

Republic of China (Taiwan) Second Review under the United Nations Convention against Corruption

Concluding Observations: Anti-Corruption Experts
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Anti-Corruption Expert Review Committee:

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INTRODUCTION

As stated in the foreword of the United Nations Convention Against Corruption (UNCAC), “Corruption is an insidious plague that has a wide range of corrosive effects in societies. It undermines democracy and the rule of law, leads to violation of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism, and other threats to human security to flourish.”

When corruption is committed by powerful actors, the negative impact not only affects fundamental rights of the people, especially the most vulnerable, but constitutes a serious threat to governance and global security. Having experienced the harmful effects of corruption, Taiwan, not being a formal member of the UN, and thus, of the UNCAC, commendably self-imposed the duty of dealing with corruption to the highest possible standards, and decided to comply with UNCAC regulations.

Since 2015, Taiwan has developed an amazing anti-corruption political will and a unique interaction between government, academia and civil society to confront this phenomenon. There are many successful stories regarding the fight against corruption. In March 2018, the Government of the Republic of China, set up a self assessment mechanism to review the status of implementation of the convention. As a result of this process, was published the “Initial Report under the United Nations Convention against Corruption”, a document that reviews the status of the implementation of the provisions of the UNCAC and its results. In August of the same year, this report was submitted to an international panel of experts, which stated in its concluding observations that “The committee recognizes the significant achievements of the government of Taiwan to adopt preventive measures, as well as operational instruments to fight corruption in a more efficient way. Nevertheless, the committee considers that there is space for improvement in several areas.”

Many of the UNCAC signatories cannot show such a good outcome.

Four years later, and after a pandemic that has had a severe impact around the world and increased the challenges in the fight against corruption, the Government of Taiwan, as a consequence of an internal process of self assessment, has presented “ROC’s Second Report

under United Nations Convention Against Corruption”. As they did with the initial report, the government has submitted this second report to a new committee of reviewers, composed by Jose Ugaz (chair), Gillian Dell, Julie Haggie, Geo-Sung Kim, and Peter Ritchie.

The review committee started its work on August Monday 29, 2022 and prepared this report after two full-day workshop sessions with more than 150 public officials, including ministers, vice ministers, legislators, professors and representatives of NGOs.

As expected, after four years, there have been new improvements and we commend the government for these efforts. At the same time, some of the recommendations of the first committee in 2018 are still awaiting implementation, and further issues that demand substantial changes have been identified.

In the intervening period, the Whistleblower Protection Act was submitted to the Legislative Yuan in several versions, but has not been approved yet. We urge the LY to consider this draft a priority due to its relevance in the context of an efficient anti-corruption policy.

Regarding the private sector, some relevant changes are needed, not only to involve the entrepreneurs and companies in a more active way in the anti-corruption efforts, but to generate incentives to conduct business with transparency and reduce the space in which corruption can flourish. As an example of this, even though the “Company Act” has been amended to increase transparency in legal entities, on the topic of beneficial ownership, we believe that some substantial modifications are needed in order to lift the veil of opaque corporations and identify the real beneficial owners of companies (and trusts) and overcome formal requisites that can easily be evaded by the corrupt. The establishment of a central registry of beneficial ownership of companies and trusts is recommended, in line with emerging international standards, and this should be easily accessible to both law enforcement authorities and the wider public and be provided a robust verification mechanism.

Corruption in the grant of subsidies to business and licences is also a serious problem in many countries, including licencing of natural resource exploitation. It is critical that Taiwan ensure it has adequate regulations preventing the misuse of procedures in this domain.

Other pending issues in the private sector are the criminalization of private bribery and the introduction of criminal liability for legal persons that commit corrupt offences. Administrative and economic sanctions have proven insufficient to deter corruption. Corporate corruption must generate criminal sanctions, like suspension, limitation of activities and dissolution of the legal person.

Despite the existence of a legal framework that allows the prosecution of Taiwanese citizens that commit corruption offences abroad, there are no cases of foreign bribery enforcement. Moreover, there has been lack of enforcement in some notorious cases like the payment of a bribe to a former president of Guatemala. Impunity should not be tolerated. Thus, we encourage the Taiwanese authorities to enforce the law and avoid foreign bribery.

