organization. (B) Domestic banks must establish a dedicated and independent AML/CFT compliance unit, and for a senior executive to be appointed by the Board of Directors with fully authority for supervision of the second line of AML/CFT efforts, and to report to the Board and the Board Secretary/Auditor every six months. (C) Requiring banking businesses having foreign branches or subsidiaries to establish a group-wide AML/CFT plan, which shall include policies and procedures for sharing information within the group for AML/CFT purposes. (D) Staffing an adequate number of AML/CFT personnel and appointing an AML/CFT compliance officer to take charge of related compliance matters in foreign business units. (§14 I)

B. In 2017, the Regulations Governing Anti-Money Laundering of Financial Institutions, Directions Governing the Internal Control System for Anti-Money Laundering and Countering Terrorism Financing of the Securities and Futures Sector, and the Directions Governing Internal Control System of Anti-Money Laundering and Countering Terrorism Financing of Insurance Sector as well as anti-money laundering guidelines formulated by affiliated associations establish clear norms and regulations for anti-money laundering operations, internal control procedures, and other relevant matters such as customer due diligence, record keeping, verification of beneficial owners, and report of suspicious money-laundering and terrorist financing transactions and cash transactions above a certain amount. When the

customer is a legal person, an organization or a trustee, financial institutions shall understand the ownership and control structure of the customer or the trust and consult their list of shareholders to identify the ultimate natural persons who own directly and/or indirectly more than 25 percent of the legal person's shares or capital, identify any natural persons exerting control through ownership interests, and identify senior managers, in order to identify the beneficial owner of the customer and take reasonable measures to verify the identity of such persons. Financial institutions shall determine the extent of applying customer due diligence (CDD) and ongoing due diligence measures based on a risk-based approach (RBA). For higher risk circumstances, obtaining the approval of senior management before establishing or entering a new business relationship and other reasonable measures must be taken to understand the sources of wealth and the source of funds of the customer; also enhanced ongoing monitoring of the business relationship must be conducted. (§14 I)

C. Directions for Confirming Customer Identity in Domestic Remittance Operations of Financial Institutions stipulate that measures be in place for customer due diligence in the case of any domestic remittance transaction exceeding NT\$30,000. (§14 III)

D. Point 4 of the Directions Governing Banking Enterprises for Operating Foreign Exchange Business provides (§14 III) :

(A) All the financial institutions shall include for all outward wire transfers the required and accurate information of the originator and the required information of the beneficiary.

(B) All the financial institutions shall take the following risk control measures when conducting inward wire transfer transactions :

i. Take reasonable measures, including post-event monitoring or real-time monitoring where feasible, to identify wire transfers that lack the required originator or required beneficiary information.

ii. Implement risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking the required originator or required beneficiary information and implement an appropriate follow-up action where the originator or beneficiary information is insufficient.

(C) A receiving intermediary financial institution shall retain all the wire transfer originator

and beneficiary information accompanying the wire transfer. Where technical limitations prevent the required information accompanying a cross-border wire transfer from being imported to the corresponding domestic wire transfer, according to the Money Laundering Control Act and relevant rules, the receiving intermediary financial institution shall retain the records of all the information received from the ordering financial institution or another intermediary financial institution for at least 5 years. The abovementioned risk management procedures shall also be applied.

(D) The information on the originator and the beneficiary must include the following:

i. Originator information:

a. Name.

b. Account number: in the absence of an account, a unique transaction reference number should be included which permits the traceability of the transaction.

c. Address: the ordering bank could decide whether to replace address with unified business number, national identification number, passport number, resident certificate number, or date and place of birth.

ii. Beneficiary Information:

a. Name.

b. Account number: in the absence of an account, a unique transaction reference number should be included which permits the traceability of the transaction.

E. The International Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation (AML/CFT) Standards published by the Financial Action Task Force (FATF) require that financial institutions verify the identity of clients (or actual beneficiaries), keep records of transactions, and have risk control mechanisms or internal control systems that include measures to assess and control risks of money laundering and terrorism financing. The standards also require that laws and regulations with a bearing on the prevention and control of money laundering be amended to strengthen the AML/CFT supervision measures of financial institutions. (§14 IV)

### **30. Domestic and international cooperation to prevent money laundering (§14 I,II,V)**

(1) Paragraph 1, Article 9 of the Money Laundering Control Act stipulates that, unless the same law



provides otherwise, financial institutions and designated non-financial institutions or personnel must report currency transactions above a certain amount to the Investigation Bureau of the Ministry of Justice (MJIB). Paragraph 1, Article 10 of the same law stipulates that financial institutions and designated non-financial institutions or personnel must report any suspicious transactions to the MJIB. Paragraphs 1 and 2, Article 12 of the same law and the Anti-Money Laundering Regulations for Cross-border Declaration and Reporting stipulate that passengers or service personnel of their means of transport must declare to customs foreign currency, currency issued in Hong Kong or Macao, Renminbi, bank notes and securities in New Taiwan Dollars, and gold (all of the abovementioned exceeding a certain amount), and any other goods that may be used for money laundering. Also, when transported by express delivery, courier, mail, or other similar means, the aforementioned items must be declared to customs, which in turn will report them to the MJIB. The Anti-Money Laundering Division (AML/D) of the MJIB is Taiwan's Financial Intelligence Unit. The AML/D analyzes and acts upon the aforementioned financial information, sending it to the domestic competent authorities for law enforcement, security, intelligence, judicial, and other related authorities. If criminal investigation so requires, competent authorities in Taiwan may use secure confidential connections to report Suspicious Transaction Reports (STRs) or request in writing that the MJIB assist in the inquiry regarding a specific financial intelligence subject, to effectively integrate the financial resources of the public and private sectors in Taiwan. (§14)

- (2) The Money Laundering Control Act stipulates that, to prevent international money laundering, the Taiwanese government may, on the basis of the principle of reciprocity, sign cooperation agreements or other international written agreements with foreign governments, agencies, or international organizations to prevent money laundering. By 2017, agreements/memoranda on AML/CFT cooperation had been signed with 43 countries and regions (see Table 5). (§14 V)

**Table 5. Countries and regions with which agreements/memoranda on AML/CFT cooperation have been signed**

Europe	Americas	Asia	Pacific	Africa	
Finland	Canada	Saint Vincent	Japan	Palau	Nigeria
Poland	USA	Saint Christopher	South Korea	Fiji	Malawi

Hungary	Nicaragua	Aruba (Netherlands)	Mongolia	Solomon Islands	Burkina Faso
Macedonia	Panama	Saint Lucia	Nepal	Marshall Islands	Ghana
Latvia	Dominican Republic	Trinidad and Tobago	Saudi Arabia	Papua New Guinea	
Holy See	Paraguay	Bermuda (North Atlantic)	Philippines	Cook Islands	
Guernsey	Sint Maarten (Netherlands)		Israel		
Lichtenstein	Virgin Islands		Afghanistan		
Albania	Netherlands Antilles		Armenia		

Source: Ministry of Justice Investigation Bureau

(3) To improve the domestic legal system for mutual legal assistance in criminal matters and promote international collaboration to strengthen capabilities for attacking cross-border crime and in anticipation of the upcoming third round of mutual assessment under the APG framework in 2018, a draft International Criminal Law Enforcement Cooperation Act has been proposed along the lines of recommendations by FATF. A key indicator of Taiwan's compliance with international cooperation, this draft law was reviewed and ratified on January 31, 2018, by the Executive Yuan and the Judicial Yuan and sent to the Legislative Yuan for consideration. Once passed [by the Legislative Yuan], it will establish a complete legal framework for mutual law enforcement assistance in international criminal matters to facilitate swift and comprehensive mutual law enforcement assistance in investigation, prosecution, and litigation of money laundering, related preparatory crimes, and terrorism, to the fullest extent possible. (§14 V)

(4) Illegal money can flow across borders due to limitations in cross-border law enforcement rights and difficulties stemming from differences in legal systems. Therefore, smooth channels for international mutual law enforcement assistance help trace illegal money flows out of or into Taiwan's territory. Before, Taiwan did not have norms for mutual law enforcement assistance, as a result of which windows for mutual law enforcement assistance were unclear and cross-border evidence gathering was difficult. Presently, to demonstrate its commitment to tracing illegal money flows, Taiwan is stepping up its measures to prevent and control money laundering. The Executive Yuan has approved the draft International Criminal Law Enforcement

Cooperation Act, which expands opportunities for Taiwan to cooperate in mutual law enforcement assistance and which contains framework provisions to make mutual law enforcement assistance smoother. (§14 V)

### 31. Liaison and cooperation among financial intelligence agencies (§14 I,IV,V)

- (1) For the duties of Taiwan’s Financial Intelligence Unit, the Anti-Money Laundering Division (AML/D) of the Ministry of Justice Investigation Bureau (MJIB), please refer to Article 5 of this report.
- (2) As a member of the Egmont Group since 1998, the AML/D of the MJIB has actively developed its international cooperation and shares AML/CFT intelligence with this group and foreign financial intelligence units. Also, AML/D personnel participates in meetings of the Financial Action Task Force (FATF) and the Asia/Pacific Group on Money Laundering (APG). (§14 I,V)
- (3) As an APG member, Taiwan, in the name of Chinese Taipei, may also participate in the FATF activities as a member. In addition, as one of the founding members of the Asset Recovery Inter-Agency Network of Asia/Pacific (ARIN-AP), Taiwan closely cooperates with this network to recover the proceeds of crime. (§14 IV, V)
- (4) Outcomes of international intelligence sharing (2014-2017) : (§14 I)

**Table 6. Outcomes of international intelligence sharing**

Work item	Unit:case			
	2014	2015	2016	2017
Foreign country requests Taiwan to assist with investigation	32	48	50	54
Taiwan requests foreign countries to assist with investigation	20	49	34	26
Foreign country provides intelligence of its own accord	32	33	27	54
Taiwan provides intelligence of its own accord	6	9	26	45
Total	90	139	137	179

Source: Ministry of Justice Investigation Bureau

### 32. Important cases of money laundering prevention

- (1) After Mega International Commercial Bank was fined by the New York State Department of

Financial Services (DFS), it was found that the bank failed to establish or implement an internal control system during the management and handling process of this case, raising concerns about sound operation. The bank was fined NT\$10 million, and 6 senior managers, including the former chairman of the board, were either removed from their positions or ordered to be removed from their positions by the bank, with a five-year ban on serving as the responsible person of financial institutions by FSC. FSC required the financial institutions to strictly follow the regulation of AML/CFT and to enhance their internal control systems and legal compliance, and strengthen the management of overseas branches in order to maintain their integrity. (§14)

- (2) Summary of Hon Hai Group Managers Receiving Kickbacks in 2014: L was the senior vice CEO of listed Company H. From July 2009 through December 2011, he held the final decision rights on parts suppliers to the group. With the collusion of several senior managers of the company and intermediary A, L demanded kickbacks from suppliers in Taiwan and China. At the instruction of A, complying suppliers handed over cash or remitted money to overseas bank accounts of foreign companies or OBU accounts set up in Taiwan. L and the other colluding managers at Company H would split the money, and assist the companies to obtain purchasing orders, advantageous procurement prices, and payment schedules. Their profits totaled more than NT\$160 million. The investigation of this case, led by the Taipei District Public Prosecutors Office, involved the Criminal Investigation Bureau (under the National Police Agency, Ministry of the Interior), Ministry of Justice Investigation Bureau, and other law enforcement agencies. Taiwan's financial intelligence unit, the AMLD, also participated in the project by uncovering unusual remittances. Through intelligence sharing in the Egmont Group, foreign counterparts helped investigate and provide financial intelligence, at Taiwan's request or at their own initiative. The group also helped coordinate member units to identify and recoup overseas criminal proceeds. These concerted efforts of public and private sector agents proved very helpful in this crackdown on corporate corruption. (§14)
- (3) From September 2002 to October 2009, M served as Director General of the National Fire Agency, Ministry of the Interior (NFA) and as the Deputy Chief Executive of the National Disaster Prevention and Response Council. In violation of the Civil Servants Work Act, the Government Procurement Act, and the Act on Recusal of Public Servants Due to Conflict of

Interest, M used the residence of the Liang Brothers as a cover and a ghost company to bid on NFA procurement tenders and benefit from procurement price differences. He then used the cover address and the puppet company to hide his illegal profits in domestic and foreign bank accounts. Taiwan's FIU participated in the investigation by comparing the bank account's transactions with procurement information. Covering the suspects, the paper company, and the actual situation of the tenders, the investigation ultimately produced a map of financial flows, which exposed the criminal facts of the case. After the investigation, financial agencies assisted with the recoupment of the criminal proceeds. Mapping the financial process also uncovered a certain money laundering model and several gaps in Taiwan's AML management. The competent authorities were contacted to strengthen their management and supervision, and the case was turned into training material on the Money Laundering Control Act used by report receiving organizations to strengthen Taiwan's AML capabilities. (§14)

### **Chapter III Criminalization and law enforcement**

#### **Article 15. Bribery of national public officials**

##### **33. Legal norms (§15)**

The Anti-Corruption Act provides penalties to be imposed for “acts of bribery that violate official duties” and “acts of bribery that do not violate official duties.” This law and Chapter 4 (Offenses of Malfeasance in Office) of the Criminal Code provide penalties for dereliction and breach of duty by public servants such as demanding, promising, or accepting bribes or other unlawful profits. (§15)

##### **34. Implementation (§15)**

In 2013, the Judicial Yuan added offenses against the Anti-Corruption Act to the list of crimes in its Sentencing Retrieval System. The added information, which is collected from District Courts around the country, includes “acts of bribery that violate official duties” and “acts of bribery that do not violate official duties” set forth in Article 11 of the Anti-Corruption Act, “demanding, taking or promising to take bribes or other unlawful profit” set forth in Article 4, and “demanding, taking or promising to take bribes or other unlawful profits by an act that belongs to the official duty” set forth in Article 5. After the judges have entered the main text of

judgment, key words, and statutory aggravating and mitigating sentencing factors, the Sentencing Retrieval System will immediately filter the verdicts in the database and display the average, highest and lowest sentences, kinds of sentences, and the statistical distribution of sentences to enable judges to grasp the sentencing context at a glance and to prevent excessive differences in the sentencing of identical or similar cases. Sentencing Retrieval System was originally used only by the judges of the country. Since June 2014, the system has been made available to prosecutors, lawyers and defendants as well. Since January 2016, the system has been made fully open to the general public to enhance the transparency and appropriateness of sentencing. (§15)

### 35. Statistics (§15)

From July 2009 to 2017, the conviction rate for corruption cases brought to court was 70.38%<sup>4</sup>. See Appendix 2. (§15)

### 36. Policy (§15)

- (1) The basic types of public servants' duty-related crimes are regulated in the Criminal Code. However, considering the serious nature of any corruption by public servants, the Legislative Yuan deemed a special statute necessary to provide norms on corruption by public servants, since non-penal norms and sanctions were deemed insufficient to regulate these crimes. Therefore, in addition to the Criminal Code, the Anti-Corruption Act was promulgated in 1963 and remains in force to date.<sup>5</sup> In drafting this law, the main considerations regarding the subjective and objective elements of the unlawfulness of corruption and dereliction of duty

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<sup>4</sup> If one looks at the scope of corruption but not illegal benefits from holding public office (Article 131, Criminal Code, and Paragraph 1, Article 6 and Articles 4 and 5 of the Anti-Corruption Act.), the conviction rate brought to court was 72.1%.

<sup>5</sup> A Provisional Act on Punishments for Corruption was promulgated on June 27, 1938, and abolished on June 30, 1943. Since, at the time, corruption among public servants was rather serious, the Act Governing Corruption during Times of [Communist] Rebellion was promulgated on July 15, 1963. In 1987, with the lifting of martial law and those circumstances no longer existing, the law was completely revised into 18 articles, which was promulgated on July 17, 1992, under the new name of the Anti-Corruption Act, which was amended on October 23, 1993, into the 20 articles that are in force to date. Article 6 on illegal gains from public office was amended on November 7, 1992. Article 11 was amended and Article 21-1 was added and promulgated on February 6, 2003. Amendments to Articles 2, 8, and 20 were promulgated on May 30, 2006.

were derived from Chapter 4 (Offenses of Malfeasance in Office) of the Criminal Code (CC) regarding common bribery, bribery with breach of duty, illegal collection and withholding of monies, and illegal profits earned by public servants. These were taken out and separately regulated. In practical application, these offenses often involve competing laws and are usually handled as “special relations,” that is to say, the Anti-Corruption Act (ACA) is applied first, even when the Criminal Code (CC) has similar provisions that could not be removed. This greatly impacts the legal normative force of Chapter 4 of the CC, which holds very similar provisions. As a result, Taiwan has seen broad debate on whether the ACA should be abolished and how to return to using only the CC in handling these offenses: In the event that the ACA is abolished, which provisions of this *lex specialis* could be modified and restructured to be inserted into the norms of the current CC? How can missing text be added to existing provisions in the CC? And what ought to be done with the ACA provisions on administrative procedural law and criminal procedural law, etc.? (§15)

- (2) For whistleblower protection, please refer to Articles 8 and 33 of this report. For “sunshine acts” such as the Act on Property-Declaration by Public Servants, Act on Recusal of Public Servants Due to Conflicts of Interest, Political Donations Act, and Lobbying Act, which deal with offering and accepting bribes, please refer to Article 5 of this report.

## **Article 16. Bribery of foreign public officials and officials of public international organizations**

### **37. Legal norms (§16 I)**

Paragraphs 1 and 2, Article 11 of the Anti-Corruption Act provide the penalties for acts of bribery that violate official duties, acts of bribery that do not violate official duties, demanding, promising, promising, accepting bribes or other unlawful profits. Paragraph 3 of the same article provides that, in cases of cross-border trade, investment, or other commercial activity involving public servants from foreign countries, the Mainland Area, Hong Kong, or Macao, the first two paragraphs apply in the event of the first two offenses listed there (acts of bribery that violate official duties, acts of bribery that do not violate official duties).

### 38. Implementation of Paragraph 2 of this article (§16 II)

With regard to the norms governing jurisdiction in Articles 3 to 7 of the Criminal Code, the solicitation or acceptance of bribes by foreign public officials does not fall within the jurisdiction of Taiwan. Whether their criminal liability for such acts should be increased warrants further study. (§16 II)

## **Article 17. Embezzlement, misappropriation or other diversion of property by a public official**

### 39. Legal norms (§17)

- (1) With regard to a public servant who for the benefit of himself or another person or entity steals or misappropriates property, private funds, or valuable items entrusted to him by his office, Subparagraph 1, Paragraph 1, Article 4 of the Anti-Corruption Act provides: “Any person who has committed any of the following acts shall be punished by imprisonment for life or a term of no less than ten years and may also be punished by a fine not exceeding NT\$100million: 1. Stealing or misappropriating public equipment or properties.” Subparagraph 3, Paragraph 1, Article 6 of the same law provides: “Any person who has committed any of the following acts shall be punished by imprisonment for a term not less than five years and may also be punished by a fine not exceeding NT\$30 million: ... 3. Stealing or misappropriating private property or equipment that is in his or her possession due to official position but not for official use.” (§17)
- (2) Article 71 of the National Property Act states: “If the person in charge of National Property violates Article 21, i.e., fails to record accrued accounts and conceals or misappropriates property, the person in charge’s penalty shall be sharpened till 1/2.” Paragraphs 1 and 2, Article 31 of the same law provide: “The administrators of the national property may not purchase or rent national property under their management, nor conduct any other disposition or profitable acts that are favorable for administrators themselves. Acts violating the preceding paragraph are invalid,” which regulates the registration of national property, as well as penalties for violations, and provisions for recusals. Article 61 provides that the competent authorities must regularly and irregularly inspect national property to ensure its proper management. (§17)



#### 40. Statistics (§17)

Violations of Subparagraph 1, Paragraph 1, Article 4 (stealing or misappropriating public equipment or property) and subparagraph 3, Paragraph 1, Article 6 (stealing or misappropriating private property or equipment that is in his or her possession due to official position but not for official use) of the Anti-Corruption Act handled by district prosecutors offices across Taiwan are shown in Table 7.

**Table 7. Violations of the Anti-Corruption Act handled by District Prosecutors Offices across Taiwan**

Unit: person

Item	Investigations resulting in prosecution		Guilty verdict	
	stealing or misappropriating public equipment or property	stealing or misappropriating private property or equipment that is in his or her possession due to official position but not for official use	stealing or misappropriating public equipment or property	stealing or misappropriating private property or equipment that is in his or her possession due to official position but not for official use
<b>2013</b>	29	9	10	10
<b>2014</b>	46	10	9	8
<b>2015</b>	22	7	13	4
<b>2016</b>	30	16	18	6
<b>2017</b>	19	7	18	3
<b>Total</b>	146	49	68	31

Source: Ministry of Justice

### Article 18. Trading in influence

#### 41. Legal norms (§18)

Articles 4–6 of the Anti-Corruption Act (ACA) contain provisions similar but not entirely identical to Article 18 (“Trading in influence”) of the United Nations Convention against Corruption (UNCAC). The article provides the scope of influence trading as “the promise, offering or giving to a public official or any other person of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the

original instigator of the act or for any other person.” The most prominent feature of the crime of influence trading is the existence of a Middleman B, who has real or supposed influence on Public Servant C, who actually carries out the administrative act. This influence provides an undue advantage to Beneficiary A, who is willing to engage and reward Middleman B to obtain the undue advantage from the public-sector organization. Whether Articles 4—6 of ACA apply to the real or supposed influence of Middleman B, specifically whether [the public servant’s] statutory competence or [the middleman’s] real influence takes precedence, is still a matter of debate. (§18)

#### **42. Policy (§18)**

- (1) Within the statutory requirements regarding penalties, and in line with the decision of the National Congress on Judicial Reform in 2017 on the reversion to harmonize the Dereliction of Duty Chapter of the Criminal Code with the Anti-Corruption Act, norms for influence trading will be carefully considered and formulated in the future. (§18)
- (2) The draft amendments to the Company Act provide that de facto directors and/or shadow directors of a company that control personnel, finance, or business operations of the company as substantively as executive directors, bear liabilities for civil and criminal matters and for administrative penalties identical to those of executive directors. The draft amendment was approved by the Executive Yuan on December 21, 2017, and passed to the Legislative Yuan for review. (§18)
- (3) Article 9 of the Act on Recusal of Public Servants Due to Conflict of Interests prohibits public servants and their related persons from conducting transactions with organs served or supervised by those public servants. However, since society considers this article as unduly restrictive to the employment rights and property rights of public servants and their related persons, a draft amendment that aims to loosen the restrictions somewhat under the principle of proportionality has been proposed and submitted to the Legislative Yuan for consideration. (§18)

### **Article 19. Abuse of functions**

#### **43. Legal norms (§19)**

- (1) Article 131 of the Criminal Code stipulates that a public official who knowingly violates the law to directly or indirectly seek unlawful gains from matters under his control or supervision for himself or others and gains benefits shall be sentenced to certain punishment. This article addresses public servants with managerial or supervisory duties. Article 134 of the same law stipulates increased penalties for such public servants. (§19)
- (2) Subparagraph 1, Paragraph 1, Article 4 of the Anti-Corruption Act (ACA) penalizes stealing or misappropriating public equipment or property. Subparagraph 2, Paragraph 1, Article 4 of the same law penalizes acquiring valuables or property through the use of undue influence, blackmail, forced acquisition, forced seizure, or forced collection. Subparagraph 3, Paragraph 1, Article 4 penalizes inflating the prices and quantities of, or taking kickbacks from, public works or procurement of equipment and goods under his or her charge. Subparagraph 4, Paragraph 1, Article 4 penalizes using government vehicles to transport contraband or carry goods for tax evasion. Subparagraph 1, Paragraph 1, Article 5 penalizes withdrawing or withholding public funds without authorization with intent to profit, or unlawfully collecting taxes or floating government bonds. Subparagraph 2, Paragraph 1, Article 5 penalizes fraudulently causing others to deliver personal property or a third person's property under cover of legal authority. Subparagraph 1, Paragraph 1, Article 6 penalizes withholding, with the intent to profit, public funds or public property that should be lawfully distributed. Subparagraph 2, Paragraph 1, Article 6 penalizes committing malfeasance while raising funds or requisitioning land or other properties. Subparagraph 3, Paragraph 1, Article 6 penalizes stealing or misappropriating private property or equipment that is in his or her possession due to official position but not for official use. Subparagraph 4, Paragraph 1, Article 6 for private profit on supervised or managed affair and. Subparagraph 5, Paragraph 1, Article 6 for private profit on unsupervised or unmanaged affair, penalize using the opportunity provided by one's position or status for unlawful gains for oneself or for others in matters under act or omission which violates the law. (§19)
- (3) Article 6 of the Civil Servant Work Act stipulates: "Civil servants shall not abuse their powers to pursue the interests of themselves or others, and shall not use opportunities in their duties to harm others." (§19)

#### 44. Policy (§19)

By the measure of Article 19 of the UNCAC, Taiwan's norms are strict. The types of abuse have already been described above. Since penalty gaps and other differences exist between the Dereliction of Duty Chapter of the Criminal Code and the Anti-Corruption Act, the National Congress on Judicial Reform in 2017 proposed to harmonize the laws, and the Ministry of Justice is currently studying proposals from academic scholars to adjust the penalty tiers and amounts. (§19)

### **Article 20. Illicit enrichment**

#### 45. Legal norms (§20)

- (1) Paragraph 1, Article 6 of the Anti-Corruption Act has been amended to give guidance to prosecutors and provides various penalties for cases where a public servant or his or her spouse or under-aged children are suspected of anomalous increase in property and the increase in property or income cannot be adequately explained. (§20)
- (2) Article 15 of the Money Laundering Control Act stipulates that receiving, holding, or using property or gains from property, using a nominee's name or false name to open an account with a financial institution, using inappropriate measures to acquire an account opened by others with a financial institution, being uncooperative with AML procedures, or having assets from unclear sources or disproportionate income, is punishable by imprisonment between six months and five years and a fine of up to NT\$2 million. (§20)
- (3) Paragraph 2, Article 12 of the Act on Property-Declaration by Public Servants stipulates that public servants unable to reasonably explain their anomalous increase in property are penalized with a fine between NT\$150,000 and NT\$3 million. The public servant obliged to declare is placed on an intensive monitoring list of their agency's civil service ethics office. Project auditing for anomalies effectively prevents such public servants from encountering corruption risks. (§20)

#### 46. Statistics (§20)

Since the implementation of Paragraph 1, Article 6 of the Anti-Corruption Act, from 2013

through 2017, the prosecutors offices under the Ministry of Justice have investigated and prosecuted five (5) cases. However, disagreement has risen over whether an increase of property follows the “disproportionate” term. The district prosecutors offices continue to actively provide evidence and interpretation, in order to enhance the applicability of this article, while judges adjudicate each case on its specific circumstances. (§20)

## **Article 21. Bribery in the private sector**

### **47. Legal norms (§21)**

- (1) Article 335 of the Criminal Code provides penalties for ordinary embezzlement. Article 336 does so for embezzlement through public fiduciary duty, Article 339 fraud, and Article 342 for harming the interests of one’s principal in entrusted affairs. (§21)
- (2) Article 125-2 of The Banking Act of the Republic of China imposes special penalties on the responsible persons or personnel of banks who commit breaches of trust. Article 127 of the same law also penalizes banks’ responsible persons who accept improper benefits. (§21)
- (3) Article 59 of the Financial Holding Company Act penalizes the responsible persons or employees of a financial holding company who violate Paragraph 4, Article 17 of the same law by accepting commissions, rebates, or other unwarranted benefits. In the event of a violation of Article 11, Paragraph 2 of the Act Governing Bills Finance Business, Article 62 of this act also penalizes the responsible persons or staff members of Bills Houses who accept commissions, rebates, or other unwarranted benefits from customers, buyers/sellers, guarantors, or other persons. (§21)
- (4) Article 171 of the Securities and Exchange Act provides for the handling of unusual transactions, breach of trust, and misappropriation by directors, supervisors, managerial officers, or employees of companies. Article 172 of the same law penalizes accepting bribes by directors, supervisors, managerial officers, or employees of the stock exchange. Article 173 penalizes bribing directors, supervisors, managerial officers, or employees of the stock exchange. (§21)
- (5) Articles 108 and 109 of the Securities Investment Trust and Consulting Act penalize directors, supervisors, managers, or employees of securities investment trust enterprises or securities investment consulting enterprises who demand, agree to accept, or accept any property or

other improper benefit in connection with the performance of his or her duties. (§21)

- (6) Articles 113 and 114 of the Futures Trading Act penalize directors, supervisors, managers, or employees of futures exchanges, futures clearing houses, or futures trust enterprises who demand, agree to accept, or accept any property or other improper benefit in connection with the performance of their duty. (§21)

#### **48. Policy (§21)**

- (1) In order to study and establish legal norms for bribery in the private sector, we have collected provisions in current Taiwanese law relating to bribery in the private sector and examples of foreign legislation in this regard. This study and discussion have led to a consensus on where gaps exist in Taiwan's current legal system that need filling. To respond to domestic and international concerns on bribery in the private sector, we have taken stock of a wide range of foreign legislative approaches, and solicited opinions from investigators, prosecutors, defendants, academics, and representatives of ministries and government agencies regarding legal norms and mechanisms for corruption in the private sector. Future legislation, if passed, may help contain corruption in the private sector and signal to the international community that Taiwan actively fights all types of corruption. (§21)
- (2) Taiwan is preparing a Private-Sector Whistleblower Protection Act. Due to the fact that its scope is diverse and complex, the law should consider different industries and offer efficient protective measures. Thus, further opinions are still being collected and studied, and the question of whether a separate law is needed or whether additional provisions in existing laws will suffice to protect whistleblowers is being considered. (§21)
- (3) To combat corrupt practices such as bribery in the private sector, the Ministry of Justice Investigation Bureau established the Enterprise Anti-Corruption Section on 16 July 2014. This section is in charge nationwide of the investigation of such corporate corruption cases as manipulation of stock prices, insider trading, kickbacks, asset draining, financial corruption, and infringements on trade secrets. It maintains outposts around the country staffed with specialized personnel, who investigate corporate corruption cases. The section boasts a specialized team, superior technology know-how, and comprehensive capabilities in financial flow analysis. It replaces the original hierarchical operating approach with a

centralized-team-operating model, which makes for swift communication, evidence gathering, and investigation in order to minimize impact on business, safeguard the public's interests, create a level playing field, and prevent corruption and crime from happening in the first place. (§21)

## **Article 22. Embezzlement of property in the private sector**

### **49. Legal norms (§22)**

- (1) Article 336 of the Criminal Code provides penalties for embezzlement through public fiduciary duty, and Article 342 does so for harming the interests of one's principal in entrusted affairs. (§22)
- (2) Article 125-2 of the Banking Act of The Republic of China imposes special increased penalties on the responsible persons or personnel of banks who commit breach of trust. (§22)
- (3) Article 57 of the Financial Holding Company Act, Article 38-2 of the Credit Cooperatives Act of the Republic of China, and Article 48-1 of the Trust Enterprise Act each provide penalties for breach of trust by responsible persons and employees of financial holding companies, credit cooperatives, and trust enterprises. (§22)
- (4) Article 171 of the Securities and Exchange Act provides for the handling of breach of trust and embezzlement by directors, supervisors, managerial officers, or employees of companies. (§22)
- (5) Articles 58 and 58-1 of the Act Governing Bills Finance Business provide penalties for breach of trust, misappropriation, or fraud by responsible persons or employees of bills finance companies. (§22)
- (6) An Article 105-1 was added to the Securities Investment Trust and Consulting Act to provide penalties for breach of trust by directors, supervisors, managers or employees of securities investment trust and consulting businesses. (§22)
- (7) Article 168-2 of the Insurance Act provides penalties for responsible persons and employees who use other people's names to directly or indirectly control the personnel, finance, or operations of an insurance business, or business operators who misuse public funds under their charge or drain company assets. (§22)

### **50. Statistics (§22)**

From 2012 to 2017, district prosecutors offices around Taiwan investigated 3,035 cases of violations of the Banking Act of the Republic of China, resulting in the prosecution of 3,949 people. In addition, the offices investigated 1,659 cases of violations of the Securities and Exchange Act, resulting in the prosecution of 2,341 people.

