



# Anti-money laundering and counter-terrorist financing measures

防制洗錢及打擊資恐措施

## Chinese Taipei 中華台北

Mutual Evaluation Report 相互評鑑報告

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## EXECUTIVE SUMMARY

1. This report provides a summary of the AML/CFT measures in place in Chinese Taipei as at the end of the on-site visit (16 November 2018). It analyses the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations and the level of effectiveness of Chinese Taipei's AML/CFT system, and provides recommendations on how the system could be strengthened.

本報告對中華臺北在現地評鑑結束前（2018年11月16日）的防制洗錢/打擊資恐措施提出總結。報告分析 FATF 40 項建議的遵循程度和中華臺北 AML / CFT 系統的有效性，並就如何加強該系統提出建議。

### Key Findings

#### 重要發現

- 1) Chinese Taipei has pursued wide ranging reforms since early 2017, with very significant progress achieved in a short period of time. This reflects strong political commitment to AML/CFT reform, significant commitment of resources, effective coordination, and efforts to strengthen and deepen the culture and practice of money laundering / terrorist financing (ML/TF) risk management.

自 2017 年初以來，中華臺北一直在進行廣泛的改革措施，並在短時間內取得了非常顯著的進展。這反映出中華臺北對防制洗錢/打擊資恐改革具有強烈的政治承諾，投入大量的資源，並經有效的協調及努力，以加強並深化洗錢 / 資恐風險管理的文化和作為。

- 2) Chinese Taipei has a generally sound understanding of its ML/TF risks which is reflected in its public national risk assessment (NRA) and other assessments. National and agency-level AML/CFT policies and activities seek to address the risks identified in the assessments. Co-ordination and co-operation on AML/CFT issues at both the policy and operational levels has improved significantly since the last evaluation.

中華臺北對其洗錢/資恐風險有著普遍合理的瞭解，這反映在其國家風險評估（NRA）和其他評估中。國家和機關層級的防制洗錢/打擊資恐政策和活動旨在解決已於風險評估中辨識的風險。從最近的評估之後，在防制洗錢/打擊資恐政策和業務層面協調與合作的問題已大幅改善。

- 3) Financial intelligence and related information is used extensively in ML and predicate offence investigations and in tracing criminal proceeds. 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. The Anti-Money Laundering Division of the MJIB (AMLDD) - Chinese Taipei's financial intelligence unit (FIU) - produces good quality intelligence and adds value in financial investigations, particularly those involving international elements.

金融情報和相關資訊廣泛用於洗錢和前置犯罪的調查與犯罪所得追查。執法機關(LEAs)在產生和使用金融情報，以追查金流軌跡並發現複雜的結構和網絡方面，受有專業訓練和豐富經驗。法務部調查局洗錢防制處(AMLDD)-中華臺北的金融情報中心(FIU)-提供高質量的情報，並為金融調查提供加值，特別是那些涉及國際因素的金融調查。

- 4) Law enforcement agencies (LEAs), including prosecutors, conduct complex ML investigations actively tracing money trails, lifting the corporate veil, unravelling layers of ownership and pursuing funds sent offshore. Prosecutors drive ML investigations and coordinate authorities according to expertise. The range of ML investigations and prosecutions is generally in line with the risk profile with the exception of relatively low numbers of ML related to drug trafficking and smuggling. However, authorities are not using the ML offence to the extent necessary across a broad range of conduct in the context of Chinese Taipei. The conviction rate for ML is low and the penalties applied have not been dissuasive. Chinese Taipei has used a variety of tools in identifying, tracing and forfeiting criminal assets which operate well in practice. Chinese Taipei is successful in forfeiting a significant value of assets when compared to the size of its economy. Forfeiture appears to be consistent with Chinese Taipei's risk profile.

執法機關，包括檢察官展現調查複雜洗錢案件的能力，包括追蹤金流軌跡，揭開公司面紗，揭開所有權階層和追查流向海外的資金。檢察官根據專業能力主導洗錢案件調查並協調權責機關。除毒品販運和走私有關的洗錢則較少外，洗錢案件調查和起訴範圍通常與風險概況一致，但是權責機關並未在中華臺北範圍內對一連串廣泛的違法行為，施以必要的洗錢罪行。洗錢案件的定罪率很低，而且所採用的懲罰並不具有勸阻性。中華臺北已經適當地使用各種工具來辨識，追查和沒收犯罪資產，實務上也運作良好。中華臺北成功地沒收與其經濟規模相當的重大價值資產，並且沒收情形與中華臺北的風險狀況一致。

- 5) A number of financial investigations of suspected TF cases have been successfully undertaken. They involved intelligence sharing and ultimately uncovered conduct that was unrelated to TF. There have been no TF convictions, which is in keeping with Chinese Taipei's TF risk profile.

中華臺北已成功進行一些涉嫌資恐案件的金融調查。他們參與了情報共享，並最終破獲與資恐無關的行為。目前沒有資恐相關的定罪，這與資恐風險的概況一致。



- 6) Chinese Taipei has strong policy and operational coordination mechanisms to support the implementation of targeted financial sanctions (TFS) to combat terrorism and proliferation of weapons of mass destruction (WMD). Authorities have issued guidance to all sectors and undertaken a great deal of outreach to all financial institutions (FI) and designated non-financial businesses and professions (DNFBP) sectors and have supported all sectors to have access to screening software to support implementation of TFS. FIs, especially banks, demonstrate a good understanding of TFS obligations and the implementation of customer and transaction monitoring to identify possible sanctions matches.

中華臺北擁有強大的政策和業務協調機制，以支持實施目標性金融制裁來打擊恐怖主義和大規模毀滅性武器擴散。權責機關已向所有部門發布指引，並對所有金融和指定之非金融事業及人員(DNFBP)進行了大量宣導活動，並支持所有部門取得名單篩選軟體以支持實施目標性金融制裁。金融機構，特別是銀行，對目標性金融制裁義務，與對可能符合制裁名單者執行客戶審查(CDD)與交易監控措施等表現出很好的瞭解。

- 7) Implementation of TFS for DPRK-related designations has resulted in 81 freezing actions worth over USD 3.96 million. While there are minor shortcomings in the scope of TFS for proliferation financing (PF), the legal framework goes beyond FATF standards by also establishing a PF offence, related suspicious transaction reporting (STR) obligations and a domestic designation system for TFS. Chinese Taipei has designated a local and entities working on his behalf/at his direction linked to PF and subjected them to TFS, resulting in freezing considerable assets. A large number of PF-related STRs have been received and intelligence has been developed to identify possible networks of associates. Authorities have granted access to frozen funds for basic expenses in keeping with the standards.

中華臺北實施與制裁北韓有關的目標性金融制裁，共有 81 次資產凍結行動，總價值超過 396 萬美元。雖然在武擴相關的目标性金融制裁方面，出現了範疇上的缺失，中華臺北的法律框架已超越 FATF 標準，包括成立武擴罪、相關可疑交易申報(STR)報告義務、國內指定制裁體系及目標性金融制裁。中華臺北已經指定了一名與武擴相關的當地人士和代表及依其指示的實體，並對其實施目標性金融制裁並凍結大量資產。本案接獲大量與資助武擴相關的可疑交易申報，並藉此發展相關情資以辨識可能的親信網絡。權責機關並已根據標準給予當事人取得凍結資產以獲得基本生活費用。

- 8) Technical compliance elements for preventive measures are generally comprehensive. There has been a shift towards a risk-based approach in the banking sector since 2013, but this approach is newer in many other sectors. Sectoral supervisors have undertaken very significant amounts of awareness raising on AML/CFT obligations and ML/TF risks. Tailored guidance has been issued for each sector.

有關預防性措施的技術遵循條件大致完整建立。自 2013 年以來，銀行業已轉型運用以風險為本之方法，但這在許多其他部門則較新。各部門監理人員針對防制洗錢/打擊資恐義務和洗錢/資恐風險實施大量活動以提升其意識。各別部門並已發布相關指引。

9) Chinese Taipei has a generally robust system of AML/CFT supervision for FIs. AML/CFT supervision of DNFBP sectors has only recently commenced. The sanctions imposed on banks, securities and insurance for AML/CFT breaches are relatively low and may not be wholly effective or proportionate. More broadly than the level of fines, overall the effects of supervisory actions have significantly influenced compliance in a positive way through remedial measures, enforcement actions and reputation damage.

中華臺北在金融部門擁有普遍強大的防制洗錢/打擊資恐監理體系。DNFBP 部門最近才開始實施防制洗錢/打擊資恐監理活動。針對銀行，證券和保險業違反防制洗錢/打擊資恐措施的制裁相對較低，可能並非完全有效或符合比例。然而，比單純罰款影響更廣泛的是，補救性措施的整體效果、強制行動和聲譽損害能以正面的方式顯著影響各部門的法規遵循程度。

10) Authorities have a mixed understanding of the risks associated with legal persons and legal arrangements. Authorities rely on CDD conducted by FIs and DNFBPs to obtain up to date beneficial ownership information of legal persons and arrangements. LEAs and the AMLD demonstrated examples of using CDD information and investigative strategies to obtain information on the beneficial ownership and control of legal persons. The scope and quality of the information held on the company registry has greatly improved in the period prior to this assessment. There are a number of controls on legal persons to mitigate their risk of misuse related to nominee shares and nominee directors. Despite the large numbers of civil trusts formed in Chinese Taipei, there are few measures to support the transparency of trusts and capturing information on settlors or trustees.

權責機關對與法人和法律協議相關的風險有著不同的理解。藉由金融機構和 DNFBPs 進行的客戶審查，使權責機關獲得法人和法律協議的最新實質受益權資訊。執法機關和洗錢防制處展現使用客戶審查資訊和調查策略獲取有關法人實質受益權和控制權資訊的範例。最近公司登記處所掌握資訊的範圍和品質在評鑑之前有了很大改善。中華臺北有對法人實施一些控制措施，以減輕濫用代名股份和代名董事的風險。儘管在中華臺北成立大量的民事信託，但很少有措施支持信託的透明度並獲取有關信託人或受託人的資訊。

11) Chinese Taipei provides good quality constructive assistance for international cooperation requests related to ML and asset restraint and forfeiture.

中華臺北為有關洗錢、資產限制和沒收的國際合作請求，提供優質的建設性援助。

## Risks and General Situation

### 風險與一般情況

2. Chinese Taipei has a well-developed financial sector and stable economy which makes it an attractive venue for both domestic and foreign proceeds of crime to be laundered. The banking sector, including the well-developed sector of offshore banking units (OBU), presents the greatest risks and there are particular risks from informal remittance. Banks dominate the financial sector, handle a high volume of transactions, and are well interconnected with the international financial system.

Chinese Taipei is subject to an array of predicate offences which generate significant proceeds. These offences to a large degree stem from organised crime, including drug trafficking, fraud and smuggling. Other predicate offences of note include corruption and bribery, and specific types of fraud including tax and securities-related crimes. Typical ML methods include the use of wire transfers to dummy accounts (including OBU accounts), cash couriers, underground remittance, foreign third parties, shell and front companies to conceal beneficial ownership and the purchase and sale of real estate. The high use of cash and the relatively large informal economy significantly increases the risk that illicit proceeds may be channelled into the formal economy.

中華臺北擁有發達的金融部門和穩定的經濟體系，使其對國內外洗錢犯罪具有吸引力。銀行業包括發達的離岸銀行業務部門風險最大，非正式匯款管道亦存在特定風險。銀行主導金融業，處理大量交易，並與國際金融體系緊密相連。中華臺北受到一系列產生鉅額所得的前置犯罪的影響。這些罪行在很大程度上源於有組織犯罪，包括販毒，詐欺和走私。其他前置犯罪包括貪污和賄賂，以及特定類型的詐欺，包括稅務和證券相關的犯罪。典型的洗錢方法包括使用電匯匯款至人頭賬戶（包括 OBU 賬戶），現金運送，地下匯款，外國第三方，空殼和前台公司隱瞞實質受益權（BO），購買和出售不動產等。大量使用現金和相對較大的非正式經濟，大大增加了非法所得可能重新流入正規經濟的風險。

3. There is no specific intelligence suggesting that Chinese Taipei is a likely target of terrorism, or evidence of foreign terrorist actors with connection to Chinese Taipei. The threat of financing domestic terrorism is low. Externally, there have not been any suspected cases of funds of designated persons or entities, or funds associated with terrorism cases entering or being sourced from the jurisdiction. Chinese Taipei has some links between certain segments of the community and regions affected by terrorism, which slightly increases the threat of TF, albeit within a low level.

沒有具體的情報顯示中華臺北可能成為恐怖主義的目標，或證明有與中華臺北聯繫的外國恐怖分子。為國內恐怖主義提供資金的威脅很低。就對外而言，沒有任何涉嫌與指定制裁人員或實體的資金，或與恐怖主義案件有關的資金，進入中華臺北或從中華臺北取得。中華臺北社會中的部分群體和受恐怖主義影響的地區之間存在某種聯繫，這略微增加了資恐的威脅，儘管仍處於較低的水準。

### *Overall Level of Effectiveness and Technical Compliance*

#### *整體效能及技術遵循程度*

4. Chinese Taipei has established a legal and institutional framework that is particularly strong in relation to technical compliance. Minor shortcomings include the scope of property subject to TFS for terrorism and WMD proliferation and some technical elements of the TF offence.

中華臺北建立了一個在技術遵循方面特別強大的法律和制度框架。需要改善的領域包括對恐怖主義和大規模毀滅性武器擴散進行目標性金融制裁的財產範圍，以及資恐犯罪的一些技術性要素。

5. Chinese Taipei has implemented an AML/CFT system that shows a number of areas of effectiveness. Particularly good results are being achieved in the areas of understanding the ML/TF risks and pursuing domestic cooperation and coordination to address risks; the development and use of financial intelligence and related financial investigation for predicate offences and the restraint and confiscation of proceeds and instruments of crime; the implementation of TFS related to terrorism and protecting the non-profit sector from terrorist abuse; and co-operating internationally to support AML/CFT. Major improvements are needed to strengthen supervision and implementation of preventive measures and to prevent the misuse of legal persons and arrangements.

中華臺北實施的防制洗錢/打擊資恐體系，在若干領域均顯示為有效。其中下列領域取得特別好的成果，包括瞭解洗錢/資恐風險和展開國內合作及協調以應對風險；針對前置犯罪發展和使用金融情報並進行金融調查，以及限制和沒收犯罪所得和犯罪工具；實施與恐怖主義有關的目標性金融制裁，

保護非營利組織免於遭受恐怖分子濫用；並在國際上展開合作以支持防制洗錢/打擊資恐。主要待改進部分包括強化監理及預防性措施的執行，以及避免法人和法律協議被濫用。

6. In the initial part of the 10 years since Chinese Taipei's last mutual evaluation little progress was made with AML/CFT reforms. However, since early 2017 very significant changes to policy and resource allocation have occurred which have supported comprehensive AML/CFT reforms and large scale implementation of the legal and institutional framework and the scope of implementation.

中華臺北自前一輪相互評鑑以來的最初 10 年期間，防制洗錢/打擊資恐的改革進展甚微。然而，自 2017 年初以來，政策和資源分配發生非常重大的變化，這些變化支持全面的防制洗錢/打擊資恐改革，以及大規模實施法律和制度框架與執行範圍。

*Assessment of Risks, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33)*

*風險評估、協調與制定政策（第 2 章-直接成果 1; R.1, R.2, R.33）*

7. Chinese Taipei demonstrated a generally sound understanding of ML/TF risks. This is reflected in the NRA process, which included a very wide range of government and private sector stakeholders and resulted in a public document, a slightly more comprehensive document for participating stakeholders and a great deal of associated outreach and awareness raising work on the findings of risk. Sectoral risk assessments and FIU strategic intelligence products have added to a shared understanding of risk. Overall AML/CFT policies and activities largely seek to address the risks identified in the NRA and other assessments.

中華臺北對洗錢 / 資恐風險的理解基本合理。這反映在國家風險評估（NRA）過程中，包括政府和私部門利益相關者的廣泛參與，並對大眾提供了一份文件，並為參與的利益相關者提供了較為全面的文件，以及針對風險的發現結果提供大量相關宣導和提高認知的工作。部門風險評估和金融情報中心的策略性情報增加了對風險的共同理解。防制洗錢/打擊資恐的總體政策和活動主要是為了解決 NRA 和其他評估中發現的風險。

8. National co-ordination and co-operation on AML/CFT issues at the policy and operational levels has improved significantly since the last evaluation. This is particularly evident in relation to policy level co-ordination among LEAs, however there are opportunities for deeper cooperation at operational levels.

自上次評估以來，國家在防制洗錢/打擊資恐的政策和業務協調與合作已有了顯著改善。在執法機關（LEAs）之間的政策層面協調方面尤其明顯，但在業務層面則有更深入合作的機會。

*Financial Intelligence, Money Laundering & Confiscation (Chapter 3 - IOs 6-8; R.3, R.4, R.29-32)*

*金融情報、洗錢與沒收（第三章-直接成果 6-8; R.3, R.4, R.29-32）*

*Use of financial intelligence to investigate ML, TF, predicate offence and to trace assets (Immediate Outcome 6)*

*使用金融情報調查洗錢、資恐及前置犯罪，並追查犯罪所得（直接成果 6）*

9. The competent authorities, in particular LEAs, investigating prosecutors and the tax authorities regularly develop and use a broad range of financial intelligence and other relevant information to investigate predicate offences, ML and possible TF and to trace criminal proceeds.



LEAs (especially the MOJ Investigation Bureau (MJIB)) and investigating prosecutors have very well-developed capabilities to utilise FIU-disseminated intelligence in financial investigations.

權責機關（特別是執法機關、檢察官和稅務機關），能定期發展並利用廣泛的金融情報和其他相關資訊調查前置犯罪、洗錢案件及疑似的資恐案件，並能追蹤犯罪所得。執法機關當中（尤其是法務部調查局）和檢察官都具有非常好的能力，能在金融調查中善用金融情報中心發送的金融情報。

10. Chinese Taipei's FIU is the AMLD, which is located within the MJIB. The FIU has a well-developed analytical capability and has excellent IT resources and skilled staff. AMLD produces good quality financial intelligence. AMLD suffers, to an extent, from a lack of human resources as it also has a significant role in relation to outreach, risk assessment work, TFS support and international cooperation.

中華臺北的金融情報中心是法務部調查局洗錢防制處。金融情報中心擁有完善的分析能力、良好的資訊科技資源和優秀熟練的人員。法務部調查局洗錢防制處提供品質好的金融情報。但在一定程度上洗錢防制處仍受限於人力資源不足的影響，因為他們在對外宣導、風險評估工作、支援目標性金融制裁和國際合作等方面都扮演重要的角色。

11. While the full range of FIs and DNFBPs are required to report STRs, there was an underreporting of STRs by higher risk sectors until recent reforms and enhanced risk-based outreach to all sectors.

雖然所有金融機構和指定的非金融事業及人員（DNFBPs）均需通報可疑交易報告，但直到最近的法規變化和強化對所有部門進行以風險為本的宣導前，高風險產業的可疑交易報告申報仍不足。

### *Investigating, prosecuting and sanctioning ML (Immediate Outcome 7)*

#### *調查、起訴與制裁洗錢犯罪（直接成果7）*

12. Chinese Taipei had not prioritised the pursuit of ML cases until 2017, at which time amendments were made to the MLCA which improved the ML offence. LEAs have very well-developed financial investigation and prosecution capacity; however the nature of the ML offence and a lack of policy priority prior to 2017 have meant that ML was pursued to a lesser extent. Results of ML prosecutions show low conviction rates and very low sentences applied. The level of prosecutions and convictions of ML has not been in keeping with its threats, risk profile and AML/CFT policies.

中華臺北過去並未將追查洗錢犯罪列為優先考量，直到 2017 年洗錢防制法完成修法情況才有所改變。執法機關具有非常完善的金融調查和起訴能力，但是洗錢犯罪的本質及 2017 年以前政策上未將調查洗錢做為優先考量，意味著洗錢犯罪的追查程度較低。洗錢起訴的結果並不有效，定罪率低，刑期亦非常低。洗錢犯罪的起訴和定罪水準未能與其威脅程度、風險概況及防制洗錢 / 打擊資恐政策保持一致。

### *Restraining and confiscating proceeds and instruments of crime (Immediate Outcome 8)*

#### *限制並沒收犯罪所得及工具（直接成果8）*

13. Chinese Taipei pursues confiscation as a policy objective and competent authorities have confiscated approximately USD 457 million since 2014 using the Criminal Code and the Criminal Procedure Code (CPC) and had restrained approximately USD 191 million at the time of the onsite visit. Tax authorities have recovered considerable funds using their powers. Chinese Taipei has demonstrated its ability to recover assets across a range of crime areas in keeping with the risk profile. LEAs, including prosecutors, have well-developed asset tracing capacity and routinely pursue financial investigations to identify assets for the purpose of recovery.



中華臺北將沒收作為政策目標。權責機關利用刑法和刑事訴訟法，自 2014 年以來至現地評鑑之前已沒收大約 4.57 億美元，並限制大約 1.91 億美元。稅務機關利用其職權收回了大量資金。中華臺北已證明其能夠在一系列犯罪追回資產，並與風險概況相符。執法機關，包括檢察官，具有良好的資產追查能力，並且固定進行金融調查以識別資產並予以追回。

14. Cash is seized at the border and the authorities have, to a certain extent, proactively targeted high-risk ports of entry. However, forfeiture applied in relation to breaches of the cross border declaration system is not applied proportionately in all cases. Overall, the extent of targeting threats posed by cash couriers has not been in keeping with the risk profile.

現金在邊境被扣押，且權責機關在一定程度上會主動鎖定高風險入境口岸。但是，在違反跨境申報制度方面的沒收並非在所有情況下都按比例原則適用。總體而言，鎖定現金攜帶者所構成威脅的行動並未與風險狀況保持一致。

#### *Terrorist Financing and Financing Proliferation (Chapter 4 - IOs 9-11; R.5-8)*

##### *資恐及資助武擴 (第 4 章-直接成果 9-11; R.5-8)*

#### *Investigating, prosecuting and sanctioning terrorist financing (Immediate Outcome 9)*

##### *調查、起訴及制裁資恐犯罪 (直接成果 9)*

15. TF risks are low overall, but despite this, TF investigations are given a high priority. LEAs, prosecutors, the FIU and security intelligence authorities have well-developed investigation capacity, and standard operating procedures to respond to possible cases of terrorism or TF.

儘管整體而言資恐風險低，資恐案件的調查仍被列為高度優先。執法機關、檢察官、金融情報中心和情報機關亦具備良好的調查能力，並有完善的標準作業程序，以因應可能的恐怖主義或資恐案件。

16. There have been a number of cases where authorities have proactively and systematically investigated TF alongside possible terrorism cases and, in two other incidents, investigated possible TF cases. In all of these cases, the conduct identified did not relate to terrorism or TF, but the investigations demonstrated the TF investigation capacity and the ability to thoroughly investigate in a coordinated joint agency context. The conduct of financial investigations is in keeping with Chinese Taipei's threats, risk profile and AML/CFT policies.

在一些案例中顯示，權責機關對於資恐案件及伴隨的疑似恐怖主義案件能主動且系統性地發動調查，並曾在另外兩起案例中調查過疑似的資恐案件。雖然所有這些案件，最後經調查確認與恐怖主義或資恐無關，但顯示中華臺北權責機關具有資恐調查能力，以及跨機關聯合協調調查的能力，其金融調查作為與中華臺北的威脅、風險概況和防制洗錢 / 打擊資恐政策相符。

#### *Preventing terrorists from raising, moving and using funds (Immediate Outcome 10)*

##### *防止恐怖份子籌募、移轉及使用資金(直接成果 10)*

17. In keeping with its profile, Chinese Taipei has not made any domestic designations pursuant to UNSCR 1373 or made a request or given effect to other countries' requests to take freezing action as appropriate. Chinese Taipei implements TFS without delay, communicating new UN listings to covered entities within one business day of UN listings. MJIB, Financial Supervisory Commission (FSC) and other authorities have undertaken a great deal of outreach and communication on TFS

obligations and provided guidance. Implementation is supported by subsidising FI/DNFBP access to sanctions screening software to small enterprises to comprehensively screen for sanctioned persons and entities. Supervision of TFS implementation (offsite and onsite) has occurred across many sectors. While understanding of TFS is best developed amongst banks and bigger FIs, implementation is occurring amongst smaller entities.

與中華臺北情況一致，目前並沒有根據聯合國安理會第 1373 號決議進行任何國內指定，或者對其他國家要求採取適當的凍結行動的請求予以實施。中華臺北毫不遲延地實施目標性金融制裁（TFS），關於聯合國新的公告名單，中華臺北可在一個工作日內向有關的申報機構公告。法務部調查局，金融監督管理委員會（FSC）和其他主管機關已就目標性金融制裁義務進行了大量的宣導及提供指引。透過補助 FI / DNFBP 小型企業進入制裁名單檢核的資料庫，可支持相關機構實施名單檢核。許多部門都有實施目標性金融制裁並進行監理行動（場外和現地）。雖然銀行和大型金融機構之間對於目標性金融制裁的理解最好，但規模較小的機構也已實施目標性金融制裁。

18. Chinese Taipei has a good understanding of the TF risks associated with NPOs and applies a risk-based approach to mitigating those risks. There have been a number of recent improvements to the legal framework to promote transparency and a significant allocation of resources to support outreach to NPOs. Over the last two years charities regulators, AMLD and other LEAs have engaged regularly with the NPO sectors on CFT issues and have conducted extensive outreach and issued useful guidance. A graded range of risk mitigation obligations, guidance and supervision has been applied taking into account the relative risks of particular sub-sectors and the features and activities of individual NPOs. The charities regulators are able to support LEAs to investigate NPOs suspected of being abused by terrorist financiers.

中華臺北對與非營利組織相關的資恐風險有很好的理解，並採用以風險為本的方法來降低這些風險。近來法律制度已進行了一些改善以促進非營利組織透明度，並分配大量資源以支持對非營利組織的宣導。在過去兩年中，慈善機構監管機關、調查局洗錢防制處和其他執法機關有定期與非營利組織部門就打擊資恐的問題進行互動，並實施了大量的宣導與發布有用的指引文件。考慮到特定類別非營利組織的相對風險以及各個非營利組織的特色和活動，已實施一系列風險抵減、指導和監督。慈善機構監管機關也有協助執法機關調查涉嫌被資恐濫用的非營利組織。

19. Chinese Taipei also has a sound confiscation regime through which it can apply criminal and measures to deprive terrorists of their assets. Overall, Chinese Taipei's measures are generally consistent with its overall risk profile.

中華臺北有一個完善的沒收制度，透過該制度，可以運用刑事處罰和措施剝奪恐怖分子的資產。總體而言，中華臺北的措施大致上與其整體風險狀況一致。

### *Preventing persons or entities involved in the proliferation of WMD from moving and using funds (Immediate Outcome 11)*

#### *防止參與大規模毀滅性武器擴散之個人或實體轉移及使用資金(直接成果 11)*

20. Countering WMD proliferation financing is a strategic priority for Chinese Taipei and it has implemented domestic measures to meet and go beyond the FATF standards, including identifying and designating domestic persons and entities that may be linked to sanctions evasion and implementing TFS against them without delay. TFS designations are effective without delay in Chinese Taipei, entering into force within 24 hours of a designation by the UN. They are communicated on the same day to FI/DNFBP and other stakeholders. Chinese Taipei's use of its domestic designation mechanism to designate certain entities owned or controlled by the principal designee has partly contributed to overcoming the technical compliance gap in the scope of coverage of freezing obligations. Freezing actions have occurred in Chinese Taipei within 6 hours of new UN designations being made pursuant to UNSCR 1718.

打擊資助大規模毀滅性武器擴散為中華臺北策略的優先事項，在其國內之實施情形已達到並超越 FATF 標準，包括辨識和指定可能與規避制裁有關的國內人員和實體，並毫不遲延對其實施目標性金融制裁。目標性金融制裁指定在中華臺北已毫不遲延地生效，在聯合國指定後 24 小時內即於國內生效。同時在同一天會與金融機構 / DNFBP 和其他相關機構進行溝通。中華臺北利用其國內指定機制指定由主要被指定人所擁有或控制的某些實體，可部分有助於克服凍結義務覆蓋範圍內的技術遵循落差。中華臺北根據聯合國安理會第 1718 號決議發布新指定的 6 小時內，即已進行凍結行動。

21. Chinese Taipei has well-developed mechanisms for addressing PF in a co-ordinated fashion at policy and operational levels. MJIB, FSC and other authorities have undertaken a great deal of outreach and communication on TFS obligations and provided guidance. As with IO10, by making comprehensive sanctions screening software (TDCC) available to FIs/DNFBPs at subsidised rates, both large and small FI/DNFBPs have the necessary tools and have been shown to actively screen for possible matches with UN sanctioned persons and entities. Supervision (offsite and onsite) has occurred across FI sectors on TFS implementation (Iran and DPRK sanctions). Regulators' outreach—combined with very active publicity of PF-related TFS—has supported improved understanding by FI/DNFBPs of their obligations. The understanding of obligations appears to be well-developed amongst banks and bigger FIs, and reasonably developed amongst smaller FIs and DNFBPs.

中華臺北在政策和執行層面建立了完善的協調打擊資助武擴的機制。調查局、金管會和其他權責機關就目標性金融制裁義務進行了大量的宣導、溝通並提供指引。與直接成果 10 一樣，提供 FI / DNFBP 關於制裁名單檢核的資料庫 (TDCC)，大型和小型金融機構 / DNFBPs 都有現成的資料庫可以使用，並且已被證明可以主動進行檢核聯合國制裁人員和實體的名單。已對金融機構實施目標性金融制裁措施 (伊朗和北韓制裁) 進行監理 (場外和現地)。監理機關的宣導 - 加上非常積極的宣導與資助武擴相關的目標性金融制裁 - 有助金融機構 / DNFBPs 了解其義務。銀行和大型金融機構對其義務的瞭解完善，另較小規模的金融機構和 DNFBPs 對於目標性金融制裁義務的瞭解也有合理發展。

22. Chinese Taipei demonstrated 81 PF-related freezing actions with the equivalent of over USD 3.96 million frozen. These frozen assets are associated with two designated persons and six designated entities. Chinese Taipei has implemented publicly-known procedures for providing access to funds for basic expenses.

中華臺北已經採取了 81 次與資助武擴相關的凍結行動，並凍結相當於 396 萬美元的金額。這些凍結的資產與 2 個指定人員和 6 個指定實體有關。中華臺北並已實施公開程序，允許使用部分資金作為基本開支。

### *AML/CFT Preventive Measures (Chapter 5 - IO4; R.9-23)*

#### *防制洗錢/打擊資恐防制措施(第 5 章 - 直接成果 4; R.9-23)*

23. Chinese Taipei has a large financial sector and moderately-sized DNFBP sectors. The level and types of ML/TF risks affecting individual FIs and DNFBPs vary, as do the ML/TF risks facing particular sectors. All of the entities performing activities covered by the FATF Standards (except casinos, which are illegal in the jurisdiction) are required to apply a range of risk-based AML/CFT preventive measures, which are generally consistent across all sectors.

中華臺北擁有龐大的金融業和中等規模的 DNFBP 產業。影響個別金融機構和 DNFBPs 的洗錢 / 資恐風險的等級和類型各不相同，特定部門面臨的洗錢 / 資恐風險也各不相同。(除了賭場在司法管轄區內是非法的外)，所有執行 FATF 標準所涵蓋活動的實體都必須採用一系列以風險為本的防制洗錢/打擊資恐防制措施，這些措施在所有產業部門基本上是一致的。



24. AML/CFT compliance is not consistent across different categories of FI. While the numbers and quality of STRs has recently improved, there are concerns about the low level of STR reporting in many sectors, including some identified as being at high-risk, and challenges with the quality of STRs being filed. The banking sector plays a predominant role in the Chinese Taipei financial system, including nearly all of the formal remittance. Overall, the understanding of ML/TF risks and obligations and implementation of AML/CFT measures appears most developed among the banks which demonstrated awareness of their AML/CFT risks in line with many aspects of the NRA. Other large FIs (insurance providers, investment firms and wealth managers) display a reasonable understanding of risks and AML/CFT compliance requirements in their sectors; however, both banks and NBFIs, particularly smaller firms, have a mixed understanding of risk. The understanding of ML/TF risk is much less developed among DNFBPs as the requirement for these entities to undertake a written risk assessment is very recent. A number of obligations on DNFBPs are very new or recently improved.

在不同類別的金融機構中，防制洗錢 / 打擊資恐遵循情形並不一致。儘管可疑交易報告的數量和質量最近有所改善，但仍擔憂許多部門的可疑交易報告水準較低，包括一些被確定為高風險的部門，以及提交可疑交易報告品質的挑戰。銀行業在中華臺北金融體系中佔主導地位，包括幾乎所有的正式匯款。總體而言，對洗錢 / 資恐風險和義務的理解以及防制洗錢 / 打擊資恐措施的實施似乎在銀行中發展最好，銀行所展現對防制洗錢 / 打擊資恐風險的認識與 NRA 許多方面吻合。其他大型金融機構（保險公司、投資公司和財富管理機構）對其所在行業的風險和防制洗錢 / 打擊資恐法遵要求有合理的理解；然而，銀行和非銀行金融機構，特別是規模較小的公司，對風險的理解比較混雜。由於 DNFBPs 是近期才要求進行書面風險評估，因此 DNFBPs 對洗錢 / 資恐風險的理解相對發展較少。對 DNFBPs 的一些義務規範是非常新的或是最近才改善的。

25. Implementation of AML/CFT measures is reasonable across FIs and has recently been enhanced amongst most DNFBPs. Over the last 1-2 years authorities and sectoral association have greatly increased their support to FI and DNFBP sectors to promote implementation, which has seen improvements in the application of many preventive measures. Since early 2018 when the NRA was issued and regulations were updated, implementation has increasingly been risk-based across a wider range of FIs and DNFBP sectors.

各金融機構有合理實施防制洗錢 / 打擊資恐措施，最近在大多數的 DNFBPs 也有所加強。在過去的 1-2 年裡，主管機關和各產業公(協)會大大增加了對金融機構和 DNFBP 的支持，以促進改善許多防制措施的應用。自 2018 年初頒布 NRA 並更新法規以來，金融機構和 DNFBP 產業實施越來越多以風險為本的防制措施。

#### *AML/CFT fit and proper controls and AML/CFT supervision (Chapter 6 - IO3; R.26-28, R. 34-35)*

##### *防制洗錢/打擊資恐適格性控制及防制洗錢/打擊資恐監理(第 6 章 - 直接成果 3; R.26-28, R. 34-35)*

26. All of the relevant FI and DNFBP sectors covered under the FATF Standards are supervised for AML/CFT compliance. Casinos are illegal and trust and company service providers are not present in the jurisdiction as a separate sector. Generally, there are systems in place for background checks and on fitness and propriety of persons owning or controlling regulated entities, however there are weaknesses across the board with checking for associations with criminals.

所有在 FATF 標準下的金融機構和 DNFBP 產業均已受到防制洗錢 / 打擊資恐的監理，賭場是非法的，而信託及公司服務提供者在司法管轄區內並非為一單獨部門。一般來說，已有系統可以進行背景調查，並檢查擁有或控制受監理實體的人員之適格性，然而各部門對罪犯關係人的檢查存在弱點。

27. FSC has a reasonable understanding of ML/TF risks, which is in line with the NRA. Their sectoral risk understanding is reasonable, but there are some challenges with their ability to develop

an updated picture of sectoral risks and firm-specific risk level reflecting a need for a wider range of inputs from LEAs and the FIU.

金管會對 ML/TF 風險有合理的理解，並與 NRA 結果一致。他們對產業風險的理解是合理的，但是他們對更新產業部門的風險圖像以及特定公司的風險程度存在一些挑戰，這反映出需要執法機關和金融情報中心提供更廣泛的投入。

28. The frequency scope and intensity of FSC's offsite and onsite supervision is increasingly based on the identified risks. Greater inputs from LEAs and the FIU are needed to guide risk-based supervisory choices, particularly in relation to higher risk scenarios. Other supervisors are still developing their supervisory capacity.

金管會場外和現地檢查的頻率範圍和強度越來越多地基於已識別的風險。特別是在高風險情境方面，需要執法機關和金融情報中心提供更多的投入來引導以風險為本的監理選擇。其他監理機關仍在發展其監理能力。

29. The quality of FSC's supervision appears to be relatively high. FSC has experienced supervisors who demonstrated good AML/CFT skills. The sanctions imposed on banks, securities, and insurance for AML/CFT breaches are relatively low and may not be wholly effective or proportionate. More broadly than the level of fines, the overall effects of remedial measures, enforcement actions and reputation damage appear to be significantly influencing compliance in a positive way.

金管會的監理品質相對較高。金管會具有良好的防制洗錢 / 打擊資恐技能和經驗豐富的監理人員。針對防制洗錢/打擊資恐違規行為的銀行、證券和保險的制裁相對較低，可能並非完全有效或相稱。補救措施、強制行動和聲譽損害的整體效果，顯示比罰款程度影響更廣泛，並能以積極的方式顯著影響法令遵循程度。

30. Chinese Taipei authorities have undertaken a very large number of programs to promote a clear understanding of ML/TF risks and AML/CFT obligations in the recent years. This has included close cooperation between supervisors, sectoral associations, the FIU and LEAs.

近年來，中華臺北權責機關開展了大量計畫以促進對 ML / TF 風險和防制洗錢 / 打擊資恐義務的清晰理解。這包括監理機關，公會，金融情報中心和執法機關之間的密切合作。

### *Transparency of Legal Persons and Arrangements (Chapter 7 - IO5; R. 24-25)*

#### *法人及法律協議透明度(第 7 章- 直接成果 5; R.24-25)*

31. A number of reforms to the company law were taken in 2018 to improve governance and transparency of legal ownership and control and governance of legal persons and to improve mechanisms to assist competent authorities to lift the corporate veil. Chinese Taipei acknowledges risks posed by corporate structures and, to a lesser extent, trusts and is taking some steps to mitigate these risks. Details of nominee directors and shareholders are publicly available on the registry. Bearer share warrants have been abolished since mid-2018, and some of the risks from bearer shares have been mitigated. There are limited transparency obligations on private express trusts, and competent authorities do not display a good understanding of risks they may pose and measures to identify and apply transparency controls of such legal arrangements.



中華臺北在 2018 年對公司法進行了一系列改革，改善法人所有權和控制權的治理和透明度，並改進相關機制以協助主管機關揭開公司面紗。中華臺北承認公司結構所帶來的風險，並在較小程度上承認信託風險，並正在採取一些措施來減輕這些風險。代名人董事和股東的詳細資訊在登記處是公開的。自 2018 年中起，無記名股票被廢除，無記名股票的部分風險得到減輕。對於民事信託透明度的規範有限，主管機關並未充分了解其可能帶來的風險以及確定對此類法律協議透明度的控制措施。

32. Chinese Taipei has recently improved the regulatory framework for all FIs and DNFBPs to obtain and maintain beneficial ownership, but there is still some way to go before all reporting entities are complying with these requirements. The context of Chinese Taipei sees relatively little professional intermediation in the establishment or continuing operation of legal persons, so FIs/DNFBPs may not consistently hold up to date and accurate information on beneficial ownership. LEAs can access any available beneficial ownership information collected by FIs and DNFBP through CDD in a timely fashion.

中華臺北最近改善了對於所有金融機構和 DNFBPs 的監理框架，以取得並持有實質受益權，但在所有申報機關都遵守這些要求之前還有一段路要走。中華臺北的概況是較少有專業中介機構在提供法人設立以及維持公司營運之服務，因此金融機構/DNFBPs 可能無法持續的掌握有關實質受益權之最新和正確資訊。執法機關可以及時向金融機構和 DNFBP 取得透過客戶盡職調查得到的實質受益權資訊。

33. Authorities demonstrated regular use of a combination of investigative techniques, basic information and CDD data obtained from FI/DNFBPs to identify beneficial ownership and control of corporate structures. This has included international cooperation in sharing such information.

主管機關證實定期使用調查技術及透過金融機構/DNFBPs 所取得之基本資訊和客戶盡職調查資料，以辨識出實質受益權和公司結構控制權。這包括分享此類資訊的國際合作。

### *International Cooperation (Chapter 8 - IO2; R. 36-40)*

#### *國際合作(第 8 章 - 直接成果 2; R.36-40)*

34. In general, Chinese Taipei provides good quality, constructive and timely assistance for international cooperation requests related to ML, predicates and asset restraint and forfeiture. The assistance provided and sought by Chinese Taipei has included formal mutual legal assistance (MLA) as well as sharing financial intelligence, supervisory information, exchanges between LEAs and other forms of international cooperation. Chinese Taipei has made three outgoing extradition requests. Repatriation and deportation of wanted individuals has been achieved between Chinese Taipei and China under the Cross-Strait Joint-Fight against Crime and Mutual Legal Assistance Agreement (2009).

一般而言，中華臺北為有關洗錢、前置犯罪、資產限制和沒收的國際合作請求提供優質、建設性和及時的協助。中華臺北提供和尋求的援助包括正式的司法互助，分享金融情報、監理資訊、執法機關間的訊息交換和其他形式的國際合作。中華臺北已經提出三次引渡請求。根據兩岸共同打擊犯罪和司法互助協議（2009 年），中華臺北與中國大陸之間的通緝犯已被遣返和驅逐出境。

35. The efforts of LEAs in actively seeking international cooperation has resulted in perpetrators being prosecuted and convicted, along with criminal asset seizure outside of Chinese Taipei. Chinese Taipei seeks assistance in an appropriate and timely manner to pursue domestic predicates, however, it has not demonstrated sufficient proactive pursuit of international assistance on ML violations.

執法機關積極尋求國際合作的努力使犯罪者在中華臺北以外的地方被起訴和定罪，以及扣押資產。中華臺北以適當和及時的方式尋求援助以追查國內前置犯罪，但是它未能針對洗錢行為積極尋求國際援助。

36. Chinese Taipei routinely uses other forms of international cooperation in a proper and timely manner and works hard to overcome the long-standing challenges it faces to ensure productive international cooperation. Chinese Taipei maintains a global network of LEA, MJIB and Customs representatives overseas who coordinate international cooperation on behalf of Chinese Taipei and have been able to assist and obtain assistance from foreign counterparts in a dynamic manner. Chinese Taipei shares basic and, as it can be identified, beneficial ownership information.

中華臺北例行、適當而及時地運用其他形式的國際合作，並努力克服長期面臨的挑戰，以確保國際合作的卓越成效。中華臺北在海外擁有由執法機關、調查局和海關代表組成的全球網絡，他們代表中華臺北協調國際合作，並能夠以機動的方式幫助和獲得外國對應單位的幫助。中華臺北共享基本的及（如可以識別的）實質受益權資訊。

### Priority Actions

#### 優先行動

37. The prioritised actions that Chinese Taipei should take include:

中華臺北應採取的優先行動包括:

- a) Amend the CTF Act to address TC gaps in relation to TFS and the minor gaps in relation to TF.

修訂“資恐防制法”，以解決在目標性金融制裁的技術遵循落差，與資恐方面的較輕微落差。

- b) Increase the human resources available to the AMLD to ensure that financial intelligence is fully exploited and that it is able to continue to service the demands it faces in relation to outreach, information sharing, risk assessments, TFS coordination, etc.

增加調查局洗錢防制處的人力，以確保充分利用金融情報，並能夠繼續滿足其在宣導、資訊分享、風險評估、協調目標性金融制裁等方面所面臨的需求。

- c) Institutionalise the strong coordination structure that was put in place ahead of the ME (the AMLO) to support ongoing priority actions to mitigate ML/TF/PF risk.

在相互評鑑之前所建立強而有力的協調架構(行政院洗錢防制辦公室)應予制度化，以支持正在進行的優先行動，減輕洗錢/資恐/武擴風險。

- d) Prioritise further comprehensive assessments of risk including: cash economy issues (including scope of the cash economy; cross-border movement of cash); ML risks with underground banking; foreign legal persons and arrangements in Chinese Taipei's offshore sector; organised crime involvement in third-party ML; emerging TF issues (including global trends on terrorism and TF). Pursue international cooperation to obtain inputs on such assessments.

優先進一步全面評估的風險包括：現金經濟的議題(包括現金經濟的範圍及跨境現金移動); 地下通匯的洗錢風險; 在中華臺北離岸部門的外國法人和法律協議的風險; 涉及第三方洗錢的組織犯罪; 新興資恐議題(包括恐怖主義及資恐的全球趨勢)。應透過國際合作以取得相關資源投入評估工作。

- e) Further integrate interaction between AMLD analysts and MJIB and police at the stage of targeting high risk crime types, e.g. drug trafficking, smuggling and third-party ML networks.

在鎖定高風險犯罪類型（例如販毒，走私和第三方洗錢網絡）目標的階段，進一步整合洗錢防制處分析人員、法務部調查局和警方之間的交流互動。

- f) LEAs should increase the use of the ML offence including through enhancement of the quality of briefs of evidence, consideration of ML at an early stage of predicate investigations, and prioritisation of third party ML across a wider range of offences.

執法機關應增加運用洗錢犯罪，包括通過提高證據摘要的品質，在前置犯罪調查的早期階段即將洗錢納入考慮，以及在更廣泛的犯罪行為中優先考慮第三方洗錢。

- g) Consider introducing AEA into asset management at the asset seizure stage or earlier, thereby relieving prosecutor's workload and effectively using AEA's expertise to manage proceeds of crime assets to preserve their value for forfeiture.

考慮在資產扣押階段或更早即將行政執行署引入資產管理，從而減輕檢察官的工作量，並有效利用行政執行署的專業知識來管理資產以保存其沒收的價值。

- h) Prioritise deeper implementation of ML risk management, in particular CDD, over higher risk sub-sectors among banks. Enhance liaison and engagement between supervisors and LEAs with the private sector, including industry associations and other sectoral groups. In particular, improved and more frequent inputs from LEAs on ML/TF/PF risks posed to FIs and DNFBPs subject to higher threats and vulnerabilities. Provide further risk-based guidance on beneficial ownership, taking into consideration Chinese Taipei's FI and DNFBP sectoral vulnerabilities.

優先考慮在銀行間具有更高風險的子部門中，實施更深入的洗錢風險管理，特別是客戶盡職調查措施。加強監理機關和執法機構與私部門間，包括各產業公(協)會和其他部門團體之間的聯絡和接觸。特別是對於 ML / TF / PF 風險，將來自執法機關所提供更佳及更頻繁資訊，轉知面臨更高威脅和弱點的 FI 及 DNFBP。並在考量中華臺北金融機構和 DNFBP 產業弱點的前提下，進一步提供有關實質受益權以風險為本的指引。

- i) Supervisors (especially for DNFBPs) should increase capacity with regards to the number of specialist AML supervisory staff, supervisory tools, and training for risk-based supervision.

監理機關（尤其是 DNFBPs）應針對以風險為本的監理，增加專業防制洗錢監理人員、監理工具和培訓。

- j) FSC and LEAs should implement further measures to support information exchange on risk. The obligations on market entry fit and proper should be expanded and further implemented. This should include enhanced information sharing between agencies, including continuing international cooperation between supervisors.

金管會和執法機關應實施進一步措施，以支持風險資訊的交換。擴大並進一步實施市場准入之適格性義務。這應包括加強各機關之間的資訊共享，包括持續監理機構間的國際合作。

## Effectiveness & Technical Compliance Ratings

### 效能及技術遵循評等

#### Effectiveness Ratings

##### 效能評等

|   |   |   |   |   |  |
|---|---|---|---|---|--|
| <b>IO.1 - Risk, policy and coordination</b><br><b>IO.1 - 風險、政策與協調</b>       | <b>IO.2 - International cooperation</b><br><b>IO.2 - 國際合作</b> | <b>IO.3 - Supervision</b><br><b>IO.3 - 監理</b>                               | <b>IO.4 - Preventive measures</b><br><b>IO.4 - 防制措施</b>                                       | <b>IO.5 - Legal persons and arrangements</b><br><b>IO.5 - 法人及法律協議</b> | <b>IO.6 - Financial intelligence</b><br><b>IO.6 - 金融情報</b> |
| <b>Substantial</b><br>相當有效  | <b>Substantial</b><br>相當有效                                    | <b>Moderate</b><br>中度有效   | <b>Moderate</b><br>中度有效   | <b>Moderate</b><br>中度有效   | <b>Substantial</b><br>相當有效                                 |
| <b>IO.7 - ML investigation &amp; prosecution</b><br><b>IO.7 - 洗錢犯罪調查與起訴</b> | <b>IO.8 - Confiscation</b><br><b>IO.8 - 沒收</b>                | <b>IO.9 - TF investigation &amp; prosecution</b><br><b>IO.9 - 資恐犯罪調查與起訴</b> | <b>IO.10 - TF preventive measures &amp; financial sanctions</b><br><b>IO.10 - 資恐防制措施與金融制裁</b> | <b>IO.11 - PF financial sanctions</b><br><b>IO.11 - 武擴金融制裁</b>        |  |
| <b>Moderate</b><br>中度有效   | <b>Substantial</b><br>相當有效                                    | <b>Substantial</b><br>相當有效  | <b>Substantial</b><br>相當有效  | <b>Substantial</b><br>相當有效  |  |

Technical Compliance Ratings (C – compliant, LC – largely compliant, PC – partially compliant, NC – non compliant)

技術遵循評等 (C – 遵循, LC – 大部分遵循, PC – 部分遵循, NC – 未遵循)

|   |  |   |   |  |  |
|---|--|---|---|--|--|
| <b>R.1 - Assessing risk &amp; applying risk-based approach</b><br>評估風險與應用以風險為本之方法   | <b>R.2 - National cooperation and coordination</b><br>全國性合作及協調機制                 | <b>R.3 - Money laundering offence</b><br>洗錢犯罪               | <b>R.4 - Confiscation &amp; provisional measures</b><br>沒收及暫時性措施      | <b>R.5 - Terrorist financing offence</b><br>資助恐怖分子犯罪   | <b>R.6 - Targeted financial sanctions – terrorism &amp; terrorist financing</b><br>資助恐怖分子及恐怖主義之目標性金融制裁 |
| <b>LC</b><br>大部分遵循  | <b>LC</b><br>大部分遵循   | <b>LC</b><br>大部分遵循  | <b>LC</b><br>大部分遵循  | <b>LC</b><br>大部分遵循                                     | <b>LC</b><br>大部分遵循   |
| <b>R.7 - Targeted financial sanctions – proliferation</b><br>武器擴散之目標性金融制裁           | <b>R.8 - Non-profit organisations</b><br>非營利組織                                   | <b>R.9 - Financial institution secrecy laws</b><br>金融機構保密法律 | <b>R.10 - Customer due diligence</b><br>客戶審查                          | <b>R.11 - Record keeping</b><br>紀錄保存                   | <b>R.12 - Politically exposed persons</b><br>擔任重要政治職務人士  |
| <b>LC</b><br>大部分遵循  | <b>LC</b><br>大部分遵循   | <b>C</b><br>遵循  | <b>LC</b><br>大部分遵循  | <b>LC</b><br>大部分遵循                                     | <b>C</b><br>遵循   |
| <b>R.13 - Correspondent banking</b><br>通匯銀行業務                                       | <b>R.14 - Money or value transfer services</b><br>金錢或價值移轉服務                      | <b>R.15 - New technologies</b><br>新科技運用                     | <b>R.16 - Wire transfers</b><br>電匯                                    | <b>R.17 - Reliance on third parties</b><br>依賴第三方之防制措施  | <b>R.18 - Internal controls and foreign branches and subsidiaries</b><br>內控及國外分支機構和子公司                 |
| <b>C</b><br>遵循  | <b>C</b><br>遵循   | <b>C</b><br>遵循  | <b>C</b><br>遵循  | <b>C</b><br>遵循   | <b>LC</b><br>大部分遵循   |
| <b>R.19 - Higher-risk countries</b><br>高風險國家  | <b>R.20 - Reporting of suspicious transactions</b><br>申報可疑交易                     | <b>R.21 - Tipping-off and confidentiality</b><br>揭露與保密      | <b>R.22 - DNFBPs: Customer due diligence</b><br>特定非金融專業人員：客戶審查        | <b>R.23 - DNFBPs: Other measures</b><br>特定非金融專業人員：其他措施 | <b>R.24 - Transparency &amp; BO of legal persons</b><br>法人之透明度及實質受益權                                   |
| <b>C</b><br>遵循  | <b>LC</b><br>大部分遵循   | <b>LC</b><br>大部分遵循  | <b>PC</b><br>部分遵循   | <b>LC</b><br>大部分遵循                                     | <b>LC</b><br>大部分遵循   |
| <b>R.25 - Transparency &amp; BO of legal arrangements</b><br>法律協議之透明度及實質受益權         | <b>R.26 - Regulation and supervision of financial institutions</b><br>金融機構之規範與監理 | <b>R.27 - Powers of supervision</b><br>監理機關之權力              | <b>R.28 - Regulation and supervision of DNFBPs</b><br>特定非金融專業人員之規範與監理 | <b>R.29 - Financial intelligence units</b><br>金融情報中心   | <b>R.30 - Responsibilities of law enforcement and investigative authorities</b><br>執法和調查機關之責任          |
| <b>PC</b><br>部分遵循   | <b>LC</b><br>大部分遵循   | <b>LC</b><br>大部分遵循  | <b>PC</b><br>部分遵循   | <b>LC</b><br>大部分遵循                                     | <b>C</b><br>遵循   |
| <b>R.31 - Powers of law enforcement and investigative authorities</b><br>執法和調查機關之權力 | <b>R.32 - Cash couriers</b><br>攜帶現金  | <b>R.33 - Statistics</b><br>統計數據                            | <b>R.34 - Guidance and feedback</b><br>指引與回饋                          | <b>R.35 - Sanctions</b><br>處罰                          | <b>R.36 - International instruments</b><br>國際相關公約與規範   |



EXECUTIVE SUMMARY

|  |   |                          |   |            |             |
|--|---|--------------------------|---|------------|-------------|
| LC<br>大部分遵循                            | LC<br>大部分遵循   | LC<br>大部分遵循              | C<br>遵循   | PC<br>部分遵循 | LC<br>大部分遵循 |
| R.37 - Mutual legal assistance<br>司法互助 | R.38 - Mutual legal assistance: freezing and confiscation<br>司法互助-凍結和沒收 | R.39 - Extradition<br>引渡 | R.40 - Other forms of international cooperation<br>其他形式合作 |            |             |
| LC<br>大部分遵循                            | LC<br>大部分遵循   | LC<br>大部分遵循              | LC<br>大部分遵循   |            |             |

## MUTUAL EVALUATION REPORT OF CHINESE TAIPEI

### 中華臺北相互評鑑報告

#### Preface

##### 前言

1. This report summarises the AML/CFT measures in place in Chinese Taipei as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Chinese Taipei's AML/CFT system, and recommends how the system could be strengthened.

本報告對中華臺北在現地評鑑之日採取的防制洗錢/打擊資恐措施提出總結。它分析了 FATF 40 項建議的遵循程度和中華臺北防制洗錢 / 打擊資恐系統的有效性，並建議它如何加強該系統。

2. This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by Chinese Taipei, and information obtained by the evaluation team during its on-site visit to Chinese Taipei from 5 November 2018 to 16 November 2018.

本評鑑係根據 2012 年 FATF 建議，並使用 2013 年方法論編制。評鑑係基於中華臺北提供的資訊，以及評鑑團在 2018 年 11 月 5 日至 2018 年 11 月 16 日對中華臺北進行現地評鑑時所獲得的資訊。

3. The evaluation was conducted by an assessment team consisting of financial, legal and law enforcement experts:

本次評鑑由金融，法律和執法專家組成的評鑑團執行：

- Ms Ratcha Fuangprang (Thailand Anti-Money Laundering Office),  
Ms Ratcha Fuangprang (泰國洗錢防制辦公室)
- Mr Mahmoud Karam Nasr (Egypt Money Laundering & Terrorist Financing Combating Unit)  
Mr Mahmoud Karam Nasr (埃及打擊洗錢及資恐中心)
- Ms Ambarwati Retno Dewi (Indonesian Ministry of Finance)  
Ms Ambarwati Retno Dewi (印尼財政部)
- Ms Miri Ryu, Deputy Director (Korea Financial Intelligence Unit)  
Ms Miri Ryu, Deputy Director (韓國金融情報中心)
- Ms Jennifer Wallis (US Department of Justice)  
Ms Jennifer Wallis (美國司法部)
- Mr Umair Rathore (State Bank of Pakistan)  
Mr Umair Rathore (巴基斯坦中央銀行)

4. The assessment process was supported by David Shannon, Michelle Harwood and Gimo Laxamana of the APG secretariat.

評鑑過程得到了 APG 秘書處 David Shannon，Michelle Harwood 和 Gimo Laxamana 的協助。

5. The report was reviewed by the FATF Secretariat, Erin Lubowicz of the New Zealand Ministry of Justice and Grace Mason, AUSTRAC Australia.

本報告經由 FATF 秘書處，紐西蘭司法部的 Erin Lubowicz 和澳洲 AUSTRAC 的 Grace Mason 審查。

6. Chinese Taipei previously underwent an APG Mutual Evaluation in 2007, conducted according to the 2004 FATF Methodology. The 2007 evaluation has been published and is available at [www.apgml.org](http://www.apgml.org).

依據 2004 年 FATF 評鑑方法論，中華臺北在 2007 年進行前一輪 APG 相互評鑑。2007 年的評鑑報告已經發布，可在 [www.apgml.org](http://www.apgml.org) 上獲取。

7. The 2007 Mutual Evaluation concluded that Chinese Taipei was compliant with 7 Recommendations; largely compliant with 18; partially compliant with 13; and non-compliant with 11. Chinese Taipei was rated compliant or largely compliant with 5 of the 16 Core and Key Recommendations.

2007 年相互評鑑總結中華臺北共有 7 項建議遵循；18 項建議大部分遵循；13 項建議部分遵循；11 項建議未遵循。中華臺北在 16 項核心和關鍵建議中共有 5 項評等符合遵循或大部分遵循。

8. Chinese Taipei exited APG 2<sup>nd</sup> Round (transitional) follow-up in July 2017 ahead of the conduct of their 3<sup>rd</sup> APG mutual evaluation in 2018-19. At the point of exiting 2<sup>nd</sup> Round follow-up, Chinese Taipei was rated LC or C on 15 of the 16 Core and Key Recommendations.

中華臺北在 2017-19 年進行 APG 第三輪相互評鑑之前，於 2017 年 7 月結束 APG 第二輪相互評鑑之過渡追蹤。在結束第二輪追蹤程序時，中華臺北在 16 項核心和關鍵建議中，有 15 項被評為大部分遵循或遵循。

9. USD equivalent figures are provided at the rate current at the time of the onsite visit. USD1 = NTD30.

等值美金金額係依據現地評鑑當時匯率換算。美金 1 元相當於新臺幣 30 元。

## CHAPTER 1. ML/TF RISKS AND CONTEXT

### 第 1 章 洗錢/資恐風險及概況

#### *ML/TF Risks and Scoping of Higher-Risk Issues*

##### *洗錢/資恐風險及高風險議題之範疇*

10. Chinese Taipei is located in the East China Sea and covers an areas of 36,193 km<sup>2</sup> encompassing the islands of Taiwan, Penghu (the Pescadores), Kinmen, Matsu, and a number of smaller islands. The total population was approximately 23.5 million as of October 2018. Chinese Taipei's GDP was measured at approximately USD 589 billion in 2018, which places it as the 22nd largest economy in the world.

中華臺北位於東海，面積 36,193 平方公里，包括臺灣島、澎湖、金門、馬祖和一些較小的島嶼。截至 2018 年 10 月，總人口約為 2350 萬人。中華臺北 2018 年 GDP 約為 5890 億美元，為世界第 22 大經濟體。

11. Chinese Taipei is a parliamentary democracy with government divided into central, provincial/municipal, and county/city levels. The central government consists of the Office of the President and five branches (called "Yuan"), namely the Executive Yuan (EY), Legislative Yuan, Judicial Yuan, Examination Yuan, and the Control Yuan.

中華臺北是一個議會民主國家，政府分為中央、省/市和縣/市。中央政府由總統府和五個分支單位（稱為“院”）組成，即行政院、立法院、司法院、考試院和監察院。

12. Executive power is exercised by the EY which consists of ministries and ministerial-level organizations. The EY has a president (usually referred to as the premier), a vice president (vice premier), a number of ministers, heads of commissions, and ministers without portfolio. The Legislative Yuan is constituted by popularly elected representatives who serve for four years and are eligible for re-election.

行政院是國家最高行政機關，由各部和部級機關組成。院內有一位首長（稱為院長）、一位副首長（副院長）、部長、委員會委員長和政務委員。立法院是國家最高立法機關，由民選代表組成，任期四年，並得連任。

13. Chinese Taipei has a civil law legal system. The emphasis of the legal system is placed on statutes rather than case law. When trying to make a decision, the Courts look to what the Constitution states first and then to codes, statutes, and ordinances.

中華臺北為大陸法系之法律系統。法律制度的重點放在法規而不是判例法上。在試圖做出決定時，法院會先查看憲法說明的內容，然後查看法律、法規和條例。

14. The chief powers of the Judicial Yuan (the judiciary) are to interpret the Constitution, to unify the interpretation of laws and orders, and to adjudicate civil, criminal and administrative matters. The judiciary has three levels: district courts and their branches that hear civil and criminal cases in the first instance; high courts and their branches at the intermediate level that hear appeals against judgments of district courts or their branches; and the Supreme Court at the highest appellate level, which reviews judgments by lower courts. Issues of fact are decided in the first and second levels, while only issues of law are considered by the Supreme Court. However, there are exceptions to this system. Criminal cases relating to rebellion, treason, and offenses against friendly relations with foreign states are handled by high courts, as the court of first instance; and appeals may be filed with the Supreme Court. Judges

decide all cases; there is no provision for jury trials. There is a separate two-tiered administrative court for appeals of administrative rulings.

司法院（司法機關）是最高司法機關，其主要權力是解釋憲法，統一法律和命令的解釋，裁定民事、刑事、行政案件。中華臺北的司法制度分為三級：地方法院及其分院負責民事和刑事案件之第一審判決；高等法院及其分院，審理針對地方法院或其分院判決的上訴；以及最高上訴級別的最高法院，審查下級法院的審判是否遵循法令規定。事實審判在第一和第二審決定，而最高法院只審理法律爭議。但是，該制度也有例外，於內亂、外患及妨害國交之刑事案件以高等法院為一審；並可向最高法院提出上訴。法官裁決所有案件；沒有陪審團審判的規定。有一個單獨的、雙層級的行政法院負責審理行政裁決訴訟。

### Overview of ML/TF Risks

#### 洗錢/資恐風險概況

15. Chinese Taipei is subject to an array of predicate offences which generate significant proceeds. These offences to a large degree stem from organised crime, including drug trafficking, fraud and smuggling. Other predicate offences of note include corruption and bribery, and specific types of fraud including tax and securities-related crimes.

中華臺北受到一系列前置犯罪的影響，這些犯罪會帶來巨額收益。這些罪行在很大程度上源自於組織犯罪，包括販毒、詐欺和走私。其他前置犯罪包括貪污賄賂，以及特定類型的詐欺，包括稅務和證券相關的犯罪。

16. Fraud is estimated by the authorities to generate the most significant amounts of criminal proceeds. Fraud networks operate domestically and transnationally, and significant numbers of Chinese Taipei fraud offenders have been arrested in many countries. Chinese Taipei authorities estimate USD 1.14 billion in proceeds of fraud is channelled annually to China; Hong Kong, China; Macao, China; Indonesia; and Malaysia alone. Conversely, Chinese Taipei's strengths as a well-developed jurisdiction—including a well-established and open financial system, strong rule of law, stable economy, the persistence of cash transactions particularly in private consumption and a sizeable underground remittance sector—make it attractive for sophisticated criminal actors seeking to benefit from illicit proceeds. In 2018, authorities estimated around 30% of ML activities in Chinese Taipei involved cross-border transactions. While the assessment team was unable to verify this independently, it is likely that this trend will grow as Chinese Taipei's economic linkages across the straits and throughout the Asia-Pacific continue to develop.

當局估計詐欺行為產生的犯罪所得最大。詐欺網絡在國內和跨國運作，許多中華臺北詐欺罪犯已在許多國家被捕。中華臺北當局估計每年約有 11.4 億美元的詐欺所得流向中國大陸、香港、澳門、印尼和馬來西亞。相反地，中華臺北作為一個發達的司法管轄區的優勢 - 包括完善和開放的金融體系、強健的法治、穩定的經濟、現金交易的持續存在，特別是私人消費和龐大的地下通匯部門 - 對於複雜並尋求自非法所得受益的犯罪者具有吸引力。2018 年，當局估計中華臺北約有 30% 的洗錢活動涉及跨境交易。雖然評鑑團無法獨立證實這一情況，但隨著中華臺北跨越海峽兩岸和整個亞太地區的經濟聯繫持續發展，這一趨勢可能會增加。

17. Corruption and bribery is a feature of the Chinese Taipei criminal environment. The 2018 NRA identified bribery amongst the eight very high-risk crimes affecting Chinese Taipei. The NRA, case studies and media reporting highlight risks of bribery and corruption amongst various levels of government. During the Panama Papers scandal that emerged in April 2016, of the 11 million documents released, over 16,000 had a connection to Chinese Taipei clients.



貪污賄賂是中華臺北犯罪環境的一個特點。2018 年 NRA 辨識出貪污賄賂為中華臺北的八項非常高風險犯罪之一。NRA、案例研究和媒體報導均強調各級政府的賄賂和貪污風險。2016 年 4 月出現的巴拿馬文件醜聞事件，在發布的 1,100 萬份文件中，超過 16,000 份與中華臺北客戶有關。

18. Risks from other predicate offences and related ML techniques are set out at the section on risk scoping below.

其他前置犯罪和相關洗錢手法的風險將於下文關於風險範疇之章節敘述。

19. Chinese Taipei's risk of TF is relatively low. The 2018 NRA noted no acts of terrorism or TF threats to Chinese Taipei have been identified by so far. There are no public indications of terrorist actors active in Chinese Taipei, nor its misuse as a source for funds, recruits or materials to supply terrorist organisations in other jurisdictions. Nevertheless, there have been substantial efforts focussed on the prevention of terrorist actors and their associates' entry into Chinese Taipei and their repatriation upon positive identification, and developing capability to identify and respond to potential instances of terrorism or TF.

中華臺北的 TF 風險相對較低。2018 年 NRA 指出，到目前為止，中華臺北沒有發現任何恐怖主義行為或資恐威脅。沒有任何公開來源指出恐怖分子在中華臺北活動，也沒有受到濫用並向其他司法管轄區內的恐怖組織供應資金、人員或物資。儘管如此，仍有大量工作重點放在防止恐怖主義行為者和其同夥進入中華臺北，在積極查明身分後將其遣返，並發展辨識和因應潛在恐怖主義或資恐事件的能力。

20. Chinese Taipei authorities have highlighted and taken action against a number of demonstrable PF risks facing Chinese Taipei related to the DPRK.

中華臺北當局強調並採取行動，以反制其所面臨之許多可證明與北韓相關的武擴風險。

### *Chinese Taipei's risk assessment*

#### *中華臺北風險評估*

21. Chinese Taipei undertook an NRA in 2017-18 with the participation of a wide range of representatives from government agencies and ministries and the private sectors. Chinese Taipei developed their own methodology, with input from external experts. The process identified and assessed ML/TF threats, vulnerabilities and risk mitigation controls. Predicate offenses were included in the NRA to represent threats. Vulnerabilities considered FIs, DNFBPs, legal persons, trusts, and non-profit organisations (NPO). Qualitative and quantitative data and information were used to reach conclusions on the gravity of the risks identified. Though the NRA undertook a reasonable process, assessors have identified some scope gaps with respect to the risk assessment of cross-border movement of cash and stored value cards.

中華臺北在 2017 - 18 年度進行國家風險評估(NRA)，來自政府機關、部會和私部門的眾多代表參加了會議。中華臺北在外部專家的參與下發展了自己的方法論。該過程確定並評估洗錢 / 資恐威脅、弱點和風險抵減控制。NRA 中包含前置犯罪以代表威脅，弱點則考慮金融機構、DNFBP、法人、信託和非營利組織。使用質性和量化資料及資訊來對所辨識風險的嚴重性取得結論。儘管 NRA 採用了合理的流程，但評鑑員發現部分範疇上的落差，包括跨境現金移動及儲值卡。

22. The NRA identified Chinese Taipei is severely affected by eight very high-risk ML threats including drugs, fraud, organised crime, corruption, smuggling, securities crimes, third-party ML and taxation crimes. High-risk threats included intellectual property right crimes. The NRA highlighted domestic and transnational ML techniques through formal and informal sectors, including trade based ML (TBML), informal remittance, cash smuggling, use of front companies and other means.

NRA 發現，中華臺北受到 8 種非常高風險的 ML 威脅的嚴重影響，包括毒品、詐欺、組織犯罪、貪污、走私、證券犯罪、第三方洗錢和稅務犯罪等。高風險威脅包括智慧財產權犯罪。NRA 強調一系列透過正式和非正式部門的國內與跨國洗錢手法，包括貿易洗錢、地下通匯、現金走私、使用前台公司和其他方式。

23. Based on the authorities' detailed counter terrorism (CT) work, the NRA assessed that Chinese Taipei has a low level of TF risk (domestic and transnational). Factors of political stability and social harmony, coupled with terrorism prevention and detailed investigation contribute to the NRA's findings that the risk of home-grown terrorism is low. No domestic incidents have been found to be associated with terrorism. The NRA identified NPO sectors that may have some vulnerability to misuse for TF (civil associations, religious foundations and charity foundations) in order to support a risk-based approach to NPO sector regulation. Outside of the NRA authorities had assessed risks of Chinese Taipei being used as a transit economy for TF.

基於當局深入的反恐工作，NRA 評估中華臺北的 TF 風險(國內和跨國)較低。政治穩定和社會和諧，加上預防恐怖主義和詳細調查等因素，得出 NRA 的結論即本土恐怖主義的風險為低。沒有發現任何國內事件與恐怖主義有關。NRA 辨識出部分非營利組織部門（人民團體、宗教財團法人和慈善財團法人）可能存在一些弱點而受資恐濫用，並用以支持以風險為基礎的非營利組織部門之規範。NRA 之外，當局則已評估中華臺北經濟體被利用為資恐過境的風險。

24. An earlier ML/TF sectoral risk assessment (SRA) was undertaken by the FSC in 2015. It focussed on information obtained from the FIU, FSC's own supervision and open sources. FSC has begun to take supervisory actions based on its findings.

金管會在 2015 年進行了較早的部門洗錢 / 資恐風險評估 (SRA)，重點放在由金融情報中心、金管會本身的監理和公開途徑所取得的資訊。金管會已開始根據其評估結果採取監理行動。

25. Following on from publication of the NRA, authorities undertook a more in-depth assessment of risk of legal persons in Chinese Taipei and of the risk of abuse of NPOs for TF.

在 NRA 公佈之後，當局對中華臺北的法人風險以及濫用非營利組織的風險進行了更深入的評估。

26. Authorities noted several occurrences of PF and highlighted contextual issues exposing the economy to a range of vulnerabilities for possible evasion of DPRK-related sanctions. Prioritised implementation of PF-related TFS has taken place in this context.

當局注意到數起武擴活動的發生，並強調由於中華臺北的風險背景因素，使其經濟體系受到一系列與規避北韓制裁有關的弱點影響。當局已優先執行與武擴相關的目標性金融制裁。

### *Scoping of Higher Risk Issues*

#### *高風險議題之範疇*

27. The assessment team identified those areas which required an increased focus through an analysis of information provided by the authorities, including the NRA, and by consulting various open sources.

評鑑團透過分析當局提供的資訊，包括 NRA，並參考各種公開來源，辨識出需要更加集中關注的領域。

28. **Organised Crime – domestic and transnational groups / networks** - The NRA and other sources identify the threat from organised crime as 'very high' and note the involvement of transnational organised crime across most crime types. The NRA does not mention the role of foreign

organised crime groups in offences involving Chinese Taipei (e.g. laundering funds of foreign offences) and connections between domestic and foreign groups. Research indicates the influence of major organised crime groups across various crime categories and controlling a range of legitimate businesses. Major organised crime groups active in Chinese Taipei (e.g. Bamboo Union, 14K, Heavenly Alliance, Four Seas Gang and others) use underground banks, underground casinos and business operations to fund activities. Their laundering includes channels of underground remittance agencies, jewellery store operators, offshore casinos, and wire remittances through shell companies and dummy accounts. The scoping note also highlighted the role of organised crime in third-party ML, drug trafficking, fraud, corruption, illegal fishing, illegal logging, casino junkets, smuggling, kidnap for ransom/racketeering/arms trafficking/remittance, cash smuggling, and enforcing contracts.

組織犯罪 - 國內和跨國集團/網絡 - NRA 和其他來源辨識出組織犯罪的威脅非常高，並注意到跨國組織犯罪涉及大多數犯罪類型。NRA 沒有提到外國有組織犯罪集團在涉及中華臺北的犯罪（例如清洗外國犯罪所得）以及國內和外國集團之間的關係中的作用。研究強調了主要有組織犯罪集團在各種犯罪類別中的影響，並控制了一系列合法企業。在中華臺北活躍的主要組織犯罪集團（例如竹聯幫、14K、天道盟、四海幫和其他）使用地下銀行、地下賭場和商業運作來資助活動。他們洗錢的管道包括地下匯款機構、銀樓業者、境外賭場、及透過空殼公司和人頭帳戶進行匯款。風險範疇還強調了組織犯罪在第三方洗錢、販毒、詐欺、貪污、非法捕魚、非法採伐、賭場中介、走私、綁架贖金/敲詐勒索/武器販運/匯款、現金走私和強制執行合同的角色。

29. **Fraud/cybercrime, transnational and domestic** – The NRA identifies fraud as ‘very high risk’, recognising the role of organised crime in facilitating transnational activity. The NRA highlights (1) general fraud (i.e. business fraud, insurance fraud, general scams), (2) internet and telecommunications fraud; and (3) Ponzi schemes. Generally Ponzi schemes and internet and telecommunications fraud involve organised crime groups. Methods of laundering fraud proceeds include wire transfers with associated layering to disperse risks and money mules who withdraw cash at ATMs across Chinese Taipei. More complex methods include the misuse of underground remittance services, jewellery stores and travel agents. The NRA also identifies the movement of proceeds of fraud through regional jurisdictions including China; Macao, China; Hong Kong, China; Indonesia and Malaysia. Risks from Offshore Banking Units (OBUs) are within scope.

詐欺/網路犯罪 - 跨國和國內 - NRA 辨識出詐欺風險非常高 - 發現組織犯罪在跨國活動方面的角色。NRA 指出詐欺包括(1) 一般詐欺（即商業詐欺、保險詐欺、一般詐騙），(2) 網路和電信詐欺；(3) 龐氏騙局。通常，龐氏騙局以及網路和電信詐欺涉及組織犯罪集團。詐欺所得洗錢的手法包括層層電匯轉帳以分散風險，並由車手在中華臺北的各 ATM 提取現金。更複雜的方法包括濫用地下匯款服務、珠寶店和旅行社。NRA 並辨識詐欺所得流動至鄰近司法管轄區：例如中國大陸、澳門、香港、印尼、馬來西亞。來自 OBU 的風險也在範疇內。

30. **Drug trafficking** – The NRA identifies drug trafficking as ‘very high risk’. The NRA and other sources recognise the role of transnational organised crime in the trafficking and distribution of drugs. Particular threats are from ketamine, amphetamines and their precursor ingredients, and heroin, with smuggling techniques including fishing boats and freight or air shipping containers from China or Southeast Asian countries. The NRA did not sufficiently consider the threats of organised crime seeking to launder the proceeds from foreign drug offences in Chinese Taipei. The scoping note focused on the various channels of laundering drug proceeds through formal and informal channels.

販毒 - NRA 辨識出販毒風險非常高。NRA 和其他來源發現跨國組織犯罪在運送和分散毒品方面的作用。K 他命、安非他命及其前驅成分和海洛因的特殊威脅，包括來自中國大陸或東南亞國家的漁船和貨運或空運集裝箱等走私技術。NRA 沒有充分考慮組織犯罪的威脅，以及試圖在中華臺北清洗外國毒品犯罪所得。風險範疇關注清洗販毒所得的各種正式和非正式管道。

31. **Corruption** - The NRA identifies corruption as 'very high risk'. The NRA and other sources highlight threats from corruption at a range of levels and some cases of high-level corruption that have been successfully detected and prosecuted. The scoping note considered corruption as a proceeds generating offence and as a facilitation activity for ML or avoiding successful prosecution of crime. The NRA did not sufficiently consider risks of foreign bribery by Chinese Taipei firms and individuals, or foreign corruption proceeds being laundered through the Chinese Taipei economy.

貪污 - NRA 辨識出貪污風險非常高。NRA 和其他消息來源強調了貪污的威脅，以及一些已被成功發現和起訴的高層貪污案件。風險範疇指出貪污是一種產生非法收益的犯罪，也是一種促進洗錢活動或避免被成功起訴犯罪的活動。NRA 沒有充分考慮中華臺北企業和個人對外國賄賂的風險，或者透過中華臺北經濟體洗錢的貪污所得。

32. **Tax offences** - The NRA identifies tax offences as 'very high risk'. The NRA and other sources highlight domestic and transnational ML of domestic and foreign tax offences as well as the channels and techniques used to launder funds. The risks from the use of OBUs, foreign companies and trusts, and the use of offshore financial centres are all considered 'very high'. The NRA notes that the investigation of transnational tax offences has revealed accounts being opened in offshore tax havens or funnelled to jurisdictions such as Hong Kong, China.

稅務犯罪 - NRA 辨識出稅務犯罪風險非常高。NRA 和其他資料來源強調國內和國外稅務犯罪的國內和跨境洗錢，以及洗錢的管道和手法。使用包括 OBU、外國公司、信託、境外金融中心的風險均被認為非常高。NRA 並指出，對跨國稅務犯罪的調查顯示，洗錢帳戶是在境外免稅天堂開設，或者被匯送到香港等司法管轄區。

33. **Smuggling** - The NRA and other sources identify very high risks associated with smuggling, including organised crime networks with trans-national capacity. Particular risks are noted from smuggling gold, cigarette, cooking oil, Wildlife trafficking and other commodities. There are significant risks from bulk cash smuggling associated with proceeds of crime and informal remittance.

走私 - NRA 辨識出與走私相關的風險非常高，包括涉及具有跨國能力的組織犯罪網絡。令人注意的特定風險如走私黃金、香煙、食用油、野生動植物和其他物品。另與犯罪所得及非正式匯款有關的大額現金走私則存在重大風險。

34. **Banking sector** - The NRA and other sources highlight various aspects of banking channels in ML schemes across the full range of high risk crime types. ML risks associated with Chinese Taipei's offshore centre (OBUs, foreign branches/subsidiaries) and also the roles of PEPs in the ownership/management of banking groups. The scoping note highlighted ML/TF risks of foreign branches and subsidiaries. Significant holdings in emerging markets and those with very significant ML/TF risks and/or weak AML/CFT controls.

銀行業 - NRA 和其他來源強調各種高風險犯罪類型的洗錢涉及使用各個層面的銀行管道。洗錢風險與中華臺北離岸中心（國際金融業務分行、外國分支機構/子公司）以及重要政治性職務人士(PEP)在銀行集團所有權/管理中的角色等有關。風險範疇強調外國分支機構和子公司的洗錢/資恐風險，以及在新興市場與那些具有非常重大洗錢/資恐風險和/或薄弱的防制洗錢/打擊資恐管控的市場，持有大量持股的風險。

35. **Jewellery/gold dealer sector** - The NRA and other sources note vulnerabilities for ML. Case studies and media coverage highlight illegal/informal remittance through jewellery/gold dealers and cases of connections to gold smuggling.

銀樓業 - NRA 及其他來源注意到此部門的洗錢弱點。案例研究和媒體報導強調透過銀樓業進行非法/非正式匯款，及其與黃金走私有關的案例。



36. **Proceeds of foreign offences coming to (or going through) the Chinese Taipei economy** – The NRA estimates top inbound sources of criminal proceeds include China; Hong Kong, China; Macao, China; Vietnam; Philippines; and Indonesia. Estimated top destination jurisdictions of outbound proceeds are China; Hong Kong, China; Macao, China; Malaysia; the Philippines; Indonesia and Vietnam.

流入（或經過）中華臺北經濟體的外國犯罪所得 - NRA 估計主要的犯罪所得來源包括中國大陸、香港、澳門、越南、菲律賓和印尼。NRA 估計犯罪所得流出最主要的目的地是中國大陸、香港、澳門、馬來西亞、菲律賓、印尼和越南。

37. **Trade Based ML** - Various case studies highlight the abuse of trade finance/trade payment channels for ML. It is noteworthy that trading SMEs are a predominant part of the Chinese Taipei economy.

貿易洗錢 - 各種案例研究強調貿易融資/貿易支付管道有被洗錢所濫用。值得注意的是，中華臺北是一個以中小企業貿易為主的經濟體系。

38. **Casino junkets (for movement of people and funds to /from foreign casinos)** – There is a sizeable sector of people and funds moving to and from foreign casinos via junkets. Studies note the role of organised crime in aspects of certain junket operations.

賭場中介（用於人員和資金往返外國賭場的移動） - 有相當規模的人員和資金透過賭場中介向外國賭場移動。研究指出組織犯罪在某些中介行動方面的角色。

## Materiality

### 重要性

#### Nature of the economy

##### 經濟體質

39. In 2017, Chinese Taipei's nominal GDP was approximately USD 576.22 billion, of which exports accounted for around 55%. It has the third-largest foreign exchange reserves in East Asia—following China and Japan—amounting to USD 460.18 billion at the end of October 2018.<sup>1</sup>

2017 年，中華臺北名目國內生產毛額約為 5762.2 億美元，其中出口占 55% 左右。它擁有東亞第三大外匯準備 - 僅次於中國大陸和日本 - 截至 2018 年 10 月底達到 4601.8 億美元。

40. Chinese Taipei has a strong external financial position built on a robust industrial base and international trade. Its current account surplus was USD 14.04 billion at end of Q3 2018. Foreign exchange capital flows that do not involve NTD transactions have been fully liberalized. SMEs are a significant feature of the economy and employ 80% of the workforce. Top individual export markets comprise of China (including Hong Kong, China), United States of America, Japan and the ASEAN member-countries<sup>2</sup>.

中華臺北在強勁的工業和國際貿易基礎上，擁有強大的對外金融實力。截至 2018 年第三季末，其經常帳戶盈餘為 140.4 億美元。外匯資本流動在不涉及新臺幣的情況下已完全自由化。中小企業是中華臺北經濟的重要特徵，僱用了 80% 的勞動力。最重要的出口市場包括中國大陸(含香港)、美國、日本和東協成員國。

#### Financial sector

<sup>1</sup> <https://www.the Central Bank.gov.tw/ct.asp?xItem=74550&ctNode=448&mp=2>

<sup>2</sup> Chinese Taipei Central Bank 2017 annual report, p15 中央銀行 2017 年年報第 15 頁  
Anti-money laundering and counter-terrorist financing measures in Chinese Taipei @ APG 2019



*金融部門*

41. Chinese Taipei also features a well-developed financial sector with USD 2.86 trillion in assets in 2017 (equivalent to 495% of GDP that year) with 66.91% of these assets attributable to the banking sector.<sup>3</sup> As of September 2017, the financial sector was largely comprised of domestic banks (representing 54.4% of the financial sector's total assets), followed by life insurance companies (27.67%) and its postal institution (7.26%). Conversely, foreign bank branches represent only 3.29% of the financial sector's assets. Chinese Taipei's banking and insurance sectors are expanding to neighbouring markets, with significant holdings in China and across Asia.

中華臺北特徵還包括擁有發達的金融部門，2017 年的資產為 2.86 兆美元（相當於當年 GDP 的 495 %），銀行業佔其中的 66.91%。截至 2017 年 9 月，金融業主要由國內銀行（佔金融業總資產的 54.4%）組成，其次是人壽保險公司（27.67%）和郵政機構（7.26%）。相反地，外國銀行在臺分行僅佔金融業資產的 3.29%。中華臺北的銀行和保險業正在向鄰近市場擴張，其中包括在中國大陸和亞洲各國的大量持股。

42. Chinese Taipei has an offshore financial sector which provides financial services exclusively to foreigners and foreign-incorporated companies with tax incentives. Participating entities tend to be formed in tax haven jurisdictions. Chinese Taipei authorities assess the majority of the participants in the offshore sector are owned or controlled by Chinese Taipei residents. While the OBU sector has been operating for over 30 years, offshore insurance and securities are relatively new and less developed. OBUs are now subject to the full range of AML/CFT controls, however there were gaps in OBUs applying full AML/CFT controls until late 2017. FSC has initiated a number of enhanced control measures since that time.

中華臺北擁有一個離岸金融部門，專門為外國人及外國公司以稅務誘因提供金融服務。參與實體往往在避稅天堂管轄區內成立。中華臺北當局評估離岸部門的大多數參與者是由中華臺北居民擁有或控制的。雖然國際金融業務分行已經運作超過 30 年，但離岸保險和證券相對較新，因此較不發達。OBU 目前已受全面性防制洗錢/打擊資恐管控，但在 2017 年底以前，OBU 在全面性防制洗錢/打擊資恐管控上存有落差。在此之後，金管會已採取一些加強控制措施。

*Financial inclusion and reliance on cash**普惠金融及現金依賴程度*

43. Chinese Taipei's informal sector remains significant.<sup>4</sup> While the adoption of electronic payment and cards continues to progress, with 91% of adults holding a bank account according to the Global Partnership for Financial Inclusion, authorities have acknowledged cash remains a significant means of settling transactions, particularly for private consumption. Chinese Taipei has a well-established financial infrastructure, where payments of large sums are usually handled by electronic means. Retail payments are supported by a range of payment systems, although this is not as well-developed as other comparable economies in the region. FSC, the Central Bank and other authorities are pursuing a number of strategies to reduce reliance on cash, including increasing the diversity of secure payment systems and promote financial inclusion.

中華臺北的非正式部門仍然很重要。雖然電子支付和票證的使用持續取得進展，且根據全球普惠金融夥伴關係研究，91% 的成年人持有銀行帳戶，但當局承認現金仍然是進行交易的重要方式，特別是用於私人消費。中華臺北擁有完善的金融基礎設施，大筆款項通常通過電子方式處理。零售支付由一系列支付系統支持，儘管這不像其他區域內類似的經濟體那樣發達。金管會、央行和其他當局正在採取一些策略來減少對現金的依賴，包括增加安全支付系統的多樣性並促進普惠金融。

<sup>3</sup> Comprising of domestic and foreign banks, credit cooperatives, a postal institution, bills finance and credit card companies. 包括本國及外國銀行、信用合作社、郵政機構、票券公司及信用卡公司。

<sup>4</sup> Estimated in 2012 to be equivalent to 28.1% of Chinese Taipei's GDP. 2012 年預估相當於中華臺北 GDP 的 28.1%。

*Exposure to trade and finance with the DPRK or Iran**與北韓或伊朗之貿易及金融往來*

44. Trade with DPRK and Iran is closely regulated and accounts for a small part of total trade volumes. Trade with the DPRK was approximately USD 12.7 million in 2016, but reduced to zero in 2018. Trade with Iran was approximately USD 1.5 billion in 2018. Authorities have identified sanctions evasion risks from parties associated with DPRK entities trading with Chinese Taipei.

中華臺北與北韓或伊朗的貿易受到嚴密規管，但與北韓和伊朗的貿易僅占貿易總額的一小部分。2016 年與北韓的貿易額約為 1,270 萬美元，但在 2018 年減少到零。2018 年與伊朗的貿易額約為 15 億美元。當局已辨識與北韓有關聯的實體與中華臺北進行貿易規避制裁的風險。

**Table 1.1: Number and Size of FIs and DNFBPs in Chinese Taipei - September 2017**

**表 1.1: 金融機構及指定之非金融事業或人員家數與規模 - 2017 年 9 月**

## CHAPTER 1. ML/TF RISKS AND CONTEXT

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| Type of FI<br>金融機構類型   | Entities<br>家數 | Assets (USD<br>millions)<br>總資產(百萬美元) | fin. sector assets<br>佔金融部門資產<br>比例 |
|--|----------------|---------------------------------------|-------------------------------------|
| Domestic banks 本國銀行  | 38             | 1,542,070                             | 53.92%                              |
| Foreign bank branches in Chinese Taipei 外陸銀在臺分行              | 29             | 95,190                                | 3.33%                               |
| Postal service institution 郵政機構                              | 1              | 209,839                               | 7.34%                               |
| Credit cooperatives 信用合作社                                    | 23             | 24,024                                | 0.84%                               |
| Bills finance companies 票券金融公司                               | 8              | 3,337                                 | 0.12%                               |
| Credit card companies 信用卡公司                                  | 5              | 1,236                                 | 0.04%                               |
| Electronic payment institutions 電子支付機構                       | 5              | 92                                    | >0.01%                              |
| Issuers of electronic stored value cards 電子票證機構              | 4              | 468                                   | 0.02%                               |
| Financial leasing companies 辦理融資性租賃之事業                       | 34             | 14,375                                | 0.50%                               |
| Securities firms 證券商   | 73             | 51,095                                | 1.79%                               |
| Securities investment trust enterprises 證券投資信託事業             | 39             | 1,646                                 | 0.06%                               |
| Securities finance enterprises 證券金融事業                        | 2              | 1,252                                 | 0.04%                               |
| Centralised securities depository enterprises 證券集中保管事業       | 1              | 819                                   | 0.03%                               |
| Futures merchants 期貨商  | 16             | 7,170                                 | 0.25%                               |
| Managed futures enterprises 期貨經理事業                           | 1              | 10                                    | >0.01%                              |
| Reinsurance companies 再保險公司                                  | 3              | 1,300                                 | 0.05%                               |
| Life insurance companies 壽險公司                                | 28             | 799,830                               | 27.97%                              |
| Non-life insurance companies 產險公司                            | 23             | 11,579                                | 0.40%                               |
| Insurance brokers 保經公司                                       | 336            | 228                                   | >0.01%                              |
| Insurance agencies 保代公司                                      | 296            | 330                                   | >0.01%                              |
| ABT 全國農業金庫   | 1              | 26,520                                | 0.93%                               |
| Farmers & fishermen's associations credit departments 農漁會信用部 | 311            | 68,240                                | 2.39%                               |
| <b>Total Financial institutions<br/>金融機構合計</b>               | <b>1,363</b>   | <b>USD 2.86 trillion</b>              | <b>100%</b>                         |
| <b>DNFBPs 指定之非金融事業或人員</b>                                    |                |                                       |                                     |
| Jewellery businesses 銀樓業                                     | 5,243          |                                       |                                     |

|  |                    |  |
|--|--------------------|--|
| Land Administration Agents 地政士   | 11,108             | <b>Total DNFBPs = 56,100</b><br>全體指定之非金融事業或人員 = 56,100 |
| Real Estate agencies 不動產經紀業  | 6,324              |  |
| Attorneys 律師   | 16,866             |  |
| Notaries 公證人   | 224                |  |
| Accountants 會計師  | 7,432 <sup>5</sup> |  |
| Certified public bookkeepers, tax return filing agents<br>記帳士暨記帳及報稅代理人 | 8,903              |  |

## Structural Elements

### 結構性因素

45. The main structural elements for an effective AML/CFT system are in place in Chinese Taipei. There is political and institutional stability and accountability, integrity and transparency and an independent and efficient judicial system are all present. High-level political commitment to AML/CFT has been particularly notable following the US regulators' actions in 2017 to fine Mega International Bank for AML/CFT failings, with key government agencies demonstrating an awareness of and dedication to their respective AML/CFT roles. Chinese Taipei has an independent judiciary and well-functioning anti-corruption agencies. Systems are marked by respect for due process and the rule of law.

中華臺北已具備達成有效防制洗錢/打擊資恐制度的主要結構性因素。政治和體制的穩定性和問責制度，誠信和透明度以及獨立有效的司法制度均已建立。在 2017 年美國對兆豐銀行罰款事件之後，防制洗錢/打擊資恐一直具有高度的政治承諾，主要政府機關瞭解並致力於各自的角色。中華臺北有一個獨立的司法機關和一個功能健全反貪腐機關，尊重正當程序和法治為其制度之特徵。

46. Media reporting on financial crime and AML/CFT matters appears to be robust in Chinese Taipei. There is a reasonable degree of in-depth public coverage of financial crime cases, which contributes to financial institutions and other stakeholders having an enhanced understanding of the risks and context of ML/TF.

在中華臺北，媒體有關金融犯罪和防制洗錢/打擊資恐問題的報導似乎很強。對金融犯罪案件以合理程度進行了深入的公開報導，這有助於金融機構和其他相關方能更強化瞭解洗錢 / 資恐的風險和脈絡。

47. In the 2017-18 World Economic Forum Global Competitiveness Report Chinese Taipei's ranking is very high overall (13th out of 140 economies)<sup>6</sup>. The ranking on institutions is somewhat lower (25th/ out of 40), but still relatively strong. The scoring within the pillar of institutions is based on seven governance categories. The Freedom House, Freedom of the World report for 2018 gave Chinese Taipei an index score of 1 out of 7 based on their continuing global assessments of political and civil liberties (N.B. 1 is the freest and 7 the least free)<sup>7</sup>.

在 2017-18 世界經濟論壇的全球競爭力報告中，中華臺北的總體競爭力非常高（140 個經濟體中的第 13 位）。機構排名略低（第 25 位/第 140 位），但仍然相對較強。機構支柱內的得分係基於七

<sup>5</sup> This figure includes 7432 CPA certificate holders; 3,396 registered practitioners; 1,972 registered CPA firms 本數量包括 7,432 名持有 CPA 證照者; 3,396 名註冊執業者; 1,972 家註冊會計師事務所。

<sup>6</sup> <http://reports.weforum.org/global-competitiveness-report-2018/country-economy-profiles/#economy=TWN>

<sup>7</sup> <https://freedomhouse.org/report/freedom-world-2018-table-country-scores>

Anti-money laundering and counter-terrorist financing measures in Chinese Taipei @ APG 2019

項治理類別。根據對全球政治和公民自由的持續評估，自由之家 2018 年世界自由報告給予中華臺北 7 分中的滿分 1 分（註 1 分是最自由的，7 分是最少的自由）

### *Background and other Contextual Factors*

#### *背景及其他概況因素*

48. Chinese Taipei had its last mutual evaluation in 2007. Despite the many recommendations including in the 2007 MER, very few reforms measures were implemented until the start of 2017. This sudden change in policy setting appears to have largely been due to a significant AML/CFT related fine given to one of Chinese Taipei's largest banks, Mega International Bank, in the United States in 2017. Since then, AML/CFT has gained additional traction in Chinese Taipei and garnered increased political commitment to support implementation.

中華臺北在 2007 年進行最近一次的相互評鑑，儘管 2007 年相互評鑑報告中有許多建議，但直到 2017 年初以前很少有實施相關改革。政策方向之所以突然發生變化，很大一部分是由於 2017 年中華臺北最大的銀行之一，兆豐銀行，因為遭受美國在防制洗錢 / 打擊資恐方面的鉅額罰款。此後，中華臺北對防制洗錢 / 打擊資恐的接受程度提高，並獲得更多政治承諾以支持實施防制洗錢 / 打擊資恐。

49. The legal and institutional progress and the amount of implementation that has occurred in the two-year period immediately prior to the mutual evaluation are significant. Many laws have been passed and implemented, the AMLO has been established, and an NRA undertaken amongst many other reforms. It is in this context that many of the effectiveness outcomes have been considered. Whilst the progress in the previous two years has been significant and had great impact, it is in contrast to the ten-year period following the previous MER.

在相互評鑑之前的兩年期間，法律和制度方面的進展以及實施的數量很大。許多法律通過並施行，也成立洗錢防制辦公室，國家風險評估並與許多其他改革一起進行。正是在這種背景下，許多效能的結果已經被考慮。雖然之前兩年的進展非常顯著也影響很大，但與前一輪 MER 之後的十年期間形成鮮明對比。

### *AML/CFT strategy*

#### *防制洗錢/打擊資恐策略*

50. Chinese Taipei does not have an AML/CFT strategy. However, the government has given priority to implementing key reforms, particularly since 2017. The establishment of the AMLO led by a high-level officer of the Executive Yuan in 2017 demonstrated the priority the government has given to AML/CFT. Since then, AMLO has coordinated the preparation for ME and the NRA.

中華臺北沒有整體防制洗錢/打擊資恐策略，但政府優先（特別是自 2017 年起）實施關鍵改革。2017 年在行政院高層成立洗錢防制辦公室（簡稱洗防辦），展現政府對防制洗錢/打擊資恐的優先順序。從那時起，AMLO 協調準備相互評鑑和國家風險評估的工作。



## Legal & institutional framework

### 法律及組織架構

#### Co-ordinating bodies

##### 協調機關

51. **The AMLO** was established in the Executive Yuan in March 2017 to co-ordinate the NRA, to oversee and prepare for the mutual evaluation and to undertake broader AML/CFT policy reforms. There are a range of other policy and operational coordination bodies as outlined at IO1.

洗防辦於 2017 年 3 月在行政院內成立，旨在協調國家風險評估，監督和準備相互評鑑、並展開更廣泛的防制洗錢與打擊資恐改革。IO1 概述了一系列其他政策和業務協調機關。

#### Legal and law enforcement agencies

##### 法律及執法機關

52. **The Prosecutors office** sits under the MOJ and is responsible for the investigation and prosecution of criminal matters in Chinese Taipei, leading and coordinating the investigation as well as freezing, seizing and confiscating assets. The three-tiered prosecution system includes: (a) Supreme Court prosecutors (SPO); (b) High Court Prosecutors (HPO); (c) District Prosecutors (DPO).

檢察署隸屬於法務部，負責中華臺北刑事案件之調查和起訴，領導和協調調查行動，以及凍結、扣押和沒收資產。三級檢察制度包括 (a) 最高檢察署(SPO); (b) 高等檢察署 (HPO); (c) 地方檢察署 (DPO)。

53. **The Ministry of Justice Investigation Bureau (MJIB)** is a criminal investigation and counter-intelligence agency within the MOJ. The MJIB investigates a wide range of criminal activity, in particular serious and economic crimes including ML.

法務部調查局(MJIB)是法務部內的刑事調查和反情報機關。MJIB 調查中華臺北的各種犯罪活動，特別是對重大和經濟犯罪(包括洗錢)等調查。

54. **The National Police Agency (NPA)** is within the Ministry of the Interior and oversees all police forces. The NPA also investigates high profile and serious crimes and ML related to these cases.

警政署 (NPA) 設在內政部門內，負責監督國家所有警力。NPA 還調查重大和嚴重的犯罪行為，及該等案件有關的洗錢活動。

55. **The Anti-Money Laundering Division of the MJIB (AMLDD)** is Chinese Taipei's FIU responsible to receive STRs, domestic threshold reports (CTR), international threshold reports (ICTR) and to analyse and disseminate financial intelligence to LEAs.

法務部調查局的洗錢防制處 (AMLDD) 是中華臺北的金融情報中心，負責受理可疑交易報告、大額通貨交易申報 (CTR) 及 ICTR，並將這些金融情報分析後分送給執法機關。

56. **Administrative Enforcement Agency (AEA)** is within the MOJ and is responsible for enforcing the execution of monetary payment obligations including taxes, fines and other obligations for payment in public law. It may also accept prosecutors' instructions to track and confiscate assets.

行政執行署(AEA)隸屬於法務部，負責執行金錢給付義務，包括稅務、罰款和其他公法給付義務。它還可以接受檢察官關於追蹤和沒收資產的指令。

57. **The Agency against Corruption (AAC)** prevents and fights corruption by planning and implementing anti-corruption policies, corruption prevention (including administering wealth declarations) and investigations of a limited number of corruption matters and related ML.

廉政署 (AAC) 負責預防和打擊貪污，職責包括規劃和實施反貪污政策，預防貪污 (包括管理財產申報) 和調查一部分貪污犯罪及其洗錢活動。

58. **National Security Bureau (NSB)** is the principal intelligence agency responsible for coordinating intelligence with foreign counterparts, including in PF and TF matters.

國家安全局 (NSB) 是主要的情報機關，負責與外國對應單位協調情報，包括武擴和資恐事務。

59. **Office of Homeland Security (OHS)** is responsible for security strategies, policies & projects.

國土安全辦公室負責國家安全策略、政策和計畫。

60. **National Immigration Agency (NIA)** is responsible for immigration matters.

移民署負責入境事務。

61. **Coast Guard Administration of the Ocean Affairs Council** is an LEA under the Executive Yuan and is responsible for protecting the resources of the territorial waters of Chinese Taipei.

海洋委員會海巡署為行政院下之執法機關，負責保護中華臺北領海的資源。

62. **Customs Administration (CA)** is responsible for border enforcement issues, including revenue collection, pursuit of smuggling and the cross border cash/BNI declaration regime.

關務署 (CA) 負責邊境執法議題，包括課徵關稅、查緝走私和跨境現金/無記名可轉讓金融工具 (BNI) 申報制度。

#### Financial and DNFBP sector bodies

##### 金融與指定之非金融事業及人員部門機關

63. **The Financial Supervisory Commission (FSC)** is responsible for the development, supervision, regulation, and examination of financial markets and financial service enterprises (banks, insurance, securities, NBFIs for prudential and AML/CFT as well as accountants and trust enterprises).

金融監督管理委員會 (FSC) 是負責中華臺北金融市場和金融服務企業的發展、監督、管理和檢查的權責機關 (銀行、保險、證券及非銀行金融機構的審慎及防制洗錢/打擊資恐監理，還包括會計師及信託業)。

64. **Bureau of Agricultural Finance** is the regulator of agricultural FIs (FSC is commissioned to conduct AML/CFT examinations).

農業金融局是農業金融機構的管理機關 (金管會受委託辦理防制洗錢/打擊資恐檢查)。

65. **Central Bank** supervises foreign exchange counters for AML/CFT.

中央銀行監理外幣收兌處的防制洗錢/打擊資恐。

66. **Department of Prosecutorial Affairs (MOJ)** supervises lawyers, including for AML/CFT.

法務部檢察司-負責監理律師業，包括防制洗錢/打擊資恐。

67. **Department of Land Administration (MOI)** supervises (together with municipal governments) land administration agents and real estate brokers, including for AML/CFT.

內政部地政司和縣市政府負責監理地政士，並根據“不動產經紀管理條例”監理不動產經紀人，包括防制洗錢/打擊資恐。

68. **Department of Commerce (MoEA)** regulates and supervises jewellery businesses, including for AML/CFT.

經濟部商業司負責銀樓業之管理及監理，包括防制洗錢/打擊資恐。

69. **Civil Division of the Judicial Yuan** supervises notaries, including for AML/CFT.

司法院民事廳負責監理公證人，包括防制洗錢/打擊資恐。

70. **Taxation Administration (MOF)** regulates and supervises bookkeepers and tax filing agents, including for AML/CFT.

財政部賦稅署負責管理及監理記帳士和報稅代理人，包括防制洗錢/打擊資恐。

### Proliferation financing

#### 資助武擴

71. The NSB integrates and coordinates anti-proliferation projects that serve as a platform for combating proliferation and other import/export violations. Agencies involved in this platform include the HPO, MOJ, Coast Guard, Bureau of Foreign Trade, MJIB, NPA, NIA, Customs, MOF, Ministry of Transportation, Maritime and Port Bureau and the FSC. In specific instances such as the detection of particular activity, the MOJ convenes a TF Review Committee attended by members of seven major ministries and agencies to determine follow-up actions.

國安局整合和協調防制大規模殺傷武器擴散計畫，提供打擊擴散和違反其他進出口規定的平台。參與該平台的機關包括高檢署、法務部、海巡署、國際貿易局、調查局、警政署、移民署、海關、財政部、交通部、港務局以及金管會。在特定情況下，例如特定活動的發現，將由法務部召集一個由七個主要部會首長參加的資恐審議會，以決定後續行動。

### Financial sector and DNFBPs

#### 金融部門與非金融事業及人員

72. When assessing the effectiveness of preventive measures and AML/CFT supervision, the assessment team gave the highest importance to banks, followed by the postal service institution, securities market intermediaries, agricultural FIs, then life insurance and other FIs. Amongst DNFBPs, real estate intermediaries were given particular importance, as well as lawyers and accountants. Jewellers were highlighted in the NRA, particularly in relation to underground remittance, rather than legitimate jewellers being a location for ML. In comparison to FIs, DNFBPs have significantly more reporting entities—around 56,100—albeit smaller volumes of transactions. Casinos and gambling are illegal in Chinese Taipei under the criminal code.

在評估預防性措施和防制洗錢/打擊資恐監理的效能時，評鑑團給予銀行最高的重要性，其次是郵政機構、證券市場中介機構、農業金融機構，然後是人壽保險和其他金融機構。在DNFBP中，不動產中介機構以及律師和會計師尤為重要。銀樓業在國家風險評估中被強調的，是與地下通匯有關的部分，而不是合法的銀樓業成為洗錢的處所。與金融機構相比，DNFBP儘管交易量較小，但擁有更多的申報實體（約56,100個）。根據刑法，賭場和賭博行為在中華臺北是非法的。

73. Chinese Taipei is an advanced financial centre, with 1,363 FIs encompassing a range of financial services across banking, securities and insurance. Domestic banks generally face higher inherent risks, due to their diverse range of customers, volume and speed of transactions, and as the only reporting entities in Chinese Taipei authorised to remit funds overseas. Domestic banks and foreign bank branches in Chinese Taipei are also the only entities authorised to establish OBUs, which the 2018 NRA identified as highly vulnerable to ML/TF risks. According to the Chinese Taipei NRA, OBUs accounted for 6.88% of the financial sector's assets, and around a third of the 2017 GDP. Offshore units for the securities and insurance industries were introduced only in 2014 and 2015 respectively, and their economic activity was equivalent to almost 1% of the 2017 GDP.

中華臺北是一個先進的金融中心，擁有 1,363 家金融機關，涵蓋銀行、證券和保險等一系列金融服務。本國銀行由於客戶的多樣性，交易量和交易速度，且是中華臺北唯一被核准向海外匯款的申報機構，通常面臨較高的固有風險。中華臺北僅本國銀行和外國銀行在臺分行被核准設立 OBU，因此被 2018 年 NRA 視為洗錢 / 資恐風險的高度弱點。根據中華臺北 NRA，OBU 佔金融業資產的 6.88%，約佔 2017 年 GDP 的三分之一。證券和保險的離岸業務單位分別於 2014 年和 2015 年推出，其經濟活動約當 2017 年國內生產總值的 1%。

74. Foreign exchange counters are excluded from the MLCA, though they are subject to AML/CFT measures under their own set of regulations as well as TFS under the CFT Act.<sup>8</sup> Financial leasing companies were brought under AML/CFT supervision in 2018.

外幣收兌處不包括在洗錢防制法中，但它們根據其自己的一套法規以及資恐防制法下的目標性金融制裁要求，受到防制洗錢/打擊資恐的規範。融資性租賃事業於 2018 年起受到防制洗錢 / 打擊資恐監理。

75. All DNFBPs present are covered for AML/CFT. Casinos are illegal, and trust and company service providers do not exist as separate businesses from lawyers or accountants. Chinese Taipei has gone beyond the FATF standards by including bookkeepers and tax return filing agents as DNFBPs.

所有 DNFBP 均包括在防制洗錢 / 打擊資恐體系內。經營賭場為非法活動。信託和公司服務提供者並非單獨存在於律師及會計師以外之業務。中華臺北將記帳士暨記帳及報稅代理人指定為 DNFBP，已超越 FATF 標準。

### *Preventive measures*

#### *預防措施*

76. Chinese Taipei's AML/CFT system has been subject to rapid and significant reforms since 2016. These reforms encompass legislative and regulatory amendments. The centrepiece of the AML/CFT laws, the MLCA, was amended on 28 June 2017 and the CFT Act was further amended in November 2018. A series of regulations and directions pursuant to the MLCA were issued under the MLCA for each individual type of FI and DNFBP. These were further revised in November 2018.

自 2016 年以來，中華臺北的防制洗錢/打擊資恐體系一直經歷快速而重大的改革。這些改革包括法律和管理規則的修正。防制洗錢 / 打擊資恐法律體系的核心，洗錢防制法於 2017 年 6 月 28 日進行修訂，資恐防制法則於 2018 年 11 月再度修訂。根據洗錢防制法針對每種類型之 FI 和 DNFBP 發布的一系列授權辦法和要點，均於 2018 年 11 月進一步修訂。

77. Transition from a rules-based to a risk-based approach for AML/CFT supervision is ongoing. Competent authorities have obtained the close cooperation of industry associations to work with supervisors and regulators to prepare guidance and conducting training and awareness raising on risk-based AML/CFT implementation.

<sup>8</sup> The Regulations Governing the Establishment and Administration of Foreign Currency Exchange Counters 外幣收兌處設置及管理辦法



從以規則為基礎過渡到以風險為基礎的防制洗錢/打擊資恐監理方法正在進行。權責機關取得各業公(協)會的密切合作，以便與監管機關合作，為實施以風險為基礎的防制洗錢 / 打擊資恐準備指引，並實施教育訓練以及宣導活動。

### Legal persons and arrangements

#### 法人及法律協議

78. All of the legal persons outlined below must register with the MOEA under the relevant statute. At the end of 2018 there were 764,572 legal persons on the register. During 2018, 42,695 new companies had been added and 31,547 had been dissolved or had their registration revoked.

下面列出的所有法人都必須根據“公司法”或“有限合夥法”等相關法令向經濟部註冊。截至 2018 年底，公司登記處共有 764,572 名法人。2018 年間，共有 42,695 家公司新成立，另有 31,547 家公司解散或撤銷註冊。

**Table: Registered legal persons – 2018**

**表:法人註冊概況 - 2018**

| Type 型態  | Number 數量 (Nov. 2018) | Basis of incorporation 設立基礎                                    | Basic characteristics & significance 基本特徵與重要性  |
|--|-----------------------|--|--|
| Limited company (LLC) 有限公司                                 | 534,260               | Company Act 公司法  | One or more shareholders - each liable in an amount limited to their contribution. Permit single shareholder and single director. Both can be non-resident. One can be a legal person 一名或多名股東 - 每一名就其出資額負有限責任。允許單一股東及單一董事。兩者皆可為非居民。其一可為法人。 |
| Company limited by shares – private 股份有限公司 - 非公開           | 164,700               | Company Act 公司法  | Shares issued in public, close company, and non-close company 股票公開發行，閉鎖性公司，非閉鎖性公司  |
| Company limited by shares – public 股份有限公司 - 公開             | 2,169                 | Company Act 公司法  | Public company whose shares are publicly traded. Not privately-held 股票公開交易之公開公司，非私人持有  |
| Foreign companies 外國公司                                     | 5,656                 | Registered under the Company Act 公司法                           | Branches and representative offices may register. Both require resident directors/managers. Subject to statutory audit. 分支機構或代表辦公室可註冊。兩者皆須有居民擔任董事/經理人。受法規查核之要求。  |
| Unlimited co. 無限公司   | 11                    | Company Act 公司法  |  |
| Unlimited company with limited liability shareholders 兩合公司 | 9                     | Company Act 公司法  | Does not issue stock, it is formed both by a limited liability shareholder and a unlimited liability shareholder 無發行股票，由一名有限責任股東和一名無限責任股東成立  |
| Limited partnerships 有限合夥                                  | 32                    | Limited Partnership Act (Art 9) and Regulations 有限合夥法第 9 條及其辦法 | One of the partners must be a resident. Not subject to corporate tax, but subject to filing financial statements and personal income tax   |



|   |                                |   |  |
|---|--------------------------------|---|--|
|   |                                |   | 合夥人之一必須為居民。毋須繳納營利事業所得稅，但須提交財務報表及繳納個人綜合所得稅                                  |
| <b>Foreign limited partnerships</b><br>外國有限合伙 | 2                              | Limited Partnership Act<br>有限合伙法        | All foreign LPs' branches.<br>所有外國有限合伙之分支機構                                |
| <b>Other corporate body types</b><br>其他公司組織型態 | Foundations<br>財團法人<br>6,054   | Foundations Act<br>財團法人法                | For example, government or private donated foundations<br>例如，政府或私人捐助設立之基金會 |
|   | Associations<br>社團法人<br>51,679 | Civil Code Art 59 - 61<br>民法第 59 至 61 條 |  |
| <b>Register size</b><br>註冊數量                  | <b>764,572</b>                 |   |  |

79. An important contextual factor is that the legal and regulatory framework and market practice sees relatively little professional intermediation in the establishment or continuing operation of legal persons. There are no requirements for company service providers to form or have a continuing role as an office holder or to have a role in filing returns. As such, few FIs/DNFBPs have a continuing relationship providing company services through the life of a company.

一個重要的背景因素是在法律和監管框架以及市場慣例中，法人的成立或繼續運作相對較少使用專業中介機構。沒有規定要求公司服務提供者成立，或持續擔任辦公處所，或在提交資訊方面發揮作用。因此，很少有金融機構/DNFBP 以持續性關係，在公司存續期間提供公司服務。

80. The Company Act underwent significant amendments in August 2018 with additional regulations being issued, a number of which are directly relevant to transparency and reporting measures. These include Article 22-1 which stipulates that board directors, supervisors and managers, as well as shareholders with at least a 10% stake in a company must declare their involvement in the entity and report to the registry any changes in their shareholding within 15 days. Powers and sanctions to enforce compliance with these and other obligations were strengthened. Additional regulations under that article extend to elements of enterprise risk assessments and other AML/CFT measures.

“公司法”於 2018 年進行了重大修訂，2018 年 8 月發布了附加條款，其中一些條款與防制洗錢/打擊資恐相關的透明度和報告措施直接相關。其中包括第 22-1 條規定，董事會成員、監事、經理人以及擁有公司至少 10% 股權的股東必須在 15 天內申報其持股，如持股有變動亦須於 15 天內申報。強制遵守這些法規和其他義務的權力和制裁措施得到加強。該條款授權訂定的其他規定並將規範擴展到企業風險評估和其他防制洗錢/打擊資恐措施。

81. Trusts in Chinese Taipei include civil trusts, business trusts or charitable trusts. Business trusts require the trustee to be a trust enterprise, which are FIs and regulated by the MLCA and the Trust Enterprise Act and supervised by the FSC (considered in R.10 and IO4). Civil trusts (which are express trusts) may be established via legal arrangements between private individuals and are regulated under the Trust Law. Foreign trusts operate in Chinese Taipei. Both civil trusts and foreign trusts are considered at R.25 and IO5. The Trust Law has only limited requirements to support transparency of the beneficial ownership and control of legal arrangements. DNFBPs providing trust services to a foreign or domestic trust are regulated by the MLCA (Art 5) and regulations governing AML/CFT measures of the respective industry of DNFBPs.

中華臺北的信託包括民事信託、營業信託或公益信託。營業信託要求受託人是信託業，即為金融機構並受洗防法和信託業法的規範，並由 FSC 監理（在 R.10 和 IO4 中考慮）。民事信託（明示信託）可以通過私人之間的法律協議建立，並受信託法的管理。外國信託有在中華臺北運作。民事信託和外國信託都在 R.25 和 IO5 中被考慮。對於法律協議的實質受益權和控制權的透明度，“信託法”的要求有限。向外國或國內信託提供信託服務的 DNFBP 受洗錢防制法（第 5 條）和 DNFBP 各業 AML/CFT 管理辦法的規範。

82. Chinese Taipei has a large number of civil trusts. Information provided by the tax authorities indicate that civil trusts have registered assets (real property) valued at 1,948,622 million NTD (approx. USD 62.8 billion) in 2018. The actual number of civil trusts is not known by authorities, as there are no obligations on civil trusts to file with the tax authorities in the absence of income or for trustees to declare their status to FIs or DNFBPs. There are no details available on the numbers of foreign trusts that may operate or hold assets in Chinese Taipei.

中華臺北擁有大量民事信託。稅務機關提供的資訊顯示，民事信託登記資產(不動產)總值新臺幣 1 兆 9,486 億 2 千 2 百萬元(約當 628 億美元)。民事信託的實際數量未知，因為民事信託沒有義務在沒有所得的情況下向稅務機關申報，受託人也沒有向金融機構/DNFBP 揭露的義務。沒有關於可能在中華臺北持有資產的外國信託數量的詳細資訊。

### *Supervisory arrangements*

#### *監理安排*

83. The FSC is the peak regulator for FIs, including for AML/CFT issues. It has four sub-bureaus, being the Banking Bureau (BB), Securities and Futures Bureau (SFB), Insurance Bureau (IB)—which are responsible for supervising banks, securities and insurance firms respectively—and the Financial Examination Bureau (FEB), which conducts offsite and onsite inspections on behalf of the FSC and other supervisory agencies.

金融監督管理委員會 (FSC) 是金融機構的最高監管機關，包括防制洗錢/打擊資恐議題。它有四個分局，分別是銀行局 (BB)、證券期貨局 (SFB)、保險局 (IB) - 分別負責監管銀行、證券和保險公司 - 以及檢查局 (FEB)，代表 FSC 和其他監管機關進行場外和現場檢查。

84. Two other supervisors for FIs are the Central Bank and Bureau of Agricultural Finance (BOAF) of the Council of Agriculture. The Central Bank is the monetary authority of Chinese Taipei, and is also the supervisor for foreign currency exchange counters and regulator for foreign exchange businesses. The BOAF supervises agricultural financial institutions (AFIs), which include the ABT and credit departments of farmers' and fishermen's associations.

其他兩個金融機構的監理機關是中央銀行 (CBC) 和行政院農業委員會農業金融局 (BOAF)。央行是中華臺北的貨幣管理機關，也是外幣收兌處的監理機關和外匯業務的管理機關。農金局監理農業金融機構 (AFI)，包括全國農業金庫和農會及漁會信用部。

85. Each DNFBP sector is regulated and supervised for AML/CFT by a specific competent authority. These include: MOEA for jewellery businesses; MOI for land administration agents and real estate brokers; MOJ for lawyers; Civil Dept. of the Judicial Yuan for notaries; FSC for accountants; and the Tax Administration for bookkeepers and tax return filing agents.

每個 DNFBP 部門都由特定的權責機關管理和監理防制洗錢/打擊資恐事務。包括：經濟部負責銀樓業；內政部負責地政士和不動產經紀人；法務部負責律師業；司法院民事廳負責公證人；金管會負責會計師；財政部賦稅署負責記帳士暨記帳及報稅代理人。

86. Industry associations in Chinese Taipei perform important roles in AML/CFT, but have a very limited role as self-regulatory bodies. The associations play coordinating roles between government and their respective sectors, and have been quite active in the NRA, as well as the preparation and dissemination of guidance subject, to regulatory approval. Industry associations have contributed significant resources to AML/CFT awareness raising, training and coordination activities.

中華臺北各行業的公(協)會在防制洗錢/打擊資恐方面發揮重要作用，但其作為自律機構的作用有限。這些公(協)會在政府和各自的部門之間發揮協調作用，並在 NRA 以及準備和發送相關主題的指引以獲得管理部門的批准，發揮相當積極的作用。各業公(協)會為提高防制洗錢/打擊資恐的認識，培訓和協調活動提供了大量資源。

### *International Cooperation*

### 國際合作

87. Chinese Taipei authorities have placed a strong priority on obtaining and providing international cooperation in AML/CFT matters, in keeping with the risk profile. The NRA identifies a range of geographic risks and jurisdictions that share ML risks for both inbound and outbound criminal proceeds and related vulnerabilities. However, Chinese Taipei faces many challenges with obtaining international cooperation due to longstanding issues. Despite this, authorities have taken steps to overcome obstacles to international cooperation and have established numerous channels and initiatives to seek and to provide international cooperation in line with the risk profile.

中華臺北當局優先重視在防制洗錢/打擊資恐事務上取得並提供國際合作，以與其風險狀況相符。NRA 辨識一系列地理風險和司法管轄區，這些管轄區在犯罪所得流入流出以及相關弱點方面都與中華臺北共有洗錢風險。然而，由於長期以來的問題，中華臺北在獲得國際合作方面面臨許多挑戰。儘管如此，當局已採取措施克服國際合作的障礙，並建立許多管道和方式來尋求和提供國際合作，以符合風險狀況。

*Key Findings and Recommended Actions**重要發現及建議行動***Key Findings****重要發現**

- 1) Chinese Taipei generally demonstrated a generally sound understanding of ML/TF risks. The 2018 NRA process was well coordinated and supported by a wide range of public and private sector representatives. The NRA adopted a reasonable methodology and process, but some scope gaps are noted with risks from cross border movement of cash and domestic trusts. The FSC conducted a sectoral risk assessment in 2015 and the FIU has conducted some strategic assessments. Further assessments of risk were undertaken in relation to legal persons and the NPO sector. Generally, FIs and DNFBPs appear to understand their risk as framed in the NRA and use it to inform their own risk assessments.

中華臺北展現出對洗錢/資恐風險普遍良好的瞭解。2018 年國家風險評估程序協調良好並受到廣泛公私部門代表的支持。NRA 採用了合理的方法論和程序，但存在一些範疇落差，包括來自跨境現金移動及國內信託的風險。金管會在 2015 年進行部門風險評估，金融情報中心則進行一些策略評估。有針對法人和非營利組織展開進一步的風險評估。一般而言，金融機構和 DNFBP 瞭解其在 NRA 中所述的風險，並將其資訊用於自己的風險評估。

- 2) Chinese Taipei has not yet issued a national AML/CFT strategy, but authorities have pursued AML/CFT policies and programs in many areas that reflect risk assessment findings. Strong policy coordination has resulted in a significant shift in the culture and priority of AML/CFT efforts.

中華臺北尚未發布國家防制洗錢與打擊資恐策略。但權責機關在許多方面已制定了防制洗錢/打擊資恐政策和計劃以反映風險評估的發現。強力的政策協調使防制洗錢/打擊資恐文化和優先順序產生重大轉變。

- 3) There has been a large increase in the allocation of resources to AML/CFT implementation across all relevant agencies, which has contributed significantly to the shift to risk-based approaches and priority implementation of AML/CFT reforms. Objectives and activities of the competent authorities and SRBs have been adjusted to be largely consistent with the identified ML/TF risks. Operational outcomes and relevant international cooperation approaches reflect a risk based approach by LEAs.

所有相關機關在實施防制洗錢/打擊資恐方面的資源分配已大幅增加，這極有助於轉型採用以風險為基礎的方法和優先執行防制洗錢/打擊資恐改革措施。權責機關和自律機構的目標及活動已經大致調整與辨識出的洗錢/資恐風險一致。實務結果和相關國際合作方法反映執法機關採取以風險為基礎的方法。

- 4) Enhanced measures have been applied for high vulnerability areas, though they may not sufficiently reflect trends in each sector. Mitigating measures for cash transaction risks



(threshold reporting) are positive, but were not applied to higher risks identified in the real estate sector.

針對高度弱點已採用強化措施，雖然該等措施可能未能充分反映每個部門的趨勢。有關現金交易風險的抵減措施（即大額現金申報要求）是正面的，但這些措施並未適用於不動產部門所辨識之高風險情況。

- 5) Coordination at the AML/CFT policy level is very strong, particularly since the creation of the AMLO. The AMLO has supported coordination and cooperation to finalize the NRA, and to adjust policy priorities across sectors and agencies. Policy cooperation and coordination is strong in the area of combating PF. While there are many strengths in operational coordination, some areas require further improvement, including between LEAs and supervisors on emerging ML/TF risks.

防制洗錢/打擊資恐在政策層面的協調非常強，特別是自洗錢防制辦公室成立以來。藉由洗錢防制辦公室支持的協調與合作，使 NRA 得以完成，並進而調整部門和機關間之政策優先順序。政策合作及協調在打擊武擴方面亦強有力。儘管在實務層面的協調具有許多優勢，部分領域仍需進一步改善，包括執法機關和監理機關針對新興洗錢/資恐風險的協調。

- 6) Authorities have worked closely with FI and DNFBP sectors and their associations on the NRA and sharing assessment findings to develop a shared understanding of risk. Significant resources were allocated to deliver programs that have led to FI / DNFBP sectors increased understanding of risk.

中華臺北當局與金融和 DNFBP 部門及其公(協)會等就 NRA 密切合作，並分享評估結果，以便對風險達成共識。大量資源分配至相關計畫，以協助金融和 DNFBP 部門增加對風險的瞭解。

### **Recommended Actions**

#### **建議行動**

- a) Finalise and implement a national AML/CFT strategy and updated agency-level strategies.  
完成並實施國家層級防制洗錢/打擊資恐策略及更新後的機關層級策略。
- b) The strong coordination structure that was put in place for the ME should be institutionalised to support ongoing priority actions to mitigate ML/TF/PF risk.  
為相互評鑑設置強而有力的協調架構應予制度化，以支持持續優先的行動來抵減洗錢/資恐/武擴風險。
- c) Prioritise further comprehensive assessments of risk including: cash economy issues (including scope of the cash economy; cross-border movement of cash); ML risks with underground banking; foreign legal persons and arrangements in Chinese Taipei's offshore sector; organized crime involvement in third party ML; trusts and; emerging TF issues (including global trends on terrorism and TF). Pursue international cooperation to obtain inputs on such assessments.

優先進一步全面評估的風險包括：現金經濟的議題(包括現金經濟的範圍及跨境現金移動); 地下通匯的洗錢風險; 在中華臺北離岸部門的外國法人和法律協議; 涉及第三方洗錢的組織犯罪; 信託; 新興資恐議題 (包括全球恐怖主義及資恐趨勢)。尋求透過國際合作以取得相關資源投入該等評估工作。



d) At a policy level, closer examination should be given to the application of enhanced measures for higher risk scenarios and simplified measures for lower risk (e.g. consider applying threshold transaction reporting obligations to real estate sector)

在政策層面，應加強檢視對高風險情境採取的強化措施，以及低風險情境採取的簡化措施（例如考慮對不動產部門採取交易門檻申報義務）。

e) Continue to enhance operational level cooperation, including between LEAs and supervisors on sharing information on emerging ML/TF risks.

繼續加強實務層面的合作，包括在執法機關和監理機構之間分享有關新興洗錢/資恐風險的資訊。

### *Immediate Outcome 1 (Risk, Policy and Coordination)*

#### *直接成果 1(風險、政策及協調)*

#### *Chinese Taipei's understanding of its ML/TF risks*

##### *中華臺北對洗錢/資恐風險的瞭解*

88. Chinese Taipei is subject to a number of significant ML threats, but few TF threats. The authorities have undertaken a number of assessments of ML/TF risks that support a reasonable understanding of key areas of risk, albeit with some relative strengths and weaknesses amongst the assessments.

中華臺北受到一些重大的洗錢威脅，但很少有資恐威脅。中華臺北當局已對洗錢/資恐風險進行了一些評估，以支持對關鍵風險領域的合理瞭解，儘管評估中存在一些相對優勢和弱點。

89. Chinese Taipei has demonstrated a generally sound understanding of ML/TF risks through the 2017/18 NRA process and other agency-level assessments. A wide range of government agencies and private sector actors participated in the NRA, which was published in May 2018.

中華臺北證明透過 2017/18 的 NRA 流程和其他機關層級的評估，對洗錢/資恐風險有了普遍合理的瞭解。範圍廣泛的政府機關和私部門機構參與 2018 年 5 月發表的國家風險評估。

90. Prior to the NRA, the FSC conducted a sectoral risk assessment (SRA) which looked at a number of vulnerabilities of the financial sector, but only relatively cursory information on threats (sources of proceeds of crime, methods of ML/TF, actors undertaking ML/TF). The SRA was a preliminary basis to commence a number of moves towards a risk-based approach by the FSC, but did not serve as a broad basis to support FI/DNFBPs' risk-based approach.

在 NRA 之前，金管會進行了部門風險評估（SRA），該評估檢視金融部門的一些弱點，但只有相對粗略的威脅資訊（犯罪所得來源，洗錢/資恐方法，參與洗錢/資恐的行為者）。SRA 是金管會開始朝向以風險為基礎方法的一些初步基礎，但並未作為支持金融機構/DNFBP 以風險為基礎方法的廣泛基礎。

91. The NRA methodology focused on the assessment of ML threats and vulnerabilities and included an independent assessment of TF risks. The NRA considered sources of proceeds, ML techniques, vulnerabilities to ML, etc. Sources of data on criminal activities included the number of STRs, cases disclosed by the FIU, cases processed by LEAs, and estimates of predicate offence proceeds. Assessments of TF risks considered both domestic and cross-border risks, domestic and foreign threats,

and the risks of movement of people and funds through the jurisdiction (including possible transit of foreign terrorist fighters). Close consideration was given to elements of TF risks with foreign workers within the jurisdiction.

NRA 方法論的重點是評估威脅和弱點，包括對資恐風險進行獨立的評估。NRA 考慮了犯罪所得來源，洗錢方法，洗錢的弱點等。關於犯罪活動的資料來源包括可疑交易報告的數量，金融情報中心披露的案件，執法機關處理的案件以及前置犯罪所得的估計數。對資恐風險的評估考慮了國內和跨境風險，國內和國外威脅，以及人員和資金通過司法管轄區的移動風險（包括外國恐怖主義戰士可能過境）。對管轄區內外國移工的資恐風險因素進行了密切關注。

92. A total of 23 ML threat areas (22 predicate offences and third party money laundering) were assessed based on three factors: “actors’ capacity”, “scope of ML activity” and “estimated of proceeds of crime annually”. The NRA classified the threats of ML/TF associated predicate offences into four categories as set out in the table below:

共有總數 23 個洗錢威脅（22 個前置犯罪和第三方洗錢）以下列三個因素進行評估：“參與者的能力”，“洗錢活動的範圍”及“每年估計的犯罪所得”。NRA 將洗錢 / 資恐相關前置犯罪威脅分為四類，如下表所示：

**Table 1.1: List of ML/TF threat profiles’ overall ratings according to Chinese Taipei**

**表 1.1: 依據中華臺北提供之洗錢/資恐威脅全體評等**

| Low<br>低  | Medium<br>中   | High<br>高   | Very High<br>非常高  |
|---|---|---|---|
| Human Trafficking (migrant smuggling)<br>人口販運<br>Sexual exploitation<br>性剝削<br>Counterfeiting currency<br>偽造貨幣<br>Murder, grievous bodily injury<br>殺人、重傷害<br>Robbery<br>搶奪<br>Extortion<br>勒贖<br>Piracy<br>海盜<br>Terrorism (Terrorist Financing)<br>恐怖主義(資恐) | Illicit arms trafficking<br>非法販運武器<br>Illicit trafficking in stolen and other goods<br>贓物<br>Theft<br>竊盜<br>Kidnapping, illegal restraint<br>綁架、拘禁等妨礙自由<br>Environmental crime<br>環保犯罪<br>Forgery<br>偽造文書 | Counterfeiting / product piracy, IPR crimes<br>仿冒 / 盜版、侵害營業秘密 | Drug trafficking<br>毒品販運<br>Fraud<br>詐欺<br>Smuggling<br>走私<br>Tax crimes<br>稅務犯罪<br>Organised crime<br>組織犯罪<br>Securities crime<br>證券販罪<br>Corruption / bribery<br>貪汙 / 賄賂<br>Third-party ML<br>第三方洗錢 |

93. As for ML/TF vulnerabilities, the 2018 NRA assessed FIs and DNFBPs against five risk factors: sector's inherent characteristics; products and services; nature of business relationships; geographic reach, and delivery channels. Sources of data included the number and size of the sector, information on their product and service, geographical locations of clients and service activities.

關於洗錢/資恐弱點，2018 年 NRA 根據下列 5 個風險因素評估金融業和 DNFBP 部門：部門的固有特性；產品與服務；業務關係的本質；地理覆蓋範圍和交付管道。資料來源包括有關部門的家數和規模，產品和服務的資訊，客戶的地理位置和服務活動。

94. The 2018 NRA gave overall vulnerability ratings for 31 sectors of FIs and DNFBPs. Two sectors were rated as very high (Offshore banking units and domestic banks). Twelve sectors were rated as high (Offshore securities units (OSU); branches of foreign banks; the post office; securities firms; offshore insurance units (OIU); jewellery businesses; accountants; lawyers; real estate brokers; credit depts. of agricultural & fisheries associations; ABT; Life insurance companies; securities investment trust enterprises). Twelve sectors were rated as medium and five as low (foreign exchange counters were notable amongst the low ratings). These assessments appear to be generally reasonable.

2018 年 NRA 針對全體 31 個金融業和 DNFBP 部門進行弱點評等。兩個行業被評為非常高（國際金融業務分行和本國銀行）。12 個部門被評為高（國際證券業務分公司（OSU）；外國銀行在臺分行；郵政機構；證券商；國際保險業務分公司（OIU）；銀樓業；會計師；律師；不動產經紀人；農漁會信用部；全國農業金庫；人壽保險公司；證券投資信託事業等。12 個部門被評為中，5 個部門被評為低（外幣收兌處在低度評等中較引人注意）。這些評估通常是合理的。

95. The earlier SRA and the NRA gave some consideration to ML techniques. The SRA noted dummy accounts as the main ML method from 2007 to 2013, accounting for a majority of all cases, followed by offshore remittances (8.8%) and use of relatives' accounts (7.5%). All other methods were below 5%. However, the 2018 NRA did not take into account such ML/TF techniques.

先前的 SRA 和 NRA 均對洗錢方法進行了一些考慮。SRA 發現人頭帳戶是 2007 年至 2013 年的主要洗錢方法，佔所有案例的多數，其次是境外匯款（8.8%）和使用親屬帳戶（7.5%）。至於其他方法均不超過 5%。然而，2018 年 NRA 並未考慮這樣的洗錢/資恐方法。

96. LEAs do not regularly produce written threat assessments of particular crime types. However joint agency sub-committees meet to share information on the risks of certain key crime types as trends change, including analysing crime statistics and sharing key cases. AMLD publishes various ML typologies reports and has produced a small number of high quality strategic analysis products on certain current and emerging risks. These are distributed to government and private sector stakeholders.

執法機關並未定期針對特定犯罪類型進行書面威脅評估；但是當犯罪趨勢變化時，跨機關小組會透過開會分享某些特定關鍵犯罪類型的風險資訊，包括分析犯罪統計數據和分享一些重大案例。調查局洗錢防制處發佈各種洗錢態樣報告，並針對當前和新興的風險製作少量的高品質策略分析報告。這些報告被分送至政府和私部門之利益相關方。

97. While the 2017/18 NRA covers ML risks associated with narcotics, fraud, human trafficking, corruption, tax, smuggling, gambling, more detailed assessments were not available on each crime type. Further assessments of corruption risks are needed to support authorities to follow the proceeds of corruption and bribery (proceeds from domestic and foreign corruption), particularly those that go offshore. A comprehensive understanding of threats of laundering proceeds of foreign offences was not sufficiently demonstrated.

雖然 2017/18 年 NRA 涵蓋與毒品販運，詐欺，人口販運，貪汙，稅務犯罪，走私，賭博等有關的洗錢風險，但對個別犯罪型態仍缺乏更詳細的評估。需要進一步評估貪汙風險，以支持當局追查貪污賄賂的犯罪所得（國內和國外貪汙所得），特別是那些移出境外的貪污賄賂所得。尚未充分證明已全面瞭解外國犯罪所得的洗錢威脅。

98. The NRA included an assessment of legal persons and, to a lesser extent, legal arrangements. A more in-depth assessment of threats and vulnerabilities of legal persons was published in August 2018. The vulnerabilities included the ease of incorporation, professional engagement not being mandatory for company incorporation and no access to company beneficial ownership information. Data sources included companies under investigations, STRs and the geographic reach of legal persons. The NRA did not sufficiently assess the risk of foreign legal persons and arrangements and how they are misused for

ML or TF or the features of types of legal persons that make them vulnerable for ML or TF. The NRA and sectoral identified all relevant categories of legal persons and gave two ratings of their relative transparency and vulnerability. Non-public limited companies and those limited by shares were rated as having 'higher' vulnerability. Public companies limited by shares, limited partnerships and **non-public unlimited partnerships** were assessed as having 'lower' vulnerability. The NRA included an assessment of TF risks associated with NPOs. The assessment considered six categories of NPOs. The assessment found that TF risks were low overall. However, it identified three categories having some risks (civil associations, national religious foundations and social welfare charity foundations) and three having no or low risks (medical foundations, educational foundations and cultural foundations). ML/TF risk assessment of trusts and NPOs lacked details on risk factors, threats, vulnerabilities and data sources and processes used in assessing their risk.

NRA 包括對法人的評估，以及法律協議(程度較低)。2018年8月再對法人的威脅和弱點發布更深入的評估報告。弱點包括公司註冊過於簡單，沒有強制專業人士參與公司註冊，也無法取得公司實質受益權資訊。評估資料來源包括曾受調查的公司，關於法人的可疑交易報告以及法人的地理範圍。NRA 並未充分評估外國法人和法律協議的風險，以及它們如何被濫用於洗錢或資恐，或者使它們易受洗錢或資恐濫用的法人類型特徵。NRA 和各部門辨識所有相關的法人類別，並對其相對透明度和弱點給出兩個評等。非公開發行之股份有限公司和有限公司被評為具有“較高”的弱點。公開發行之股份有限公司，有限合夥和**非公開發行之無限及兩合公司**被評估為具有“較低”的弱點。NRA 還包括對非營利組織評估資恐風險。評估共考慮六種類型的非營利組織，發現整體資恐風險為低。然而，它辨識三種具有一定風險的類別（人民團體，全國性宗教財團法人和社會福利慈善類財團法人）和三個沒有或風險較低的類別（醫療類財團法人，教育類財團法人和文化類財團法人）。信託和非營利組織的洗錢/資恐風險評估缺乏有關風險因子，威脅，弱點和資料來源，以及評估風險程序的詳細資訊。

99. The NRA considered risks from transnational movement of proceeds of crime. Authorities reasonably considered geographical risks including the main destination and source jurisdictions for illicit proceeds and identified China; Macao, China; Hong Kong, China and the Philippines as the common sources and destinations countries. The British Virgin Island, Samoa and Cayman Island were highlighted, given the threats arising from legal persons formed in those jurisdictions being active in Chinese Taipei's offshore financial sector and the sectors associated risks.

NRA 考慮犯罪所得跨境移動的風險。當局合理考慮犯罪所得主要目的地和來源的地理風險，並辨識出中國大陸；澳門；香港和菲律賓是共同的來源和目的地國家。英屬維爾京群島，薩摩亞和開曼群島也被強調，因為在中華臺北離岸金融部門活躍的法人係於該等司法管轄區成立，還有該等部門相關風險所帶來的威脅。

100. The authorities have not sufficiently considered the nature of risks associated with informal channels and cash. Consideration of cross border BNIs were not included in the NRA. Qualitative and quantitative data were used to assess ML/TF risks in most of the sectors; however, this was not the case in assessing trusts and NPOs. More in depth risk assessment is required of DNFBPs sectoral risks. Further, Chinese Taipei should continue to maintain an understanding of regional and global trends that might change the risk profile of Chinese Taipei for TF (refer to IO. 9).

NRA 沒有充分考慮與非正式管道和現金有關的風險的性質。跨境無記名可轉讓工具不包括在 NRA 中。質化和量化資料被用於評估大多數部門的洗錢/資恐風險；但是，在評估信託和非營利組織時並非如此。DNFBP 部門風險需要更深入的風險評估。此外，中華臺北應繼續瞭解可能改變中華臺北資恐風險狀況的區域和全球趨勢（參見 IO.9）。

101. The NRA did not assess the risk of virtual assets but did note that virtual currencies such as Bitcoins had been used for drug transaction payments that particularly involved marijuana trafficking. Virtual assets are intended to be included in future risk assessments.



NRA 沒有評估虛擬資產的風險，但確實注意到像比特幣這樣的虛擬貨幣已被用於特別像是大麻販運這樣的毒品交易付款。虛擬資產將包含在未來的風險評估中。

102. In the period 2016-18 there was a significant policy focus on AML/CFT reforms, which included the formation of the AMLO as a leading body responsible for organizing, supervising and coordinating Chinese Taipei's AML/CFT efforts. This contrasts to the period of 2007 - 2016 in which there was very little progress with reforms, or implementation of Chinese Taipei's AML/CFT system.