Corruption in political campaign finance is a common problem around the world. Allowing private companies and other entities to donate money to political actors carries substantial integrity risks. If financing political campaigns with public funds is not feasible in the current

situation of Taiwan, following the best international standards in the matter, at least donations should be open, transparent, and with limited amounts.

The Government of Taiwan has demonstrated substantial international cooperation against corruption and other crimes. However, there are further opportunities to strengthen its engagement and partnerships with regional and multilateral organizations, and developing countries, by sharing its skills and knowledge of preventing, detecting, investigating and prosecuting corruption, money laundering, asset confiscation and mutual legal assistance. These skills and knowledge are in great demand in other countries and jurisdictions, especially developing countries, as many struggle to implement the UNCAC and related recommendations of the Financial Action Task Force (FATF).

We want to congratulate the Government of Taiwan for its latest demonstration of its commitment to the anti-corruption cause and express our sincere gratitude for the opportunity to contribute to the review process of the ROC's Second Report. We are sure this commitment will result in a better and transparent country for the benefit of the people of Taiwan and the generations to come.

This report provides an assessment of Taiwan's good practices and challenges in implementation, chapter by chapter and article by article, following the format used by UNCAC review executive summaries.

September 2, 2022

Chapter II: Preventive Measures

Main Findings and Observations

Preventive anti-corruption policies and practices (Article 5)

The Taiwanese government has implemented an impressive range of corruption prevention legislation and practice since the last review.

This includes substantive legislative amendments targeted at: improving procurement transparency and accountability (Government Procurement Act); regulation of the private sector to improve corporate governance (Company Act); ensuring a money laundering prevention and control system that substantially satisfies FATF requirements (Money Laundering Control Act). In addition, legislation has been developed and is pending to limit undue lobbying influence over politicians; and to introduce some controls on political donations.

Preventive anti-corruption body or bodies (Article 6)

The Agency Against Corruption (AAC) sits as a Division within the Ministry of Justice. Its legislation does not specifically provide for independence as per Article 6.2, although its legislation provides for prosecuting officers to have judicial police powers. There appears to be close collaboration with the Ministry of Justice.

Whilst the core vision and strategic objectives - of Corruption Prevention and Corruption Investigation - are set out in its Annual Report the strategic objectives do not always flow through to the programmes, suggesting the need for a more cohesive strategic approach.

The work of AAC is strengthened by expert, highly trained and well-networked prosecutors selected from the Ministry of Justice. However the AAC has initiated multiple programmes focusing on Corruption Prevention which supplement the existing recruitment and oversight of Government Employee Ethics Units across 1,179 Central and Local Government entities.

Legislative changes made since the first UNCAC report have generated high demand on both capacity and competency of AAC and Ministry of Justice officials, as the scope and depth of both investigation and prosecution has increased. This pressure is recognised by the Ministry and some programmes are being implemented in stages. The resource of ethical support to agencies has been extended through the Government Employee Ethics programme.

Public Sector, Codes of Conduct for Public Officials (Articles 7 & 8).

Taiwan has implemented public service integrity and transparency programmes, including: the National Integrity Building Action Plan; the Procurement Integrity Programme, with improved agency collaboration through the use of a technology platform. It has also implemented several legislative changes including the Recusal Act. The Integrity Award trial is a worthwhile initiative to recognise good practice. The origin of the award was the Integrity Risk Assessment which proposed a systematic approach by each agency to regularly undertake an integrity risk assessment.

There are controls in place around political donations, and reasonable transparency measures. However, there is still room for improvement. Allowing private companies and other entities to donate money to political actors carries substantial integrity risks. If financing political campaigns with public funds is not feasible in the current situation of Taiwan, following the best international standards in the matter, at least donations should be open, transparent, and with limited amounts. Without ensuring integrity in political finance, it is not easy to get citizen's confidence in the integrity of politics.