## **Article 23. Laundering of proceeds of crime**

### **51. Legal norms (§23)**

On December 28, 2016, the Money Laundering Control Act was amended to more closely align with Article 23 of the UNCAC. For key amendments and objectives, please refer to Unit c), Section 4, Chapter II of the General Discussion. In addition, Article 2 of the same law provides penalties for persons that knowingly disguise or conceal property or property interests obtained from a serious crime committed by themselves, while Article 3 stipulates that when specific crimes (listed there) in other laws involve money laundering, the Money Laundering Control Act also applies, using the phrase “As used in this Act, ‘serious crimes’ include the following crimes:” (§23 I)

### **52. Policy (§23)**

In 2018, Taiwan will participate in the third round of mutual evaluations of the Asia/Pacific Group on Money Laundering (APG). The Executive Yuan has established the Anti-Money Laundering Office to create an integrated program of anti-money laundering guidelines and initiatives to enhance its capabilities to prevent and control money laundering.

## **Article 24 Concealment**

### **53. Legal norms (§24)**

- (1) Articles 4—6 of the Anti-Corruption Act (ACA) regulate serious crimes with a minimum sentence of five (5) years. Article 15 of the same law provides a penalty of one to seven (1–7) years of imprisonment and/or a fine of up to NT\$3 million for persons that knowingly accept, handle, conceal, or possess property derived from the crimes set forth in Articles 4—6. (§24)
- (2) Article 349 of the Criminal Code provides a penalty of up to five (5) years imprisonment and/or a fine for persons that receive, transport, accept for storage, knowingly purchase, or act as an



intermediary for stolen property. (§24)

- (3) Paragraph 2, Article 38-1 of the Criminal Code stipulates that proceeds of a crime obtained by natural persons, legal persons or an unincorporated body other than the offender shall be confiscated if they knowingly obtain the illegal proceeds from the offender, obtain the illegal proceeds from the offender for free or at a cost that is considerably not reciprocal, or if the party benefits from the illegal act committed by the offender for the said party. Related articles have stipulated confiscation for the case where the offender transfers the illegal proceeds to the third party in order to conceal the property from the illegal act. (§24)
- (4) Paragraph 2, Article 2 of the Money Laundering Control Act stipulates that knowingly concealing or hiding the nature, source, destination, location, ownership rights, disposal rights, or other rights of the proceeds of a particular crime is also regarded as money laundering. Article 18 of the same law expands the confiscation provision: In the event that an offence under Article 14 is committed, the property or the benefits of the property that are transferred, converted, concealed, obscured, accepted, obtained, possessed or used in the offence shall be confiscated. Article 15 does the same for the acceptance, possession, or use of property or the benefits of such property. The expanded confiscation under Article 18 of the Money Laundering Control Act is in line with the norms of this Article. (§24)

#### **54. Important measures and approaches (§24)**

As the FIU is dedicated to the prevention and report of money laundering through the Money Laundering Control Act, the Anti-Money Laundering Division (AML) of the Ministry of Justice Investigation Bureau (MJIB) helps communicate and coordinate between the public and private sectors and trace and recoup illegal proceeds. When a financial institution learns of media reports regarding major cases of transactions and asset transfers involving persons related to them, they may contact the AML for a preliminary review and domestic law enforcement agencies for prosecution. The reporting and distribution of financial intelligence helps law enforcement agencies to seize illegal proceeds or open up lines of investigation. For example, in a major city land development case, the statutory reporting mechanism and communication channels between the AML and financial institutions facilitated analysis on sharing of intelligence and review of evidence. The investigation identified a city representative that had

accepted illegal gains for his intervention. (§24)

## **Article 25. Obstruction of justice**

### **55. Legal norms (§25)**

- (1) Article 277 of the Criminal Code on causing injury, Article 302 on depriving others of their freedom of movement, Article 304 on coercion under threat, and Article 305 on threat of injury or damage are general provisions that also extend to the protection of witnesses. (§25)
- (2) Article 135 of the Criminal Code on threats, Article 140 on insulting public servants, Article 277 on causing injury, Article 302 on depriving others of their freedom of movement, Article 304 on coercion under threat, and Article 305 on threat of injury or damage are general provisions which also extend to the protection of trial and law enforcement officers. (§25)
- (3) Article 4 of the Witness Protection Act provides that if the life, body, freedom or property of a witness or a person who is closely related to such witness is in jeopardy due to his or her testifying in front of the prosecutor or in court, and protection is thus necessary, the court may issue a witness protection order. In urgent circumstances, preliminary measures to protect the witness may be taken if the protective order cannot be issued in time. (§25)
- (4) Article 95 of the Organic Act of the Courts stipulates that violation of refusing to follow orders from the presiding judge, appointed judge, or entrusted judge to maintain the order of the court, which obstructs the court in the performance of its duties, if did not stop after warning, is penalized with imprisonment up to three months and/or a fine up to NT\$30,000. (§25)

### **56. Policy (§25)**

In order to ensure the correct exercise of judicial power in Taiwan and uncovering of truth, the National Congress on Judicial Reform in 2017 discussed the prevention of obstruction of justice, including destruction of evidence and false testimony. It was suggested that breach of trust be expanded to include the offenses of full right order, jumping bail, harassing witnesses, taking revenge on investigators and witnesses, obstructing criminal investigations and criminal law enforcement in order to eliminate abuse of power, mediation by public officials, and other obstruction of law enforcement. The Criminal Law Amendment Taskforce of the Ministry of Justice is still soliciting opinions from academia and the field of law enforcement and

adjudication regarding the direction of the following proposed initial amendments regarding obstruction of justice:

- (1) A proposed addition of Article 172-1 to the Criminal Code which would impose a penalty of up to three years in prison, criminal detention, or a fine up to NT\$100,000 for obstructing or harassing witnesses. In addition, at the suggestion of experts, there is discussion regarding formulating such offenses as obstruction of the court, obstruction of the prosecution, obstruction of parliament (as in the US) in order to gradually meet the requirements of Article 25 of the UNCAC. (§25)
- (2) A proposed addition of Article 172-4 to the Criminal Code to penalize improper speech or actions, disobeying orders from a judge or prosecutor, or obstructing the legal process, which hinders judicial proceedings or the law enforcement personnel in the performance of their duties. (§25)
- (3) Under prevailing law, witnessing bribery is not an offense. Proposed amendments to Articles 165 and 168 of the Criminal Code penalize instigating false statements by witnesses, and forgery, alteration, and destruction of evidence. (§25)
- (4) A proposed addition of Article 172-4 to the Criminal Code to read as follows: “He who, during a court proceeding or investigation, uses improper speech or actions, disobeys orders from a judge or prosecutor, or obstructs the legal process, which hinders judicial proceedings or the law enforcement personnel in the performance of their duties, is punished with a term of imprisonment of less than six months, criminal detention, or a fine of less than NT\$9,000. Legislative considerations: “In order to safeguard the proper exercise of judicial power, appropriate punishment must be applied if, during a court proceeding or investigation, a person uses improper speech or actions, disobeys orders from a judge or prosecutor, or obstructs the legal process, which hinders judicial proceedings or the law enforcement personnel in the performance of their duties. Foreign legislation also contains contempt of court provisions, which is why this article is proposed.” (§25)

## **Article 26. Liability of legal persons**

## 57. Legal norms (§26)

In Taiwanese law, legal persons have civil, criminal, and administrative liabilities, which are described below.

### (1) Criminal liability (§26 I,II,IV)

Taiwanese law is built on the criminal law theory of the continental law system. Therefore, even when Taiwanese law does not contain provisions regarding criminal liability for legal persons, legislative practice uses the norms contained in the Criminal Code of the Republic of China (Criminal Code) to make up for deficiencies in the Criminal Code. Examples include the following:

- A. Article 127-4 of the Banking Act of the Republic of China provides: Although punishment is to be imposed on the responsible person(s) in accordance with other provisions, in the event that the responsible person, agent, employee, or a staff member of a legal entity commits any of the offenses punishable under Article 125 through Article 127-2 of this Act, the legal entity shall also be punished by the administrative fine or criminal fine described in each such article. The preceding Paragraph shall apply to Foreign Banks. This is a provision of liability of legal persons. (§26 I,II,IV)
- B. Article 16, Paragraph 1 of the Money Laundering Control Act: When a representative, agent, employee, or other employed personnel of a legal person commits an offence listed in the preceding two Articles when performing his or her duties of employment, the offender shall be punished and the legal person shall be charged with a fine in accordance with relevant provisions. Thus, Taiwan has provisions in place regarding the criminal liability of legal persons for money laundering. When civil servants in Taiwan accept bribes, embezzle public or non-public property, or obstruct justice, provisions regarding criminal liability of legal persons do not apply, but there are civil liability provisions that provide relief. (§26 I,II,IV)
- C. Article 49, Paragraph 5 of the Act Governing Food Safety and Sanitation stipulates: Where the representative of a legal entity or the agent, employees or other practitioners of a legal entity or natural person that commit offenses from Paragraphs 1 to 3 during the performance of duties, not only is the wrongdoer to be punished but the legal entity or natural person is also fined no more than ten times the fine stipulated in the respective preceding paragraphs. Thus,

Taiwan's Act Governing Food Safety and Sanitation contains provisions regarding the criminal liability of legal persons. (§26 I,II,IV)

(2) Civil liability (§26 I,II)

Article 26 and Article 28 of the Civil Code stipulate that legal persons bear civil liability for violations of their obligations under civil law. (§26 I,II)

(3) Administrative liability (§26 I,II)

The Administrative Penalty Act contains general provisions on administrative penalties in Taiwan's administrative laws. The main points of legal liability of legal persons for violations of obligations under administrative law are regulated by the provisions of the applicable administrative laws. When an administrative organ imposes a sanction, the principles of proportionality and discretion are to be observed, as set forth in Articles 7 and 10 of the Administrative Procedure Act. Article 7, Paragraph 2 of the Administrative Penalty Act defines punishable behavior of legal persons as acts that are committed willfully or negligently, or acts to be equated with those, by their representatives, administrators, other persons with representation rights, staff members, employees, or workers.

(4) The legal liability of a legal person may not affect the criminal liability of a natural person who committed the offense concerned. (§26 III)

(5) The Administrative Penalty Act provides general rules on administrative penalties. According to Articles 3 and 7 of the act, a private-sector legal person may be the object of a penalty for an act of breach of duty under administrative law through acts that are committed willfully or negligently, or acts to be equated with those, of persons with representation rights, substantive employees, employees, or workers. (§26 III)

(6) A legal person liable under this article is liable to criminal or non-criminal penalties that are effective, proportionate, and deterrent (§26 IV)

A. A new confiscation chapter has been added to the Criminal Code. As of July 1, 2016, Article 38 (1) states: Proceeds of the crime that belong to the offender shall be confiscated. If there are special provisions, these special provisions shall be followed. Proceeds of crimes obtained by natural persons, legal persons or an unincorporated body other than the offender under one of the following conditions shall be confiscated: ... The addition of natural persons, legal

persons, and unincorporated bodies bridges the gaps in the old law, which limited confiscation to natural persons, rendering it impossible to confiscate criminal proceeds from legal persons, such as in the Datong case (2015, Tai-Fei-Zi, No. 269). With the amendment to the law, the legal effects of the liabilities of legal persons have become regulated in the Criminal Code. (§26 IV)

B. Other relevant norms include, for instance, Article 127-4 of the Banking Act of the Republic of China, which stipulates: Although punishment is to be imposed on the responsible person in accordance with other provisions, in the event that the responsible person, agent, employee or a staff member of a legal entity commits any of the offenses punishable under Article 125 through Article 127-2 of this Act, the legal entity shall also be punished by the administrative fine or criminal fine described in each such article. (§26 IV)

#### **58. Policy (§26)**

- (1) Other corruption prevention measures relating to legal persons, their liabilities, and future policy directions are described in Article 12 of the report.
- (2) To strengthen corporate governance, some provisions of the Company Act have been adjusted and amended, with the most important amendments including provisions relating to de facto directors and/or shadow directors of non-publicly traded companies, inclusion of limited companies under the principle of Piercing the Corporate Veil, the right of directors of joint-stock limited companies to inspect, copy, or photocopy business, financial status, and accounting documents at any time to carry out their business; relaxation of procedures for convening the Board of Directors; enlarging the inspection scope of the inspectors and specific internal transaction documents of companies; adding corporate governance professionals; abiding by international money laundering prevention; and other norms—all by way of response to the challenging requirements from the emergence of a new economic development model and the rapid development of innovative businesses and the restructuring of the economy. (§26)

### **Article 27. Participation and attempt**

#### **59. Legal norms (§27)**

Taiwan's legal norms include participation and attempts. For instance:

- (1) Article 28 of the Criminal Code provides that each of the two or more persons acting jointly in the committing of an offense is a principal offender. Furthermore, Article 29 provides: A person who solicits another to have committed an offense is a solicitor. A solicitor shall be punished according to the punishment prescribed for the solicited offense. Finally, Article 30 provides: A person who aids another in the commission of a crime is an accessory. These articles satisfy the requirements of Article 27 of the UNCAC requiring that State Parties establish participation as accomplice, assistant, or instigator as criminal offenses in accordance with the convention. (§27 I)
- (2) The penalty provisions of Article 25 of Criminal Code of the Republic of China regarding attempts to commit an offense and Article 27 regarding the reduction or remittance of penalties for voluntarily suspended attempts; Article 4, Paragraph 2, Article 5, Paragraph 2, and Article 6, Paragraph 2 of the Anti-Corruption Act also stipulate clear penalties. (§27 II)
- (3) Articles 87 to 91 of the GP Act prescribes the penalties for attempts to commit an offense of collusion, bid rigging and disclosing of confidential information. (§27 II)
- (4) Articles 14 and 15 of the Money Laundering Control Act stipulate: Anyone involved in money laundering activities prescribed in the paragraphs in Article 2 shall be sentenced to imprisonment of no more than seven years; in addition, a fine of no more than NT\$50,000 shall be imposed. In the event of the following circumstances, if anyone accepts, possesses, or uses the property or the benefits of the property without a reasonable account of the origin of such assets, and if his or her income is obviously disproportionate to the size of such assets, an imprisonment of no less than six months and no more than five years shall be imposed, and a fine of no more than NT\$5 million may also be imposed: 1. Opening accounts at financial institutions in other people's names or under a false name. 2. Getting hold of accounts opened by others at financial institutions via improper means. 3. Avoiding anti-money laundering procedures described in Articles 7-10. These articles provide clear penalties for money laundering attempts. (§27 II)

#### **60. Policy (§27)**

Taiwan's Criminal Code currently fully satisfies the penalty requirements of Article 27 of the

UNCAC, and Taiwan will closely follow discussions of the norms of this article.

## **Article 28. Knowledge, intent and purpose as elements of offenses**

### **61. Legal norms (§28)**

Taiwan's legislation is in line with the knowledge, intent, and purpose as elements of offenses as set forth by the UNCAC. The large majority of criminal offenses described in the Criminal Code are all intentional crimes. Therefore, in criminal legislation, these offenses are constituted of subjective unlawfulness and intent. Only the General Provisions Chapter of the Criminal Code contain a different definition of subjective mind, dividing intent into direct intent (definitely intentional) and indirect intent (not necessarily intentional or not clearly intentional). Article 13, Paragraph 1, of the Criminal Code states: An offense is committed intentionally if the actor knowingly and intentionally causes the accomplishment of the elements of an offense. This describes direct intent. Paragraph 2 of the same article states: An offense is considered an intentional commission of an offense if the actor is aware that the act will accomplish the elements of the offense and if such accomplishment is not against his will. This describes indirect intent. In addition to unlawfulness and intent, the offender must have the statutory intent, being the intent to commit an unlawful act. Therefore, the actor must have the active and direct intent as necessary elements for constituting an offense. In addition, according to the rules of evidence of the Code of Criminal Procedure of the Republic of China (Code of Criminal Procedure), objective facts and circumstances may be used to deduce subjective intent. (§28)

### **62. Important Cases (§28)**

- (1) The Supreme Court's Verdict 2017 Tai-Shang-Zi No. 1628 puts forward a description of using objective facts and circumstances to deduce subjective intent: ... On the basis of the power of selected evidence, the court has the discretionary power and authority of judgment to arrive at judgments that are not inconsistent with the life experiences of ordinary people or laws of morality. In its verdict, it must state its reasoning, for it cannot arbitrarily accuse a person of an unlawful act. The reasoning may serve as the grounds for an appeal to a court of third instance. The difference between attempted murder and assault is whether or not at the time of the



assault the offender had the intention to murder the victim. The comprehensive observation and judgment of their overall motives, the type of weapon used, the body parts injured, the circumstances of the assault, the severity of the victim's injuries, the encounter between the parties, their responses, and such factors, are all necessary to assess the situation. (§28)

- (2) The Supreme Court's Verdict 2014 Tai-Shang-Zi No. 564 puts forward another description of using objective facts and circumstances to deduce subjective intent: ... The subjective elements of crime, such as intent, negligence, knowledge, criminal objective (intent), etc., all exist in the mind of the actor. With the exception of confession, usually several, external, objective, and connected pieces of evidence must be relied upon and examined in their entirety and in relationship to one another in order to arrive at accurate evidence of [the actor's] mind. Therefore, a court assessing the facts must synthesize all direct and indirect evidence, and reasonably infer from rules of experience and rules of theory to determine its choice. Keeping all pieces of evidence separate and assessing them individually does not conform to the rules of reason. (§28)

## **Article 29. Statute of limitations**

### **63. Legal norms (§29)**

- (1) The Criminal Code sets out time limits for the right to prosecute crimes. Article 80 stipulates: Prosecution is barred by limitation if not exercised within the following periods: 1. Thirty years for an offense that carries the maximum principal punishment of death or imprisonment for life or for no less than ten years. 2. Twenty years for an offense that carries the maximum principal punishment of imprisonment for no less than three years and the maximum punishment for less than ten years. 3. Ten years for an offense that carries the maximum principal punishment of imprisonment for no less than one year but no more than three years. 4. Five years for an offense that carries the maximum principal punishment of imprisonment for less than a year, short-term imprisonment, or a fine. The right to prosecute is the right of the Prosecutors Office or the victims of a crime to request the court to confirm the existence and scope of state penalties [with regard to the alleged crime]. Therefore, the right to prosecute expires when prosecutors or crime victims do not put forward an accusation (prosecution) within the

deadline. Before prosecution, the court cannot, under the principle of no trial without charge, confirm the existence and scope of such state penalties. Conversely, after an accusation has been brought forward, the right of prosecution has been availed of, and in principle, no time limit applies from that point onward. Under current law, the longest statute of limitation is 30 years. Article 83 of the Criminal Code furthermore stipulates that the period of limitation of prosecution terminates with the initiation of prosecution, the suspension of investigation by law (such as Article 261 of the Code of Criminal Procedure), or to a case where the offender has escaped and has been put on the wanted list (see Articles 84 to 87 of the Code of Criminal Procedure). Among these, an escaped offender on the wanted list as a reason terminating the limitation of prosecution is in line with the UNCAC regarding statutes of limitations, which states where the alleged offender has evaded the administration of justice [a longer or suspended statute of limitations may be provided]. (§29)

- (2) Article 40 of the Criminal Code sets forth the statute of limitations for confiscation under the new system: When multiple confiscations have been pronounced, all of such confiscation judgments shall be executed. Confiscation exceeding the statute of limitations specified in Article 80 shall not be executed, except for contraband or unless otherwise specified. This also applies to subjects of confiscation outside the territory of the Republic of China and 5 years after the statute of limitations specified in the preceding paragraph has expired. If confiscation has not been executed or punctually executed over 10 years upon the date judgment is finalized, it shall not be executed. (§29)

#### 64. Policy (§29)

At present, statutes of limitation are in place. Extensions for serious corruption still require assessment, investigation, discussion, and study to arrive at consensus in society. Furthermore, regarding major offenses against humanity, the Ministry of Justice Criminal Code Amendment Task Force has submitted the text No statute of limitations applies to serious crimes punishable by the death penalty, life imprisonment, or fixed-term imprisonment of not less than ten years, where the crime concerned has resulted in death to the Executive Yuan for review. (§29)

### **Article 30. Prosecution, adjudication and sanctions**

**65. Legal norms (§30)**

- (1) To achieve the multiple purposes or functions of protecting legal interests, suppressing and preventing crime, protecting human rights, and correcting people, the Criminal Code stipulates that the following basic and main principles must be complied with; the principles of legality of punishment, rule of law, guilt, proportionality, cautious punishment, and humanity. When prosecuting crimes according to law, prosecutors must follow these basic principles. Article 2 of the Code of Criminal Procedure also stipulates that public officials who conduct proceedings in a criminal case must give equal attention to circumstances both favorable and unfavorable to the accused. When prosecuting crimes, prosecutors must abide by due process of law. (§30)
- (2) Article 30, Paragraph 4 of the UNCAC guarantees the defendant's *habeas corpus* in criminal proceedings. The Code of Criminal Procedure provides for alternative methods to detention, such as release on bail, custody of another, or a limitation on his residence, i.e., bail paid or bail bond given, or detention of an assistant *ad litem* or another suitable person within the jurisdiction, to urge the defendant to timely appear before the court when summoned; or to restrict the defendant's current domicile to ensure that the defendant can be tried before the court, as provided in Articles 101-2, 108 to 111, 113 to 116, 116-2, 117, and 117-1 of the Code of Criminal Procedure. (§30)
- (3) In order to ensure that a defendant who has not been detained, suspended, or remanded in custody can be tried in court, Article 101-2 of the Code of Criminal Procedure provides for bail, custody of another, or a limitation on his residence. Articles 113, 115, and 116 of the same law stipulate that if an application for suspension of detention is permitted, the accused must be released upon receipt of the bail bond or bail. Article 116-2, Paragraph 1 stipulates that in granting the suspension of detention, the court may set conditions to be complied with by the accused, such as periodically reporting to the court or public prosecutor. Furthermore, if a defendant whose detention has been terminated fails to appear before court without good reason, violates the limitations on his residence, new facts or fears of escape arise, or violates the order to periodically report to the court or public prosecutor, that defendant may be detained again. Article 6, Paragraph 1, Subparagraph 3 of the Immigration Act also stipulates that the judicial authorities may restrict [Taiwanese citizens or foreign nationals] from going

abroad. (§30 I-IV)

- (4) Prisoners' parole cases pursuant to Article 77, Paragraph 1 of the Criminal Code and Article 81, Paragraph 1 of the Prison Act mention circumstances of the offense, behavior in prison, and risk of recidivism as reference standards for the approval of parole. (§30 V)
- (5) Article 12, Paragraph 3, Subparagraph 4 of the Civil Service Performance Evaluation Act stipulates that in cases of serious corruption with large administrative liability and substantiated evidence, two major demerits must be given at one time, which leads to dismissal from employment. Article 18 of the same law and Article 24 of the Enforcement Rules of the act stipulate that the dismissal from employment is suspended until it has been confirmed. (§30 VI)
- (6) Article 21 of the Civil Service Pay Act stipulates that those being suspended from post in accordance with laws shall be given half of the basic pay (seniority pay) during the suspension. The leadership of a civil service prosecuted for dereliction of duty will adhere to the principle of presumption of innocence and consider the degree of the civil servant's dereliction of duty, the circumstances of the case, and the type and size of losses in determining whether half of the basic pay (seniority pay) is paid during suspension. (§30 VI)
- (7) Article 28, Paragraph 1, Subparagraph 4 of the Civil Service Employment Act stipulates that persons who, while in a civil service position, have been convicted of graft or corruption-related offences or are wanted for such offenses and whose prosecution is unresolved, may not be employed as civil servants. Article 9, Paragraph 1, Subparagraph 4 of the Regulation Governing the Appointment of Personnel of Agencies under the Ministry of Economic Affairs stipulates that any former public servant found guilty of corruption or embezzlement or being wanted may not be appointed or seconded to the agencies governed by the regulation. (§30 VII)
- (8) Article 79 of the Local Government Act stipulates that elected local officials, councilors, and representatives must be relieved of their positions and powers after a verdict has become final. In addition, Article 26 of the Civil Servants Election and Recall Act stipulates that those who have committed crimes of embezzlement or election bribery cannot be registered as candidates and are barred from standing for election. (§30 VII)
- (9) Any public servant who commits a criminal offense under a law must be punished according to

the penal provisions of the same law. If the offense involves losses, the public servant is assessed and appropriately penalized under the Civil Service Performance Evaluation Act, and may be suspended or moved under the Public Functionaries Discipline Act. These provisions do not preclude the competent authority from exercising its disciplinary powers over the civil servant concerned. (§30 VIII)

(10) The Rehabilitation Protection Act stipulates that those who meet the criteria of Article 2 of the same law must be given, according to their individual circumstances and needs, such services as employment, medical treatment, outplacement coaching, education, skills training, emergency assistance, travel subsidies, subsidized accommodation, accompaniment from home and back, assistance with household registration, business start-up loans, community visits and tracking, family support, or referrals to relevant agencies/organizations to help the person rehabilitate and reintegrate into society and prevent recidivism. (§30 X)

(11) Article 1 of Prison Act states that the purpose of imprisonment and custody is to encourage and assist an inmate in reforming and adapting to social life. (§30 X)

(12) In order to assist convicts and inmates return to society, the Association of Rehabilitation Protection assists persons that meet the criteria of Article 2 of the Rehabilitation Protection Act according to their individual circumstances and needs, with such services as employment coaching, medical assistance, placement in sheltered workplaces, education support, skills training, emergency assistance, travel subsidies, subsidized accommodation, accompaniment from home and back, assistance with household registration, business start-up loans, community visits and tracking, family support or referrals to relevant agencies/organizations, as well as through living arrangements with relatives, visits to their home town and relatives, autonomous work outside prison, or social service outside prison to help the person rehabilitate and reintegrate into society and prevent recidivism. (§30 X)

(13) Article 2 of the Rehabilitation Protection Act states: The following individuals may be protected:

1. Prisoners released from prison after serving the full term, or absolved, of a sentence.
2. Prisoners released on parole, on bail, or on bail for medical treatment.
3. Prisoners released after serving the full term of correctional punishment, or being absolved of the correctional punishment.
4. Juvenile delinquents who have served the full term of reformatory.
- 5.

Defendants exempted from prosecution under Article 253 of the Code of Criminal Procedure or Article 147 of the Military Justice Act. 6. Defendants exempted from punishment or from service. 7. Defendants whose sentences have been suspended. 8. Defendants for whom the execution of imprisonment has been suspended or whom the prisons have rejected. 9. Juveniles serving juvenile probation service. 10. Juveniles under protective restraint. (§30 X)

**66. Important Cases (§30)**

- (1) Former deputy magistrate of Taoyuan County and director of the Office of Building Administration of Taoyuan Mr. Yeh X was charged with accepting a NT\$4 million bribe from Mr. Zhao X related to the construction of the A7 Affordable Housing Project in Linkou during his tenure as director in 2011. In April 2016, the Supreme Court of the Republic of China (Supreme Court) sentenced him to seven years in prison for accepting bribes and dereliction of duty. (§30)
- (2) Mr. Zhuang X, former vice chairman of Central Motion Pictures Corporation, was charged with abusing the company chairman Mr. Cai X's overseas trips by gradually misappropriating nearly NT\$750 million under the pretexts of land development funds and purchasing of office buildings. The Supreme Court sentenced Mr. Zhuang to a cumulative sentence of eight years and six months for forgery of securities and forgery of documents. (§30)
- (3) The founder of a famous Taiwanese construction company with private assets of more than NT\$1.7 billion repeatedly allegedly offered bribes to public officials. He was detained on suspicion of bribing a deputy magistrate of a county government. While the case was under investigation, he was released on a bail of NT\$30 million, with home confinement, and agreed to periodically report to the police. However, the founder was later suspected of bribing officials of the central construction unit, local councilors and representatives, and reporting untruthful corporate earnings, and was detained again. After this second investigation, the founder was released on a bail of NT\$550 million with home confinement. (§30)

**67. Policy (§30)**

- (1) The application of parole is subject to consideration of offenses committed, behavior in prison, and risk of recidivism as set forth in Comprehensive Review of Parole Standards. If the criminal proceeds have been recouped and there is no risk of recidivism due to loss of status or qualifications, parole may be given a lenient review. (§30 V)

- (2) The reinforcement of confiscation policies and the expansion of confiscation are described in Units b) and c), Section 4, Chapter II of the General Discussion and under Article 31 of the report.
- (3) In 2017, the National Congress on Judicial Reform convened by the Office of the President arrived at a consensus regarding promoting the participation of citizens in the criminal trial system. After breakout meetings, the vote for a (lay) assessor judge system versus a jury trial system was 7:7. As there was no plenary discussion on the subject, a model was not determined. Thus, as the final decision maker, the Judicial Yuan was charged with studying various systems of public participation in criminal trials; the study started June 29, 2017. After 18 intensive discussions, a press conference was held in November to announce the first draft of the Directions for Citizen Participation in Criminal Trials. Except where provided otherwise, the procedural provisions of the directions apply to the Code of Criminal Procedure and other laws (see Article 4 of the draft). Since then, the Judicial Yuan has held public hearings, moot court sessions, and information sessions to solicit opinions from society. After the draft was approved by the Judicial Yuan, it was submitted to the Legislative Yuan for consideration.