在 2016 - 18 年期間，國家政策高度關注防制洗錢/打擊資恐改革，其中包括成立了洗錢防制辦公室，作為負責組織，監督和協調中華臺北防制洗錢與打擊資恐工作的國家領導機關。這與 2007 年至 2016 年期間形成對比，在該期間，中華臺北的防制洗錢與打擊資恐體系改革或實施進展甚微。

103. Since 2017 Chinese Taipei has given a priority to policy reforms and a move to a risk based approach ahead of the ME, which has involved significant efforts of cooperation and coordination. The NRA sets out some policy directions and there is a clear plan to prepare a national strategy. AMLO and other agencies demonstrated work to prepare to adopt a strategy following the ME.

自 2017 年以來，中華臺北已於相互評鑑之前，將政策改革和採取以風險為基礎的方法置於優先順序，其中包括合作和協調的重大努力。NRA 提出了一些政策方向，並有明確計畫將制定國家策略。洗防辦和其他機關證明準備於相互評鑑後實施國家策略的工作。

104. Authorities demonstrated their agency-level AML/CFT policies and activities that directly reflect risk assessment findings. Chinese Taipei has adopted some strategies and action plans relating to predicate threats, which include elements of AML/CFT. These include New-Generation Anti-Drug Strategy and the Strategic Anti-Drug Action Plans (July 2017); National Integrity Building Action Plan; and the Action Plan for Comprehensive Enforcement of Intellectual Property Rights Protection.

當局證明機關層級的防制洗錢/打擊資恐政策和活動，直接反應風險評估的發現。中華臺北採取一些與前置威脅有關的策略和行動計劃，其中包括防制洗錢的元素：新世代反毒策略和安居緝毒方案（2017 年 7 月）；國家廉政建設行動方案；貫徹保護智慧財產權行動計劃。

105. Sufficient resources and manpower are allocated for AML/CFT policies and activities. Significant additional resources were provided and other resources re-allocated to support priority policies and activities in response to the updated understanding of ML/TF risks.

充足的資源和人力被分配於防制洗錢/打擊資恐政策和活動。因應對 ML / TF 風險的最新瞭解，已提供了大量額外資源，並將其他資源重新分配以支持優先的政策和活動。

### *Exemptions, enhanced and simplified measures*

#### *免除、加強及簡化措施*

106. Results of assessments of risk have generally been used to support application of enhanced measures in higher risk scenarios. A risk based approach to the application of simplified measures for lower risk scenarios is generally well supported by available assessments. A reduced range of AML/CFT measures have been applied to foreign exchange counters. FIs and DNFBPs are only required to apply simplified measures to foreign government entities, domestic government-owned enterprises, domestic public companies, and foreign listed companies. However, this does not sufficiently consider PEP risks and other higher risk areas.

風險評估結果一般用於支持高風險情境中採用的強化措施。現有評估通常很好地支持以風險為基礎方法來應用低風險情境的簡化措施。外幣收兌處採用縮小範圍的防制洗錢 / 打擊資恐措施。金融機



構和 DNFBP 對外國政府實體，國內公營事業，國內公開發行公司和外國上市公司採取簡化措施。但是，這並沒有充分考慮 PEP 風險和其他較高風險的領域。

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107. Taking into account the risks of a cash-based economy, Chinese Taipei has obliged FIs and most DNFBPs to report threshold transactions (CTRs) exceeding NT\$500,000 (USD 16700) to the MJIB. However despite the risks identified in the NRA, CTR obligations were not applied to transactions in the real estate sector.

考慮到現金經濟的風險，中華臺北要求金融機構和大多數 DNFBP 必須向 MJIB 申報超過新臺幣 50 萬元（16,700 美元）的現金交易（大額現金申報）。然而儘管 NRA 辨識出這樣的風險，但這些措施並未適用於不動產部門。

### *Objectives and activities of competent authorities*

#### *權責機關的目標與行動*

108. Regulatory and supervisory authorities' demonstrated that their objectives and activities are increasingly consistent with the results of the NRA and other assessments of risk. Supervisors, following the SRA, tended to focus on a sub-set of key threat areas and had not comprehensively adjusted their objectives and activities to take account of the wider set of priority threat areas. Since late 2017, the FSC has adjusted its priorities and activities in response to the NRA process findings. FSC and other supervisors have begun to increase their engagement on risk with AMLD and other LEAs and have increased the focus, frequency, scope and depth of supervision taking into account the updated understanding of risk.

管理和監理機關證明其目標和行動愈來愈符合 NRA 和其他風險評估的結果。在 SRA 之後，監理機關傾向於關注一部分的重大威脅範圍，而沒有全面調整其目標和行動，以考慮更廣泛的優先威脅領域。但自 2017 年底以來，金管會已根據 NRA 流程的發現結果，調整其優先事項和活動。金管會和其他監理機關並已開始與調查局洗錢防制處及其他執法機關聯繫，以增加對風險的投入，並且就其對風險瞭解的更新，增加了監理的重點、頻率、範圍和深度。

109. LEAs and the prosecutors have mostly aligned their investigative priorities to the eight very high threats identified in the ML/TF NRA prior to and since the completion of that assessment.

NRA 風險評估完成之前和之後，執法機關和檢察官已大多將其調查的優先順序與洗錢/資恐國家風險評估辨識的八種非常高風險威脅結合一致。

### *National coordination and cooperation*

#### *國家協調與合作*

110. Coordination and cooperation on combating ML, TF and PF is strong overall at both policy and operational levels. There has been a significant shift in the culture of AML/CFT coordination. This area was previously viewed as a responsibility of specific competent authorities, but 'buy-in' has increased with greater awareness and priority evident across more relevant government agencies.

在政策和實務兩個層面上，打擊洗錢、資恐和武擴的協調與合作，整體而言是強有力的。防制洗錢/打擊資恐協調文化發生了重大轉變。此一領域在先前被視為特定權責機關的責任，但近年來認同程度已有增加，包括明顯有更多相關政府機關對此提高意識和優先順序。

111. The EY has placed a strong priority on coordination and cooperation in the preparation of the NRA and for the ME process. The government has allocated significant resources to cooperation and coordination, both within the AMLO and through a wide range of joint agency processes. The establishment of the AMLO as the joint-agency coordination body for the NRA and ME preparation has

seen contributions from different government departments and state owned corporations which has supported a much deeper whole-of-government approach to coordination.

行政院在準備 NRA 和相互評鑑程序方面，強力將國家協調與合作置於優先順位。政府已經在洗錢防制辦公室內部和通過廣泛的跨機關流程，為合作和協調分配了大量資源。作為準備 NRA 和相互評鑑的跨機關協調單位，洗錢防制辦公室的建立得到了不同政府部門和國營事業的協助，這些協助支持了以更深入的政府整體方法進行協調。

112. A wide range of coordination and cooperation meetings and activities were held during the process of ML/TF NRA. Interagency cooperation and coordination meetings are periodically held and operationally on a case by case basis when necessary. For example in 2016, MOJ has collaborated with JY, MAC, MOFA, FSC, MOTC, NCC, CIB, MJIB, NIA, and HPO to establish the "Inter-Agency Platform against Cross-Border Fraud" to improve the effectiveness of combating cross-border fraud. Some competent authorities are responsible for coordinating national efforts relating to specific threats: NPA is coordinating cybercrime investigation; and NSB is responsible for coordinating TF efforts. Following the NRA, interagency communication meetings have been held among competent authorities and have led to increasingly coordinated efforts on most priority threats.

在洗錢/資恐國家風險評估的過程中，舉辦範圍廣泛的協調與合作會議及活動。跨機關的合作和協調會議定期舉行，且於必要時根據個案舉行實務會議。例如，在 2016 年，法務部與司法院，大陸委員會，外交部，金管會，交通部，國家通訊傳播委員會，警政署刑事警察局，法務部調查局，移民署和臺灣高等檢察署合作建立了“打擊跨境電信詐騙跨部會平台”，以改善打擊跨境詐欺的有效性。一些權責機關負責協調與特定威脅有關的努力：警政署正在協調網路犯罪調查；國家安全局負責協調資恐的努力。在 NRA 之後，權責機關間舉行跨機關溝通會議，提昇對優先處理威脅的協調努力。

113. While there are examples of good cooperation leading to strong operational outcomes, the level of cooperation and coordination among LEAs, AMLD and prosecutors needs to be enhanced. Prosecutorial authorities expressed their interest in enhancing cooperation with AMLD in parallel financial investigations and in tracing illegal funds.

雖然有合作良好的例子並帶來強有力的實務結果，但是執法機關、調查局洗錢防制處和檢察官之間的合作與協調程度需要加強。檢察機關表示有意在平行金融調查和追查非法資金方面加強與調查局洗錢防制處的合作。

114. Structures and joint agency cooperation in relation to combating TF operate well at both policy and operational levels. The main CT and CFT coordination mechanism is the Homeland Security Policy Committee of the EY, which was established to formulate CT policies, review laws, approve plans and supervise operations. The members are generally at the level of ministers and heads of departments. The Committee meets at least annually. In addition, coordination meetings for Homeland Security Policy Committee are held every quarter. At the operational level, the Director of OHS organises regular working level meetings for specific issues with relevant agencies.

在政策和執行層面上，與打擊資恐有關的架構和跨機關合作運作良好。主要負責打擊恐怖主義和資恐協調機制的是行政院國土安全政策會報，該會報的成立是為了制定打擊恐怖主義政策，審查法律，批准計劃和監督運作。會報成員通常是部長層級和機關首長。會報每年至少舉行一次會議。此外，每季都會舉行國土安全政策會報業務會議。在執行層面上，國土安全辦公室主任定期與相關機構就特定問題召開工作級會議。

115. The NSB leads the coordination of TF efforts with MOJ, as the competent authority for TF investigations. While Chinese Taipei has generally low TF risks, there have been a number of cases where authorities have closely considered possible TF or terrorism matters and demonstrated good operational level cooperation. In these cases, national security and law enforcement agencies, including the FIU, were shown to coordinate well.

國家安全局（NSB）負責領導與法務部的資恐協調工作，其中法務部是資恐調查的權責機關。雖然中華臺北的資恐風險普遍較低，但在一些案例中，當局已經密切考慮可能涉嫌資恐或恐怖主義的問題，並在實務上表現出良好的合作。在這些案例中，包括金融情報中心在內的國家安全和執法機關被證明能夠很好地協調。

116. The central authority in charge of CT policy is the OHS which regularly exchanges information with national security, LEAs and administrative agencies through meetings of the EY Homeland Security Policy Committee. The level of information exchange is consistent with the TF risk profile.

負責反恐政策的中央機關是國土安全辦公室（OHS），它透過行政院國土安全政策會報，定期與國家安全機關，執法機關和行政機關交換資訊（參見 IO 9）。資訊交換水準與中華臺北的資恐風險狀況一致。

117. Supervisory authorities demonstrate a degree of cooperation with LEAs and AMLD. However, there is a need for closer cooperation and information sharing to support supervisors to take a deeper approach to risk-based supervision and outreach.

監理機關證明與執法機關和調查局洗錢防制處進行一定程度的合作。但是，彼此間需要更密切的合作和資訊共享，以支持監理機關用更深入的方法進行以風險為基礎的監理和宣導。

118. Inter-agency processes have worked well to support the preparation and implementation of the legal framework and regulated implementation mechanisms for TFS to combat PF. Coordination on combating WMD, including PF, has involved a wider set of stakeholders than earlier AML/CFT coordination work. It is notable that Chinese Taipei has consulted closely with foreign partners and regional bodies when pursuing measures to give effect to UN and FATF obligations to combat the proliferation of WMD and PF. The additional measures to allow for additional PF-related domestic designations and TFS were supported by close coordination and an understanding of vulnerabilities.

中華臺北機關間的合作程序，非常良好地支持準備和實施有關目標性金融制裁(TFS)的法律框架和管理執行機制，以打擊武擴行為。與早期的防制洗錢/打擊資恐協調工作相比，打擊包括武擴在內的大規模毀滅性武器擴散的協調涉及更多利益相關方參與。值得注意的是，中華臺北在尋求措施以落實聯合國和 FATF 打擊大規模毀滅性武器擴散的義務時，已與外國夥伴和區域性機關進行了密切磋商。通過密切協調和對弱點的瞭解，支持以額外的措施來對國內新增與武擴相關的指定名單和執行目標性金融制裁。

### *Private sector's awareness of risks*

#### *私部門的風險認知*

119. FIs and DNFBPs, through their sectoral associations and individual firms, were closely involved in the conduct of the NRA and subsequent awareness raising on risk. The authorities included association representatives and senior managers of FIs and DNFBPs in the ML/TF NRA process. Results of risk assessments to related FIs, DNFBPs were shared through seminars, face-to-face meetings, and publication of guidelines.

金融機構和 DNFBP 藉其部門公協會和個別公司的參與，密切涉入 NRA 和後續提高風險認知的活動。當局將金融機構和 DNFBP 的公協會代表及高階管理人員納入洗錢/資恐國家風險評估程序。風險評估結果並以舉辦研討會，面對面會議和出版指引等方式，與相關金融機構和 DNFBP 分享。

120. AMLO played a vital role in the efforts to reach out to private sector and DNFBPs with the aim of raising their awareness on the results of ML/TF NRA. Significant resources (AMLD, FSC, AMLO, etc.) were allocated to help to ensure that respective FIs, DNFBPs and related sectors are aware of the results of risk assessments and increase their understanding of ML/TF risks. There was also widespread coverage of the NRA process and results in media and social media coverage.

洗錢防制辦公室在努力與私部門和 DNFBP 接觸方面發揮了至關重要的作用，目的是要提高它們對洗錢/資恐國家風險評估結果的認識。調查局洗錢防制處、金管會、洗錢防制辦公室等分配了大量資源，以幫助確保個別金融機構，DNFBP 和相關部門瞭解風險評估結果，並增進它們對洗錢/資恐風險的認識。NRA 的流程和結果也在媒體和社群網路受到了廣泛報導。

121. Sectoral associations and private sector representatives demonstrated a reasonable understanding of findings contained in the NRA and an increasing understanding of risk. The private sector had lacked further specific details of key risks. Immediately prior to the ME onsite the FSC, AMLD and LEAs held a number of compliance events with the private sector which included more detailed sharing of information on current and emerging risks.

公(協)會和私部門代表對 NRA 所述的結果表現出合理的瞭解，以及持續增進的風險認識。私部門過去對重大風險領域缺乏進一步具體細節資訊。緊接在現地評鑑之前，金管會、調查局洗錢防制處和執法機關與私部門舉行了一些法遵活動，其中包括與私部門更詳細地分享當前和新興出現的風險。

### *Overall Conclusion on Immediate Outcome 1*

#### *直接成果 1 整體結論*

122. Chinese Taipei demonstrated a reasonable assessment and generally sound understanding of ML/TF risks. Overall AML/CFT policies and activities largely seek to address the risks identified in the NRA and other assessments. National co-ordination and co-operation on AML/CFT issues at the policy and operational levels has improved significantly since the last evaluation. This is particularly evident in relation to policy level co-ordination among LEAs, however there are opportunities for deeper operational levels cooperation.

中華臺北展現出對洗錢/資恐風險合理的評估與普遍良好的瞭解。整體而言，防制洗錢/打擊資恐政策和活動主要是為了解決 NRA 和其他評估中辨識的風險。自上一輪評鑑以來，國家防制洗錢/打擊資恐在政策和實務層面的協調及合作已大幅改善，特別在執法機關之間的政策協調方面尤其明顯，然而在實務層面仍有更深入合作的機會。

**123. Chinese Taipei has a substantial level of effectiveness for Immediate Outcome 1.**

**中華臺北 IO1 評等為相當有效。**



## Key Findings and Recommended Actions

## 重要發現與建議行動

## Key Findings

## 重要發現

## Immediate Outcome 6 (Financial intelligence ML/TF)

## 直接成果 6 (洗錢與資恐金融情報)

- 1) Financial intelligence and related information is used extensively to investigate ML, associated predicate offences, potential TF cases and for tracing criminal proceeds. LEAs are well equipped and experienced in using and generating financial intelligence in investigations to uncover complex structures and networks. AMLD adds value in complex financial investigations, particularly those involving international elements. LEAs actively generate and use financial intelligence, drawing on AMLD products and other data.

金融情報及其相關資訊廣泛運用於調查洗錢、相關的前置犯罪、潛在的資恐案件和追查犯罪所得。執法機關在使用和製作金融情報於調查，以發現複雜的結構和網絡方面，具有良好的設備和經驗。法務部調查局洗錢防制處能為複雜的財務調查增值，特別是那些涉外的財務調查。執法機關運用法務部調查局洗錢防制處的情報和其他資料，積極製作和使用金融情報。

- 2) For the very few cases that involved elements of TF, AMLD demonstrated experience of providing related financial intelligence, including that obtained through Egmont channels.

法務部調查局洗錢防制處在涉嫌資恐的極少數案例當中，展現提供相關金融情報的經驗，包括透過艾格蒙聯盟獲得的金融情報。

- 3) The AMLD receives a large number of STRs and an even greater number of CTRs. AMLD demonstrated quality intelligence products produced by experienced and capable analysts. Despite having a database that scans for priority indicators, AMLD staff analyse each STR received and those CTRs screened as higher risk. In conducting their analysis, AMLD has access to a very wide range of information.

洗錢防制處受理大量可疑交易報告及為數更多的大額通貨交易報告。洗錢防制處的金融情報品質優良，由經驗豐富、能力良好之分析人員製作。儘管有資料庫可檢覈優先指標，洗錢防制處人員亦併以人工檢視每件受理之可疑交易報告及經檢覈高風險的大額通貨交易報告。洗錢防制處在執行分析時，能調取廣泛的資訊。

- 4) AMLD produces a reasonable number, range and quality of analysis reports with approximately 15% of STRs becoming analysis reports each year. MJIB is the predominant recipient of AMLD disseminations and, to a lesser extent NPA, Prosecutors and TA. Reflecting its role, AAC makes relatively little use of AMLD financial intelligence. Whilst STRs play a key role in financial investigations, fewer STRs generate new investigations.

洗錢防制處每年產出分析報告的數量、範圍及品質合理，比例約占可疑交易申報數量之 15%。法務部調查局為洗錢防制處分析報告之主要接收機關，其次為內政部警政署、檢察署及稅務機關。廉政署因為角色的關係，相對較少運用洗錢防制處分送之金融情報。



雖然可疑交易報告在財務調查中扮演關鍵角色，但因可疑交易報告而啟動新調查的情況較少。

- 5) FIU analysis and disseminations support the operational needs of competent authorities to a large extent. This includes AMLD's uses of Egmont Group information to support domestic and transnational investigations and to assist in overcoming difficulties LEAs face in obtaining international cooperation. The FIU cooperates extensively with other competent authorities to exchange information and financial intelligence. AMLD staff performs a wide range of crucial additional functions going beyond receipt, analysis and dissemination of STRs (including outreach, feedback, TFS administration, etc.). Despite high skills and ICT capabilities, with increased staffing the assessment team considers AMLD could achieve greater outputs.

金融情報中心的分析和分送在很大程度上支援權責機關的實務需要。這包括洗錢防制處善用艾格蒙聯盟資訊，支援國內及跨國的調查，協助執法機關克服在國際合作面臨的困難。金融情報中心亦與其他主管機關充分合作，以交流資訊和金融情報。除了接收、分析和分送可疑交易報告外，洗錢防制處的人員還能執行廣泛、額外的重要功能（包括宣導、意見反饋及目標性金融制裁行政事宜等）。評鑑團認為洗錢防制處人員具備相當嫻熟的技能及資訊科技通訊能力，但如能增加該處的人力，將可以達到更卓越的成效。

#### *Immediate Outcome 7 (ML investigation and prosecution)*

##### *直接成果 7(洗錢犯罪調查及起訴)*

- 1) Chinese Taipei's legal and institutional frameworks demonstrate compliance with the international standards with the exception of a small scope gap in the smuggling of migrants as a predicate offence. The small scope gap does not significantly impact on effectiveness.

除了走私移民不是洗錢犯罪的前置犯罪是一個小的落差外，中華臺北的法律及制度架構與國際標準是相符合的，這個小的落差不會顯著影響效能。

- 2) LEAs demonstrated the ability to investigate complex financial crime cases and related financial investigations. Cases presented demonstrate complex financial investigations tracing money trails, lifting the corporate veil, unravelling layers of ownership and money being sent offshore. The role of the prosecutor in driving ML investigations and coordinating authorities according to expertise has been a strength. The MJIB and prosecutors have specialist economic crime units that assist in complex matters.

執法機關展現出調查複雜金融犯罪及相關金融調查的能力。案例展現出複雜的金融犯罪案件包括追查金流、揭開公司面紗、揭開所有權結構及追查海外資金。在更複雜的洗錢案件中執法機關善用其他機關的專業。檢察官根據專業知識在推動洗錢調查和協調機關方面一直是一種力量，法務部調查局及檢察官擁有專業的經濟犯罪單位協助調查複雜的案件。

- 3) Authorities are not investigating and prosecuting ML in line with the overall risk environment and context (when compared to the significant number of profit generating predicate offences occurring in Chinese Taipei). Of the cases of ML that have been investigated or prosecuted, these broadly align to the risk profile with the exception of drug trafficking and smuggling matters.

機關在調查及起訴洗錢與整體風險環境及概況並不相符(當與從發生在中華臺北的前置犯罪所產生的龐大利潤相比)。除了毒品販運及走私以外，在已經調查或起訴的洗錢犯罪大體上與風險相符。

- 4) A clear incentive for prosecutors to apply ML charges was lacking until the MLCA was amended in June 2017. ML has been given greater priority since the amendment.

在 2017 年 6 月修訂洗錢防制法之前，缺乏對檢察官適用洗錢起訴的明確誘因。自修法以來，洗錢已變成較優先的事項。

- 5) Authorities note that third party ML constitutes a high risk threat, however there have been very few third party ML investigations and prosecutions until more recently.

機關指出第三方洗錢是中華臺北高風險威脅之一，但是直到最近第三方洗錢的調查及起訴非常少。

- 6) The rate of conviction for ML is low and the penalties applied have not been dissuasive.

洗錢罪的定罪率低且處罰不具有勸阻性。

#### *Immediate Outcome 8 (Confiscation)*

##### *直接成果 8(沒收)*

- 1) Chinese Taipei has a good legal framework for seizing and forfeiting criminal proceeds, instrumentalities and property of equivalent value. Chinese Taipei has heavily relied on criminal forfeiture to seize and forfeit criminal assets located in Chinese Taipei as well as the proceeds transferred overseas. Chinese Taipei does not have administrative forfeiture. All forfeiture must be adjudicated by a court order.

中華臺北擁有良好的法律框架，可以扣押和沒收犯罪所得，犯罪工具和等價值的財產。中華臺北當局非常依賴刑事沒收來扣押和沒收位於中華臺北的犯罪資產以及轉移到海外的收益。中華臺北沒有行政沒收。所有的沒收都要有法院命令。

- 2) Efforts for forfeiture of criminal proceeds, instrumentalities, and properties of corresponding value have been enhanced by an expressed strategic direction and emphasis on the pursuit of forfeiture of proceeds of crime as a goal.

通過明確的政策方向和強調以追求沒收犯罪所得為目標，強化了沒收犯罪所得，工具和等價值財產的努力。

- 3) Chinese Taipei has appropriately used a variety of tools in identifying, tracing and forfeiting criminal assets. Provisional measures provided under the CPC operate well in practice.

中華臺北已經適當地使用各種工具來識別，追查和沒收犯罪資產。刑事訴訟法的暫時性措施在實務中運作良好。

- 4) Chinese Taipei is successful in forfeiting a significant value of assets comparable to the size of its economy. The amount forfeited arising from a range of predicate offenses appears to be consistent with Chinese Taipei's risk profile. Significant assets remain under restraint subject to ongoing actions.

中華臺北成功地沒收了大量與其經濟規模相當的資產，因前置犯罪而被沒收的金額似乎與中華臺北的風險狀況一致。大量的資產仍在限制中，需要持續的行動。

- 5) Asset management at the stage of restraint is reasonably well supported by prosecutors.

在限制階段的資產管理得到了檢察官的充分的支持。

- 6) Chinese Taipei has been able to obtain a domestic judicial order against criminal proceeds located offshore for enforcement and registration in a foreign court, which successfully restrained the criminally-linked assets in the foreign jurisdiction. Authorities have been able to seize locally-based funds relating to foreign predicate offences; however, Chinese

Taipei is not able to share the proceeds where a final forfeiture order against the seized funds has not been entered.

中華臺北已經能夠取得針對海外犯罪所得的國內司法命令，以便在外國法院執行和登記，從而成功地禁制了在外國與犯罪有關的資產。當局已經能夠扣押與外國前置犯罪有關的國內資金；但是，如果沒有針對被扣押資金的最終沒收命令，中華臺北將無法分享所得款項。

- 7) MLCA amendments (2017) expanded the controls on declaration and possible seizure and confiscation cross border cash, which reflects the high risk of undeclared or falsely-declared cash smuggling of criminal proceeds to/from neighbouring jurisdictions. An increase in operational responses since the amendments was beginning to be demonstrated.

2017 年 MLCA 修正案擴大了對申報和可能被扣押和沒收跨境現金的控制，這反映了來自鄰近司法管轄區未申報或不實申報的現金走私犯罪收益的高風險。自修正後，業務上回應開始有所增加。

### **Recommended Actions**

#### **建議行動**

#### *Immediate Outcome 6 (Financial intelligence ML/TF)*

#### *直接成果 6 (洗錢/資恐金融情報)*

- a) Despite high performing staff, the AMLD would benefit from an increase in human resources to support: (i) increased strategic analysis outputs; (ii) greater use and analysis of the large amount of information available to the FIU; (iii) increased number of analysis reports to disseminate to LEAs; and (iv) greater support if needed to LEAs in their investigations.

儘管洗錢防制處人員素質優良，人力增加可使洗錢防制處受益以助於：(i) 增加策略性分析產出；(ii) 提升運用及分析金融情報中心取得之大量資訊；(iii) 提高分送執法機關之分析報告數量；及(iv) 強化執法機關調查所需的支援。

- b) Further increase AMLD support for the operational needs of other LEAs and supervisors in order to: minimize the number of disseminations that do not proceed to full investigations; support supervisors' market entry and supervisory activities; and allow tax authorities to access a greater range of CTRs to support their administrative and criminal justice activities.

進一步強化洗錢防制處支援其他執法和監理機關的實務需求，以降低分送卻未全面應用於案件調查之金融情報數量；支援監理機關的市場進入和監理活動；允許稅務機關能取得更多的大額交易通報資料，以支援他們的行政和刑事司法活動。

- c) Further integrate interaction between AMLD analysts and MJIB and NPA at the stage of targeting high risk crime types, e.g. drug trafficking, smuggling and third party ML networks.

在針對高風險犯罪類型例如毒品販運、走私和第三方洗錢網絡等的調查上，應進一步整合洗錢防制處的分析與法務部調查局和內政部警政署之間的互動。

- d) Extend authorities' online access to include information such as foreign exchange transactions data and cross border wire transfer information from the Central Bank.

擴大透過線上取得資訊的權限，包括來自中央銀行的外匯交易資料和跨境電匯資料等。

- e) AMLD is encouraged to focus strategic intelligence products on high-risk foreign proceeds and regional and domestic high risk crime trends.

鼓勵洗錢防制處將策略性分析情報的重點著重在高風險的外國犯罪所得，和區域性及國內的高風險犯罪趨勢。

*Immediate Outcome 7 (ML investigation and prosecution)*

*直接成果 7(洗錢犯罪調查及起訴)*

- a) LEAs should increase the use of the ML offence including through enhancement of the quality of briefs of evidence, consideration of ML at an early stage of predicate offence investigations and prioritisation of third party ML across a wider range of offences and particularly the high risk crime types.

執法機關應該擴大洗錢犯罪調查，方法包括提升證據品質、在調查前置犯罪的階段考慮調查洗錢犯罪，以及在更廣泛的犯罪範圍內，特別是高風險犯罪類型優先調查第三方洗錢。

- b) Reconsider the penalty for ML, on the basis of statistics supplied, the sanctions applied against natural persons were not effective, proportionate or dissuasive.

重新考慮對洗錢犯罪的處罰，根據所提供的統計數據，對自然人實施的制裁並非有效、合乎比例性或具有勸阻性的。

- c) Prioritise pursuing legal persons and ML based on foreign predicate offences in line with the risk profile.

應以風險為本優先追查法人犯罪及前置犯罪在國外的洗錢犯罪。

- d) Prioritise continued outreach and training to the judiciary to ensure an understanding of the complexity and importance of the ML offence and to ensure that sanctions applied are proportionate and dissuasive.

考慮繼續向司法機關進行宣導和訓練，以確保理解洗錢犯罪的複雜性及重要性，並確保所適用的制裁是合乎比例性及具勸阻性。

*Immediate Outcome 8 (Confiscation)*

*直接成果 8(沒收)*

- a) Chinese Taipei should consider designating AEA as an agency responsible for asset management from the moment of seizure (or earlier) and ensure they are able to manage or convert seized assets into cash, thereby relieving prosecutor's work load and effectively utilising AEA's expertise in asset management.

中華臺北應考慮從扣押（或更早）的那一刻起將法務部行政執行署指定為負責資產管理的機構，並確保他們能夠管理或將扣押的資產轉換為現金，從而減輕檢察官的工作量並有效利用法務部行政執行署在資產管理方面的專業知識。

- b) Chinese Taipei should consider the proportional application of forfeiture by the Customs Administration to non-declared or falsely declared currency or BNI. Proportionality is particularly relevant if such currency or BNI can be proven to be derived from a legitimate source.

中華臺北應考慮由海關當局依比例來沒入未申報或不實申報的貨幣或無記名可轉讓金融工具(BNI)。如果可以證明貨幣或無記名可轉讓金融工具來自合法來源，適用比例原則會特別重要。



- c) Chinese Taipei should consider enacting an in rem forfeiture law, filling in the legal gaps where the existing non-conviction based forfeiture provision under the CPC may not convey the authority to pursue forfeiture.
- d) 中華臺北應考慮制定對物沒收專法，來填補現行刑事訴訟法的單獨宣告沒收規定下可能無法賦予權責機關沒收的法律漏洞。

124. The relevant Immediate Outcomes considered and assessed in this chapter are IO6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R.4 and R.29-32.

本章考慮及評估的直接成果為 IO6-8。與本章節效能評估有關的建議為 R.3、R.4 及 R.29-32。

### *Immediate Outcome 6 (Financial intelligence ML/TF)*

#### *直接成果 6 (洗錢/資恐金融情報)*

##### *Use of financial intelligence and other information*

##### *使用金融情報及其他資訊*

125. The AMLD is a law enforcement style FIU sitting within the MJIB. FIU staff are trained judicial police officers and undertake their work using such powers. Financial intelligence is developed by the FIU and disseminated to judicial police officers and prosecutors spontaneously or as required. Other LEAs and Prosecutors also develop their own financial intelligence in conducting parallel financial investigations alongside predicate offence matters. Financial intelligence is generated and used as a valuable tool in predicate offence and ML investigations by both AMLD and LEAs. It is pertinent to note that as AMLD officers are also MJIB staff, they operate with the same judicial police powers as other key LEAs.

洗錢防制處為執法型金融情報中心，設置於法務部調查局內。金融情報中心人員為受訓過的司法警察官，運用職權執行金融情報中心工作。金融情報中心研編金融情報，並自行或依請求分送予司法警察和檢察官。其他執法機關和檢察官也於調查前置犯罪併行財務調查時，自行研編金融情報。洗錢防制處及執法機關均能產製並運用金融情報，其其成為對前置犯罪及洗錢調查具有價值之工具。應注意的是，洗錢防制處人員也是法務部調查局人員，能執行與其他主要執法機關相同的司法警察權。

126. Nevertheless, AMLD has access to a very wide range of financial information directly including STRs, ICTRs, CTRs, Financial Information Services Co (FISC) information, information from the private sector, information held by the Joint Credit Information Centre (JCIC), and the TWSE. It also may access household registration, criminal records, immigration records, vehicle/vessel/aircraft registration, labour insurance, national insurance, status of foreign workers, stolen item information, business registration, information on cases processed by the 165 anti-fraud platform, foundation registrations, taxi driver information, telephone numbers, indictments and court judgments. LEAs also have access to the above information with the exception of STRs, CTRs and ICTRs which they receive on request to AMLD.

然而，洗錢防制處可以直接獲取範圍廣泛的金融資訊，包括 STRs、ICTRs、CTRs、財金資訊股份有限公司(FISC)資訊、私部門提供的資訊、財團法人金融聯合徵信中心(JCIC)留存的資訊和臺灣證券交易所(TWSE)資訊。另外還可以取得戶政登記、刑事犯罪記錄、出入境記錄(移民)、車輛/船隻/飛機登記、勞保、健保、外國移工身份、贓物資訊、商業登記、165 反詐騙平台之的案資料、基金會登記、計程車駕駛資訊、電話號碼、起訴書和法院判決書。執法機關除須依請求向洗錢防制處取得 STRs、CTRs 和 ICTRs 等資訊外，其他以上資訊均可取得。

127. To support the development of financial intelligence by the AMLD and various LEAs, Chinese Taipei developed an account opening information retrieval system, FISC, in 2001. The



FISC provides information on whether a party under investigation has an account (either current or closed) with an FI. Based on MOJ Directions, the following LEAs have access to FISC: Prosecutors' Offices, NPA, Coast Guard Administration, MJIB, AEA and AAC. LEAs can obtain account information and transaction particulars. A new function for checking safety deposit box rentals (in line with findings of risk) was added to the system on 31 March 2018 with clear guidelines as to response times required of the FI.

3

中華臺北於 2001 年由財金資訊股份有限公司開發了開戶資料檢索系統 (FISC 系統)，以支持洗錢防制處和各執法機關發展金融情報。財金資訊股份有限公司可提供被調查的對象在金融機構是否有帳戶 (現有帳戶或結清戶) 的資料。依法務部管理要點，下列執法機關可取得 FISC 資訊：檢察署、警政署、海巡署、法務部調查局，法務部行政執行署和法務部廉政署。執法機關可以取得帳戶資料和交易明細。該系統於 2018 年 3 月 31 日增加確認保管箱租用的新功能 (與風險結果一致)，包含明確指示金融機構需回應的時間。

128. Prosecutors are able to present requests to FIs electronically for account information. Requests may be made for digitized information of personal information on account holders and particulars of transactions that took place during a specified period. FIs are required to provide the requested information within 7 working days through the electronic platform. This new system went online for all prosecutor offices on 1 March 2018. For most other LEAs, information from the private sector is requested via "official letter".

檢察官能以電子方式向金融機構提出帳戶資訊請求，要求提供關於帳戶持有人基本資料的數位資料，以及在特定期間內之交易明細。金融機構必須在 7 個工作日內，透過電子平台提供所要求的資訊。這個新系統於 2018 年 3 月 1 日與所有檢察署連線。而大多數其他執法機關則透過「公文」向私部門請求資訊。

129. LEAs have online access to a wide range of financial and non-financial data in order to develop parallel financial intelligence. Where online access is not available, official letters are widely used between authorities including AMLD to obtain information such as wire transfers and foreign exchange data transactions (including tax authorities, RTC, FSC etc.). One such database is the singular window interface developed by MOJ which is accessible by all MOJ authorities (prosecutors, MJIB, AMLD) and contains financial, administrative and law enforcement information. In addition to the singular window access, MJIB established closed internal systems accessible by MJIB agents (including AMLD). NPA has a similar online query systems available for its police force.

執法機關可於線上請求查詢各種金融和非金融數據，同步研編金融情報。如果沒有線上查詢權限，則機關間含洗錢防制處，廣泛運用公文方式，調取如匯款及外匯交易資料 (含稅務機關、中央存款保險股份有限公司及金融監督管理委員會等)。其中一個資料庫為法務部單一窗口，供全體法務部所屬單位 (檢察官、法務部調查局、洗錢防制處) 使用，內容有金融、行政和執法的資訊。除了單一窗口外，法務部調查局亦建置封閉的內部系統供調查人員 (含洗錢防制處) 查詢。內政部警政署亦有類似線上查詢系統，供警察人員使用。

130. Statistics provided by Chinese Taipei as to the number of enquiries made by LEAs for various forms of financial and other information (such as CTRs, JCIC, criminal records, motor vehicle registration, entry and exit records, stolen item information etc.) through the singular window of the MOJ are significant. It is evident from this data that in particular the MJIB, AMLD and Prosecutors seek a wide range of readily available information.

中華臺北所提供有關執法機關透過法務部單一窗口查詢各項金融及其他資訊 (如大額通貨交易報告、聯徵中心、刑事犯罪紀錄、車籍登記、入出境、贓物等) 的統計數字，數量非常可觀。資料顯示特別是法務部調查局、洗錢防制處與檢察官所能運用易於取得的資料相當廣泛。

**Table 3.1: Inquiries received by JCIC and FISC from 2015 to 2017**

表 3.1 2015 年至 2017 年金融聯合徵信中心及財金資訊公司收到請求統計

| JCIC<br>Personal<br>and<br>corporate<br>credit<br>extension<br>金融聯合徵<br>信中心個人<br>和企業授信<br>資料 | Inquiring<br>Agency<br>請求機關 | 2014          | 2015          | 2016          | 2017          | 2018          |
|--|-----------------------------|---------------|---------------|---------------|---------------|---------------|
|  | Courts<br>法院                | 1,043         | 989           | 1007          | 925           | 811           |
|  | Prosecutors<br>檢察官          | 105           | 392           | 681           | 925           | 157           |
|  | MJIB<br>法務部調查局              | 90            | 436           | 587           | 325           | 111           |
|  | AAC<br>行政執行署                | 10            | 48            | 38            | 75            | 29            |
|  | AEA<br>廉政署                  | 2,215         | 2688          | 2541          | 2307          | 1,897         |
|  | NPA<br>內政部警政署               | 15,790        | 17694         | 32950         | 39063         | 30,867        |
| <b>FISC<br/>財金資訊公<br/>司</b>  | Courts<br>法院                | 304           | 348           | 533           | 505           | 533           |
|  | Prosecutors<br>檢察官          | 7,112         | 7946          | 7926          | 10174         | 9,359         |
|  | MJIB<br>法務部調查局              | 4,515         | 4747          | 4413          | 6033          | 6,866         |
|  | AAC<br>行政執行署                | 1,497         | 1082          | 1253          | 2021          | 2,340         |
|  | AEA<br>廉政署                  | 20,567        | 14,491        | 23,434        | 20,517        | 13,837        |
|  | NPA<br>內政部警政署               | 2,222         | 2707          | 4316          | 9366          | 10,795        |
|  | CGA<br>海洋委員會海<br>巡署         | 38            | 15            | 36            | 15            | 121           |
|  | Total (FISC)<br>小計 (FISC)   | 36,255        | 31,321        | 41,911        | 48,631        | 43,851        |
| <b>Total (FISC + JCIC)<br/>兩者總和 (FISC + JCIC)</b>  |                             | <b>55,508</b> | <b>53,937</b> | <b>75,270</b> | <b>87,791</b> | <b>77,723</b> |

Note: Inquiries made by NPA include information related to watch-listed accounts (including queries submitted online and through official letters; unit: number of inquired individuals)

註：內政部警政署的查詢包括與警示帳戶相關的資訊（包括透過線上和發公文的查詢；單位：被查詢個人的人數）

131. LEAs demonstrate good use of financial intelligence in investigations with an enhanced ability to conduct financial analysis in financial investigations. This was demonstrated to a lesser extent by AAC and NPA. Authorities presented the team with many case studies of complex financial investigations that led to the arrest of wider networks and fugitives. The success of these matters was premised on the clearly advanced ability of LEAs to investigate and generate financial intelligence in their own investigations and to a lesser extent, information such as STRs from the FIU.

執法機關在調查中表現出高度使用金融情報，具備在金融調查中進行財務分析的高度能力。法務部廉政署及內政部警政署這方面展現程度則較小。各機關向評鑑團說明許多案例，因複雜之財務調查而查獲規模更大的犯罪網絡與通緝犯。這些案件調查成功的主因係執法機關在調查中展現高度的調查及編製金融情報之能力，較少源自金融情報中心分送之 STR。

132. With respect to the AAC, it does not usually investigate complex corruption matters as these are investigated by MJIB. However, the team notes a need for increased cooperation between AAC and AMLD to uphold national efforts to deter corruption offences.

法務部廉政署通常不會調查複雜的貪污案件，因該等案件通常由法務部調查局著手調查。然而，評鑑團認為法務部廉政署和洗錢防制處之間需加強合作，共同維護國家避免貪污犯罪。

133. As discussed further in IO9, despite the low risk of TF in Chinese Taipei, authorities are well-placed to investigate potential instances of TF. AMLD in particular as the focal point for the Egmont Group plays a key role in financial investigations in TF matters. In relation to any potential TF investigation involving international elements, the AMLD is the competent authority for the receipt and exchange of information. AMLD demonstrated that requests from foreign counterparts were actioned in a timely manner.

正如 IO9 中所討論的內容，儘管中華臺北的資恐風險較低，但權責機關有能力調查疑似資恐的案件。洗錢防制處作為與艾格蒙聯盟聯繫的單位，在資恐案件的財務調查中發揮關鍵作用。關於涉外的任何疑似資恐調查，洗錢防制處是接收和交換資訊的權責單位。洗錢防制處展現能即時回應外國夥伴的請求。

#### **Case Example 3.1 - Financial investigation of potential TF in Chinese Taipei**

##### **案例 3.1-中華臺北疑似資恐案件之財務調查**

Two Chinese Taipei locals sought to cause explosions on the High Speed Rail in Chinese Taipei by placing two suitcases containing self-made explosives. Whilst the explosions didn't proceed due to faults in their design, the explosives were discovered and reported to authorities. AMLD commenced financial investigations on the two subjects and reached out to FIs urging them to share information concerning these individuals and received STRs from more than 10 FIs. AMLD conducted analysis of the STRs and related information. Analysts discovered that the suspects converted all of their assets into cash prior to the crime, to collate money to go short on the Chinese Taipei Index Futures on the Singapore Exchange on the basis that the explosions would cause unrest and have a negative impact on the market. The suspects were eventually charged with violations of the Futures Trading Act amongst other criminal offences.

兩位中華臺北公民放置兩個裝有自製炸藥的手提箱在高鐵上，意圖使其爆炸，最後由於設計缺陷，致爆炸沒有發生，但爆炸物後來被發現並交給權責機關。洗錢防制處對這兩個嫌犯進行財務調查，並與金融機構聯繫，敦促他們分享這兩人的資訊，並從超過 10 個金融機構收到可疑交易報告。洗錢防制處分析可疑交易報告和案關資訊後發現，這兩位犯嫌在犯罪前曾將所有資產轉換為現金，並在新加坡交易所進行中華臺北指數期貨的放空，犯案理由是因為爆炸會導致市場動盪，並對市場產生負面影響。嫌疑人最終被依違反期貨交易法及其他刑事犯罪判刑。

#### *STRs received and requested by competent authorities*

##### *接獲可疑交易報告及接受主管機關請求查詢可疑交易報告*

134. AMLD receives STRs, CTRs and ICTRs relating to ML, predicate offences or TF. Cash transactions exceeding NTD 500,000 are required to be reported to AMLD by FIs, and some DNFBPs. CTRs are processed through for red flag indicators (such indicators change as risk profiles adapt). AMLD staff review and assign cases to analysts when red flags are identified. ICTRs are analysed by AMLD's database to ensure that the data is correct (the CTR database will automatically send a notice to the agency for rectification if it is not correct). The ICTR is then stored in the AMLD database where it is screened against certain red flag indicators for priority (including amount, frequency and whether the individual has a criminal record). In these circumstances, cases are selected for further analysis. AMLD demonstrated a number of cases that originated from ICTRs. Financial analysis conducted by AMLD cross-references ICTRs, CTRs and STRs.

洗錢防制處受理洗錢、前置犯罪或資恐相關之 STR、CTR 及 ICTR。金融機構及某些 DNFBPs 超過新台幣 50 萬元之現金交易，應向洗錢防制處申報。CTR 透過大額交易智慧分析系統篩選可疑指標(如採取之風險剖析指標改變)，當辨識出可疑指標，洗錢防制處則檢視並分案予分析

人員。ICTR 申報通報資料則由洗錢防制處資料庫確認資料之正確性(如資料不正確，資料庫會自動通知通報機關更正)，ICTR 即儲存於洗錢防制處資料庫中，輔以某些可疑指標篩選出優先分析情況(包括數額、頻率及申報人有無前科等)。符合這些條件者，即挑出進一步分析。洗錢防制處說明數個源自 ICTRs 的案例。洗錢防制處進行金融分析均交叉參考 ICTRs, CTRs 及 STRs 資料。

135. Once STRs are received and processed through the database for priority and based on risk indicators, the section chief will personally review each STR. High risk STRs are assigned to analysts for further analysis. Once assigned to an analyst, they will access the available databases and seek further information. Such information includes whether the individual has interests as a director or supervisor of a company, household registration, vehicle, taxation, immigration and other information. Most of this information is able to be obtained from the MOJ single window. Overall, approximately 15% of all STRs become analysis reports. Feedback from LEAs indicated that they find the product of AMLD intelligence to be useful however this is not necessarily borne out in the statistics.

一旦洗錢防制處受理 STR 並經資料庫依據風險指標處理優先情形者，洗錢防制處科長會親自檢視每件 STR。那些被標記為高風險者，就分案進行後續分析。分析人員收到分案後，會查詢現有資料庫並搜尋更多資訊。相關資訊包括個人是否具有公司董事或監事身分、戶政、車籍、稅務、移民和其他資訊。大部分資訊都可以從法務部單一窗口取得。總體而言，所有可疑交易報告中約有 15% 會成為分析報告。從執法機關的回饋顯示，他們認為洗錢防制處產出的情報是有用的，但這未必在統計數據中得到證實。

**Table 3.2: CTRs and ICTRs received by the AMLD from 2014 to 2018**

表 3.2 2014 年至 2018 年洗錢防制處接獲 CTRs 和 ICTRs 統計

|                                | 2014      | 2015      | 2016      | 2017      | 2018      |
|--------------------------------|-----------|-----------|-----------|-----------|-----------|
| FIs - CTRs<br>金融機構- CTRs       | 4,107,745 | 3,934,706 | 3,712,684 | 3,543,775 | 3,207,222 |
| DNFBPs - CTRs<br>DNFBPs - CTRs | 0         | 2         | 1         | 32        | 77        |
| Total CTRs<br>CTRs 總計          | 4,107,745 | 3,934,708 | 3,712,685 | 3,543,807 | 3,207,299 |
| ICTRs<br>ICTRs                 | 17,781    | 27,727    | 33,555    | 196,822   | 337,467   |

**Table 3.3: STRs received and processed by the AMLD from 2014 to 2018**

表 3.3 洗錢防制處 2014 年至 2018 年接獲及處理可疑交易報告統計

|   | 2014  | 2015   | 2016   | 2017   | 2018   | Total  |
|---|-------|--------|--------|--------|--------|--------|
| FI 金融機構   | 6,890 | 9,656  | 13,972 | 23,605 | 35,767 | 89,890 |
| DNFBP   | 0     | 0      | 0      | 46     | 102    | 148    |
| Total 總計  | 6,890 | 9,656  | 13,972 | 23,651 | 35,869 | 90,038 |
| STRs used in analysis reports<br>被運用於分析報告的STRs    | 938   | 1,415  | 2,178  | 3,873  | 4,339  | 12,743 |
| % STR used in analysis reports<br>被運用於分析報告的STRs比率 | 13.6% | 14.7 % | 15.6 % | 16.4 % | 12.1 % | 14.2 % |

**Table 3.4: Cases disseminated from AMLD to competent authorities**

表 3.4 洗錢防制處分送案件予權責機關統計

|   | 2014 | 2015 | 2016 | 2017  | 2018  | TOTAL<br>總計 |
|---|------|------|------|-------|-------|-------------|
| Cases disseminated spontaneously<br>by AMLD to competent authorities<br>由洗錢防制處主動分送予權責機關 | 288  | 524  | 619  | 1,129 | 1,808 | 4,368       |



|   |     |     |     |       |       |       |
|---|-----|-----|-----|-------|-------|-------|
| Cases disseminated on request by AMLD to competent authorities<br>由權責機關請求，洗錢防制處被動分送 | 45  | 68  | 84  | 219   | 427   | 843   |
| <b>Total 總計</b>   | 333 | 592 | 703 | 1,348 | 2,235 | 5,211 |

136. STR filings from DNFBPs are low, which reflects their recent coverage for full AML/CFT measures; however the upswing in numbers of STRs filed by DNFBPs is a positive. The authorities did not explain why the statistic of approximately 15% of all STRs that lead to analysis reports has remained constant over a number of years. AMLD provides feedback to FIs on STRs including those which become financial intelligence reports every 3 months. It is not clear whether the quality of STRs or the feedback given to reporting entities has had an impact on the number of STRs that become analysis reports. AMLD has a dedicated channel for REs to query relevant reporting affairs, and AMLD communicates regularly with FIs who have filed an STR to continue to update them on its progress. As set out in IO4, outreach to reporting entities was significantly enhanced from 2017 in line with the increased priority afforded to AML/CFT and the amendments to the legislative framework. This explains the increase in the filing of STRs in 2018.

來自 DNFBP 的 STR 申報量很低，這反映了他們最近才納入洗錢防制法，但 DNFBP 申報 STR 數量呈現上升是正面的。關於約有 15% 的可疑交易報告會成為分析報告，權責機關沒有解釋為什麼此統計數據在若干年內保持不變。洗錢防制處每 3 個月會回饋金融機構有關 STRs 處理情形，包含成為金融情報報告的 STRs 為何。並不清楚 STRs 品質或提供回饋予申報機構，對於最終成為分析報告的 STRs 件數是否有影響。洗錢防制處建置指定聯繫管道讓申報機構詢問相關申報事宜，另該處會定期與申報 STR 之金融機構溝通，以持續讓他們瞭解申報的最新情形。如同直接成果 4 所述，洗錢防制處根據將更多優先投入 AML/CFT 及法律架構的修正，自 2017 年以來大幅強化向申報機構的宣導。這同時解釋了 2018 年 STRs 申報量的增加。

137. Whilst financial intelligence is used in investigations in Chinese Taipei, and LEAs appear to make use of AMLD data and to a lesser extent AMLD financial intelligence reports, it was not evident that STRs, by themselves initiate a large number of investigations. Authorities demonstrated that this was in part due to LEAs capabilities with generating financial intelligence for their own use. Statistics demonstrate that LEAs seek a significant amount of data from AMLD including through the JCIC and FISC to enhance their investigations (see table below). Financial analysis reports sent spontaneously from the AMLD resulted in 2,237 criminal investigations (2014 – 2018).

中華臺北雖然會利用金融情報進行調查，且執法機關顯示會運用洗錢防制處的資料，並在較低程度上運用洗錢防制處的金融情報分析報告，但不見大量源自 STR 啟動的調查案件。權責機關說明部分原因係因執法機關亦能自己產製金融情報。統計數據顯示執法機關向洗錢防制處請求大量的資料，包含利用聯徵中心和財金公司的資料，以強化他們的調查（詳參下表）。總計 2,237 件犯罪調查案件是源於洗錢防制處主動分送的金融情資分析報告（2014 年至 2018 年）。

#### *Operational needs supported by FIU analysis and dissemination*

##### *金融情報中心分析及分送資訊以支援需求*

138. Statistics provided by Chinese Taipei show that LEAs rely heavily on data from the AMLD, particularly in relation to CTRs. Statistics show regular inquiries from LEAs.

中華臺北提供之統計數據顯示執法機關非常仰賴洗錢防制處的資訊，尤其是關於 CTR。統計數據顯示執法機關經常查詢的情況。

**Table 3.5: Statistics of inquiries received by AMLD for LEAs**

**表 3.5 洗錢防制處收到執法機關查詢數據統計**

| 2014 |     | 2015 |     | 2016 |     | 2017 |     | 2018 |     |
|------|-----|------|-----|------|-----|------|-----|------|-----|
| CTR  | STR | CTR  | STR | CTR  | STR | CTR  | STR | CTR  | STR |



|                               |               |            |               |              |               |              |               |              |               |              |
|-------------------------------|---------------|------------|---------------|--------------|---------------|--------------|---------------|--------------|---------------|--------------|
| MJIB<br>法務部調查局                | 61,092        | 545        | 36,040        | 740          | 21,413        | 872          | 32,402        | 971          | 30,717        | 1,352        |
| CIB, NPA<br>刑事警察局/內政部警政署      | 211           | 12         | 324           | 14           | 5,507         | 1,666        | 6,750         | 3            | 8,752         | 43           |
| AAC<br>法務部廉政署                 | 10,051        | 16         | 5,317         | 0            | 7,505         | 0            | 11,171        | 0            | 16,667        | 333          |
| NIA<br>內政部移民署                 | 0             | 0          | 0             | 0            | 0             | 0            | 8             | 0            | 0             | 0            |
| Prosecutor's<br>Office<br>檢察署 | 16,613        | 107        | 7,948         | 734          | 4,000         | 584          | 5,726         | 125          | 6,574         | 793          |
| Courts<br>法院                  | 22            | 0          | 91            | 0            | 97            | 0            | 37            | 0            | 54            | 0            |
| AEA<br>行政執行署                  | 475           | 0          | 948           | 0            | 1,089         | 0            | 3,288         | 0            | 3,659         | 0            |
| CGA<br>海洋委員會海巡署               | 0             | 0          | 0             | 0            | 2             | 0            | 1,034         | 0            | 75            | 0            |
| <b>Total 總計</b>               | <b>88,464</b> | <b>680</b> | <b>50,668</b> | <b>1,488</b> | <b>39,613</b> | <b>3,122</b> | <b>60,416</b> | <b>1,099</b> | <b>66,498</b> | <b>2,521</b> |

139. The below table demonstrates the provision of financial analysis reports by the AMLD to LEAs. Though reports seem to contain relevant, accurate and useful information, for some LEAs a significant portion of reports result in cases being closed (i.e. AAC and NPA).

下表顯示洗錢防制處提供執法機關的金融情資分析報告。雖然報告內容包括相關、正確及有用的資訊，但部分執法機關列參結案的比例很高(即法務部廉政署及內政部警政署)。

**Table 3.6: Financial intelligence reports spontaneously disseminated by AMLD**

表3.6：洗錢防制處主動分送的金融情報報告

| Recipient authority and processing<br>接獲機關及處理情形              | 2014 | 2015 | 2016 | 2017 | 2018 | Total<br>總計 |
|--|------|------|------|------|------|-------------|
| <b>MJIB法務部調查局</b>  |      |      |      |      |      |             |
| AML D dissemination reports received<br>接獲洗錢防制處主動分送之報告數      | 223  | 379  | 464  | 727  | 964  | 2,757       |
| Still undergoing processing/investigating<br>程序進行/偵查中        | 21   | 62   | 120  | 237  | 535  | 975         |
| Completed investigation submitted to Prosecutors<br>完成調查移送檢方 | 125  | 208  | 236  | 352  | 292  | 1,213       |
| Case Closed<br>結案  | 77   | 109  | 106  | 137  | 137  | 566         |
| <b>NPA內政部警政署</b>   |      |      |      |      |      |             |
| AML D dissemination reports received<br>接獲洗錢防制處主動分送之報告數      | 37   | 49   | 66   | 110  | 151  | 413         |
| Still undergoing processing/investigating<br>程序進行/偵查中        | 0    | 1    | 3    | 2    | 14   | 20          |
| Completed investigation submitted to Prosecutors<br>完成調查移送檢方 | 7    | 13   | 9    | 5    | 9    | 43          |
| Case Closed<br>結案  | 30   | 35   | 54   | 103  | 128  | 350         |
| <b>AAC法務部廉政署</b>   |      |      |      |      |      |             |
| AML D dissemination reports received<br>接獲洗錢防制處主動分送之報告數      | 0    | 1    | 0    | 3    | 3    | 7           |
| Still undergoing processing/investigating<br>程序進行/偵查中        | 0    | 0    | 0    | 1    | 3    | 4           |
| Completed investigation submitted to Prosecutors             | 0    | 0    | 0    | 0    | 0    | 0           |

|  |    |     |     |     |     |       |
|--|----|-----|-----|-----|-----|-------|
| 完成調查移送檢方   |    |     |     |     |     |       |
| Case Closed<br>結案  | 0  | 1   | 0   | 2   | 0   | 3     |
| <b>Prosecutor's Offices 地檢署</b>                              |    |     |     |     |     |       |
| AML D dissemination reports received<br>接獲洗錢防制處主動分送之報告數      | 15 | 18  | 21  | 65  | 91  | 210   |
| Still undergoing processing/investigating<br>程序進行/偵查中        | 0  | 0   | 1   | 12  | 30  | 43    |
| Completed investigation submitted to Prosecutors<br>完成調查移送檢方 | 12 | 12  | 12  | 36  | 43  | 115   |
| Case Closed<br>結案  | 3  | 6   | 8   | 17  | 18  | 52    |
| <b>Tax authorities 稅務機關</b>                                  |    |     |     |     |     |       |
| AML D dissemination reports received<br>接獲洗錢防制處主動分送之報告數      | 55 | 136 | 156 | 375 | 928 | 1,650 |
| Still undergoing processing<br>程序進行                          | 4  | 3   | 16  | 106 | 670 | 799   |
| Penalty<br>罰鍰  | 28 | 76  | 76  | 174 | 142 | 496   |
| Case Closed<br>結案  | 23 | 57  | 64  | 95  | 116 | 355   |
| <b>Other administrative departments 其他行政機關</b>               |    |     |     |     |     |       |
| AML D dissemination reports received<br>接獲洗錢防制處主動分送之報告數      | 3  | 0   | 1   | 3   | 4   | 11    |
| Still undergoing processing<br>程序進行                          | 0  | 0   | 0   | 0   | 1   | 1     |
| Reference<br>參考  | 1  | 0   | 0   | 0   | 1   | 2     |
| Case Closed<br>結案  | 2  | 0   | 1   | 3   | 2   | 8     |

140. In relation to the high number of cases closed relative to disseminations (5048 disseminations vs. 1334 cases closed), it was explained by those agencies that the STRs did not enhance a current investigation but were filed away for future use. Whilst the MJIB also investigates corruption matters, the team sees utility in also sending all corruption related STRs and/or analysis reports to AAC to ensure that information is exchanged in a transparent manner between all parties.

關於分送情資列參結案數高(分送 5048 件，其中 1334 件列參結案)，這些機關解釋 STR 雖然未能強化現有調查案件，但仍將其存參以備未來運用。雖法務部調查局亦能調查貪瀆情事，評鑑團希望未來能將貪污相關之 STR 及/或分析報告也分送給法務部廉政署，有助於確保所有機關間以更透明方式交換資訊。

141. Responses were mixed from LEAs as to the utility of disseminated STRs and the number of STRs that turned into investigations. NPA and AAC both noted that very few if any of the disseminations actually commenced an investigation (ML or predicate). They noted the utility of STRs that were provided to them on request during an already active investigation and in this regard the raw data, particularly with respect to CTRs was often considered by LEAs to be of high value. LEAs did not demonstrate regular requesting of information on ICTRs.

執法機關對於分送 STR 的效益及 STR 啟動調查數量的回應意見不一。警政署及廉政署均注意到分送 STR 實際啟動的調查很少(洗錢或前置犯罪調查案件)。他們提及針對現在調查中的案件，向洗錢防制處請求提供 STR 的效益，在此情形下取得的原始資料，特別是 CTR，對於案件偵辦具有高度價值。執法機關顯示並不經常請求 ICTR 的資訊。

142. From April 2018 FIs/DNFBPs were required to include CDD data (that included beneficial ownership information) and transaction data as part of the STR filing. Since that time the quality

of the STRs has increased which should add to greater quality of AMLD disseminations to support financial investigations. AMLD regularly uses its powers to obtain additional information from FI/DNFBP for its analysis work.

FI / DNFBP 自 2018 年 4 月起，申報 STR 需包含客戶審查資料(含實質受益人資訊)和交易資料。自那時起，STR 的品質有所提升，應有助於提升洗錢防制處分送案件以支援財務調查的品質。洗錢防制處會定期使用職權向 FI / DNFBP 取得其他資訊，支援其分析工作。

143. AMLD has 23 staff members all of whom come from within the MJIB. AMLD staff must have at least five years' experience in financial investigations or economic crime. AMLD staff are thus well experienced staff in financial investigations however, the workload and the large amount of information and demands placed on the FIU call for greater resources.

洗錢防制處有 23 名工作人員，全都來自法務部調查局，他們必須至少有五年的金融調查或經濟犯罪調查經驗，因此均為財務調查經驗豐富的人員。但加諸金融情報中心的工作量和大量資訊及需求，顯示他們需要更多資源。

144. AMLD's use of Egmont channels and associated relationships are instrumental in serving operational needs of LEAs. As noted in IO2, the many successes in transnational investigations are credited to AMLD's use of Egmont network. AMLD has made a total of 540 requests to foreign partners between 2015 and June 2018. It has received a total of 551 requests for intelligence from foreign partners during this time.

洗錢防制處運用艾格蒙聯盟管道及相關關係可協助執法機關的實務需求。如在 IO2 所提，許多跨國調查的成功案例均歸功於洗錢防制處運用艾格蒙網絡。洗錢防制處自 2015 年至 2018 年 6 月共向外國對等機關提出 540 件請求。同期受理外國對等機關 551 案情報請求。

145. **Strategic analysis** - AMLD does not have a separate strategic analysis division. Analysts conducting financial analysis also conduct strategic analysis alongside their operational intelligence work. Since 2012 the AMLD's strategic analysis has focused on emerging issues such as Union Pay Cards from China, virtual currencies, and vulnerabilities in the OBU sector and company incorporation loopholes. Whilst AMLD has produced some sound strategic analysis reports and held related workshops, it was not clear who was the intended audience of the reports. AMLD advised that most of the strategic analysis work is classified and only kept within government with the exception of some analysis that was published in annual reports. Strategic analysis statistics were not available, but samples of strategic analysis reports demonstrate their quality. AMLD advised that in practice they have conducted strategic analysis on key risk areas, including forged Union Pay cards, virtual currencies, OBU accounts, loopholes in capital auditing mechanisms, and others.

**策略分析**--洗錢防制處未另設策略分析部門。進行財務分析的人員在執行實務情報工作之餘，還需進行策略性分析。自 2012 年起，洗錢防制處將策略性分析關注在新興議題，包括來自中國大陸的銀聯卡、虛擬貨幣、OBU 部門弱點及公司企業的漏洞等。雖然洗錢防制處已產製一些良好的策略性分析報告，但不清楚哪些人是報告預期的受眾。洗錢防制處說明大多數策略分析工作都是機密的，除了部份年報所公布的分析外，其它只留存於政府內部。關於策略性分析的統計數據未能提供，但有提供策略性分析報告的範例，以說明報告的品質。洗錢防制處提到他們在實務運作上，已針對重要風險領域進行策略分析，包括偽造銀聯卡、虛擬貨幣、OBU 帳戶、驗資機制漏洞與其它等。

146. It was not clear that all strategic intelligence reports were used by policymakers or by regulators and supervisors to drive risk-based responses to emerging threats and typologies. However, authorities advised that in response to strategic analysis reports, deficiencies in legal frameworks were identified and rectified. The AMLD had not established a separate strategic analysis team with dedicated staff members undertaking such analysis. Having such a capability would help to drive deeper risk-based actions on behalf of regulators and supervisors, and other LEAs and generate a greater understanding of risk in the private sector.

並不清楚決策者或主管機關和監理機關是否運用所有策略性分析報告，針對新興威脅和態樣推動以風險為本之因應措施。但權責機關告知已針對策略性分析報告，找出法律架構中的缺失並予以修正。洗錢防制處並未設置獨立的策略性分析團隊，並由專職人員進行分析。擁有這樣的能力將幫助驅使主管機關和監理機關，以及其他執法機關深化風險為本的行動，並更進一步瞭解私部門的風險所在。

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### **Case Example 3.2 – STR commences a successful ML prosecution**

#### **案例 3.2-STR 成功起訴洗錢**

AMLDD received an STR in January 2015 which indicated that an OBU account of Company A received USD 1.12 million from Company B overseas having been inactive for almost one year. AMLDD conducted an analysis of the STR and concluded that the information might be related to an international business email compromise fraud case. A financial analysis report was disseminated to the MJIB to initiate an investigation.

洗錢防制處於 2015 年 1 月收到一份 STR，提及 A 公司的 OBU 帳戶從海外 B 公司收到 112 萬美元，該帳戶已靜止將近一年。洗錢防制處分析該可疑交易報告，發現這些資訊可能與某國際商業電子郵件詐欺案有關，並向法務部調查局分送該案金融分析報告，啟動後續案件調查。

The investigation found Mr. C was the director of Company A, registered in jurisdiction S, which had no actual business activities. In order to gain personal profit, Mr. C provided the OBU account of Company A to an international fraud group through Mr. L. The international fraud group then used email to deceive Company B overseas. As a result, proceeds of crime was remitted into Company A's OBU account. In order to disguise the proceeds of crime, Mr. C transferred these funds to several personal and legal persons' foreign currency accounts controlled by Mr. C. Some funds were exchanged and transferred to NTD currency accounts. Mr. C instructed a friend of his to withdraw NTD 3 million (approx. USD100,000) in cash from one account. Mr. C and Mr. L were indicted on the charge of violating the Criminal Code and the MLCA in May 2016.

經調查發現，C 先生是在 S 國註冊的 A 公司的董事，該公司沒有實際的業務活動。C 先生為了獲得個人利益，透過 L 先生向國際詐騙集團提供 A 公司的 OBU 帳戶。國際詐騙集團隨後使用電子郵件詐騙在海外的 B 公司。詐騙的犯罪所得匯入 A 公司的 OBU 帳戶中。為了掩蓋犯罪所得，C 先生將這些資金轉移到自己實際控制的幾個個人和法人的外幣帳戶。其中一些資金被匯兌轉入新台幣的帳戶當中。C 先生隨後指示他的一位朋友從帳戶中領出 300 萬元新台幣(折合約 10 萬美金)現金。C 先生和 L 先生於 2016 年 5 月因違反刑法和洗錢防制法被起訴。

### **Case Example 3.3: Bribery within Company H**

#### **案例 3.3：H 公司內部的賄賂**

AMLDD disseminated a financial analysis report and gave further assistance to DPO which was already conducting an investigation on the same subject, Mr L, related to complex financial transactions between Mr L and suppliers of Company H including cash remittance, securities transactions and joint investments. AMLDD analysed the flow of funds based on documents obtained from banks, securities brokers and the Central Bank.

洗錢防制處分送金融情資分析報告予已調查該對象 L 先生之台北地檢署並提供進一步的協助。本案關於 L 先生及 H 公司供應商之間複雜的金融交易，包括現金匯款、證券交易以及共同投資。洗錢防制處依據取自銀行、證券商和央行的文件分析金流。

Investigators discovered Mr L, as senior vice president of the company, was responsible for corporate resources, procurement and price monitoring of components and supplies. He was found to have been intimidating suppliers to pay secret commissions to remain a supplier and to secure eligible supplier status. The commissions totalled approximately NTD 160 million (USD 54 million) and were distributed



between Mr H and Mr L. Assistance was provided by foreign FIUs though the ESW with reports disseminated to LEAs. Mr L confessed and was prosecuted for violations against the Securities and Exchange Act.

調查人員發現 L 先生為該公司資深副總裁，負責公司資源、採購及物品零件與供應價格監控。並發現他強迫供應商支付佣金，以成為供應商，穩固供應商地位。佣金總額約新台幣 1 億 6 千萬（540 萬美元）並分給 H 先生與 L 先生。外國金融情報中心透過艾格蒙網路提供協助，而這些報告也分送給執法機關。L 先生認罪並因違反證券交易法遭起訴。

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147. Statistics of the categories of criminal offences pertaining to financial intelligence reports disseminated by the AMLD both spontaneously and upon request show that such disseminations largely reflect some categories of high risk offences as set out in the NRA. However the instances of drug trafficking, corruption and bribery and organised crime were low. The instances of intelligence dissemination upon request for tax evasion and gambling were also low given their risk profile in the NRA.

洗錢防制處主動提供或依權責機關請求被動分送之金融情報依犯罪類型統計之數據顯示，該等分送報告大多反映出國家風險評估報告所列出的某些高風險犯罪類型。然而毒品販運、貪汙及賄賂及組織犯罪的數量是低的。鑒於國家風險評估報告中所述之風險概況，請求就逃漏稅捐及賭博案件等分送情資之件數也是低的。

Table 3.7: AMLD disseminations and breakdown of related criminal offence categories

表 3.7：洗錢防制處依犯罪類型分送之金融情資報告統計

| Categories of offences<br>犯罪類型  | 2014                |                     | 2015                |                     | 2016                    |                     | 2017                    |                     | 2018                    |                     |
|---|---------------------|---------------------|---------------------|---------------------|-------------------------|---------------------|-------------------------|---------------------|-------------------------|---------------------|
|   | spontaneously<br>主動 | upon request<br>經請求 | spontaneously<br>主動 | upon request<br>經請求 | spontaneousl<br>y<br>主動 | upon request<br>經請求 | spontaneousl<br>y<br>主動 | upon request<br>經請求 | spontaneousl<br>y<br>主動 | upon request<br>經請求 |
| Drug trafficking<br>毒品販運  | 3                   | 1                   | 7                   | 0                   | 13                      | 0                   | 30                      | 0                   | 10                      | 10                  |
| Fraud<br>詐欺   | 34                  | 6                   | 48                  | 5                   | 73                      | 13                  | 87                      | 25                  | 97                      | 47                  |
| Investment fraud<br>投資詐騙  | 25                  | 10                  | 25                  | 13                  | 47                      | 10                  | 35                      | 30                  | 65                      | 55                  |
| Corruption and bribery<br>貪瀆/賄賂   | 9                   | 5                   | 27                  | 4                   | 43                      | 6                   | 24                      | 18                  | 24                      | 38                  |
| Tax evasion<br>逃漏稅捐   | 56                  | 3                   | 143                 | 3                   | 162                     | 2                   | 220                     | 3                   | 435                     | 2                   |
| Insider trading, market manipulation, embezzlement, securities fraud<br>內線交易、市場操縱、侵占、證券詐欺 | 29                  | 7                   | 65                  | 18                  | 46                      | 17                  | 60                      | 41                  | 51                      | 65                  |
| Underground banking<br>地下通匯   | 26                  | 8                   | 31                  | 12                  | 33                      | 10                  | 56                      | 17                  | 55                      | 33                  |
| Organized crime<br>組織犯罪   | 0                   | 0                   | 0                   | 0                   | 1                       | 0                   | 2                       | 0                   | 0                       | 1                   |
| Smuggling<br>走私   | 0                   | 0                   | 0                   | 0                   | 0                       | 0                   | 0                       | 0                   | 0                       | 3                   |
| Counterfeiting & piracy of products; trade secrets violations<br>偽造/仿冒產品；違反營業秘密法規         | 0                   | 0                   | 1                   | 0                   | 0                       | 0                   | 2                       | 2                   | 1                       | 0                   |
| Breach of trust<br>背信   | 6                   | 0                   | 12                  | 2                   | 14                      | 4                   | 16                      | 6                   | 11                      | 17                  |
| Counterfeiting currency<br>偽造貨幣   | 0                   | 0                   | 0                   | 0                   | 0                       | 1                   | 0                       | 0                   | 1                       | 1                   |
| Forgery<br>偽造   | 1                   | 0                   | 2                   | 0                   | 4                       | 0                   | 8                       | 3                   | 9                       | 3                   |
| Violation of futures trading act<br>違反期貨交易法案  | 8                   | 0                   | 6                   | 1                   | 9                       | 1                   | 14                      | 4                   | 12                      | 8                   |

|  |            |           |            |           |            |           |              |            |              |            |
|--|------------|-----------|------------|-----------|------------|-----------|--------------|------------|--------------|------------|
| Usury, loan sharking<br>重利   | 1          | 1         | 3          | 0         | 2          | 2         | 9            | 0          | 13           | 1          |
| Criminal conversion<br>侵占  | 20         | 0         | 28         | 0         | 22         | 3         | 25           | 9          | 25           | 12         |
| Violations of company act<br>違反公司法   | 18         | 0         | 63         | 4         | 80         | 1         | 178          | 26         | 227          | 32         |
| Government procurement act violation<br>違反政府採購法  | 1          | 0         | 2          | 0         | 5          | 1         | 6            | 0          | 0            | 1          |
| Murder, grievous bodily injury<br>謀殺、重傷害   | 1          | 0         | 1          | 0         | 0          | 0         | 0            | 0          | 0            | 0          |
| Robbery<br>搶劫強盜  | 0          | 0         | 0          | 0         | 1          | 0         | 0            | 0          | 0            | 0          |
| Gambling<br>賭博   | 28         | 0         | 36         | 0         | 50         | 0         | 70           | 0          | 48           | 0          |
| Extortion<br>勒索  | 1          | 0         | 2          | 0         | 1          | 0         | 0            | 0          | 4            | 0          |
| Terrorism (including TF)<br>恐怖主義 (含資助恐怖主義)   | 0          | 0         | 0          | 0         | 0          | 0         | 0            | 0          | 0            | 0          |
| Proliferation(including PF)<br>武器擴散 (含資助武器擴散)  | 1          | 0         | 0          | 0         | 1          | 0         | 1            | 0          | 8            | 0          |
| Kidnapping+<br>綁架+   | 1          | 0         | 0          | 0         | 0          | 0         | 0            | 0          | 0            | 0          |
| Theft+<br>竊盜+  | 0          | 0         | 0          | 0         | 0          | 0         | 0            | 0          | 0            | 0          |
| Human Trafficking+<br>人口販運+  | 0          | 0         | 0          | 0         | 0          | 0         | 0            | 0          | 1            | 0          |
| Professional ML+<br>專業洗錢+  | 0          | 0         | 0          | 0         | 0          | 0         | 0            | 0          | 0            | 0          |
| Sexual exploitation (including Child)+<br>性剝削 (含兒童) +  | 0          | 0         | 0          | 0         | 0          | 0         | 0            | 0          | 1            | 0          |
| Other<br>其他  | 19         | 7         | 46         | 6         | 66         | 13        | 359          | 35         | 729          | 127        |
| <b>Total</b> (N.B. 1 case may involve more than 1 crime type)<br><b>總計 (注：1 案可能包含超過 1 種犯罪類型)</b> | <b>288</b> | <b>48</b> | <b>548</b> | <b>68</b> | <b>673</b> | <b>84</b> | <b>1,202</b> | <b>219</b> | <b>1,827</b> | <b>456</b> |

148. TF is assessed as low risk in Chinese Taipei and there are very few examples of potential TF. In cases where potential TF has been identified, AMLD has demonstrated its ability to quickly respond to requests for assistance from foreign partners. LEAs have shown strong capacity to conduct financial investigations, generating and making use of financial intelligence.

中華臺北的資恐被評為低風險且疑似資恐的案例非常少。當發現疑似資恐的案件，洗錢防制處展現其能快速回應外國合作夥伴請求之能力。執法機關亦展現進行財務調查、產製和善用金融情報的強大能力。

### *Cooperation and exchange of information/financial intelligence*

#### *資訊/金融情報合作與交換*

149. AMLD cooperates with other competent authorities on a case by case basis when there is an operational need, or through meetings held periodically to evaluate the level of cooperation, coordination and information exchange. AMLD provided the DPO with assistance on complicated funds flow matters 10 times each year on average over the last five years. Competent authorities were not able to provide exact data that captures the level of cooperation among competent authorities. However, LEAs provided many case examples where AMLD assisted complex investigations and it is evident that LEAs are generally independently able to conduct financial intelligence in complex investigations. In some circumstances for example where foreign assistance is required, LEAs call on the AMLD to assist and assistance was provided in a timely manner. It was difficult for the assessment team to measure the exact level of cooperation however this is likely due to the fact that LEAs demonstrated a very high capability of independently conducting investigations.

洗錢防制處與其他權責機關會視實務需要進行個案合作，或透過定期會議評估合作、協調及情資交換程度。洗錢防制處在過去五年中，平均每年約 10 次協助地檢署有關複雜金流案件分析。權責機關無法提供可反映權責機關間合作程度的相關確切資料。然而，執法機關提供許多洗錢防制處協助複雜調查之案例，且執法機關大致均能獨立進行複雜案件的財務調查。在某些情況下，例如需要外國協助時，執法機關會請洗錢防制處協助，洗錢防制處也會即時提供協助。評鑑團很難衡量合作的確切程度，但這可能是因為事實上執法機關已能展現獨立進行調查的高度能力。

#### **Case Example 3.4: Olive Oil fraud**

##### **案例3.4：橄欖油詐騙**

In October 2013 a complaint was made that an olive oil company was using impure oil mixed with toxic compounds. Mr K was the responsible person for the company. AMLD investigated the case and discovered that employees of the company had withdrawn over NTD12 million (approx. USD400,000) in cash from a partner company. This indicated to authorities an intent for Mr K to hide illegal proceeds. They also discovered abnormal transactions of large amounts of funds between Mr K and his family. Mr K was sent to prison for 12 years and the company also received a penalty of NT38 million. Related financial accounts, real estate and assets of Mr K were seized.

2013 年 10 月接獲檢舉橄欖油公司使用不純、且內含毒物的油品。K 先生為公司負責人。洗錢防制處調查此案發現，公司員工已從合作的夥伴公司提領現金超過 1200 萬新台幣（折合約 400,000 美元），並向權責機關提醒 K 先生有意掩飾非法所得。還發現 K 先生和他的家人間存在大量資金的異常交易。最後 K 先生被判有期徒刑 12 年，該公司則被處以 3800 萬新台幣的罰金。K 先生的相關金融帳戶，房地產和資產被沒收。

#### **Case Example 3.5: Transnational telecom scam**



**案例3.5：跨國電信詐騙**

DPO investigations of the ML hub of a fraud organization identified a very large number of parties and complexity of transactions. DPO sought AMLD assistance in analysing financial flows. AMLD obtained and analysed account and transaction details and related vouchers from several dozen FIs as well as CTRs and foreign exchange records retrieved from Central Bank. AMLD obtained information from foreign FIUs via the ESW. AMLD disseminated analysis reports with funds flow charts, foreign exchange records, and other relevant documents to the DPO.

地檢署針對某詐騙組織的洗錢中心的調查，發現大量的當事人及複雜的交易。地檢署尋求洗錢防制處協助，分析資金流向。洗錢防制處獲取並分析來自數十家金融機構的帳戶、交易紀錄、相關憑證、大額交易報告以及中央銀行提供的外匯紀錄。洗錢防制處亦透過艾格蒙系統，從外國金融情報中心獲得資訊，最後發送資金流程圖、外匯記錄和其他相關文件的分析報告予地檢署。

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150. AMLD implements adequate measures to protect the confidentiality of information exchanged with domestic and with foreign counterparts. Measures include password protection to access the database; secure and sealed enveloped when exchanging information through official letters; and limiting ESW access to the AMLD Head, Deputy Head and one other officer. Accessing information databases online has enhanced the level of information exchanged among all competent authorities and safeguarded the confidentiality of information.

洗錢防制處針對國內或與國際夥伴交換情資，均有充足的措施保護其機密性，包括運用帳戶密碼調取資料庫資訊、以官方密件公文等交換情資、並限於洗錢防制處處長、副處長及另一人員有登入艾格蒙安全網路的權限。使用線上資料庫可強化所有權責機關間的情資交換程度並保護資訊的機密。

151. Contact points are designated for cooperation among AMLD and other competent authorities including CGA, AAC, NPA, TA, and CA. There are mechanisms for cooperation and coordination between AMLD and competent authorities. For example when competent authorities file requests, the head of AMLD, based on the urgency and complexity of cases, allocates available manpower and assigns designated personnel to participate in taskforce meetings to assist with seizures, or financial investigations into complicated transactions domestically and internationally. AMLD analysts are encouraged to further integrate resources with MJIB and NPA in relation to the targeting and investigation of high risk crime types such as drug trafficking, smuggling and targeting third party ML networks.

為因應合作，洗錢防制處和其他權責機關包括海巡署、法務部廉政署、內政部警政署、財政部賦稅署和關務署等指定聯繫窗口。洗錢防制處與權責機關間有合作與協調機制。例如，當權責機關提出請求時，洗錢防制處處長根據案件的急迫性和複雜性，分配可用的人力，並指派專人參加工作會議，協助扣押或對國內外複雜交易進行財務調查。洗錢防制處鼓勵分析人員，能進一步與法務部調查局和內政部警政署整合資源，鎖定並調查高風險犯罪類型如販毒、走私和第三方洗錢網絡。

152. AMLD and other competent authorities, to a great extent, exchange information with foreign counterpart FIU and competent authorities when necessary.

洗錢防制處及其他權責機關，能視需要，在很大的程度上與外國對等金融情報中心及權責機關交換資訊。

**Table 3.8: Intelligence exchanges through the Egmont Secure Web**

**表 3.8：透過艾格蒙安全網絡情報交換統計**

| Year | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|------|------|------|------|------|------|-------|
|------|------|------|------|------|------|-------|

| 年度  |              |     |     |     |     |     |       |
|---|--------------|-----|-----|-----|-----|-----|-------|
| Request foreign FIU to provide assistance<br>請求國外 FIU 提供協查      | Case<br>案件   | 20  | 49  | 34  | 21  | 23  | 147   |
|   | Report<br>報告 | 70  | 228 | 165 | 87  | 107 | 657   |
| Foreign FIU spontaneously provided information<br>國外 FIU 主動提供情資 | Case<br>案件   | 32  | 33  | 27  | 53  | 99  | 244   |
|   | Report<br>報告 | 56  | 46  | 46  | 100 | 198 | 446   |
| Totals<br>總計  | Case<br>案件   | 52  | 82  | 61  | 74  | 122 | 391   |
|   | Report<br>報告 | 126 | 274 | 211 | 187 | 305 | 1,103 |

### Overall conclusion for Immediate Outcome 6

#### 直接成果 6 總評

153. Competent authorities, in particular LEAs, investigating prosecutors and the tax authorities regularly develop and use a broad range of financial intelligence and other relevant information to investigate predicate offences, ML and possible TF and to trace criminal proceeds. LEAs - especially MJIB - and investigating prosecutors have very well-developed capabilities to develop intelligence, and make use of FIU-disseminated financial intelligence in investigations. The AMLD accesses a very wide range of data sources (although wire transfer and foreign exchange transaction data is indirectly obtained), including very active international cooperation. AMLD has well-developed analytical capability to produce good quality financial intelligence. The AMLD cooperates well with LEAs in assisting and facilitating investigations and makes good use of information available to it, however, AMLD could enhance cooperation through more interaction with LEAs when investigating proceeds of high threat predicate offences; and further establishing the operational needs of LEAs. AMLD has excellent IT resources and skilled staff, but it suffers to an extent from a lack of human resources that are needed to make it even more effective.

權責機關特別是執法機關、檢察官和稅務機關，能經常開發且善用廣泛的金融情報及其他相關資訊，以調查前置犯罪、洗錢和疑似的資恐案件，並追蹤犯罪所得。執法機關（尤其是法務部調查局）和檢察官具備良好的能力，能夠開發情報，並利用金融情報中心發送的金融情報進行調查。洗錢防制處可以取得非常廣泛的資訊（儘管電匯和外匯交易資料是間接獲得），包含非常積極的國際合作。洗錢防制處人員擁有完善的分析能力，可以產出高品質的金融情報。洗錢防制處協助執法機關調查案件，並能充分利用可獲得的資訊，但洗錢防制處可在調查高威脅前置犯罪的犯罪所得時，與執法機關進行更多互動以強化合作；及進一步確立執法機關在實務運作上的需要。洗錢防制處擁有完善的資訊科技資源和技能嫻熟的人員，但某程度上仍缺乏所需的人力，以達成更好效能。

### 154. Chinese Taipei has a substantial level for effectiveness for Immediate Outcome 6.

中華臺北直接成果 6 評等為相當有效。

## Immediate Outcome 7 (ML investigation and prosecution)

### 直接成果 7 (洗錢犯罪調查及起訴)

155. Chinese Taipei's legal and institutional frameworks demonstrate compliance with the international standards with the exception of a small scope gap in the smuggling of migrants as a predicate offence and minor shortcoming with LEA powers. These small scope gaps do not significantly impact on effectiveness. However in order to comply with international standards and considering the risk profile of Chinese Taipei this gap should be addressed.

除了走私移民不是洗錢的前置犯罪以及執法機關調查權的小缺失是一個小的落差外，中華臺北的法律及制度架構與國際標準是相符合的，這個小的落差不會顯著影響效能，但為了符合國際標準和中華臺北的風險概況，應該處理這一落差。

### ML identification and investigation

#### 辨識及調查洗錢犯罪

156. Prior to 2017 the ML offence had some deficiencies as outlined in the 2007 MER. The amendment of MLCA in 2017 to bring the ML offence into compliance reflected only recent policy decisions of government to prioritise pursuing financial crime and ML.

在 2017 年之前，如 2007 年的相互評鑑報告所述在洗錢犯罪有許多的缺失。2017 年洗錢防制法的修正及遵循僅僅是反映了政府優先追查金融犯罪及洗錢犯罪的政策決定。

157. All LEAs in Chinese Taipei are empowered to investigate ML. However, the prosecutor is the primary investigative body, and investigations are largely driven and co-ordinated by prosecutors with assistance from LEAs. In practice, when ML is identified by any of the LEAs, the case is often transferred to dedicated units of the MJIB or NPA (CIB) due to their investigative expertise. This includes ML cases relating to corruption. The LEA then brief prosecutors at the District Prosecutor level who are then requested to conduct the investigation to integrate resources.

中華臺北所有的執法機關都可以調查洗錢犯罪，檢察官是主要的偵查主體，大部分的調查是透過檢察官的協調並由司法警察（像是警政署、調查局、廉政署、海巡署）協助檢察官完成。在實務上，當任何的執法機關辨識出洗錢犯罪時，基於法務部調查局或刑事警察局的調查專業，這包含了與貪污相關的案件。案件通常會轉移給他們的專業單位。地檢署的檢察官會要求調查並整合資源。

158. The key role taken by prosecutors in driving ML investigations and in coordinating authorities according to expertise is a strength. The MJIB and prosecutors have specialist economic crime units that assist in complex matters. However, with the evolving nature of the ML offence and an anticipated increase in investigations, the ongoing success of prosecutions will be dependent on prosecutors' offices having sufficient resourcing.

擔任關鍵角色的檢察官依據專業知識在推動洗錢調查和協調機關方面一直是一種力量，法務部調查局及檢察官擁有專業的經濟犯罪單位協助調查複雜的案件，然而，由於洗錢犯罪的本質與可預期的調查日漸增加，這方面的成功將取決於地檢署是否有充足的資源。

159. Prosecutor's offices include both prosecutor investigators and trial prosecutors. Trial prosecutors appear before the Court, while prosecutor investigators play an investigating role and do not present cases to the court. There are 532 prosecutor investigators across all prosecutors' offices, of which 102 have an expertise in finance and economics. Additionally, there are 22 Supreme Court Prosecutors, 179 at the High Prosecutors Office across five branches, and 1165 at the DPO across 21 branches.

檢察署由檢察事務官和檢察官組成，檢察官負責蒞庭論告，檢察事務官扮演調查的角色，但並不向法院提起公訴，總共有 532 名檢察事務官分布在所有的檢察署，其中 102 名檢察事務官有財經背景。至於檢察官的部分，有 22 名在最高檢察署，179 名在 5 個高等檢察署及分署，以及 1165 名在 21 個地方檢察署。

3 160. LEAs demonstrated the ability to investigate various types of financial crime cases. Cases presented include complex financial crime cases involving tracing money trails, lifting the corporate veil, unravelling layers of ownership, and tracing money sent offshore. In more complex ML cases LEAs draw on other authorities' expertise. Prosecutors noted the utility of using a combined approach to an investigation, using prosecutors and different LEAs, to cover all aspects and perspectives on a case. In some cases, AMLD is brought in to assist in complex financial investigations. In relation to matters at the airports, MJIB police officers are stationed at all airports and work with Customs to deal with any criminal matters that arise. In this regard the team noted good domestic cooperation and coordination in ML investigations which is largely driven by experienced prosecutors.

執法機關展現出調查複雜金融犯罪及相關金融調查的能力。案例展現出複雜的金融犯罪案件包括追查金流、揭開公司面紗、揭開所有權結構及追查海外資金。在更複雜的洗錢案件中執法機關善用其他機關的專業。檢察官談到了利用檢察官和不同執法機構採用整合方法進行調查的實用性，以涵蓋案件的所有層面及觀點。有些案件協助複雜的金融調查。關於機場的案件，調查局調查官駐紮在所有機場，並與海關合作處理所有的刑事案件。在這一方面，評鑑團注意到在洗錢犯罪的調查上有良好的國內合作及協調通常是由有經驗的檢察官進行的。

161. The below table represents the number of ML cases referred from LEAs to prosecutors' offices for investigation. Authorities were not able to provide statistics on the number of ML investigations opened by LEAs (whether they proceeded to referral to prosecutors or not).

下表是執法機關移送洗錢案件之檢察機關之數據。執法機關無法提供有關洗錢犯罪調查之數據(無論是否進行或是移送至檢察官。)



Table 3.9: ML matters referred from LEAs to Prosecutors

表 3.9:我國各執法機關調查(移送)洗錢犯罪之案件數

| Year 年度                         | NPA 警政署    | MJIB 調查局   | AAC 廉政署   | Total 總數   |
|---------------------------------|------------|------------|-----------|------------|
| 2014                            | 12         | 29         | 1         | 42         |
| 2015                            | 26         | 24         | 2         | 52         |
| 2016                            | 31         | 35         | 3         | 69         |
| 2017                            | 53         | 31         | 0         | 84         |
| 2018<br>(Jan to Jun)<br>(一月到六月) | 127        | 20         | 4         | 151        |
| <b>Total<br/>總數</b>             | <b>249</b> | <b>139</b> | <b>10</b> | <b>398</b> |

3

162. Whilst the authorities demonstrated credible and advanced techniques for ML investigation, the statistics of actual cases investigated is low when considering the large number of predicate offences investigated and the risk profile. Whilst some authorities indicated the low numbers of ML cases was due to previous shortcomings in the ML offence, however these shortcomings were identified in the 2007 MER and only rectified in 2017. One aspect of the identified challenges was that the ML offence previously had a threshold of proceeds of crime generated before ML could be charged. This was the case with respect to criminal fraud and some aspects of corruption involving procurement but not to other predicate offences.

雖然主管機關在洗錢犯罪調查上展現出可靠及精良的技巧，但與大量前置犯罪的調查件數及風險概況相較洗錢犯罪的實際調查數據較低，雖然部分機關指出洗錢案件數量較少是因為洗錢罪前置犯罪的缺陷上，而這些缺陷在 2007 年的相互評鑑報告已經指出，但是到 2017 年才做修正。其中一個被指出的挑戰是要起訴洗錢罪之前有個犯罪所得的門檻，除了其他的前置犯罪以外，詐欺及政府採購涉及的貪污案件都有這種狀況。

163. Authorities are all able to access many rich sources of financial and other information to assist investigations (see IO6). Sources for ML investigation include information from field agents, predicate offence investigations, general public, AMLD, various government databases and other authorities. AMLD undertakes analysis of STRs that are deemed high-risk by red flags contained in the database and on the basis of analyst's judgement. Once the financial analysis report is completed it is then sent to LEAs for further investigation. Based on financial intelligence reports provided by AMLD to LEAs from 2014-2018 a total of 2237 criminal cases were opened. Of these cases, 565 are still in processing/under investigation, 859 were transferred to the DPO. Authorities advise that of these, 36 cases related to ML.

所有的機關可以使用多樣的資源去辨識及調查洗錢犯罪(看 IO6)，這些用來調查洗錢犯罪的資源包含探員、前置犯罪調查、大眾、洗防處、多樣的政府資料庫及其他機關，洗防處依據數據庫中包含的紅旗指標並根據分析師的判斷對存在高風險的可疑交易報告進行分析，當分析報告完成後會送給執法機關進行調查，依據 2014 年到 2018 年洗防處提供給執法機關金融情報報告總計有 2237 件犯罪案件開啟調查，在這些案件中，有 565 件仍在處理/調查中，859 人被移送到地方檢察署。主管機關表示其中 36 起是與洗錢有關的案件。

Table 3.91: Money Laundering investigations and prosecutions by prosecutors

表 3.91:洗錢犯罪的調查及起訴

|      | Investigation concluded*<br>偵查終結 |                    | Deferred Prosecution<br>緩起訴 |                    | Prosecuted<br>起訴 |                    |
|------|----------------------------------|--------------------|-----------------------------|--------------------|------------------|--------------------|
|      | Cases<br>件數                      | Participants<br>人數 | Cases<br>件數                 | Participants<br>人數 | Cases<br>件數      | Participants<br>人數 |
| 2014 | 54                               | 150                | 3                           | 28                 | 15               | 38                 |

|                                 |            |              |           |           |            |            |
|---------------------------------|------------|--------------|-----------|-----------|------------|------------|
| 2015                            | 96         | 231          | 2         | 30        | 35         | 69         |
| 2016                            | 66         | 244          | 2         | 3         | 13         | 52         |
| 2017                            | 113        | 242          | 6         | 9         | 63         | 91         |
| 2018<br>(Jan to Jun)<br>(一月到六月) | 429        | 529          | 3         | 3         | 356        | 398        |
| <b>Total<br/>總數</b>             | <b>758</b> | <b>1,396</b> | <b>16</b> | <b>73</b> | <b>482</b> | <b>648</b> |

Table 3.92: Money Laundering prosecutions and convictions

表 3.92: 洗錢犯罪的起訴及判決

| Year<br>年度   | Prosecuted<br>起訴 |              | The First Instance<br>Judgement**<br>第一審判決 |                         |           |           | The Second Instance<br>Judgement<br>第二審判決 |              |                      |           | The Third Instance<br>Judgement<br>第三審判決 |              |                      |           |
|--------------|------------------|--------------|--|-------------------------|-----------|-----------|---|--------------|----------------------|-----------|--|--------------|----------------------|-----------|
|              | Cases            | Participants | Cases***                                   | Participants<br>persons | Convicted | Others    | Cases                                     | Participants | Convicted<br>persons | Others    | Cases                                    | Participants | Convicted<br>persons | Others    |
| 2014         | 15               | 38           | 10   | 18                      | 9         | 9         | 7   | 11           | 3                    | 8         | 5  | 12           | 9                    | 3         |
| 2015         | 35               | 69           | 11   | 28                      | 9         | 19        | 5   | 15           | 8                    | 7         | 2  | 2            | 1                    | 1         |
| 2016         | 13               | 52           | 12   | 28                      | 14        | 14        | 9   | 18           | 3                    | 15        | 2  | 3            | 0                    | 3         |
| 2017         | 63               | 91           | 22   | 24                      | 16        | 8         | 11  | 20           | 14                   | 6         | 4  | 6            | 2                    | 4         |
| 2018         | 356              | 398          | 49   | 51                      | 46        | 5         | 2   | 9            | 6                    | 3         | 4  | 6            | 4                    | 2         |
| <b>Total</b> | <b>482</b>       | <b>648</b>   | <b>104</b>                                 | <b>149</b>              | <b>94</b> | <b>55</b> | <b>34</b>                                 | <b>73</b>    | <b>34</b>            | <b>39</b> | <b>17</b>                                | <b>29</b>    | <b>16</b>            | <b>13</b> |

### Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

#### 洗錢犯罪的調查及起訴與威脅、風險及國家防制洗錢政策的相符性

164. The conclusions reached in IO1 demonstrate that Chinese Taipei generally has a good understanding of its threats and risk profile. The NRA found that Chinese Taipei faces 8 high-risk threats including drug trafficking, fraud, organised crime, corruption and bribery, smuggling, securities crimes, third-party ML, tax crime. LEAs and prosecutors confirmed that the highest priority is afforded to these 8 high risk crime types and that direction had been given to ensure that financial investigations and consideration of ML was applied across the spectrum of these offences. This is still to be borne out in the statistics and as Chinese Taipei begins to more actively pursue ML in line with its risk profile and based on its amended offence.

直接成果 1 的結論指出中華臺北整體來說對於威脅及風險有很好的認識，國家風險評估報告發現中華臺北面臨 8 個高風險威脅，包含毒品販運、詐欺、組織犯罪、貪污賄賂、走私、證券犯罪、第三方洗錢及稅務犯罪。執法機關及檢察官證實，最優先的工作就是調查這 8 大高風險犯罪並確保金流調查及洗錢犯罪能夠適用到這些犯罪。當中華臺北基於修正後的洗錢罪開始更積極地以風險為本追查洗錢犯罪及其他前置犯罪時，其結果仍然必須以數據來證明。

165. Since 2017 there has been a significant drive from authorities on prioritising ML and related financial flows. However, prior to this there was not a clear incentive for prosecutors to apply ML charges. This was potentially due to many factors, including some limitations under the old MLCA and

a weakness in the available sanctions. In light of the fact that the identified high risk crime types carry more significant sentences than that of ML, the very low penalties applied may have acted as a disincentive to prosecutors to undertake complex ML investigations. This may also account for a rather high rate of deferred prosecution in the past.

雖然從 2017 年起權責機關有顯著的動力優先調查洗錢犯罪及金流追查，但之前檢察官並沒有明確的誘因起訴洗錢罪，潛在的原因可能很多，包含舊的洗錢防制法的限制以及制裁的軟弱，但是鑑於高風險犯罪比洗錢犯罪的刑期更重，極輕的處罰可能會影響檢察官調查複雜洗錢案件之意願。這也可能導致了過去較高的緩起訴比率。

166. LEAs such as MJIB, NPA, and AAC have all introduced incentive systems for officers who investigate ML cases in line with the high priority afforded to ML by the government. Such initiatives have contributed to the increase in the number of ML investigations during the first half of 2018 as outlined in the table above.

執法機關如調查局、警政署及廉政署都有引進獎勵機制鼓勵調查員調查政府優先考量的洗錢犯罪，這些措施造成了 2018 年上半年洗錢犯罪調查的增加。

167. From the statistics provided by the authorities, it is not possible to discern the number of ML investigations for each predicate offence. However, the aggregate number shows that the ratio of prosecution to investigation is low (for example there were 1396 participants investigated, of that number 648 were prosecuted and 149 participants received a first instance judgment in the period 2014 - 2018). This is notable when comparing the ratio of prosecution to investigation during the first half of 2018, to that of previous years as outlined in the table above. The number of ML investigations and prosecutions in Chinese Taipei, generally align to the risk profile, however overall the number of ML cases is not commensurate with the scale of ML-related predicate offences in Chinese Taipei.. Amongst 8 high risk crimes identified, the predicate offences leading to ML cases are fraud and drug trafficking, although there is still some way to go for both of these predicate offences.

從機關提供的數據來看，很難辨別出各個前置犯罪的洗錢調查件數，但是，整體數據顯示案件的起訴率是低的(例如在 2014-2018 年間有 1396 人被調查，648 人被起訴，149 人遭第一審判決)。這從以 2018 年上半年的案件起訴率與之前的年度相比也看得出來。中華臺北的洗錢犯罪調查及起訴數據大體上與風險是相符的，但是洗錢案件的件數與中華臺北洗錢之前置犯罪規模相比不相符合。在所辨識出的 8 大高風險犯罪中，最多導致洗錢的前置犯罪是詐欺及毒品，儘管這 2 個前置犯罪仍然有很大的進步空間。

#### **Case Example 3.6: Fire fighting equipment procurement corruption case**

##### **案例3.6: 消防器材採購貪瀆案**

The chief of a certain government agency abused his position to procure fire safety equipment during his tenure and in doing so collected bribes of over NT19.24 million (approx. USD0.64 million) from the winning bidder of the project. The winning bidder profited NT200 million (approx. USD6.66 million) from the project. MJIB investigators sought assistance from the AMLD to investigate the money flows.

某政府機構的負責人在任期內濫用職權採購消防安全設備，並從該項目的得標者處收受賄賂新台幣 1924 萬元（約合 64 萬美元）。得標者從該項目中獲利 2 億新台幣（約 666 萬美元）。法務部調查局調查員向洗錢防制處尋求協助，以調查資金流向。

AMLD's detailed comparison of the bank account records and CTRs of the Chief and other natural and legal persons connected to the case identified transactions between the chief, his family members and named companies. AMLD identified that accomplices had used multiple companies under their control to bid many times in the project. The project payments were transferred to bank accounts in Chinese Taipei and some offshore. The Chief retired from public office, and his accomplices then transferred more

than NT20 million to his account. He then purchased 15 kilograms of gold in cash in Chinese Taipei. When this was discovered, authorities seized the gold, NT4 million in cash, foreign currencies, related accounts and real estate. Accomplices assisted authorities and wired back monies that were sent overseas. The defendants were indicted under the Anti-Corruption Act and the MLCA. They were sentenced to imprisonment of 6 months to 18 years and all assets were confiscated.

AMLDD 對負責人以及與案件有關的其他自然人和法人的銀行帳戶記錄和 CTR 的詳細比較，確定了負責人、其家庭成員和指定公司之間的交易。AMLDD 發現，同夥曾利用多個受其控制的公司對該項目進行了多次競標。項目付款已轉移到中華臺北和部分離岸的銀行帳戶。首長從公職退休，其同夥隨後將超過 2000 萬新台幣轉入他的帳戶。然後，他在中華臺北購買了 15 公斤黃金。一經發現，當局就沒收了黃金、新台幣 400 萬現金、外幣、相關帳戶和房地產。同夥協助當局匯回海外的款項。被告則依貪污治罪條例和洗錢防制法被起訴。他們被判處 6 個月至 18 年有期徒刑，並沒收所有財產。

168. **Drug Trafficking** - the number of ML prosecutions arising from drug trafficking is low. There were only 5 drug-related ML prosecutions between 2012 and June 2018. The authorities explained that because Chinese Taipei does not produce drugs, most of the money is outbound and most transactions are undertaken in cash, hence the difficulty in tracing money flows. This may also be attributable to the high use of underground remittance services making it difficult for authorities to trace funds and prove criminal conduct. There is insufficient targeting of investigations on third party ML and laundering foreign proceeds, both of which are priority crime types.

毒品販運-毒品販運的洗錢犯罪起訴件數是低的，在 2012 年至 2018 年 6 月間僅有 5 件起訴，機關解釋這是因為中華臺北並不生產毒品，大部分的金流都是流向國外且大部分都是現金交易，也因此追查金流很困難。這也有可能是因為地下匯兌的高度使用導致權責機關難以追查金流及證明犯罪行為。並沒有針對第三方洗錢及國外不法所得的洗錢實施足夠的調查。

169. **Fraud** - the ratio of ML prosecutions arising from fraud is higher than any other predicate offence, accounting for 40% of all ML prosecutions between 2012 and June 2018. The authorities have been able to pursue complex fraud-related ML cases successfully.

詐欺-以詐欺為前置犯罪的洗錢犯罪起訴比率是高於其他前置犯罪的，在 2012 至 2018 年 6 月間大約占了所有洗錢起訴的 40%，權責機關可以成功追查複雜的與詐欺相關之洗錢犯罪。

170. **Corruption** - 19 ML prosecutions arising from corruption between 2012 and June 2018. This number may seem relatively low when considering the number of prosecutions for corruption is 1786, however, case samples demonstrate that the corruption cases that have been pursued are highly sensitive, high level and complex ML cases. These demonstrate the strength of investigative skills and expertise. Investigating third party ML and laundering foreign proceeds is not sufficiently targeted in relation to this priority crime type.

貪污-2012 年至 2018 年 6 月間以貪污為前置犯罪的洗錢犯罪起訴件數是 19 件，這與貪污罪的起訴件數 1786 件相較顯得較低。但是，提供的案例顯示所追查的貪污案件具有高度的敏感度、高階及複雜的洗錢案件，這展現了調查技巧及專業。未針對這類型前置犯罪的第三方洗錢及國外不法收益洗錢實施充分調查。

171. **Organised crime** - the number of ML prosecutions and organised crime surged during the first half of 2018 (271 cases prosecuted), which is attributable to the legislative amendment to the Organised Crime Prevention Act. Investigating third party ML and laundering foreign proceeds is not sufficiently targeted in relation to this priority crime type.

組織犯罪-在 2018 年的上半年洗錢犯罪的起訴及組織犯罪件數增加(271 件起訴)，這可歸因於組織犯罪防制條例的修法。未針對這類型前置犯罪的第三方洗錢及國外不法收益洗錢實施充分調查。



172. **Tax crimes** - most are detected by the tax authorities who will refer the case to the MJIB to investigate. To date there have only been 2 ML cases arising from tax crimes. This may be because the number of ML prosecutions per predicate only reflects the predicate offence with the highest sentencing. However, when comparing the number of tax crimes, and the significance of the cash-based economy, the lack of ML prosecutions is not in line with the risk profile. Investigating third party ML and laundering foreign proceeds is not sufficiently targeted in relation to this priority crime type.

稅務犯罪-大部分是由稅務機關發掘並將案件移給調查局調查。到目前為止只有 2 件以稅務犯罪為前置犯罪的洗錢案。這有可能是因為洗錢罪的前置犯罪只會顯示刑度最高的前置犯罪。但是與稅務犯罪以及以現金為基礎的經濟相較，未針對這類型前置犯罪的第三方洗錢及國外不法收益洗錢實施充分調查。

173. While the assessment team welcomes the increase in the number of ML investigation for 2018, the trend is most pronounced in regard to fraud, organised crime and third-party ML. Authorities advised that they are prioritising the 8 high risk crime types as set out in the NRA however the results are still to be demonstrated.

雖然評鑑團肯定 2018 年的洗錢犯罪調查數據之增加，但是這個趨勢大多在詐欺、組織犯罪及第三方洗錢發揮作用，權責機關表示他們將國家風險評估報告中的八大高風險罪列為優先，但是結果仍需要證明。

### *Types of ML cases pursued*

#### *洗錢案件的起訴類型*

174. Between 2012 – June 2018 prosecutions took place in 65 self-laundering cases, 409 cases of third party ML and 27 cases of ML based on foreign of predicate offences. Almost all of the cases of third party ML were prosecuted in the year immediately prior to the ME onsite. In 2017 legal persons were investigated in five cases for ML with one case filed for prosecution. In 2018, legal persons were investigated in 22 cases with 12 cases filed for prosecution.

在 2012 年至 2018 年 6 月間，起訴了 65 件為自己洗錢案件，409 件第三方洗錢案件，及 27 件洗錢犯罪前置犯罪在國外案件，幾乎所有的第三方洗錢案件發生在現地評鑑的前一年。2017 年有 5 起法人洗錢犯罪被調查，1 起案件被起訴。2018 年調查了 22 起法人洗錢案件，起訴了 12 起案件。

175. The NRA highlights third-party money laundering as one of the eight high-risk threats. However, the NRA discusses elements of this laundering as including underground remittances and subsequent breaches of the Banking Act. Whilst many cases were shown to involve the use of underground banking channels to conduct ML, the NRA also notes that legitimate businesses use underground remittances to transfer funds from China to Chinese Taipei. Authorities also advise that the use of dummy accounts predominately by individuals looking to make money in exchange for allowing accounts to be set up and transacted upon in their names. It was not clear that authorities are actively targeting underground banking related to proceeds of crime rather than legitimate trade. Authorities advised that the spike in third party ML cases in 2018 relates predominately to dummy account cases. In light of the findings of the NRA and the typologies of various third party ML in Chinese Taipei this should remain a focus of authorities.

國家風險評估報告強調第三方洗錢是八大高風險犯罪之一，但是，國家風險評估報告討論這類洗錢的要素包含地下匯兌及違反銀行法，雖然許多案例顯示包含使用地下匯兌進行洗錢，國家風險評估報告也指出合法企業利用地下匯兌將資金從中國轉移至中華臺北的狀況。權責機關指出人頭帳戶主要是想要賺錢的個人在使用，並用他們的名字進行交易。目前尚不清楚當局是否正在積極瞄準與犯罪所得而非合法貿易的地下匯兌。當局表示，2018 年第三方洗錢案件的激增主要與人頭帳戶案件有關。鑑於 NRA 的發現以及中華臺北各種第三方洗錢的類型，這應該仍然是當局的關注的焦點。

**Box 3.7 - Examples of different types of ML prosecuted in Chinese Taipei****案例 3.7-中華臺北不同類型洗錢犯罪起訴案例**

**Self-laundering:** An individual Mr C was a member of a scam syndicate and converted his and others fraud proceeds into Bitcoins and transferred them in and out of e-wallets repeatedly in order to avoid detection. He laundered NT50 million in one month using forged identity documents to apply for accounts. He then directed the Bitcoins to other members of the scam syndicate. Authorities investigated Mr C and as a result of the investigation he was charged with offences against the MLCA. He was ultimately sentenced to 4 years and 6 months imprisonment.

**為自己洗錢:** C 先生是一個詐騙集團的成員，將他和其他人的詐欺不法所得轉換為比特幣，並反復將其轉移到電子錢包中以避免被發現。他使用偽造的身份證件在一個月內洗了五千萬新台幣。然後，他將比特幣轉給詐騙集團的其他成員。當局對 C 先生進行了調查，調查結果他被指控違反洗錢防制法。他最終被判處四年六個月徒刑。

**Third party ML:** A criminal Mr C established Group Y and claimed Y could provide high profit investments. Investors were recruited via various means. Some customers did in fact receive high value rewards and other perks. Group Y raised more than NT6.5 billion. To avoid detection, investors were required to pay in cash. With the assistance of a third party Mr T the funds were transferred through his accounts. Cash was hidden in other areas and some transferred offshore. In November 2018, both Mr C and Mr T were prosecuted for violations of the Multi-Level Marketing Supervision Act, Banking Act and the MLCA.

**第三人洗錢:** 罪犯 C 先生成立了 Y 集團，並聲稱 Y 可以提供高利潤的投資，並通過各種方式招募投資者。實際上，有些客戶確實獲得了高價值的獎勵和其他福利。Y 集團募集了超過新台幣 65 億元的資金。為了避免被發現，投資者必須以現金支付。在第三人 T 先生的協助下，資金通過他的帳戶轉移。現金被藏在其他地區，有一些轉移到了海外。在 2018 年 11 月，C 先生和 T 先生均因違反多層次傳銷管理法、銀行法和洗錢防制法而受到起訴。

**ML based on foreign predicate offences:** A Japanese national (N) was suspected of embezzling company property in Japan due to the abuse of his power. N then purchased large amounts of expensive watches, jewellery and diamonds before fleeing to Chinese Taipei with his wife. The CIB received a notice from Japanese police requesting a joint investigation to apprehend the suspect and seize related assets. Chinese Taipei police located the suspect and uncovered luxury residences and found the couple were living an extravagant lifestyle. Assets were seized and N is current in the process of being prosecuted for ML in Chinese Taipei.

**前置犯罪在國外之洗錢:** 一名日本國民 (N) 因濫用職權而被懷疑在日本挪用公司財產。N 隨後與妻子一起逃亡到中華臺北，然後購買了大量昂貴的手錶，珠寶和鑽石。刑事局收到日本警察的通知，要求進行聯合調查以逮捕嫌疑人並沒收相關資產。中華臺北警方找到了嫌疑人並發現了豪華住宅，發現他們倆過著奢侈的生活。N 的資產被沒收，在中華臺北被起訴洗錢。

**Table 3.93: Types of ML crimes prosecuted (number of defendants)**

表 3.93: 洗錢犯罪的起訴類型(人數)

| Category 類型 | 2014 | 2015 | 2016 | 2017- June 2018 | Total 總數 |
|-------------|------|------|------|-----------------|----------|
|             |      |      |      |                 |          |

|  |           |           |           | 2017-2018 六月 |             |
|--|-----------|-----------|-----------|--------------|-------------|
| Self-laundering<br>為自己洗錢                           | 9         | 25        | 6         | 7            | 47          |
| Third party ML<br>第三人洗錢                            | 7         | 25        | 6         | 356          | 394         |
| Predicate offences in foreign countries<br>前置犯罪在國外 | 2         | 5         | 0         | 3            | 10          |
| <b>Total 總數</b>                                    | <b>18</b> | <b>55</b> | <b>12</b> | <b>366</b>   | <b>*451</b> |

176. The TC annex analysis of Recommendation 3 notes potential legislative challenges with prosecuting ML based on foreign predicate offences. Authorities confirmed that their interpretation of the law allowed them to charge ML based on foreign predicate offences and cases presented to the team demonstrated successful prosecutions (as outlined above). Nevertheless, for the avoidance of any future doubt, the MLCA was amended subsequent to the onsite visit.

技術遵循附件的第 3 項建議分析指出，在前置犯罪在國外的情形下起訴洗錢罪有潛在的立法挑戰，權責機關證實法律的解釋讓他們可以起訴前置犯罪在國外的洗錢犯罪，而提交給評鑑團的案例也展現出成功的起訴(如上面所述)。然而，為了避免未來的質疑，洗錢防制法已經在現地評鑑後修法完成。

177. Authorities face challenges with investigating ML relating to foreign proceeds of crimes and in receiving international cooperation generally (see IO2). Cases presented demonstrate novel and resolute efforts to overcome challenges with receiving international cooperation and authorities' success in this area is notable.

權責機關在調查涉及國外不法所得的洗錢及國際合作面臨挑戰(參見 IO2)。案例展現出克服這些全新挑戰的堅決努力，他們在國際合作這方面的成功非常顯著。

178. Authorities have undertaken numerous training sessions for relevant agencies focused on ML and amendments to the MLCA and the CFT Act. Between 2014 and June 2018 there were a total of 614 sessions with 23,985 participants. Participants included officials from MOJ (including Prosecutors Office), CGA, NPA, NIA, MJIB, AAC and Criminal Department of Judicial Yuan.

權責機關針對洗錢犯罪、洗錢防制法及資恐防制法之修正進行大量的訓練課程。在 2014 年至 2018 年 6 月間，總計有 614 場訓練場次及 23985 位參訓人員，參訓人員包含來自法務部(包含檢察署)、海巡署、警政署、移民署、調查局、廉政署及司法院刑事廳的人員。

### *Effectiveness, proportionality and dissuasiveness of sanctions*

#### *制裁的有效性、合乎比例性及勸阻性*

179. Sanctions for ML are not applied effectively and dissuasively. The MLCA provides a maximum penalty of no more than seven years imprisonment and in addition, a fine of not more than NT5 million. The Act provides for a reduction of punishment for offenders who confess during the investigation or trial (Art.16). Despite the maximum period of imprisonment being seven years, the average sentence for first instance judgments was 11.89 months. For second instance judgments, the average sentence was 13 months. For third instance judgments, the average sentence was 11.19 months. During the first

half of 2018, 44 out of 51 defendants received sentencing of less than one year (see table below). When taking into account the already high workloads for prosecutors, the incentive to charge ML may not be present.

洗錢犯罪制裁不具有有效性及勸阻性，洗錢防制法規定 7 年以下有期徒刑及新臺幣 500 萬元以下罰金。該法規定在偵查中或審判中自白者得減輕其刑(第 16 條)。儘管最高刑其是 7 年，第一審平均刑期是 11.89 個月。第二審平均刑期是 13 個月，第三審平均刑期是 11.19 個月。在 2018 年上半年，51 位被告中有 44 位刑期不到 1 年(詳見下表)。在考量檢察官龐大的工作量下，現時顯然沒有起訴洗錢罪的誘因。

180. The procedure for calculating an overall sentence in Chinese Taipei is for the judiciary to determine the penalty for the predicate offence and the penalty for the ML offence separately. Judges will then add the two sentences together and then generally determine an overall sentence that lies in between the sum total of the two offences.

在中華臺北計算總刑期(定應執行刑)的程序是由司法機關先分別決定前置犯罪及洗錢犯罪的刑期，法官將兩個刑期加總後，並在加總後的刑期範圍內決定總刑期。

181. The conviction rate for ML is also low. Between 2014 – 2018 there were 1396 persons who had concluded investigations for ML. Of these 1396 persons, 648 were prosecuted and of that 94 were convicted at first instance. The reason/s for the low conviction rate was not explained and may be due to the legislative requirements and/or training of judges.

洗錢罪的定罪率也很低，在 2014 至 2018 年間，偵查終結的洗錢案件有 1396 人，其中有 648 人被起訴，94 人在第一審被定罪，無法解釋為何定罪率低，有可能是因為立法的要求或是法官的訓練。

182. Given that the identified high risk crime types carry more significant sentences than that of ML, the very low penalties applied may have acted as a disincentive to prosecutors to proceed with complex ML investigations alongside predicate offence investigations.

鑑於高風險犯罪比洗錢犯罪的刑期更重，極輕的處罰可能會影響檢察官調查複雜洗錢案件及前置犯罪之意願。

183. The Judicial Yuan promulgated sentencing guidelines and a sentencing manual for judges' reference in 2018 in order to ensure the appropriateness of sentencing. Authorities advise that the guidance to the judiciary is resulting in increased sentences for ML, citing one case in 2018 that attracted a penalty of 8 years and six months. In practice, amendments to the MLCA will take time to come through as new offences are charged under the amended legislation.

在 2018 年司法院頒布了量刑指南和手冊供法官參考，以確保量刑的適當性。當局告知，給司法機構的指南讓洗錢的刑期增加，並引述一起 2018 年的案件，該案判決 8 年 6 個月的刑期。實際上，洗錢防制法修正後，仍需要時間讓新的案件以修正後的洗錢防制法起訴。



Table 3.94: Average sentence given for ML

表 3.94:洗錢罪平均刑期

| Year<br>年度                   | First Instance Court -<br>Average Sentence (months)<br>第一審-平均刑期(月) | Second Instance Court<br>Average Sentence<br>(months)<br>第二審-平均刑期(月) | Third Instance Judgment<br>Average Sentence<br>(months)<br>第三審-平均刑期(月) |
|------------------------------|--|--|--|
| 2014                         | 4  | 15   | 11.22  |
| 2015                         | 18.11  | 19.75  | 30   |
| 2016                         | 12.14  | 7.67   | 0  |
| 2017                         | 40.87  | 10.22  | 9  |
| 2018<br>(Jan-Jun)<br>(一月到六月) | 3.8  | 17.33  | 14   |
| <b>Total<br/>總數</b>          | <b>11.89</b>   | <b>13</b>  | <b>11.19</b>   |

### Other criminal justice measures

#### 其他刑事司法措施

184. Chinese Taipei authorities highlighted challenges in prosecuting ML in light of previous legislative deficiencies. Generally, apart from pursuing a prosecution of the predicate offence, it not apparent that authorities actively took further steps to apply other criminal justice measures. As noted in IO8, there were further challenges with freezing and seizing proceeds of crime prior to the legislative amendment in 2016. Amendments to the CPC now allow forfeiture of assets where a criminal has fled, died or due to other reasons where a criminal prosecution is unavailable. Since these amendments however authorities have in some instances embraced the opportunity to apply alternative measures in line with the new regime.

中華臺北機關表示由於之前的法律缺陷導致起訴洗錢罪充滿挑戰。整體來說，除了進行前置犯罪的追訴之外，機關並沒有很主動地採取其他的刑事司法措施。如直接成果 8 所述，在 2016 年的法律修法之前，在凍結及扣押不法所得上有許多的挑戰。刑法沒收制度的修正允許當嫌犯逃跑、死亡或其他因素而無法進行刑事起訴時，仍可以沒收資產。因為這些修正，權責機關在某些情況下依據新制度採取替代性措施。

185. Authorities have in some instances taken novel approaches to pursuing matters in order to ensure punishment of offenders and the confiscation of proceeds of crime in very serious matters. One such example of the continued pursuit of offenders over a number of years and the application of new laws as they come into effect is demonstrated below.

權責機關在某些情況下會採取新的方法追查犯罪確保對犯罪者的處罰及不法所得的沒收，其中一個例子就是多年來持續追訴嫌犯，並當新的法律生效時立即適用。

**Case Example 3.8: Procurement of the Lafayette frigate****案例3.8:拉法葉採購弊案**

This case relates to the purchase of a military frigate from a French company in 1989. At the time, the Chief of the Logistics Section, Ministry of Defence (Mr K) was suspected of receiving a commission from the transaction which was an offence against the Anti-Corruption Act. Authorities prosecuted Mr K along with Mr W who was an arms dealer. Mr K and Mr W were charged under Article 15 of this act which is the offence of “intentionally accepting, transporting, concealing, storing or knowingly purchasing property which is known to be the proceeds of any of the offences listed in Articles 4 through 6...”. Thus, the defendants in this matter were charged with an alternative charge that nevertheless covered much of the conduct of ML. The defendants in this matter transferred proceeds of crime overseas and authorities took action to freeze the proceeds. Approximately 1 billion USD has been frozen across 61 different accounts. Further, once the CPC was amended in 2016 allowing for a wider scope of confiscation and following the death of one of the defendants, Prosecutors returned to Court in this matter to confiscate the criminal proceeds totalling USD900 million. Authorities experienced many challenges in this case, including extremely significant sums of proceeds of crime, international cooperation challenges and limitations to the domestic legislative regime. Despite this, prosecutors were able to take a novel approach to ensuring criminal justice outcomes and the confiscation of proceeds of crime in order to provide restitution to the state and punishment of those involved.

此案與 1989 年從一家法國公司購買軍用護衛艦有關。當時，國防部後勤科科長（K 先生）涉嫌從交易中獲得佣金，這是一種違反貪污治罪條例之犯罪。當局起訴了 K 先生和武器交易商 W 先生。K 先生和 W 先生根據該法第 15 條“明知因犯第四條至第六條之罪所得之財物，故為收受、搬運、隱匿、寄藏或故買者……”被起訴。因此，在這件事上，被告被控以其他罪名，但該罪名涵蓋了洗錢的大部分行為。被告在此案中將犯罪收益轉移到海外，當局採取了行動凍結了收益。已凍結 61 個不同帳戶中約 10 億美元。此外，從 2016 年對刑事訴訟法進行了修訂擴大沒收範圍，並且在其中一名被告死亡後，檢察官向法院聲請並沒收了總計 9 億美元的犯罪不法所得。當局在此案中遇到了許多挑戰，包括犯罪不法所得非常多，國際合作面臨的挑戰以及國內立法制度的限制。儘管如此，檢察官還是能夠採取新穎的方法來確保刑事司法結果和沒收犯罪不法所得，歸還國家損失並懲處涉案人員。

186. Deficiencies in the old MLCA may have posed challenges for authorities to prosecute ML charges and in such instances legislation such as the Securities Exchange Act was used to prosecute for example in matters such as falsifying capital increases and illegal merger transactions.

舊的洗錢防制法缺陷帶給機關在起訴洗錢犯罪時許多挑戰，在某些情況下，證券交易法的立法被用來起訴虛偽增資案件及非法購併交易案件。

*Overall conclusions on Immediate Outcome 7**直接成果 7 之整體結論*

187. Chinese Taipei has not prioritised the pursuit of ML until quite recently. The focus on pursuing ML cases dates from amendments to the MLCA in 2017 when the offence was improved. LEAs have very well developed financial investigation and prosecution capacity, however the nature of the ML offence and a lack of policy priority has meant that ML was pursued to a lesser extent. Results of ML prosecutions have not been effective, with low conviction rates and very low sentences applied. Chinese Taipei is not yet able to demonstrate that its level of prosecutions and convictions of ML is in keeping with its threats, risk profile and AML/CFT policies.

在 2017 年洗錢防制法的修法之後，中華臺北專注於追查洗錢案件，在這之前，中華臺北沒有將追查洗錢列為優先考量。執法機關具有非常完善的金融調查和起訴能力，但是洗錢犯罪的性質及在政策上未將調查洗錢做為優先考量意味著洗錢犯罪的追查程度較低。洗錢起訴的結果並不有效，定罪

率低，判決刑期非常低。中華臺北尚未能證明其對洗錢犯罪的起訴和定罪水準與其威脅、風險概況與 AML / CFT 政策保持一致。

**188. Chinese Taipei has a moderate level for effectiveness for Immediate Outcome 7.**

中華臺北直接成果 7 評等為中度有效。

**Immediate Outcome 8 (Confiscation)****直接成果 8(沒收)***Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective*

將沒收犯罪所得、犯罪工具和等價財產作為政策目標

3

189. Chinese Taipei has a generally effective legal framework for freezing, seizing and forfeiting criminally linked assets. The MLCA contains provisions for criminal forfeiture on conviction and also authorises for restraint and seizure of criminal proceeds in ML cases. The Criminal Code provides also for conviction based confiscation, this was expanded in 2016 as outlined below. Article 38-1 of the Criminal Code expressly permits forfeiture of properties of corresponding value and article 38 of the Criminal Code is a general provision allowing for forfeiture of instrumentalities. The CPC contains provisional measures such as seizing and freezing of assets and also includes some forfeiture provisions. The Narcotics Hazard Prevention Act and the Forest Act provide for specific forfeiture authorities against instrumentalities involved in the offenses governed by these Acts. Amendments to the Criminal Code in 2016 expanded the scope of property subject to forfeiture allowing the seizure and forfeiture of property in a third parties title or possession and forfeiture in cases where a defendant has died, fled or authorities are unable to prosecute.

中華臺北擁有一個大致上有效的法律框架，用於凍結、扣押和沒收與犯罪有關的資產。洗錢防制法有關於定罪後刑事沒收的規定，該規定有禁制、扣押洗錢罪的犯罪所得。刑法也有關於定罪後沒收的規定，如以下所述於 2016 年擴大。刑法第 38-1 條明確允許沒收相對應價值的財產，刑法第 38 條似乎是允許沒收犯罪工具的一般規定。刑事訴訟法有扣押、凍結資產及沒收的暫時性措施。毒品危害防制條例和森林法這兩個法律有沒收特定犯罪工具之規定。2016 年“刑法”修正擴大了沒收的財產範圍，允許扣押和沒收第三人所有或佔有之財產或在被告死亡，逃亡或當局無法起訴的情況下沒收財產。

190. Chinese Taipei does not have administrative forfeiture by LEAs. The Customs Administration (CA) is considered an administrative agency rather than a LEA. The CA has the authority to administratively seize and forfeit assets arising from violations of the Anti-Smuggling Act, including cross-border declaration violations. All forfeiture must be adjudicated by a court order.

中華臺北的執法機關沒有行政沒收。中華臺北的海關被認為是行政機關而非執法機關。海關當局可以在違反海關緝私條例，包含違反跨境申報的情況下扣押及沒入資產。所有的沒收必須由法院命令裁決。

191. LEAs and prosecutors place a high priority on forfeiture and seek orders forfeiting property of equivalent value generally as a policy objective. Extensive training has been provided to officers from relevant agencies. Between 2014 and 2017 almost 1000 training sessions were held including over 10,000 officers on forfeiture of criminal proceeds. The number and levels of participation increased year on year within that figure. Sessions included staff from the Criminal Department of the JY, MOJ (incl Prosecutors Office), CGA, Ocean Affairs Council, NPA, NIA, MJIB and AAC.

執法機關和檢察官非常重視沒收，並將聲請沒收等價財產的命令作為政策目標。已向有關機構的官員提供了廣泛的教育訓練。2014 年至 2017 年期間，舉辦了近 1000 場教育訓練，其中包括 10,000 多名沒收犯罪所得的人員。場次和參與人數逐年增加。會議包括司法院刑事廳，法務部（包括地檢署），海洋委員會海巡署，警政署，移民署，法務部調查局和廉政署的代表。

192. The 2017 MOJ “*Enforcement Guidelines for Pursuit of the Proceeds of Crime by Prosecutorial Authorities*” provides the basis for the HPO platform for information on the pursuit of proceeds of crime. The platform was designed to streamline communication between HPO and other relevant agencies. In



addition, in 2017 MOJ published the “*Seizure and Confiscation Case Handbook*”, ensuring that prosecutors and LEAs are able to grasp the revised forfeiture system. Further information concerning seizure and appraisal of assets is placed on the MOJ website to enable prosecutors in the field to handle and manage seized assets. A real time look-up system for items to be auctioned on MOJ’s official website is also available in order to raise awareness of the auctioned assets and enhance transparency of the auction process.

法務部 2017 年發布的“檢察機關追討犯罪所得實施要點”，為高檢署建立一個追討犯罪所得的訊息平台。該平台旨在簡化高檢署與其他相關機構之間的溝通。此外，2017 年法務部出版了“扣押沒收辦案手冊”，確保檢察官和執法機關能夠掌握修訂後的沒收制度。此外，有關扣押和拍賣資產的資訊也放置在法務部網站上，以使外勤檢察官能夠處理和管理被扣押的資產。法務部的官方網站上也有拍賣物品的即時查詢系統，以提高對拍賣資產的認識並提高拍賣過程的透明度。

193. The July 2015 revised “MJIB Directions for Investigations of Proceeds of Crime when Conducting Criminal Cases” directs the MJIB to expand pursuit of the proceeds of crime. Other LEAs including NPA, NIA, CGA and AAC include forfeiture of criminal assets in the respective agency’s policy and action plan, placing a clear emphasis and policy objective of pursuing forfeiture of criminal assets.

2015 年 7 月修訂的“法務部調查局辦理刑事案件追查犯罪不法所得應行注意事項”，指引調查局擴大追查犯罪所得。包括警政署，移民署，海巡署和廉政署在內的其他執法機關，將沒收犯罪資產放入各單位的政策和行動計劃中，明確強調將沒收犯罪資產作為政策目標。

194. In the context of pursuing criminal assets, LEAs in Chinese Taipei implemented a performance evaluation system known as “incentive measures”. The “incentive measures” are a merit-based system to assess LEA officers’ performance, there is not in fact a direct consequential link between monetary compensation awarded to an officer and the amount of assets seized or forfeited. In evaluating an officer’s performance, many factors will be taken into consideration such as the complexity of the case, the effect of the investigation, whether or not it is a proactive investigation, the length of the investigation, evidence collection, and the presence of ML components. Although this system varies in its operation by each agency where points are given to the officer or whether a promotion or monetary compensation is awarded, it does not raise concerns of the risk of abusing LEAs’ seizure power. In particular, as stated above, Chinese Taipei does not provide for administrative forfeiture by LEAs, and all forfeiture must be premised on a court order. Furthermore, LEAs’ seizure authority without a court order is limited to the three exceptions under CPC Article 133-1 and 133-2.

在追查犯罪資產方面，中華臺北的執法機關實施了稱為“獎勵措施”的績效評估制度。“獎勵措施”是評估執法機關官員績效的制度，事實上對於官員的金錢獎勵與被扣押或沒收的資產數量並未直接相關。在評估一名官員的表現時，會考慮很多因素，例如案件的複雜性，調查的效果，是否是主動調查，調查的時間長短，證據收集以及是否存在洗錢的因素。雖然這個系統的運作因各個機構的運作情況而有是否給予晉升或金錢獎勵的不同，但這並沒有造成執法機關濫用扣押權限的風險。特別是，如上所述，中華臺北的執法機關並無行政沒收的規定，所有沒收必須以法院命令為前提。此外，沒有法院命令的執法機關的扣押權限僅限於刑事訴訟法第 133-1 條、133-2 條規定的三個例外。

195. The high value of amounts forfeited reflects a policy to pursue proceeds of crime as well as the capacity of LEAs and prosecutors. A variety of training sessions has been provided to LEAs and prosecutors to support confiscation and forfeiture.

中華臺北高額的沒收金額反映了追討犯罪所得的政策，以及執法機關及檢察官的能力。向執法機關和檢察官提供的各種培訓課程也為扣押及沒收提供了支持。

### *Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad*

## 沒收國內外前置犯罪之犯罪所得以及國外收益

## i. Proceeds of Crimes, Instrumentalities and Property of Corresponding Value

## 犯罪所得、犯罪工具及等值財產

196. Chinese Taipei authorities heavily rely on criminal forfeiture to seize and forfeit criminal assets located in Chinese Taipei as well as proceeds transferred overseas. Its efforts in forfeiture of criminal proceeds, instrumentalities, and properties of corresponding value have been enhanced by an expressed strategic emphasis on the pursuit of forfeiture of proceeds of crime as a goal.

中華臺北當局非常依賴刑事沒收來扣押和沒收位於中華臺北的犯罪資產以及轉移到海外的收益。中華臺北對沒收犯罪所得、工具和等價值財產的努力也通過明確的政策目標，強調以追討沒收犯罪所得為目標。

Table 3.95: Confiscation pronounced by confirmed court rulings

表 3.95: 經法院裁判確定應沒收金額

|                       | 2014       | 2015       | 2016       | 2017        | 2018 (1-6)  | Total       |
|-----------------------|------------|------------|------------|-------------|-------------|-------------|
| Cases<br>案件數          | 5,592      | 5,029      | 6,938      | 16,434      | 7,986       | 41,979      |
| Value (USD)<br>金額(美元) | 82,838,351 | 16,153,153 | 58,300,255 | 291,137,146 | 140,553,523 | 589 million |

197. Chinese Taipei provides general provisions as well as specific authority to forfeit instrumentalities. There is statutory authority in Chinese Taipei which permits the conversion of instrumentalities seized into cash during the course of litigation. The statistics in the table below show the converted value from 2014-2018 of non-cash assets seized which included instrumentalities of the crimes. Chinese Taipei was unable however to provide separate statistics on instrumentalities seized and confiscated.

中華臺北就沒收工具有一般性規定以及特別規定。中華臺北有法定權限允許在訴訟過程中將被扣押的工具轉換為現金。下表中的統計數字顯示 2014 - 2018 年轉換的非現金資產的價值，其中包括犯罪的工具。但是，中華臺北無法將被扣押和沒收的工具的統計數據分開來。

Table 3.96: Converted Value of Non-cash Assets Seized incl. Instrumentalities of Crimes (USD)

表 3.96: 扣押之非現金資產及犯罪工具變價金額統計(美金)

| Year<br>年度                        | 2014    | 2015    | 2016    | 2017      | 2018<br>(Jan-Jun)<br>2018<br>(1-6 月) | Total<br>value of<br>converted<br>items<br>各變價項<br>目總計 |
|-----------------------------------|---------|---------|---------|-----------|--------------------------------------|--|
| Vehicles<br>車輛                    | 197,683 | 328,706 | 558,260 | 1,341,970 | 555,721                              | 2,982,341  |
| Precious<br>metals &<br>jewellery | 52,336  | 0       | 7950    | 29,774    | 9,408                                | 99,468   |

|                             |         |         |         |           |         |           |
|-----------------------------|---------|---------|---------|-----------|---------|-----------|
| 貴金屬及寶石                      |         |         |         |           |         |           |
| Electronic products<br>電子產品 | 5,233   | 43,970  | 194,485 | 76,091    | 49,907  | 369,687   |
| Other<br>其他                 | 84,728  | 109,413 | 121,645 | 980,102   | 11,501  | 1,307,390 |
| Annual total<br>年度總額        | 339,981 | 482,090 | 882,340 | 2,427,938 | 626,538 | 4,758,888 |

198. Article 38-1 of the Criminal Code allows for the forfeiture of property of equivalent value. This provision has been used well in forfeiting properties of corresponding value located domestically and overseas. The following case study demonstrates Chinese Taipei's ability to seize the property of corresponding value as the property seized is not traceable to the criminal offenses, but existed prior to the commission of the accused criminal offense.

刑法第 38-1 條允許沒收同等價值的財產。這項規定已被良好的運用在沒收國內外同等價值的財產。以下案例說明中華臺北有能力扣押無法追溯刑事犯罪，但在犯罪之前就已存在之同等價值的財產。

**Case Example 3.9: Forfeiture of Property of Corresponding Value****案例3.9: 等價財產的沒收**

In order to obtain raw edible oil at a “competitive” low price, Mr. W, former Chairman of Company W conspired with Mr. C, President of Company C, an oil production Co. to purchase contaminated oil at a low price from Company C. Mr. W then instructed Oil Production Co. C to manufacture the contaminated oil into olive oil and grapeseed oil for Company W, masked as Company W’s products “exclusive” or “golden ratio” blended oil. Mr. W and Mr. C falsely presented to the public that the companies used imported olive oil and grapeseed oil in making the products. As a result, the company gained NT\$150 million in illicit proceeds by selling the contaminated oil. Mr. W was indicted in October 2014 for fraud and convicted by the trial court. The appeal is presently pending. After the CPC was amended, the prosecutor’s office in July 2016 applied to the trial court for an order to seize a piece of land whose existence predated the criminal scheme however was seized on the basis that it was property of corresponding value.

為了以“有競爭力”的低價獲得原料食用油，W公司前董事長W先生與一家石油生產公司C公司總裁C先生合謀，以低價從C公司購買受污染的油。W先生隨後指示石油生產公司C為W公司製造受污染的橄欖油和葡萄籽油，作為W公司的產品“獨家”或“黃金比例”混合油。W先生和C先生錯誤地向大眾表示，這些公司使用進口橄欖油和葡萄籽油製造產品。結果，該公司透過出售受污染的油獲得了1.5億新台幣的非法收益。W先生於2014年10月因詐欺罪被起訴，並被地方法院定罪。該上訴案正在審理中。刑事訴訟法修正後，2016年7月地檢署向地方法院提出申請，要求扣押一塊土地，該土地在犯罪計劃前即已存在，但是因為它是等價值的財產而被沒收。

## ii. Provisional Measures

## 暫時性措施

199. Chinese Taipei is able to appropriately use a variety of tools in identifying, tracing, and forfeiting criminal assets. Case studies and other data demonstrate that restraint and seizures are performed in a timely manner. Provisional measures under the CPC appear to operate well in practice.

中華臺北能夠適當地使用各種工具來識別、追查和沒收犯罪資產。提供的案例及其他資料展現出能及時進行限制和扣押。CPC提供了暫時性措施，似乎在實務上運作良好。

**Table 3.97: Seizures by Prosecutors Offices****表 3.97: 地方檢察署扣押金額統計**

| Year<br>年度   | Number of cases<br>案件數 | Amount NTD<br>新台幣     | USD equivalent<br>等值美元 |
|--------------|------------------------|-----------------------|------------------------|
| 2013         | 5,119                  | 1,796,926,204         | 59,897,540             |
| 2014         | 3,942                  | 12,019,217,540        | 400,640,585            |
| 2015         | 3,598                  | 1,274,215,530         | 42,473,851             |
| 2016         | 3,574                  | 2,849,532,465         | 94,984,416             |
| 2017         | 2,525                  | 5,417,755,292         | 180,591,843            |
| 2018         | 1,110                  | 831,729,768           | 27,724,326             |
| <b>Total</b> | <b>19,868</b>          | <b>24,189,376,799</b> | <b>806,312,561</b>     |

200. Prosecutors have the sole responsibility for applying for seizure orders from the court and as such all statistics are attributed to them. However, each case involves multiple LEAs who are involved



in investigating the matter. The amounts contained in the above table do not include the seizures made by the CA.

檢察官全權負責向法院申請扣押令，因此所有統計數據都來自於他們。但是，每個案件都涉及多個參與調查的 LEA。上表所含數據不包括財政部關務署的扣押。

201. Chinese Taipei also provided statistics on seizures based on the various offenses. The below table shows that seizures grounded on specific predicate offense are generally consistent with Chinese Taipei's risk profile.