Lobbying is controlled through the Lobbying Act, with a requirement for registration of lobbyists and a definition. An amendment act is under review by the Executive Yuan since April 2021. There is no practice of publishing the diaries of senior officials who have the power to significantly influence or make decisions on law and policy.

Under the Act on Property Declaration by Public Servants, Taiwan has a comprehensive system for declaration of properties by public officials which was implemented in 2015. This includes an internet "Property Declarations and Verification Platform".

Public procurement (Article 9).

Considerable efforts have been made to strengthen transparency and anti corruption awareness and practice in government procurement through the Procurement Integrity Programme. There does not appear to be a national procurement strategy. Corruption-prone and risky areas in public procurement should be listed with any possible solutions.

Public Reporting and Participation of Civil Society (Articles 10 and 13)

Taiwanese agencies have engaged well with civil society in several areas, including procurement monitoring, as advisors, and also in the development of the first National Action Plan as part of the Open Government Partnership; and the Procurement Integrity Platform initiatives. In addition, anti corruption volunteer programmes and civics education training are evidence of the intention of the Taiwanese government to ensure that citizens are part of the integrity journey.

Legislation is in place enabling access to information and this includes a principle of a general right to information. However the avenues for appeal are limited to the courts - this is likely to prove a barrier due to cost. There is no independent entity to hear complaints or take a system wide view.

Private Sector (Article 12)

Taiwan has initiated Roadmaps for enhancing Corporate Governance and corporate sustainable development. This has resulted in increased numbers of audit committees and corporate governance supervisors for listed companies. Those programmes of work are ongoing and are expected to be fully achieved by the end of 2023.

Some public sector organisations such as the Financial Supervisory Commission (FSC) have required whistleblower policies and practices by some financial entities, such as anonymous reporting lines. Some other private agencies have taken that up.

Taiwanese agencies (central and local) have undertaken awareness raising and promotion events and activities with the private sector, including The Foreign Business and Enterprises

Integrity Forum, regular meetings with the Chambers of Commerce and encouragement for businesses to adopt ISO 37001.

However the private sector has generally lacked initiative in anti-corruption work. A more collaborative approach with the private sector is needed to encourage companies and businesses to understand the value (good governance, reputation and business success) of increasing integrity and anti-corruption awareness and practices, and to develop those in collaboration with the government.

Measures to prevent money-laundering (Article 14)

Taiwan has implemented a regulatory and supervisory money laundering regime that has been praised for substantial improvements and high rates of compliance with FATF standards. An opportunity for greater financial integrity would be the creation of a register of beneficial ownership that is robust enough to facilitate more efficient and effective due diligence across the financial system and more proactive monitoring and investigation by the appropriate authorities.

Successes and good practices

- The National Integrity Building Action Plan
- Well-developed legislation and practices on property declarations by public officials, including verification process and public access
- Establishment of enhanced transparency and anti corruption focus on government procurement including large projects
- Integrity education at schools
- Legislation and implementation of an anti-money laundering framework
- First process to national action plan for the Open Government Partnership

Challenges to implementation and recommendations

- Create an independent body to consider complaints and compliance with the Freedom of Government Information Act
- Increase anonymous reporting channels across both the public and private sectors
- Implement a central register of beneficial ownership that sufficiently identifies those who have substantial control over private entities
- Require published diaries for one or more categories of those identified in Article 2 of the Lobbying Act, in particular those with the power to significantly influence or make decisions on law and policy
- Introduce a more systematic approach by each agency to regularly undertake an Integrity System Risk assessment
- Strengthen the AAC's performance by providing necessary resources
- Review the process for appointing the head of the AAC in order to assure independence of that role
- Ensure that political donations are open, transparent and with limited amounts. Legislation governing political donations should be reviewed to meet best international standards
- Abolish offset clauses in future defense acquisition to ensure the integrity of the defense procurement, as the majority of G20 countries have abolished that practice.

- Introduce ‘a global anti-corruption ambassador’ position that can work closely with international partners to improve Taiwan’s anti-corruption policy and to spread Taiwan’s good practices in this field for the benefit of global society
- Amend government procurement requirements to require that bidding companies disclose their beneficial ownership .