## **Article 31. Freezing, seizure and confiscation**

### **68. Legal norms (§31)**

- (1) The reinforcement of the money laundering prevention mechanism and the expansion of confiscation are described in Units b) and c), Section 4, Chapter II of the General Discussion.
- (2) Article 38 of the Criminal Code stipulates that the proceeds of crime and the tools of crime must be confiscated. Article 133 of the Code of Criminal Procedure provides that a thing that can be used as evidence or is subject to confiscation may be seized. Article 13 of the Money Laundering Control Act stipulates that during an investigation, the Prosecutor may request that the court freeze specific transactions involving money laundering in order to safeguard against future confiscations of criminal proceeds. Article 10 of the Anti-Corruption Act provides related rules for criminal proceeds. The Human Trafficking Prevention Act contain provisions regarding preservation and confiscation to ensure recovery of criminal proceeds. The Directions for the Administration, Consignment, and Use of Confiscated Criminal Proceeds from Money

Laundering contain provisions on the confiscation of property. (§31 I-VI)

- (3) Article 10 of the Anti-Corruption Act, Article 18 of the Money Laundering Control Act, Article 171, Paragraph 7 of the Securities Exchange Act, and Article 71-1 of the Act Governing Bills Finance Business all contain provisions regarding the recovery of criminal proceeds. Article 10 of the Anti-Corruption Act stipulates: For offenses prescribed in Articles 4-6, suspicious property and valuables of the offender, his/her spouse and their minor children acquired within three years of the offense shall be regarded as criminal gains if the defendant cannot prove the legality of their sources upon the request of the prosecutor during investigation or under the order of the court during the judiciary proceedings. (§31 I-VI)
- (4) Article 133, Paragraph 3 of the Code of Criminal Procedure stipulates that courts and prosecutors may order financial institutions to submit bank, financial, or business records (§31 VII)
- (5) Article 48, Paragraph 2 of the Banking Act of the Republic of China and Financial Supervisory Commission Letter Jin-Guan-Yin No. 09510002020 of May 23, 2006 provide that organs with statutory investigation powers such as law enforcement, courts martial, taxation, supervision, and auditing may exclude the limitations of the obligations of bank secrets. For instance, the Code of Criminal Procedure, Code of Civil Procedure, and Compulsory Enforcement Act contain provisions allowing for written requests to banks related to an investigation to assist with the inspection of their customer's savings, deposits, safe deposit boxes, and other information. (§31 VII)
- (6) Article 6-1 of the Anti-Corruption Act stipulates that a public servant suspected of corruption has the obligation to clarify an unusual increase in property or the sources of such property. The scope of the crime under investigation may be appropriately expanded, the identification of the unusual increase of the property may be relaxed, and the penalty slightly increased. (§31 VIII-X)

#### **69. Important cases (§31)**

Since the implementation of the new system of confiscation in Taiwan in July 2016, the prosecutors offices have submitted to the courts confiscation requests totaling more than NT\$60 billion. This amount includes the separate confiscation cases of criminal proceeds of



defendant Wang X, which had flowed to third party Ye X. After the Taipei District Prosecutors Office had requested the Taipei District Court to grant intensive hearings, the court ruled that criminal proceeds to the amount of US\$900,146,887.18 (NT\$27.355 billion) must be confiscated, reflecting the core of the new system. (Ministry of Justice [Department of Prosecutorial Affairs] §31I-VI)

**70. Policy (§31)**

(1) Chapter 5-1 on Confiscation of the Criminal Code, the general provisions on seizure under Article 133 sqq., and Chapter 7, Section 2 on Special Procedures for Confiscation of the Code of Criminal Procedure all took effect on July 1, 2016. All laws related to confiscation which took effect before July 1, 2016 are no longer in use, and the new system is followed in order to satisfy the requirements of Article 31 of the UNCAC, which stipulates that each state party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation. In consideration of the victim's rights, Article 38-1, Paragraph 5 of the Criminal Code stipulates that for proceeds of crime that have actually been returned to the victims, no declaration of confiscation will be made, and Article 473 of the Code of Criminal Procedure stipulates that where a rights holder requests the return of confiscated object within one year of the execution, the prosecutor must return such items to guarantee the victim's rights. Furthermore, study of amendments to the law is on-going, such as an amendment of Article 171 of the Securities and Exchange Act to protect the rights of the majority of victims in class action suits. The Banking Act of the Republic of China, Financial Holding Company Act, Credit Cooperatives Act Of The Republic of China (Credit Cooperatives Act), Trust Enterprise Act, Act Governing Bills Finance Business, Securities Investment Trust and Consulting Act, and Insurance Act have all been amended. Furthermore, Article 34 of the draft Act on Mutual Legal Assistance in International Criminal Matters regulates returns or payments to foreign nationals through foreign governments as well as conditions and timeframes for confiscation and tracking of property. This demonstrates Taiwan's efforts in confiscation and consideration given to the rights and interests of victims. (§31)

(2) The draft Act on Mutual Legal Assistance in International Criminal Matters provides assistance to foreign governments in confiscating and tracking criminal proceeds in Taiwan. This law sets

out the methods for sharing the criminal proceeds of criminal proceeds confiscated through transnational cooperation (Article 33). The draft provides for the enforcement of foreign verdicts regarding confiscation and sets forth procedures for foreign countries to request that Taiwanese courts assist with the execution of confiscation (Articles 23 to 28). The draft also contains provisions regarding the seizure, confiscation, and return of stolen goods. With regard to returning a stolen good or paying its equivalent value to a foreign national, when it is impossible or difficult to make such a return, the draft stipulates that Taiwan requests the foreign government concerned to return the stolen good or pay its equivalent value to the national (Article 34). The draft also contains provisions regulating mutual legal assistance in criminal matters between the Taiwan Area and the Mainland Area, and between the Taiwan Area and Hong Kong and Macao (Articles 35 and 36). (§31)

## **Article 32. Protection of witnesses, experts and victims**

### **71. Legal norms (§32I,II,III)**

- (1) Article 11, Paragraph 5, Article 12, Paragraphs 1 and 2, and Article 13, Paragraph 1 of the Witness Protection Act stipulate that when the life, body, or freedom of a witness or a person who is closely related to such witness is in danger, or their places of living or working need to be changed, the court or prosecutor may immediately order the judicial police agency to assign a police officer to offer personal protection or designate a settlement agency to offer comprehensive assistance. The crimes listed under the criteria of Article 2 comprise those covered by the Anti-Corruption Act to satisfy the requirements of Article 32 of the UNCAC. Article 15, Paragraph 1 stipulates that the provisions set forth in this act also apply to the informant, reporter, complainant or victim. (§32I,II)
- (2) Article 12 of the Agreement on Mutual Legal Assistance in Criminal Matters between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States (AIT-TECRO Mutual Legal Assistance Agreement), Article 10 of the Agreement on Mutual Legal Assistance in Criminal Matters between the Taipei Economic and Cultural Office in the Philippines and the Manila Economic and Cultural Office in Taiwan (Taiwan-Philippines Criminal Legal Mutual Assistance Agreement) regulate mutual legal assistance in criminal

matters. In the future, similar agreements with other countries are expected to be concluded and implemented. (§32 III)

- (3) Article 271, Paragraph 2 and Article 271-1 of the Code of Criminal Procedure provides that the victim or his/her family is given the opportunity to state their views. Article 344, Paragraph 3 of the Code of Criminal Procedure provides that where a complainant or victim disagrees with the judgment of a lower court, he/she may request that the prosecutor appeal with specific reasons given. Article 253-2 on deferred prosecution, Article 255 on non-prosecution, Article 451-1 on summary sentencing, and Article 455-2 on the bargaining process all contain norms that give the victim opportunities to express and request consideration for his/her opinions and concerns. (§32 IV-V)
- (4) Under Article 98, Paragraph 1, Subparagraph 4 of the Medical Care Act, the Medical Review Committee of the Ministry of Health and Welfare is entrusted with conducting assessments commissioned by the judiciary or prosecutorial authority as one of its various assessment duties. The review opinions are issued under the name of the committee rather than as opinions from individual experts. The authorities do not use natural persons as experts. (§32)

**72. Policy (§32 I,II)**

- (1) Taiwan does not have regulations regarding experts. The protection of experts will be included in future studies and proposals. (§32 I,II)
- (2) Mutual legal assistance in international criminal law enforcement requires assurances of reciprocity and guarantees regarding the use [of intelligence shared] to ensure smooth facilitation of testimony, representations, expert opinions, or other assistance in Taiwan as requested. Taiwan does not punish any of the persons mentioned above when he or she refuses to go to a place, or does not go to a place, or refuses to make a statement after going to a place, nor does it restrict their personal freedom or their exit from the country; or provide assistance with testimony about other matters, representations, expert opinions, or other assistance; or prosecute, detain, punish, restrict exit, or other measures for any offense before entering the country. If the requesting party requests Taiwan to exempt the aforesaid personnel from the previous obligations or responsibilities, the Ministry of Justice will use an appropriate format, under Article 32 of the draft Act on Mutual Legal Assistance in International Criminal

Matters, to state the limitations of the abovementioned guarantees from the Taiwanese agency concerned and to stipulate that the content of the guarantee must not be violated. (§32 I,II)

### **Article 33. Protection of reporting persons**

#### **73. Legal norms (§33)**

- (1) Article 15, Paragraph 1 of the Witness Protection Act stipulates that the protections of the act apply to informants, reporters, complainants, and victims if needed. (§33)
- (2) Article 18 of the Anti-Corruption Act stipulates that informants that expose cases of corruption and dereliction of duty should be rewarded and protected. The Anti-Corruption Informant Rewards and Protection Regulation provides the reward and protection mechanism for informants in corruption and dereliction of duty cases. (§33)
- (3) Article 18 of the Directions for Handling People's Petition Cases by Organs under the Executive Yuan stipulates that if a people's petition cases require confidentiality, the accepting organ must keep it confidential. The directions uniformly regulate the basic protection measures to safeguard the identities of informants. (§33)
- (4) Article 11 of the Directions Regarding the Rewards for Illegal Financial Cases Reported by the People to the Financial Regulatory Commission stipulates that the organization receiving information [on financial irregularities] must keep confidential any information that may identify the informant and must take appropriate measures according to the law to protect the safety of the informant and involve the police authorities if necessary. (§33)

#### **74. Policy (§33)**

- (1) The structure of Taiwan's draft Whistleblower Protection Act, which only regards the public sector, includes protection measures to keep the whistleblower's identity confidential, protect their personal safety, and safeguard their employment. To date, the protection of whistleblowers in the private sector has not yet been regulated by a specific law, but laws such as the Labor Standards Act, Occupational Safety and Health Act, Act Governing Food Safety and Sanitation, and Water Pollution Control Act contain provisions regarding informants in the private sector that provide protections to keep confidential their identity, safeguards to their working rights, reduction or remittance of criminal liability, prohibitions against improper

measures against informants, invalidation of retaliatory acts, informing rewards, and compensation of litigation costs. The Ministry of Justice will as soon as possible collect views from every sector of society to study and formulate a single dedicated law to cover every sector, which law will require the competent authorities in charge of various industries to formulate measures specific to the industries under their remit to protect whistleblowers that serve the public interest. Or alternatively, the competent authorities in charge of various industries will have to pursue legislation to regulate the protection of whistleblowers within their regulations in ways that suit the circumstances of the industries concerned. (§33)

- (2) The FSC is considering incorporating whistleblower complaint channels and related protection mechanisms into the norms for internal control measures for the banking, financial holding, securities, and insurance industries, as well as into future inspection items in order to urge the financial services industry to treat whistle-blowers and complaints properly, protect whistleblowers' rights and interests, and promote enhanced corporate governance in the financial industry. (§33)

## **Article 34. Consequences of acts of corruption**

### **75. Legal norms (§34)**

- (1) The GP Act sets forth the measures governing illegal (including corruption) conducts of suppliers, including confiscation or recovering of a bid bond; confiscation of performance bond, not awarding contracts to unqualified tenderers, revoking awards, terminating or rescinding contracts, deducting illegal benefits, publishing the value of tender on the Government Procurement Gazette for debarment for one or three years (Articles 31, 32, 50, 59, 101, 102, 103 of the GP Act). Suppliers and personnel involved in bid collusion, bid rigging, or disclosure of confidential information are criminally liable (Articles 87 to 92 of the GP Act). In consideration of the rights and interest of bona fides third parties, Article 58 of the Enforcement Rules of the GP Act specifies the proceeding means after revoking the award or rescinding the contract pursuant to Article 50 of the GP Act. (§34)
- (2) In terms of corrupt practices of government agencies, Article 117 of the Administrative Procedure Act provides that the authority rendering an unlawful administrative disposition or

its superior authority, apart from certain circumstances in which withdrawal is prohibited, may withdraw the disposition in whole or in part within two years from the date when the authority becomes aware of the existence of a reason for withdrawal (in conjunction with Article 121). If the administrative disposition is lawful, however, the law or regulation or if the facts based on which the administrative disposition was rendered have undergone changes to the extent that the disposition would result in detriment to the public interest if not revoked, or revocation is intended to prevent or eliminate material detriment to the public interest, the authority rendering the disposition may revoke its disposition within two years from the occurrence of the cause of revocation (in conjunction with Articles 123 and 124). Where the authority withdraws or revokes its disposition with retroactive effect, the legal reasons behind the benefits to affected persons cease to exist, and therefore the authority is entitled, based on Article 127, to demand repayment from the persons that benefited from the original disposition. (§34)

- (3) Article 135 sqq. of the Administrative Procedure Act set forth the norms for the conclusion of an administrative contract by an administrative organ. Articles 141 to 143 describe the circumstances where an administrative contract is not valid, while Article 149 provides that matters relating to administrative contracts not provided for in this Act shall be governed by provisions of the Civil Code as applicable *mutatis mutandis*. Therefore, if an administrative organ concludes an administrative contract with a person, and acts of corruption impact its validity, the validity must be determined based on the concrete circumstances in the light of the provisions given by the Administrative Procedure Act and the Civil Code. (§34)
- (4) Article 10 of the Anti-Corruption Act stipulates that for offenses prescribed in Articles 4-6, suspicious property and valuables of the offender, his/her spouse and their minor children acquired within three years of the offense shall be regarded as criminal gains if the defendant cannot prove the legality of their sources upon the request of the prosecutor during investigation or under the order of the court during the judiciary proceedings. Article 38-1, Paragraph 5 of the Criminal Code provides that proceeds of crime legally returned to the victim shall not be confiscated or collected. According to the above provision, if criminal proceeds in a corruption case are the property of a victim, they must be returned to the victim. (§34)

- (5) The new version of the “Criminal Code” specified that only criminal offenders and malicious third parties are the subjects of seizure and forfeiture, not the bona fide third parties, as the rights of bona fide third parties have been duly protected. Malicious third parties are, as stated in Paragraph 2, Article 38-1 of the “Criminal Code,” natural persons, legal persons or non-legal person entities. Where the disputes related to malicious third parties may not be malicious per se, Chapter VII-II (From 12 of Article 455 onward) of the “Code of Criminal Procedures” also regulate the special procedures for the forfeiture of third parties, so that the rights of third parties in the litigation procedure are properly protected.
- (6) Mechanisms for seizure, confiscation, and return to victims are described under Article 31 of this report.

#### **76. Policy (§34)**

- (1) In 2017, the National Congress on Judicial Reform adopted a resolution to merge the offense of dereliction of duty in the Anti-Corruption Act and the Criminal Code (constituent elements and penalties). The Ministry of Justice will take a proactive and thorough approach to protecting the rights of *bona fide* third parties. (§34)
- (2) The Executive Yuan reviewed and approved the draft amendment to the Government Procurement Act on October 12, 2017. The draft amendment comprises aggravated punishment for bribery, including the expansion of applicable condition on the prohibition of inducing the procuring entity to sign a contract by giving unjust benefits to all tendering procedures, not limited to selective tendering and restricted tendering procedures; the amount of fines for giving unjust benefits has been doubled (Article 59 of the draft amendment); new additional circumstances with a three-year debarment where an supplier has offered, promised, or delivered unjust benefits to any person related to the procurement, the debarment period is three years (Article 101 of the draft amendment). (§34)

- 77.** The legal norms for and approaches of liability of legal persons are described under Article 26 of this report.

### **Article 35. Compensation for damage**

#### **78. Legal norms (§35)**

- (1) The State Compensation Law stipulates that the state bears liability for damages in the event that, by intent or neglect, state power has wrongfully infringed upon a person's liberty or rights. This law also contains provisions regarding the entities and procedures by which people may seek compensation from the state. After the state has paid compensation to a citizen for an infringement caused by intent or gross negligence of a public servant or by a fault in public works caused by corruption of a public servant, the public servant will be requested to pay for the compensation (Article 2, Paragraph 3 and Article 3, Paragraph 2). In addition, when a person or entity acts in the exercise of public power entrusted to perform public duties, that person or entity will be regarded as a public servant of the entrusting agency. If acts of corruption lead to unlawful exercise of public power and state liability for compensation, the agency bearing the liability to compensate will seek compensation from the entrusted entity or person under Article 4, Paragraph 2 of the same law. (§35)
- (2) Articles 1 and 2 of the Law of Compensation for Wrongful Detentions and Executions stipulate the circumstances and conditions under which people may seek compensation: where the prosecutor or the court has ruled that there is no cause for prosecution or a security disposition; the victim has not been prosecuted, punished, or given protective measures and treatment; a person has been physically confined before a final sentence of imprisonment or security disposition has been given by a judge; or a person has been unlawfully held in custody, detained, imprisoned, convicted, or restricted in his physical freedom through protective measures and treatment. (§35)
- (3) In the event that there is damage to the rights and interests of others caused by corruption in the private sector, the victim may, in the light of the actual circumstances, seek compensation for damage based on acts infringing his rights under the Civil Code (Articles 28, 184, 188 and 192 to 195) or non-performance of debt obligations (Articles 224, 226 to 227-1). (§35)

#### **79. Policy (§35)**

In order to strengthen government's rights to claim the reimbursement for compensation and to comply with the government compensation system, a draft amendment to the State Compensation Law has been drawn up, Article 9 of which states that a state compensation budget must be compiled by the central authorities of levels I and II. Article 7 provides that



when an authority is slow in exercising its reimbursement right, its superior authority may order it to do so within a certain period of time. If the authority still fails to do so, the superior authority may claim the right to reimbursement for compensation in its stead. Until the draft amendment has become law, the Ministry of Justice will continue to be the unit reminding the authorities to carry out compensation obligations. It will issue an Overview of New Compensation Incidents by Central Government Agencies to the Control Yuan for review. The Ministry of Justice will also request, semiannually, that the agencies concerned issue an Overview of Results of Review and Implementation of Claims, which it forwards to the Control Yuan for review. (§35)

## **Article 36. Specialized agencies**

### **80. Legal norms (§36)**

- (1) Taiwan has a number of specialized agencies. The Agency Against Corruption (AAC) handles the investigation and the preventing of corruption and related crimes. The Ministry of Justice Investigation Bureau (MJIB) handles the investigation of corruption, bribery in elections, prevention and control of serious economic crimes (including corporate corruption), and the investigation and prevention of money laundering. The prosecutors offices, based on the Code of Criminal Procedure, coordinate the personnel of the AAC, MJIB, and the police authorities to jointly investigate offenses set forth in the UNCAC and bring cases before the court. These authorities are referred to as law enforcement agencies under Article 37 of the UNCAC. (§36)
- (2) Refer to Section 3, Chapter II of the General Discussion — Anti-corruption system.

### **81. Important measures and practices (§36)**

- (1) Taiwan's Agency Against Corruption (AAC) was established on July 20, 2011, to serve as an agency in the prevention and fight against corruption. Prior to the establishment of the AAC, all civil service ethics offices would each relay gathered corruption evidence to the MJIB for intensified searches, following which requests for prosecution would be given to the prosecutors offices. The AAC was established on the idea of more innovative modes of corruption fighting. There is a system of current crime investigation and a system of prosecutors stationed in the AAC. Under the latter system, the Ministry of Justice selects prosecutors to the

AAC specifically charged with the investigation of corruption and related crimes. This enables earlier submission of cases [by the AAC] to the prosecutors, who employ a multi-tiered filtering and verification mechanism to develop more accurate and timely criminal evidence. Also, thanks to their coordinating role from the very beginning, the prosecutors have greater autonomy and less interference. (§36)

- (2) AAC is not the only specialized anti-corruption authority. The MJIB has been in charge of investigating corruption work since August 1956; and since 1991, the MJIB has also handled the investigation of bribery in elections. The Directions for Fighting Corruption and Liaising between the Ministry of Justice Investigation Bureau and the Agency Against Corruption, Ministry of Justice provide a matrix network and joint fights against corruption. By 2017, 364 cooperation cases had been carried out by the two parties. (§36)
- (3) In addition to carrying out anti-corruption investigations, the AAC coordinates and supervises civil service ethics offices [which are embedded in government agencies]. It also provides special skills training to civil service ethics personnel on how to investigate corruption and related crimes (e.g., annual and irregular planning and documentation, collecting of evidence, investigating and prosecuting operations, searches and seizures, government procurement cases, etc.) in order to strengthen the overall integrity of the government. The centralized supervision and personnel system also help maintain the independent position of civil service ethics officials in the exercise of their duties and powers. (§36)
- (4) Apart from investigating cases of corruption, the MJIB directs, during political elections, the Election Bribery Task Force that oversees field offices and stations to support prosecutorial personnel and to strengthen the investigation of bribery during elections. In addition, an Enterprise Anti-Corruption Section was established in 2014 with dedicated personnel specially charged with investigating corporate corruption to crack down on corruption committed by companies. (§36)

## **82. Policy (§36)**

Prosecutors offices at all levels, AAC, and MJIB are all tasked with conducting judicial investigations to fight corruption. The civil service ethics offices at all levels also carry out their statutory duties of administrative investigation of corruption cases. If corruption cases occur,

they may render mutual assistance, based on the Directions for the Exercise of Duties and Liaising between Prosecutors and the Judicial Police Authorities; Directions for Fighting Corruption and Liaising between the Ministry of Justice Investigation Bureau and the Agency Against Corruption, Ministry of Justice; and Directions for Civil Service Offices in Government Organs Regarding Cooperation with Investigations of Corruption Coordinated by the Agency Against Corruption, Ministry of Justice, in order to raise Taiwan's capacity to fight against corruption. (§36)

### **Article 37. Cooperation with law enforcement authorities**

#### **83. Legal norms (§37)**

- (1) Law enforcement agencies referred to by the UNCAC are described under Article 36 of this report.
- (2) Article 14 of the Witness Protection Act provides that a defendant or criminal suspect in a criminal case may cooperate with the prosecutor to mitigate or remit his or her sentence. (§37)
  - A. Paragraph 1 states: The sentence of any defendant or suspect who has committed or allegedly committed the criminal offenses set forth in Article 2 helps prosecutor to prosecute other principal offenders or accomplices by providing material testimony or evidence shall be reduced or exempted with the prosecutor's prior approval. Paragraph 3 of the same article states: If any defendant or suspect is not a principal offender or an accomplice in the criminal offenses set forth in Article 2 but has helped the prosecutor to prosecute other accomplices who have committed a more serious offense by providing material testimony regarding the accessory before the fact, accessory during the fact, and accessory after the fact, is prosecuted, his or her sentence may be reduced or exempted with the prosecutor's prior approval.
  - B. After considering the seriousness of the criminal offenses committed by the defendant or suspect, the injuries suffered by the victim, the importance of the serious crime prevention and the significance of the public interest, the prosecutor may assent to drop the charges against a defendant or suspect who is not a principal offender or an accomplice in the criminal offenses as set forth in Article 2 but helps the prosecutor to prosecute other

accomplices who have committed a more serious offense by providing material testimony regarding the accessory before the fact, accessory during the fact, and accessory after the fact.

C. Paragraph 2, Article 8 of the Anti-Corruption Act and Article 14-1 of the Witness Protection Act specifies the reduced sentence of an accomplice in a criminal liability case. This is a form of the so-called “Internal Conflict” for cases known as white-collar crimes under the law, or planned and strictly organized crimes committed by criminal groups that are generally hard to uncover and solve. For the effective combat of crimes to protect the country and society, and as encouragement for insiders to turn themselves in by acting as informants to uncover crimes committed by other members, magnanimity will be granted to these informants in the legal proceedings in exchange for the eradication of the criminal groups and the offenders in criminal justice. This arrangement is a matter of encouraging criminals to surrender themselves to and help to uphold criminal justice. This is a typical example of the collaboration between the public and the private sector.

(3) The protection of witnesses is further discussed under Article 32 of this report.

#### **84. Policy (§37)**

The first paragraph of Article 2 of the draft Act on Mutual Legal Assistance in International Criminal Matters provides: With regard to international mutual legal assistance in criminal matters, the treaty... Article 4, Paragraph 1, of the same draft provides: Providing or accepting the necessary assistance with criminal law enforcement procedures relating to investigation and trial... When this law has passed, Taiwan will have a legal basis in its internal system of law to conclude relevant agreements with foreign countries. In addition, under the existing legal system of Taiwan, the Mainland Area is not included under the abovementioned foreign governments, institutions, or international organizations. In line with the actual needs in the dispute between Taiwan and the Mainland Area regarding mutual legal assistance in criminal matters, as well as the current legal framework for cross-strait relations, and Article 3 (regarding communication bodies) of the Cross-strait Joint Fight against Crime and Mutual Legal Assistance Agreement (Cross-Strait Mutual Legal Assistance Agreement). Article 35 of the draft law provides that the Cross-Strait Mutual Legal Assistance Agreement applies mutatis

mutandis to requests for mutual legal assistance from or to the Taiwan Area or the Mainland Area, i.e. Taiwan's Ministry of Justice and the authorities in the Mainland Area. In addition, relations with Hong Kong and Macao are subject to the norms of the Laws and Regulations Regarding Hong Kong & Macao Affairs. In line with the current legal framework for relations with Hong Kong and Macao, Article 36 of the draft law provides that the Laws and Regulations Regarding Hong Kong & Macao Affairs applies mutatis mutandis to requests for mutual legal assistance from or to the Taiwan Area or Hong Kong or Macao, i.e., Taiwan's Ministry of Justice, via the Mainland Affairs Council, Executive Yuan and the authorities in Hong Kong and Macao. (§37)

### **Article 38. Cooperation between national authorities**

#### **85. Legal norms (§38)**

- (1) Articles 228 to 231-1 of the Code of Criminal Procedure regulate how public prosecuting affairs officials, judicial police officers and the judicial police must obey directions and instructions from the prosecutor in criminal investigations and report their findings to the prosecutor. Article 241 of the same law stipulates that a public official who, in the execution of his official duties, learns that there is suspicion that an offense has been committed, must report it. Article 247 provides that a public prosecutor may request from a competent public office any report necessary for an investigation. Lastly, Article 249 provides that if necessary, a public prosecutor may also request a nearby military officer to send troops for assistance. (§38)
- (2) Articles 9 and 10 of the Money Laundering Control Act stipulate that financial institutions (banks; trust and investment corporations; credit cooperative associations; credit departments of farmers' associations; credit departments of fishermen's associations; the Agricultural Bank of Taiwan; postal service institutions which also handle the money transactions of deposit, transfer and withdrawal; bills finance companies; credit card companies; insurance companies; securities companies; securities investment trust enterprises; securities finance enterprises; securities investment consulting enterprises; centralized securities depository enterprises; futures commission merchants; and trust enterprises) must report currency transactions equal to or above a certain threshold and suspect transactions to the MJIB in accordance with Articles

14 and 15 of the same law. (§38)

- (3) Articles 13 and 14 of the Anti-Corruption Act further stipulate that persons directly responsible for supervision, accounting, auditing, crime investigation, inspection, or government ethics and internal affairs discover acts of corruption have the obligation to report them. (§38)
- (4) The Regulation Governing the Exercise of Duties and Liaising between Procurators and the Judicial Police; Directions for the Combating of Corruption and Liaising between the Agency Against Corruption and the Ministry of Justice Investigation Bureau; and Directions for Civil Service Offices in Government Organs Regarding Cooperation with Investigations of Corruption Coordinated by the Agency Against Corruption, Ministry of Justice all serve to strengthen cooperation among government agencies. (§38)

**86. Important measures and practices (§38)**

- (1) The Economic Crime Prevention Conference is held annually, with the MJIB acting as the conference's secretariat. The interdepartmental conference brings together the Ministry of Justice (Department of Prosecutorial Affairs, Taiwan High Prosecutors Office), Ministry of the Interior (National Police Agency, National Immigration Agency), Fair Trade Commission, Ministry of Foreign Affairs (Bureau of Consular Affairs), Financial Supervisory Commission (Banking Bureau, Securities and Futures Bureau, Insurance Bureau, Financial Examination Bureau), Ministry of Economic Affairs (Department of Commerce, Intellectual Property Office) and other units around the theme of current economic crime and corporate corruption and with a focus on the prevention of serious economic crime (including corporate corruption). (§38)
- (2) The AMLD, Taiwan's financial intelligence unit (FIU), established under international anti-money laundering mechanisms, receives financial intelligence reported by financial institutions and designated non-financial institutions or their personnel. The AMLD analyzes, processes, and uses this information in accordance with the Money Laundering Control Act and also exchanges this information with FIUs of other countries. When analysis of financial intelligence newly received or already in its possession indicates a connection with the work of prosecutors, judicial organs, or the investigation of civil service ethics or corporate corruption, it will share, strictly for intelligence purposes and under demand of strict confidentiality, with the agencies concerned for reference in on-going cases. Prosecutors or other judicial organs may also, for the

purposes of investigating civil service ethics or corporate corruption, request that the AMLD provide financial intelligence on a particular target for a specific period of time or request that the AMLD assist with international transfer and exchange of financial intelligence. (§38)