中華臺北也提供了各種犯罪的扣押統計數據。下表顯示基於特定前置犯罪的扣押大致上與中華臺北的風險狀況一致。

Table 3.98: Seizures - broken down by predicate offence (in USD)

表 3.98: 地方檢察署辦理洗錢及前置犯罪扣押金額統計(美金)

| Criminal offense type<br>前置犯罪類型                                | 2014       | 2015      | 2016       | 2017      | 2018 (1-6) | Average    |
|--|------------|-----------|------------|-----------|------------|------------|
| <b>Very high risk offences</b><br>非常高風險威脅                      |            |           |            |           |            |            |
| Drug Trafficking<br>毒品販運                                       | 1,232,211  | 1,381,188 | 779,245    | 1,007,105 | 468,634    | 1,081,863  |
| Corruption and Bribery<br>貪汙及賄絡                                | 1,787,945  | 335,271   | 659,966    | 2,273,569 | 871,280    | 1,317,340  |
| Fraud (incl. illegal fund raising)<br>詐欺(含吸金)                  | 4,248,279  | 2,496,422 | 28,597,152 | 5,237,655 | 5,699,803  | 10,284,291 |
| Smuggling<br>走私  | 18,900     | 0         | 10         | 624,162   | 110,474    | 167,455    |
| Tax Crimes<br>稅務犯罪   | 2,360,350  | 1,766,531 | 25,694,427 | 3,523,107 | 12,633,739 | 10,217,368 |
| Insider trading /market manipulation<br>內線交易/市場操縱              | 17,076,744 | 8,352,429 | 637,771    | 7,666,103 | 4,899,529  | 8,585,017  |
| Third Party ML<br>第三方洗錢  | 298,740    | 2,464,117 | 1,089,938  | 49,774    | 5,966,681  | 2,193,167  |
| Organised Crime<br>組織犯罪  | 61,792     | 67,300    | 66,080     | 551,178   | 62,297     | 179,699    |
| <b>High risk offences</b><br>高風險威脅                             |            |           |            |           |            |            |
| Intellectual Property Crime<br>智慧財產犯罪                          | 17,233     | 0         | 143,540    | 512,271   | 18,616     | 153,702    |
| <b>Medium risk offences</b><br>中風險威脅                           |            |           |            |           |            |            |
| Illicit Arms Trafficking<br>非法販運武器                             | 40,617     | 60,263    | 1,777      | 413       | 75         | 22,921     |
| Illicit trafficking -stolen & other goods<br>非法販運-贓物和其他物品      | 167        | 0         | 0          | 0         | 0          | 37         |
| Environmental Crimes<br>環保犯罪                                   | 30,692     | 116,652   | 42,940     | 360,919   | 346,666    | 199,526    |
| Kidnapping<br>綁架   | 200        | 0         | 0          | 0         | 0          | 44         |
| Theft<br>竊盜  | 9,291      | 983       | 104,743    | 5,390     | 46,235     | 37,031     |
| Forgery of documents, securities, ID<br>偽造文書、有價證券、身分證<br>件     | 17,700     | 34,848    | 401,558    | 20,258    | 1,060      | 105,650    |
| <b>Low risk offences</b><br>低風險威脅                              |            |           |            |           |            |            |
| Counterfeiting currency<br>偽造貨幣                                | 17,700     | 34,700    | 401,558    | 20,258    | 1,060      | 105,617    |
| Trafficking in human beings (migrant<br>smuggling)<br>人口販運(偷渡) | 13,826     | 37,680    | 48,612     | 1,838,111 | 11,007     | 433,164    |
| Sexual Exploitation  | 1,660      | 13,840    | 20,316     | 5,663     | 4,190      | 10,149     |

|                                     |           |           |           |           |           |           |
|-------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| 性剝削                                 |           |           |           |           |           |           |
| Robbery<br>搶劫                       | 6,623     | 12,470    | 2,832     | 6,366     | 8,682     | 8,217     |
| Murder<br>謀殺                        | 6,473     | 0         | 0         | 25,877    | 37        | 7,197     |
| Extortion<br>恐嚇取財                   | 688       | 14,657    | 0         | 3,802     | 335       | 4,329     |
| <b>總額(美金百萬)Total (USD millions)</b> | <b>27</b> | <b>17</b> | <b>58</b> | <b>23</b> | <b>31</b> | <b>35</b> |

3

### iii. Domestic and Foreign Predicates and Property Moved Overseas

#### 國內外前置犯罪及移往海外之犯罪資產

202. Chinese Taipei provided case examples demonstrating that it pursues forfeiture using all of the asset recovery tools at its disposal and in all contexts, including in cases involving domestic and foreign predicate offenses and proceeds which have been moved overseas. A breakdown showing amount of assets seized and forfeited based on domestic and foreign predicates is unavailable. However, Chinese Taipei provided the forfeiture amount based on a court order for each predicate offense from 2013-2018.

中華臺北提供的案例證明中華臺北使用所有資產追討工具以及在所有情況下都會追討沒收，包括涉及國內和外國前置犯罪和已轉移到海外的收益。未提供有關根據國內和國外前置犯罪而扣押和沒收的資產數量。然而，中華臺北提供了各前置犯罪在 2013-2018 年根據法院命令沒收的金額。

203. Chinese Taipei indicated that no legal impediments or other barriers preclude it from sharing forfeited assets with other countries; however, Chinese Taipei has not yet received such a sharing request. As such, asset sharing is untested. Chinese Taipei has successfully repatriated assets from overseas in a few occasions.

中華臺北表示，沒有任何法律障礙或其他障礙妨礙其與其他國家分享沒收資產；但是，中華臺北還沒有收到這樣的分享請求。因此，資產分享未經過檢驗。中華臺北曾多次成功的自海外匯回資產。

#### **Case Example 3.91: Seizure and Forfeiture against Proceeds Transferred Overseas 2018**

##### **案例3.91:2018年扣押及沒收轉移至海外之犯罪所得**

Two persons orchestrated a fraud scheme where many individuals in Chinese Taipei were promised a variety of benefits in exchange for their monetary donation/contribution. The investigation revealed that the fraud proceeds, totalled approximately USD277 million, and USD9 million transferred overseas including into jurisdiction U.

The Taoyuan District Prosecutor's office applied to the District Court for a restraining order against the assets owned or controlled by the two individuals as well as an entity owned by the two in jurisdiction U in connection with the fraud schemes. The District Court granted the order.

Taoyuan DPO sent an MLA request through MOJ to Jurisdiction U seeking enforcement of the District Court's order against the assets in jurisdiction U in the effort to preserve the availability of the assets for forfeiture. Jurisdiction U executed the MLA request and restrained the assets belonging to the individuals and the entity in question on behalf of Chinese Taipei.

兩人精心策劃了一項詐欺計劃，該計畫對中華臺北許多個人承諾各種好處，以交換得到他們的捐款/貢獻。調查顯示，詐欺行為總額約為 2.77 億美元，約 900 萬美元轉移到海外，包括進入 U 國。桃園地檢署向地區法院申請禁止兩個人擁有或控制的資產以及兩人在 U 國擁有的與詐欺計劃有關的實體。地方法院批准了該命令。桃園地檢署透過法務部向 U 國發出了司法互

助請求，要求執行地方法院對 U 國資產的命令，以保護資產的可用性。U 國執行了司法互助請求並代表中華臺北限制了屬於該人的資產和有疑慮的實體。

204. Article 40 of the Criminal Code authorizes forfeiture of criminal assets without a conviction in the cases where a defendant has died fled, or due to other reasons where a criminal prosecution is unavailable.

刑法第 40 條規定，在被告逃亡的情況下，或因其他原因無法提起刑事訴時，在沒有定罪的情況下沒收犯罪資產。

205. Although there is no indication in the statutory language that an *in rem* forfeiture action can be brought under this article, in practice Chinese Taipei has used Article 40 to forfeit funds in an account solely premised on the fact that the funds in that account were criminal proceeds, without any criminal charge or prosecution.

雖然在法律用語中沒有說明可以根據第 40 條提起對物沒收，但實際上中華臺北已單純根據帳戶中的資金是犯罪所得的事實，在沒有任何刑事指控或起訴的情形下，依第 40 條的規定沒收該帳戶內資金。以下案例實質上證明了對物沒收的行動。

**Case Example 3.92: Forfeiture of funds in the absence of a criminal charge or prosecution**

**案例3.92:於未經刑事指控或起訴下沒收資金**

A hacker with an unknown identity and location, hacked into a bank account held at a bank in Chinese Taipei, and instructed a victim in a foreign jurisdiction to wire money into the account in Chinese Taipei. The account holder in Chinese Taipei appeared to be unaware of the criminal activities related to the account. Using Article 40 of the Criminal Code and Article 18 of MLCA, authorities seized and subsequently forfeited the funds fraudulently obtained in the account in Chinese Taipei. Since the criminal perpetrator was unknown, and the account holder in Chinese Taipei was not complicit, a criminal prosecution was not possible. USD 76,000 was forfeited in this case in June 2018.

一名身份和地點不明的駭客入侵中華臺北一家銀行的銀行帳戶，並指示外國的受害人將錢匯入中華臺北的帳戶。中華臺北的帳戶持有人似乎不知道與帳戶有關的犯罪活動。根據刑法第 40 條和洗防法第 18 條，當局扣押並隨後沒收了在中華臺北帳戶中以詐欺手段獲得的資金。由於犯罪者不明，且中華臺北的帳戶持有人不是共犯，因此無法進行刑事起訴。在這種情況下，2018 年 6 月沒收了 76,000 美元。

206. The case study above demonstrates that a forfeiture action pursuant to Article 40 of the Criminal Code can be used as the functional equivalent to an *in rem* NCB proceeding. Chinese Taipei identified and discussed the difficulties and challenges in financial investigations in regards to the OBU accounts and forfeiture for accounts held by nominees. The hacker case referenced in the paragraph above represents one of scenarios how nominee accounts were used. No other similar cases were provided to the team to further demonstrate how well Article 40 has been applied in the use of the nominee accounts situation. Given the fact that Article 40 is under the Criminal Code, the evidentiary standard for any NCB proceedings in CT, presumably, is based on the criminal standard – beyond a reasonable doubt. Authorities were not able to give a clear indication as to the evidentiary standard of proof under Art 40. In some cases it may be very difficult to prove based on the criminal standard that the properties were derived, used, or intended to be used in committing crimes. As such, greater clarity through legislation, regulations or procedures regarding NCB in rem forfeiture would significantly ease these drawbacks and directly target criminal assets regardless of the owner of an account into which criminal proceeds were transferred or deposited.



上開案件證明，根據刑法第 40 條規定的沒收，與對物訴訟的非定罪為基礎的沒收功能相當。中華臺北確認並討論了有關 OBU 帳戶和沒收人頭帳戶的金融調查中的困難和挑戰。上面段落中引用的駭客案件表示出人頭帳戶被使用的一種方式。沒有其他類似情況可提供給評鑑團進一步說明在利用人頭帳戶的情況應如何適用第 40 條。鑑於第 40 條是刑法的規定，因此中華臺北所有 NCB 訴訟程序的證據標準可能都是基於刑事標準 - 超越合理懷疑。評鑑團根據第 40 條提出了關於 NCB 證據證明的問題，但是，得到的答案還不明確。在某些情況下，可能很難根據刑事標準證明財產是因犯罪所得，使用或意圖使用的。因此，通過與 NCB 對物訴訟有關的明確立法，規章或程序，可以大大的減輕這些缺點，並直接針對犯罪資產，無論犯罪所得轉移或存入的帳戶所有人為何。

207. Tax offenses with a fraud component such as an element of misrepresentation will be prosecuted by the prosecutors' offices, and any forfeiture of the fraud proceeds is adjudicated by a court. The statistics for tax offense forfeiture involving fraud has been included into the forfeiture figures by the district prosecutors' office. Tax cases are first decided by the National Taxation Bureau while enforcement is handled by the Administrative Enforcement Agency of MOJ ("AEA"). A small amount of money related to criminal assets has been able to be recovered by AEA using tax procedures where, for various reasons, criminal cases were not able to be brought or had failed.

具有詐欺要件的稅務犯罪，例如申報不實，將會被地檢署起訴，且所有詐欺所得的沒收均由法院裁定。涉及詐欺的稅務犯罪的沒收統計數據已被地檢署納入沒收的數據。中華臺北的稅務案件會先經國稅局裁決，並由法務部行政執行署（“AEA”）執行。執行署可以經由稅務程序收回少量因為各種原因無法成功提起或未提起的刑事案件但與犯罪資產有關的資金。

208. Regarding tax recoveries that are proceeds of crime, the AEA is a specialised agency which works to recover major fines (including tax and other administrative fines and court orders) and manages associated assets. The team noted the considerable success of the AEA, but available statistics mean that the team cannot discern which values have been recovered by the AEA that are proceeds of crime as distinct from tax fines or other recoveries. Some credit, if not in full, nevertheless, should be given to the efforts made by AEA's tax recovery.

在與犯罪所得有關的稅務回收方面，執行署是一個專門機構，主要在收回重大罰鍰（包括稅收和其他行政罰鍰和法院命令）和管理相關資產。評鑑團注意到執行署取得了相當大的成功。但是尚未能夠將執行署收回的金額分辨為犯罪所得而與稅務罰款或其他追償金做區別。儘管如此，即便不是全部，仍應該要肯定執行署收回稅收所做的努力。

**Table 3.99: Amounts recovered by AEA via the Tax System (NTD)**  
**表3.99:行政執行署財稅案件徵起情形統計(新臺幣)**

| Year/NTD<br>年/新台幣              | Amount recovered<br>收回金額          | Tax owed<br>本稅                       | Fines<br>罰鍰                         |
|--------------------------------|-----------------------------------|--------------------------------------|-------------------------------------|
| 2014                           | 11,061,626,603                    | 9,462,557,978                        | 1,599,068,625                       |
| 2015                           | 10,521,115,466                    | 9,120,579,986                        | 1,400,535,480                       |
| 2016                           | 10,827,129,248                    | 9,169,948,059                        | 1,657,181,189                       |
| 2017                           | 10,091,469,683                    | 8,738,088,821                        | 1,353,380,862                       |
| 2018 (Jan-Oct)<br>2018(1月-10月) | 8,322,907,075                     | 7,218,663,215                        | 1,104,243,860                       |
| <b>Total<br/>總額</b>            | <b>50,824,248,075</b>             | <b>43,709,838,059</b>                | <b>7,114,410,016</b>                |
| <b>USD equivalent<br/>美金</b>   | <b>USD 1.7 billion<br/>17 億美金</b> | <b>USD 1.46 billion<br/>14.6 億美金</b> | <b>USD 237 million<br/>2.37 億美金</b> |

## iv. Asset Management

## 資產管理

209. Management of seized assets is largely undertaken by prosecutors. Management of assets has been significantly eased by “mandatory” conversion provisions (Art141 CPC). Guidance for prosecutors to manage the seized assets is provided by a handbook. Prosecutors have an asset tracking and management case system which records details of all seized items with other information including the offence committed, category, delivery date of the case and a code for tracking. All seized assets are deposited into a warehouse. Procedures (Auction and destruction processes of seized/confiscated items by DPOs) are in place destruction of contraband items.

主要是由檢察官管理被扣押的資產。強制變價條款（刑事訴訟法第 141 條）大大減輕了資產管理的負荷。檢察官如何管理被扣押資產有出版成指引手冊。檢察官有一個資產追蹤和管理案件系統，該系統記錄所有被扣押物品的詳細資訊以及其他資訊，包括所犯罪行，類別，交付日期和追蹤代碼。所有被扣押的資產都存入倉庫。對違禁品也有銷毀程序（地檢署扣押/沒收物品的拍賣和銷毀過程）。

210. Several provisions under the CPC provide the authority to convert the seized assets into cash. In general, the conversion can occur based on a prosecutor’s discretion or a defendant’s consent. In the circumstances that a property owner does not agree to the conversion, the property owner has the right to appeal to a district court. In addition, a stakeholder may take back the seized assets upon the provision of a guarantee or security which has an equivalent value to the seized assets.

刑事訴訟法的若干條款賦予了將被扣押資產變現的權力。一般而言，變價可以基於檢察官的裁量權或被告的同意。在資產擁有人不同意變價的情況下，資產擁有人有權向地方法院提出上訴。此外，利益相關者可以在提供與被扣押資產具有同等價值的擔保時取回被扣押的資產。

211. AEA appears to have the ability to manage large and complex assets; however, AEA does not have a role in asset management until a forfeiture judgment has been entered and it needs to be enforced against the seized assets. In order to better utilise the AEA, the DPO has been conducting auctions with the AEA to gather greater awareness. Between January 2017 – June 2019 the DPO sought assistance from the AEA in 42 cases with the equivalent of approximately USD1.4 million being realised at joint auctions. From January 2014 - June 2018, the DPO received the equivalent of approximately USD4.76 million in proceeds of crime assets realised at auction. There is the potential for the AEA to take a greater role in asset management on behalf of Execution Prosecutors in order to ease the burden on them to manage all proceeds of crime assets, given their expertise in this area.

執行署似乎有能力管理大型及複雜資產；但是，在沒有沒收判決前，執行署無法在資產管理中發揮作用，且執行的對象是被扣押的資產。為了更好地利用執行署，地檢署一直在與執行署舉行拍賣，以喚起更多認識。在 2017 年 1 月至 2019 年 6 月期間，地檢署有 42 個案件尋求執行署的協助，大約 140 萬美元在聯合拍賣被實現。從 2014 年 1 月至 2018 年 6 月，地檢署收到所拍賣的犯罪所得收益 476 萬美元。因此，鑑於其在該領域的專業知識，AEA 有可能代表執行檢察官在資產管理方面發揮更大作用，以減輕他們管理所有犯罪資產所得的負擔。

*Confiscation of falsely or undeclared cross-border transaction of currency/BNI**沒收不實或未申報的貨幣/ BNI 跨境交易*

212. Cash or goods smuggling has been identified as a high risk, with inflows and outflows of proceeds of crime from neighbouring countries. Some steps including legislative measures have been taken to target cross-border movement of cash. Chinese Taipei has a significant cash-based economy.

現金或貨物走私被辨識為高風險，伴隨來自鄰國的犯罪所得流入和流出。已經採取了包括立法措施在內的一些措施針對現金的跨境流動。中華臺北擁有重要以現金為基礎的經濟。

213. Chinese Taipei has a legal framework in place for the declaration and identification of cross border movements of funds and BNI. A written declaration system is in existence for all travellers carrying cash over 100,000 NTD (about USD 3,333), \$10,000 USD or its equivalent in foreign currency, and the equivalent of \$10,000 USD in BNIs. Prior to the amendments of MLCA on June 28, 2017, no requirement for declaration of domestic currency, and only foreign currency was subject to the declaration requirement.

中華臺北有用於申報和辨識資金和 BNI 跨境流動的法律框架。所有攜帶超過 100,000 新台幣（約合 3,333 美元），10,000 美元或等值外幣現金，相當於 10,000 美元 BNI 的旅客均須使用書面申報系統。在 2017 年 6 月 28 日洗防法修正前，沒有要求申報本國貨幣，只有外幣才須申報。

214. The requirement to make a declaration is included on arrival cards. Travellers with declaration responsibility will exit through a separate path from the travellers without declaration responsibility. Substantial signage was observed at the major international airport (Taoyuan Airport) putting travellers on notice of the declaration requirements.

入境單上有申報的要求。具有申報義務的旅客與無申報義務的旅客會經由不同的路徑離開。在主要國際機場（桃園機場）觀察到大量標牌，讓旅客注意到申報要求。

215. Customs send the declaration reports to AMLD monthly. If a false or non-declaration occurs, a report of the instance will be sent immediately to AMLD. As discussed in IO6, ICTRs are scanned through a database for red flag indicators and analysed in AMLD investigations.

海關每月向洗錢防制處發送申報報告。如果是不實或未申報，該報告會馬上發送給洗防處。如 IO6 所述，ICTRs 會經由資料庫檢視紅旗指標，並在洗錢防制處的調查中分析。

216. Screening is undertaken to detect cash smuggling. CA and CGA stated that all luggage was x-rayed at land and sea checkpoints. Security risk profiling is conducted on travellers, with selected passengers undergoing thorough physical checks and x-rays. Intelligence received from domestic and international partners feeds into CA's targeted screening of high risk travellers.

為了偵測現金走私會進行篩檢。海關和海巡署表示所有行李都在陸上和海上的檢查站進行了 X 光檢查。對旅客進行安全風險分析，選定的旅客會進行徹底的身體檢查和 X 光檢查。從國內和國際夥伴獲得的情資可以幫助海關有針對性地篩選高風險旅客。

**Table 3.991: Total number of violations of cross-border movement declarations (USD)**

**表 3.991: 跨境/違反跨境申報金額及件數統計（美元）**

| Estimated values<br>預估價值                             | 2014       | 2015       | 2016      | 2017      | 2018 (1-6) | Total<br>總額                  |
|--|------------|------------|-----------|-----------|------------|------------------------------|
| Cross-border<br>declaration reports<br>跨境申報件數        | 19,750     | 30,345     | 33,470    | 196,682   | 157,401    | 437,648                      |
| Cross-border<br>declaration violations<br>違反跨境申報義務件數 | 100        | 128        | 103       | 123       | 79         | 533 violations<br>533件違規     |
| Value of undeclared<br>/misdeclared (USD)            | 11,660,304 | 12,627,748 | 8,360,403 | 5,894,171 | 1,993,078  | USD 40.5 million<br>4050 萬美元 |

|  |           |           |           |           |           |   |
|--|-----------|-----------|-----------|-----------|-----------|---|
| 違反跨境申報義務查獲金額(美元)   |           |           |           |           |           |   |
| <b>Value of confiscated cash for undeclared /misdeclared (USD)</b><br>違反跨境申報義務沒入金額(美元) | 1,147,187 | 1,537,938 | 2,574,790 | 2,693,094 | 1,516,187 | <b>USD 9.5 million Confiscated</b><br><b>沒收950萬美元</b> |

\* The 2017 amendment to the MLCA expanded the obligation to declare to a wider range of assets including gold, diamonds, precious stones and platinum. However, authorities advise even after this amendment, declarations relating to this group of assets were not appraised and therefore aren't included in the above statistics.

\* 2017 修正的洗錢防制法將申報的義務擴大至包含黃金，鑽石，寶石和白金在內更廣泛的資產。然而，即使在洗防法修正後，當局表示因與該等資產組有關的申報未經過鑑價，因此未包含在上開統計數據中。

217. Since 2015 Chinese Taipei authorities have seized goods and other items valued at over USD155 million in violations of the Customs Anti-Smuggling Act. This resulted in USD137 million from these detections.

中華臺北的權責機關自 2015 年起，已經扣押違反海關緝私條例的貨物及其他物品，價值超過 1.55 億美元。從這些違反案件中超過 1.37 億美元。

218. The CA's powers and processes to seize and forfeit detected cash appear to be adequate after the MLCA's amendment on June 28, 2017. Several case studies further demonstrate that CA has detected and seized both undeclared cash and gold including through x-ray inspections at relevant entry and exit points. Investigative measures and agency coordination by ALMD and LEAs following detection are well pursued.

在洗防法於 2017 年 6 月 28 日修訂後，海關的扣押和入收現金的權力和程序似乎已足夠。幾個案例進一步證明海關利用 x 光機檢測，在相關入出境地點辨識並扣押了未申報的現金和黃金。之後在洗防處和執法機關間的調查措施和機關合作也表現的很好。

### *Proportionality of sanctions for a failure to disclose or a false declaration*

#### *對未揭露或不實申報制裁的比例原則*

219. Where there is a false or non-declaration of currency or BNI that exceeds the threshold, the amount over the threshold will be seized and forfeited pursuant to Article 12 of MLCA and Article 36 of the Administrative Penalty Act (APA). If there are indications that the currency was likely derived from an illicit source based on CA's initial investigation and other information, the carrier and the currency or BNI will be referred to LEAs for further investigation. In this case, the whole amount of the currency or BNI discovered may be seized at the discretion of customs. The case then proceeds through the usual course of a criminal investigation and ultimately decided by a competent court as to the forfeiture and penalties. In the event the carrier argues that the funds seized are legitimate (despite not declaring or falsely declaring) the CA will still seize the amount exceeding the declaration threshold. The traveller has 30 days to bring a claim to a Review Committee under the MOF challenging CA's seizure. If not challenged within 30 days, CA's forfeiture decree of the seized currency or BNI becomes final. The Review Committee under MOF, once it receives a claim filed by the traveller, will examine both facts and law to determine whether CA's seizure is legal. If the Review Committee affirms CA's seizure, the traveller has two months to further challenge the ruling to an administrative court under the Judicial Yuan. The administrative court will review both facts and law in regards to the seizure. Although rare, the traveller does have an opportunity to have a further appeal to the Supreme Administrative Court within 20 days after the ruling by the administrative court. Neither the Review Committee under MOF nor the administrative court under the Judicial Yuan will look into the source of the money seized nor



do they have the authority to alter the amount seized by CA. The Administrative Court's decision is final, and not appealable to a District Court.

如果未申報或申報不實的貨幣或 BNI 超過門檻，超出門檻的金額將根據洗錢防制法（MLCA）第 12 條和行政罰法（APA）第 36 條規定扣押和沒入。如果基於財政部關務署的初步調查和其他資訊，有跡象顯示該貨幣可能來自非法來源，則運送者和貨幣或 BNI 將會被轉給執法機關進行進一步調查。在這種情況下，查出的全部貨幣或 BNI 可能由海關裁量處理。案件隨後經過一般刑事調查過程，並最終由主管法院決定沒收和處罰。如果運送者辯稱遭扣押的資金是合法的（儘管沒有申報或不實申報），財政部關務署仍將扣押超過申報門檻的金額。旅客有 30 天的時間向 MOF 的審查委員會提出要求，要求審查財政部關務署的扣押。如果未在 30 天內提出，財政部關務署扣押貨幣或 BNI 的命令將會確定。財政部審查委員會一旦收到旅客的要求，將審查事實和法律，以確定財政部關務署的扣押是否合法。如果審查委員會確認財政部關務署的扣押，旅客有兩個月的時間進一步向隸屬於司法院的行政法院提出質疑。行政法院將審查有關扣押的事實和法律。旅客確實有機會在行政法院作出裁決後 20 天內向最高行政法院提出進一步上訴，雖然此種情形較少見。財政部的審查委員會和隸屬司法院的行政法院都不會調查被扣押的資金來源，也沒有權力改變被扣押的金額。行政法院的決定是終局，不能向地方法院提出上訴。

220. As such, there is in fact no difference in forfeiture applied to non-declared or falsely-declared cash derived from illicit criminal proceeds or from legal sources such as immigrant workers' legitimate earnings. The assessment team notes the significant number of immigrant workers in Chinese Taipei. In cases where the source of the falsely-declared or non-declared currency or BNI is legitimate, full forfeiture of the amount above the declaration threshold appears disproportionate, in circumstances where there is evidence that the seized money is legitimate. In this respect, the team notes that forfeiture following a failure to disclose or a false declaration of carriage of currency or BNI is not applied proportionately.

因此，對於從非法犯罪收益所得之未申報或申報不實的現金或來自合法來源例如來自移工的合法收入等，都是一律沒入沒有任何差別。評鑑團注意到中華臺北有大量的移工。如果申報不實或未申報的貨幣或 BNI 的來源是合法的，在有證據證明所扣押的金錢是合法的情況下，完全沒收超過申報門檻的金額似乎不合比例原則。在這方面，評鑑團指出，沒收未申報或虛假不實的貨幣或 BNI 不符合比例原則。

#### *Consistency of confiscation results with ML/TF risks & national AML/CFT policies and priorities.*

##### *沒收成果與洗錢/資恐風險及全國性洗錢/打擊資恐政策及優先性的一致性*

221. Chinese Taipei considers its high risk domestic ML predicates to be drug trafficking, fraud, smuggling, tax crimes, organized crime, securities crime, corruption and bribery, and third-party ML. See IO1. From 2014- June, 2018, approximately USD323 million, 55% of the assets seized and forfeited relate to these key threats, indicating consistency with Chinese Taipei's assessment of its risks.

中華臺北認為其高風險的國內前置犯罪為販毒，詐欺，走私，稅務犯罪，組織犯罪，證券犯罪，貪污和賄賂以及第三方洗錢。請參閱 IO1。自 2014 年至 2018 年 6 月，約 3.23 億美元，即扣押和沒收資產的 55% 都與這些主要威脅有關，與中華臺北對其風險評估有一致性。

222. Chinese Taipei is successful in forfeiting a significant value of assets comparable to the size of its economy, and the amount forfeited arising from the predicate offenses appears to be consistent with Chinese Taipei's risk profile. This is demonstrated by the forfeiture statistics in the following table broken down by offenses.

中華臺北成功地沒收了與其經濟規模相當的資產價值，由於前置犯罪而被沒收的金額似乎與中華臺北的風險狀況一致。下表按照犯罪類型分類的沒收統計數據證明了這一點。



Table 3.992: Confiscations pronounced by confirmed court rulings (USD equivalent)

表 3.992: 經法院確定判決應沒收金額統計(等值美元)

| Criminal offense type<br>犯罪類型   | 2014       | 2015      | 2016       | 2017       | 2018<br>(Jan-Jun)<br>(一月到六月) | Average<br>平均 |
|---|------------|-----------|------------|------------|------------------------------|---------------|
| Drug Trafficking<br>毒品販運  | 3,864,507  | 2,034,628 | 2,346,706  | 1,547,372  | 1,429,049                    | 2,493,836     |
| Corruption and Bribery<br>貪汙及賄絡   | 49,521,662 | 4,718,214 | 7,114,507  | 5,496,750  | 2,735,289                    | 15,463,649    |
| Fraud (incl illegal fundraising)<br>詐欺(含吸金)   | 263,112    | 79,033    | 28,678,248 | 74,421,804 | 47,879,216                   | 33,626,981    |
| Smuggling<br>走私   | 1,327      | 5,478     | 132,626    | 4,284,272  | 626,371                      | 1,122,239     |
| Tax crimes<br>稅務犯罪  | 419        | 0         | 36,272     | 629,710    | 1,641,370                    | 512,838       |
| Insider trading, securities market<br>manipulation<br>內線交易/市場操縱                       | 16,879,296 | 293,270   | 4,584,441  | 50,619,648 | 1,010,770                    | 16,308,317    |
| Third Party ML<br>第三方洗錢   | 7,210,868  | 2,291,807 | 0          | 21,146     | 392,141                      | 2,203,547     |
| Organized crime<br>組織犯罪   | 0          | 0         | 0          | 0          | 5,037                        | 1,119         |
| <b>High 高</b>   |            |           |            |            |                              |               |
| IPR Crime<br>智慧財產犯罪   | 2,928      | 23,484    | 111,565    | 723,160    | 669,240                      | 340,084       |
| <b>Medium 中</b>   |            |           |            |            |                              |               |
| Illicit arms trafficking<br>非法販運武器  | 994,569    | 29,963    | 23,854     | 428,840    | 272,291                      | 388,782       |
| Illicit trafficking in stolen and other<br>goods<br>非法販運贓物及其他物品                       | 4,007      | 167       | 87,895     | 139,701    | 34,407                       | 59,150        |
| Environmental crime<br>環保犯罪   | 64,298     | 1,404     | 155,690    | 4,506,809  | 726,325                      | 1,212,117     |
| Kidnapping<br>綁架  | 0          | 0         | 0          | 40,167     | 0                            | 8,926         |
| Theft<br>竊盜   | 457        | 687       | 738,918    | 10,344,719 | 1,954,634                    | 2,897,648     |
| Forgery of documents, securities,<br>ID documents, or passports<br>偽造文書、有價證券、身分<br>證件 | 17         | 29,247    | 280,254    | 10,020,985 | 3,224,738                    | 3,012,276     |
| <b>Low 低</b>  |            |           |            |            |                              |               |
| Counterfeiting currencies<br>偽造貨幣   | 27         | 29,247    | 280,254    | 10,020,985 | 3,224,760                    | 3,012,283     |
| Trafficking in human beings<br>(migrant smuggling)<br>人口販運(偷渡)                        | 17,102     | 16,457    | 21,731     | 441,737    | 81,818                       | 128,632       |
| Sexual Exploitation<br>性剝削  | 203,485    | 157,053   | 211,169    | 1,095,300  | 500,939                      | 481,766       |
| Robbery   | 1,900      | 2,097     | 36,618     | 429,867    | 156,178                      | 139,258       |

| Criminal offense type<br>犯罪類型 | 2014              | 2015               | 2016              | 2017               | 2018<br>(Jan-Jun)<br>(一月到六月) | Average<br>平均     |
|-------------------------------|-------------------|--------------------|-------------------|--------------------|------------------------------|-------------------|
| 搶劫                            |                   |                    |                   |                    |                              |                   |
| Murder<br>謀殺                  | 4,140             | 283                | 0                 | 7,777              | 1,100                        | 2,956             |
| Extortion<br>恐嚇取財             | 950               | 17                 | 24,100            | 359,667            | 348,813                      | 163,011           |
| <b>Total 總計</b>               | <b>79 million</b> | <b>9.7 million</b> | <b>44 million</b> | <b>175 million</b> | <b>67 million</b>            | <b>83 million</b> |

### Overall conclusion on Immediate Outcome 8

#### 直接成果8之總體結論

223. Chinese Taipei pursues confiscation as a policy objective. It has restrained and confiscated significant amounts across a range of crime areas in keeping with the risk profile. LEAs have well developed asset tracing capacity and routinely pursue financial investigations to identify assets for the purpose of recovery. Cash is seized at the border and the authorities have, to a certain extent, proactively targeted high-risk ports of entry. However, forfeiture for breaches of the cross border declaration system is not applied proportionately in all cases.

中華臺北將沒收作為政策目標。它根據風險狀況限制並沒收了一系列犯罪的大量金額。執法機關具有良好的資產追蹤能力，並且經常進行金融調查以識別資產並予以追回。在邊境緝獲現金，當局在一定程度上會主動針對高風險入境口岸。然而在違反跨境申報制度方面的沒入，並非在所有情況下都適用比例原則。

224. **Chinese Taipei has a substantial level for effectiveness for Immediate Outcome 8.**

中華臺北直接成果8之評等為相當有效。

## CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### 第四章-資恐及資助武器擴散

#### Key Findings and Recommended Actions

##### 重要發現及建議行動

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#### Key Findings

##### 重要發現

##### TF offence (IO 9)

##### 資恐犯罪 (直接成果 9)

- 1) Chinese Taipei's assessed its TF risk in the 2017 NRA. The NRA found that Chinese Taipei is a low risk for TF which the team considers is a reasonable conclusion.  
中華臺北於 2017 年進行國家資恐風險評估，依據國家風險評估報告指出，中華臺北係資恐低風險，評鑑團認為是合理的結論。
- 2) The CTF Act (2016) criminalises TF in accordance with most international requirements and was further amended in 2018.  
2016 年制定的資恐防制法已將資恐犯罪罪刑化，2018 年的法規修正，已與國際標準大致一致。
- 3) The NSB is the highest intelligence authority and in practice coordinates efforts on TF investigations. NSB's December 2017 operational procedure for investigating cases involving terrorism (including TF) sets out operational responsibilities for each agency and has been used by LEAs involved in CFT matters (NSB, MJIB, AMLD).  
國家安全局為最高情報機關，實務上負責協調有關的資恐情資調查。國家安全局於 2017 年 12 月修訂「涉恐個案查處作業程序」確認各個機關的運作職責，與打擊資恐事務相關的執法機關，如國安局、法務部調查局、洗錢防制處等，亦據以適用此作業程序。
- 4) A number of financial investigations of suspected TF cases have been successfully undertaken. They involved intelligence sharing and ultimately uncovered conduct unrelated to TF.  
有為數不多涉嫌與資恐有關的案件，已成功地進行調查，其中包含情資的分享，最終未發現與資恐有關。
- 5) There have been no TF convictions in Chinese Taipei, which is in keeping with the TF risk profile.  
中華臺北無資恐定罪的統計數據，與整體資恐風險一致。
- 6) The central authority in charge of counter-terrorism policy is the Office of Homeland Security (OHS) which regularly exchanges information with national security, LEA, and administrative agencies through meetings of Homeland Security Policy Committee of Executive Yuan.

行政院國土安全辦公室為主要負責制定反恐政策之中央主管單位，並定期透過國土安全會議與國安機關、執法機關及行政機關交換情資。

- 7) There is no separate investigation unit for TF, however in the event of potential TF cases, the NSB coordinates efforts with LEAs, Prosecutors, AMLD and the OHS as needed. The authorities are well-equipped to conduct parallel financial investigations based on existing expertise and the sound framework for TF. Should TF arise in the future in Chinese Taipei, the authorities are well placed to investigate thoroughly and effectively.

無獨立編制的資恐調查單位，惟如發生疑似的資恐案例，國家安全局根據需要，協調執法機關、檢察機關、法務部調查局洗錢防制處和行政院國土安全辦公室共同合作。中華臺北有充分的能力，具備專業知識與健全的打擊資恐法制框架，併行金融調查。如果未來發生資恐案件，權責機關應可進行澈底且有效的調查。

#### *TFS related to TF and NPOs (IO 10)*

##### *資恐目標性金融制裁及非營利組織 (直接成果 10)*

- 1) Chinese Taipei has strong policy and operational coordination mechanisms to support the implementation of a legal framework for implementing TFS to combat terrorism.

中華臺北具有完善的政策、法律架構及合作機制，支持打擊資恐的目標性金融制裁之執行。

- 2) There are some technical compliance gaps with the freezing obligations and prohibitions – these do not extended to those acting on behalf of, or at the direction of, designated persons or entities.

在凍結及禁止義務之技術遵循方面仍存在落差，這些義務不適用於代表或間接代表被制裁對象之個人或團體。

- 3) The legal framework for CT-related TFS is being implemented without delay. The mechanism that would be used for 1373 designations has been used for domestic designations related to PF and has been shown to operate well.

有關目標性金融制裁的法律架構能毫不遲延執行。有關聯合國安理會第 1373 號決議的指名機制，已被用於國內資助武擴的指名制裁，且證明此一機制運作良好。

- 4) Name-screening measures are being reasonably implemented by FIs and DNFBPs. Authorities have issued guidance to all sectors and undertaken a great deal of outreach to all FI and DNFBP sectors. All sectors have subsidised access to screening software to support implementation.

金融機構及指定之非金融事業或人員合理地執行名單檢核措施。權責機關發布指引文件給所有部門，且向金融機構及指定之非金融事業或人員進行大量的宣導作為。所有部門皆有輔助管道，可使用檢核資料庫，進行名單檢核。

- 5) FIs, especially banks, demonstrate a good understanding on TFS obligations and the implementation of CDD measures and transaction monitoring to implement screening.

金融機構當中，特別是銀行能充分了解目標性金融制裁義務，並執行客戶審查及交易監控等檢核等措施。

- 6) FSC and other supervisors have commenced supervision of TFS amongst FIs.

金融監督管理委員會及其他監理機關，監督金融機構進行目標性金融制裁情況。



- 7) Chinese Taipei has undertaken elements of a domestic review of its NPO sector and has considered potential risks within the NPO sector to identify which subset of NPOs that might be of particular risk of being misused for TF.

中華臺北進行非營利組織的國內評估，並考量非營利組織內的潛在風險，確認哪些類型組織可能特別容易被資恐者濫用。

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- 8) Regulators and competent authorities have conducted outreach and awareness raising in relation to transparency, good governance, TF risks and related mitigation measures.

監理及權責機關針對非營利組織透明度、良好的治理、資恐風險與相關的簡化措施等，已進行完善的宣導及意識提升活動。

- 9) A graded range of risk mitigation obligations, guidance and supervision has been applied taking into account the relative risks of particular sub-sectors and the features and activities of individual NPOs.

針對特定非營利組織的相對風險及各非營利組織的特徵和活動狀況，已採取一系列抵減風險義務、指引和監督作為。

#### *Proliferation financing (10 11)*

##### *資助武器擴散(直接成果 11)*

- 1) Chinese Taipei has strong policy and operational coordination mechanisms to support the implementation of a legal framework for TFS to combat PF. The legal framework for PF-related TFS is being implemented without delay.

中華臺北具有強力的政策及協調機制，支持打擊資助武擴目標性金融制裁法律架構之執行。資助武擴相關目標性金融制裁的法律架構已達毫不遲延地執行。

- 2) There are some technical compliance gaps with the freezing obligations and prohibitions – these do not extend to those acting on behalf of, or at the direction of, designated persons or entities. However, the legal framework for TFS goes beyond FATF standards by including a PF-related offence and related STR reporting obligations as well as establishing a domestic designation system to complement the obligations under Rec. 7. Chinese Taipei has used this domestic framework to designate certain natural and legal persons working on behalf of or at the direction of the principal designee, which goes some way to overcome the technical compliance gap.

在凍結義務及禁令存有技術遵循落差-因為這些義務並不及於代表被制裁之個人或實體或依其指示行事之人。然而，目標性金融制裁的法律架構超越 FATF 標準，包含資助武擴罪刑化、相關申報可疑交易報告義務，並建立國內指名制度，補充建議第 7 項的義務。中華臺北已使用此國內架構指定某些代表主要被指定之人或依主要指定之人指示行事的自然人和法人，這在某程度上克服了技術遵循的落差。

- 3) TFS related to DPRK have resulted in over USD 3.96 million being frozen or seized, including assets indirectly owned or controlled. Chinese Taipei has implemented its additional domestic system and has designated a local and related entities linked to PF and subjected them to TFS, including freezing considerable assets. FIs have filed numerous PF-related STRs which have assisted LEAs to investigate possible networks associated with designated persons and entities. Authorities have granted access to frozen funds for basic expenses in keeping with the standards.

與北韓有關的目標性金融制裁凍結或扣押金額超過 396 萬美元，包括間接擁有或控制的資產。中華臺北已經實施了額外的國內機制，並指定了一個與資助武擴相關的公民和相關實體，並將其納入目標性金融制裁，包括凍結大量資產。金融機構已經提交了許多與資助武擴有關的可疑交易報告，這些報告協助執法機關調查與被指定人員和實體相關的可能網絡，權責機關已根據標準授權凍結資金可使用於基本開支。

- 4) The name-screening measures are reasonably implemented by FIs. Chinese Taipei demonstrates its ability to freeze funds or other assets of designated persons/entities. Authorities have issued guidance to FIs and DNFBP and supported all sectors to have access to screening software.

金融機構合理地執行名單檢核措施。中華臺北展現其有能力凍結被指名之個人/實體資金及其他資產。權責機關有發布指引文件給金融機構及指定之非金融事業或人員使用，也協助讓所有行業別都能使用名單檢核軟體。

- 5) FIs, especially banks, demonstrate a good understanding on TFS obligations and the implementation of CDD measures and transaction monitoring for sanctions matches. Authorities have undertaken awareness raising on PF to promote understanding of obligations on all FI/, DNFBPs and other sectors required to implement TFS. Challenges remain with obtaining sufficient detailed information on intermediaries associated with designated persons or entities. FSC and other supervisors have undertaken supervision of PF-related TFS amongst FIs.

金融機構，特別是銀行，對目標性金融制裁義務、執行客戶審查、交易監控比對制裁名單展現理解良好。權責機關致力提高對資助武擴的認識，並促進所有金融機構和 DNFBP 及需執行目標性金融制裁的其他產業對相關義務進行瞭解。在取得與被指定之人或實體相關中介人充足詳細的資訊方面，仍存在挑戰。金管會及其他監理機關對於金融機構有啟動資助武擴目標性金融制裁之監理。

### **Recommended Actions**

#### **建議行動**

#### *TF offence (IO 9)*

#### *資恐罪（直接成果 9）*

- a) Chinese Taipei should continue to maintain an understanding of regional and global trends that might change the risk profile of Chinese Taipei to TF.

中華臺北應持續掌握可能改變資恐風險狀況的區域性和全球性趨勢。

- b) Chinese Taipei should ensure that in the event of potential TF the CFT SOP and related measures are able to be applied swiftly, whilst the nature of the matter (terrorist related or general criminality) is still being determined.

中華臺北應確保無論所調查的案件本質為何（涉恐或一般犯罪案件），均能迅速依「涉恐個案查處作業程序」及其他措施，調查疑似的資恐案件。

- c) The NSB should continue to strengthen and promote sharing of intelligence amongst security agencies, LEAs and to the private sector particularly in relation to external TF threats.

國家安全局可以持續在情報部門、執法機關及私部門之間，就外部資恐威脅有關的情報，強化並促進情報共享。

- d) In light of the findings in the NRA, authorities should conduct further analysis of the OBUs and DBUs to better understand their vulnerability to TF. Any relevant findings as part of this exercise should be shared with sectoral regulators and supervisors.

根據國家風險評估的發現，權責機關應進一步分析國際金融業務分行及指定辦理外匯業務銀行，以瞭解這些業別的資恐弱點。任何的發現都應與各該產業的監理機關分享。

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#### *TFS related to TF and NPOs (IO 10)*

##### *與資恐有關的目標性金融制裁與非營利組織(IO 10)*

- a) Address the remaining TC gaps with the CFT Act.  
解決資恐防制法在技術遵循上的缺失。
- b) Continue to conduct outreach and awareness raising to FI/DNFBP on possible sanctions evasion risk associated with emerging threats and actions to look for those working on behalf of or at the direction of designated persons/entities. Continue information sharing to FIs to assist in their work to monitor and screen for possible matches or sanctions evasion.

繼續向 FI / DNFBP 宣導和提升意識，了解新興威脅可能造成規避制裁的風險，以及如何辨識是否為指定制裁對象/實體之代表人或受指定制裁對象/實體指導（揮）下工作之人。監理機關應持續向金融機構分享資訊，協助他們進行交易監控及檢核可能規避制裁的情形。

- c) Further promote and support transparency and good governance of the NPO sector, with particular support to the sub-sector of NPOs identified as carrying some risks for abuse for TF.  
進一步提倡並支持非營利組織的透明度與完善治理，特別協助那些具有被濫用資恐風險的非營利組織子部門。
- d) Provide further information regarding possible TF risk to NPOs and their regulators to continue to refine risk-based implementation. This should involve MOFA and LEAs/NSB.  
應提供非營利組織及其監理機關更多關於資恐風險的資料，持續完備以風險為本的監理機制。資料部分涉及外交部、執法機關及國家安全局。

#### *Proliferation financing (IO 11)*

##### *資助武器擴散(直接成果 11)*

- a) Revise the CTF Act to rectify technical gaps identified, including ensuring freezing obligations clearly extend to all funds owned or controlled by persons or entities acting on behalf of designated persons or entities and comprehensive TFS are enforceable on all natural and legal persons.  
修正資恐防制法以補正技術遵循所發現的落差，包括確保凍結義務明確及於由代表被指定之人或實體行事之人或實體所擁有或控制的所有資金，並且所有自然人和法人均應執行全面的目標性金融制裁。
- b) Continue to provide support to FIs/DNFBPs (guidance and outreach) with further information to assist screening for those working on behalf of or at the direction of designated persons/entities and to help to monitor and screen for possible sanctions evasion. This should be complemented by authorities assessing financial products and services that are likely to be abused or misused for sanctions evasion.

繼續向金融機構/ DNFBP 提供協助（指引和宣導），提供進一步的資訊，以協助檢核那些代表被指定之人/實體行事或依被指定之人/實體的指示行事者，並幫助監控和檢核可能的規避制裁情形。這應當輔以權責機關評估可能被濫用或利用來規避制裁的金融產品和服務。

- c) Supervisors should continue to identify sectoral vulnerabilities to target off-site and on-site supervision of CPF TFS and provide additional case-specific information to the private sector.

監理機關應持續辨識部門的弱點，以針對打擊武擴之目標性金融制裁的非現地和現地監理，並向私部門提供其他具體案例資訊。

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### *Immediate Outcome 9 (TF investigation and prosecution)*

#### *直接成果 9 (資恐調查與起訴)*

#### *Prosecution/conviction of types of TF activity consistent with the Chinese Taipei's risk-profile*

#### *國家風險與資恐活動類型之起訴/判決*

225. Chinese Taipei conducted an NRA in 2017 that determined that TF is low risk in Chinese Taipei and that no substantial TF threat has been identified thus far. The team has considered Chinese Taipei's NRA report and in conjunction with its own findings and open source material considers that an overall rating of low risk for TF is reasonable.

中華臺北在 2017 年進行國家風險評估，中華臺北的資恐係低風險，尚無實質的資恐威脅。評鑑團已綜合檢視中華臺北的國家風險評估報告，並結合自己的調查結果和資料來源，認為風險總體評級是低風險為合理結果。

226. The NRA considered the potential threat for TF based on the nature of foreign workers in Chinese Taipei. There are approximately 676,000 foreign migrant workers residing in Chinese Taipei, predominantly from Indonesia, Vietnam and the Philippines. LEAs had conducted financial investigations of two potential instances of TF involving foreign workers, but ultimately did not identify TF conduct in Chinese Taipei.

國家風險評估根據於中華臺北境內的外籍移工，認為資恐可能是潛在的威脅。目前約有 67 萬 6,000 名外籍移工居住中華臺北境內，主要來自印尼、越南及菲律賓等國家。另外執法機關針對 2 件潛在資恐案例，已進行財務調查，但最終未發現資恐活動情事。

227. The NRA considered TF risks amongst the NPO sectors and identified civil associations, religious foundations and charity foundations as having potential risks due to insufficient information being provided in anonymous donations and the scope of their operation. Whilst there has been no identified case of TF through NPOs, authorities maintain their vibrant NPO sector may be vulnerable. A discussion of actions taken with respect to NPOs is provided below in IO10. It is noted that the likely channels being used for TF will be the OBUs and Domestic Banking Units (DBUs).

國家風險評估考量非營利組織部門的資恐風險，並指出人民團體、宗教財團法人及社會福利慈善財團法人，因匿名捐款資訊不足，具有潛在風險。雖然沒有透過非營利組織進行資恐的案例，但權責機關認為較活躍的非營利組織部門具有可能被濫用的弱點。有關非營利組織採取的行動將在直接成果 10 討論。值得注意的是，受資恐濫用的管道可能是國際金融業務分行及指定辦理外匯業務銀行。

228. The CTF Act was enacted in 2016 criminalising TF in accordance with most international requirements.



資恐防制法在 2016 年制定並納入國際標準，將資恐罪刑化。

229. There are no TF convictions in Chinese Taipei. Thus far, the MJIB has investigated a total of 7 cases potentially related to terrorism or TF activities. Four of those cases have been closed and three cases remain under investigation. Based on current investigations, no TF case has actually been uncovered so far in Chinese Taipei.

4 中華臺北目前無資恐案件之相關定罪。然而，截至目前為止，法務部調查局曾調查過 7 件涉恐或與資恐有關的活動，其中 4 件已經結案，而 3 件尚在調查中。依目前的調查狀況，中華臺北尚未發現任何資恐案件。

### *TF identification and investigation*

#### *資恐辨識與調查*

230. The NSB is the intelligence agency responsible for collecting and analysing intelligence or information related to national security and interests. The NSB is able to integrate and coordinate with other agencies such as the NIA, MJIB, AMLD and military agencies in cases of national security. In response to global threats, including the concern around foreign fighters and other matters, authorities in Chinese Taipei collaborated to introduce the “Investigation and Processing Operation Procedures for Cases Involving Terrorism” (the CFT SOP) in December 2017. The CFT SOP has been disseminated to and used by relevant LEAs involved in investigating terrorism (NSB, MJIB, AMLD). Relevant extracts of i. intelligence collection; ii. Intelligence investigation; iii. Prosecution/TFS; iv. Counter terrorism responses/strategies. The SOP includes strategies to investigate funds flows and to seek and provide international cooperation where relevant and provides for domestic cooperation.

國家安全局是負責收集、分析攸關國家安全及利益的情報機關。在整體國家安全體系下，國家安全局能夠統合並協調其他機構，如移民署、法務部調查局及軍事機構的情報工作。為因應全球威脅，包括關注外國戰鬥人員和其他事項，中華臺北相關權責機關於 2017 年 12 月共同修訂「涉恐個案查處作業程序」（CFT SOP），該作業程序業已發布供涉恐相關的執法機關（如國家安全局、法務部調查局、洗錢防制處等）據以執行。流程分為 4 個階段，包括 1. 情報收集；2. 情報調查；3. 起訴/目標性金融制裁；4. 反恐應變/策略等，內容包括調查金流以及尋求國際及國內的合作事項。

231. There is no designated unit for TF investigations, however in cases where TF was suspected, the NSB coordinated efforts with LEAs, Prosecutors, AMLD and the OHS in line with the CFT SOP.

中華臺北無專責調查資恐案件的機關，但如果發現或懷疑有資恐情事，國家安全局將依「涉恐個案查處作業程序」（CFT SOP），與執法機關、檢察機關、法務部調查局洗錢防制處和行政院國土安全辦公室協調合作。

232. Prosecutors do not have designated sections devoted to TF (in line with the risk profile). However, in the event that TF occurred, the matter would be dealt with by a prosecutor working in the major criminal cases division of the HPO. In such cases, the Prosecutors have particular guidelines to abide by which require Prosecutors to ensure a speedy investigation, and all documents sent to court are marked red meaning it is an urgent case amongst other special measures.

檢察機關針對資恐案件無指定專組專辦（符合風險概況）。但如果發生資恐案件，會先由高檢署辦公室負責偵辦重大犯罪案件的檢察官處理。檢察機關內部有特別的指引，要求承辦檢察官應迅速調查是類案件，所有送到法院的案卷都以紅色標記，目的為讓法院瞭解資恐案件係屬於緊急案件，需採取特殊措施。

233. TF matters that fall to MJIB to investigate are dealt with by the National Security Operation Division. This division has a wide range of functions regarding counter terrorism including PF and TF.



In addition, the MJIB International Operations Division would also seek related intelligence from partners in other jurisdictions. TF or terrorism matters that come to the NPA are dealt with by the Intelligence Protection Division. In this instance, the NPA would initiate a nationwide investigation and such a case would be regarded as a major case.

如果資恐案件發交到法務部調查局，將會由國家安全維護處負責處理。國家安全維護處在執行反恐工作具有廣泛不同的功能，包括反武擴和資恐。此外，法務部調查局的國際事務處，亦會向其他合作夥伴國家尋求相關情報。資恐或涉恐案件如交由內政部警政署調查，將由保防組主責處理。在發生資恐案件情況下，內政部警政署將啟動全國性的調查行動，並將資恐案件列為重大案件。

234. The AMLD has demonstrated it plays a key role in TF investigations in the small number of cases that have been outlined. The AMLD demonstrated that it has actively supported Egmont Group exchanges of information relating to TF.

法務部調查局洗錢防制處在中華臺北為數不多的資恐調查案件中，扮演相當關鍵的角色。洗錢防制處積極主動與艾格蒙聯盟相互交流資恐情資。

235. The NIA also plays a role in TF investigations and has provided details of cases in which they received intelligence regarding the potential involvement of a foreigner with IS who may have sought entry into Chinese Taipei. In these cases, the NIA exercised its power under the Immigration Act and denied entry to this person.

內政部移民署在調查資恐案件中亦發揮作用。移民署提供有關接獲疑似參與 IS 外國人欲入境中華臺北的具體個案資料。移民署在這些案件中，根據入出國及移民法行使職權，拒絕前揭案例人士進入中華臺北境內。

236. Authorities are aware of their respective roles and responsibilities and are well-equipped to conduct parallel financial investigations based on existing expertise. Should TF arise in the future in Chinese Taipei, authorities are well placed to investigate thoroughly and effectively.

各權責機關瞭解各自在資恐案件所扮演的角色及責任，中華臺北執法機關有能力，調查此類案件時，併行財務調查。如果中華臺北未來發生資恐案件，相關權責機關即可啟動澈底及有效的調查。

237. There have been no STRs from any domestic reporting institution involving TF in the past 3 years. However, the AMLD has conducted financial investigations on the basis of requests from Egmont partners. Once analysed by the AMLD the information is sent to the National Security Operation Division<sup>9</sup> (NSOD) of the MJIB, and other LEAs.

中華臺北在過去 3 年內，沒有收到國內機構通報任何涉及資恐的可疑交易報告。然而法務部調查局洗錢防制處曾經根據艾格蒙聯盟的合作夥伴要求，進行金融調查。洗錢防制處分析與資恐有關的金融情資後，發送到法務部調查局的國家安全維護處和其他執法機關。

**Table 4.1: TF intelligence statistics provided by the NSB**

**表 4.1 國家安全局有關反恐/資恐情資統計**

| Counter-terrorism intelligence / year<br>反恐情資/年度 | 2015 | 2016 | 2017 | 2018<br>(Jan-Jun) | Total |
|--|------|------|------|-------------------|-------|
| Number of Counter-Terrorism intelligence         | 12   | 19   | *136 | 7                 | 174   |

<sup>9</sup> The NSOD is a unit under the MJIB responsible for coordinating and organising investigations on cases related to terrorist activities, terrorist financing and PF. It receives and allocates intelligence received from AMLD relating to these matters.

國家安全維護處是隸屬法務部調查局的單位，負責協調、組織與恐怖主義活動、資恐和武擴有關的案件調查，並為接收洗錢防制處發送與是類案件有關情報的窗口。

|   |    |    |     |   |     |
|---|----|----|-----|---|-----|
| 反恐情資件數  |    |    |     |   |     |
| Number of specific intelligence relating to TF<br>與資恐有關特定情資件數   | 0  | 2  | 0   | 0 | 2   |
| Criminal investigations with TF links<br>與資恐有關的犯罪調查   | 0  | 2  | 0   | 0 | 2   |
| Counterterrorism and TF intelligence distributed<br>to other national security authorities (such as<br>NPA, MJIB, NIA)<br>反恐與資恐情資分送給其他國家安全機關（如內<br>政部警政署、法務部調查局及內政部移民署） | 12 | 21 | 136 | 7 | 176 |
| TF-related STRs<br>資恐有關的可疑交易報告  | 0  | 0  | 0   | 0 | 0   |

\* Note: The surge in 2017 relates to the Universiade event held in Taipei in which authorities undertook a significant amount of pre-event intelligence exchanges with foreign counterparts.

\*註：2017 年案件數激增與在臺北舉行的世大運有關，權責機關與外國夥伴機關進行大量的賽前安全情報交流。

238. There has been one significant incident in Chinese Taipei involving a bombing of the high speed rail. In this matter the AMLD took initiative to conduct a financial investigation into the suspects based on media reports that led to the finding that the incentive behind the bombing was in fact market manipulation and not terrorism related.

中華臺北曾發生一起在高鐵放置炸彈的重大治安事件。法務部調查局洗錢防制處主動根據媒體報導，對嫌犯進行財務調查，結果發現嫌犯放置炸彈背後的動機，是為了市場操縱且與恐怖主義無關。

#### **Case Example 4.1: 2013 bombings on the high-speed rail in Chinese Taipei**

##### **案例4.1：2013年高鐵炸彈客案**

On April 12 2013 bombs were placed on the High Speed Rail, which did not explode. NSB and OHS were informed and the criminal investigations were coordinated by the DPO. The NPA was responsible for investigating certain aspects of evidence such as the explosives, collection of evidence, questioning of suspects etc. The NSB coordinated the intelligence agencies. The suspects had travelled to China. NPA obtained cooperation from counterparts in China, which resulted in the suspects being returned to Chinese Taipei.

嫌犯於 2013 年 4 月 12 日放置炸彈在高鐵（HSR）上，炸彈當時沒有爆炸。權責機關發現後，隨即通知國家安全局和行政院國土安全辦公室，刑事調查部分則由繫屬地方檢察署協調偵辦，內政部警政署負責調查證據，如爆炸物的證據收集，訊問嫌疑人等，另由國家安全局協調相關情報機構的情報蒐集。當時嫌犯已潛逃至中國，內政部警政署透過與中國夥伴機關合作，將嫌犯至中國遣送回臺。

AMLD financial investigations commenced based on media reporting on the incident. AMLD notified FIs seeking further information and received emergency STRs from more than 10 FIs on the same day. Preliminary analysis showed that one of the suspects had converted all of his assets to cash prior to engaging in this conduct. He collected a significant amount of money in order to short the Chinese Taipei Index Futures on the Singapore exchange. This information was submitted to the DPO.

法務部調查局洗錢防制處根據此事件的媒體報導，著手進行嫌犯的財務調查。洗錢防制處於同一日收到來自 10 多家金融機構通報的緊急可疑交易報告。洗錢防制處經過初步分析後，發現其中一名嫌疑人在犯下此行為前，為了補足購買新加坡指數期貨的資金短缺，已將其所有資產變現，調度大量資金集中。相關情資均提交予地檢署。

The DPO investigation identified the aim of the bombing was financial gain through the short position in the stock market prior to a bombing anticipating the stock price plummet in response to the bombings. The defendants were prosecuted for attempted murder, offences against public safety and violation of

the Futures Trading Act. One defendant was sentenced to 20 years imprisonment and the other was sentenced to 10 years and 6 months imprisonment.

地檢署檢察官啟動偵查後，認為被告犯行的目的是為獲取經濟利益。該罪行的目的是在引爆炸彈之前，放空臺股指數期貨，從而在新加坡證券交易所獲得龐大經濟利益。被告最後以殺人未遂、公共危險罪和違反期貨交易法，遭地檢署起訴，其中一名被告被判處 20 年有期徒刑，另一名被告被判處 10 年 6 個月有期徒刑。

Authorities looked comprehensively into other possible connections and motives and concluded in this matter that it was not a terrorist incident. Under the Homeland Security Situation Determination Procedures, the competent authorities assess whether the case is in fact terrorist activity by reviewing the intent and other issues behind the crime.

權責機關認定此重大人為治安事件，不是恐怖攻擊事件。權責機關根據國土安全情勢研判作業程序，分析嫌犯犯行背後的目的及其他情況，評估該案件實際上是否屬於恐怖攻擊。

239. As seen in the case study above, procedures are in place for authorities to determine whether or not in fact an event is a terrorist event. If it is determined to be connected to terrorism, then the CFT SOP will apply which outlines the responsibilities of each respective agency. Authorities should ensure that the Homeland Security Situation Determination Procedures do not prevent a swift response using all relevant powers and agencies prior to the determination being made.

如上述案例研究所示，權責機關已制定案件處理作業程序，以確認該案件是否屬於恐怖主義事件。如果確定與恐怖主義有關，則適用「涉恐個案查處作業程序」，該程序中概述各該權責機關的職責。中華臺北應確保「行政院國土安全應變機制行動綱要」之相關規定，不會在決定個別案件性質之前，因而影響權責機關迅速處置應變作為。

240. It is evident that Chinese Taipei exchanges intelligence with supportive foreign counterparts regarding potential TF targets. This was demonstrated in live cases and regular international cooperation to prepare for possible terrorist cases. Chinese Taipei has taken preventative measures such as denying entry to potential financiers on the basis of foreign intelligence. However, authorities note that increased exchanges of intelligence with a variety of foreign partners would increase their ability to more effectively target foreign threats to Chinese Taipei.

中華臺北與外國夥伴機關就潛在資恐對象交換情資，並採取預防措施。從實際案件和定期國際合作的情況都可看出在為未來可能發生的恐怖主義案件進行準備。中華臺北採取預防性措施，例如根據外國情報，拒絕疑似資恐者入境。權責機關另提及，與各種外國夥伴機關合作，強化雙邊情報交流，有效提升應對來自外國威脅的能力。

### *TF investigation integrated with -and supportive of- national strategies*

#### *整合資恐調查並用於支援全國性反恐策略及調查*

241. Chinese Taipei has good counter-terrorism policies in place organised by the OHS. The “Guidelines for Contingency Response Plans and Operations of Homeland Security of Executive Yuan” provide a basic framework for counter-terrorism. At a more operational level, underneath the OHS sits the “Response Team for Major Man-made Security Accidents or Terrorist Attacks” with designated agencies for each incident. The case studies identified above highlight how TF intelligence and related financial investigations have been supportive of national CT strategies. TF intelligence contributed to the CT preparations ahead of the 2017 Universiade event held in Taipei. As outlined in IO1, Chinese Taipei lacks a national CFT strategy and it will be important that CFT concerns by AMLD and LEAs are closely integrated with and supportive of national CT strategies.

中華臺北由國土安全辦公室統籌完善的反恐架構，其中以「行政院國土安全應變機制行動綱要」為反恐的基礎。在執行操作的層面，由國土安全政策架構下的「重大人為維安事件或恐怖攻擊應變組」運作執行，針對不同個案性質，納入與反恐事務有關的部會。上述案例研究即顯示，資恐情報和相關金融調查支援國家整體反恐政策。在舉辦 2017 年臺北世界大學運動會之前，所獲得之資恐情報亦有助於反恐準備工作。如同 IO1 報告內容提及，中華臺北缺乏國家層面的打擊資恐政策，因此洗錢防制處和執法機關對打擊資恐議題的關注，與國家反恐政策的緊密結合及支援，將是未來的重點。

- 4 242. The main counter terrorism and CFT mechanism is the Homeland Security Policy Committee of the EY, which was established to formulate CT policies, review laws, approve plans and supervise operations. At the operational level, the Director of OHS organises working level meetings for specific issues with relevant agencies and such meetings are also held regularly. The NSB is key for planning, regulation, supervising and integrating national intelligence for terrorism and TF. The OHS and NSB remain on alert to share counter-terrorism intelligence. The NSB integrates and assesses intelligence from all agencies, including from AMLD, to make a judgment about individual cases.

中華臺北主要的反恐及打擊資恐機制是行政院的國土安全政策會報，此會報負責制定反恐政策及檢視法規，審核各機關執行計畫並監督運作情況，在業務執行層面，國土安全辦公室主任可針對特定議題，召集相關機關，定期召開工作層級會議。國家安全局是中華臺北情報機構，為規劃、管制、監督並整合國家總體反恐和資恐情報的核心機關。國安局和國土辦隨時維持高度戒備，雙方共享反恐情報。國安局整合和評估所有情報機關執行情報工作的情形，並判斷個案重要性。

#### *Effectiveness, proportionality and dissuasiveness of sanctions*

##### *制裁之有效性、合乎比例及勸阻性*

243. There has been no prosecution of TF in Chinese Taipei. The available sentences for TF range from one to seven years (CTFA Art. 8). In the context of Chinese Taipei, such sentencing is commensurate with other serious offences such as human trafficking and kidnapping for ransom.

中華臺北無起訴資恐案件。按資恐防制法規定，資恐罪的法定刑期為一年以上、七年以下。資恐罪的法定刑與中華臺北其他重大犯罪刑度相稱，例如人口販運和擄人勒贖。

244. The CTFA provides for sentence remittance in the event that the offender voluntarily surrenders within six months after committing the crime. Because surrender refers to a situation where the authorities have no prior knowledge of a crime and is different from confession, authorities confirm that the remittance assists to initiate new investigations and uncover networks where they were previously unknown. The provision does not apply if the authorities are already aware of and investigating a suspect. In the absence of TF prosecutions, this provision has never been applied.

資恐防制法規定，如果資恐者在犯罪後六個月內自首，免除其刑。在此的自首係指權責機關尚未能事先了解犯罪已經發生，且自首與自白不同。中華臺北權責機關認為自首有助於權責機關發動新的調查作為，並進一步發現不法網絡。此規定於當局已知嫌疑人並展開調查的情形下不適用。鑑於目前無資恐罪起訴案件，這項規定未曾實際適用。

#### *Alternative measures used where TF conviction is not possible (e.g. disruption)*

##### *當資恐定罪不可行時，具備其他替代措施(例如阻斷資恐活動)*

245. Chinese Taipei has a low risk for TF and few instances have been detected. Despite this, Chinese Taipei is able to implement various measures where a TF conviction is not possible. Such measures include strengthening of border security, prosecuting other crimes where TF is not possible, and revocation of NPOs licence should it be identified as having been used for TF.



如上所述，中華臺北的資恐風險低，僅發現少數疑似案例。惟中華臺北能夠在資恐定罪不可行時，採取多項替代措施。相關措施包括強化國境安全、以其他罪名繼續追訴犯行、若發現非營利組織涉及不法，則廢止其設立許可等。

246. Chinese Taipei has signed a terrorist screening exchange agreement with the United States. This assists agencies to screen prior to travellers' arrival in Chinese Taipei. Further, due to the numbers of migrant workers in Chinese Taipei and the findings of the NRA, NSB very carefully vets all migrant workers seeking to enter Chinese Taipei to work. All workers are required to apply for a permit which is then vetted by the NSB and immigration agencies and if necessary, entry to Chinese Taipei is denied.

中華臺北與美國簽署恐怖分子篩檢協議，有助於各機關在旅客抵達中華臺北之前進行名單篩檢。此外，根據中華臺北的移工人數和國家風險評估的結果，國家安全局非常謹慎地審核所有欲入境中華臺北工作的移工，所有移工都必須事先申請許可，然後經由國家安全局和移民署審核，於必要時，旅客或移工的入境申請會被拒絕。

247. Chinese Taipei has taken significant efforts to disrupt and prevent potential TF. This was demonstrated in the recent Summer Universiade event in which the NSB managed potential threats including international cooperation with foreign partners to vet each person entering Chinese Taipei. In addition, Chinese Taipei repatriated a person suspected of possible IS recruitment, and has also denied entry as evidence of supporting terrorism was discovered (see following case study).

中華臺北努力地在其境內，遏止並防制潛在資恐案件發生。由最近舉辦的世大運活動可證，國家安全局與外國夥伴機關的國際合作，掌控潛在威脅；於國境線上，嚴格審查每位入境者。此外，中華臺北亦曾遣返一位疑似受到 IS 招募的外國人，並且拒絕另一名支持恐怖主義者入境之案例（見以下案例）。

#### **Case Example 4.2: TF investigations 案例 4.2 資恐調查**

In August 2016 Chinese Taipei received intelligence on migrant worker T suspected of possible IS recruitment. As a result of the authorities' investigation, T was repatriated from Chinese Taipei.

中華臺北於 2016 年 8 月收到涉嫌受到 IS 招募的移工 T 的情報。經過相關機關調查後，T 被遣返出境。

In December 2016 Chinese Taipei received intelligence on migrant worker D from Indonesia who attempted a bomb attack on the Indonesian President. D had been employed for home care in Chinese Taipei from 2013 to 2016. After Chinese Taipei intelligence authorities and LEAs conducted investigations the decision was made to deny entry future to D as evidence of supporting terrorism was discovered.

中華臺北收到來自印尼的移工 D 的情資，內容顯示其企圖對印尼總統府進行炸彈攻擊。國安機關調查後發現於 2013 年至 2016 年，D 曾在中華臺北受僱擔任看護工，因為掌握 D 支持恐怖主義的證據，決議自此將 D 列為禁止入境名單。

### *Overall conclusion for Immediate Outcome 9*

#### *直接成果 9 之總體結論*

248. Assessments confirm that terrorism and TF risks are low overall, however TF investigations are given a high priority. LEAs, prosecutors, the FIU and security intelligence authorities have well developed investigation capacity, and standard operating procedures to respond to possible cases of terrorism or TF. There have been a number of cases where authorities have proactively and systematically investigated TF alongside possible terrorism cases and, in two other incidents, investigated possible TF cases. The conduct of financial investigations is in keeping with the risk profile



and CFT policies. Chinese Taipei has used immigration laws to keep possible terrorist financiers out of the jurisdiction where it is not practicable to secure a TF conviction.

評鑑團肯認中華臺北的恐怖主義和資恐的風險較低，但能優先地調查資恐案件。執法機關、檢察機關、金融情報中心和安全情報機關都有很好的調查能力，並具備應對疑似恐怖主義或資恐案件的標準作業程序。權責機關也主動且有系統地調查幾起疑涉資恐的案件，並在另外兩起涉恐案件中調查是否有資恐可能。執法機關啟動財務調查的情況亦與風險和打擊資恐政策一致。在確認資恐無法定罪的情況下，中華臺北另外依據移民法，將可能的資恐者禁止入境或驅逐出境。

4

**249. Chinese Taipei has a substantial level for effectiveness for Immediate Outcome 9.**

中華臺北直接成果 9 之評等為相當有效。

**Immediate Outcome 10 (TF preventive measures and financial sanctions)****直接成果 10(資恐防制措施及金融制裁)****Implementation of targeted financial sanctions for TF without delay****毫不遲延執行資恐目標性金融制裁**

250. The CTA was promulgated in July 2016 and amended in November 2018 to give effect to TFS under R. 6. Chinese Taipei has strong policy and operational coordination mechanisms to support the implementation of a legal framework for implementing TFS to combat terrorism. There are some technical gaps in the legal basis for TFS as freezing obligations and persons or entities that are not regulated FIs or DNFBPs under the MLCA to implement TFS (availability of an administrative sanction and clear requirement to report a freeze action or attempt to provide funds). The amended CTF Act applies to assets wholly or jointly owned or controlled, directly or indirectly, but not clearly to property derived from such property or to funds or other assets of persons and entities acting on behalf of or at the direction of designated persons and entities, except when those funds are also property or property interests of the designated person or entity.

中華臺北遵循 FATF 的建議 6，於 2016 年 7 月頒布，並於 2018 年 11 月修訂資恐防制法，以執行目標性金融制裁措施。中華臺北擁有堅強的政策及業務協調機制，在此法律框架下，有利於執行目標性金融制裁，打擊恐怖主義。執行資恐的目標性金融制裁之法制面仍存有一些法規的落差，以及在洗錢防制法之下未被要求執行目標性金融制裁之金融機構及 DNFBP（如行政制裁之可取得性，明文要求通報凍結的行為或通報意圖提供資金的行為）。修正後資恐防制法適用於直接或間接、完全或共同擁有或控制的資產，但沒有明確規定從該財產所衍生的財產或指定人員和實體的代表人或實體的資金或其他資產亦需一併凍結，除非這些資金也是指定人員或實體的財產或財產上利益。

251. TFS freezing obligations are being implemented without delay. The process for converting UN listings into binding domestic designations and updating domestic websites and publications with new names occurs within 24-36 hours following any UN updates. The competent authority (MOJ / MJIB) has dedicated personnel who check the UN sanction lists daily basis to ensure that sanctions list is up-to-date. The MJIB reports sanction lists of related UNSC resolutions from time to time to the MOJ.

目標性金融制裁凍結義務毫不延遲地實施。聯合國指定名單經由國內指名，將更新的指定名單公告在國內官方網站及發布相關官方文件，使其在國內產生法效力，約莫於聯合國發布更新名單後的 24-36 小時內完成。權責機關（法務部及法務部調查局）指派專責人員每日檢查聯合國制裁名單，以確保制裁名單維持最新狀態。一有名單更新，法務部調查局會向法務部通報聯合國安理會決議的最新制裁名單。

252. MOJ is the competent authority responsible for designations pursuant to UNSCR 1373. The TF Review Committee (TFRC) is well established to implement UNSCR 1373-related designations should the need arise, either based on a domestic initiative or when considering foreign requests. In practice, Chinese Taipei has not used the TFRC for a 1373 designation, which is in keeping with the risk profile. Chinese Taipei demonstrated that the TFRC has operated well to consider and designate persons and entities associated with domestic proliferation financing, which utilises the same mechanisms and evidentiary standards, albeit in relation to financing of WMD proliferation.

法務部為權責機關，負責依聯合國安理會第 1373 號決議執行指定制裁，並設置資恐審議委員會，在需要時依據國內機關提報或接受外國請求，執行與聯合國安理會第 1373 號相關的指定制裁。目前中華臺北資恐審議委員會未曾就安理會第 1373 號相關決議，進行指定制裁的案例，這與中華臺北資恐風險概況一致。惟中華臺北發生防止資助大規模毀滅性武器擴散的指定制裁案例，因為與資恐使用相同的機制與標準，以茲證明資恐審議委員會之機制運作良好。

253. A very large number of outreach and awareness raising sessions have been undertaken to FIs and DNFBPs regarding implementation of TFS against TF. Guidance has been issued to all FI and DNFBP sectors, which add to effective implementation. Both outreach and guidance are strongly supported by government authorities and all sectoral associations (see IO 4).

中華臺北已經舉辦多場宣導和提升執行目標性金融制裁意識的相關會議，指導金融機構和 DNFBP 行業如何針對資恐指名對象，進行目標性金融制裁，並且已向所有金融機構和 DNFBP 發布書面指引以有效執行目標性金融制裁。上述措施皆獲得政府權責機關和所有產業公會的大力支持。

254. Sanctions screening by FIs and DNFBPs is being conducted reasonably well. Screening by banks appears to go beyond UN lists to include OFAC and other national lists. However, there has not been sufficient focus on sanctions evasion vulnerabilities through entities associated with designated persons (see IO 4), which reflects the gap in the legal framework. Despite this, the context of Chinese Taipei and its TF risk do not raise particular concerns in this regard for this immediate outcome. Authorities have good supported transaction and customer checking amongst FIs/DNFBPs through the subsidising the provision of TDCC system for TFS sanctions and PEP screening databases to ensure that even small business DNFBPs have access to comprehensive sanctions and PEP checking lists. Not all DNFBP use the TDCC, but the coverage is wide and increasing. FSC and TDCC maintain data on usage of the system and continue to encourage uptake of sanctions screening software.

金融機構和 DNFBP 篩濾檢核制裁名單的運作機制相當良好。銀行的篩濾名單範圍甚至超出聯合國名單的範圍，另外還納入包括 OFAC 和其他國家指定制裁名單，但銀行似乎未能充分掌握與指定制裁對象有關的實體資訊（見 IO 4），而這也是制裁措施的漏洞及法律架構下存在的缺失。惟考量中華臺北的背景資訊及其資恐風險，這些問題無須在此特別關注。相關權責機關透過臺灣集中保管結算所提供的制裁名單和重要性政治職務人士檢核資料庫，有助於確保即便是小型的 DNFBP 都能獲得完整的制裁名單和重要性政治職務人士資料，有效地協助金融機構及 DNFBP 執行交易和客戶檢查工作。雖然目前並非所有 DNFBP 都已使用集保結算所的檢核系統，但使用的行業範圍廣泛且不斷增加。金管會和集保結算所維護系統使用的資料，並持續倡導善用這套系統。

255. Supervision of FIs for TFS compliance has taken place over a number of years. Supervision of DNFBPs for TFS has been limited, although more supervision has been undertaken with accountants. Reflecting high levels of outreach, FIs /DNFBPs demonstrate good understanding of their obligations and processes to respond to alerts received following each update to the government's TFS list.

權責機關監督金融機構進行目標性金融制裁的遵循狀況已行之有年。儘管對會計師進行了更多的監督，然而監督 DNFBP 執行目標性金融制裁仍屬有限。金融機構和 DNFBP 相當瞭解每次接獲政府公布更新制裁名單後的義務和應行流程，如此也彰顯高層的宣導很有效果。

256. No funds or other economic resources related to persons or entities designated by the UN have been located in Chinese Taipei. No cases of possible false positives have been reported to the authorities, although guidance has been sought from FIs. This is in keeping with the risk profile.

目前中華臺北境內未發現與聯合國安理會相關決議之指定制裁名單的個人或實體有關的資金或財產。儘管已經向金融機構尋求指引，但目前主管機關尚未接獲任何可能的誤報，此結果符合中華臺北的風險概況。

### *Targeted approach, outreach and oversight of at-risk non-profit organisations*

#### *對於有風險的非營利組織進行的目標性接觸、宣導及監督*

257. Since 2017 Chinese Taipei has pursued a targeted, interagency coordinated approach to overseeing the whole NPO sector based on its assessment of TF risks.

自 2017 年以來，中華臺北根據資恐風險評估，持續採用目標性的跨部門協調方式，監理整個非營利組織部門。

258. Regulators demonstrated a good understanding of risks and vulnerabilities for TF. This was captured in the NRA and through further work by authorities in 2017-18 to identify the subset of NPOs that may be at risk and should be the focus of FATF standards/controls. Through this process regulators demonstrated a good comprehension of risks and vulnerabilities. While TF risks are low overall in Chinese Taipei, authorities have taken a reasonable approach to assess which sub-sectors of NPOs that meet the FATF definition may be vulnerable to being misused for TF by considering their legal form, governance and transparency; the focus nature and location of their work; and the collection and disbursement of funds. Of these, further emphasis has been given to those few sub-sectors which may undertake charitable work in riskier jurisdictions.

監理機關清楚瞭解洗錢及資恐的弱點。於 2017-2018 年間的國家風險評估及相關過程中，辨識出某些非營利組織的類別，可能有風險且需要適用 FATF 的標準及監理。監理機關在過程中全面性地瞭解風險及弱點。雖然中華臺北的資恐為低度風險，監理機關仍採取合理的方法，透過考量其法律架構、治理方式和透明度、工作性質和地點，以及資金的收集和支付，以評估符合 FATF 定義的非營利組織之子類別是否可能容易受資恐濫用。在這些非營利組織當中，也進一步關注那些在風險較高的司法管轄區內，進行慈善工作的少數非營利組織。

**Table 4.2: Chinese Taipei's assessment of the risk profile of NPO sectors (2017)**

**表 4.2 中華臺北非營利組織風險評估 (2017)**

|                 | Civil Associations<br>人民團體 | National Religious Foundations<br>全國性宗教財團法人 | Social Charity Foundations<br>社會福利慈善財團法人 | Medical Foundations<br>醫療財團法人 | Educational Foundations<br>教育財團法人 | Cultural Foundations<br>文化財團法人 |
|-----------------|----------------------------|---|--|-------------------------------|-----------------------------------|--------------------------------|
| TF risk<br>資恐風險 | At risk<br>有風險             | At risk<br>有風險                              | At risk<br>有風險                           | No risk<br>無風險                | No risk<br>無風險                    | No risk<br>無風險                 |
| NPOs<br>非營利組織   | 16,277                     | 192   | 236                                      | 58                            | 1,025                             | 202                            |

259. A great deal of outreach and awareness raising has been undertaken to the regulators and to the NPO sector to ensure that the wider set of regulators and at-risk NPOs are aware of their obligations and potential TF risks. More detailed outreach and awareness raising has focused on those sectors MOFA and regulators have, in cases of NPOs working in or near to conflict zones, provided more targeted risk information.

已向監理機關和非營利組織部門進行大量宣導和意識提升之活動，確保監理機關和具有風險的非營利組織能意識到其義務和潛在的資恐風險。外交部和監理機關應針對在衝突地區內或附近區域工作的非營利組織，進行更詳細的宣導和意識提升，並提供更聚焦的風險資訊。

260. Chinese Taipei demonstrates that it has, to a large extent, without disrupting or discouraging legitimate NPO activities, applied focused and proportionate measures to such NPOs which it has identified as being vulnerable to TF abuse, in line with the risk-based approach. A graded range of risk mitigation obligations, guidance and supervision has been applied taking into account the relative risks of particular sub-sectors and the features and activities of individual NPOs.



中華臺北展現其在很大程度上，在不破壞或不阻礙合法的非營利組織活動的情況下，基於以風險為本的方式，針對被辨識出易受濫用的非營利組織採取關注與相符的措施。考量特定非營利組織的相對風險及個別非營利組織的特徵和活動，已採取一系列抵減風險義務、指引和監督作為。

261. Chinese Taipei demonstrated that it has good controls to manage risks with charitable collection. There are strong transparency and good governance controls in place across various NPOs sub-sectors. A number of recent changes have further deepened these controls for NPOs carrying some TF risks. NPOs are covered by requirements for maintaining records, obtaining permission to undertake fundraising, as well as providing reports on programs, funding and expenditure. There are controls on programs, fundraising and expenditure of NPOs, with a particular focus on high risk jurisdictions as destinations following the principles of know your recipient NGOs. In a number of cases where there may be greater risks, authorities undertake onsite visits to charities to confirm the implementation of controls on programs, finances and personnel.

中華臺北已有效管理勸募風險。各非營利組織子類別皆具備完善的組織透明度和良好的治理措施。最近的一些變革進一步深化對具資恐風險的非營利組織的監理。非營利組織被要求保存紀錄、獲得勸募許可及提供主管機關活動計畫、資金和支出的報告。對於非營利組織的計畫、募款和支出等活動亦訂有相關管控措施，特別是在那些受關注的高風險管轄區活動的非營利組織，須遵守「瞭解您的受益非政府組織為何」之原則。在具有可能存在更大風險的案例中，主管機關會進行實地訪查，確認該慈善組織執行管控活動計畫、財務和人員的狀況。

262. For civil associations, national religious foundations and social welfare charity foundations, more targeted outreach has been undertaken and sectoral and institutional risk assessments are required and are being conducted. The three regulators have been supported by AMLD and LEAs to commence more focused offsite and onsite monitoring of targeted NPOs.

主管機關在人民團體、全國性宗教財團法人及社會福利慈善財團法人等三類團體，已進行更多的目標性宣導，並要求進行產業及機構風險評估。這三類主管機關獲得調查局洗錢防制處及相關執法機關的協助，更能聚焦在特定非營利組織，以利後續進行場外及現地監理活動。

**Table 4.3: NPO outreach and education on AML/CFT by competent authorities**

表 4.3 非營利組之主管機關進行之防制洗錢／打擊資恐教育訓練

| Competent authorities<br>主管機關 |                | 2016           |                      | 2017           |                      | 2018 (Jan-Jun) |                      |
|-------------------------------|----------------|----------------|----------------------|----------------|----------------------|----------------|----------------------|
|                               |                | Sessions<br>場次 | Participants<br>與會人次 | Sessions<br>場次 | Participants<br>與會人次 | Sessions<br>場次 | Participants<br>與會人次 |
| MOHW<br>衛生福利部                 | SFAA<br>社會及家庭署 | 2              | 239                  | 1              | 37                   | 2              | 181                  |
|                               | DMA<br>醫事司     | 1              | 33                   | 2              | 46                   | 0              | 0                    |
| MOI<br>內政部                    | DCA<br>民政司     | 0              | 0                    | 2              | 187                  | 0              | 0                    |
|                               | CCAPO<br>合團司   | 0              | 0                    | 2              | 350                  | 0              | 0                    |
| MOE 教育部                       |                | 7              | 691                  | 4              | 261                  | 2              | 314                  |
| MOC 文化部                       |                | 2              | 140                  | 0              | 0                    | 0              | 0                    |

263. Foundations Act amendments in 2018 included targeted controls for CFT. Article 10 requires foundations to have AML/CFT plans if branch offices are located in countries with particular ML/TF risks. Article 25 requires foundations to undertake and report on the findings of a risk report (along with work plans and budgets) if they are related to jurisdictions or areas with high risks of ML or TF.

2018 年財團法人法的修正包括目標性打擊資恐措施。第 10 條要求如果非營利組織的分支機構設址於洗錢/資恐高風險的國家，財團法人需制定防制洗錢/打擊資恐因應計畫。第 25 條要求財團法人如於洗錢或資恐風險較高的司法管轄區或地區進行相關活動，須提交風險評估報告（以及工作計畫和預算書）。

264. Outreach, monitoring and supervision of NPOs and controls on charitable fundraising indicate that levels of compliance with obligations are reasonable. Chinese Taipei authorities have allocated significant resources to outreach and resources to monitoring and oversight. Implementation of these measures is proportionate to the risks faced by Chinese Taipei.

主管機關針對非營利組織的宣導、管控和監督以及對慈善籌資應遵守的義務所採行的措施合理。中華臺北已將大量資源用於宣導和監理，所採行的措施與中華臺北所面臨的風險亦相稱。

265. While police authorities have not identified or investigated NPOs exposed to terrorist and TF risks, this is in keeping with Chinese Taipei's risk profile. TF investigation capacity, information sharing and experience with international cooperation are in place to ensure any NPO-related TF investigations can be prioritised.

雖然警察機關沒有辨識出及查獲與恐怖份子及資恐有關的非營利組織案例，符合中華臺北的風險概況。資恐調查能力、資訊分享和國際合作經驗皆已到位，以確保任何與非營利組織相關的資恐調查都應優先。

#### *Deprivation of TF assets and instrumentalities 剝奪資恐活動之資產及工具*

266. There have not been any cases of terrorists or terrorist financiers being deprived of their assets. As such there have not been any matters of restraining, seizing or confiscating any TF-related assets or instrumentalities. This is in keeping with the risk profile.

目前尚無任何與恐怖分子或資恐者被剝奪資產的案件。因此，沒有任何限制、扣押或沒收任何與資恐有關的資產或工具案例。此一結果符合風險概況。

#### *Consistency of measures with overall TF risk profile*

##### *實施之措施與整體資恐風險概況一致*

267. The measures undertaken by Chinese Taipei are consistent with its overall TF risk profile. These conclusions were based on: statistics provided by Chinese Taipei, discussions with the NSB, AMLD, AMLO and LEAs; relevant risk and threat assessments; and case studies showing the close consideration of risks and potential cases and risk TF mitigation measures by LEAs and NPO regulators.

中華臺北採取的措施與其整體資恐風險概況一致。這些結論基於：中華臺北國家安全局，調查局洗錢防制處、行政院洗錢防制辦公室和執法機關提供的統計數據、相關風險和威脅評估；案例表明執法機關和非營利組織監理機關有密切關注風險和潛在案例以及風險抵減措施。

#### *Overall conclusions on Immediate Outcome 10*

##### *直接成果 10 之總體結論*

268. Chinese Taipei demonstrated that it has implemented TFS, taken a targeted approach to overseeing NPOs of higher risk, and is prepared to deprive terrorists and terrorist financiers of their assets consistent with Chinese Taipei's risk profile. LEAs and intelligence services are vigilant to evolving TF risks. Chinese Taipei authorities have allocated significant resources to supporting the private sector to understand their TFS obligations, risks of sanctions evasion and practical measures to

enhance the implementation of TFS. Authorities have also conducted significant levels of outreach and monitoring and oversight to support the NPO sector and to mitigate potential TF risks. Authorities have implemented a graded range of obligations and support to NPO sectors, depending on the TF risks.

中華臺北展現已確實執行目標性金融制裁工作，亦採取目標鎖定的方式監督較高風險的非營利組織。剝奪恐怖分子及資恐者資產之措施均已到位，此結果與中華臺北的風險概況一致。執法機關及情報機關對於資恐風險的變動，常保持高度警惕。中華臺北權責機關亦分配顯著的資源，協助私部門瞭解執行目標性金融制裁義務、逃避制裁的風險，並採取有實效的措施以落實執行目標性金融制裁。權責機關進行有效的對外宣導活動及監督作為，協助非營利組織執行是項工作，抵減潛在的資恐風險，並根據資恐風險，對非營利組織實施一系列支援措施。

#### 269. Chinese Taipei has a substantial level for effectiveness for Immediate Outcome 10.

中華臺北在直接成果 10 之評等為相當有效。

#### *Immediate Outcome 11 (PF financial sanctions)*

##### *直接成果 11(資助武擴金融制裁)*

270. The Counter-Terrorism Financing Act was promulgated on 27 July 2016 and was amended with effect from 7 November 2018. The legal framework to prevent proliferation of WMD covers not only UN resolutions but also provides for elements of a PF offence, related STR reporting obligations and for Chinese Taipei to implement a domestic listing mechanism and related TFS. However there are some technical gaps remaining, especially the scope of funds to be frozen being held by those acting on designated persons' and entities' behalf or at their direction.

資恐防制法在 2016 年 7 月 27 日制定並在 2018 年 11 月 7 日修正生效。整個法律架構在防制資助大規模毀滅性武器擴散不僅包含聯合國安理會決議，且有訂定關於資助武擴犯罪、申報可疑交易義務，使中華臺北得據以執行國內指名機制和相關目標性金融制裁。惟存有一些技術遵循上的落差，特別是在那些代表被指定之個人和實體或依其指示之人所持有的資金凍結範圍方面。

271. Chinese Taipei authorities have taken steps to understand the context of their exposure to possible sanctions evasion in relation to Rec 7. Trade conducted between Chinese Taipei and Iran has accounted for a very small amount compared to the overall amount of Chinese Taipei's total trade and trade with the DPRK is negligible since 2018. The management of trade in goods falls under the authority of the Bureau of Foreign Trade (BOFT) under the MOEA.

中華臺北權責機關對於建議第 7 項已採取措施，瞭解相關規避制裁可能曝險的情況。中華臺北與伊朗之間的貿易額佔中華臺北總體貿易額比例相當小，自 2018 年以來與北韓間的貿易更是微乎其微。有關貿易貨品的管制是經濟部國際貿易局的職權。

#### *Implementation of targeted financial sanctions related to proliferation financing without delay*

##### *毫不遲延地執行資助武器擴散之目標性金融制裁*

272. The MOJ-led mechanism implementing TFS against WMD proliferation is similar to that for TFS related to terrorism. It operates without delay and extends both asset freezing obligations and prohibitions to all persons and entities in Chinese Taipei. Individuals, legal persons, or entities designated by the relevant UNSCRs and any successor resolution on the prevention of proliferation of WMD referred to the UN (DPRK and Iran) regulations, and prohibitions including freezing-measures go into effect without delay upon designation by the UN. The process for converting UN listings into binding domestic designations occurs within 24 hours. The list is then published on the website of domestic authorities which brings it into effect immediately. The competent authority (MOJ/MJIB) has

dedicated personnel who check the UN sanction lists of related UNSC resolutions daily, to ensure that their sanctions lists are up-to-date. Any updates are reported by MJIB through official letters. MOJ usually publishes related resolutions and sanction list in the dedicated AML/CFT section of the MOJ's official website within 24 hours, i.e. on the same day as MOJ receives the official letters.

法務部執行目標性金融制裁對抗資助大規模毀滅性武器擴散的機制，與執行資恐的目標性金融制裁機制相類似。運作上毫不遲延，並將資產凍結義務和禁令擴及到中華臺北所有的個人和實體。有關聯合國安理會就防止大規模毀滅性武器擴散決議及任何後續決議(北韓及伊朗)指名的個人、法人或實體及包括凍結措施等禁令，在聯合國指名後毫不遲延地生效。將聯合國發布的決議名單轉換為具約束力的國內指定過程，在 24 小時內可完成。該等制裁名單在國內權責機關於網站公告後即刻生效。權責機關(法務部/法務部調查局)派有專人每日確認聯合國安理會相關制裁清單，以確保制裁清單及時更新。法務部調查局會透過官方公文報告任何更新的資訊，法務部通常會在收到公文 24 小時內，將相關決議及制裁清單公告在法務部官網防制洗錢及打擊資恐專區，即法務部收到公文同日。

#### **Case Example 4.3: Implementation of new UN designations without delay resulting in asset freezing actions**

On 30 March 2018 the UN Security Council designated one individual and 21 companies pursuant to UNSCR 1718. MJIB identified that the list of additional individual and legal persons included the offshore company Pro-Gain Group Corporation (place of registration: Samoa) and Kingly Won International Co., Ltd. (place of registration: Marshall Islands) that were wholly owned by Chinese Taipei local Tsang Yung-Yuan. The MJIB also discovered that Mr. Tsang Yung-Yuan had allegedly assisted North Korea in obtaining coal and crude oil illegally. The process of giving domestic effect to the new UN listings was done within 6 hours. The MOJ also issued official letters to competent authorities of FIs and DNFBPs and published a press release on the official website of the MOJ to urge implementation of TFS.

After publishing the sanction lists, FIs reported frozen assets of sanctioned persons and entities resulting in approximately 30 freezing actions with an estimated value of approximately USD 1.08 million.

#### **案例 4.3：毫不遲延地執行聯合國新的指定名單並進行資產凍結行動**

2018 年 3 月 30 日，聯合國安理會根據 1718 號決議指定 1 名個人和 21 家公司。法務部調查局辨識出其他個人和法人名單包括境外公司 Pro-Gain Group Corporation (註冊地：薩摩亞) 和 Kingly Won International Co., Ltd. (註冊地：馬紹爾群島) 為中華臺北國人張永源所擁有。法務部調查局還發現，張永源疑似協助北韓非法取得煤炭和原油。聯合國的新名單在中華臺北 6 小時內即生效。法務部也向金融機構和 DNFBPs 主管機關發出公文，並在法務部官網上發布新聞稿，敦促執行目標性金融制裁。

在公告制裁名單後，金融機構申報受制裁之人和實體的凍結資產，約有 30 項凍結行動，估計價值約為 108 萬美元。

273. The competent authority, regulators and LEAs utilize a range of communication channels to ensure all relevant persons and entities are aware of their TFS obligations, any updates to the lists, and possible threats of PF sanctions evasion. Mechanisms used include email subscription notifications from MJIB, subscription to MOJ RSS feeds, government letters to relevant agencies, publications, and briefings to media to ensure news coverage, and informal communication through social media. Chinese Taipei demonstrated comprehensive use of these mechanisms to help to ensure FIs and DNFBPs and other relevant parties are aware of PF threats, updated lists and conduct proper screening of the



designated persons. As at the time of the onsite visit, there were approximately 500 subscribers to AMLD's TFS notification service. Moreover, most of the private sector uses the TDCC web portal for screening their customers against sanction lists.

權責機關、監理機關及執法機關善用各種溝通管道，確保相關人員及實體瞭解目標性金融制裁義務、名單的更新和可能規避資助武器擴散的威脅。使用的機制包括透過法務部調查局電子郵件的訂閱通知、法務部的 RSS 訂閱、政府發送相關機構公函、出版物、提供媒體簡報，以確保新聞報導，以及透過社群媒體進行的非正式溝通。中華臺北展現藉由這些機制的全面應用，幫助確保金融機構和指定之非金融事業或人員及其他相關人了解資助武器擴散的威脅、已更新的名單，並對被指定之人進行適當的檢核。在現地評鑑期間，大約有 500 人訂閱洗錢防制處的目標性金融制裁通知服務。此外，大多數的私部門是使用台灣集中保管結算所的網站來檢核其客戶是否為制裁名單。

274. At the time of the onsite in November 2018, relevant agencies did not report any inquiries from FIs or DNFBPs regarding possible false positives to potential designated persons or entities. Authorities indicated that this reflects the detailed information made available on the subjects of designations.

在 2018 年 11 月現地評鑑期間，相關機關並沒有收到金融機構或指定之非金融事業或人員詢問有關潛在被指定之人或實體可能有偽陽性的任何問題。權責機關表示這反映指定主體的資訊很明確。

#### *Identification of assets and funds held by designated persons/entities and prohibitions*

#### *辨識及禁止指定之個人或實體資產及資金*

**Table 4.4: Assets frozen related to WMD proliferation TFS 2018**

| Freezing actions                     | Banks     | Other FIs | DNFBP | Others | Total     |
|--------------------------------------|-----------|-----------|-------|--------|-----------|
| Freezing actions                     | 35        | 43        | 0     | 3      | 81        |
| Individuals whose assets were frozen | 2         | 2         | 0     | 1      | 5         |
| Entities whose assets were frozen    | 5         | 1         | 0     | 0      | 6         |
| Frozen assets value (USD equiv.)     | 1,521,752 | 2,446,014 | 0     | *46    | 3,967,766 |

\* Restrictions on real estate transactions

**表 4.4：2018 年與資助武器擴散之目標性金融制裁相關的資產凍結**

| 凍結行動         | 銀行        | 其他金融機構    | 指定之非金融事業或人員 | 其他  | 總計        |
|--------------|-----------|-----------|-------------|-----|-----------|
| 凍結行動         | 35        | 43        | 0           | 3   | 81        |
| 個人被凍結的資產     | 2         | 2         | 0           | 1   | 5         |
| 實體被凍結的資產     | 5         | 1         | 0           | 0   | 6         |
| 凍結資產價值(相當美元) | 1,521,752 | 2,446,014 | 0           | *46 | 3,967,766 |

275. While STRs related to possible PF matters had been filed since 2016, matches with designated persons and entities and associated asset freezing have all taken place in 2018. This reflects changes to the UN lists and domestic designations in early 2018 to include a number of persons and entities in or connected to Chinese Taipei. As of the time of the onsite visit, various assets (deposits, securities, credit cards, check deposits, and insurance policies) amounting to approximately USD 3,719,781 had been frozen. It is notable that assets have been frozen related to persons and entities controlled by the designated person.

雖然自 2016 年以來已提交與資助武擴相關的可疑交易報告，但符合被指定人員和實體及相關的資產凍結都發生在 2018 年。這反應 2018 年初聯合國名單和國內指名的變化，包括一些中華臺北國人或與中華臺北有關的實體。截至本次現地評鑑期間，凍結約 3,71 萬 9,781 美元的各種資產（存款、證券、信用卡、支票存款和保險單）。值得注意的是，也凍結由被指定人所控制的個人和實體有關的資產。

276. Chinese Taipei has gone beyond the requirement under Rec. 7 to designate Chinese Taipei local Chen Shih-Hsien and related legal persons on the basis of their connection to PF.

中華臺北超越建議第 7 項的要求，依據與資助武器擴散相關事證，指名國人陳世憲及相關法人。

#### **Case Example 4.4: Freezing funds associated with oil transfers to UN designated entities**

NSB, MOFA and MJIB received information by the end of 2017 regarding suspected trans-shipment of oil to DPRK vessels designated by the UN. The information showed Chen Shih-Hsien and associated legal persons under his control (BTGC), which was registered at the British Virgin Islands, and Billions Bunker Group Corporation (BBGC), registered at the Republic of the Marshall Islands. Both were connected to the evasion of the TFS against entities listed pursuant to UNSCR 1718.

The MOJ held multiple interdepartmental meetings with NSB, OHS, MOFA, MOEA, MOI, MOTC, FSC, and other relevant agencies in early January 2018 to share information and discuss countermeasures for Chen Shih-Hsien and others' suspected violation of UNSCRs.

In January 2018 the Minister of Justice convened the TFRC (in accordance with the CTF Act and the Regulations) with the heads of seven major ministries/commissions as committee members to review and reach a decision. The TFRC resolved to designate Chen Shih-Hsien, BTGC, BBGC, Oceanic Enterprise Co. Ltd. and UMC Corporation Peru S.A.C.

After publishing the designations, FIs reported related frozen assets of sanctioned targets. Approximately 60 discrete assets in total included deposits, securities, credit cards, check deposits, and insurance policies, with an estimated value of NT\$90,150,870 (approximately USD2.88 million).

#### **案例 4.4：凍結與向聯合國指定實體進行石油交易之相關資金**

國家安全局、外交部及法務部調查局於 2017 年底接獲有關涉嫌向聯合國指定的北韓船隻轉運石油的情資。該情資顯示，陳世憲及其所控制的相關法人，在英屬維京群島註冊的 BTGC 和在馬紹爾群島共和國註冊的 Billions Bunker Group Corporation (BBGC)，都與規避聯合國安理會第 1718 號決議所列實體目標性金融制裁有關。

法務部隨即於 2018 年 1 月初，邀集國家安全局、行政院國土安全辦公室、外交部、經濟部、內政部、交通部及金融監督管理委員會等相關部會，多次召開研商會議，就陳世憲等涉嫌違反聯合國安理會決議，進行情資分享及討論因應對策。

法務部於 2018 年 1 月，依資恐防制法及相關規定，召開「資恐防制審議會」，由七大部會委員出席審議並決議。資恐防制審議會決議指定陳世憲、BTGC、BBGC、Oceanic Enterprise Co. Ltd. 及 UMC Corporation Peru S.A.C 為制裁名單。

本件指名公告後，金融機構通報所凍結之被制裁對象相關資產，總計筆數約 60 筆，包含存款、股票、信用卡、支票存款、保險單，價值估計為新臺幣 9,015 萬 870 元(約 288 萬美元)。

277. The CTF Act was amended in November 2018 to partly address gaps in the freezing obligation (especially in relation to property indirectly owned or controlled by designated persons / entities), however some gaps remain. The freezing obligation applies to assets wholly or jointly owned or controlled, directly or indirectly, but not clearly to property derived from such property of designated persons. The gap in the freezing obligation is only for funds or other assets of persons and entities acting on behalf of or at the direction of designated persons and entities, in cases where those funds are not also the property or property interests of the designated person or entity.

4

資恐防制法在 2018 年 11 月的修正，部分處理凍結義務的落差(特別是在由被指定之個人/實體間接擁有或控制的資產)，然而仍有部分落差。凍結義務適用於直接或間接全部或共同擁有或控制的財產，但並不清楚是否及於由該等被指定之人的財產所衍生的財產。凍結義務的落差在於，代表被指定之人和實體或依其指示行事之人或實體的資產，如果該等資產是被指定個人或實體的財產或財產上利益，才能凍結。

278. Chinese Taipei has used the domestic designation mechanism and related freezing actions to cover persons and entities acting on behalf of the principal designee. In the case of the designation of Chen Shih-Hsien highlighted above, MOJ designated a number of entities owned or controlled by or acting on behalf of Chen Shih-Hsien, which has served to overcome some elements of gap with the scope of coverage of TFS. Authorities also indicate that the criminal offence in section 9(1) of the CTFA (criminalisation of directly or indirectly collecting or providing any property or property interests for another natural or legal person in the knowledge that they are a designated person or entity) could be used to take action against the funds of persons acting on behalf of or at the direction of designated persons or entities, but this has not been tested in practice.

中華臺北使用國內指名機制和相關資產凍結行動，以涵蓋代表主要被指定之人行事的個人和實體。在上述所強調指定陳世憲的案例中，法務部指定一些由陳世憲所擁有或控制或代表陳世憲行事的實體，這有助於克服目標性金融制裁涵蓋範圍的一些落差。權責機關還指出，資恐防制法第 9 條第 1 項規定的刑事犯罪(將明知他們是被指定的個人或實體，仍直接或間接為其收集或提供財物或財產上利益者罪刑化)可據以對代表被指定之人或實體或依其指示行事之人的資產採取行動，但這尚未經過實務檢驗。

279. In cases where FIs do not have sufficient evidence to freeze funds under TFS, they have filed a STRs related to possible PF, which is done under the complementary controls that Chinese Taipei has taken to include PF-related STR reporting obligations on all FIs/DNFBPs. The numbers of STRs were particularly high following the domestic designation of a Chinese Taipei resident in early 2018.

在金融機構沒有足夠的證據凍結目標性金融制裁資金的情況下，他們會提交疑似與資助武器擴散相關的可疑交易報告，這是根據中華臺北所採取的補充控制措施，包括所有金融機構及指定之非金融事業或人員與資助武器擴散相關的申報可疑交易報告的義務。繼 2018 年初中華臺北國人經國內指定後，可疑交易報告的數量特別多。

**Table 4.5: STR statistics related to PF**

|   | 2016 | 2017 | *2018 | Total |
|---|------|------|-------|-------|
| PF related STRs                                   | 5    | 27   | 261   | 293   |
| Reports distribution to investigative authorities | 1    | 7    | 161   | 169   |
| Reports disseminated to foreign FIUs              | 0    | 5    | 3     | 8     |
| Cases closed due to insufficient information      | 4    | 15   | 86    | 105   |

*\* Jan to Jun, 2018*

**表 4.5: 與資助武擴相關的可疑交易報告**

|               | 2016 | 2017 | *2018 | 總計  |
|---------------|------|------|-------|-----|
| 資助武擴相關的可疑交易報告 | 5    | 27   | 261   | 293 |

|                |   |    |     |     |
|----------------|---|----|-----|-----|
| 報告分送給調查機關      | 1 | 7  | 161 | 169 |
| 報告分送給國外的金融情報中心 | 0 | 5  | 3   | 8   |
| 資訊不足結案         | 4 | 15 | 86  | 105 |

\*2018 年 1 至 6 月

280. Relevant agencies demonstrated a focus on financial investigations in response to freezing actions in an effort to uncover possible networks involved in PF or related sanctions evasion. Chinese Taipei authorities have used cases of asset freezing and analysis of PF-related STRs (293 since 2016) to progress investigation and prevention actions to address WMD proliferation and PF vulnerabilities in real time. This reflects an integration of CPF controls and activities with broader efforts to combat WMD proliferation by assisting the authorities to identify possible networks of people working on behalf of or at the direction of designated persons and entities.

相關權責機關在凍結行動上，投入大量的金融調查，以盡可能發現涉及資助武器擴散或規避制裁的網絡。中華臺北權責機關使用資產凍結案例和分析資助武器擴散相關的可疑交易報告（自 2016 年起為 293 個），進行調查工作和防制行動，即時解決大規模毀滅性武器擴散和資助武器擴散弱點的問題。這反映打擊資助武器擴散控制措施和行動相互結合，藉由協助權責機關辨識可能代表被指定之人和實體或依其指示行事之人的相關網絡，以更廣泛地打擊大規模毀滅性武器。

281. Access to frozen funds for basic expenses has been granted in keeping with the standards. MOJ, as the competent authority may set restrictions on access to frozen funds and MOJ has issued restrictions and publicly available procedures in relation to PF-related TFS.

已根據標準准許授權使用凍結資金於基本開支。法務部作為權責機關，對於凍結資金的取用定有限制，法務部已發布與資助武器擴散目標性金融制裁相關的限和公開程序。

#### *FIs and DNFBPs' understanding of and compliance with obligations*

##### *金融機構與指定之非金融事業或人員對義務的瞭解及遵循*

282. A large number of outreach and awareness raising sessions have been undertaken for instructing FIs and DNFBPs to implementation of TFS against PF. Guidance has been issued, which adds to effectiveness implementation.

有進行大量的宣導及意識提升課程，指導金融機構及非金融事業或人員執行資助武器擴散目標性金融制裁。發布指引文件有助於有效地執行。

283. Authorities and sectoral associations have provided FIs and DNFBPs with a range of studies and resources to assist TFS implementation, by adding to their understanding of the context of WMD-related TFS and possible sanctions evasion trends. From January 2018 FSC shared various resource materials on PF risks with the private sector (through the Bankers Association) including UN Panel reports on DPRK (UNSCR 1874 expert group report, February 2017); U.S. Fin CEN report November 2, 2017; "Countering Proliferation Finance: An Introductory Guide for FIs" compiled by the Royal United Services Institute (RUSI); and "Study of Typologies of Financing of WMD Proliferation", King's College London. In addition, FSC issued a number of letters and held of seminars and workshops with various sectors.

權責機關及產業公會透過增加對大規模毀滅性武器相關目標性金融制裁背景和可能的規避制裁趨勢的瞭解，提供金融機構和 DNFBPs 一系列研究報告和資源，以協助目標性金融制裁的執行。金融監督管理委員會自 2018 年 1 月向私部門（透過銀行公會）分享有關資助武擴風險的各種資源文獻，包括聯合國專家小組關於北韓的報告（2017 年 2 月聯合國安理會 1874 決議案專家小組報告；2017 年 11 月 2 日美國金融犯罪執法網（FinCEN）報告；由皇家聯合國防研究所（RUSI）編制「反資助



武擴：金融機構入門指南」；以及倫敦國王學院的「大規模毀滅性武器擴散資助態樣研究」。此外，金融監督管理委員會已發出信函並向各產業舉辦一系列研討會和工作坊。

284. FSC has developed a FAQs for banks, securities and insurance on TFS implementation for TF/PF, which recommends FIs regularly check the MJIB website frequently and be aware of frequent and spontaneous updates to its sanctions list.

4 金融監督管理委員會為銀行業、證券業及保險業發布關於資恐/資助武器擴散執行目標性金融制裁的常見問題集，建議金融機構定期頻繁檢視法務部調查局網站，並了解其需頻繁並自動地更新制裁名單。

285. The Model Guideline for DNFBP sectors urge DNFBPs to have measures to monitor whether any property in their possession/control is owned/controlled by or on behalf of UN or domestically sanctioned persons or entities. The guideline also advises DNFBPs to visit MJIB's website to obtain the list of persons and entities subject to TFS.

DNFBP 產業的示範指引敦促 DNFBPs 需採取措施，監測其擁有/控制的任何財產是否由受聯合國或國內制裁的人或實體所擁有/控制。該指引亦建議 DNFBPs 應至法務部調查局的網站，取得目標性金融制裁的名單。

286. Based on COA instructions, the ABT has established an AML/CFT System for ABT and Credit Departments of Farmers' and Fishermen's Associations. The system has incorporated name checking modules to help to implement TFS. The system is updated to reflect changes to UN listings.

依行政院農業委員會指示，農業金庫已建立「農業金庫和農漁會信用部的防制洗錢/打擊資恐系統」。該系統包含名稱檢查模組，有助於執行目標性金融制裁。該系統會依聯合國名單變更而更新。

287. FIs and DNFBPs appear well aware of the TFS in place against Iran and the DPRK. Some FIs have developed in-house databases, derived from the MOJ's sanctions lists as well as commercial databases. Authorities have helped to ensure good support for transaction and customer checking amongst FIs/DNFBPs by making TDCC screening software for TFS sanctions at subsidised rates helps to ensure that even small business DNFBPs have access to comprehensive sanctions screening software. Not all DNFBP use the TDCC, but the coverage is wide and increasing. Usage data of the TDCC system is reviewed and authorities continue to encourage uptake of such systems.

金融機構和 DNFBPs 非常了解對伊朗和北韓的目標性金融制裁。部分金融機構開發內部資料庫，資料庫內容來自法務部的制裁名單以及商業資料庫的資料。權責機關以補貼價格，製作目標性金融制裁的 TDCC 檢核軟體，幫助確保即使是小型企業的 DNFBPs 也可以使用全面的制裁檢核軟體，確保為金融機構/DNFBPs 的交易和客戶檢核工作，提供良好的支持。並非所有 DNFBP 都使用 TDCC，但覆蓋範圍很廣且不斷增加。權責機關會審視 TDCC 系統的使用狀況並持續鼓勵業者使用此類系統。

288. Name checks are performed on customers and related parties, when a customer tries to establish a business relationship or conduct a transaction. Additionally, FIs conduct regular batch checks on their customers whenever their databases are updated. Banks' screening appears to go beyond UN lists to include OFAC and other national lists. There are several cases demonstrated by banks representatives where they have identified assets on the OFAC lists and have filed STRs which led to financial investigations.

當客戶想建立業務關係或進行交易時，會對客戶和關聯方進行名稱檢核。此外，金融機構會在其資料庫更新時，對其客戶進行定期的批次檢核。銀行的檢核範圍似乎大於聯合國名單，包括 OFAC 和其他的國家名單。銀行代表在幾個案例中說明他們已辨識出在美國財政部的海外資產控制辦公室 (OFAC) 名單上的資產，並申報可疑交易報告，執法機關後續亦對此啟動財務調查。

289. In addition to name screening, most FIs utilized CDD measures and transaction monitoring to prevent and identify possible PF-related transactions, especially in their trade finance areas. Information on trade controls also assists FIs to detect suspicious transaction related to possible PF sanctions evasion.

除名稱檢核外，大多數金融機構利用 CDD 措施和交易監測以預防和辨識可能與資助武器擴散有關的交易，特別是在其貿易融資領域。有關貿易管制的資訊也有助金融機構監測可能規避資助武器擴散制裁相關的可疑交易。

290. FIs and DNFBPs face challenges with establishing associations with designated persons and entities in the absence of name matches. FSC has directed banks to the vulnerabilities for sanctions evasion, especially in trading with Chinese companies and/or their intermediaries. Additional focus is needed by FIs on sanctions evasion vulnerabilities through entities associated with designated persons, including obtaining sufficient information about such associations.

金融機構和 DNFBPs 在未比對出名稱的情況下，與被指名人員和實體建立業務關係上面臨挑戰。金融監督管理委員會已指示銀行規避制裁的弱點，特別是在與中國大陸公司和/或其中介機構進行交易時。此外金融機構應關注透過與被指名人士有關之實體來規避制裁的弱點，包括取得足夠的資訊瞭解其中關聯。

291. Chinese Taipei demonstrated a robust information-sharing mechanism among relevant authorities in charge of export control. The BOFT oversees export control matters and implementation of proliferation-related UNSCRs. The MJIB is the lead LEA responsible for investigating proliferation and PF cases. Its investigations may be initiated by their own sources, or from advice provided by the NSB. The BOFT, CA, NSB and MJIB are closely connected in sharing information to detect possible cases of illegal exports of strategic high-tech commodities (SHTC) and violations of UNSCRs.

中華臺北負責出口管制的相關權責機關之間，展現健全的資訊分享機制。經濟部國際貿易局監督出口管制事宜和與聯合國安理會決議有關武器擴散的實施。法務部調查局是負責調查武擴和資助武器擴散案件的主要執法機關。調查可由他們自身的消息來源或國家安全局提供的建議來啟動。經濟部國際貿易局、財政部關務署、國家安全局和法務部調查密切聯繫分享資訊，偵測戰略高科技物品違法出口或違反聯合國安理會決議之可能案件。

292. Supervision of FIs' compliance with the Chinese Taipei sanctions regime is undertaken by the FSC and other supervisors. FSC has performed regular and ad-hoc onsite inspections to test implementation of PF-related TFS, understanding of obligations for asset freezing and reporting, sanctions. Screening policies and procedures for individuals and entities are tested during onsite examination. FSC has conducted thematic examinations on name-screening, to ensure FIs' databases correspond with sanctions lists, and that transaction monitoring and name-screening may promptly detect designated parties. Onsite supervision includes sample testing to confirm TFS implementation. Foreign exchange counters also conduct sanctions-screening utilising the TDCC database. Their implementation of TFS is supervised by the Central Bank. There are still some gaps in the legal framework to be able impose sanctions on foreign exchange counters which fail to implement all the TFS obligations (see Rec.7). Even though there are sanctions available under Article 9, the imprisonment or fines that can be imposed only with proof of that person or entity have intention to finance provide funds to a designated person or entity, gaps remain.

金融監督管理委員會和其他監理機關監督金融機構是否遵循中華臺北制裁制度。金融監督管理委員會定期和不定期進行現地檢查，測試資助武擴相關目標性金融制裁的執行情形，了解資產凍結和通報的義務。在現地檢查時，會對個人和實體的制裁檢核政策和程序進行測試。金融監督管理委員會已對名稱檢核進行專案檢查，以確保金融機構的資料庫符合制裁名單，及交易監控和名稱檢核可迅速偵測到被指名的對象。現地監理包括以樣本測試，以確認目標性金融制裁的執行情形。外幣收兌處也使用 TDCC 資料庫，進行制裁名單檢核。外幣收兌處對目標性金融制裁的執行情形是由中央銀

行監督。對外幣收兌處未執行所有目標性金融制裁義務而施以處罰的法律架構方面，仍存在一些落差(見建議第 7 項)。即使依據資恐防制法第 9 條的規定可施以處罰，但只有在證明該人或實體意圖資助而提供資金予被指名之人或實體的情況下，始能判處有期徒刑或罰金，這部分仍存在落差。

293. DNFBPs were only recently included in Chinese Taipei's AML framework and obligations regarding TFS on PF. Relevant authorities are continuing to raise awareness regarding their obligations. Many DNFBPs conduct sanctions screening through the TDCC database.

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DNFBPs 最近才被納入中華臺北的防制洗錢體系和資助武器擴散相關的目標性金融制裁義務。相關權責機關正持續提升其對義務的意識。許多 DNFBPs 透過 TDCC 資料庫進行制裁名單檢核。

### *Overall conclusions on Immediate Outcome 11*

#### *直接成果 11 之整體結論*

294. The legal framework for PF-related TFS is being implemented without delay, however there are some technical compliance gaps with Rec 7. At the same time, the legal framework for TFS goes beyond FATF standards by including a PF offence and related STR reporting obligations as well as establishing a domestic designation system to complement the obligations under Rec. 7. Chinese Taipei has implemented TFS without delay to freeze significant assets related to a UN designation person and a number of UN designated entities. Chinese Taipei has also used its domestic designation framework to designate certain natural and legal persons working on behalf of or at the direction of the principal designee, which goes some way to overcome the technical compliance gap. TFS related to DPRK have resulted in over USD 3.96 million being frozen or seized, including assets indirectly owned or controlled. FIs have filed numerous PF-related STRs which have assisted LEAs to investigate possible networks associated with designated persons and entities. Authorities have undertaken efforts to raise awareness on PF-related TFS. FSC and other supervisors have commenced supervision of PF-related TFS amongst FIs to further ensure TFS implementation is occurring without delay.

資助武器擴散相關目標性金融制裁的法律架構執行能毫不遲延，然而在建議第 7 項有一些技術遵循的落差。同時，目標性金融制裁的法律架構超越 FATF 標準，包括資助武器擴散犯罪、相關 STR 申報義務以及建立國內的指名機制，補充建議第 7 項下之義務。中華臺北實施目標性金融制裁能毫不遲延地凍結與聯合國被指名人員和若干聯合國所指定實體有關的重要資產。中華臺北也使用其國內指名機制，指名代表指定主要被指名人士或依其指示行事的某些自然人和法人，這在某程度上克服技術遵循的落差。與北韓有關的目標性金融制裁，有超過 396 萬美元被凍結或扣押，包括被指名人士間接擁有或控制的資產。金融機構已提交許多與資助武器擴散相關的可疑交易報告，有助執法機關調查與被指名人士和實體相關的可能網絡。權責機關已努力提升申報機構對與資助武器擴散相關目標性金融制裁的認識。金融監督管理委員會和其他監理機關已開始監督金融機構與資助武器擴散相關目標性金融制裁之執行情形，並進一步確認是否毫不遲延地執行目標性金融制裁。

295. **Chinese Taipei has a Substantial level of effectiveness on Immediate Outcome 11.**

中華臺北直接成果 11 之評等為相當有效。

## CHAPTER 5. PREVENTIVE MEASURES

### 第五章 防制措施

#### Key Findings and Recommended Actions

##### 重要發現及建議行動

#### Key Findings

##### 重要發現

- 1) Most TC elements are in place, however the updated obligations on DNFBPs only came into force in late 2018, and as such effectiveness is yet to be demonstrated in those sectors.

大多數技術遵循都已到位，但 DNFBPs 更新之義務在 2018 年底始生效，因此這些部門的有效性尚未得到證明。

- 2) The transition from a rules-based to a risk-based approach has been occurring in banking sectors in a preliminary manner since 2013, with more direct support since late 2015. The transition is newer in other sectors. Whilst important progress is being made, further work remains for each FI/DNFBPs' to more fully reflect enterprise risk assessment (ERA) findings in their risk based approach. Understanding of the rules is best amongst banks, generally good amongst other FIs and increasing amongst DNFBPs. FIs other than banks and DNFBPs have much further to go in relation to an understanding of risk.

銀行業初步自 2013 年以來，從以規則為本的方法導入以風險為本的方法，自 2015 年底以來，獲得更多直接的支持。就其他產業而言導入的時間則較短。雖然已有重要進展，但每一金融機構/指定之非金融事業或人員在其風險為本的方法中，仍然需要更充分地反映機構風險評估 (ERA) 的結果。銀行對相關法令的理解最好，其他金融機構大致良好，指定之非金融事業或人員對相關法令的理解則提升中。銀行以外的金融機構和指定之非金融事業或人員在理解風險方面有更多努力空間。

- 3) Sectoral supervisors and the AMLD have undertaken very significant awareness raising on AML/CFT obligations and ML/TF risks. Guidance has been issued for each respective sector. Most FIs have completed an ERA, as have some DNFBPs. There is a need for more detailed inputs on risk to be made available to each sector to ensure that the ERAs reflect sector and enterprise-specific risks. Risk mitigation measures need to be more substantially based on the risk profile. This is particularly the case with enhanced measures.

各業別的監理機關及洗錢防制處在防制洗錢/打擊資恐義務和洗錢/資恐風險方面進行了大量提升意識的作為。已為每個產業發布了指引。大多數金融機構已經完成了機構風險評估，部分指定之非金融事業或人員也已經完成。需要對每個部門的風險提供更詳細的資訊，以確保機構風險評估反映部門和企業的特定的風險。風險抵減措施需要更大程度地基於風險圖像。特別是強化措施的案例。

- 4) Rules, guidelines, outreach and FSC supervision have greatly assisted FIs and DNFBPs to implement CDD, but challenges remain. In some cases regular CDD routines may rely too heavily on basic documentation. Enhanced CDD does not appear to apply a sufficiently targeted range of controls. Many FIs refuse business when CDD is incomplete, related STR filing is low in specific



sectors and balancing potential de-risking by domestic banks needs to be closely managed. In practice, identification of beneficial ownership of domestic customers may be over-reliant on ownership documentation and declarations, despite obligations and guidance to FIs.

各種規範、指引、宣導以及金管會的監理非常有助於金融機構和指定之非金融事業或人員 CDD 的執行，但挑戰仍然存在。在某些情況下，定期例行性的客戶審查可能過於依賴基本文件。加強客戶審查似乎沒有應用足夠聚焦的控制範圍。許多金融機構在客戶審查不完整時，會拒絕業務，但在某些產業中相關的可疑交易申報件數是少的，並且需密切管理國內銀行潛在去風險化的情形。實務上，辨識國內客戶的實質受益權可能過度依賴所有權文件及聲明書，儘管對金融機構已訂有義務及指引。

- 5) Identification of beneficial ownership of foreign customers is even more challenging from complex structures and foreign trusts. There are also significant risks from informal nominee arrangements to obscure beneficial ownership. Identifying controlling interests for offshore companies is particularly problematic for Chinese Taipei FIs, as for most banks globally. OBUs present the greatest challenges in this regard, with significant legacy CDD gaps remaining. The depth and quality of recently updated CDD across the OBU sector is a concern.

辨識外國客戶的實質受益權，對於複雜結構和外國信託則更具挑戰。非正式代名人的安排也有很大的風險以掩蓋實質受益權。辨識境外公司的控制權，對於中華臺北的金融機構(如同全球大多數的銀行所面臨的)，尤其是有疑問的。國際金融業務分行在這方面面臨最大的挑戰，許多遺留下來的客戶審查落差，仍然存在。國際金融業務分行產業最近更新的客戶審查的深度和品質也是一個疑慮。

- 6) A wide range of FIs/DNFBPs utilise PEP checklists. Most domestic banks and large NFBI establish their own risk management system to identify and monitor the activities of PEP clients. The availability of the TDCC system is a real strength. However, the focus on identification of foreign PEPs does not sufficiently reflect the risk profile. Foreign exchange counters are exempted from PEP obligations.

許多金融機構/指定之非金融事業或人員使用重要政治性職務人士清單。多數國內銀行及大型的 NFBI 建立自身的風險管理系統，以辨識並監控 PEP 客戶的活動。TDCC 系統能提供資訊真的是一項優點。但是，外國重要政治性職務人士的辨識重點並未充分反映風險圖像。外幣收兌處被豁免 PEP 的義務。

- 7) Record keeping obligations are well implemented. Controls on correspondent banking appear to be well implemented. Risk assessments of new technologies are well integrated with ERAs and FSC's risk based approach. The recent regulatory sandbox is an important development for assessing product AML/CFT risk and opportunities to balance financial inclusion concerns.

充分執行記錄保存義務。通匯銀行業務的控制顯示得到了很好的執行成果。新科技的風險評估與機構風險評估，和金融監督管理委員會以風險為本的方法結合良好。最近的監理沙盒是一個重要的發展，以評估產品 AML/CFT 風險，也是平衡普惠金融性疑慮的機會。

- 8) FIs' implementation of controls on wire transfers appear to be reasonably well supported.

金融機構實施的電匯控制顯示出得到了相當好的支持。

- 9) Implementation of TFS controls appears to be reasonably well supported. The availability of the TDCC system greatly supports implementation by small and medium FIs/DNFBPs.

目標性金融制裁控制的執行顯示出得到了相當好的支持。集保系統的使用，大大地支持了小型和中型 FIs/DNFBPs 的執行。

- 10) Application of jurisdictional risk is given a great deal of emphasis, with greater focus on jurisdictional-specific risks faced by Chinese Taipei being implemented since the 2018 NRA.

國家風險的應用受到了很大的重視，從 2018 年 NRA 以來，更加著重在中華臺北面臨的特殊國家風險。

- 11) Overall the quality and quantity of STRs appear to have improved in the last 12 months, reflecting greatly increased outreach, red flags and typologies as well as a focus on monitoring. Even more focus needs to be given to customer profile and additional risk indicators to identify suspicion. DNFBP sectors still appear to be under-reporting.

總體而言，在過去 12 個月中，可疑交易報告的品質和數量顯示出有所改善，反映出宣導活動、紅旗指標、態樣及對監測的關注大大增加。需要更加關注客戶的資料和其他風險指標，以識別可疑的情況。DNFBP 產業顯示仍申報較低。

- 12) Internal controls appear to be well developed. FIs have taken many steps and expended considerable resources to greatly enhance their internal controls in a short period of time. The information sharing gaps have been very recently addressed.

內部控制顯示出發展得很好。金融機構採取了許多措施，並花費了大量資源，在短時間內大大加強了內部控制。最近解決了資訊分享落差的問題。

### **Recommended Actions**

#### **建議行動**

- a) Continue outreach, awareness raising and training to priority sectors to reinforce understanding of obligations, risks and the risk-based approach to AML/CFT implementation.

繼續向優先部門進行宣導、提升意識及訓練，以加強對義務、風險和執行 AML/CFT 以風險為本的方法的瞭解。

- b) Address TC gaps in relation to TFS and consider extending PEP obligations to foreign exchange counters.

處理外幣收兌處在目標性金融制裁方面的技術遵循落差，並考慮對其施以有關 PEP 的義務。

- c) Prioritise deeper implementation of ML risk management, in particular CDD, over higher risk sub-sectors among banks. OBUs and cross border risks present the greatest need in this regard.

優先考慮對銀行間風險較高的子部門進行更深層次洗錢風險管理，特別是客戶審查。國際金融業務分行和跨境風險仍然是這方面的最需要的。

- d) Enhance liaison and engagement between supervisors and LEAs and the private sector, including industry associations. In particular, improved and more frequent inputs from LEAs on ML/TF/PF risks posed to FIs and DNFBPs subject to higher threats and vulnerabilities.

加強監理機關和執法機構與私部門，包括產業公會之間的聯繫和接觸。特別是，執法機關對於金融機構和指定之非金融事業或人員構成較高威脅和弱點的洗錢 / 資恐 / 資助武擴風險，應提供更好和更頻繁的資訊。

- e) Provide further risk-based guidance, taking into consideration Chinese Taipei's FI and DNFBP sectoral vulnerabilities and balancing financial inclusion and de-risking concerns.

提供進一步以風險為本的指引，特別要考慮到中華臺北金融機構和指定之非金融事業或人員的產業弱點並平衡普惠金融和去風險化的疑慮。

- f) Support continuing improvement of CDD and overall consideration of counterparty risks, moving beyond confirmation of customer identity.

持續改進客戶審查並全面考慮交易對手風險，而不只是確認客戶身份。

- g) Support continuing shifts to proactive STR reporting based on customer profile and evolving risk indicators.

支持持續轉變為係依據客戶資料和所涉風險指標主動申報 STR。

296. The relevant Immediate Outcome considered and assessed in this chapter is IO4. The recommendations relevant for the assessment of effectiveness under this section are R9-23.

本章評估的直接成果為 IO4。與本節效能評估相關的建議項次為 R9-23。

#### *Immediate Outcome 4 (Preventive Measures)*

##### *直接成果 4 (防制措施)*

##### *Understanding of ML/TF risks and AML/CFT obligations*

##### *瞭解洗錢/資恐風險及防制洗錢/打擊資恐義務*

297. Significant progress has been made by financial institutions in the shift to a risk-based approach over two years. While banks have been required to adopt a risk-based approach since 2013, findings from risk assessments and detailed guidance on risk mitigation were not available to FIs until late 2015. More in-depth findings on risk were made available through the 2017/8 NRA process. It is notable that authorities and the private sector have applied very significant resources to fast-track improvements in FIs' understanding of risks and obligations in a very short timeframe.

在兩年內金融機構在改變以風險為基礎的方法方面取得重大進展。雖然自 2013 年以來，要求銀行採用風險為本的方法，但直到 2015 年底，金融機構才獲得風險評估結果和詳細的抵減風險指導。在 2017/8 NRA 過程中提供更深入的風險發現。值得注意的是，權責機關和私部門已經投入大量資源，金融機構在很短的時間內，快速改善對風險和義務的理解。

298. The move to a risk-based approach is even more recent among DNFBPs, but authorities and industry associations have prioritised AML/CFT activities and allocated significant resources to increasing awareness of risks and obligations. Supervisors have extensively communicated with respective DNFBPs on their AML/CFT obligations and risks. Associations have played a key role in coordinating outreach and education, developing guidance and supporting the move to a risk-based approach. Some DNFBPs have only recently been fully included in Chinese Taipei's AML/CFT regime. In particular lawyers, accountants, notaries, land administration agents and real estate brokers were only included since 28 December 2016.

對於 DNFBPs 而言，採取以風險為基礎的方法是較為最近的事，但是主管機關及產業公會皆優先導入防制洗錢及打擊資恐相關資源，以提升風險意識及法令遵循。監理機關已廣泛就遵循義務及風險與業者進行溝通。在宣導及教育的協調、制定指引及支持採取以風險為基礎的方法等方面，公會扮

演重要的角色。部分 DNFBPs 直到最近才被納入防制洗錢及打擊資恐的監理範圍。特別是律師、會計師、公證人、地政士及不動產經紀業，自 2016 年 12 月 28 日起，才被納入監理。

299. Banks, securities, insurance FIs were particularly notable for their developed approach to understanding their ML risks and obligations, although challenges remain with dummy accounts and informal nominees. Those sectors have completed ERAs since 2016, and many reported updating their ERA since the NRA's completion. In contrast, other FIs require further support in this area. Those FI sectors recently brought into the AML/CFT regime are still catching up on education and outreach on their risks and AML/CFT obligations. These include financial leasing companies—which were brought into AML/CFT supervision in 2018—and credit departments of fishermen and farmers' associations as well as Chunghwa Post.

特別值得注意的是銀行、證券及保險等金融機構已發展方法來瞭解其洗錢風險和義務，雖然人頭帳戶和非正式代名人的挑戰仍在。自 2016 年以來，該等產業已經完成機構風險評估，並且多家說明，自 NRA 完成以來，已更新他們的 ERA。相較之下，其他金融機構需要在這一領域得到進一步支持。那些近期被納入防制洗錢/打擊資恐制度的金融機構仍在追趕其風險和防制洗錢與打擊資恐義務的教育和宣導作為。其中包括融資性租賃公司(其在 2018 年納入防制洗錢/打擊資恐監理)和農漁會信用部以及中華郵政。

300. Banks identified their high-risk areas to be: cross-border wire transfers (particularly as they are the only RE which can remit funds overseas), deposit accounts and cash transactions, electronic banking, trade finance and correspondent banking. Securities firms have identified non-face-to-face account opening, grouped accounts or multiple accounts traded by a third-party. Life insurers have identified risks from products with high non-forfeiture value or cash value.

銀行辨識其高風險領域為：跨境電匯（特別是因為它們是唯一可以向海外匯款的申報機構）、存款帳戶和現金交易、電子銀行、貿易融資和通匯銀行業務。證券公司已辨識非面對面開戶，由第三方交易的多個帳戶。人壽保險公司已辨識具有高保單價值準備金或現金價值的產品的風險。

301. Some DNFBPs have completed ERAs, and some have also undertaken steps to risk rate their customers and transactions. While the NRA findings of DNFBPs appear reasonable, there were indications of divergent understanding in risk, threats and vulnerabilities. The NRA found accountants, lawyers, real estate brokers and jewellery businesses carry the greatest vulnerabilities. Meetings with supervisors and the sector did not illustrate detailed understanding of dynamics of risk facing each sector. In some cases, for example amongst jewellers, there are mismatches between sectoral understanding of elements of risk (e.g. the sector considers their small scale to reduce their risk as a vector for laundering funds, while the NRA and other assessments identified jewellery businesses as vulnerable to the proceeds of organised crime).

部分 DNFBPs 已經完成機構風險評估，部分業者也開始對顧客及交易的風險進行分級。雖然國家風險評估對於 DNFBPs 的發現尚稱合理，但對於風險、威脅及弱點的瞭解有分歧的現象。國家風險評估發現會計師、律師、不動產經紀業及銀樓業存在相當大的弱點。與監理機關及各產業進行的會議，無法詳細描繪各產業所面臨的風險變動情形。在某些情況下，例如銀樓業，業者對於產業風險的考量因素，有不一致的認知情形。(例如，該產業認為其規模小，以降低其作為洗錢活動載體的風險，但國家風險評估和其他評估則辨識銀樓業易受組織犯罪獲取所得的弱點)。

302. There are opportunities for further improvement with assessing and understanding risks. The assessment team had concerns about contrasts in FIs' understanding and assessments of their own risks, when compared with the findings of the NRA and SRA. Banks almost uniformly indicated their most significant threats were posed by fraud and proceeds from domestic offences. This is supported by FSC outreach and supervisory findings. Both contrasted with the 2017/8 NRA's finding that the banking sector is vulnerable to proceeds of a much wider set of crimes, including proceeds from foreign offences. FIs and their supervisors acknowledged understanding of organised crime and other very high level ML threats—as per the NRA—to be areas of improvement. Moreover FIs' assessments and



understanding of risks from OBU customers and channels would benefit from a range of enhanced inputs on risk to strengthen risk-based approaches. To address this, the FSC has launched the AML/CFT Strategy Roadmap with comprehensive action plans specifically in response to NRA. With respect to the very high risk areas identified in the NRA, the FSC has been in close collaboration with AMLD, LEAs and relevant stakeholders to move forward with a variety of risk mitigation measures, which is a welcome development.

5 在評估和了解風險方面，有進一步改進的機會。當比較 NRA 和 SRA 的發現結果時，評鑑團對於金融機構對其風險的理解和評估的差異表示關注。銀行幾乎一致表示，他們最重要的威脅來自詐欺及國內犯罪的犯罪所得，這與 FSC 宣導和監理所發現的結果一致。這兩者都與 2017/8 國家風險評估的發現結果形成鮮明對比，即銀行業容易受到更多犯罪所得的影響，包括國外犯罪所得。金融機構及其主管機關承認對組織犯罪和其他非常高的 ML 威脅（根據 NRA）的理解是有待改進的領域。此外，一系列強化的風險資訊有助於金融機構對 OBU 客戶和渠道風險的評估和理解，並強化以風險為本的方法。為處理上述情形，FSC 已開始進行 AML/CFT 策略藍圖，特別針對 NRA 制定全面的行動計畫。針對 NRA 辨識為非常高風險的領域，FSC 已與洗錢防制處、執法機關和相關利害關係人密切合作，採取各種抵減風險措施，這是一個令人樂見的發展。

303. Two particular challenges include risks from corruption and also risks from informal sector (underground banking, cash economy related to ML). When considering corruption risk, FIs (and their supervisors) appear to significantly focus on identification of PEPs (whether domestic or foreign) and adverse media reporting. Banks do not focus on other elements of domestic and foreign corruption risk, including at-risk industries, geographic considerations, electoral funding issues and so forth. ML risks particular to banks—including Chinese Taipei's cash-based economy and cross-straits underground banking—are not well assessed by FIs nor factored into their risk mitigation.

兩個特殊挑戰包括貪污風險以及非正規部門的風險（地下通匯業務，與洗錢有關的現金經濟）。在考慮貪污風險時，金融機構（及其主管機關）似乎將重點放在識別 PEP（無論是國內還是國外）和負面新聞報導上。銀行不關注其他國內和國外貪污風險的因素，包括高風險行業、地理因素、選舉資金問題等。金融機構沒有妥善評估銀行特有的洗錢風險，包括中華臺北的現金經濟和兩岸地下通匯，也沒有將其納入抵減風險的因素。

304. Frequent and structured engagement between LEAs (including the FIU) and FIs/DNFBPs has commenced, but more needs to be done to assist FI/DNFBPs to deepen their risk-based approach. FIs participated in the NRA which contributed to a shared understanding and the FSC and LEAs have commenced new Compliance Forum meetings which started immediately prior to the ME onsite and are intended to be a regular occurrence for sharing risk information with FI/DNFBPs. Improved communication with NPA and Customs on the major crime types was identified by the FSC as an area for improvement. There is a need for sustained cooperation between the FIU, LEAs and the financial sector on sharing information on specific threats and vulnerabilities as well as risk trends.

LEAs(包含 FIU)和 FI / DNFBPs 之間已開始頻繁、有系統的參與，但在協助 FI / DNFBPs 深化以風險為本的方法上，仍有很多改善空間。金融機構參與 NRA 的過程，有助於共識形成，FSC 與執法機關在現地評鑑前，已開始舉辦法遵論壇會議，並希望定期與 FI / DNFBPs 分享風險資訊。FSC 認為應改善並強化與內政部警政署和海關，就主要犯罪類型的溝通。金融情報中心、執法機關和金融業之間就特定威脅和弱點，以及風險趨勢的資訊分享需持續合作。

### *Application of risk mitigating measures*

#### *採取風險抵減措施*

305. FIs have begun to adopt mitigating measures to address many of their risks. Investment in AML/CFT compliance across major FIs, including human capital, enterprise and industry-wide efforts, is notable. Supervisory authorities have taken steps to track indicators of progress with the application of mitigating measures. FSC identified an increase of AML/CFT-related expenditure of more than 300%

amongst banks, insurance and securities firms from 2014 to 2018. This equates to very significant increases in dedicated AML/CFT personnel, systems and training.

金融機構已開始採取抵減措施來處理其許多風險。大型金融機構對防制洗錢/打擊資恐的法遵投資是顯著的，包括人力成本、企業和整個行業的努力。監理機關已透過採取抵減措施，追蹤進展指標。自 2014 年至 2018 年，FSC 指出銀行、保險和證券公司的防制洗錢/打擊資恐支出增加超過 300%，此代表專責的防制洗錢/打擊資恐人員、系統和培訓增加顯著。

306. Mitigation measures involve restriction on products commensurate to risk levels, with a particular focus on restricting or declining business when there are doubts on customer identity or authenticity. The assessment team has concerns about these mitigations' potential for de-risking.