Chapter III: Criminalisation and Law Enforcement

Main findings and observations

Bribery offences, trading in influence (articles 15, 16, 18, 21)

Bribery of public officials is regulated under Taiwan’s Anti-Corruption Act, Articles 4, 5, 6, 11; and Criminal Code, Articles 121, 122, 123, 131. When both the Anti-Corruption Act and the Criminal Code apply, the former, being a specialized law, shall govern. There is no statutory definition of “bribe”; instead, bribes are determined by the courts on a case-by-case basis.

Payment of a bribe to a foreign public official is criminalised under the Anti-Corruption Act but the offence is not clearly defined, there is no definition of foreign public official and there have been no cases of enforcement against foreign bribery.

Private-to-private bribery is partially regulated under the Taiwan Criminal Code, the Securities and Exchange Act and the Banking Act. The Criminal Code (Article 342) provides for sanctions against a person who takes an illegal benefit for himself or others or causes harm in managing the affairs of their principal. The Banking Act prohibits responsible persons and staff members of a bank from accepting commissions, rebates and the amount of other unwarranted benefits from depositors, borrowers or other customers. The Securities Exchange Act prohibits directors, supervisors and employees of stock exchanges from demanding, agreeing to accept, or accepting any improper benefit in connection with the performance of his or her duties

Trading in influence is not established as an offence under Taiwanese law but there is proposed legislation in preparation on the subject.

Laundering of proceeds and concealment (articles 23, 24)

The Money Laundering Control Act promulgated in 1996 and most recently amended in 2018, establishes money laundering and concealment offences. The Asia-Pacific Group on Money Laundering review of Taiwan in 2019 found that it had pursued wide-ranging reforms since early 2017, with very significant progress in a short period of time.

Embezzlement, abuse of functions, illicit enrichment (articles 17, 19, 20)

Embezzlement, misappropriation or other diversion of property by a public official are covered by the Anti-Corruption Act as well as the National Property Act. Illicit enrichment is also provided for under the Anti-Corruption Act and under the Money Laundering Control Act. In each case, the formulation of the offence does not fully cover the elements of the offence in the UNCAC and is so brief as to leave open issues to be determined by the courts.

Obstruction of justice (article 25)

There is no provision for a consolidated offence of obstruction of justice. There are a range of provisions in the Criminal Code, the Court Organization Act and the National Judges Act that cover elements of obstruction of justice. Draft amendments to the Criminal Code are under review by the Executive Yuan since 2019 to ensure more complete coverage in this area, such as in relation to the notion of interference and bribery of witnesses.

Liability of legal persons (article 26)

A company would not in general not be held liable for bribery or corruption, although under the Civil Code it may be subject to civil liability and under the Administrative Penalty Act it can be liable for violations of obligations under administrative laws. Only individual chairpersons, directors, or anyone else in a company who participates in corruption would be held criminally liable. Under the Banking Act, the Money Laundering Control Act, the Government Procurement Act companies can be held liable if their representatives, agents or employees commit an offence. The Ministry of Justice is studying legislation on corporate bribery prevention and control and the possible introduction of criminal liability.

Participation and attempt (article 27)

The Criminal Code covers participation and attempt but does not include a conspiracy offence.

Prosecution, adjudication and sanctions, cooperation with law enforcement authorities (articles 30, 37)

The Criminal Code, the Code of Criminal Procedure and other legislation stipulate sanctions in criminal and administrative cases. Prison terms stipulated are heavy and fines are relatively low.

Protection of witnesses and reporting persons (articles 32, 33)

There is no general whistleblower protection legislation in Taiwan and legislative proposals appear to face obstacles, such as opposition from legislators and the private sector.

One draft of the proposed whistleblower legislation advances a general standard for protected disclosure, but if implemented in that form, barriers would remain due to procedural requirements within the legislation about whom to report to. It is also best practice for definitions in whistleblower protection legislation to cover all acts or omissions that are unlawful or abusive or that threaten or harm the public interest, not just those specifically related to corruption. A review of the draft against best practice should be undertaken.