- (3) In addition to reports made by virtue of Article 241 of the Code of Criminal Procedure, administrative organs must, when they develop suspicion of a crime during the exercise of their duties, request that the local judicial authority issue a search warrant in accordance with the law to search and seize information and evidence at the suspected venues. The legal basis may be found in Article 31 of the Tax Collection Act, Article 15 of the Tobacco and Alcohol Tax Act, Article 16 of the Labor Inspection Act, and Article 5 of the Organic Act Governing the Establishment of the Financial Supervisory Commission. (§38)
- (4) The Regulation Governing the Handling of Cases by Judicial Organs with Assistance from Personnel Seconded by the Financial Examination Bureau, Financial Supervisory Commission provides that when prosecutorial agencies have a need for the examination of financial flows, such assistance must be provided based on actual needs and in a timely manner. (§38)

#### **87. Policy (§38)**

Taiwan continuously integrates and strengthens cooperation among government agencies. Examples include the following:

- (1) The AAC's system of in-house prosecutors, which is seconded by prosecutors offices, is described under Article 36 of this report.
- (2) The Taiwan High Prosecutors Office has a Corruption Fighting Steering Group, which meets periodically to supervise and prosecute cases of corruption, and to develop strategies for fighting corruption. The group also reviews reports from Corruption Fighting Steering Groups at district prosecutors offices and answers queries from them. (§38)
- (3) When handling cases involving the Criminal Code of the Armed Forces and other military, state, and social security, public prosecutors offices at all levels may borrow Ministry of Defense military legal personnel with a seniority of more than three years to assist in investigations. Due to the secondment, their seniority, conditions, remuneration, performance appraisal, rewards and penalties are different from those of public servants. The Regulation Governing the Matters relating to the Secondment of Ministry of Defense Military Legal Personnel to Courts and

Prosecutors Offices of All Levels provides guidance for investigations under this model. (§38)

- (4) To prohibit corruption in government procurement, the Public Construction Commission (PCC) and the Ministry of Justice (MOJ) have jointly established a Platform for Government Procurement. Through this platform, PCC's Government E-Procurement System is available for MOJ units and personnel to manage abnormalities at any stage of government procurement. The platform helps integrate existing investigation operations, information sharing between PCC and MOJ, and to prevent procurement irregularities from the beginning. (§38)
- (5) For more effective construction of major public works, the heads of government agencies may use the anti-corruption platform set up by the Civil Service Ethics Offices of all government agencies to invite public-sector and private-sector agents such as personnel related to prosecution, investigation, corruption fighting, auditing, PCC, suppliers, and stakeholders to engage in communication to help improve the planning and execution of procurement cases. In addition, under the Executive Yuan's policy on large procurement with the most advantageous tender model, the AAC and PCC have established a Public Construction Civil Ethics Task Force to serve as a communication channel for the exchange of views on a regular basis to bridge gaps between engineering and judicial knowledge and reduce legal risks in major public construction. (§38)
- (6) The Ministry of Justice Investigation Bureau currently has 24 legal officers based in 18 offices around the world: the United States (Washington [two officers], Los Angeles, New York, and San Francisco), Canada (two officers: Vancouver and Toronto), Japan (two officers: Tokyo and Osaka), United Kingdom, France, Germany, the Netherlands, South Korea, the Dominican Republic, South Africa, Australia, Myanmar, Thailand, Vietnam, Indonesia, Malaysia, the Philippines, and Saudi Arabia. (§38)

## **Article 39. Cooperation between national authorities and the private sector**

### **88. Legal norms (§39)**

Article 18 of the Anti-Corruption Act stipulates that people exposing corruption or dereliction of duty to the competent authorities should be awarded and protected. Article 9 of the Anti-Corruption Informant Rewards and Protection Regulation expressly provides that the



national ID card number (or unified ID number in the case of foreign nationals) must be protected. The reward system covers both Taiwanese citizens and foreign nationals. Article 5 of the Witness Protection Act provides that the written petition for the protective order may include the national ID card number or unified ID number to encourage both Taiwanese citizens and foreign nationals to report crimes. The Directions Regarding the Rewards for Financial Illegal Cases Reported by the People to the Financial Regulatory Commission contains similar norms to encourage reporting of financial crimes. (§39 II)

**89. Important corruption prevention measures and practices (§39)**

- (1) The AAC and the Civil Service Ethics Offices hold awareness events such as forums, symposiums, and specialized seminars for enterprises and manufacturers. These events aim to share analysis of the international corruption indices and legal developments in the global fight against corruption, clarify the content of norms in Taiwan's Anti-Corruption Act, share developments related to the protection of whistleblowers in the public and private sectors, and emphasize corporate governance and corporate integrity to grow effective internal controls that prevent bribery. (§39 I)
- (2) The anti-corruption platform mechanism, one of the manifestations of cooperation between state organs and the private sector, is described under Article 14 of this report. (§39 I)
- (3) The FSC and prosecutorial authorities share a communication platform, which is managed by a team on the prosecutorial side. The platform enables real-time cooperation on crimes as they emerge. The prosecutorial organs may also obtain financial information from the Joint Credit Information Center (JCIC). In the letter Jin-Guan-Yin (1) No. 09510002020 issued May 23, 2006, by the FSC, it is recorded that the courts or competent authorities may request that the financial institution provide information on deposits, loans, remittances, and safe deposit boxes. (§39 I)
- (4) The IAFI maintains a database of claims provided by insurance companies and compares them to any anomalies in damages. It also assists judicial organs with investigations and collaborates with insurance companies to collect evidence. Collaboration with financial supervision units, judicial authorities, and insurance companies has resulted in successful crackdowns on fraud groups. (§39 I)

- (5) The Ethical Corporate Management Best Practice Principles for TWSE/GTSM Listed Companies and the Corporate Governance Best Practice Principles for TWSE/TPEX Listed Companies offer a reporting system for TWSE/TPEX listed companies with corporate governance assessment indicators. The Code of Practice for the Corporate Governance of Insurance Companies stipulates that insurance companies must have anonymous internal reporting channels for matters of public interest. By the end of 2017, 33 financial holding companies and banks, 15 major securities dealers, and 38 insurance companies had established channels and protection systems for whistle blowers. (§39 II)
- (6) Taiwan's financial intelligence unit (AMLD) collaborates with financial institutions and designated non-financial institutions and their personnel. This collaboration is described under Article 37 of this report.
- 90.** Important cases of cooperation between the public and private sectors in fighting corruption (§39)
- (1) In May 2014, an internal whistleblower of a tire company in Nangang reported to the Criminal Investigation Bureau, National Police Agency, Ministry of the Interior a case of a company manager using his position in the company to solicit kickbacks. The prosecutor initiated prosecution, as a result of which in April 2015 the Taiwan Taipei District Court pronounced a verdict sentencing the manager to five years imprisonment for breach of trust in violation of Article 171, Paragraph 1, Subparagraph 3, and Paragraph 2 of the same article. (The defendant voluntarily withdrew his appeal.) (§39)
- (2) In 2014, a case of alleged breach of trust by Liao X of the Hon Hai Group was investigated in open communication with legal personnel of the group. Both sides were aware that only mutual understanding, trust, and cooperation allow for the swift and complete collection of evidence, a full understanding on unlawful financial flows, and a complete view on the crime. Thus, Hon Hai Group fully cooperated with the investigation as needed and actively provided documentary evidence such as orders and contracts from Taiwan and the Mainland Area, helped with tracing the suspect, asked its employees to cooperate as witnesses, urged manufacturers involved to turn themselves in, assisted with the calculation of the damages. As a result, from filing, execution, transfer to prosecution, the case took just ten months—far

faster than investigations of major economic crimes in the past. After the investigation had been completed and transferred to the prosecution for indictment, Hon Hai Group quickly established an internal Corruption Control Department. Afterward, it reported to the MJIB a case of alleged embezzlement by Cai X and a case of alleged fraud by Liu X, and assisted MJIB personnel in collecting evidence in the Mainland Area. (§39)

- (3) In 2013, Chen X and others were suspected of breach of trust. Formosa Plastics Group (FPG) actively cooperated with the investigators to assist in the clarification and interpretation of all the evidence, after which the case was smoothly transferred to the New Taipei District Public Prosecutors Office for prosecution. Aware of the importance of fighting corporate corruption, the FPG invited MJIB personnel multiple times from September 2015 onward to share experience in fighting corporate corruption. The group also set up a contact window for the MJIB, which reports unclear cases to the MJIB. Together, the FPG and MJIB work to reduce corruption in the private sector. In addition, HTC and MediaTek also voluntarily inform the Ministry of Justice Investigation Bureau of employee infringements of their trade secrets, in a collaboration mode similar to above, where the enterprises conduct an internal investigation, collect evidence, report the matter, and cooperate with the prosecution, providing witnesses and material evidence to help determine the whereabouts of the suspects, take stock of damage, trace illegal money flows, seize unlawful proceeds, all in order to achieve concrete results that are win-win for the government and the enterprise. (§39)

#### **91. Policy (§39)**

- (1) The FSC has set standards for administrative penalties. Penalizations in each case depend on the severity of the circumstances. Increased fines are imposed with careful consideration of the principle of prudent supervision. (§39 I)
- (2) In the future, consideration will be given to the spirit of the US Federal Sentencing Guidelines, using a system of adjustable sanctions to encourage companies concerned to improve. Before administrative agencies impose sanctions or file indictments, the actor's conduct is considered, to encourage organizations to develop well-rounded legal compliance systems. (§39 I)
- (3) Amendments to parts of the Company Act are being prepared. Key amendments include making the provisions on de facto directors and/or shadow directors also apply to those of

non-publicly traded joint-stock limited companies; inclusion of limited companies under the principle of Piercing the Corporate Veil; the right of directors of joint-stock limited companies to inspect, copy, or photocopy business, financial status, and accounting documents at any time to carry out their business; relaxation of procedures for convening the Board of Directors; enlarging the inspection scope of the inspectors and specific internal transaction documents of companies; adding provisions on corporate governance professionals; etc. Without adding too much cost for compliance with corporate laws and regulations, we continue to provide an environment that is friendly to innovation and entrepreneurship while enhancing corporate governance, in order to promote Taiwan as a business environment conducive to all sorts of business, attract domestic and foreign entrepreneurs to establish companies in Taiwan, and give small and medium-sized companies ample flexibility to run their business. In addition, as part of Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) efforts, the draft amendments to the Company Act include AML norms. Barring certain exceptions, the ultimate beneficiaries of companies must be declared. The amendments were reviewed and approved by the Executive Yuan on December 21, 2017, and passed on to the Legislative Yuan for consideration. (§39 I)

- (4) When imposing sanctions on financial enterprises, the FSC considers the losses caused, whether internal control mechanisms have been established and implemented, measures taken to improve identified gaps, etc. (§39 I)
- (5) To build awareness among the general public with regard to fighting corruption and disseminate anti-corruption information such as protection mechanisms and incentives, the AAC has created and placed the Whistleblower's Reward and Protection Kit on its website. The AAC also has developed a Whistle-blowing Brief, Whistle-blowing Cartoon, and a Whistle-blowing Online Card Game to deepen people's knowledge of clean government. (§39 II)

## **Article 40. Bank secrecy**

### **92. Legal norms (§40)**

- (1) Article 48, Paragraph 2 of the Banking Act of the Republic of China and Financial Supervisory

Commission letter Jin-Guan-Yin No. 09510002020 issued May 23, 2006, provide for limitations to the obligations of bank secrets. This is discussed under Article 31 of this report. (§40)

- (2) Article 25 of the Act Governing Bills Finance Business provides for the lifting of the obligation to maintain confidentiality when the law or regulations from FSC so provide. (§40)
- (3) Article 34, Paragraph 2 of the Regulations Governing Securities Firms stipulate that securities firms must establish information on their customers, which they must keep confidential with the exception of statutory obligations to cooperate with investigations. Article 37, Paragraph 16 of the same regulations provides that securities firms must not disclose, unless in response to inquiries made in accordance with laws and regulations, the contents of orders placed by a customer or other secrets obtained in the course of operation of business. Article 7, Paragraph 2 of the Securities Investment Trust and Consulting Act stipulates that securities investment trust businesses, securities investment consulting businesses, discretionary investment businesses, fund custody businesses, and full fiduciary custody businesses and their personnel must observe the limitations of their obligations of confidentiality. Article 31, Paragraph 2 of the Regulations Governing Futures Commission Merchants stipulates that futures commission merchants must keep confidential the information established to conduct transactions, with the exception of statutory obligations to cooperate with investigations. Article 55, Paragraph 5 of the same regulations stipulates that futures traders engaged in futures trading must not disclose any trade secrets learned while carrying out commissioned transactions. (§40)
- (4) The Money Laundering Control Act provides that financial institutions (banks; trust and investment corporations; credit cooperative associations; credit departments of farmers' associations; credit departments of fishermen's associations; the Agricultural Bank of Taiwan; postal service institutions which also handle the money transactions of deposit, transfer and withdrawal; bills finance companies; credit card companies; insurance companies; securities companies; securities investment trust enterprises; securities finance enterprises; securities investment consulting enterprises; centralized securities depository enterprises; futures commission merchants; and trust enterprises) and designated non-financial businesses or personnel (banking, lawyers, accountants, government officials, accountants and tax agents) must report currency transactions equal to or above a certain threshold and suspect

transactions to the MJIB, must report currency transactions equal to or above a certain threshold, and are exempted from their obligations to maintain confidentiality of information learned during the course of business. (§40)

- (5) Article 14-1 of the Regulations Governing VAT Refund Claims by Foreign Travelers Purchasing Goods Eligible for VAT Refund stipulates that private tax refund operators must file reports of cash transactions or suspicious transactions with the Anti-Money Laundering Office of the Ministry of Justice Investigation Bureau for tax refunds exceeding NT\$500,000. Article 11 of the Regulations Governing the Establishment and Administration of Foreign Currency Exchange Counters stipulates that foreign currency exchange counters shall report suspicious money laundering transactions with the format provided by the MJIB, and are exempted from their obligations to maintain confidentiality in such cases. (§40)

**93. Policy (§40)**

- (1) To prevent and stop the financing of terrorist activities, organizations, and elements and to strengthen international cooperation in the prevention of terrorism, Article 7, Paragraph 3 of the Terrorism Financing Control Act stipulates that those who report such cases in accordance with the law are exempted from their obligations to maintain confidentiality of their business operations. Article 133, Paragraph 1, of the Code of Criminal Procedure provides that objects may be seized for evidence or confiscation, while Article 138 of the same law provides that when the owner, possessor, or custodian of a thing refuses to surrender or deliver such a thing without justified cause, such seizure may be effected by force. Thus, Taiwan has proper mechanisms in place to overcome the potential obstacles of bank secrecy laws and regulations during criminal investigations. (§40)
- (2) Article 48, Paragraph 2 of the Banking Act of the Republic of China stipulates: A bank shall keep confidential all related information on deposits, loans or remittances of its customers unless any of the following circumstances obtains: 1. Otherwise provided for by law (...) 4. Other circumstances as prescribed by the competent authority. Other provisions by law include: Personal Information Protection Act (although not specifically mentioned in it), the Code of Criminal Procedure, and other laws have specific provisions which override the provisions of the Banking Act of the Republic of China. (§40)

- (3) All other customer information held by banks other than the information referred to above (i.e., information other than deposits, loans, or remittances by customers) is subject to Article 6 (special information) or Article 20 (regular information) of the Personal Information Protection Act, the articles of which allow for the disclosure of such information under the circumstances specified therein. (§40)

## **Article 41. Criminal Record**

### **94. Legal norms (§41)**

- (1) According to Article 9 of the Criminal Code, notwithstanding a conviction of a court of jurisdiction in a foreign country on the same act of offense, this law shall govern. A sentence by a court of jurisdiction in a foreign country has been served in whole or in part can be used for offsetting the sentence under this law in whole or in part. As stated in this provision, the principle of second review (initial stage) is adopted in the trial while the principle of combination (exclusion) is adopted in execution, which is in compliance with the requirement set forth in the former part of Article 41 of the UNCAC. (§41)
- (2) According to Paragraph 1, Article 6 of the Personal Information Protection Act, personal information on medical history, medical treatment, genes, sex life, health examination and conviction record shall not be collected, processed or use except under any of the following circumstances: 1. It is explicitly stated in law; 2. Government entities/agencies performing their legitimate duties....; 3. The party concerned voluntarily discloses the information or personal information is being legally disclosed; 4. The engagement of government entities/agencies or academic research institutions for medical, public health, or crime prevention purposes; 5. Within the scope necessary for assisting government entities/agencies in the performance of their legitimate duties....6. At the written consent of the party concerned. The personal information on criminal records as referred to in Paragraph 6, Article 4 of the Enforcement Rules for the Personal Information Protection Act shall be the record on public prosecution, non-prosecution arrangement, or court ruling or action. If any of the exceptions as stated in Paragraph 1 of the aforementioned Personal Information Protection Act is applicable, the information on the criminal record of an individual can be used. (§41)

(3) The entities using information on criminal cases shall make their respective information security policies in accordance with the Guidelines for Information Security Management for the Executive Yuan and Subordinated Entities for the proper pursuit of information security. (§41)

**95. Important measures and practices of Taiwan (§41)**

(1) The Judicial Yuan performs the function of disclosing the information on criminal records and compiles the codes for the timely update of budget (location input in Chinese only). Currently, the prefix coding system of the cases adopted by the Judicial Yuan is the Big5 stored in 2 Bytes. Therefore, only about 19,270 characters (including synthesis of characters) can be stored. In the future, it will be changed to Unicode and stored in 4 Bytes, which allows for the storage of more than 100,000 characters. This is a solution for the inadequacy of computer characters. The system is scheduled to be opened for service in June 2020. (§41)

(2) The designated personnel of the court will enter the information on criminal records by severity of the conviction of the case concerned. If international cooperation is concerned, the mechanism and practice will be determined as dictated by actual needs. (§41)

(3) The information on criminal records of Taiwan is integrated with the criminal investigation records, imprisonment and discharge record of the correctional service, and the criminal ruling record of the Judicial Yuan with daily updates whenever there is new data for a complete record at every stage, including criminal investigation, judgment, execution, imprisonment and discharge, wanted list, and observation. This is an essential reference for the prosecutors in criminal investigation, the exercise of correction by the correctional authorities, and the courts of the Judicial Yuan at all levels in making judgment on the sentencing of convicts. This is also essential for the Ministry of the Interior (including the Department of Civil Affairs at the counties and the cities and Household Registration Offices across Taiwan, entry and exit and the National Immigration Agency), National Security Agency, Ministry of National Defense (Military Intelligence Bureau, National Defense Political Warfare Bureau), and Coast Guard Administration, Executive Yuan for the investigation of the aforementioned cases. The information is also essential for the Central Election Commission in matching related criminal cases while cross-referencing. The data exchange is conducted through encryption with



limitation to the recipient only with the user ID and password for access with audit on the transactions to ensure strict protection and control of the information. (§41)

**96. Policy (§41)**

All government entities/agencies have established the system of responsibility for information security in accordance with the Regulations Governing Government Entities/ Agencies in the Classification of Information Security Responsibility and have thereby set up relevant security protection measures through classification of the information system and standards of information security protection subject to risk assessment with the goal to continue the reinforcement of information system security and the level of security. (§41)

**Article 42. Jurisdiction**

**97. Legal norms (§42)**

- (1) The Criminal Code of the Republic of China regulates the penalty of criminal offenses in Taiwan under two fundamental principles: the territoriality principle and the nationality principle. The former refers to the applicability of the law to offenses committed within the national territory of the Republic of China, while the latter refers to the applicability of the law to offenses committed by particular group of people. Under the territoriality principle, any commitment of a criminal offense within the territory of Taiwan will be punishable under the legal jurisdiction of the Republic of China in criminal justice notwithstanding the nationality of the criminals or the victims. This spirit is manifested in Article 3 and Article 4 of the Criminal Code. Under the nationality principle, any national of the Republic of China is punishable by the law of criminal justice of the Republic of China, wherever the person is located. In general, the origin of the nationality principle is the basic tie between the state and its people to the extent that it is not necessary to be pursued by particular law. Yet, the applicability of the law of criminal justice of the Republic of China to crimes committed by nationals of the Republic of China outside of Taiwan is specified in Article 6 and Article 7 of the Criminal Code in the relation of the applicability of the law (restrictive condition), and the crimes committed by a foreign national where the nationals of the Republic of China are the victims were specified in Article 8 of the same law. The Criminal Code also provides that Subparagraphs 1, 2, 3, 5, 6, 7, and 8 in Article 5

are applicable to cases protected under the principle of protection (both the territoriality principle and the nationality principle are not applicable when the rights protected under the principle of protection of the Criminal Code are violated within the territory protected by the Criminal Code). Likewise, Subparagraphs 4, 8, 9, and 10, Article 5 of the Criminal Code denote the principle of universality (has origins from the requirements of the international community in keeping common order and value for which joint effort of the states concerned is required in response to particular types of crimes). In addition, the Republic of China has also made related legislation in response to the legal jurisdiction under Paragraphs 1 and 2 in Article 42 of the UNCAC. (§42)

- (2) The Law of Extradition prohibits the extradition of nationals of the Republic of China to the requesting state party but specifies that if the crime committed is punishable in both countries and is subject to imprisonment with a term of at least 1 year under the law of the Republic of China, or if the crime is the willful assassination of a head of state, the national in question shall be tried by the court in Taiwan. (§42III-IV)

**98. Policy (§42)**

- (1) Taiwan and some other countries and international organizations (such as the European Judicial Network) have established channels for routine communications. If the situations as stated in Article 42 of the UNCAC occur, Taiwan may find a solution through mutual consultation. Action has been taken in response to possible contention over legal jurisdiction or request for legal jurisdiction between Taiwan and other countries through the preparation of the draft Act on International Mutual Assistance in Criminal Matters and the draft amendment to the Law of Extradition, which will be congruent with the UNCAC requirement under this provision. (§42 V)
- (2) Due to the distinctive nature of the relation between Taiwan and Mainland China and under the principle of personal jurisdiction of international law, cross-border crimes of telecommunication fraud, the government of the Republic of China, as always, will request that the suspects for criminal investigation be brought to Taiwan for trial through mutual judicial assistance by requesting that other countries provide related information so that the authorities in Taiwan can proceed with judicial action. After the return of the suspects to Taiwan, the police authorities and public prosecutors will continue to collaborate with other

countries for access to related supporting evidence. (§42)

## **Chapter IV International Cooperation**

### **Article 43. International Cooperation**

#### **99. Legal norms (§43)**

- (1) According to Article 1 of the Law in Supporting Foreign Courts on Consigned Cases, on consignment of a civil or criminal case by a foreign court, the court shall proceed in accordance with this law unless otherwise specified in relevant treaties or laws. Article 2 of the same law also specifies that in consignment for assistance in a civil or criminal case to the court, only cases which do not contradict the law of the Republic of China will be accepted. This legislation is under the fundamental principle of international judicial mutual assistance. (§43)
- (2) Further to the rule of the Law in Supporting Foreign Courts on Consigned Cases, Taiwan also provides assistance in investigation, gathering of evidence and delivery of documents in consigned civil and criminal cases from foreign courts. Judicial assistance is also evidenced by the signing of the AIT-TECRO Mutual Legal Assistance Agreement, the Taiwan-Philippines Criminal Legal Mutual Assistance Agreement, and the Agreement on Mutual Legal Assistance in Criminal Matters between the Taipei Economic and Cultural Office in the Republic of South Africa and the Liaison Office of the Republic of South Africa in Taiwan between Taiwan and the USA, the Philippines, and South Africa, respectively, for mutual legal assistance. (§43)
- (3) The aforementioned mutual legal assistance agreements and the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement between Taiwan and Mainland China are bilateral agreements on combating crimes. Yet, no provision is given on the same crime. (§43)
- (4) The Anti-Money Laundering Division of the Investigation Bureau has entered into MOUs or agreements with 43 countries or regions in the cooperation of intelligence sharing regarding anti-money laundering under the framework of the Egmont Group Financial Intelligence Units (such as Table 5 in Article 14 of the Report). According to relevant international standards, the principle of information sharing under the Egmont Group Intelligence Units, and the

aforementioned MOUs or agreements on exchange of financial intelligence, the Anti-Money Laundering Division of the Investigation Bureau may accept the request of domestic law enforcement agencies and act on their behalves to request for the exchange of intelligence on particular targets or funds through the confidential network of the Egmont Group to collect financial information related to crimes for intelligence purposes. In addition, we may also accept the requests of other countries or regions in the sharing of financial intelligence related to criminal activities in Taiwan on a voluntary basis. (§43)

**100. Important measures and practices (§43)**

- (1) For state parties or other parties who are not contracting parties with Taiwan in mutual legal assistance in criminal matters, Taiwan will observe the principle of mutual-benefit with reference to the international practices or general principle of mutual legal assistance and will not request for the same type of offenses or crime on double criminality. (§43)
- (2) The Financial Supervisory Commission (FSC) of Taiwan, Republic of China, is a member signatory of the IOSCO and the IAIS MMOU, and continues to enter into bilateral documents with other countries/jurisdictions on cooperation in financial supervision. Information exchange, technical cooperation, or assistance in investigation under these arrangements will be conducted in compliance with the domestic laws of the Republic of China and under the principle of reciprocity and the information exchanged will be kept confidential. (§43 I)
- (3) Further to the entering into agreements with the USA, the Philippines, and South Africa on mutual legal assistance in criminal matters, Taiwan has also participated in the important international network with countries in the Asia-Pacific, such as ARIN-AP, ACT-NET and APG under APEC, and the Egmont Group, which made Taiwan a full status member. Taiwan has also successfully used the ARIN-AP platform in providing intelligence on crimes to countries, who have replied in gratitude. (§43)
- (4) Taiwan has made positive efforts in joining the EIJN. Further to linking to the window for communication with other members of the network, Taiwan may also attend the annual conference as an observer to establish channels of communication with other countries in mutual legal assistance. This will be helpful for requesting assistance in legal matters in the future. (§43)

- (5) Taiwan engages in international cooperation with its treaty partners through exchanging information for tax purposes in accordance with the provisions of Exchange of Information under the concluded and enforced tax treaties and the Regulations Governing the Exchange of Tax Information Concerning Agreements on Tax Matters. (§43)
- (6) In 2017, Taiwan and Japan sought to realize the policies of anti-money laundering with Japan in accordance with international mutual assistance agreements like the Taiwan-Japan Agreement on Cooperation and Mutual Assistance in Customs Affairs (§43)

**101. Statistics (§43 I )**

- (1) From 2012 to 2017, there were 173 cases related to requests for mutual legal assistance with other countries and 89 cases related to requests of other countries for mutual legal assistance with Taiwan. Obvious cases were the corruption and malfeasance of former President Chen Shui-Bian and the corruption case in the procurement of naval warships. The content of the requests covered gathering of evidence in investigation, freezing, and confiscation of assets. (§43 I)
- (2) By the end of 2017, the FSC and the peripheral agencies had entered into 57 bilateral documents on the cooperation in financial supervision. (§43 I)

**102. Policy (§43)**

- (1) For information on the reinforcement of mutual legal assistance, refer to Unit d), Section 4, Chapter II of the General Discussion.
- (2) Diplomatically, Taiwan is in a very difficult situation that makes it difficult for Taiwan to enter into mutual legal assistance agreements with other countries. In practice, mutual legal assistance is usually handled through the diplomatic channel under mutual benefit. However, the progress of the countries (parties) to whom Taiwan has requested mutual legal assistance tends to be slow, and Taiwan could not complete the investigation and trial of cases on time. In most circumstances, Taiwan had to urge a quick response. Taiwan will continue to enter into agreements with other countries in mutual legal assistance in criminal matters for speeding up the process of investigation and judicial proceedings. (§43 I)
- (3) According to the draft version of the Act on International Mutual Assistance in Criminal Matters, if the requesting party is willing to issue a declaration of mutual assistance which is in

compliance with the requirement of the same law, Taiwan shall provide serving documents, search and seizure, and any other assistance not contradictory to the law of the Republic of China. Paragraph 2, Article 10 of the same draft also specifies that double criminality could be served as the reason for refusal of assistance. Yet, there is no explicit definition on the name of the same crime. Under common practices of international mutual legal assistance, the variation of the legal systems of different countries, and the protection of the rights of the parties concerned to legal action, Taiwan is not prohibited from providing any assistance on the condition that the spirit of the rule of law is duly observed and the law and order of the Republic of China is unaffected. Assistance may be provided on a case-by-case basis. Pursuant to Paragraph 3 of the same article, if the request of the requesting parties can be declined or the assistance can be declined under Paragraph 1 and Paragraph 2 of the same article, the Ministry of Justice shall require the requesting parties to provide additional information or revise the content of the request for consideration of assistance. (§43 I,II)

#### **Article 44. Extradition**

Because of the factors of international politics, Taiwan applies different legal rules in interaction with different political entities of the international community; it applies the Law of Extradition for extradition from countries without extradition treaties and the applicable treaty for extradition from countries that have executed extradition treaties, including Paraguay, Swaziland, Dominican Republic, Federation of St. Christopher and Nevis, Saint Vincent and the Grenadines, the Marshal Islands; South Africa, Commonwealth of Dominica, Costa Rica, Grenada and Malawi have severed their full diplomatic relations with Taiwan and have entered into extradition treaties with Taiwan (for the applicability of this provision, refer to Annex 3). In addition, Taiwan has entered into a Taiwan-UK Memorandum on the Extradition of Zain Taj Dean, which became effective on October 16, 2013. The extradition (known as “expatriation” in this Agreement) of suspects from Mainland China, is based on the Cross-Straits Agreement on Combating Crimes and Mutual Legal Assistance or the Guidelines for Cross-Straits Arrest and Expatriation of Criminal Convicts or Criminal Suspects. (§44 I,XVIII)