抵減措施包括限制與風險水平相稱的產品，尤其是在對客戶身分或真實性存在疑慮時，限制或拒絕業務。評鑑團對這些抵減措施有潛在去風險(derisking)的疑慮。

### *Offshore units*

#### *離岸單位(國際業務分行/分公司)*

307. Banks, securities and insurance firms are permitted to establish offshore units. Of these, OBUs are the most developed and carry by far the greatest risks. These units were particularly noted by authorities and FIs to have very high inherent risks, due to unverified client identities and unresolved ownership structures, the liquidity of their holdings, and the deployment of their capital offshore. FSC's most recent supervisory information identified over 70% of BO of OBU customers are from Chinese Taipei. OBU accounts are not allowed to accept foreign-denominated cash payments, which they perceive reduces ML/TF risks. The NRA and SRA identified significant risks in the OBU sector, both from the nature of the sector and its customers and from the wholesale gaps in CDD prior to 2017.

允許銀行、證券和保險公司建立離岸單位(國際業務分行/分公司)。其中，OBUs 是最發達的，並且具有最大的風險。由於未經核實的客戶身分和未分解的所有權結構所持有資產的流動性以及離岸資本的部署，權責機關和金融機構特別注意到這些單位具有非常高的固有風險。FSC 最新的監理資訊發現 OBU 客戶的實質受益人超過 70%來自中華臺北，OBU 帳戶不允許接受外幣的現金支付，他們認為這樣做可以降低 ML / TF 風險。NRA 和 SRA 從 OBU 的行業性質、客戶，以及 2017 年之前 CDD 的諸多落差中，辨識出 OBU 產業的重大風險。

308. From late 2017 the FSC has been pursuing a CDD remediation exercise with the OBUs, which is an important risk control. While this project has made important progress, implementation has further to go to complete the CDD remediation exercise and manage risks in the sector. FSC priority risk mitigation measures are welcome, particularly with the assistance of LEAs, AMLD and relevant stakeholders. Together they have provided Q&As, guidance on tax-related ML risks and TBML risk, focus group discussions with AMLD and tax authorities to enhance the understanding of risk and risk mitigation of OBUs.

從 2017 年底開始，金管會一直在對 OBUs 進行 CDD 的改善工作，這是一項重要的風險控制。雖然這項改善工作有重要的進展，但其執行上還能做得更好，以完成 CDD 改善作業並管理該行業的風險。評鑑團樂見金管會將風險抵減措施作出優先順序，特別是在執法機關、洗錢防制處和相關利害關係人的協助下，提供問答集、稅務相關洗錢風險和貿易融資洗錢風險的指引，並舉辦專案會議，與洗錢防制處和稅務機關商討，以強化風險的理解並抵減 OBUs 的風險。

#### **Box 5.1: Background on Chinese Taipei's offshore units (OBU)**

#### **Box 5.1: 中華臺北OBU的背景**

OBU were originally established in 1983 under the Offshore Banking Unit Act, partly in order to enhance Chinese Taipei's attractiveness as a regional financial centre and access to foreign investment, but also due to restrictions on cross-strait investment and direct engagement with Chinese businesses. All OBU customers must be foreign individuals or foreign corporates. Currently more than 70% of OBU customers are subsidiaries of Chinese Taipei businesses. Offshore insurance and securities units (OIU and OSU) are relatively new (established in 2014/15). OBUs, OIUs and OSUs' account for 7% of the financial sector's total assets.

國際金融業務分行（OBU）最初於1983年根據“國際金融業務條例”成立，部分原因是為了提升中華臺北作為區域金融中心和獲取外國投資的吸引力，同時也是由於兩岸投資和直接參與中國大陸的業務的限制。所有 OBU 客戶需為外國人或外國公司。目前超過 70% 的國際金融業務分行客戶是中華臺北公司的子公司。國際保險和證券業務分公司（OIU 和 OSU）發展相對較晚，於 2014/15 年成立。OBUs、OIUs 和 OSUs 佔中華臺北金融業總資產的 7%。

309. Banks, securities firms and life insurers have sought to mitigate offshore units' risks since the updated CDD requirements were issued by the FSC. Mandatory CDD remediation, focussed on the verification of customer identities and identifying ultimate beneficial owners and controllers, has been required since 2016. This process was undertaken on a rules basis and did not include updating enterprise risk assessment work, nor any guidance on risk elements. The project has been largely facilitated through customer self-disclosure and document review. Offshore units are notable in that EDD extends to site visits in addition to desk-based work. In the particular case of OBUs, mitigating measures have concluded with account closure, or restriction of new business and transactions until documents for CDD have been provided by clients.

自 FSC 更新 CDD 的要求以來，銀行、證券公司和人壽保險公司一直在尋求降低國際業務分行/分公司的風險。自 2016 年以來，已要求進行強制性 CDD 的補救，重點是驗證客戶身分並確定最終實質受益人與控制者。該流程是在以規則為基礎上進行，不包括更新機構風險評估工作，也不包括任何風險要素指南。該計畫主要透過客戶自我揭露和文件檢查，以獲得大幅度的改進。值得注意的是離岸單位執行 EDD 除了文件審查外，還擴展到實地訪問。特別在 OBUs 的情況下，在客戶提供 CDD 文件之前，抵減措施有關閉帳戶或限制新業務和交易。

310. For other categories of FIs, risk mitigation implementation includes declining business or restricting higher risk activities for accounts. Other mitigating measures have included increased frequency of periodic reviews based on assessed risk, and closer surveillance for suspicious transactions.

就其他類型的金融機構，風險抵減措施包括婉拒業務或限制帳戶較高風險的活動。其他抵減措施包括根據評估的風險增加定期審查的頻率，以及對可疑交易進行更密切的監測。

311. Most TC elements are in place for DNFBPs, but comprehensive obligations were very new at the time of the onsite visit. DNFBPs are the early stage of applying AML/CFT measures in keeping with the risks. While Chinese Taipei has recognised risks from the cash economy and requires cash transaction reports for most sectors, these controls were not applied to the real estate sector. This is despite clear identification of clear ML risks associated with cash transactions in the sector. Authorities noted that the basis for real estate being excluded was because the volume of reporting would be excessive. However concerns remain that this was not risk-based.

對 DNFBPs 而言，大多數 TC 的要件皆已具備，但是在現地評鑑時該全面性的義務是非常新的。DNFBPs 應用 AML/CFT 措施應對風險才剛起步。然而，對於資恐相關的可疑交易申報及目標性金融制裁的凍結義務等相關執行能力尚有缺失。雖然中華臺北承認現金經濟具備相當的風險，多數產業具備相關門檻的現金交易申報，卻獨漏不動產相關產業。儘管該產業現金交易相關洗錢風險相當明顯，且已清楚辨識。權責單位指出將不動產產業排除在外的原因是因為申報數量將會相當龐大。然而如此認知並非以風險為基礎。



## Application of CDD and record keeping requirements

### 採取客戶審查及紀錄保存措施

312. Risk-based CDD has been a requirement since 2013. Record keeping obligations are well understood by FIs and implementation follows the international standards. LEAs and other competent authorities confirmed the availability of records and timeliness of their retrieval.

自 2013 年起，依法必須採用以風險為基礎的客戶審查措施。金融機構充分瞭解紀錄保存規定並依據國際標準加以執行。執法機關與其他權責機關確認紀錄可取得並得及時檢索。

313. FIs, supervisors, and FIs' associations acknowledged some of the difficulties in performing CDD. There are challenges with resolving ultimate beneficial ownership or control, particularly in cases involving trusts, low-transparency jurisdictions, complex corporate structures and/or nominees in foreign corporate holdings.

金融機構、監理機關和金融機構公會體認到在執行 CDD 的一些困難，解決最終實質受益權與控制權方面存在挑戰，特別是涉及信託、低透明度司法管轄區、複雜公司結構和/或外國公司控股的代名人的案件。

314. The timing of CDD undertaken by FIs is, generally, in keeping with the rules. However it does not appear that FIs adjust the timing and intensity of their CDD work to reflect customer risk. CDD is now performed prior to on-boarding and periodically updated, but risk events do not sufficiently determine the timing of updating or ongoing CDD.

金融機構執行 CDD 的時點普遍符合規範。但是，金融機構似乎沒有調整其 CDD 工作的時點和強度來反映客戶風險。CDD 現在於新開戶前執行並定期更新，但風險事件不足以確定更新或持續進行 CDD 的時點。

315. Based on feedback from supervisors, FIs' associations and FIs interviews, certain banks were able to demonstrate cases of very detailed CDD work, including in relation to relatively layered ownership and control structures. However, this appears to be most thorough in cases of significant credit lines being established and may focus on prudential rather than ML/TF risk. In some cases CDD may rely too heavily on basic documentation and customer identity verification, being overly reliant on checklists of documentation, account opening forms, self-declarations of beneficial ownership (obtaining certificates of good standing or incumbency) and source of funds.

根據監理機關、金融機構公會和金融機構面談的回饋，某些銀行能夠說明非常詳細的 CDD 工作案例（包括分層所有權及控制權結構），但似乎在建立重要信貸額度的情況下是最徹底的，並且可能側重於審慎而非 ML / TF 風險。在一些案件中，CDD 可能過於依賴基本文件和客戶身分驗證，過於依賴文件的檢核清單、開戶表格、實質受益權的自我聲明書（取得存續或職權證明）和資金來源。

316. The case of CDD remediation undertaken for OBUs, OSUs and OIUs since 2016 illustrates some challenges with the progress towards a risk-based approach to CDD and understanding of connections between CDD and suspicion of ML and possible STR reporting. The authorities required the banking sector to improve its CDD for OBUs through customer identity verification from May 2017, and to complete CDD remediation for all OBU account-holders by 31 December 2017. This process led to a significant number of accounts being closed at account-holders' request. According to FSC, banks terminated relationships with 43,124 customers (23% of all OBU customers). Additionally, a third of OBU accounts were still held by banks but in a 'frozen' state due to customers being unwilling to provide sufficient documentation for OBUs to complete the CDD remediation. Very few STRs were reported arising from this work, which does not reflect the NRA findings on the sectoral risks and the OBUs' inability to complete CDD in many cases. The team has concerns regarding the depth and quality of



recently updated CDD across the sector. While FSC stated the CDD remediation process was complete, in practice banks' efforts are generally ongoing.

自 2016 年以來對 OBUs、OSUs 和 OIUs 進行 CDD 改善案例說明，在採用以風險為本方法的 CDD 方面取得進展，以及瞭解 CDD 與疑似洗錢及可能的 STR 申報之間關係的一些挑戰。權責機關要求銀行業從 2017 年 5 月 22 日起，透過客戶身分驗證改善 OBUs 的 CDD，並在 2017 年 12 月 31 日之前完成所有 OBU 帳戶持有人的 CDD 改善。這一過程導致大量帳戶被關閉，係依帳戶持有人的要求。據 FSC 稱，銀行終止與 43,124 名客戶的關係（佔所有 OBU 客戶的 23%）。此外，由於客戶不願意為 CDD 提供足夠的文件，三分之一的 OBU 帳戶被凍結。該作業程序產生的 STR 申報量很少，無法反映 NRA 於產業風險的發現以及許多 OBUs 無法完成 CDD 的情形。評鑑團對整個行業最近更新 CDD 的深度和品質有疑慮。雖然 FSC 表示 CDD 改善程序已經完成，但實際上銀行仍繼續努力中。

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317. When applying EDD, FIs do not appear to apply a sufficiently targeted range of enhanced measures. Banks appear to be more willing to conduct EDD, particularly when there are cases of complex ownership structures or PEP concerns. In some cases bank staff may visit the premises of OBU account holders to verify the business and beneficial ownership.

在採取 EDD 時，金融機構似乎沒有應用足夠聚焦的強化措施。銀行似乎更願意進行 EDD，特別是在有複雜的所有權結構或 PEP 問題的情況下。在某些情況下，銀行職員可能會至 OBU 帳戶持有人的處所訪查，以驗證其業務和實質受益權。

318. Identification of beneficial ownership of foreign customers presents particular challenges from weaknesses in assessing customer risk and profile, complex and opaque structures (foreign legal persons and arrangements formed in secrecy jurisdictions). Identifying controlling interests for offshore companies is particularly problematic for OBUs, with very significant legacy CDD gaps remaining.

在確定外國客戶的實質受益權方面，於評估客戶風險和概況、複雜結構和不透明結構（在保密司法管轄區成立的外國法人和協議）方面的弱點存在特殊挑戰。辨識境外公司的控股權益對 OBUs 而言尤其是問題，剩餘的客戶審查有非常明顯的落差。

319. Despite requirements and guidance from the FSC, there are concerns that in practice FIs may relay too much on MOEA documentation for the identification of beneficial ownership of domestic corporate customers. The Company Act amendments in late 2018 may assist with CDD. There are also significant risks from informal nominee arrangements to hide BO. The threshold of 25% of share ownership may be too high in practice, in particular when applying EDD. In many cases banks go beyond the stated thresholds when establishing the ultimate beneficial owners or controllers, particularly for matters involving the management of credit risk, however concerns remain.

儘管有 FSC 的規範及指引，但在實務上，仍有金融機構在辨識國內客戶的實質受益權時，可能過度依賴經濟部的文件之疑慮。2018 年底“公司法”的修正有助於 CDD。安排非正式代名人，以隱藏實質受益人也存在重大風險。在實務上，25% 股權的門檻可能過高，特別是在應用加強客戶審查時。在許多情況下，銀行在建立最終實質受益人或控制權人時，會做得優於門檻規定，在涉及信用風險管理的事項上尤其如此。然而，此部分仍有疑慮。

320. Guidance from authorities in relation to risk-mitigation considerations when refusing business when CDD is incomplete requires further development to ensure strengthened implementation overall. As mentioned above, the CDD remediation project for OBUs saw tens of thousands of accounts being closed for incomplete CDD, but FIs' consideration of STR filing led to STRs in only very limited circumstances. Banks were not sufficiently well guided to consider ML risk, in particular the types of scenarios that might give rise to suspicion and therefore STR filing.

有關當 CDD 不完整時，拒絕業務關係的風險抵減考量，主管機關應對此發展進一步的指引，以確保強化整體執行。如上述，OBUs 的 CDD 補救措施因 CDD 不完整，因而關閉數萬個帳戶，但金融機構

對於 STR 申報的考量，導致僅在非常有限的情況下才申報 STR。銀行未得到足夠的指導，考量洗錢風險及風險抵減，特別是那些可能引起懷疑並因此申報 STR 的情境類型。

321. Securities firms have a number of additional risk mitigation measures in place. These include limits to trading amounts opened remotely, grouping accounts with same designated third-parties, IP addresses or contact details, and undertaking EDD when third-party is trading securities. Securities firms have established daily monitoring to identify suspicious activity.

證券公司還有許多其他的抵減風險措施，包括對遠端交易金額進行限制，對具有相同指定第三方、IP 位址或聯繫方式的帳戶進行分組，並在第三方交易證券時進行 EDD。證券公司已建立日常監控，辨識可疑活動。

322. DNFBPs have begun risk-based approach to CDD with the fuller requirements only entering into force in late 2018. Record keeping obligations are well understood by DNFBPs and implementation follows the international standards. It is apparent most DNFBPs take steps to identify customers, and take measures to conduct elements of CDD. DNFBPs' CDD work is supported by sectoral guidance, however the CDD rules are new and the move to the risk based-approach for CDD is at a very early stage.

DNFBPs 已開始對於 CDD 採用風險為基礎的方法，更全面的要求在 2018 年底才生效。DNFBPs 充分理解紀錄保存義務，並且遵循國際標準實施。大多數 DNFBPs 很明顯採取措施來辨識客戶，並採取措施執行 CDD 的規定。DNFBPs 的 CDD 工作得到產業部門指引的支持，但 CDD 規則是新的，轉變為以風險為本的方法執行 CDD 尚處於剛開始階段。

323. The timing of CDD undertaken by DNFBP is not yet clearly established and it is not yet clear that DNFBPs adjust the timing and intensity of their CDD work to reflect customer risk. Based on feedback from DNFBP associations and interviews, certain DNFBPs were able to demonstrate cases of detailed CDD work.

DNFBP 執行 CDD 的時機尚未明確建立，目前尚不清楚 DNFBPs 調整其 CDD 工作的時機和強度以反映客戶風險。根據 DNFBPs 公會的回饋和訪談，某些 DNFBPs 能夠展現其 CDD 詳細工作的實例。

### *Application of EDD measures*

#### *採取強化措施*

##### *i. PEPs*

##### *擔任重要政治性職務人士*

324. Chinese Taipei authorities and sectoral associations have made high quality commercial databases for PEP screening available to FIs and DNFBPs at subsidised rates. This supports screening for PEPs and sanctions matches. There is a widespread use of commercial databases, supplemented by open source research, to screen for both domestic and foreign PEPs. TDCC's screening system and those of other commercial providers, have been widely taken up amongst FIs and DNFBPs to screen for PEPs, which adds to effectiveness. Guidance provided to FIs and DNFBPs also adds to effectiveness. However, there are limits overall on how well some FIs and many DNFBPs' identify wider family members and associates in their PEP screening.

中華臺北主管機關和產業公會以優惠價格，提供金融機構和 DNFBPs 高品質的 PEP 檢核商業資料庫，有助其篩濾 PEPs 與制裁名單。該商業資料庫業經廣泛使用，並輔以公開資訊搜尋，檢核國內與外國 PEPs。金融及非金融業者廣泛採用 TDCC 的系統或其他商業資料庫進行 PEPs 的檢核，提升檢核成效。提供金融機構和 DNFBPs 的指引參考亦增加檢核效能。然而，對於部分金融機構和許多 DNFBPs 在 PEP 檢核中辨識家庭成員及關係人的能力，總體而言仍存在限制。

325. FIs and DNFBPs require greater practical guidance on how PEPs screening should reflect and be moderated according to ML/TF risk. Guidance is available on this subject, but the risk based application of these controls is not yet well implemented. This is particularly the case with exposure to foreign corruption risks and also offshore structures (OBUs), noting the uptake of OBUs by domestic PEPs and their associates. Weaknesses with CDD and beneficial ownership add to the challenges to identify PEPs, including their associates.

金融機構和 DNFBPs 在 PEP 的檢核應如何反映並根據洗錢/資恐風險進行調整，需要更多實務的指引。雖然在該主題可以找到指引，但未妥善運用以風險為基礎的管控，特別是暴露於國外貪腐風險及離岸架構(OBUs)的情況下，要注意國內 PEPs 及其關係人使用的 OBUs。CDD 和實質受益權的弱點增加辨識 PEPs（包括與其有關係之人）的挑戰。

326. FIs and regulators acknowledged that there are some challenges for FI and DNFBP with screening for possible Chinese PEPs. Banks, in particular, noted the challenges of identifying such PEPs through most commercial databases and other FIs face similar challenges. Banks were notable in their demonstrated efforts to mitigate cross-straits PEP risk through compilation of their own information holdings on local PEPs, through Chinese-language searches for adverse media reporting and online legal filings, and other initiatives. Further guidance and support is recommended to enhance this important area.

金融機構和監理機關承認，FIs 和 DNFBPs 在篩檢可能的中國大陸 PEPs 方面存在一些挑戰。注意到特別是銀行，透過大多數商業數據庫辨識此等 PEPs 的問題，其他金融機構亦面臨類似情況。銀行透過自己彙集掌握的當地 PEPs 資訊、中文負面報導、線上法律文件和其他措施，於抵減兩岸 PEP 風險上做出明顯的努力。建議進一步提供指導和支持，以加強這一重要領域。

## ii. Correspondent banking

### 通匯銀行

327. Controls applied to correspondent banking appear to be relatively well implemented. Banks and supervisory findings did not highlight any major difficulties in implementing correspondent banking requirements under the AML/CFT rules and circulars. Due diligence practices across the FIs, including questionnaires and open source research, escalate as necessary according to jurisdictional risks. However, it is not clear that banks sufficiently consider correspondent banking risk in their ERAs.

執行通匯銀行業務的控制成果良好。銀行及監理機關未特別指出根據防制洗錢/打擊資恐法規和通函，實施通匯銀行業務要求的任何重大困難。各個金融機構的盡職調查實務，包括問卷調查和公開資訊查證，已根據國家風險，進行必要的強化。但是，目前尚不清楚銀行是否在其企業風險評估中，充分考量通匯銀行風險。

## iii. New technologies

### 新科技運用

328. Risk assessments of new technologies are well integrated with ERAs and the FSC is supportive of risk based approaches. The recent establishment of a regulatory sandbox is an important development to support FIs and the FSC develop new technology and manage AML/CFT risk. Authorities continue to place an emphasis on financial inclusion in their consideration of risk based approaches to regulation of new technologies.

新技術的風險評估良好結合機構風險評估，FSC 支持以風險為本的方法。最近的監理沙盒是一個重要的發展，支持金融機構及 FSC 發展新技術並管理 AML/CFT 風險。監理機關在考慮基於風險的新技術監理方法時，繼續強調普惠金融。

#### iv. Wire transfer rules

##### 電匯規則

329. FIs' implementation of controls on wire transfers appear to be reasonably well supported. Rules are applied without threshold and apply to domestic and cross border wires. This is supported by outreach and guidance and confirmed through supervision.

金融機構對電匯實施的控制措施顯示得到相當好的支持。電匯規則沒有設定門檻，並適用於國內和跨境電匯。這項規則的執行得到宣導活動和指引發布的支持，並透過監理得到確認。

#### v. Targeted financial sanctions – TF

##### 有關資恐之目標性金融制裁

330. While there are technical compliance gaps for TFS (see R.6), guidance has been issued to all sectors and a great deal of awareness raising and outreach has been undertaken with FI and DNFBP sectors. In addition, as discussed in IO3, this has been a major area for offsite and on-site supervisory focus.

雖然目標性金融制裁(見 R.6)的技術遵循存在落差，對於金融及非金融業者已提供相關指引並進行許多提升意識宣導活動。此外，如同於 IO3 之報告內容，此為非現地及現地監理之重點項目。

331. Reflecting the outreach and guidance, FIs and DNFBPs appear to implement list-based screening without delay through automated screening software and manual processes. FIs and DNFBPs demonstrated a reasonable approach to receiving sanctions list updates through various channels including website, RSS, social media channels. As mentioned in relation to PEPs, TDCC software is subsidised to help to ensure that a very wide set of FIs and DNFBPs can make use of automated checking software TFS. Implementation of TFS controls appears to be reasonably well supported as outlined in IO 10 and 11.

金融機構和 DNFBPs 透過自動檢核軟體及人工程序，毫不遲延地執行制裁名單的篩檢，此反映宣導和指引的成果。金融機構和 DNFBPs 說明已透過合宜方式，包括網站、線上訂閱(RSS)、社群媒體之各種管道，取得最新制裁名單資訊。如前關於 PEPs 的描述，提供 TDCC 系統使用優惠，可確保金融機構和 DNFBPs 更廣泛使用自動化檢核軟體，可以有效協助管控目標性金融制裁的執行上，如 IO10 及 11 之報告內容。

332. Routines for verifying positive matches, including escalating matches to the AMLD and continuing a freeze have been demonstrated through the implementation of Rec 7 (see IO 11).

透過建議第 7 項的實施(見 IO 11)，展現檢核比對的例行作業，包括與 AMLD 的升級比對以及持續凍結。

#### vi. Higher-risk countries identified by the FATF

##### FATF 所認定之較高風險國家

333. Application of jurisdictional risk is given a great deal of emphasis by FIs and DNFBPs, including a number of CPF and CFT related controls. Consideration of jurisdictional risk has been enhanced and better calibrated to reflect jurisdictional specific risks faced by Chinese Taipei since the 2018 NRA was completed.

金融機構和 DNFBPs 相當重視國家風險的應用，包括一些與打擊武擴和打擊資恐有關的控制措施。自 2018 年 NRA 完成以來，強化並調校國家風險分析，反映中華臺北面臨的特殊國家風險。



*Reporting obligations and tipping off**申報義務及預防資訊洩漏*

## FIs

## 金融機構

5

334. STR reporting obligations have a minor TC gap for predicates, however in practice, FIs appear to be applying the international standards and screening for any STRs, including those related to PF. Most categories of FIs are also required to file CTRs which is an important additional control.

可疑交易申報義務在前置犯罪部分存在微小的技術遵循落差，但實務上，金融機構似乎應用國際標準，篩選任何可疑交易，包括與武擴相關的 STR。大多數類別的金融機構也需要申報 CTR，這是一個重要的額外管控。

335. Overall the quality and quantity of STRs appear to have improved in the last 12 months, reflecting a number of factors. FI/DNFBPs involvement in the NRA has increased understanding of risk, and sectoral associations have produced much more detailed guidance in cooperation with the AMLD and regulators and these include both objective and subjective criteria for suspicion, which are tailored to particular sectors. FSC's supervision has focused on FIs' compliance with STR reporting obligations. AMLD has increased feedback to FIs reporting STRs to encourage improvements in quality and increases in the numbers of STRs filed. FIs internal controls for identifying possible matters of suspicion are generally operating well. These areas have seen significant improvements over the last 18 months. FSC highlighted findings of additional dedicated AML personnel and upgraded IT systems in many sectors, which has contributed to the volume and quality of STR filing.

總體而言，在過去 12 個月中，可疑交易報告的品質和數量顯示情況有所改善，這反映許多因素。金融機構和 DNFBPs 參與國家風險評估，增進對風險的瞭解；產業公會與 AMLD 和監理機關合作制定更詳細的指引，其中包括針對特定部門量身訂制的客觀和主觀可疑表徵的標準；FSC 的監理聚焦在金融機構 STR 申報義務的遵循；AMLD 增加對金融機構可疑交易申報的回饋，以鼓勵改善可疑交易報告的申報品質與數量。金融機構對於辨識可疑情事的內部控制大致運作良好。這些範疇在最近 18 個月內有顯著進步。FSC 強調發現，許多產業部門投入更多的專職反洗錢人員和升級 IT 系統，此有助於提升 STR 申報的數量和品質。

336. AMLD confirmed that the quality of STRs has improved greatly within the last year. Since early 2018 AMLD has required STR filings to include more detailed information as part of the STR, including information that may have given rise to suspicion and all related CDD and transactional data associated with the matter. This has helped to improve the basis of AMLD analysis of STRs.

AMLD 確認在過去一年 STR 的品質有很大改善。自 2018 年初以來，AMLD 要求 STR 申報文件包含更詳細的資訊，含括可能引起懷疑以及案關的所有 CDD 和交易資料，這有助改善 AMLD 分析 STRs。

337. There is a mix of reactive and proactive reporting and FIs demonstrated suspicion being identified at various stages of business and arising from various lines of control within FIs. Assessors have some concerns that the final decision to file an STR may be too reliant on negative press reporting about the customer and/or objective criteria included in guidance, rather than concerns arising from the customer's profile and additional risk indicators arising from findings of risk assessments (this is despite clear obligations for the later).

金融機構表示在不同的業務階段，辨識出可疑情事，並且由金融機構內部的各種控制防線產生各種被動和主動報告。評鑑員疑慮之處在於，申報可疑交易報告的最終決定，可能過於依賴客戶的負面新聞和/或指引中的客觀標準，而非來自於客戶的資料和風險評估結果發現的其他風險指標所產生的考量(儘管後來有明確的義務規定)。

**Table 5.1: STRs reported by FIs from 2014 to 2018**  
**表 5.1: 2014 年至 2018 年金融機構申報 STRs**

| <b>Financial Institutions 金融機構</b>  | <b>2014</b>   | <b>2015</b>  | <b>2016</b>   | <b>2017</b>   | <b>2018</b>   |
|---|---------------|--------------|---------------|---------------|---------------|
| Domestic banks <sup>10</sup> 本國銀行   | 6,389         | 9,139        | 12,608        | 19,326        | 25,552        |
| Foreign bank branches 外銀在臺分行  | 22            | 24           | 31            | 33            | 75            |
| Chunghwa Post 中華郵政  | 355           | 345          | 1,010         | 2,303         | 4,656         |
| Credit cooperatives 信用合作社   | 34            | 43           | 70            | 700           | 1343          |
| Credit card companies 信用卡公司   | 3             | 5            | 10            | 13            | 30            |
| E-payment service providers 電子支付機構  | -             | -            | -             | 6             | 24            |
| Electronic stored value card issuers 電子票證機構                               | -             | -            | 1             | 17            | 28            |
| Securities firms 證券商  | 6             | 5            | 11            | 115           | 717           |
| Securities investment trust enterprises 證券投資信託事業                          | 4             | 2            | 6             | 17            | 73            |
| Securities investment consulting enterprises 證券投資顧問事業                     | -             | -            | -             | -             | 2             |
| Securities finance enterprises 證券金融事業                                     | -             | -            | 2             | 5             | 19            |
| Centralised securities depository enterprises 證券集中保管事業                    | 21            | 20           | 19            | 24            | 23            |
| Futures merchants 期貨商   | -             | -            | 2             | 9             | 53            |
| Reinsurance companies 再保險公司   | -             | -            | -             | -             | -             |
| Life insurance companies 壽險公司   | 39            | 59           | 164           | 789           | 1,757         |
| Property insurance companies 產險公司   | 2             | -            | 17            | 10            | 23            |
| Insurance brokers 保經公司  | -             | -            | 1             | -             | 17            |
| Insurance agents 保代公司   | -             | -            | -             | 1             | 28            |
| Farmers' associations' credit departments 農會信用部                           | 15            | 14           | 20            | 224           | 1,186         |
| Fishermen's associations' credit departments 漁會信用部                        | -             | -            | -             | 10            | 40            |
| Agricultural Bank 全國農業金庫  | -             | -            | -             | 3             | 31            |
| Bills finance companies 票券金融公司  | -             | -            | -             | -             | 8             |
| Foreign Exchange Counters 外幣收兌處   |               |              |               |               | 82            |
| <b>Yearly total 各年度合計</b>   | <b>6,890</b>  | <b>9,656</b> | <b>13,972</b> | <b>23,605</b> | <b>35,767</b> |
| <b>Total STRs reported by FIs since 2014<br/>2014-2018 年金融機構申報 STR 總數</b> | <b>89,890</b> |              |               |               |               |

338. The use of red flags and typologies are a strength for monitoring, but even more focus needs to be given to customer profile and additional risk indicators to identify instances of suspicion, in particular during ongoing CDD.

紅旗指標和態樣的使用是監控的一項優勢，但需要更加關注客戶的資料和其他風險指標，以辨識可疑的情況，特別是在進行持續性的客戶審查。

339. Foreign exchange counters have only just commenced STR reporting. While the risks of the sector are assessed as relatively low, there is a concern that more needs to be done to support the implementation of internal controls and monitoring to identify and file STRs.

外幣收兌處剛開始進行 STR 申報。雖然該部門的風險被評估為相對較低，但仍需要有更多作為支持內控和監督的執行，以辨識並提交可疑交易報告。

340. Concerns remain with some elements of risk-based monitoring for possible STRs given the mismatch in threat assessment between NRA and FI ERAs. Assessors interviews with FIs and

<sup>10</sup> OBU STR filing is included within these figures OBU 申報的 STR 包括在此數字內。  
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supervisors indicate that a significant number of STRs filed appear to be reactive or defensive, as opposed to proactive (e.g. from CDD or customer monitoring). A related example is the CDD remediation exercise with OBUs and relatively few STRs, despite tens of thousands of accounts for which CDD could not be completed. FSC reported that OBUs filed 367 STRs in 2016, 656 in 2017 and 276 in 2018 (from January to March), which shows an increasing trend, albeit from a very low base. Concerns remain about the relatively small number of STRs filed from higher risk sectors and this is not commensurate with the overall risks.

5

鑑於 NRA 和金融機構的 ERA 之間的威脅評估不盡符合，對可能的 STRs 進行以風險為基礎的監控的某些要素仍然存在疑慮。評鑑員與金融機構和監理機關的訪談發現，似乎有大量的 STRs 申報為被動或是防禦性申報，而非主動申報（例如來自 CDD 或客戶監控）。一個相關的例子是 OBU 的 CDD 改善措施，儘管有上萬個帳戶無法完成 CDD，但其中卻申報相對較少的 STRs。依 FSC 的說明，在 2016 年申報 367 件有關 OBU 的 STRs，2017 年申報 656 件，而 2018 年 1 月至 3 月申報 276 件，申報數量呈現增長趨勢，儘管申報數量低。對於高風險部門卻申報相對較少數量 STRs 的情況，仍存有疑慮，因為與整體風險不相符。

341. FIs generally appear to understand and apply measures to avoid tipping off. Consistent guidelines and training have been provided to inculcate the maintenance of confidentiality of STR and related information. According to regulators, FIs compartmentalise STRs and have been responsive to recommendations restricting access to a need-to-know basis. Tipping off by FI personnel has not been detected by LEA or supervisory authorities.

金融機構大致上理解並採取措施避免資訊洩漏，並已提供一致的指引和訓練，灌輸員工維護 STR 和相關資訊的機密。據監理機關表示，金融機構會區隔不同的 STRs，並因應建議，將相關資訊僅限縮於必需知道的範圍內。執法機關或監理機關目前尚未發現金融機構人員有洩密的情事。

#### DNFBPs

##### 非金融事業或人員

342. Given the newness of the full coverage of DNFBP sectors in AML/CFT controls, the focus for the first year has been supervisory outreach and education and preliminary steps towards supervision. The second year since coverage has seen further supervision and steps towards enforcing the new obligations.

基於 DNFBP 甫全面納入洗錢防制/打擊資恐規範範圍，第一年重心為宣導監理及訓練，以及初步的監理活動。第二年為強化新規定執行之深度監理活動。

**Table 5.2: STRs reported by DNFBPs since 2017 (year MLCA coverage commenced)**

| DNFBP  | 2017       | 2018       |
|--|------------|------------|
| Accountants  | 29         | 62         |
| Land administration agents                             | 11         | 12         |
| Notaries   | 6          | 15         |
| Lawyers  | 0          | 2          |
| Bookkeepers / Bookkeeping and Tax Return Filing Agents | 0          | 3          |
| Jewellery Businesses                                   | 0          | 2          |
| Real Estate Agents                                     | 0          | 3          |
| Company Service Providers                              | 0          | 3          |
| <b>Yearly Totals</b>                                   | <b>46</b>  | <b>102</b> |
| <b>Total STRs reported by DNFBPs since 2017</b>        | <b>148</b> |            |

表 5.2: DNFBPs 自 2017 年以來申報的 STR (該年納入洗防法)

| DNFBP               | 2017 | 2018 |
|---------------------|------|------|
| 會計師                 | 29   | 62   |
| 地政士                 | 11   | 12   |
| 公證人                 | 6    | 15   |
| 律師                  | 0    | 2    |
| 記帳士 / 記帳及報稅代理人      | 0    | 3    |
| 銀樓業                 | 0    | 2    |
| 不動產經紀業              | 0    | 3    |
| 公司服務提供者             | 0    | 3    |
| 年度總計                | 46   | 102  |
| 自 2017 年以來申報 STR 總計 | 148  |      |

343. Regulators and associations have disseminated prescriptive red flags to guide STR filing. These have included subjective and objective factors tailored to each sector and have contributed directly to a greater number of STRs being filed with increasing quality in many cases. However case studies tend to be due to suspicion based on customer profile and circumstances beyond typologies.

監理機關及公會發布詳盡的可疑交易申報的紅旗指標，包括為每一產業部門量身訂做的客觀及主觀表徵，也直接促成一定數量的可疑交易申報，提升許多申報案例的品質。然而案例顯示可疑之處係在於顧客資料及交易樣態以外之情況。

344. Apart from accountants (who have long been supervised by FSC and more closely involved in outreach at an earlier stage), STR filing is not yet commensurate with risks in most DNFBP sectors. Notably, there have been only four STRs filed by jewellery businesses or lawyers in 2018. Only 23 STRs were filed by land administration agents over the course of 2017-18. In response to the low numbers, the objective and subjective criteria for filing have been further tailored to each sector and to reflect NRA findings and feedback from AMLD.

除了會計師（長期受 FSC 監督，並在較早階段即密切地參與宣導活動）外，在大多數 DNFBP 產業部門的可疑交易申報並未與風險相稱。值得注意的是，銀樓業及律師在 2018 年僅有 4 件可疑交易申報案例。2017 及 2018 年度僅地政士業別申報 23 件可疑交易。為因應如此少的申報數量，應該為每個產業部門更進一步地量身訂做客觀及主觀因素標準，並納入 NRA 的發現以及 AMLD 的回饋意見。

345. There have been no cases identified of tipping off by DNFBPs. Guidelines require staff to maintain confidentiality. Uneven degrees of sophistication around how reporting is conducted. Bookkeepers and tax return filing agents will report STRs “by post” to maintain confidentiality. Consistent statements that internal controls and training pursuant to regulations prevent leaks.

尚未發現 DNFBPs 洩密的案例。發布的指引要求員工應保守秘密，但就如何進行申報的要求並不一致。記帳士暨記帳及報稅代理人以郵寄方式申報可疑交易，以避免洩密。各業別對於遵守法規要求進行內控及訓練，以避免洩密之陳述一致。

### *Internal controls and legal/regulatory requirements impending implementation*

#### *內部控制及妨礙執行之法律或相關規定*

346. Internal controls appear to be well-developed among FIs. Considerable resources have been allocated to internal controls since 2016 and almost all sectors have greatly increased their compliance departments and routines. This has extended to employee screening, AML/CFT policies and procedures, monitoring and systems, staff training, audit, etc. In addition, FIs are required to ensure their AML/CFT compliance officer make decisions independently to file STRs. There are, however, concerns that internal controls to ensure that compliance staff independently make decisions within banks to file



STRs is undermined in practice. In some instances this may not be done independently by compliance staff, but is dependent on Bank President or other managers' say-so. Internal controls amongst DNFBPs have been support by outreach, guidance and offsite supervision.

金融機構內部控制發展良好。自 2016 年以來，金融機構配置大量資源於內部控制，幾乎所有產業都大幅增加法遵部門和例行性工作，並已擴展到員工選任、AML/CFT 政策和程序、監控和系統、員工培訓、稽核等。此外，金融機構必須確保其 AML/CFT 法遵主管能獨立自主進行 STRs 申報之決策主。然而在內部控制的實務運作，以確保銀行內的法遵人員能獨立決定申報 STR 仍有弱化的疑慮。在某些情況下，申報 STR 可能不是由法遵人員獨立完成，而是取決於銀行總經理或其他主管人員指示。DNFBPs 的內部控制透過宣導、指引以及非現地監理獲得支持。

5

347. Group-wide compliance is improving, albeit from a low base. Supervision and outreach by FSC has given some focus to group-wide controls, which has supported implementation on that basis. Information sharing gaps have been addressed only very recently.

儘管基數低，但集團整體的法遵情況正在改善。FSC 的監理和宣導已關注到集團層級的控制層面，在此基礎上即可支持實務運作，例如最近已解決集團間資訊分享落差的問題。

348. Sectoral associations have given some support to DNFBPs to assist them to develop internal controls and routines to support identifying and reporting STRs. This has been reinforced in outreach sessions by AMLD.

產業部門公會為 DNFBPs 提供一些協助，幫助他們制定內部控制和例行性工作，以識別和申報可疑交易報告。AML D 的宣導活動亦能強化此項工作。

#### *Overall conclusions on Immediate Outcome 4*

##### *直接成果 4 之整體結論*

349. TC elements for preventive measures are mostly comprehensive. The transition from a rules-based to a risk-based approach has been occurring in banking sectors since 2013 but is newer in other sectors. Detailed obligations for DNFBP are new and implementation has only recently commenced. FI/DNFBP Sectoral supervisors have undertaken very significant amounts of awareness raising on AML/CFT obligations and ML/TF risks. Guidance has been issued for each respective sector.

防制措施的各项技術遵循要件大多數是完整的。自 2013 年以來，銀行部門從以規則為本的方法朝向以風險為本的方法轉變，但對其他產業而言仍然是新的領域。新的規範要求 DNFBP 的詳細義務，並且最近才開始實施。金融機構和 DNFBP 產業的監理機關，對 AML/CFT 義務和 ML/TF 風險舉辦許多意識提升活動，並發布每個產業部門的指引。

350. **Chinese Taipei has a moderate level of effectiveness on Immediate Outcome 4.**

中華臺北在直接成果 4 之評等為中度有效。

## CHAPTER 6. SUPERVISION

### 第六章 監理

#### Key Findings and Recommended Actions

##### 重要發現及建議行動

##### Key Findings

##### 重要發現

- 1) Chinese Taipei has a generally robust system of AML/CFT supervision in the financial sectors. The risk-based approach for AML/CFT supervision is still new in some sectors. FSC implementation of risk based supervision commenced in late 2015 however risk inputs were lacking at the initial stages.

中華臺北在金融部門擁有普遍強大的防制洗錢/打擊資恐監理制度。以風險為本的防制洗錢/打擊資恐監理在某些部門仍屬新概念。金管會在 2015 年底開始實施以風險為本的監理，但在初始階段缺乏風險方面的投入。

- 2) DNFBP supervision has only recently commenced. The EY has allocated additional resources to DNFBP regulators, which has enabled them to greatly enhance outreach and take a number of steps towards risk-based supervision, including preliminary onsite examinations. There may be a need to enhance the powers of DNFBP sectoral supervisors.

DNFBP 監理最近才開始實施。行政院為 DNFBP 監理機關配置了額外的資源，這使他們能夠大大加強宣導力道，並採取一系列措施進行以風險為本的監理，包括初步的現場檢查。可能需要加強 DNFBP 部門監理機關的權力。

- 3) FSC has taken various steps to maintain and further develop its understanding of ML/TF risks including an understanding of relative risks between different sectors and of individual institutions. FSC has risk information from FIs and sectoral assessments, however all supervisors need greater inputs from the FIU and LEAs to better support risk-based supervision and fit and proper controls. BOAF requires more information on risk to support risk-based supervision.

金管會已採取各種措施來維持和進一步發展其對 ML/TF 風險的理解，包括了解不同部門和個別機構之間的相對風險。金管會擁有來自金融機構和部門評估的風險資訊，但所有監理機關都需要更多來自金融情報中心和執法機關的投入，以更好地支持以風險為本的監理和適格性控制措施。農金局需要更多風險資訊來支持以風險為本的監理。

- 4) Licensing and related fit and proper requirements are applied to all FIs. FSC has controls in place to prevent criminals from entering the market by owning or controlling FIs. There are gaps in the scope of obligations (associates of criminals) and implementation needs to be deepened taking into account risks (including foreign currency exchange counters & agricultural FIs).

所有金融機構均適用許可制度及相關的適格性要求。金管會已實施控制措施防止犯罪分子通過擁有或控制金融機構進入市場。相關義務的範圍（罪犯的關係人）存在落差，考慮到風險情況，執行上需要深化（包括外幣收兌處和農業金融機構）。

- 5) Limited market entry and fit and proper controls are in place across DNFBP sectors. Gaps include the scope and implementation of measures related to criminal and their associates.

DNFBP 部門已有限制進入市場和適格性的控制措施。落差則包括有關規範犯罪分子及其關係人措施的範圍和執行。

- 6) The frequency, scope and intensity of offsite and onsite supervision is increasingly based on identified risks. Additional FSC supervisory resources need to be applied to higher risk scenarios.

場外和現地檢查的頻率、範圍和強度正愈來愈基於已辨識的風險。金管會額外的監理資源需要應用於更高風險的情境。

- 7) The quality of FSC's offsite and onsite supervision appears to be relatively high. FSC supervisors have good AML/CFT skills and experienced staff. While the bulk of AML/CFT supervision has been done in combination with prudential supervision, increasingly stand-alone full scope AML/CFT supervision and thematic supervision is being conducted by FSC.

金管會的場外和現地檢查的品質相對較高。金管會擁有良好的防制洗錢/打擊資恐技能和經驗豐富的員工。雖然大量的防制洗錢/打擊資恐監理與審慎監理相結合，但金管會正在進行越來越獨立的全面防制洗錢/打擊資恐監理和專案監理。

- 8) The fines imposed on banks, securities, and insurance for AML/CFT breaches are relatively low and may not be wholly proportionate. Going beyond fines, the overall effects of remedial measures, enforcement actions and reputation damage appear to positively influence compliance.

對有防制洗錢/打擊資恐違規行為的銀行、證券業和保險業的罰款相對較低，可能不完全相稱。在罰款之外採取的補救措施、強制行動和聲譽損害，整體而言對法遵產生正面影響。

- 9) Authorities have undertaken a very large number of programs to promote a clear understanding of ML/TF risks and AML/CFT obligations in the recent years. This has included close cooperation between supervisors, sectoral associations, the FIU and LEAs.

當局近年來開展了大量計畫，以促進各界對洗錢 / 資恐風險和防制洗錢/打擊資恐義務的明確理解。這包括監理機關、公會、金融情報中心和執法機關之間的密切合作。

### **Recommended Actions**

#### **建議行動**

- a) Supervisors (especially for DNFBPs) should ensure they have the full set of supervisory powers, increase capacity (particularly the number of specialist AML/CFT supervisory staff), supervisory tools (manuals, etc.) and training for risk-based supervision. Relevant threat analysis from LEAs or the FIU should be provided to FI and DNFBP supervisors to benefit risk-based supervision. The FSC and LEAs should implement further measures to support information exchange on risk.

監理機關（尤其是指 DNFBP）應確保具備全面的監理權力、增加能力（特別是專業防制洗錢/打擊資恐監理人員）、監理工具（手冊等）和以風險為本的監理培訓。應向 FI 和 DNFBP 監理人員提供執法機關或金融情報中心的相關威脅分析，俾對以風險為本的監理有所幫助。金管會和執法機關應實施進一步措施以支持風險資訊的交換。

- b) Expand the obligations on market entry fit and proper and further implement the obligations. This should include enhanced information sharing between agencies, including international cooperation between supervisors.

擴大市場進入之適格性義務，並進一步履行該義務。這應包括加強各機關之間的資訊共享，包括監理機關之間的國際合作。

- c) Continue to expand the use of stand-alone full scope AML/CFT supervision and the conduct of thematic onsite supervision to target persisting or emerging risk areas (e.g. trade finance areas).

繼續擴大使用獨立的全面防制洗錢/打擊資恐監理，和針對持續或新興風險領域（如貿易洗錢領域）實施主題式現地檢查。

- d) Strengthen remedial actions and sanctions regimes and increase the application of dissuasive and proportionate sanctions to ensure a risk-based compliance culture.

加強補救行動和裁罰制度，增加應用具勸阻性和相稱的裁罰，以確保以風險為本的法遵文化。

- e) Support the coordination and sharing of knowledge and information between FI and DNFBP supervisors.

支持 FI 和 DNFBP 監理機關之間知識和資訊的協調與共享。

- f) Further support continuing international cooperation with foreign supervisors on a risk sensitive basis (see IO2).

進一步支持在風險敏感的基礎上，與外國監理機關繼續展開國際合作（見 IO2）。

### Immediate Outcome 3 (Supervision)

#### 直接成果 3 (監理)

##### *Licensing, registration & controls preventing criminals and associates from entering the market*

##### *許可、註冊及監管措施以防制罪犯及其關係人進入市場*

##### *Banks, securities and insurance*

##### *銀行、證券及保險業*

351. Licensing controls are generally robust in the financial sector. FSC has control measures in place to prevent criminals from owning or controlling FIs or holding a management function in financial holding companies, banks, insurers, securities firms, and other FSC-regulated FIs. Major shareholders and responsible persons for FIs are subject to fit and proper test. However, there are challenges in FSC obtaining sufficient information from LEAs and intelligence agencies (domestic and foreign) on possible associations with criminals in order to supporter a deeper approach to reviews.

金融部門的許可控制通常很是強而有力的。金管會制定控制措施，防止犯罪分子通過持有、控制或管理金融控股公司、銀行、保險公司、證券公司和其他金管會監理的金融機構。金融機構的主要股東和負責人必須經過適格性的測試。然而，金管會面臨的挑戰是從執法和情報機關（國內和國外）獲取有關可能是犯罪分子關係人的充分資訊，以支持更深入的審查方法。

352. Requirements are in place on the person or concerned party (including a third party acting on behalf of the same person or same concerned party in trust, by mandate or other legal arrangements) who intends to singly, jointly or collectively hold more than a certain threshold of outstanding voting shares (i.e. 10%, 25% and 50%) of a bank and insurance company. In such a case FSC's prior approval



is required. For securities, firms must file a report with the FSC when there is a change in the total number of shares owned by those officers and shareholders who hold more than 10% of outstanding shares. In practice, FSC periodically reviews the list of shareholders to verify whether holding structures have reached reporting thresholds. However, more needs to be done to ensure that fit and proper checks are undertaken on the natural persons who ultimately own or control the FI regardless of the percentage of holding.

對個人或有關方（包括第三方以信託、授權或其他法律協議代表同一人或同一關係人）如意圖單獨、共同或集體持有銀行和保險公司一定門檻以上的表決權股份（即 10%，25%和 50%）之要求已經到位，這需經過金管會事先核准。對於證券業，當持有已發行股票超過 10%的高級職員和股東所擁有的股份總數發生變化時，公司必須向金管會提交報告。在實務上，金管會定期審查股東名單，以核實控股結構是否達到報告門檻。然而，無論持股比例為何，還需要做更多以確保對最終擁有或控制金融機構的自然人進行適格性檢查。

353. During establishment or any change of responsible persons in companies (including prospective directors, supervisors and general managers) and banks (directors, supervisors, general managers, and *de facto* responsible persons), the FSC implements prior approval reviews. These reviews comprise of both positive (i.e. competency and capacity) and negative tests (i.e. no disqualification criteria, such as implication or conviction for criminal activity).

在設立階段，或公司負責人（包括可能的董事，監事和總經理）和銀行負責人（董事，監事，總經理和實際上的負責人）有任何變更時，金管會均會事先進行核准審查。這些審查包括積極（即資格和能力）和消極資格測試（即取消資格的標準，例如隱含犯罪活動或被判刑）。

354. FSC implements on-going review of any changes in shareholders list and responsible persons to ensure fit and proper major shareholders including beneficial owners and responsible persons of FI under FSC regulations.

金管會根據自身規定，對股東名單和負責人的任何變更進行持續審查，以確保主要股東包括金融機構實質受益人和負責人的適格性。

355. From 2013 to 2017, the FSC handled 29 cases involving disqualification of 49 FIs' responsible persons or major shareholders (refer to Table below). The FSC has imposed sanctions thereon, including dismissals and suspension from duties.

從 2013 年到 2017 年，金管會處理了 29 起涉及 49 家金融機構負責人或主要股東消極資格的案件（參見下表）。金管會已對此加以裁罰，包括解除和暫停職務。

**Table 6.1: Sanctions against office holders or major shareholders of FIs**

**表 6.1: 針對金融機構持有者或主要股東之裁罰**

| Type 型態                              | Number of cases/persons 件數/人數 |      |      |      |      |          |
|--------------------------------------|-------------------------------|------|------|------|------|----------|
|                                      | 2014                          | 2015 | 2016 | 2017 | 2018 | Total 合計 |
| Financial holding company<br>金融控股公司  | 1/1                           | 0    | 0    | 4/4  | 0    | 5/5      |
| Domestic banks<br>本國銀行               | 0                             | 1/1  | 2/6  | 0    | 2/7  | 3/7      |
| Credit cooperatives<br>信用合作社         | 0                             | 1/1  | 0    | 2/3  | 0    | 3/4      |
| Credit card companies<br>信用卡公司       | 1/3                           | 0    | 0    | 0    | 0    | 1/3      |
| Electronic stored value card issuers | 0                             | 1/1  | 0    | 0    | 0    | 1/1      |

| Type 型態  | Number of cases/persons 件數/人數 |            |            |              |             |              |
|--|-------------------------------|------------|------------|--------------|-------------|--------------|
|  | 2014                          | 2015       | 2016       | 2017         | 2018        | Total 合計     |
| 電子票證機構   |                               |            |            |              |             |              |
| Securities firms<br>證券商                                  | 0                             | 0          | 0          | 1/1          | 4/4         | 1/1          |
| Securities investment trust enterprises<br>證券投資信託事業      | 1/1                           | 0          | 0          | 0            | 0           | 4/8          |
| Securities investment consulting enterprises<br>證券投資顧問事業 | 1/1                           | 0          | 1/2        | 2/2          | 0           | 4/5          |
| Life insurance companies<br>壽險公司                         | 1/4                           | 0          | 1/1        | 0            | 2/5         | 5/12         |
| Non-life insurance companies<br>非壽險公司                    | 0                             | 0          | 0          | 0            | 0           | 1/1          |
| Insurance broker companies<br>保經公司                       | 0                             | 0          | 0          | 1/1          | 0           | 1/1          |
| <b>Grand total 總計</b>                                    | <b>5/10</b>                   | <b>3/3</b> | <b>4/9</b> | <b>10/11</b> | <b>8/16</b> | <b>30/49</b> |

**Case Example 6.1: FSC rejection of application for establishment in the securities sector**

The applicant filed to establish a securities investment consulting corporation with the FSC on August 5, 2014. The FSC checked the Judicial Yuan's court decision database and further information and found that the promoters had once illegally operated a securities investment consulting business. In accordance with Article 68 of the Securities Investment Trust and Consulting Act, a person under the above circumstances shall not serve as a promoter.

**案例 6.1：金管會拒絕證券業的設立申請案**

申請人於 2014 年 8 月 5 日向金管會申請成立證券投資顧問公司。金管會查詢司法院的法院判決資料庫和進一步的資訊，發現發起人曾經非法經營證券投資顧問業務。根據“證券投資信託及顧問法”第 68 條，在上述情況下，任何人不得擔任發起人。

Table 6.2: No. of approvals/rejections for the establishment of FIs (head offices) (source: FSC)

表 6.2: 申設金融機構(總機構)之核准/拒絕件數(資料來源: 金管會)

| Type 型態  | 2014              |                |                 | 2015              |                |                 | 2016              |                |                 | 2017              |                |                 | 2018              |                |                 | Total 合計          |                |                 |
|--|-------------------|----------------|-----------------|-------------------|----------------|-----------------|-------------------|----------------|-----------------|-------------------|----------------|-----------------|-------------------|----------------|-----------------|-------------------|----------------|-----------------|
|  | Application<br>申請 | Approval<br>核准 | Rejection<br>拒絕 | Application<br>申請 | Approval<br>核准 | Rejection<br>拒絕 | Application<br>申請 | Approval<br>核准 | Rejection<br>拒絕 | Application<br>申請 | Approval<br>核准 | Rejection<br>拒絕 | Application<br>申請 | Approval<br>核准 | Rejection<br>拒絕 | Application<br>申請 | Approval<br>核准 | Rejection<br>拒絕 |
| Foreign bank branches<br>外國銀行在臺分行              | 0                 | 0              | 0               | 0                 | 0              | 0               | 1                 | 1              | 0               | 0                 | 0              | 0               | 0                 | 0              | 0               | 1                 | 1              | 0               |
| Credit card co.<br>信用卡公司                       | 0                 | 1              | 0               | 0                 | 0              | 0               | 0                 | 0              | 0               | 0                 | 0              | 0               | 0                 | 0              | 0               | 0                 | 1              | 0               |
| E-payment<br>電子支付機構                            | 0                 | 0              | 0               | 5                 | 3              | 0               | 0                 | 2              | 0               | 1                 | 0              | 0               | 1                 | 1              | 0               | 7                 | 6              | 0               |
| Electronic stored value card issuers<br>電子票證機構 | 0                 | 1              | 0               | 0                 | 0              | 0               | 0                 | 0              | 0               | 0                 | 0              | 0               | 0                 | 0              | 0               | 0                 | 1              | 0               |
| Securities firms<br>證券商                        | 0                 | 0              | 0               | 3                 | 3              | 0               | 0                 | 0              | 0               | 0                 | 0              | 0               | 0                 | 0              | 0               | 3                 | 3              | 0               |
| Securities investment trusts co                | 0                 | 0              | 0               | 2                 | 1              | 0               | 0                 | 1              | 0               | 0                 | 0              | 0               | 0                 | 0              | 0               | 2                 | 2              | 0               |

CHAPTER 6. SUPERVISION

|  |          |          |          |           |           |          |           |           |          |           |          |          |           |           |          |           |           |          |
|--|----------|----------|----------|-----------|-----------|----------|-----------|-----------|----------|-----------|----------|----------|-----------|-----------|----------|-----------|-----------|----------|
| 證券投資<br>信託公司   |          |          |          |           |           |          |           |           |          |           |          |          |           |           |          |           |           |          |
| Securities<br>investment<br>consulting<br>證券投資<br>顧問公司 | 3        | 2        | 1        | 4         | 1         | 1        | 6         | 5         | 2        | 2         | 2        | 1        | 6         | 5         | 1        | 21        | 15        | 5        |
| Non-life<br>insurance<br>非壽險公<br>司                     | 0        | 0        | 0        | 1         | 0         | 0        | 1         | 1         | 0        | 0         | 1        | 0        | 6         | 0         | 0        | 2         | 2         | 0        |
| Insurance<br>brokers<br>保經公司                           | 4        | 2        | 0        | 4         | 4         | 0        | 1         | 3         | 0        | 4         | 2        | 0        | 6         | 4         | 0        | 19        | 15        | 0        |
| Insurance<br>agents<br>保代公司                            | 1        | 3        | 0        | 0         | 0         | 0        | 2         | 1         | 0        | 4         | 4        | 0        | 3         | 3         | 0        | 10        | 11        | 0        |
| <b>Grand<br/>total<br/>總計</b>                          | <b>8</b> | <b>9</b> | <b>1</b> | <b>19</b> | <b>12</b> | <b>1</b> | <b>11</b> | <b>14</b> | <b>2</b> | <b>10</b> | <b>9</b> | <b>0</b> | <b>16</b> | <b>13</b> | <b>1</b> | <b>65</b> | <b>57</b> | <b>5</b> |



## Agricultural FIs

### 農業金融機構

356. Agricultural FIs include ABT, credit departments of farmers' and fishermen's associations. The responsible persons of ABT (including directors, supervisors, and managerial officers) must meet the eligibility requirements of the person in charge of the bank and provide information to the supervisors for review and approval.

農業金融機構包括全國農業金庫、農會及漁會信用部。全國農業金庫的負責人（包括董事，監事和經理人員）必須符合銀行負責人的資格要求，並向監理機關提供資訊以供審查和批准。

357. COA has a review mechanism for the appropriateness of the persons in charge of ABT. COA undertakes daily supervision, which includes checks to determine whether the responsible persons in charge have violated relevant eligibility requirements. COA appoints and/or recommends the ABT's 15-person board of directors, of whom four are government representatives and five are independent directors. The remaining six directorships have been assumed by the secretaries-general of the farmers' or fishermen's associations after the competent authority's verification of their qualifications for appointment. Its chairman of the board is elected by the directors and further approved by EY. Besides, the selection of the general manager must also be reported to EY for approval.

農金局對全國農業金庫負責人的適格性有一個審查機制。農金局進行日常監理，包括檢查以確定負責人是否違反相關的資格要求。農金局任命和/或推薦全國農業金庫的 15 人董事會，其中 4 人是政府代表，5 人是獨立董事。其餘 6 名董事職位由監理機關核實其任命資格後，由農會或漁會的總幹事擔任。全國農業金庫董事長由董事選舉產生，並經行政院進一步批准。此外，總經理的選任也必須報告給行政院核准。

358. Farmers' and fishermen's associations' local contexts are considered by regulators when identifying and managing fit-and-proper risks. COA and local authorities take steps to review whether applicants have committed a specific crime, have been convicted or have been proved to engage in or be involved in other dishonest or improper activities at the time a farmers' association or fishermen's association applies for their establishment or there is a change of the credit department director. In practice, they are discharged if any violations are found. COA also has a power to reject any applications to establish a credit department due to improper management.

監理機關在辨識和管理適格性風險時，會考慮農會和漁會的當地情況。在農會或漁會申請成立或信用部負責人有變更時，農金局與當地政府會審查申請人是否曾犯特定犯罪、被判刑、被證實涉入或參與其他不誠信或不適當的行為。在實務上，如果發現任何違規行為，信用部負責人將被解除職務。農金局有權拒絕任何有管理不當的農漁會申請設立信用部。

359. In practice, COA conducts ongoing checks to verify the competency and capacity of farmer or fishermen's associations' secretary-generals or candidates aspiring to such a post. For example, a secretary-general of a fishermen's association was convicted by a criminal court in 2015, which prompted COA to order this association to dismiss him. Additionally COA may suspend directors, supervisors, and secretaries-general of the farmers' or fishermen's associations (including their credit departments), if they are proven to violate the law and articles of incorporation, or otherwise subject farmers' and fishermen's associations to harm. Despite controls in place to prevent criminals from holding or controlling agricultural FIs, improvements are needed in the area of fit and proper checks to ensure criminal's associates are unable to enter the market.

在實務上，農金局進行持續檢查，以核實農會或漁會的總幹事或有志於擔任此職位的候選人的資格和能力。例如，有漁會的總幹事在 2015 年被刑事法庭定罪，這促使農金局命令該農會解除他的職務。此外，農金局可以暫停農會或漁會（包括其信用部）的董事、監事和總幹事的職務，如

果他們被證明違反法律和設立章程，或者使農會和漁會受到損害。儘管已採取控制措施防止犯罪分子持有或控制農業金融機構，但在適格性檢查方面仍需要改進，以確保犯罪分子的關係人無法進入市場。

### Foreign Currency Exchange Counters

#### 外幣收兌處

360. Regulations came into force in August 2018 that require a police criminal record certificate with no conviction record in Chinese Taipei whenever a foreign exchange counter is established or changes its person-in-charge. Existing foreign currency exchange counters are exempt from re-registering. However, the obligations over changes to persons-in-charge will apply to any changes to current license holders. The Central Bank appointed BoT to undertake documentary review of application of establishment of foreign currency exchange counters.

依據 2018 年 8 月生效的法規，當外幣收兌處設立或變更負責人時，必須提出在中華臺北沒有犯罪紀錄的警方證明。現有的外幣收兌處可免於重新登記，但是負責人變更的義務將適用於現有持有執照者。中央銀行指定臺灣銀行對外幣收兌處的設立申請進行文件審查。

**Table 6.3 Applications to establish foreign currency counters**

**表 6.3 外幣收兌處申請設立統計**

| Year<br>年度 | Applications<br>申請 | Approvals<br>核准 | Rejection<br>拒絕 |
|------------|--------------------|-----------------|-----------------|
| 2013       | 34                 | 34              | 0               |
| 2014       | 30                 | 30              | 0               |
| 2015       | 45                 | 45              | 0               |
| 2016       | 21                 | 21              | 0               |
| 2017       | 37                 | 34              | 3               |

361. The Central Bank's revision of related regulations is welcomed as an improvement to help ensure that criminals and their associates are prevented from entering the market. There are gaps with in-depth review of owners including the beneficial owner of foreign exchange counters and its person-in-charge. The Central Bank and BoT should not only review certificate submitted by applicants but should also consider information from relevant authorities e.g. FIU and LEAs.

央行修訂相關法規是一項受歡迎的改進，它有助於確保犯罪分子及其關係人無法進入市場。對外幣收兌處所有人，包括實質受益人及其負責人的深度審查仍存在落差。中央銀行和臺灣銀行不僅應審查申請人提交的證書，還應考慮有關當局提供的資訊，例如：金融情報中心和執法機關。

### DNFBPs

#### 指定之非金融事業或人員

362. Jewellers are the only business without a licensing system. However, they are subject to the general negative qualifications under the Company Act. All other DNFBPs are subject to licensing, registration and other controls to prevent criminals being professionally accredited. However, the controls over DNFBPs regarding fit and proper are still limited and are not implemented on a risk-sensitive basis. Regulators do not pursue ongoing fit-and-proper review to ensure criminals and their associates are prevented from entering the market.

銀樓業是唯一無執照申請系統的產業，但是銀樓業仍受公司法之一般性消極資格限制。除銀樓業以外之 DNFBP，有相關發照、登記及其他形式之控制措施，以避免犯罪者成為專業人士。然而，DNFBP 對於適格性管制仍然有限，且未以風險為本方式執行。另主管機關並未持續進行適格性審查，以確保防止犯罪者及其關係人進入市場。

*Supervisors' understanding and identification of ML/TF risks**監理機關對 ML / TF 風險的理解和辨識*

363. FSC undertook its first sectoral risk assessment in 2015 to establish a baseline understanding of elements of ML risk. Supervisors demonstrate increased understanding of ML/TF risks since their participation in 2017/18 NRA. The NRA goes some way to identifying the sectoral vulnerabilities based on inherent factors; business characteristics, nature of products and services, nature of business relationship, geographical reach, and nature of delivery channels.

金管會於 2015 年進行了第一次部門風險評估，以建立對洗錢風險要素的基本瞭解。自 2017/18 年參與 NRA 以來，監理機關表現出對洗錢 / 資恐風險的更多瞭解。NRA 在某種程度上根據下列固有因素辨識部門弱點：產業特性、產品和服務的性質、業務關係、地理範圍和通路的性質。

364. While FSC, as long-standing FIs supervisors, has the most robust mechanism to understand the risk of their supervised sectors as a whole as well as an understanding of relative risks between different sectors of individual institutions, other supervisors still have further steps to take to deepen their understanding of ML/TF risks of their supervised sectors.

雖然金管會作為長期的金融機構監理機關，擁有最強大的機制來了解整個受監理部門的風險，以及對各個機構不同部門之間相對風險的理解，但其他監理機關仍需進一步加深對他們受監理部門洗錢 / 資恐風險的理解。

*Banks, securities and insurance**銀行、證券及保險業*

365. FSC takes various steps to maintain its understanding of ML/TF risks in support of their supervision. Before development of NRA in 2017-2018, the first financial Sector Risk Assessment (SRA) was conducted by FSC in 2015, with inputs from the private sector and AMLD. FSC categorizes the ML/TF risk of each sector, looking at the threat of ML/TF to each sector before coming up with a scoring (low/medium/high) for inherent risk, based on a number of factors such as size, volume, cash intensity, frequency of international transactions, of non-resident customers, of higher risk customers and the number of STRs reported. An assessment of a set of control factors (such as market entry, AML/CFT regulations, guidelines and enforcement mechanism in place) then results in a further rating, which is combined to produce an overall risk score for the sub-sector. SRA covered all of FSC-regulated FIs at that time (Chunghwa Post was included amongst domestic banks in the SRA).

金管會採取各種措施來保持對洗錢/資恐風險的理解，以支持其監理行動。在 2017-2018 年發展 NRA 之前，金管會於 2015 年進行第一次金融部門風險評估 (SRA)，其中包括私部門和洗錢防制處的投入。金管會對每個部門的洗錢/資恐風險進行分類，根據規模大小、交易金額、現金密集度、國際交易頻率、非居民客戶、高風險客戶和可疑交易報告數量等多種因素，分析洗錢/資恐對每個部門的威脅，並得出固有風險等級 (低/中/高)。接續評估一系列控制因素 (例如市場進入，防制洗錢/打擊資恐法規、指引和執法機制受否存在等) 後得出另一評等，該評等被併入組合後產生子部門的總體風險評分。當時部門風險評估涵蓋所有金管會監理的金融機構 (中華郵政被納入部門風險評估的本國銀行部門)。

366. FSC participated in 2018 NRA process and most NRA findings are in line with 2015 SRA, i.e. domestic banks and OBUs are rated higher risk sectors. FSC plans to update the SRA to take into account the findings of 2018 NRA.

金管會參與 2018 年的 NRA 程序，且大多數 NRA 的結果與 2015 年部門風險評估一致，即本國銀行和國際金融業務分行是風險較高的部門。金管會計劃納入 2018 年 NRA 的結果以更新部門風險評估。

367. FSC has a reasonable understanding of the nature of products, customers, delivery channels and geographical spread of their supervised sectors. Though there was some effort by FSC to address higher risks area, for example, requiring OBUs to re-do CDD of their customers, further works are needed especially threats analysis conducted together with FIU and LEAs to increase understanding of how each FI was used for ML or TF. There is a need for continuing work to consider FIs' risk exposure across the full range of priority threats identified in the NRA, for example a more detailed understanding to risks of proceeds from domestic and foreign corruption risks. There are also concerns that the dynamics of risk faced by the OBU sector is not sufficiently well assessed in either the SRA or the NRA and could usefully be a focus of further updating risk assessments.

金管會對受其監管部門的產品、客戶、交付通路和地理範圍的性質有合理的理解。雖然金管會為解決高風險領域做了一些努力，例如要求國際金融業務分行重新執行客戶的盡職調查，但還需要進一步的工作，特別是與金融情報中心和執法機關共同進行威脅分析，以增加對每個金融機構如何被利用於洗錢或資恐的理解。針對 NRA 辨識出各種必須優先處理的威脅，需要繼續展開工作以瞭解金融機構面臨的風險，例如針對國內外貪污所得的風險須有更詳細的瞭解。另在部門風險評估或 NRA 中，國際金融業務分行部門面臨的風險動態並未得到充分評估，可於進一步更新風險評估時加以關注。

### Agricultural FIs

#### 農業金融機構

368. Apart from participating in the NRA, BOAF has yet to complete risk assessments of individual credit departments of the farmers' and fishermen's associations. BOAF has taken steps to increase its understanding of controls in the sector through an offsite questionnaire surveying 311 credit departments. BOAF has instructed all credit departments to complete an ERA and the BOAF plans to conduct a comprehensive risk assessment on all agricultural FIs once the ERAs are complete.

除參與 NRA 外，農金局尚未完成個別農會和漁會信用部的風險評估。通過對 311 個信用部進行場外問卷的調查，農金局已採取措施增加對該部門控制機制的理解。農金局已指示所有信用部完成 ERA，並計劃在 ERA 完成後對所有農業金融機構進行全面的風險評估。

369. BOAF should continue to enhance its understanding of ML/TF risks and work closely with FSC, FIU and LEAs to improve inputs, with the objective of conducting deeper analyses of ML/TF risks. Additionally, FSC should consider sharing knowledge and expertise on supervision, reviews, and ERAs.

農金局應繼續加強對洗錢/資恐風險的理解，並與金管會、金融情報中心和執法機關密切合作以改進投入，對洗錢/資恐風險進行更深入的分析。此外，金管會應考慮分享有關監管、審查及 ERA 的知識和專業。

### Foreign exchange counters

#### 外幣收兌處

370. The Central Bank assesses institutional level risk based on identified characteristics of each counter. These include higher volume of transactions, a counter's physical location, and the nature of the business which a counter is attached to (including high-value goods such as jewellery). The Central Bank has used this to identify higher risk counters as a focus of supervision.

中央銀行根據所辨識出的各個收兌處特性以評估機構層面的風險。這些特性包括更高的交易量、收兌處的實際位置，以及收兌處原屬業務的性質（包括高價值商品例如珠寶等）。中央銀行利用這一點辨識高風險收兌處以確定監管重點。

371. There Central Bank takes relatively limited steps to obtain additional risk information to allow it to maintain an up to date understanding of risk and periodically review risk assessments.



Risk information from the FIU, LEAs other supervisors of primary businesses, especially jewellers, is needed to maintain a more comprehensive view of ML/TF risk that each counter may pose.

中央銀行採取相對有限的步驟獲得額外的風險資訊，以使其能夠保持對風險的最新理解，並定期審查風險評估結果。需要取得來自金融情報中心、執法機關及其他主要業務監管機關特別是銀樓業的風險資訊，以便更全面地了解每個收兌處可能產生的洗錢/資恐風險。

#### DNFBPs

指定之非金融事業及人員

372. In addition to the NRA's results, some regulators have used questionnaires to covered sectors to further develop the regulator's understanding of the sectors they supervise. However, developing in-depth analysis of sectoral risk remains a work in progress.

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除國家風險評估結果以外，部分監管機關以問卷方式進一步瞭解所監管之產業。然而，深入的產業風險分析仍在進行當中。

#### *Risk-based supervision of compliance with AML/CFT requirements*

以風險為本之監理如何遵循防制洗錢/打擊資恐之要求

373. FSC has moved to a risk-based approach to supervision, with some initial steps since late 2015. Its internalisation of risk-based approaches has improved. The measures used by the FSC to understand and assess ML/TF risks of respective sectors and entities reflects a reasonable understanding of some of the threats and vulnerabilities. However there is a need for deeper consideration of a range of key threats and vulnerabilities. While the FSC supervisor has developed risk analysis tools to assess inherent risks of each sector (NRA and SRA findings and consideration of ERA), however the FSC has not sufficiently drawn on LEA and FIU information. The team welcomes the cooperation between FSC and AMLD but highlights a need for more structured regular interaction between FSC and AMLD to jointly consider AML/CFT supervisory choices (e.g. emerging risk areas, thematic supervision to enhance quality of STR filing, etc.). Overall ML/TF risk increasingly serves as a key input in determining the focus and intensity of supervision, although this is taking time to mature.

自 2015 年底以來，金管會已採取一些初步措施朝向以風險為本的監理方法。以風險為本方法的內化已得到改善。金管會用於理解和評估各部門和實體 ML/TF 風險的措施，已反映金管會對某些威脅和弱點具有合理的理解。但是，需要更深入地考慮一系列關鍵的威脅和弱點。雖然金管會監理人員已開發風險分析工具來評估每個部門的固有風險（NRA 和 SRA 結果以及 ERA 的考慮），但金管會還沒有充分利用執法機關和金融情報中心的資訊。評鑑團歡迎金管會和洗錢防制處之間的合作，但強調金管會和洗錢防制處之間需要更有組織化的定期互動，以共同考慮 AML/CFT 監理選擇（例如新興風險領域、專案監理以提高可疑交易報告品質等）。總體而言，ML/TF 風險越來越成為決定監理重點和強度的關鍵因素，儘管這需要時間才能臻於成熟。

#### Banks, securities and insurance

銀行、證券及保險業

374. FSC has covered AML/CFT examination by conducting full-scope (prudential with element of AML/CFT) supervision, AML/CFT targeted examination (all AML/CFT measures), and thematic AML/CFT examination.

金管會對 AML/CFT 進行檢查，包括一般監理（審慎監理內含 AML/CFT 要素），AML/CFT 目標性檢查（所有 AML/CFT 措施）以及 AML/CFT 專案檢查。

375. FEB is only bureau responsible for on-site examination of all FSC-regulated FIs. As of November 2018, there were 217 onsite examiners, with 45 AML/CFT specialists. FEB use a

supervision manual to conduct AML/CFT targeted (thematic) or full scope on-site examination which covered every aspect of AML/CFT requirements. Time spent onsite, number of staff in the team, scope and sample size are based on individual FI's residual risk.

檢查局是唯一負責對所有金管會監理之金融機構進行現地檢查的機關。截至 2018 年 11 月，共有 217 名現地檢查人員，其中有 45 名 AML/CFT 專家。檢查局使用監理手冊進行 AML/CFT 目標（專案）或一般現地檢查，涵蓋 AML/CFT 要求的各個方面。現地檢查花費的時間、團隊成員數量、檢查範圍和樣本規模均依據個別金融機構的剩餘風險來決定。

376. FSC has used findings of the SRA to determine priority and frequency of onsite examination plans for FIs under FSC's supervision. The SRA also contributed to determining the number of AML/CFT targeted examinations. From 2015 to Q3 2018, the banks are subject to FSC examination on AML/CFT at 69%, while ratio for securities and insurance sectors are lower, 22% and 9% respectively. The SRA itself did not provide detailed risk information about threats, but focused on a sub-set of vulnerabilities, so a number of the determinations may be lacking.

金管會利用部門風險評估的結果決定對金管會監理下的金融機構制定現地檢查計劃的優先順序和頻率。此外，部門風險評估還有助於確定 AML/CFT 目標檢查的數量。從 2015 年到 2018 年第三季，銀行接受金管會防制洗錢/打擊資恐檢查的比率為 69%，而證券和保險部門的比率較低，分別為 22% 和 9%。部門風險評估本身並未提供有關威脅的詳細風險資訊，而是側重於部分弱點，因此可能缺乏一些判斷因素。

377. FSC takes a structured approach to identify ML/TF risks in individual institutions which comprise of 4 levels—very high, high, medium and low. These levels are based on FI's inherent risk level and level of satisfactory of control measures. The frequency of re-assessment is based on the individual FI's residual risk rating. FSC's approach is to use individual FI's residual risk is used to determining the frequency and sample size needed for each institute's on-site examination. The approach is used for every FSC-regulated sector.

金管會採用結構化方法辨識個別機構的 ML/TF 風險，包括 4 個等級-非常高，高，中和低。這些評等係基於金融機構的固有風險水準和控制措施是否令人滿意的等級。重新評估的頻率取決於個別金融機構的剩餘風險評等。金管會的方法是使用個別金融機構的剩餘風險來決定每個機構現地檢查所需的頻率和樣本規模。該方法適用於每個金管會監理的產業。

**Table 6.4: Risk-based AML/CFT Examination in depth and frequency (FSC)**

**表 6.4: 以風險為本防制洗錢/打擊資恐檢查之深度與頻率 (金管會)**

| Individual FI's residual risk<br>個別金融機構剩餘風險 | Reviewed Samples Needed<br>所需抽查樣本   | Frequency of Targeted Exam<br>專案檢查頻率   |
|---|---|--|
| <b>High</b><br>高                            | +30% of benchmark<br>較基準值提高 30%   | At least Biennially<br>至少 2 年一次  |
| <b>Medium</b><br>中                          | Benchmark (e.g. new opening accounts needed to be reviewed)<br>依基準值(例如應審查之新開帳戶) | At least Triennial (priority for FI with inferior compliance rating)<br>至少 3 年一次(優先針對法遵評等較差金融機構) |
| <b>Low</b><br>低                             | -10% of benchmark<br>較基準值降低 10%   | N/A<br>不適用   |

378. While in practice FSC did not strictly follow the timing set out in the banking sector risk matrix conducted in 2017, there are reasonable measures in place to target examinations. FSC

examined all four banks rated with a 'high' level of risks in 2018. Four other banks rated with 'medium' risks, including those identified as having inferior internal controls relative to their peers, were selected for inspection in 2018. FSC indicated that all four banks that were determined to have 'high' level of risks have been examined in 2018.

雖然實際上金管會並未嚴格遵循 2017 年銀行業風險矩陣中規定的時程安排，但已採取合理措施來確定檢查目標。金管會對 2018 年評等為“高”風險的四家銀行進行了檢查。其他四家被評為“中”風險的銀行，其中包括內部控制相對同業較差者已於 2018 年檢查。金管會表示，所有“高”風險的 4 家銀行均已於 2018 年進行檢查。

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379. Concerns remain that the pre-set samples size and frequency of bank supervision may not wholly reflect a risk-based approach. FSC has taken some steps to adjust the frequency and intensity of supervision based on both sectoral and institutional level of ML/TF risks. There is a remaining need for sectors such as domestic bank and OBUs which pose higher risk, to be subjected to more frequent and intense off-site/on-site visit tailored to the risks. Also, with more input regarding threats analysis FSC may focus more on area of products, services, locations, type of customers that pose higher risk. This may be included in thematic examinations underpinned by more detailed AMLD and LEA data.

然而評鑑團仍關注，預先設定的樣本規模和銀行監理頻率可能並不完全反映以風險為本的方法。金管會已採取一些措施，根據部門和機構的 ML/TF 風險水準，調整監理的頻率和強度。對於風險較高的部門如本國銀行和國際金融業務分行等部門，仍然需要根據風險進行更頻繁和更高強度的場外/現地檢查。此外，隨著更多有關威脅的分析投入，金管會可能要更關注較高風險的產品、服務、地理位置和客戶類型等領域。這可能包含在有更詳細的洗錢防制處和執法機關資料支持的主題式檢查中。

380. FSC pursues a reasonable number of AML/CFT onsite examinations, with a balance between prudential plus AML/CFT and AML/CFT only assessments. The tables below illustrate that since 2015, on average 23% of all such supervision is AML/CFT-only (full scope or thematic). It is notable that higher proportions of full-scope AML/CFT visits are focused on higher risk areas (esp. OBUs).

金管會追求合理次數的 AML / CFT 現地檢查，以在審慎附加的 AML / CFT 和單純 AML / CFT 評估之間取得平衡。下表顯示自 2015 年，平均有 23% 的監理是僅針對 AML / CFT（一般或主題），但值得注意的是，有更高比例的一般 AML / CFT 檢查集中在較高風險領域（特別是國際金融業務分行）。

381. The quality of FSC's supervision appears to be relatively high and the agency demonstrates that it has staff who are skilled and experienced in AML/CFT supervision. As of November 2018, 10.4% of FSC's manpower (91 people) was mainly focusing on AML/CFT. FSC may need to apply additional resources, mainly to higher risk scenarios.

金管會監理的品質相對較高，該機關證明，在 AML/CFT 監理方面擁有熟練和有經驗的員工。截至 2018 年 11 月，金管會中 10.4% 的人力資源（91 人）主要專注於防制洗錢/打擊資恐。金管會可能需要應用額外資源，主要是針對更高風險的情況。

382. Onsite supervision by FSC adopts well considered methodologies supported by comprehensive manuals. FSC examiners evaluate the adequacy and effectiveness of AML/CFT/CFP controls based on the bank's own business characteristics and its risk profile. Examiners consider documentation, interviews, sample testing, etc.

金管會的現地監理採用了嚴謹的方法論，並有完整詳盡的手冊。金管會檢查員根據銀行各自的業務特徵及其風險概況，評估 AML / CFT / CFP 控制措施的充分性和有效性。檢查員會參考文件、訪談、抽樣測試等。

**Table 6.5: FSC's onsite examinations- All types**

(Including prudential examinations with AML/CFT elements and full scope AML/CFT examinations)

表 6.5: 金管會的現地檢查 - 所有類型  
(包括涵蓋 AML/CFT 項目的審慎檢查以及全面的 AML/CFT 檢查)

| AML/CFT onsite examinations by the FSC<br>金管會 AML/CFT 現地檢查   | 2014       | 2015       | 2016       | 2017       | 2018       | Totals       |
|--|------------|------------|------------|------------|------------|--------------|
| <b>On-site examinations on banking, securities and insurance sectors (prudential incl. AML)</b><br>對銀行、證券、保險業的現地檢查(包含 AML 的審慎檢查) |            |            |            |            |            |              |
| <b>Banking sectors 銀行業</b>   |            |            |            |            |            |              |
| Domestic banks (including OBU) (37 FIs)<br>本國銀行(含國際金融業務分行)(37 家)   | 56         | 53         | 58         | 71         | 75         | 313          |
| OBU 國際金融業務分行   | 33         | 29         | 42         | 50         | 28         | 182          |
| Foreign bank branches in Chinese Taipei (29 FIs)<br>外國銀行在臺分行(29 家)   | 15         | 10         | 12         | 14         | 18         | 69           |
| Postal Office(1 FI)郵政機構(1 家)   | 1          | 10         | 1          | 6          | 7          | 25           |
| Credit cooperative associations (23 FIs)信用合作社(23 家)  | 13         | 16         | 30         | 20         | 19         | 98           |
| Bills finance companies (8 FIs)票券金融公司(8 家)   | 7          | 4          | 4          | 6          | 5          | 26           |
| Credit card companies (5 FIs)信用卡公司(5 家)  | 3          | 1          | 2          | 2          | 3          | 11           |
| Electronic payment institutions (5 FIs)電子支付機構(5 家)   | 0          | 0          | 0          | 2          | 1          | 3            |
| Electronic stored value card issuers (4 FIs)電子票證機構(4 家)  | 1          | 0          | 1          | 2          | 2          | 6            |
| Subtotal 小計  | 129        | 123        | 150        | 173        | 158        | 733          |
| <b>Securities sectors 證券業</b>  |            |            |            |            |            |              |
| Securities firms (including OSUs)證券商(含國際證券業務分公司)   | 11         | 30         | 13         | 23         | 17         | 109          |
| Securities investment trust enterprises (39 FIs)<br>證券投資信託公司(39 家)   | 16         | 24         | 17         | 26         | 19         | 116          |
| Securities finance (2 FIs)證券金融事業(2 家)  | 2          | 0          | 2          | 1          | 1          | 6            |
| Centralized securities depository (1 FI)<br>證券集中保管事業(1 家)  | 0          | 0          | 0          | 0          | 1          | 1            |
| Subtotal 小計  | 29         | 54         | 32         | 50         | 38         | 232          |
| <b>Insurance sectors 保險業</b>   |            |            |            |            |            |              |
| Life insurance (including OIUs, 23 FIs)<br>壽險公司(含國際保險業務分公司, 23 家)  | 17         | 12         | 13         | 15         | 17         | 88           |
| Non-life insurance (incl. reinsurance-22 FIs)<br>產險公司(含再保險, 22 家)  | 7          | 10         | 10         | 11         | 7          | 58           |
| Insurance brokers (approx. 470 FIs)保經公司(約 470 家)   | 0          | 1          | 0          | 2          | 4          | 7            |
| Insurance agents (approx. 305 FIs)保代公司(約 305 家)  | 0          | 0          | 0          | 0          | 2          | 2            |
| Subtotal 小計  | 24         | 23         | 23         | 28         | 30         | 155          |
| <b>Annual total 各年度合計</b>  | <b>182</b> | <b>200</b> | <b>205</b> | <b>251</b> | <b>226</b> | <b>1,064</b> |
| <b>Commissioned examinations performed by the FSC 金管會受託檢查</b>  |            |            |            |            |            |              |
| Credit departments of farmers' associations (288 FIs)<br>農會信用部(288 家)  | 100        | 93         | 91         | 116        | 81         | 481          |
| Credit departments of fishermen's associations (28 FIs)<br>漁會信用部(28 家)   | 10         | 13         | 14         | 12         | 12         | 61           |
| ABT (1 institution)全國農業金庫(1 家)   | 1          | 0          | 1          | 0          | 2          | 4            |
| <b>Total examinations 受託檢查合計</b>   | <b>111</b> | <b>106</b> | <b>106</b> | <b>128</b> | <b>95</b>  | <b>546</b>   |



Table 6.6: FSC's onsite examinations- AML/CFT only (including thematic)

表 6.6: 金管會現地檢查-AML/CFT 專案(含主題式檢查)

| AML/CFT onsite examinations by the FSC<br>金管會 AML/CFT 現地檢查                       | 2015      | 2016      | 2017       | 2018      | Total      |
|--|-----------|-----------|------------|-----------|------------|
| Domestic banks (38) 本國銀行(38 家)   | 8         | 17        | 30         | 27        | 82         |
| OBUs (61units) 國際金融業務分行(61 家)  | 8         | 24        | 26         | 8         | 66         |
| Foreign bank branches in Chinese Taipei (29 institutions)<br>外國銀行在臺分行(29 家)      | -         | 3         | -          | 7         | 10         |
| Postal saving and remittance service provider (1 institution)<br>辦理儲金匯兌之郵政機構(1家) | 10        | -         | 6          | 6         | 22         |
| Credit cooperative associations (23 institutions) 信用合作社<br>(23 家)                | 6         | 18        | 7          | 8         | 39         |
| Bills finance companies (8 institutions) 票券金融公司(8家)                              | -         | -         | 2          | 2         | 4          |
| Electronic payment institutions (5) 電子支付機構(5 家)                                  | -         | -         | 2          | -         | 2          |
| Electronic stored value card issuers (4) 電子票證機構(4 家)                             | -         | -         | 2          | -         | 2          |
| Securities firms (including OSUs) 證券商(含國際證券業務分<br>公司)                            | 18        | -         | 10         | 7         | 35         |
| Securities investment trust enterprises (39) 證券投資信託<br>公司(39家)                   | -         | -         | 5          | 6         | 11         |
| Securities finance (2 institutions) 證券金融事業(2家)                                   | -         | -         | 1          | -         | 1          |
| Securities investment consulting enterprise 證券投資顧問事<br>業                         | -         | -         | 4          | 2         | 6          |
| Future commission merchants 期貨商  | -         | -         | -          | 3         | 3          |
| Life insurance (including OIUs, 28 institutions) 壽險公司(含<br>國際保險業務分公司, 28家)       | 1         | -         | 5          | 5         | 11         |
| Non-life insurance (incl. reinsurance-22) 產險公司(含再保<br>險, 22家)                    | 1         | -         | 2          | -         | 3          |
| Insurance brokers (331 institutions) 保經公司(331家)                                  | 1         | -         | 2          | 4         | 7          |
| Insurance agents (294institutions) 保代公司(294家)                                    | -         | -         | -          | 2         | 2          |
| <b>Annual totals 各年度合計</b>   | <b>53</b> | <b>62</b> | <b>104</b> | <b>87</b> | <b>306</b> |

383. Full scope supervision considers elements of assessing risks and related responses; CDD and EDD routines; ongoing monitoring and STR filing; TFS implementation (TF/PF); policies and procedures; and organisation and personnel. Focus areas include correspondent banking controls (policies/procedure and their implementation, 3rd party payments, foreign branches and subsidiaries, etc.).

一般檢查的監理考慮評估風險和相關因應的要素; 客戶審查和強化審查的例行性實務; 持續監控和可疑交易申報; 執行目標性金融制裁 (TF / PF); 政策與程序; 以及組織和人員。重點領域包括通匯銀行的控制措施 (政策/程序及其執行、第三方支付、外國分支機構和子公司等)。

384. FSC has begun to conduct thematic targeted supervision of banks, with some undertaken in response to trigger events, and some arising from findings of risk assessments. In 2015 FSC conducted targeted thematic examination of 8 domestic banks on their deposit account opening and related AML measures in response to FSC/FIU consideration of risks from the proceeds of telecom frauds. In 2016 and 2017 FSC conducted a number of rounds of targeted thematic supervision of OBUs implementation of CDD on beneficial ownership and control of customers. In the same years FSC did thematic targeted supervision on AML controls of foreign branches of domestic banks. In 2018 FSC conducted thematic supervision of TFS implementation on 15 domestic banks.

金管會已開始對銀行進行主題式專案監理, 其中一些針對觸發事件進行, 另一些針對風險評估結果。在 2015 年, 為回應金管會和金融情報中心對電信詐欺收益風險的考量, 金管會針對 8 家國

內銀行之存款帳戶開戶和相關防制洗錢措施進行了專案主題性的檢查。2016 年和 2017 年，對於國際金融業務分行針對客戶的實質受益權和控制權執行客戶盡職調查方面，金管會進行了多次針對性專案檢查。同年，金管會對國內銀行之國外分支機構的防制洗錢管控進行了主題式專案檢查。2018 年，金管會對 15 家國內銀行目標性金融制裁之執行，辦理主題式監理。

385. Off-site monitoring is conducted by each of the FSC bureaus and is well implemented. Offsite reviews consider whether policies, procedures and action plans of risk management formulated by FIs are reasonably commensurate with the outcomes of their enterprise-wide risk assessments. In addition, the FSC also evaluates if FIs have appropriate personnel and budgets to implement relevant controls, including their audit. In respect of reviewing methods, the FSC mainly requires FIs to submit relevant reports and conducts individual interviews of each entity in order to understand the FIs' AML/CFT mechanisms in place and the implementation thereof.

金管會各局都有進行場外監控，並且實施良好。場外審查考量金融機構所制定的風險管理政策、程序和行動計畫，是否與其企業整體的風險評估結果一致。此外，金管會還評估金融機構是否有適當的人員和預算來實施相關控制，包括稽核。在審查方法方面，金管會主要要求金融機構提交相關報告，並對每個實體進行單獨訪談，以了解金融機構的現行防制洗錢/打擊資恐機制及其實施情形。

386. FSC has requirements for external auditing by an independent third party. In 2016, the FSC identified 12 banks of high risks, based on the size of total assets and OBU assets as well as onsite examination findings, and required them to have external auditing on the effectiveness of their enterprise-wide AML/CFT risk assessments and AML/CFT programs. For securities firms, in 2017 the FSC required an independent third party to examine the effectiveness of their enterprise-wide AML/CFT risk assessments and AML/CFT programs.

金管會要求獨立第三方進行外部查核。2016 年，金管會根據總資產和國際金融業務分行資產的規模以及現地檢查結果確定了 12 家高風險銀行，並要求他們對其企業整體的 AML/CFT 風險評估及計畫的有效性進行外部查核。對於證券公司，2017 年金管會要求獨立的第三方檢查其企業整體的 AML/CFT 風險評估和 AML/CFT 計畫的有效性。

387. In 2018, the FSC required third parties to examine securities firms and increase the scope and intensity of external audit on banking sector and insurance sector. This included requiring all domestic banks, credit cooperatives, bill finance companies, life insurance companies and 2 non-life insurance companies to commission public certified accountants to conduct an examination on AML/CFT with assurance.

2018 年，金管會要求第三方查核證券公司，並增加銀行業和保險業外部查核的範圍和強度。這包括要求所有國內銀行、信用合作社、票券金融公司、人壽保險公司和 2 家非壽險公司委託會計師對 AML/CFT 辦理查核。

388. For insurance companies, the FSC selected 11 life insurance companies based on the same mechanisms outlined above and subjected them to examination similar to the examination of banks and securities firms (i.e. AML/CFT elements undertaken as part of onsite prudential supervision).

對於保險公司，金管會根據上述相同機制選擇了 11 家人壽保險公司，並對其進行類似於銀行和證券公司的審查（即作為現地審慎監理的一部分進行的 AML/CFT 要素）。

389. Moreover, although banking sector is under supervision of FSC, the Central Bank also conducts examination on wire transfer transactions which decision made on volume of transactions and is wholly rules based. Thus, in this area, the supervision reflects a mix of a risk-sensitive and some rules-based measures.

此外，雖然銀行部門受到金管會的監理，但中央銀行還對電匯交易進行審查，該交易涉及交易量的決定，且完全以法規為本。因此，在這一領域，監理反映了風險敏感和一些以法規為本措施的混合。

### Agricultural FIs

#### 農業金融機構

390. BOAF, has appointed the FSC FEB to conduct onsite examinations of agricultural FIs for both prudential and AML/CFT controls. FEB (FSC) conduct on-site AML/CFT supervision by following BOAF's risk analysis, rather than FSC's own risk assessment. Following FEB on-site examinations, the BOAF or local competent authorities are responsible for taking follow-up actions and help agricultural FIs to improve their AML/CFT compliance.

農金局已委託金管會檢查局對農業金融機構進行現地檢查和防制洗錢/打擊資恐管控。金管會檢查局係依循農金局的風險分析而不是金管會本身的風險評估來進行現地 AML/CFT 檢查。在檢查局現地檢查之後，農金局或地方主管機關負責採取後續行動並幫助農業金融機構改善其防制洗錢與打擊資恐遵循情形。

### Foreign currency exchange counters

#### 外幣收兌處

391. The Central Bank identifies ML/TF risks of individual foreign currency exchange counters through the institutional risk assessments to guide its risk based supervision. It also considers findings from earlier supervision as well as the risk factors (geographical region, industry, exchange volume and deficiencies identified in previous inspections) in determining the frequency and scope of inspections for AML/CFT. Exchange volumes and previous inspection findings are given the greatest weight. Applying this methodology, the Central Bank identified 10% (45) of all the counters as high risk, with 35% (152) as medium risk.

中央銀行通過機構風險評估確定個別外幣收兌處的 ML/TF 風險，以指引其以風險為本之監理。它還在確定防制洗錢/打擊資恐檢查的頻率和範圍時，考慮了早期監理的結果以及風險因素（先前檢查中辨識出的地理區域、行業、交易量和弱點）。交易量和以前的檢查結果是最重要的。採用這種方法，中央銀行將所有收兌處的 10%（45）確定為高風險，35%（152）為中等風險。

392. The Central Bank completed operational inspections of each of the 45 high-risk counters between September 2016 and August 2018. In addition, the Central Bank also has an immediate check-up mechanism whereby operational inspection will immediately follow any filing of an STR by a the foreign currency exchange counter.

2016 年 9 月至 2018 年 8 月，中央銀行對 45 個高風險收兌處中進行了業務檢查。此外，中央銀行也有立即檢查機制，在外幣收兌處申報可疑交易報告後，將立即對該外幣收兌處進行業務檢查。

393. On-site inspection of foreign exchange counters focuses on adherence with the Foreign Currency Exchange Counter Regulations, which includes the covered requirements of AML/CFT. The Central Bank has taken follow-up actions including official request to improvements or written counselling and follow-up on deficiencies by BoT.

中央銀行對外幣收兌處進行現地檢查的重點是“外幣收兌處設立和管理辦法”的遵循，這個辦法涵蓋防制洗錢/打擊資恐的要求。中央銀行已採取後續行動，包括正式要求改進或書面諮詢以及對臺灣銀行發現缺失的後續追蹤。

## DNFBPs

## 指定之非金融事業及人員

394. MLCA amendments in 2016-2017 clarified AML/CFT supervisory powers for DNFBPs regulators. Since that time, DNFBP supervisors have taken some steps to monitor AML/CFT compliance within their supervised sectors.

洗錢防制法在 2016~2017 的修正，明訂 DNFBP 主管機關防制洗錢/打擊資恐的監理權力。自此以後，DNFBPs 主管機關就其主管產業開始進行監管行動。

395. In mid-2017, the jewellery retailer supervisor has distributed questionnaires in advocacy activities to learn if the daily businesses and transactions in jewellery business complied with the laws, and to further identify and analyse customer types as well as the existence of large-amount currency transactions and cash payments. The on-site inspections on large-scale jewellers also conducted in 2017. It was found that 3 of them failed to report currency transactions above NT\$500,000 to the MJIB and failed to comply with the regulations regarding CTR and 4 of them have yet to receive trainings in AML and CFT. However, supervisor decided not to punish those who failed to comply with AML/CFT obligations but provided assistances punishments as the one-year assistance period had not expired at the time of the inspections.

銀樓業主管機關在 2017 年度中針對業者發放問卷，瞭解業者在日常業務及交易上，是否遵守相關法令規定，並深入確認及分析顧客樣態、大額現金交易及現金付款之業務狀況。對於大型業者進行之現地檢查亦在 2017 年度進行。主管機關發現 3 家業者未依規定向調查局申報 50 萬元以上之大額通貨交易，4 家業者未接受相關防制洗錢/打擊資恐之訓練。然而，因為 1 年輔導期未滿，主管機關決定不對違反規定之業者進行處罰。

396. Inspections of CPAs in the 12 months since coming under the AML/CFT regime, have focussed on AML internal control systems. FSC has adopted some risk-based inspection method, targeting the inspections on firms with higher risks according to factors like the scale of the firm, number of attestation cases, and types of clients as well as considering the deficiencies found in routine supervision. FSC also signed a collaborative inspection agreement with the Public Company Accounting Oversight Board (PCAOB) of the U.S. and has conducted numerous joint inspections. In 2018, 24 CPA firms were subject to off-site inspection include the 'big four' firms and 14 medium firms which were of higher inherent risks to be included in the inspections; 6 small firms were also included in combining higher inherent risks and noncompliance risks and considering related supervision information. The off-site inspection focus on understanding business and AML/CFT implementation. FSC plans to perform on-site inspections on 8 firms (from large to small firms) from July to December of 2018.

自會計師納入防制洗錢/打擊資恐監管範圍後 1 年內，相關檢查著重於洗錢防制內部控制系統。金管會採取以風險為本之方法，考慮事務所規模、認證案件數量、客戶種類以及一般性檢查之缺失等面向，以高風險業者為主要查核對象。金管會亦與美國 PCAOB 簽訂聯合檢查協定，並執行許多聯合檢查。2018 年，針對 24 家固有風險較高事務所，包含 4 大會計師事務所及 14 家中型事務所，進行場外檢查；就固有風險、未遵循風險較高及考慮其他相關監理資訊，對 6 家小型事務所進行檢查。場外檢查側重瞭解業務及防制洗錢/打擊資恐執行情況。金管會已於 2018 年 7 至 12 月對 8 家業者(從大規模到小規模皆有)進行現地檢查。

397. Lawyers, unlike other DNFBPs, are subject to long-established self-regulation. MOJ plans to conduct a form of on-site supervision with 20 selected law firms beginning in July 2018. This will be done in conjunction with the Bar Association. MOJ is working through a number of logistical issues with the sector, given sensitivities with the new obligations. The standard for selection of firms for on-site supervision are (1) off-site supervision results, those which are thought to have information



disparity, or which have higher non-compliance risk index; (2) law firms with special business form (i.e., non-partnership alliance of independent lawyers); (3) random samples.

與其他 DNFBP 業者不同，律師長久以來就是高度自律的單位。自 2018 年 7 月起，法務部即規劃結合律師公會選定 20 家業者進行現地檢查。鑑於新法實施的敏感性，法務部持續與業界就邏輯性議題加以溝通。所選現地檢查業者標準為(1)依據場外檢查結果，認定有資訊落差或較高不遵循之風險業者(2)特別營業型態的事務所(如個別律師採非合夥形式之合作)(3)隨機抽樣。

398. According to the 2018 NRA's sectoral vulnerability analysis, real estate brokerages have high levels of vulnerabilities while land administration agents have medium levels of vulnerabilities. DLA considered the availability of existing resources and selected the real estate brokerage sector with higher risks as the target for "offsite supervision" in this round and issued official letters to 40 real estate brokerages (those with the most branches) on April 10, 2018 to request them to fill out offsite supervision questionnaires, which were divided into "ML/TF risks" and "non-compliance risks". DLA conducted on-site inspections in August and September 2018 on 17 real estate brokerages following further review of the returned offsite questionnaires. In October 2018 DLA delivered on-site inspection results and recommended action reports to local governments, associations of land administration agents, real estate agents, and the inspected businesses. These reports urged the businesses to make improvement and strengthen awareness to avoid repeating the same mistakes.

依據 2018 年國家風險評估有關產業弱點的分析，不動產經紀業存在高度弱點，地政士為中度弱點。內政部地政司考量現有資源，選擇較高風險業者進行場外監理，於 2018 年 4 月 10 日發文要求 40 家有最多分支機構之業者填寫場外監理問卷，包括洗錢/資恐風險及未遵循風險。在完成回收問卷的審查後，內政部地政司在 2018 年 8 月和 9 月對 17 家房地產經紀人進行了現地檢查。內政部地政司於 2018 年 10 月向地方政府、地政士公會，不動產經紀人和被檢查企業提供了現地檢查結果和建議行動報告，敦促企業改進並加強意識，避免重複同樣的錯誤。

399. Overall, the AML/CFT supervision on DNFBP sector is ongoing as they recently include in the regime. There are improvements needed especially on maintain an understanding of ML/TF risks within the sector and individual level and more detailed off-site and on-site examination in keeping with risk profile. Previously, AMLO assigned some resources to promote DNFBP's supervision. Therefore, DNFBP supervisors need more resources to strengthen their works on AML/CFT supervision.

整體而言，DNFBP 產業納管不久，防制洗錢/打擊資恐相關監理仍在持續進行。對於瞭解產業及自身洗錢/資恐風險，因應風險分布而進行詳盡的非現地及現地檢查，尚有進步空間。之前洗防辦已經提供部分資源供 DNFBP 的監理運用。因此，DNFBP 主管機關需要更多資源以強化防制洗錢/打擊資恐相關監理工作。

### *Remedial actions and effective, proportionate, and dissuasive sanctions*

#### *改善措施和有效、合乎比例且具勸阻性的處罰*

400. FSC has a graduated range of remedial measures that it can impose on financial institutions. A variety of sanction measures in place, such as official requests for improvement, correction orders, reprimands, warning letters, restrictions of businesses, dismissals of directors or managers, among other means to adequately address the AML/CFT deficiencies found in FIs.

金管會對金融機構採取一系列漸進的改善措施，並制定各種處分方式，例如函請改善、糾正、懲戒、警告函、限制業務、解除董事或經理人職務及其他措施，以充分處理金融機構在防制洗錢/打擊資恐發現之缺失。

401. Amendment to the MLCA in 2016, increased fines available for failure to comply with AML/CFT obligations to a range of NT\$500,000 - \$10 million (previously, fines had ranged from

NT\$200,000 to NT\$1 million). Insurance Act amended increased the upper limit of fines to NT\$12 million (from NT\$6 million) for deficiencies involving internal controls. Similar amendments are also planned for the Banking Act and the Securities and Exchange Act with planned increases of from NT\$10 million to NT\$50 million, and from NT\$2.4 million to NT\$4.8 million for banks and securities firms, respectively.

2016 年洗錢防制法修正後，對未遵守防制洗錢/打擊資恐義務之罰款增加至新台幣 50 萬元~新台幣 1000 萬元（此前，罰款金額從新台幣 200,000 元到新台幣 100 萬元不等）。並修訂保險法，將涉及內部控制缺失的罰款上限提高到新台幣 1200 萬元（原為新台幣 600 萬元）。銀行法和證券交易法也計劃進行類似的修訂。對於銀行和證券公司，罰款的上限將分別從新台幣 1000 萬元增加到新台幣 5000 萬元，及從新台幣 240 萬元增加到新台幣 480 萬元。

402. Overall, the financial sanctions imposed on banks, securities and insurance are not proportionate to gaps identified, in particular with rules-based obligations. In some cases, the low quantum of fines available was a problem (for example the Mega International Bank case).

總體而言，對銀行、證券、保險施以的金融裁罰與所辨識出的防制洗錢/打擊資恐落差合乎比例，特別是與以法規為本的義務有關。在某些情況下，可裁處的罰款金額過低是一個問題（例如兆豐國際商業銀行案例）。

403. The fines imposed increased significantly from 2016 to 2017 due to the recent global supervisory focus. It is apparent that sanctions imposed mainly relate to deficiencies or breaches of CTR, CDD (including ongoing monitoring), STR and internal control requirements. Since 2017, FSC has identified more breaches with ongoing monitoring and STR mechanisms.

由於最近的全球監理重點，從 2016 年到 2017 年，罰款額大幅增加。顯然，實施的制裁主要涉及大額通貨交易報告、客戶審查（包括持續監控）、可疑交易報告和內部控制要求的缺失或違反。自 2017 年以來，金管會已通過持續監控和可疑交易報告機制辨識了更多違規行為。

404. One of the most severe punishments imposed by supervisory authorities in the last three years includes the incident in which Mega International Bank was fined by the US DFS in 2016. The FSC imposed a range of sanctions as set out in the case study below.

監理機關在過去三年中施加的最嚴厲的處罰之一包括 2016 年兆豐國際商業銀行被美國紐約金融服務署罰款的事件。金管會施以一系列的處罰措施如下案例所列。

#### **Case Example 6.2: Fines imposed on Mega International Bank's New York branch**

Onsite examinations by the New York State Department of Financial Services (DFS) in 2015 found that the New York branch had engaged in suspicious transactions with its Panama Branch, and failed to provide an adequate explanation. In 2016 Mega International Bank was fined USD 180 million by the DFS over its New York branch's inferior internal controls and failure to carry out exhaustive CDD, while the head office had failed to provide adequate oversight. This was the highest fine to have ever been imposed on the overseas location of a domestic financial institution.

FSC established an inter-agency taskforce, and found Mega Bank had exhibited multiple deficiencies with compliance, internal audits, independence and expertise of compliance officers, internal report procedures, and communication with competent authorities. The FSC imposed a maximum fine of NTD 10 million (approx. USD330,000), along with a correction order. It suspended the bank's application for the establishment of additional overseas branches until the deficiencies were completed rectified, and removed a director who was a representative of a legal person (a financial holding company). The FSC also ordered the bank to dismiss senior executives including its general manager, manager of the New York Branch, vice president, chief auditor, and chief compliance officer.

**案例 6.2：對兆豐國際商業銀行紐約分行處以罰款**

紐約金融服務署（DFS）在 2015 年的現地檢查發現，該行紐約分行與其巴拿馬分行進行可疑交易，但未提供合理的解釋。2016 年兆豐國際商業銀行因其紐約分行的內控欠佳以及未能執行詳盡的客戶審查，且總行未能提供充分的監督，故被紐約金融服務署處以 1.8 億美元的罰款。這是有史以來國內金融機構在海外遭懲處的最高罰款。

金管會建立一個跨機構工作小組，發現兆豐銀行在法遵、內部稽核、法遵長的獨立性和專業性、內部報告程序以及與主管當局的溝通方面呈現多處缺失。金管會處以最高罰款新台幣 1,000 萬元（約合 330,000 美元）以及糾正；暫停該銀行增設海外分支機構的申請，直到缺失完全改善為止，並罷免一名法人代表董事（一家金融控股公司）。金管會還下令該行解僱高級管理人員，包括其總經理、紐約分行經理、副總經理、總稽核和法遵長。

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**Table 6.7: Sanctions levied by the FSC for AML/CFT failings****表 6.7: 金管會對 AML/CFT 缺失裁罰情形**

| Year 年度 |                | Fines 罰鍰        | Measures other than correction orders 糾正以外措施 | Correction orders 糾正 | Official letter requesting improvement 函請改善 | Total 合計 |
|---------|----------------|-----------------|--|----------------------|---|----------|
| 2014    | Banking 銀行業    | 1               | 0  | 0                    | 96  | 97       |
|         | Securities 證券業 | 0               | 0  | 0                    | 29  | 29       |
|         | Insurance 保險業  | 0               | 0  | 0                    | 24  | 24       |
|         | Subtotal 小計    | 1               | 0  | 0                    | 149   | 150      |
| 2015    | Banking 銀行業    | 0               | 0  | 0                    | 95  | 95       |
|         | Securities 證券業 | 0               | 1  | 3                    | 56  | 60       |
|         | Insurance 保險業  | 1 (USD 80k)     | 0  | 0                    | 24  | 25       |
|         | Subtotal 小計    | 1               | 0  | 3                    | 175   | 180      |
| 2016    | Banking 銀行業    | 17 (USD 1.63m)  | 10   | 10                   | 131   | 168      |
|         | Securities 證券業 | 0               | 0  | 3                    | 53  | 56       |
|         | Insurance 保險業  | 3               | 0  | 7                    | 23  | 33       |
|         | Subtotal 小計    | 20              | 10   | 20                   | 207   | 257      |
| 2017    | Banking 銀行業    | 16 ( USD 1.05m) | 1  | 28                   | 124   | 169      |
|         | Securities 證券業 | 1 (USD 20k)     | 3  | 14                   | 59  | 77       |
|         | Insurance 保險業  | 0               | 0  | 2                    | 29  | 31       |
|         | Subtotal 小計    | 17              | 4  | 44                   | 212   | 277      |

|                           |                   |                                       |           |            |            |             |
|---------------------------|-------------------|---------------------------------------|-----------|------------|------------|-------------|
| <b>2018<br/>(Jan/Sep)</b> | Banking<br>銀行業    | 8 (USD 90k)                           | 0         | 18         | 99         | 125         |
|                           | Securities<br>證券業 | 0                                     | 0         | 30         | 37         | 67          |
|                           | Insurance<br>保險業  | 7 (USD<br>106,667)                    | 2         | 30         | 23         | 62          |
|                           | Subtotal<br>小計    | 15                                    | 2         | 78         | 159        | 254         |
| <b>Totals 合計</b>          |                   | <b>54 (approx.<br/>USD 3 million)</b> | <b>16</b> | <b>145</b> | <b>902</b> | <b>1117</b> |

405. For Agricultural FIs, prior to the implementation of the amended MLCA, violations were mostly punished by official letter requesting improvement, corrections, or other administrative penalties. Despite the implementation of amended MLCA and regulations commencing in June 2017, the BOAF focuses on providing guidance and assistance to increase the awareness and operations of agricultural FIs toward AML/CFT, rather than supervision. In case of breaches involving AML/CFT obligations, BOAF has mostly issued official letters to the local competent authorities to request more supervision for improvements and instruct the ABT to strengthen guidance and assistance. More needs to be done by supervisors to impose effective remedial actions or sanctions.

農業金融機構部分，在實施經修訂的洗錢防制法之前，農業金融機構的違規行為大多受到要求改進、更正函或其他行政處罰的處罰。儘管自 2017 年 6 月開始實施經修訂的洗錢防制法和法規，但農金局的重點是提供指導和幫助，以提高農業金融機構對防制洗錢/打擊資恐的認識和運作，而不是監理。如果涉及防制洗錢/打擊資恐義務的違規行為，農金局主要向當地監理機關發公文，要求對改進進行更多監理，並指示全國農業金庫加強指導和協助。監理者需更加努力，以確保所採取之補救措施或裁罰的有效性。

406. For foreign currency exchange counters, sanctions for AML/CFT are only available in the *Foreign Currency Exchange Counters Regulations*. These sanctions include official letter from BoT for remedial action or cancelling the approval for serious violations of regulations. No fines are available to enforce compliance. From 2014 to June 2018, the Central Bank inspected 465 foreign exchange counters and issued 398 official letters for AML/CFT violations and issued 439 letters requiring remedial actions. Only in one case were breaches serious enough to cancel the approval to operate.

外幣收兌處部分，違反防制洗錢/打擊資恐要求的制裁僅規定於“外幣收兌處設置及管理辦法”。這些制裁措施包括透過臺灣銀行函請其後續改善，或對嚴重違反規定者廢止其核准。但沒有罰款可以強制業者遵循。2014 年至 2018 年 6 月，中央銀行檢查了 465 個外幣收兌處，發出 398 份違反防制洗錢/打擊資恐法規的公文，及 439 封要求採取改善措施的公文。只有一起案件，因違規行為嚴重到足以廢止其營業許可。

**Table 6.8: Sanctions imposed for AML/CFT violations by foreign currency counters**

**表 6.8: 外幣收兌處違反 AML/CFT 規定受裁罰情形**

| Year<br>年度      | Counters inspected<br>受查家數 | Issue official letter<br>函請改善 | Cancel approval<br>廢止核准 |
|-----------------|----------------------------|-------------------------------|-------------------------|
| 2014            | 64                         | 49                            | -                       |
| 2015            | 61                         | 37                            | -                       |
| 2016            | 80                         | 69                            | -                       |
| 2017            | 147                        | 136                           | 1                       |
| 2018 (Q1 to Q2) | 113                        | 107                           | -                       |
| <b>Totals</b>   | <b>465</b>                 | <b>398</b>                    | <b>1</b>                |



## DNFBPs

指定之非金融事業及人員

407. DNFBPs were brought into the MLCA framework in June 2017. As such, fines had not yet been imposed, but some remedial actions had been taken, following an initial round of off-site and limited on-site inspections of some sectors. The efforts put in place by relevant authorities with each DNFBP sector is an important foundation for future supervision and promotion of risk-based AML/CFT implementation amongst the DNFBPs.

2017年6月，DNFBP被納入洗錢防制法。因此，雖尚未實施罰款，但在對一些部門進行了第一輪場外檢查和有限的現地檢查之後，已採取了一些補救措施。有關當局與每個DNFBP部門的努力是未來監理和促進DNFBP以風險為本實施AML/CFT的重要基礎。

6

*Impact of supervisory actions on compliance 監理行動對法遵的影響*

408. The fines imposed on banks, securities, and insurance for AML/CFT breaches are relatively low and may not be wholly proportionate. However, it should be noted that fines and the publication of the fines and the negative findings, are contributing to significant changes in the culture and conduct of compliance in Chinese Taipei. The overall effects of remedial measures, enforcement actions and reputation damage appear to positively influence compliance. Supervisory actions are, overall, having a very significant impact on compliance and a move towards a risk-based approach across the financial sector and, more recently, with DNFBPs. According to off-site and on-site examination results in recent years, FSC stated that FIs have enhanced their understanding of the AML/CFT obligations, devoted significant amount of resources, and established systems and procedures to improve examination deficiencies. However, CDD measures (including the identification of beneficial owners and PEPs), ongoing CDD, and transaction monitoring are still challenging for FIs. The authorities, including AMLO and supervisors and SRBs stressed that their efforts have helped DNFBPs to improve their awareness of ML/TF risks and obligations in each sector.

對於有防制洗錢/打擊資恐違規行為的銀行業、證券業和保險業的罰款相對較低，可能並不完全相稱。但是，應該指出的是，罰款以及罰款和負面檢查結果的公佈，都會導致中華臺北的法遵行為和文化發生重大變化。補救措施、執法行動和聲譽損害的總體影響似乎對法遵產生積極影響。總體而言，監理行動對法遵產生了非常重大的影響，並在整個金融部門和最近的DNFBP中採用以風險為本的方法。根據近年來的場外和現地檢查結果，金管會表示金融機構已加深了對AML/CFT義務的了解，投入了大量資源，並建立了改善檢查缺失的系統和程序。但是，客戶審查措施（包括辨識實質受益人和重要政治性職務人士）、持續的客戶審查和交易監控對於金融機構而言仍然充滿挑戰。包括洗防辦、監理機關以及公會在內的主管機關強調，他們的努力幫助DNFBP提高了對每個部門ML/TF風險和義務的認識。

409. Given that the stakes of AML/CFT breaches are getting higher especially the cases of fines imposed by US authority, the industry-wide awareness of AML/CFT compliance in the financial sector is increasing and more resources have been dedicated by FI/DNFBPs. For example, dedicated AML/CFT officers of domestic banks have increased to 1,079 at end-March 2018 from 171 at the end of 2014. The growth rate is over 500%.

鑑於防制洗錢/打擊資恐違規行為越來越高，特別是美國當局罰得越來越重，金融部門對行業範圍內防制洗錢/打擊資恐法遵的意識提高，而且金融機構/DNFBP都投入更多的資源。例如，2018年3月底為止，國內銀行專門的防制洗錢/打擊資恐人員從2014年底的171人增加到1,079人。增長率超過500%。

*Promoting a clear understanding of AML/CFT obligations and ML/TF risks*

*促進對AML/CFT義務和ML/TF風險的清楚瞭解*

410. FSC's efforts promote a clear understanding among FIs of their AML/CFT obligations and ML/TF risks by establishing long-term partnerships and engaging in ongoing communications with sectors through their associations, holding meetings, coordinating the financial industry to hold training courses and advocacy sessions, and setting up dedicated AML/CFT webpages. FSC also advises on sectoral guidance issued by associations. FSC has an established long-term partnership and ongoing communication with the financial sector especially through the establishment of task-force and one-on-one communication to maintain understanding of AML/CFT obligations and discussion on emerging ML/TF risks.

金管會透過建立長期合作夥伴關係，並透過公會與各部門進行持續溝通、召開會議、協調金融業舉辦培訓課程、宣傳會議及設立專門的防制洗錢/打擊資恐網頁，促進金融機構明確瞭解其防制洗錢/打擊資恐義務和 ML/TF 風險。金管會還對公會發布的部門指引提出建議。金管會與金融部門建立了長期合作夥伴關係和持續溝通，特別是通過建立工作小組和一對一溝通，以保持對防制洗錢/打擊資恐義務的理解，並討論新出現的 ML/TF 風險。

411. In addition to the formation of AML task force in May of 2017 to plan for the amendments of regulations and enforcement of guidance and assistance, there are several follow-up actions on inspected agricultural FIs to ensure they have sound understanding of AML/CFT obligations. Competent authorities continue to hold educational trainings each year and since 2016, the AML/CFT subjects were incorporated into relevant courses. AML/CFT guidelines for agricultural FIs were issued and BOAF has established an AML/CFT Section on its website to provide the latest relevant regulations of AML/CFT and Q&A for reference.

除了 2017 年 5 月成立防制洗錢工作小組以計劃修訂法規和執行指引和援助之外，還對受檢的農業金融機構採取了若干後續行動，以確保他們對防制洗錢與打擊資恐義務有充分的理解。自 2016 年起監理機關每年持續舉辦教育訓練，防制洗錢/打擊資恐被納入相關課程。農金局發布了農業金融機構防制洗錢/打擊資恐準則，並在其網站上設立了防制洗錢/打擊資恐專區，以提供防制洗錢/打擊資恐和問答的最新相關規定供參考。

412. The Central Bank conducted public engagements in 2017 and 2018 to explain the rationale for amendments made to relevant Regulations. The Central Bank has hosted seminars and training. In addition, BoT issued SOPs, Q&A and other guidelines for foreign currency exchange counters to understand their AML/CFT obligations. These are also available on website for the counters to review and download.

中央銀行在 2017 年和 2018 年舉行公開活動，以說明相關辦法之修正意旨，並舉辦研討會和培訓。此外，臺灣銀行亦發布外幣收兌處標準作業程序、Q&A 和其他指引，以促其了解 AML/CFT 義務。這些並放在網站上供業者查閱和下載。

#### DNFBPs

##### 指定之非金融事業及人員

413. Most DNFBPs were involved in the drafting and provided their feedback on new obligations regarding AML/CFT. Many meetings between authorities, SRBs and senior officials were held prior to this round mutual evaluation. The competent authorities have consulted opinions from the associations on training, and composition of guidance, as well as on the amendments of related regulations.

大多數 DNFBP 有參與修法草擬過程，並提供相關新增防制洗錢/打擊資恐義務之回饋意見。第三輪相互評鑑之前，主管機關、公會及高階官員已舉行許多會議。主管機關就培訓，指引構成以及相關法規的修訂已徵求各協會的意見。

414. Best practice Guidance Notes on Implementing Anti-Money Laundering and Countering the Financing of Terrorism for DNFBPs" was developed by AMLO and supervisors. It has recently been implemented by all DNFBPs to ensure they adopt consistent methods of AML and CFT, as well as ensure the supervisory authorities adopt consistent interpretations of the MLCA and the CTF Act.

執行防制洗錢/打擊資恐最佳指引由洗防辦及主管機關制定。最近提供 DNFBP 作為執行參考，以確保採行一致之防制洗錢/打擊資恐方法，並確保主管機關就洗防法及資恐防制法採取一致性解釋。

415. However, in the near future, relevant authorities should consider developing the detailed guidelines for specific DNFBP sector to response to threats and risks regarding specific activity.

然而，不久的將來，相關主管機關應考慮對特定 DNFBP 產業建立更詳細的指引，以呼應相關威脅及特定活動風險。

### *Overall conclusions on Immediate Outcome 3*

#### *直接成果 3 之整體結論*

416. Fit and proper checks by supervisors are generally sound, though there is a need to enhance controls against criminal associates, and implementation for select FI/DNFBP. A risk-based supervisory regime is in place for FIs and DNFBPs, though the latter have only been recently included and more needs to be done to improve both monitoring capabilities and regulatory transparency with respect to clearly-defined statutory powers. FSC's frequency scope and intensity of offsite and onsite supervision is increasingly based on the identified risks. Chinese Taipei's supervisory regime is holistic, encompassing close cooperation through private-public associations, through to graduated remedial measures towards ensuring AML/CFT compliance. However, there are opportunities for improvement including regular risk inputs from the FIU and LEAs. Fines imposed on FIs for serious AML/CFT breaches are relatively low and may not be wholly proportionate. Going beyond fines, the overall effects of remedial measures, enforcement actions and reputation damage appear to positively influence compliance.

監理機關對適格性的審查普遍是健全的，但需要加強對罪犯關係人的控管，以及對特定金融機構 / DNFBP 實施。金融機構和 DNFBP 已經建立以風險為本的監理制度，儘管後者最近才被納入，並且在明定的法定權力方面需要更加努力以提高監督能力和監管透明度。金管會場外和現地監理的頻率範圍和強度，愈趨近已識別的風險。中華臺北的監理制度是全面的，包括透過與私-公協會的密切合作，透過漸進的補救措施，來確保 AML/CFT 的遵循。但還有改進的空間，包括金融情報中心和執法機關的定期風險資訊的提供。對於金融機構嚴重的 AML/CFT 違規行為，罰款相對較低，可能並不完全合乎比例。罰款以外，補救措施、執法行動和商譽損害的整體影響似乎對法遵產生積極影響。

417. **Chinese Taipei has a moderate level for effectiveness for Immediate Outcome 3.**

中華臺北在直接成果 3 之評等為中度有效。

## CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

### 第7章-法人及法律協議

#### Key Findings and Recommended Actions

#### 重要發現及建議行動

##### Key Findings

##### 重要發現

- 1) Information on the creation and types of Chinese Taipei legal persons is publicly available. There is a central public register that lists basic information on companies registered in Chinese Taipei.  
有關中華臺北法人設立及類型的資訊可以公開查閱。有一個中央公開的登記機關，列出在中華臺北登記的公司基本資訊。
- 2) The NRA and a more detailed follow-up assessment in mid-2018 have led to some of the risks associated with legal persons being reasonably well understood by competent authorities. Risks posed by foreign and domestic express trusts have not been well assessed and the role of domestic service providers for formation and management of foreign companies and trusts is not well understood by most agencies.  
國家風險評估和在 2018 年年中更詳細的後續評估，使主管機關對一些與法人相關的風險有相當充分的理解。外國和國內明示信託所構成的風險沒有得到很好的評估，大多數機關對國內服務提供業者在形成或管理外國公司和信託方面的角色沒有很好的理解。
- 3) The quality of the information held by MOEA is reasonable and has been supported by oversight and some quality checking. Recent legislative amendments and implementation activities have contributed to increases in the range and quality of basic ownership data available on the registry. More comprehensive quality checking of MOEA registry data had not commenced.  
經濟部所持有資訊的品質是合理的，並受到監督和一些品質檢查的支持。近期的修法及執行活動，對登記機關所持有基本所有權資料的範圍和品質有所增加。但尚未開始對經濟部登記資料進行更全面的品質檢查。
- 4) Despite the large numbers of civil trusts formed in Chinese Taipei, there are few measures to support the transparency of trusts and capturing information on settlors or trustees. As a practical matter, foreign trusts are not prohibited, and appear to have a meaningful presence.  
即便有大量的民事信託在中華臺北成立，支持信託透明度並取得有關委託人或受託人資訊的措施很少。在實務運作上，外國信託不被禁止，並顯示出有一定數量的存在。
- 5) There are a number of controls on legal persons to mitigate their risk of misuse related to Chinese Taipei nominee shares and nominee directors. Controls were put in place for bearer shares in mid-2018, but there are some gaps with legacy bearer shares.  
一些法人控制措施可以降低中華臺北代名股份及代名董事被濫用的風險。2018 年年中開始對無記名股票實施控制措施，但對既存無記名股票則存在一些落差。
- 6) There are few controls on civil trusts formed in Chinese Taipei or on foreign trusts operating in Chinese Taipei. Trustees of a domestic trust are required to identify the settlor and beneficiaries



each year when dealing with trust property. FIs or DNFBPs who have domestic or foreign trusts as customers are required to identify and verify all parties to the trusts. There are some gaps when DNFBPs are employed to settle a trust and do not also serve as a trustee. There are no obligations on trustees of foreign or domestic trusts to declare their status to FIs or DNFBPs.

對於中華臺北成立的民事信託或在中華臺北運作的外國信託，控制措施很少。在處理信託財產時，國內信託的受託人必須每年確定委託人和受益人。擁有國內或國外信託作為客戶的金融機構或 DNFBP 須要辨識和驗證信託所有的當事人。當 DNFBP 被聘僱於安排信託且不作為受託人時，存在一些落差。外國或國內信託的受託人沒有義務向金融機構或 DNFBP 揭露其信託地位。

- 7) Authorities rely on CDD conducted by FIs and DNFBPs to obtain beneficial ownership information of legal persons and arrangements. As outlined in IO.4, CDD to identify the beneficial owners and controllers of customers by FIs and DNFBPs is reasonably well implemented. There is no statutory requirement for legal persons to disclose or record their beneficial ownership at the company registry, or to otherwise be held by the company.

主管機關依賴金融機構和 DNFBP 進行的 CDD 來取得法人及法律協議之實質受益權資訊。如直接成果 4 (IO.4)所述，透過金融機構和 DNFBP 執行 CDD 以辨識客戶的實質受益人和控制人執行良好。沒有法定要求法人在公司登記機關披露或記錄其實質受益權資訊，或以其他方式由公司持有。

- 8) LEAs and the AMLD demonstrate examples of using CDD information and investigative strategies to obtain information on the beneficial ownership and control of legal persons in the course of developing financial intelligence or conducting financial investigations.

執法機關和法務部調查局洗錢防制處以範例證明使用 CDD 資訊和調查策略，以在發展金融情報或進行金融調查過程中，取得有關法人實質受益權和控制權的資訊。

- 9) Authorities have sought and provided international cooperation in relation to transparency of legal persons and arrangements in specific cases.

主管機關在特定案件中尋求並提供有關法人和法律協議透明度的國際合作。

### **Recommended Actions**

#### **建議行動**

- a) Ensure that AML/CFT controls are applied to professionals in Chinese Taipei who provide services for the formation and management of foreign companies or trusts services and impose effective, proportionate, and dissuasive sanctions. To enhance mitigating measures to professionals who fails to comply with regulation or guidelines related AML/CFT, authorities should impose

確保防制洗錢/打擊資恐控制措施適用於在中華臺北提供外國公司成立、管理或信託服務的專業人員，並施以有效、合乎比例和勸阻性的裁罰。為強化抵減措施，對於未履行防制洗錢/打擊資恐有關的法規或指引的專業人員，主管機關應：

- b) Enhance MOEA's activities on the verification of information subject to registration, and consider granting the MOEA a more proactive role in that verification process.

加強經濟部在驗證登記資訊方面的活動，並考慮授予經濟部在該驗證過程中更積極主動的角色。

- c) Chinese-Taipei should implement enforceable measures to ensure trustees, (for both domestic and foreign trusts) disclose their status when forming a business relationship to support CDD.

中華臺北應採取可強制的措施，確保信託之受託人（國內和國外信託）在建立業務關係時，揭露其在信託中之地位，以協助 CDD 作業。

- d) Chinese Taipei should extend controls to enhance transparency on civil trusts.

中華臺北應擴大控制措施，以提高民事信託的透明度。

- e) Chinese Taipei should implement mechanisms to mitigate the risks from legacy bearer shares.

中華臺北應對採取機制來降低既存無記名股票的風險。

- f) Target international cooperation to obtain BO and control information on legal persons and arrangements with countries with shared risks, esp. those jurisdictions most used for incorporation related to the OBU sector (e.g. BVI, Samoa, Seychelles, Belize, Hong Kong, China, etc.)

鎖定國際合作，以取得具有共同風險國家的法人和法律協議的實質受益權和控制權資訊，尤其是最常用被用於設立與 OBU 部門有關公司的司法管轄區（例如 BVI、薩摩亞、塞席爾、貝里斯、香港、中國大陸等）

418. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The recommendations relevant for the assessment of effectiveness under this section are R.24 & 25.

本章審查和評估的直接成果為 IO.5。與本章節效能評估有關的建議為建議第 24 項和第 25 項。

### ***Immediate Outcome 5 (Legal Persons and Arrangements)***

#### ***直接成果 5(法人及法律協議)***

419. At the time of the onsite, Chinese Taipei law recognised a number of types of legal persons which are classified into associations (profit-seeking and public-welfare) and foundations (public-welfare). The number of profit legal person including companies (unlimited companies, limited companies, unlimited companies with limited liability shareholders, companies limited by shares), cooperative, and limited partnerships, while non-profit legal persons can be divided into public welfare association legal persons and foundation legal persons. Companies may be public with additional governance under the Securities and Exchange Act and have foreign ownership which has minimum and maximum allowable shares. Foreign companies are also permitted to be established in Chinese Taipei, but have some additional requirements and limitations. The various categories of non-profit legal persons including cultural, religious, social charity, medical, and educational organizations.

在現地評鑑時，中華臺北法律承認多種類型的法人，包含社團（營利和公益）及財團（公益）。營利法人包括公司（無限公司、有限公司、兩合公司、股份有限公司）、合作社及有限合夥，非營利法人則可分為公益社團法人和財團法人。公司可以公開發行，並適用證券交易法而受到更高度的管理，而擁有外國股權的公司則有最低及最高允許股數的限制。外國公司也可在中華臺北設立，但有一些額外的要求和限制。各類型非營利法人，包括文化、宗教、社會慈善、醫療和教育型組織。

420. As of the end of July 2018, there were 698,769 registered companies in Chinese Taipei. Of these, 532,265 were limited companies {limited by capital}. There were also 166,184 companies limited by shares, of which 2,169 were public companies and 164,315 were private. In addition there were 20 unlimited companies.

截至 2018 年 7 月底，中華臺北有 698,769 家公司登記。其中，532,265 家是有限公司{受資本額限制}。還有 166,184 家股份有限公司，其中 2,169 家是公開發行公司，164,315 家是非公開發行公司。此外還有 20 家無限公司。

421. For legal arrangements, Chinese Taipei permits the creation of trusts, which can be classified as “civil trusts”, “business trusts” or “charitable trusts”. Civil trusts (which are express trusts) may be established via legal arrangements between private individuals and are regulated under the Trust Law. Foreign trusts operate in Chinese Taipei. The Trust Law has only limited requirements to support transparency of the beneficial control of legal arrangements. DNFBP having trusts as clients, including providing trust services to a domestic civil trust or a foreign trust are regulated by the MLCA (Art 5) and regulations governing AML of the respective industry of DNFBPs. However, the regulations and guidelines do not go into detail regarding obligations on DNFBPs providing trust services as opposed to other transactions.

關於法律協議，中華臺北允許成立信託，可分為「民事信託」、「營業信託」或「公益信託」。民事信託（明示信託）可以通過私人之間的法律協議設立，並受信託法的規範。外國信託有在中華臺北運作。對於支持法律協議實質受益控制之透明度，信託法的要求有限。DNFBP 擁有信託客戶，包括向國內民事信託或外國信託提供信託服務，並受洗錢防制法（第 5 條）和 DNFBP 各業的洗錢防制法規的規範。但是，對於 DNFBP 提供信託服務而非其他交易的義務，法規和準則並沒有詳細規定。

422. There appears to be a very large number of civil trusts operating in Chinese Taipei. Information provided by the tax authorities indicate that there are NTD 8,638,838 million assets from business trusts and NTD 1,948,622 million (approx. USD65 billion) registered assets of civil trusts in Chinese Taipei. Only real property of civil trusts is obliged to be registered. Business trusts require the trustee to be a trust enterprise, which are FIs and regulated by the MLCA and the Trust Enterprise Act and supervised by the FSC (considered in R.22 and IO4).

中華臺北似乎有大量的民事信託存在。稅捐機關提供的資訊指出中華臺北申報營業信託財產金額有新台幣 8,638,838 百萬元，申報民事信託財產金額有新台幣 1,948,622 百萬元(約 650 億美金)。只有不動產的民事信託需要登記。營業信託要求受託人必須是信託業者，由於信託業都是金融機構，除受到洗錢防制法和信託業法的規範，並受到金管會的監理。（參 R.22 和 IO4）。

423. There are obligations on civil trusts to file with the tax authorities when the trust earns income, however the numbers of civil trusts holding assets may be higher than those declaring earnings. Tax authorities were not able to provide statistics on the numbers of civil trusts filing earnings. Information filed with the tax authorities on the income of trusts captures trustees, beneficiaries, and lists entrusted properties in accordance with Article 33(1)(5) of the Tax Collection Law. There are no details available on the numbers of foreign trusts that may hold assets in Chinese Taipei.

當民事信託獲取收益時，有義務向稅務機關提出申報，然而持有資產的民事信託數量可能較申報收益的信託數量更高。稅務機關無法提供有關申報收益的民事信託數量統計。根據稅捐稽徵法第 33（1）（5）條向稅務機關申報信託收益資訊的範圍包括受託人、受益人和委託財產清單。沒有關於可能在中華臺北持有財產的外國信託數量之詳細資訊。

### *Public availability of information on the creation and types of legal persons and arrangements*

公開獲得有關法人和法律協議設立及類型的資訊

424. Information on the creation and registration of for profit legal person is publicly available from the homepage of the MOEA “Commercial Industrial Services Portal (CISP)”. The CISP includes details of legal persons, including their form and articles as well as directors and shareholders, and registered nominee directors and shareholders. In addition MOEA hosts the CTP portal for LEAs and government agencies which include other government data sets and enhanced search functions to understand ownership and control of legal persons. There is also online information available developed by commercial entity Market Observation Post System (MOPS) for the public to access information on changes of directors, supervisors, managers and major shareholders and share equity. Information on the creation of legal arrangements is available through the Trust Law. Information on filing details of income of a civil trust is available from the tax authorities.

營利法人設立及登記的資訊可由經濟部首頁「全國商工行政服務網(CISP)」公開取得。CISP 包括法人的詳細資訊，包括其形式和章程以及董事和股東，以及登記的代名人董事和股東。此外，經濟部還為執法機關及政府機關提供 CTP 入口網站，其中包括其他政府資料庫以及增強的搜尋功能，以瞭解法人的所有權和控制權。還有商業實體開發的「公開資訊觀測站」(MOPS)提供線上資訊，可以公開取得有關董事、監察人、經理人及主要股東變更及轉讓股票(股權)的資訊。有關設立法律協議的資訊可透過信託法取得。有關民事信託申報收益的詳細資訊可由稅捐機關取得。

### *Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities*

#### *辨識、評估和瞭解法律實體的洗錢/資恐風險和弱點*

425. Chinese Taipei has identified and assessed some of the ML/TF risks and vulnerabilities of legal persons and arrangements created in Chinese Taipei and some elements of risk arising from foreign legal persons and trusts. This was undertaken through the NRA and also a follow-up detailed assessment by the MOEA on corporate entities risk of ML (updated August 2018). The NRA assessed companies limited by shares and limited companies as carrying higher risks. The NRA also assessed not for profit legal persons.

中華臺北已辨識和評估在中華臺北設立法人及法律協議的部分洗錢 / 資恐風險與弱點，以及外國法人和信託風險的部分因素。這是透過國家風險評估進行的，以及後續由經濟部對公司實體的洗錢風險進行更為詳細的評估（2018年8月更新）。國家風險評估發現股份有限公司和有限公司具有較高的風險。國家風險評估也有評估非營利法人。

426. The assessments of risk did not identify the characteristics of particular types of legal person or arrangement, or features of their establishment or ongoing management and control that would contribute to or mitigate ML/TF risk. Chinese Taipei assessed legal persons’ risk of misuse including: lack of transparency of the companies, shell company, offshore company and offshore financial service, and other risks including concealing of BOs by professions. Authorities acknowledge these risks, however there is no consistent and coherent understanding within the government of the inherent and residual risks associated with legal persons and arrangements. Risks posed by foreign trusts have not been well assessed and the role of domestic service providers for formation and management of foreign companies and trusts is not well understood by most agencies. Some LEAs have a better understanding of the threats.

風險評估並未辨識特定類型的法人或法律協議的特徵，或其成立的特性，或有助於或減輕洗錢/資恐風險的持續管理及控制措施。中華臺北評估法人被濫用的風險，包括：公司欠缺透明度、空殼公司、境外公司和境外金融服務，以及其他風險，包括專業人員隱匿實質受益人。主管機關認知這些風險，然而，政府內部對於與法人和法律協議相關的固有風險和剩餘風險，沒有一致和連貫的理解。外國信託構成的風險尚未得到很好的評估，大多數機關都不太了解國內服務提供業者在外國公司和信託的設立和管理方面的角色。部分執法機關對威脅有更佳的理解。



427. The authorities have not yet taken sufficient steps to understand risks from foreign companies and trusts active in Chinese Taipei's offshore financial sector (OBUs, OSUs, OIUs), and in foreign ownership and control of domestic assets. The NRA identified the top five places of registration of OBU customers, being British Virgin Islands; Samoa; Hong Kong, China; Belize; and the Seychelles. Regulations governing OBU, OSU and OIU limit accounts to foreign incorporated customers (i.e. foreign companies) and as such foreign trusts are not permitted to hold accounts directly. Authorities have not identified the extent to domestic or foreign trusts have a role in the beneficial ownership and control of foreign companies operating in the OBU/OSU/OIU sectors and in areas of Chinese Taipei's financial sector. As a practical matter, foreign trusts are not prohibited.

主管機關尚未採取足夠措施以瞭解活躍於中華臺北境外金融部門（OBU、OSU、OIU），以及外國持有與控制國內資產的外國公司及信託的風險。國家風險評估辨識出 OBU 客戶的前五大登記地，即英屬維爾京群島、薩摩亞、香港、貝里斯和塞席爾。規範 OBU、OSU 和 OIU 的法規限於在外國成立的客戶（即外國公司）開戶，因此外國信託不允許直接持有帳戶。對於在 OBU/OSU/OIU 部門和中華臺北金融部門運作的外國公司，主管機關尚未辨識國內或國外信託對於該等公司在實質受益權和控制權的角色。實務上，外國信託並未被禁止。

### *Mitigating measures to prevent the misuse of legal persons and arrangements*

#### *防止法人和法律協議被濫用的抵減措施*

428. Chinese Taipei has taken mitigating measure including enhanced information transparency of legal person, the enforcement measures to eliminate shell companies, certain steps to prevent offshore financial service from being misused by ML/TF, and prevention of professionals concealing the information of BOs.