Freezing, seizure and confiscation; bank secrecy (articles 31, 40)

Taiwan extensively amended its legislation on confiscation during the period 2015-2016 to bring it in line with international standards. This included the introduction of non-conviction-based confiscation into the Criminal Code in 2016.

Statute of limitations; criminal record (articles 29, 41)

Taiwan has relatively long statutes of limitation laid down in the Criminal Code, based on the length of the principal punishment, ranging from 30 to five years depending on the gravity of the offence and no limitation for crimes resulting in death. There is discussion underway about extending the limitation periods for major acts of corruption.

Jurisdiction (article 42)

The Criminal Code provides for both the territoriality and the nationality principles and also specifies the application of the law to crimes committed outside Taiwan. The Code also includes the principles of protection and universality in certain cases.

Consequences of acts of corruption and compensation for damage (articles 34 and 35)

According to the Government Procurement Act, contractors in breach of laws due to corrupt practices, are sanctioned with contractual consequences (non refunding, revocation of the award, rescission of the contract and suspension).

The State Compensation Law provides for liability of the state in case of damages caused through the intentional or negligent act of any public servant within the scope of her or his office or employment. The procedures by which the victim may claim the state compensation are also specified.

It is not clear what is the situation of the individual victim of corruption offences, in particular in case of indirect or collective damage, due to the fact that the Code of Criminal Procedure does not define who can be considered the victim of a crime.

Specialized authorities and interagency coordination (articles 36, 37, 38, 39)

The two agencies conducting anti-corruption investigations are the Ministry of Justice Investigation Bureau (MJIB) and the Agency Against Corruption (AAC) established in 2011, with the AAC in charge of anti-corruption in the public sector and the MJIB handling corruption and corporate crime in the private sector. The two coordinate via a horizontal communications platform.

The AAC conducts professional competency trainings for Government Employee Ethics Officers on how to investigate corruption and related crimes. The AAC has established a Resident Coordinator System and the Taiwan Prosecutors Office has set up an Anti-Corruption Supervision Group, whose tasks include development of strategies to fight corruption. The Financial Supervisory Commission (FSC) is responsible for carrying out financial examinations and determining administrative penalties for financial institutions.

The independence of prosecutors and judges is guaranteed by their secure positions, protected by Constitution.

Successes and good practices

- Taiwan significantly increased enforcement against money laundering in 2021, raising the conviction rate compared to 2019, when the APG review of Taiwan found it to be low. The 2019 APG review also found that law enforcement agencies (LEAs) are well-equipped and experienced in generating and using financial intelligence to follow money trails and uncover complex structures and networks. LEAs, including prosecutors, conduct complex money laundering investigations and pursuing funds sent offshore. Prosecutors drive money laundering investigations and coordinate authorities according to expertise.
- The APG review of Taiwan in 2019 found that it had a sound confiscation regime, including non-conviction- based confiscation.

- Taiwan has long statutes of limitation for corruption offenses, including 30 years for the most serious offences and no limitation where the crime has caused death.