**103.** Legal norms (§44 I,III-IX, XI, XII, XVI)

Applicable laws, treaties, and agreements of the Republic of China are in compliance with the requirements stated in Article 44 of the UNCAC and are specified below:

(1) In compliance with Paragraphs 1, 5, and 6 of Article 44 of the UNCAC

According to Article 1 of Law of Extradition, extradition shall be pursued in accordance with extradition treaties, where applicable, or, in the absence of an extradition treaty, this law shall be applicable. As stated in Article 2 of the same law, persons who have committed crimes in the country (entity) which is requesting extradition shall be punishable by both the law of the Republic of China and the country (entity) requesting extradition. Extradition shall be granted, except where the penalty under the law of the Republic of China is less than 1 year of imprisonment. (§44 I,V,VI)

(2) In compliance with Paragraphs 8 and 9 in Article 44 of the UNCAC

Article 2 to Article 5 of Law of Extradition specify the minimum penalty required for the validation of extradition, and the reasons for declining extradition. Articles 9 to 12, Articles 17, 18, 20 and 23 of the same law specify the procedures for extradition. (§44 VIII,IX)

(3) In compliance with Paragraphs 11 and 12 in Article 44 of the UNCAC

According to Article 12 and Article 16 of Law of Extradition, in case of emergency before the issuance of a formal statement by a foreign government requesting extradition, Taiwan may request in writing that the foreign government detain the suspects that government intends to extradite. A time frame has been set for the interrogation and ending of the case on the suspects under extradition. The same law also provides that the suspects being requested for extradition may be detained under normal circumstances or in emergencies. The Law of Extradition adopts the principle of no extradition of nationals by which suspects shall be referred to a court of law for judicial proceeding if extradition is denied. (§44 XI、XII)

(4) In compliance with Paragraphs, 3, 4, 7, and 16 in Article 44 of the UNCAC

It is explicitly stated in the extradition treaties binding the Republic of China and other state signatories that the suspects concerned shall be punishable under the law of the Republic of China and the country (entity) requesting extradition with a sentence of imprisonment of at least 1 year shall be subject to extradition. The aforementioned treaties also include the extradition of suspects in the crimes of bribery, corruption, and tax evasion. (§44 III,VI,VII,XII)

#### **104. Important measures and practices (§44 II, XIII, XVII)**

Policies and practices relevant to Article 44 of the UNCAC are specified below:

##### **(1) Paragraph 2, Article 44 of the UNCAC**

In consideration of social charity or government policy (Taiwan has this requirement but other countries do not have such a requirement: Taiwan may only unilaterally assist a third country in extradition, which is in defiance of the principle of mutual benefit), the model of legislation as stated in Paragraph 2, Article 44 of the UNCAC was not adopted in the Law of Extradition. In reviewing the request of mutual legal assistance or extradition from the requesting side, Taiwan will not focus on the wording but rather the objective fact in determining whether the act of the suspect should be punished by the law of the Republic of China. (§44 II)

##### **(2) Paragraph 13, Article 44 of the UNCAC**

According to Paragraph 13, Article 44 of the UNCAC, the state signatory receiving the request for extradition may consider executing the sentence of the state signatory requesting extradition or the unserved prison term only as permitted by the domestic law of the state signatory requested for extradition and in compliance with legal requirements. This part of the provision is not applicable to the action to be taken by Taiwan, so there is no such legal requirement in Taiwan. As such, under the spirit of the draft version of the Act on International Mutual Assistance in Criminal Matters which states that mutual legal assistance in the international community will be provided on condition that it is in compliance with the legal requirements of the state signatory requested for extradition, even though this is not explicitly stated in the Law of Extradition. Inasmuch as there is variation in the legal systems of different countries and diversity in the requests for extradition, many cases are not regulated by the law of the Republic of China. In consideration of the trends and needs of maximum assistance under international mutual legal assistance, action may be taken as per request of the requesting country on condition that such request is not in violation of the law of the Republic of China and satisfies the needs of the requesting country. (§44 XIII)

##### **(3) Paragraph 17, Article 44 of the UNCAC**

In practice, the administrative branch of the government shall allow an opportunity for the requesting country (entity) to present a statement and provide supplementary information



before declining the request. (§44 XVII)

**105. Statistics (§44XVIII)**

Eight (8) suspects (fugitives) of criminal offenses under the Anti-Corruption Act (wanted) have been expatriated for criminal offenses under the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement. (§44 XVIII)

**106. Important cases (§44)**

Wang X was indicted by the Taipei District Prosecutors Office after his departure in 2007. He then entered into the United States without legal travel documents and was detained by the United States for several months. After years of trials in the Immigration Court of the US, Wang was ordered to be deported in a court ruling in 2014. Wang appealed to the Board of Immigration Appeals, but the committee sustained the previous ruling of the court in its decision made in 2015. Wang then appealed to the United States Court of Appeals for the Ninth Circuit and petitioned to stop the execution of the aforementioned ruling. Wang died in May 2016 while the trial was still in progress. The proceeding then came to an end. (§44)

**107. Policy (§44)**

- (1) Law of Extradition currently in effect in Taiwan was enacted in 1954, with amendments to the wording in 1980. The change in the international environment of extradition over the years made the content of this law unable to keep up with reality. Furthermore, there is also discrepancy between the content of this law and the criminal procedures currently in effect, which made this law difficult to attune to the rapid change in the legal environment. In consideration of related international conventions of the UN, and legislation in Germany, Japan, and Korea, Taiwan planned to present a draft amendment of the Law of Extradition, the content of which covers: the definition of the crime for extradition, declaring the principle of mutual benefits under extradition, the work of the Ministry of Foreign Affairs or the Ministry of Justice after the request for extradition, specifying that the granting of extradition is a matter of exclusive jurisdiction, declaration of the condition and program for extradition, and the condition and program for the detention, summons, and arrest warrant of extradition, the condition, program, remedy and implementation procedures for extradition and detention, the condition, program, remedy and implementation procedures for extradition and detention in

emergency, the permission for requesting extradition, and the court proceedings, action of the prosecutors in response to extradition that should be or could be overruled as realized through the court review procedure, the program for the persons being requested for extradition in consent for extradition or waiver of related protection, and the effect of the expression of intent, the remedy for the ruling of the request for extradition, and the action of the court. (§44)

- (2) As stated in Article 1 of the current Law of Extradition, that extradition shall be pursued in accordance with extradition treaties, where applicable, or, that this law shall be applicable in the absence of an extradition treaty, is based on the aforementioned principles. The Law of Extradition is a supplementary requirement to the treaties between Taiwan and other countries under the legal framework. Some of the crimes under the UNCAC (such as money laundering and the acceptance of bribes by public officials) are punishable under the law of criminal justice in Taiwan, and the severity of penalty exceeds the minimum requirements of the aforementioned laws or treaties in double penalty and are not cited as the cause for rejecting extradition. Yet, a portion of the crimes (such the acceptance of bribes by public officials of a foreign country, as stated in Paragraph 2, Article 16, and the crime of influence on transactions, as stated in Article 18 of the UNCAC) shall still be subject to inclusion in the law through amendment. (§44 VI)
- (3) The Law of Extradition has provided appropriate protection for persons under extradition, and its essence is relevant to the entitlement to the people of Taiwan. For example, the detention of persons under extradition, or the discretion to choose a defense attorney, is subject to the rule of the Code of Criminal Procedures of the Republic of China, otherwise this law shall be applicable. The draft amendments to Articles 20, 22, and 23 of Law of Extradition provides further protection, including the authority of the defense attorney and the right of being notified of related remedial procedures. The draft amendment will also make it clear that if the person sought is not elected as a defender, the court shall appoint a public defender or lawyer for defense. The draft will further strengthen the normative density of safeguards, including the right to relevant remedy procedures. (§44 XIV)
- (4) According to Article 3 of the Law of Extradition, extradition of military, political and religious

nature shall be rejected. In practice, communication with the requesting state will be conducted before rejecting the request so that the requesting state may have the chance to present a statement or provide supplementary information. The draft amendment to the Law of Extradition shall include specific reasons for persons not granted extradition due to ethnicity, nationality, gender, religion, identity, political opinions or connections with social groups with different political positions, which will be susceptible to punishment or improper treatment. (§44 XV)

- (5) In consideration of the practical problems in the international environment, Article 11 of the Treaties Act, which was promulgated and enacted on July 1, 2015, requires that treaties containing clauses of ratification, adoption, endorsement, or accession, shall be presented to the R.O.C president in the care of the Executive Yuan by the administering government agency upon ratification by the Legislative Yuan for the issuance of the letter of ratification, adoption, endorsement or accession, with notification to the Ministry of Foreign Affairs. These treaties will be fully effective after the domestic procedures and exchange of notes as specified in the treaties or the custody of related documents. The administering government agency shall report to the R.O.C president in the care of the Executive Yuan for announcement. If specific treaty cannot be exchanged or put under custody due to specific reasons, the administering government agency shall notify the R.O.C president in the care of the Executive Yuan for announcement of the situation. (§44)
- (6) Taiwan will further its effort to consult with countries with diplomatic relations and other countries in signing extradition agreements or treaties. (§44)

#### **Article 45. Transfer of Sentenced Persons**

Applicable legal rules have been enacted for handling the transfer of sentenced persons under the spirit of humanism in Taiwan, including the enactment of the Transfer of Sentenced Persons Act in 2013 and other international treaties and agreements, such as the Arrangement between the Taipei Representative Office in the Federal Republic of Germany and the German Institute in Taipei on the Transfer of Sentenced Persons and Cooperation in the Enforcement of Penal Sentences with the Federal Republic of Germany, which came into full force on February 7, 2014, and the Arrangement

between the Justice Authorities of Taiwan and the Authorities of the United Kingdom of Great Britain and Northern Ireland on the Transfer of Sentenced Persons with the UK, which came into full force on May 3, 2016. In addition, Taiwan has also entered into the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement in 2009, which also serves that purpose. The Ministry of Justice responds to requests for the transfer of sentenced persons in conjunction with other entities or agencies at the common consent of Taiwan, the transferring state and the sentenced person. (§45)

**108. Legal norms (§45)**

(1) According to Article 2 of the Transfer of Sentenced Persons Act, the transfer of sentenced persons shall be accomplished in accordance with the treaties binding the Republic of China and the transferring state, or shall be governed by this law in the absence of a treaty. Where the provision of this law may not provide for such purpose, other applicable laws like the Criminal Code, the Code of Criminal Procedure, and the Juvenile Delinquency Act shall govern. (§45)

(2) Taiwan and the Federal Republic of Germany and United Kingdom have signed the Arrangement between the Taipei Representative Office in the Federal Republic of Germany and the German Institute in Taipei on the Transfer of Sentenced Persons and Cooperation in the Enforcement of Penal Sentences and the Arrangement between the Justice Authorities of Taiwan and the Authorities of the United Kingdom of Great Britain and Northern Ireland on the Transfer of Sentenced Persons. Taiwan also signed a treaty with Panama on the transfer of sentenced persons, which was terminated due to the severance of the diplomatic relations between the two countries, and the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement with Mainland China (Article 11 of this agreement specified the transfer of persons sentenced with criminal charges).

**109. Statistics (§45)**

(1) As of October 2017, there were 7 sentenced persons of German nationality sent back to Germany to serve their sentences under the Arrangement between the Taipei Representative Office in the Federal Republic of Germany and the German Institute in Taipei on the Transfer of Sentenced Persons and Cooperation in the Enforcement of Penal Sentences. (§45)

(2) Taiwan and Mainland China have entered into the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement in 2009. Since then, there were 19 sentenced persons sent back from Mainland China to Taiwan (including 5 in 2014 and 3 in 2015, after the enactment of the Transfer of Sentenced Persons Act in 2013). In 2016 and 2017, Taiwan liaised with the competent authorities in Mainland China through correspondence urging for activating the transfer of sentenced persons as soon as possible, though Taiwan received no reply from Mainland China. (§45)

**110. Policy (§45)**

Under the current international situation, the Ministry of Justice will work in conjunction with other entities and agencies to respond to the request of foreign countries for the transfer of sentenced persons under the principle of reciprocity. According to the Transfer of Sentenced Persons Act and other international treaties, the transfer of sentenced persons shall be accomplished at the common consent of Taiwan, the transferring state, and the sentenced persons. As such, sentenced persons of Taiwan staying in other countries shall be governed by the Transfer of Sentenced Persons Act, whereby Taiwan will seek every opportunity to enter into treaties or agreements with other countries in the aspect of the transfer of sentenced persons. (§45)

**Article 46. Mutual Legal Assistance**

In the area of international cooperation, Taiwan has entered into agreements (arrangements) with the USA, South Africa, and the Philippines on mutual legal assistance in criminal matters, and has entered into the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement with Mainland China. For the proper implementation of the agreements (arrangements) on mutual legal assistance in criminal matters with the USA and Mainland China, Taiwan has also instituted the Guidelines for the Prosecution and Investigation Entities/Agencies in the Pursuit of the Agreements on Mutual Legal Assistance in Criminal Matters with the USA and also the Guidelines for Cross-Straits Investigation and Gathering of Evidence. The laws of the Republic of China governing mutual legal assistance are the Transfer of Sentenced Persons Act enacted in 2013, The Law in Supporting Foreign Courts on Consigned Cases, and Law of Extradition, which will be served as the

legal reference for the pursuit of international mutual legal assistance. The legal references and important policies of Taiwan in the legal aspect are specified below. (§46)

**111. Legal norms (§46 I, II, IV-VIII, XXII, XXIX)**

The domestic law, agreements, and treaties effective in the Republic of China and in compliance with the requirement of Article 46 of the UNCAC are specified below:

(1) In compliance with Paragraphs 1 and 2 of the UNCAC

A. Article 1 of the Law in Supporting Foreign Courts on Consigned Cases specifies that this law shall be applicable to all cases, civil and criminal, consigned by foreign courts for assistance unless otherwise governed by treaties or specified by law. If the draft version of the Act on International Mutual Assistance in Criminal Matters is passed by the Legislative Yuan in the future, it will replace the Law in Supporting Foreign Courts on Consigned Cases in the part governing mutual legal assistance in criminal matters. The content of the draft version of Act on International Mutual Assistance in Criminal Matters in the area of assistance will remain unchanged for both natural persons and legal persons in extradition. (§46 I,II)

B. Taiwan has already entered into agreements on mutual legal assistance in criminal matters with the USA, the Philippines, South Africa, and Mainland China (as shown in Table 8). (§46 II)

**Table 8. Agreements on mutual legal assistance in criminal matters between Taiwan and the USA, the Philippines, South Africa, and Mainland China**

Time of deed	Full title of the agreement	Abbreviation of the agreement
March 26, 2002	AIT-TECRO Mutual Legal Assistance Agreement	Taiwan-US Mutual Legal Assistance in Criminal Matters Agreement
April 26, 2009	Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement	Cross-Straits Agreement on Combating of Crimes and Mutual Legal Assistance
April 19, 2013	Taiwan-Philippines Criminal Legal Mutual Assistance Agreement	Taiwan-Philippines Mutual Legal Assistance in Criminal Matters Agreement
July 24, 2013	Agreement on Mutual Legal Assistance in Criminal Matters between the Taipei Economic and Cultural Office in the Republic of South Africa and the Liaison Office of the Republic of South Africa in Taiwan	Taiwan-South Africa Mutual Legal Assistance in Criminal Matters Agreement

Source: Ministry of Justice

(2) In compliance with Paragraph 4, Article 46 of the UNCAC

According to Paragraph 2, Article 21 of the Money Laundering Control Act, information on money laundering can be provided to other countries under the principle of reciprocity. (§46 IV)

(3) In compliance with Paragraph 5, Article 46 of the UNCAC

A. Taiwan has signed agreements on mutual legal assistance in criminal matters with the United States, the Philippines, South Africa and the Mainland China, and has standardized the mutual legal assistance materials for confidentiality or for the purpose of their own use. (§46 V)

B. It is the obligation of personnel engaged in the mutual legal assistance of Taiwan to keep all information contained in the documents of mutual legal assistance in strict confidence pursuant to Item 49 to Item 76 of the Documentation Handbook of the Executive Yuan. In addition, after the Ministry of Justice has accepted the request for mutual legal assistance and notified the prosecution office for execution, the prosecutors, prosecutorial officers, judicial police officers, and judicial police shall keep the information being obtained for the purpose of executing the request of the Ministry of Justice related to mutual legal assistance in strict confidence pursuant to Paragraph 1, Article 245 of the Code of Criminal Procedure. (§46 V)

(4) In compliance with Paragraph 6, Article 46 of the UNCAC

The law of Taiwan does not affect the obligations of mutual legal assistance now regulated or to be regulated by any other bilateral or multilateral agreements (arrangements). Article 5 of the Taiwan-South Africa Mutual Legal Assistance in Criminal Matters and Article 4 of the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement specified the scope of cooperation but not a mandatory measure. There is the possibility of a request for double penalty, but the definition of the crime of money laundering in Taiwan conforms to the standards of the Vienna Convention on the Law of Treaties and the Palermo Convention on the Law of Treaties. The scope of the preliminary act of crime has also covered the types of crimes as cited in the annex to the FATF assessment methodology. As such, the agreements (arrangements) on mutual legal assistance in criminal matters may regulate double penalty, it could not be interpreted as unjustifiable or inappropriate restrictive condition. If a country requests mutual legal assistance with Taiwan in the absence of an agreement (arrangement) on

mutual legal assistance, Taiwan will consider international practices and general theory of mutual legal assistance under the principle of mutual benefit. For example, the same type of crime or accusation of crime is not necessarily identical under the possibility of double penalty, and may not be interpreted as unjustifiable or inappropriate conditions. (§46 VI)

(5) In compliance with Paragraph 7, Article 46 of the UNCAC

Article 2 of the Law in Supporting Foreign Courts on Consigned Cases specifies that cases accepted by court for mutual legal assistance, civil or criminal alike, may not be contradictory to the law of the Republic of China. This part is congruent with the content from Paragraph 9 to Paragraph 29, Article 46 of the UNCAC. In general, mutual legal assistance may be granted only if such assistance is in compliance with the law of the Republic of China. (§46 VII)

(6) In compliance with Paragraph 8, Article 46 of the UNCAC

According to Article 48 of the Banking Act of the Republic of China, no rejection of providing mutual legal assistance by using confidentiality of banking information as an excuse. Refer to Article 31 of the Report for details. (§46 VIII)

(7) In compliance with Paragraph 22, Article 46 of the UNCAC

There is no requirement in the Law in Supporting Foreign Courts on Consigned Cases, the Taiwan-US Mutual Legal Assistance in Criminal Matters Agreement, the Taiwan-Philippines Mutual Legal Assistance in Criminal Matters Agreement, and the Taiwan-South Africa Mutual Legal Assistance in Criminal Matters Agreement that requests for mutual legal assistance involving financial and taxation information should be turned down. (§46 XXII)

(8) In compliance with Paragraph 29, Article 46 of the UNCAC

According to the Code of Criminal Procedure and under the principle of mutual legal assistance in criminal matters, there is no doubt that government archives that could be disclosed to the public could also be provided to foreign governments. However, the availability of undisclosed government archives to foreign governments as per their requests, like the testimonies obtained by the police and investigation agencies of Taiwan in the process of investigation, or information on household registration and military service, is at the discretion of the prosecutors. According to Article 1 of the draft version of the Act on International Mutual Assistance in Criminal Matters, there is no doubt that government archives already disclosed to



the public could be provided to foreign governments on the basis of mutual respect and equality, improvement of mutual legal assistance in criminal matters, and the Cross-Straits Joint Combating. If the provision of assistance will cause damage to the national interest of the Republic of China, or the result of assistance is in defiance of the legal system and spirit of the Republic of China, Taiwan shall consider whether assistance should be provided. Article 10 of same draft specifies the reasons for rejection of assistance. In consideration of the variation in the legal systems of different countries and the rights of the parties concerned to legal action, assistance may be provided on a case-by-case basis on condition that such assistance is not in defiance of the legal spirit and the public order of Taiwan. Paragraph 2 of the same article also specifies that if there is a reason that specific requests for assistance should be turned down, the Ministry of Justice shall request the requesting state to provide supplementary and necessary information or revise the content of the request before making decision on granting assistance. (§46 XXIX)

(9) For further information on the rules and regulations pertinent to Article 46 of the UNCAC as stated in the Law in Supporting Foreign Courts on Assigned Case, Taiwan-US Mutual Legal Assistance in Criminal Matters Agreement, Taiwan-Philippine Mutual Legal Assistance in Criminal Matters Agreement, Taiwan-South Africa Mutual Legal Assistance in Criminal Matters Agreement and the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement, refer to the draft version of the International Criminal Justice Mutual Assistance Agreement and the agreements on mutual legal assistance in criminal matters between Taiwan and other countries. (§46 XXIX)

(10) For information on the agreements, arrangements and memoranda between Taiwan and other countries, refer to Article 48 of the Report.

**112. Important measures and practices (§46 II,V,XVI,XVII,XIX,XXIV)**

Policies and measures relevant to the requirements in Article 46 of the UNCAC are specified below:

(1) Paragraph 2, Article 46 of the UNCAC

A. Taiwan has signed agreements with the USA, the Philippines, South Africa, and Mainland China on mutual legal assistance in criminal matters. In practice, the Ministry of Justice will

liaise with the competent authorities of these contracting parties in requesting for mutual legal assistance. In the absence of agreements on mutual legal assistance in criminal matters, countries requesting mutual legal assistance from Taiwan shall make the request in accordance with applicable international law and practices and thereby tender the request for mutual legal assistance through diplomatic channels to the Ministry of Foreign Affairs, and in turn, forward them to the Ministry of Justice for action. After the accomplishment of the request, the Ministry of Foreign Affairs will respond to the foreign services of relevant countries. Whether or not an agreement on mutual legal assistance is in place, Taiwan will make arrangements in response to the request of a requesting country on criminal cases of top-priority significance. (§46 II)

B. In the absence of mutual legal assistance in criminal matters, requesting states may request mutual legal assistance in criminal matters from Taiwan if they are willing to present documentation for guarantee of reciprocity, such as documents containing wording within the allowable scope of law, the government shall afford the widest measure of assistance to the request of the Republic of China and in compliance with the legal requirements of the Republic of China. Under the principle of reciprocity and in conformity to the international practices or general principles of law in mutual legal assistance in criminal matters, and for the purposes of joint law enforcement in combating crimes, Taiwan will afford the widest measure of assistance. (§46 II)

(2) Paragraph 5, Article 46 of the UNCAC

Under the principles of information exchange under the Egmont Group framework and the international practices in intelligence exchange, confidentiality is the fundamental concern. Under the Egmont Group principles, a non-disclosure clause is indispensable. Likewise, Taiwan will inscribe the non-disclosure clause when entering into agreements or memoranda between Taiwan (the Investigation Bureau) and foreign FIUs, and such information in exchange is confidential. The information involved in the exchange between the parties shall be kept in strict confidence and tight security to ascertain that the information may only be consumed as authorized by the laws of the countries concerned governing privacy and confidentiality of information. Accordingly, the information in the exchange shall also be protected by the

receiving country in confidentiality under similar rules and regulations, and the obligation of undertaking of confidentiality of the information by the state parties shall survive the termination of the memorandum. (§46 V)

(3) Paragraphs 16, 17, 24, Article 46 of the UNCAC

Taiwan will proceed to review requests once received. If supplementary information is required, Taiwan will ask the requesting state for provision. If rejection is determined, Taiwan will inform the requesting party. If all the conditions are satisfied, Taiwan will refer the request to relevant entities or agencies for execution. Quick reply to the requesting state on inquiry of the progress will be given. (§46 XVI, XVII, XXIV)

(4) Paragraph 19, Article 46 of the UNCAC

Measures have been taken for control and protection for the security of the competent authorities in the exchange of information. The information furnished by the requested state may only be used for the purposes stated in the request unless under prior authorization of the requested state. The documents in circulation between the law enforcement agencies and foreign countries shall be used as information by the law enforcement agencies. Such information shall not be disclosed to any third party without prior consent of the requested state. For example, the ARIN-AP administered by the Ministry of Justice for joint action for recovery of the proceeds from crimes and information exchange with the member states of the Asia-Pacific that prior review is required to define the scope of information to be provided and the limitation of the purposes of use of information. (§46 XIX)

**113. Statistics (§46)**

- (1) The statistical data showing the cases of mutual legal assistance between Taiwan and other countries are exhibited in Table 9. (§46)

**Table 9. Statistical data of mutual legal assistance between Taiwan and other countries**

Abbreviation of agreement	Requesting state → Requested state	Cases (persons)
Taiwan-US Mutual Legal Assistance in Criminal Matters Agreement (2012 to 2017)	Taiwan → USA	139 cases
	USA → Taiwan	73 cases
Taiwan-Vietnam Mutual Legal	Taiwan → Vietnam	3,145 cases

Assistance Agreement on Civil Matters	Vietnam → Taiwan	2,249 cases
Other countries with de facto relations (2012 to 2017)	Taiwan → other countries	173 cases
	Other countries → Taiwan	89 cases
Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement	The fugitives escaped from Taiwan and hide in Mainland China were arrested and deported to Taiwan through the channels agreed by both sides.	476 persons

Data Time: 2017; Sources: Ministry of Justice, Ministry of Interior (National Police Agency)

- (2) Under the liaison and coordination between Taiwan and the Supreme People's Court, High People's Court, and the Public Security Department of Mainland China, joint action has been taken to fight cross-border telecommunication fraud with property recovered and returned to the victims in 14 cases where competent authorities of Mainland China returned an amount of NT\$14.42 million to the victims of Taiwan, and Taiwan has returned an amount of NT\$20.54 million to the victims of Mainland China. (§46)
- (3) Taiwan has entered into 43 agreements or MOUs with other countries or regions in cooperative intelligence exchange. For further information, refer to Article 14 of the Report. (§46 V)
- (4) From 2012 to 2017, the National Police Agency, Ministry of the Interior has arrested 2 fugitives in the USA, 69 fugitives in Thailand, and 20 fugitives in the Philippines, and returned them to Taiwan. (§46)
- (5) The joint effort between the police authorities of Taiwan and the Philippines in drug enforcement: From 2014 to 2017, Taiwan and the Philippines have successfully solved 12 cases of serious crimes through the channels and mechanisms of bilateral cooperation with seizure of more than 1,000 kg of such drugs as amphetamine (finished products), 8,000 kg of semi-finished products and materials, 3 drug rings, 1 transit spot, 6 shipments in cargo containers and air transport totaling more than 2 billion at market value (approximately 3,200 million pesos). In addition, the National Police Agency, Ministry of the Interior engaged in joint law enforcement in January 2015 with the police of the Philippines rounded up 40 kg of amphetamine and an angel dust (Phencyclidine) drug manufactory with the roundup of 247 kg of amphetamine in May 2016. (§46)

(6) The book of confiscation was included the Criminal Code and was enacted on July 1, 2017. With this change, the legal effect of the responsibility of legal persons is explicitly defined. For further information, refer to Article 26 and Article 31 of the Report. Petition for confiscation of cash is more than NT\$60 billion, amounting in an attainment rate of more than 50%. (§46 II,III)

**114. Important cases (§46)**

Victim Liu of Mainland China received phone calls from members of a telephone fraud gang in October 2014. Liu first remitted funds to the shell bank account of the UnionPay system in Mainland China kept under the control of this gang on several instances. The Hsinchu District Prosecutors Office conducted an investigation on the case and pressed charges on the suspects pending on the ruling of the court. The Hsinchu District Prosecutors Office immediately made their request with the Ministry of Justice for communication with the Public Security Department of Mainland China pursuant to the requirement of transfer of stolen goods in Article 9 of the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement so as to enforce this agreement. On September 26, 2017, Taiwan transferred the amount of approximately NT\$657,270 (approximately RMB143,588), which were proceeds from crimes of cross-straits telecommunication fraud in 2 cases and were recovered, to the same victim of the fraud, Liu, of Mainland China. This was the 8<sup>th</sup> successful recovery and return of the proceeds from crimes to the legitimate owner. (§46)

**115. Policy (§46)**

The Law in Supporting Foreign Courts on Consigned Cases has been legislated for a long time and the scope of coverage is not sufficient, which makes it unable to deal with the needs of contemporary international cooperation in mutual legal assistance in criminal matters. The distinctive situation of Taiwan made it just able to enter into agreements (arrangements) on mutual legal assistance in criminal matters with some countries, such as the United States. Furthermore, these agreements (arrangements) require the support of our domestic law for make them fully enforceable. In the absence of a treaty or agreement, the facility of domestic law will be even more important in requesting mutual legal assistance as legal support. For this reason, we should consult with the UNCAC and other international conventions and legislation of other countries to make our own law governing mutual legal assistance in criminal matters as

the legal reference in making requests and executing mutual legal assistance in criminal matters with other countries. Currently, the Act on International Mutual Assistance in Criminal Matters is being prepared at the drafting stage. This law is designed to consist of 4 chapters, namely, general provisions, requests from foreign governments, institutions, or international organizations with Taiwan for assistance, requests from Taiwan with foreign governments, institutions, or international organizations for assistance, and miscellaneous, for a total of 39 articles. The Executive Yuan passed the draft on November 16, 2017. It is expected that a legal framework for international criminal justice mutual assistance will be established after this law has been passed by the legislature, and can quickly provide for judicial proceedings on cases related to money laundering, the investigation of related preliminary acts of crimes and financing of terrorism, prosecution, and related legal actions to the widest measures. (§46)

- (1) For information, refer to Unit d), Section 4, Chapter II of the General Discussion, on Mechanisms for the Reinforcement of Mutual Legal Assistance in Criminal Matters.
- (2) A study on the draft version of the Act on International Mutual Assistance in Criminal Matters and the agreements (arrangements) between Taiwan and other countries in mutual legal assistance in criminal matters in the requirements and description of Article 46 of the UNCAC is shown in Appendix 4.
- (3) As practices in international criminal justice mutual assistance, inquiry and hearing of the defendants, witness or other parties concerned of the requested state (party) requested by the requesting state (party) shall generally be processed by the personnel of the requested state (party). The following regulations should be included in the draft of the Act on International Mutual Assistance in Criminal Matters: (§46)
  - A. According to Article 17 of the draft of the Act on International Mutual Assistance in Criminal Matters: when a requesting state requests assistance from Taiwan in inquiry and interrogation of the aforementioned parties, the entities in the assistance process are not familiar with the case requested for mutual legal assistance. As such, the requesting state shall explicitly state the particulars for verification and the questions for reference with related descriptions to facilitate the entities in the assistance of the execution of the inquiry and hearing on behalf of the requesting state.