中華臺北已採取的抵減措施包括提高法人資訊透明度、杜絕空殼公司的執法措施、特定步驟防止境外金融服務被洗錢/資恐濫用，以及防止專業人員隱匿實質受益人資訊。

429. As outlined in section 1, the legal and regulatory framework and market practice sees relatively little professional intermediation in the establishment or continuing operation of legal persons. There are no requirements for company service providers to form or have a continuing role as an office holder or to have a role in filing returns. As such few FIs/DNFbps have a continuing relationship providing company services.

如第 1 節所述，無論法律、管理架構以及市場慣例，在法人的設立或持續運作中，相對較少使用專業中介。沒有相關規定要求必須由公司服務提供者提供設立或繼續擔任辦公室持有人的角色，也無須在申報收益時發揮作用。因此，很少有金融機構/DNFbp 就提供公司服務保有持續性關係。

430. MOEA statistics confirm that a large majority of companies do not have an intermediary assisting with company registration. Approximately 12% of companies draw on the services of accountants for filing registrations. All Chinese Taipei's (for profit) legal persons can be established by any natural persons or by a CPA or attorney on behalf of the legal persons to undertaken registration with the relevant competent authority. While Notaries<sup>11</sup> only provide consultation-services in establishing companies, CPAs and attorneys may be gate-keepers in the creation and management of companies and other legal persons, and are legally subject to AML/CFT preventative measures. MOEA and other competent authority of legal persons rely on the information of legal persons provided by CPA and attorneys.

經濟部的統計數據證實，絕大多數公司沒有專業中介協助公司登記。大約 12% 的公司利用會計師的服務提交登記。所有中華臺北（營利）法人均可由任何自然人或會計師或律師代表法人向相關主管機關進行設立登記。公證人<sup>11</sup> 只在設立公司時提供諮詢服務，會計師和律師則可能是公司和其他法

<sup>11</sup> Notaries provide services including notarization and attestation. 公證人提供之服務含公證及認證。

人成立和管理的守門人，並且在法律上受到防制洗錢/打擊資恐預防性措施的規範。經濟部和其他法人的權責機關依賴會計師和律師提供的法人資訊。

431. Chinese Taipei has CDD obligations in place requiring FIs and DNFBPs to collect beneficial ownership and control information generally in keeping with R.10 and R.22. While these obligations have been in place for DNFBPs since 2017, a number of enhancements were made in November 2018. The regulations for lawyers and accountants do not sufficiently cover scenarios where they provide company and trust services rather than simply having legal persons or legal arrangements as customers. Additional guidance is needed for DNFBPs undertaking trust and company services.

中華臺北已有 CDD 義務，要求金融機構和 DNFBP 廣泛地收集實質受益權和控制權資訊，以符合 R10 及 R22 之規定。雖然自 2017 年以來 DNFBP 已經存在這些義務，2018 年 11 月又再進行多項強化。當律師和會計師提供公司和信託服務，而非僅將法人或法律協議當成客戶時，既有的規定不足以涵蓋前者的情況。DNFBP 需要額外的指引來進行信託和公司服務。

432. The Company Act was amended in August 2018 with a range of mitigating measures related to AML/CFT. Companies are required to provide basic information including directors, supervisors, and major shareholder (now any party with 10% or more) to MOEA. This information must be maintained by the company and reported to the registrar within 15 days of any change (Company Act Art 22-1). Sanctions for violations were increased. Similar requirements are in place for other for-profit legal persons.

2018 年 8 月修訂公司法，採取一系列與防制洗錢/打擊資恐有關的抵減措施。公司必須向經濟部提供基本資訊，包括董事、監察人和主要股東（現持有 10% 或以上之任一方）。這些資訊必須由公司維護，並在有任何變更後 15 日內向登記機關申報（公司法第 22-1 條）。對違反行為的裁罰也加重處罰。其他營利性法人也有類似的要求。

433. The 2018 amendments removed companies' ability to issue bearer shares, and limited the instances where share warrants (including bearer share warrants) may issue to ensure their transparency. Authorities confirm that companies have no discretion to issue share warrants other than in the controlled instances. However, some risks remain from legacy bearer shares as there is no clear timeframe for previously issued bearer shares or share warrants to be redeemed or dematerialised.

2018 年修法廢除公司得發行無記名股票的規定，並限制得發行股票認股權證（包括無記名股票認股權證）的情況，以確保公司透明度。主管機關確認除受控情況外，公司無權發行股票認股權證。然而，既存的無記名股票仍然存在一些風險，因為對於以前發行的無記名股票或認股權證沒有明確的贖回或使其消失的時間。

434. The Company Act requires registration of nominee director and nominee shareholders. Nominee director and nominee shareholder are not defined under Chinese Taipei's Company Act, but in practice these function as nominees: directors or shareholders under other people's name who bear no actual power, voting agreements and voting trusts, natural person representing the Juris person shareholder acting as director or supervisor, and name borrowing registration The Company Act (Art 38.7) and binding filing requirements under MOEA regulation require nominee directors and nominee shareholders and the nominee's principal to be registered with the MOEA. Historical records of directors or supervisors and any nominees are also publicly available information and searchable in the registry by authorities. MOEA data showed registration records for 32,079 companies having nominee directors and 32,371 having nominee shareholders.

公司法要求代名人董事和代名人股東進行登記。根據中華臺北的公司法，代名人董事和代名人股東沒有定義。但在實務上，以下這些功能即是代名者：以他人名義持有且沒有實際權力的董事或股東，投票協議和投票信託，代表法人股東擔任董事或監察人的自然人，提供借位(名)登記。公司法（第

38.7 條) 和經濟部法規下具有約束力的申報規定，要求代名人董事、代名人股東以及代名人的委託人向經濟部登記。董事或監察人的歷史記錄和任何代名人也是公開的資訊，並可由主管機關的登記資料中進行查詢。經濟部的資料顯示，有 32,079 家公司有代名人董事和 32,371 家公司有代名人股東的登記紀錄。

435. As highlighted above, there are over approx. USD65 billion of registered assets for civil trusts in Chinese Taipei, but very few controls in place in relation to civil trusts (domestic) or foreign trusts. Trustees are not, in either case, required to disclose their status to FIs or DNFBPs, which may reduce the ability of CDD and EDD to mitigate the risks of misuse of legal arrangements.

如上所強調，中華臺北民事信託的財產申報金額超過美金 650 億，但對民事信託（國內）或外國信託的管制措施很少。在任何一種情況下，受託人都不須要向金融機構或 DNFBP 揭露其身分，這會降低 CDD 和 EDD 抵減濫用法律協議風險的能力。

436. Disclosure obligations (to fiscal authorities) on income of trusts adds to transparency and helps to mitigate some of the risks, but it is not clear that there is a proactive approach to using this information to target the use of civil or foreign trusts to obscure ML beyond tax evasion.

信託收益的揭露義務（對財政機關）雖可增加透明度並有助於減輕某些風險，但尚不清楚是否採用積極主動的方法，在逃稅以外利用這些資訊來打擊利用民事或外國信託掩蓋洗錢。

437. Article 31 of the Trust Act requires trustees to report annually on trust property records to the settlor and any identifiable beneficiaries. This has the effect of identifying parties to the trust.

信託法第 31 條要求受託人每年向委託人和任何可辨識的受益人報告信託財產記錄。這具有辨識信託各方當事人的效果。

438. The relatively recent inclusion of DNFBPs, including lawyers and CPAs, in full AML/CFT obligations extended CDD obligations to cases where DNFBPs are providing trust services to a domestic civil trust or a foreign trust. However, authorities were not able to estimate the extent to which such DNFBPs serve in these roles and there are some technical gaps on how far CDD extends when the DNFBPs are settling a trust without also acting as a trustee. This is an important measure to help to prevent the misuse of legal arrangements, however as there is no obligation on civil trusts to use a DNFBP for trust services, it is not a widely applicable control.

DNFBP（包括律師和會計師）相對最近才被納入全面的防制洗錢/打擊資恐義務，並已將其 CDD 義務擴展到為國內民事信託或外國信託提供信託服務的案件。但是，主管機關無法預估 DNFBP 在這些角色所扮演的程度，而且 DNFBP 在不擔任受託人的情況下委任信託時，CDD 延伸的程度存在一些技術遵循落差。這是幫助防止法律協議被濫用的重要措施，但由於民事信託沒有義務使用 DNFBP 的信託服務，因此它不是一種廣泛適用的管制措施。

#### **Case Example 7.1: EDD measures applied to customers with issued bearer shares**

A Borrower Investment company Y sought to open an account with a bank. After performing CDD, it was discovered that the company was able to issue bearer shares and it was immediately treated as a high-risk customer, noted in the IT system, and confirmed no transactions were permitted without the approval of the general manager.

#### **案例 7.1: EDD 措施適用於已發行無記名股票的客戶**

借款人 Y 投資公司試圖在銀行開立帳戶。執行 CDD 後，發現該公司能夠發行無記名股票，遂立即將其視為高風險客戶，並在資訊系統中註明，確認未經總經理核准不得進行任何交易。

*Timely access to adequate, accurate and current basic and beneficial ownership information*

*即時獲取適當、正確及最新之基本和實質受益權資訊*



439. Basic information, structure of company, shareholders, and for very simple holdings, BO information of a company can be ascertained through the information maintained by the MOEA and the company. This information is available to competent authorities and is generally timely. Until the 2018 amendment to the Company Act, companies were not required to report information on shareholders holding less than 25% of shares or total capital and the required timing of updating filings to MOEA did not support accurate or timely data being available, even on basic ownership. The 2018 amendments and regulations require information on all directors, supervisors, managers and shareholders holding more than 10% of shares or capital. The regulation also requires reporting to the information platform within 15 days of any change. At the time of the onsite visit there were transition arrangements in place, so MOEA holdings were improving.

公司的基本資訊、結構、股東，以及在非常單純持股下的實質受益人資訊，可透過經濟部及公司的維護的資訊確認。這些資訊可供主管機關取得，且通常是即時的。在 2018 年公司法修正之前，公司毋須申報持有 25% 以下股份或資本額的股東資訊，且規定向經濟部更新申報資訊的期限，無法支持提供正確或即時的資料，甚至是基本所有權資訊。2018 年的修法和法規要求申報所有董事、監察人、經理人及持有 10% 以上股份或資本額之股東資訊。法規還要求任何變更應在 15 天內向資訊平台申報。現地評鑑時正值於過渡期間，因此經濟部持有資訊的情況正在改善。

440. Public companies have had similar obligations for some time under the Securities and Exchange Act. The Company Act obligations to report from 10% are a welcome development, but it does not go as far as the insiders' shareholding reporting requirements under the Securities and Exchange Act. In that act shareholdings for purpose of the 10% threshold include the shares held by the shareholder's spouse and minor children as well as the shares held under any other party's name (Article 25(3) of the Securities and Exchange Act). Article 2 of the Securities and Exchange Act Enforcement Rules regulates the shares held under the name of any third party.

根據證券交易法，公開發行公司已有類似義務一段期間。公司法從 10% 以上申報的義務是一項令人樂見的發展，但它並未達到證券交易法規定的內部人持股報告的要求。在該法中，為 10% 門檻目的持股包括股東的配偶和未成年子女持有的股份，以及任何以他方名義持有的股份（證券交易法第 25（3）條）。證券交易法施行細則第 2 條規定以任何第三方名義持有的股份。

441. CTP searching facilitated by MOEA includes a range of data provided by the TDCC (listed company information). CTP search supports multi-layer search. This cross references both filed company ownership / directorship information, as well as public companies filings from listed companies, as well as tax information.

由經濟部推動的 CTP 資訊搜尋包括臺灣集中保管結算所股份有限公司提供的一系列資料（上市公司資訊）。CTP 搜尋支援多層次搜尋功能，並交叉引用經申報的公司所有權/董事資訊、上市公司的公開發行公司資訊以及稅務資訊。

442. Competent authorities have access to beneficial ownership information collected by FI/DNFBP through CDD, with FI/DNFBPs taking reasonable measures to identify and verify the identity of BOs. Additional information can be obtained through official letters. CDD is done reasonably well amongst FIs, and while the obligations are new amongst DNFBPs, CDD information on BO may be available. CDD records are updated periodically under ongoing CDD requirements, while BO arrangements may have changed in the interim. Challenges in conducting CDD including in relation to nominee or front accounts or complex structures may limit the utility of CDD information in revealing ultimate beneficial ownership and control. As outlined in IO.3 & IO.4, there are as number of strengths and some weaknesses with the implementation of CDD obligations, but outreach and supervision of CDD has resulted in increased rates of compliance by banks and other FIs.

主管機關可以取得 FI/DNFBP 透過 CDD 收集的實質受益權資訊，FI/DNFBPs 會採取合理措施辨識和驗證實質受益人的身份。其他資訊可以透過正式公函取得。金融機構執行 CDD 的表現良好，然而該



義務對 DNFBP 仍是新的，CDD 實質受益人的資訊是可取得的。根據持續性 CDD 的要求，CDD 記錄應定期更新，然而實質受益人的安排可能在更新之前就發生變化。進行 CDD 的挑戰包括與代名人、前台帳戶或複雜結構相關，可能會限制 CDD 資訊在揭露最終實質受益權和控制權方面的效用。正如 IO.3 和 IO.4 所述，CDD 義務的實施具有多種優勢和一些弱點，但 CDD 的宣導和監理已使銀行和其他金融機構的遵循比率提高。

443. LEAs and the FIU demonstrated regular use of mechanisms to obtain CDD information to identify BOs of legal persons. Information requests allow LEAs and the FIU to access relevant data in a reasonable timeframe. The AMLD and LEAs have power to obtain CDD information collected from FIs or DNFBPs in order to understand the beneficial ownership or control of a legal person or arrangement. Authorities have powers to request all FIs to help them with identifying which FI or DNFBP has a particular legal person as a customer, however this all-institutions approach is rarely done in practice.

7 執法機關和金融情報中心顯示經常使用機制取得 CDD 資訊以辨識法人之實質受益人。資訊請求允許執法機關和金融情報中心在合理的時間範圍內取得相關資料。法務部調查局洗錢防制處和執法機關有權取得金融機構或 DNFBP 所收集的 CDD 資訊，以便了解法人或法律協議的實質受益權或控制權。權責機關有權要求所有金融機構協助確認那些金融機構或 DNFBP 的客戶為該特定的法人，然而在實務中，很少要求全體機構作確認。

444. LEAs regularly take steps to obtain beneficial ownership information in the course of financial investigations. LEAs have demonstrated many instances of pursuing beneficial ownership of foreign corporates which hold accounts in OBUs. Significant challenges are noted in lifting the corporate veil in relation to foreign corporates which are at the heart of the business model of the OBUs in Chinese Taipei. FSC has led a significant push on CDD of existing and new OBU customers and LEAs and the FIU demonstrated actions to seek information from foreign partners on OBU customers.

執法機關經常在金融調查過程中採取措施以取得實質受益權資訊。執法機關已經證明對許多在 OBU 持有帳戶的外國公司追查實質受益權的例子。中華臺北對於以 OBU 為核心商業模式的外國企業，存有關於揭開企業面紗的重大挑戰。金管會已經大力推動對現有和新的 OBU 客戶的 CDD 措施，執法機關與金融情報中心並展現向外國合作夥伴尋求 OBU 客戶資訊的行動。

#### **Case Example 7.2: Identification of ultimate beneficial owners of companies used in a market manipulation case**

FSC monitoring identified suspicions regarding a public company, Company C for possible false product transactions initially for approximately USD 4 million. MJIB compared tax records, information obtained from FIs to identify transactions between related companies inconsistent with regular practice and identified certain companies sharing directors, supervisors, or shareholders and similar addresses in the business registration information. AMLD financial intelligence confirmed a web of affiliate companies. In the course of further investigations, MJIB identified a fraud ring involving complex beneficial ownership to obscure the persons controlling over 15 domestic and 5 foreign companies. These were used to fabricate close to one thousand circular transactions, amounting to over USD 300 million (which were not actual transactions). The false transactions were used to window-dress financial reports disclosed to the public and mislead nonspecific investors to participate in stock investments of the stocks of Company A, Company B, and Company C.

#### **案例 7.2：確認市場操縱案件中所使用公司的最終實質受益人**

金管會監控發現有關公開發行公司 C 可能涉嫌商品虛假交易，最初約為 400 萬美元。調查局比對稅務記錄，及從金融機構獲得的資訊，以辨識相關公司間不符合常規的交易，並發現某些公司在商業登記資訊中共有董事、監察人、股東和類似的地址。調查局洗錢防制處的金融情報證實關聯公司的網絡。在進一步調查過程中，調查局確定涉及複雜實質受益權的詐欺行為，以掩飾控制超過 15 家國內公司和 5 家外國公司的實際人員。這些架構被用於捏造近一千筆循環交易，金額超過 3 億美元（都不是實際交易）。經由利用虛假交易向大眾揭露美化的財務報告，欺騙非特定投資者參與 A 公司、B 公司和 C 公司的股票投資。

445. LEAs have identified some cases where there is a need to obtain historical ownership information from MOEA to assist with understanding current beneficial ownership and control arrangements. These details were able to be obtained from MOEA in a number of instances. Arising from this, MOEA has plans to include access to historical basic information (date of approval, company name, capital, location of company, directors and supervisors, managers and other information) on its website<sup>12</sup> to assist in the reconstruction of historical ownership and further assist with steps to uncover BO by FI/DNFBP and LEAs.

執法機關已經辨識一些需要從經濟部取得歷史所有權資訊的案例，以協助理解現有實質受益權和控制權的安排。這些細節已經在許多情況下能自經濟部取得。由此，經濟部計畫在網站上<sup>12</sup>提供歷史基本資訊（核准日期、公司名稱、資本額、公司所在地、董事和監察人、經理人和其他資訊），以協助重建歷史所有權，並進一步協助金融機構/DNFBP 和執法機關發掘實質受益人。

446. In relation to domestic trusts, the obligations at Article 31 of the Trust Act requiring trustees to report trust property records to the settlor and any identifiable beneficiaries annually should provide a basis to assist LEAs and other authorities identify aspects of beneficial ownership and control when investigating a trust. Related tax filings may also assist, particularly as professional trust service providers are not always used. Competent authorities did not demonstrate regular use of these powers to obtain information on parties to a private trust.

關於國內信託，信託法第 31 條規定受託人每年有義務向委託人和任何可辨識的受益人報告信託財產記錄，這應可於調查信託時提供基礎，以協助執法機關和其他機關辨識實質受益權和控制權。相關的稅務申報也是有所幫助，特別是專業信託服務提供者並不總是被使用。權責機關沒有證明經常使用這些權力來取得私人信託當事人的資訊。

447. CDD information on trustees who are customers of an FI has been obtained by LEAs in some instances (particularly from trustee businesses). However, LEAs indicated that in their experiences, offshore trusts under legal agreements are risky and present particular challenges in investigation.

某些情況下（特別是來自受託人業務），執法機關已經取得作為金融機構客戶的受託人之 CDD 資訊。然而，執法機關表示，根據他們的經驗，根據法律協議進行的境外信託存在風險，並對調查具有特別的挑戰。

### *Effectiveness, proportionality and dissuasiveness of sanctions*

#### *裁罰的有效性、合乎比例和勸阻性*

448. MOEA has taken a range of actions to implement its powers to strike off companies and other legal persons that have fail to file updated registration information. The statutory financial penalties for failure to keep ownership information up-to-date were previously not dissuasive, however amendments in 2018, including 22-1(4), of the Company Act has added to the dissuasiveness. At the time of the onsite MOEA had not commenced enforcement programs with the new obligations.

經濟部已採取一系列行動來執行其權力，以打擊未能提交更新登記資訊的公司和其他法人。之前對於未能保持所有權資訊在最新狀態的罰鍰不具有勸阻性，但 2018 年的修法，包括公司法的第 22-1（4）條增加了勸阻性。在現地評鑑期間，經濟部尚未開始執行新義務的強制計畫。

449. As outlined in IO.3, there are strengths in the implementation of CDD obligations by FIs supervised by FSC, but little checking of such implementation by DNFBPs. FSC has applied sanctions in cases of failures to undertake proper CDD or provide such material to competent authorities, and while the quantum of sanctions are low, they do support improved access to CDD information.

<sup>12</sup> Available as of 21 December 2018. 自 2018 年 12 月 21 日起可用。

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如 IO.3 所述，金管會監理的金融機構在履行 CDD 義務方面具有優勢，但很少有對 DNFBP 的此類措施執行檢查。金管會有對未能採取適當的 CDD 或向權責機關提供此類資料的情況施以裁罰，雖然裁罰的金額低，但它們確實支持改善 CDD 資訊的取得。

450. MOEA is an active registrar and, following the Company Act amendments in 2018, was beginning implement comprehensive enforcement frameworks for the new requirements. Existing controls were well enforced by the MOEA and the authorities were able to demonstrate a good track record of warning and striking off legal persons that failed to meet the disclosure obligations. At the end of 2018 there were 764,572 legal person on the registry. During 2018 42,695 new companies had been added and 31,547 had been dissolved or had their registration revoked. . During the same period MOEA identified approximately 2,000 companies with vacancies for directors, resulting in orders being given for re-election.

經濟部是一個積極的登記機關，在 2018 年公司法修訂後，開始為新的要求實施全面性強制架構。經濟部強制執行現有控制措施的表現良好，且主管機關已能展現良好的記錄，對於未能履行揭露義務的法人予以警告並解散。在 2018 年年底，共有 764,572 家法人登記。2018 年期間，新增 42,695 家公司，31,547 家公司遭解散或撤銷登記。在同一期間，經濟部發現有大約 2,000 家公司的董事職位懸缺，並命令公司進行改選。

### *Overall conclusions on Immediate Outcome 5*

#### *直接成果 5 之整體結論*

451. Chinese Taipei has undertaken a number of reforms to the Company Law to improve governance and transparency of legal ownership and governance of legal persons and improved mechanisms to assist competent authorities to lift the corporate veil. Chinese Taipei acknowledges risks posed by corporate structures and, to a lesser extent, trusts, and is taking some steps to mitigate these risks. There are controls to ensure the transparency of nominee directors and shareholders measures and to manage risks of share warrants and, to some extent, bearer shares. There are limited transparency obligations on private express trusts and few measures to identify the control of such legal arrangements. The context of Chinese Taipei sees relatively little professional intermediation in the establishment or continuing operation of legal persons, so FIs/DNFBPs may not consistently hold up to date and accurate information on beneficial ownership. LEAs demonstrated regular use of a combination of investigative techniques, basic information and CDD data obtained from FI/DNFBP to identify beneficial ownership and control of corporate structures. This has included international cooperation in sharing such information.

中華臺北對公司法進行了部分改革，以改善法人所有權的透明度和法人治理，並改善機制以協助權責機關揭開公司面紗。中華臺北認知公司結構所帶來的風險，以及信託在程度上相對較輕的風險，並正採取一些措施來抵減這些風險。有一些控制措施可以確保代名人董事和股東的透明度，並管理股票認股權證的風險，並在某種程度上管理無記名股票的風險。私人明示信託的透明度義務有限，有少許措施得以辨識這種法律協議的控制權。中華臺北的在法人的成立或繼續運作中，相對較少使用專業中介，因此金融機構/DNFBP 可能無法持續掌握有關實質受益權的最新和正確資訊。執法機關證明經常合併使用調查技巧、基本資訊和從金融機構/DNFBP 取得的 CDD 資料，來辨識公司結構的實質受益權和控制權。這包括分享此類資訊的國際合作。

452. **Chinese Taipei has a moderate level of effectiveness for Immediate Outcome 5.**

中華臺北在直接成果 5 之評等為中度有效。

## CHAPTER 8. INTERNATIONAL COOPERATION

### 第八章 國際合作

#### Key Findings and Recommended Actions

##### 重要發現及建議行動

###### Key Findings

###### 重要發現

- 1) Chinese Taipei provides good quality constructive assistance for international cooperation requests received in relation to ML, predicates and asset restraint and forfeiture. Such assistance is provided by Chinese Taipei generally in a timely fashion

中華臺北為收到有關 ML、前置犯罪、資產限制和沒收的國際合作請求提供了高品質有建設性的幫助。中華臺北一般而言能及時提供此種幫助。

- 2) The assistance Chinese Taipei provided and sought comprises of a variety of international cooperation requests, including formal MLA, financial intelligence, supervisory, LEA and other forms of international cooperation.

中華臺北提供和尋求的援助包括各種國際合作請求，包括正式的司法互助、金融情報、監理、LEA 和其他形式的國際合作。

- 3) Chinese Taipei, to date, has not received any incoming extradition requests while it has sent three outgoing extradition requests. Chinese Taipei has an extradition treaty with twelve jurisdictions and the majority of the requests have been executed in the form of repatriation or deportation. Under the Cross-Strait Joint-Fight against Crime and Mutual Legal Assistance Agreement (2009), repatriation and deportation of wanted individuals has been achieved between Chinese Taipei and China.

迄今為止，中華臺北提出三次的引渡請求，但未收到任何引渡請求。中華臺北與六個國家簽訂了引渡條約，其中大多數請求已經以遣返或驅逐出境的形式執行。根據兩岸共同打擊犯罪和司法互助協議（2009 年），中華臺北與中國大陸之間的通緝犯已被遣返和驅逐出境。

- 4) The efforts of LEAs in actively seeking international cooperation including repatriation of locals has resulted in perpetrators being prosecuted and convicted along with criminal asset seizure outside of Chinese Taipei.

執法機關積極尋求國際合作（包括遣返公民）的努力導致犯罪者在中華臺北以外的地方被起訴和定罪，以及資產被扣押。

- 5) Chinese Taipei seeks assistance in an appropriate and timely manner to pursue domestic predicates, however, it is not sufficiently proactive with pursuing international assistance in ML matters.

中華臺北以適當和及時的方式尋求協助以追訴國內前置犯罪，但是，在尋求國際援助洗錢事務方面不夠積極主動。

- 6) Chinese Taipei routinely uses other forms of international cooperation in a proper and timely manner. Chinese Taipei maintains a network of LEA representatives overseas (including MJIB, Customs and FSC) who seek and coordinate international cooperation. This assists with



overcoming long-standing challenges to obtaining assistance and has further contributed to Chinese Taipei authorities assisting and obtaining assistance from foreign counterparts in a more dynamic and effective manner.

中華臺北經常以適當和及時的方式使用其他形式的國際合作。中華臺北在海外有尋求和協調國際合作的全球 LEA 代表網絡（包括 MJIB、海關和 FSC）。這有助於克服長期面臨的挑戰以獲得援助，並為中華臺北當局能夠以更加動態和有效的方式協助並獲得外國執法部門的協助做出了進一步的貢獻。

- 7) Overall the assistance provided and sought through other forms of cooperation is consistent with the risk profile of Chinese Taipei. Chinese Taipei's LEAs play an active role in sharing information spontaneously with their foreign counterparts.

總體而言，透過其他形式的合作提供和尋求的幫助符合中華臺北的風險狀況。中華臺北的 LEA 在主動與外國對等機關分享信息方面扮演了積極的角色。

- 8) Chinese Taipei shares basic and BO information of legal persons and arrangements, however, it can only share information that is available under Chinese Taipei law. LEAs including the AMLD have actively sought international cooperation for beneficial ownership information from foreign counterparts in keeping with the risk profile.

中華臺北分享法人和法律協議的基本和 BO 資訊，但是，它只能分享根據中華臺北法律規定的資訊。包括 AMLD 在內的 LEA 積極尋求國際合作，以獲得外國對等機關的受益所有權信息，以符合風險狀況。

### *Recommended Actions*

#### *建議行動*

- a) Continue to apply an increased focus on international cooperation, in particular in relation to LEAs actively transnational aspects of key risk areas of drug trafficking, smuggling and also underground banking channels.

持續關注國際合作，特別是有關 LEA 在涉及販毒，走私和地下銀行管道等主要風險領域跨國方面的國際合作。

- b) Consider proactively seeking information related to ML offences when a MLA request is sent to a foreign jurisdiction regarding predicate offenses.

當向外國司法管轄區發送有關前置犯罪的 MLA 請求時，請考慮主動尋求與 ML 犯罪相關的資訊。

- c) FSC should further consider and respond to specific transnational risk when planning and undertaking international cooperation, including sharing risk information related to fit and proper checking and on the planning and conduct of supervision.

FSC 在計劃和開展國際合作時應進一步考慮和回應特定的跨國風險，包括分享與適格性檢查有關的風險資訊，以及有關監理的計畫和作為。

453. The relevant Immediate Outcome considered and assessed in this chapter is IO2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40.

本章考慮和評估的直接成果是 IO2。與本節有效性評估有關的建議是 R.36-40。

## Immediate Outcome 2 (International Cooperation)

### 直接成果 2 (國際合作)

454. Chinese Taipei has a sound legal framework and related mechanisms for international cooperation both through the formal and informal channels of cooperation. Assistance broadly covers evidence gathering, investigation, inquiry, prosecution, restraint/seizure and forfeiture of assets, provision and serving of documents, transfer of persons in custody for testimonial purposes, locating persons and other proceedings on criminal matters.

中華臺北透過正式和非正式合作管道，建立了健全的法律框架和相關的國際合作機制。協助大致涵蓋證據收集，調查，詢問，起訴，限制/扣押和沒收資產，準備和提供文件，為作證所需移交被羈押人員，尋找人員和其他刑事訴訟程序。

455. Chinese Taipei's assessments of risk have considered many elements of transnational threats, however there remain some weaknesses with understanding and consideration of foreign threats, including criminal proceeds from China (see IO 1). These gaps in understanding and responding to some aspects of transnational risks apply to criminal justice, financial supervisory and regulatory areas. This resulted in less-focused cooperation on drug and smuggling offenses and related ML.

中華臺北對風險的評估考慮了許多跨國威脅因素，但在理解和考慮外國威脅方面仍然存在一些弱點，包括來自中國大陸的犯罪收益（見 IO 1）。理解和應對跨國風險某些方面的這些差距包含刑事司法，金融監管和監管領域。這導致在毒品和走私犯罪及與洗錢相關方面的合作重點較少。

456. An important contextual issue is that Chinese Taipei faces broad and long-standing challenges to receiving international cooperation from foreign jurisdictions. Chinese Taipei demonstrated wide ranging efforts to find practical ways to overcome these challenges. Chinese Taipei actively uses FIU international cooperation channels to help to improve cooperation with non-FIU foreign counterparts. A large number of Chinese Taipei LEA attachés or liaison officers are stationed globally to support international cooperation in many dimensions, which significantly increased the opportunities for direct engagement with foreign counterparts and enhanced the efficiency of international cooperation. FSC participates in a wider range of technical cooperation bodies, and provides further practical support through foreign liaison officers and regular foreign engagement.

一個重要的背景問題是，中華臺北面臨著接受外國司法管轄區國際合作廣泛而長期的挑戰。中華臺北展示了廣泛的努力，以找到克服這些挑戰的實際方法。中華臺北積極利用 FIU 國際合作渠道，幫助加強與非 FIU 國外對等機關的合作。全球駐紮著大量中華臺北執法機關專員或聯絡官，以支持多方面的國際合作，大大增加了與外國對等機關直接接觸的機會，提高了國際合作的效率。FSC 參與更廣泛的技術合作機構，並通過外國聯絡官和定期的外國參與提供進一步的實際支持。

### *Providing constructive and timely MLA and extradition, seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements*

*提供建設性和及時性的司法互助及引渡，尋求及時的法律協助，以追查跨國性之國內洗錢、相關前置犯罪及資恐案件*

457. Chinese Taipei provides high quality constructive assistance for international cooperation requests related to ML and asset restraint and forfeiture.

中華臺北為有關洗錢和資產限制和沒收的國際合作請求提供高品質的建設性幫助。

458. MOJ's Department of International and Cross Strait Affairs is Chinese Taipei's Central Authority for providing and seeking formal international cooperation in criminal matters including extradition. A formal request under a mutual legal assistance treaty or agreement (MLAT/A) will be

sent directly to MOJ, and in the absence of a MLAT/A, a written request via diplomatic channels on the basis of reciprocity can be sent to Chinese Taipei's Ministry of Foreign Affairs (MOFA). After the enactment of the Mutual Assistance in Criminal Matters Act on May 2, 2018, a written request based on the principle of reciprocity, if urgent, can be directly transmitted between MOJ and foreign courts or relevant prosecutorial or law enforcement authorities while a request that lacks urgency is still routed via both MOJ and MOFA. MOJ is also a member of ARIN-AP and the point of contact for Chinese Taipei in asset recovery work.

法務部國際及兩岸法律司是中華臺北負責提供和尋求含引渡在內的正式國際合作的中央機關。根據司法互助條約或協議（MLAT / A）提出的正式請求將直接發送給 MOJ，如果沒有 MLAT / A，可以通過外交途徑在互惠基礎上向外交部（MOFA）發送書面請求。在 2018 年 5 月 2 日“國際刑事司法互助法”頒布後，基於互惠原則的書面請求，如果有緊急情況，可以直接在 MOJ 與外國法院或相關檢察機關或執法機關之間交換，但若沒有緊急情況仍然要經由 MOJ 和 MOFA。MOJ 是 Arin-AP 的會員，也是中華臺北資產返還的聯絡窗口。

459. Chinese Taipei currently has MLAT/A with four countries and extradition treaties/agreements with 6 countries.

中華臺北目前與 4 個國家簽訂司法互助條約/協定，及與 6 個國家簽訂引渡條約/協定。

460. The assistance Chinese Taipei provided and sought comprises of a variety of international cooperation requests, including formal MLA, financial intelligence, supervisory, law LEA and other forms of international cooperation.

中華臺北提供和尋求各種形式的國際合作請求，包括正式的司法互助、金融情報、監理、法律執法機關和其他形式的國際合作。

461. MOJ maintains a rudimentary electronic case management system and conducts request reviews on a priority basis. In placing priority on the requests, MOJ will take a number of factors into consideration. One example is if the request is urgent, assets seizure requests usually will be given priority since the assets may be dissipated quickly. Other factors include the level of severity of the offenses identified in the requests and the likely social impact of the case. The case management system handles both MLA and extradition requests.

法務部管理電子案件管理系統及對於請求進行優先性審查。在審查請求的優先性時，法務部會考慮許多因素。例如如果是緊急的請求，扣押資產的請求通常會被優先考慮，因為資產可能會快速減失。其他因素包括犯罪的惡性以及案件對社會的影響。案件管理系統處理司法互助請求及引渡請求。

462. Assistance provided by Chinese Taipei is generally timely. The duration of the time for responding to MLA requests varies, hinging upon the clarity of the incoming requests received from the foreign jurisdictions, the complexity of the issues, and the information sought or the action requested by other jurisdictions. The average timeframe to complete a MLA request for all cases including requests transmitted under a bilateral MLA agreement or via diplomatic channels is about 4.5 months. The majority of feedback from FATF and FSRB indicated that MLAs by Chinese Taipei were being provided in a timely manner.

中華臺北一般來說能提供及時的幫助。回應司法互助請求的時間不盡相同，這取決於從外國收到的請求的明確性，問題的複雜性以及所尋求的資訊或其他司法管轄區所要求的行動。完成司法互助請求的平均時間，包括根據雙邊司法互助協議或外交管道的請求，大約需要 4.5 個月。大部份來自 FATF 和 FSRB 的回應都顯示中華臺北能提供及時的司法互助。

463. A MLA request seeking coercive measures can only be executed if dual criminality is present while a lack of the dual criminality will not impact execution of a MLA request that does not seek

coercive measures such as information on bank records. Asset restraint and seizure requests can be executed quickly by using domestic restraint/seizure statutes.

涉及強制處分之司法互助請求僅在符合雙重可罰原則時始能執行，若未涉及強制處分如調取銀行紀錄時，則雖不符雙重可罰原則亦不影響其執行。資產凍結或扣押請求可運用國內凍結/扣押之法令迅速執行。

464. From the years 2013-2017, Chinese Taipei received 102 requests for assistance in criminal matters. Of these, 16 requests are related to ML offences and 56 related to ML predicates. 87% of the 102 requests have been fulfilled.

自 2013 年至 2017 年，中華臺北收到 102 份刑事司法互助請求。其中 16 項請求與洗錢犯罪相關，56 項與洗錢前置犯罪相關。102 個請求中有 87% 已完成回覆。

**Table 8.1: MLA requests received and sought (jurisdictions other than China)**

**表 8.1：收到和提出之司法互助請求（中國以外之其他司法管轄區）**

| Type of Request<br>請求種類       | No. of Requests Received<br>收到之請求數量 |      |      |      |      |                   | No. of Requests made<br>提出之請求數量 |      |      |      |      |                   |
|-------------------------------|-------------------------------------|------|------|------|------|-------------------|---------------------------------|------|------|------|------|-------------------|
|                               | 2013                                | 2014 | 2015 | 2016 | 2017 | 2018<br>(Jan-Jun) | 2013                            | 2014 | 2015 | 2016 | 2017 | 2018<br>(Jan-Jun) |
| Total<br>總計                   | 15                                  | 17   | 25   | 29   | 16   | 23                | 29                              | 32   | 52   | 51   | 47   | 35                |
| ML<br>洗錢                      | 2                                   | 3    | 3    | 3    | 3    | 2                 | 1                               | 0    | 5    | 5    | 0    | 2                 |
| Predicates<br>前置犯罪            | 9                                   | 10   | 13   | 19   | 5    | 16                | 19                              | 16   | 32   | 40   | 41   | 29                |
| Requests<br>Fulfilled<br>完成請求 | 13                                  | 17   | 24   | 26   | 8    | 5                 | 21                              | 15   | 34   | 24   | 10   | 0                 |
| Refused<br>拒絕                 | 2                                   | 0    | 1    | 2    | 1    | 0                 | 5                               | 0    | 5    | 4    | 2    | 0                 |

465. Chinese Taipei received and sought a large number of successful MLA requests with China, which is, to a degree, in keeping with the risk profile. Chinese Taipei's MLA and extradition with China operates under the Cross-Strait Joint-Fight against Crime and MLA Agreement, which entered into force in June 2009. From 2015-2017, there were more than 100 MLA cases between Chinese Taipei and China related to joint investigation and evidence gathering. Chinese Taipei responded to 533 incoming MLA requests from China in the same period.

中華臺北收到並向中國大陸尋求大量成功的司法協助請求，這在一定程度上符合風險狀況。中華臺北的 MLA 與中國大陸的引渡在 2009 年 6 月生效的海峽兩岸聯合打擊犯罪和司法互助協議下運作。從 2015 年至 2017 年，中華臺北與中國大陸之間的 MLA 案件超過 100 起與聯合調查和證據蒐集有關。同一時期，中華臺北回應了 533 個來自中國大陸的 MLA 請求。

466. Chinese Taipei largely provides international cooperation in line with its risk profile. Below is a table reflecting the jurisdictions with which Chinese Taipei has sought and provided cooperation.

中華臺北主要根據其風險狀況提供國際合作。以下表格反映了中華臺北尋求和提供合作的司法管轄區。



**Table 8.2: Jurisdictions involved in Chinese Taipei's MLA cases (not including cases with China)**

**表 8.2：與中華臺北司法互助往來之司法管轄區（中國以外國家）**

| MLA provided by Chinese Taipei to foreign jurisdictions<br>中華臺北向外國司法管轄區提供之司法互助   |                              | Requests for MLA from Chinese Taipei to foreign jurisdictions<br>中華臺北向外國司法管轄區請求之司法互助   |                              |
|--|------------------------------|--|------------------------------|
| Jurisdiction<br>司法管轄區  | No. of MLA cases<br>司法互助案件數量 | Jurisdiction<br>司法管轄區  | No. of MLA cases<br>司法互助案件數量 |
| USA<br>美國  | 23                           | USA<br>美國  | 74                           |
| Poland<br>波蘭   | 13                           | UK<br>英國   | 20                           |
| Vietnam<br>越南  | 9                            | Philippines<br>菲律賓   | 19                           |
| Switzerland<br>瑞士  | 8                            | Vietnam<br>越南  | 14                           |
| Australia<br>澳洲  | 6                            | Singapore<br>新加坡   | 11                           |
| Germany<br>德國  | 5                            | Australia<br>澳洲  | 6                            |
| South Korea<br>南韓  | 2                            | South Africa<br>南非   | 4                            |
|  |                              | Spain<br>西班牙   | 3                            |
| <b>Total 合計</b>  | <b>66</b>                    | <b>Total 合計</b>  | <b>151</b>                   |
| Cases: ML, drug trafficking, corruption, taxation offences, forgery of documents, fraud, breach of trust, human trafficking<br>案件：洗錢、毒品販運、貪污、稅務犯罪、偽造文書、詐欺、背信、人口販運。 |                              | Cases: ML, drug trafficking, corruption, forgery of documents, fraud, obstruction of freedom, copyright Act, human trafficking.<br>案件：洗錢、毒品販運、貪污、稅務犯罪、偽造文書、詐欺、妨害自由、違反著作權、人口販運。 |                              |

467. Chinese Taipei provided a number of case studies in which MLA was provided to high quality in a timely way. Some of these matters are still on-going and cannot be published.

中華臺北提供了一些案例研究表示及時提供高品質的刑事司法互助。其中一些案件仍在進行中而無法公布。

**Case Example 8.1: Asset Recovery**

**案例8.1：資產返還**

Chinese Taipei prosecuted its former President for corruption-related charges and ML. The former first family, with received bribe payments, used Hong Kong, China and Swiss bank accounts, British Virgin Island companies and a St. Kitts and Nevis trust to purchase two real properties located in the United States. The United States initiated two civil forfeiture actions and ultimately forfeited the properties as a result of a settlement. Chinese Taipei provided critical assistance ranging from information sharing via both MLA and law enforcement channels, witness interviews etc. After forfeiture, the United States sold the properties and obtained approximately \$1.5 million in proceeds, which was returned to Chinese Taipei in 2016.

中華臺北起訴前總統貪污及洗錢犯罪。前第一家庭收受賄賂付款運用香港籍瑞士銀行帳戶、BVI 公司及 St. Kitts and Nevis 信託在美國購買 2 間不動產。美國在該 2 間不動產所在地採取民事沒收，最後沒收清算。中華臺北在本案提供重要協助，從透過司法互助及執法管道分享資訊、訪談證人等。沒收之後，美國則拍賣該不動產，獲得約 150 萬美金，並於 2016 年歸還中華臺北。

468. Chinese Taipei has demonstrated, in various actual cases, that it has taken positive action on the request for assistance from other countries by freezing and seizing assets; searching for and seizing physical evidence; and extraditing the offenders. For example, in response to a MLA request from the United States, Chinese Taipei has seized over USD15 million in drug proceeds involved in large scale trade-based ML schemes. In another case, based on an MLA request from Australia related to drug smuggling, Chinese Taipei provided a wide range of assistance in aid of the Australian investigation, resulting in the arrest of a number of drug offenders including the main target in the case.

中華臺北在各種實際案例中證明，已透過凍結和扣押資產、尋找和扣押物證、引渡罪犯等方式對其他國家的互助請求採取了積極行動。例如，針對美國的司法互助請求，中華臺北已經扣押超過 1500 萬美元的大規模以貿易為基礎的洗錢詐騙。針對澳洲的毒品走私案件的司法互助請求，中華臺北在調查方面提供了廣泛的協助，使得包括該案件主嫌在內的一些毒品犯罪者被逮捕。

469. One untested challenge to the provision of constructive assistance is Chinese Taipei's ability to share forfeited assets based on a MLA request from other jurisdictions. Chinese Taipei has never shared forfeited assets with another jurisdiction as Chinese Taipei advised that it to date has not received a request for sharing.

中華臺北根據其他司法管轄區的司法互助請求分享沒收資產的能力仍未經過檢驗。中華臺北從未與另一個司法管轄區分享沒收資產，因為中華臺北方面表示迄今尚未收到分享請求。

470. Chinese Taipei, to date, has not received any incoming extradition requests while it has sent three outgoing extradition requests. Chinese Taipei has an extradition treaty with six countries and the majority of the requests have been executed in the form of repatriation or deportation.

中華臺北迄今雖有提出三個引渡請求，但未收到任何引渡請求。中華臺北與 6 個國家簽訂了引渡條約，其中大多數請求已經以遣返或驅逐出境的形式執行。

### **Case Example 8.2: Extradition/deportation of Murder Suspects**

#### **案例8.2：謀殺案嫌疑人引渡/驅逐出境**

In aid of a murder investigation in Hong Kong, China in the absence of a specific request from Hong Kong, China - Chinese Taipei spontaneously revoked three suspects Chinese Taipei's entry permits for deportation, and promptly notified the relevant authority in Hong Kong, China of their pending deportation. Chinese Taipei requested the Hong Kong, China authorities of to escort the suspects back to Hong Kong, China.

為協助在香港某謀殺案調查，香港雖未提出特定請求，中華臺北主動註銷 3 名嫌疑人台北之入境簽證以驅逐出境，並迅速通知香港有關單位，請求香港派員陪同主嫌返回中國香港。

**Table 8.3: Extradition/Repatriation/Deportation from 2014-June 2018**

**表 8.3：2014 年至 2018 年 6 月之引渡/遣返/驅逐出境**

| Type<br>種類  | Agency<br>機關       | 2014 | 2015 | 2016 | 2017 | 2018 (Jan-Jun) | Total |
|---|--------------------|------|------|------|------|----------------|-------|
| Chinese Taipei<br>locals repatriated<br>中華臺北國民被遣<br>返 | NPA<br>內政部警<br>政署  | 51   | 74   | 49   | 54   | 30             | 258   |
|   | MJIB<br>法務部調<br>查局 | 0    | 1    | 1    | 79   | 11             | 92    |
| Foreigners<br>reported<br>遞解外國人<br>出境                 | MJIB<br>法務部調<br>查局 | 1    | 1    | 2    | 4    | 1              | 9     |
|   | NIA<br>內政部移<br>民署  | 2    | 0    | 1    | 0    | 0              | 3     |

471. Under the Cross-Strait Joint-Fight against Crime and Mutual Legal Assistance Agreement, repatriation and deportation of wanted individuals has been achieved between Chinese Taipei and China. From 2013-2017, Chinese Taipei received 13 repatriation requests from China, 8 of which have been executed and completed; during the same period, Chinese Taipei has sent 730 repatriation requests to China, 220 which have been responded to.

根據海峽兩岸共同打擊犯罪及司法互助協議，中華臺北與中國大陸之間的通緝犯已能被遣返和驅逐出境。從 2013 年到 2017 年，中華臺北收到了 13 件來自中國大陸的遣返請求，其中 8 件已經執行完成；在同一時期，中華臺北已向中國大陸發出了 730 件遣返請求，其中 220 件已獲得回應。

472. Chinese Taipei seeks MLA in an appropriate and timely manner. Chinese Taipei provided seminars for prosecutors and law enforcement in regards to the use of formal MLAs; MOJ proactively contacts the district prosecutors' office if a MLA request is needed; After the enactment of Mutual Legal Assistance in Criminal Matter Act in May 2018, MOJ's website includes templates for MLA requests for various purposes and the information on the countries with which Chinese Taipei has a bilateral MLA or an extradition agreement.

中華臺北能及時適當地尋求司法互助。中華臺北為檢察官和執法部門提供有關使用正式司法互助的研討會；如果需要提出司法互助請求，法務部會積極的與地檢署聯繫；在 2018 年 5 月頒布國際刑事司法互助法後，法務部的網站即涵蓋了與各種目的相關的司法互助請求樣本，以及與中華臺北簽訂雙邊司法互助或引渡協議的國家的訊息。

473. The case studies provided by Chinese Taipei demonstrate that it seeks MLA requests generally in line with its risk profile – proactively seeking MLA assistance to pursue domestic predicates while less enterprisingly to pursue international assistance for ML violations. For instance, in 2017 Chinese Taipei sent 47 outgoing MLA requests, of which 41 related to ML predicates, however, none related to ML.

中華臺北提供的案例證明其總體上係根據風險狀況尋求司法互助-積極尋求司法互助以訴追國內前置犯罪，然而並不那麼有魄力的尋求國際協助有關洗錢犯罪。例如，2017 年中華臺北發出了 47 件司法互助請求，其中 41 件涉及洗錢前置犯罪，但是並未與洗錢有關。

**Case Example 8.3: Prosecution of Corruption and Ongoing Asset Recovery Action**

### 案例8.3：貪污起訴及持續資產返還行動

Mr. W, an arms broker, and Mr. K, a Chinese Taipei military officer, obtained kickbacks, approximately USD516 million, through a purchase of Lafayette frigate made by Chinese Taipei in 1989. Mr. K was prosecuted under the Anti-Corruption Act. Chinese Taipei sent a MLA request to Switzerland where Mr. K's corruption proceeds were located, requesting the restraint and later repatriation of the corruption proceeds. Switzerland executed the request and repatriated the assets back to Chinese Taipei who forfeited the assets upon Mr. K's conviction. Mr. W used his family members' accounts to launder the corruption proceeds and transferred the proceeds to various jurisdictions including Switzerland, Liechtenstein, Austria, Jersey, Luxembourg, and Isle of Man. Chinese Taipei sought MLA from the aforementioned countries to restrain the accounts. The jurisdictions froze funds amounting to USD1.084 billion. Chinese Taipei's court of first instance in 2017 issued a forfeiture judgment in the amount of approximately USD900 million.

軍火商 W 先生及中華臺北軍官 K 先生透過 1989 年中華臺北採購拉法葉案取得約 5 億 1600 萬美元的高額回扣。K 先生因違反中華臺北的貪污治罪條例被起訴，中華臺北向 K 先生貪污不法所得之所在地瑞士提出司法互助請求，希望能凍結並返還貪污所得。瑞士執行該請求並依 K 先生的判決書所沒收之資產返還給中華臺北。W 先生以其家屬的帳戶清洗貪污所得並移轉至不同國家，包括瑞士、列支敦斯登、奧地利、澤西、盧森堡及曼島。這些國家凍結之不法所得資金高達 10 億 8400 萬美元。中華臺北一審法院於 2017 年判決沒收約 9 億美元。

474. Pursuant to the Joint-fight against Crime and Mutual Legal Assistance Agreement with China, Chinese Taipei has actively engaged in joint investigations with 5 provincial level entities in China including Shanghai, Guangdong, Fujian, Zhejiang and Jiangsu. From 2014-2017, the MJIB sent 30 requests to China regarding investigation and evidence gathering. Out of these requests, 24 cases involved telecommunications fraud, 1 case related to narcotics, and 5 cases related to other economic crimes.

根據海峽兩岸共同打擊犯罪和司法互助協助協議，中華臺北積極與中國大陸的 5 個省級進行聯合調查，包括上海、廣東、福建、浙江和江蘇。從 2014 年至 2017 年，法務部調查局向中國大陸發出了 30 份關於調查和蒐集證據的請求。在這些要求中，24 個案件涉及電信詐欺，1 個案件涉及麻醉藥品，5 個案件涉及其他經濟犯罪。

### *Seeking other forms of international cooperation for AML/CFT purposes*

#### *尋找其他形式之防制洗錢/打擊資恐目的之國際合作*

475. Chinese Taipei regularly seeks other forms of international cooperation in an appropriate and timely fashion for AML/CFT purposes. Chinese Taipei maintains a global network of law enforcement attachés who seek and provide international cooperation as needed. These representatives were able to directly engage in communication and cooperation with their foreign counterparts, thereby resulting in a more dynamic and constructive process.

中華臺北定期以適當和及時的方式尋求其他形式的國際合作，以實現洗錢防制/打擊資恐的目的。中華臺北擁有全球執法網絡，法務部和洗錢防制處專員，他們根據需要尋求並提供國際合作。這些代表能夠直接與外國對等機關進行溝通和合作，並提升互動及建設性。

476. These attachés seek assistance for the investigations and prosecutions that are generally consistent with the risk profile of Chinese Taipei. Where multiple agencies' efforts are involved and agencies' jurisdiction on investigations overlap, the law enforcement attaché who started the investigation will usually take lead and guide a joint investigation. When the investigation is viable and ready, the law enforcement attachés will contact the relevant district prosecutors' office and at that point the prosecutor assigned to the case will coordinate and direct the investigation.



這些專員因調查及起訴尋求協助，整體與中華臺北的風險狀況一致。當涉及多個機關的付出，調查職權有所重疊，則先開始調查的執法專員會帶頭並指導聯合調查。當調查可行並就緒時，執法專員會聯繫相關的地檢署，此時分案的承辦檢察官將協調和指揮調查。

**Table 8.4: Chinese Taipei's Global Network in aid of International Cooperation**

**表 8.4：中華臺北國際合作之全球協助網絡**

| Agency<br>機關     | Officers Assigned Abroad<br>外派官員 | No. of Jurisdictions/Region<br>司法管轄區/地區數量 |
|------------------|----------------------------------|---|
| MJIB<br>法務部調查局   | 26                               | 20  |
| NPA<br>內政部警政署    | 10                               | 10  |
| NIA<br>內政部移民署    | 26                               | 20  |
| CGA<br>海洋委員會海巡署  | 3                                | 2   |
| CA<br>財政部關務署     | 2                                | 2   |
| FSC<br>金融監督管理委員會 | 6                                | 2   |
| MOEA<br>經濟部      | 150                              | 50  |

477. *FIU cooperation* - ALMD is a member of the Egmont Group, and plays an important international collaboration role for exchange of financial intelligence using the Egmont Secured Web (ESW) on behalf of domestic agencies. As of the onsite, Chinese Taipei has MOUs or agreements on AML/CFT intelligence exchange with 46 countries. Chinese Taipei advised that AMLD, on average, was able to complete each request within 22 days.

洗錢防制處是艾格蒙聯盟的會員，代表國內機關運用艾格蒙安全網路（ESW）在中華臺北的金融情資交換扮演重要的國際合作角色。截至現地評鑑為止，中華臺北與 46 個國家簽訂了防制洗錢/打擊資恐情資交換合作備忘錄或協議。中華臺北表示，平均而言，洗錢防制處能在 22 天內完成每件請求。

478. From 2014- to June 2018, AMLD engaged in 1,250 intelligence exchanges with 155 FIUs in 348 cases. Out of the 348 cases, AMLD received requests on 210 cases, made requests in 138 cases based on the needs for STR analysis or on behalf of domestic LEAs and prosecutors' offices, and spontaneously shared intelligence on 96 cases. The majority of request were made to Hong Kong, China; the United States; and Singapore and predominately related to fraud and stock market crimes.

2014 年至 2018 年 6 月，洗錢防制處共與 155 個金融情報中心進行 348 案 1250 次情資交換。348 案中，洗錢防制處受理 210 案請求，基於 STR 分析所需或代表國內執法機關和檢察署提出 138 案請求，並主動分享 96 案情資。大部分請求是針對香港，中國，美國和新加坡，主要涉及欺詐和股票市場犯罪。

Table 8.5: Statistics - Outgoing Requests by AMLD and LEAs

表 8.5：統計資料—洗錢防制處和各執法機關請求外國提供情資

| Authority<br>機關名稱                            | Request/Execution<br>請求/執行情形    | 2014 | 2015 | 2016 | 2017                  | 2018<br>(Jan-Jun)     |
|--|---------------------------------|------|------|------|-----------------------|-----------------------|
| <b>Financial Intelligence Unit</b><br>金融情報中心 |                                 |      |      |      |                       |                       |
| AMLD<br>洗錢防制處                                | Cases<br>案數                     | 20   | 49   | 34   | 21                    | 14                    |
|  | Requests made<br>請求件數           | 70   | 228  | 165  | 87                    | 60                    |
|  | Granted(case)<br>同意(案數)         | 20   | 45   | 32   | 21                    | 13                    |
|  | Denied (case)<br>拒絕(案數)         | 0    | 0    | 0    | 0                     | 1                     |
|  | Pending (case)<br>未回覆(案數)       | 0    | 4    | 2    | 2                     | 2                     |
| <b>Law Enforcement Authorities</b><br>執法機關   |                                 |      |      |      |                       |                       |
| MJIB<br>法務部調查局                               | Requests made (cases)<br>請求(案數) | 125  | 190  | 115  | 118                   | 103                   |
|  | Granted<br>同意                   | 101  | 156  | 46   | 74                    | 76                    |
|  | Denied<br>拒絕                    | 0    | 0    | 0    | 1                     | 0                     |
|  | Pending<br>未回覆                  | 24   | 34   | 69   | 43                    | 27                    |
| AAC<br>法務部廉政署                                | Requests made (cases)<br>請求(案數) | 2    | 7    | 3    | 1                     | 1                     |
|  | Granted<br>同意                   | 2    | 7    | 3    | 1 processing<br>1 進行中 | 1 processing<br>1 進行中 |
|  | Denied<br>拒絕                    | 0    | 0    | 0    | 0                     | 0                     |
|  | Pending<br>未回覆                  | 0    | 0    | 0    | 0                     | 0                     |
| NPA(CIB)<br>內政部警政署(刑事警察局)                    | Requests made<br>請求件數           | 68   | 127  | 125  | 130                   | 56                    |
|  | Granted<br>同意                   | 11   | 30   | 2    | 45                    | 10                    |
|  | Denied<br>拒絕                    | 14   | 16   | 14   | 3                     | 3                     |
|  | Pending<br>未回覆                  | 43   | 81   | 109  | 82                    | 46                    |
| NIA<br>內政部移民署                                | Requests made (cases)<br>請求(案數) | 6    | 4    | 11   | 6                     |                       |
|  | Granted<br>同意                   | 6    | 4    | 11   | 6                     |                       |
|  | Denied<br>拒絕                    | 0    | 0    | 0    | 0                     |                       |
|  | Pending<br>未回覆                  | 0    | 0    | 0    | 0                     |                       |

### **Case Example 8.4: Prosecution achieved through other forms of International Cooperation**

#### **案例8.4：其他刑事國際合作達成起訴**

In July 2016 a hacking occurred of an overseas branch of Bank F's computer system, which gained access to the bank's internal network and a specific model of ATM. Investigations found that an international criminal group comprised of 22 suspects from 9 countries were involved and a few members of the group arrived in Chinese Taipei after the initial hack and gained control of 41 ATMs in 22 branches of the Bank on July 10 and 11, 2016. The criminal activity caused the ATMs to automatically dispense cash bills, totalling NTD 83.27 million (approx. USD2.74 million). IB investigations led to the arrest of suspects in Chinese Taipei within 5 days.

MJIB identified the IP address of the unknown server in jurisdiction S that was used by the group to establish irregular connection with Bank F's overseas branch audio service mainframe to crack the access password. AMLD assisted MJIB investigating fund flows between related parties before and after the case, and monitored subsequent transactions. Money mules who were used in the case were foreign nationals. AMLD obtained cooperation from foreign FIUs through ESW to obtain criminal records, STRs or CTRs and financial records associated with the foreign suspects and shared the financial intelligence with MJIB. Chinese Taipei's intelligence resulted in the arrest of the main suspects in March 2018 in jurisdiction S and unravelled an international cybercrime group, a notorious Eastern European hacker group, who had hacked into the banking systems in multiple countries and then laundered funds. This group was wanted by the police in multiple countries.

In September 2016, Taipei District Prosecutors Office charged the 3 main suspects with various criminal offenses and issued circular orders to 19 money mules involved in the case. In January 2017, Taipei District Court sentenced the defendants to 5 years of imprisonment and an additional fine of NT\$600,000 (about USD20,000). They will be deported after serving their sentence.

2016年7月，某國際犯罪集團包括來自9國的22位嫌犯駭入F銀行海外分行之電腦系統，取得進入該銀行內部網路權限控制某特定型號的ATM。該集團部分成員後來抵達中華臺北並於2016年7月10日及11日控制了22家分行41台ATM。該犯罪活動導致ATM自動吐鈔，總計新臺幣8327萬元(約274.6萬美元)，刑事警察局在接獲目擊者報告後立刻發動國內調查。刑事警察局運用不同調查技巧包括監視攝影機、媒體及民眾通報，成功於5天內在中華臺北逮捕嫌犯。

MJIB 迅速辨識在S國被犯罪集團建立不定期連線F銀行海外分行的語音主機，以破解登入密碼之伺服器的IP位址。洗錢防制處協助法務部調查局檢視來自或流向本案發生前後之可疑金流，並監控後續交易。本案的錢驛為外籍人士，洗錢防制處透過艾格蒙網路群求外國金融情報中心之合作，包括前科紀錄、STR或CTR及與外籍嫌犯在相關國家之金融帳戶。當接獲各不同國家金融情報中心的回應後，洗錢防制處立即將金融情資轉給法務部調查局進一步調查。中華臺北的情報後來在2018年3月於S國逮捕主嫌，並揭露跨國網路犯罪集團是惡名昭彰的東歐駭客組織，其已成功駭入許多國家的銀行系統並進行洗錢。該集團遭多個國家通緝。

2016年9月，台北地檢署以多項罪名起訴3名主嫌，並簽發通緝令予涉入本案之19位錢驛。2017年1月，台北地方法院判處被告5年徒刑併科新台幣60萬元罰鍰(約2萬美元)，服刑期滿後將驅逐出境。

479. Chinese Taipei is able to provide and seek various forms of assistance by LEAs and AMLD prior to transmission of a MLA request, and therefore, a mixed use of informal and formal forms of assistance in an appropriate and timely manner significantly enhanced the effectiveness of Chinese Taipei's international cooperation. MJIB made outgoing requests in 651 cases between 2014 and June 2018.

在發送 MLA 請求之前，中華臺北能夠向 LEA 和 AMLD 提供並尋求各種形式的協助，因此能適當及時地混合使用非正式和正式的幫助，大大提高了中華臺北國際合作的效率。MJIB 在 2014 年至 2018 年 6 月期間提出了 651 個案件的請求。

480. AAC has close collaboration mechanisms with foreign counterparts in 8 jurisdictions. Between 2014 and 2017 the AAC exchanged intelligence in 36 cases and made 13 outgoing requests. Case examples were provided to the team demonstrating the utility of these requests.

法務部廉政署與 8 個司法管轄區的外國對等機關建立了密切的合作機制。在 2014 年至 2017 年期間，法務部廉政署在 36 個案件中交換了情報，並提出了 13 個請求。中華臺北向評鑑團提供了案例，展現了這些請求的效用。

481. CGA makes regular use of its liaison officers stationed in Tokyo, Okinawa and Manila and has established communication channels with 16 agencies in 9 jurisdictions including China, the United States, Japan, New Zealand, Australia and a number of SE Asian jurisdictions. A total of 390 requests were made from CGA to China from 2014 to 2017.

海洋委員會海巡署定期利用其設在東京、沖繩和馬尼拉的聯絡官，並與包括中國、美國、日本、紐西蘭、澳大利亞和其他東南亞司法管轄區在內的 9 個司法管轄區的 16 個機關建立了溝通渠道。2014 年至 2017 年期間，海洋委員會海巡署向中國大陸提出共 390 個請求。

482. CA has liaison officers in the United States and Japan. CA has entered into 7 agreements, 6 arrangements and 4 MOUs on customs cooperation with 16 countries or jurisdictions including the European Union (EU), and established and developed communication and cooperation with foreign customs authorities in over 20 jurisdictions. From 2014-2017, CA completed 1,013 cases related to customs investigations with 24 foreign partners. In particular, CA cooperated with the customs authority in 3 countries for drug trafficking cases and seized 144 kg of drugs, and 133.5kg of smuggled gold.

財政部關務署在美國和日本設有聯絡官。迄今為止，海關已與包括歐盟（EU）在內的 16 個國家或地區簽訂了 7 項協定、6 項協議和 4 項海關合作備忘錄，並與 20 多個國家的海關當局建立並開展了溝通與合作。從 2014-2017 年間，財政部關務署與 24 個國家完成了與海關調查有關的 1,013 起案件。特別是，中華臺北的海關與 3 個國家的海關當局合作有關販毒的案件，查獲了 144 公斤的毒品和 133.5 公斤的走私黃金。

483. NIA has 27 liaison officers dispatched to various jurisdictions aligned with risk, signed 19 cooperation agreements/MOUs. NIA has completed intelligence exchanges in 27 cases with foreign immigration authorities.

內政部移民署有 27 名聯絡官被派往各個與風險一致的司法管轄區，簽署了 19 項合作協議/備忘錄。內政部移民署已與外國移民當局完成 27 個案件的情報交換。

484. *Tax Administration co-operation* - The MOF (Taxation) has entered into 32 tax agreements which provides for authority for information exchange. From 2014-2017, TA completed 13 cases of information exchange on tax matters with the competent authorities in 6 countries.

迄今為止，財政部（稅務機構）已簽訂了 32 項租稅協定，提供了交換資訊的權力。自 2014-2017 年，稅務機構與 6 個國家的主管機關完成了 13 件稅務訊息交換。

485. *FSC co-operation* - FSC has used a range of means to pursue information exchange. FSC has overseas representative offices in the United Kingdom and the United States. FSC has entered into 55 MOUs, EOLs, or protocols with 37 foreign supervisory authorities. FSC is a signatory to the IOSCO MMOU and IAIS MMOU. From 2014-2017, FSC, under various frameworks, completed 577 intelligence exchanges with foreign supervisory authorities of 25 jurisdictions and these appear to be comprehensive and timely. The most information exchanged with foreign banking supervisors are concern fit and proper tests of major shareholders or senior management of banks. Information exchange with foreign securities supervisors are generally related to securities frauds, insider trading, etc. FSC pursues regular exchange with foreign insurance supervisors. Processing time for its



insurance sector to complete incoming requests ranges from 8 to 44 days depending on the complexity of the requests.

FSC 使用一系列的方式進行訊息交換。FSC 在英國和美國設有兩個海外代表處。迄今為止，FSC 已與 37 個外國監理機構簽訂了 55 份備忘錄、EOL 或協議。FSC 是 IOSCO MMOU 和 IAIS MMOU 的簽約方。從 2014 年起，FSC 在各種框架下與 25 個國家的外國金融監理機構完成了 577 個情資交換。與外國銀行監管機構交換最多的信息是與關於主要股東或銀行高階管理層的適格性有關，而與外國證券監理機構的信息交換一般涉及證券詐欺、內線交易等。中華臺北表示其保險部門完成所收到請求的處理時間為 8 到 44 天，取決於該請求的複雜程度。

486. *BOAF and Central Bank cooperation* – any international cooperation sought in relation to records held by BOAF or the Central Bank would be obtained via either the FSC or AMLD and then provided to international partners.

農金局和中央銀行的合作 - 任何與農金局或中央銀行持有的紀錄有關的國際合作都會透過 FSC 或 AMLD 提供給國際合作夥伴。

#### *Providing other forms international cooperation for AML/CFT purposes*

*基於防制洗錢/打擊資恐目的，提供其他形式的國際合作*

487. Chinese Taipei is able to provide many forms of assistance before receiving a request for MLA through its network of LEA attachés posted abroad. Requests for ordinary investigative assistance and intelligence exchange can be made by foreign counterparts to the attachés who will in turn pass the information request to domestic agencies. Chinese Taipei LEAs play a very active role in information sharing as well as spontaneously exchange intelligence with their foreign counterparts. The table below shows the number of requests received and their execution by ALMD and each LEA from 2014-June, 2018.

中華臺北能在接獲司法互助請求之前，透過其派駐國外的聯絡官提供許多形式的協助。一般調查請求及情資交換可經由外國對等機關向駐外人員提出，再傳遞給國內機構。中華臺北執法機關在與對等機關交換情資方面，非常主動積極。下表顯示了 2014 年至 2018 年 6 月洗錢防制處和每個執法機關收到的請求數量及其執行情況。

#### **Case Example 8.5: Arrest and assets seized achieved as a result of both MLA and other forms of International Cooperation**

##### **案例8.5：逮捕及資產扣押達成雙邊司法互助或其他形式之國際合作**

An investigation identified numerous remittances had been made to jurisdiction U and jurisdiction D. The LEA attaché stationed in jurisdiction D was tasked to monitor the movements of the individuals who made remittances. The DPO submitted MLA requests to jurisdiction U and jurisdiction D for relevant transactions. AMLD joined the investigation and issued letters to retrieve account information, transaction details, and related vouchers from several dozen of FIs. A lot of cash proceeds were found to have been transferred overseas. AMLD analysed CTRs and forex records retrieved from the Central Bank. AMLD also made a series of requests over ESW to foreign FIUs, and disseminated detailed analysis reports to the Prosecutors Office.

The investigation uncovered an overseas call centre established by fraud perpetrators in jurisdiction D. MJIB contacted jurisdiction D's judicial department for assistance. MJIB, CIB and the prosecutors visited jurisdiction D and reached agreement with the relevant authorities on cooperation, after which a formal MLA request was made to jurisdiction D. The investigation further discovered that the main suspect was also under investigation for ML by the jurisdiction D's prosecutors. In September 2017, jurisdiction D

conducted search warrants on properties of the main suspect and his associates and arrested the phone scam suspects and seized key evidences including computers and training manuals. Four Chinese Taipei suspects in this case were escorted back to Chinese Taipei by the LEA officers. The case is still under investigation by authorities in charge of this case.

某案調查發現有多筆匯款至 U 國與 D 國，派駐 D 國法務秘書受命監控匯款個人之動態。地檢署向 U 國及 D 國提出司法互助請求相關帳戶之交易資料。由於金融交易相當複雜，洗錢防制處參與調查，並發文向數十家金融機構調取帳戶資訊、交易明細及相關傳票。發現多筆現金交易，不法所得移轉至海外後，洗錢防制處分析 CTR 及央行的外匯交易紀錄。洗錢防制處也透過艾格蒙安全網路向外國金融情報中心請求相關金融情資並分送分析報告，連同資金流向圖、外匯交易紀錄及其他相關文件予檢察署。

調查發現詐欺犯在 D 國設立境外發話中心，法務部調查局聯絡 D 國的司法部請求協助。調查局、刑事局及檢察官赴 D 國並會晤相關機關。進一步調查發現 D 國檢察官也在調查主嫌所涉之洗錢犯罪。2017 年 9 月 11 日及 13 日，D 國搜索 2 處發話中心及主嫌與 3 名同夥住處。結果，D 國當局逮捕電話詐欺涉嫌人並扣押關鍵證據，包括電腦及訓練手冊。本案 4 名中華臺北籍犯罪嫌疑人由執法官員陪同遣返回台。本案仍由承辦機關調查中。

**Table 8.6: Incoming requests by AMLD and LEAs**

**表 8.6：洗錢防制處及執法機關對接獲外國情資請求之處理**

| Authority<br>機關                       | Request/Execution<br>請求/執行情形        | 2014 | 2015 | 2016 | 2017 | 2018<br>(Jan-Jun) |
|---------------------------------------|-------------------------------------|------|------|------|------|-------------------|
| Financial Intelligence Unit<br>金融情報中心 |                                     |      |      |      |      |                   |
| AMLD<br>洗錢防制處                         | Cases received<br>請求案數              | 32   | 48   | 50   | 60   | 20                |
|                                       | Requests received<br>請求件數           | 89   | 144  | 168  | 168  | 71                |
|                                       | Granted (case)<br>同意 (案數)           | 32   | 48   | 50   | 60   | 21                |
|                                       | Denied (case)<br>拒絕 (案數)            | 0    | 1    | 0    | 0    | 0                 |
|                                       | Spontaneous<br>主動提供                 | 6    | 9    | 26   | 45   | 10                |
| Law Enforcement Authorities<br>執法機關   |                                     |      |      |      |      |                   |
| MJIB<br>法務部調查局                        | Requests received<br>(case)<br>請求案數 | 77   | 129  | 91   | 129  | 119               |
|                                       | Granted<br>同意                       | 77   | 129  | 91   | 128  | 119               |
|                                       | Denied<br>拒絕                        | 0    | 0    | 0    | 1    | 0                 |
|                                       | Spontaneous (case)<br>主動提供 (案數)     | 167  | 149  | 134  | 184  | 155               |
| AAC<br>法務部廉政署                         | Requests received<br>(case)<br>請求案數 | 1    | 9    | 6    | 7    | 2                 |
|                                       | Granted<br>同意                       | 1    | 9    | 6    | 7    | 2                 |
|                                       | Denied<br>拒絕                        | 0    | 0    | 0    | 0    | 0                 |

|                             |                           |    |    |    |     |                        |
|-----------------------------|---------------------------|----|----|----|-----|------------------------|
| NPA (CIB)<br>內政部警政署 (刑事警察局) | Requests received<br>請求案數 | 57 | 89 | 93 | 123 | 42                     |
|                             | Granted<br>同意             | 57 | 89 | 93 | 123 | 25<br>(processing 進行中) |
|                             | Denied<br>拒絕              | 0  | 0  | 0  | 0   | 0                      |

488. Chinese Taipei's LEAs focus on offenses related drug trafficking and telecommunication fraud, and have conducted joint investigations with China, Hong Kong, China and other Southeast Asian countries in line with the risk profile identified by the NRA. The following is a table on the joint investigations by Chinese Taipei's LEAs and other jurisdictions. The team was provided details of the jurisdictions with which cooperation was provided in these cases and confirm that they are all in line with Chinese Taipei's risk profile.

中華臺北的 LEA 關注與販毒和電信詐欺相關的犯罪，並根據 NRA 確定的風險狀況與中國大陸、香港和其他東南亞國家進行了聯合調查。以下是中華臺北的 LEA 和其他司法管轄區聯合調查的表格。向評鑑團提供了在這些案件中提供合作的司法管轄區的詳細資訊，並確認它們都符合中華臺北的風險狀況。

**Table 8.7 – examples of assistance provided by MJIB and NPA to partner jurisdictions**

**表 8.7—法務部調查局及內政部警政署跨境協查例子**

| Year<br>年度                         | Cases<br>案數 | Type of Offence<br>犯罪類型  | Suspects<br>Arrested<br>逮捕之涉嫌人數 |
|------------------------------------|-------------|--|---------------------------------|
| <b>MJIB</b><br>法務部調查局              |             |  |                                 |
| 2014                               | 9           | Drug Trafficking, Pharmaceutical Affairs Act, Fraud<br>毒品販運、麻醉藥品管制、詐欺                          | 65                              |
| 2015                               | 6           | Drug Trafficking<br>毒品販運   | 32                              |
| 2016                               | 11          | Drug Trafficking, Securities and Exchange Act<br>毒品販運、證券交易法                                    | 29                              |
| 2017                               | 5           | Drug Trafficking<br>毒品販運   | 35                              |
| 2018<br>(Jan-Jun)                  | 6           | Drug Trafficking, Telecommunications Fraud<br>毒品販運、電信詐欺  | 53                              |
| <b>NPA (CIB)</b><br>內政部警政署 (刑事警察局) |             |  |                                 |
| 2014                               | 13          | Telecommunications fraud, Drug Trafficking<br>電信詐欺、毒品販運  | 153                             |
| 2015                               | 23          | Telecommunications Fraud, Drug Trafficking<br>電信詐欺、毒品販運  | 372                             |
| 2016                               | 47          | Telecommunications Fraud, counterfeiting, BEC fraud, drug trafficking<br>電信詐欺、仿冒、跨國商業電郵詐騙、毒品販運 | 816                             |
| 2017                               | 25          | Telecommunications Fraud and drug trafficking<br>電信詐欺、毒品販運                                     | 335                             |
| 2018                               | 47          | Telecommunications Fraud and drug trafficking  | 340                             |

|           |           |
|-----------|-----------|
| (Jan-Jun) | 電信詐欺、毒品販運 |
|-----------|-----------|

### International exchange of basic and beneficial ownership information of legal persons and arrangements

#### 透過國際情資交換法人及法律協議之基本與實質受益人資訊

489. Chinese Taipei shares basic and BO information of legal persons and arrangements, however, it can only share information that is available under Chinese Taipei law (see IO5). Basic information is publicly available on a website established by MOEA. MOJ, AMLD, MJIB, NPA, and TA have responded to requests related to BO information during the assessment period. MOJ's formal request related to the BO information from the information exchange by LEAs. LEAs' assistance provided on BO information includes their efforts in searching information available in public sources and law enforcement-sensitive portals, as well as issuance of a letter of request to the banks involved or the relevant governmental agencies requesting the BO information. If needed, LEAs can also provide BO assistance by requesting submission of voluntary interviews of individuals who may hold such information. Between 2014 to 2017 SFB/FSC responded to 33 requests related to BO information for regulatory enforcement of security market law with an average time frame for response ranging from 30 to 60 days. SFB/FSC's SOP requires SFB to provide BO information as well as the information regarding money flows when responding a BO-related request. TA provides assistance through public records search, and statements of business income tax filed by legal entities with TA, and such assistance in the tax-related matters was provided under tax agreements signed between Chinese Taipei and foreign jurisdictions.

中華臺北分享法人與法律協議的基本資訊與實質受益人資訊，然其只能分享中華臺北法律許可之資訊。基本資訊可在經濟部建立的網站上公開取得。法務部、洗錢防制處、法務部調查局、內政部警政署和稅務機關已在評鑑期間回應了與實質受益人資訊有關的請求。法務部的正式請求涉及執法機關情資交換中的實質受益人資訊。執法機關提供實質受益人資訊的協助包括他們努力搜尋公開資源和執法網絡中的敏感資訊，以及以公文向相關銀行或向相關政府機關請求實質受益人資訊。如有需要，執法機關還可以透過請求可能持有此類資訊的個人以自願接受訪談之方式提供涉及實質受益人的協助。2014年至2017年間，金管會證期局已回應33件與實質受益人資訊相關之請求，平均回應時間為30至60天。金管會證期局的SOP要求證期局在回應實質受益人相關請求時須提供實質受益人資訊以及相關金流。稅務機關透過搜尋公開紀錄及法人向稅務機關申報之營業所得稅資料提供協助，中華臺北是根據與外國所簽訂之稅務協定提供這些與稅務相關的協助。

**Table 8.8 Statistics on Requesting or Providing BO Information**

**表8.8 請求或提供實質受益人資訊之統計數據**

| Authority/ Year<br>機關/年度 |                           | 2014 | 2015 | 2016 | 2017 | 2018 (Jan-Jun) |
|--------------------------|---------------------------|------|------|------|------|----------------|
| MLA requests<br>司法互助請求   |                           |      |      |      |      |                |
| MOJ<br>法務部               | Requests Received<br>接收請求 | 0    | 1    | 1    | 0    |                |
|                          | Requests Made<br>提出請求     | 2    | 1    | 4    | 1    |                |
| FIU<br>金融情報中心            |                           |      |      |      |      |                |
| AMLD<br>洗錢防制處            | Requests Received<br>接收請求 | 18   | 27   | 31   | 36   | 10             |
|                          | Requests Made<br>提出請求     | 14   | 30   | 16   | 15   | 10             |
| LEAs                     |                           |      |      |      |      |                |



| 執法機關                                  |                           |    |   |    |   |   |
|---------------------------------------|---------------------------|----|---|----|---|---|
| MJIB<br>法務部調查局                        | Requests Received<br>接收請求 | 3  | 2 | 1  | 1 | 0 |
|                                       | Requests Made<br>提出請求     | 10 | 7 | 6  | 1 | 1 |
| NPA<br>內政部警政署                         | Requests Received<br>接收請求 | 6  | 2 | 4  | 3 | 3 |
|                                       | Requests Made<br>提出請求     | 16 | 8 | 3  | 0 | 3 |
| Supervisory Authority<br>監理機關         |                           |    |   |    |   |   |
| FSC<br>金融監督管理委員會                      | Requests Received<br>接收請求 | 7  | 5 | 12 | 9 | 2 |
|                                       | Requests Made<br>提出請求     | 9  | 5 | 6  | 6 | 3 |
| Other Competent Authorities<br>其他權責機構 |                           |    |   |    |   |   |
| MOF<br>(Tax)<br>財政部<br>(稅務)           | Requests Received<br>接收請求 | 3  | 1 | 0  | 0 | 0 |
|                                       | Requests Made<br>提出請求     | 0  | 0 | 0  | 0 | 0 |

## Overall conclusion on Immediate Outcome 2

### 直接成果 2 之總體結論

490. Chinese Taipei authorities place a strong priority on obtaining and providing international cooperation in line with its risk profile despite the challenges it faces due to longstanding issues. Authorities have taken proactive and novel steps to overcome obstacles to international cooperation and have established numerous channels and initiatives to seek and to provide international cooperation in line with the risk profile to achieve operational outcomes.

中華臺北當局儘管因長期存在的問題而面臨挑戰，但仍高度重視獲取和提供符合其風險狀況的國際合作。當局採取積極主動和新穎的步驟克服國際合作的障礙，並建立了許多渠道和措施，以尋求和提供符合風險狀況的國際合作，以實現運作上成果。

491. **Chinese Taipei has a substantial level for effectiveness for Immediate Outcome 2.**

中華臺北在直接成果 2 之評等為相當有效。

## TECHNICAL COMPLIANCE ANNEX

### 技術遵循附件

1. This annex provides detailed analysis concerning the level of technical compliance for Indonesia with the FATF 40 Recommendations in their numerical order. It does not include descriptive text on the member's situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

本附件按數值順序，詳細分析中華臺北對 FATF 40 項建議的技術遵循水準。它不包括有關會員情況或風險的描述性文字，並且僅限於對每項建議之技術標準進行分析。它應與相互評鑑報告合併閱讀。

#### *Recommendation 1 - Assessing Risks and applying a Risk-Based Approach*

##### *建議第 1 項 - 風險評估及風險基礎方法之應用*

2. These requirements were added to the FATF Recommendations in 2012 and, therefore, were not assessed during Chinese Taipei's 2007 MER.

這些要求在 2012 年被加到 FATF 建議中，因此未在中華臺北 2007 年 MER 期間進行評估。

3. **Criterion 1.1** – FSC undertook a sectoral risk assessment (SRA) in 2015 which focused on threats and vulnerabilities in the financial sector. The SRA adopted a relatively simple methodology and included financial sector regulators, the FIU and a small number of private sector representatives.

標準 1.1 – 2015 年金管會進行產業風險評估(SRA)，重點關注金融部門的威脅和弱點。產業風險評估採用了一種相對簡單的方法，共有包括金融部門管理機關，金融情報中心和少數私部門代表參與。

4. Chinese Taipei's first ML/TF NRA was undertaken in 2017 and early 2018. The assessment was coordinated by the AMLO and involved 37 government agencies and 31 industry associations. The NRA report mostly presents the assessment of inherent risks before mitigation measures are taken into account. It is intended to support agencies implement possible follow-up actions and control measures.

中華臺北第一次洗錢 / 資恐國家風險評估 (NRA) 於 2017 年和 2018 年初進行。評估由 AMLO 協調，涉及 37 個政府機構和 31 個行業協會。NRA 報告主要介紹在考慮抵減措施之前對固有風險的評估。它旨在支持各機構實施可能的後續行動和控制措施。

5. The NRA adopted a reasonable methodology and appears to have been applied to identify and assess risks and draw generally sound conclusions. The NRA identifies a reasonable range of key threats from certain categories of crime, as well as the nature of certain actors associated with key ML and predicate crime threats (e.g. organised crime, 3<sup>rd</sup> party laundering). The NRA and other assessments considered geographic risk factors including illicit inflow and outflow of the proceeds of crime. The 2018 NRA also identifies a number of key sectoral vulnerabilities and extends to assessments of aspects of legal persons and NPOs. The NRA process included an assessment of the foreign exchange counters sector.

NRA 採用了一套合理的方法論用於辨識和評估風險，並得出一般合理的結論。NRA 藉由分析某些類別的犯罪，以及與主要洗錢和前置犯罪威脅（例如組織犯罪，第三方洗錢）相關的某些行為者特質，辨識出一系列的主要威脅。NRA 和其他評估考慮了地理風險因素，包括犯罪所得的非法流入和流出。2018 年 NRA 還辨識一些主要的部門弱點，並將評估範圍擴展到法人和非營利組織。NRA 流程並包括評估外幣收兌處風險。

6. The NRA considered TF risks. Interagency processes demonstrate that Chinese Taipei has identified and assessed its TF risks. The methodology used to assess TF is reasonable and considers a wide range of domestic and transnational factors. Based on such factors, no substantial TF threat has been identified.

NRA 考慮了 TF 風險。機構間流程證明中華臺北已經辨識並評估其 TF 風險。用於評估 TF 的方法是合理的，並考慮了廣泛的國內和跨國因素。基於這些因素，尚未發現重大的 TF 威脅。

7. The NRA process resulted in a longer report available to participating stakeholders, and a slightly shorter published version. A follow-on, more detailed assessment of the risks of Chinese Taipei legal persons was prepared and published in mid-2018.

NRA 流程為參與的利益相關者提供了更長的報告，並略微縮短了發布版本。後續在 2018 年年中並編寫及發布有關中華臺北法人更詳細的風險評估。

8. While LEAs and security intelligence agencies demonstrate that they identify and understand key risks, LEAs generally do not produce threat assessments to be shared with other agencies. There are some weaknesses in the NRA and other assessments in relation to identifying the nature and source of foreign proceeds of crime flowing through Chinese Taipei and the involvement of Chinese Taipei persons and entities involved in ML outside of the jurisdiction. There is also a need for further assessment of use of underground remittance and illegal gambling sectors.

雖然執法機關和安全情報機關證明他們辨識並理解關鍵風險，但執法機關通常不會製作威脅評估與其他機關共享。有關辨識流經中華臺北的外國犯罪所得的性質和來源，以及中華臺北自然人和實體在境外參與洗錢部分，NRA 和其他評估存在一些缺陷。還需要進一步評估利用地下匯款和非法賭博部門的情況。

9. **Criterion 1.2** - The AMLO is the designated statutory authority to coordinate assessments of ML/TF risks. AMLO's role is set by the Executive Yuan as per the Notes on Establishment of Anti-Money Laundering Office. Previously, such risk assessment and related actions was coordinated by MOJ. Agencies have responsibility for assessing elements of ML/TF risk relevant to their work.

標準 1.2- AMLO 是被指定負責協調 ML / TF 風險評估的法定機關。AMLO 的角色由行政院根據“防制洗錢辦公室設置要點”規定。在此之前，此類風險評估和相關行動由法務部協調。機構有責任評估與其工作有關的 ML / TF 風險要素。

10. **Criterion 1.3** - The NRA updated and greatly expanded the earlier SRA. The June 2018 vulnerability assessment of legal persons updated and expanded elements of the NRA. Chinese Taipei has indicated that the NRA will be updated every 3 years. AMLO and other authorities have planned regular meetings and discussions on any changes in risk scenario or supply additional information on ML/TF risks, however, no further details were available on risk scenario changes that would require an update of the ML/TF NRA.

標準 1.3-NRA 更新並大大擴展先前金融部門的部門風險評估。2018 年 6 月對法人的弱點評估有助於更新和擴大 NRA 的內容。中華臺北已表示 NRA 將每 3 年更新一次。AMLO 和其他當局已計劃定期舉行會議和討論風險情況的任何變化，或提供有關洗錢 / 資恐風險的新增資訊，但是，有關何時因風險變化而須更新洗錢 / 資恐國家風險評估報告，尚未有進一步的細節資訊。

11. **Criterion 1.4** - The NRA was publicly launched in May, 2018. AMLO, along with MJIB and FSC held a large number of events for a wide range of government and private sector stakeholders to disseminate the NRA and discuss its findings. Authorities have used a wide range of channels to deliver the NRA and its findings to government and FIs/DNFBPs. The earlier SRA was widely shared with the private sector. The FIU shares findings of its strategic risk assessments with the private sector through outreach sessions. The Executive Yuan officially publishes and disseminates the results of NRA report through publication events and press releases. In addition, AMLO provides the NRA electronic file and the video of introduction on its website. .

標準 1.4-NRA 於 2018 年 5 月公開發布。AMLO 與 MJIB 和 FSC 一起為眾多政府和私部門相關者舉辦了大量活動，以傳播 NRA 並討論其調查結果。當局利用各種管道向政府和金融機構/DNFBPs 提

供 NRA 及其調查結果。早先的部門風險評估廣泛與私部門分享。FIU 通過宣導與私部門分享其策略風險評估結果。行政院透過出版活動和新聞稿正式發布和傳播 NRA 報告的結果。此外，AMLO 在其網站上提供 NRA 電子檔和介紹影片。

12. **Criterion 1.5** - Authorities demonstrated a range of areas where there has been an enhanced allocation of resources to AML/CFT implementation which has, in a large part, been based on authorities' understanding of risk since the completion of the SRA and NRA. FSC used the findings of the 2015 SRA to support a move towards a risk-based approach to AML/CFT resource allocation and implementing measures to mitigate some of the identified risks. Further enhanced measures, based on identified risks, are required for some DNFBPs (e.g. jewellers and real estate) and agricultural FIs supervised by BOAF.

標準 1.5 - 當局展示了一連串加強分配防制洗錢/打擊資恐執行資源的領域，這些領域在很大程度上是基於當局自完成 SRA 及 NRA 以來對風險的理解。金管會利用 2015 年 SRA 評估的結果，來支持朝向以風險為基礎的方法，實施防制洗錢/打擊資恐的資源分配，並採取措施抵減某些已辨識的風險。部分 DNFBP(例如銀樓業和不動產部門)和行政院農業委員會農業金融局監理的農業金融機構，必須針對辨識的風險採行進一步的加強措施。

13. **Criterion 1.6** - Prior to the NRA Chinese Taipei authorities excluded foreign currency exchange counters from the MLCA, based on authorities judgement (SRA and other sources) that the sector faces lower ML/TF risks, when considering the nature, scope, turnover of permitted business (exchange is limited to only selling NTD, transactions limited to USD10,000 and a very low volume of the sector overall (equivalent to 0.66% of foreign exchange business of the banking sector). The 2017-18 NRA reassessed the risks faced by the sector and confirmed the sector faces lower ML/TF risks. Foreign exchange counters remained outside of the MLCA, but in 2018 certain CDD, STR and other AML/CFT obligations were extended to the sector through of regulations issued under the Central Bank Act. TFS obligations apply under the CFT Act. Overall, the sector's exclusion from the MLCA exempts them from PEP and higher risk jurisdiction requirements and certain risk-based internal controls, including an internal risk assessment. Though exempted, some points of concern arise relating to measures applied to PEPs, and customers from higher-risks jurisdiction, given the cash nature of transactions.

標準 1.6-在 NRA 之前，中華臺北當局經考慮外幣收兌處被核准經營業務的性質、範圍及營業額，根據當局的判斷（SRA 和其他來源），該行業面臨較低的 ML / TF 風險，從而將外幣收兌處排除在洗防法以外（外幣收兌處僅限於出售新台幣，交易限額為 10,000 美元，整體行業的交易量非常低（相當於銀行業外匯業務的 0.66%）。2017 - 18 年 NRA 重新評估該行業面臨的風險並確認該部門面臨較低的 ML / TF 風險。外幣收兌處仍排除在洗防法之外，但在 2018 年透過修訂外幣收兌處設置及管理辦法，某些 CDD, STR 和其他防制洗錢 / 打擊資恐義務的法規擴展適用到該部門。TFS 義務根據資恐防制法而適用。總體而言，該部門被排除在洗防法之外，使他們免於 PEP、高風險管轄區要求和某些基於風險的內部控制，包括機構內部風險評估。雖然獲得豁免，但鑑於該部門現金交易的性質，出現了與 PEP 和來自高風險管轄區顧客相關措施的疑慮。

14. **Criterion 1.7** - Chinese Taipei has taken some measures to ensure that their AML/CFT regime addresses higher risks, including requiring most FI/DNFBP sectors to report cash transaction above a threshold. FIs are also required to verify customers identify when they make a domestic wire transfer above NTD 30,000 (approx. USD1000). BOAF has required agricultural financial institutions to apply enhanced measures for domestic PEPs, extending controls beyond the FATF definition of domestic PEPs to include lower-level local officials, reflecting their roles and possible vulnerabilities with agricultural FI.

標準 1.7-中華臺北採取了一些措施，以確保其反洗錢/打擊資助恐怖主義制度能夠應對更高的風險，包括要求大多數金融機構/ DNFBP 部門報告超過門檻的現金交易。金融機構還需要驗證客戶何時進行國內電匯超過新台幣 30,000 元（約美金 1,000 元）。BOAF 要求農業金融機構對國內 PEP 採取加強措施，將 FATF 對國內 PEP 定義的控制範圍擴大到包括較低級別的地方官員，以反映其在農業金融機構中的作用和可能的弱點。



15. **Criterion 1.8** - Each of the Regulations issued to FIs and DNFBPs under the MLCA allow some exemptions on identifying beneficial owners in certain low risk situations including customers that are domestic government entities, government-owned enterprises, foreign government entities, FIs from non-higher risk countries etc. Some simplified measures are also available for DNFBPs with some pre conditions, even though some of exemption rules may be in keeping with footnote 33 in FATF methodology. However, it is noted that the bookkeepers and tax return filing agents are allowed simplified measures in certain areas that are identified as high risks in the NRA.

標準 1.8-根據洗防法向金融機構和 DNFBP 發布的每項法規允許在某些低風險情況下辨識實質受益人的一些豁免，包括國內政府實體，政府所有企業，外國政府實體，非高風險國家的金融機構等。對於具有一些先決條件的 DNFBP，也可以採取一些簡化措施，即使部份豁免措施符合 FATF 方法論中第 33 項註腳的規定。但值得注意的是，記帳士暨記帳及報稅代理人在某些 NRA 確定為高風險領域可以採取簡化措施。

16. **Criterion 1.9** - Supervisors of FIs and DNFBPs have undertaken awareness raising and outreach as well as offsite and onsite supervision to support to ensure that enterprise risk assessments and risk based approaches (to respond to higher / lower risks) are being taken.

標準 1.9-金融機構和 DNFBP 的主管機關進行了提升意識和宣導以及場外監控和現地檢查，以支持確保採取企業風險評估和基於風險的方法（對更高/更低風險的回應）。

17. **Criterion 1.10** - The Article 7 of the MLCA requires FIs and DNFBPs to comply with a risk-based approach. Article 2 of Article 6 of the AML Regulations for FIs defines risk based approach as identifying, assessing and understanding ML/TF risks by the FI, which is done in the form of an internal risk assessment (ERA). The obligation of conducting an ERA also covers various aspects of risks, for example, customer, products, delivery channels and geographic etc. The regulation also obliges them to keep the risk assessment up to date and share the outcomes with the regulators. The Regulations Governing Internal Controls of AML/CFT of Banking, e-payment and Stored Value Card Issuers elaborates in greater detail obligations to assess and document risks and have appropriate mechanisms to share risk findings with the competent authority. The various DNFBP AML/CFT regulations (issued November 2018) set out requirements for risk assessments, including a requirement to keep the assessments up to date. FSC and DNFBP sector supervisors have put in place mechanisms to notify these outcomes of the risk assessment to the regulators and SRBs. Each sector of FI and DNFBP has mechanisms with relevant authorities for REs to share information on risks identified in their ERA with the supervisor.

標準 1.10- 洗錢防制法第 7 條要求金融機構和 DNFBP 遵守基於風險的方法。金融機構防制洗錢辦法第 2 條及第 6 條將以風險為基礎的方法定義為金融機構確認，評估和瞭解其暴露之洗錢 / 資恐風險，並以內部風險評估(ERA)的形式完成。實施 ERA 的義務還涵蓋風險的各個面向，例如客戶，產品，交付管道和地理位置等。該法規還要求他們對風險評估進行更新，並與監管機關分享結果。銀行業及電子支付機構電子票證發行機構防制洗錢及打擊資恐內部控制要點更詳細地闡述了評估和記錄風險的義務，並須有適當的機制與主管機關分享風險發現。向每個 DNFBP 部門發布的各種防制洗錢/打擊資恐辦法（於 2018 年 11 月公布）規定了風險評估的要求，包括要求保持評估在最新狀態。FSC 和 DNFBP 各部門主管機關已建立機制，將這些風險評估結果通報監管機關和 SRB。每個 FI 和 DNFBP 部門都有與主管機關建立機制，以便申報機構將 ERA 發現的風險資訊與監理機關共享。

18. **Criterion 1.11**- AML/CFT regulations require FIs to set up policies, controls and procedures, which are approved by senior management, monitor the implementation of those controls, and take enhanced measures to manage and mitigate the higher ML/TF risk scenarios. The various AML/CFT regulations covering DNFBP sectors set out comparable requirements for internal policies, controls and procedures, but do not explicitly require DNFBPs to take enhanced measures to manage the risks where higher risks are identified.

標準 1.11-防制洗錢/打擊資恐辦法要求金融機構制定政策，控制措施和程序，由高級管理層批准，監督這些控制措施的實施，並採取強化措施來管理和抵減較高洗錢 / 資恐風險的情形。針對

DNFBP 部門的各種防制洗錢 / 打擊資恐辦法規定了可比照的內部政策，控制和程序要求，但沒有明確要求 DNFBP 採取強化措施來管理辨識出較高風險的情形。

19. **Criterion 1.12** - The various AML/CFT regulations covering FI and DNFBP sectors set out circumstances in which some simplified measures are permitted and confirm that FIs and DNFBPs are not allowed to apply these simplified measures when there is a suspicion of ML or TF.

標準 1.12-針對 FI 和 DNFBP 部門的各種防制洗錢 / 打擊資恐辦法規定了允許一些簡化措施的情況，並確認當懷疑有 ML 或 TF 時，不允許 FI 和 DNFBP 適用這些簡化措施。

### *Weighting and Conclusion*

#### *權重與結論*

20. Chinese Taipei has taken important steps in relation to assessing and responding to ML/TF risks and supporting agencies and the private sector to move towards risk based approaches. There are some minor shortcomings in relation to identifying the nature and source of foreign proceeds of crime flowing through Chinese Taipei and the involvement of Chinese Taipei persons and entities involved in ML outside of the jurisdiction; and requiring DNFBPs to take enhanced measures to manage the risks where higher risks are identified. **Chinese Taipei is rated largely compliant with Recommendation 1.**

中華臺北已採取重要措施評估和應對洗錢 / 資恐風險，並支持各機關和私部門改採以風險為基礎方法。部分小缺失包括：辨識流經中華臺北外國犯罪所得的性質和來源、辨識在司法管轄區之外參與洗錢的中華臺北個人和實體、要求 DNFBP 採取強化措施來管理辨識出的高風險情形等。中華臺北第 1 項建議的評等為大部份遵循。

### *Recommendation 2 - National Cooperation and Coordination*

#### *建議第 2 項 - 國際合作及協調*

21. In the 2007 MER, Chinese Taipei was rated largely compliant with former R.31. There was no formal mechanism for ensuring cooperation among LEAs and support the development and promulgation of CFT measures. The current R.2 contains new requirements related to co-operation and co-ordination on combating PF that were not assessed in MER 2007.

中華臺北在 2007 年的相互評鑑報告中，就之前的建議 31 評等為 LC(大部份遵循)。沒有正式的機制來確保執法機關間的合作，及支持打擊資恐措施的制定和頒布。目前的建議 2 新增有關反武擴的相關合作與協調建議，這些建議內容沒有在 2007 年的評鑑報告中進行評估。

22. **Criterion 2.1** - Chinese Taipei does not have a national-level AML/CFT policy, but authorities have pursued AML/CFT policies in a number of areas that directly reflect risk assessment findings (e.g. formation of AMLO, enhanced resource allocation, prioritised outreach and supervision, etc.). Some sector and issue-specific national policies appear to have elements of AML policy. Chinese Taipei intends to establish a national AML/CFT policy following the completion of the NRA and intends to review the policy every three years.

標準 2.1- 中華臺北沒有國家層級的防制洗錢/打擊資恐政策，但當局在許多領域實施防制洗錢/打擊資恐政策，直接反應風險評估的結果（例如，組成洗錢防制辦公室，加強資源分配，優先推廣和監理等）。一些部門和針對具體問題的國家政策似乎具有防制洗錢政策的要素。中華臺北計劃在國家風險評估會議完成後制定全國性防制洗錢/打擊資助恐怖主義政策，並每三年進行重新評估。

23. **Criterion 2.2** - Since 2017 the AMLO, which is under the Executive Yuan, has been designated to take charge of coordinating AML/CFT policies. Article 3 of the CTF Act (2016) designates the Executive Yuan as the policy coordination body for CFT issues, and the AMLO performs that function. While the operation of the AMLO has chiefly focused on overall AML/CFT policy priorities, coordination of the NRA process and ME preparation.

標準 2.2- 自 2017 年以來，行政院下的洗錢防制辦公室被指定負責協調防制洗錢/打擊資恐政策。資恐防制法（2016 年）第 3 條將行政院指定為資恐防制政策協調機構，由洗錢防制辦公室來執行此功能。洗錢防制辦公室的運作主要集中在防制洗錢 / 打擊資恐政策優先事項、國家風險評估流程及評鑑準備的協調上。

24. **Criterion 2.3** - The AMLO has served as a key AML/CFT policy development coordination mechanism. The AMLO includes representatives from a number of agencies and ministries certain state-owned corporations. Several committees/meetings bring together relevant stakeholders to coordinate and cooperate on elements of AML/CFT at both policy and operational levels. These include the "Economic Crime Prevention Implementation Meeting" consist of the Executive Yuan, NSB, AMLD, MOJ, and FSC; "Fight Against Transnational Fraud Crimes Inter-Agency Platform Meeting" include the Mainland Affairs Council (MAC), FSC, Ministry of Foreign Affairs, MOJ, NPA, MOI; "Coordination Meeting between Ministry of Justice and FSC" is organised for the MOJ and FSC; and "Cross-strait Joint-Fight against Crime and Mutual Legal Assistance Communication and Coordination Meeting" include the Executive Yuan, MOJ, MOI, NSB and the Mainland Affairs Council (MAC). However, there are some gaps in relation to operational level cooperation, for example, there is a need for closer cooperation between LEAs and the FSC to help to deepen risk-based supervision and for closer cooperation between AMLD from one side; and LEAs and public prosecutors on the other side.

標準 2.3- 洗錢防制辦公室已成為防制洗錢/打擊資恐關鍵政策制定協調機制的重要組成部分。洗錢防制辦公室包括來自各國家機構和國營企業的代表，將相關利益方聚集在一起。在政策和業務層面協調和合作防制洗錢/打擊資恐的要素包括：“經濟犯罪防執行會報”由行政院、國安局金融情報中心、法務部和金管會組成；“打擊跨境詐騙犯罪跨部會平台會議”包括大陸委員會、外交部、法務部、內政部警政署；另法務部和金管會成立“法務部與金融監督段理委員會聯繫會報”；“海峽兩岸共同打擊犯罪及司法互助協議聯繫協調會議”包括行政院、司法院、內政部、國安局、大陸委員會。但是，在業務層面合作方面則存在一些落差，例如，執法機關和金管會之間需要加強合作，以協助深化以風險為本的監理，並一方面促進與調查局洗錢防制處之間更密切的合作；另一方面為執法機關和檢察官的合作。

25. **Criterion 2.4** - Chinese Taipei has a range of well-functioning mechanisms for cooperation and coordination on combating the financing of proliferation of WMD (CPF) at policy and operational levels. The NSB coordinates counter-proliferation projects, including CPF. The NSB holds annual and impromptu meetings on counter proliferation involving the High Prosecutors Office, MOJ, CGA, BFT, MJIB (including the AMLD), NPA, MOI, NIA, Customs Administration, MOF, Ministry of Transportation Maritime and Port Bureau, and the FSC. Case specific coordination on combating proliferation is coordinated by the MOJ as needed.

標準 2.4- 中華臺北在政策和業務層面上為打擊資助武擴的合作與協調提供了一系列運作良好的機制。國家安全局協調反擴散項目，舉行年度和不定期的反武擴會議，參與機關有高等法院檢察署、法務部、海岸巡防署、經濟部國貿局、法務部調查局（包括調查局洗錢防制處）、內政部警政署、移民局、財政部關務署、交通部海事局和港務局，以及金管會。關於反武擴的具體案例協調由法務部根據需要進行協調。

26. **Criterion 2.5** - The AMLO brings together relevant authorities to ensure the compatibility of AML/CFT requirements with other legal and governance regimes in Chinese Taipei, including rules related to data protections and privacy. Overall data protection and privacy obligations on competent authorities, FIs or DNFBPs do not impede the application of AML/CFT requirements.

標準 2.5- 洗錢防制辦公室促使相關部門一同確保對防制洗錢/打擊資恐規範與其他法律和監督制度之相容性，包括資料保護以及隱私權。總之，權責機關對於資料保護及隱私權義務，不會阻礙金融機構或指定之非金融事業或人員適用防制洗錢/打擊資恐規範。

## Weighting and Conclusion

### 權重與結論



27. Chinese Taipei has a range of well-functioning coordination structures. AML/CFT policy priorities increasingly reflect findings of risk assessments. There are some gaps with the absence national level AML/CFT policy and a need, in some areas, for greater operational-level cooperation. **Recommendation 2 is rated largely compliant.**

中華臺北有一系列運作良好的協調機制，防制洗錢/打擊資恐的優先政策越來越多，反應風險評估的結果。對於缺乏國家層級之防制洗錢/打擊資恐政策存有落差，在某些領域需要加強業務層面的合作。建議 2 的評等為大部分遵循。

### **Recommendation 3 - Money laundering offence**

#### **建議第 3 項 - 洗錢犯罪**

28. In its 2007 MER Chinese Taipei was rated PC with the former R.1 on the basis that the ML offence lacked some elements outlined in Article 3(1)(b)(c) of the Vienna Convention and Article 6 of the Palermo Convention. The threshold for what is considered a serious offence was deemed too high, terrorism and TF were not predicate offences, there was no provision permitting the intentional element of the offence of ML to be inferred from objective factual circumstances. It was further recommended that the terms “property” and “property interests” be defined. Finally, when proving property was proceeds of crime it was evident that a conviction for a predicate offence was required.

中華臺北在 2007 年相互評鑑的建議第 1 項被評為部分遵循(PC)，因為洗錢罪行缺乏維也納公約第 3 (1) (b) (c) 條和巴勒莫公約第 6 條所概述的某些要素。重大犯罪的門檻太高，恐怖主義和資恐尚未認定為前置犯罪，沒有規定允許可以從客觀事實情況推斷出洗錢犯罪的故意要素。被建議進一步定義“財產”和“財產上利益”。最後，當證明財產是犯罪所得時，顯然需要已對前置犯罪定罪。

29. **Criterion 3.1** - ML is criminalised under Article 2 of the MLCA which is in line with the Vienna and Palermo Conventions. It defines the money laundering offence as:

- i. knowingly disguises or conceals the origin of the proceeds of specified unlawful activity, or transfers or converts the proceeds of specified unlawful activity to help others avoid criminal prosecution;
- ii. disguises or conceals the true nature, source, the movement, the location, the ownership, and the disposition or other rights of the proceeds of specified unlawful activity; or
- iii. accepts, obtains, possesses or uses the proceeds of specified unlawful activity committed by others.

Article 14 of the MLCA also provides that an attempt to commit a money laundering offence is punishable, and the Article 28, 29 and 30 of the Criminal Code state that a person who aids, joins, solicits a crime will be punished.

標準 3.1-依據洗錢防制法第 2 條規定，洗錢犯罪被罪型化，符合維也納和巴勒莫公約的規定。將洗錢罪定義如下：i 故意掩飾或隱匿特定犯罪所得來源，或使他人逃避刑事追訴，而移轉或變更特定犯罪所得；ii.掩飾或隱匿特定犯罪所得之本質、來源、去向、所在、所有權、處分權或其他權益者；或 iii. 收受、持有或使用他人之特定犯罪所得。

洗防法第 14 條還規定，洗錢罪未遂犯應受到處罰，刑法第 28,29 和 30 條規定，幫助，參與，促使犯罪的人應受到處罰。

30. **Criterion 3.2** - Predicate offences are termed “specified unlawful activity” under Art 3 of the MLCA which applies a combined approach. Specified unlawful activity includes any offence with a minimum punishment of imprisonment for a term of six months or more, as well as the list of offences such as corruption, bribery, forgery, fraud, illicit trafficking in stolen goods, smuggling, counterfeit and pirated products, environmental crime, tax crimes, insider trading and market



manipulation, and terrorism financing. The smuggling of migrants however is not specified unlawful activity and therefore does not constitute a predicate offence to ML.

標準 3.2-根據洗錢防制法第 3 條採用的混合制，前置犯罪被稱為“特定犯罪”。特定犯罪包括任何最低刑期為六個月以上有期徒刑的犯罪，以及貪污，賄賂，偽造，詐欺，非法運送贓物，走私，仿冒和盜版產品、環保犯罪，稅務犯罪，內線交易暨操作證券市場，以及資恐。然而，偷渡不是特定犯罪，因此不構成洗錢的前置犯罪。

31. **Criterion 3.3** - Predicate offences are covered through a combined approach. Any specified unlawful activity constitutes a predicate offence, which includes any offence with a minimum punishment of imprisonment for a term of six months or more. Chinese Taipei also includes a list of predicates encompassing offences such as corruption, bribery, forgery, fraud, illicit trafficking in stolen goods, smuggling, counterfeit and pirated products, environmental crime, tax crimes, insider trading and market manipulation, and terrorism financing. However the smuggling of migrants is not a predicate offence in Chinese Taipei.

標準 3.3-有多面向措施涵蓋處理前置犯罪。任何特定犯罪都會構成前置犯罪，包括最低刑期為六個月以上的犯罪。中華臺北採用例示方法，包括貪污，賄賂，偽造，詐欺，非法運送贓物，走私，仿冒和盜版產品、環保犯罪，稅務犯罪，內線交易暨操作證券市場，以及資恐等犯罪。然而，偷渡在中華臺北不是前置犯罪。

32. **Criterion 3.4** - Art. 4 of the MLCA provides that proceeds of specified unlawful activity means the property or benefits and interests of the property obtained or derived from the predicate offence. There is no value threshold stipulated. However, the term “property” has not been defined in the MLCA and hence it is not clear what types of property pertain to the ML offence. Chinese Taipei has provided case samples to demonstrate that a wide range of property has been construed by the court to be “property”. However the absence of the definition in legislation leaves the definition open to judicial construction.

標準 3.4-洗防法第 4 條規定，特定犯罪收益是指從前置犯罪中取得或變得的財產或利益。沒有規定金額的限制。但是，“財產”一詞尚未在洗錢防制法中定義，因此不清楚哪類財產屬於洗錢犯罪。中華臺北提供了案件證明法院將廣泛的財產解釋為“財產”。然而，立法缺乏定義將由司法解釋補充。

33. **Criterion 3.5** - Art. 4, Paragraph 2 of the MLCA stipulates that when identifying the proceeds of specified unlawful activity, it should not be necessary that a person is convicted of specified unlawful activity. However as noted above, the term property has not been defined.

標準 3.5-洗錢防制法第 2 條規定，在辨識特定犯罪的收益時，被告並不需要因為特定犯罪遭到定罪。但是，如上所述，尚未定義財產一詞。

34. **Criterion 3.6** - The MLCA does not expressly include predicate offences that occurred in another jurisdiction. However, Article 4 of the Criminal Code states that where either the conduct or the result of an offence takes place within Chinese Taipei, the offence is considered as committed within the Chinese Taipei. Case samples were provided to demonstrate that the legislation has been interpreted to allow ML charges for foreign predicate offences. Chinese Taipei amended the MLCA after the onsite to reflect this for the avoidance of future doubt.

標準 3.6-洗錢防制法中沒有明確包含在另一個司法管轄區發生的前置犯罪。但是，刑法第 4 條規定，如果犯罪的行為或結果發生在中華臺北境內，則該犯罪視為在中華臺北境內所犯。中華臺北已提供案例證明立法解釋允許針對發生在外國的洗錢前置犯罪起訴。中華臺北在現地評鑑後修正洗錢防制法，以反映這一點，避免將來出現疑問。

35. **Criterion 3.7** - Art 2 of the MLCA sets out three circumstances in which a person may commit ML. The first and third specifically refer to concealing or disguising the proceeds of unlawful activity that is committed by others. However, Art 2(2) notes that ML is committed when a person “disguises or conceals the true nature, source, movement, location, ownership and the disposition or other rights of the proceeds of specified unlawful activity”. It would therefore appear as though a

person may commit ML for predicate offences which they undertake if they commit the specified activity in Art 2(2).

標準 3.7-洗錢防制法第 2 條規定行為人可能構成洗錢的三種情況。第一和第三是指掩飾或隱匿他人犯下特定犯罪的收益。但是，第 2 條第 2 款指出，當一個人掩飾或隱匿特定犯罪所得本質、來源、去向、所在，所有權和處分權或其他權益時，就會構成洗錢。因此，如果有人涉犯第 2 條第 2 款中的行為，那麼該行為人就可能構成前置犯罪的洗錢。

36. **Criterion 3.8** - Art 13 of the Criminal Code provides that “conduct is considered an intentional commission of an offence if the actor is aware that the act will accomplish the elements of the offense and if such accomplishment is not against his will.” Whilst the Criminal Code expresses subjective requirements of intent, the Supreme Court has confirmed the position that intent may be inferred from objective circumstances (Supreme Court Judgement 1999 No. 1421). In practice, judgments rendered by the court of third instance (the Supreme Court) are binding and followed by lower courts in principle.

標準 3.8-刑法第 13 條規定，“行為人對於構成犯罪之事實，預見其發生而其發生並不違背其本意者，以故意論。”刑法規定了主觀意圖的要求，同時最高法院也確認了可以從客觀情況推斷出意圖的立場（最高法院 88 年台上字第 1421 號判決）。實務上，第三審法院（最高法院）作出的判決原則是會約束下級法院並遵循的。

37. **Criterion 3.9** - Art 14 of MLCA stipulates that anyone involved in money laundering activities shall be sentenced to imprisonment of not more than seven years; in addition, a fine of not more than NT\$5 million (approx. US\$160,000) shall be imposed. When considering penalties for ML across comparable jurisdictions, the maximum term of imprisonment for seven years may not be considered adequately dissuasive. However, in terms of the context of Chinese Taipei, the term of imprisonment for ML is more severe than many serious crimes such as financing terrorist attacks and some bribery offences.

標準 3.9-洗防法第 14 條規定，參與洗錢活動的任何人應被判處 7 年以下有期徒刑；此外，還將處以最高 500 萬新台幣（約 160,000 美元）的罰金。當考慮相對應的司法管轄區對洗錢的處罰時，最高七年的有期徒刑可能不被視為具有足夠的勸阻性。然而，就中華臺北的情況而言，洗錢的有期徒刑比許多重大犯罪更嚴厲，例如資助恐怖攻擊和一些賄賂罪。

38. **Criterion 3.10** - Criminal liability and sanctions for ML apply to legal persons and are without prejudice to the criminal liability of natural persons (Art 16 of the MLCA). The sanction for legal person convicted of ML is a fine no more than 5million NTD. This does not preclude parallel civil proceedings. However, a wide range of other forms of administrative penalties may also be imposed on legal persons, including disciplinary warnings, reprimands, restrictive and prohibitive actions.

建議 3.10-洗錢的刑事責任和制裁適用於法人，並且不影響對自然人的刑事責任（洗防法第 16 條）。對涉犯洗錢罪的法人的罰款最高為新台幣 500 萬元。但這並不排除併行的後續民事訴訟。但是，對法人也可能會施加其他形式廣泛的行政罰，包括警告性處分，告誡，限制和禁止行為。

39. **Criterion 3.11** - There are ancillary offences to the ML offence: Article 14 of the MLCA criminalises an attempt to commit ML, aiding (Art 30 Criminal Code), abetting (Art. 28) and Chapter 4 of the Criminal Code, and the Supreme Court Judgments 2005 No. 2822, 2009 No. 5199, 2012 No. 5199. Whilst the term ‘conspiracy’ to commit is not expressed this is covered by Article 28 of the Criminal Code ‘acting jointly’ and confirmed in the Supreme Court judgment 2009 No. 6924 and 2012 No 5199.

標準 3.11-洗錢罪有共犯的規定：洗錢防制法第 14 條規定將意圖洗錢而幫助（刑法第 30 條）、教唆（第 28 條）和刑法第 4 章以及最高法院 94 年台上字第 2822 號判決、98 年台上字第 5199 號判決、102 年 5199 號判決，定為刑事犯罪。雖然沒有“共謀”的用語，但有涵蓋在刑法第 28 條的“共同犯罪，並經最高法院 98 年台上字第 6924 號及 101 年台上字第 5199 號判決予以確認。

## Weighting and Conclusion

*權重與結論*

40. Migrant smuggling is not a predicate offence to ML and the definition of property is not explicit although has been construed by courts widely. **Recommendation 3 is rated largely compliant.**

偷渡並非洗錢的前置犯罪，雖然法院有廣泛的解釋但財產的定義並不明確。建議 3 的評等為大部分遵循。

**Recommendation 4 - Confiscation and provisional measures****建議第 4 項 - 沒收及暫時性措施**

41. In its 2007 MER Chinese Taipei was rated LC with the former R3, based on the fact that there was no definition of “property” or “property interests” in the MLCA to ensure that the ML offence extends to all forms of property. It was further not clear whether instrumentalities used or intended to be used can be confiscated if they are under the name of a third party due to operation of Article 38 of the Criminal Code.

在中華臺北 2007 年相互評鑑報告，當時的建議 3 評等為大部分遵循，因為在洗錢防制法中沒有“財產”或“財產上利益”的定義以確保洗錢罪適用於所有形式的財產。根據刑法第 38 條，如果以第三方的名義使用或意圖使用的工具是否可以被沒收，尚不清楚。

42. Chinese Taipei predominately relies upon the Criminal Code and Criminal Procedure Code (CPC) for confiscation and provisional measures. Whilst the MLCA inserted provisions regarding confiscation, in practice authorities rarely rely on those provisions given the wide powers contained in the CPC.

中華臺北主要依據刑法和刑事訴訟法來沒收和採取暫時性措施。洗防法加入了關於沒收的規定，但在實務上，權責機關不會依據這些規定，因為刑事訴訟法規範的權力已經非常廣泛。

**Criterion 4.1****標準 4.1**

43. *Property laundered, proceeds of crime, instrumentalities* – Article 18 of the MLCA allows property or benefits of the property that is transferred, converted, concealed, obscured, accepted, obtained, possessed or used in ML offences to be confiscated upon conviction of money laundering.

洗白的財產、犯罪所得及工具 – 洗錢防制法第 18 條規定允許在被判洗錢罪的情況下，將在洗錢罪行中移轉、變更、掩飾、隱匿、收受、取得持有或使用財產的財產或利益予以沒收。

44. According to Article 40 of the Criminal Code, if the offender is not prosecuted or convicted due to facts or legal reasons, the thing which may be confiscated independently may be pronounced separately.

根據刑法規定第 40 條，因事實上或法律上原因未能追訴犯罪行為人之犯罪或判決有罪者，得單獨宣告沒收。

45. *For all other criminal offences*, - Article 38-1 of the Criminal Code allows proceeds of crime belonging to the offender to be confiscated. For property belonging to other natural or legal persons, it is able to be confiscated if it can be shown that they (a) knowingly obtained the illegal proceeds from the offender (b) obtained the illegal proceeds for free or not at a reciprocal cost and (c) the party benefitted from the illegal act. Proceeds of crime is defined as any property derived from or obtained directly or indirectly through the commission of an offence. However, property is not defined in legislation in Chinese Taipei.

對於所有其他刑事犯罪-刑法第 38-1 條規定允許沒收屬於犯罪者的犯罪所得。對於屬於其他自然人或法人的財產，如果能夠證明他們 (a) 故意從犯罪者那裡獲得非法所得 (b) 無償或非正常價



格獲得非法所得 (c) 該方受益於該非法行為，則可被沒收。犯罪所得是指從犯罪中直接或間接獲得或取得的任何財產。但是，中華臺北的立法對於財產沒有定義。

46. Instrumentalities – Article 38 of the Criminal Code provides for confiscation of things used in the commission of or preparation for the commission of an offence or derived from or acquired through the commission of an offence, only if it belongs to the offender. It may be confiscated from other persons if obtained without proper reasons. Further, Article 18 of the Narcotics Hazard Prevention Act allows the confiscation and destruction of any Category 1 and 2 narcotics along with equipment for manufacturing or administering such narcotics. For Category 3 and 4 narcotics and related equipment shall be confiscated and destroyed if there is no justifiable reason for possession. Article 19 provides that items used by offenders committing certain narcotics offences shall be confiscated along with water, land and air transport vehicles used in certain offences. Other legislative provisions exist for the confiscation of instrumentalities of crime including for crimes committed under the Slope Land Conservation and Utilization Act (Art 34), the Soil and Water Conservation Act (Art 32) and the Forestry Act (Art 51).

犯罪工具 - 刑法第 38 條規定，只有在屬於犯罪者的情況下，才能沒收犯罪或預備犯罪或從犯罪中獲得或因犯罪獲得的物品。如果無正當理由取得，可能從非犯罪者處沒收。此外，毒品危害防制條例第 18 條允許沒收和銷毀任何第 1 級和第 2 級麻醉品以及製造或管理此類麻醉品的設備。對於第 3 級和第 4 級麻醉品及其相關設備，如果沒有合理的理由持有，應沒收之。第 19 條規定，犯有某些毒品罪的犯罪者使用的物品應與某些犯罪所使用的水，陸，空運輸工具一起沒收。關於沒收犯罪工具的其他立法規定，包括根據山坡地保護法（第 34 條），水土保持法（第 32 條）和森林法（第 51 條）所犯下的罪行。

47. Property of corresponding value - Article 38-1 of the Criminal Code provides that where confiscation of the proceeds of crime failed or is not appropriate, the value thereof shall be collected from the offender.

等價值的財產 - 刑法第 38-1 條規定，如果無法沒收犯罪所得或不宜沒收，追徵其價額。

48. Property allocated for use in the financing of terrorist acts, terrorism or terrorist organisations – The provisions of the Criminal Code as outlined above apply (Art 38 of the Criminal Code).

用於資恐行為，恐怖主義或恐怖主義組織的財產 - 適用上述刑法的規定（刑法第 38 條）。

#### Criterion 4.2

##### 標準 4.2

49. **4.2(a)** – Article 131 of the Criminal Code allows a public prosecutors or public prosecuting affairs official, judicial police officer, or judicial policeman police to search a dwelling without a search warrant under certain circumstances (to arrest or pursue accused persons or suspects, or under reasonable belief a person is inside committing an offence). This may also be done if there is probable cause to believe the circumstances are ‘exigent’ and there are sufficient facts to justify an apprehension that evidence may be destroyed, forged, altered or concealed within 24 hours unless the search is conducted immediately. The owner, holder or custodian of the items to be seized shall bring forward or deliver the items as ordered. Chinese Taipei state that LEAs use this provision allows LEAs to compel production of documents without a court order.

**標準 4.2 (a)** - 刑法第 131 條允許檢察官，公訴機關官員，司法警察或司法警察官在某些情況下在沒有搜索票的情況下搜索住所（逮捕或追捕被告或嫌疑人，或合理相信某人在內犯罪）。如果有相當理由相信情況“緊急”並且有足夠的事實證明，除非立即進行搜索，證據在 24 小時內可能被銷毀，偽造，塗改或隱匿，也適用無票搜索。被扣押物品的所有人，持有人或保管人應提出或交付物品。中華臺北表示，該條款允許執法機關在沒有法院命令的情況下強制交付文件。

50. **4.2(b)** – Article 13 of the MLCA allows a prosecutor to request a court order to prohibit the withdrawal, transfer, payment, delivery and assignment or to make other necessary disposition of property for not more than six months. If the situation is urgent the prosecutor may stop



transactions if required to ensure the integrity of the confiscated property or evidence. However a court order is required to be applied for within three days of such action failing which the freeze comes to a halt. The Court then may consider whether to issue a court order to continue the prohibition on the withdrawal, transfer, payment, delivery and assignment of such property. However, such orders can only be extended once for six months so their maximum period is 12 months. Whilst it is not expressed in the legislation that such orders may be made *ex parte*, authorities advise in practice that orders are applied for on an *ex parte* basis.

**標準 4.2 (b)** - 洗錢防制法第 13 條規定，允許檢察官申請法院命令禁止提領，移轉，支付，運送，轉讓或進行其他必要的財產處置，時間最長為六個月。如果情況緊急，檢察官可以在必要時停止交易，以確保沒收財產或證據的完整性。但是這樣的情形仍必須在三天內申請法院命令，否則凍結就會被停止。然後，法院可以考慮是否簽發命令，以繼續禁止提領，轉移，支付，運送和轉讓這些財產。但是，此類命令只能延長一次，為期六個月，因此最長期限為 12 個月。立法中沒有表示可以片面作出此類命令，但權責機關表示在實務上是片面申請命令，不需事先通知受影響對象或事先通知其參與。

51. The CPC carves provides three exceptions for seizure without a judicial order. CPC Article 133 states that a thing which can be used as evidence or subject to confiscation may be seized. The term “thing” has not been defined. However in Chinese language the term takes on a very wide definition that would encompass all forms of property. In addition, Article 133-1 and 133-2 allow seizure without a court order by a prosecutor, prosecuting investigator, judicial police officer or judicial police under consent or exigent circumstances. However, the seizure shall be reported to the court within three days of execution if implemented by a prosecutor and shall be reported to the prosecutor and the court within three days of execution if implemented by a prosecuting investigator, judicial police officer, or judicial police. Seizure orders may prohibit collection from debtors or other sanctions and to prohibit the action of paying off for the accused or third party.

刑事訴訟法規定了三個無須法院命令沒收的例外情況。根據刑事訴訟法第 133 條規定可以扣押可用作證據或可得沒收的物品。對於“物品”尚無定義。但是，在中文裡有一個非常廣泛的定義，包括所有形式的財產。此外，第 133-1 和 133-2 條允許在未經法院命令的情況下，根據同意或緊急情況，由檢察官，檢察事務官，司法警察官或司法警察扣押。但是，如果由檢察官執行扣押，則應在執行後三天內向法院報告，如果由檢察事務官，司法警察官或司法警察執行，應在執行後三天內向檢察官和法院報告。扣押命令可以禁止向債務人收款或其他制裁，並禁止為被告或第三人付款。

52. **4.2 (c)** - there are no express provisions allowing authorities to take steps to prevent or void actions that prejudice the Chinese Taipei’s ability to freeze or seize or recover property that is subject to confiscation.

**標準 4.2 (c)** - 沒有明確規定允許當局採取措施防止或取消損害中華臺北凍結、扣押或追回得沒收財產能力的行為。

53. **4.2 (d)** - Chinese Taipei LEAs have a wide range of investigative powers under the CPC as outlined above and in R31 below. In particular, Art 122 of the CPC allows a search of a person, property, electronic record, dwelling or other premises of an accused or suspect where there is probable cause to believe that the property or electronic record subject to seizure is there.

**標準 4.2 (d)** - 中華臺北的執法機關在刑事訴訟法的規定下具有廣泛的調查權力，如上所述和下文建議第 31 項中所述。特別的是，刑事訴訟法的第 122 條允許在有相當理由相信得被扣押的財產或電子記錄存在時，可以搜索被告或嫌疑人身體，財產，電子記錄，住所或其他處所。

54. **Criterion 4.3** - The Criminal Code prohibits confiscation of proceeds of crime obtained by *bona fide* third parties. Article 38-1 further confirms that proceeds of crime obtained by natural, legal or unincorporated bodies other than the offender are only confiscated when (a) knowingly obtained (b) they have obtained the proceeds for free or at a cost that is not reciprocal or (c) the party benefitted from the illegal act. Articles 455-12-29 of the CPC appear to provide protection of a *bona fide* third party. For instance, Article 455-12 allows a third party whose property is subject

to confiscation to apply to the court for participation in the confiscation proceeding. Article 455-13 requires the prosecutors to give direct notice to a third party or include such intention into an indictment if a third party's property will be confiscated, depending on the timing of the public prosecution. Finally, even if a third party failed to participate in the confiscation proceeding due to his/her own cause and the third party's property has been ordered to be confiscated, the third party is still given the right to file a motion to vacate the confiscation judgment provided that such motion is filed within 30 days after the third party learned of the confiscation judgment (Article 455-29).

**標準 4.3**--刑法禁止沒收善意第三人取得的犯罪所得。第 38-1 條規定進一步規定，除了犯罪者以外的自然人，法人或非法人團體取得的犯罪所得僅在以下情況下被沒收：(a) 故意取得 (b) 他們是無償獲得的，或者是不相當的 (c) 該方受益於該非法行為。刑事訴訟法第 455-12~29 條顯然為善意第三人提供保護。例如，第 455-12 條規定允許財產被沒收的善意第三人向法院申請參加沒收程序。第 455-13 條規定要求檢察官直接通知第三方，或者如果第三方的財產將被沒收，則將這種意圖記載在起訴書中，根據提起公訴的期程。最後，即使第三方因其自身原因未能參與沒收程序並且第三方的財產被命令沒收，第三方仍有權提出請求以撤銷沒收判決。但此請求需在第三方獲悉沒收判決後 30 天內提出(第 455-29 條)。

55. **Criterion 4.4** - The Criminal Code provides for circumstances where an asset is confiscated, ownership and rights in the property are transferred to the government on finalisation of confiscation. Once assets are seized, appropriate measures shall be taken to protect property against loss or damage (CPC Article 140). A person may be ordered to guard seized property which is inconvenient to transport or preserve or the owner or other person may be ordered to preserve it. Seized property may be sold at auction if it is determined that seized property will be damaged or if it is inconvenient to preserve it (i.e. if its storage costs are deemed expensive or it will be difficult to store). Seized property may be returned to the owner, possessor or custodian if they ask for return of it and undertake to preserve it (CPC Article 141-142). The Guidelines for prosecuting authorities to pursue proceeds from crime provides further advice on asset management.

**標準 4.4**--刑法規定了沒收資產的情況，財產的所有權和權利在完成沒收時轉移給政府。一旦資產被扣押，刑事訴訟法第 140 條規定，應採取適當措施保護財產免遭損失或損害。當財產不便於運輸或保存，可以命令某人保護被扣押的財產，或者可能命令所有人或其他人來保存。如果確定被扣押的財產將被損壞或者不方便保存（即如果其保存成本被認為是昂貴的或難以存放），第 141 條允許拍賣出售被扣押的財產。第 142 條規定如果被扣押財產的所有人，擁有人或保管人要求歸還，並承諾保存，則可將扣押財產歸還給所有人，擁有人或保管人。檢察機關追討犯罪所得實施要點為資產管理提出更多的建議。

56. According to Articles 4 and 12 of the "Notices for Prosecuting Authorities in Appraising Items Seized in Criminal Investigation", the prosecutor shall organize auctions in writing and deliver notices to the defendant or the nominal owner of the seized assets. The prosecutor shall also notify the defendant or stakeholders five days before the implementation of the auction or sell-off.

根據“檢察機關辦理刑事案件偵查中扣押物變價應行注意事項”第 4 條和第 12 條，檢察官應以書面形式拍賣，並向被告或被扣押資產的名義上所有人發出通知。檢察官應在拍賣或變賣前五天通知被告或利益相關者。

## Weighting and Conclusion

### 權重與結論

57. Chinese Taipei has comprehensive provisions for the seizure and confiscation of proceeds of crime. There are no express provisions allowing for transactions to be voided, property is not defined in the legislation and it is not expressed that applications to seize be made *ex parte*. There is a small scope gap in the application of R.4 to offences of smuggling of migrants. However, the legislative gaps in relation to the definition of property, and *ex parte* nature of seizure orders have been shown to operate in practice. **Recommendation 4 is rated largely compliant.**

中華臺北對扣押和沒收犯罪所得有全面性的規定。沒有明確規定可以使交易無效，立法未就財產定義，也沒有明確規定聲請扣押可以片面為之。將 R.4 運用於偷渡犯罪的存在微小落差。但是，與財產定義有關的立法落差以及扣押令的片面性質已展現在實務運作上。**建議第 4 項的評等為大部分遵循。**

## Recommendation 5 - Terrorist financing offence

### 建議第 5 項 - 資恐罪行

58. In its 2007 MER Chinese Taipei was rated NC for the former SRII as at the time of the MER, TF had not been criminalized.

在 2007 年相互評鑑報告中，中華臺北因為未將資恐罪刑化，因此前次 SRII 被評為未遵循。

59. **Criterion 5.1 and 5.2** -Article 8 of the CTF Act notes that if a person “directly or indirectly” collects or provides property or property interests for another person in the knowledge that the other person prepares for specific plans or activities to commit any of the following offenses for the purposes of causing death or serious bodily injury to unspecified persons to intimidate the public or pressure the government, a foreign government, a foreign institution or an international organization they shall be subject to punishment for not less than one year but no more than seven years and a fine of up to NTD10 million. Further, Article 9 criminalises the financing of the following individuals (or groups)

**標準 5.1 和 5.2。**資恐防制法第 8 條規定，如果某人明知另一人有實行特定的犯罪行為之具體計畫或活動，直接或間接為其收集或提供任何財物或財產上利益，應處以 1 年以上 7 年以下的有期徒刑，並處以最高達新台幣 1000 萬元的罰金。此外，第 9 條對於以下個人（或團體）的資助行為定為刑事犯罪

- a. terrorists (individuals or entities designated under UNSCR 1267 or 1373); or  
恐怖分子（經聯合國安理會 1267 號或 1373 號文件指定制裁的個人或實體）；或
- b. a terrorist group that is formed with the purpose to commit any of the specified crimes in Article 8; or  
為發動第 8 條的特定犯罪而成立的恐怖組織；或
- c. an individual, legal person or entity with a plan to intimidate the public or pressure the government, a foreign government, an institution or an international organization by way of committing crimes specified in Article 8; or  
以犯第 8 條所列之罪，而達恐嚇公眾或脅迫政府、外國政府、機構或國際組織目的之個人、法人或實體；

60. It is prohibited to directly or indirectly provide financing of property or property interests to an individual, legal person or entity as described above in the knowledge that such financing is provided for *terrorist training expenses*.

禁止明知為恐怖主義活動訓練費用所需，而直接或間接向上述個人、法人或實體提供財物或財產上利益。

61. It is not necessary to prove that property or property interests were provided to carry out any specific terrorist acts. Attempts to commit the above are punishable.

資恐罪之成立，無需證明所提供財物或財產上之利益，最後是否被用來執行任何具體的恐怖主義行為。資恐未遂亦可追訴資恐罪。

62. There are some shortfalls in the TF offence under Art 8 of the CFT Act, specifically; (a) Art 8 does not criminalise self-financing of terrorism however self-financing may in part be covered by



the ancillary offence of “preparing for” which is criminalized in relation to some criminal offences in Chinese Taipei such as murder (b) Art 8 has in effect combined Art 2(1)(a) and 2(1)(b) of the TF convention. In this regard, for a prosecution of TF to succeed, the prosecution must prove intent/knowledge on behalf of both the financier (“*in the knowledge*”) and the terrorist actor (“*to intimidate the public or pressure the government, a foreign government or another institution*”). Whilst not strictly in line with the TF convention, this is assessed to not be a shortfall under R5. Further analysis of the distinction between pure criminal offences and terrorism offences are discussed in IO9 and give credence to the fact that Chinese Taipei distinguishes between offences that are committed for terrorist vs other purposes.

資恐防制法第 8 條仍然有缺失，特別是 (a) 第 8 條不處罰恐怖分子自行籌資者，即使自行籌資以發動恐怖活動的行為仍可能以刑法某些犯罪的預備犯處罰，如預備殺人罪。(b) 第 8 條實際上雖已結合聯合國反資恐公約第 2 條第 1 項 a 款和 b 款內容，但為能成功起訴資恐罪，必須證明資恐者具有「明知他人有實行第 8 條所列之相關犯罪」的認識以及受資助的他人具備「恐嚇公眾或脅迫政府、外國政府、國際機構或組織」的目的等 2 項要求，如此與反資恐公約的要求不一致。但評鑑團認為這不是在 R5 的缺失，因為在直接成果 9 的報告內容中，已進一步分析單純的刑事犯罪與恐怖主義犯罪之間的構成區別，事實上中華臺北亦能區分案件究竟是為恐怖主義犯罪，或因其他目的犯下的罪行。

63. As noted above, the text of Art 8 does not specifically set out Art 2(1)(b) of the convention (any other act intended to cause serious bodily injury or death) as the TF offence in Art 8 only relates to the offences listed. However the team notes that the scope of that gap may be minimal.

如同前述，資恐防制法第 8 條內文僅以條列式方式列舉相關犯罪類型，未如反資恐公約第 2 條第 1 項 b 款所揭「其他意圖造成他人死亡或重傷的行動」所涵蓋範圍廣泛。但評鑑團認為這是微小缺失。

64. **Criterion 5.2bis** - Article 9 of the CTFA stipulates that a person who directly or indirectly provides, or attempts to provide, financing of property or property interests in the knowledge that such financing is provided for terrorist training expenses shall be punished. Art 9(1)(3) also provides an offence of financing a person who is conducting or planning to commit an offence specified in Art 8 by intimidating or pressuring the government or a foreign government, institution or international organization. This provision covers the gap in the above provision that only criminalises financing for training purposes.

**標準 5.2bis**。資恐防制法第 9 條第 2 項規定「明知為前項各款所列之個人、法人或團體訓練所需之相關費用，而直接或間接提供財物或財產上利益之資助者」，而第 9 條第 1 項第 3 款的規定「以犯第 8 條之罪而達恐嚇公眾或脅迫政府、外國政府、機構或國際組織之目的。」這項規定補足第 9 條第 2 項僅處罰以資助恐怖分子為訓練目的之行為。

65. **Criterion 5.3** Chinese Taipei adopts the term ‘property’ however it is not defined in relevant legislative provisions. Authorities, including lawyers from within the MOJ confirm that the term property is a general term and includes all personal property, real estate, cash, deposits, foreign currency, securities, claims or other property rights and other interests of economic value. The source of the property or property interests in the CTFA is not stipulated as either legal or illegal and the definition therefore covers all forms of property. The Judicial Yuan confirm that the term property is all encompassing and that the Court would interpret it widely.

**標準 5.3**。中華臺北針對「財物」一詞，未於任何法律或法規中明確定義範圍。權責機關，包括法務部內的律師，均確認財物一詞為概括性詞彙，包括所有個人財產、房地產、現金、存款、外幣、證券、債權或其他財產權利以及其他具有經濟價值的利益。資恐防制法的財物或財產上利益的來源未被規定為合法或非法，因此該定義涵蓋所有形式的財產。司法院也證實，財物一詞具有包羅萬象的含義，法院審判時，會對其廣泛解釋，評鑑團亦認同法院廣泛適用該詞彙所包括的範圍。

66. **Criterion 5.4** - Article 9 stipulates that it is not necessary to prove that property or property interest were provided to carry out any specific terrorist acts. It does not specify that it is not necessary to prove the property was provided to *attempt* a terrorist act.



**標準 5.4。**資恐防制法第 9 條規定，無需證明資恐者提供財物或財產上利益，用以實際著手任何恐怖主義行為，亦無需證明行為人所提供財物是否導致恐怖行動未遂（按：即便行為人已提供財物，但恐怖活動未遂，如此亦構成資恐罪。）

67. **Criterion 5.5** - the intent and knowledge required to prove the offence can be inferred from objective factual circumstances (see also criterion 3.8). This is because terrorist financing under Articles 8 and 9 are criminal offences and thus the Criminal Code also applies (Art 11 of the Criminal Code). Art 13 of the Criminal Code provides for the definition of criminal intent and established Supreme Court judgments confirm that objective circumstances can be taken into account when deciding on intent.

**標準 5.5。**證明犯罪所需的「意圖」和「明知」可以從客觀事實情況推斷（另見 criterion 3.8）。這是因為根據資恐防制法第 8 條和第 9 條所列之資恐罪是刑事犯罪，因此也適用刑法之規定（刑法第 11 條）。刑法第 13 條有關於犯意的定義，並且最高法院的判決亦確認在決定犯罪者主觀構成要件「意圖」時，可以考量客觀事實條件加以推斷。

68. **Criterion 5.6** - An individual in violation of Article 8 of the CTF Act shall be sentenced to imprisonment of not less than one year but not more than seven years and a fine of not more than NTD 10 million (approx. USD 300,000); an individual in violation of Article 9 shall be sentenced to imprisonment of not less than one year but not more than five years and a fine of not more than NTD 5 million (approx. USD 160,000). A Chinese Taipei local may be punished for TF committed outside the jurisdiction. Reflecting the complexities in investigating and prosecuting TF, the CFTA provides for three levels of sentence reduction for offenders who confess their crimes, namely within 6 months of the act, after 6 months of the act, or during investigations or trial.