Challenges in implementation and recommendations

- Consistent with the 2019 APG Mutual Evaluation, ensure all corruption-related reports of the Anti-Money Laundering Division (FIU) are provided to the (AAC) and the MJIB and the AAC to strengthen cooperation against corruption-related money laundering.
- Establish with greater clarity the offences of bribery, embezzlement and other diversion of property in line with the UNCAC (Articles 15 and 17)
- Introduce as a matter of high priority the offence of bribery of foreign public officials and officials of public international organizations and ensure there is jurisdiction over the offence (Article 16)
- Criminalise private sector bribery as a separate offence (article 21)
- Include obstruction of justice through threats, force or bribery of witnesses to interfere with their testimony and other clarifications of the provisions in the Criminal Code (article 25)
- Urgently establish a clear and comprehensive legal framework for the liability of legal persons in corruption cases, whether criminal, civil or administrative, and give serious consideration to introducing criminal liability of legal persons. In particular, consider introducing the offence of failure of a legal person to prevent bribery, as in the UK Bribery Act. (article 26)
- Ensure that legal persons are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions for corruption offences, including monetary sanctions (article 26)
- Consider introducing a conspiracy offence to improve enforcement against complex corruption schemes (article 27)
- Consider introducing lower sanctions for smaller scale corruption offences, to ensure that sanctions take into account the gravity of offences and consider the introduction sentencing guidelines that allow judges room for taking into account specific circumstances (article 30)
- Taiwanese enforcement authorities are encouraged to take a proactive approach to detection of international corruption offences, such as regularly checking media reports and enforcement databases of countries in which Taiwanese companies operate (article 30)
- Adopt as a matter of priority comprehensive whistleblower protection legislation for the public and private sectors, corresponding to the highest international standards (article 33).
- Consider including a broad definition of a victim of corruption in its Criminal and Civil Procedure Codes, taking into account cases of indirect damage and collective victims in order to assure their legal standing in such proceedings (article 35)

Chapter IV: International cooperation

Main findings and observations

Extradition; transfer of sentenced persons (articles 44, 47).

Taiwan has demonstrated the capacity for the return of people to requesting countries, including 268 cases in the period 2017 to 2021, some of which involved corruption or bribery. Taiwan generally does not permit the extradition of its citizens. A revised Extradition Law was submitted to the Executive Yuan in 2018 and again in 2020 to remedy deficiencies and improve its coverage including, for example, the acceptance of bribes by public officials of a foreign country.

With regard to the transfer of sentenced prisoners, Taiwan has adequate agreements and arrangements in place to transfer sentenced prisoners. The Ministry of Justice responds to requests for the transfer of sentenced persons in conjunction with other entities or agencies with the common consent of Taiwan, the transferring state and the sentenced person.

Mutual legal assistance (article 46)

Taiwan has implemented a comprehensively revised Act on Mutual Legal Assistance (MLA) in Criminal Matters which is consistent with the requirements of the UNCAC including taking evidence, locating witnesses, production of documents, executing search warrants, and providing material from investigations. Taiwan continues to enter into agreements with countries in order to implement the Act. Where a treaty or agreement is lacking, Taiwan has the capacity to provide mutual legal assistance in criminal matters based on the principle of reciprocity. In the years 2018 to 2021, Taiwan initiated 16 MLA requests related to corruption.

Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)

Taiwan generally demonstrates high levels of commitment, resourcing and effectiveness in international cooperation. Taiwan participates in various multilateral organizations to promote law enforcement cooperation against corruption and related crimes, including:

- the Asia-Pacific Group on Money Laundering (APG), including the Donors and Providers (DAP);
- the Asset Recovery Interagency Network - Asia Pacific (ARIN-AP); and
- Asia-Pacific Economic Cooperation (APEC), including the Anti-Corruption and Transparency Experts Working Group, the Network of Anti-Corruption Authorities and Law Enforcement Agencies (ACT-NET,) and
- affiliated entities covering Customs, and Illegal Logging and Associated Trade (EGILAT).

Taiwan has cooperated in a range of investigations, including cases linked to Slovenia, Croatia, Belgium, Montenegro, Turkey, the USA, Central America, Mainland China, and most countries in SouthEast Asia. Cooperative investigations addressed a wide range of offenses, including human trafficking, drug trafficking, frauds and scams, financial crime and drug trafficking. Taiwan's AAC was involved in 23 cases in the period 2017 to 2021.

Regarding special investigative techniques, Taiwan is able to use controlled delivery mechanisms and has done so in successful investigations. However, unlike in many other jurisdictions, Taiwan is not yet legally able to use undercover operations or access computer systems in the investigation of corruption or other serious crimes. The review committee has been advised of potential community sensitivities around surveillance powers, yet encourages Taiwan to proceed with consideration of the draft "Undercover Investigation Act" and to consider legal means by which evidence and intelligence can be obtained from

computer systems during authorized investigations. The Review Committee notes that the Ministry of Justice is working on drafts of the “Science and Technology Investigation Act” and the “Undercover Investigation Act,” and encourages the enactment and implementation of provisions consistent with the effective implementation of UNCAC.