- B. According to Paragraph 2, Article 17 of the draft of the Act on International Mutual Assistance in Criminal Matters: in cross-border mutual legal assistance, there is the need of sending the information on the inquiry and interrogation of the requested state (party) to the requesting state (party) via technological equipment in real-time. Accordingly, Paragraph 18, Article 46 of the UNCAC specified that the entities that provide assistance may transmit the status of the inquiry or hearing via videoconferencing equipment for sharing with the requesting state (party).
- C. According to Paragraph 1, Article 18 of the draft of the Act on International Mutual Assistance in Criminal Matters, at the consent of the entities providing the assistance, the personnel of the requesting state may witness the process of inquiry or hearing on the scene. The execution of the request for international criminal justice mutual assistance involves the exercise of public power and should be executed by the personnel of the requested state (party). Inasmuch as there is familiarity with the case under request for mutual legal assistance, the presence of the personnel of the requesting state (party) in the process of the execution of the request for assistance will be helpful for the personnel of the requested state (party) in the execution of the request for assistance if it is not unenforceable or violates the laws of the requested state (party).
- D. According to Article 16 of the draft of the Act on International Mutual Assistance in Criminal Matters, the content and scope of request for international mutual legal assistance in criminal matters must be explicitly stated with facts. The requesting state shall not transmit or use information or evidence furnished by the requested state for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested state. Article 20 of the same draft also provides that in cases where the requesting party requests for physical evidence or documentation, Taiwan shall respond accordingly. If the aforementioned physical evidence or documentation is obtained from a third party, or involved in other legal proceedings in Taiwan and thus cannot be lent, Taiwan shall request the requesting state to return the lent material immediately after use or by a designated deadline. This provision is stated in Article 16 of the Taiwan-US Mutual Legal Assistance in Criminal Matters Agreement.

- (4) Taiwan will further its effort in seeking bilateral cooperation on the basis of reciprocity with countries in the absence of formal diplomatic relations to advocate for entering into agreements on mutual legal assistance for the effective combating of cross-border crimes. (§46 II)

## **Article 47. Transfer of Criminal Proceedings**

### **116. Important measures and practices (§47)**

- (1) It is stated in Article 47 of the UNCAC that the stated signatories shall consider the possibility of transferring to one another the proceedings for the prosecution of an offence established in accordance with the UNCAC in cases where such transfer is considered to be the interests of proper administration of justice, particularly in cases where several legal jurisdictions are involved, with a view to concentrate the prosecution. In performing this obligation, Taiwan will consider the possibility of transferring proceedings, where appropriate, in cases involving several legal jurisdictions, and seeks to enter into treaties, agreements or arrangements or under the principle of reciprocity to advocate the transfer for facilitating the institution of the proceedings. (§47)
- (2) The Ministry of Justice or the Ministry of Foreign Affairs may contact countries with a possibility of signing agreements of mutual legal assistance with Taiwan and exchange opinions in writing. When a consensus is reached, the Ministry of Foreign Affairs shall make positive effort in arranging consultation and meeting with each other through their foreign representatives with a view to sign agreements on mutual legal assistance for broadening the base of mutual legal assistance between Taiwan and other countries. Before signing an official agreement, the Ministry of Justice shall establish windows for liaison with competent authorities of other countries for strengthening the effort in mutual legal assistance on individual cases and avoiding difficulties in arresting criminals staying overseas, and seek the possibility of cooperation on individual cases under the principle of reciprocity. (§47)

### **117. Important cases (§47)**

- (1) Hu X and its gang (his accomplices were trialed and sentenced by the US Federal Court on charge of organized crimes): In 1998, Hu X repeatedly passed the information collected from



Wintec Company to his accomplices of the gang for larceny purposes at the residence of Michael Liu and a nearby unknown location. They later stole from the Wintec Company and caused the death of Hsu-Ping Tsai from gunshot wounds. The FBI later arrested them. After committing the felony in the USA, Hu X snuck back to Taiwan while his accomplices were put on trial in the USA. Both the USA and Taiwan has legal jurisdiction. Taiwan complied with the USA's requests for mutual legal assistance with the reply from the US Department of Justice by sending relevant evidence and files. The FBI agents also came to Taiwan to stand witness (For information, refer to the 2016 Taiwan High Court Ruling on Appeal Case No. 1464). There was no treaty for the transfer of legal proceedings in this case, but transfer has been accomplished through mutual legal assistance on individual cases. (§47)

- (2) Former attending physician in the blood cancer of the Koo Foundation Sun Yat-Sen Cancer Center, Huang X, was upset because his girlfriend from Mainland China had severed her relationship with him. In December 2009, Huang X carried with him 5 bottles of Class IV controlled drugs, a kind of sedative, to go to Mainland China by plane. He asked his former girlfriend, identified as Qin X, for a meeting using an excuse, and used the sedative on her to make her unconscious. Then he had sex with the girl, and use a towel to clog her mouth until the girl suffocated to death. Huang X then snuck back to Taiwan. On December 29, 2009, the Criminal Investigation Bureau of the Public Security Department of Mainland China transferred the murder case of Qin X with all files, testimonies, and physical evidence (for information, refer to Taiwan High Court 2013 Ruling on Appeal Case No. 635) to Taiwan. The prosecutor of Taiwan instituted an indictment on Huang on charge of murder and requested that the court punish Huang with life imprisonment. Huang was immediately suspended by the hospital. The High Court of Taiwan sustained the previous ruling in the second instance of the trial. Huang was sentenced to 11 years of imprisonment for murder in final court ruling. (§47)
- (3) On February 14, 2011, suspects of fraud in Taiwan were deported to Mainland China by the government of the Philippines to stand trial, as both sides of the Taiwan Straits claimed their own legal jurisdiction. After consultation, Mainland China transferred the suspects and evidence back to Taiwan. This is an example of the transfer of legal proceedings in criminal matters between Taiwan and Mainland China (for further information, refer to Taichung District

Court of Taiwan 2012 Ruling of Transfer Proceedings Case No. 304). The result of the transfer of legal proceedings between jurisdictions resulted in the prosecution initiated by Taiwan where Mainland China waived the right to press charges on the 14 suspects from Taiwan. (§47)

**118. Policy (§47)**

- (1) For further information, refer to Unit d), Section 4, Chapter II of the General Discussion - Reinforcement of the Mechanisms of Mutual Legal Assistance in Criminal Matters and Article 42 of The Report.
- (2) There is room for further cooperation between Taiwan and Mainland China in the repatriation of criminals in economic crimes and the acceptance of criminals after the two sides have entered into the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement. Yet, both sides performed well in mutual legal assistance in other areas stated in the agreement. It is high time that supplementary agreements or other forms of consultation should be held for the improvement of the mechanisms between Taiwan and Mainland China in joint law enforcement for combating crimes and mutual legal assistance related to the jurisdictions of both sides. Taiwan should make the best use of every available opportunity in exchange for communication with the competent authorities of Mainland China in law enforcement for further cooperation so that the issue of jurisdiction may be properly handled. (§47)

**Article 48. Law Enforcement Cooperation**

**119. Legal norms (§48)**

- (1) The Taiwan-US Mutual Legal Assistance in Criminal Matters Agreement, the Guidelines for the Prosecution and Investigation Entities in the Implementation of Mutual Legal Assistance in Criminal Matters between Taiwan and the USA explicitly state that the law enforcement agencies of Taiwan and the USA may provide mutual legal assistance to each other in the investigation, pursuit, and prevention of crime and related criminal proceedings. (§48)
- (2) Article 4 and Article 5 of the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement specifies the scope of cooperation in joint law enforcement of combating crimes and the common consent of both sides in the exchange of information on crimes, assistance in the pursuit and repatriation of criminals and suspects of crimes, and may, where necessary,

engage in joint law enforcement in investigation and pursuit. (§48)

- (3) Preventing and Combating Serious Crime Agreement, Arrangement on Cooperation in Combating Transnational Economic Crime and other Related Crimes with Thailand, Memorandum of Understanding (MOU) between the Taipei Economic and Cultural Office (TECO) and the Manila Economic and Cultural Office (MECO) on Combating Transnational Crimes, and the agreements (arrangements) or memoranda on confidentiality between Taiwan and other 2 countries. Furthermore, Taiwan has entered into the ROC Supreme Court Prosecutors Office and the Kingdom of Bahrain MOU on Cooperation in Combating Crime in 2016 with the goal of building up the network of combating crimes with all countries of the world. (§48)

**120. Important measures and practices (§48)**

- (1) Due to factors in international politics, Taiwan has not been able to attend or participate in the meetings, mechanisms and technical activities of INTERPOL since 1984 and has relied on indirect means for access to information on international security. This made Taiwan spend more time and effort in establishing rules and regulations on counter-terrorism and upgrading professional skills, which has hampered the effort in combating crime at the global level in a short time frame and with complete information. Taiwan could play a role in international counter-terrorism and should not be excluded. (§48)
- (2) Taiwan is not a member of INTERPOL, but can maintain close liaison with the central authorities of INTERPOL in all countries and the law enforcement agencies in these countries for fortifying mutual assistance among member states. Taiwan can also receive encrypted e-mails from the headquarters of INTERPOL related to Taiwan through the central authorities of INTERPOL in Tokyo, Japan. In addition, Taiwan can participate in the International Conference on Transnational Organized Crime and Terrorism (ICTOCT) regularly for exchanges of information between the law enforcement officers of all countries in combating crimes and enhancing the efforts of joint law enforcement. (§48)
- (3) Taiwan has dispatched Police Liaison Officers (PLA) and related personnel to stations in the USA, South Africa, Indonesia, Malaysia, Thailand, Vietnam, the Philippines, Japan, Korea and Macao. Interactions with the local law enforcement agencies have been facilitated and carried out in a timely manner through e-mail communication. Through joint law enforcement in investigation

and pursuit, Taiwan may send additional personnel to other countries for joint investigation and gathering of evidence for building up solid relations in law enforcement cooperation with these countries. Furthermore, Taiwan has developed mechanisms for cooperation with 8 foreign anti-corruption agencies for mutual assistance in the investigation of corruption. (§48)

- (4) Under the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement, Taiwan has established communication channels with the Ministry of Public Security and the Supreme People’s Procuratorate of Mainland China, and 5 agencies at the provincial level for the exchange of information on different kinds of economic crimes, narcotics, corruption, and malfeasance, and joint law enforcement and repatriation of fugitives with Hong Kong, Macao, and the Ministry of Public Security Taiwan Affairs Office and other law enforcement agencies of Mainland China for substantive cooperation in law enforcement. (§48)

**121. Statistics (§48)**

- (1) Statistics on cases of requesting for joint law enforcement is shown in Table 10.

**Table 10. Statistics on requests for joint law enforcement**

State parties	Content	Number of cases (persons)
Foreign agencies in joint enforcement of anti-corruption (From 2011 to 2017)	AAC requested foreign anti-corruption agencies for joint action	25 cases
	Foreign anti-corruption agencies requested AAC for joint action	30 cases
Hong Kong, Macao (From 2013 to 2017)	Exchange of economic criminals, convicts in private sector corruption, and the pursuit of felons at large and related intelligence.	102 cases
Mainland China (From June 2009 to December 2017)	Crimes pertinent to UNCAC such as money laundering, general economic crimes, corruption in private sector and related frauds, criminal conversion or breach of trust.	Joint action in pursuit of 28 cases Deported 49 convicts (including 8 fugitives of corruption crimes, 8 fugitives of corruption crimes in the private sector) Assistance to Mainland China by sending back 1 person. 996 cases in crime intelligence exchange 35 cases in joint investigation and law enforcement

Other countries (From June 2009 to December 2017)	Corruption, corruption in private sector	Expatriation of 7 fugitives of corruption crimes, 4 fugitives of corruption crimes in the private sector
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Data time: 2017; Sources: Ministry of Justice (AAC, Investigation Bureau)

- (2) Taiwan has entered into AML/CFT memorandum or agreements on the exchange of related intelligence with 43 countries or regions. For further information, refer to Article 14 of the Report. (§48)
- (3) From 2012 to 2017, Police Liaison Officers (PLA) have successfully arrested and sent back 557 fugitives (as shown in Table 11) with the cracking of 63 cases on cross-border drug dealing and the arrest of 253 suspects and confiscation of 10,669.12kg of drugs. (§48)

**Table 11 Information on the arrest and expatriation of overseas fugitives**

Date	Total	Mainland China	Vietnam (Including Cambodia)	Thailand	Indonesia	Japan	The Philippines	Malaysia (including Singapore)	South Africa (including Kenya)	USA
<b>Total</b>	<b>557</b>	<b>264</b>	<b>77</b>	<b>72</b>	<b>51</b>	<b>38</b>	<b>21</b>	<b>25</b>	<b>7</b>	<b>2</b>
<b>2012</b>	124	73	17	9	5	6	3	9	2	0
<b>2013</b>	98	57	10	5	10	6	2	4	2	2
<b>2014</b>	98	54	9	18	9	5	3	0	0	0
<b>2015</b>	11	54	9	17	15	6	4	4	2	0
<b>2016</b>	60	13	16	12	4	5	6	3	1	0
<b>2017</b>	66	13	16	11	8	10	3	5	0	0

Source: Ministry of Interior (National Police Agency)

- (4) Taiwan settled 2 drug related cases in 2015 and another 4 cases in 2016 through joint efforts with the law enforcement agencies of foreign countries. As of 2017, Taiwan has successfully settled 7 drug related cases in joint effort with the law enforcement agencies of foreign countries (as shown in Table 12). (§48)

**Table 12. Information on joint law enforcement between the Coast Guard Administration, Executive Yuan of Taiwan and other countries from 2015 to 2017 (drug related crimes)**

Year	Competent authorities	Cases
2015	New Zealand Customs	1
	National Police of the Philippines	1
	Anti-Corruption Bureaus of the Philippines	1
2016	New Zealand Customs	1
	Narcotics Suppression Bureau of Thailand	1
	Drug enforcement unit of the Cambodian National Police	1
2017	Indonesian National Police	1

Drug enforcement unit of the Cambodian National Police	1
The Philippine Drug Enforcement Agency	4
Okinawa Police Station of Japan	1

Source: Coast Guard Administration, Executive Yuan

- (5) From 2015 to 2017, Coast Guard Administration, Executive Yuan, provided information to the law enforcement agencies of Mainland China under the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement that led to the successful cracking of 9 cases of drug related crimes (as shown in Table 13). (§48)

**Table 13. Information on Cross-Straits Joint law enforcement in combating drug related crimes**

Year	Number of cases	Quantity of drugs (kg)
2015	4	934.697
2016	2	1341.75
2017	3	555
Total	9	2831.447

Source: Coast Guard Administration, Executive Yuan

**122. Important cases (§48)**

- (1) The Court of Korea issued an arrest warrant for wanted criminal of major economic crimes KIM X. A red alert was given by INTERPOL. Taiwan arrested the fugitive in Keelung on July 31, 2013 (Criminal Investigation Bureau of National Police Agency of the Ministry of the Interior) and handed the fugitive over to the Immigration Administration of the Ministry of Interior on August 1 of the same year for further action. (§48)
- (2) After entering into the PCSC with the US on bilateral cooperation in the prevention and combating of serious crimes on December 20, 2011, the first instance of joint law enforcement in the investigation of fugitives of serious crimes yielded results: Pilipino-American CORPUZ was allegedly involved in the murder of an American female on December 31, 2013. The FBI received information that the suspect would be in transit at Taoyuan International Airport on January 10, 2014, and passed the information to Taiwan (Criminal Investigation Bureau of the National Police Agency of the Ministry of the Interior) for action. On receiving the information, Taiwan police arrested the suspects in a matter of hours. The FBI expressed their gratitude for the support and was impressed with the efficiency of the police of Taiwan. There was zero

lead-time in this action of joint law enforcement. (§48)

- (3) On December 20, 2017, the representative of the Criminal Affairs Bureau of Japan presented a certificate of gratitude and a banner to the National Police Agency and 8 individual banners to the police engaged in the task force for joint law enforcement in the case of drug trafficking with 480 kg of drugs confiscated. (§48)
- (4) The first case of the voluntary action for the arrest of a fugitive from Taiwan by the border police of Mainland China and inform Taiwan of the arrest: a former judge of Tainan District Court of Taiwan allegedly violated the Anti-Corruption Act and on the charge of running a sex parlor behind the scenes disguised as a skin care business jointly with his mistress, and made use of his position as a judge to protect the illegal business. He was sentenced to imprisonment of 11 years and 2 months in the final court ruling. The convict snuck out of Taiwan during the legal proceedings of the case and was wanted by the court. In October 2010, this convict used a counterfeit passport to attempt to pass the port of Zhuhai in Mainland China, and was discovered and arrested by the border police. Officers of the Investigation Bureau and the Immigration Administration of the Ministry of Interior were dispatched for Guangzhou to escort the convict back to Taiwan and closed the case. (§48)
- (5) Chairman Chou X of a certain listed company was allegedly involved in hyping of the stock issued by his own company with others including Chang X so as to inflate the stock price. They acquired unjustified proceeds amounting to NT\$600 million in 2010. Chou X departed from Taiwan in the course of investigation and hid at his company in Shenzhen. He was wanted by the Taipei District Prosecutors Office. The Investigation Bureau followed the mechanisms under the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement by requesting assistance twice from the Ministry of Public Security of Mainland China in arresting Chou X. The police from the Guangdong Police Station arrested Chou X on August 8, 2013, and transferred Chou X to the law enforcement officers of Taiwan for taking back to Taiwan. On June 30, 2016, the Supreme Court of Taiwan sentenced Chou X to 7 years of imprisonment on violation of the Securities and Exchange Act. (§48)
- (6) Wang X, an offender of serious economic crimes, had been hiding in Mainland China for 9 years. On May 4, 2012, the Investigation Bureau followed the mechanisms under the Cross-Strait Joint

Crime-Fighting and Judicial Mutual Assistance Agreement by requesting the Ministry of Public Security of Mainland China for assistance in writing. On acknowledging the request, Shanghai police went to Dalian, Liaoning Province, to arrest Wang X and delivered Wang X to the Special agents of the Investigation Bureau for return to Taiwan. Wang X was a former legislator of Taiwan and a vice chairman of a certain bank. He was allegedly involved in the serious economic crime of breach of trust. His offense attracted a great amount of attention with the people of Taiwan. This case exemplifies the determination of the law enforcement agencies on both sides of the straits in the repatriation of fugitives, joint crime-fighting, and the integrity of justice. (§48)

- (7) In March 2017, the Taichung District Prosecutors Office discovered certain members of a fraud gang to have gone to country A in America to set up a computer center. Taiwan contacted the judicial authorities of country A for legal assistance. Related personnel of Taiwan headed for country A on June 3 of the same year. Consensus was built after mutual consultation. Country A started to gather evidence and locate the computer center. The officers dispatched from Taiwan (Investigation Bureau and Criminal Investigation Bureau [CIB]) arrived in Country A on August 28 and assisted in the gathering of all evidence collected and petition for a search warrant. Two locations housing the computer facilities used in telecommunication fraud were raided in September of the same year and 4 residences of the prime suspect Huang. The law enforcement officers arrested 4 members of the fraud gang and seized the computers, telephones, gateways, operation manuals and other important evidence related to the fraud. Prime suspect Huang was also allegedly involved in the forgery of customs document of the immigration authorities of Country A and money laundering. The court of Country A sentenced Huang to 6 months of imprisonment. After coordination, Country A agreed that the 4 Taiwanese suspects could be sent back to Taiwan under the escort of the law enforcement officers of Taiwan. (§48)

## **Article 49. Joint Investigations**

### **123. Legal norms (§49)**

According to Article 2 of the Taiwan-US Mutual Legal Assistance in Criminal Matters



Agreement, Article 1 of the Taiwan-Philippines Mutual Legal Assistance in Criminal Matters Agreement and Article 2 of the Taiwan-South Africa Mutual Legal Assistance in Criminal Matters Agreement, among other bilateral agreements (arrangements), joint investigation is feasible for individual cases. (§49)

**124.** Statistics: as shown in Table 14 (§49)

**Table 14. Statistics on joint investigations**

	Taiwan-US Mutual Legal Assistance in Criminal Matters Agreement, Taiwan-South Africa Mutual Legal Assistance in Criminal Matters Agreement.	Principle of reciprocity
Number of cases requested by both sides		29 (including corruption and malfeasance, economic crimes and drugs).
	USA, South Africa	Australia, New Zealand, Canada, Dominican Republic, Brazil, Argentina, Fiji, Mauritius.

Data time: 2012 to 2017; Source: Ministry of Justice

**125.** Important cases (§49)

- (1) On March 16, 2016, with the help of the intelligence from The National Crime Agency (NCA), UK, the central authorities of Interpol Seoul (Korea) and Madrid (Spain), our Police Liaison Officer (PLA) in Thailand engaged in joint action with the Thai police in the arrest of transnational credit card fraud gang member MOSNEAGU GEORGE of Romania and also 7 Romanian suspects including BARBU in Taipei City, New Taipei. On April 27, 2016, prime suspect CUBELAC, and other suspects in the total of 6 were arrested (Including 3 Taiwanese accomplices responsible in remittances). The case was then closed. (§49)
- (2) From July 9 to July 10, 2016, 51 ATM in 20 branches of the First Bank fell victims to ATM scams with losses amounting to NT\$83.27 million. The National Police Agency, Ministry of Interior arrested 3 suspects on July 18 and recovered about NT\$77.45 million. Nineteen (19) other accomplices of foreign nationalities were at large and snuck out of Taiwan. They were wanted by the prosecutors. (§49)
- (3) The SWIFT system of Far Eastern Bank was hacked on October 3, 2017, with fund transfer amounting to NT\$1.8 billion. The National Police Agency, Ministry of Interior notified the

central authorities of the Interpol Colombo (Sri Lanka) through the INTERPOL notification system for assistance in the investigation of the accounts involved in the crime and requested blocks of the cash flows. Sri Lanka subsequently arrested 4 suspects and provided assistance in recovering NT\$1.74 billion on October 5. (§49)

- (4) For strengthening international cooperation in the combating of transnational telecommunication fraud and money laundering, Taiwan proposed and accomplished the establishment of liaison officers commissioned for routine duties in Country A of America. This arrangement yielded results. Examples are the recent visit of the delegation of prosecutors from Taiwan to Country A for discussion with the local prosecution authorities of Country A in joint investigations and launch joint action in law enforcement in Country A, including search and detention. In this joint operation, telecommunication equipment used in telecommunication fraud was seized in Country A with the arrest of Taiwanese suspects and accomplices in Country A for the deterrence of telecommunication frauds in that country. (§49)

## **Article 50. Special Investigative Techniques**

### **126. Legal norms (§50)**

- (1) Subparagraphs 1 and 3, Paragraph 1, Article 5, of the Communication Security and Surveillance Act specifies that the investigation of corruption is a necessary condition for legitimizing the application of eavesdropping. Unless the eavesdropping is conducted unlawfully and the content of information collected from illegal eavesdropping or the evidence so derived are lawfully unacceptable, evidence gathered from the content of eavesdropping and the evidence so derived could serve as evidence in judicial investigations, other proceedings, or for other purposes in related procedures and limitation. (§50 I)
- (2) Article 32-1 and Article 32-2 of the Narcotics Hazard Prevention Act regulate the investigations of transnational drug related crimes basing on which the Guidelines for Customs Service in the Controlled Delivery of Drugs for regulating the transfer operation under control. (§50 IV)
- (3) According to Article 133-2 of the code of Criminal Procedures, in case of emergency that immediate action of seizure is necessary with justifiable reasons, proceed to seizure directly. According to Article 4 of the Money Laundering Control Act, the sentence of court on guilty of

the crimes is not a necessary condition for the determination of proceeds from crimes. This provision broadens the scope of the identification of proceeds from crimes for confiscation. (§50)

**127. Statistics (§50 I)**

In 2017, there were 21,293 petitions for communications surveillance submitted for the first time processed by the control body of the government of which the majority of the petitions were from the police authorities, which accounted for 69.7% of the total, followed by the investigation authorities, which accounted for 19.0% of the total. The court has received 20,580 petitions of the same kind with 70.8% approved. Of all these cases, 1,056 were related to corruption and malfeasance, with 1,046 cases or 99% approved for such purposes. (§50 I)

**128. Policy (§50 I,II,III)**

- (1) Change in the social structure has paved the way for new means and modes of crimes. The means of investigations currently in use can no longer properly handle organized and hidden crimes across national borders. Under these circumstances, investigations by undercover police emerged as an effective means for criminal investigation for the police in many countries. In Taiwan, we have drafted the Undercover Investigation Act pending further discussion for consensus. Extraordinary means of investigation adopted in Taiwan for communications surveillance are interpretation station, covert recording device, and GPS. (§50 I)
- (2) Further development of investigation techniques and extensive installation of eavesdropping facility will be continued as provided by law particularly the Communication Security and Surveillance Act. (§50 II,III)

**129. Important cases of Controlled Delivery (§50 I)**

- (1) Person A is the person in charge of a piece of land under particular county/city government and this piece of land is offered for tender invitation. Person A assisted a particular construction company to acquire a particular piece of public land, and told Person B, a friend of Person A, in May 2014, to collect a sum of NT\$16 million as kickback previously arranged for the successful acquisition of the said land under the assistance of Person A. This incident was then discovered by the AAC. After Person B arrived at the office of the said construction company, he found out that the bags he brought with him were not enough to carry NT\$16 million in cash.

Person B then walked out from the office and bought a brand new suit case from a nearby shop and returned to the office of the construction company, filled the case with all the cash, and carried the case filled with cash to a seafood restaurant to deliver it to Person A. Person A then brought the cash home. At the instruction of the prosecutor, the AAC videotaped the entire process of carrying small bags by Person B, the purchase of the suit case, the delivery of the case with items, and Person A carrying the case home. The AAC then dispatched its agents to the home of Person A and controlled the exact location of the case while petitioning the court for a search warrant. The AAC agents conducted search on the residences of Persons A and B and related facilities of the construction company, and discovered the aforementioned proceeds from bribery. (§50 I)

- (2) Huang X, the chairman of a Hong Kong oil company was allegedly involved in fraud and money laundering and was on bail while taking a trip to Taiwan for medical attention in February 2015. He was then kidnapped from his residence in September 2015, with financial dispute believed to the motive of the kidnap. A ransom amount of HKD70 million (approximately NTD290 million) was demanded. The Taiwanese police escorted the wife of Huang X to pay the ransom of HKD13 million, arrested 15 suspects in Taiwan, and saved Huang X from the hands of the criminals for continued medical attention in Taiwan. (§50 I)
- (3) At the instruction the prosecutor of the Prosecution Office at Kaohsiung District Court of Taiwan, the Coast Guard Administration, Executive Yuan and its functionaries used radar to monitor the activities of fishing vessels. On May 26, 2017, they successfully raided the fishing boat Yung Fu Sheng with the confiscation of 1,800 cubes of heroin amounting to 693 kg, which was the largest quantity of drugs ever raided in Taiwan. (§50 I)

## **Chapter V Asset Recovery**

### **Article 51. General Provision**

#### **130. Legal norms (§51)**

- (1) According to Article 473 of the code of Criminal Procedures, The prosecutor shall return or delivery property confiscated or recovered within one (1) year after the final ruling of the court

in response to the claim of the entitled party for return, or the creditors to the proceeds from crimes who have acquired the entitlement to claim for payment unless the aforementioned property is damaged or the entitled parties waive the claims. If there is already a change in the value of the aforementioned property, the proceeds from the change in value shall be delivered to the entitled parties. Article 475 of the same law also provides that, if the entitled owner of the property cannot be found, or the property in point cannot be returned, the prosecutor shall make announcement of such details. If there is no party claiming the property two (2) years after the day of announcement, the property shall be converted to the national treasury. This law covers the effect of confiscation and the protection of the right of the victims. (§51)

- (2) According to Paragraph 5, Article 13 of the Money Laundering Control Act, requests from foreign governments, institutions, or international organizations under the treaties or agreements as provided in Article 21 of this law, or under the principle of reciprocity, for assistance with Taiwan, and if the crimes involved the offenses stated in Article 3 of this law, the rules as mentioned in the previous 2 paragraphs shall be applicable even though the Republic of China is involved in investigation or the crimes are in court proceedings (the requirement of the confiscation of the proceeds from crimes) (§51)
- (3) Article 17 of the AIT-TECRO Mutual Legal Assistance Agreement, and Articles 18 and 19 of the Taiwan-Philippines Agreement on Mutual Legal Assistance in Criminal Matters also serve the same purpose. (§51)

**131. Important cases (§51)**

- (1) The US Department of Homeland Security conducted an investigation on a drug cartel in Latin America in November 2011, and discovered that one Taiwanese woman inside the US used the import and export sale of garments as cover to assist the drug dealers in money laundering. US\$27 million from the drug trade was involved in the laundering and was remitted to a domestic bank in Taiwan. The competent authorities of the USA and Taiwan remained in close liaison for intelligence exchange. In September 2014, the US Department of Justice applied the AIT-TECRO Mutual Legal Assistance Agreement and thereby requested from Taiwan mutual legal assistance to seize the bank account under the title of the aforementioned Taiwanese women for keeping the proceeds from money laundering. The Prosecution Office of Taipei

successful seized the proceeds from illegal means, amounting to US\$15 million. (§51)

- (2) The first successful case in the recovery of property through Taiwan-US mutual legal assistance: Chen X used the proceeds from bribery in the 2<sup>nd</sup> reform of the banking and financial system to buy two pieces of real estate in the USA. In July 2010, the prosecutor of the US Department of Justice of the criminal investigation branch responsible for the confiscation of property and money-laundering cases held that the two pieces of real estate were suspected of being acquired by proceeds from corruption, so he filed a civil procedure for confiscation of the property. In addition, he further requested from the Ministry of Justice mutual legal assistance for 2 instances in accordance with the AIT-TECRO Mutual Legal Assistance Agreement. In response, the former Special Investigation Squad of the Prosecution Office of the Supreme Court of Taiwan (this function was dissolved on January 1, 2017) provided the competent authorities of the USA with evidence and materials. The US government auctioned the 2 pieces of real estate in 2013 for the total amount of US\$1.5 million and returned the full amount to Taiwan in 2016. (§51)
- (3) One case exemplified the universal fundamental principle that nobody may retain proceeds from crimes under the law: it has been 15 years since the case of the proceeds from bribery to defendant Wang X from the procurement of the Lafayette battleship unfolded. After years of endeavor, the prosecutors took appropriate action in freezing the proceeds kept in the bank accounts of Switzerland, Liechtenstein, Luxembourg, Austria, Jersey Island, and the Isle of Man. After the new law became effective on July 1, 2016, the prosecutors immediately petitioned the Taipei District Court of Taiwan to confiscate the proceeds from bribery from Wang X and other accomplices amounting to US\$969,751,764.31, including principal and accrued interest. The Taipei District Court of Taiwan acted in favor of the petition whereby a warrant was issued for the confiscation of the proceeds from crimes from defendants Wang X with other four people and the third parties, Euromax Company, Sableman Company, and Luxmore Company, proceeds which totaled US\$900,146,887.18, including principal and accrued interest to the last day of execution. (§51)

### **132. Policy (§51)**

Taiwan may assist the US in seizing the proceeds of crimes under the AIT-TECRO Mutual Legal

Assistance Agreement on condition that there is legal support from domestic legislation for such purposes and that the proceeds are returned to the US. However, there is no legislation in existence for the time being, and as such nothing could be done. As stated in the draft of the Act on International Mutual Assistance in Criminal Matters (for further information, refer to Article 46 of the Report), Taiwan may request that a third country seize the proceeds from crimes with recognition and execution of the ruling in foreign countries for the confiscation of proceeds from crimes (the content should also specify that the requesting state shall provide related information and protect the rights of the third party). This became essential as a legal reference for the return of proceeds from crimes after the draft was passed into law. Taiwan will be discrete in withholding expenses incurred from the proceedings before returning the proceeds to the requesting state. (§51)

## **Article 52. Prevention and Detection of Transfers of Proceeds of Crime**

### **133. Legal norms (§52 I,II,IV-VI)**

- (1) According to Article 9 of the Business Entities Accounting Act, business expenditure at a designated amount shall be effected by bill of exchange, promissory note, check, postal remittance, T/T, fund transfer or any other means or instruments of payment approved by the competent authority with the name of payee stated for leaving a complete audit trail. (§52 I)
- (2) According to Article 38 of the Business Entities Accounting Act, Paragraph 2, Article 8 of the Money Laundering Control Act, and Article 12 and Article 13 of the Regulations Governing Anti-Money Laundering of Financial Institutions, accounting documents and records on all business relations and transactions with its customers shall be maintained. In addition, the original specimens of the records on data reported by financial institutions, customer due diligence (CDD), and transaction documents shall be kept for at least five (5) years. Details of the Regulations Governing Anti-Money Launder of Financial Institutions are specified below:  
(§52 I,II)
  - A. Article 3 and Article 13 specify that financial institutions shall verify the identity of the customer and keep relevant transaction records with respect to cash transactions above a certain amount. For occasional transactions, they must verify the identity of the customer in

accordance with Paragraph 4 of Article 3. The means for the aforementioned CDD that it shall include identifying the beneficial owner of a customer and taking reasonable measures to verify the identity of the beneficial owner, using data or information from a reliable source.