**標準 5.6。**違反資恐防制法第 8 條的個人，應處以一年以上、七年以下有期徒刑，並處以新台幣 1000 萬元以下（約 300,000 美元）的罰金；違反第 9 條規定的個人，處以五年以下的有期徒刑，併科新台幣 500 萬元以下（約 160,000 美元）的罰金。中華臺北公民在管轄範圍以外，所從事的資恐行為仍會受到資恐罪追訴。為降低調查和起訴資恐罪的困難度，資恐防制法有 3 種層次的量刑規定，資恐者於犯罪後六個月內自首者，免除其刑；逾六個月者，減輕或免除其刑；在偵查或審判中自白者，減輕其刑。

69. The CTFA provides for reduced sanctions in the event that the offender voluntarily surrenders within six months of committing the crime or reduced if they shall surrender after that time. Attempts to commit TF are expressly punishable in the CTF Act in which case Article 25(2) of the Criminal Code applies. That article notes that the punishment of an attempt may be reduced from that of an accomplished offence. In practice, the severity of the sentence is determined by the trial judge on a case by case basis taking into account all relevant matters.

資恐防制法訂有刑責減輕規定，例如資恐者在犯罪內六個月內自首，免除其刑，逾六個月者，減輕其刑，並可適用刑法第 25 條第 2 項規定，未遂犯之處罰，以有特別規定者為限，並得按既遂犯之刑減輕之。在實際上，判決的刑度高低由法官綜合考量案關所有事項並依據具體事證確定。

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

與其他司法管轄區相比，資恐罪之刑期為七年（第 8 條）和五年（第 9 條）似乎太低。然而資恐罪與其他重大刑事犯罪，例如人口販運、綁架勒索、劫機、組織犯罪和逃稅等之法定刑度相稱。

71. **Criterion 5.7** - Under Article 11 of the CTF Act, a legal person is held severally liable, apart from a natural person, for any offence set out in Article 8 or Article 9 of the CTFA. The fines applicable to legal persons range from NTD 5 million to NTD 10 million. In addition, civil liability does not preclude criminal liability of a legal person.

**標準 5.7。**根據資恐防制法第 11 條規定，法人除了自然人之外，若違反第 8 條或第 9 條規定的任何罪行而需承擔個人責任。適用於法人的罰金範圍為 500 萬新臺幣以上、1000 萬新台幣以下。此外，法人具有民事責任，且不因此排除法人的刑事責任。

72. **Criterion 5.8** - An attempt to commit the TF offence is criminalised (Article 8 and Article 9 of the Counter Terrorism Financing Act). Participating as an accomplice in a TF offence or an attempted offence is criminalised under Article 28 of the Criminal Code which states that “Each of the two or more persons acting jointly in the commission of an offense is a principal offender”. Anyone who organises or directs others to commit a TF offence or attempted offence, or contributes to the commission of one or more TF offences or attempted offence by a group of person acting with a common purpose is prosecuted (Supreme Court Civil Judgment No. 6924 of 2009; Articles 29 and 30 of the Criminal Code and the Supreme Court’s Judgment No. 2822 of 2005). It is not evident that ancillary offences can be prosecuted for attempts as well as an established offence.

**標準 5.8。**資恐未遂罪亦為刑事犯罪（資恐防制法第 8 條和第 9 條）。依據刑法第 28 條規定，資恐犯罪或未遂犯罪的共犯參與資恐行為，皆為正犯。任何組織或指示他人犯資恐罪或未遂犯罪，或協助具有共同目的的團體犯一個或數個資恐罪行或意圖犯罪者，均可構成資恐罪（參照 2009 年最高法院第 6924 號判決；刑法第 29 條和第 30 條以及最高法院 2005 年第 2822 號判決），但不清楚資恐之各種從犯的未遂行為是否亦能如同既遂一樣處罰。

73. **Criterion 5.9** -TF offences are predicate offences for ML (Article 3 of the MLCA).

**標準 5.9。**資恐罪是洗錢防制法第 3 條規定的洗錢前置犯罪。

74. **Criterion 5.10** - Article 4 of the Criminal Code indicates where either the conduct or the result of an offense takes place within Chinese Taipei, the offense shall be considered as committed within Chinese Taipei. This would enable authorities to prosecute TF that was committed in Chinese Taipei, regardless of where the terrorist act is intended to occur.

**標準 5.10。**刑法第 4 條規定「犯罪之行為或結果，有一在中華民國領域內者，為在中華民國領域內犯罪」意指，無論恐怖行動的行為或結果地為何，中華臺北權責機關都能夠追訴在中華臺北境內發生的資恐行為。

## Weighting and Conclusion

### 權重與結論

75. There are some minor gaps with the TF offence, it is not evident that self-financing is criminalised although such conduct may be prosecuted under an ancillary offences. Art 2(1)(b) of the TF convention (“any other act to intimidate or pressure a government”) is also not present as all offences are linked to listed terrorist offences. The term “property” is not defined in any laws or regulations although the team accepts that the term is construed widely by the courts. **Recommendation 5 is rated largely compliant.**

資恐罪仍存在微小落差，雖然恐怖分子自籌資金的行為可能會以預備犯形式起訴，但有關自籌資金的處罰規定不明顯。另外聯合國反資恐公約第 2 條第 1 項 b 款（任何其他恐嚇或脅迫政府的行為）之概括性規定，在中華臺北亦無類似立法，因為資恐防制法第 8 條所列出的犯罪都僅係與恐怖主義罪行有關之犯罪類型。財物一詞在任何法律或法規中都未定義其範圍，雖然評鑑團認同法院會廣泛適用這個詞的範圍。**建議 5 的評等為大部分遵循。**

## Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

### 建議第 6 項-資助恐怖分子及恐怖主義之目標性金融制裁

76. In its 2007 MER Chinese Taipei was rated NC for the former SRIII as there were no effective laws and procedures to freeze terrorist funds or other assets of entities designated by the UN1267 Committee or to freeze terrorist assets of persons designated in the context of UNSCR 1373.

在 2007 年的相互評鑑報告中華臺北在之前 SRIII 被評為 NC，沒有有效的法律及程序以凍結恐怖份子資金或其他被聯合國安理會 1267 決議案指定之實體之其他資產，或凍結聯合國安理會 1373 決議案指定之恐怖主義團體及個人之資產。

### Criterion 6.1 -

#### 標準 6.1 -

77. **6.1 (a)** - The MOJ is the competent authority in Chinese Taipei responsible for considering designations and related affairs (Art 2 of the CTF Act). In the event that Chinese Taipei identified a potential designation or assisted another jurisdiction to prepare a submission to the UN, the MOJ is identified as the competent authority. However, as Chinese Taipei is not a member of the UN there are impediments to it directly proposing entities and individuals for designation by the UN.

6.1 (a) - 中華臺北負責指定及相關事務之權責機關是法務部(資恐防制法第 2 條)，當中華臺北辨識潛在的受指定對象或協助其他司法管轄區準備提交給聯合國時，法務部為權責機關。但是，因為中華臺北不是聯合國會員國，所以向聯合國提報指定對象會有阻礙。

78. **6.1(b-e)** - Due to this unique position, Chinese Taipei has not expressly taken decisions reflecting the requirements set out in Rec 6.1 (b - e) in the CTF Act. Nevertheless, in theory the competent authority has been identified as the MOJ and there would be no barriers to following UN procedures.

由於其獨特的地位，中華臺北沒有明確地在資恐防制法訂定規訂反映 R6.1 (b-e) 中之要求。但是，理論上權責機關法務部在遵循聯合國程序上並無障礙。

### Criterion 6.2

#### 標準 6.2

79. **6.2 (a)** - Chinese Taipei has legislated to issue designations pursuant to UNSCR 1373 through the CTFA. Ministry of Justice is the competent authority in Chinese Taipei responsible for considering designations and related affairs (Art 2 of the CTF Act). The TF Review Committee (TFRC) is established by Article 3 of the CTFA to review any proposal of listing or delisting individuals or legal persons or entities who meet the criteria of designation, whether within or outside Chinese Taipei. The TFRC may consider designations proposed by other jurisdictions (Art 4).

6.2(a) - 中華臺北已立法根據聯合國安理會 1373 號決議透過資恐防制法公告指定。法務部是中華臺北負責指定之權責機關(資恐防制法第 2 條)，資恐防制審議會是依據資恐防制法第 3 條召開，負責審議符合指定標準之自然人或法人或實體之指定或除名，無論是在國內或國外。審議會可以審議其他司法管轄區提出之指定(第 4 條)。

80. **6.2(b)** - Art 5 provides a mechanism to identify targets based on reports from the Investigation Bureau or under its own authority, the competent authority may seek listings based on the specified criteria. LEAs and the NSB have a number of operational mechanisms that may be used to identify targets. Article 5 confirms that the competent authority may act “under its own authority”.

6.2(b) - 第 5 條提供機制基於調查局之提報辨識指定目標，權責機關依據特定標準進行指定。執法機關和國安局具有許多可用於辨識目標的運作機制。第 5 條確認權責機關可“依職權”指定。

81. **6.2(c)** - The TF Review Committee (TFRC) is established by Article 3 of the CTFA to review any proposal of listing or delisting individuals or legal persons or entities who meet the criteria of designation, whether within or outside Chinese Taipei. The TFRC may consider designations proposed by other jurisdictions (Art 4). The mechanisms and procedures support this being done promptly

6.2(c) - 資恐審議會 (TFRC) 依據資恐防制法第 3 條設立，負責審查符合指定標準的個人或法人或實體之指名或除名，無論是在中華臺北境內還是境外。審議會可考慮其他司法管轄區提出的指定 (第 4 條)。相關機制和程序支持迅速完成審議。

82. **6.2(d)** - There is no evidentiary basis set out in the CTF Act. Article 4 of the CTF Act sets out the grounds upon which a person or entity may be listed on the sanction list. In particular, it specifies (a) an individual, legal person or entity suspected of committing a crime specified in Article 8, Paragraph 1, hereof with unspecified persons for the purpose of intimidating the public or coerce a government, a foreign government or institution, or an international organization. There are no further details provided in relation to what constitutes “suspected of a crime” or an evidentiary standard.

6.2(d) - 資恐防制法沒有明文證據依據之標準。資恐防制法第 4 條依據相關的聯合國安理會相關決議案包括 1373 號決議建立機制辨識符合指定標準之目標。特別地是，它規定個人、法人或團體涉嫌第八條第一項各款所列之罪，以引起不特定人死亡或重傷，而達恐嚇公眾或脅迫政府、外國政府、機構或國際組織目的之行為或計畫。但是如何構成「涉嫌犯」和證據標準沒有進一步的細節。

83. However, as the decision to designate is an administrative decision of government, and authorities confirm that the Administrative Procedure Act applies in such cases. It provides that,

但是，由於指定是一個行政處分，權責機關確認行政程序法適用在這些案件上，該法指出：

"in rendering an administrative disposition or carrying out other administrative acts, an administrative authority shall make a judgment of the truthfulness of the facts based on logical reasoning and the empirical doctrine after taking into consideration the statements presented and the conclusion reached upon the facts found and the evidence obtained, and shall then give the party a notice of its decision and reasons therefore."

「行政機關為處分或其他行政行為，應斟酌全部陳述與調查事實及證據之結果，依論理及經驗法則判斷事實之真偽，並將其決定及理由告知當事人」

Authorities indicate that the element of “logical reasoning” is paramount to having reasonable grounds.

主管機關指出邏輯推理對於獲得合理根據至關重要。

84. When receiving such requests, based on the report from the MJIB or under the competent authority’s own authority, the competent authority must obtain approval from TFRC before including such individual, legal person and entity on the Sanction List. There is no requirement that designations are conditional upon the existence of criminal proceedings.

當達到這些要求，基於調查局的提報或權責機關依其職權，權責機關在將個人、法人及團體納入制裁名單之前必須自審議會取得同意。指定不以存在刑事訴訟為要件。

85. **6.2(e)**- When requesting another jurisdiction to give effect to the actions initiated under the freezing mechanisms, authorities confirm that there would be no barrier to provide as much identifying information, and specific information supporting the designation. Chinese Taipei information.

6.2(e) - 當要求其他國家執行凍結機制時，權責機關確認在提供辨識資訊及特定資訊支持指定上沒有阻礙。

86. **Criterion 6.3** - Criminal justice mechanisms and investigation powers are available to carry out investigations or operate *ex parte* against a person being considered for designation. The MOJ is the competent authority and the MJIB (including the FIU) is, in practice, responsible for carrying out investigations pursuant to possible designations under the CTF Act. The MJIB has wide investigation powers and the MJIB Operation Regulation on Matters Relevant to AML and CFT confirms the scope of the MJIB to carry out investigations relating to matters under the CTF Act. The CPC confirms that criminal investigations shall not be disclosed to the public.

**標準 6.3** - 刑事司法機制及調查機關得對被確認指定之人逕行採取行動。法務部是權責機關，調查局(包含金融情報中心)在實務上是依據資恐防制法針對可能的指定負責執行調查。調查局有廣泛



的調查權，調查局防制洗錢及打擊資恐行動綱領確認調查局得依據資恐防制法進行調查。刑事訴訟法規定偵查不公開之。

87. **Criterion 6.4** - The implementation of relevant provisions in the CTF Act ensures that designations made by the UN are able to take effect in Chinese Taipei within 24 hours of UN designation. The MJIB reports new UN designations to the MOJ for review in accordance with CTF Act Articles 4 and 5. The MOJ will then conduct a review of that designation and publish it formally rendering the designation effective in Chinese Taipei. For UNSCR 1373 designations, these are pronounced immediately upon the decision being made by the TFRC upon consideration of relevant evidence. If a request is made from another jurisdiction to give effect to a foreign designation, a meeting of the TFRC is convened, and the designation announced should the evidence reach the required threshold.

**標準 6.4** - 資恐防制法確保聯合國的指定可於 24 小時內在中華臺北生效。調查局依據資恐法第 4 條及第 5 條提報新的聯合國指定給法務部進行審查。法務部進行審查後會公告指定名單並在中華臺北生效。就聯合國安理會第 1373 號決議來說，審議會在考慮相關證據後會立刻公告指定。如果是來自其他司法管轄區請求指定欲生域外效力，審議會召開後，如認該指定達到證據門檻時將公告。

### Criterion 6.5

#### 標準 6.5 -

88. **6.5(a)** -The CTF Act implements the TFS freezing obligation by establishing enforceable prohibitions on dealing with property of designated persons or entities. Article 7 of the CTF Act prohibits the following activities with respect to individuals, legal persons, or entities named on the sanction list (i.e. 1267 and 1373 lists):

6.5(a) - 資恐防制法透過建立強制禁止規定針對指定制裁人及團體之財產執行目標性金融制裁。資恐防制法第 7 條規定對於指定制裁之個人、法人或團體不得為下列行為(亦即 1267 及 1373 名單)：

7(1)(1) Making withdrawals, remittance, transfers, payment, deliveries or assignments related to the financial accounts, currency or other payment instrument of the designated individual, legal person and entity.

7(1)(1) 對其金融帳戶、通貨或其他支付工具，為提款、匯款、轉帳、付款、交付或轉讓。

7(1)(2) Making transfers, changes, dispositions, use of, or taking any other measures which may change the quantity, quality, value or location of property or interests of the designated individual, legal person and entity.

7(1)(2) 對其所有財物或財產上利益，為移轉、變更、處分、利用或其他足以變動其數量、品質、價值及所在地。

7(1)(3) Collecting or providing any property or any property interests for the designated individual, legal person and entity.

7(1)(3) 為其收集或提供財物或財產上利益。

89. Article 12 of the CTF Act includes an enforcement provisions for any FI or DNFBP that breach the prohibitions on dealing with property (*de facto* freezing provisions) at Article 7 (competent authorities may levy administrative fines ranging from NDT 20,000 to 1,000,000 (approx. USD 600 - 32,000) to enforce the prohibition). Article 9 of the same act includes a criminal penalty for all persons (natural and legal) who collect or provide any property or property interests for designated persons or entities. Chinese Taipei authorities argue that under their law the conduct outlined in 7(1)(1-2) is a subset of 'collecting and providing any property or property interest' and the wider enforcement provision would apply beyond FIs and DNFBPs. This interpretation is not clearly established.

資恐防制法第 12 條包括金融機構或 DNFBP 違反第 7 條規定的禁止處理財產(事實上的凍結條款)(主管機關可能會裁罰新台幣 20,000 至 1,000,000 (約 600-32000 美元) 執行禁令)。同法第 9

條規定為指定之人或實體收集或提供財物或財產上利益者（自然人和法人）的刑事罰。中華臺北當局辯稱，資恐法第 7 條第 1 項的第 1、2 款中所述的行為被“為其收集或提供財物或財產上利益”的所涵蓋，更廣泛的執法條款適用於金融機構和 DNFBP 以外之人。這種解釋尚未明確。

90. There is no definition of property in the CTF Act or in most legislation related to any aspect of AML/CFT. Chinese Taipei authorities indicate that the courts interpret these terms very broadly and have, in other contexts, demonstrated freezing and confiscation of the widest range of property under provisions with the same terminology. In this regard, the above prohibitions cover most forms of funds and assets but it is not sufficiently clear that it covers the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities.

資恐防制法及大多數防制洗錢及打擊資恐法律都沒有財產的定義，中華臺北指出，法院對這些條款的解釋非常廣泛，並且在其他情況下，依據相同的術語凍結和沒收最廣泛的財產。所以上述禁令涵蓋的大多數型式之資金及資產，但是不清楚是否有涵蓋從被指名之人或團體直接或間接擁有、控制之資金或其他資產所衍生之資金或其他資產。

91. Chinese Taipei confirms that as notification is not required under the CTF Act, then the measures can be taken without notice. Sectoral regulators have issued guidelines to their respective entities outlining further information and obligations under Article 7.

中華臺北確認資恐防制法沒有要求通知當事人，所以不用事前通知即可採取措施。機構的主管機關向各自的機構發布了指導方針，概述了第 7 條規定的資訊及義務。

92. **6.5(b) –**

- (i) The CTF Act applies the freezing obligation to all funds or other assets that are owned or controlled by the designated person or entity, and not just those that can be tied to a particular terrorist act, plot or threat.

資恐防制法的凍結義務包含由被指定之人或團體所擁有或控制之全部資金或其他資產，且不以涉及具體的恐怖活動、密謀或威脅者為限。

- (ii) The obligation applies to assets wholly or jointly owned or controlled, directly or indirectly, but not clearly to property derived from such property of designated persons.

凍結義務擴及被指名之人或團體直接或間接、全部或共同擁有或控制之資金或其他資產，但是是否涵蓋從上述財產產生出的財產並不清楚。

- (iii) The obligation applies to the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities.

凍結義務擴及從被指名之人或團體直接或間接擁有、控制之資金或其他資產所衍生之資金或其他資產。

- (iv) The freezing obligations do not apply to all funds or other assets of persons and entities acting on behalf of or at the direction of designated persons and entities, except when those funds are property or property interests of the designated person or entity.

除了資金是受指定制裁人或團體之財物或財產上利益，凍結義務沒有擴及代表被指名之人或團體執行或受其指示之所有資金或其他資產。

93. **6.5 (c) -** Article 9 includes an enforceable prohibition on natural and legal persons who directly or indirectly collect or provide any property or property interests for another person in the knowledge that the other person is a designated person or entity. There is no clear prohibition on providing economic resources, financial or other related services to entities or persons controlled by or working at the direction of a designated person or entity.

6.5(c) - 第 9 條規定處罰明知為指定制裁之個人或團體，而仍直接或間接為其收集或提供財物或財產上利益之自然人或法人，但沒有明確禁止經濟資源或金融等相關服務遭到各人或團體利用，或代表其等之人或團體。

94. **6.5(d)** - Chinese Taipei has a number of mechanisms for communicating designations and changes in designations (including de-listings) to FI and DNFBPs. Designations are published on the website as soon as they are made and FIs are informed via email. The FSC has issued Regulations Governing the Reporting of Properties and Property Interests of Sanctioned Parties by FIs' providing guidance to FIs and similar regulations have been issued by other sectoral regulators.

6.5(d) - 中華臺北有許多與金融機構及 DNFBP 聯繫指定及相關改變事宜(包含除名)之機制。當指定做成時會立即在網站公告，並透過電子郵件通知金融機構。金管會已訂定「金融機構對經指定制裁對象之財物或財產上利益及所在地通報辦法」提供給金融機構，類似的規定由其他主管機關發布。

95. **6.5 (e)** - Art. 7 of the CTF Act requires FIs and DNFBPs to immediately report any of the following circumstances discovered under its authority to the MJIB:

6.5(e) - 資恐防制法第 7 條要求金融機構及 DNFBP 因業務關係知悉下列情事，應即通報法務部調查局：

- a. That such institution holds or manages the property or property interests of a designated individual, legal person or entity.

其本身持有或管理經指定制裁之個人、法人或團體之財物或財產上利益。

- b. Places where the property or property interests of a designated individual, legal person or entity are located.

經指定制裁之個人、法人或團體之財物或財產上利益所在地。

96. Regulations were issued to FIs on 14 November setting out obligations for internal controls on reporting freezing actions. That regulation allows FIs two days to file a report to MJIB, except in 'obviously significant and urgent cases' in which a report should be made as soon as possible. The obligation on FIs and DNFBPs to report attempted transactions related to TFS, but STR reporting obligations would capture most instances of an attempted transaction with a designated terrorist. Foreign exchange counters are not covered by the obligation on FIs to report cases of asset freezing, but would be required to report a TF related STR, including attempted transactions and a frozen transaction related to a designated terrorist.

11 月 14 日向金融機構發布了法規，規定了內部報告凍結行動的義務。該法規允許金融機構兩天內向法務部調查局提交報告，除非“明顯重大且緊急的情況”應盡快提交報告。金融機構和 DNFBP 有義務報告與資恐制裁有關的未遂交易，但 STR 報告義務將包含大多數與指定恐怖分子之間的未遂交易。金融機構報告資產凍結案件的義務不包括外幣收兌處，但需要提出與資恐相關的可疑交易報告，包括未遂交易和與指定恐怖分子有關的凍結交易。

97. **6.5 (f)** - There are protections in the criminal code (articles 21 & 22) for 3<sup>rd</sup> parties who freeze funds in good faith when they do so under article 7. It is not clear whether FIs or DNFBPs who receive payments into account from designated persons and entities are protected as Art 9 criminalizes the “collection” of funds.

6.5(f) - 在刑罰(第 21、22 條)有針對善意第三人依據第 7 條凍結資金給予阻卻違法。因為資恐防制法將第 9 條的收集資金訂為犯罪，目前尚不清楚從指定人員和實體收到付款的金融機構或 DNFBP 是否受到保護。

### Criterion 6.6

98. **6.6 (a)** - Chinese Taipei is not a member of the UN and is unable to submit de-listing requests to the relevant committee. Art 5 of the CTF Act confirms that individuals who are designated by the UN shall only be delisted according to the de-listing procedures of the UNSC.

6.6(a) - 由於中華臺北不是聯合國會員國也無法提交除名請求給相關之委員會，資恐防制法第 5 條證實受聯合國指名之人只能根據聯合國安理會的除名程序進行除名。

99. **6.6(b)** - Provisions regarding de-listing under 1373 are found in Art. 6 of the CTF Act which confirms that the TF review committee shall de-list individuals, legal persons or entities designated pursuant to Art 4. The procedures for de-listing are contained in the Regulations Governing Operation of TF Review Committee, Sanction Exceptions and Restrictions.

6.6(b) - 有關 1373 號決議之除名規定在資恐防制法第 6 條，確認了資恐防制審議會可以針對受第 4 條指定之個人、法人或團體進行除名。

100. **6.6 (c)** - Art 13 of the CTF Act confirms that parties who disagree with their listing may seek administrative remedy however it is not clear what such remedies are.

6.6(c)-資恐防制法第 13 條規定不同意指定之當事人可以尋求行政救濟，但是並不清楚該救濟之內容。

101. **6.6 (d)** Chinese Taipei is not a members of the UN and is unable to seek review from the 1988 Committee.

6.6(d) - 中華臺北不是聯合國會員國，所以沒有辦法向 1988 決議案之委員會尋求審議。

102. **6.6 (e)** - there are no procedures informing designated persons and entities of the availability of UN Office of the Ombudsperson to accept de-listing petitions from them, however Art 5 confirms that people listed by the UN may only be de-listed by the procedures of the UNSC.

6.6(e) - 沒有程序通知被指名之人及團體向聯合國監察使辦公室提出除名請求，但是第 5 條確認被聯合國指名之人只能透過聯合國安理會進行除名。

103. **6.6 (f)** - there are no publicly known procedures to support unfreezing of funds for persons who are inadvertently affected by the process (i.e. a false positive). As the TFS are based on a *de facto* freeze (a prohibition on FIs/DNFBPs dealing with assets), however there is not procedure or guide for FIs/ DNFBPs to be assisted in the verification of false positives. Authorities indicate that in practice, as the designation is an administrative penalty, an appeal may be able to be raised under the Administrative Appeal Act. However, it is not clear how this practice would allow someone who was not actually designated to appeal against the decision to designate and the respective power of any administrative authority to provide relief when it is not altering any decision of government.

6.6(f)-沒有公眾週知之程序允許對非故意受到該程序影響的人解凍資金（即偽陽性）。由於資恐制裁是基於事實上的凍結（禁止金融機構及 DNFBP 處理資產），但是沒有程序或指引可以幫助 FIs/DNFBP 協助驗證偽陽性。中華臺北認為，在實務上，由於指定是行政處分，可以根據行政訴訟法提出訴訟。但是，目前尚不清楚這種做法如何允許實際上沒有被指定的人對指定的決定提出上訴，以及任何主管機關在不改變政府決定時提供救濟的權力。

104. **6.6 (g)** - In practice, de-listings are announced on the MOJ website and FIs and DNFBPs may subscribe to the list and therefore receive updates as they occur. Chinese Taipei has issued Q & As for industry to guide them in this process.

6.6(g)-實務上，除名會被公告在法務部網站上，金融機構及 DNFBP 會訂閱所以能收到更新，中華臺北也發布了 Q & As 給各產業指導他們相關程序。

105. **Criterion 6.7** - Article 6(1) of the CTF Act provides that the competent authority may permit access to funds:

**標準 6.7** - 資恐防制法第 6 條規定權責機關可以允許指定對象取得下列資金:

6(1)(1) Exempting property or property interests necessary for maintaining the family life of a designated individual or dependents;

6(1)(1)酌留經指定制裁之個人或其受扶養親屬家庭生活所必需之財物或財產上利益。



6(1)(2) Making reservations for expenses necessary for the management of property or property interests by a designated individual, legal person or entity;

6(1)(2)酌留經指定制裁之個人、法人或團體管理財物或財產上利益之必要費用。

6(1)(3) Permitting any payment made by a designated individual, legal person or entity to a *bona fide* third-party creditor, whose right is given before the sanctions were implemented.

6(1)(3)對經指定制裁之個人、法人或團體以外之第三人，許可支付受制裁者於受制裁前對善意第三人負擔之債務。

106. Article 6(2) provides that competent authority may set restrictions and issue regulations as to how the exempted or reserved property or property rights shall be used by the individual, legal person or entity. MOJ has issued restrictions and publicly available procedures under these provisions in relation to PF-related TFS. The controls on access to funds for extraordinary expenses does not explicitly cover the elements requiring UNSC permission as considered in UNSCR 1452, however this requirement is not applicable, given Chinese Taipei's status with the UN.

第 6 條第 2 項規定，主管機關可以對個人、法人或實體如何使用豁免或酌留的財物或財產權進行限制和頒布規定。法務部根據這些規定發布了與武擴相關的制裁的限制和公開程序。對於額外開支的控制沒有明確涵蓋聯合國安理會第 1452 號決議中要求獲得安理會許可的要素，但鑑於中華臺北在聯合國的地位，這一要求不適用。

### *Weighting and Conclusion*

#### *權重與結論*

107. Chinese Taipei has taken steps to legislate and implement many aspects of TFS. The scope of the freezing obligation is not clear in relation to funds and assets derived or generated from those assets owned or controlled by designated persons or entities. TFS do not extend to all assets held by persons acting on behalf of or at the direction of designated persons or entities. It is not clear that the freezing obligation is enforceable to all natural and legal persons in Chinese Taipei. There are no procedures for dealing with false positives and FIs and DNFBPs are only required to report attempted transactions in the context of TF-related STRs. **Recommendation 6 is rated largely compliant.**

中華臺北已經對目標性金融制裁採取立法及執行面上之措施。沒有明確規定凍結之義務擴及被指名之人或團體擁有或控制之資產所產生之資金及資產，也沒有擴及代表被指名之人或團體執行或受其指示之資金或其他資產。凍結義務是否擴及所有自然人及法人並不清楚，也沒有處理偽陽性的程序，金融機構及 DNFBP 僅被要求提報與資恐相關的未遂交易的 STR。R6 評等為 PC。

### *Recommendation 7 – Targeted Financial sanctions related to proliferation*

#### *建議第 7 項-武器擴散之目標性金融制裁*

108. TFS relating to the proliferation of WMD is a new Recommendation added in 2012.

與大規模毀滅性武器擴散有關的目標性金融制裁是 2012 年增加的新建議。

109. **Criterion 7.1** - As with Rec 6, Chinese Taipei implements TFS relating to the prevention and suppression of WMD proliferation via the CTF Act. MOJ is the competent authority for TFS. MOJ forms a TF review committee to review listing proposals, delisting requests etc. Art 5(1) provides that the competent authority shall include all individuals, legal persons or entities designated by the relevant UNSCR and successor resolutions on the prevention of proliferation of WMD on the Sanction List.

**標準 7.1** - 與 R6 一樣，中華臺北通過資恐防制法，以實施有關預防和制止大規模毀滅性武器擴散的目標性金融制裁。法務部是目標性金融制裁的主管機關。法務部成立一個資恐審議委員會，負

責審查指定、除名請求等。資恐防制法第 5 條第 1 項規定，主管機關應將相關聯合國安理會指定的所有個人、法人或實體以及關於防止大規模殺傷性武器擴散後續決議的制裁名單包括在內。

110. The implementation of relevant provisions in the CTF Act ensures that designations made by the UN are able to take effect in Chinese Taipei within 24 hours of designation. The MJIB reports the designation to the MOJ for review in accordance with Articles 4 and 5. The MOJ will then conduct a review of that designation and publish it formally rendering the designation effective in Chinese Taipei.

資恐防制法確保聯合國的指定可以於 24 小時內，在中華臺北生效。法務部調查局依據資恐防制法第 4 條及第 5 條規定，提報新的聯合國指定名單予法務部審查。法務部進行審查後會公告指定名單並在中華臺北生效。

### Criterion 7.2

#### 標準 7.2

111. **7.2 (a)** - The CTF Act implements the TFS freezing obligation by prohibiting dealing with property of designated persons or entities. Article 7 of the CTF Act prohibits the following activities with respect to individuals, legal persons, or entities named on the sanction list (i.e. the UN and domestic lists related to WMD proliferation):

**7.2(a)** - 資恐防制法規定禁止處理與指定制裁人及團體有關的財產之實施目標性金融制裁凍結義務。資恐防制法第 7 條規定對於指定制裁之個人、法人或團體不得為下列行為(亦即與反武擴相關的聯合國及國內指定名單)：

7(1)(1) Making withdrawals, remittance, transfers, payment, deliveries or assignments related to the financial accounts, currency or other payment instrument of the designated individual, legal person and entity.

對其金融帳戶、通貨或其他支付工具，為提款、匯款、轉帳、付款、交付或轉讓。

7(1)(2) Making transfers, changes, dispositions, use of, or taking any other measures which may change the quantity, quality, value or location of property or interests of the designated individual, legal person and entity.

對其所有財物或財產上利益，為移轉、變更、處分、利用或其他足以變動其數量、品質、價值及所在地。

7(1)(3) Collecting or providing any property or any property interests for the designated individual, legal person and entity.

為其收集或提供財物或財產上利益。

112. Article 12 of the CTF Act includes an enforcement provisions for FI and DNFBP that breach the prohibitions on dealing with property (*de facto* freezing provisions) at Article 7 (competent authorities may levy administrative fines ranging from NDT 200,000 to 1,000,000 (approx. USD 6,000 – 32,000) to enforce the prohibition). Article 9 of the same act includes a criminal penalty for all persons (natural and legal) who collect or provide any property or property interests for designated persons or entities. Chinese Taipei authorities argue that under their law the conduct outlined in 7(1)(1-2) is a subset of ‘collecting and providing’ and the wider enforcement provision would apply beyond FIs and DNFBPs. This interpretation is not clearly established.

資恐防制法第 12 條包括金融機構及 DNFBP 違反第 7 條規定的禁止處理財產（事實上的凍結條款），中央目的事業主管機關處以新台幣 20 萬元以上 1,00 萬以下（約 6,000-32,000 美元）之罰鍰。同法第 9 條規定為指定之人或實體收集或提供財物或財產上利益者（自然人和法人）的刑事處罰。中華臺北說明資恐防制法第 7 條第 1 項的第 1、2 款中所列的行為含括於「為其收集或提供財物或財產上利益」的範圍，更能廣泛適用於金融機構和 DNFBPS 以外之人，惟此種解釋尚未明確。

113. There is no definition of property in the CTF Act or in most legislation related to any aspect of AML/CFT. Chinese Taipei authorities indicate that the courts interpret these terms very broadly and have, in other contexts, demonstrated freezing and confiscation of the widest range of property under provisions with the same terminology. In this regard, the above prohibitions cover most forms of funds and assets but it is not sufficiently clear that it covers the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities.

資恐防制法及大多數防制洗錢及打擊資恐法律無財物的定義。中華臺北指出，法院的解釋範圍非常廣泛，並且在其他情況下，相同的用詞所能含括凍結和沒收最廣泛的各種財產類型。因此上述禁止規定的範圍能涵蓋大多數形式的資金及資產，但是不清楚是否包含從被指名之人或實體直接或間接擁有、控制之資金或其他資產所衍生之資金或其他資產。

114. Chinese Taipei confirms that as notification is not required under the CTF Act, then the measures can be taken without notice. Sectoral regulators have issued guidelines to their respective entities outlining further information and obligations under Article 7.

中華臺北確認資恐防制法未要求制裁需通知當事人，所以不用事前通知即可執行制裁。各主管機關向所監理的機構發布指引，說明資恐防制法第 7 條規定進一步資訊及義務。

115. Article 9 penalises a person who directly or indirectly collects or provides any property or property interests for another person in the knowledge that the other person is a designated person or entity. The penalty is not less than six months and not more than five years imprisonment and a fine up to NTD five million (approx. USD 160,000).

資恐防制法第 9 條規定在知道他人為指定之人或實體之情況下，直接或間接為他人收集或提供任何財物或財產上利益之人進行處罰，法定刑期為六個月以上五年以下有期徒刑，罰金高達 500 萬新台幣（約 160,000 美元）。

116. **7.2 (b)**

### **7.2 (b)**

117. **7.2 (b)(i)** The CTF Act applies the freezing obligation to all funds or other assets that are owned or controlled by the designated person or entity, and not just those that can be tied to a particular act, plot or threat of proliferation.

資恐防制法的凍結義務包含由被指定之人或實體所擁有或控制之全部資金或其他資產，且不以涉及具體的恐怖活動、密謀或威脅為限。

118. **7.2 (b) (ii)** The obligation applies to assets wholly or jointly owned or controlled, directly or indirectly, but not clearly to property derived from such property of designated persons.

凍結義務擴及被指名之人或實體直接或間接、全部或共同擁有或控制之資金或其他資產，但是不清楚是否涵蓋從上述財產當中所衍生出的財產。

119. **7.2 (b) (iii)** The obligation applies to the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities.

凍結義務擴及從被指名之人或實體直接或間接擁有、控制之資金或其他資產所衍生之資金或其他資產。

120. **7.2 (b) (iv)** The freezing obligations do not apply to all funds or other assets of persons and entities acting on behalf of or at the direction of designated persons and entities, except when those funds are property or property interests of the designated person or entity.

除了資金是受指定制裁人或團體之財物或財產上利益之外，凍結義務未擴及代表被指名之人或實體執行或受其指示之所有資金或其他資產。

121. **7.2(c)** - There is a clear prohibition on property and property interest, which appears to cover economic resources, to designated entities or persons at article 9 of the CTF Act. However this

does not clearly extend to person controlled by or working at the direction of a designated person or entity.

**標準 7.2 (c)** - 根據資恐防制法第 9 條，明確禁止提供財物和財產上利益給指定實體或個人，這些似乎涵蓋經濟資源。但是，範圍未明確可擴及到由指定人員或實體所控制之人或受指定人員或實體指示之人。

122. **7.2(d)**-Mechanisms for communicating designations to FI and DNFBPs include publication on the AMLD website as soon as they are made and FIs are informed via email. The FSC has issued Regulations Governing the Reporting of Properties and Property Interests of Sanctioned Parties by FIs' providing guidance to FIs and similar regulations have been issued by other sectoral regulators.

**標準 7.2(d)** - 與金融機構及 DNFBPs 聯繫指定之機制包括當完成指定名單程序時，會盡快公告在法務部調查局洗錢防制處網站上，且透過電子郵件通知金融機構。金融監督管理委員會已訂定「金融機構對經指定制裁對象之財物或財產上利益及所在地通報辦法」提供給金融機構，類似的規定則由其他主管機關發布。

123. **7.2(e)** - Art. 7 of the CTF Act requires FIs and DNFBPs to immediately report any of the following circumstances discovered under its authority to the MJIB:

**標準 7.2(e)** - 資恐防制法第 7 條要求金融機構及 DNFBPs 因業務關係知悉下列情事，應即通報法務部調查局：

- That such institution holds or manages the property or property interests of a designated individual, legal person or entity.  
其本身持有或管理經指定制裁之個人、法人或團體之財物或財產上利益。
- Places where the property or property interests of a designated individual, legal person or entity locate.  
經指定制裁之個人、法人或團體之財物或財產上利益所在地。

124. It is not clear whether FIs and DNFBPs are required to report attempted transactions to provide funds or other assets to designated persons or entities.

目前尚不清楚金融機構和 DNFBPs 是否需要報告向指定人員或實體提供資金或其他資產之未遂交易。

125. **7.2 (f)**-There are protections in the criminal code (articles 21 & 22) for 3<sup>rd</sup> parties who freeze funds in good faith when they do so under article 7. It is not clear whether FIs or DNFBPs who receive payments into account from designated persons and entities are protected as Art 7 criminalizes the “collection” of funds.

**標準 7.2 (f)** - 刑法第 21 條和第 22 條為善意第三人依據資恐防制法第 7 條凍結資金，提供阻卻違法規定。尚不清楚金融機構或 DNFBPs 若收到來自指定人員和實體的付款，是否違反資恐防制法，因為第 7 條規定收集資金亦屬於資恐罪。

126. **Criterion 7.3** -FSC and other supervisory authorities adopt measures for monitoring and supervising compliance with TFS obligations and conducting outreach. Supervision of WMD-related TFS has commenced for both FIs and DNFBPs. Section 12 of the CTF Act provides administrative penalties for failures to freeze assets and/or to report cases of freezing to the MJIB. The available administrative fines for failing to freeze assets range from NTD200,000 up to NTD1 million (approx. US\$6,000-32,000). Criminal sanctions for providing funds to designated persons and entities extend to five year and \$160,000, which is proportionate and dissuasive. Sectoral regulators are responsible for enforcing compliance.

**標準 7.3**-由金融監督管理委員會和其他監理機關監督目標性金融制裁義務的遵守及宣導。金融監督管理委員會監督金融機構和 DNFBPs 執行大規模毀滅性武器有關的目標性金融制裁情況。依據資恐防制法第 12 條規定，對於未能凍結資產和/或向法務部調查局報告凍結案件處以行政罰，未凍結資產的罰鍰範圍為新臺幣 20 萬元以上新臺幣 100 萬元以下（折合 6,000-32,000 美元），而



向指定人員和實體提供資金的刑罰最高處以為 5 年有期徒刑及 16 萬美元之罰金，處罰合乎比例及具有勸阻性。由各產業主管機關負責所監理的機構遵循相關事宜。

#### Criterion 7.4

##### 標準 7.4

127. **7.4(a)** - Chinese Taipei is not a member of the UN and is not able to submit de-listing requests to the relevant committee. However, Art 5 of the CTF Act confirms that individuals who are designated by the UN shall only be delisted according to the de-listing procedures of the UN Security Council.

標準 7.4(a) - 中華臺北非聯合國會員國，無法提交除名請求予相關之委員會，但是資恐防制法第 5 條確認受聯合國指名之人僅能根據聯合國安理會的程序進行除名。

128. **7.4(b)** - There are no procedures or guides for FIs/ DNFBPs to be assisted in the verification of possible 'false positives' for unfreezing of funds for persons who are inadvertently affected by the process. The authorities indicate that in practice, the publicly known procedures associated with the Administrative Appeal Act would be available to an inadvertently affected by the freeze, as the TFS designation is an administrative penalty, and a 3<sup>rd</sup> party's appeal may be raised under the Administrative Appeal Act and file for relief as the inadvertently affected 3<sup>rd</sup> party is not the subject of the administrative penalty.

標準 7.4 (b) - 無任何程序或指引可以幫助金融機構/ DNFBPs 確認可能的「偽陽性」狀況，讓在資金凍結過程中無端受影響的人解凍資金。權責機關表示，在實務上，與行政訴訟法相關的公告程序為無端受到凍結影響之人提供救濟程序。因為目標性金融制裁是一種行政處分，就算不是受指定之人但無端受影響的第三方，可根據行政訴訟法提出進行救濟。

129. **7.4(c)** - Article 6 CTF Act allows for the following access to funds:

標準 7.4(c) - 資恐防制法第 6 條規定可以允許取得下列資金

- Exempting property or property interests necessary for maintaining the family life of a designated individual or dependents;  
酌留經指定制裁之個人或其受扶養親屬家庭生活所必需之財物或財產上利益。
- Making reservations for expenses necessary for the management of property or property interests by a designated individual, legal person or entity;  
酌留經指定制裁之個人、法人或團體管理財物或財產上利益之必要費用。
- Permitting any payment made by a designated individual, legal person or entity to a *bona fide* third-party creditor, whose right is given before the sanctions were implemented.  
對經指定制裁之個人、法人或團體以外之第三人，許可支付受制裁者於受制裁前對善意第三人負擔之債務。

130. The competent authority may set restrictions as to how the exempted or reserved property or property rights shall be used by the individual, legal person or entity. MOJ has issued restrictions and publicly available procedures under these provisions in relation to PF-related TFS which are in keeping with the standards for basic expenses. The controls on access to funds for extraordinary expenses does not explicitly cover the elements requiring UNSC permission as considered in UNSCR 1452, however this requirement is not applicable, given Chinese Taipei's status with the UN.

主管機關可以對個人、法人或實體如何使用豁免或酌留的財物或財產權進行限制。為了與基本開支的標準一致，法務部根據這些規定，發布與武器擴散相關的目標性金融制裁的限制和公開程序。對於額外開支的管控未明確涵蓋聯合國安理會第 1452 號決議要求獲得安理會許可的內容，但鑑於中華臺北在聯合國的地位，此一要求不適用。

131. **7.4(d)** - Chinese Taipei has a number of mechanisms for communicating designations and changes in designations (including de-listings) to FI and DNFBPs. Designations are published on the

website as soon as they are made and FIs are informed via email. The FSC has issued Regulations Governing the Reporting of Properties and Property Interests of Sanctioned Parties by FIs' providing guidance to FIs and similar regulations have been issued by other sectoral regulators.

**標準 7.4(d)**-中華臺北有許多與金融機構及 DNFBPs 聯繫管道，通知指定及相關變更之事宜(包含除名)之機制。當指定做成後會在最短時間內公告在網站上，且透過電子郵件通知金融機構。金融監督管理委員會已訂定「金融機構對經指定制裁對象之財物或財產上利益及所在地通報辦法」，提供給金融機構據以執行，類似的規定由其他主管機關發布。

### Criterion 7.5

#### 標準 7.5

132. **7.5(a)** – There is no coverage of interest or other earnings on account along with payments due under contracts may be added into accounts frozen as long as these payments continue to be subject to a freeze.

**標準 7.5(a)** - 只要這些付款繼續被凍結，就不會將利息或其他收入以及根據合約到期的應付款項加入凍結帳戶。

133. **7.5(b)** – Article 6(1)(3) provides that payments may be from frozen funds to a *bona fide* third-party creditor for agreements entered into prior to designation. Article 6(2) provides that the MOJ may 'within the necessary scope', set restrictions as to how the frozen property or property rights shall be used. Authorities indicate that it would be applied to ensure that the payment due is not related to any prohibited property or activity and that it is not directly or indirectly received by designated persons or entities. However Chinese Taipei has not yet had a circumstance of release of frozen funds to pay a bona fide creditor, so has not yet elaborated the additional restrictions. Given Chinese Taipei's status, the expected process to submit prior notification of possible release of funds to the Security Council is not applicable.

**標準 7.5 (b)** - 資恐防制法第 6 條第 1 項第 3 款規定，對於在被指定之前簽訂的協議，付款可以從凍結的資金轉到善意第三人之債權人。第 6 條第 2 項規定，法務部可以“在必要範圍內”對如何使用凍結財物或財產權進行限制。權責機關表示，此規定用來確保應支付款項不涉及任何被禁止的財產或活動，並且不會被指定人員或實體直接或間接獲取。然而，中華臺北未曾將凍結資金支付善意債權人，因此無法詳細說明額外的限制。鑑於中華臺北的地位，預先向安理會提交可能解凍資金的預告程序不適用。

### Weighting and Conclusion

#### 權重與結論

134. Chinese Taipei goes beyond Recommendation 7 and includes a basis for domestic designations of person and entities involved in WMD proliferation going beyond those listed at the UN, which is a positive. The scope of the freezing obligation is not clear in relation to funds and assets derived or generated from those assets owned or controlled by designated persons or entities. It does not extend to all assets held by persons acting on behalf of or at the direction of designated persons or entities. It is not clear that the freezing obligation is enforceable to all natural and legal persons in Chinese Taipei. There are no procedures for dealing with false positives. It is not clear whether FIs and DNFBPs are required to report all attempted transactions. **Recommendation 7 is rated largely compliant.**

中華臺北對於涉及大規模毀滅性武器擴散的個人和實體的國內指定機制已超過聯合國指定名單範圍，亦並較建議第 7 項要求的更多，這是一個正面的情況。惟就指定之個人或實體擁有或控制的資產所衍生的資金和資產，凍結義務的範圍不明確，亦未擴及代表被指名之人或實體或受其指示之資金或其他資產。凍結義務是否擴及所有自然人及法人不甚清楚，未訂定處理偽陽性的程序，亦不清楚金融機構及 DNFBPs 是否需提報所有未遂交易。**建議 7 的評等為大部分遵循。**

**Recommendation 8 – Non-profit organisations****建議第 8 項 - 非營利組織**

135. In its 2007 MER Chinese Taipei was rated largely compliant with the former SRVII as outreach had not been undertaken to raise awareness of specific vulnerabilities in the sector with respect to TF risk.

中華臺北在其 2007 年的相互評鑑報告中依照前 SRVII 的標準被評等為大部分遵循，評鑑報告指出尚未對與資恐風險有關之部門進行特定弱點的意識提升。

136. The following table summarises the types, supervisors of NPOs and concerned legal instruments for governing NPOs in Chinese Taipei.

下表總結了中華臺北非營利組織的類型、監督機關及相關法源依據。

| Types of NPO<br>非營利組織 | Laws/Regulations concerned<br>法律/規定       | Supervisors<br>主管機關  | Total<br>總數<br>(2018) |
|-----------------------|---|--|-----------------------|
| Associations<br>社團    | Civil Associations Act<br>人民團體法           | CCAPO, MOI<br>內政部合作及人民團體司籌備處   | 51,679                |
| Foundations<br>財團     | The Foundations Act (2018)<br>財團法人法(2018) | SFAA, MOHW, DCA, MOI, DMA, MOE, MOC<br>衛生福利部社會及家庭署、內政部<br>民政司、衛生福利部醫事司、教育部、文化部 | 6,054                 |

**Criterion 8.1**

## 標準 8.1

137. **Criterion 8.1(a)** – Authorities have undertaken joint agency processes to reasonably identify which subset of organizations fall within the FATF definition of NPO, and used all relevant sources of information to identify the features and types of NPOs which by virtue of their activities or characteristics, are likely to be at risk of TF abuse in Chinese Taipei. The 2018 NRA took this approach and identified (1) civil associations, (2) national religious foundations and (3) social welfare charity foundations as the subset of NPO that may be at risk of TF abuse. The NRA highlighted that elements of TF arise from those NPOs' contact with foreign institutions and foreign donations, and (2) gaps in competent authorities' understanding including NPOs' jurisdiction of origin, legal gaps to support competent authorities to request which jurisdiction they originate from and foreign donor information.

**標準 8.1(a)** - 中華臺北已透過召集相關機關參與會議，確定哪些組織屬於 FATF 的非營利組織定義，並利用所有相關資訊來源確定非營利組織的特徵和類型，並了解哪些特徵和類型是非營利組織可能面臨遭資恐濫用風險的問題。2018 年國家風險評估採取了這種方法，並確定了 (1) 人民團體，(2) 全國性宗教財團法人 (3) 社會福利慈善財團法人為非營利組織的次級團體，並可能存有資恐濫用的風險。國家風險評估強調，資恐的要素來自非營利組織與外國機構和外國捐贈的聯繫，以及 (2) 主管機關對於監理上的資訊落差，包括未有法律支持主管機關要求非營利組織之原籍國及外國捐助者資訊。

138. **Criterion 8.1(b)** – The NRA took a relatively high level approach to identifying the nature of threats posed by terrorist entities to the NPOs which may be at risk. Competent authorities (LEA, national security and NPO regulators) have shared information to consider and identify the nature

of threats posed by terrorist entities to the NPOs which are at risk as well as how terrorist actors may potentially abuse those NPOs.

**標準 8.1.(b)**- 國家風險評估採取了一種較高位階的方法來確定非營利組織可能面臨資恐的威脅性質。權責機關（執法機關、國家安全和非營利組織監理機關）藉由資訊分享，以考慮和確定恐怖組織對於非營利組織可能構成的威脅的性質以及恐怖份子可能如何濫用這些非營利組織。

139. **Criterion 8.1(c)** - Arising from the 2018 NRA and preparation for the 2018 ME process, Chinese Taipei authorities reviewed the adequacy of measures, including laws and regulations and identified initial gaps in understanding and legislation. A number reforms to legal and institutional arrangements and regulatory programmes for higher risk NPO sectors were undertaken, most significantly being an amended Foundations Act which entered into force in August 2018.

**標準 8.1.(c)**- 由於 2018 年國家風險評估和 2018 年相互評鑑的準備工作，中華臺北當局充分審查了相關措施適當性，包括法律、法規以及立法方面的認知及初步缺失。對高風險的非營利組織部門進行了法律和辦法以及監管計劃的若干改革，最重要的是制定財團法人法，該法於 2018 年 8 月生效。

140. **Criterion 8.1(d)** - The NRA indicates that the AMLO will update its assessment every three years, with the next NRA scheduled for 2021. NPO regulators and LEAs indicated ongoing processes to monitor and reassess TF risks, including vulnerabilities of particular sub-sectors of NPOs.

**標準 8.1.(d)**- 國家風險評估報告指出行政院洗錢防制辦公室將每 3 年更新一次評估，下一次國家風險評估將於 2021 年舉行。非營利組織的主管機關和執法機關表示正在進行監測和重新評估資恐風險的流程，包括對於特定非營利組織子部門的弱點。

## Criterion 8.2

### 標準 8.2

**Criterion 8.2(a)** - Chinese Taipei NPO regulatory authorities have articulated clear policies to promote accountability, integrity, and public confidence in the administration and management of NPOs. NPOs in Chinese Taipei are subject to a regime of detailed outreach, regulation and supervision, which includes rules and regulations and auditing requirements. NPOs' administrative controls on fundraising, under the Charity Donations Destined for Social Welfare Funds Implementation Regulations adds to the promotion of transparency and integrity.

**標準 8.2.(a)**-- 中華臺北非營利組織主管機關制定了明確的政策，以促進非營利組織的行政和管理中的責任、廉潔和公眾信心。中華臺北的非營利組織受有充分的溝通、監管和監督制度，其中包括規章制度和審計要求。有關非營利組織募集資金的控管規定在公益勸募條例，該條例包含透明度及廉潔性的相關要求。

141. Both associations and foundations are required to report annually to the authorities. The Regulations on Disposal of the Financial Affairs of Social Associations establishes social associations' financial reporting obligations, while Art 16 of Regulations on Supervision of Interior Business requires foundations to submit to the authorities their budget and business plans, as well as an annual report on the previous year.

社團法人及財團法人兩者皆需要提供年度報告給主管機關。社團法人依據社會團體財務處理辦法規定社團法人的財務報告義務，而“內政部審查全國性宗教財團法人設立許可及監督要點”第 16 條要求財團法人須向主管機關提交其預算和活動計劃，以及上一年度的年度報告。

142. Additional controls are placed on civil associations which conduct overseas humanitarian aid. They are required to seek approval from their competent authorities—who in turn consult with the Ministry of Foreign Affairs.

對於進行海外人道主義救援的人民團體有進行了額外的管制。他們必須向主管機關申請核准，主管機關也會向外交部諮詢相關意見。



143. The MOI has developed accounting system software that has been disseminated to all social welfare organizations to assist them to establish accounting systems that can be audited by authorities.

內政部已發展一套會計系統，並將該系統提供給所有社會福利組織，以協助主管機關建立會計系統進行稽核。

144. **Criterion 8.2.(b)** – The Executive Yuan has allocated additional resources to support the full range of NPO sector regulators undertake a large number of AML/CFT-related outreach and educational programmes to NPO sectors during 2017 and 2018. This has been supported by the AMLO and other competent authorities to raise and deepen awareness among NPOs as well as the donor community about the potential vulnerabilities of NPOs to TF abuse and TF risks, and the measures that NPOs can take to protect themselves against such abuse. Outreach took place at in-person events, as well as teleconferences in an attempt to reach a wider range of NPOs across Chinese Taipei. NPO Regulators also undertook outreach to a number of NPOs working in foreign jurisdictions.

**標準 8.2.(b)**-行政院已撥出額外資源，支持各種非營利組織主管機關並在 2017 年和 2018 年期間向非營利組織部門開展大量與防制洗錢與打擊資恐的宣導及和教育訓練計劃。在得到洗錢防制辦公室和主管機關的支持，提高和加深非營利組織的意識、捐助界對非營利組織可能會被濫用於資恐風險的潛在弱點，以及非營利組織可以採取哪些措施來保護自己免受資恐濫用。意識提升活動也用在舉辦現場活動以及電話溝通，以促進中華臺北更多非營利組織了解此類議題。非營利組織主管機關也特別與在國外工作的一些非營利組織進行了宣導活動。

145. **Criterion 8.2(c)** – Competent authorities have pursued regular communication with NPOs, and provided guidance on best practices to avoid TF abuse. Authorities provided Chinese translations of FATF guidance and other resource documents to NPO stakeholders to assist them to understand their obligations and risks and to support best practice and enhanced risk-based controls.

**標準 8.2.(c)**- 主管機關與非營利組織有定期進行溝通，並提供避免遭資恐濫用的最佳做法指導文件。主管機關向非營利組織相關者提供了 FATF 指引和其他資源文件的中文譯本，以幫助他們了解自己的義務和風險，以支持最佳做法並增加以風險為本的控制。

146. Amendments to the Foundations act in 2018 put in place a number of risk-based controls to requiring Foundations to develop an AML/CFT plan and risk assessment, depending on their operational risk levels.

2018 年修正的財團法人法規定了一系列以風險為本的控制措施，要求財團法人根據其業務風險提供防制洗錢/打擊資恐的計畫和風險評估。

147. **Criterion 8.2(d)** – Authorities have encouraged NPOs to conduct business through banks and other regulated financial channels and to develop best practice controls when there are challenges with ensuring payments through those channels.

**標準 8.2.(d)**- 主管機關鼓勵非營利組織透過銀行和其他受監管的金融管道進行其推展的業務，並確保他們在支付管道遇到挑戰時提供最佳作法。

### **Criterion 8.3**

#### 標準 8.3

148. Competent authorities have taken appropriate measures to promote effective supervision or monitoring in line with identified risk. Since the completion of the NRA in April 2018, authorities responsible for the regulation and supervision of the sub-set of NPOs that are more likely to face TF risks have worked to develop a risk matrix, for determining priority follow-up inspection methods, frequency, education and training. Prior to the publication of the NRA, competent authorities targeted overseas activities and foreign-related funds for monitoring. They also maintained local level controls on collection of charitable funds. Chinese Taipei also conducts risk assessment including identification types of major types of risk abused NPOs on risk project evaluation and

countering measures (self-regulated risks management measures and the measures to control AML/CFT risks)

主管機關已採取適當措施並採用與辨識出的風險一致的方法以有效提升非營利組織之監督管理。自 2018 年 4 月國家風險評估完成以來，主管機關已努力規劃發展風險矩陣作為其監管和監督可能面臨資恐風險的非營利組織次級團體，以確定優先的後續檢查方法、頻率、教育和培訓。在國家風險評估出版之前，主管機關對於海外活動和與外國有關的資金有進行監控。他們還對勸募款項的收集保持了地方層面的控制。中華臺北還進行風險評估，風險評估項目包括辨識有被資恐濫用的非營利組織類別及其防制措施（自我風險管理措施和防制洗錢/打擊資恐風險的措施）

149. The Civil Associations and the Foundation act set out clear obligations requiring registration, maintenance of information on their purpose and objectives and the issuance of at least annual financial statements and information on office holders. Sub-sector regulators apply additional controls in relation to programs, funding, etc. There are close controls on charitable collection, with requirements for local registration and related oversight mechanisms.

人民團體和財團法人法規定了明確的義務，要求登記、成立宗旨和目標的資訊更新，且至少要發布年度財務報表和相關管理人員資訊。子部門監管機構對計劃、資金等實施額外控制。有關當地登記及相關監督機制的要求，在慈善的勸募上有嚴格的控制。

#### **Criterion 8.4**

##### 標準 8.4

150. **Criterion 8.4.(a)** – Chinese Taipei authorities demonstrated supervisory activities, including offsite monitoring, onsite supervision and enforcement actions involving those NPOs in the sectors identified as having some TF risks. This extended to requirements for registration, maintaining information on NPOs purpose and objectives, financial activities and controls, programmatic requirements and transparency of charitable collection. A number of supervisors seek risk information from LEAs to guide their regulation and supervision.

**標準 8.4.(a)** – 中華臺北主管機關對於已辨識出具有資恐風險的非營利組織已展現監理活動，包含進行書面檢查、實地檢查以及執法行動。擴及在登記、成立宗旨和目標的資訊更新、財務活動及監理、計畫要求及勸募透明性等。有部分主管機關表示需要從執法機關獲得風險的資訊，以便運用在其規定及監理。

151. There is a lack of an explicit legal basis for competent authorities to request a social charity foundation to provide details of the origin jurisdiction and donor details in the case of foreign donors. Some aspects of this gap may be able to be addressed by regulations yet to be issued under article 25 of the Foundations Act.

對於主管機關因缺少法令，無法要求社會慈善財團法人提供非營利組織之原設籍國資訊及外國捐助者資訊，此部分缺失可以透過財團法人第 25 條進行補充。

152. **Criterion 8.4. (b)** – Supervisors of NPOs can potentially impose sanctions for breach of requirements, including revocation of licenses, abolishment of a permit, fines, dissolution and administrative sanctions. However the range of sanctions is not sufficiently proportionate and dissuasive for violations by Civil Associations or persons acting on behalf of these NPOs. Recent amendments to the Foundations Act have ensured a greater of proportionate and dissuasive sanctions are available to relevant regulators. Art 58 of the Civil Association Act enables authorities to apply a graduated range of sanctions for civil associations. These sanctions range from warnings, to stopping whole or part of its business, and at worst referral to the Chinese Taipei courts for disincorporation. However, proportionate and dissuasive fines are not available. Articles 10, 11, 25 and 27 of the Foundation Act (2018) set out a range of administrative sanctions including limits on activities, dissuasive fines and withdrawal of registration.

**標準 8.4.(b)** – 非營利組織的主管機關可以對違反要求的非營利組織進行處分，包括撤銷許可證、廢止許可證、罰款、解散和行政處罰。但是，對於人民團體或其代表人的違法行為，在處罰的範圍不夠充分、合乎比例和具有勸阻性。修正的“財團法人法”確保主管機關可以採取更多合乎比例

和勸阻性處罰措施。“人民團體法”第 58 條規定，主管機關可以對人民團體實施一系列嚴格的處罰。這些處罰包括警告、停止其全部或部分業務，情況嚴重者可由法院進行解散。但是，裁罰手段沒有合乎比例和具勸阻性的罰鍰。財團法人法（2018 年）第 10,11,25 和 27 條規定了一系列行政處罰，包括限制活動、具有勸阻性的罰款及撤銷登記。

### Criterion 8.5

#### 標準 8.5

153. **Criterion 8.5(a)** – NPO sector competent authorities, LEAs, the FIU and other authorities have demonstrated regular and effective cooperation, coordination and information sharing. AML/CFT issues in the NPO sector were shared by relevant authorities during the national ML/TF risk assessment meetings, and education and training with NPO sectors. Information is shared on sub-sectoral risks and at-risk NPOs.

**標準 8.5. (a)** – 非營利組織主管機關、執法機關、金融情報中心和其他相關機關已展現有定期及有效的合作、協調和資訊分享。主管機關在國家洗錢及資恐風險評估會議期間分享了有關非營利組織在防制洗錢/打擊資恐議題，及非營利組織部門的教育和培訓，此外資訊也有被分享給子部門的非營利組織和具有風險的非營利組織。

154. **Criterion 8.5.(b)** – The MJIB is the agency responsible for investigating financial crimes, including TF. The expertise and capability of the MJIB to conduct financial investigations is well established.

**標準 8.5. (b)** – 法務部調查局是負責調查金融犯罪的機構，包括資恐。法務部調查局進行金融調查的專業知識和能力已經確立。

155. **Criterion 8.5.(c)** – MOHW (and SFAA and DAM), MOI (DCA and CCAPO), MOE and MOC can access records on NPOs, including their names, address and key personnel; NPO purpose, annual financial reports; transaction records; and have the right to review NPOs' activities to ensure they are in line with their stated goals. All such information would be available to LEAs during an investigation of misuse of an NPO.

**標準 8.5. (c)** – 衛生福利部(社會及家庭署、醫事司)、內政部(民政司、合團司)、教育部和文化部可以獲得非營利組織的紀錄，包括其姓名、地址和主要人員；非營利組織成立的目的、年度財務報告；交易紀錄，並有權審查非營利組織的活動，以確保它們符合既定目標。在調查濫用非營利組織的過程中，所有這些資訊都可提供給執法機關使用。

156. **Criterion 8.5.(d)** – The National Security Bureau (NSB) leads the coordination of TF efforts with MOJ, as the competent authority for TF investigations. There have been a number of cases where authorities have closely considered possible TF or terrorism matters and demonstrated good operational level cooperation. In these cases, national security and LEAs including the FIU, were shown to coordinate well. The central authority in charge of counter-terrorism policy is Office of Homeland Security (OHS) which regularly exchanges information with national security, LEA, and administrative agencies through meetings of Homeland Security Policy Committee of Executive Yuan.

**標準 8.5. (d)** – 國家安全局與法務部共同主導、協調所有資恐調查與情資，擔任調查資恐犯罪的主管機關。在一些案例中，中華臺北已確切考慮潛在的資恐或恐怖主義問題，並表現出良好的業務合作關係。在這些案件中，國家安全局和包括金融情報中心在內的執法機關，已證明具有良好協調機制。國土安全辦公室（OHS）是負責反恐政策的中央主管機關，透過行政院國土安全政策會報定期與國家安全局、執法機關與各行政機關經常進行資訊交流。

157. **Criterion 8.6** - The MOFA and NPO regulators are responsible for international cooperation on CFT issues, including international requests for information regarding particular NPOs suspected of terrorist financing or involvement in other forms of terrorist support. MJIB is then responsible for coordinating with NPO regulators and other competent authorities.



**標準 8.6**—外交部及非營利組織主管機關負責打擊資恐議題的國際合作，包括有關涉嫌資恐或參與其他支持恐怖份子形式的特定非營利組織的國際資訊請求。法務部調查局也負責與 NPO 主管機關和其他機關進行協調。

158. Art 14 of the CTFA establishes that Chinese Taipei may—based on the principle of reciprocity and in order to prevent international TF activities—execute cooperative treaties or other international written agreements to counter TF with foreign governments, foreign institutions and international organisations.

資恐防制法第 14 條使中華臺北可以基於互惠原則，以防止國際資恐活動 - 執行合作條約或其他國際書面協議，並與外國政府、外國機構和國際組織合作打擊資恐。

### *Weighting and Conclusion*

#### *權重與結論*

159. While NPO regulators have enforcement powers, the range of sanctions are not sufficiently proportionate and dissuasive for violations by civil associations or persons acting on behalf of these NPOs. **Recommendation 8 is rated largely compliant.**

雖然非營利組織主管機關具有執行權力，但對於人民團體或代表這些非營利組織行事的人員的違法行為，處罰範圍不夠充分，不具比例性和勸阻性。**建議 8 的評等為大部分遵循。**

### *Recommendation 9 – Financial institution secrecy laws*

#### *建議第 9 項 - 金融機構保密法律*

160. Chinese Taipei was rated compliant with the former R.4 in its 2007 MER.

中華臺北在 2007 年的 MER 中，前 R.4 評等為遵循。

#### **Criterion 9.1**

##### 標準 9.1

161. Under the MLCA, confidentiality provisions relating to FIs can be set aside in three specific circumstances: (i) STR and CTR reports, (ii) when supervisors order FIs and DNFBPs to provide relevant information, and (iii) when LEAs are suspect criminal conduct (Art 10). Article 11 of the Foreign Exchange Counter Regulation, foreign currency counters are exempted from confidentiality when filing STRs to their designated authority. MJIB staff, including AMLD, are deemed to be judicial police officers pursuant to Article 14 of the Organic Act for Investigation Bureau and are able to access information pursuant to the CPC (art 230) and the Administrative Procedure Act when they suspect an offence has been committed, which allows them to request information from any FI when conducting analysis. Information sharing between competent authorities, both domestically and internationally, is not impeded by confidentiality requirements.

根據 MLCA，可以在三種具體情況下不受與金融機構有關的保密規定限制：(i) STR 和 CTR 報告，(ii) 監理機關命令金融機構和 DNFBP 提供相關資訊，以及 (iii) LEAs 執行可疑犯罪行為調查 (第 10 條)。根據“外幣收兌處設置及管理辦法”第 11 條，外幣收兌處向其指定授權機構 (中央銀行) 申報 STR 時，可免於保密。MJIB 人員，包括 AMLD，根據“法務部調查局組織法”第 14 條規定，係為司法警察，當他們懷疑有犯罪行為時，能夠根據“刑事訴訟法” (第 230 條) 和“行政程序法”獲取相關資訊，並允許他們在進行分析時，向任何 FI 請求資訊。國內和國際主管機關之間的資訊共享不受保密要求的阻礙。

162. While Art 48 (2) of the Banking Act establishes bank secrecy, it allows this to be lifted in circumstances as prescribed by the FSC. These ‘other circumstances’ include directions and regulations issued by the FSC. Art 18 of the Offshore Banking Act establishes offshore banking



branches are under no obligation to disclose any information *unless otherwise required by court order or law*. This also applies to offshore securities and insurance branches. Bank secrecy is lifted in relation to CTRs, STRs FIU analysis (including CDD data obtained from the OBU) and LEA investigations. MLCA lifts the secrecy for sharing with authorities domestically and internationally. AMLD and other authorities are able to share information obtained with the FSC.

雖然“銀行法”第 48 條第 2 項規定銀行保密，但它允許在 FSC 規定的情況下不受限制。這些“其他情況”包括 FSC 發布的辦法和要點。國際金融業務條例第 18 條規定，除非法院命令或法律另有要求，否則境外銀行分行沒有義務揭露任何資訊。這也適用於離岸證券和保險分支機構。關於 CTR，FIU 分析 STRs（包括從 OBU 獲得的 CDD 資料）和 LEA 調查方面不受銀行保密規定限制。MLCA 免除國內和國際上與權責機關機密資訊分享的限制。AMLD 和其他機關能夠共享自 FSC 獲得的資訊。

163. In relation to information between FIs as required by R.13, R.16 and R.17 needed, Article 48 (2)(a) of the Banking Act, gives banks an exemption from confidentiality obligations in other circumstances as prescribed by the competent authority. Other sectoral legislation has similar provisions related to the competent authority. With respect to R.13, R.16 and R.17, the information sharing between FIs are required to fulfil their obligations under the Directions Governing Internal Control System of AML/CFT of Banking Business, Electronic Payment Institutions and Electronic Stored Value Card Issuers and the Regulations Governing AML of FIs". Given these Directions and Regulations are issued by the FSC, the competent authority of the Banking Act, the obligations under said Directions and Regulations constitute circumstances prescribed by the competent authority and override the confidentiality obligations under Article 48 of the Banking Act. Article 18 of the Offshore Banking Act indicates that 'Unless otherwise required by court order or law, offshore banking branches are under no obligation to disclose any information to third parties' however art 7 of the Regulations Governing AML of FIs and Art 3 & 5 of Regulations Governing Internal Audit and Internal Control System of AML/CFT of Banking Business and Other FI Designated by the FSC have explicit provisions for the exchange of information in response to R13, R16, and R17. These two regulations are applicable to OBUs as they are subsets of banks regulated under these two regulations. The regulations are duly issued according to the MLCA, so fall within "court order or law" as specified in Article 18 of the Offshore Banking Act.

關於 R.13、R.16 和 R.17 所要求的金融機構之間的資訊，“銀行法”第 48（2）（a）條規定，賦予銀行在主管機關規定的其他情況下免除保密義務。其他部門立法也有與主管機關有關的類似規定。關於 R.13、R.16 和 R.17，金融機構之間的資訊共享需要履行其在“銀行業及電子支付機構電子票證發行機構防制洗錢及打擊資恐內部控制要點”和“金融機構防制洗錢辦法”的義務。鑑於銀行法的主管機關（FSC）發布這些指示和規定，前述的控制要點和辦法的義務即是由主管機關所規定，並超越“銀行法”第 48 條規定的保密義務。“國際金融業務條例”第 18 條規定，“除非法院命令或法律另有要求，否則境外銀行分行沒有義務向第三方揭露任何資訊”，但“金融機構防制洗錢辦法”第 7 條和銀行業及其他經金融監督管理委員會指定之金融機構防制洗錢及打擊資恐內部控制與稽核制度實施辦法第 3 條和第 5 條的管理銀行業務和其他金融機構防制洗錢/打擊資恐的內部稽核和內部控制系統，由 FSC 指定的其他 FI 對於回應 R13、R16 和 R17 的資訊交換有明確的規定。這兩項監理銀行的子法規亦同樣適用於 OBUs，他們亦係根據 MLCA 正式訂定，因此屬於“國際金融業務條例”第 18 條規定的“法院命令或法律”。

### Weighting and Conclusion

#### 權重與結論

164. **Recommendation 9 is rated compliant.**

建議第 9 項評等為遵循。

## Recommendation 10 – Customer due diligence

### 建議第 10 項- 客戶審查(下稱 CDD)

165. In its 2007 MER Chinese Taipei was rated PC with the former R.5 due to a number of deficiencies including: the threshold for occasional cash transactions that triggered CDD obligations was too high (approx. US\$30,000); FIs were not required to take reasonable measures to check if a customer was acting on behalf of another person and to identify the beneficial owner. There was a gap in the scope of covered FIs (financial leasing). Only the securities sector had explicit requirements to obtain information on the purpose and intended nature of the relationship, no requirement for the securities or insurance sector to perform CDD when the previously obtained customer information was dubious and there was no obligation to verify identity using reliable information for the insurance sector. The CDD treatment of existing customers was not clear.

中華臺北在 2007 年 MER 中，前 R.5 被評為 PC，缺失原因包括：啟動 CDD 義務的臨時性現金交易門檻太高（約 30,000 美元）；未要求金融機構採取合理措施以查核客戶是否代理他人行事並辨識實質受益人。由於金融租賃業未被涵蓋在洗錢防制/打擊資恐體制，使受規範之金融機構範圍存在落差，只有證券業明確要求獲取有關業務往來關係的目的和預期性質的資訊，未要求證券業或保險業對於先前取得的客戶資訊有疑問時執行 CDD，且保險業沒有運用可靠資訊以驗證身分之義務。對現有客戶的審查規範不清楚。

### Legal Basis of requirements on FIs & DNFBPs

#### 對金融機構及 DNFBPs 規範之法律基礎

166. The MLCA (articles 7, 8 & 10) and CTF Act (article 7) provides that the competent authority shall issue regulations governing additional requirements, procedure and processes to implement various preventive measures. The AML Regulations of FIs, AML Regulations of Agricultural FIs, AML Regulations of Financial Leasing Enterprises, and AML regulations for each of the DNFBP sectors were issued to give effect to these provisions of the MLCA and CTF Act. The Regulations Governing the Establishment and Administration of Foreign Currency Exchange Counters were issued under Article 35 of the Central Bank Act. All such regulations issued by the executive branch are subject to a disallowance process of the Legislative Yuan (under articles 60 and 61 of the Exercise of Legislative Powers Exercise Law), which ensures parliamentary oversight of the executive branch rule-making powers. As such, the relevant regulations are within the FATF's consideration of 'law' for the purposes of R. 10, 11 and 20.

洗錢防制法（第 7,8 和 10 條）和資恐防制法（第 7 條）規定主管機關應訂定有關實施各種預防措施的額外規定、程序和方式。為落實洗錢防制法和資恐防制法，業已頒布金融機構防制洗錢辦法、農業金融機構防制洗錢辦法、辦理融資性租賃業務事業防制洗錢辦法和各 DNFBP 部門的防制洗錢辦法，“外幣收兌處設置及管理辦法”則係依據“中央銀行法”第 35 條訂定。行政機關發布的此類法規命令都需經過國會（立法院）[根據“立院職權行使法”第 60 和 61 條]的審查程序，該程序確保國會監督行政部門依法律授權制定法規命令的權力。因此，相關法規屬於 FATF 對建議第 10, 11 和 20 項所考量之“法律”範圍。

### FIs covered by CDD obligations

#### 負有 CDD 義務的金融機構

167. All FIs are included in CDD obligations, albeit with some risk-based exclusions for certain measures (see Rec.1). Art 5 of the MLCA lists certain types of institutions and other FIs designated by the competent authorities in the definition of FIs. The AML regulations of FIs and the AML regulations of Agricultural FIs include explicit reference to these sectors, including the other types of FIs designated by the FSC. There are standalone obligations on leasing companies and foreign exchange counters.

所有金融機構都納入 CDD 義務規範中，儘管某些措施存在一些基於風險的排除規定（見建議 1）。洗錢防制法第 5 條列出主管機關對金融機構的定義，包括特定類型的機構和其他經指定之金融機

構。金融機構防制洗錢辦法和農業金融機構防制洗錢辦法均明確提到這些部門，包括經 FSC 指定的其他類型的金融機構。融資性租賃業務事業和外幣收兌處有其個別的義務規範。

| Sectors obliged to undertake CDD 有義務執行CDD的產業/部門  |
|--|
| <b>AML regulations of FIs 金融機構防制洗錢辦法</b>   |
| <ul style="list-style-type: none"> <li>• Banks 銀行</li> <li>• Credit cooperatives 信用合作社</li> <li>• Postal office (Chunghwa Post) 郵政機構(中華郵政)</li> <li>• Credit card companies 信用卡公司</li> <li>• Trust enterprises 信託業</li> </ul>  |
| <ul style="list-style-type: none"> <li>• Securities firms 證券商</li> <li>• Securities finance enterprises 證券金融事業</li> <li>• Securities investment and trust enterprises 證券投資信託事業</li> <li>• Securities investment consulting enterprises 證券投資顧問事業</li> <li>• Securities central depository enterprises 證券集中保管事業</li> <li>• Futures commission merchants 期貨商</li> <li>• Leverage transaction merchants 槓桿交易商</li> <li>• Future trust enterprises and managed futures enterprises (Art. 5 (18), MLCA) 期貨信託事業及期貨經理事業</li> <li>• Insurance companies 保險公司</li> <li>• Reinsurance companies 專業再保險公司</li> <li>• Insurance agents - companies and natural persons 保險代理人 - 公司及個人</li> <li>• Insurance broker - companies and natural persons 保險經紀人 - 公司及個人</li> <li>• Electronic stored value card issuers 電子票證發行機構</li> <li>• Electronic payment institutions 電子支付機構</li> </ul> |
| <b>AML regulations of Agricultural FIs 農業金融機構防制洗錢辦法</b>  |
| <ul style="list-style-type: none"> <li>• Credit departments of farmers' associations 農會信用部</li> <li>• Credit departments of fishermen's associations 漁會信用部</li> <li>• ABT 全國農業金庫</li> </ul>  |
| <b>AML Regulations of Financial Leasing Enterprises 辦理融資性租賃業務事業防制洗錢辦法</b>  |
| <ul style="list-style-type: none"> <li>• financial leasing enterprises 融資性租賃事業</li> </ul>  |
| <b>Regulation on Foreign Exchange Counters 外幣收兌處設置及管理辦法</b>  |
| <ul style="list-style-type: none"> <li>• Foreign exchange counters 外幣收兌處</li> </ul>  |

Detailed CDD requirements

詳細的 CDD 要求

168. **Criterion 10.1** - Art 3(1,1) of the AML Regulations of FIs, the AML Regulations of Agricultural FIs and the AML Regulations of Financial Leasing Enterprises prohibit FIs from accepting anonymous accounts or accounts in fictitious names for establishing or maintaining business relationship. Art 4(1,1) of the AML Regulations of FIs, the AML Regulations of Agricultural FIs prohibit establishing business relationships or carrying out transactions with a customer suspected of opening an account, purchasing insurance or registering a stored value card under an anonymous account, fake name, or using a nominee/shell company.

標準 10.1 - 金融機構防制洗錢辦法、農業金融機構防制洗錢辦法、辦理融資性租賃業務事業防制洗錢辦法第 3 條(第 1 項第 1 款)規定，金融機構不得接受客戶以匿名或使用假名建立或維持業務關係。上述金融機構及農業金融機構辦法第 4 條(第 1 項第 1 款)禁止與涉嫌以匿名、假名或使用人頭/虛設公司開立帳戶、投保或辦理電子票證記名作業的客戶建立業務關係或進行交易。

*When CDD is required**何時需要 CDD*

169. **Criterion 10.2** - Art 3(1,2) of the AML Regulations of FIs requires CDD measures to be undertaken when establishing business relations with a customer, or while carrying out occasional transactions through cards (worth NT\$500k or ~US\$16,300 or EUR14,000) or cross-border wire transfers (worth NT\$30k or ~US\$981), or if there is a suspicion of ML/TF, or if there is doubt about a customer's previously held identification information. Foreign exchange counters are required to apply CDD for each transaction. See Article 3 subparagraph 2, item 2, of both AML regulations of FIs and AML regulations of Agricultural FIs and article 3(2) of AML Regulations on Financial Leasing Institutions and article 10 of Regulation on Foreign Exchange Counters.

標準 10.2 - 金融機構防制洗錢辦法第 3 條(第 1 項第 2 款)規定，在與客戶建立業務關係時或透過卡片進行臨時性交易時（金額達新台幣 50 萬元或約 16,300 美元或 14,000 歐元）或跨境電匯（金額達新台幣 3 萬元或約 981 美元），或疑似洗錢/資恐情事、或者對於過去所取得客戶身分辨識資料有疑問時，應採取 CDD 措施。外幣收兌處則須逐筆採取 CDD。參見金融機構及農業金融機構防制洗錢辦法第 3 條第 2 款第 2 目，辦理融資性租賃業務事業防制洗錢辦法第 3 條第 2 款，及外幣收兌處設置及管理辦法第 10 條。

*Required CDD measures for all customers**所有客戶都需要 CDD 措施*

170. **Criterion 10.3** - FIs are required to undertake CDD to identify and verify customer identities using reliable, independent information (Article 3(4)(1) of AML regulations of FIs, article 3(3)(A) of AML regulations of Agricultural FIs, and article 3(3) of AML Regulations of Leasing Enterprises). Foreign exchange counters are also required to obtain and verify the identity of their customers using original passports or entry and exit permits (with photo) (Article 10 of the Regulation on Foreign Exchange Counters).

標準 10.3 - 金融機構依規定，需使用可靠、獨立的資訊執行 CDD，以辨識和驗證客戶身分[金融機構防制洗錢辦法第 3 條第 4 款第 1 目、農業金融機構防制洗錢辦法第 3 條第 3 款 A、辦理融資性租賃業務事業防制洗錢辦法第 3 條第 3 款]。外幣收兌處也須使用正本護照或入出境許可證(附照片)，取得和驗證客戶身分（外幣收兌處設置及管理辦法第 10 條）。

171. **Criterion 10.4** - FIs are required to verify persons acting on behalf of a customer is authorised to do so and identify and verify the identity of that person, using reliable and independent information (Article 3(4)(2) of AML Regulations of FIs and the Article 3(3)(B) of AML Regulations of Agricultural FIs, article 3(3)(2) of the AML Regulations of Leasing Enterprises). Under Article 10 of the Foreign Exchange Counter Regulation each transaction must be submitted by the customer 'in person', and as such persons are not able to purport to act on behalf of another person.

標準 10.4 - 金融機構依規應確實查證代理之事實，使用可靠和獨立的資訊辨識及驗證代理人身分[金融機構防制洗錢辦法第 3 條第 4 款第 2 目，農業金融機構防制洗錢辦法第 3 條第 3 款 B，辦理融資性租賃業務事業防制洗錢辦法第 3 條第 3 款第 2 目]。根據外幣收兌處設置及管理辦法第 10 條每筆交易必須由客戶"親自辦理"，因此不會有人聲稱係代理他人辦理的情形。

172. **Criterion 10.5** - FIs are required to identify and take reasonable measures to verify a customer's beneficial ownership, including the use of reliable information (art. 3(4)(3) of AML regulations of FIs; Art. 3(3)(C) of AML regulations of Agricultural FIs; and art. 3 of the AML Regulations of Leasing Enterprises). The definition of BO, under both mentioned regulations mirrors the standards.

標準 10.5 - 金融機構依規定需辨識客戶實質受益人，並以合理措施驗證其身分，包括使用可靠資訊（金融機構防制洗錢辦法第 3 條第 4 款第 3 目和農業金融機構防制洗錢辦法第 3 條第 3 款 C，辦理融資性租賃業務事業防制洗錢辦法第 3 條）。根據上述辦法，實質受益人(下稱 BO)的定義與標準相符。



173. Exemptions to identifying BOs may not apply to the circumstances that customers are from or in higher-risk jurisdictions or where there is a suspicion of ML/TF (Article 6, paragraph 1, subparagraph 3 of AML regulations of FIs and Article 6, item 3 of AML regulations of Agricultural FIs). Article 6, paragraph 2 notes that the abovementioned exception shall not apply if: (1) the customers are from or in countries and jurisdictions known to have inadequate AML/CFT regimes, including but not limited to those designated by international organizations on AML/CFT and other countries or regions that forwarded by FSC. However, this rule is not applied to electronic stored value card registration operations.

對 BO 身份辨識的豁免規則不適用於客戶來自高風險管轄區或懷疑涉及 ML/TF 的情況（金融機構防制洗錢辦法第 6 條第 1 項第 3 款和農業金融機構防制洗錢辦法第 6 條第 3 款）。第 6 條第 2 項亦規定上述豁免不適用於：（1）客戶來自未採取有效防制洗錢或打擊資恐之高風險國家或司法管轄區，包括但不限於由 FSC 函轉的國際組織公告的國家或地區。但是，該規則不適用於電子票證記名作業。

174. **Criterion 10.6** - FIs are required to understand the purpose and intended nature of a business relationship, and obtain relevant information when undertaking CDD (AML Regulations of FIs article 3(4)(4); article 3(3)(4) of the AML Regulations of Leasing Enterprises). Foreign exchange counters only conduct business with walk in customers and as such are not applicable to this criterion.

標準 10.6 - 金融機構在進行 CDD 時，應瞭解業務關係的目的和預期性質，並取得相關資訊（金融機構防制洗錢辦法第 3 條第 4 款第 4 目，辦理融資性租賃業務事業防制洗錢辦法第 3 條第 3 款第 4 目）。外幣收兌處因僅辦理過路客業務（臨時性交易），不適用本項標準。

175. **Criterion 10.7** - Article 5(1) of the AML Regulations of FIs and equivalent articles in the AML Regulations of Agricultural FIs and the AML Regulations of Leasing Enterprises require FIs to conduct ongoing CDD on existing customers based on materiality and risk, and to perform CDD at appropriate times which take into account previous CDD and adequacy of data obtained. The regulations give examples of appropriate timing of CDD and some triggers for updating CDD. FIs must perform CDD over the course of a business relationship to ensure transactions are consistent with the FI's knowledge of the customer, their business and risk profile including source of funds. FIs must periodically review documents, data and information collected through the CDD process, particularly for higher risk categories of customers, and ensure they are up-to-date and relevant and at least annually.

標準 10.7 - 金融機構防制洗錢辦法第 5 條第 1 項及農業金融機構與辦理融資性租賃業務事業防制洗錢辦法相應條文，要求金融機構根據重要性和風險程度，對現有客戶進行持續的 CDD，並於考量前次 CDD 及所獲得資料之適足性後，在適當時機執行 CDD。該辦法亦列舉適當時機及一些應予更新 CDD 的驅動因子。金融機構必須在業務關係中執行 CDD，以確保所進行之交易與金融機構對客戶及其業務、風險狀況（包括資金來源）之了解相符。需定期檢視 CDD 程序所收集的文件、資料和資訊，特別是對於風險較高的客戶類別，確保是更新且相關的資訊。法規規定至少每年完成一次。

#### *Specific CDD measures required for legal persons and legal arrangements*

##### *法人和法律協議所需的具體 CDD 措施*

176. **Criterion 10.8** - Article 3(1)(5) of the AML Regulations of FIs requires FIs to understand the business nature and 3(7)(1) requires the FI to understand the legal person or legal arrangement, its structure or trustees as well as beneficial ownership and control (see also Article 3 subparagraph 6, of AML Regulations of Agricultural FIs and article 3 of the AML Regulations of Leasing Enterprises).

標準 10.8 - 金融機構防制洗錢辦法第 3 條第 5 款要求金融機構應瞭解業務性質，第 3 條第 7 款並要求了解法人、團體或受託人的實益受益權和所有權結構。（並參見農業金融機構防制洗錢辦法第 3 條第 6 款和辦理融資性租賃業務事業防制洗錢辦法第 3 條）。

177. **Criterion 10.9** - The requirements to obtain information in order to identify the customers that are legal persons or legal arrangements and verify their identity for FIs are prescribed in Article

3(5) of AML Regulations of FIs and Article 3(4) of AML Regulations of Agricultural FIs and article 3 of the AML Regulations of Leasing Enterprises. The types of information required are in line with the standards, i.e. name, legal form and proof of existence of customer or trust, the charter or similar power documents that regulate and bind the legal person or trust, names of relevant persons having a senior management position in the customer and the address of the register office of the customer, and if different, the address of its principal place of business.

標準 10.9 - 金融機構防制洗錢辦法第 3 條第 5 款、農業金融機構防制洗錢辦法第 3 條第 4 款和辦理融資性租賃業務事業防制洗錢辦法第 3 條規定金融機構取得資訊以辨識法人或法律協議的客戶並驗證其身分。所需資訊的類型符合標準，亦即客戶或信託的名稱，法律形式和證明，規範和約束法人或信託的章程或類似權力文件，在客戶中擔任高階管理人員的姓名，和客戶註冊之辦公室地址，如果不同，其主要營業處所的地址。

178. **Criterion 10.10** - For legal persons and organizations, FIs have to obtain information to identify the BO of the customer and take reasonable measures to verify identity of such person by determining controlling ownership interest (as in c. 10.10 (a)). A controlling ownership interest refers to owning directly and/or indirectly more than 25% of the legal person's shares or capital.

標準 10.10 - 對於法人和團體，金融機構必須取得資訊以辨識客戶的 BO，並採取合理措施透過確認控制所有權權益來驗證此人的身分（如 c.10.10 (a)）。控制所有權是指直接和/或間接擁有法人股份或資本的 25% 以上。

179. Where there is a doubt of the controlling ownership interest or no natural person exerting control through ownership interests is identified, FIs shall consider the natural person(s), if any, exercising control of the customer through other means (as in c. 10.10 (b)). If FIs still cannot identify natural person(s) acting as BO, they shall identify the natural person who holds the position of senior managing official.

如果對控制所有權權益有所懷疑或當沒有自然人透過所有權權益進行控制時，金融機構應考慮透過其他方式對客戶行使控制權的自然人（如果有）（如 c.10.10 (b)）。如果金融機構仍然無法辨識出自然人為 BO，應辨識擔任高階管理職位的自然人身分。

180. The obligations on FIs to take reasonable measures to verify identity by obtaining independent information mirror the standards.

金融機構透過取得獨立資訊，採取合理措施以驗證此身分的義務規定符合標準。

181. **Criterion 10.11** - For customers who are trustees, FIs have to obtain the following information to identify the BO of the trust and take reasonable measures to verify identity of such person: (1) the identity of the settlor(s), the trustee(s), the trust supervisor (per trust laws of Chinese Taipei which is the same as trust protector), the beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, or (2) the identity of person(s) in equivalent or similar position. The regulations did not specify how to identify BO of other types of legal arrangement.

標準 10.11 - 客戶為信託之受託人時，金融機構必須取得資訊以辨識信託的 BO，並採取合理措施來驗證此人的身分：(1) 委託人、受託人、信託監察人（根據中華臺北信託法規，與信託保護者相同）、信託受益人及其他可有效控制該信託帳戶之人的身份，或(2) 具相當或類似職務者之身份。法規沒有具體說明如何辨識其他類型法律協議的 BO。

#### *CDD for Beneficiaries of Life Insurance Policies*

##### *人壽保險契約受益人的 CDD*

182. **Criterion 10.12** - FIs are required to identify and take reasonable measures to verify the beneficiary of a life insurance policy, investment-linked insurance policy or annuity insurance policy applied to insurance enterprise (Article 3(8) of the AML Regulations of FIs).

標準 10.12 - 金融機構依規應辨識並採取合理措施驗證人壽保險、投資型保險或年金保險契約之保險受益人，此係適用保險業（金融機構防制洗錢辦法第 3 條第 8 款）。

183. **Criterion 10.13**– FIs should consider a beneficiary as a relevant risk factor in determining whether to apply EDD measures. EDD measures apply if an insurance enterprise determines that a beneficiary who is a legal person or a trustee presents a higher risk (Article 6 of AML Regulations of FIs).

標準 10.13 - 在決定是否採用強化客戶審查措施(下稱 EDD)措施時，金融機構應將人壽保險契約的受益人納入風險考量因素。如果保險業確定法人或受託人的受益人存在較高風險，則適用 EDD 措施(金融機構防制洗錢辦法第 6 條)。

#### *Timing of verification*

##### *確認時機*

184. **Criterion 10.14**– FIs shall verify the identity of customers before establishing a business relationship or conduct occasional transactions with the customer. Unless there are any circumstances listed as follow are met, data used to verify the identity of the customer and BO may be first obtained and verified following the establishment of a business relationship: (1) the ML/TF risks are effectively managed, (2) it is necessary to avoid disrupting normal conduct of business with a customer, (3) under reasonable and feasible conditions, the identity verification procedures for the customer and BO will be completed in an expeditious manner.

標準 10.14 - 金融機構與客戶建立業務關係或進行臨時性交易前，應完成確認客戶身分。但符合下列各目情形者，得先取得辨識客戶及實質受益人身分之資料，並於建立業務關係後，再完成驗證：(1)洗錢及資恐風險受到有效管理。(2)為避免對客戶業務之正常運作造成干擾所必須。(3)會在合理可行之情形下儘速完成客戶及實質受益人之身分驗證。

185. **Criterion 10.15**– As mentioned above, the ML/TF risks which should be effectively managed include the adoption of risk management procedures concerning the conditions under which a customer may utilize the business relationship prior to verification (Article 3(1)(9) of the AML Regulations of FIs, Article 3 (7) of AML Regulations of Agricultural FIs and article 3 of the AML Regulations of Leasing Enterprises).

標準 10.15 - 如前述，應針對客戶可能利用交易完成後才驗證身分之狀況，採取風險管理作為，以使洗錢及資恐風險受到有效管理(金融機構防制洗錢辦法第 3 條第 1 項第 9 款，農業金融機構防制洗錢辦法第 3 條第 7 款，辦理融資性租賃業務事業防制洗錢辦法第 3 條)。

#### *Existing customers*

##### *既存客戶*

186. **Criterion 10.16**– FIs are required to apply CDD on existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained (Article 5(1) of the AML Regulations of FIs and equivalent articles in the AML Regulations of Agricultural FIs and article 5 of the AML Regulations of Leasing Enterprises).

標準 10.16 - 金融機構應依重要性及風險程度，對現有客戶進行 CDD，並考量前次執行審查之時點及所獲得資料之適足性，在適當時機對已存在之往來關係進行審查(金融機構防制洗錢辦法第 5 條第 1 款，農業金融機構防制洗錢辦法相應條款，辦理融資性租賃業務事業防制洗錢辦法第 5 條)。

#### *Risk-based approach*

##### *以風險為基礎之方法*

187. **Criterion 10.17**– FIs are required to perform EDD where the ML/TF risks are higher as specified. EDD measures include (1) obtaining the approval of senior management before establishing or entering an new business relationship; (2) taking reasonable measures to understand the sources of wealth and the source of funds of the customer; where the source of funds means the source which generate those funds essentially; (3) conducting enhanced ongoing monitoring of business relationship (see article 6 of the AML Regulation on FIs, article 6 of the AML



Regulations of Leasing Enterprises and equivalent articles in the AML Regulations of Agricultural FIs).

標準 10.17 - 金融機構對 ML/TF 風險較高時，應執行強化客戶審查措施，包括：(1)在建立或新增業務往來關係前，應取得高階管理人員同意；(2)應採取合理措施以瞭解客戶財富及資金來源。其中資金來源係指產生該資金之實質來源；(3)對於業務往來關係應採取強化之持續監督(金融機構防制洗錢辦法第 6 條，辦理融資性租賃業務事業防制洗錢辦法第 6 條，農業金融機構防制洗錢辦法相應條款)。

188. **Criterion 10.18** - FIs may adopt simplified measures under relatively low risk scenarios and such simplified measures shall be commensurate with the lower risk factors. However, simplified CDD are not allowed in the following circumstances; (1) where the customers are from or in higher-risk countries and jurisdictions; or (2) where there is a suspicion of ML or TF in relation to the customer or the transaction (article 6 of the AML Regulations on FIs, article 6 of the AML Regulations of Leasing Enterprises and equivalent articles in the AML Regulations of Agricultural FIs). FIs are not required to identify and verify BO identity if:

標準 10.18 - 金融機構對於較低風險情形，得採取簡化措施，該簡化措施應與其較低風險因素相當，然而有下列情形者不得採取簡化CDD:(1)客戶來自未採取有效防制洗錢或打擊資恐之高風險地區或國家；(2)或有足資懷疑該客戶或交易涉及洗錢或資恐者(金融機構防制洗錢辦法第 6 條，辦理融資性租賃業務事業防制洗錢辦法第 6 條，農業金融機構防制洗錢辦法相應條款)。但是，金融機構不需要辨識和驗證 BO 身分，倘：

(1) Customers or person having a controlling ownership interest in the customer is government entity (either domestic or foreign), government owned enterprises, Chinese Taipei supervised FIs and foreign FI that is subject to and supervised for AML/CFT requirements that are in line with FATF standards, public company or listed company and its subsidiaries, and employee stock ownership trust or employee saving trust (subparagraph 7 of Article 3, item 3 of AML regulations of FIs and subparagraph 6 of Article 3, C. of AML regulations of Agricultural FIs).

客戶或對客戶具控制權者是政府機關（不論是中華臺北或外國）、公營事業、中華臺北監管的金融機構，和所受監理規範符合 FATF 所定防制洗錢/打擊資恐標準一致的外國金融機構、上市、上櫃公司及其子公司、員工持股信託或員工福利儲蓄信託（金融機構防制洗錢辦法第 3 條第 7 款第 3 目，農業金融機構防制洗錢辦法第 3 條第 6 款 C）。

(2) When customer purchase property/accident/health insurance or insurance product that does not require policy value reserve (subparagraph 7 of Article 3, item 4 of AML regulations of FIs and subparagraph 6 of Article 3, D. of AML regulations of Agricultural FIs).

當客戶購買財產保險、傷害保險、健康保險或不具有保單價值準備金之保險商品時（金融機構防制洗錢辦法第 3 條第 7 款第 4 目和農業金融機構防制洗錢辦法第 3 條第 6 款 D）。

189. While the exemptions seem reasonable in a number of lower risk scenarios, there are concerns with exemptions in relation to beneficial owners of any public companies and of foreign FIs in cases outside of correspondent banking. For example, a Hong Kong, China securities broker may hold an account on behalf of Chinese Taipei-based customers, but not be subject to CDD on those customer accounts.

雖然在一些較低風險的情況下，採行豁免似乎合理，但是對於任何公開發行公司及通匯銀行以外的外國金融機構的實質受益人豁免有疑慮，例如，中國香港證券經紀商可以代表中華臺北客戶持有帳戶，但這些客戶帳戶不受 CDD 約束。

190. FIs do not have to request the powers that regulated and bind the legal person or arrangement when (1) those customers are included in the exemption to identify and verify the BO identity (2) when customer purchases property insurance, accident insurance, health insurance or an insurance product that does not require policy value reserve. These exemption shall not apply if there is any of the following circumstances: (1) the customers are from or in countries and jurisdictions known to have inadequate AML/CFT regimes, including but not limited to those



designated by international organizations on AML/CFT and other countries or regions that forwarded by FSC.

金融機構在以下情況允許毋須取得規範和約束法人或協議之相關權力文件；(1) 於 C.10.5 所指出之豁免辨識和驗證 BO 身分的客戶類型，(2) 當客戶購買財產保險、傷害保險、健康保險或不具有保單價值準備金之保險商品時。但有下列情形者則不得適用此豁免：(1) 客戶來自未採取有效防制洗錢或打擊資恐之高風險地區或國家，包括但不限於 FSC 函轉國際防制洗錢組織所公告防制洗錢與打擊資恐有嚴重缺失之國家或地區，及其他未遵循或未充分遵循國際防制洗錢組織建議之國家或地區。

#### *Failure to satisfactorily complete CDD*

##### *無法充分完成 CDD*

191. **Criterion 10.19** - In the circumstances that FIs are unable to comply with CDD measures specified in Article 4 of AML Regulations of FI and AML Regulations of Agricultural FI, FIs should decline to establish business relationship or carry out any transaction with the customer. FIs, therefore, should consider filing STR. If it is unable to be completed within a reasonable and feasible time frame, the business relationship must be terminated, in which case the customer shall be notified in advance in cases where an STR is not being filed (article 3(1)(9) of the AML Regulations of FIs; article 3(7) of the AML Regulation of Leasing Enterprises.

標準 10.19 在金融機構防制洗錢辦法及農業金融機構防制洗錢辦法第 4 條規定的情形下，金融機構無法完成確認客戶身分措施時，應婉拒與客戶建立業務關係或交易。金融機構因此應考慮申報 STR。如未能在合理可行之時限內完成客戶及實質受益人之身分驗證，須終止該業務關係，在此情況下(未申報 STR)，應事先告知客戶(金融機構防制洗錢辦法第 3 條第 1 項第 9 款和辦理融資性租賃業務事業防制洗錢辦法第 3 條第 7 款)。

192. **Criterion 10.20** - If an FI forms a suspicion of ML or TF and reasonably believes that performing the CDD process will tip-off the customer, it is permitted not to pursue that process and file an STR instead.

標準 10.20 - 若金融機構懷疑某客戶或交易可能涉及洗錢或資恐，且合理相信執行確認客戶身分程序可能對客戶洩露訊息時，得不執行該等程序，而改以申報疑似洗錢或資恐交易報告。

#### *Weighting and Conclusion*

##### *權重與結論*

193. There are minor gaps in relation to exemption on FIs identifying and verifying beneficial ownership in relation to certain types of customers. **Recommendation 10 is rated largely compliant.**

有關金融機構對某些類型客戶相關的 BO 辨識和驗證程序之豁免規定存在微小落差。建議 10 評等為大部分遵循。

#### *Recommendation 11 - Record-keeping*

##### *建議第 11 項-紀錄保存*

194. In its 2007 MER, Chinese Taipei was rated partially compliant with the former R.10. FIs were not required to keep transaction records for any non-cash transaction, or cash transactions below NT\$1,000,000; no requirements to keep transaction records that would allow individual transactions to be reconstructed by FIs for evidentiary purposes; retention periods excluded the requirement to keep transaction records for five years following completion of a transaction. International transaction records were not captured, no requirement on FIs to keep account files or business correspondence and retention periods excluded the requirement to keep customer records for five years following termination of an account or business relationship.

在 2007 年的 MER 中，中華臺北在先前的 R.10 被評為部分遵循。金融機構不需保留任何非現金交易的交易紀錄，或低於新臺幣 1,00 萬元之現金交易，無需留存交易紀錄。這些紀錄將使金融機構在證據保全目的下，得重建個別交易；除了交易完成後保留交易紀錄五年的要求外，還有一段保留期；跨國交易紀錄無保存；未要求金融機構保留帳戶文件或商業信函之期限，應延長至客戶終止帳戶或業務關係後，仍需保留客戶紀錄五年。

195. The Regulations Governing AML of FIs were issued pursuant to MLCA Art 8(3), which is enforceable under articles 9 and 10 of the MLCA. The regulations covering foreign exchange counters are issued under art 35(2) of the Central Bank Act and enforceable via article 9 of the regulation. As discussed at Rec. 10, the regulations are issues pursuant to a parliamentary disallowance process, and are considered within the meaning of ‘law’ for the purposes of the FATF methodology.

“金融機構防制洗錢辦法”是依據洗錢防制法第 8 條第 3 項發布的，該條項規定可根據洗錢防制法第 9 條和第 10 條處罰。規範外幣收兌處的法規係依據“中央銀行法”第 35 條第 2 項制定，並可依據該法規第 9 條處罰。如建議 10 所述，法規命令制定需經過國會審查程序，與 FATF 方法論要求一致，被視為具有“法律”的含義。

196. **Criterion 11.1** - The primary record keeping obligation is set out in the MLCA. Article 12 of the AML Regulations of FIs and the article 11 of the AML Regulations of Leasing Enterprises and equivalent articles in the AML Regulations of Agricultural FIs requires FIs to keep records on customer transactions in hard copy or electronic form, for at least five years. Art 12 of the Regulations for Foreign Currency Exchange Counters extend parallel obligations to foreign exchange counters, but requires records to be kept for 10 years.

標準 11.1- 主要紀錄保存義務規定在洗錢防制法，並在條文中規定相關的要求細節。金融機構防制洗錢辦法第 12 條及辦理融資性租賃業務事業防制洗錢辦法第 11 條與農業金融機構防制洗錢辦法相關法條，要求金融機構以文書形式保存或電子形式保存客戶交易紀錄至少五年。“外幣收兌處設置及管理辦法”第 12 條延長外幣收兌處的義務，要求需紀錄保存 10 年。

197. **Criterion 11.2** - Art 12(1,1) of the AML Regulations of FIs and the AML Regulations of Leasing Enterprises and equivalent articles in the AML Regulations of Agricultural FIs requires FIs to keep identification information, account records and business correspondence for a period of five years from the date a business relationship is ended, or after date of a transaction. Art 12 of the Foreign Exchange Counters Regulation requires foreign exchange memos (which capture CDD data) and STRs to be held for five years. Foreign exchange counters are not required to maintain analysis undertaken that may form the basis of an STR.

標準 11.2- “金融機構防制洗錢辦法”第 12 條第 1 項第 1 款及辦理融資性租賃業務事業防制洗錢辦法第 11 條與農業金融機構防制洗錢辦法相關法條，要求金融機構在業務關係終止之日或交易日期之後的五年內保存客戶身分資料、帳戶交易紀錄及往來商業信函。“外匯收兌處設置及管理辦法”第 12 條規定，應保留外匯水單和可疑交易報告五年。外匯交易紀錄之保存不需要包括相關的客戶審查文件，並且該辦法未要求外幣收兌處保存任何可能構成可疑交易報告的分析資料。

198. **Criterion 11.3** - Art 12(1,3) of the AML Regulations of FIs, article 11(4) of the AML Regulations of Leasing Enterprises and equivalent articles in the AML Regulations of Agricultural FIs requires FIs to maintain transaction records that are sufficient for reconstruction for criminal evidentiary purposes. Foreign exchange counters are required to keep all exchange memos which capture the necessary information to reconstruct transactions, i.e. each customer’s name and date of birth, their home country/region, passport number or exit & entry permit number, transaction amount, etc. (Article 10(1) of Foreign Exchange Counters Regulation).

標準 11.3 - “金融機構防制洗錢辦法”第 12 條第 1 項第 3 款及辦理融資性租賃業務事業防制洗錢辦法第 11 條第 4 款與農業金融機構防制洗錢辦法相關法條，要求金融機構應保存交易紀錄達足以重建個別交易之程度，以備作為認定犯罪證據之目的。關於外匯管理的規定，對於外幣收兌處必須保留交易紀錄，即客戶姓名，生日，國籍，護照號碼或入出境許可證號，交易金額等。(參見外幣收兌處設置及管理辦法第 10 條第 1 項)。

199. **Criterion 11.4** - FIs are required to swiftly furnish transaction and CDD information to authorities when requests are made (Art 12(1,4) of the Regulations Governing AML of FIs, article 11(4) of the AML Regulations of Leasing Enterprises and equivalent articles in the AML Regulations of Agricultural.) Article 4(2) of Regulations Foreign Exchange Counters require that foreign exchange counters shall not conceal or destroy related documents or circumvent, impede or refuse the inspection, which is in addition to the record keeping requirements to ensure that records are able to be swiftly provided.

**標準 11.4** - 金融機構在權責機關要求時，須立即提供交易及 CDD 資料(金融機構防制洗錢辦法第 12 條第 1 項第 4 款及辦理融資性租賃業務事業防制洗錢辦法第 11 條第 4 款與農業金融機構防制洗錢辦法相關規定)。外幣收兌處設置及管理辦法第 4 條第 2 項規定外幣收兌處不得隱瞞或銷毀有關文件，不得規避，妨礙或拒絕檢查，此外還要有紀錄保存要求，以確保能夠迅速提供交易紀錄。

### Weighting and Conclusion

#### 權重與結論

200. Foreign exchange counters are not required to maintain analysis undertaken that may form the basis of an STR. **Recommendation 11 is largely compliant.**

未要求外幣收兌處應保存可能構成可疑交易報告基礎的分析資料。建議 11 為大部分遵循。

### Recommendation 12 - Politically exposed persons

#### 建議第 12 項-重要政治性職務人士

201. In the 2007 MER, Chinese Taipei was rated NC with R.6 as there was no legislation or specific guideline that required FIs to have appropriate risk management procedures for PEPs.

在 2007 年的相互評鑑報告中，由於沒有立法或具體指引要求金融機構對重要政治性職務人士採取適當的風險管理措施，因此中華臺北被評為 NC 未遵循。

202. **Criterion 12.1** - Article 7(3) of MLCA together with Article 10(1) of AML Regulations of FIs, AML Regulations of Leasing Enterprises and Articles 3(1,7,A), 6(1,1) in the AML regulations of Agricultural FIs require FIs to implement risk management systems to determine whether a customer or the BO is a foreign PEP, obtain management approval, establishing the source of funds, and enhance ongoing monitoring. The scope of foreign PEPs is defined in Article 3 of Standards for Determining the Scope of Politically Exposed Persons Entrusted with Prominent Public Function, Their Family Members and Close Associates is in line with the standards (Standards for Determining PEPs).

**標準 12.1**- 對於國外重要政治性職務人士，洗錢防制法第 7 條第 3 項以及金融機構防制洗錢辦法第 10 條第 1 項、辦理融資型租賃業務事業防制洗錢辦法第 3 條第 1 項第 7 款 A、農業金融機構防制洗錢辦法第 6 條第 1 項第 1 款，均要求金融機構實施風險管理系統，以確定客戶或實質受益人是否為國外重要政治性職務人士、取得管理階層批准、確立資金來源，並加強持續性監控。“重要政治性職務之人與其家庭成員具有密切關係之人範圍認定標準”第 3 條所規定的國外重要政治性職務之人的範圍為受委託具有公共職能之人，包括其家庭成員和密切相關之人，符合本項標準。

203. **Criterion 12.2** - Controls on PEPs under Article 7(3) of the MLCA apply equally to domestic PEPs and persons who have been entrusted with a prominent function by an international organisation. The Article 10(1) of the AML Regulations of FIs, the AML Regulations of Leasing Enterprises and equivalent articles in the AML regulations of Agricultural FIs require FIs to determine whether a customer or the BO is a domestic PEP or a person who is or has been entrusted with a prominent function by an international organization. The scope of domestic PEPs and person who is or has been entrusted with a prominent function by an international organization indicated in Article 2 and 4 of the Standards for Determining PEPs. In cases when there is higher risk business



relationship with such a person, FIs are required to adopt additional measures (management approval, establishing the source of funds, enhanced ongoing monitoring).

**標準 12.2** - 洗錢防制法第 7 條第 3 項對重要政治性職務人士的規範同樣適用於國內重要政治性職務人士和受國際組織委託具有重要職務之人。金融機構防制洗錢辦法第 10 條第 1 項、辦理融資性租賃業務事業防制洗錢辦法、農業金融機構防制洗錢辦法均要求金融機構確認客戶、實質受益人是否為國內重要政治性職務人士，或是已被國際組織賦予重要職務之人。國內重要政治性職務人士的範圍和被國際組織委託具有重要性職務之人之認定，規定在“重要政治性職務之人與其家庭成員有密切關係之人範圍認定標準”第 2 條和第 4 條。此類人員之家庭成員及有密切關係之人分別具有較高風險的業務關係，要求金融機構採取額外措施，包括經管理階層批准、確立資金來源並加強持續性監控等。

204. **Criterion 12.3** - The relevant measures must be applied to family members and close associates of PEPs, with terms defined in Article 7(3) of MLCA and Article 6 and 7 of Standards for Determining PEPs.

**標準 12.3** - 相關措施適用於家庭成員和與重要政治職務性職務人士有密切關係之人，其中包含洗錢防制法第 7 條第 3 項和重要政治性職務之人與其家庭成員及有密切關係之人範圍認定標準第 6 條及第 7 條之規定。

205. **Criterion 12.4** - Article 10, paragraph 3 of AML Regulations of FIs, requires insurance companies and post offices engaging in simple life insurance business to take reasonable measures to determine if the beneficiary of a life insurance policy, investment-linked insurance policy or annuity insurance policy (or their beneficial owner) is a PEP prior to payment of the benefit or cash surrender value. If higher risks are identified, they are required to inform senior management, conduct enhanced scrutiny of the whole business relationship with the policyholder, and consider making STR.

**標準 12.4** - 依據金融機構防制洗錢辦法第 10 條第 3 項規定，要求保險公司及辦理簡易人壽保險業務之郵政機構，必須採取合理措施，以辨識及驗證人壽保險、投資型保險或年金保險保單之受益人（或其實益受益人），在給付保險金或解約金之前如發現為重要政治性職務人士或發現較高風險，應通知高階管理層，對保單持有人（保險客戶）之整體業務關係進行強化審查，並考慮申報可疑交易報告。

### *Weighting and Conclusion*

#### *權重與結論*

206. **Recommendation 12 is rated compliant.**

**建議 12 的評等為遵循。**

### **Recommendation 13 – Correspondent banking**

#### **建議第 13 項 – 通匯銀行**

207. Chinese Taipei was rated largely compliant with the former R.7 in its 2007 MER. Shortcomings related to implementation of new controls over correspondent banking.

中華臺北在其 2007 年的 MER 中，先前 R.7 被評為大部分遵循。新實施的通匯銀行規定有與執行相關的缺失。

208. Only banks, the post office and the ABT are permitted to conduct cross-border correspondent banking transactions. All are subject to the Directions Governing ICS of AML and CFT of Banking Business, Electronic Payment Institutions and Electronic Stored Value Card Issuers, which are enforceable, which applies to all banks including ABT. In practice, the post office does not maintain correspondent relationships. Banks and other FIs do not have other similar relationships to correspondent banking.



只有銀行、郵局和全國農業金庫被允許進行跨境通匯銀行交易，並受“銀行業及電子支付機構電子票證發行機構防制洗錢及打擊資恐內部控制要點”的規範。實務上，郵局並未具有通匯或其他類似關係。

### Criterion 13.1

#### 標準 13.1

209. The above mentioned enforceable Direction govern controls on correspondent banking in articles 4(1-8) and largely mirrors the wording of the standards.

上述內控要點具有強制力，並於第 4 點(1-8 款)規範通匯銀行業務，其內容大部分比照標準之文字制定。

210. **13.1 (a)** - Art 4(1,1) requires banks to gather sufficient publicly available information to understand a correspondent bank's business and determination of its reputation and quality of management, and whether it has been investigated or subject to AML/CFT regulatory action.

211. **13.1 (a)** - 內控要點第 4 (1,1) 條要求銀行定有一定政策和程序，蒐集足夠之可得公開資訊，以充分瞭解該委託機構之業務性質，並評斷其商譽及管理品質，包括是否遵循防制洗錢及打擊資恐之規範，及是否曾受洗錢及資恐之調查或行政處分，以及是否已經過調查或是否要接受 AML / CFT 監理措施。**13.1.(b)** - The same Directions require banking businesses to assess whether correspondent bank has adequate and effective AML/CFT controls.

**13.1.(b)** - 內控要點要求通匯銀行和其他類似關係定有政策和程序，包括評估該委託機構對防制洗錢及打擊資恐具備適當之控管政策及執行效力。

212. **13.1.(c)** - The same Directions require banking businesses to obtain approval from senior management before establishing relationships with a correspondent bank.

**13.1.(c)** - 內控要點要求通匯銀行和其他類似關係定有政策和程序，在與委託機構建立通匯往來關係前，應先取得高階管理人員核准後始得辦理。

213. **13.1.(d)** - The same Directions require banking businesses to document the respective AML/CFT responsibilities of each party. In practice, banks and the supervisor apply and interpret this obligation to document to include ensuring a clear understanding.

**13.1.(d)** - 內控要點要求通匯銀行和其他類似關係定有政策和程序，以文件證明各自對防制洗錢及打擊資恐之責任作為。銀行與監管機關於實務上，會應用並解釋此文件義務，包括確認清楚理解該文件。

### Criterion 13.2

#### 標準 13.2

214. **13.2 (a)** - The same Directions require banking businesses to satisfy themselves that the respondent bank has performed CDD on customers with direct access to their accounts.

**13.2 (a)** - 內控要點要求通匯銀行和其他類似關係定有政策和程序，包括通匯往來銀行須確認該委託機構已對可直接使用通匯往來銀行帳戶之客戶，確實執行確認客戶身分等措施。

215. **13.2 (b)** - The same Directions require banking businesses to satisfy themselves that the respondent bank can provide relevant CDD information on customers with direct access to their accounts upon request.

**13.2 (b)** - 內控要點要求通匯銀行和其他類似關係定有政策和程序，包括委託銀行能依通匯往來銀行之要求提供確認客戶身分之相關資料。

216. **Criterion 13.3** - The same Directions (i) prohibit entering into correspondent relationships with shell banks and (ii) require banks to satisfy themselves that respondents do not permit their accounts to be used by shell banks. The Direction and other regulations do not further define 'shell bank' but questionnaires (which have been the subject of FSC supervision) from Chinese Taipei

Banks to identify respondents possible dealing with shell bank adopt the definition included in the FATF glossary.

標準 13.3。內控要點要求通匯銀行和其他類似關係定有政策和程序，(i) 不得與空殼銀行建立通匯往來關係；(ii) 不得與允許空殼銀行使用其帳戶之委託機構建立通匯往來關係。該內控要點和其他法規未進一步定義“空殼銀行”為何，而是從中華臺北銀行提供的調查表當中（為 FSC 監理的對象），確定可能與空殼銀行有往來的委託銀行採用 FATF 詞彙表中的定義。

### *Weighting and Conclusion*

#### *權重與結論*

#### **217. Recommendation 13 is compliant.**

第 13 項建議評等為遵循。

### *Recommendation 14 - Money or value transfer services*

#### *建議第 14 項-金錢或價值移轉服務*

218. In its 2007 MER, Chinese Taipei was rated LC with the former SR.VI, it was noted that there were no laws or regulations governing MVTs providers that operate outside banking channels, no remittance providers were licensed to operate outside of the banking sector and there was an identified need for structures and strategies to support increased update of remittance through formal channels. Underground banking vulnerabilities remained and need to be continuously assessed.

2007 年 MER，中華臺北在前特別建議 VI 評等為大部分遵循，並指出無法律或命令管理銀行以外的金錢或價值移轉服務業者，未准許銀行業以外之匯款服務提供商經營此業務。而且必需具備結構和策略，以因應透過正規管道增加的新型態匯款。地下通匯的弱點仍然存在，且需持續評估。

219. Banks and Electronic Payment Institutions are FSC regulated financial institutions under the MLCA. Global remittance companies (Western Union, MoneyGram, etc.) operate in Chinese Taipei as payment service providers of banks (based on approval of the Ministry of Economic Affairs). The national Postal Office (Chunghwa Post) provides international and domestic remittance through SWIFT (with a cooperative bank) and money orders through the international postal system. Domestic remittances within postal network are done via postal accounts or money orders.

銀行和電子支付機構是洗錢防制法定義下 FSC 監理的金融機構。全球匯款公司（西聯匯款及 MoneyGram 等）在中華臺北是作為銀行之支付服務提供商營運（根據經濟部核准）。處理國家郵政事務的中華郵政透過 SWIFT（與合作銀行）和國際郵政系統的匯票，提供國際和國內匯款。郵政網路內的國內匯款透過郵政帳戶或匯票完成。

220. **Criterion 14.1** - All natural or legal persons that provide MVTs are required to be licensed or registered. Only banks, the postal service and electronic payment institutions are allowed to provide money or value transfer services in Chinese Taipei. Banks are allowed to provide remittance services under Article 29 of the Banking Act. Electronic payment institutions are allowed to engage in the business of transferring funds between e-payment accounts pursuant to Article 3 and 44 of the Act Governing Electronic Payment Institutions. Chunghwa Post is permitted to provide domestic and international remittance based on the Postal Remittances and Savings Act. Chunghwa Post operates a large networks of post office branches, which, in the case of smaller branches, **are often run by existing businesses**. Articles 16 of the Regulations Governing Postal Remittances and Savings Operations requires Chunghwa Post to obtain yearly approval from the MOTC and FSC and update MOTC and FSC on their locations and activities.

標準 14.1-提供金錢或價值移轉服務的所有自然人或法人都必須獲得許可或登記。中華臺北只有銀行、郵局和電子支付機構得提供金錢或價值轉移服務。依據銀行法第 29 條，銀行可以提供匯款服務。電子支付機構則依據電子支付機構管理條例第 3 條和第 44 條，得從事電子支付帳戶之間

的資金轉移業務。中華郵政依據郵政儲金匯兌法得提供國內和國際匯款。中華郵政經營龐大的郵局分支機構網路，在較小的分支機構通常運作現有業務。郵政儲金匯兌業務監督管理辦法第16條要求，中華郵政公司辦理儲金匯兌業務時，每年應向交通部及FSC申請核准。其地點和活動如有變動需向交通部和FSC更新。

221. There are clear penalties to operating an MVTS without license or registration, which appear to be proportionate and dissuasive.

無照或未登記而經營金錢或價值移轉服務有明確的處罰，而且是合比例並具勸阻性。

222. **Criterion 14.2** - The registration / licensing authority, works with the MJIB and other LEAs to identify persons carrying out MVTS business without registration or license and to take sanctions against them. Chinese Taipei authorities demonstrated that both regulatory agencies and LEAs seek to identify cases on their own and also seek information from FIs remitters on possible case of illegal remittance in the market. Authorities have given some direction to FIs (based on 2006 MJIB Guidelines) to assist with the identified of possible underground remittance. Authorities demonstrated a number of instances where STRs and FIU analysis led to referrals of suspected underground banking to LEAs. In response to NRA findings FSC has sought greater LEA support to target underground banking. For the period 2015- 2018 (August), the police and MJIB uncovered 257 underground remittance cases involving 970 suspects and seized over NTD 237 million (approx. USD 8.5 million) in cash in those case. LEAs recognize that significant threats remain from illegal remittance and continue to target higher risk sectors. STR reporting and disseminations from AMLD to police assist in this work

**標準 14.2**-登記/發照機關與法務部調查局和其他執法機關合作，辨識未經登記或許可而進行金錢或價值移轉服務者，並加以裁罰。中華臺北權責機關說明，監理機關和執法機關試圖自行追查案件，並從金融機構匯款人尋找市場上非法匯款可疑案件的資訊。權責機關指導金融機構（根據2006年法務部調查局指引）提供，以協助辨識可能的地下匯款情事。權責機關提出一些STR和FIU分析結果，將可疑的地下通匯轉介到執法機關的案例。為回應NRA的發現結果，FSC尋求更多執法機關的支援，以打擊地下通匯。2015年至2018年(8月)間，警方與法務部調查局查獲地下匯款共計257件、涉案人數970人、查扣金額超過新臺幣2億3,700萬元(約850萬美元)。執法機關認識到非法匯款仍然存在重大威脅，並繼續鎖定高風險產業。AMLD向警方分送可疑交易報告案件有助於查緝工作。

223. **Criterion 14.3** - FSC demonstrated that it is responsible for and has undertaken remittance-related monitoring of AML/CFT compliance by banks, electronic payment institutions and Chunghwa Post. This has included offsite and onsite supervision of head office and branches.

**標準 14.3**-FSC說明其負責並已監督銀行、電子支付機構和中華郵政之匯款相關的AML/CFT法令遵循情形的，包括對總公司及分支機構之場外及場內監理。

224. **Criterion 14.4**- The Chunghwa Post and banks' branch networks are not agents, but rather branches of the principle institutions. Agents for MVTS providers are not permitted in Chinese Taipei. Article 29 of the Banking Act sets out that, unless otherwise provided by law, any person other than a bank shall not handle domestic or foreign remittances. In this sense, there must be explicit provisions stipulated in law to enable a person to engage in MVTS in Chinese Taipei. Since the Electronic Payment Institutions Act does not have explicit provisions to permit an electronic payment institution to use an agent to provide its members' fund transfer services, it is illegal for any person acting as an agent of an electronic payment institution to provide MVTS. The Banking Act does not have explicit provisions to permit a bank to use an agent to provide its remittance services, it is illegal for any person acting as an agent of a bank to provide remittance services. Furthermore, remittances, as one of the core businesses of a bank, are not allowed for outsourcing since they are not specified in the purview of business items under Article 3 of the Regulations Governing Internal Operating Systems and Procedures for the Outsourcing of Financial Institution Operation. Rec. 14 does not apply to a bank when it is permitted to perform MVTS under its banking license and already subject to full range applicable obligations under the FATF Recommendations.



**標準 14.4-**中華郵政和銀行的分支網絡並非代理人，而是總公司的分支機構。中華臺北金錢或價值轉移服務提供者不允許使用代理人。銀行法第 29 條規定，除法律另有規定外，非銀行不得辦理國內外匯兌業務。從這個意義上說，在中華臺北須有法律明文規定，始能從事金錢或價值移轉服務。由於電子支付機構管理條例沒有明文規定允許電子支付機構使用代理人提供其會員資金轉帳服務，因此任何人作為電子支付機構代理人，提供金錢或價值移轉服務是違法的。銀行法沒有明文規定允許銀行使用代理人提供匯款服務，任何人作為銀行代理人提供匯款服務是非法的。此外，匯款作為銀行的核心業務之一，不允許委外，因為該業務未在“金融機構作業委託他人處理內部作業制度及程序辦法”第 3 條所規定的業務項目範圍。當銀行根據其銀行業務許可執行金錢或價值轉移服務，並且已經適用 FATF 建議所規定的全部義務時，則不適用建議第 14 項。

225. **Criterion 14.5** - The Chunghwa Post and banks' branch networks are not agents, but rather branches of the principle institutions.

**標準 14.5-**中華郵政和銀行的分支網絡並非代理人，而是總公司的分支機構。

### *Weighting and Conclusion*

#### *權重與結論*

226. **Recommendation 14 is rated compliant.**

建議第 14 項評等為遵循。

### *Recommendation 15 - New technologies*

#### *建議第 15 項 - 新科技運用*

227. In its 2007 MER, Chinese Taipei was rated largely compliant with the former R.8 although the report noted that banks lacked effective measures to monitor all individual transactions conducted electronically.

雖然先前的報告指出銀行缺乏有效措施監控所有以電子方式進行的個別交易，但在 2007 年的 ME 中，中華臺北前 R.8 的評等為大部分遵循。

228. **Criterion 15.1** - FSC has established a 'regulatory sandbox' for experimentation involving innovative financial technologies, developing technology-based innovative financial products or services, facilitating the development of financial inclusion, and ensuring the protection of innovative experimentation participants and financial consumers. The Financial Technology Development and Innovative Experimentation Act (i.e. Fintech Sandbox Rule) (2018) regulates. Article 25 of the said Act explicitly stipulates that the provisions of the MLCA, CTF Act and related regulations, orders or administrative rules will still apply. Under these arrangements the FSC will identify the ML/TF risks associated with proposed products or activities and assess the adequacy and practicability of the proposed control measures. Furthermore, the FSC will hold a joint review meeting with all related agencies and experts to assess risks.

**標準 15.1** - FSC 已經建立“監理沙盒”，用於實驗涉及創新的金融科技，創新的金融產品或服務，促進普惠金融的發展，並確保創新實驗參與者和金融消費者保護。金融科技發展與創新實驗條例（即 Fintech Sandbox Rule）（2018 年）第 25 條明文規定，MLCA、CTF 及相關法規與命令或行政規則的規定仍將適用。在此架構下，FSC 將確定這些所提的產品或活動相關的 ML/TF 風險，並評估提議的控制措施是否充分和可實行。此外，FSC 將與所有相關機構和專家舉行聯合審查會議，以評估風險。

229. Outside of this 'regulatory sandbox, FSC takes a proactive supervisory approach to identify and assess the ML/TF risks in relation to the development of new business and products and the use of new technologies for both new and pre-existing business and products. FSC has applied this approaches with electronic payment institutions, digital deposit accounts, and on-line insurance applications and other FIs. While the Central Bank does not have a similar approach to foreign



exchange counters, the nature of their products and business delivery mechanisms is essentially fixed and has not seen changes in products, practices, delivery mechanisms or technologies.

在“監理沙盒”之外，FSC 採取積極主動的監理方法，辨識和評估與新業務和新產品的開發與、新推出及既有業務與產品使用新技術之相關的 ML / TF 風險。FSC 已將此方法應用於電子支付機構、數位存款帳戶及網路保險申請和其他金融機構。雖然中央銀行對外幣收兌處沒有類似的方法，但其產品和業務交付機制的性質基本上是固定的，並且無產品、做法、交付機制或技術的變動。

230. In relation to obligations on FIs, Art 5 of Directions for ICS of AML and CFT of Banking Business, EPI and ESVCI: Banking business, electronic payment institutions and electronic stored value card issuers are required to assess ML/TF risks before launching new products/services or new business practices, and establish relevant risk management measures to mitigate identified risks. Art 4 of ICS for AML and CFT of Securities and Futures Sector: Required to assess ML/TF risks before launching new products/services or new business practices, and establish relevant risk management measures to mitigate identified risks. Art 4 of the Directions Governing ICS of AML and CFT for Insurance Sector: Requires insurance enterprises to assess ML and TF risks prior to launch of new products with policy value reserve or cash value or money-related services or new businesses and establish relevant risk management measures to mitigate identified risks. Art 3(1) of Directions Governing ICS of Credit Departments of Farmers and Fishermen's Associations: Requires credit departments to assess ML or TF risks that may arise in relation to development of new products or services or new business practices and establish relevant risk management measures to mitigate those risks.

關於金融機構的義務：銀行業及電子支付機構電子票證發行機構防制洗錢及打擊資恐內部控制要點第 5 條：銀行業及電子支付機構和電子儲值卡發行商需要在推出新產品/服務或新業務之前評估 ML/TF 風險並建立相應之風險管理措施以降低所辨識之風險。證券期貨業防制洗錢及打擊資恐內部控制要點第 4 條：在推出新產品或服務或辦理新種業務之前，應評估 ML/TF 風險，並建立相應之風險管理措施以降低所辨識之風險。保險業防制洗錢及打擊資恐內部控制要點第 4 條：要求保險業在推出具有保單價值準備金或現金價值或貨幣相關服務或新業務的新產品之前評估 ML 和 TF 風險，並建立相關風險管理措施以降低所識別之風險。農會漁會信用部防制洗錢及打擊資恐內部控制要點第 3 (1) 條：要求信用部門推出新產品或服務或辦理新種業務前，應進行相關的 ML 或 TF 風險評估，並建立相應之風險管理措施以降低所辨識之風險。

### Criterion 15.2

#### 標準 15.2

231. **15.2(a)** - The articles referenced above require FIs to identify and assess associated ML and TF risks prior to launching new products/services, or engaging in new business practices.

**15.2 (a)** - 上述條文要求金融機構在推出新產品/服務或參與新商業活動之前，應辨識和評估相關的 ML 和 TF 風險。

232. **15.2(b)** - The articles referenced above require FIs to establish risk control measures to reduce risks identified in the assessment of ML/TF of new products and business practices.

**15.2 (b)** - 上述條文要求金融機構制定風險控制措施，以降低新產品和商業活動於 ML / TF 評估中發現的風險。

### Weighting and Conclusion

#### 權重與結論

233. **Recommendation 15 is rated compliant.**

建議第 15 項評等為遵循。

## Recommendation 16 – Wire transfers

### 建議第 16 項 – 電匯

234. In its 2007 MER, Chinese Taipei was rated LC with the former SR.VII. There were no clear requirements in relation to AML/CFT controls on wire transfers.

中華臺北在 2007 年 MER 中，前 SR.VII 被評等為大部分遵循(LC)。MER 指出對於電匯的 AML/CFT 控制措施沒有明確的要求。

235. **Criterion 16.1** - Art. 7 of Regulations Governing Foreign Exchange Business of Banking Enterprises, only banks, the ABT and Chunghwa Post may apply for approval to engage in outward and inward remittances in foreign currencies. Controls on wire transfers apply to all outgoing wire transfers, regardless of the remittance amount. Directions Governing Banking Enterprises for Operating Foreign Exchange Business ('Directions on FX'), point 4(1)(3)(1), require cross-border ordering FIs to include the required and accurate information of the originator and the required information of the beneficiary with outgoing wire transfer.

**標準 16.1** 銀行業辦理外匯業務管理辦法第 7 條規定，只有銀行、全國農業金庫和中華郵政可以申請從事外幣的匯入和匯出匯款業務。無論匯款金額如何，相關規範均適用於所有匯出電匯。銀行業辦理外匯業務作業規範第 4 點第 1 項第 3 款第 1 目規定，要求跨境匯款金融機構發送之匯款電文包含必要及正確的匯款人資訊，及必要的受款人資訊。

236. **Criterion 16.2** - Art 7 of the Regulations Governing Foreign Exchange Business of Banking Enterprises apply equally to individual cross-border wire transfers from a single originator and those that are bundled in a batch file for transmission to beneficiaries. The batch file should contain required and accurate originator information, and full beneficiary information, that is fully traceable within the beneficiary jurisdiction; and the financial institution should be required to include the originator's account number or unique transaction reference number.

**標準 16.2** 銀行業辦理外匯業務管理辦法第 7 條同樣適用於單一匯款人的個別跨境電匯，及以批次文件形式傳送給受益人的電匯。批次文件應包含必要且正確的匯款人資訊，以及在受款國內完全可追溯的完整受益人資訊。金融機構應被要求包含匯款人帳號或唯一的交易參考號碼。

237. **Criterion 16.3 and 16.4** - Chinese Taipei does not apply a *de minimis* threshold.

**標準 16.3 和 16.4** - 中華臺北未採用最低限額。

238. **Criterion 16.5** - Banks, the ABT and Chunghwa Post are able to conduct domestic wire transfers, whether in NTD or foreign currency. Credit cooperatives, credit departments of farmers' associations and credit departments of fishermen's associations are able to conduct domestic wire transfers in NTD only. If the wire transfer conducted in foreign currency, the Regulations Governing Foreign Exchange Business of Banking Enterprises apply. In the case of NTD domestic transfers, the Directions on Internal Control of Banking and Agricultural FIs regarding wire transfer require FIs to include information on the originator and the beneficiary accompanying the wire transfer, as indicated for cross-border transfer. Article 8(1 & 2) of the MLCA requires FIs and DNFBPs to maintain all necessary records on transactions, both domestic and international, made due to operating their business or practicing their profession. The transaction records shall be maintained for a period of at least five years after the date of the transaction, unless a longer record-keeping term is required by other laws. The aforementioned provisions are applied to domestic transfer in NTD.

**標準 16.5** 銀行、全國農業金庫和中華郵政能夠進行國內電匯，無論是新臺幣還是外幣。另信用合作社、農會、漁會的信用部能以新臺幣進行國內電匯。如果以外幣進行電匯，適用銀行業辦理外匯業務管理辦法。在新臺幣國內匯款，銀行業和農業金融機構內部控制要點(農業金融機構防制洗錢與打擊資恐內部控制及稽核制度實施辦法)中有關電匯的規定要求金融機構電匯應包括有關匯款人和受益人資訊，如跨境匯款所要求。洗錢防制法第 8 條第 1 和 2 項要求金融機構和 DNFBPs 保

留因經營業務或從事其專業而在國內和國際交易中的所有必要紀錄。交易紀錄應在交易日期後保留至少五年，除非其他法律要求更長的紀錄保存期限。上述規定適用於新臺幣的國內匯款。

239. **Criterion 16.6** - Apart from requirement mentioned above, FIs may choose to include the account number or a unique transaction reference number which permits the transaction to be traced back to the originator and the beneficiary. In this case, FIs shall make information available within 3 business days of receiving the request either from the beneficiary FI or from appropriate competent authorities i.e. the Central Bank, FSC and COA. However, LEA are able to compel immediate production of such information and FIs shall respond accordingly.

**標準 16.6** 除上述要求外，金融機構可以選擇包括帳號或唯一的交易參考號，以便將交易追溯到匯款人和受款人。在這種情況下，金融機構應在收到受款金融機構或權責機關（即中央銀行、FSC和COA）要求時，於3個工作日內提供資訊。但是，LEA能夠強制要求立即提供此等資訊，並由金融機構作出相應的回應。

240. **Criterion 16.7** - Banking business and credit department are required to maintain all information on the originator and the beneficiary. Pursuant to Article 8 of MLCA, it requires FIs to maintain all necessary records on transactions, both domestic and international, for a period of at least 5 years after the date of the transaction, unless a longer record keeping term is required by other laws.

**標準 16.7** 銀行業和信用部必須保留匯款人和受款人的所有資訊。根據洗錢防制法第8條要求，金融機構在交易日期之後的至少5年內保留國內和國際交易的所有必要紀錄，除非其他法律要求更長的紀錄保存期限。

241. **Criterion 16.8** - When there are failures to comply with the abovementioned obligations, FIs are not allowed to engage in wire transfer business according to the abovementioned directions.

**標準 16.8** 當未能遵守上述義務時，金融機構按照上述要點規定不得從事電匯業務。

242. **Criterion 16.9** - Point 4(1)(3)(1) of the Directions on FX requires intermediary FI to retain all the wire transfer originator and beneficiary information accompanying the wire transfer.

**標準 16.9** 銀行業辦理外匯業務作業規範第4點第1項第3款第1目要求中介金融機構保留電匯所附的所有匯款人和受款人資訊。

243. **Criterion 16.10** - Where technical limitations prevent this with a domestic transfer, intermediary FI needs to keep record for 5 years with all of the information according to point 4(1)(3)(2) of the Directions on FX.

**標準 16.10** 若因技術限制，使得附隨於跨境電匯之匯款人或受益人資訊無法繼續保留在國內的相關電匯中，則中介金融機構依據銀行業辦理外匯業務作業規範第4點第1項第3款第2目規定，對於所有相關資訊應留存紀錄至少5年。

244. **Criterion 16.11** - Point 4(1)(3)(3) of the Directions on FX requires intermediary FI to take reasonable measures to identify cross border wire transfers that lack the required information.

**標準 16.11** 銀行業辦理外匯業務作業規範第4點第1項第3款第3目要求中介金融機構應採取合理措施，以辨識缺少所需資訊之跨境電匯。

245. **Criterion 16.12** - According to point 4(1)(3)(3) (where point 4(1)(2)(3) mutatis mutandis applies) of the Directions on FX required intermediary FI to have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking originator or beneficiary information, and when to take the appropriate action.

**標準 16.12** 銀行業辦理外匯業務作業規範第4點第1項第3款第3目(準用第4點第1項第2款第3目)要求中介金融機構建立基於風險的政策和程序，以確定何時執行、拒絕或暫停缺少匯款人或受款人資訊的電匯，以及何時採取適當的行動。

246. **Criterion 16.13** - Point 4(1)(3)(3) of the Directions on FX obliges beneficiary FI to take reasonable measures, including post-event monitoring or real-time monitoring where feasible, to identify wire transfers that lack the required originator or beneficiary information.

**標準 16.13** 銀行業辦理外匯業務作業規範第 4 點第 1 項第 3 款第 3 目規定要求受款金融機構應採取合理措施，包括可行的事後或即時監控，以辨識缺少所需匯款人和受款人資訊的電匯。

247. **Criterion 16.14** - Beneficiary FI of cross-border transfer shall verify the identity or primary registration data of the customer (which is the beneficiary) and ensure that supporting documents comply with the regulations on all cross-border transfers. The beneficiary FI is required to do so regardless of whether the identity of the beneficiary has been previously confirmed (according to point 4 of the Directions on FX). The retention period as same as c.16.7 is also applied.

**標準 16.14** 跨境匯款的受款金融機構應確認客戶（受款人）的身分或主要登記資料，並確保證明文件符合所有跨境匯款的規定。無論受款人的身分是否事先得到確認（根據銀行業辦理外匯業務作業規範第 4 點），受款金融機構都需如此進行。紀錄保存期間與標準 16.7 規範一致。

248. **Criterion 16.15** - For foreign currency transfer (both domestic and cross-border), point 4(1)(2)(3) of the Directions on FX require beneficiary FI to have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking originator or beneficiary information, and when to take the appropriate action.

**標準 16.15** 對於外幣匯款（國內和跨境），銀行業辦理外匯業務作業規範第 4 點第 1 項第 2 款第 3 目規定要求受款金融機構應建立以風險為基礎的政策和程序，以確定何時執行、拒絕或暫停缺少匯款人或受款人資訊的電匯，以及何時採取適當的行動。

249. **Criterion 16.16 and 16.17** - Only banks are allowed to provide remittance services, both foreign and NTD currency, under Article 29 of the Banking Act and electronic payment institutions are allowed to engage in the business of transferring funds, in NTD only, between e-payment accounts pursuant to Article 3 and 44 of the Act Governing Electronic Payment Institutions. Both of them need to follow requirements in this recommendation as mention in previous criterions. As outlined in Recommendation 14, there are no other licensed MVTs providers in Chinese Taipei.