Successes and good practices

- High levels of Mutual Legal Assistance and Extradition, supported by skilled practitioners in Taiwan and official representatives in key international locations
- Cooperation in cooperative investigations covering a wide range of crimes in Europe, Asia and the Americas
- Participation in various international networks to combat corruption and money laundering, including APEC, APG, and the Asset Recovery Inter-agency Network - AsiaPacific (ARIN-AP)

Recommendations

The following steps could further strengthen existing anti-corruption measures:

- Finalise and enact the revised draft law on extradition (article 44)
- Proceed with consideration of the draft “Undercover Investigation Act” and to legal means by which evidence and intelligence can be obtained from computer systems during authorized investigations (article 50)
- Complete the drafts of the “Science and Technology Investigation Act” and the “Undercover Investigation Act,” and facilitate the enactment and implementation of such provisions consistent with the effective implementation of UNCAC (article 50)

Chapter V: Asset Recovery

Main findings and observations

General Provision, Prevention and Detection of assets (articles 51, 52)

After the initial report was delivered, the “Regulations Governing Anti-Money Laundering of Financial Institutions” were amended (November 2018), improving rules on customer identity, beneficial ownership, record keeping, reporting, etc. These changes were added to provisions contained in the “Banking Act”, “Regulations Governing Internal Audit and Internal Control System of Anti-Money Laundering”, and others.

Considering the limitations imposed by the diplomatic situation of Taiwan, international cooperation for the recovery of property and confiscation measures happen, based on bilateral agreements or application of the principle of reciprocity. International standards on anti-money laundering and organized crime are followed in line with the rules of the Vienna and the Palermo conventions. Based on the Code of Criminal Procedure, the return of confiscated assets in Taiwan is mainly based on the original rights holder and interests of the requesting State Party, and may include sharing of the collected proceeds of crime and the deduction of relevant fees.

International Cooperation for Purposes of Confiscation (article 55)

Attending the current political situation, the country has developed comprehensive regulations to share information with other State Parties on proceeds of corrupt offenses and

adequately respond to the requests of other State Parties and cooperate for purposes of confiscation (Criminal Code, Code of Criminal Procedure, Money Laundering Control Act, Mutual Legal Assistance in Criminal Matters Act, and bilateral agreements).

Financial Intelligence Unit (article 58)

These actions are facilitated by the action of the Taiwanese Financial Intelligence Unit (the AMLD of the Ministry of Justice Investigative Bureau), which operates according to the Financial Action Task Force standards (Taiwan has also been a member of the Egmont Group since 1998), who has recognized its proactive and efficient good practices.

No new cases of asset recovery have been produced since the review of the initial report.

Successes and good practices

- The Review Committee recognises the challenges faced by Taiwan in recovering international assets from corruption with the limitations imposed by its diplomatic situation. Nevertheless, Taiwan has been assisting foreign authorities, through the MOJ, in matters related to asset recovery based in Mutual Legal Assistance mechanisms and bilateral agreements. In recognition of this effort, the APG has positively rated Taiwan in the Mutual Evaluation Report, round 3.
- Even though there is now a more intensive scrutiny of Political Exposed Persons (PEPs) and other individuals who are, or have been entrusted with prominent public functions, their family and associates, there is potential for scrutiny to be enhanced.
- A significant challenge is the improvement of beneficial ownership provisions in order to identify the final natural person who directly or indirectly controls the corporate structure, and open the accessibility to such information. The current regulation, which establishes that financial institutions are obliged to identify the final natural person who directly or indirectly holds the shares of a legal person over the 25% of the capital, or the senior management is not enough to assure transparency.