B. Article 10 specifies that when conducting CDD measures, financial institutions should check to determine a customer and its beneficial owner or senior managerial officer is a person who is currently or has been entrusted with a prominent public function by a foreign government or an international organization [referred to as politically exposed persons (PEPs) hereunder], or is a family member or close associate of a PEP. If a customer or the beneficial owner thereof is determined to be as a current PEP of a foreign government, a financial institution shall treat the customer as a high-risk customer, and adopt enhanced CDD measures. If a customer or the beneficial owner thereof is determined to be a current PEP of the domestic government or an international organization, a financial institution shall assess the PEP's risks when establishing business relationship with the PEP and conduct annual review thereafter; in case of higher risk business relationship with such customers, the financial institution shall adopt enhanced CDD measures. Article 9 and Article 15 also specify that financial institutions shall conduct ongoing monitoring of the accounts or transactions, and file a suspicious transaction report upon discovery of suspicions of money laundering or terrorist financing.

C. Article 6 specifies that, a Financial Institution shall determine the extent of applying customer due diligence (CDD) and ongoing due diligence measures based on a risk-based approach (RBA). For higher risk circumstances, they must obtain the approval of senior management before establishing or entering a new business relationship, and reasonable measures must be taken to understand the sources of wealth and the source of funds of the customer, and enhanced ongoing monitoring of the business relationship must be conducted. A financial institution shall establish policies and procedures for account and transaction monitoring based on a risk-based approach and utilize an information system to assist in the detection of suspicions of money laundering or terrorist financing transactions.

(3) Item 4 in the Directions Governing Internal Control System of Anti-Money Laundering and Countering Terrorism Financing of Banking Business, Electronic Payment Institutions and Electronic Stored Value Card Issuers explicitly states that banking businesses are prohibited



from entering into correspondent relationship with shell banks and should be required to satisfy themselves that correspondent financial institutions do not permit their accounts to be used by shell banks. (§52 IV)

- (4) Article 11 to Article 13 of the Act on Property-Declaration by Public Servants specify the penal provisions (including administrative penalty and criminal penalty) for entities (institutions), groups or individuals who declined to explain or provided untrue accounts in explanation without justifiable reasons, parties obliged to make declaration of property possession who made willful concealment of material facts or cheated in the declaration process and made declaration beyond the designated deadline without justifiable reasons, provided untrue accounts on property on purpose, parties under trust obligation who failed to refer to trust by the designated deadline without justifiable reason or entrust property for purpose under the same law. (§52 V)
- (5) The Act on Property-Declaration by Public Servants regulates the review and penalty as well as the review mechanism, and demands that all parties obliged to make declaration shall comply with the aforementioned rules and regulations in making declaration, including the property in Taiwan and that offshore. Penalties will be imposed for willful concealment or providing untrue accounts of property on purpose. (§52 VI)
- (6) The GP Act has established transparent and effective anti-corruption measures, as referred to in Article 9 of the Report, for the elimination of corruption, please refer to Article 14 of the Report. Article 17 of the GP Act also prescribes that the participation of foreign suppliers in the procurement by each entity shall be governed by the requirements set forth in the treaties or agreements to which this nation is a party, the procuring entity shall permit the participation of suppliers from parties of the said treaties or agreements, and may, based upon actual needs, provide in the tender documentation that suppliers from countries which are not parties to the said treaties or agreements are permitted to participate. Please refer to Article 9 of the Report. (§52)
- (7) Article 22-1 of the amendment to the Company Act, a clause on the disclosure of the actual beneficiaries is included. For further information, refer to Article 14 of the Report.

**134. Important measures and practices (§52 III)**

- (1) Taiwan will continue to participate under the mechanisms of the Egmont Group, the APG and other international organizations to cultivate channels for reciprocal consultation with relevant offshore entities. (§52 III)
- (2) Taiwan Stock Exchange and Taipei Exchange (TPEX) established designated body for market surveillance for detecting illegal trade such as stock hype and insider trade in accordance with the Taiwan Stock Exchange Corporation Rules Governing Implementation of the Stock Market Surveillance System and Regulations Governing Implementation of the Market Surveillance System for Securities Traded on the TPEX (§52)

**135. Important cases (§52)**

- (1) Party A was an employee in the sale department of petrochemical company who is responsible for the sale of petrochemical products. Party A was well aware that the offer of Japanese Company X was higher than Korean Company Y. Yet, he presented a phony quotation to the company with illicit intent and sold the products of the company to Korean company Y at a lower price so as to get kickback from Korean company Y. For effecting payment to Mr. A, the manager of Korean Company Y, Mr. B, asked his friend in Taiwan who agreed to avail his bank account to Mr. B by surrendering the passbook and the banking card to Mr. A. Mr. B then remitted the total of NT\$130 million as a reward to the account in several transactions. Party A then withdrew money from the ATM of the bank with the banking card. The bank detected the unusual transactions at its ATM via its financial institution system, used their experience to scrutinize the transactions, and reported the suspected money laundering to the Investigation Bureau. The AML branch of the Investigation Bureau started to trace the sources of the funds and determined that they were from offshore. The transactions were not socially associated with the holder of the account and were suspected to be illegal. The bureau referred the case to law enforcement for investigation. The acceptance of kickback was finally uncovered. After proper actions were taken, all the proceeds from crimes were recovered. Mr. A was sentenced to imprisonment for 6 years and eight (8) months by New Taipei District Court of Taiwan in July 2015. (§52)
- (2) Party A is in charge of the consumer channel of multinational corporation X. Company X commissioned Company Y to launch a promotional event by using gift vouchers as gifts for the

consumers to as to boost up sale. With illicit intent, Party A recalled the gift vouchers left over from the promotional event through Company Y, and cash the gift vouchers under his own accounts without surrendering the gift vouchers to the Company. He took the amount of NT\$170 million from the company through criminal conversion. One day, when Party A cashed the gift vouchers at a financial institution, the financial institution discovered that the gift vouchers presented for cash in sold shortly before and the amount was too high, which was unusual in the transaction of the gift voucher market. The financial institutions suspected the transactions and reported to the Investigation Bureau. The AMLD discovered that Mr. A had likely used the funds of the company to buy the gift vouchers for criminal conversion. The case was transferred to law enforcement for investigation. The findings from the investigation indicated that Mr. A had bought several pieces of real estate after the cash in of the gift vouchers. They then took immediate action to freeze the assets of Mr. A to prohibit the transfer of proceeds from the crimes and successfully recovered the proceeds. Mr. A was sentenced to 2 years of imprisonment by the High Court of Taiwan with probation for 5 years. (§52)

## **Article 53 Measures for Direct Recovery of Property**

### **136. Legal norms (§53)**

- (1) Paragraph 2, Article 19 of the Money Laundering Control Act amended on December 28, 2016, specifies that the proceeds from crimes confiscated or recovered under the treaties or agreements between Taiwan and foreign governments, entities, or international organizations or under the principle of reciprocity pursuant to Article 21 of this law are at the discretion of the Ministry of Justice for return to the concerned foreign governments, entities, or international organizations in whole or in part under the aforementioned treaties, agreements, or under the principle of reciprocity, or, the proceeds of the property requested for transfer in whole or in part. The reason for the amendment is that Article 57 of the UNCAC explicitly requires the return or the sharing of the proceeds from crimes recovered through international mutual assistance. The law in effect only provides that the Ministry of Justice may transfer the proceeds in whole or in part to the parties providing assistance in the cases where Taiwan requested that foreign governments, entities or international organizations provide assistance

in confiscation. In cases where foreign governments, entities, or international organizations request assistance in confiscation from Taiwan, no law in effect provides the request for sharing of the proceeds. As such, there is no legal reference for action. The Ministry of Justice may request foreign governments, entities, or international organizations of the requesting states (parties) for sharing. If the Article is subject to amendment, the mechanisms for the Ministry of Justice in requesting the sharing of confiscated property with the foreign governments, entities, or international organizations under assistance will be established. Domestic laws in different countries vary in the recovery of proceeds from crimes through international cooperation. An example is the system of property claim under civil procedures further to the confiscation under the criminal law in the Anglo-British legal system. For facilitating international cooperation, the system of sharing the fruit of confiscation shall not be limited to the confiscated proceeds from crimes but also include the action involved in the recovery of proceeds from crime. (§53)

- (2) The Civil Procedures Act does not provide the mechanisms for the claim for damage of the victims (state, government agency, or individuals) under law. As such, any case of this nature is at the discretion of the court in making judgment on a case-by-case basis. (§53)

## **Article 54. Mechanisms for recovery of property through International cooperation in confiscation**

### **137. Legal norms (§54)**

- (1) Paragraph 2, Article 19 of the Money Laundering Control Act regulates the confiscation of proceeds from crimes and also the practice in the execution of confiscation per the request of foreign courts. (§54 I,II)
- (2) According to Paragraph 5, Article 13 of the Money Laundering Control Act, for the request of foreign governments, entities, or international organizations for assistance under the treaties or agreements pursuant to Article 21 of this law or under the principle of reciprocity, if the cases are relevant to the offenses stated in Article 3 of this law, the aforementioned 4 paragraphs shall be applicable whether or not these cases are under the investigation of legal proceedings of the Republic of China. This is the practice of executing the orders of foreign courts in the

freezing of assets. Paragraph 3, Article 18 of the same law also provides for confiscation. (§54 I,II)

- (3) Where the request of other states for mutual legal assistance in identification, seizure or confiscation is governed by relevant treaties or agreements on anti-money laundering, or under the principle of reciprocity, and the crimes are offenses as defined by Article 3 of the Money Laundering Control Act, competent authorities of the Republic of China may take immediate and appropriate actions in response to the request without investigation or proceedings in accordance with applicable laws related to seizure and prohibition of disposal or confiscation. The definition of the crime of money laundering in Taiwan conforms to the requirements of the Vienna Convention on the Law of Treaties and the Palermo Convention on the Law of Treaties, which also includes preliminary offenses with money laundering. (§54 I,II)
- (4) Article 10 of the Anti-Corruption Act and Article 133 of the code of Criminal Procedures are the legal reference for confiscation. For further information, refer to Article 31 of the Report. Article 17 of the AIT-TECRO Mutual Legal Assistance Agreement and Articles 18 and 19 of the Taiwan-Philippines Agreement on Mutual Legal Assistance also provide legal reference for confiscation. (§54 I,II)
- (5) The amendment to the code of Criminal Procedures and Enforcement Rules for the code of Criminal Procedures were promulgated on June 22, 2016, whereby the system of the confiscation of the property from crimes of a third party was established. (§54 I,II)

**138. Important measures and practices (§54)**

- (1) Taiwan can respond quickly to the request of foreign states for the identification, freezing, seizure, or confiscation of the sources of money laundering or proceeds from crimes, criminal tools or tools intended for use in the committing of a crime or the equivalent value of property in mutual legal assistance. (§54 I,II)
- (2) The practice of the national FIU unit of Taiwan (AMLD, MJIB) : (§54 I,II)
  - A. For international transmission in request for exchange of financial intelligence, refer to Article 38 of the Report.
  - B. As provided by the Egmont Group framework in the practice of intelligence exchange, member states shall specify the reason, any legal proceedings in progress, and anticipation of

the confiscation or lodgment of property at the time of request for financial information exchange. Accordingly, if there are anticipations of confiscation or lodgment of property at the time the judiciaries or law enforcement agencies of relevant member states request the exchange of information, it shall be explicitly stated in the request. Likewise, when the prosecutors or other law enforcement agencies need to request the AMLD provide assistance in handling the requests for international transmission of financial information as per the request of foreign financial intelligence units in the process of investigation of corruption or malfeasance in the private sector, and holds that there is the possibility of requesting that the competent authorities of the countries where the property from crimes are located for assistance in confiscation or lodgment, and it is necessary to notify the competent authorities of relevant countries, they will explain the details as per the request of the requesting entities at the time of international transmission of financial information.

C. Where foreign financial intelligence units may request the confiscation or lodgment of property on behalf of the judiciary or law enforcement agency of specific member state under the Egmont Group framework of intelligence exchange, the request will be referred to relevant prosecutors by division of labor for action.

#### **139. Important cases (§54)**

There are several cases exemplifying the success of Taiwan in the coordinated action of confiscation and lodgment of property with other countries. Examples are:

- (1) Coordinated with the USA in the confiscation of real estate allegedly involved in the corruption of former President Chen X, and seizure of the proceeds in the bank accounts of Taiwan from money laundering from Latin American drug dealers. (§54 I,II)
- (2) Worked in coordination with Switzerland and other countries in the seizure or freezing of the bank accounts involved in the deposit of bribe money for defendants Wang X and accomplices related to the Lafayette scandal. (§54 I,II)

#### **140. Policy (§54)**

Specify related requirements from Article 23 to Article 28, and Article 34 in the draft version of the Act on International Mutual Assistance in Criminal Matters (refer to Article 46 of the UNCAC) (§54 I,II)

## **Article 55. International Cooperation for Purposes of Confiscation**

### **141. Legal norms (§55 I,II,III,VI,IX)**

- (1) The Money Laundering Control Act regulates the practice of the execution of orders of confiscation by foreign courts. For further information, refer to Article 53 of the Report. For crimes specified in Paragraph 1, Article 13 of the same law (make use of accounts, remittance, currency or other payment instruments for the commission of crimes) shall be subject to the application under Paragraph 2 of the same article in the orders for the prohibition of the transaction for withdrawal, fund transfer, payment, delivery, assignment, or any other necessary measures. Under Paragraph 5 of the same article, this special requirement also applies to requests for mutual legal assistance from foreign countries. (§55 I,II)
- (2) The provisions under the code of Criminal Procedures, AIT-TECRO Mutual Legal Assistance Agreement, and the Taiwan-Philippines Agreement on Mutual Legal Assistance in Criminal Matters on confiscation or seizure are specified in Article 54 of the Report. (§55 I,II)
- (3) Article 46 of the UNCAC shall be applicable under Paragraph 3 of this article. For further information, refer to Article 46 of The Report.
- (4) The Chapter of Confiscation was introduced to the Criminal Code. Likewise, the requirements for confiscation of proceeds from crimes were broadly defined in the Money Laundering Control Act (refer to Article 31 of the Report). The latter part of Paragraph 1, Article 142 of the code of Criminal Procedures, and Subparagraph 4, Paragraph 2, Article 18, and Paragraph 3, Article 19 of the Taiwan-Philippines Agreement on Mutual Judicial Assistance also provide that no damage should be caused to the rights of third parties. (§55 IX)
- (5) It is explicitly stated in the draft version of the Act on International Mutual Assistance in Criminal Matters that if specific condition is satisfied, Taiwan should recognize and execute the verdict or order of requesting that the state assist in the confiscation or recovery of proceeds from crimes excluding the civil procedures of the requesting state. Yet, the principle of priority was adopted in the draft version of the Act on International Mutual Assistance in Criminal Matters whereby the same offence under the treaty and domestic law, the former shall be the first to use. Likewise, crimes defined by the UNCAC shall be handled in accordance with the

means and purposes specified in the UNCAC and the draft version of the International Criminal Justice will not be applicable. (§55 III,VI-IX)

- (6) Comparing the crime of stolen goods under the Civil Code of the Republic of China and the proceeds from crimes as stated in Article 55 of the UNCAC: The Criminal Code defines stolen goods in two ways. First of all, it is stated in Article 329 of the Criminal Code that, in larceny or forcible seizure, offenses where there is the use of violence or threat on the scene for the protection of stolen goods, where there is an escape from arrest, or eradication of criminal evidence, shall be deemed robbery. Secondly, it is the crime stated in Article 349 in Chapter 34, on Stolen Goods, of the Criminal Code. The former is limited to the property acquired by larceny or forcible seizure. The crime of stolen goods stated in the latter aims at avoiding difficulty in the repossession or recovery of property through forcible seizure or criminal conversion through larceny, fraud, or criminal conversion. As such, the prerequisite of the latter is that the property acquired by the commission of the aforementioned crimes could be defined as stolen goods. This implies that the property acquired from the aforementioned crimes to the criminal confinement of the victims to the effect that the victims are manipulated by the criminals cannot be defined as stolen goods. Stolen goods as referred to in this context shall be any illegal act on the property for purpose of acquisition of the property. If the law provides that the victims may claim for the repossession of the goods, including movables or real estate, but not intangible rights or benefits. This refers to the objects deriving from the commission of crimes as stated in Article 38 of the Civil Code. However, this should be classified as proceeds from crimes as stated in Paragraph 1, Article 38-1 of the Criminal Code. Article 55 of the UNCAC regulates international cooperation in confiscation, in which case such cooperation shall be activated in pursuant to Paragraph 5, Article 38-1 of the Criminal Code that if the proceeds from crimes were actually and lawfully returned to the victims, it would not be appropriate to pronounce for confiscation or recovery pending on court decision, or petition for return pursuant to Article 473 of the code of Criminal Procedures after court decision. (§55)

#### **142. Policy (§55)**

The draft version of the Act on International Mutual Assistance in Criminal Matters prepared in Taiwan:



- (1) Article 23 to Article 28 of the draft version of the Act on International Mutual Assistance in Criminal Matters regulates assistance to foreign countries in the execution of confiscation.
- (2) Paragraph 3, Article 55 of the UNCAC regulates the information stated in the written request for mutual legal assistance pursuant to Paragraph 15, Article 46 of the UNCAC. Other matters to be covered are also stated in Article 23 to Article 28, and Article 34 of the draft version of the Act on International Mutual Assistance in Criminal Matters. (§55 I,II)
- (3) Provisions regulating the recognition and execution of property to the request of foreign countries are introduced to the draft version of the Act on International Mutual Assistance in Criminal Matters.
- (4) The condition for the confiscation or recovery of property from crimes is explicitly stated in the draft version of the International Criminal Justice Mutual Legal Assistance for requesting Taiwan for assistance in the execution of the seizure of property and the court ruling on crimes or orders. It also provides the rights for third parties with the procedures for expression of opinions. Taiwan is entitled to claim expenses incurred from property confiscated or recovered under these procedures or directly return to the beneficial owners and request for possession of a certain proportion of the proceeds through consultation (Article 34 of the draft regulates the proportion of sharing and the management of the property as determined by the Executive Yuan). (§55 IV)
- (5) Subparagraph 6, Paragraph 1, Article 23 of the draft version of the International Criminal Justice Mutual Legal Assistance provides that if the order of confiscation issued by the requesting state (party) through mutual legal assistance involves the rights of a third party, that third party shall be granted the opportunity for a claim. This also proves that Taiwan has taken the protection of the rights of third parties into consideration. (§55 IX)

## **Article 56. Special Cooperation**

### **143. Important measures and practices of Taiwan (§56)**

Taiwan is a member of the APG, Egmont Group, and ARIN-AP thereby all member signatories shall exchange information on proceeds from money laundering and crimes. (§56)

## **Article 57. Return and Disposal of Assets**

### **144. Legal norms (§57)**

- (1) The Chapter of Confiscation was introduced to the Criminal Code and the scope for the confiscation of proceeds from crimes was broadly defined in the Money Laundering Control Act. For further information, refer to Article 31 of the Report. (§57)
- (2) According to Paragraph 1, Article 19 and Article 20 of the Money Laundering Control Act, the property confiscated from money laundering shall be used and managed by special accounts for designated use. The code of Criminal Procedures and the Important Notice to Prosecution Entities on the Change in the Value of Objects Seized from the Pursuit of Criminal Investigation also regulate the disposition of property from seizure and the change in the value thereof. (§57 I)
- (3) The latter part of Paragraph 1, Article 142 of the Criminal Procedure Act specifies that, if no third party claims for the stolen property, it will be returned to the victims. This indicates that the law of Taiwan values the return of property under seizure to the beneficial owners, whether they are victims or third persons. (§57 I)
- (4) Paragraph 2, Article 19 of the Money Laundering Control Act, Paragraph 2, Article 17 of the AIT-TECRO Mutual Legal Assistance Agreement, and Paragraph 3, Article 19 of the Taiwan-Philippines Agreement on Mutual Legal Assistance in Criminal Matters regulate the return of assets. (§57 III)

### **145. Statistics (§57 III)**

For information on the return of seized stolen goods to the victims in the cross-border telecommunication fraud between Taiwan and Mainland China, refer to Article 46 of the Report. (§57 III)

### **146. Important cases (§57)**

An obvious case in point is a telecommunication fraud in October 2014, where a victim in Mainland China, Liu, received a telephone call from the fraud gang, and remitted funds for several instances to the UnionPay banking card bank accounts controlled by the fraud gang. The prosecutors of Taiwan launched an investigation and press charges against the criminals. Under the ruling of the court, Taiwan (Ministry of Justice) liaised with the Public Security Department

of Mainland China under Article 9, Transfer of Stolen Goods, in the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement, and transferred the proceeds of crimes from two counts of telecommunication fraud across the strait, totaling NT\$657,270 (approximately RMB143,588), on September 26 2017 to the victim Liu of Mainland China. This was the 8<sup>th</sup> instance where Taiwan returned the proceeds from crimes to victims in Mainland China. There is no law regulating the return of proceeds from crimes only to the victims. In the past, if no victim could be located or confirmed, or the detail of the crime could not be confirmed, it was impossible to return the proceeds from crimes to the victims. (§57)

**147. Policy (§57 I,III,V)**

- (1) The draft version of the Act on International Mutual Assistance in Criminal Matters prepared by Taiwan:
  - A. Article 33 of the draft version of the Act on International Mutual Assistance in Criminal Matters has similar requirement of the return of assets in the provision of the UNCAC. For further information, refer to Article 55 of The Report. (§57 III)
  - B. Article 35 and Article 36 of the draft version of the Act on International Mutual Assistance in Criminal Matters specified that the Act on International Mutual Assistance in Criminal Matters shall apply mutatis mutandis to the request for mutual legal assistance in criminal matters between Taiwan and Hong Kong, Mainland China, and Macao. (§57 I)
- (2) Article 142 and Article 473 of the code of Criminal Procedures aim at the return of seized property to the victims of crimes. According to Article 473 of this law, the prosecutors shall return the objects of confiscation, recovered property, to the beneficial owner as claimed, or the parties entitled to claim for the proceeds of crimes as creditors who have been granted for the claim, within 1 year after court ruling, unless the aforementioned confiscated objects or recovered property was damaged or abandoned. Where the value of the confiscated objects may change, the proceeds equivalent to the value after such change may be effected. Previously, Paragraphs 1 and 2, Article 38-3 of the new Criminal Code specifies that notwithstanding the transfer of the ownership of the confiscated property to the state acknowledged at the time of court ruling, the rights of the third parties over the subject matter shall remain intact. Accordingly, the victims of crimes shall still be bona fide owners of the

confiscated property after the execution of confiscation, and shall petition with the prosecutors for the return of property under this provision. Also, if the beneficial owners of the proceeds from crimes have been granted the right for execution, they shall still petition with the prosecutors for compensation on the confiscated objects of recovered property to prevent the incapacitation of the criminals after the execution of confiscation by the state, whereby the victims of crimes have no resort for claim, which results in rivalry between the state and the people for benefits. (§57 III)

- (3) Paragraph 5, Article 57 of the UNCAC provides that within the allowable scope of domestic legal system, states shall consider the feasibility and necessity for the entering into agreements or mutual acceptance of arrangements by individual cases. (§57 V)

## **Article 58. Financial Intelligence Unit**

### **148. Important measures and practices (§58)**

The FIU of the Republic of China is the Anti-Money Laundering Division, Investigation Bureau, responsible for the receiving, analysis and transmission of information on suspicious financial transactions to the competent authorities, and prevention of money laundering. The AMLD participated in, the Egmont Group as a member for exchange of financial intelligence with offshore institutions. (§58)

## **Article 59. Bilateral and Multilateral Agreements and Arrangements**

- 149.** For information on international cooperation in anti-money laundering, refer to Article 14 of The Report.

## **Chapter VI Technical Assistance and Information Exchange**

### **Article 60. Training and Technical Assistance**

#### **150. Important measures and practices (§60)**

- (1) Training Program (§60 I)

Taiwan provides training for the court judges, prosecutors, anti-corruption officers and

investigation personnel responsible for the prevention and combating of corruption. (As shown in Table 15).

**Table 15. Training programs**

Target	Content of training
Court judges, prosecutors and invited personnel assigned from other law enforcement agencies	Seminars on anti-corruption organized by the Ministry of Justice, practical training and conferences on international mutual judicial assistance
Anti-corruption officers	New recruits: orientation (5 months) Officers in active service: effective measures for the prevention, monitoring, investigation, punishment and control of corruption, the making of anti-corruption policies and design capacity, government procurement and the reading and interpretation of financial statements, the monitoring of the flows, recovery, and return of the proceeds from crimes, and related topics.
Investigation Personnel	Orientation for the new recruits: Professional training in anti-corruption works Personnel in active service: policy direction of anti-corruption and investigation of bribery in elections, investigations, recovery of proceeds from crimes, and other techniques in fighting corruption. Topics on the strengthening of liaison and cooperation with other countries in mutual legal assistance, skills of investigation in the crime scenes of drugs, improvement in investigation techniques, anti-money laundering, and the investigation of cross-border crimes.