**標準 16.16 和 16.17** 根據“銀行法”第 29 條，僅銀行被允許提供外幣和新臺幣的匯款服務，電子支付機構根據電子支付機構管理條例第 3 條及第 44 條被允許從事電子支付帳戶之間的轉帳（僅限新臺幣）業務。這些行業都需要如之前的標準所述，遵循此建議中的要求。除此之外，無其他 MVTs 提供商。

250. **Criterion 16.18**- In the context of conducting wire transfers, FIs are obliged to take freezing action and comply with prohibitions from conducting transactions with designated persons and entities under UNSCRs 1267 and 1373, and their successor resolutions, according to Article 7(1), of the CTF Act.

**標準 16.18** 依據資恐防制法第 7 條第 1 項規定，金融機構有義務採取凍結行動並遵守聯合國安理會第 1267 號及第 1373 號與其等後續決議案。

## Weighting and Conclusion

### 權重與結論

251. **Recommendation 16 is compliant.**

建議第 16 項的評等為遵循。

### Recommendation 17 - Reliance on third parties

#### 建議第 17 項-依賴第三方

252. In its 2007 MER Chinese Taipei was rated compliant with the former R.9.



中華臺北 2007 年 MER 前建議第 9 項被評為遵循。

253. **Criterion 17.1** FIs in Chinese Taipei are permitted to rely on third-parties to perform verification of customers, beneficial ownership and/or a potential business relationship's purpose. Art 7(1) of the AML Regulations of FIs states such FIs bear ultimate responsibility for these CDD measures. It also requires FIs to be able to (a) immediately obtain necessary CDD information, (b) should take adequate steps to satisfy that copies of identification and other relevant documentation for CDD requirements will be made available from the third-party without delay upon request, and (c) shall ensure the third-party is regulated, supervised and monitored, and has appropriate CDD and record-keeping measures in line with R.10 and 11. Art 7 of the Regulations Governing AFIs requires Agricultural FIs to perform their own CDD, but if permitted by law 'or the Council' then they remain ultimately responsible for CDD measures and must comply with a set of provisions identical to Art 7(1) of the Regulations Governing AML of FIs.

**標準 17.1-**中華臺北金融機構得依賴第三方執行辨識及驗證客戶本人身分、實質受益人身分或業務關係之目的及性質。金融機構防制洗錢辦法第 7 條第 1 項規定，該等金融機構仍應負確認客戶身分之最終責任。亦規定金融機構應能(a)立即取得確認客戶身分所需資訊，(b)應採取符合金融機構本身需求之措施，確保所依賴之第三方將依金融機構之要求，毫不延遲提供確認客戶身分所需之客戶身分資料或其他相關文件影本，及(c)確認所依賴之第三方受到規範、監督或監控，並有適當措施遵循建議第 10 項及建議第 11 項之確認客戶身分及紀錄保存之相關規範。農業金融機構防制洗錢辦法第 7 條規定農業金融機構確認客戶身分作業應自行辦理，如法令或農委會另有規定，農業金融機構得依賴第三方並負確認客戶身分之最終責任，且應遵守金融機構防制洗錢辦法第 7 條第 1 項相同的條文規定。

254. **Criterion 17.2** - Art 7(1,4) of the Regulations Governing AML of AFIs requires FIs which rely on third parties to conduct CDD to ensure their respective jurisdictions are subject to AML/CFT regulations consistent with FATF standards. FSC issued an instruction to FIs stipulating what information on jurisdictional risk FIs are permitted to use as a basis for their own assessment of ML/TF jurisdictional risk. The FSC supervision handbook includes a regular check on whether FIs have considered jurisdictional risk as part of their ERA.

**標準 17.2-**農業金融機構防制洗錢辦法第 7 條第 1 項第 4 款規定，金融機構依賴第三方進行 CDD，應確認所依賴之第三方之所在地，其防制洗錢及打擊資恐規範與防制洗錢金融行動工作組織所定之標準一致。FSC 已向金融機構發布指示，說明金融機構得運用哪些國家風險之資料作為其本身的洗錢/資恐國家風險之評估基礎。FSC 監理手冊內容包含應定期檢核金融機構是否將國家風險納入其機構風險評估中考量。

255. **Criterion 17.3** - FIs subject to consolidated/group supervision are banks, futures, insurance and securities, but there is no discrete procedure for third parties that are of the same financial group and as such FIs are not permitted to accord a different requirement with respect to third parties relied upon for CDD measures that are part of the same financial group.

**標準 17.3-**受合併/集團監管的金融機構是銀行、期貨、保險和證券，但對於屬於同一金融集團的第三方，沒有特別另訂的程序，因此金融機構依賴屬於同一金融集團之第三方進行 CDD，不得提出不同的要求。

### Weighting and Conclusion

#### 權重與結論

256. **Recommendation 17 is rated compliant.**

建議第 17 項評等為遵循。

## Recommendation 18 – Internal controls and foreign branches and subsidiaries

### 建議第 18 項 - 內控及國外分支機構和子公司

257. Chinese Taipei was rated largely compliant with former R.22. Insurance and securities sectors were not explicitly required to pay particular attention to their branches and subsidiaries in countries which did not sufficiently apply the FATF Recommendations. There were no formal obligation on FIs relating to managing differences in AML/CFT requirements between home and host regulators.

中華臺北之前 R.22 被評為大部分遵循。保險業及證券業未明確要求該行業應特別留意位於其他未能或未充分遵循 FATF 建議之國家的分行及子公司。對金融機構管理所屬分行及子公司於母國與所在國 AML/CFT 要求有所不同時，未規範相關義務。

258. **Criterion 18.1** - Article 6, paragraph 1 of MLCA requires FIs to establish their own policies and procedures against ML which shall include operational and internal control procedures against ML and TF, regular on-the-job training for ML prevention organized or attended by the FI, designation of personnel responsible for coordinating and supervising the implementation of the policies and procedures.

**標準 18.1** - 洗錢防制法第 6 條第 1 項要求金融機構應建立洗錢防制政策及程序，其內容應包括防制洗錢及打擊資恐之作業及內控程序、定期舉辦或參加防制洗錢之在職訓練、指派專責人員負責協調監督其政策及程序之執行。

259. There are four regulations issued pursuant to Art.6, para.3 of MLCA which were enforced on 9 November 2018 namely the Regulations Governing internal Audit and Internal control system of AML/CFT of Banking Business and other FIs designated by FSC, Regulations Governing internal Audit and Internal control system of AML/CFT of Financial Leasing Enterprises, Regulations Governing internal Audit and Internal control system of AML/CFT of Securities Business and other FIs designated by FSC, and the Regulations Governing internal Audit and Internal control system of AML/CFT of Insurance companies, Post offices Engaging in Simple Life Insurance Business and other FIs designated by FSC ('Regulations for Internal Controls for Banking, Securities, Insurance and Financial Leasing Companies').

有 4 項法規係根據洗錢防制法第 6 條第 3 項訂定，於 2018 年 11 月 9 日生效施行，包括：銀行業及其他經金融監督管理委員會指定之金融機構防制洗錢及打擊資恐內部控制與稽核制度實施辦法、辦理融資性租賃業務事業防制洗錢及打擊資恐內部控制與稽核制度實施辦法、證券期貨業及其他經金融監督管理委員會指定之金融機構防制洗錢及打擊資恐內部控制與稽核制度實施辦法、保險公司與辦理簡易人壽保險業務之郵政機構及其他經金融監督管理委員會指定之金融機構防制洗錢及打擊資恐內部控制與稽核制度實施辦法等有關銀行業、證券業、保險業和融資性租賃業務事業之內部控制規定。

260. There is also a direction issued by COA on internal control system for AML/CFT of credit departments of farmers' and fishermen's associations. Item 9 indicates sanction of any violation of the direction as referred to Art. 33 of the Agricultural Finance Act.

另有一項由行政院農業委員會發布的農會漁會信用部防制洗錢及打擊資恐內部控制要點，其第 9 點明定違反該要點所定事項，將依農業金融法第 33 條處分。

261. The Regulations for Internal Controls for Banking, Securities, Insurance and Financial Leasing Companies (in Art.6 for Banking and Art.4 for other sectors) require that the AML/CFT internal control system of banking, securities and insurance sectors including financial leasing companies shall be approved by the board of directors (council) and the AML/CFT program should establish based on ML/TF risks and business size. The details of AML/CFT program should include (i) an appointment of compliance officer at the management level in charge of AML/CFT compliance matters, (ii) an employee screening and hiring procedure, (iii) an ongoing employee training program and (iv) an independent audit function to test the effectiveness of AML/CFT systems. More detailed requirements are in Art.7 for Banking, Art.5 for financial leasing and securities and Art.6

for insurance sector, which require dedicated AML/CFT units and adequate staff. Art.9 for Banking, Art.6 for financial leasing, Art.7 for securities and Art.8 for insurance sector require FI to establish screening procedures to ensure high standards when hiring employees. The direction issued by COA contains equivalent requirements in Item 5, 6, 7 and 8.

銀行、證券、保險和融資性租賃業務事業的內部控制與稽核制度實施辦法規定（銀行業於第 6 條，其他產業於第 4 條）要求該等產業的 AML/CFT 內部控制制度應經董(理)事會批准，並根據 ML / TF 風險和業務規模建立 AML / CFT 計畫，細節應包括 (i) 指定 AML/CFT 主管負責遵循事宜、(ii) 員工遴選及任用程序、(iii) 持續性員工訓練計畫、(iv) 測試 AML/CFT 制度有效性之獨立稽核功能。更詳細的要求參見銀行業實施辦法第 7 條、融資租賃及證券業實施辦法第 5 條及保險業實施辦法第 6 條，有配置 AML/CFT 專責單位與人員的規定。銀行業實施辦法第 9 條、融資租賃業實施辦法第 6 條、證券業實施辦法第 7 條及保險業實施辦法第 8 條，則有要求應確保建立遴選及任用優質的員工程序。行政院農委會發布的要點在第 5、6、7、8 點亦有類似規定。

262. Article 13 of the Regulation on foreign exchange counters include some element of criterion 18.1 (c). However, it is not reflect all requirements.

外幣收兌處設置及管理辦法第 13 條包括標準 18.1 (c) 的一些要件，但未反映所有要求。

263. **Criterion 18.2** -According to Regulations for Internal Controls for Banking, Securities, Insurance and Financial Leasing Companies (in Art.6 for Banking and Art.4 for financial leasing and securities and Art.5 for insurance sector) require banking, securities and insurance sectors including financial leasing companies to establish a group-level AML/CFT programs to be implemented within the financial group. The program includes policies and procedures for sharing information within the group as required for the purposes of CDD and ML/TF risk management include information and analysis of transactions or activities which appear unusual and adequate safeguards on the confidentiality to prevent tipping-off.

**標準 18.2** - 銀行、證券、保險和融資租賃業的實施辦法規定（銀行業於第 6 條、融資租賃及證券業於第 4 條，保險業於第 5 條）要求該等產業應建立集團整體性防制洗錢及打擊資恐計畫，並在金融集團內實施。該計畫包括為 CDD 與洗錢及資恐風險管理目的所需之集團內資訊分享政策及程序，並應包括異常交易或活動之資訊及所為之分析及妥善的防範資料洩露之安全防護措施。

264. **Criterion 18.3** - FIs are required to ensure that their foreign branches or subsidiaries apply AML/CFT measures consistent with the head office/parent company's requirements. Where the minimum AML/CFT requirements of the host jurisdiction and home jurisdiction are different, the branches or subsidiaries shall follow the criteria which are higher. If the host jurisdiction does not permit the proper implementation of AML/CFT measures consistent with the home jurisdiction requirements, appropriate additional measures should be taken to manage the ML/TF risks and report shall be made to FSC (Regulations for Internal Controls for Banking, Securities, Insurance and Financial Leasing Companies, Art. 6, para.5 for banking, Art.4, para.5 for financial leasing and securities and Art. 5, para.5 for insurance sectors). This criterion is not applicable to Agricultural FIs and Foreign Exchange Counters as they do not have foreign branches or subsidiaries.

**標準 18.3** - 金融機構應確保其國外分公司(或子公司)，在符合當地法令情形下，實施與總公司（或母公司）一致之防制洗錢及打擊資恐措施。當總公司（或母公司）與分公司（或子公司）所在國之最低要求不同時，分公司（或子公司）應就兩地選擇較高標準者作為遵循依據；倘因外國法規禁止，致無法採行與總公司（或母公司）相同標準時，應採取合宜之額外措施，以管理洗錢及資恐風險，並向 FSC 申報（見銀行、證券、保險和融資租賃內控辦法規定，銀行業於第 6 條第 5 項，融資租賃及證券業於第 4 條第 5 項，保險業於第 5 條第 5 項）。此 18.3 標準不適用於農業金融機構及收兌處，因為其無海外分支機構。

## Weighting and Conclusion

### 權重與結論

265. There are minor gaps in relation to internal control obligations for foreign exchange counters. **Recommendation 18 is largely compliant.**



在外幣收兌處有關的內控義務方面有微小落差。建議第 18 項評等為大部分遵循。

## Recommendation 19 – Higher-risk countries

### 建議第 19 項-高風險國家

266. In its 2007 MER Chinese Taipei was rated non-compliant with the former R.21 as obligations were not in place.

中華臺北 2007 年 MER 前建議第 21 項評等為未遵循，因為沒有規定。

267. **Criterion 19.1** -Article 11 of MLCA allows the competent authorities in charge of FIs to spontaneously or in response to reports submit by MJIB, apply further requirements on FIs proportionate to the risks from countries for which this is called for by the FATF. Article 11(2)(1-3) sets out that high-risk countries or regions include (a) countries or areas where major flaws are detected in its counter-ML and TF efforts, according to announcements issued by international AML organizations<sup>13</sup>, (b) countries or regions where advice of international AML organizations are not followed or not fully followed, according to announcements issued by international AML organizations<sup>14</sup>.

**標準 19.1**-洗錢防制法第 11 條規定，金融目的事業主管機關得自行或經法務部調查局通報，對 FATF 呼籲之高風險國家採取與風險相稱之措施。第 11 條第 2 項第 1 至 3 款規定高風險國家或地區包括(a)經國際防制洗錢組織公告防制洗錢及打擊資恐有嚴重缺失之國家或地區<sup>13</sup>，(b)經國際防制洗錢組織公告未遵循或未充分遵循國際防制洗錢組織建議之國家或地區<sup>14</sup>。

268. **Criterion 19.2** -Article 11 of MLCA includes an enabling provision for the competent authorities in charge of FIs to apply countermeasures proportionate to the risks. While not all possible countermeasures are set out in the act, there is a catch all provision for competent authorities to ‘adopt other necessary preventive measures that are effective and proportionate to the risks’ to meet the standard (MLCA Article 11(1)(3)).

**標準 19.2**-洗錢防制法第 11 條規定，金融目的事業主管機關得採取與風險相稱之措施。但該法並未明定所有可能的反制作為，而是訂定概括條款，使主管機關得採取其他與風險相稱且有效的必要防制措施，以符合標準之要求(洗錢防制法第 11 條第 1 項第 3 款)。

269. **Criterion 19.3** - MJIB is the competent authority responsible for maintaining and promptly updating a list of countries mentioned in Article 11 of MLCA. MJIB forwards the list to the competent authorities for FIs and DNFBPs. Article 11(2)(3) allows MJIB and other competent authorities to identify other countries or areas where high risks of ML and TF are confirmed by sufficient evidence, which could apply to countries of concern going beyond the FATF lists.

**標準 19.3**-法務部調查局是負責維護並即時更新洗錢防制法第 11 條所述國家清單之權責機關。法務部調查局將清單通報予金融目的事業及指定之非金融事業或人員之主管機關。第 11 條第 2 項第 3 款允許法務部調查局因其他有具體事證認定有洗錢及資恐高風險之國家或地區，該條款得適用於 FATF 清單以外之有疑慮國家的情況。

## Weighting and Conclusion

### 權重與結論

270. **Recommendation 19 is compliant.**

建議第 19 項為遵循。

<sup>13</sup> Referred to public statement issued by FATF or other bodies. 指 FATF 或其他組織所公告。

<sup>14</sup> Referred to the list of jurisdictions subject to FATF’s global on-going AML/CFT compliance process or other lists. 指 FATF 全球 AML/CFT 遵循進展的國家清單，或其他清單。



**Recommendation 20 – Reporting of suspicious transaction****建議第 20 項-申報疑似洗錢或資恐交易**

271. In its 2007 MER Chinese Taipei was rated partially compliant with former R.13 and non-compliant SR IV. There was no legal requirement to file STRs or attempted transactions, and TF was not covered. Chinese Taipei's progress on ML-related STR reporting was upgraded in APG follow-up to a level equivalent to LC in 2011. However, the deficiency still remained for TF-related STR reporting.

中華臺北在 2007 年的相互評鑑報告中，前第 13 項建議被評為部分遵循，SR IV 被評為未遵循，因為當時沒有申報可疑或未遂交易的法律規定，且範圍尚未涵蓋資恐。中華臺北在洗錢相關的可疑交易報告進展在 APG 追蹤報告中至 2011 年評等提升為大部分遵循。然而，與資恐相關的可疑交易報告仍然存在缺失。

272. **Criterion 20.1** - Article 10 of the MLCA obliges FIs to report all suspicious transactions, including attempted transactions which may involve ML or unexplained wealth offences to the MJIB. With the exception of smuggling of migrants, all related predicate offences are provided for in the MLCA, including an explicit obligation to report suspicion of laundering the proceeds of terrorism or TF. While the obligation relates to suspicious transactions related to ML, there is no direct obligations to report suspicion that funds are the proceeds of criminal activity or relate to TF, even if no transaction has occurred.

**標準 20.1**--洗錢防制法第 10 條規定金融機構須向法務部調查局申報可疑交易報告，包含涉及洗錢或財產來源不明的犯罪之未遂交易，除了人口販運外，所有相關的前置犯罪皆有規定在洗錢防制法中，包含申報疑似恐怖主義之不法所得的洗錢或資恐。雖然該義務涉及申報與洗錢有關的可疑交易，但在懷疑資金是否與恐怖活動的不法所得或資恐有關時，則無直接的申報義務，即便未發生交易的情形也是。

273. Article 10(3) of the MLCA provides that the central competent authorities shall establish the regulations governing the scope, methods and procedures of the reporting of STRs required by paragraph 1. Article 10(5) of the MLCA imposes a fine of NTD 500,000 to 10 million on FIs (up to approximately USD 330,000) on breach of the obligation of 10(1), and the regulations issued in accordance with 10(3). The Regulation Governing AML of FIs gives effect to Article 10(3) of the MLCA. Article 15 of the Regulation references an obligation to file reports on 'suspicious ML/TF transactions'. The obligation in the regulation was demonstrated to cover TF, even in the absence of an explicit obligation to report STRs for TF in the MLCA.

洗錢防制法第 10 條第 3 項規定主管機關應訂定第一項申報可疑交易報告之申報範圍、方式、程序。洗錢防制法第 10 條第 5 項規定違反第 1 項規定或第 3 項所定辦法中有關申報之範圍、方式、程序之規定者，由中央目的事業主管機關處金融機構新臺幣 50 萬元以上 1000 萬元以下罰鍰。中華臺北頒佈金融機構防制洗錢辦法，以落實洗錢防制法第 10 條第 3 項規定，其中同法第 15 條揭示申報洗錢/資恐交易。該義務涵蓋資恐申報規定，即便缺少明確向主管機關申報與資恐相關 STRs 的義務。

274. The Regulation sets out the timeline for reporting, the form and nature of reporting, but does not add any further details regarding the nature of suspicion. The regulations oblige FIs to report the suspicion to the AMLD within two business days after approval by the chief compliance officer. Directions require reporting obligations to file related CDD and transactions data that may have formed part of or be related to the STR.

該辦法規定申報的時間及報告的形式和性質，但對於可疑內容的性質，則未提供任何進一步細節。法規要求金融機構對於可疑交易的申報，須在法遵主管批准後的 2 個工作日內，向 AMLD 申報。申報規定要求申報機構所申報之 STR 內容，需包含案關之 CDD 及交易明細資料。

275. Article 11 of the Regulations Governing the Establishment and Administration of Foreign Currency Exchange Counters issued under the Central Bank Act require foreign exchange counters to file STRs related to some aspects of ML and TF. Art. 11 provides a range of objective and subjective

factors as a basis for suspicion. However the obligation does not extend to all instances where a foreign currency counter suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to TF. The report is not made directly to the AMLD, but to the BoT (as the regulator) and the Regulation Governing the Establishment and Administration of Foreign Currency Exchange Counters requires the BoT to report it to the AMLD within 10 days upon the suspicious transaction is discovered by the foreign currency exchange counter. This timeframe does not satisfy the requirement of prompt reporting.

根據“中央銀行法”制定的“外幣收兌處設置及管理辦法”第 11 條要求外幣收兌處辦理外幣收兌業務時，對於疑似洗錢或資恐之交易，應申報可疑交易報告。第 11 條提供一系列客觀和主觀指標作為判斷的依據。然而，該義務未延伸到外幣收兌處懷疑或有合理理由懷疑資金是犯罪所得或與資恐有關的所有情況。此外，該報告並非直接向調查局洗錢防制處申報，而是向台灣銀行（依據外幣收兌處設置及管理辦法作為監理機構）提出，而外幣收兌處設置及管理辦法規定台灣銀行必須在外幣收兌處發現可疑交易後的 10 日內，向調查局洗錢防制處申報。這種通報時間不符合及時申報的要求。

276. **Criterion 20.2** - FIs are required to report suspicious and attempted transactions. Article 9 of the Regulation requires FIs to monitor accounts or transactions for suspicion and provides some processes that would generate and make use of indicators of suspicion and patterns monitoring to allow FIs to identify cases of suspicion and to file ‘suspicious of ML/TF transactions’. The Regulation is explicit that in the case of STRs generated from the monitoring processes set out at article 9, then the STR should be filed regardless of whether the transaction was completed or not (this may be something other than attempted transactions). Additionally, there is no explicit provision for attempted transactions related to TF.

**標準 20.2** - 要求金融機構申報可疑及未遂交易。金融機構防制洗錢辦法第 9 條規定要求金融機構監控可疑帳戶或交易，並提供一些作業程序，以產生和利用可疑表徵的監控指標，以便金融機構辨識可疑案件並申報“疑似洗錢或資恐的交易”。該辦法明確規定，對於根據第 9 條規定，在監控過程產生的可疑交易報告，無論交易是否完成，都應申報可疑交易報告（然而這可能不是未遂交易）。另外，沒有明確規定與資恐相關的未遂交易應否申報。

277. Article 11 of the Regulations Governing the Establishment and Administration of Foreign Currency Exchange Counters requires foreign exchange counters to report incomplete transactions that would otherwise be STRs and include a description of customers’ special features and the transaction process.

外幣收兌處設置及管理辦法第 11 條要求外幣收兌處申報未完成交易的可疑交易報告，包括客戶特殊表徵的描述以及交易過程。

## Weighting and Conclusion

### 權重與結論

278. While STR obligations do not appear to cover the proceeds of migrant smuggling, this is not given weight. While the obligation relates to suspicious transactions related to ML, there is no direct obligations to report suspicion that funds are the proceeds of criminal activity or relate to TF, even if no transaction has occurred. There are minor shortcomings with STR reporting on foreign exchange counters related to the prompt filing and incomplete transactions. **Recommendation 20 is rated largely compliant.**

申報可疑交易報告的義務未包含人口販運，而這項權重沒有很重。雖然有申報涉及與洗錢有關的可疑交易報告之義務，但就資金疑似犯罪所得或與資恐有關，即使交易未發生，則無直接規定需進行申報。外幣收兌處就即時申報 STR 和未完成交易之規定仍存在輕微缺失。**建議第 20 項為大部分遵循。**

**Recommendation 21 – Tipping-off and confidentiality****建議第 21 項 – 揭露與保密**

279. In its 2007 MER Chinese Taipei was rated compliant with former R.14.

中華臺北在 2007 年的 MER 中，前 R.14 被評等為遵循。

280. **Criterion 21.1** - Paragraph 2 of article 10 of the MLCA confirms that FIs (including responsible persons, directors, managers, and employees of such institutions or businesses) are exempted from business confidentiality obligation when they report suspicion to the FIU. However, there is no explicit provision to support that the protection shall be made available even if the person filing the report did not know precisely what the underlying criminal activity was, and regardless of whether the illegal activity actually occurred. Article 11 of the Regulation on Foreign Exchange Counters exempts currency exchange counters from confidentiality obligations when reporting STRs. However, the regulation does not explicitly extend this safe harbour from liability to the directors, officers and employees.

**標準 21.1** – 洗錢防制法第 10 條第 2 項規定，金融機構（包括該機構或事業的負責人、董事、經理人和職員）在向金融情報中心申報可疑交易報告時，免除其業務上應保密之義務，但無明確規定即使申報人不確切知道所涉及犯罪活動為何，亦不清楚非法活動是否已實際發生等情況，也應保護使其免除保密義務。依外幣收兌處設置及管理辦法第 11 條規定，外幣收兌處申報可疑交易報告時，免除其保密義務，但是該辦法並未明確將免除保密義務擴及至董事，高級職員和員工（安全港條款）。

281. **Criterion 21.2** - Article 17 of the MLCA prohibits disclosing or delivering documents, pictures, information, or objects relating to reported transactions. The range of sanctions are imprisonment not more than two years, detention, or a fine of not more than NT\$500,000. Article 12 of the Regulation on Foreign Exchange Counters establishes that information of customers gathered in the exchange business shall be kept confidential, unless otherwise provided by law. The regulation is not explicit that reporting of suspicion of ML to the FIU shall also be kept confidential. The prohibition does not extend to include officers and directors when they disclose that an STR is sent to the AMLD.

**標準 21.2** - 洗錢防制法第 17 條禁止洩露或交付與申報交易有關的文書、圖畫、消息或物品，刑責為兩年以下有期徒刑、拘役或新臺幣 50 萬元以下的罰金。依據外幣收兌處設置及管理辦法第 12 條規定，因辦理收兌業務所蒐集客戶之資訊，除其他法律另有規定者外，應保守秘密。該辦法並未明確規定向金融情報中心申報可疑洗錢的行為也應予以保密，該禁止規定亦未擴及至包括職員和董事向洗錢防制處申報可疑交易報告時亦需一併適用。

**Weighting and Conclusion –****權重與結論**

282. While the MLCA and Foreign Exchange Counter Regulation extend safe harbour and elements of tipping off, there are minor shortcomings in relation to explicit prohibition on tipping off by foreign exchange counters. **Recommendation 21 is rated largely compliant.**

雖然洗錢防制法和外幣收兌處設置及管理辦法擴大安全港條款和揭露的要件，在明確禁止外幣收兌處揭露的規定仍存在輕微缺失。**建議第 21 項為大部分遵循。**

**Recommendation 22 – DNFBPs: Customer due diligence****建議第 22 項-DNFBPs: 客戶審查**

283. In its 2007 MER Chinese Taipei was rated non-compliant with the former R.12 as dealers in precious metals and stones were the only category of DNFBPs covered under the MLCA. CDD and



record keeping obligations only applied for cash transactions above US\$31,000. Requirements on those few covered DNFBP fell substantially short of the requirements in R 5, 6, 8-11 and 17.

中華臺北 2007 年 MER 當中，前建議第 12 被評為未遵循，因為當時僅銀樓業者納入於洗錢防制法 DNFBPs 類別中。客戶審查和紀錄保存的範圍僅適用於 31,000 美元以上的現金交易。對這幾項涵蓋 DNFBP 的要求大幅低於建議第 5、6、8-11 和 17 項的要求。

### Criterion 22.1

#### 標準 22.1

284. Eight new regulations covering CDD and other obligations for each DNFBP sector entered into force on 9 November 2018. These are referenced in each of the criteria below.

8 個新的規定於 2018 年 11 月 9 日生效，涵蓋每個 DNFBP 產業的 CDD 和其他義務。以下每個標準均引用新法規。

285. **22.1 (a)** - Casinos are prohibited under Chapter 21 of the Criminal Code.

**22.1(a)**-刑法第 21 條規定禁止經營賭場

286. **22.1 (b)** - CDD requirements are set out in *Regulations Governing AML/CFT for Land Administration Agents and Real Estate Brokerages*. MOI is the regulator of land administration agents and real estate brokerages. Under Art.7, land administration agents and real estate brokerages are required to verify the identity of the customers when conducting a real estate transaction, or establishing a business relationship, or discovering suspicious acts of ML or TF, or having doubts about the veracity of the previously obtained customer identification.

**22.1(b)** “地政士及不動產經紀業防制洗錢及打擊資恐辦法”有關於 CDD 的規定。內政部地政司 (MOI) 是地政士及不動產經紀人的主管機關。根據上開辦法第 7 條規定，地政士及不動產經紀人在進行不動交易，建立業務關係時，如發現可疑的 ML 或 TF 行為，或懷疑之前已取得客戶資料的真實性時，都必須檢核客戶的身分。

287. The regulations also contain some CDD requirements that partly in line with Rec 10. There are, however, some shortcomings. (1) The definition of ‘business relationship’ in Art.2,6. is limited to having conducted three or more real estate transactions for the same customers within 5 years. This means the obligation to understand and, as appropriate, obtain information on, the purpose and intended nature of the business relationship (c.10.6) and to conduct ongoing due diligence on the business relationship (c. 10.7) are required only when meet with such condition. (2) There are no explicit requirements to understand the nature of the customer’s business and its ownership and control structure (c. 10.8). (3) There are no specific requirements regarding timing of verification (c. 10.14&10.15). (4) The regulation requires that land administration agents and real estate brokerages shall decline the transaction and file STR to MJIB concerning some circumstances (Art.9&15). However, there is no explicit requirement regarding incomplete CDD (c. 10.19) and tipping-off to be in keeping with c. 10.20.

該辦法的 CDD 要求部分符合建議第 10。但是仍有一些缺失，即 (1) 第 2 及 6 條規定中的“業務關係”之定義，是否限制在 5 年內為同一客戶進行三次或更多次的不動產交易，這意味著業者有義務了解及在適當情況下取得與業務關係之目的及業務性質等資訊 (c.10.6)；在滿足某些條件時，需對業務關係進行持續性的客戶調查 (c.10.7)。(2) 未明確要求了解客戶業務的性質及其所有權和控制結構 (c.10.8)。(3) 對確認時機無具體要求 (c.10.14 和 10.15)。(4) 要求地政士和不動產經紀人在某些情況下拒絕交易並向洗錢防制處申報 STR (第 9 條和 15 條)。但是，對於無法充分完成 CDD (c.10.19) 和揭露時 (c.10.20) 無明確的要求。

288. **22.1(c)** - *The Regulations Governing the Implementation and Report of AML/CFT for Jewellery Businesses* contain CDD requirements when engaging in any cash transaction with a customer at NTD 500,000 or above (equivalent to USD/EUR 15,000) (Art.4, para. 2). There are major shortcomings regarding CDD requirements since the regulations require jewellery businesses to obtain the customer’s identification and verify the identity of customer (Art. 4, 1.) and to obtain the agent’s identification (Art. 4, 2.) only. Moreover, enhanced due diligence is only required in the case



of PEPs and their family members or close associates instead of where there is a perceived high risk of ML/ TF. Some CDD obligations are not applicable as all business is conducted with occasional customers.

**22.1(C)** 銀樓業防制洗錢與打擊資恐施行及申報辦法規定，要求銀樓業在與客戶進行任何現金涉及新臺幣為 50 萬元或以上（相當於美元/ 15,000 歐元）（第 4 條第 2 款）之交易時，應遵守 CDD 規定。關於 CDD 要求存在重大缺失，因為法規要求銀樓業應取得客戶的身分證明並驗證客戶的身分（第 4 條第 1 項），在有代理人情況時，應取得代理人的身分證明（第 4 條第 1 項第 2 款）。此外，只有在具有 PEPs 及其家庭成員及有密切關係之人的情況下，才需要進行 EDD，而非認為有 ML / TF 高風險的情況下，即啟動 EDD。因為銀樓業的所有業務都是臨時性客戶，所以有些 CDD 規定未適用。

289. **22.1(d)** - Notaries, Attorneys, Certified Public Accountants and Certified Public Bookkeepers and Bookkeeping and Tax Return Filing Agents are required to implement AML/CFT measures according to MLCA (Art. 5,) when they prepare for or carry out transactions for their client concerning the following activities:

- buying and selling of real estate;
- managing of client money, securities or other assets;
- management of bank, savings or securities accounts;
- organization of contributions for the creation, operation or management of companies; or
- creating, operating or management of legal persons or arrangements

However, in the case of notaries, the obligation does not include when they create, operate, or manage a buying and selling of business entities.

**22.1 (d)** 公證人、律師、會計師、記帳士暨記帳及報稅代理人，在為客戶準備或執行以下活動的交易時，必須根據 MLCA（第 5 條）實施洗錢防制/打擊資恐措施：

- 購買和出售房地產；
- 管理客戶金錢、證券或其他資產；
- 管理銀行、儲蓄或證券帳戶；
- 有關提供公司設立、營運或管理之資金籌劃；或
- 法人或法律協議之設立、營運或管理

但是，對於公證人則未規定創建、營運或管理商業實體的買賣之階段時，需實施反洗錢防制/打擊資助恐怖主義措施。

290. The details of CDD related requirements are in the *Regulations Governing AML/CFT for Notaries (Regulations for Notaries)*, the *Regulations on AML/CFT Operations Matters Conducted by Attorneys (Regulations for Attorneys)*, the *Regulations AML/CFT for Certified Public Accountants (Regulations for CPA)* and the *Regulations on AML/CFT for certified Public Bookkeepers and Bookkeeping and Tax Return Filing Agents (Regulations for Bookkeepers and Tax Filing Agents)*.

CDD 相關要求的細節在“公證人防制洗錢及打擊資恐辦法”（公證人辦法）、“律師辦理防制洗錢及打擊資恐作業辦法”（律師辦法）、“會計師防制洗錢及打擊資恐辦法”（會計師辦法）和記帳士暨記帳及報稅代理人防制洗錢與打擊資恐辦法（記帳士和稅務代理人辦法）。

291. The Regulations for Notaries contain some CDD requirements that partly in line with Rec 10. There are, however, some shortcomings namely (1) no explicit requirement on obtaining information on the purpose and intended nature of the business relationship (c.10.6), (2) no provisions regarding timing of verification (c.10.14-15) and existing customers (c. 10.16) and (3) It requires that notaries shall decline the transaction concerning some circumstances (Art.15). However, there is no explicit requirement regarding incomplete CDD (c. 10.19).

公證人辦法之 CDD 要求，部分符合建議第 10 項的規定。但是仍有一些缺點，即（1）沒有明確要求取得業務關係之目的及業務性質的資訊（c.10.6）。（2）沒有確認時機（c.10.14-15）和既存

客戶 (c.10.16) 之規定。(3) 要求公證人在某些情況下拒絕交易 (第 15 條)，但對於無法充分完成 CDD 則無明確拒絕交易規定 (c.10.19)。

292. The Regulations for Attorneys indicate some requirements that are partly in line with Rec 10 including the requirement on identifying and verifying customer and person who acts on behalf of or authorized to conduct transaction for customer (c.10.3-4), some requirement to review customer identity and specific requirements regarding legal person and arrangement also requirement to obtain BO information of customer who is legal person and legal arrangement (c.10.5, 10.8-11). There are some circumstances that require attorneys to file STR to MJIB (Art.10) but the regulations are silent on other requirements regarding unable to complete CDD (c.10.19).

律師辦法之要求部分符合建議第 10 包括辨識和確認代表或授權為客戶進行交易的客戶和個人之身的要求 (c.10.3-4)，一些規定關於客戶審查以及有關法人和法律協議，應取得 BO 資訊的特定要求 (c.10.5,10.8-11)。在某些情況下，律師應向洗錢防制處申報 STR (第 10 條)，但未就無法充分完成 CDD (c.10.19) 時，亦需申報 STR 之規定。

293. The Regulations for CPA are mostly in line with Rec 10 while there are lack of requirements regarding timing of verification (c.10.14-15).

會計師辦法大部分符合建議第 10，但缺少確認時機之相關規定 (c.10.14-15)。

294. The Regulations for Bookkeepers and Tax Filing Agents contain some requirements on Rec 10. However, there are major shortcomings identified as it lack of the following requirements; (1) the requirements to obtain BO information is partially specified but not exactly in line with C.10.5, 10.10 and 10.11; (2) there is no obligation to understand and, as appropriate, obtain information on, the purpose and intended nature of the business relationship (c.10.6); (3) the requirement on ongoing CDD is not applied to lower-risk circumstance which is not in line with c. 10.7 and 10.18; (4) the regulations are silent on requirements regarding timing of verification (c.10.14-15), existing customers (c.10.16) and tipping-off in keeping with c.10.20.

記帳士暨記帳及報稅代理人辦法的一些要求符合建議第 10。但是缺乏以下要求，而存在重大缺失：(1) 僅有部分取得 BO 資訊的規定，但不完全符合 C.10.5, 10.10 和 10.11 之要求；(2) 無瞭解及在適當狀況下，取得有關業務關係之目的及業務性質等資訊的規定 (c.10.6)；(3) 在低風險的情況下，則無持續進行客戶審查，不符合 10.7 和 10.18 的規定；(4) 法規沒有規定確認時機 (c.10.14-15)，而且既存客戶 (c.10.16) 和揭露的規定與 c.10.20 標準不一致。

295. **22.1 (e)** - while the MLCA provides for coverage of TCSPs, at present there is no trust and company service provider sector beyond lawyers and accounts. As such separate guidelines have not been offered.

**22.1 (e)** 雖然 MLCA 涵蓋範圍包括信託或公司服務提供者，但目前除律師和會計師外，無信託和公司服務提供者，所以未提供個別的指引。

296. **Criterion 22.2-** MLCA obligations (art.8) analysed at Rec 11 apply equally to all covered DNFBPs.

標準 22.2，在建議第 11 項分析的 MLCA 義務 (第 8 條) 同樣適用於所有的 DNFBPs。

297. **Criterion 22.3** - Article 7 of the MLCA obliges all DNFBP to apply a risk based approach to CDD of PEPs, their families and associates. Most of the related regulations mentioned in criterion 22.1 (except for Regulations for Jewellery Businesses and Regulations for Bookkeepers and Tax Filing Agents) contain specific requirement on the scope of the required CDD on PEPs, their family members and close associates. Those regulations, require DNFBPs to conduct EDD, obtaining information regarding the source of funds and continue to monitor transactions.

標準 22.3 MLCA 第 7 條規定，強制所有 DNFBP 對 PEPs 與其家庭成員及有密切關係之人的客戶審查，採取以風險為本的方法。標準 22.1 中提到的大多數相關法規 (《銀樓業辦法》和《記帳士暨記帳及報稅代理人犯法》除外) 對 PEPs 與其家庭成員及有密切關係之人所要求的 CDD 範圍均有具體要求。這些法規要求 DNFBP 進行 EDD，取得有關資金來源的資訊並對持續進行交易監控。

298. **Criterion 22.4** - Only land administrative agent and real estate brokerages and CPAs have requirements regarding new technologies Rec 15.

**標準 22.4** 只有地政士、不動產經紀人和會計師的辦法規定關於建議第 c 15 新科技的要求。

299. **Criterion 22.5** - Only CPA is permitted to rely on third party to conduct CDD. Art. 11 of the Regulations for CPA set the requirements that are in line with Rec. 17.

**標準 22.5**。只允許會計師可仰賴第三方進行 CDD。會計師辦法第 11 條規定符合建議第 17 項的要求。

### *Weighting and Conclusion*

#### *權重與結論*

300. There are a number of shortcomings in relation to the scope of CDD DNFBPs which is given some weight. Controls on PEPs, record keeping and reliance on third parties are mostly covered. The gaps in relation to new technology are given weight, due to the nature of the sectors. **Recommendation 22 is rated partially compliant.**

關於 DNFBPs 的 CDD 範圍具有占評等一定權重的諸多缺失。而 PEPs 的控制、紀錄保存和依賴第三方的規定已大致含括於範圍內依賴。另考量產業特性，與新科技運用的法規落差亦占有權重。**建議第 22 項評等為部分遵循。**

### *Recommendation 23 - DNFBPs: Other measures*

#### *建議第 23 項-DNFBPs:其他措施*

301. In *its* 2007 MER Chinese Taipei was rated non-compliant with the former R.16 as only dealers in precious metals and stones were covered by AML/CFT requirements.

中華臺北在 2007 年的 MER 前建議第 16 的評等為未遵循，因為當時僅銀樓業者納入洗錢防制/打擊資恐的要求。

302. **Criterion 23.1** - Art 10 of the MLCA requires DNFBPs to report suspicious transactions to *the* MJIB on the same basis as FIs (a minor shortcoming related to smuggling of migrants). The findings of Rec 20 apply equally to DNFBPs. It should be noted that the MLCA adds an additional cash transaction reporting obligation on certain DNFBPs.

**標準 23.1** MLCA 第 10 條要求 DNFBPs 應與金融機構採行相同的標準(在人口販運方面有輕微缺失)，向洗錢防制處通報可疑交易。建議第 20 的發現同樣適用於 DNFBPs。但特別注意的是 MLCA 在某些 DNFBPs 業別額外訂有現金交易申報義務之規定。

303. **Criterion 23.2** - Art 6 of the MLCA requires DNFBPs to comply with ICS requirements. Competent authorities have issued regulations under the MLCA, and related directions, to each DNFBP sector governing AML policies and procedures for DNFBPs. These extend to compliance management, screening staff, ongoing employee training and audit. At the time of the onsite visit, DNFBPs in Chinese Taipei did not have group structures or foreign branches and subsidiaries.

**標準 23.2** MLCA 第 6 條規定要求 DNFBPs 應符合內部控制 (ICS) 需要，各 DNFBPs 主管機關已根據 MLCA 和相關法規，向每個 DNFBP 業別發布監理 DNFBP 洗錢防制政策和程序的指引，相關規定延伸至法遵管理、篩選員工、持續的員工培訓和稽核。在現地評鑑時，中華臺北的 DNFBPs 無集團結構、外國分支機構和子公司等。

304. **Criterion 23.3** - Article 11 of MLCA is also applied to DNFBP (see analysis in R. 19).

**標準 23.3** MLCA 第 11 條也適用於 DNFBP(見建議第 19 的分析)。

305. **Criterion 23.4** - Paragraph 2 of article 10 and article 17 of the MLCA are applied to DNFBPs (see analysis in R. 21).

**標準 23.4** MLCA 第 10 條第 2 項和第 17 條適用於 DNFBPs(見建議第 21 的分析)。

## Weighting and Conclusion

### 權重與結論

306. There are **moderate** shortcoming in relation to DNFBPs' STR reporting obligations. **Recommendation 23 is rated largely compliant.**

在 DNFBPs 的 STR 申報義務方面 存在中度缺失。建議第 23 項評等為大部分遵循。

## Recommendation 24 – Transparency and beneficial ownership of legal persons

### 建議第 24 項-法人之透明度和實質受益權

307. In its 2007 MER Chinese Taipei was rated partially compliant with the former R.33. There were no obligations to maintain and make available beneficial ownership information for legal persons.

2007 年中華臺北 MER 對前建議第 33 項評等為部分遵循。沒有要求為法人保存和提供實質受益權資訊的義務。

308. **Criterion 24.1** - the Company Act and the Regulations Governing Company Registration and Recognition provide the mechanisms to identify and describe different types, forms, and features of legal persons in Chinese Taipei. Information on these entities is available to the general public on MOEA website.

**標準 24.1**-公司法及公司登記和認許辦法提供辨識和概述中華臺北法人不同類型、形式和基本特性的機制。有關這些實體的資訊公眾可在經濟部網站查詢。

309. Legal persons are classified as either Associations or Foundations. Associations are generally profit-seeking or for the welfare of the public and include companies, banks, unions, agricultural associations, and other civil associations. Foundations are generally only for the public welfare and include general foundations and specific foundations such as medical foundations, private schools etc.

法人分類為社團或財團。社團通常是追求利益或為了公共利益，包括公司、銀行、工會、農會和其他民間協會。財團通常僅用於公共利益，包括一般財團和特別財團，如醫療財團法人、私立學校等。

310. Four types of legal persons can to be formed under the Company Act:

依公司法可成立下列四種類型法人：

- a) Unlimited company; a company organized by two or more shareholders who bear unlimited joint and several liabilities for discharge of the obligations of the company;  
無限公司：指二人以上股東所組織，對公司債務負連帶無限清償責任之公司；
- b) Limited company: a company organized by one or more shareholders, with each shareholder liable for the company in an amount limited to the amount contributed by that person;  
有限公司：由一人以上股東所組織，每名股東就其出資額為限，對公司負其責任之公司；
- c) Unlimited company with limited liability shareholders: a company organized by one or more shareholders of unlimited liability and one or more shareholders of limited liability; and  
兩合公司：由一個或多個無限責任股東和一個或多個有限責任股東組織的公司；及
- d) Company limited by shares: a company whose shares have been issued in public, closed company, and non-closed company;  
股份有限公司：公司股份已公開發行，又可分為閉鎖性公司和非閉鎖性公司；

311. Foreign companies, which are formed under the laws of another jurisdiction, can be registered under Articles 373 and 374 of the Company Act to undertake business in Chinese Taipei.



根據其他司法管轄區法律成立之外國公司，可依據公司法第 373 條和第 374 條規定註冊在中華臺北經營業務。

312. Other forms of legal persons can be established under the Civil Code, Limited Partnership Act, and Regulations Governing the Application of Limited Partnership Registration as follows:

其他類型法人的設立依據民法、有限合夥法和有限合夥登記申請辦法，分述如下：

- a) Limited partnerships (see Article 9 of the Limited Partnership Act and Regulations governing the Application of Limited Partnership Registration), this includes foreign limited partnerships which are for-profit partnerships formed under the laws of any foreign jurisdiction and having the same rights and obligations as a domestic limited partnership. legal person (domestic or foreign) may be a general partner in a limited partnership provided that it shall designate a natural person as its representative to exercise, on its behalf, the duties of a general partner.;

有限合夥（見有限合夥法第 9 條和有限合夥登記申請辦法），包括以任何外國司法管轄區法律成立的營利性合夥之外國有限合夥，其與國內有限合夥具有相同的權利和義務。法人（國內或國外）可以是有限合夥的普通合夥人，但前提是指定自然人作為其代表，行使普通合夥人的義務。

- b) Government-donated foundations (Articles 59, 60 and 61 of the Civil Code); and

政府捐贈基金會（民法第 59、60 及 61 條）；及

- c) Private-donated foundation.

私人捐贈基金會。

313. The DOC Commercial Industrial Services Portal (CISP) is the company registry and provides detailed information on the legal basis and the process to form and register companies including foreign companies. The processes and procedures for obtaining and recording beneficial ownership information is not however publicly available.

經濟部商業司全國商工行政服務入口網站（CISP）是公司登記機構，提供包括外國公司等公司設立和登記法律基礎與流程的詳細資訊。但取得和記錄實質受益權資訊的流程及程序並非公開。

314. **Criterion 24.2** - Chinese Taipei considered the risk of ML abuse through legal persons as part of its NRA. Some analysis was provided in relation to how a company may be abused for ML including the risk of offshore companies being established to conduct false transactions, the potential use of existing companies for underground remittances, establishment of shell companies and the conversion of foreign investment status to perform false transactions. Further to the NRA, the MOEA issued a more detailed assessment on corporate entities' risk of ML in August 2018. The assessment took into account input from industry (including lawyers, certified public accountants and bookkeepers and tax return filing agents) along with LEAs. Whilst the risk assessment discussed aspects of the risks of legal persons being used for ML, including offshore companies and OBUs, it did not consider the specific ML or TF risk associated with all types of legal persons that can be created in Chinese Taipei, in particular differentiating aspects of their transparency of ownership and control. FSC supplemented the understanding of risk with surveys to banks to ascertain their experience of bearer shares.

**標準 24.2**-中華臺北在國家風險評估中考量透過濫用法人洗錢的風險，提供了一些關於公司如何被濫用於洗錢的分析，包括設立境外公司進行虛假交易的風險、利用現有公司於地下通匯的可能性、設立空殼公司，以及轉換外資身分從事不實交易。繼國家風險評估後，經濟部在 2018 年 8 月對公司實體的洗錢風險發布了一個更為詳細的評估。該評估納入業界（包括律師、會計師和記帳及報稅代理人）及執法機關的資訊。雖然風險評估討論了公司被利用於洗錢的風險面向，包括境外公司和 OBU，但它沒有考慮與所有可在中華臺北設立的法人類型相關的特定洗錢或資恐風險，特別是區分各類型法人的所有權和控制權透明度。金管會透過向銀行進行問卷調查，以確定他們對無記名股票的經驗為何，藉此補充對風險的理解。

*Basic Information**基本資訊*

315. **Criterion 24.3** - the Company Act requires all companies to register details with the MOEA, which makes details of all company registration available to the public, including: name of the company; legal form and status; the address of the registered office; basic regulating powers; and the list of directors. For limited companies however the Articles of Incorporation only includes the number of directors, but not their names (Article 101). For companies limited by shares, the Articles of Incorporation must contain the name of the company, scope of business, total number of shares and par value of each share, location, number of directors and supervisors and their term of office, date of establishment.

**標準 24.3**-公司法要求所有公司向經濟部登記詳細的資訊，以便向公眾提供所有公司登記的詳細資訊，包括：公司名稱；法人形式和地位；登記地址；基本規範權力；和董事名單。但對於有限公司而言，公司章程僅包括董事人數，但不包括其姓名（第 101 條）。對於股份有限公司，公司章程必須包含公司名稱、所營事業、股份總數和股票面額、地址、董事和監事人數及任期、成立日期。

316. Information of corporate registration is provided in the website of the competent authority, the Industrial Commerce Services Portal (article 387 of the Company Act and Form D issued under the same article).

公司登記資訊在主管機關網站，即全國商工行政服務入口網站上提供。（公司法第 387 條和根據該條發布的表格 D）。

317. Art 17 of Limited Partnership Act provides that the registered information shall be made open to the public by the central competent authority including: name of the limited partnership; location of the limited partnership; name of each general partner and capital contribution amount and liability type of each partner; branch(s) of a domestic limited partnership; name of the limited partnership responsible person.

有限合夥法第 17 條規定，登記的資訊應由中央主管機關向公眾公開，包括：有限合夥的名稱；有限合夥的地點；普通合夥人的姓名，各合夥人的出資額和責任類型；國內有限合夥的分支機構；有限合夥負責人的姓名。

318. For foundations, Articles 59-62 of the Civil Code require the purpose, name, principal and branch offices, total assets, date of licence, name and domicile of director or controller, name of the director who represents the juridical person, if any, and the period of duration. The Director of the Foundation shall submit the application for registration to the authorities concerned in the place of its principal and branch offices. A copy of its act of endowment or the will shall be annexed to the application.

針對財團，民法第 59-62 條規定要求目的、名稱、主事務所及分支機構、總財產、受許可日期、董事或管理人的姓名和住所、代表法人的董事姓名，若有，和存立期限。財團之登記，由董事向其主事務所及分事務所所在地之主管機關行之。並應附具捐助章程或遺囑備案。

319. Requirements for foreign companies are contained at Articles 370 – 386 of the Company Act. Foreign companies must obtain a certificate of recognition from the government under which it was incorporated and complete the process for branch office registration. A representative within Chinese Taipei must be designated to represent the company in all domestic matters (Art 372). A foreign company must keep a copy of its Articles of Incorporation in the office of its representative within Chinese Taipei.

外國公司的要求係規定於公司法第 370 至 386 條。外國公司必須取得設立國政府之認許證明，並完成分公司登記的流程。外國公司應於中華臺北指定代表以代表公司處理國內所有事務（第 372 條）。外國公司必須在中華臺北之代表處所備置公司章程的副本。

320. In the event there are shareholders of unlimited liability, a roster of such shareholders shall also be kept. (Art 374). It is not clear what information is required in the Articles of Incorporation

of a foreign company as that is likely to be dictated by the home jurisdiction in which it is registered. It is therefore not clear that for foreign companies operating in Chinese Taipei that all of the basic information as required by R.24.3 is obtained. They are however liable to an examination of their books, records and documents (Art 384).

外國公司如有股東無限責任者，還應備置其名冊（第 374 條）。尚不清楚外國公司的公司章程所需要的資訊，因為這可能是由其登記的母國司法管轄區所指定。因此，對於在中華臺北營業的外國公司而言，尚不清楚 R.24.3 所要求的所有基本資訊是否取得。但是其有關之簿冊、記錄及文件應受主管機關查閱（第 384 條）。

321. **Criterion 24.4** - Art 393 as outlined above applies, however there are specific further provisions for each type of company as follows:

**標準 24.4** - 適用上述公司法第 393 條，但各類型的公司都有個別的進一步規定如下：

322. Unlimited company (including unlimited companies with limited liability shareholders) - Articles of Incorporation along with minutes of shareholder meetings, financial statements, shareholder rosters and the counterfoil of corporate bonds are required to be kept at the head office of each unlimited company (Art 40 - 41 Company Act). Fines are imposed on the shareholder or the director who is designated to represent the company for failure to comply. There is no requirement to hold a list of directors, however there is a requirement to maintain a list of shareholders, including shareholders who represent the company or are designated to conduct business operations of the company (art 41 & 115). There is no requirement to record the category and number of shares held by each shareholder.

無限公司（包括兩合公司）- 公司章程以及股東會議記錄、財務報表、股東名簿和公司債券的存根都需要保存在各無限公司的本公司（公司法第 40- 41 條）。若未能遵守規範，將對指定代表公司之股東或董事施以處罰。沒有要求持有董事名單，但有要求保留股東名冊，包括代表公司或被指定執行公司業務的股東（第 41 及 115 條），無需記錄每個股東持有的股票類別和數量。

323. Limited companies - are required to maintain the Articles of Incorporation (Art 98 Company Act) along with a shareholders roster at its head office which includes the amount of capital contribution made by each, name and residence of each shareholder (art 103). Basic information is contained in the Articles of Incorporation. Details of the elections of directors at general meetings (art 172) must be recorded in minutes and be available at the company (art. 210).

有限公司-必須在本公司備置公司章程（公司法第 98 條）及股東名簿，其中包括各股東的出資額、名稱和住居地（第 103 條）。基本資訊包含在公司章程中。股東大會董事選舉的詳細情況（第 172 條）必須做成記錄並在公司提供查閱（第 210 條）。

324. Companies limited by shares - Articles of Incorporation are required to include the name of the company, scope of business, number of shares, location of company, number and names of directors and supervisors and the date of the Articles of Incorporation. At the inaugural meeting, promoters shall report the Articles of Incorporation, roster of shareholders, total number of shares issued, name of subscribers, roster of directors and supervisors of the company including their residence. This information is to be maintained at a location notified to the registry (art 210). Article 169 provides that a shareholders roster shall be assigned and specify: a) the name or title and the domicile or residence of the shareholders; b) the number of shares held by each shareholder; and the serial number(s) of share certificate(s), if issued, by that shareholder; c) the date of issuance of the share certificates; d) the number of shares, the serial number of share certificate(s), and the date of issuance of the bearer share certificate(s), if bearer stocks are issued; and e) the words describing the type of special shares, if special shares are issued.

股份有限公司 - 公司章程應包括公司名稱、所營事業、股份總數、本公司所在地、董事和監察人人數及姓名和章程日期。在創立會上，發起人應報告公司章程、股東名簿、已發行股份總數、申請者姓名、公司董事和監察人名簿（包括其住所）。這些資訊應備置並通知登記機關地點（第 210 條）。第 169 條規定，股東名簿應編號記載：a) 股東的姓名或名稱以及住所或居所；b) 各股東持有的股數；以及該股東之股票號數（發行股票者）；c) 股票發行日期；d) 如果發行無記名股

票，發行無記名股票的股票數量、股票證書的序列號和發行日期；e) 如果發行特別股，則註明特別股份種類的字樣。

325. For a foreign company, after its recognition, it shall maintain a copy of its Article of Incorporation in the office of its representative for litigious and non-litigious matters or branch office within the territory of Chinese Taipei. In case there are shareholders of unlimited liability, a roster of such shareholder shall also be kept. See however comments raised above in R.24.3.

對於外國公司，於其獲得認許後，應在中華臺北境內其代理人辦公室或分公司備置公司章程的副本，以代表公司為訴訟和非訴訟事務。如果股東有無限責任，則還應保留該等股東的名冊。請參見上文 R.24.3 中提出的意見。

326. Finally, an amendment to Article 22 of the Company Act now requires all companies to provide to the registering authority the names, nationalities, dates of birth, number of shares held or equity contribution and other particulars of its directors, supervisors, managers and shareholders whose shareholding or amount of contribution exceeds 10% of total number of shares or capital stock every year and within 15 days of any change.

最後，依公司法第 22 條的修正，現在要求所有公司每年向登記機關提供其董事、監察人、經理人，以及持股數量或出資額超過百分之十總股數或資本額之股東的姓名、國籍、出生日期、持股數或出資額及其他詳情，或在任何變動後 15 天內完成變更登記。

327. All companies are also required to maintain a roster of shareholders under Article 169 of the Company Act. The roster must contain the following information: 1.The name or title and the domicile or residence of the shareholders; 2.The number of shares held by each shareholder; and the serial number(s) of share certificate(s), if issued, by that shareholder; 3.The date of issuance of the share certificates; 4.The number of shares, the serial number of share certificate(s), and the date of issuance of the bearer share certificate(s), if bearer stocks are issued; and 5.The words describing the type of special shares, if special shares are issued.

根據公司法第 169 條，所有公司還須持有股東名簿。名簿必須包含以下資訊：1、各股東之姓名或名稱、住所或居所；2、各股東之股數；發行股票者，其股票號數；3、發給股票之年月日；4、發行無記名股票者，應記載其股數、號數及發行之年月日；及 5、發行特別股者，並應註明特別種類字樣。

328. Partnerships are required to name each general partner and capital contribution amount and liability type of each partner, this information is required to be held by the registry.

合夥要求各普通合夥人姓名和出資額及各合夥人責任類型，這些資訊必須由登記機關持有。

329. **Criterion 24.5** - Article 5 of the Regulations Governing Company Registration and Recognition requires any change in the particulars registered in a company or foreign company registration to be filed with the competent authority within 15 days of such a change. MOEA had commenced oversight and quality checking of new registration and filing requirements, however they were not well advanced at the time of the onsite visit.

**標準 24.5**-公司登記和認許辦法第 5 條要求在變更後 15 日內，向主管機關提交變更公司登記或外國公司登記的詳細資料。經濟部已開始對新的登記和申報要求進行監督和品質檢查，但是在現地評鑑時尚未有良好進展。

### *Beneficial Ownership Information*

#### *實質受益權資訊*

330. **Criteria 24.6(a-b) are not applicable.**

**標準 24.6(a-b) 不適用。**

331. **Criterion 24.6(c)** - Mechanisms to ensure that information on the beneficial ownership of a company is obtained or can otherwise be determined in a timely manner rely on FIs and DNFBPs CDD on beneficial ownership of legal persons. FIs/DNFBP are obliged to make such information



available to authorities in a timely manner. Detailed obligations to obtain and verify CDD information in relation to beneficial owners of legal persons are in place, but as per the analysis contained in R.10 and R.22 there are specified circumstances in which collection of this information is not required, these exceptions apply to all FIs and DNFBPs and include when the client is a government owned entity or business entity or a foreign government entity, a public company or any of its subsidiaries and other circumstances. The context of Chinese Taipei sees relatively little professional intermediation in the establishment or continuing operation of legal persons, so FIs/DNFBPs may not consistently hold up to date and accurate information on beneficial ownership.

**標準 24.6(c)** - 確保取得公司實質受益權資訊，或能夠以其他方式即時確定的機制，依賴金融機構和指定之非金融事業或人員對法人進行實質受益權的客戶審查。金融機構/指定之非金融事業或人員有義務即時向主管機關提供此類信息。有關取得並確認與法人實質受益人有關的客戶審查資訊的詳細義務已經到位，但是根據 R.10 和 R.22 中的分析，在某些特定情況下不需要收集此資訊，這些例外適用於所有金融機構和指定之非金融事業或人員，包括對於客戶是政府所有的實體或商業實體或外國政府實體、上市公司或其任何子公司和其他情況。中華臺北在法人的設立或持續經營中，相對較少使用專業中介，因此金融機構/指定之非金融事業或人員可能無法持續掌握有關實質受益權最新和正確的資訊。

332. **Criterion 24.7** - There are requirements on all FIs and DNFBPs to obtain beneficial ownership information of their customers. However, the obligation on FIs to keep beneficial ownership up-to-date, which is in keeping with criterion 10.16, has limitations. The requirement to periodically update CDD on the basis of materiality and risk may result in an FI waiting a number of years in the absence of a risk-event, rather than updating CDD whenever beneficial ownership changes.

**標準 24.7** - 所有金融機構和指定之非金融事業或人員都被要求取得客戶的實質受益權資訊，但是按照標準 10.16，對於金融機構保持實質受益權在最新狀態的義務是有侷限性的。相關要求係根據重要性和風險來定期更新客戶審查資料，這可能導致金融機構在沒有風險事件的情況下，等待若干年才更新客戶審查，而不是在實質受益權發生變化時就更新客戶審查資料。

333. **Criterion 24.8** - Foreign companies are required to designate a representative within Chinese Taipei to represent the company and to serve as its responsible person (Art 372). Responsible persons are required to keep a copy of the company's articles of incorporation.

**標準 24.8**-外國公司必須在中華臺北指定代表人並擔任其負責人（第 372 條）。負責人必須保留公司章程的副本。

334. The rules regarding responsible persons of domestic companies are provided in Article 8 (1) of the Company Act. The responsible persons in charge of an unlimited company are the shareholders who conduct the business of the company or represent the company (Articles 45 and 46); the responsible person of a limited company is the chairman of the board (Article 108); the responsible persons in charge of an unlimited company with limited liability shareholders are the same as those of an unlimited company (Article 115); and the responsible person of a company limited by shares is the chairman of the board (Article 208 ). All responsible persons above are required to be included in company registration. Companies are required to file basic information of the responsible persons above with the Registrar.

關於國內公司負責人的規定訂於公司法第 8 條第 1 款。無限公司的負責人是執行公司業務或代表公司的股東（第 45 和 46 條）；有限公司的負責人是董事會主席（第 108 條）；負責兩合公司的負責人與無限公司的負責人相同（第 115 條）；股份有限公司的負責人是董事會主席（公司法第 208 條）。上述所有負責人都必須包含在公司登記中。公司必須向登記機關提交上述負責人的基本資訊。

335. In relation to limited partnerships, there is a requirement for the limited partnership to nominate a representative (Art 9) however it is not clear that the scope of their duties includes accounting to authorities for beneficial or basic ownership information.

關於有限合夥設有合夥代表人規定（有限合夥法第 9 條），但不清楚其責任有無包括向主管機關提供實質受益權或基本所有權資訊。

336. **Criterion 24.9** -Article 94 of the Company Act requires account books, statements and documents relating to the business and liquidation affairs of the company to be kept for a period of 10 years from the date of filing a report to the court after completion of liquidation. The custodian of the materials shall be determined by a majority of shareholders. Articles 113 and 115 of the Company Act also apply this requirement to unlimited companies with limited liability shareholders and limited companies. The records required to be kept are those “relating to business and settlement affairs” and therefore are likely to mostly encompass those required by R.24. Art 332 applies this requirement to companies limited by shares.

**標準 24.9** - 公司法第 94 條要求有關公司之帳簿、表冊及關於營業與清算事務之文件，應自清算完結向法院聲報之日起，保存十年。資料的保存人應由股東過半數之同意決定。公司法第 113 條和 115 條也將該要求適用於兩合公司和有限公司。需要保留的記錄是「與業務和清算事務有關」的記錄，因此可能主要包括 R.24 要求的記錄。第 332 條將此要求適用於股份有限公司。

#### Other Requirements

##### 其他要求

337. **Criterion 24.10** - Companies are required to disclose the registered (basic) information within a prescribed time. LEAs may access basic and beneficial ownership information held with FIs and DNFBPs, under the provisions of the CPC, when they have suspicion of a criminal offence. It is not clear that other competent authorities have all the powers necessary to obtain timely access to the basic and beneficial ownership information held by the relevant parties.

**標準 24.10** - 公司必須在規定的時間內揭露登記（基本）資訊。當涉嫌刑事犯罪時，執法機關可以根據刑事訴訟法的規定取得金融機構和指定之非金融事業或人員所持有的基本和實質受益權資訊。尚不清楚其他權責機關是否擁有全部必要的權力，以即時獲得相關當事人所持有的基本和實質受益權資訊。

338. **Criterion 24.11** - Amendment of the Company Act in August 2018 removed the ability to issue bearer shares. The amendment to Article 447-1 requires companies to replace existing bearer shares with registered shares when bearer share holders exercise their rights as shareholders. The amendments did not set a timeline for this to be completed. While many bearer shareholders may come forward at general meetings, this is not mandatory.

**標準 24.11** - 2018 年 8 月修訂公司法廢除發行無記名股票的規定。第 447-1 條的修正要求公司在無記名股票股東行使其股東權利時，公司以記名股票取代無記名股票。修正條文沒有規定完成這項工作的時間表。雖然許多無記名股東可能出席股東大會，但這項規定不是強制性的。

339. Regarding bearer share warrants, under the Company Act, all preferred shares with warrants (or corporate bonds) and employee stock options issued in Chinese Taipei are registered, and all shares purchased will be registered when conversion rights are exercised. Authorities confirm that companies do not have discretion to include an ability to issue share warrants within their articles of incorporation.

關於無記名股票認股權證，依據公司法，所有在中華臺北發行的優先股認股權證（或公司債券）和員工股票認股選擇權均已登記，且所有購買的股票將在行使轉換權時進行登記。主管機關確認公司無權將發行股票認股權證的能力納入其公司章程。

340. **Criterion 24.12** -Article 27(2) of the Company Act includes some controls on nominee directors and shareholders. The article allows a juristic shareholder to assign representatives to be elected as directors. Information of both the nominated representatives and the juristic shareholder have to be registered to the Registrar. Registered information on the nominee and nominator is publicly available via the CISP for free access.

**標準 24.12** - 公司法第 27 (2) 條包括對代名人董事和股東的一些控制措施。該條允許法人股東指派代表當選為董事。被提名代表和法人股東的資訊都必須在登記機關登記。關於代名人和提名人的登記資訊可透過 CISP 免費公開取得。

341. **Criterion 24.13** - Article 210 of the Company Act imposes a fine of not less than NT10,000 and no more than NT50,000 (approx. USD18,000) on responsible persons for not making the Articles of Incorporation and register of shareholders and other information available at the company office. Various regulations on FIs and DNFBPs for CDD set out requirements to maintain beneficial ownership details of their clients who are legal persons and include minimal information-requirements pertaining to bearer shares. Breaches of regulations carry fines of between NT500,000 and NT10 million for FIs and NT50,000 to NT1 million for DNFBPs (see R.10 and R.22). The Company Act includes sanctions for a failure to keep information required in R24.3 and 24.4 up to date. Further penalties are found in the Administrative Penalty Act in which penalties for acts undertaken in breach of duty under administrative law is punishable by a maximum statutory fine of NT3,000.

**標準 24.13**-公司法第 210 條規定，公司未在辦公室備置公司章程和股東名簿及其他資訊，將對負責人處以新台幣 1 萬元以上和 5 萬元以下罰鍰。各種規範金融機構和指定之非金融事業或人員執行客戶審查的法規，要求其保有法人客戶的實質受益權的詳情，也包括與無記名股份相關的最低資訊要求。違反規定的金融機構罰鍰金額為新台幣 50 萬元至 1,000 萬元，指定之非金融事業或人員罰鍰金額為新台幣 5 萬至 100 萬元（見 R.10 和 R.22）。對未能保持 R24.3 和 24.4 所要求資訊在最新狀態的公司，公司法有裁罰的規定。進一步的處罰定於行政罰法，對違反行政法規規定義務的行為，可處以最高法定罰鍰新台幣 3,000 元。

#### **Criterion 24.14**

##### **標準 24.14**

**24.14(a)** - *Facilitating access by foreign competent authorities to basic information held by company registries*; Chinese Taipei exchanges such information either through informal channels or supported by MOUs or based on the principle of reciprocity. However, in relation to basic information held with a company registry, this information is available online at the Commercial Industrial Services Portfolio

**24.14(a)** - 便利外國權責機關取得公司登記機關持有的基本資訊；中華臺北通過非正式管道或備忘錄或基於互惠原則交換此類資訊。但是對於公司登記機關持有的基本資訊，此資訊可經全國工商服務入口網線上取得。

342. **24.14(b)** - *Exchanging information on shareholders* - Information on shareholdings greater than 10% and any details of nominee arrangements are included on the publicly available registry. MOEA, the FIU and LEAs are able to facilitate exchanging information on shareholders when holdings are less than 10% and not filed with the registry.

**24.14(b)** - 交換有關股東的資訊 - 關於持股比例超過 10% 的資訊和代名人協議的任何詳情都包含在公開的登記機關。當持股低於 10% 且未向登記機關提交時，經濟部、金融情報中心和執法機關能夠促進股東資訊的交換。

343. **24.14(c)** - *Using investigative powers of competent authorities* - Chinese Taipei LEAs are able to use their investigative powers to obtain and share beneficial ownership information with and on behalf of foreign counterparts. In Chinese Taipei beneficial ownership is captured by REs through CDD. In this regard, cooperation and information exchange between supervisors is outlined at R.40.14. The AMLD or FSC are able to request relevant CDD records.

**24.14(c)** - 利用權責機關的調查權力 - 中華臺北的執法機關能夠運用其調查權力，代表外國對等單位取得和分享實質受益權資訊。在中華臺北，申報機構透過客戶審查獲得實質受益權。在這方面，R.40.14 概述在監理機關間的合作和資訊交換。調查局洗錢防制處或金管會能夠請求相關的客戶審查記錄。



344. **Criterion 24.15-** Chinese Taipei predominately exchanges beneficial ownership information with foreign counterparts via Egmont Secure web. Per the analysis in R.40.10 feedback is exchanged amongst FIUs pursuant to the Egmont principles of information exchange. The MJIB Operation Regulations on matters relevant to AML/CFT further contains provisions for the FIU to provide feedback on information exchanges.

**標準 24.15-** 中華臺北主要透過艾格蒙安全網絡與外國對等單位交換實質受益權資訊。根據 R.40.10 中的分析，金融情報中心間依據艾格蒙資訊交換原則進行回饋。法務部調查局關於 AML/CFT 相關事項的操作指南進一步定有金融情報中心就資訊交換提供回饋的規定。

### *Weighting and Conclusion*

#### *權重與結論*

345. Chinese Taipei has assessed ML and TF risks for legal persons however the assessments do not cover all types of legal persons, particularly the differentiation in how each may be abused for ML or TF. There are requirements to keep basic ownership information up-to-date and accurate and a well-developed database for authorities to collate ownership information. While beneficial ownership details are not required to be kept by companies or the registry, CDD obligations extend to all FIs and DNFBPs and are well supported by guidance on lifting the corporate veil. However, there is relatively little professional intermediation in the establishment or continuing operation of legal persons, so FIs/DNFBPs may not consistently hold up to date and accurate information on beneficial ownership. LEAs can access any available beneficial ownership information collected by FIs and DNFBP through CDD in a timely fashion. Public registration of nominee directors or shareholders adds to transparency. Oversight of and enforcement to ensure accuracy of registration filing with MOEA had not commenced at the time of the onsite visit. Amendments to the Company Act in 2018 introduced measures to removed bearer share warrants, ceased the ability to issue bearer shares, but did not place a timeframe on mechanisms to convert bearer shares issued before August 2018 into registered shares. **Recommendation 24 is rated largely compliant.**

中華臺北已評估法人的洗錢和資恐風險，但評估並未涵蓋所有類型的法人，特別是區分每一種類型法人如何被濫用於洗錢或資恐。有要求保持基本所有權資訊在最新和正確的規定，並建立一個完善的資料庫，供主管機關收集所有權資訊。雖然公司或登記機關不須保存實質受益權詳情，但客戶審查義務適用於所有金融機構和指定之非金融事業或人員，並得到有關揭開公司面紗指引很好的支持。但是，在法人的設立或持續營運中，相對較少使用專業中介，因此金融機構/指定之非金融事業或人員可能無法持續地持有實質受益權最新和正確的資訊。執法機關可以即時取得金融機構和指定之非金融事業或人員透過客戶審查收集的任何實質受益權資訊。代名人董事或股東的公開登記提高了透明度。在現地評鑑時尚未開始監督和強制行動，以確保提交經濟部登記資訊的準確性。2018 年公司法修正移除無記名股票認股權證及廢除發行無記名股票的措施，但沒有將 2018 年 8 月之前發行的無記名股票轉換為記名股票的時間表。**建議第 24 項評等為大部分遵循。**

### **Recommendation 25 – Transparency and beneficial ownership of legal arrangements**

#### **建議第 25 項 - 法律協議透明度及實質受益權**

346. In its 2007 MER Chinese Taipei was rated partially compliant with the former R.34. Competent authorities had only limited powers to have timely access to information on the beneficial ownership and control of trusts.

在 2007 年的相互評鑑報告中，中華臺北在前建議第 34 項評等為部分遵循。權責機關只有有限的權力即時取得信託的實質受益權和控制權資訊。

#### *Sources of trust law*

##### *信託法律來源*

347. There are two laws in Chinese Taipei that primarily relate to 'trust(s)':



中華臺北有二部法律主要與信託相關：

- a) Trust Law (also referred to as Trust Act); and

信託法，以及

- b) Trust Enterprise Law (also referred to as Trust Enterprise Act).

信託業法

348. Under the Trust Law (amended 30 December 2009) Article 1 defines the term "trust" as a legal relationship in which the settlor transfers or disposes of a right of property and causes the trustee to administer or dispose of the trust property according to the stated purposes of the trust for the benefit of a beneficiary or for a "specified purpose" (a specified purpose trust is a charitable trust).

信託法(2009年12月30日修訂版)第1條定義「信託」，係指委託人將財產權移轉或為其他處分，使受託人依信託本旨，為受益人之利益或為「特定目的」（指公益信託），管理或處分信託財產之法律關係。

349. The Trust Law establishes the legal foundation for the formation and settlement of all trusts in Chinese Taipei. Article 2 defines the legal relationship referred to in Article 1 as based on contract law: '...a trust shall be established by a contract or a will' (testamentary trusts are not a concern for R. 25). Effectively, by virtue of the two sections above-quoted, trusts in Chinese Taipei amount to third-party contracts, which qualify as 'legal arrangements' under the FATF definition.

信託法建立中華臺北成立及協議所有信託的法律基礎。信託法第2條定義第1條所稱之法律關係為，基於契約法：「信託應以契約或遺囑為之」（遺屬信託並非建議第25項所討論的）。實務上基於上述二節，中華臺北信託涉及三方的契約關係，符合FATF所定義之「法律協議」。

350. Under the Trust Enterprise Law, a 'trust enterprise' is an institution approved by a competent authority pursuant to the provisions of that Act to conduct a range of financial services including managing real estate, leasing, collective investments, safe deposit box services, issuance of securities etc. (Chapter III, Art 16ff). Under Article 10 of the Act a 'trust enterprise can only be a company limited by shares.' The scope of 'trust agreements' are outlined in Article 19 and include financial products and services offered by financial institutions.

依信託業法，「信託業」指依據該法經主管機關許可之機構，經營一系列金融服務包括管理不動產、租賃、集合投資、保管箱、發行有價證券等(第3章第16條)。依信託業法第10條規定，「信託業的組織以股份有限公司為限」。對於「信託合約」應記載事項規定在信託業法第19條，包括金融機構提供的商品及服務。

351. Under the 'Enforcement Rules of the Trust Enterprise Law', trust assets are assets of the trust enterprise (Article 2) and are not held in the name of the settlor or beneficiary, but on behalf of the beneficiaries. The rules provide for a range of discretionary and non-discretionary trusts for individually managed, and collectively managed, trust arrangements (Articles 5-7). Under Article 10 of the Enforcement Rules, the general provisions of the Trust Law (noted above) apply.

依「信託業法施行細則」，信託財產為信託業的財產(第2條)，並非以委託人或受益人名義持有，而是代表受益人持有。第5到7條規定受託人對信託財產有決定權、受託人對信託財產無決定權的單獨管理和共同管理之規範。第10條規定信託業者也適用(上述)信託法的規定。

352. Trust enterprises consist of banks and other FIs but FI rules do not apply to trust enterprises when acting as trustees. Authorities also indicated that the majority of trusts in Chinese Taipei are settled under the Trust Law but governed under the Trust Enterprise Law.

信託業者包括銀行及其他金融機構，但金融機構的規範不適用於信託業者為受託人的情形。主管機關也指出中華臺北大部份的信託係依信託法協議，但受到信託業法的管理。

353. AML regulations applying to FIs and DNFBPs cover instances where a client is a trustee, and in such cases require CDD on all parties to the trust (settlor, trustees, beneficiaries, trust

property). MLCA or AML regulations do not extend requirements to collect such information when apply when an FI or DNFBP

防制洗錢規定適用於金融機構及指定之非金融事業或人員的客戶為信託之受託人時，必須對信託關係所有當事人進行客戶審查措施（包括委託人、受託人、受益人及信託財產）。洗錢防制法或其他洗錢防制規範都沒有進一步規範當金融機構及指定之非金融事業或人員本身是信託受託人時必須取得相關資訊。

354. This Recommendation does not cover ‘charitable trusts’, settled under the Trust Law (see R.8 for these). According art 72 Trust Law, a charitable trust shall operate under the supervision of the industry’s regulatory authority.

本項建議不包括依信託法協議之「公益信託」（參見建議第8項）。依信託法第72條規定，公益信託由各該目的事業主管機關監督。

355. Under the trust law, the court has a supervisory role over trusts formed under the Trust Law, including to intervene to interpret the trust deed in accordance with the Civil Code using provisions applicable to contractual relationships. There are limitations on confidentiality under a trust, as asset may either be registered or third party creditors may apply for the inspection of trust accounts if they are shown to be ‘connected persons’ (Article 32).

依信託法，法院對依信託法成立之信託具監督地位，包括依民法使用契約關係的規定介入解釋信託契約。信託的保密性有所限制，因為資產應登記，或契約以外的第三方債權人如果是「利害關係人」，可以請求檢查信託帳戶（第32條）。

#### **Criterion 25.1:**

##### **標準 25.1:**

356. **25.1(a)** –Article 31 of the Trust Act requires trustees managing trust property to make a yearly report to the settlor and any beneficiaries able to be identified on a yearly basis. In this way, information is obtained on some parties to the trust. While AML Regulations covering lawyers, accountants (CPAs) and FIs (including trust enterprises) require the FI and DNFBP to understand the ownership and control structure of their customers who are trustees, and obtain details of the parties to the trust, there is no requirement for either DNFBPs or FIs to collect that information when they are hired to prepare a trust deed or to perform the role of a trustee.

**25.1(a)**- 依信託法第31條規定，管理信託財產之受託人，每年應向委託人和受益人提交報告。透過這種方式，可以取得部分信託當事人相關資訊。即便洗錢防制法規包括律師、會計師、金融機構(含信託業)，要求金融機構以及指定之非金融事業或人員瞭解當客戶為受託人時之所有權及控制權架構，並取得信託當事人之詳細資訊，但卻沒有要求當金融機構或指定之非金融事業或人員本身被聘用去規劃信託契約或擔任信託受託人時，應取得前揭相關資訊。

357. **25.1 (b)** – There are no requirements on trustees (whether enterprise trustees or other trustees) to hold basic information on regulated agents or and service providers to a trust.

**25.1(b)** - 沒有法律規範要求受託人(無論是信託業或其他信託之受託人)應持有代理人或信託服務業者之基本資訊。

358. **25.1(c)** - There are no corresponding requirements in the Trust Law. There are obligations in the MLCA on DNFBPs providing trust services (lawyers and CPAs) to maintain any information obtained through CDD, which may include details of settlors, trustees and beneficiaries.

**25.1 (c)** - 信託法沒有相應的規範。洗錢防制法有規範提供信託服務的指定之非金融事業或人員(律師和會計師)，保存透過客戶審查所取得之任何資訊，包括委託人、受託人和受益人等詳情。

359. There are no AML/CFT requirements for foreign trusts operating in Chinese Taipei unless the foreign trustee interacts with a FI or DNFBP in which case the CDD measures as outlined in this report will apply.

對於在中華臺北運作的外國信託，沒有防制洗錢/打擊資恐的規定，除非該外國信託與金融機構或指定之非金融事業或人員互動，才會適用本報告所述的客戶審查措施。

360. **Criterion 25.2-** The obligations on the trustee (Trust Law art 31) to deliver a trust property inventory to the settlor and beneficiary (where known) at least once a year helps to ensure some information on parties to a trust is updated at least each year.

**標準 25.2-**有關受託人有義務(信託法第 31 條)至少每年提交信託財產目錄給委託人及受益人(已知)，有助於確保信託關係人的資訊可以至少每年更新一次。

361. **Criterion 25.3-** When a trustee is a trust enterprise, there are provisions that require a declaration of trust property. For example, Article 28 of the Regulations Governing the Scope of Business, Restrictions on Transfer of Beneficiary Rights, Risk Disclosure, Marketing and Conclusion of Contract by Trust Enterprises requires that when a trust enterprise uses the trust asset to trade with others, the trust enterprise shall inform the counterparty explicitly that it is trading in its capacity as trustee and is not trading its own assets. There are no other requirements on trustees to an express trust to explicitly inform FIs and DNFBPs when forming a business relationship or carrying out transactions including for foreign trustees.

**標準 25.3-**當受託人是信託業時，有規定要求申報信託財產。例如信託業營運範圍受益權轉讓限制風險揭露及行銷訂約管理辦法第 28 條規定，當信託業使用信託資產與他人進行交易時，信託業應明確告知交易對手，其以受託人身份進行交易，並非交易自己的資產。沒有其他的規定要求明示信託受託人(包含外國信託受託人)在形成業務關係或進行交易時，應清楚告知金融機構和指定之非金融事業或人員其在信託中的地位。

362. **Criterion 25.4** -There are adequate provisions requiring trustees to provide competent authorities with any information relating to the trust or to provide FIs and DNFBPs with information on the beneficial ownership (control) and the assets of the trust to be held or managed under the terms of the business relationship without being prevented by law or enforceable means. Chinese Taipei authorities assert that in the absence of a law preventing a trust enterprise from providing FIs and DNFBPs with information on the beneficial ownership and asset of the trust. Bank secrecy does not impede information sharing amongst each other – trust enterprise FI with another FI.

**標準 25.4-**有足夠的規定要求受託人向權責機關提供與信託有關的任何資訊，或向金融機構和指定之非金融事業或人員提供有關實質受益權(控制權)的資訊及根據業務關係條款所持有或管理的信託資產，並不受法律或強制方法的妨礙。中華臺北主管機關聲稱，沒有法律妨礙信託業向金融機構和指定之非金融事業或人員提供有關信託的實質受益權和資產資訊。銀行保密並不妨礙彼此之間的資訊共享-在信託業金融機構與另一個金融機構之間。

363. **Trust Enterprise:** Art 42 of the Trust Enterprise Act applies. Article 45 of the Banking Act mutatis mutandis, to the Competent Authority's examination of a trust enterprise or order a trust enterprise to prepare and submit relevant information and reports.

信託業：適用信託業法第 42 條。主管機關對信託業的檢查或命令其編製和提報相關資訊和報告，準用銀行法第 45 條規定。

364. Art 45 Banking Act requires the Central Competent Authority (for trust enterprise it is the FSC) at any time, appoint a designee, entrust an appropriate institution or direct a local Competent Authority to appoint a designee to examine the business financial affairs and other relevant affairs, or direct a bank to prepare and submit within a prescribed period of time, balance sheets, property inventories or other relevant documents for examination. The Central Competent Authority may, when necessary, appoint professionals to verify statements, materials or affairs, and such professionals shall, in turn, present a report to the Central Competent Authority.

銀行法第 45 條規定中央主管機關(信託業的主管機關是金管會)得隨時派員，或委託適當機構，或令地方主管機關派員，檢查銀行或其他關係人之業務、財務及其他有關事項，或令銀行或其他關係人於限期內據實提報財務報告、財產目錄或其他有關資料及報告。中央主管機關可在必要時指定專業人員核實陳述、資料或事務，而這些專業人員應向中央主管機關提交報告。



365. Art 56 Trust Enterprise Act provide that any of such violations shall be punishable by a fine of not less than Six Hundred Thousand NTD (NT\$600,000) but not more than Three Million NTD (NT\$3,000,000)

信託業法第 56 條規定，任何此類違規行為處新臺幣 60 萬元以上 300 萬元以下罰鍰。

366. Art 82 Trust Law provide that the industry's regulatory authority can impose a fine of not less than NT\$20,000 and not more than NT\$200,000 on the trustee of a charitable trust if the trustee refuses, obstructs or bypasses the inspection of the industry's regulatory authority.

依信託法第 82 條規定，如果公益信託受託人拒絕、妨礙或規避對目的事業主管機構的檢查，該目的事業主管機構可以對受託人處新臺幣 2 萬元以上 20 萬元以下罰鍰。

367. *Private Trust:* Art 60 and 61 Trust Law requires all trusts other than business trusts or charitable trusts to be executed under the supervision of the court. Upon application of the interested party or the prosecutor, the court may inspect the trust affairs as well as appoint and order an inspector to take any necessary official actions. A trustee who disobeys or obstructs the court inspection is imposed a fine ranging from NT\$10,000 to NT\$100,000.

民事信託：信託法第 60 條和第 61 條規定，除營業信託或公益信託以外的所有信託，由法院監督。法院得因利害關係人或檢察官之聲請為信託事務之檢查，並選任檢查人及命為其他必要之處分。受託人不遵守法院之命令或妨礙其檢查者，處新台幣 1 萬元以上 10 萬元以下罰鍰。

368. **Criterion 25.5** -Judicial police and prosecutors are able to access information held by a trustee, FIs or DNFBP under broad powers in the CPC. This includes the ability to petition for a search warrant if needed.

**標準 25.5**- 司法警察和檢察官能夠根據刑事訴訟法的廣泛權力，獲取受託人、金融機構或指定之非金融事業或人員所持有的資訊。這包括在需要時申請搜索票的能力。

369. In the case of trust enterprises the FSC may obtain information from trust enterprises under Art 42 of the Trust Enterprise Act *vis a vis* Art. 45 of the Banking Act.

至於信託業，金管會可以依信託業法第 42 條準用銀行法第 45 條規定，向信託業者取得資訊。

370. There is no clear provisions requiring information held by trustees of private trusts or charitable trusts, and other parties are able to be obtained by a competent authority or LEA in a timely manner. However, as all trusts are executed under the supervision of the court, upon an application of an interested party or a prosecutor, the court may inspect trust affairs. The powers contained in the Trust Law in relation to charitable trusts allow the industry's regulatory authority to inspect the business and financial conditions of the trust.

沒有明確的規定要求民事信託或公益信託受託人持有的資訊，可由主管機關或執法機關即時取得。但是，由於所有信託都是在法院的監督下執行的，在利益關係人或檢察官提出申請後，法院可以檢查信託事務。信託法中包含與公益信託相關的權力，允許目的事業主管機關檢查信託事務和財務狀況。

371. **Criterion 25.6** -The CPC contains powers for LEAs to obtain relevant beneficial ownership information (require exact powers to force the submission of authenticated copies, written copies etc. as not provided). This applies to all trustees, whether they are a natural person, FI or DNFBP.

**標準 25.6**- 刑事訴訟法包含執法機關取得相關實質受益權資訊的權力（如未提供，應具有確切的權力以強制提交經過驗證的副本和書面副本等）。這適用於所有受託人，無論他們是自然人、金融機構還是指定之非金融事業或人員。

372. As outlined in R.37, the MACMA in conjunction with various mutual legal assistance agreements provides the basis for international cooperation in Chinese Taipei. The MACMA allows Chinese Taipei authorities to execute all relevant powers under the CPC on behalf of a requesting jurisdiction. There are no overly restrictive conditions to the provision of cooperation.



如建議第 37 項所述，國際刑事司法互助法與各種司法互助協議相結合，為中華臺北的國際合作奠定基礎。國際刑事司法互助法允許中華臺北權責機關代表請求的司法管轄區執行刑事訴訟法下的所有相關權力。提供合作沒有過於嚴格的條件。

373. **Criterion 25.7** - For Trustees that are FIs or DNFBPs – failure to comply with the AML Regulation for FIs or the sectoral AML/CFT regulations for various DNFBPs result in penalties set out in the MLCA at articles 7 and 8. Art 7 contains penalties for failure to conduct adequate CDD (NT500,000 – NT10 million for FIs and NT50,000 – NT1 million for DNFBPs). Art 8 specifies penalties for not maintain records (fine between NT500,000-NT10 million on FIs or NT50,000 – NT1 million on DNFBPs).

**標準 25.7-** 對於金融機構或指定之非金融事業或人員擔任受託人 - 違反金融機構防制洗錢辦法或指定之非金融事業或人員各業的防制洗錢/打擊資恐法規，將導致依據洗錢防制法第 7 條和第 8 條規定的處罰。第 7 條規定對未能充分執行客戶審查的處罰（金融機構為新臺幣 50 萬元以上 1 千萬元以下罰鍰，指定之非金融事業或人員為新臺幣 5 萬元以上 1 百萬元以下罰鍰）。第 8 條規定未留存記錄的處罰（金融機構為新臺幣 50 萬元以上 1 千萬元以下罰鍰，指定之非金融事業或人員為新臺幣 5 萬元以上 1 百萬元以下罰鍰）。

374. There are however very limited requirements for trustees to disclose their status as trustee to FIs or DNFBPs and therefore no corresponding sanctions.

然而，受託人向金融機構或指定之非金融事業或人員披露其受託人身份的要求非常有限，因此沒有相應的裁罰。

375. For private trustees, comprehensive AML CDD and record keeping obligations do not apply to private trustees and hence there are no penalties for breach of these requirements.

對於民事信託，全面的防制洗錢客戶審查和記錄保存義務不適用於民事信託受託人，因此沒有違反這些要求的處罰。

376. **Criterion 25.8** - There are sanctions (fine) to impose for failing to grant to competent authorities access to information regarding the trust, as follows:

**標準 25.8** - 如果未能提供主管機關取得信託有關資訊，則可以施予裁罰（罰鍰）如下：

377. *Trust Enterprise:* Art 56 Trust Enterprise Act confirms that Art 45 of the Banking Act applies mutatis mutandis and therefore that a failure of a trustee to prepare and submit relevant information and reports to the competent authority may result in a fine which is set out in the Banking Act (not less than Six Hundred Thousand NTD (NT\$600,000) but not more than Three Million NTD (NT\$3,000,000)).

信託業：信託業法第 56 條確認準用銀行法第 45 條，因此受託人未能向主管機關編製和提報相關資料及報告可能會被處以罰鍰，依據銀行法，罰鍰金額為新臺幣 60 萬元以上 300 萬元以下。

378. *Private Trust:* Art 61 Trust Law - a trustee who disobeys or obstructs the court inspection is imposed a fine ranging from NT\$10,000 to NT\$100,000. However, as stated above, it is not clear that such information would be held in the first place.

民事信託：信託法第 61 條 - 受託人不遵守法院之命令或妨礙其檢查者，處新臺幣 1 萬元以上 10 萬元以下罰鍰。但是如前所述，尚不清楚是否一開始就保留這些資訊。

## Weighting and Conclusion

### 權重與結論

379. There are minimal measures in place to ensure that basic and beneficial ownership and control information in relation to trusts is available. Trustees have obligations to identify settlors and beneficiaries at least annually. While FIs have obligations to collect that information in some circumstances within the context of a customer relationship, when DNFBPs or trust enterprises act

in the capacity of trustee they are not explicitly required to collect the information required under this recommendation. **Recommendation 25 is rated partially compliant.**

只有低度的規範要求確保取得信託基本及實質受益權及控制權資訊。受託人有義務至少每年辨識委託人及受益人。雖金融機構有義務在客戶關係中取得相關資訊，但當指定之非金融事業或人員或信託業者作為受託人時，沒有法規明文要求其應取得本項建議相關的資訊。**建議第 25 項評等為部分遵循。**

## **Recommendation 26 - Regulation and supervision of financial institutions**

### **建議第 26 項 - 金融機構之規範與監理**

380. In its 2007 MER, Chinese Taipei was rated largely compliant with former R.23. Insurance agents and brokers were exempted from AML/CFT requirements and AML/CFT requirements had only recently been extended to the money changing sector.

在 2007 年的相互評鑑報告中，中華臺北在前 R.23 被評為大部分遵循。缺失包括保險代理人 and 經紀人被免於防制洗錢 / 打擊資恐規範，且最近才要求將防制洗錢 / 打擊資恐規範擴展到貨幣兌換部門。

381. **Criterion 26.1** - FSC is responsible for regulating and supervising banking business, electronic payment institution, electronic stored value card issuer, securities and futures business, insurance enterprise and financial leasing businesses on AML/CFT matters. According to Art. 2, para 1 of the Organic Act Governing the Establishment of FSC, the FSC is responsible for the development, supervision, management, and examination of the financial market and financial service industry including requirements for FIs in AML/CFT aspects.

**標準 26.1** - 金管會負責監管和監督銀行業務、電子支付機構、電子票證發行機構、證券期貨業、保險業及融資性租賃業的防制洗錢/打擊資恐事宜。根據金融監督管理委員會組織法第 2 條第 1 項規定，金管會負責金融市場和金融服務行業的發展、監督、管理和審查，包括對於金融機構在防制洗錢/打擊資恐方面的要求。

382. BOAF is responsible for the management, supervision, inspections, assistance, and review of the business, finances, and personnel of agricultural financial institutions, according to the Article 7 of the Agricultural Finance Act. Chinese Taipei has adopted a unitary system in which the FSC's Financial Examination Bureau is responsible for all financial inspections of agricultural financial institutions.

根據“農業金融法”第 7 條，農金局負責管理、監督、檢查、協助和審查農業金融機構的業務、財務和人員。中華臺北採用統一制度，由金管會檢查局負責對農業金融機構進行所有的金融檢查。

383. The Central Bank is competent authority in charge of foreign exchange business (Article 3 of Foreign Exchange Regulation Act). According to Article 35, paragraph 1, subparagraph 2 of Central Bank Act, the Central Bank shall authorize and supervise banks and other enterprises engaged in foreign exchange operations. Paragraph 2 of the same Article prescribes regulations governing requirements of application, the examination procedure, approval of authorization, the scope of operations, withdrawal of authorization, and other matters which banks and other enterprises applying to engage in foreign exchange operations must comply with, shall be stipulated by the Central Bank.

中央銀行是負責外匯業務的主管機關（外匯管理條例第 3 條）。根據中央銀行法第 35 條第 1 項第 2 款，中央銀行應指定並督導從事外匯業務的銀行和其他事業。同條第 2 項規定，銀行及其他事業申請辦理外匯業務應具備之條件、審查程序、核准指定、業務範圍、廢止指定及其他應遵行事項之辦法由央行定之。

384. **Criterion 26.2** - Core principle FIs namely banks, securities and insurance businesses are required to be licensed. FSC is their competent authorities who approve their license before commencing their business operation. Article 21 of the Banking Act, Article 44 of the Securities and

Exchange Act and Article 137 of the Insurance Act refers. Other categories of FI are approved, registered, or designated by their competent authorities i.e. FSC or COA or the Central Bank.

**標準 26.2** - 核心原則金融機構即銀行、證券和保險業必須獲得許可。金管會是其主管機關，在開始其業務運作之前批准其許可。“銀行法”第 21 條，“證券交易法”第 44 條和“保險法”第 137 條均有提及。其他類別的金融機構由其主管機關核准、註冊或指定，亦即金管會或農委會或中央銀行。

385. **Shell banks:** The prohibition of licensing or operation of shell banks is not explicitly stated in law, however Articles 2 and 7 of the “Standards Governing the Establishment of Commercial Banks” require minimum paid-in capital and stipulates that the bank shall complete the computer linkage facilities for the deposit, loan and other businesses of the bank, of which the above facilities should be confirmed by the competent authority or the designated organization before starting its business. Approval for a bank’s establishment is contingent on having physical presence (i.e. meaningful mind and management), so in practice no shell bank is allowed to operate in Chinese Taipei.

空殼銀行：法律沒有明確規定禁止許可或經營空殼銀行，但“商業銀行設立標準”第 2 條和第 7 條要求最低實收資本，並規定銀行經許可設立者，應於開始營業前完成本行存款、放款及其他業務之電腦連線作業設施，並經主管機關或其指定機構認定合格。因此，銀行必須在獲得批准之前實際存在（即有經營意願和管理），並且不允許空殼銀行在中華臺北營運。

386. **Criterion 26.3** - FSC is able to remove or refuse appointment of the management of FIs in the following circumstances [Article 30 of the Company Act], which are general provisions applied to every company setting up in Chinese Taipei]

**標準 26.3** - 金管會可在下列情況下對金融機構的管理層得進行解任或拒絕任命[公司法第 30 條]，這些規定適用於在中華臺北設立的每家公司。

- Having committed an offence as specified in the Statute for Prevention of Organizational Crimes and subsequently adjudicated guilty by a final judgment, and the time elapsed after he has served the full term of the sentence is less than five years;
- 曾犯組織犯罪防制條例之罪，經有罪判決確定且服刑期滿未逾五年。
- Having committed the offence in terms of fraud, breach of trust or misappropriation and subsequently punished with imprisonment for a term of more than one year, and the time elapsed after he has served the full term of such sentence is less than two years;
- 曾犯詐欺、背信、侵占罪經宣告一年以上有期徒刑確定，且服刑期滿後未逾二年。
- Having been adjudicated guilty by a final judgment for misappropriating public funds during the time of his public service, and the time elapsed after he has served the full term of such sentence is less than two years;
- 在擔任公職期間挪用公款，經判決有罪確定，且服刑期滿後未逾二年。
- Having been adjudicated bankrupt, and having not been reinstated;
- 受破產之宣告，尚未復權。
- Having been dishonoured for unlawful use of credit instruments, and the term of such sanction has not expired yet; or
- 使用票據經拒絕往來尚未期滿；或

387. This does not comprehensively to criminals and their associates. It is not explicitly stated in the laws regarding the requirement to conduct fit and proper check against major shareholders or

beneficial owners of the FIs. However, there are requirements to FI to declare persons who hold significant controlling interest<sup>15</sup> for approval from FSC.

以上並未完全及於所有犯罪者及其關係人。法律沒有明確規定對金融機構的主要股東或實質受益人進行適格性檢查的要求。但是，金融機構被要求揭露具有重大控制權之人，以取得金管會的核准。

388. The FSC has laid down rules governing the FSC's prior or *ex post facto* approval mechanism and qualification requirements for responsible persons of banks, namely directors, supervisors, general managers, and *de facto* responsible persons. Where there is a new application for establishment of FSC-regulated bank or there is a change in the responsible persons, in addition to competence requirements, it has to be ensured that no disqualification criteria apply to the responsible persons concerned, such as any record of criminal involvement in organized crime. Where there is a breach of the disqualification requirement for the responsible person found by the FSC through its routine supervision after he or she assumes the position, the responsible person concerned shall *ipso facto* be discharged in accordance with the law.

金管會制定了有關金管會事先或事後批准機制的規則，以及銀行負責人（即董事，監事，總經理和事實上的負責人）的資格要求。金管會監管的銀行如果有新的申請設立或負責人變更，除了能力要求外，還必須確保相關負責人沒有消極資格的情形，例如任何參與組織犯罪的犯罪紀錄。如果金管會在其擔任職務後通過例行監理發現違反資格要求，則有關負責人應當依法解除職務。

389. *Credit departments of farmers' & fishermen's associations:* According to the articles of incorporation of credit departments of farmers' (fishermen's) associations, the general director of the credit department (branch department) is the person in charge of the credit department. Governors and supervisors are also considered to be persons in charge when they perform operations related to the credit department. Article 46-1 of the Farmers Association Act and Article 49-1 of the Fishermen's Association Act stipulate conditions under which the powers of personnel selected, appointed, and hired by farmers and fishermen's associations shall be suspended before the conclusion of criminal prosecution. Where a guilty verdict is rendered, the individual shall be discharged from his or her position; those sentenced to a fixed-term imprisonment, public security penalty, or reformatory penalty shall be discharged from his or her position.

農會和漁會信用部：根據農會和漁會信用部的章程，信用部（分支部門）總幹事是信用部的負責人。信用部（分部）主任；理事、監事在執行與信用部有關的業務時也被視為負責人。“農會法”第46-1條和第49-1條規定了在刑事訴訟結束前暫停農會和漁會選拔、任命和僱用人員的權力的條件。農會選任及聘、僱人員，因刑事案件被判決有罪者應解除其職務。受有期徒刑以上刑判、公共安全刑罰或改革刑罰者，應解除其職務。

390. ABT - Article 35-2 of the Banking Act applies *mutatis mutandis* to Article 26 of the Agricultural Finance Act and authorized the establishment of the "Regulations Governing Qualification Requirements and Concurrent Serving Restrictions and Matters for Compliance by the Responsible Persons of Banks" which specifies that where the person in charge of the ABT meets negative qualifications specified in Article 3 of the Regulations, related parties and the Agricultural Bank shall actively report the circumstance that constitutes *ipso facto* cause for dismissal to the competent authority. The competent authority shall actively impose sanctions in accordance with reported information.

全國農業金庫“農業金融法”第26條比照適用“銀行法”第35-2條，及其授權制定之“銀行負責人應具備資格條件兼職限制及應遵行事項準則”，規定全國農業金庫負責人應符合準則第3條規定的消極資格條件，相關方和全國農業金庫應當主動向主管機關報告構成解任事實的情況。主管機關應根據報告的資訊積極實施制裁。

<sup>15</sup> Significant controlling interest refers to the same person or same concerned party (including a third party acting on behalf of the same person or same concerned party in trust, by mandate or other legal arrangements) intends to singly, jointly or collectively hold more than a certain threshold of outstanding voting shares (i.e. 10%, 25% and 50%).



391. *Foreign Exchange Counters:* Article 5(3-5) of Regulations Governing the Establishment and Administration of Foreign Currency Exchange Counters prescribe the foreign currency exchange counter shall provide the responsible persons' police criminal record certificates with no conviction record in Chinese Taipei when applying for the establishment of a foreign currency exchange counter or changing its responsible person.

外幣收兌處:外幣收兌處設置及管理辦法第 5 條第 3 項至第 5 項規定, 外幣收兌處應當在申請設立或更換其負責人時, 提供在中華臺北無犯罪紀錄的警察紀錄證明。

392. According to Article 4 of the Standards governing the establishment of securities firms stipulates disqualified circumstances of the promoters of a securities company. As for the on-going fit and proper review, based on Article 4 of the Regulations Governing Securities firms, when there is a change in the total number of shares owned by a securities firm's directors, supervisors, general manager and shareholders holding more than 10% of outstanding shares, the firm must file the change with the FSC. The FSC will then examine the reason for the change in order to prevent criminals or other associates from holding a significant or controlling interest in the firm.

證券商設置標準第 4 條規定要求發起人之消極資格條件, 至於適格性持續審查, 根據證券商設置標準第 4 條規定, 當證券公司董事、監事、總經理和持股 10% 以上股東之持股總數發生變化時, 公司必須向金管會提報變更情形。然後金管會將查核變更的原因, 以防止犯罪分子或其關係人持有公司的重大或控股權益。

393. **Criterion 26.4 - Core Principles** financial institutions are regulated and supervised mostly in line with the Principles set by the BCBS, IOSCO, and IAIS.

**標準 26.4** - 核心金融機構的管理和監督主要符合 BCBS, IOSCO 和 IAIS 制定的原則。

394. MVTS providers, namely electronic payment institutions and issuers of electronic stored value cards, are regulated and supervised by FSC. Foreign exchange counters are supervised by the Central Bank.

金錢或價值移轉服務提供商, 即電子支付機構和電子票證機構均受金管會管理及監理。外幣收兌處則受央行監理。

395. **Criterion 26.5** - FSC has commenced risk-based supervision and has begun to take increasing measures which support FSC determining the frequency and intensity of onsite examinations and offsite monitoring based on (1) institutional risks (2) sectoral risks and (3) institutional and group characteristics. FSC has taken a number of steps to more closely consider key risk management issues in determining the frequency and intensity of supervisions. FSC has generally taken a reasonable approach to considering the ML/TF risks and the policies, internal controls and procedures associated with the institution or group, as identified by the supervisor's assessment of the institution's or group's risk profile. However, it is only beginning to closely consider the ML/TF risks present in Chinese Taipei (pending more inputs from the FIU and LEAs) and the characteristics of the financial institutions or groups, in particular the diversity and number of financial institutions and the degree of discretion allowed to them under the risk-based approach.

**標準 26.5** - 金管會已開始以風險為本的監管, 並增加措施, 以支持金管會確定現地檢查和場外監理的頻率和強度, 根據 (1) 機構風險 (2) 部門風險和 (3) 機構和集團特性。金管會採取了一些措施, 以更密切地考慮重大的風險管理問題, 來確定監理的頻率和強度。基於監理機關對機構或集團評估所辨識的風險概況, 金管會普遍採取合理的方法, 來考慮與該機構或集團相關的洗錢/資恐風險、政策、內部控制和程序。然而, 金管會才剛開始密切關注中華臺北現有的洗錢/資恐風險 (尚待更多投入來自金融情報中心和執法機關) 以及金融機構或集團的特性, 特別是關於金融機構的多樣性和數量, 以及允許他們以風險為本的裁量程度。

396. The Central Bank has completed sectoral and institutional risk assessment of foreign currency exchange counters. The sectoral risk assessment of the foreign currency exchange counters is based on five factors: the sector's inherent characteristics; nature of products and services provided by the sector; nature of the business relationship with the clientele; geographic reach of sector's activities; and the nature of delivery channels. The institutional risk assessments combine information

collected from off-site supervision, including the areas where individual institutions are established, the primary business sector by classification, and the exchange volume, with the on-site supervision's operational inspection results as the four risk factors for assessment, with each factor differently weighted for its potential risk influence on the foreign currency exchange counters. The Central Bank and BoT do not sufficiently consider the ML/TF risks present in Chinese Taipei when determining the frequency and intensity of their supervision.

央行已完成外幣收兌處的部門和機構風險評估。外幣收兌處的部門風險評估均基於“行業固有特性”，“行業提供的產品和服務的性質”，“與客戶的業務關係的性質”，“行業活動的地理範圍”和“交付管道的性質”等五個因素。機構風險評估結合了場外監控的資訊，包括個別機構的設立區域，按分類劃分的主要業務，兌換量及現地檢查的結果作為評估的四個風險因素，每個因素對外幣收兌處風險潛在影響的權重不同。在決定監理的頻率和強度時，央行和臺灣銀行沒有充分考慮中華臺北的洗錢/資恐風險。

397. **Criterion 26.6** - FSC conducts risk assessments of each institution, as a basis for preparing its AML/CFT supervision. The major events or developments in the management and operations of FI or group are updated by FSC through the review of the BOD meeting minutes.

**標準 26.6** - 金管會對每個機構進行風險評估，作為準備其防制洗錢/打擊資恐監理的基礎。對於金融機構或集團管理和營運中的重大事件或發展，金管會透過審查其董事會會議紀錄進行更新。

398. In general, the FSC will update the risk assessment annually based on the level of inherent risk and control measures of individual FI and then reach the overall rating (residual risk) of individual FI by a matrix. In addition, the FSC will keep informed of the changes in the risk profile of individual FI through daily supervision and update its risk profile when there are major events.

一般而言，金管會將根據個別金融機構的固有風險和控制措施的水準每年更新其風險評估，然後通過矩陣得出個別金融機構的整體評等（剩餘風險）。此外，金管會將通過日常監理，隨時得知個別金融機構風險概況的變化，並在發生重大事件時更新其風險狀況。

399. Credit departments of farmers and fishermen's associations shall complete ML/TF risk assessments by the end of August 2018 and the ABT will complete its first risk assessment report in July 2017. Agricultural financial institutions shall update their risk assessments periodically in 1 to 1.5-year intervals. BOAF shall complete the first risk assessments for credit departments of farmers and fishermen's associations and conduct a more comprehensive risk assessment on all agricultural financial institutions as the basis for the frequency and intensity of subsequent onsite inspections and remote supervision.

農會和漁會信用部應在 2018 年 8 月底前完成洗錢/資恐風險評估，全國農業金庫將於 2017 年 7 月完成第一次風險評估報告。農業金融機構應每隔 1 年至 1.5 年定期更新風險評估。農金局應完成農會和漁會信用部的首次風險評估，並對所有農業金融機構進行更全面的風險評估，作為後續現地檢查和場外監理的頻率和強度的依據。

400. The Central Bank updates and examines the sectoral risk assessment of foreign currency exchange counters triennially, and institutional risk assessment annually. If any magnificent and serious risk event happens, the Central Bank will adjust the level of risk rating of the foreign currency exchange counter whenever necessary and conduct operational inspection on such foreign exchange counters promptly.

央行每 3 年更新和審查外幣收兌處的部門風險評估，並每年更新機構風險評估。如果發生任何重大和嚴重的風險事件，央行將在必要時調整外幣收兌處的風險評等，並立即對該等外幣收兌處進行業務檢查。

## Weighting and Conclusion

### 權重與結論

401. The Central Bank and BoT do not sufficiently consider the ML/TF risks present in Chinese Taipei when determining the frequency and intensity of their supervision. **Recommendation 26 is rated largely compliant.**

在決定監管的頻率和強度時，央行和臺灣銀行沒有充分考慮中華臺北的 ML / TF 風險。**建議第 26 項評等為大部分遵循。**

### **Recommendation 27 - Powers of supervisors**

#### **建議第 27 項- 監理機關之權力**

402. In its 2007 MER Chinese Taipei was rated largely compliant with former R.29. AML/CFT requirements for foreign currency exchange sector only came into force recently and the related supervisory framework was unclear.

中華臺北 2007 年相互評鑑報告原 R.29 被評為大部分遵循。外幣收兌處那時剛納入 AML/CFT 規範，且相關監理架構不明。

403. **Criterion 27.1** - FSC has powers to regulate and supervise banking business, electronic payment institution, electronic stored value card issuer, securities and futures business and insurance enterprise on AML/CFT matters. These powers are derived under the Organic Act Governing the Establishment of the FSC, MLCA and regulation issued under those and relevant sectoral statutes. Also, the Executive Yuan on June 17, 2017 designated the FSC as the competent authority for AML matters of financial leasing business. According to Art. 2, para1 of the Organic Act Governing the Establishment of FSC, the FSC is responsible for the development, supervision, management, and examination of the financial market and financial service industry including requirements for FIs in AML/CFT aspects.

**標準 27.1** - 金管會有權監管和監督銀行業、電子支付機構、電子票證發行機構、證券期貨業和保險業的 AML/CFT 事宜。金管會相關權力源自金融監督管理委員會組織法、洗錢防制法及其他有關子法。此外，行政院於 2017 年 6 月 17 日指定金管會為融資租賃業的 AML 主管部門。根據金管會組織法第 2 條第 1 項規定，金管會負責金融市場和金融服務業的發展、監督、管理和檢查，包括對金融機構 AML/CFT 方面的要求。

404. The Organic Act also empowers FSC to oversee the management, supervision, inspection, assistance, and review of the business, finances and personnel of agricultural FIs (Article 7 of the Agricultural Finance Act). The Central Bank is competent authority responsible for authorizing and supervising banks and other enterprises engaged in foreign exchange operations (article 35 of the Central Bank act), including AML/CFT aspects of foreign exchange counters. Article 38 empower Central Bank to undertake targeted examination of the foreign exchange business.

組織法亦賦予金管會權力負責農業金融機構之業務、財務與人事之管理、監督、檢查、輔導(農業金融法第 7 條)。中央銀行為督導指定銀行及其他事業辦理外匯業務之主管機關(中央銀行法第 35 條)，包括外幣收兌處 AML/CFT 的監理。中央銀行法第 38 條賦予中央銀行對外幣收兌處業務查核之職責。

405. **Criterion 27.2** - FSC, BOAF, and the Central Bank have the authority to conduct inspections of their supervised FIs. Articles 4 & 5 of the Organic Act establishing the FSC provides that agency's authority to conduct supervision of FIs. Article 64 of the securities and exchange Act, Article 101 of the Securities Investment Trust and Consulting Act, and Article 98 of the Futures Trading Act provide general power to order securities or future trading firms to provide report or FSC may inspect their business if it is any concerns on public interest or to preserve order of the market. Article 148 of Insurance Act allow FSC to have appropriate agency or professional expert to conduct inspection instead.

**標準 27.2** - 金管會、農金局及央行有權對其轄管之金融機構進行檢查。金融監督管理委員會組織法第 4、5 條賦予主管機關對轄管金融機構執行金融檢查。證券交易法第 64 條、證券投資信託及顧問法第 101 條、期貨交易法第 98 條賦予主管機關得命令證券商或期貨業提出報告資料，為保障



公益或維護市場秩序，亦得檢查其業務。保險法第 148 條亦允許金管會得委託適當機構或專業經驗人員進行檢查。

406. According to Article 2 of the Act Governing Electronic Payment Institutions and Article 2 of the Act Governing Electronic Stored Value Card Issuers provides FSC, as the competent authority, with additional powers to conduct inspections over electronic payment institutions and stored value card issuers. Article 6 of the MLCA, the FSC is the designated AML/CFT competent authority of financial leasing companies and responsible for their AML/CFT supervision.

依電子支付機構管理條例第 2 條及電子票證發行管理條例第 2 條，金管會為其主管機關，並被賦予檢查之權力。依洗錢防制法第 6 條，金管會被指定為辦理融資性租賃事業之主管機關並負責其防制洗錢/打擊資恐監理。

407. FSC is also the competent authority to supervise business operations of Chunghwa Post for remittance, in collaboration with the Central Bank which is responsible for supervising Chunghwa Post foreign-exchange business (Art. 38 of the Central Bank Act).

金管會也是中華郵政的業務主管機關，在匯款方面，並與負責管理中華郵政外匯業務的中央銀行合作(中央銀行法第 38 條)。

408. **Criterion 27.3** - The provisions mentioned in criterion 27.2 also empower FSC, BOAF, and the Central Bank to order their supervised FIs to compile relevant books, documents, financial or business reports or other related information. Article 5 of the Organic Act extends FSC's powers of supervision to include responsible persons and employees of an FI and the FI's affiliated enterprises (as defined in the Company Act). The Organic Act empowers the FSC to require an examinee to appear at an FSC designated office for questioning. In relation to ensuring access to the premises of an FI, the Organic Act empowers the FSC, in cases involving suspected financial crime, to present facts to a prosecutor seeking permission to file a motion in the court for a search warrant of an FI.

**標準 27.3** - 如前於標準 27.2 所述，金管會、農金局及央行有權命令其轄管之金融機構彙編相關帳簿、文件、財務或業務報告、或其他有關資料。組織法第 5 條延伸金管會的權力至金融機構的負責人、員工及其關係企業(如公司法之定義)，並有權要求被檢查者到達指定辦公處所備詢。在確保得以進入金融機構處所方面，組織法亦賦予金管會權力，對涉有金融犯罪嫌疑之案件，得敘明事由，報請檢察官許可，向該管法院聲請核發金融機構之搜索票。

409. **Criterion 27.4** - FSC, as the competent authority for all FIs except for foreign exchange counters, is authorised to impose sanctions. There are a range of sanctions which can be applied if an obliged entity fails to meet its responsibilities under the MLCA and related statutes. Apart from imposing fines, the corrections and other measures such as requesting improvement within a specified period of time, restrictions of businesses, dismissals of directors, supervisors or managers, ordering to dissolve, revoke or cancel the permission and etc. Competent authorities for foreign exchange counters can call for remedial measure and can ultimately revoke or cancel the license when the Central Bank supervision identifies that a foreign exchange counter seriously violates AML/CFT regulations, however fines are not available to enforce compliance. The nature of the sector [stand-alone nature of business, their scope and scale] means that this gap is not material.

**標準 27.4** - 金管會為所有金融機構的主管機關(收兌處除外)，有權對金融機構施以處罰。對於違反洗錢防制法及相關法令義務規定者，有各種的處罰方式，除罰鍰外，還有糾正，及其他諸如要求限期改善、限制業務、董監事/經理人解職、撤銷執照等措施。收兌處的主管機關可以要求採取補正措施，並且當確定收兌處嚴重違反 AML/CFT 規定時，最終手段得予撤銷或廢止核准，然並無罰鍰的處罰方式。該部門的性質(業務的單一、範圍和規模)意味著這個落差並不重大。

## Weighting and Conclusion

### 權重與結論

410. There are minor shortcomings in the Central Bank ability to sanction foreign exchange counters for AML/CFT failings. **Recommendation 27 is rated largely compliant.**



在中央銀行對收兌處違反 AML/CFT 規定的制裁能力方面有微小缺失。建議第 27 項評等為大部分遵循。

## Recommendation 28 – Regulation and Supervision of DNFBPs

### 建議的 28 項-DNFBPs 之規範與監理

411. In its 2007 MER Chinese Taipei was rated non-compliant under the former R.24. The DNFBP sector was not covered by the national AML/CFT framework, with the exception of dealers in jewellery and gold.

中華臺北 2007 年相互評鑑報告原 R.28 被評為未遵循。除了銀樓以外，指定之非金融事業或人員產業不受國家的防制洗錢/打擊資恐框架所涵蓋。

412. **Criterion 28.1** - Casinos are prohibited from operating in Chinese Taipei under Chapter 21 of the Criminal Code.<sup>16</sup>

標準 28.1-根據“刑法”第 21 章規定，中華臺北禁止賭場活動。

413. **Criterion 28.2** -Art 6 of the MLCA states central competent authorities are responsible for regular inspection and review of DNFBPs' AML policies and procedures. Chinese Taipei demonstrated that competent authorities for each DNFBP sector have commenced offsite AML/CFT inspections and, in some sectors onsite inspections. Based on coordination with AMLO and with sectoral associations, each DNFBP sector has systems and programs in place for monitoring compliance with AML/CFT requirements. This is done in coordination with the AMLO.

標準 28.2-洗錢防制法第 6 條規定，中央主管機關負責定期檢查和審查指定之非金融事業或人員的防制洗錢政策和程序。中華臺北證明指定之非金融事業或人員各產業的主管機關已開始就 AML/CFT 進行場外檢查，並在一些部門進行現地檢查。在洗錢防制辦公室與各部門公會的協調基礎上，各個指定之非金融事業或人員都有適當的系統和計畫，用於監理 AML/CFT 要求的遵循情況。這是與洗錢防制辦公室協調完成的。

- **Real estate:** Point 5 of the Regulations Governing AML/CFT for Land Administration Agents and Real Estate Brokerages requires random inspection of real estate and land admin agencies' ICS for AML/CFT.

不動產：地政士及不動產經紀業防制洗錢及打擊資恐辦法第 5 條要求對不動產經紀業和地政士之 AML / CFT 內部控制措施進行隨機檢查。

- **Jewellery businesses:** Point IV(2) of the Regulations Governing AML/CFT for Jewellery Businesses requires the MOEA to inspect/review AML/CFT operations and internal controls on an annual basis, though they are also allowed to delegate this inspection/review to others. (Article 4(3)). Art 4(1,2) of the Regulation requires the MOEA to dispatch officers to inspect and review operations and ICS of jewellery retailers annually.

銀樓業：銀樓業防制洗錢與打擊資恐施行及申報辦法第 4 (2) 點規定經濟部必須每年檢查/審查防制洗錢/打擊資恐業務和內部控制，但允許將業務委託他人檢查/審查 (第 4 (3) 點)。該辦法第 4 (1,2) 點要求經濟部每年指派人員檢查和審查銀樓零售業的業務和內部控制。

- **Accountants:** Regulations Governing AML/CFT for CPA provide that the national association of CPAs can also be designated by FSC to conduct onsite and offsite inspection.

會計師：會計師 AML/CFT 的法規規定，金管會也可指定會計師公會進行現地和非現地檢查。

- **Attorneys:** While there some powers are provided in the Regulations on AML/CFT Operations Matters Conducted by Attorneys, it is not clear that this represents a system for monitoring

<sup>16</sup> It is an offence to gamble in public, furnish a place to gamble or assemble persons to gamble, to operate lottery or 'prize-giving savings businesses', or acts in an intermediary for either.

compliance to ensure attorneys are subject to compliance with AML/CFT policies and procedures.

律師：雖然通過律師辦理防制洗錢及打擊資恐作業辦法賦與其權力執行，但不清楚這是否是遵循監督系統，以確保律師遵循防制洗錢/打擊資恐政策和程序。

- *Notaries:* Art 6 of Regulations Governing AML/CFT for Notaries requires the Judicial Yuan to conduct spot inspections annually of ICS of court notary divisions and civil notary public offices. Spot inspections are carried out by the district court which the notary is registered to, or the local notary association to which the civil notary belongs to.

公證人：公證人防制洗錢及打擊資恐辦法第 6 條要求司法院每年對法院公證處和民事公證人所辦理防制洗錢的內部控制進行現場檢查。現場檢查由公證人登記的地區法院或民事公證人所屬的當地公會進行。

414. Article 6 of the MLCA authorises the central competent authorities in charge of relevant DNFBP sectors to inspect and review AML/CFT controls. Art 3 of the Real Estate Broking Management Act notes the MOI is the administrative office at the central governmental level, while municipal and county-level land administration offices oversee their respective real estate brokerages. CPAs are supervised by the FSC as the competent authority under Art 3 of the Certified Public Accountant Act. Art 3 of the Certified Public Bookkeepers Act establishes the MOF as the competent authorities for bookkeepers and tax return filing agents. The Department of Prosecutorial Affairs, MOJ is the competent authority responsible for attorneys.

洗錢防制法第 6 條授權中央主管機關進行相關 DNFBP 產業 AML/CFT 控制措施之檢查及檢視。不動產經紀業管理條例”第 3 條指出，內政部是中央政府層級的行政辦公室，而市級和縣級地政辦公室則負責監督所屬的不動產經紀業務。依據會計師法第 3 條會計師的主管機關為金管會並受其監督。“記帳士法”第 3 條規定財政部為記帳士暨記帳及報稅代理人的主管機關。法務部檢察司是律師的主管機關。

415. **Criterion 28.3** -Bookkeepers and tax return filing agents are the other categories of DNFBPs subject to systems for monitoring compliance with AML/CFT requirements: Art 7, 9 and 11 requires bookkeepers and tax return filing agents to register with the MOF. Art 12 of the Regulations Governing AML for Certified Public Bookkeepers and Tax Return Filing Agents authorises MOF National Tax Bureaus to investigate.

**標準 28.3** 記帳士暨記帳及報稅代理人是指定之非金融事業或人員的其他類別，要遵循 AML/CFT 要求：第 7,9 和 11 條要求記帳士暨記帳及報稅代理人向財政部登記。記帳士暨記帳及報稅代理人防制洗錢與打擊資恐辦法第 12 條授權財政部國稅局進行調查。

#### **Criterion 28.4:**

##### **標準 28.4:**

416. **28.4(a)** - Overall, with the exception of CPAs and notaries, there are gaps in the powers of sectoral supervisors to monitor compliance. Article 6 (3-4) of the MLCA holds that the central competent authorities in charge of the relevant industries shall regularly inspect and review the implementation of the policies and procedures for AML/CFT and may delegate the inspection and review to another agency, institution, legal person or organization. A series of AML/CFT guidelines or directions have been issued for each sector which reference that the competent authorities will supervise for compliance with obligations in the MLCA and its regulations. However, only regulations for CPAs and notaries give a clear statutory basis for adequate powers to perform supervisory functions with DNFBPs, including powers to obtain records, enter premises, inspect systems, etc.

**28.4 (a)** 總體而言，除了會計師和公證人外，部門主管機關在監督法遵方面存在落差。洗錢防制法第 6 (3-4) 條規定，相關產業的中央主管機關應定期檢查和審查 AML/CFT 政策和程序的實施情況，並可委託其他機關、機構、法人或組織進行檢查和審查。已經為每個部門發布了一系列 AML/CFT 指引或指導，其中提到主管機關會監督遵守洗錢防制法及其規定的義務。但是，只有會

計師和公證人有明確的法令依據賦予監督 DNFBP 之充分權力，包括獲取紀錄、進入處所、檢查系統等權力。

417. **28.4.(b)** - Overall, there do not appear to be provisions which prevent a criminal from holding a significant or controlling interest in a DNFBP. Additionally, there do not appear to be enforceable statutory instruments which prevent criminals' associates from being accredited, holding a significant/controlling stake, or holding a management role in a DNFBP.

**28.4 (b)** 總的來說，似乎沒有規定阻止犯罪分子對 DNFBP 持有重大或控制權益。此外，似乎沒有可執行的法定文書阻止犯罪分子的關係人獲得委任、持有重要/控股權，或在 DNFBP 中擔任管理職務。

418. *Real estate:* Under Art 6 of the Land Administration Act, a criminal who served more than a year in prison cannot be an agent. If they already are, then competent authorities must withdraw and cancel their license to practise. Art 6 of the Real Estate Broking Management Act excludes persons who are bankrupted, were managers of a nullified real estate brokerage, and those who are convicted of specified offences for which they served more than a year in jail from being registered as brokers. These offences include: fraud, breach of trust, misappropriation, Article 2 of Prevention of Sexual Aggression and Articles 3(1), 3(2), 6 and 9 of Prevention of Organised Crime. Art 31 of the Real Estate Broking Management Act sets out graduated sanctions for brokers. Being reprimanded thrice leads to their business being suspended for 6 months to 3 years, and a cumulative suspension time of 5 years leads to the broker's certificate being rescinded.

不動產經紀業：根據“地政土法”第 6 條，在監獄服刑超過一年的罪犯不能成為經紀人。如果他們已經存在，主管機關必須撤銷並取消其執業許可。“不動產經紀業管理條例”第 6 條排除受破產宣告之人、曾經營經紀業經撤銷或廢止許可者、及在監獄服刑超過一年以上之人登記成為經紀人。這些罪行包括：詐欺、背信、侵占罪、性侵害犯罪防治法第 2 條所定之罪、組織犯罪防制條例第 3 (1)、3 (2)、6 和 9 條之罪。受申誡處分三次者會被停止執行業務 6 個月至 3 年，累計 5 年的停業時間經紀人的證書將被廢止。

419. *Jewellery businesses:* are only subject to the Company Act's provisions (Art 108(4), Art 192(5) and Art 216 (4)) which is limited to barring criminals from a corporate directorship or a supervisory role in a company.

銀樓業：銀樓業必須遵守“公司法”的規定（第 108（4）條，第 192（5）條和第 216（4）條），禁止犯罪分子擔任公司董事或監督職務。

420. *Bookkeepers and Tax Return Filing Agents:* are Regulated under Art 4 of the Certified Public Bookkeepers Act. Art 4(1,1) prevents criminals who have served more than a year in jail from acting as a certified public bookkeeper. However, there are no provisions preventing criminals' associates from being accredited, holding a significant/controlling stake, or holding a management role in a bookkeeping or tax return filing business. MOF is their competent authority under Article 3.

記帳士暨記帳及報稅代理人：根據記帳士法第 4 條加以規範。第 4（1,1）條規定，禁止在監獄服刑一年以上的罪犯充任記帳士。但是，沒有規定阻止犯罪分子的關係人獲得委任、持有重要/控股權、或在記帳士暨記帳及報稅代理人業務擔任管理職務。第 3 條規定財政部是主管機關。

421. *Attorneys:* Art 4 of the Attorney Regulation Act prevents anyone convicted of a crime and sentenced to more than a year in jail, involving a crime of 'moral turpitude that affects their moral fitness to practise law', and having been disbarred by the Attorney Disciplinary Committee from being an attorney.

律師：律師法第 4 條規定，任何被判決有罪並入獄服刑一年以上、涉及“道德敗壞而影響他們實踐法律的道德操守”的罪行、及被律師懲戒委員會取消其律師資格者，將不能成為律師。

422. **28.4.(c)** - Art 6(4) of the MLCA provides administrative fines of NTD 50k to 500k which can be applied by central competent authorities (or delegated agency/institution/legal person/organisation) in cases where DNFBPs avoid/refuse/obstruct *regular* inspections of their implementation of AML policies and procedures. In addition, other sanctions are available under the

MLCA, CFT Act and sector-specific statutes which may be applied for AML/CFT failures and a lack of compliance with directions from competent authorities.

**28.4.(c)** 根據洗錢防制法第 6 (4) 條，如果指 DNFBP 規避/拒絕/妨礙定期檢查他們實施防制洗錢政策和程序，主管機關（或授權機關/機構/法人/組織）可對其處以 5 萬至 50 萬新台幣的行政處罰。此外，當防制洗錢/打擊資恐失敗及未遵循主管機關的指引時，可依據洗錢防制法、資恐防制法及特定部門的法規處罰。

#### **Criterion 28.5:**

##### **標準 28.5:**

423. **28.5.(a)** - The various competent authorities responsible for DNFBPs, supported by the AMLO, have used recent NRA findings to establish and to commence the implementation of a risk-based supervisory framework and risk assessment tools. This has included outreach, offsite supervision and, in some sectors, limited onsite supervision.

**28.5.(a)** -負責 DNFBP 的各個主管機關，在洗錢防制辦公室的支援下，利用最近的國家風險評估發現去建立並開始實施以風險為本的監理框架和風險評估工具。這包括宣傳、非現地檢查，以及在一個部門進行有限的現地檢查。

424. **28.5.(b)** - Commencing in 2018, DNFBPs have been subject to limited risk-based supervision, which is derived from tools including national and sectoral risk assessments, and questionnaires. Reporting entities deemed to have lower risk are subject to education and training, while onsite inspections are initially being undertaken with those sectors or entities shown to be medium to high-risk.

**28.5.(b)** -從 2018 年開始，DNFBP 受到有限的以風險為本的監督，這些監督來自包括全國和部門風險評估及問卷調查在內的工具。風險較低的申報機構主要施以教育和訓練，而現地檢查最初顯示是針對中至高風險的部門或機構進行。

#### *Weighting and Conclusion*

##### *權重與結論*

425. In terms of prevention of criminals and their associates, there are some control gaps for the holding of significant/controlling interests in DNFBPs. Furthermore, there are deficiencies in controls around prevention of associates from accreditation and holding a management role. In terms of DNFBP supervision, there are steps towards a risk-sensitive basis. However a nascent DNFBP supervisory framework and tools, as well as limited risk inputs, are a challenge for the determination of intensity/frequency as well as individual entities' profiles for risk-based supervision. **Recommendation 28 is rated partially compliant.**

在預防犯罪分子及其同夥方面，在指定之非金融事業或人員中持有重要/控制權益存在一些控制落差。此外，在防止員工進行認證和擔任管理職務方面存在控制缺失。在 DNFBP 監管方面，有一些步驟是朝向以風險敏感為本。然而，初期的 DNFBPs 監督架構和工具以及有限的風險投入，對於確定強度/頻率以及各實體以風險為本監督的配置都是一個挑戰。**建議第 28 項評等為部分遵循。**

#### **Recommendation 29 - Financial intelligence units**

##### **建議第 29 項—金融情報中心**

426. In its 2007 MER, Chinese Taipei was rated compliant with former R.26. R.29 contains new requirements that were not assessed under the 2004 Methodology. The revised recommendation provides a clearer articulation of the three core FIU functions.

在 2007 年的相互評鑑報告中，中華臺北被認為符合前第 26 項建議。第 29 項建議包含 2004 年評鑑方法論未評估的新要求。修訂後的建議更明確訂出金融情報中心的三個核心職能。



427. In 1997 the MLPC was established as an FIU under the MJIB. In 2008 the AMLD was formed as a law-enforcement type FIU, still located within the MJIB. The Regulations for the Departmental Affairs of the MJIB sets out the AMLD's FIU activities and responsibilities.

1997 年在法務部調查局下設置洗錢防制中心（MLPC）作為金融情報中心。2008 年調查局洗錢防制處（AMLD）成立，為一執法型金融情報中心，仍設於法務部調查局內。法務部調查局處務規程明定洗錢防制處作為金融情報中心的職掌。

428. **Criterion 29.1** - According to the MLCA and the CTF Act, the AMLD is the competent central agency for receipt of STRs. The MLCA requires FIs and DNFBPs to report currency transactions and STRs to the AMLD which may relate to any of the predicate offences in the MLCA (Art 9-10). Article 9 of the Regulations for Departmental Affairs of MJIB confirms that the AMLD is in charge of receiving, analysing and processing suspicious transaction reports filed by FIs.

**標準 29.1**-依據洗錢防制法及資恐防制法，AMLD 是受理可疑交易報告的中央權責機關。洗錢防制法要求金融機構和 DNFBP 向 AMLD 申報任何與洗錢防制法特定犯罪相關之大額通貨交易和可疑交易報告（第 9-10 條）。法務部調查局處務規程第 9 條確認洗錢防制處負責受理、分析和處理金融機構申報之可疑交易報告。

429. **Criterion 29.2** - The FIU is the central agency responsible for receiving disclosures from reporting entities in accordance with Article 9 of the Regulations for Departmental Affairs of MJIB. FIs and DNFBPs are required to file the following to the AMLD under the MLCA, CFT act and the Foreign Exchange Counter Regulation:

**標準 29.2**-依據法務部調查局處務規程第 9 條規定，金融情報中心為負責受理所有申報機構揭露的中央單位。金融機構和 DNFBP 必需根據洗錢防制法、資恐防制法和外幣收兌處設置及管理辦法向洗錢防制處申報以下內容：

- a. STRs (Art 10 of the MLCA and Art 11 of the Foreign Exchange Counter Regulation)  
可疑交易報告（依據洗錢防制法第 10 條及外幣收兌處設置及管理辦法第 11 條）
- b. CTRs (FIs and jewellery businesses) equal to or above the applicable designated threshold – currently set at NTD 500,000 (approx. USD17,000) or value equivalent in foreign currency or above (MLCA Art. 9)  
大額通貨交易報告（金融機構和銀樓業）在等於或高於指定門檻時，目前門檻為 50 萬元新台幣（約 17,000 美元）或等值的外幣或以上（洗錢防制法第 9 條）。
- c. International Currency and Securities Transportation Report (ICTR) made to Customs are provided to AMLD on a monthly basis (for batch reports) or without delay in case of a false declaration (MLCA Art. 12)  
海關每月向洗錢防制處通報 ICTR(批次報告)或在發生申報不實時立即通報（洗錢防制法第 12 條）。
- d. Reports of frozen funds and assets of designated persons under various UNSCRs (Article 7 of the CTF Act).  
與各種聯合國安理會決議指定制裁對象之資金及資產凍結報告（資恐防制法第 7 條）。

430. **Criterion 29.3** - MJIB staff, including AMLD, are deemed to be judicial police officers pursuant to Article 14 of the Organic Act for Investigation Bureau and are able to access information pursuant to the CPC and the Administrative Procedure Act. AMLD requires FIs and DNFBPs to produce records in keeping with their role as investigators Article 230 of the CPC which confirms judicial police who suspect an offence has been committed shall initiate an investigation. Letters to reporting entities reference the existence of a possible ML investigation and references an FSC order from 2006 (Jin-Guan-Yin-1 No. 09510002020). In other cases (e.g. DNFBP not regulated by FSC) AMLD relies on art 133 of the CPC, which allows judicial police to seize a thing which may be used as evidence or subject to confiscation and is used to obtain supplementary documents, including transaction records, accounting vouchers, CDD and detailed documents without a court order.

Similarly, AMLD has access to a wide range of information on finance, administration, and law enforcement, (as per article 19(4) of the Administrative Procedure Act) including but not limited to household registrations, business registrations, immigration records, taxation (non-real time), motor vehicle registration, criminal offences, prosecution briefs, taxation (real-time), and labour insurance, or may send an official letter to institutions including but not limited to the Central Bank, Ministry of Education, the MOF, MOI, Ministry of Health and Welfare, local government at all levels, the Stock Exchange Corporation (TWSE), Taipei Exchange (TPEX), Financial Information Service Co., Ltd for seeking information.

**標準 29.3-**根據法務部調查局組織法第 14 條，法務部調查局人員包括洗錢防制處，係司法警察官，得依刑事訴訟法及行政程序法取得資料。刑事訴訟法第 230 條確認司法警察懷疑涉有犯罪之嫌時應立即立案調查，因而洗錢防制處要求金融機構和 DNFBP 需提供紀錄，以符合其調查人員之角色。在通知通報機構的公函中會提及現有一洗錢案件之調查，並引用金管會 2006 年所發之令（金管銀字第 09510002020 號）；在其他情況下（例如 DNFBP 不受金管會監理），洗錢防制處依據刑事訴訟法第 133 條允許司法警察扣押可能作為證據或得沒收之物，用於取得補充文件，包括交易紀錄、會計憑證、客戶審查和詳細文件，而無需法院核發令狀。同樣地，洗錢防制處亦可獲取廣泛的財務、行政和執法等資訊（依行政程序法第 19 條第(4)項），包括但不限於戶籍、商業登記、出入境紀錄、稅務（非即時）、車籍登記，刑事犯罪紀錄、起訴書、稅務（即時）和勞保資料，亦可發文向中央銀行、教育部、財政部、內政部、衛生福利部、各級地方政府、台灣證券交易所股份有限公司（TWSE）、證券櫃檯買賣中心（TPEX）及財金資訊股份有限公司等調取資料。

431. **Criterion 29.4** - The AMLD conducts operational/tactical analysis on STRs and related information which come to the FIU. The AMLD has databases that identify priority STRs for analysis however staff at AMLD also analyse each STR that comes into the FIU for priority. AMLD has access to a wide range of information which it utilizes when undertaking analysis of STRs both proactively and reactively. This includes the provision of international cooperation from foreign counterparts.

**標準 29.4-**洗錢防制處就金融情報中心受理之可疑交易報告及相關資訊進行實務/策略分析。洗錢防制處擁有資料庫以識別應優先分析的 STR，但洗錢防制處人員亦以人工檢視每件申報至金融情報中心之可疑交易報告的優先性。洗錢防制處可調取廣泛的資訊，得以於主動或被動分析可疑交易報告時加以運用，這包括提供外國對等機關的國際合作。

432. The AMLD performs strategic analysis, combining when necessary with MOF and FSC to identify trends and typologies of financial crime. The requirement to conduct strategic analysis is based in Regulations under Art 5 of the MJIB Operation Regulations on Matters relevant to AML/CFT. The AMLD does not have a dedicated strategic analysis team, rather intelligence analysts undertake research as required. The research is generally disseminated within government and only occasionally is circulated more widely amongst the private sectors.

洗錢防制處執行策略性分析，且視需要結合財政部和金管會，共同辨識金融犯罪之趨勢與態樣。策略性分析係依據法務部調查局辦理防制洗錢及打擊資恐業務作業要點第 5 條規定之任務。洗錢防制處並無專責團隊負責策略性分析，而是要求情報分析人員進行研究。這些分析資料通常在政府機關內分送，僅偶爾再傳遞給私部門。

433. **Criterion 29.5** - Article 9(2) of the Regulation for Departmental Affairs of the MJIB provides a statutory basis for AMLD to receive, analyse and disseminate STRs. Article 9(3) provides a basis for receiving and maintaining CTRs and ICTR, but does not explicitly provide a basis for further dissemination<sup>17</sup>. Statistics provided to the team demonstrate that such information is however disseminated. Article 9(7) puts AMLD in charge of 'other AML related matters'. Article 5 of the MJIB Operation Regulations on Matters Relevant to AML/CFT allows AMLD to disseminate its product of analysis to competent authorities spontaneously or upon requests. AMLD disseminates operational financial intelligence products in written format labelled "classified". Art 5 of the Operation Regulations sets out further requirements for the information to be provided for information only,

<sup>17</sup> An updated translation of Art 9(3) of the Regulation was subsequently provided to the assessment team immediately prior to the adoption of the report, however this was not able to be reflected in the final analysis. 法務部調查局處務規程第 9 條第(3)項更新的翻譯之後已在報告採認前提供給評鑑團，惟無法反映於最終分析中。

it shall be confidential and the competent authorities may not deliver the information to third parties without approval from the AMLD. In order to respond efficiently to requesting agencies, AMLD has established a secure and dedicated network with the competent authorities including MJIB, MOJ (Prosecutors' Offices, AAC, AEA) and NPA to request information. In other instances, the result of analysis is sent via hard copies labelled classified.