Challenges in implementation and recommendations

- Consider new ways to circumvent diplomatic restrictions (article 51)
- Amend the signed agreements with other countries to include provisions on asset recovery (article 51)
- Consistent with UNCAC, define clear criteria of the profile of legal and natural persons, accounts and transactions that shall be subject to enhanced scrutiny (article 52)
- Create a registry of persons (legal and natural) that should be subject to enhanced scrutiny and develop a proactive policy of regular notification of such lists to the financial institutions of Taiwan (article 52)
- Establish a central register of beneficial ownership that sufficiently identifies those who have substantial control over companies or other corporate vehicles. For this purpose, the current regulation on Beneficial Ownership shall be improved to move from the identification of shareholders with more than 25% of the capital, to the more functional concept of “natural person in real control of the company” The definition of beneficial ownership should be broadened to enable identification of persons who are in control of the company. Consider the use of unique corporate role holder identifiers for individuals who are or become directors of companies or general partners of limited partnerships (article 52.3)

- Implement a flexible policy of who may have access to the registry of beneficial ownership to avoid opaque corporate veils, promote transparency and narrow the space for corrupt practices and impunity (article 52.3)
- Follow the principles of the Global Forum on Asset Recovery (GFAR) to promote successful asset recovery, including the request of technical assistance towards successful asset recovery and disposition (article 52, 56)

Chapter VI: Technical assistance and information exchange

Main findings and observations

Training and technical assistance; collection, exchange and analysis of information on corruption and good practice; implementation of the UNCAC through economic development and technical assistance (articles 60, 61 and 62).

The Government of Taiwan has a well educated workforce that is skilled in various aspects of preventing, detecting, investigating and prosecuting corruption and bribery, and conducting international cooperation. Many of the skills and knowledge possessed by the Government of Taiwan are in great demand in other countries and jurisdictions, especially developing countries, as they struggle to implement the UNCAC and related recommendations of the Financial Action Task Force (FATF). Globally, the demand for capacity building assistance greatly exceeds the supply of assistance, thereby creating a strategic opportunity for potential providers of capacity building assistance.

Not being a State Party to UNCAC is not necessarily a barrier to a greater international role and influence for Taiwan in supporting the effective implementation of UNCAC and the associated FATF Recommendations. Taiwan already participates in various multilateral organizations to promote cooperation against corruption and related crimes, including APG, including the Donors and Providers Group; the Egmont Group Financial Intelligence Units; the Asset Recovery Interagency Network - Asia Pacific (ARIN-AP); the APEC Anti-Corruption and Transparency Experts Working Group and the associated Network of Anti-Corruption Authorities and Law Enforcement Agencies (ACT-NET).

Successes and good practices

- Taiwan regularly sends staff to participate in international seminars, forums and training courses, and to discuss anti-corruption policies and practical practices with officials from other countries in the areas of integrity, anti-corruption, investigation, and law enforcement, so as to improve the ability to combat corruption.
- Taiwan supported a range of training and development events, such as the “APEC Exchange Workshop on Enhancing Whistleblower Protection in Corruption Cases” and the “APEC Guiding Principles for the Protection of Whistleblowers” to implement the consensus of APEC regional cooperation on the protection of whistleblowers. Taiwan, along with the United States, Japan and Australia, jointly held the 2019 Global Cooperation and Training Framework (GCTF) - Anti-Corruption in the Public and Private Sectors.

Challenges and recommendations

- Taiwan's Second Report under the United Nations Convention against Corruption states (p.24) that: *"Taiwan has very limited participation in international or regional cooperation mechanisms for preventing or combating corruption, resulting in many challenges for combating cross-border corruption crimes and recovering assets."*
- As encouraged by Article 60 of UNCAC, the Government of Taiwan may consider whether it wishes to strengthen its engagement and influence with developing countries by sharing its skills and knowledge of anti-corruption, money laundering and asset confiscation. Much of the potential greater supply of assistance from Taiwan could be in the form of lower cost skills and knowledge transfer, not necessarily financial capital
- Taiwan could consider developing and maintaining a strategic policy to guide technical assistance and information exchange to identify priorities and opportunities for Taiwan to engage in technical assistance in regional and multilateral organizations (APG, APEC, ARIN-AP) and with individual countries through bilateral assistance. Taiwan may consider assigning responsibility to a senior official to lead this work, and consider appointing an Ambassador for Anti-Corruption