Source: Ministry of Justice (AAC, Investigation Bureau)

(2) Training, support, and experience sharing (§60 II,III,V,VI,VII)

A. Taiwan continues to make donations to the Asia/Pacific Group on Money Laundering (APG) to support programs that enhance the capabilities of its Pacific island member states in anti-money laundering and combating terrorist financing. Since 2014, Taiwan has also donated to the Training Working Group (TWG, now renamed as the Technical Assistance and Training Working Group, or TATWG) of the Egmont Group (EG). The aim is to help the EG hold training programs with other regional anti-money laundering organizations. Taiwan also participates in annual EG meetings, as well as related conferences and activities. Taiwan sponsored Cambodia, Nepal, and Vietnam as candidates for EG membership by providing technical support. Cambodia and Nepal have since become members. (§60 II,III)

B. Taiwan supports implementation of the Information and Communication Technology Project

in Latin American and Caribbean nations with which it enjoys diplomatic relations. This helps said countries with their anti-corruption efforts. With a wealth of experience in e-government and information and communications technology, Taiwan has also helped such nations build a one-stop, electronic certification and licensing system for imports and exports by integrating cargo import/export systems and controls. As a result, application, inspection, joint administration, approval, and certification and licensing take place more smoothly across different government entities. Taiwan also provides training programs on simplifying trade processes. This allows these countries to better control imports/export processes, transparency of such process, and related data analysis. (§60 II,VII)

C. Taiwan provides and shares the experience in anti-money laundering through the APG and the Egmont Group. (§60 V,VI)

(3) Sub-regional, regional and international conferences and symposiums (§60 VI)

A. Participation in the activities organized by international organizations, as shown in Table 16 below:

**Table 16. Participation in activities organized by international organizations**

Organization	Activity
APEC	Participated in the 22 <sup>nd</sup> and 23 <sup>rd</sup> Anti-Corruption and Transparency Workshop of ACTWG, the ACT-EGILAT of ACTWG.
IAACA	The 9 <sup>th</sup> Annual Conference of IAACA
TI	General Conference of TI, the 17 <sup>th</sup> International Anti-Corruption Conference
Egmont Group	Egmont Group Workshop, Egmont Group annual conference (routine)
FATF	General conference and work team meetings of FATF (routine)
APG	Annual conference of APG, APG conference of patterns of money laundering and financing of terrorism (routine).
ARIN-AP	Annual conference of ARIN-AP, and conference on international economic crimes (routine)

Source: Ministry of Justice (AAC, Investigation Bureau)

B. Taiwan hosted the International Symposium on Regional Security and Transnational Crimes in 2015 and has invited experts and scholars, and law enforcement officers from countries in west Asia, Southeast Asia, USA, the UK, Japan, and Korea, and foreign dignitaries, representatives, law enforcement liaison officers of relevant countries in Taiwan, and the officials, experts and scholars of the Republic of China to the event in search for consensus from the law enforcement agencies of the countries attending the conference so as to

strengthen the bond in cooperation. (§60 VI)

C. Taiwan hosted the APEC Workshop on “Enhancing Whistleblower Protection in Corruption Cases” in 2017. Officials from 13 APEC economies, experts and scholars in Taiwan and from overseas, multinational corporations, financial institutions, NGO, risk audit firms, and law practitioners have participated in the event. The result from the discussion of the Guiding Principles Governing Whistleblower Protection will help to build up consensus in regional cooperation under APEC for the protection of whistleblowers. (§60 VI)

(4) Assessment, analysis and study on acts of corruption (§60 IV)

A. The AAC conducts annual surveys on satisfaction of the people and public opinion on corruption. With the help of the findings from the survey on the subjective impression of the public on the work of the government in anti-corruption and the prolonged observation of the trend of development of corruption in Taiwan, related policies and action plan could be mapped out. The ethic units also adopts the means and tools for the analysis and study of possible pattern of corruption, the origin of corruption, and the effect inside the entities: including early warning, prevention for repeated offense of corruption, public opinion survey on integrity of the government, interview on clean politics, and hosting colloquiums. (§60 IV)

B. For information on the evaluation of integrity on the advocacy agencies promoted by AAC, refer to Article 5 of the Report.

## **Article 61. Collection, Exchange and Analysis of Information on Corruption**

**151. Important measures and policies (§61)**

(1) Taiwan responds to the Corruption Perceptions Index (CPI) and the Global Corruption Report (GCR) released by the Transparency International (TI) annually for making timely improvements. (§61)

A. In 2016, CPI Global included 176 countries and regions (including Taiwan) in the rating. Taiwan scored 61 and was ranked 31st. In 2017, CPI Global included 180 countries and regions (including Taiwan) in the rating. Taiwan scored 63 and was ranked 29th. Since the primary source of CPI scoring is the subjective impression of experts and corporate managers on the state of corruption of the public sector of Taiwan, further effort should be made for

enhancing the transparency of the government in decision-making in the future, properly implement the necessary measures for enhancing transparency of the administrative branch of the government pursuant to Article 10 of the UNCAC, and avoid the lack of transparency in decision-making and administrative decision of the government that aroused suspicion of corruption in the public sector. In addition, efforts will be made to mitigate the effect of corruption on corporate activities, eliminate illicit deal between the business world and public officials. In other words, it is the prevention of the potential problem of bribery, conflict of interest, and corruption inherent to government procurement and public constructions between the enterprises and the public sector. Besides, further efforts should be sustained for the legislation of the draft version for the protection of the informants of corruption into law and the establishment of a viable system for the “protection of the whistle blowers”. As preventive measures, the legal system currently in effect will be subject to review to avoid irrationality that mire the public officials and the business into criminal offenses and tainted the image of the government in clean politics. Nonetheless, we shall intensify the marketing with the potential assessors through international organizations and occasions in international conferences to show the effort in supporting the UNCAC of Taiwan and the result.

B. The Global Corruption Trend Index of Asia-Pacific in 2017 covered the findings from survey of 16 countries in Asia-Pacific including Taiwan. Taiwan, Australia, and Sri Lanka were among the countries of survey. The performance on key questions was positive and the offering of bribe by people was insignificant where 79% of the respondents in Taiwan held that they could participate in fighting corruption with contribution, which is just behind Australia at 80%. In the aspect of the willingness of reporting corruption, 77% of the respondents of Taiwan suggested that every individual shall be obliged to report on the witness of corruption, and, 53% of the respondents held that they were willing to report corruption even though they have to stand witness in court. But 26% of the respondents of Taiwan corruption have the impression that corruption in Taiwan tended to be getting serious. Yet, it was not as serious as in neighboring countries and regions such as Japan, Mainland China, Hong Kong and Korea. The statistical data of the government indicated an objective view that the crime of



corruption was on the decline with the increase of conviction rate. This proved that Taiwan has been successful in fighting corruption. In the future, Taiwan will intensify the prevention and investigation of corruption, including risk monitoring and control, effective audit and early warning, sustained promotion of anti-corruption, accelerate the legislation of the law for the protection of the informants, and fortify the capacity in the investigation of serious corruption cases to earn the support of the public on keeping the public sector clean. This is also the response to the recommendation and call of the TI.

- (2) The Central Integrity Committee of Executive Yuan reviewed the report on the state and analysis of anti-corruption presented to every session of the committee for reviewing the international evaluation on corruption, and the statistical data on the crimes of corruption and malfeasance so as to keep abreast of the trend of corruption and understand the environment that triggered corruption. The committee also consults the external members of the committee for their opinions. Related information will be disclosed to public on the website of Ministry of Justice and AAC after the sessions. (§61 I)
- (3) Competent authorities at the central and district levels will brief on anti-corruption in regular meetings presided over by the heads of the entities/agencies for discussion on matters pertinent to corruption. Experts and scholars and figures of social justice will be invited as members for advice. In 2016, 1,195 meetings have been held with 1,887 reports on special topics, and 2,695 resolutions after discussion. (§61 I)
- (4) A survey on public satisfaction and clean politics has been conducted annually to find out the subjective impression of the public on clean politics of the government. Through long-term observation of the trend in the change of corruption in Taiwan, we could map out new plans. The survey on clean politics in 2017 was a continuation of the content of the two-stage report in survey in 2016: “Evaluation of the public on the understanding of clean politics and the sources of information” and “Assessment on integrity of various type of public officials” (§61 III):
  - A. In the “Evaluation of the public on the understanding of clean politics and the sources of information”, interviewees held that the top priority of the government for the effecting combating of corruption should be “legislation for the prevention of corruption” (35.8%). As

compared to the survey results of the last 3 years, the tolerance of the interviewees on corruptions committed by public officials tended to be lowered.

B. In the “Assessment on integrity of various type of public officials”, the ranking of the degree of integrity of the public officials by the interviewees in their assessment indicated that: the top 5 in the assessment of level of integrity in the survey of 2016 was in the order of “medical staff in public hospitals, monitoring personnel, general civil servants, fireman and security inspection personnel, and education administration personnel”. The bottom 6 in the assessment of integrity is in the order of “construction administration personnel, government procurement staff, legislators, public officials at the township and villages, county councilors and land development personnel”. The primary source of information on the impression of integrity was TV (34.9%), followed by personal experience (15.0%), and relatives and friends (14.1%).

- (5) The National Integrity Action Plan adopted the concept of National Integrity System suggested by TI whereby the resources of all entities/agencies of the state will be integrated. In the Report on the Result of Items under Control of the Executive Yuan in 2016 for review and the Objective for Performance in 2017 indicated 46 performance objectives set by the Executive Yuan. In 2016, 39 objectives have been achieved, 7 objectives were behind, which made up the attainment rate of 84.8% (the objectives not being achieved were the progress in the review of the Act on Property-Declaration by Public Servants and the Act on Recusal of Public Servants Due to Conflicts of Interest, the number of cases for registration of ethic related matters and random selection for inspection, continuing education on regulation governing ethics of civil servants, study on the legislation of law for whistleblower protection, priority in the investigation of cases in significant hazards to clean politics and integrity, investigation and seizure of proceeds from offshore money laundering, and the invitation of the public foodstuff enterprises of the country to colloquium on the advocacy of clean politics, a total of 7 items). Action has been taken to review with relevant entities on the status of attainment and map out corrective action plan. (§61)
- (6) Organize and participate in international conferences and workshops. For further information, refer to Article 60 of the Report.

## Article 62. Other measures: implementation of the Convention through economic development and technical assistance

### 152. Important measures and practices (§62)

- (1) Taiwan has worked with countries with which it enjoys diplomatic relations in Latin America and the Caribbean (Belize, St. Christopher, St. Lucia, and St. Vincent) on the Information and Communication Technology Project. For further information, please refer to Article 60 of the Report. (§62)
- (2) Taiwan has sent related personnel to participate in international conferences, forum, and training programs, and discussed the policies and practices with competent authorities in anti-corruption, investigation of corruption, investigation, and law enforcement of other countries and Mainland China in strengthening the capacity of fighting corruption. (Refer to Table 17). (§62)

**Table 17. Participation in international conferences, forums, and training programs**

time	International conferences, forum and training programs
Annual participation since 2007	Cross-Straits, Hong Kong, and Macao Conference on Policing
Annual participation since 2012	Criminal Justice Forum in 4 Regions Across the Straits
Annual participation since 2015	The Seminar on International Wealth Investigation (English Session) and Seminar on International Wealth Investigation (Chinese Session) organized by Hong Kong Police.
Participation in 2017	The 42 <sup>nd</sup> Law Enforcement Management Program in Asia-Pacific organized by the Australian Federal Police
	The 268 <sup>th</sup> training course of the FBI Academy
	Probation at NYPD of the USA
	Practical training at MPD
	Asia-Pacific Conference of the FBI
	Training at the FBI Academy
	FBI-Pacific Training Initiative
	Training at the French International Police
	International training program in Prevention of Human Trafficking at the RCMP Academy of Canada

Source: Ministry of Justice (Investigation Bureau); Ministry of Interior (National Police Agency)

- (3) In 2017, the National Police Agency, Ministry of Interior sent police officers to NYPD for probation, to MPD for practical training, to the Asia-Pacific Conference of the FBI, to FBI Academy for training, to French international police for training, and the RCMP Academy of

Canada for training in an international program of Prevention of Human Trafficking. (§62)

## **Chapter VII Mechanisms for Implementation (Article 63 to Article 64)**

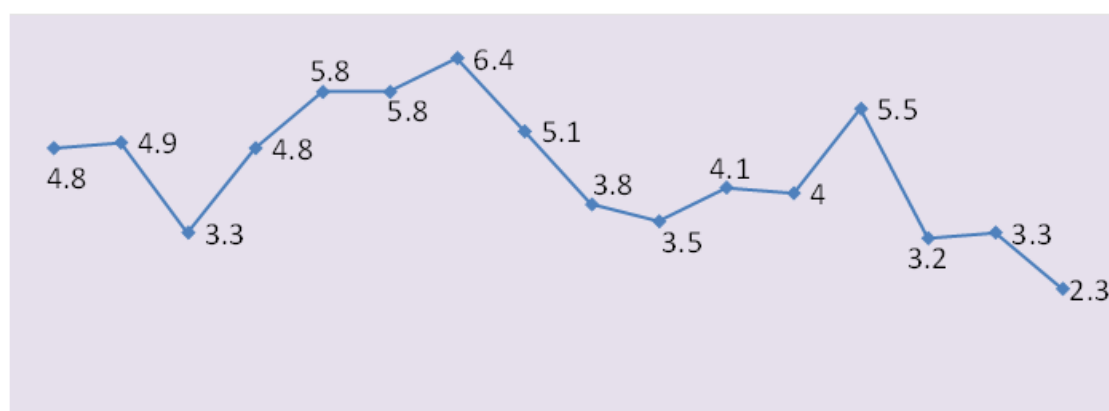
## **Chapter VIII Final Provision (Article 65 to Article 71)**

**153.** The Republic of China is not a state signatory that Article 63 to Article 71 will not be applicable.

## 【Appendices】

**Appendix 1: Statistical Data and the trend of Corruption Cases charged by the Prosecution Office in all district courts from 2002 to June 2017**

Year/ Month /Day	Number of cases for criminal indictment	Number of indictment on corruption (case)			Number of persons indicted for criminal offenses	Number of indictment on corruption (person)			
		Sub-total	Anti-corruption Act	Malfeasance		Sub-total	Indictment rate per mid-term population of 100,000	Anti-corruption Act	Malfeasance
2002	125,289	524	498	26	153,003	1,085	4.8	1,044	41
2003	113,004	591	561	30	136,258	1,101	4.9	1,065	36
2004	118,851	357	339	18	139,454	756	3.3	728	28
2005	134,624	465	445	20	158,817	1,092	4.8	1,056	36
2006	158,889	512	485	27	189,943	1,330	5.8	1,274	56
2007	188,422	529	491	38	221,486	1,331	5.8	1,267	64
2008	199,374	512	468	44	231,813	1,467	6.4	1,393	74
2009	187,179	438	400	38	216,540	1,179	5.1	1,118	61
2010	187,424	354	310	44	218,443	887	3.8	830	57
2011	182,051	354	317	37	211,783	814	3.5	755	59
2012	176,379	407	380	27	203,760	943	4.1	897	46
2013	180,508	356	320	36	208,262	929	4.0	875	54
2014	192,915	426	386	40	219,121	1,292	5.5	1,226	66
2015	199,963	337	308	29	226,278	760	3.2	719	41
2016	209,913	282	244	38	235,549	770	3.3	712	58
2017	215,504	265	242	23	239,483	541	2.3	508	33
<b>Total</b>	<b>2,770,289</b>	<b>6,70</b>	<b>6,194</b>	<b>515</b>	<b>3,209,993</b>	<b>16,27</b>		<b>15,467</b>	<b>810</b>



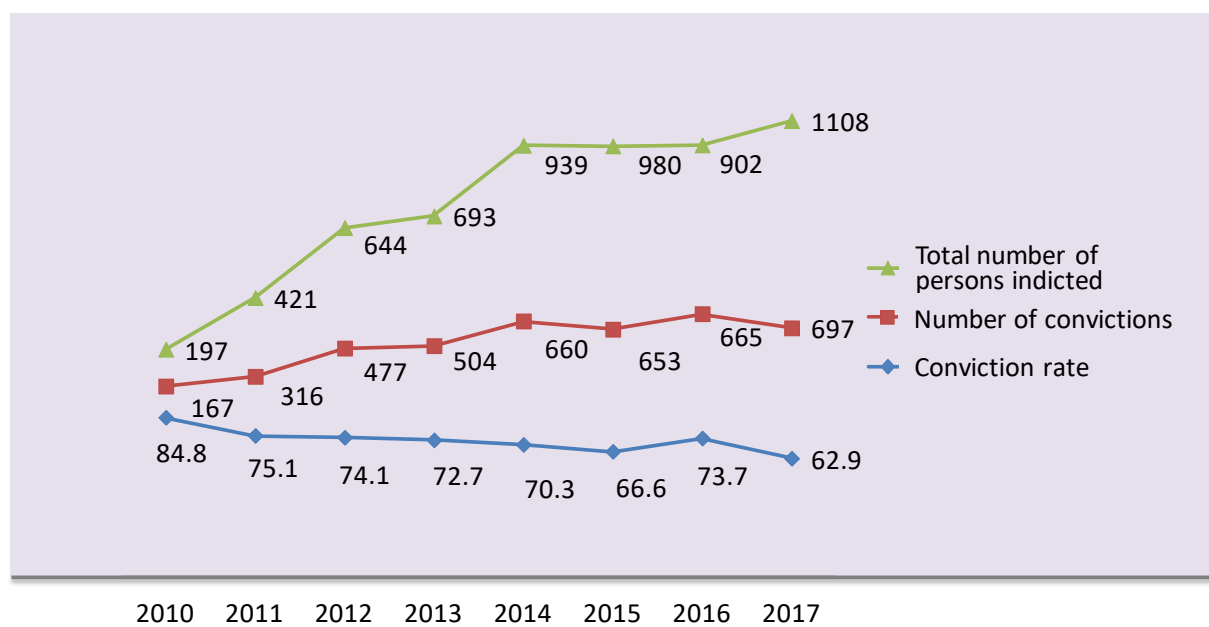
2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017

Note:

1. Indictment rate per mid-term population of 100,000 = number of persons indicted for corruption/mid-term population 100,000.
2. Mid-term population = (population at the end of census period + population at the end of the previous census period) /2.
3. Note to statistics: in the field of Number of indictment on corruption includes the offenses of the Anti-Corruption Act and malfeasance.
4. Source: Department of Statistics, Ministry of Justice

## Appendix 2: Statistical Data and Trend of the conviction rate on corruption cases

Year/ Month/	Total number of persons indicted	Number of convictions (persons)	Conviction rate (%)
July 2009 to December 2017	5,891	4,146	70.38
Jul-Dec 2009	7	7	100
2010	197	167	84.8
2011	421	316	75.1
2012	644	477	74.1
2013	693	504	72.7
2014	939	660	70.3
2015	980	653	66.6
2016	902	665	73.7
2017	1,108	697	62.9



Source: Ministry of Justice

**Appendix 3: Note to the Act on International Mutual Assistance in Criminal Matters and agreements (arrangements) on mutual legal assistance in criminal matters between Taiwan and other countries in relation to Article 46 of the UNCAC**

Item	Applicable legal rules	The draft of International Criminal Justice Mutual Legal Assistance
3	<p>Article 2 of the AIT-TECRO Mutual Legal Assistance Agreement.</p> <p>Article 2 of the Taiwan-Philippines Agreement on Mutual Legal Assistance in Criminal Matters</p> <p>Taiwan-South Africa Agreement on Mutual Legal Article 2 of the Assistance in Criminal Matter.</p> <p>Article 1 of the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement.</p>	<p>Related requirements are specified in Article 6.</p>
4	<p>Article 6 of the AIT-TECRO Mutual Legal Assistance Agreement.</p> <p>Article 5 of the Taiwan-Philippines Agreement on Mutual Legal Assistance in Criminal Matters</p> <p>Article 4 of the Taiwan-South Africa Agreement on Mutual Legal Assistance in Criminal Matter.</p> <p>Article 1 of the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement.</p>	<p>Related requirements are specified in Article 9 and Article 12.</p>
5	<p>Article 6 of the AIT-TECRO Mutual Legal Assistance Agreement.</p> <p>Article 5 of the Taiwan-Philippines Agreement on Mutual Legal Assistance in Criminal Matters.</p> <p>Article 6 of the Taiwan-South Africa Agreement on Mutual Legal Assistance in Criminal Matter.</p> <p>Article 16 of the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement.</p>	<p>Article 14 requires that unless the parties hereto agreed otherwise or the law specified otherwise, information requested or in execution shall be kept in strict confidence.</p>
6	<p>Article 4 of the AIT-TECRO Mutual Legal</p>	<p>Related requirements are specified in</p>



	Assistance Agreement. Taiwan-Philippines Agreement on Mutual Legal Article 3 of the Assistance in Criminal Matters Article 5 of the Taiwan-South Africa Agreement on Mutual Legal Assistance in Criminal Matters. Article 15 of the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement.	Article 10. Article 2 rules the order of law. Matters concerning mutual legal assistance in international criminal law have always been signed by multilateral or bilateral treaties. To fulfill their international obligations, our country should give priority to those treaties if they have been signed.
9	Paragraph 3, Article 2, and Subparagraph 4, Paragraph 1, Article 4 of the AIT-TECRO Mutual Legal Assistance Agreement.	Paragraphs 1 and 2, Article 10, specified that the reasons for rejection for assistance and discretion in rejection for assistance are in conformity to the requirements in international cooperation and the essential principle of international mutual legal assistance in criminal matters as stated in Chapter 4 of the UNCAC. The restriction on double penalty has been eased to a certain extent, which helps to bolster the interaction between Taiwan and the international community and also allows for flexibility in individual cases. Compared with the laws of Australia, they also have similar regulations.
10	Paragraphs 1 and 2, Article 11 of the AIT-TECRO Mutual Legal Assistance Agreement.	In the aspect of investigation of the witness, the draft regulates the initiation and return of the persons under detention in Taiwan or the requesting state to a third country for assistance, and offsetting the term of the sentence as mitigation of punishment. In addition, it also specifies the condition and the process of two-way gathering of evidence through videoconferencing between Taiwan and the state concerned. Taiwan shall afford the supply of evidence in the widest measures within the allowable limits of the law to the requesting states.

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Article 19, Paragraph 2. If the contents of the request are arranged for the defendants and suspects in the criminal proceedings of our country or those who have restricted their personal liberty or have been allowed to exit the country to the designated place, the former is still in the process of judicial investigation and trial in our country, The complicated exit procedures, as well as the guardianship and safety of personnel, are not easy. In principle, they should not be allowed to arrange for such personnel to leave for assistance. However, unless otherwise agreed by both parties, the person in charge of custody shall freely consent to his knowledge and shall not be subject to the above-mentioned principle in accordance with the priority principle of Article 2 of this Law

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11 12	Paragraph 3, Article 11 of the AIT-TECRO Mutual Legal Assistance Agreement.	Related requirements are specified in Paragraphs 4 of Article 19.
13	Article 3 of the AIT-TECRO Mutual Legal Assistance Agreement. Article 2 of the Taiwan-Philippines Agreement on Mutual Legal Assistance in Criminal Matters. Article 1 of the Taiwan-South Africa Agreement on Mutual Legal Assistance in Criminal Matters.	Related requirements are specified in Article 7 and Article 9.
14	Paragraph 1, Article 5 of the AIT-TECRO Mutual Legal Assistance Agreement. Paragraph 1, Article 4 of the Taiwan-Philippines Agreement on Mutual Legal Assistance in Criminal Matters. Paragraph 1, Article 3 of the Taiwan-South Africa Agreement on Mutual Legal Assistance in Criminal Matters.	Related requirements are specified in Paragraphs 1, 2, and 5 of Article 8.

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15	<p>Paragraphs 2, Article 5 of the AIT-TECRO Mutual Legal Assistance Agreement</p> <p>Paragraphs 2 and 3, Article 4 of the Taiwan-Philippines Agreement on Mutual Legal Assistance in Criminal Matters.</p> <p>Paragraphs 2 and 3, Article 3 of the Taiwan-South Africa Agreement on Mutual Legal Assistance in Criminal Matters.</p>	<p>Related requirements are specified in Paragraph 3, Article 8.</p>
16	<p>Paragraph 4, Article 5 of the AIT-TECRO Mutual Legal Assistance Agreement of the Taiwan-Philippines Agreement on Mutual Legal Assistance in Criminal Matters</p> <p>Paragraph 4, Article 4 of the Taiwan-South Africa Agreement on Mutual Legal Assistance in Criminal Matters.</p>	<p>Related requirements are specified in Paragraph 4, Article 8.</p>
17	<p>Article 2 of The Law in Supporting Foreign Courts on Consigned Cases.</p> <p>Paragraph 3, Article 6 of the AIT-TECRO Mutual Legal Assistance Agreement.</p> <p>Paragraph 1, Article 5 of the Taiwan-Philippines Agreement on Mutual Legal Assistance in Criminal Matters.</p> <p>Paragraph 2, Article 1 of the Taiwan-South Africa Agreement on Mutual Legal Assistance in Criminal Matter.</p>	<p>Related requirements are specified in Article 8 and Article 12.</p>
18	<p>Article 11 of the Taiwan-Philippines Agreement on Mutual Legal Assistance in Criminal Matters.</p> <p>(There are similar kinds of requests stated in the mutual legal assistance agreements in criminal matters between Taiwan-USA and Taiwan-Philippines).</p>	<p>Related requirements are specified in Paragraph 2, Article 17 and Article 31.</p> <p>This provision specified that the personnel of the requesting state may be present at the scene of execution with the consent of the competent authority of the Taiwan (refers to the court or Prosecution Office).</p>
19	<p>Article 8 of the AIT-TECRO Mutual Legal Assistance Agreement.</p> <p>Article 7 of the Taiwan-Philippines Agreement on Mutual Legal Assistance in Criminal Matters.</p> <p>(No regulations of the applicability of</p>	<p>Related requirements are specified in Subparagraph 3, Paragraph 2, Article 10; Article 16; Sub-paragraph 2, Paragraph 1, Article 32.</p>

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	crimes without proof).	
20	<p>Paragraph 5, Article 6 of the AIT-TECRO Mutual Legal Assistance Agreement.</p> <p>Paragraph 2, Article 7 of the Taiwan-Philippines Agreement on Mutual Legal Assistance in Criminal Matters.</p> <p>Paragraph 6, Article 4 of the Taiwan-South Africa Agreement on Mutual Legal Assistance in Criminal Matter.</p>	<p>Related requirements are specified in Article 14 that information pertinent to the request for assistance and the execution of the request shall be kept in strict confidence unless it is not necessary for the execution of the request or the parties hereto agreed otherwise, or the law specified otherwise.</p>
21	<p>Article 4 of the AIT-TECRO Mutual Legal Assistance Agreement.</p> <p>Article 3 of the Taiwan-Philippines Agreement on Mutual Legal Assistance in Criminal Matters.</p> <p>Article 5 of the Taiwan-South Africa Agreement on Mutual Legal Assistance in Criminal Matters.</p>	<p>Related requirements are specified in Article 10.</p>
23	<p>Sub-paragraph 7, Article 6 of the AIT-TECRO Mutual Legal Assistance Agreement.</p> <p>Paragraph 4, Article 3 of the Taiwan-Philippines Agreement on Mutual Legal Assistance in Criminal Matters.</p> <p>Paragraph 5, Article 5 of the Taiwan-South Africa Agreement on Mutual Legal Assistance in Criminal Matters.</p>	<p>As stated in Paragraph 4, Article 8, if the content of the request note contains insufficient information that execution could not be done, the requested state may ask the requesting state to provide supplementary information or proceed to Sub-paragraph 1, Paragraph 2, and Article 10 for rejection of the request. In addition, the requested state may consult with the requesting state as provided by Paragraph 3 that assistance could be provided on condition that necessary information is complete or the content of information has been properly revised. In practice, any rejection of the request will be explained. For example: countries other than the USA, the Philippines, and South Africa, directly send the requesting note to the Ministry of Justice without passing through the Ministry of Foreign Affairs for requesting assistance. It is</p>

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		clarified that in the absence of an agreement on mutual legal assistance, Taiwan asks the requesting state to refer the request for assistance through diplomatic channels of the Republic of China. The Ministry of Justice shall return the request note to the requesting state. The requesting state makes the request for mutual legal assistance through diplomatic channels and proposes the guarantee of reciprocity. The Ministry of Justice then accepts the request for action.
24	<p>Paragraphs 1, 6, Article 6 of the AIT-TECRO Mutual Legal Assistance Agreement.</p> <p>Paragraphs 1, 3, Article 5 of the Taiwan-Philippines Agreement on Mutual Legal Assistance in Criminal Matters.</p> <p>Paragraphs 1 to 4, and 7, Article 4 of the Taiwan-South Africa Agreement on Mutual Legal Assistance in Criminal Matters.</p>	<p>Related requirements are specified in Paragraph 2, Article 8. As well as the case of urgent cases in accordance with the proviso 7, may not be able to implement mutual legal assistance through diplomatic channels. In particular, the requesting party is allowed directly to the MOJ as the liaison channel for mutual legal assistance.</p>
25	<p>Paragraph 4, Article 6 of the AIT-TECRO Mutual Legal Assistance Agreement.</p> <p>Paragraph 2, Article 3 of the Taiwan-Philippines Agreement on Mutual Legal Assistance in Criminal Matters.</p> <p>Paragraph 5, Article 4 of the Taiwan-South Africa Agreement on Mutual Legal Assistance in Criminal Matters.</p>	<p>Related requirements are specified in Paragraphs 2 to 6, Article 10. Taiwan will consider if the request affects the domestic legal proceedings as a vital concern before granting the assistance. In practice, if a specific request from foreign countries affects the legal proceedings of Taiwan, Taiwan should defer the execution of assistance, which would be fully justifiable.</p>
26	<p>Paragraph 2, Article 4 of the AIT-TECRO Mutual Legal Assistance Agreement.</p> <p>Paragraph 3, Article 3 of the Taiwan-Philippines Agreement on Mutual Legal Assistance in Criminal Matters.</p> <p>Paragraph 5, Article 4, and Paragraph 4,</p>	<p>Related requirements are specified in Paragraph 3, Article 10.</p>

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	Article 5 of the Taiwan-South Africa Agreement on Mutual Legal Assistance in Criminal Matters.	
27	Article 12 of the AIT-TECRO Mutual Legal Assistance Agreement.	Related requirements are specified in Paragraph 4, Article 19 and Paragraph 3, Article 32.
28	Article 7 of the AIT-TECRO Mutual Legal Assistance Agreement. Article 6 of the Taiwan-Philippines Agreement on Mutual Legal Assistance in Criminal Matters. Article 8 of the Taiwan-South Africa Agreement on Mutual Legal Assistance in Criminal Matters.	Related requirements are specified in Article 15.
29	Article 10 of the AIT-TECRO Mutual Legal Assistance Agreement. Article 9 of the Taiwan-Philippines Agreement on Mutual Legal Assistance in Criminal Matters.	As stated in Article 1, there should be no doubt that government archives already disclosed to the public could be availed of by foreign governments for joint efforts in combating crimes under the principle of mutual respect and equity for the improvement of mutual legal assistance in international criminal justice. If the supply of such information will cause damage to the national interest of Taiwan, or the results of assistance If there is a reason for refusing assistance as provided for in Article 10, it is not appropriate to provide assistance based on the customary practice of mutual legal assistance in criminal matters. However, considering the differences in the legal systems of different countries and safeguarding the litigation rights of the parties concerned, without prejudice to the rule of law Spirit and influence of the law and order in our country, Taiwan still could not provide any assistance at all. We can decide whether to provide assistance according to the

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specific circumstances of a case.

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