**標準 29.5-**法務部調查局處務規程第 9 條第 (2) 項為洗錢防制處接收、分析和分送可疑交易報告提供法定依據。第 9 條第 (3) 項為接收及維護大額交易通貨報告及 ICTR 的法定依據，但無明訂進一步分送的規定<sup>17</sup>。惟提供給評鑑團的數據說明是有分送的。第 9 條第 (7) 項則規定洗錢防制處負責其它洗錢防制相關事宜。法務部調查局辦理防制洗錢及打擊資恐業務作業要點第 5 條允許洗錢防制處主動或依要求，分送分析的產品予權責機關。洗錢防制處以標註「密件」的書面文件，分送實務性金融情報分析產品。作業要點第 5 條規定，提供的資訊僅為資訊性質，這些資訊應予保密，且未經洗錢防制處核准，不得將情資傳遞給第三方。為有效回應請求機構之需求，洗錢防制處與權責機關建立一個安全專用的網路系統，提供法務部調查局、法務部（檢察署、廉政署、行政執行署）和內政部警政署請求資訊。在其他情況下，分析結果以標註密件之紙本公文寄送。

434. **Criterion 29.6** - Article 17 of the MLCA provides some obligation to the information security and data protection. Article 8 of the MJIB Operation Regulations on Matters Relevant to AML and CFT and the MJIB Maintenance and Operation Guidelines for IT Security Equipment contains procedures for handling, storing, disseminating, protecting, accessing, and safeguarding of all digital and non-digital information and files acquired, received and kept safely and securely.

**標準 29.6-**洗錢防制法第 17 條明訂資訊安全及資料保護之義務。法務部調查局辦理防制洗錢及打擊資恐業務作業要點第 8 條和法務部調查局資訊設備維運安全作業要點規定包含處理、儲存、分送、保護、調取、接收和保全所有數位和非數位資訊與文件的程序。

435. Article 8 of the MJIB Operation Regulations on Matters Relevant to AML and CFT require personnel to exercise extreme caution when processing and using files and data which must be lawfully obtained, handled, and held in custody. AMLD personnel are furthermore required to observe all confidentiality and security measures and are prohibited from disclosing reporting entities, employees, or other personnel and information of personnel of such entities responsible for handling such data. The MJIB has rigorous regulations and principles regarding employment, stringent testing and evaluation measures. This includes ongoing evaluations by the personnel office, civil service ethics office and Inspection Division of the MJIB to scrutinize the integrity of agents.

法務部調查局辦理防制洗錢及打擊資恐業務作業要點第 8 條要求人員在處理和運用檔案、數據資料時，應特別謹慎，必須合法取得、處理和保管是類資料。洗錢防制處人員更被要求須檢視所有保密及安全措施，禁止揭露申報單位、員工或其他人事資料與其他在申報機構中處理此類數據資料的人事資訊。法務部調查局在人員招募時，擁有相當嚴格的測試和評估措施，包括法務部調查局的人事室、政風室及督察室人員會持續審查每位人員的誠信品格。

436. The AMLD staff are all MJIB personnel with a minimum of 4 years' experience as an MJIB officer. MJIB staff hold relevant clearances. The CPC requires secrecy in criminal investigations with sanctions for any breach. The AMLD is located in a secure part of the MJIB with separate entrances that are not accessible by other MJIB members.

洗錢防制處人員均為在法務部調查局服務 4 年以上調查官。調查官均具有相關許可。刑事訴訟法規定刑事偵查保密，違者將予以處罰。洗錢防制處位在法務部調查局內的安全地點，具有獨立的出入口，其他法務部調查局人員無權隨意進入。

437. **Criterion 29.7** - The AMLD was set up in accordance with the Organic Act for Investigation Bureau, Ministry of Justice to execute FIU functions, and the AMLD Head is authorized to review and approve the handling, analysis, exploitation, and dissemination of related intelligence. In accordance with the regulations prescribed in Article 5 of the MJIB Operation Regulations on Matters Relevant to AML/ CFT upon approval by the Division Head, staff shall disseminate compiled operational or strategic financial intelligence in critical situations involving the stability of the financial system or national security. There are no requirements for further consent to be sought.



**標準 29.7**-洗錢防制處是依據法務部調查局組織法成立，執行金融情報中心功能，洗錢防制處首長有權審查和批准相關情資的處理、分析、運用和分送。依據法務部調查局辦理防制洗錢及打擊資恐業務作業要點第 5 條規定，經該處處長批可後，該處人員就涉及金融系統穩定或國家安全之重要情勢分送彙編之實務性和策略性金融情報，毋須尋求進一步同意。

438. Article 21 of the MLCA empowers the government to sign AML treaties or agreements with foreign governments, agencies or international organizations on the basis of reciprocity. Article 9(5) of the Regulations for Departmental Affairs of the MJIB gives a statutory basis for AMLD to be in charge of 'liaison, planning, coordination and implementation of information exchange, personnel training and cooperation in investigating ML cases with foreign counterparts. Article 6 of the MJIB Operation Regulations on Matters Relevant to AML/ CFT enables the AMLD to make decisions autonomously on whether and how to share information with foreign FIUs, even with non-Egmont Group members. The MJIB Operation Regulations on Matters Relevant to AML/ CFT, MJIB can disseminate analysis results to the Prosecutor's Offices and LEAs spontaneously or upon requests.

洗錢防制法第 21 條授權政府在互惠的基礎上，與外國政府、機構或國際組織簽訂防制洗錢之條約或協定。依據法務部調查局處務規程第 9 條第 (5) 項為洗錢防制處負責與國外對等機關之資訊交換、人員培訓、跨國洗錢案件合作調查，提供聯繫、規劃、協調及執行之法定依據。法務部調查局辦理防制洗錢及打擊資恐業務作業要點第 6 條規定，洗錢防制處能夠自主決定是否與外國金融情報中心分享資訊及其方式，即使該對象並非艾格蒙聯盟會員。法務部調查局辦理防制洗錢及打擊資恐業務作業要點規定，法務部調查局可主動或依請求，分送其分析結果予檢察署和執法機關。

439. Article 9 of the Regulations for Departmental Affairs of the MJIB gives a statutory basis for AMLD to be in charge of researching AML strategies; receiving and analysing STRs and disseminating analysis results; receiving and maintaining CTRs and ICTRs; assisting domestic LEAs in matching data from the AMLD for investigating ML and coordinating/contacting on ML prevention; liaison, planning, coordination and implementation of information exchange, personnel training and cooperation in investigating ML cases with foreign counterparts operational analysis and strategic analysis of financial intelligence related to AML/CFT as well as assisting in, cooperating on, and conducting negotiations pertaining to domestic and international ML and TF investigations. AMLD is vested with the core responsibility of the operation of the statutory FIU core functions and operates independently. Its functions are explicitly different from the core functions of MJIB.

調查局處務規程第 9 條賦予洗錢防制處法律基礎，負責研究防制洗錢策略；接收及分析可疑交易報告並分送分析結果；接收並維護大額通貨交易報告和 ICTR；為調查洗錢案件及協調/聯繫防制洗錢事務時，協助國內執法機關比對洗錢防制處的資料；聯繫、規劃、協調及執行與國外對等機關之資訊交換、人員培訓、跨國洗錢案件合作調查；與防制洗錢與打擊資恐有關金融情報的實務性分析和策略性分析，以及就國內及國際的洗錢和資恐調查提供協助、合作和研商。洗錢防制處擁有法定金融情報中心核心功能運作之核心職責，並且獨立運作，其功能明顯不同於法務部調查局的核心功能。

440. The AMLD staff are full-time investigators; while the MJIB nominally supervises the AMLD, the Director of the AMLD is fully authorized to review, determine, and disseminate all operational and strategic analysis of financial intelligence domestically and internationally. The AMLD budget forms part of the MJIB budget and budgetary requirements are submitted to the MJIB for consideration. Instances were cited where resources were sought, and granted from the MJIB.

洗錢防制處人員為全職調查官，法務部調查局雖然名義上監督洗錢防制處，但洗錢防制處處長獲充分授權以審查、決定和分送所有國內及國際金融情報之實務性與策略性分析。洗錢防制處的單位預算是法務部調查局預算的一部分，預算需求須送請法務部調查局審議。實例上曾有洗錢防制處尋求資源時，獲法務部調查局准許的情形。

441. **Criterion 29.8** - The MJIB has been a member of the Egmont Group since 1998.

**標準 29.8** - 法務部調查局自 1998 年成為艾格蒙聯盟會員。

### *Weighting and conclusion*



*權重與結論*

442. AMLD is LEA-style FIU that is mandated to independently conduct operational and strategic analysis and disseminate to domestic and foreign partners. The AMLD shares information with domestic and foreign counterparts in a secure manner. There is not an express provision allowing for the dissemination of ICTRs and CTRs however such information is included in analysis reports that are disseminated. **Recommendation 29 is rated largely compliant.**

洗錢防制處是一個執法型金融情報中心，依法獨立執行實務性及策略性分析，並分送予國內及國外夥伴機關。洗錢防制處以安全的方式，與國內及國外對等機關分享資訊。目前沒有明訂分送 ICTRs 和 CTRs 的規定，但這些資訊都包括在分送的分析報告當中。**建議第 29 項評等為大部分遵循。**

*Recommendation 30 - Responsibilities of law enforcement and investigative authorities**建議第 30 項-執法和調查機關之責任*

443. Chinese Taipei was rated largely compliant with former R.27 in its 2007 MER. Designated authorities did not have responsibility for the investigation of ML or TF; there had only been limited success in the recovery of proceeds of crime and there were limitations on special investigation techniques that could be used to conduct investigations in ML.

此項建議於中華臺北在 2009 年相互評鑑時，係對應建議第 27 項(R.27)，並取得大部分遵循之評等。過去一些指定機關不具備洗錢或資恐案件調查調查的權力；在追溯犯罪所得方面僅取得有限的效能，其可用於進行洗錢的特殊偵查技術亦受到限制。

444. **Criterion 30.1-** Public Prosecutors are the primary investigative body in Chinese Taipei. Under Article 228 of the CPC, public prosecutors shall immediately begin an investigation if they have a suspicion that any criminal offence has been committed. Prosecutors instruct judicial police (MJIB, NPA, AMLD), who assist the Prosecutors in obtaining evidence throughout the investigation (Art 229 - 231 of the CPC). When judicial police suspect that an offence has occurred, they are also able to initiate an investigation and report the results thereof to the prosecutor. The prosecutor considers whether sufficient evidence has been gathered and guides the judicial police officer through the criminal investigation process. Certain officials including police officers, military police officers, and other authorized persons may act as a judicial police officers in assisting the public prosecutor to investigate an offence. However, as stated above they may also initiate investigations themselves and report the results to the prosecutor (CPC Article 230).

**標準 30.1-**檢察官在中華臺北為偵查主體。根據刑事訴訟法第 228 條的規定，如果檢察官懷疑有任何刑事犯罪，應立即展開偵查。另依據刑事訴訟法第 229-231 條規定，檢察官指揮協助檢方的司法警察（官）（法務部調查局、內政部警政署及洗錢制處等）在調查過程中取得證據。當司法警察（官）認為有犯罪嫌疑時，亦能自行發動調查並將結果報告檢察官。檢察官將視所蒐集之證據是否充足，指導司法警察（官）完成刑事調查程序。刑事訴訟法第 230 條規定，包括警察、憲兵和依法令關於特定事項，得行司法警察官之職權者，皆為司法警察官，協助檢察官偵查犯罪。然而如上所述，司法警察（官）亦可自行啟動調查，並將調查結果報告給檢察官。

445. **Criterion 30.2** - Prosecutors and judicial police officers are the predominant criminal investigators in Chinese Taipei with the power to investigate both predicate offences and ML/TF under provisions of the CPC. Prosecutors and judicial police officers are able to conduct financial investigations of predicate offences, ML and TF.

**標準 30.2** 根據刑事訴訟法規定，檢察官和司法警察皆為中華臺北具有調查犯罪權限之人員。他們都有權調查洗錢及其前置犯罪與資恐犯罪。檢察官和司法警察亦能夠對洗錢及其前置犯罪與資恐犯罪進行財務調查。

446. **Criterion 30.3** -Prosecutors are the key body tasked with seizing and freezing proceeds of crime. However, under the CPC, judicial police authorities, including prosecutor investigators, the Coast Guard Administration, NPA, NIA, MJIB, AAC, and regional military police are able to seize

property that should be confiscated or is suspected of being proceeds of crime. The seizure is temporary until the prosecutor applies to the court.

**標準 30.3** 檢察官為負責扣押和凍結犯罪所得的主體。根據刑事訴訟法規定，司法警察官，包括檢察事務官、海巡署、警政署、移民署、調查局、廉政署之機關人員和地區憲兵等，能夠暫時扣押應被沒收或可疑為犯罪所得的財物，直至檢察官向法院聲請沒收。

447. **Criterion 30.4** -A number of authorities that are not LEAs handle financial investigations involving money laundering, terrorism financing, and predicate offences that occur within their scope of operations. These include the Ministry of Labour, Environmental Protection Administration (EPA), the Central Bank, Taxation Administration (MOF), Intellectual Property Office (MOEA) and the FSC. These authorities may refer to a prosecutor and judicial police authorities (Articles 240 and 241 of the CPC). Customs may survey, search, seize and obtain witnesses, testimonies and evidences related to smuggling; articles 10, 12, 17-22 of the Customs Anti-smuggling Act.

**標準 30.4** 一些非屬於執法機關，例如勞動部、行政院環保署、中央銀行、財政部稅務署、經濟部智慧財產局、金管會及其相關的機關等，於其業務範圍內，協助執法機關涉及洗錢、資恐及其前置犯罪的財務調查。依據刑事訴訟法第 240 條和 241 條規定，這些非執法機關會將協助調查的資料提交檢察官和司法警察官。中華臺北海關依據海關緝私條例第 10 條、第 12 條及第 17 條至 22 條之規定，有權調查、搜索、扣押並取得與走私案件有關的證詞和證據。

448. As non-LEAs are not granted related authorities by the CPC, they may only investigate related information within their scope of operations. If they discover illegal activities in their investigation, they shall lodge an accusation with a prosecutor and judicial police (officer) in accordance with Article 241 of the CPC. Non-law enforcement agencies may assist prosecutors and judicial police in carrying out criminal investigations in related cases. In this case however, the prosecutor would take over the task of managing the criminal and the proceeds of crime case.

由於刑事訴訟法未賦予非執法機關偵查犯罪之權限，非執法機關僅能於其業務範圍內協助調查案關資訊。如果在調查過程中，發現非法活動情事，應依據刑事訴訟法第 241 條的規定，向檢察官或司法警察（官）告發。非執法機構可協助檢察官和司法警察（官）進行刑事調查，後續由檢察官接手處理犯嫌與犯罪所得。

449. **Criterion 30.5** – the AAC is the designated anti-corruption body in Chinese Taipei and is able to, under the supervision of the public prosecutor, conduct searches, seizures and collect evidence; Articles 128-1, 130~131-1, 137, 152 of the CPC. In practice, both the AAC and MJIB officers investigate ML/TF offences arising from or related to corruption and each have powers of criminal investigation, and in any event work alongside prosecutors.

**標準 30.5** 法務部廉政署主要為處理反貪腐的政府機關，他們有權在檢察官的指揮下，進行搜索、扣押及蒐集證據等作為；依據刑事訴訟法第 128-1 條、130~131-1 條、137 條及 152 條規定，廉政署及調查局人員具有刑事調查權，並且無論在調查犯罪的任何階段，都會與檢察官密切合作。

### Weighting and Conclusion

#### 權重與結論

450. **Recommendation 30 is rated compliant.**

建議第 30 項評等為遵循。

### Recommendation 31 - Powers of law enforcement and investigative authorities

#### 建議第 31 項 - 執法和調查機關之權力

451. In its 2007 MER Chinese Taipei was rated compliant with the former R.28.

在 2007 年的評鑑報告中華臺北在之前的建議第 28 項是評為完全遵循。

**Criterion 31.1:****標準 31.1:**

452. **31.1(a)** Competent authorities (all judicial police officers including MJIB, AMLD, NPA, AAC) in Chinese Taipei are able to compel the production of records, this is done via provisions in the CPC requiring the seizure of things which may be used as evidence or which are subject to confiscation (Art. 133). For requests to other domestic agencies compelling the production of documents, Art. 126 of the CPC applies. In practice, authorities may obtain details regarding bank account openings from FAIS, however this does not provide transaction records. LEAs therefore consult FAIS initially for details of current bank accounts of suspects and then obtain transaction details from the relevant bank. Art 138 of the CPC provides that if the owner, possessor or custodian of property which should be seized refuses to deliver or surrender it without justified cause, force may be used to compel production of the property.

**標準 31.1(a)** 中華臺北所有執法機關(所有的司法警察包含調查局、洗防處、警政署、廉政署)能夠透過刑事訴訟法第 133 條規定將得為證據或得沒收之物以扣押的方式取得記錄，如是要求其他國內機關提供文件，刑事訴訟法第 126 條規定可以適用。在實務上，機關可以透過 FAIS 取得銀行帳戶開戶資料，但是沒辦法提供交易紀錄。執法機關必須先向 FAIS 查詢嫌疑人的銀行帳戶開戶資料之後，才能向相關銀行調取交易細節。刑事訴訟法第 138 條規定應扣押物之所有人、持有人或保管人無正當理由拒絕提出或交付或抗拒扣押者，得用強制力扣押之。

453. **31.1(b)** Art 122-132-1 of the CPC allows for the search of the person or property of an accused person, and the search of property, dwelling or premises, or electronic record of a third party where there is probable cause to believe that the accused or suspect, property or electronic record subject to seizure is there. The owner, possessor or custodian of the property subject to seizure may be ordered to surrender or deliver a thing that may be seized. Seizure may be executed by a public prosecutor, judicial police officer or judicial police. Property found at a search that is subject to seizure may be seized even if it is not named in the search warrant.

**標準 31.1(b)** 刑事訴訟法第 122 條至 132-1 條規定允許針對被告或犯罪嫌疑人之身體、物件、電磁紀錄及住宅或其他處所執行搜索，以及對於第三人之身體、物件、電磁紀錄及住宅或其他處所，以有相當理由可信為被告或犯罪嫌疑人或應扣押之物或電磁紀錄存在時為限，得搜索之。應扣押財產之所有人、持有人或保管人被要求交出應扣押物。扣押可能由檢察官、司法警察官或司法警察執行。執行搜索或扣押時，發現本案應扣押之物為搜索票或扣押裁定所未記載者，亦得扣押之。

454. **31.1(c)** CPC Art 196-1 allows judicial police officers to summons a person to appear for questioning. Customs officers may also compel witnesses to attend and give evidence under Art 17-22 of the Customs Anti-Smuggling Act.

**標準 31.1(c)** 刑事訴訟法第 196-1 條允許司法警察官通知證人到場詢問，海關緝私條例第 17 條至第 22 條亦允許海關人員強制證人參加並提供證據。

455. **31.1(d)** CPC Art 133 provides that a thing which can be used as evidence or is subject to confiscation may be seized. The owner, possessor, or custodian of the property subject to seizure may be ordered to surrender or deliver it. Property that is discovered during a seizure or search as above shall be seized even if it is not present on the warrant (Art 137).

**標準 31.1(d)** 刑事訴訟法第 133 條規定可為證據或得沒收之物，得扣押之，對於應扣押物之所有人、持有人或保管人，得命其提出或交付。執行搜索或扣押時，發現本案應扣押之物為搜索票或扣押裁定所未記載者，亦得扣押之。(第 137 條)

**Criterion 31.2:****標準 31.2:**

456. **31.2(a) - Undercover operations** - Competent authorities are able, in limited circumstances, to use undercover operations (Articles 12 and 13 of the Police Power Exercise Act). The Police Power Exercise Act allow police to select a third party to secretly collect data on a suspect who is



suspected of violating criminal laws. This use of informants only applies in limited circumstances in which police seek the assistance of others to operate undercover.

**標準 31.2(a)** 臥底偵查-執法機關只能在有限的情況下使用臥底(警察職權行使法第 12 及 13 條)，警察職權行使法規定警察可以遴選第三人秘密蒐集有違反刑法之虞嫌犯之相關資料，警察運用線民、尋求他人協助進行臥底只能適用在有限制的情況下。

457. **31.2(b) - Intercepting communications** –The Communication Security and Surveillance Act allows for communication surveillance in relation to certain predicate offences and includes utilizing wired and wireless telecommunication equipment to send, store, transmit or receive symbols, texts, images, sound or other types of information, mail and letters, speeches and conversations. Art 5 provides for interception warrant with sufficient evidence that the accused is involved in listed crimes including all offences punishable with a minimum of a three year fixed-term of imprisonment. There is a small number of predicate offences that are not covered, however ML under the MLCA is covered. While amendments to the MLCA were not been reflected in cross references within the Communication Security and Surveillance Act, assessors accept the authorities advice that in the spirit and purpose of the legislation, courts will still grant interception warrants for ML and related predicate offences. Interception warrants for ML would allow use of the Act for ML related to predicates that are not expressly captured under the Act. The Communication Security and Surveillance Act allows for surveillance to be conducted on organisations with the aim of operating international or cross-border terrorist activities, or a member of such organization (Art 7, 8 &9). Authorities demonstrated that security intelligence agencies have an additional statutory basis for their electronic surveillance and telecommunications interception for instances where Chinese Taipei residents may be suspected of involvement in matters related to security of the "...economy, technology, social or major security issues". This would cover intelligence collection for aspects of ML, TF and certain predicates.

**標準 31.2(b)** -通訊監察 - 通訊監察及保障法允許對某些前置犯罪進行通訊監察，包括利用有線和無線電信設備發送，儲存，傳輸或接收符號，文本，圖像，聲音或其他類型的資訊、郵件和信件，演講和對話。第 5 條規定了提供充分證據證明被告參與了所列罪行，包括最輕本刑三年以上有期徒刑之罪行核發通訊監察書。有少數的前置犯罪未被涵蓋，但洗錢防制法下的洗錢罪包含在內。雖然洗錢防制法的修正沒有連通訊保障及監察法一起修正，但評鑑員接受了當局的建議，即根據立法的精神和目的，法院仍將對洗錢犯罪和相關的前置犯罪核發通訊監察書。洗錢的通訊監察書允許使用該法未明確記錄的前置犯罪。通訊保障及監察法允許對開展國際或跨境恐怖活動，或者是該組織的成員進行監察（第 7、8、9 條）。權責機關指出，在中華臺北居民可能涉嫌參與“.....經濟，科技，社會或重大安全問題”等安全事項的情況下，情報機構有額外的法定依據對其進行通訊監察。這將涵蓋洗錢、資恐和某些前置犯罪的情報收集。

458. **31.2(c) - Accessing computer systems** – Articles 122 of the CPC allows an examination of mobile phones or computer devices and Articles, 133 through to 153 of the CPC allow data captured from devices such as a computer system or conversation records of messaging software stored in such device to be analysed.

**標準 31.2(c)** 擷取電腦系統資料-刑事訴訟法第 122 條規定允許針對手機 或電腦設備進行檢查，刑事訴訟法第 133 條至第 153 條規定允許從儲存在電腦系統或通訊軟體之對話紀錄擷取相關紀錄並分析。

459. **31.2(d) - Controlled delivery** - In drug matters, articles 32-1 and 32-2 of the Chinese Taipei Narcotics Hazard Prevention Act allow for controlled delivery in certain narcotics cases. Further detail on controlled deliveries is provided for in the Operational Guidelines for Customs Enforcement of Controlled Delivery of Narcotics which regulates methods for conducting controlled deliveries. Controlled delivery is only available in drug matters under the legislation outlined above.

**標準 31.2(d)** -控制下交付-在毒品案件，毒品危害防制條例第 32-1 及 32-2 條規定在特定毒品案件下執行控制下交付。控制下交付更多的細節規定在「海關執行毒品控制下交付作業要點」。控制下交付只能在上述的立法下適用在毒品案件。



460. **Criterion 31.3** - As outlined above, competent authorities have the powers to access information from the private sector under the CPC to further their financial investigation of assets (predominately Articles 126 and 133 of the CPC). In practice, the competent authorities are able to use the FAIS to obtain account information provided by a financial institutions and are not required to notify any person in advance in order to conduct a criminal investigation. There are no requirements outlined in the above provisions with respect to conducting investigations that require notice to the owner.

**標準 31.3**-就如上述，執法機關有權力透過刑事訴訟法取得私部門持有的相關資訊以進行金融調查(規定在刑事訴訟法第 126 條及第 133 條，實務上執法機關可以使用 FAIS 以取得金融機構提供之帳戶資訊)，而不用在執行犯罪調查前通知任何人。上述規定中並沒有載明就調查程序需通知所有權人。

461. **Criterion 31.4** - The competent authorities may seek all relevant information or analysis held by the AMLD. This is done pursuant to the provisions of the CPC that require documents to be produced in the course of a criminal investigation. This is undertaken either electronically (for example the NPA/prosecutors/AMLD) however also occurs via official letter.

**標準 31.4**-執法機關可以透過洗錢防制處取得相關資訊或分析，這是依據刑事訴訟法之規定，該規定允許在調查時提供文件。這是透過電子方式進行的(例如警政署、檢察官、洗錢防制處)，但是也可以透過正式公文。

### *Weighting and Conclusion*

#### *權重與結論*

462. Chinese Taipei has broad provisions allowing for the collection and production of documents and evidence in criminal proceedings. However, there are restrictions on authorities' ability to conduct undercover investigations and intelligence gathering. There is a minor scope gap in relation to intercepting communications for a small number of predicate offences and to conduct controlled delivery in predicates other than drug matters. The gaps with controlled delivery are not given weight. **Recommendation 31 is rated largely compliant.**

在刑事訴訟程序中，中華臺北有廣泛的規定可以取得文件及證據，但是在執法機關執行臥底及情報蒐集部分有相當限制。在針對少數前置犯罪的通訊監察和在毒品以外犯罪進行控制下交付方面存在微小的落差。就控制下交付的落差沒有賦予權重。**建議第 31 項評等為大部分遵循(LC)。**

### *Recommendation 32 - Cash Couriers*

#### *建議第 32 項—現金攜帶*

463. In its 2007 MER Chinese Taipei was rated PC with the former SRIX. There was a lack of resources available to the Customs Service to enforce the declaration system; deficiencies in the sanctions available for non-compliance with the declaration system; and a lack of implementation of specific sanctions for cash smuggling.

中華臺北先前的 SRIX 評等為 PC。海關部門缺乏可用於執行申報系統的資源，對不遵守申報系統的制裁存有缺陷，以及對現金走私沒有實施具體制裁。

464. **Criterion 32.1** - Chinese Taipei has a declaration system for cross-border transportation of currency and BNIs, which extend to all physical cross-border transportation, Article 12 of the MLCA confirms that passengers or crew members entering or leaving Chinese Taipei must declare certain items to customs: (1) cash in foreign currency over USD10,000; (2) cash in NTD over NTD100,000; (3) negotiable securities with a face value of more than USD10,000; (4) gold in an aggregate value over USD20,000; (5) other items with a total value over the applicable threshold that might be used for ML (defined as diamonds, precious stones and platinum not for personal use). This includes the delivery of such items through mail or other similar means, across the border. Regulations have been issued

pursuant to Art 12 of the MLCA designating the applicable thresholds and providing further requirements on declarations including clarification of the definition of negotiable securities. Art 4 of the AML Guidelines for Cross Border Declaration and Reporting (Cross-Border Guidelines) requires passengers entering and departing the jurisdiction to fill out customs declaration forms and present them to customs for approval. For items sent by mail or other means, procedures are prescribed in the Customs Act and relevant Regulations. For currency issued by China being transported across the border, the above thresholds apply for declaration. Further statutory provisions set out requirements that coins and notes issued in China may not be brought into or taken out of Chinese Taipei above amounts prescribed by the FSC. Above those amounts, a declaration and deposit is required to Customs, and repayable on departure (Art 38). Violation of this provision results in confiscation by Customs of the amount exceeding the required declaration amount (Art 92). Article 16 of the Customs Act requires all imported goods to be declared to customs within fifteen days following the arrival date of transportation carrying such goods. Exporters shall also declare exported goods before departure (Art 3-4 Cross-Border Guidelines).

**標準 32.1-**中華臺北有跨境運輸貨幣和 BNIs 的申報系統，包含所有實體的跨境運輸，洗防法第 12 條規定入出境的旅客或機組人員必須向海關申報某些物品：1) 外幣現金超過 10,000 美元；(2) 新台幣現金超過 10 萬；(三) 面值超過 10,000 美元的有價證券；(4) 總價值超過 20,000 美元的黃金；(5) 總價值超過適用門檻可能被用於洗錢的其他物品（定義為非供個人使用的鑽石，寶石和白金）。這包括透過郵寄或其他類似方式跨境運送此類物品。根據洗防法第 12 條發布了相關法規，規定了適用的門檻，並對申報提出了進一步的要求。洗錢防制物品出入境申報及通報辦法（洗錢防制物品出入境申報及通報辦法）第 4 條要求進出該國的旅客填寫海關申報表並交由海關批准。對於透過郵寄或其他方式發送的物品，關稅法和相關法規規定了程序。對於運輸中國大陸發行的貨幣，適用上述申報門檻。其他規範進一步要求不得攜入或攜出超過金管會規定之大陸地區發行票券的金額。超過金額時，需向海關申報和封存，並在離境時返還（第 38 條）。違反這一規定會導致被海關沒收超過申報金額的款項（第 92 條）。關稅法第 16 條要求所有進口貨物在運輸貨物的運輸到貨日期後十五日內向海關申報。出口商也應在出貨前申報出口貨物（洗錢防制物品出入境申報及通報辦法第 3-4 條）。

465. **Criterion 32.2** - Chinese Taipei has a written declaration system for all travellers carrying cash over the thresholds outlined above (Art 12 MLCA and Reg. 3 of the Cross-Border Guidelines).

**標準 32.2-**中華臺北有書面申報系統，適用於所有攜帶超過上述門檻現金的旅客（洗防法第 12 條及洗錢防制物品出入境申報及通報辦法第 3 條）

466. **Criterion 32.3** - Chinese Taipei adopts a written declaration system.

**標準 32.3-**中華臺北採用書面申報系統。

467. **Criterion 32.4** - Article 11 of the Customs Anti-Smuggling Act allow a customs officer when they deem that carriage of an article might violate the Act to order that person to hand the article over. Article 12 of the same act allows them to interrogate a suspect. In practice, MJIB officers operating at the border would also be able to investigate the matter under their criminal justice powers.

**標準 32.4** -海關緝私條例第 11 條允許海關官員在認為運輸的物品可能違反該法案時，命令該人員交付該物品。同法第 12 條允許他們詢問嫌疑人。實務上，在邊境活動的法務部調查局官員也可以根據刑事司法權對案件進行調查。

468. **Criterion 32.5** - Penalties for failure to disclose are present in Art 12 of the MLCA. Foreign currencies not declared to customs are subject to confiscation. In the event of a false declaration in which the value of the currency is misrepresented, the part over the amount declared shall be confiscated by customs. Failure to declare the value of negotiable securities, gold or items transported or a false declaration will lead to a fine equivalent to the value of the negotiable securities, gold or items that are not declared or are falsely declared. Upon discovery of NTD that exceeds the restricted amount, the cash cannot be transported into or out of Chinese Taipei. When it is not declared, the cash is confiscated and in the event of a false declaration, the amount of cash not declared shall be confiscated. For those that have not been declared in full, the undeclared portion shall be confiscated. Separate legislation prohibits cross-straits movement of coins and notes in Chinese RMB. Penalties

for non-compliance are dissuasive however may not be proportionate in certain circumstances (see IO8).

**標準 32.5**-洗防法第 12 條有規定未向海關申報的外幣可予以沒收的處罰。如果不實申報中貨幣的價值被虛報，則超出申報金額的部分應由海關予以沒收。未申報可轉讓證券，黃金或運輸物品的價值或不實申報將處以相當於有價證券、黃金或未申報或不實申報物品價值的罰鍰。一旦發現超過限制金額的新台幣，現金就不能攜出或攜入。若未申報，則現金會被沒入，如果發生不實申報，則應沒收未申報現金的數額。台灣地區與大陸地區人民關係條例第 92 條規定，未經許可或申報的中國人民幣券將被海關沒收。對於那些未完整申報的，應沒收未申報的部分。對違規行為的處罰具有勸阻性，但在某些情況下可能不具比例原則（見 IO8）。

469. **Criterion 32.6** - information obtained by customs are reported to AMLD monthly (Art 12 MLCA and Art 5 Cross-Border Guidelines). The information obtained through the declaration process and information regarding false declaration or failure to report are all transmitted via manual delivery in encrypted forms. As AMLD is responsible to receive and process ICTR, it has direct access to this information.

**標準 32.6**-海關獲得的資訊每月向調查局報告（洗防法第 3 至 5 條和洗錢防制物品出入境申報及通報辦法第 5 條）。透過申報獲得的訊息以及有關不實申報或未申報的訊息均通過加密形式交付。洗防處負責受理及處理 ICTR，並可直接獲得此類訊息。

470. **Criterion 32.7** - various coordination meetings are held between port and customs authorities, immigration, aviation police and district prosecutor's office to communicate inspections of traveller baggage and cash reports for inspection work for international ports and airports in Chinese Taipei. In particular as there are MJIB officers stationed at each port, there is a close working relationship between Customs and MJIB on all matters that arise at the border. In relation to cargo, the MOI, MOF, MOJ and Coast Guard Administration coordinate to divide relevant work and cooperate. Platforms are in place such as the joint criminal proceeds investigation coordination meetings, Executive Yan Investigation on Smuggling and Human Trafficking Coordination meetings, Drug Enforcement Coordination Meetings and Customs Affairs Coordination Meetings.

**標準 32.7**-港口和海關當局，移民，航空警察和地檢署檢察官之間舉行了各種協調會議，以便對中華臺北國際港口和機場的行李檢查和現金報告進行溝通。特別是由於駐守在每個港口的法務部調查局官員，海關和法務部調查局之間就邊境出現的所有問題都有密切的工作關係。在貨物方面，內政部，財政部，司法部和海巡署協調劃分相關工作和合作。已有建置相關平台，如行政院查緝走私偷渡聯繫會報，走私和人口販運協調會議，毒品防制會報，關務會報。

471. **Criterion 32.8** - Article 11 of the Customs Anti-Smuggling Act allows customs officers to demand an item be handed to officers for investigation if they suspect violation of that act. Art 36 of the Administrative Penalty Act stipulates that a thing that may serve as evidence or be forfeited may be seized which enables Customs to seize items. However, there is no definition of what a "thing that may be forfeited" is. In practice, authorities say that it has a wide interpretation.

**標準 32.8**-海關緝私條例第 11 條允許海關官員命令交付物品給官員進行調查，如果他們懷疑違反該條例的話。行政罰法第 36 條規定，得沒入或可為證據之物，得扣留之，使海關能夠扣押物品。但是，沒有定義“得沒入之物”是什麼。在實務上，主管機關表示有廣泛的解釋。

472. **Criterion 32.9** - Declarations exceeding the threshold or false declarations are reported to the MJIB who are required to keep copies of all accepted files and information for a minimum of five years (Art 3 of MJIB Operation Regulations). Further, CA are required to keep all original data or electronic files for a minimum of five years (Art 5 and 6 of the Cross Border Guidelines). This data would be available to LEAs in the event of suspicion of ML or TF.

**標準 32.9**-陳報給法務部調查局的超過申報門檻或不實申報的報告，調查局必須保留所接收資料或訊息的影本至少五年（調查局辦理防制洗錢與打擊資恐業務作業要點第 3 點）。此外，CA 必須保留所有原始數據或電子文件的副本至少五年（洗錢防制物品出入境申報及通報辦法第 5 條和第 6 條）。如果有懷疑 ML 或 TF 的情況，這些數據可供執法機關使用。



473. **Criterion 32.10** - Art. 12 of the Customs Act deems information from customs declaration to be confidential except in expressed circumstances which includes dissemination to relevant agencies. Those in violation of Art 12 may be subject to disciplinary action or if the criminal law shall be handed to relevant authorities for investigation. Controls are in place for the disclosure of personal information by government agencies in the Personal Information Protection Act (Art 15-18). Safeguards are in place to restrict improper use of information, including sanctions against tip-offs.

**標準 32.10** - 關稅法第 12 條將海關申報資訊視為機密，除非有特定情形，包括向相關機構分送訊息。違反第 12 條規定的人可能會受到紀律處分，或者如果根據刑事法律移交有關當局進行調查。政府機構在個人資料保護法（第 15-18 條）對揭露個人資料進行了管制。制定了保護措施以限制對資訊的不當使用，包括對洩密的制裁。

474. **Criterion 32.11** - Persons carrying out a physical cross-border transportation of currency or BNIs that are related to ML/TF or predicate offences are subject to prosecution for ML under the MLCA (Art 2). The prosecutor may request the court to order the prohibition of withdrawal, transfer, payment or delivery or any other disposition of property if they believe an offender has committed ML and similar powers are available under the CPC as outlined in R.4. Under the MLCA, ML is punishable by imprisonment of not more than seven years and a fine of not more than NT\$ 5 million. For currency or BNI or other items that are falsely declared, the amount exceeding the required declared amount is able to be confiscated. Under Art 18 of the MLCA, all property relating to ML is able to be confiscated. Article 36 of the Administrative Penalty Act allows a thing that may be forfeited to be seized. Noting the comments in IO8, the team considers that the penalties are dissuasive and proportionate in the event that a person is involved in ML, TF or a predicate offence.

**標準 32.11** - 根據洗防法，對與洗錢/ 資恐或前置犯罪有關的貨幣或 BNI 進行跨境運輸的人將受到洗錢的起訴（第 2 條）。檢察官可以申請法院命令禁止提領，轉移，付款或交付或任何其他財產處置，如果他們認為犯罪者已經犯下了洗錢罪，R.4 中提到的刑事訴訟法也有類似的權力。根據洗防法，洗錢罪可處以最高七年的有期徒刑和最高新台幣 500 萬的罰金。對於貨幣或 BNI 或其他不實申報的項目，可以沒收超過申報金額的金額。根據洗防法第 18 條，與洗錢有關的所有財產都可以沒收。行政罰法第 36 條允許扣留可得沒入的物品。注意到 IO8 中的評論，評鑑團認為，如果一個人參與 ML、TF 或前置犯罪，則這樣的處罰具備勸阻性和比例原則。

### *Weighting and Conclusion*

#### *權重與結論*

475. Chinese Taipei has a robust declaration system for incoming and outgoing cash, BNI and other goods. Whilst customs officers have the power to seize items on suspicion, they may only seize “things that may be forfeited or may serve as evidence”. There is no definition of a thing which may be forfeited however authorities advise that this is construed widely. These are minor gaps. **Recommendation 32 is rated largely compliant.**

中華臺北擁有強大的進出現金、BNI 和其他商品的申報系統。雖然海關官員有權扣押涉嫌物品，但他們只能扣留“可得沒入或可為證據的物品”。沒有可得沒入之物的定義，但當局說明這已有廣泛的解釋。這些是微小的落差。**建議第 32 項的評等為大部分遵循。**

### *Recommendation 33 – Statistics*

#### *建議第 33 項-統計數據*

476. In its 2007 MER, Chinese-Taipei was rated largely compliant with former Recommendation 32. There were discrepancies in statistics of penalties arising out of ML prosecution; SRIII actions; and for MLA / extradition.

在 2007 年的相互評鑑報告中，中華臺北在先前第 32 項建議之評等為大部分遵循（LC），當時相互評鑑報告認定有關洗錢起訴之處罰統計數據、關於 SRIII 行動、司法互助/引渡的統計數據存在差異。



**Criterion 33.1:****標準 33.1:**

477. **33.1 (a) STRs, received and disseminated** -Chinese-Taipei maintains statistics regarding STRs including STRs and other reports received and disseminated which are kept by MJIB. Art. 2 of the MJIB Operation Regulation on AML/CFT provide that file and information (refer to documents, electronic records, and other information accepted in accordance with Art 9 (CTR), 10 (STR), and 12 (cash courier) of the MLCA and Art 7 CTFA (assets and property/ property interest of names on the sanction list) that are recorded or stored at the investigation bureau (MJIB) shall be retained for at least five years from the acceptance date to the reporting date.

**33.1 (a) STRs, 受理與分送**-中華臺北維護有關可疑交易報告的統計數據，包括受理和分送的可疑交易報告，並由 MJIB 保管。根據法務部調查局辦理防制洗錢暨打擊資恐事項作業要點第 2 點（下稱“MJIB 作業要點”）規定，檔案和資訊是指根據洗錢防制法第 9 條（CTR）、第 10 條（STR）及第 12 條（現金攜帶）接收之文件，電子記錄和接受的其他資訊。資恐防制法第 7 條（制裁名單上相關姓名之資產和財產/財產上利益），紀錄並儲存於調查局（MJIB）之資訊自受理申報日起應保存至少五年。

478. **33.1(b) ML/TF investigations, prosecutions and convictions** - Chinese Taipei maintains statistics on ML cases including ML/TF investigations by prosecutors, LEAs, prosecutions, and convictions which are kept and compiled by MOJ from district prosecutor's office for all predicate offences and ML investigations. Chinese Taipei does not however maintain statistics on ML investigations that are opened by LEAs prior to being referred to prosecutors. Competent Authorities keep statistics on particular ML/TF investigations and predicate offences: MJIB (drug trafficking, corruption, TF, financing of proliferation, securities crimes, fraud embezzlement, tax crime, Ponzi schemes, underground banking, ML, etc.), NPA (drug trafficking, organized crimes, fraud, crimes in violation of environmental protection, kidnapping, underground banking, loansharking, ML, etc.), AAC (corruption, bribery, and ML, etc.), Coast Guard Administration, Ocean Affairs Council (drug trafficking, smuggling, arms trafficking, alien smuggling), and NIA (human trafficking).

**33.1 (b) 洗錢/資恐調查、起訴與定罪**-中華臺北維護洗錢案件統計數據，包括檢察官的洗錢/資恐調查，起訴和定罪，法務部保存並彙編地檢署所有前置犯罪與洗錢調查。然而，中華臺北並未保存移送檢察官之前，各執法機關立案的洗錢調查統計數據。其他權責機關亦就特定洗錢/資恐調查保存統計數據：調查局（販毒，貪瀆，資恐，資助武擴，證券犯罪，詐欺侵占，稅務犯罪，龐氏騙局，地下通匯，洗錢等），警政署（販毒，有組織犯罪，詐欺，環保犯罪，綁架，地下通匯，重利，洗錢等），廉政署（貪瀆，賄賂和洗錢等），海巡署（販毒，走私，武器販運，偷渡）和移民署（人口販運）。

479. **33.1(c) - Property frozen; seized and confiscated** -Chinese Taipei maintains statistics on property restrained and confiscated. MOJ is responsible for keeping the records of frozen, seizure, and confiscation of properties. Other competent authorities also keep statistics: the AEA keeps and compiled the records of enforcement against properties (mainly tax evasion and offences), the CA keeps the statistics on confiscation of no/false declarations of currencies, negotiable securities with value over reporting threshold (AML Guidelines for cross border declaration ad reporting article 4 - 6 AML). Under article II juncto III the MJIB Regulations provide that file and information (assets and property/ property interest of names on the sanction list (art 7 CTFA) that are recorded or stored at the MJIB shall be retained for at least five years.

**33.1(c) 財產凍結、扣押與沒收**-中華臺北維護凍結限制和沒收財產的統計數據。法務部負責保存凍結，扣押和沒收財產的記錄。其他權責機關亦保存以下統計數據：行政執行署保存並彙編財產的執法記錄（主要是逃稅和違法行為），關務署統計沒收貨幣的無/虛假申報，有價值超過報告門檻的有價證券（洗錢防制物品出入境申報及通報辦法第 4,5,6 條）。根據調查局辦理防制洗錢與打擊資恐業務作業要點第二條第 3 款規定，在 MJIB 記錄或儲存的制裁名單（CTFA 第 7 條）中的資訊（資產和財產/財產利益）應保留至少五年。

480. **33.1(d) Mutual legal assistance or other international requests for co-operation made and receive** -MLA statistics are kept and compiled by MOJ and Judicial Yuan, while statistics of other forms of internal cooperation are kept and compiled by: AMLD, supervisory authorities, LEAs and the MOF.

**33.1(d)** 受理及提出請求司法互助或其他國際合作之請求-司法互助的統計數據由法務部和司法院保存和彙編，而其他形式的內部合作的統計數據由以下機關保存和彙編：洗錢防制處，監理機關、執法機關和財政部。

### Weighting and Conclusion

#### 權重與結論

481. Chinese Taipei maintains a wide range of statistics pertaining to the requirements of R.33 however it does not keep detailed statistics on ML investigations that are opened by LEAs prior to being referred to prosecutors. **Recommendation 33 is rated largely compliant.**

中華臺北保留了有關 R.33 要求的廣泛統計數據，但是它沒有保留移送給檢察官之前，由 LEA 開啟的 ML 調查的詳細統計數據。**建議第 33 項評等為大部分遵循。**

### Recommendation 34 – Guidance and feedback

#### 建議第 34 項-指引與回饋

482. In its 2007 MER Chinese Taipei was rated partially compliant with the former R.25. The MLPC did not provide feedback on or acknowledge the receipt of STRs and STR cases that had been completed.

中華臺北 2007 年相互評鑑報告前建議第 25 項評等為部分遵循。洗錢防制處對於收到可疑交易報告，和完成可疑交易報告案件未提供回饋或確認。

483. **Criterion 34.1:** Supervisors have issued comprehensive guidelines on assessment of ML/TF risks and adoption of prevention programs and model guidelines regarding AML/CTF policies and procedures to a wide range of FI's on a sector-specific basis.

**標準 34.1-**監理機關已發布全面性有關 ML / TF 風險評估的指引，以及針對廣泛的金融機構，依特定部門發布 AML / CTF 政策和程序訂定防制計畫指引及範本。

484. To establish guidelines, financial supervisors also actively participate in seminars organized by the MIJB and related agencies of the FSC. Financial supervisors have provided further lectures on relevant AML/CFT policies such as CDD measures, maintaining transaction records, and reporting STRs.

為訂定指引，金融監理機關也積極參與由法務部調查局和金管會相關機關舉辦的研討會。金融監理機關已提供有關 AML/CFT 政策的其他講座，如客戶盡職調查措施、維護交易記錄和申報可疑交易報告。

485. Supervisors also provide feedback by holding seminar and information session, conferences, inspections, interview, onsite visit, as well as AMLD who provides reporting institution with feedback on the number and analysis results of related reports every six months, or assigns agents to FIs and DNFBPs from time to time to share and analyse actual past cases and use case studies to describe suspicious signs and characteristics of STRs. AMLD also organizes seminars for personnel responsible for AML operations and person in charge and invites financial supervision competent authorities from time-to time to discuss the latest trends in AML operations and exchange opinions.

監理機關也藉由舉辦研討會、座談會、檢查、面談、實地探訪等提供回饋，洗錢防制處每 6 個月也回饋申報機構相關申報件數及相關申報的分析結果，或不定時派員至金融機構或指定之非金融事業或人員，分享分析經驗，並以案例說明可疑表徵及特性。洗錢防制處也不定期舉辦防制洗錢業務專責人員或負責人座談會，邀請金融監理機關研討洗錢防制最新的趨勢並交流意見。

486. AMLD publishes relevant information on its website including regulation and laws, international standards, annual reports, case studies, etc., standardized forms related to AML/CFT reporting, and a link to the UN consolidated sanction list. The website of the FSC further responds to questions or recommendations from audit personnel, publishes industry-specific AML/CFT examination manuals, announces critical deficiencies or common discrepancies found in inspections and provides guidance on improvement to establish continuous communication channels with FIs.

洗錢防制處於其網站發布相關資訊，包括法令、國際標準、年報、案例、AML/CFT 申報表格，及聯合國制裁名單的連結。金管會網站進一步受理稽核人員之提問與建議、發布各業別 AML/CFT 檢查手冊、公布重大或常見之檢查缺失，並提供改善指引，與金融機構建立持續性的溝通管道。

487. AMLD has a dedicated telephone number for REs to query relevant reporting affairs such as STRs. The AMLD further provides feedback to REs who provide STRs that lead to criminal investigations and recommends appropriate rewards to the relevant staff members. They also inform the relevant institution's supervisor of such matters.

洗錢防制處設有專線電話，供申報機構詢問相關申報事宜，例如可疑交易申報。洗錢防制處對申報可疑交易報告有利於犯罪調查的申報機構會提供回饋，並建議對相關人員予以適當獎勵。該等事宜也會通知相關機構的監理機關。

488. Most sectors' self-regulatory bodies have issued AML/CFT guidelines. In this regard, the FSC issues guiding principles to facilitate the implementation of laws, FSC's regulations and directions issued by FSC. As to the practical implementation, the FSC requires related self-regulatory organizations, such as financial industry associations, to issue model guidelines or best practices, following the direction of the FSC, after extensive discussion with public and private sectors. These guidelines or best practices are required to be approved by the FSC. Although the guidelines with regard to practical implementation are issued by self-regulatory organizations, the FSC has fully engaged and proactively participated in the discussion for developing those guidelines.

許多產業的自律組織有發布 AML/CFT 指引。在這方面，金管會發布指導原則以促進法律、法規及指引的實施。至於涉及實務執行層面者，則請公會等自律組織，依金管會指示方向，邀集公私部門共同討論後，再報金管會備查後發布指導範本或最佳案例。因此該等涉及實務執行層面的指引，雖是由自律組織所發布，但研議過程金管會亦均參與討論。

489. With respect to DNFBPs, relevant DNFBPs competent authorities have cooperated with AMLO to publish DNFBP guidance notes for their reference.

針對 DNFBPs，相關 DNFBP 主管機關與行政院洗錢防制辦公室合作發布『DNFBP 執行防制洗錢及打擊資恐業務最佳指引』供業者參考。

490. According to article IX (2) MJIB Operation Regulations, MJIB may provide feedback for reporting institution, enterprise, or professional regarding domestic and foreign ML/TF case studies as well as AML/CTF guidance and related information.

依據法務部調查局指引第 IX(2)條規定，法務部調查局得向申報機構、企業或專業人員提供有關國內和國外 ML / TF 案例研究以及 AML / CTF 指引和相關資料。

### *Weighting and Conclusion*

#### *權重與結論*

491. Chinese Taipei issues comprehensive guidelines and provides feedback to reporting entities on their AML/CFT obligations. **Recommendation 34 is rated compliant.**

中華臺北針對申報實體之 AML/CFT 義務方面，有發布全面性的指引並提供回饋。**建議第 34 項評等為遵循。**



## Recommendation 35 – Sanctions

### 建議第 35 項-處罰

492. Chinese Taipei was rated largely compliant with the previous R.17 in its 2007 MER. The type and nature of sanctions actually imposed by the FSC were inadequate in view of the many AML/CFT non-compliance findings for the banking sector.

中華臺北在 2007 年的相互評鑑報告中，前 R.17 被評等為大部分遵循。報告指出，鑑於銀行業許多防制洗錢/打擊資恐違規的調查結果，金管會實際執行的制裁類型和性質不足。

#### Criterion 35.1:

##### 標準 35.1:

493. *Rec 6:* Article 12 of the CTF Act stipulates that any FI that violates Article 7, paragraph 1 (TFS) or paragraph 2 (reporting obligations), of the CTF Act will be fined between NT\$200,000 and NT\$1 million (around USD6500 to 32,000).

建議 6：資恐防制法第 12 條規定，任何違反第 7 條第 1 款項（目標性金融制裁）或第 2 項（報告義務）的金融機構，將處以新臺幣 20 萬至 100 萬罰鍰（約 USD6500 - 32000）。

494. *Rec 8:* There are fines ranging between NTD30,000 and 500,000 (around USD970 to 16,000) for AML/CFT breaches (2018 Foundations Act). Under the Civil Code, the director or controller of a licensed legal person who disobeys the supervising order of, or obstructs the inspection by the authorities concerned, may be fined under NTD 5,000 (around USD160); the authorities concerned may apply to the court for dismissing the director or controller's position and make other necessary arrangements. If a legal person violates any conditions under which the license has been granted, the authorities concerned may revoke the legal person's license (Article 33 of the Civil Code). Where a civil association violates a law or its constitution or encumbers public welfare, the regulating authority may warn it, cancel its resolution, or stop whole or a part of its business, and order it to improve within a specified time limit. If improvements are not made within the time limit or in serious circumstances, the punishments may be executed such as recall of the personnel, setting a time limit for correction, abolishment of the permit and disincorporation. If the director or controller set forth in the preceding paragraph violates the act, regulation, or bylaw to such an extent that may endanger interests of the public or the legal person, the authorities concerned may apply to the court for dismissing his position and make other necessary arrangement. The legal persons' licenses may be revoked, as the competent authority may order a civil association to cease operations, dismiss personnel, or revoke its license (Articles 34 and 58 of the Civil Associations Act).

建議 8：2018 年“財團法人法”規定，對於與防制洗錢/打擊資恐相關的缺失，可處新臺幣 30,000 起至 500,000 罰鍰（約合 970 至 16,000 美元之間）。根據“民法”，違反監理命令或妨礙有關主管機關檢查的法人董事或控制權人，可處 5,000 新臺幣（約 160 美元）罰鍰，主管機關得向法院申請解僱董事或控制人的職務，並作出其他必要的安排。如果法人違反了許可證授予的任何條件，主管機關得撤銷法人的許可（民法第 33 條）。如果法人違反法律或其章程或妨礙公共福利，主管機關得發出警告、取消其決議，或者停止其全部或部分業務，並命令其在規定的期限內改善。如未在規定期限內進行改善或嚴重情況下，得執行處罰如解僱人員、設定更正時限、廢止許可和解散。如果前款規定的董事或控制權人違反了法規或章程或其他可能危害公眾或法人利益的行為，主管機關可以向法院申請解除其職務並作出其他必要的安排。得撤銷法人的許可執照，同時主管機關得依據“人民團體法”第 34 和第 58 條命令該人民團體停止業務、撤免職員或廢止許可。

495. *Rec 9:* Fines of NTD 2 to 10 million apply (Art 45 of the Banking Act). Security and future enterprise and insurance enterprise also have similar provisions. In the case of agricultural FIs, a competent authority may order them to provide information and reports. FIs that fail to comply shall be fined NTD 2 to 10 million. (Article 7, paragraph 2 of the Agricultural Finance Act). Farmers' and fishermen's associations shall be fined from NTD 150,000 to NTD 1,800,000 (Article 48 of the same Act). Tax authorities are able to conduct and request information, and impose a fine of no less than 3,000 and no more than 30,000 NT dollars (Articles 30 and 46 of the Tax Collection Act).



建議 9：依據“銀行法”第 45 條規定得處新臺幣 200 萬元以上 1000 萬元以下罰鍰。證券期貨業和保險業也有類似的規定。此外，“農業金融法”第 7 條第 2 項規定，中央主管機關得責令農業金融機構提供資訊和報告。不遵守規定的金融機構，依照同法第 48 條的規定，得處以新臺幣 200 萬元以上 1000 萬元以下罰鍰或者對農會和漁會處以新臺幣 150,000 元以上 1,800,000 以下罰鍰。稅務機關得要求提供資訊，並得依據“稅捐稽徵法”第 30 條和第 46 條處以新臺幣 3,000 元以上 30,000 元以下罰鍰。

496. *Rec 10 to 12, 17, 19, 20, 22 and 23:* FIs that violate the requirements may be fined between NT\$500,000 and NT\$10 million (USD 16000 to 325,000), while DNFBPs may be fined between NT\$50,000 and NT\$1 million (USD 1500 to USD 32,000) (Articles 7-10 of the MLCA).

建議 10 至 12, 17, 19, 20, 22 和 23：違反要求的金融機構可能被罰款新台幣 500,000 至 1 千萬（16,000 至 325,000 美元），而 DNFBP 可能被罰款新台幣 50,000 至 1 百萬（1500 美元至 32,000 美元）（洗錢防制法第 7-10 條）。

497. *Rec 13, 15, 16, and 18:* The competent authorities are able to issue corrections, order improvements within time limits, terminate operations, or implement other necessary measures (Article 129 of the Banking Act, Articles 167-2、167-3 and 171-1 of the Insurance Act; Article 48 of the Act Governing Electronic Payment Institutions, Article 31 of the Act Governing Issuance of Electronic Stored Value Cards, Article 178 of the Securities and Exchange Act, and Article 50 of the Agricultural Finance Act). For money exchangers, the BoT is able to revoke or cancel its approval (Articles 10-14 of the Money Exchanger Regulation). There are requirements for banks, electronic payment institutions and electronic stored value card issuers to have compliance management arrangements, employee screening, training programmes and independent audit functions (Article 7 of Directions Governing ICS of AML/CFT of Banking Business, Electronic Payment Institutions and Electronic Stored Value Card Issuers). Breaches of internal control requirements shall be subject to administrative fines of NTD 2 million to NTD 10 million (around US 66,000 to 330,000). Additionally, breaching these requirements may be sanctioned by the FSC (Article 11 of the same Directions), including through a graduated range of measures (Article 61-1 of the Banking Act).

建議 13, 15, 16 和 18：主管機關得依據下列規定發布更正、時限改進、終止業務或實施其他必要措施（銀行法第 129 條、保險法第 167-2, 167-3 和 171-1 條、電子支付機構管理條例第 48 條、電子票證發行管理條例第 31 條、證券交易法第 178 條和農業金融法第 50 條）。對於外幣收兌處，如違反外幣收兌處設置及管理辦法第 10-14 條，臺灣銀行得撤銷或廢止核准。對於銀行、電子支付機構和電子儲值卡發行人有要求進行法遵管理安排、員工篩選、培訓計劃和獨立審計職能（銀行業及電子支付機構電子票證發行機構防制洗錢及打擊資恐內部控制要點第 7 點）。違反內部控制要求的行政罰鍰將達到新台幣 200 萬至 1000 萬（約 66,000 至 330,000 美元）。此外，違反這些要求可能會受到金管會透過一系列漸進措施（同要點第 11 點）的制裁（銀行法第 61-1 條）。

498. *Rec 21 to 23:* There are sanctions in place, with an imprisonment of not more than three years for public officials and not more than two years or a detention or a fine of not more than NT\$ 500,000 for non-public officials, which includes employees of DNFBPs; article 17 of the MLCA.

建議 21 至 23：洗錢防制法第 17 條有裁罰規定，對公務員得處以三年以下有期徒刑，對不具公務員身分之人得處以二年以下有期徒刑、拘役或新臺幣 50 萬元以下罰金。

499. **Criterion 35.2** - Competent authorities are able to apply sanctions to FIs and their directors and senior management (Article 61-1 of the Banking Act; and Articles 26, 33 of the Agricultural Finance Act, Paragraph 1, Article 149 and Article 164-1 of the Insurance Act, Article 6 subparagraph 13 of the Regulations Governing Qualification Requirements and Concurrent Serving Restrictions and Matters for Compliance by the Responsible Persons of Banks, Article 104 of the Securities Investment Trust and Consulting Act, Articles 56, 66 of the Securities and Exchange Act and Article 101 of the Futures Trading Act, Article 3, subparagraph 14 of the Regulations Governing Required Qualifications for Responsible Persons of Insurance Enterprises, Article 25 of the Act Governing Issuance of Electronic Stored Value Cards). With regard to DNFBPs, the competent authorities are able to impose a fine ranging from NT\$ 50,000 and NT\$ 500,000 for the violation of AML policies, and a fine from NT\$ 50,000 and NT\$ 1 million for the violation of CDD, record keeping, CTR and STR obligations (Articles

6-10 of the MLCA). With the exception of tipping off provisions, it is not explicit that sanctions extend to DNFBPs' senior management.

**標準 35.2** - 主管機關依據銀行法第 61-1 條、農業金融法第 26、33 條、保險法第 149 條第 1 項和第 164-1 條、銀行負責人應具備資格條件兼職限制及應遵行事項準則第 6 條第 13 款、證券投資信託和諮詢法第 104 條、證券交易法第 56、66 條、期貨交易法第 101 條、保險業負責人應具備資格條件準則第 3 條第 14 款及電子票證發行管理條例第 25 條等規定，可以對金融機構實施裁罰，亦得對其董事、高階管理層實施制裁。主管機關對 DNFBP 違反防制洗錢政策的違法行為得依據洗錢防制法第 6-10 條處以新臺幣 5 萬元以上 50 萬元以下罰鍰，並得對違反客戶審查、紀錄保存、大額現金交易報告和可疑交易報告規定者處新臺幣 5 萬元以上 100 萬元以下罰鍰。除了洩密條款外，針對 DNFBP 高階管理層的裁罰並不明確。

### Weighting and Conclusion

#### 權重與結論

500. While a range of criminal, civil and administrative sanctions are available, the range of monetary penalties available to regulators and supervisors are not proportionate or dissuasive. It is not clear that fines can be levied against DNFBP directors or senior management except in the case of tipping off failings. **Recommendation 35 is rated partly compliant.**

雖然有各種刑事、民事及行政裁罰措施，管理及監理機關可以處以罰鍰的範圍不合乎比例原則或具勸阻性。目前除洩密外，尚不清楚是否可對 DNFBP 董事或高階管理層處以罰鍰。**建議第 35 項評等為部分遵循。**

### Recommendation 36 - International instruments

#### 建議第 36 項--國際相關公約與規範

501. In the 2007 MER, Chinese Taipei was rated partially compliant for R.35 and non-compliant for the former SRI. Chinese Taipei had not become a party to the Vienna, Palermo or TF conventions nor had they fully implemented the conventions. It was noted that Chinese Taipei lacked effective laws and procedures to implement UNSCR 1267 and 1373.

在 2007 年的相互評鑑報告中，中華臺北在 R35 被評為 PC，在前 SRI 被評為 NC，中華臺北沒有簽署維也納公約、巴勒莫公約或防制資助恐怖分子公約，也沒有完全執行這些公約。中華臺北缺乏有效的法律及程序執行聯合國安理會第 1267 及 1373 號決議。

502. **Criterion 36.1** - As Chinese Taipei is not a member of the UN it has not been able to become a party to the Vienna Convention, the Palermo Convention, the Terrorist Financing Convention or the UN Convention against Corruption.

**標準 36.1** - 由於中華臺北不是聯合國會員國所以沒有簽署維也納公約、巴勒莫公約、防制資助恐怖分子公約或聯合國反貪腐公約。

503. **Criterion 36.2** - Chinese Taipei has enacted laws and taken measures in an effort to fully implementation the obligations contained within the UN conventions.

**標準 36.2** - 中華臺北訂定了法律並採取措施努力執行這些聯合國公約的要求。

504. Chinese Taipei has now criminalized participation in an organised crime group (Organized Crime Prevention Act). The OCPA applies to all predicate offences (except smuggling of migrants which is not a predicate offence to ML in Chinese Taipei).

中華臺北已經將參與組織犯罪罪刑化(組織犯罪防制條例)，組織犯罪防制條例適用所有前置犯罪(除了偷渡移民不是中華臺北的洗錢前置犯罪)。

505. ML is now criminalized largely in line with Palermo Convention (see R.3). Art 7 of the Criminal Code deals with criminal offences committed by nationals of Chinese Taipei abroad however

this does not satisfy the requirement at Art 6 of the Palermo Convention. With implementation of the MLCA, Chinese Taipei has a comprehensive domestic regulatory and supervisory regime in place for banks and non-bank FIs requiring implementation of relevant AML/CFT measures. A reasonable cross-border declaration regime is in place however deficiencies are noted at R.32.

洗錢罪刑化已經大致符合巴勒莫公約(參見 R3)，刑法第 7 條處理中華臺北國民在國外犯罪之情形，但是這無法滿足巴勒莫公約第 6 條的要求。透過洗錢防制法的執行，中華臺北針對銀行及非銀行之金融機構有廣泛的國內監管制度，要求執行相關防制洗錢及打擊資恐措施。已經制定合理的跨境申報制度，但在 R.32 中有缺失。

506. Chinese Taipei has predominately implemented Art 12 and 13 of the Palermo Convention with the noted minor deficiencies identified in R.4 and R.38. With respect to extradition, Chinese Taipei has largely implemented the extradition requirements with minor deficiencies noted in respect of R.39 below and minor deficiencies with respect to Art 16 (consideration of enforcing a sentence domestically).

中華臺北執行了巴勒莫公約的第 12 條及第 13 條，其中在 R4 及 R38 被指出有輕微缺失。有關引渡部分，中華臺北大致執行了引渡的要求，在 R39 只有輕微缺失，在第 16 條也只有輕微缺失(考慮在國內執行判決)。

507. As noted in R.5, Chinese Taipei now has a largely compliant TF offence.

就如 R5 所述，中華臺北在資恐犯罪取得 LC。

508. Chinese Taipei has not criminalised the smuggling of migrants and the definition of property is not provided in any statute. It is not expressed that predicate offences extend to predicates that occurred in another jurisdiction although as noted above this has occurred in practice.

中華臺北沒有將偷渡移民罪刑化，且財產的定義沒有法律規定。儘管沒有解釋前置犯罪發生在其他司法管轄區之情形，但是在實務上已經發生。

### *Weighting and Conclusion*

#### *權重與結論*

509. Chinese Taipei has largely implemented international instruments despite not being a party to the relevant conventions. Only minor deficiencies are noted in relation to ML and TF offences, in particular the smuggling of migrants is not a predicate offence to ML and the term “property” is not defined in statute. Chinese Taipei’s inability to join the UN conventions is given very little weight. **Recommendation 36 is rated largely compliant.**

中華臺北雖然不是相關公約的締約國，但在很大程度上已經實施了國際公約。對於洗錢和資恐犯罪只有輕微的缺失，特別是偷渡移民不是洗錢的前置犯罪，“財產”一詞在法規中沒有定義。中華臺北無法加入聯合國公約所占的權重很小。**建議第 36 項的評級為大部分遵循。**

### *Recommendation 37 - Mutual legal assistance*

#### *建議第 37 項—司法互助*

510. In the 2007 MER, Chinese Taipei was rated largely compliant with the former R.36 and non-compliant with SRV. MLA with jurisdictions without a mutual legal assistance agreement could only be done through court orders or letters rogatory. In relation to SRV, TF and other terrorism offences had not yet been criminalised.

在 2007 年的 MER 中，中華臺北的前 R.36 被評為 LC 以及 SRV 被評為 NC。這是因為沒有司法互助協議的司法管轄區只能透過法院命令或請求書處理司法互助。關於 SRV，資恐和其他恐怖主義罪行尚未被罪刑化。



511. **Criterion 37.1** - Chinese Taipei can provide MLA on four different bases (1) agreed treaties; (2) the MACMA; (3) the Law in Supporting Foreign Courts on Consigned Cases (the Law Supporting Foreign Courts) and (4) the MLCA.

**標準 37.1** - 中華臺北可以在四個基礎上提供司法互助(1)條約(2)刑事司法互助法(3)外國法院委託事件協助法(4)洗防法。

512. *Agreed treaties* - where there are agreed treaties between Chinese Taipei and the foreign jurisdiction, the provision of MLA is governed by the terms of the specific agreement.

條約 - 如果中華臺北與外國司法管轄區之間達成協議，則 MLA 的提供受特定協議條款的約束。

513. *Assistance under the MACMA* - the MACMA allows a wide range of assistance to be provided on the principle of reciprocity. Assistance is provided via the Ministry of Foreign Affairs and then to the Ministry of Justice in a formal Letter of Request (LOR). The MACMA confirms that the domestic laws of Chinese Taipei apply in the provision of requests and thus noting the findings of R.4, a wide range of seizing, freezing and confiscation measures are able to be applied. However, the MACMA does allow for urgent requests to be implemented directly through the MOJ as long as a LOR is filed within 30 days (Art 8). The MACMA applies in relation to all “criminal matters” including ML, TF and predicate offences.

根據國際刑事司法互助法提供的協助 - MACMA 允許根據互惠原則提供廣泛的協助。提供的幫助是通過正式的請求書 (LOR) 透過外交部，然後轉由法務部。MACMA 確認中華臺北的國內法適用於提供請求，因此注意到 R.4 的調查結果，可以採用各種扣押、凍結和沒收措施。但是，只要在 30 天內提交 LOR，MACMA 就允許直接透過法務部執行緊急請求 (第 8 條)。MACMA 適用於所有“刑事事件”，包括 ML、TF 和前置犯罪。

514. *Assistance under the MLCA* - the MLCA also provides a basis for assistance when the request applies to specified unlawful activities as defined under Art. 3 of MLCA. Assistance includes the provision of information concerning declarations, reports or investigation results gathered under the MLCA (Art.21) and assistance with seizing and confiscation (Art.18).

根據 MLCA 提供的協助 - 當要求適用於第 3 條定義的特定犯罪時，MLCA 也提供幫助的基礎。幫助包括提供有關根據 MLCA 申報、報告或調查結果的信息 (第 21 條) 以及協助扣押和沒收 (第 18 條)。

515. *The Law Supporting Foreign Courts* - since implementation of the MACMA, all criminal matters are now governed by the MACMA however this legislation enables the exchange of information in relation to civil matters.

外國法院委託事件協助法 - 自從 MACMA 實行以來，全部刑事案件均由 MACMA 管理，但外國法院委託事件協助法可以進行交換與民事有關的信息。

516. **Criterion 37.2** - Chinese Taipei’s central authority is the MOJ (Art 3 of the MACMA). However, the MACMA confirms that all MLA requests are to be made to the Ministry of Foreign Affairs via a letter of request (LOR). The MOFA will in due course send the LOR with relevant documentation to the MOJ for action. For jurisdictions that have agreements with Chinese Taipei, the MOJ will deal directly with the competent authority of the other jurisdiction.

**標準 37.2** - 中華臺北的中央權責單位是法務部 (MACMA 第 3 條)。但是，MACMA 規定所有司法互助請求都要向外交部提出請求書 (LOR)。外交部將在適當時候將請求書及相關文件發送給法務部採取行動。對於有與中華臺北簽訂協議的司法管轄區，法務部將直接與其他司法管轄區的權責機關接洽。

517. The MOJ also has a Department of International and Cross-Strait Legal Affairs which has established the ‘International and Cross-Strait Mutual Legal Assistance Registration System’. This system records requests and monitors progress for matters between China and Chinese Taipei.

法務部還設有國際及兩岸法律司。該部門建立了“國際和海峽兩岸司法互助登錄系統”，該系統記錄相關請求，並監控中國大陸與中華臺北之間請求的案件處理程序。



518. MOJ maintains a rudimentary electronic case management system and conducts request reviews on a priority basis. In placing priority on the requests, MOJ will take a number of factors into consideration. One example is if the request is urgent, assets seizure requests usually will be given priority since the assets may be dissipated quickly. Other factors include the level of severity of the offenses identified in the requests and the likely social impact of the case. The case management system handles both MLA and extradition requests.

法務部管理電子案件管理系統，並針對請求的優先性進行審查。在考慮請求時，法務部考慮許多因素。例如如果是緊急的請求，資產扣押的請求通常將會被優先處理，因為資產可能會迅速滅失。其他因素包括犯罪的嚴重程度以及案件可能對社會產生的影響。案件管理系統處理司法互助和引渡請求。

519. **Criterion 37.3** – Art 10 of the MACMA sets out two circumstances in which the MOJ shall deny assistance none of which are unreasonable or unduly restrictive. At Art 10(2), circumstances are provided for in which the MOJ may deny assistance including where it violates reciprocity, the absence of dual criminality, where the wrongdoings violate martial law rather than criminal law, where it interferes with ongoing proceedings in Chinese Taipei, where the alleged wrongdoings have been subject to a decision not to prosecute in Chinese Taipei. In such circumstances, the decision not to provide assistance is discretionary and this decision may be reviewed after further material or documents have been provided by the requesting jurisdiction. In this regard, the conditions upon which Chinese Taipei may provide assistance are not subject to unreasonable or unduly restrictive conditions. The Law Supporting Foreign Courts does not specify any conditions of assistance apart from that of an agreement for reciprocity.

**標準 37.3** - MACMA 第 10 條規定了法務部拒絕提供司法互助的兩種情況，這些情況均非不合理或有不適當的限制。在第 10 (2) 條中，規定了法務部可拒絕提供司法互助的情況，包括違反互惠的情況，沒有雙重可罰性，如果行為觸犯軍法而不是普通刑法，對中華臺北正在進行的訴訟程序造成妨礙，該行為經不起訴處分。在這些情況下，不提供司法互助的決定是有裁量性的，在提出請求的司法管轄區提供進一步的資料或文件後，可以對該決定進行審查。在這方面，中華臺北可以提供司法互助的條件不受不合理或不適當的限制。外國法院委託事件協助法在提供司法互助僅有互惠的要求。

520. **Criterion 37.4** – As provided for at 37.3 above, the conditions upon which assistance may be refused do not include that the offence is considered to involve fiscal matters nor on the grounds of secrecy.

**標準 37.4** - 依照上述 37.3 的規定，可拒絕提供幫助的條件不包括該罪涉及財政事項或以保密為由。

521. **Criterion 37.5**– any information relating to the request and its implementation is confidential unless it is necessary for implementing the request, upon the consent of the parties or otherwise provided by law (Art 14 MACMA). As requests for assistance are carried out under the provisions of the CPC, provisions in that Act apply as to confidentiality in criminal matters including the requirement that criminal investigations not be made public. Further confidentiality provisions are present in agreements made between Chinese Taipei and other jurisdictions.

**標準 37.5** - MACMA 第 14 條規定除非為執行請求有必要或在雙方同意或法律另有規定的情況下，否則與請求及其執行相關的任何訊息均應保密。由於請求互助是根據刑事訴訟法的規定進行的，該法案中的規定於刑事事項的保密性也適用，包括不公開刑事偵查的要求。此外，中華臺北與其他司法管轄區之間的協議中也有保密的規定。

522. **Criterion 37.6** - Art 10 provides circumstances in which the MOJ may deny assistance including where the acts or omissions described in the request do not constitute an offence in Chinese Taipei. A requesting parties request for assistance for coercive measures as outlined in Art 6 (3-7) which includes search and seizure, freezing of assets, restitution of proceeds of crime etc. is only able to be accepted where there is dual criminality (Art 22 of the MACMA). Therefore, whilst the dual criminality requirement is still discretionary, the act expresses circumstances in which it will apply, inferring that in non-coercive measures the discretion is not likely to be exercised. Chinese Taipei

authorities confirm that for non-coercive measures, dual criminality does not impact Chinese Taipei's execution of a request, whether under the MACMA or a MLA agreement.

**標準 37.6** - 第 10 條規定了法務部可以拒絕提供司法互助的情況，包括請求中的行為或不作為在中華臺北不構成犯罪的情況。MACMA 第 22 條規定請求方要求提供強制處分幫助，如第 6 條 (3-7) 所述的情況，只能在有雙重可罰性的情況下被接受，包括搜索和扣押、凍結資產、返還犯罪所得等。因此，雖然雙重犯罪要求仍然是有裁量性的，但該法律規定了適用的情況，在非強制處分的情形下，不太可能行使裁量權。中華臺北權責機關表示對於非強制處分，無論是根據 MACMA 還是司法互助協議，雙重可罰性都不會影響中華臺北執行請求。

523. **Criterion 37.7** – as stated above, dual criminality is not mandatory, under the MACMA it is a discretionary requirement. However, there is no commentary provided in either laws or implemented agreements as to what constitutes dual criminality. Chinese Taipei advise that in practice, the MOJ would consider international precedents and common practice when considering whether to give effect to a request for assistance.

**標準 37.7** - 如上所述，雙重可罰性並無強制性，根據 MACMA，這是一項有裁量的要求。但是，關於什麼構成雙重可罰性，任何法律或協議都沒有提供說明。中華臺北表示在實務上，法務部在考慮是否提供幫助時會考慮國際先例和慣例。

524. **Criterion 37.8** - requests for assistance must be implemented in accordance with the laws of Chinese Taipei and only if there is no conflict with domestic laws (Art 12 of the MACMA). This provides all of the powers available to authorities under the CPC whilst noting the deficiencies contained in R.31. Nevertheless, Art 6 of the MACMA outlines the types of assistance that is able to be provided and includes obtaining evidence, service of documents, search, seizure, immobilisation of assets, implementation of final and irrevocable judgments or orders of confiscation, restitution of proceeds of crime and other types of assistance that are not contradictory to the laws of Chinese Taipei. The Law Supporting Foreign Courts confirms that “the evidence of criminal cases for which a court is consigned by a foreign court to help investigate shall be duly handled according to evidence investigation in the Code of Civil or Criminal Procedure”.

**標準 37.8** - MACMA 第 12 條規定，執行請求應根據中華臺北的法律，如果與國內法律沒有衝突，將予以執行。這為權責機關提供了所有根據刑事訴訟法的權力。但是注意到 R.31 在中華臺北的執法權方面存在一些不足之處。儘管如此，MACMA 第 6 條概述了能夠提供的幫助的類型，包括取得證據、提供文件、搜索、扣押、禁止處分財產、執行沒收和追徵的確定裁判或命令、犯罪所得的返還，以及其他不違反中華臺北法律的司法協助。外國法院委託事件協助法規定“外國法院委託法院調查的刑事案件證據，應根據民事或刑事訴訟法中的證據調查妥善處理”。

## Weighting and Conclusion

### 權重與結論

525. Chinese Taipei has largely implemented the requirements relating to R.37. However, there are minor shortfalls in the powers of LEAs (see R.31) which apply to R.37. In some instances, dual criminality may be required for non-coercive measures. **Recommendation 37 is rated largely compliant.**

中華臺北大致上執行了與 R.37 有關的要求。但是，適用於 R.37 的執法權力（見 R.31）存在微小缺失，在某些情況下，非強制措施可能需要具備雙重可罰性。**建議第 37 項的評等為大部分遵循。**

## Recommendation 38 – Mutual legal assistance: freezing and confiscation

### 建議第 38 項—司法互助：凍結和沒收

526. In its 2007 MER Chinese Taipei was rated largely compliant for the former R.38, as LEAs were not able to utilise controlled delivery provisions.

中華臺北在 2007 年 MER 的 R.38 被評為 LC，因為當時執法機關無法使用控制下交付規定。

**Criterion 38.1:****標準 38.1 :**

527. *Assistance under the MLCA* - article 18 of the MLCA allows for the provision of assistance in seizure and confiscation in the following circumstances:

根據洗防法提供的協助 - 洗防法第 18 條允許在下列情況下提供扣押和沒收協助:

- a) If the request is made by foreign governments, institutions or international organisations based on agreed treaties or agreements in accordance with Art.21; or 如果請求是由外國政府、機構或國際組織根據第 21 條的條約或協議提出的;或
- b) On the principle of reciprocity; 根據互惠原則;
- c) If the criminal activity involved constitutes an offence stipulated in Art 3. 如果構成第 3 條所定的犯罪。

528. Offences under Art. 3 encompass ML, TF and all predicates with the exception of smuggling of migrants (see R.3). In addition, Article 13(V) of MLCA authorizes MLA requests that seek assistance prohibiting the withdrawal, transfer, payment, delivery or assignment of property for six months. Transactions may be prohibited in the event the situation is urgent.

第 3 條的罪行包括 ML、TF 和所有前置犯罪，但偷渡移民除外（見 R.3）。此外，洗防法第 13 條第 5 項允許司法互助請求禁止提領、轉移、支付、交付或轉讓財產六個月。如果情況緊急，可以禁止交易。

529. Assistance in relation to the provision of records such as CTRs, STRs and incoming and outgoing cross border declarations may be provided (Art.21).

可提供有關 CTRs、STRs 及入出境申報等紀錄的協助（第 21 條）。

530. The assistance should be provided even if the investigation or trial does not take place in the jurisdiction of the requesting jurisdiction. In the event that the offence is not one involving ML or a listed predicate offence then the provisions of the MACMA apply. Therefore, assistance under the MLCA only applies for ML and predicate offences (with the exception of smuggling of migrants) in circumstances of dual criminality. Assistance for identifying assets is limited under the MLCA to the provision of STRs, CTRs and ICTRs however broader assistance in identifying assets is able to be provided under the MACMA.

即使調查或審判沒有在請求國的境內進行，也應提供協助。如果犯罪不是涉及洗錢或列舉的前置犯罪，則適用國際刑事司法互助法的規定。因此，在雙重可罰性的情況下，根據洗防法的協助僅適用於洗錢和前置犯罪（偷渡移民除外）。根據洗防法對於辨識資產的協助限於提供 STRs、CTR 及 ICTRs，但國際刑事司法互助法對於辨識資產可以提供更廣泛的協助。

531. *Assistance under the MACMA* - the MACMA allows a wide range of assistance to be provided on the principle of reciprocity. Assistance is provided via the Ministry of Foreign Affairs and then to the MOJ in a formal Letter of Request (LOR). The MACMA allows for cooperation on the obtaining of evidence, search, seizure, implementation of final judgments or order of confiscation or collection of proceeds value relating to an offence, and other types of assistance not contradictory to law of Chinese Taipei (Art.6). The MACMA confirms that the domestic laws of Chinese Taipei apply in the provision of requests (Art.12) and thus noting the findings of R.4, a wide range of seizing, freezing and confiscation measures are able to be applied (including the seizure and confiscation of property of corresponding value). For urgent requests, these may be implemented directly through the MOJ as long as a LOR is filed within 30 days (Art 8).

根據國際刑事司法互助法的協助 - 國際刑事司法互助法允許根據互惠原則提供廣泛的協助。透過外交部提供協助，然後通過正式的請求書（LOR）由法務部提供協助。MACMA 允許在獲取證據、搜索、扣押、執行終局判決或沒收命令或蒐集與犯罪有關的收益方面進行合作，以及與中華臺北法律不相矛盾的其他類型的援助（第 6 條）。MACMA 確認中華臺北的國內法適用於提出請求（第 12



條)，因此注意到 R.4 的調查結果，可以適用各種扣押、凍結和沒收措施（包括扣押和沒收等價值的財產）。只要在 30 天內提交請求書，可以透過法務部直接執行緊急的請求（第 8 條）。

532. **Criterion 38.2** - Art 12 of the MACMA confirms that requests for assistance shall be implemented in accordance with the laws of Chinese Taipei. In its domestic law, Art.40 of the Criminal Code allows for confiscation in circumstances in which the offender is not prosecuted or convicted due to facts or legal reasons. In this scenario, confiscation of “a thing used in commission of or preparation for the commission of an offence or a thing derived from or acquired through the commission of an offence may occur if it belongs to the offender or if belongs to another person without proper reason”. Further, proceeds of crime under Art. 38-1(1-2) may be confiscated independently. Chinese Taipei confirm and case studies demonstrate that Art 40 applies in the event the offender is unknown.

**標準 38.2** - 國際刑事司法互助法第 12 條規定，請求協助應根據中華臺北的法律。在國內法中，刑法第 40 條允許在犯罪者因事實或法律上原因未被起訴或定罪的情況下予以沒收。在這種情況下，第 38 條（2 - 3）（犯罪人以外之人取得的犯罪工具和犯罪所得的追徵）所規定之物和第 38-1 條（1-2）（犯罪所得）可以獨立沒收。經中華臺北確認和案例研究表明，第 40 條適用於罪犯不明的情況。

533. **Criterion 38.3** - The Ministry of Justice is responsible for coordinating seizure and confiscation actions with other countries. This has been demonstrated throughout various cases evidencing cooperation with other jurisdictions. Art 140 and 141 of the CPC along with the Notices for Prosecuting Authorities in Appraising Items Seized in Criminal Investigation also provide further provisions for management of seized property as outlined in R.4 above.

**標準 38.3** - 法務部負責協調與其他國家的扣押和沒收行動。在與其他司法管轄區合作的各類案件中都證明了這一點。刑事訴訟法第 140 和 141 條以及檢察機關辦理刑事案件偵查中扣押物變價應注意事項也提供了上述 R.4 所述就被扣押財產管理的進一步規定。

534. **Criterion 38.4** - Chinese Taipei is able to share confiscated property with other countries (MLCA Art. 19 and Art 33 of MACMA.)

**標準 38.4** - 中華臺北可以和其他國家分享扣押的財產。（洗防法第 19 條及國際刑事司法互助法第 33 條）

## Weighting and Conclusion

### 權重與結論

535. Chinese Taipei is able to extend comprehensive assistance to other countries in relation to the restraint and confiscation of assets. As the system for assistance in seizing and confiscation reflects their domestic regime, some shortcomings, as outlined at R.4, may apply. In practice, these shortcomings are minor. **Recommendation 38 is rated largely compliant.**

中華臺北能夠在限制和沒收資產方面向其他國家提供全面協助。由於協助扣押和沒收的制度反映了其國內制度，如 R.4 所述，可能存在一些缺點。在實務上，這些缺點很微小。**建議第 38 項的評等為大部分遵循。**

## Recommendation 39 - Extradition

### 建議第 39 項—引渡

536. In the 2007 MER, Chinese Taipei was rated largely compliant with the former R.39. The MER noted that Chinese Taipei did not have any process in place to cooperate with another jurisdiction when prosecuting a Chinese Taipei suspect. TF offences had not been criminalised and they were not extraditable offences.

在 2007 年的相互評鑑報告，中華臺北的前 R39 被評為 LC，相互評鑑報告指出中華臺北在起訴中華臺北嫌犯時與其他司法管轄區之合作沒有任何進展。資恐罪沒有罪刑化也不是可引渡的犯罪。



537. Chinese Taipei relies on different laws, regulations and agreements when conducting extradition. For countries with which Chinese Taipei has signed an extradition treaty, extradition procedures are handled in accordance with the relevant treaty. Chinese Taipei confirm that there are currently twelve jurisdictions that have agreed extradition treaties (the Dominican Republic, Malawi, Grenada, Saint Vincent and the Grenadines, Marshall Islands, Swaziland, Paraguay, Commonwealth of Dominica, Federation of Saint Kitts and Nevi, Palau, South Africa and Costa Rica). In the absence of an extradition treaty, matters are handled in accordance with the Law of Extradition. Chinese Taipei also has special arrangements in place in relation to China (the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement) and Hong Kong, China and Macao, China (“Laws and Regulations Regarding Hong Kong and Macao Affairs”).

中華臺北在執行引渡時依賴不同的法律、規定及協議。當中華臺北與有簽訂引渡條約的國家執行引渡時依據相關條約，中華臺北確認目前有 12 個國家有引渡條約(多明尼加、馬拉威、格瑞那達、聖文森、馬紹爾群島、史瓦濟蘭、巴拉圭、多米尼克、聖克里斯多福及尼維斯、南非及哥斯大黎加)。對於沒有引渡條約的國家就依據引渡法，中華臺北與中國大陸(海峽兩岸共同打擊犯罪及司法互助協議)、香港及澳門(香港澳門關係條例)之間也有特殊的協議。

538. The Law on Extradition notes that “Extradition shall be effected in accordance with treaties. Where there are no treaties or no provisions applicable to a case in existing treaties, the provisions of this law shall prevail.”

引渡法指出引渡依條約，無條約或條約無規定者，依該法之規定。

**Criterion 39.1** - ML and TF are extraditable offences – the Extradition Law confirms that an offence is an extraditable offence where the maximum punishment for the offence in Chinese Taipei is a minimum of one year (Art.2). All offences specified in the MLCA and the CTF Act comprise of crimes punishable by a maximum of more than one years imprisonment and are thus extraditable. In relation to those countries with which Chinese Taipei has extradition treaties, it is stipulated that extraditable offences are those that are punishable under both the laws of Chinese Taipei and the jurisdiction seeking the requisition by a maximum penalty of more than one year’s imprisonment. The only minor gap is in relation to the absence of smuggling of migrants as a predicate offence to ML.

**標準 39.1**-洗錢及資恐是可引渡之罪-引渡法規定最重本刑為一年以下有期徒刑以外之罪者為可引渡之犯罪(第 2 條)。洗錢防制法之所有犯罪及資恐防制法都是最重本刑超過一年之罪，所以可以引渡，關於有與中華臺北簽訂引渡條約的國家，規定犯罪如在中華民國及該司法管轄區之最重本刑超過一年即為可引渡的犯罪。只有一個小缺失就是偷渡移民不是洗錢的前置犯罪。

539. When cooperating with China, Chinese Taipei conducts repatriation procedures rather than extradition, owing to special agreements in place. Point 5 of the Cross-Straight Mutual Assistance Agreement confirms that Chinese Taipei and China agree to apprehend and repatriate criminals and criminal suspects. Point 6 provides further details as to how the repatriation is to take place.

當與中國大陸合作時，由於有特殊的協議，中華臺北以遣返程序取代引渡，兩岸司法互助協議第 5 點指出中華臺北與中國大陸同意緝捕及遣返刑事犯與刑事嫌疑犯，第 6 點規定遣返如何進行。

540. In relation to Hong Kong, China and Macao, China, Art 56 of the Regulations Regarding Hong Kong and Macao Affairs confirms that mutual judicial assistance is provided on a reciprocal basis. In practice, the Extradition law would therefore apply to these jurisdictions.

關於香港及澳門，港澳關係條例第 56 條規定司法互助依互惠原則處理，實務上，引渡法可以適用在這些司法管轄區。

541. **39.1(b)** - Chinese Taipei has had very few cases of extradition. For those that have been received, the MOJ has a MLA Management Information System. The system classifies cases by the type of crime in determining priority for implementation. The Extradition law contains procedures and responsible competent authorities executing an extradition request. Where urgency justifies, the law permits correspondence to be made seeking arrest or detention of an individual prior to submission of a formal extradition request (Art. 12). In facing competing extradition requests from multiple

jurisdictions seeking the same individual, Article 6 specifies the factors of priority assigned. In practice, CT, to date has received no extradition requests.

**標準 39.1(b)** - 中華臺北的引渡案件非常少，對於已經收到的案件，法務部有一個司法互助案件管理資訊系統，這個系統依據案別將案件分類，並決執行的優先順序。引渡法規定執行引渡請求的程序和主管機關。在緊急程度合理的情況下，法律允許在提交正式引渡請求之前得以函電請求拘提羈押所擬引渡之人犯（第 12 條）。

542. **39.1(c)** - Chinese Taipei does have conditions on the execution of extradition requests however these are not unduly restrictive. Some examples of the conditions of extradition in the Extradition Act include: if the offence is of military, political or religious nature; or if the person requested has committed another offence and is currently before a Court in Chinese Taipei, they shall not effect extradition until after legal proceedings have been completed.

**標準 39.1(c)** - 中華臺北確實有執行引渡請求的條件，但這些並非過分限制，引渡法中的條件包括：犯罪行為具有軍事、政治、宗教性時；請求引渡之人犯另犯他罪，已繫屬中華臺北之法院者，其引渡應於訴訟程序終結後為之。

543. **Criterion 39.2** - Chinese Taipei does not extradite its own nationals (Article 4 of the Law on Extradition) however it does note that in the event that extradition is refused on this basis, the person shall be referred to a Court which has jurisdiction over the case for trial. However, in some of the extradition agreements between Chinese Taipei and other jurisdictions lack the obligations to refer such person to a court which has jurisdiction over the case for trial. This only applies to 5 jurisdictions. In relation to the special agreement with China, there is no requirement to extradite to China. Chinese Taipei advise that in practice, the competent authorities would open an investigation under the CPC in this case and refer the case to the court.

**標準 39.2** - 中華臺北不引渡國民(引渡法第 4 條)，但是它指出當在此情況下拒絕引渡時應立即移送法院審判。但是在中華臺北與其他司法管轄區之間的引渡協議中，沒有義務引渡公民也無需將其提交給有司法管轄權的法院，這僅適用於 5 個司法管轄區。關於與中國大陸的協議，沒有要求引渡到中國大陸。中華臺北指出在實務上，主管機關將根據刑事訴訟法開展調查，並將案件提交法院。

544. **Criterion 39.3** - Dual criminality is required in Chinese Taipei however the Law on Extradition and the extradition agreement with China only require the underlying conduct of the offending to be punishable to both countries (Art 2 of the Law on Extradition “if the offence is punishable”). Chinese Taipei confirm provisions in extradition treaties mirror the requirements in the Law on Extradition.

**標準 39.3** - 中華臺北要求雙重處罰性，但是引渡法及與中國大陸的引渡協議只要求雙邊均將該行為予以罪刑化即為已足(引渡法第 2 條「犯罪應處罰者」)。中華臺北確認引渡條約中的條款反映了“引渡法”的要求。

545. **Criterion 39.4** - For jurisdictions with which Chinese Taipei has not signed an extradition treaty, the Law on Extradition provides that in the case of emergency, a foreign government may request the immediate arrest and detention of a person to be extradited (Article 12). For those that Chinese Taipei has signed agreements with, similar provisions are in place reflecting the requirement at Article 12 of the Law on Extradition. For example, there is a clause allowing a person to voluntary relinquish procedural safeguards for extradition in the agreement signed with Palau. Chinese Taipei is able to receive urgent extradition requests from the China in the form of a telephone call, fax, email or other means provided that a written request is provided within 10 days.

**標準 39.4** - 對於與中華臺北沒有簽署引渡條約的司法管轄區，“引渡法”規定在緊急情況下，外國政府可以要求立即逮捕和拘留被引渡者（第 12 條）。對於有與中華臺北簽署引渡條約者，有類似的規定反映了“引渡法”第 12 條的要求。例如，在與帛琉簽署的協議中有一項條款允許一個人自願放棄引渡程序保障。如果在 10 天內提供書面請求，中華臺北可以通過電話、傳真、電子郵件或其他方式收到中國大陸的緊急引渡請求。

## Weighting and Conclusion

*權重與結論*

546. In some circumstances where Chinese Taipei does not extradite its own locals, there are no obligations to refer them to a domestic court for trial. There is a gap with smuggling of migrants. **Recommendation 39 is rated largely compliant.**

在中華臺北沒有引渡其本國國民的情況下，沒有義務將他們移送到國內法院接受審判。在偷渡移民方面有落差。**建議第 39 項是大部分遵循。**

*Recommendation 40 - Other forms of international cooperation**建議第 40 項—其他形式之國際合作*

547. In its 2007 MER Chinese Taipei was rated partially compliant with R.40 and non-compliant with SR.V. There were no measures in place relating to international cooperation on TF.

中華臺北於 2007 年的 MER 第 40 項建議被評為部分遵循，而特別建議第 5 項(SR.V)為未遵循。沒有與資恐相關的國際合作的措施。

548. **Criterion 40.1**– Chinese Taipei has many provisions allowing international cooperation. The MLCA provides a basis for cooperation on ML and predicates at Art 21, allowing authorities to enter into treaties or agreements on combating ML with foreign governments, institutions or international organisations on the principle of reciprocity. Information gathered in investigations under the MLCA (specifically, cross border declarations, STRs and CTRs) may be provided on the basis of reciprocity. Article 14 of the CTFA allows authorities to execute cooperative treaties or other international written agreements in relation to TF with foreign governments, institutions or organisations on the basis of reciprocity.

**標準 40.1** - 中華臺北有許多允許國際合作的條款。洗錢防制法第 21 條提供了洗錢及前置犯罪合作的基礎，允許權責機關依據互惠原則與外國政府、機構或國際組織簽訂關於打擊洗錢的條約或協議。根據洗錢防制法（特別是跨境申報、STR 和 CTR）調查收集的資訊可基於互惠提供。資恐防制法第 14 條允許權責機關在互惠基礎上與外國對等機構簽訂有關 TF 的合作條約或其他國際書面協議。

549. Art 21-1 of the Securities and Exchange Act, Art 175-1 of the Insurance Act, Art 5-1 of the Tax Collection Act and Art 6 of the Futures Trading Act enables authorized agencies to enter into a cooperative treaty or agreement with foreign governments, agencies or organisations on the basis of reciprocity. On the basis of the agreement, the competent authority may then compel authorities or agencies to provide information in order to be exchanged pursuant to the agreement. The assistance that may be provided is wide and includes investigation assistance and the ability to compel production of documents from authorities or FIs. Art 5 of the Act to Implement United Nations Convention Against Corruption requires authorities to cooperate with foreign governments, international governmental organisations, and anti-corruption bodies. Art 3 and 5 of the Human Trafficking Prevention Act allow international cooperation on human trafficking matters. Examples of implementation of these laws are as follows:

證券交易法第 21-1 條、保險法第 175-1 條、稅捐稽徵法第 5-1 條和期貨交易法第 6 條使權責機關能夠在互惠基礎上與外國政府、機構或組織簽訂合作條約或協議。在協議的基礎下，權責機關可強制機關或機構提供資訊，以便依協議進行交換。可提供的協助範圍很廣，包括調查協助和強制當局或金融機構產製文件的能力。聯合國反貪腐公約施行法第 5 條要求權責機關與外國政府，國際間政府組織和反貪腐機構合作。人口販運防制法第 3 和第 5 條允許人口販運問題的國際合作。執行這些法律的例子如下：

- LEAs exchange information generally through diplomatic channels on the basis of reciprocity. 執法機關通常透過外交管道在互惠基礎上交換信息。
- The AMLD exchanges information with foreign FIUs based on Art.6 of the MJIB Operation Regulation on matters relevant to AML/CFT which allows the AMLD to share all files, information and related intelligence with foreign financial intelligence units.



洗錢防制處根據調查局辦理防制洗錢與打擊資恐業務作業要點第 6 條規定，就 AML / CFT 相關的事項與外國金融情報中心交換信息，該要點允許洗錢防制處與外國金融情報中心共享所有文件，信息和相關情報。

- The MJIB and NPA exchange information through liaison officers stationed overseas, through signed MOUs.  
法務部調查局和內政部警政署透過駐海外的聯絡官交換信息，簽署備忘錄。
- Chinese Taipei is also a member of the Asset Recovery Interagency Network Asia Pacific (ARIN-AP) which allows for information sharing.  
中華臺北也是 ARIN-AP 的成員，該網絡允許信息共享。
- Information is able to be freely exchanged by the Taxation authorities under the Taxation Act. The Taxation authorities have wide powers to obtain information from entities within Chinese Taipei including private institutions. The taxation authorities have 32 bilateral tax agreements with other jurisdictions which also facilitates information exchange.  
根據稅法稅務機關可以自由交換信息。稅務機關擁有廣泛的權力，可以從中華臺北的實體（包括私人機構）獲取信息。稅務機關與其他司法管轄區簽訂了 32 項雙邊稅務協定，這也有利於信息交流。
- LEAs (including judicial police (MJIB, NPA) and prosecutors may exchange information with China on the basis of the Cross-Strait Joint Fight against Crime and MLA Agreement and the related Guidelines for Cross Strait Investigation and Evidence Collection. This provides a broad basis to cooperate in the exchange of information and intelligence on the basis that certain (reasonable) conditions are met.  
執法機關（包括司法警察（法務部調查局，內政部警政署）和檢察官可以在兩岸共同打擊犯罪和司法互助協議以及相關的海峽兩岸調查取證作業要點的基礎上與中國大陸交換信息。在某些（合理）條件得到滿足的基礎上，為交換訊息和情資的合作提供了廣泛的基礎。
- The FSC utilises the International Association of Insurance Supervisors (IAIS) and International Organisation of Securities Commissions (IOSCO) MMOUs. They have entered into a further 55 MOUs or protocols with 37 foreign supervisory authorities.  
金融監督管理委員會利用 IAIS 和 IOSCO 的 MMOU。他們與 37 個外國監管機構簽訂了另外 55 份備忘錄或協議。
- The MJIB has entered into ML/TF intelligence exchange MOUs or agreements with 44 jurisdictions.  
法務部調查局已與 44 個國家簽訂了 ML / TF 情報交換備忘錄或協議。
- The CA has signed 7 customs mutual assistance agreements, 6 customs cooperation arrangements and 4 customs cooperation MOUs with 16 jurisdictions.  
財政部關務署與 16 個國家簽署了 7 項海關互助協議，6 項海關合作安排和 4 項海關合作諒解備忘錄。

#### Criterion 40.2:

##### 標準 40.2 :

550. **40.2 (a)** - As outlined above, the MLCA and CFTA and other provisions cited in R40.1 provide a legal basis for cooperation by authorities relevant to ML and TF.

**標準 40.2 (a)** -如上所述，洗錢防制法和資恐防制法，以及其他 R40.1 引用的法規，為權責機關有關洗錢及資恐之合作提供了法律依據。

551. **40.2 (b)** - The terms of the relevant treaties, laws, MOUs and guidelines allow for a wide range of cooperation to take place without obtrusive procedures required. Case studies were provided to the team to demonstrate efficient cooperation.

**標準 40.2 (b)** -相關條約、法律、合作備忘錄、指引等之條款允許廣泛之合作，無需要求繁瑣程序。提供給評鑑團的案例展現了有效的合作。

552. **40.2 (c)** - The FIU exchanges information with foreign FIUs using the Egmont Secure Web, for non-Egmont members, the use of secure channels and gateways are provided for in the relevant MOUs that are signed. The FSC exchanges information through stationed liaison officers in the US and



UK, and for other countries the terms of the MOUs signed with IAIS and IOSCO govern the gateways for exchange of information. The Chinese Taipei Principles for the FSC in providing information, financial examination assistance, and investigative assistance to foreign financial supervisory authorities further require the FSC to securely exchange information with foreign counterparts. The MJIB exchanges information through 25 liaison officers stationed overseas and other MOUs entered into with other countries. The MJIB Operation Regulations on matters relevant to AML and CFT provides for the use of a secure network to carry out inquiries within a specific timeframe. Information exchanges take place according to the principles enshrined in the MJIB Operation Regulations on matters relevant to AML/CFT. The NPA, Coast Guard, AAC, Customs, MOF and NIA all rely on stationed officers overseas and bilateral and multi-lateral agreements. All staff stationed overseas by Chinese Taipei competent authorities transmits information through encrypted telefax systems, encrypted files/emails or diplomatic bags to ensure security.

**標準 40.2 (c)** -金融情報中心透過艾格蒙聯盟安全網路與外國金融情報中心交換情資，對於非艾格蒙聯盟成員，在簽署的相關合作備忘錄中規定須使用安全管道和渠道。金管會透過派駐美國和英國的聯絡官交換情資，而對於其他國家則依國際保險監理官協會（IAIS）和國際證券委員會組織（IOSCO）成員簽署的多邊合作備忘錄條款管制資訊交換。金融監督管理委員會與外國金融主管機關間資訊提供金融檢查協助及協助調查處理原則進一步要求金融監督管理委員會與外國對等機關安全地交換資訊。法務部調查局透過派駐海外的 25 名法務秘書以及與其他國家簽訂的其合作備忘錄交換情資。法務部調查局辦理防制洗錢及打擊資恐業務作業要點規定在特定期間運用安全網絡執行查詢。與外國的情資交換是依據法務部調查局作業要點的原則進行的。警政署、海巡署、廉政署、財政部關務署、財政部和移民署均仰賴駐外人員、雙邊和多邊協議。中華臺北權責機關所有駐外人員均透過加密傳真系統，加密文件/電子郵件或外交郵袋傳遞信息，以確保安全。

553. **40.2(d)** – The FIU has a SOP on the exchange of intelligence and monitoring timelines. Other agencies such as the FSC, MJIB, Ocean Affairs Council, Coast Guard Administration and NIA have SOPs which include handling priorities. The NPA prioritises requests according to the priority attached to the request. Customs Administration has a SOP which covers priority and time control over information exchange depending on the urgency of the matter.

**標準 40.2(d)**-金融情報中心就情報交換和監控時表訂有 SOP。其他機關，如金管會，調查局，海巡署，和移民署都有包括處理優先事項在內的 SOP。警政署依據請求附帶的優先性為優先判定標準。海關訂定之 SOP，依事件的急迫性，訂定包含情資交換之優先性、時效控制等準則。

554. **40.2 (e)** – Chinese Taipei advise that all authorities act with the principle of mutual benefit and confidentiality when conducting information exchange.

**標準 40.2(e)**-中華臺北表示所有權責機關進行資訊交換時都遵循互惠和保密原則。

555. **Criterion 40.3**– It is clear from the legislative provisions cited above that Chinese Taipei authorities have the authority to sign agreements with the widest range of foreign counterparts and that this has been implemented as demonstrated in 40.1 above. There are no barriers to being able to sign the agreements in a timely way.

**標準 40.3**-從上述立法規定可以清楚地看出，中華臺北當局有權與最廣泛的外國對等機關簽署協議，並且已經如上文第 40.1 節所示實施。就及時簽署協議沒有障礙。

556. **Criterion 40.4**– AMLD provides feedback on information exchanges pursuant to the Egmont principles. The MJIB Operation Regulations on Matters Relevant to AML/CFT also includes a provision for feedback to be provided in accordance with follow-up processing under lawful premises. The SOP in place for the FSC on information exchange requires that the FSC provide feedback where requested, in a timely manner to competent authorities from whom the FSC has received assistance, on the use and usefulness of the information obtained. LEAs do not have specific provisions however advise in practice that feedback is provided to foreign agencies particularly on the accuracy and quality of the information obtained. For example, in successful cases, certificates or medals of gratitude are provided to the foreign agency. The Regulations Governing the Exchange of Tax Information Concerning Agreements on Tax Matters require a feedback letter in English describing the usage and effectiveness of the information.

**標準 40.4** - 洗錢防制處根據艾格蒙聯盟原則提供有關資訊交換的回饋。法務部調查局辦理防制洗錢/打擊資恐業務作業要點亦規定在合法前提下的後續處理及回饋等條款。金管會在資訊交換方面的 SOP 要求金管會依對方請求，及時向已協助金管會之權責機關回饋有關取得之資訊運用情形和效用。執法機關則無具體規定，但在實務上會提供外國機構回饋意見，特別是所取得資訊之準確性和品質。例如，有成功案例時，致送感謝函或感謝獎牌予外國機關。租稅協定稅務用途資訊交換作業辦法要求以英文信函提供回饋意見，說明資訊之運用和效用。

557. **Criterion 40.5** – There are no unreasonable or unduly restrictive conditions placed on the ability of Chinese Taipei authorities to enter into the exchange of information. Laws expressly provide that FIs for example must provide documents where a request is made pursuant to an agreement or MOU. The MOUs signed by various agencies do restrict information exchanges that contradict domestic laws or go against national security however these are not unduly restrictive conditions. The MJIB Operation Regulations on matters relevant to AML/CFT confirms that in relation to requests sought of the MJIB (FIU); those that violate the reciprocity principle or harm security or public interests should be rejected, such provisions not being unreasonable. In practice, no competent authority of Chinese Taipei has ever refused a request for assistance.

**標準 40.5** - 並無不合理或不適當的限制條件影響中華臺北各機關進行資訊交換的能力。法律明確規定，例如：當請求係依據協議或合作備忘錄所提出時，金融機構必須提供文件。各機關簽署的合作備忘錄確實限制了違反國內法或違反國家安全的資訊交流，但這些並非過度限制性條件。法務部調查局辦理防制洗錢/打擊資恐業務作業要點確認，向法務部調查局（金融情報中心）提出的相關請求，若有違反互惠原則或損害安全或公共利益者，應予拒絕，這些規定並非不合理。實務上，中華臺北的權責機關並未拒絕過外國之協查請求。

558. **Criterion 40.6**– Chinese Taipei has put controls in place to ensure that information received is used only for authorized purposes. For example, the FIU has implemented SOPs based on Egmont principles for the controls on use of information. All agreements and MOUs signed by the AMLD include terms regarding information access controls, protection of documents and prior consent. The FSC has SOPs in place confirming that information may only be used for the purpose for which it was requested or provided. LEAs take the approach of indicating on documents that are exchanged that the documents are for intelligence purposes only, and that contents cannot be disclosed to third parties without consent. The regulations on tax exchange specify that prior authorization must be obtained and that information exchanged may only be used for the purpose based on which the information was requested. Finally, the MJIB Operation Regulation on Matters Relevant to AML/CFT confirm that with the delivery of financial intelligence, it shall be specified that it is provided for information only and cannot be used as evidence. Further, that the intelligence is kept confidential and agencies may not deliver the information to third parties without approval from the Bureau.

**標準 40.6** - 中華臺北已實施管控措施，以確保收到的資訊僅用於授權目的。例如，金融情報中心根據艾格蒙聯盟原則執行管控資訊運用的 SOP。洗錢防制處簽署的所有協議和合作備忘錄均包括有關取得資訊之控管、文件保護和事先同意等條款。金管會也訂有 SOP，確認資訊僅能用於請求或提供的目的。執法機關採取的方式是在交換的文件上指明文件僅用於情報目的，並且未經同意不得向第三方揭露內容。稅收交換條例規定必須事先獲得授權，並且交換的資訊僅可用於請求資訊的目的。最後，法務部調查局辦理防制洗錢及打擊資恐業務作業要點確認，在提供金融情報時，應指明其僅供參考，不能用作證據。此外，情報應保密，且未經調查局許可，相關機關不得將資訊提供給第三方。

559. **Criterion 40.7** – the relevant guidelines and principles for the respective authorities outlined above have provisions that require the confidentiality of documents exchanged. For example, the MOF Regulations on the exchange of tax information specifies that information received shall be kept confidential, and follow domestic laws relating to information protection. The Personal Information Protection Act requires confidentiality of information relating to personal information provided, and Art 245 of the CPC requires that criminal investigations are not made public. There is no provision to allow a refusal to provide information on the basis of confidentiality concerns although in practice this could occur.

**標準 40.7** - 上述各機關的相關作業要點和原則都有條款確認要求交換文件的機密性。例如，財政部有關稅務信息交換的準則規定，收到的信息應保密，並遵守有關資訊保護的國內法律。“個人資料保護法”要求對與所提供的相關個人資訊保密，“刑事訴訟法”第 245 條要求刑事偵查不得公開。沒有規定允許基於保密問題拒絕提供信息，雖然在實務上中可能會發生這種情況。

560. **Criterion 40.8** – The basis for cooperation by Chinese Taipei authorities is generally under provision of agreements, MOUs and through membership of groups such as Egmont, ARIN-AP etc. The legal provisions enabling such agreements all allow wide cooperation on the basis that the matter relates to the authority's area of competence and is authorized by Chinese Taipei law. Such agreements and provisions allow for wide cooperation and are not restrictive. In effect, authorities are therefore able to conduct inquiries on behalf of foreign counterparts.

**標準 40.8**--中華臺北當局合作的基礎通常是基於協議、合作備忘錄以及透過如 Egmont、ARIN-AP 等團體的成員資格。實現此類協議的法律規定都允許在該事項涉及當局的權限範圍，並經中華臺北法律授權。這些協議和條款允許廣泛合作，而不是限制性的。因此，當局可以代表外國對等機關進行調查。

561. **Criterion 40.9**–The MLCA and CTFA provide a legal basis for cooperating on ML and TF. The Organic Act for Investigation Bureau, MOJ confirms that the MJIB (in which the AMLD sits) is responsible for coordination and correspondence between related overseas institutions, international collaboration, national security investigations involving a foreign jurisdiction and assistance in investigating and tracking international crimes. The MJIB Operation Guidelines on Matters Relevant to AML and CFT also provide details of how the MJIB should approach international requests.

**標準 40.9**-MLCA 和 CTFA 為洗錢和資恐的合作提供了法律依據。“調查局組織法”確認，調查局（金融情報中心所在地）負責相關海外機構之間的協調和通信、國際合作，涉及外國的國家安全調查以及協助調查和追蹤國際犯罪。法務部調查局辦理防制洗錢及打擊資恐業務作業要點也提供了該局應如何處理國際要求的詳細信息。

562. **Criterion 40.10** – As a member of Egmont, the FIU is required to provide feedback in compliance with the Egmont Principles for Information Exchange between FIUs.

**標準 40.10** - 作為艾格蒙聯盟的成員，金融情報中心必須提供符合艾格蒙聯盟金融情報中心之間信息交換的原則的反饋意見。

563. **Criterion 40.11** – The AMLD acts in accordance with the Egmont principles for information exchange. Further, the MJIB Operation Regulations on AML/CFT at Art 6 confirms that the AMLD may implement international transmission for investigations, inquiries or ruling of criminal cases. It confirms that the MJIB may actively share files, information and related intelligence materials with foreign financial intelligence units. Whilst the provisions are broad and don't directly align with the requirements of R40.11, there do not appear to be any barriers to undertaking the activities described on behalf of another jurisdiction.

**標準 40.11**- 洗錢防制處按照艾格蒙聯盟情資交換原則行事。此外，法務部調查局辦理防制洗錢及打擊資恐業務作業要點第 6 條規定，洗錢防制處可以實施國際傳播，以便對刑事案件進行調查，調查或裁決。該要點確認法務部調查局可以積極與外國金融情報中心共享文件、信息和相關情報資料。雖然這些規定很廣泛，但並不直接符合 R40.11 的要求，但似乎沒有任何障礙可以代表另一個司法管轄區進行所述活動。

564. **Criterion 40.12**– The FSC is able to cooperate internationally in keeping with Article 3 of the Organic Act governing the Establishment of the FSC which allows FSC to conduct international supervisory cooperation and exchange of supervisory information. The FSC also has broad power to direct banks and related parties to provide information and reports under Art 45 of the Banking Act. Article 21-1 of the Securities and Exchange Act allows Chinese Taipei authorities based on the principle of reciprocity to enter into treaties or agreements with foreign governments, agencies or international organisations to facilitate information exchange and investigation assistance. Similar provisions exist in the Futures Trading Act and the Insurance Act. Whilst the Central Bank does not have provisions enabling direct exchange of information, in the event that there was an international



request for information then that could be undertaken via the Central Bank and FSC agreements to share information. The FSC would then be able to share that information on their behalf. Similarly, AMLD would also be able to obtain information from the Central Bank to share with foreign FIUs.

**標準 40.12** - 金管會根據“金融監督管理委員會組織法”第 3 條進行國際合作，該法允許金管會進行國際監督合作和交換監督訊息。金管會還擁有廣泛的權力，指導銀行和相關方根據“銀行法”第 45 條提供信息和報告。“證券交易法”第 21-1 條允許中華臺北當局根據互惠原則與外國政府、機構或國際組織簽訂條約或協議，以促進信息交流和調查協助。期貨交易法和保險法中也有類似的規定。雖然中央銀行沒有能夠直接交換信息的條款，但如果有國際信息請求，可以透過中央銀行和金管會的協議進行共享信息。然後，金管會將能夠代表他們分享該信息。同樣，洗錢防制處也可以從中央銀行取得資訊，與外國金融情報中心分享。

565. **Criterion 40.13** – the FSC has a SOP in place relating to cross-border supervisory cooperation – the Principles for the FSC in providing information, financial examination assistance and investigative assistance to foreign financial supervisory authorities. The SOP confirms that the FSC may provide information on the basis of agreements and in the absence of agreements on the basis of reciprocity. However, where requests are made outside of the IOSCO MMOU or IAIS MMOU, the information is not provided, in principle, unless allowed by Art18 (1)(3,6,7,9) of the Freedom of Government Information Law. Thus far the FSC has signed 57 written agreements regarding cooperation with 38 countries which provide wide-ranging power to exchange information with foreign counterparts including information on shareholders, senior management of FIs, supervisory information exchange, and information relating to predicate crimes of securities frauds, insider trading and market manipulation. Art 45 of the Banking Act allows the FSC to order banks to prepare and submit reports or other relevant documents and would use this provision in the event of a request for assistance.

**標準 40.13** - 金管會制定了與跨境監理合作有關的 SOP—金管會向外國金融監理機構提供信息、財務審查援助和調查援助的原則。SOP 規定金管會可以在協議的基礎上提供信息，並且在沒有協議的情下，基於互惠的原則提供信息。但是，如果在 IOSCO MMOU 或 IAIS MMOU 之外提出請求，除非政府資訊公開法第 18 條第 (1) 款 (3,6,7,9) 允許，否則原則上不提供信息。到目前為止，金管會已與 38 個國家簽署了 57 份書面協議，這些協議提供了與外國對等機關交換信息的廣泛權力，包括股東、金融機構高級管理層、監理信息交流以及與證券詐欺、內線交易和市場操縱等前置犯罪相關的信息。銀行法第 45 條允許金管會命令銀行準備和提交報告或其他相關文件，並在請求協助時使用該條款。

566. **Criterion 40.14** - the FSC is able to exchange a wide range of information with foreign supervisors including regulatory information; prudential information and AML/CFT information (see 40.8).

**標準 40.14** - 金管會能夠與外國監理機構交換廣泛的信息，包括監理信息、審慎監理資訊和 AML / CFT 信息 (見 40.8)。

567. **Criterion 40.15** - The FSC has entered into agreements and MOUs with foreign counterparts that allow for the host financial supervisor to allow a home supervisor or its agents to conduct cross-border on-site inspections in the host jurisdiction's territory, and with the consent of both parties the home supervisor may conduct onsite inspections either alone or accompanied by the host financial supervisors.

**標準 40.15** - 金管會已與外國對等機關簽訂協議和合作備忘錄，允許當地金融監理機關讓母國監理機關或其代理人在該國境內進行跨境現地檢查，在徵得雙方同意下，母國金融監理機關可以單獨或由當地的金融監理人員陪同進行現地檢查。

568. **Criterion 40.16** - The FSC has joined the IOSCO MMoU and is a signatory member of the IAIS. These agreements have explicit provisions regarding prior authorization of disclosure of information in place. The FSC has compliant provisions in its MOUs with foreign supervisors. In the absence of an MOU with such terms, the Principles for the FSC in providing information, financial examination assistance and investigative assistance to foreign financial supervisory authorities applies.



**標準 40.16** - 金管會加入了 IOSCO MMoU，是 IAIS 的簽約成員。這些協議對事先授權揭露信息有明確規定。FSC 與外國監理機構簽署了合作備忘錄。在沒有此類條款的合作備忘錄的情況下，適用金融監督管理委員會與外國金融主管機關間資訊提供金融檢查協助及協助調查處理原則。

569. **Criterion 40.17** - The MLCA enables competent authorities to exchange information concerning STRs, CTRs and customs declarations with foreign authorities on the basis of reciprocity and information relating to assistance on seizures or freezing requests under Art 18. The MJIB is able to exchange information with foreign counterparts as outlined above. As stated above, NPA utilises relationships in order to enable the sharing of information. Where difficulties occur, such information would usually be sought from the AMLD through Egmont channels. Many examples of such assistance were provided to the ME team some of which are outlined at IO2.

**標準 40.17** - MLCA 使主管當局能夠在互惠的基礎上與外國當局交換有關 STRs、CTRs 和海關申報的信息，並根據第 18 條提供有關援助緝獲或凍結請求的信息。法務部調查局能夠與如上所述的外國對等機關分享訊息。如上所述，內政部警政署利用關係來實現信息共享。如果遇到困難，通常會從洗錢防制處通過艾格蒙管道尋求此類信息。向評鑑團提供了許多這樣協助的例子，其中一些在 IO2 中概述。

570. **Criterion 40.18** - Chinese Taipei exchanges information through platforms such as Egmont Group and adheres to the agreements in place with respect to such exchanges. Chinese Taipei has a wide basis upon which it is able to exchange information and conduct investigations (on the basis of reciprocity). In these circumstances, provisions of agreed MOUs or MLA agreements, the MACMA, MLCA and other provisions apply. For example Art 6 of the MACMA confirms authorities are able to assist on obtaining evidence, search, seizure etc. Requests shall be implemented in accordance with the laws of Chinese Taipei (Art 12). Provisions of law restrict the use of any information obtained in the course of a criminal investigation as outlined in R37.5.

**標準 40.18** - 中華臺北通過艾格蒙聯盟等平台交換信息，並遵守有關此類交換的協議。中華臺北有廣泛的基礎，可以交換信息和進行調查（在互惠的基礎上）。在這些情況下，適用簽定的合作備忘錄或 MLA 協議、MACMA、MLCA 和其他條款的規定。例如，MACMA 第 6 條規定當局能夠協助取得證據、搜索、扣押等。請求應根據中華臺北的法律實施（第 12 條）。法律規定限制使用如 R37.5 所概述，於刑事調查過程中獲得的任何信息。

571. **Criterion 40.19** - provisions of the MACMA broadly allow for joint investigations in allowing foreign authorities to participate in the investigative process (Art 17). Art 18 specifically allows persons from the requesting party to appear at the scene of implementation of the request on consent of the assisting body. Chinese Taipei has provided examples of situations in which joint investigation teams have been implemented successfully with other jurisdictions.

**標準 40.19** - MACMA 的規定廣泛的允許聯合調查，並允許外國當局參與調查過程（第 17 條）。第 18 條明確允許請求方的人員在協助方同意下出現在執行請求的現場。中華臺北提供了聯合調查小組與其他司法管轄區成功執行的例子。

572. **Criterion 40.20** - Chinese Taipei is able to exchange information indirectly with non-counterparts. This is done through treaties and other agreements reached and outlined above, diplomatic staff stationed in overseas missions. The AMLD conducts transmission of a wide range of material on behalf of other domestic authorities through the Egmont Group channels and pursuant to the MJIB Operation Regulation on Matters Relevant to AML/CFT. The FSC is able to exchange information provided by domestic and foreign competent authorities including the BOAF and the Central Bank.

**標準 40.20** - 中華臺北能夠間接與非對等機關交換信息。這是透過條約、其他協議以及上述駐紮在海外特派的外交人員所完成的。洗錢防制處通過艾格蒙聯盟集團管道並根據法務部調查局辦理防制洗錢及打擊資恐業務作業要點，代表其他國內當局進行各種資料的傳輸。金管會能夠交換國內外主管機關提供的信息，包含農金局和中央銀行。

### Weighting and Conclusion

### 權重與結論

573. Chinese Taipei is able to exchange a wide range of information with foreign counterparts through the use of MOUs, agreements, officers stationed overseas and the use of Egmont Channels and other platforms. Given Chinese Taipei's heavy reliance on MOUs it should continue to agree MOUs with a wider range of jurisdictions. Some agencies don't have direct information exchange agreements with foreign counterparts, however other domestic agencies may provide that information on their behalf. **Recommendation 40 is rated largely compliant.**

中華臺北透過使用合作備忘錄、協議、海外特派官員以及使用艾格蒙聯盟管道和其他平台，能夠與外國對等機關交換廣泛的信息。鑑於中華臺北非常依賴備忘錄，中華臺北應持續與更廣泛的司法管轄區達成備忘錄。有些機構沒有與外國對等機關直接簽訂信息交換協議，但其他國內機構可能代表他們提供這些信息。**建議第 40 項評等為大部分遵循。**

Summary of Technical Compliance – Key Deficiencies

技術遵循摘要—重要缺失

| Compliance with FATF Recommendations                                  |              |  |
|---|--------------|--|
| Recommendation<br>建議  | Rating<br>評等 | Factor(s) underlying the rating<br>評等因素  |
| 1. Assessing risks & applying a risk-based approach<br>風險評估及風險基礎方法之應用 | LC           | <ul style="list-style-type: none"> <li>Enhanced and reduced measures are not sufficiently based on identified risks<br/>強化和簡化措施未充分依據辨識之風險</li> </ul>   |
| 2. National cooperation and coordination<br>全國性合作及協調機制                | LC           | <ul style="list-style-type: none"> <li>Chinese Taipei does not yet have explicit national level strategies<br/>中華臺北還沒有明確的國家層級策略</li> <li>There are some minor gaps in elements of operational level cooperation<br/>在業務合作層面存有一些輕微的落差</li> </ul>  |
| 3. Money laundering offence<br>洗錢犯罪                                   | LC           | <ul style="list-style-type: none"> <li>Smuggling of migrants is not a predicate offence to ML<br/>偷渡不是洗錢的前置犯罪</li> <li>The definition of ML in cases of self-laundering is not comprehensive<br/>為自己洗錢案件的洗錢定義不夠全面</li> </ul>   |
| 4. Confiscation and provisional measures<br>沒收及暫時性措施                  | LC           | <ul style="list-style-type: none"> <li>No express provisions allowing for transactions to be voided or applications to seize to be made ex parte.<br/>沒有明確規定允許交易無效或者單方面申請扣押</li> <li>Proceeds and instruments related to smuggling of migrants is not covered.<br/>未涵蓋與偷渡有關的犯罪所得和工具</li> </ul>   |
| 5. Terrorist financing offence<br>資恐犯罪                                | LC           | <ul style="list-style-type: none"> <li>There are some minor gaps with the TF offence, it is not evident that self-financing is criminalised although such conduct may be prosecuted under an ancillary offences.<br/>資恐罪刑化仍有輕微落差，恐怖份子自行籌資的處罰規定並不清楚，即便其可能以從犯方式處罰。</li> <li>Art 2(1)(b) of the TF convention (“any other act to intimidate or pressure a government”) is also not present as all offences are linked to listed terrorist offences.<br/>未處罰反資恐公約第 2 條第 1 項 b 款規定「任何其他脅迫或威脅政府的活動」，因為所有的處罰都是與列舉的恐怖活動有關。</li> <li>The term “property” is not defined in any laws or regulations although the team accepts that the term is construed widely by the courts.<br/>財物一詞沒有規定在任何法規當中，雖然評鑑團接受法院會採取廣泛的適用範圍。</li> </ul> |
| 6. Targeted financial sanctions related                               | LC           | <ul style="list-style-type: none"> <li>The amended CTF Act applies TFS to assets wholly or jointly owned or controlled, directly or indirectly, but</li> </ul>   |

| Compliance with FATF Recommendations                                     |              |  |
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| Recommendation<br>建議   | Rating<br>評等 | Factor(s) underlying the rating<br>評等因素  |
| to terrorism & TF<br>資助恐怖分子及恐<br>怖主義之目標性金<br>融制裁                         |              | <p>not clearly to property derived from such property of designated persons.</p> <p>修正後的資恐防制法凍結義務擴及被指名之人或團體直接或間接、全部或共同擁有或控制之資金或其他資產，但是否涵蓋從上述財產衍生的財產並不清楚。</p> <ul style="list-style-type: none"> <li>The freezing obligations do not apply to funds or other assets of persons and entities acting on behalf of or at the direction of designated persons and entities, except when those funds are property or property interests of the designated person or entity</li> </ul> <p>凍結義務並不包括代表被指定之人或團體執行或受其指示資金或其他資產，除了當資金是被指定之人或團體之財物或財產上利益。</p> <ul style="list-style-type: none"> <li>Freezing obligation are not clearly enforceable on natural and legal persons who are not also FIs or DNFBPs.</li> </ul> <p>凍結義務是否擴及金融機構或 DNFBPs 以外之自然人或法人不明確。</p> <ul style="list-style-type: none"> <li>No protection for parties implementing TFS obligations in good faith.</li> </ul> <p>執行目標性金融制裁義務之人無阻卻違法規定。</p> <ul style="list-style-type: none"> <li>There are no clear procedures for dealing with false positive designations, other than administrative appeal procedures.</li> </ul> <p>除了行政訴訟法以外沒有明確的程序處理偽陽性情況。</p> <ul style="list-style-type: none"> <li>It is not clear whether FIs and DNFBPs are required to report attempted transactions that would be prohibited under TFS.</li> </ul> <p>金融機構及 DNFBPs 是否需要報告受目標性金融制裁規範禁止的未完成交易並不明確。</p> |
| 7. Targeted financial sanctions related to Proliferation<br>武器擴散之目標性金融制裁 | LC           | <ul style="list-style-type: none"> <li>The amended CTF Act does not clearly apply TFS to assets or property derived from property of designated persons or entities.</li> </ul> <p>修正後的資恐防制法沒有明確將目標性金融制裁適用到從指定之人或實體之財產所衍生之資產或財產。</p> <ul style="list-style-type: none"> <li>The freezing obligations do not apply to funds or other assets of persons and entities acting on behalf of or at the direction of designated persons and entities, except when those funds are property or property interests of the designated person or entity</li> </ul> <p>凍結義務沒有適用到代表被指定之人或實體之資金或其他資產，除了當資金是被指定之人或實體之財物或財產上利益。</p> <ul style="list-style-type: none"> <li>Freezing obligation are not clearly enforceable on natural and legal persons who are not also FIs or DNFBPs.</li> </ul>   |



| Compliance with FATF Recommendations              |              |  |
|---|--------------|--|
| Recommendation<br>建議                              | Rating<br>評等 | Factor(s) underlying the rating<br>評等因素  |
|   |              | <p>凍結義務是否擴及金融機構或 DNFBPs 以外之自然人或法人不明確。</p> <ul style="list-style-type: none"> <li>No protection for parties implementing TFS obligations in good faith.<br/>針對善意第三人執行目標性金融制裁義務沒有保護。</li> <li>There are limited procedures for dealing with false positives.<br/>針對偽陽性情況的處理程序有限。</li> <li>It is not clear whether FIs and DNFBPs are required to report attempted transactions that would be prohibited under TFS.<br/>目前尚不清楚金融機構和 DNFBP 是否需要報告受目標性金融制裁規範禁止的未完成交易。</li> <li>No clear provisions allowing interest or other earnings to be added nor any payments due under contracts, so long as the account remains frozen.<br/>一旦帳戶被凍結，沒有明確的條款允許增加的利息或其他收入也被列入凍結，此外，也不允許根據契約支付任何應付款項。</li> <li>No legal protections to ensure payments made to a frozen account under contract do not relate to prohibited items or activity.<br/>沒有法律保護第三人，來確保根據契約向凍結帳戶付款，且該筆款項與禁止的項目或活動無關的情形。</li> </ul> |
| 8. Non-profit organisations<br>非營利組織              | LC           | <ul style="list-style-type: none"> <li>Sanctions available to enforce obligations for transparency and accountability amongst NPOs are not sufficiently effective, proportionate and dissuasive for violations by civil associations or persons acting on behalf of these NPOs<br/>對人民團體及其代表人違反規定的處罰並不充分有效、合乎比例且具勸阻性，以強制非營利組織遵守透明度和組織誠信之義務。</li> </ul>   |
| 9. Financial institution secrecy laws<br>金融機構保密法律 | C            | <ul style="list-style-type: none"> <li>The recommendation is fully met<br/>建議完全符合</li> </ul>   |
| 10. Customer due diligence<br>客戶審查                | LC           | <ul style="list-style-type: none"> <li>Minor gaps in relation to exemption on identifying and verifying beneficial ownership in relation to certain types of customers.<br/>對某些類型客戶豁免辨識和驗證實質受益權之規定存在輕微落差。</li> </ul>   |
| 11. Record keeping<br>紀錄保存                        | LC           | <ul style="list-style-type: none"> <li>Gaps with foreign exchange counters keeping records of analysis leading to STRs<br/>外幣收兌處未能保存可疑交易報告之分析紀錄存在缺失</li> </ul>   |
| 12. Politically exposed persons                   | C            | <ul style="list-style-type: none"> <li>The recommendation is fully met<br/>建議完全符合</li> </ul>   |

| Compliance with FATF Recommendations   |              |  |
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| Recommendation<br>建議   | Rating<br>評等 | Factor(s) underlying the rating<br>評等因素  |
| 重要政治性職務人士  |              |  |
| 13. Correspondent banking<br>通匯銀行業務  | C            | <ul style="list-style-type: none"> <li>The recommendation is fully met<br/>建議完全符合</li> </ul>   |
| 14. Money or value transfer services<br>金錢或價值移轉服務                            | C            | <ul style="list-style-type: none"> <li>The recommendation is fully met<br/>建議完全符合</li> </ul>   |
| 15. New technologies<br>新科技運用  | C            | <ul style="list-style-type: none"> <li>The recommendation is fully met<br/>建議完全符合</li> </ul>   |
| 16. Wire transfers<br>電匯   | C            | <ul style="list-style-type: none"> <li>The recommendation is fully met<br/>建議完全符合</li> </ul>   |
| 17. Reliance on third parties<br>依賴第三方                                       | C            | <ul style="list-style-type: none"> <li>The recommendation is fully met<br/>建議完全符合</li> </ul>   |
| 18. Internal controls and foreign branches and subsidiaries<br>內控及國外分支機構和子公司 | LC           | <ul style="list-style-type: none"> <li>There are minor gaps in relation to internal control obligations for foreign exchange counters.<br/>與外幣收兌處有關的內部控制義務方面有輕微落差。</li> </ul>  |
| 19. Higher-risk countries<br>高風險國家   | C            | <ul style="list-style-type: none"> <li>The recommendation is fully met<br/>建議完全符合</li> </ul>   |
| 20. Reporting of suspicious transaction<br>申報疑似洗錢或資恐交易                       | LC           | <ul style="list-style-type: none"> <li>Weaknesses in the STR obligations on foreign exchange counters<br/>外幣收兌處有可疑交易申報義務的弱點</li> <li>STRs don't clearly cover cases of suspicion that funds are the proceeds of a criminal activity, or are related to TF, even if no transaction has occurred.<br/>可疑交易報告未清楚包括懷疑資金是犯罪活動產生之所得，或與資恐相關之案件，即使在未有交易發生的情況下。</li> <li>STR obligations do not appear to cover the proceeds of migrant smuggling<br/>可疑交易申報義務未包括偷渡的不法所得</li> </ul> |
| 21. Tipping-off and confidentiality<br>揭露與保密                                 | LC           | <ul style="list-style-type: none"> <li>No explicit prohibition on tipping off covering foreign exchange counters.<br/>外幣收兌處未有明文禁止洩密之規定</li> <li>No explicit requirement to keep reporting of suspicion of ML to AMLD to be kept confidential. No explicit requirement to include officers and directors and prevent them from disclosing an STR has been sent to AMLD.</li> </ul>  |

| Compliance with FATF Recommendations                                       |              |   |
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| Recommendation<br>建議   | Rating<br>評等 | Factor(s) underlying the rating<br>評等因素   |
|  |              | 向調查局洗錢防制處申報疑似洗錢之案件，未明文規定應予保密。未明文納入經理人和董事並避免其揭露向洗錢防制處申報 STR 之資訊。   |
| 22. DNFBPs:<br>Customer due diligence<br>DNFBP: 客戶審查                       | PC           | <ul style="list-style-type: none"> <li>A number of shortcomings in relation to the scope of CDD and other risk-based preventive measures covering various DNFBPs.<br/>各 DNFBP 有 CDD 範圍和其他風險為本的預防措施的缺失</li> </ul>  |
| 23. DNFBPs: Other measures<br>DNFBP: 其他措施                                  | LC           | <ul style="list-style-type: none"> <li>There are minor gaps with obligations to file STR related to proceeds of migrant smuggling<br/>申報與偷渡犯罪所得有關 STR 的義務有輕微落差</li> <li>no explicit provision to support that the protection shall be made available even if the person filing the report did not know precisely what the underlying criminal activity was, and regardless of whether the illegal activity actually occurred<br/>對於申報可疑交易報告之人，即使其不明確知道潛在之犯罪活動為何，以及是否確實發生非法活動，對於該等人員沒有明確提供保障之規定</li> </ul>   |
| 24. Transparency and beneficial ownership of legal persons<br>法人之透明性和實質受益權 | LC           | <ul style="list-style-type: none"> <li>Not all ML/TF risks were assessed with respect to all types of legal persons able to be created in Chinese Taipei.<br/>未針對所有在中華臺北設立的各類型法人進行所有的洗錢/資恐風險評估。</li> <li>Oversight of and enforcement to ensure accuracy of registration filing with MOEA had not commenced at the time of the onsite visit.<br/>現地評鑑時尚未開始監督和執行以確保提交經濟部登記資訊的正確性。</li> <li>Controls do not fully mitigate risks posed by bearer shares issued before August 2018<br/>控制措施不能完全抵減 2018 年 8 月之前發行無記名股票帶來的風險</li> <li>There is relatively little professional intermediation in the establishment or continuing operation of legal persons in Chinese Taipei, so relying on CDD information obtained by FIs/DNFBPs may not ensure that information on the beneficial ownership of a company is can be otherwise determined in a timely manner<br/>在中華臺北設立或繼續經營的法人中，相對較少使用專業中介，因此依賴金融機構/DNFBP 取得的 CDD 資訊，可能無法確保及時確定有關公司實質受益權的資訊。</li> </ul> |
| 25. Transparency and beneficial ownership of legal                         | PC           | <ul style="list-style-type: none"> <li>Trustees of civil trusts are not required to obtain and hold accurate and current details of parties to the</li> </ul>   |

| Compliance with FATF Recommendations  |              |   |
|---|--------------|---|
| Recommendation<br>建議  | Rating<br>評等 | Factor(s) underlying the rating<br>評等因素   |
| arrangements<br>法人協議透明度及<br>實質受益權   |              | trust and any other natural person who may be exercising effective control over the trust<br>民事信託受託人無需取得並持有信託當事人和可能對信託行使有效控制權的任何其他自然人的正確和最新詳細資訊 <ul style="list-style-type: none"> <li>Trustees of civil or foreign trusts are not required to declare their status to FIs and DNFBPs when establishing a relationship<br/>當建立關係時，民事信託或外國信託的受託人無須向金融機構和 DNFBP 揭露其受託人身份</li> <li>There are few requirements requiring trustees to hold basic information on regulated agents of and service providers to the trust<br/>針對信託受規範的代理人及服務提供者業者，受託人被要求持有的資本資訊很少。</li> </ul> |
| 26. Regulation and supervision of financial institutions<br>金融機構之規範與<br>監理              | LC           | <ul style="list-style-type: none"> <li>The Central Bank and BoT do not sufficiently consider the ML/TF risks when determining frequency and intensity for supervision on foreign exchange counters<br/>在決定監理外幣收兌處的頻率和強度時，央行和臺灣銀行沒有充分考慮中華臺北的洗錢 / 資恐風險。</li> </ul>  |
| 27. Powers of supervisors<br>監理機關之權力  | LC           | <ul style="list-style-type: none"> <li>There are shortcomings in the supervisor's ability to sanction foreign exchange counters for AML/CFT failings<br/>主管機關對外幣收兌處違反 AML/CFT 規定的裁罰能力有缺失</li> </ul>   |
| 28. Regulation and supervision of DNFBPs<br>DNFBP之規範與<br>監理                             | PC           | <ul style="list-style-type: none"> <li>Gaps with controls to prevent criminals' associates from being accredited, holding a significant or controlling stake, or a management role in a DNFBP.<br/>防止犯罪者的關係人取得專業委任、持有重要或控制權益，或在 DNFBP 中擔任管理職務的控制措施有落差。</li> </ul>   |
| 29. Financial intelligence units<br>金融情報中心  | LC           | <ul style="list-style-type: none"> <li>The AMLD shares information with domestic and foreign counterparts in a secure manner. There is not an express provision allowing for the dissemination of ICTRs and CTRs however such information is included in analysis reports that are disseminated.<br/>洗錢防制處以安全方式與國內外對等機關分享資訊，但沒有明確的規定允許 ICTRs 和 CTRs 的分送，但這些資訊卻包含在分送的分析報告當中</li> </ul>   |
| 30. Responsibilities of law enforcement and investigative authorities<br>執法和調查機關之<br>責任 | C            | <ul style="list-style-type: none"> <li>The recommendation is fully met<br/>建議完全符合</li> </ul>  |



| Compliance with FATF Recommendations                                      |              |  |
|---|--------------|--|
| Recommendation<br>建議  | Rating<br>評等 | Factor(s) underlying the rating<br>評等因素  |
| 31. Powers of law enforcement and investigative authorities<br>執法和調查機關之權力 | LC           | <ul style="list-style-type: none"> <li>There are restrictions on authorities ability to conduct undercover investigations and to intercept communications in relation to some predicate offences<br/>權責機關在執行臥底偵查及對某些前置犯罪的通訊監察有限制。</li> <li>Controlled delivery only applies in relation to drug offences<br/>控制下交付只能適用在毒品犯罪。</li> </ul>  |
| 32. Cash couriers<br>現金攜帶   | LC           | <ul style="list-style-type: none"> <li>There is no requirement to retain declarations when there is a suspicion of ML or TF<br/>當懷疑 ML 或 TF 時，沒有保留申報資料的要求。</li> <li>Customs officers have the power to seize items on suspicion, but may only seize “things that may be forfeited” which is undefined (but appear to be construed widely).<br/>海關有權扣押有嫌疑物品，但可能只能扣押“可得沒入之物”。未定義“可得沒入之物”，但似乎被廣泛地解釋。</li> </ul> |
| 33. Statistics<br>統計數據  | LC           | <ul style="list-style-type: none"> <li>Chinese Taipei does not maintain statistics relating to ML investigations that are opened by LEAs prior to being referred to prosecutors.<br/>中華臺北沒有保留有關在移交給檢察官前，由執法機關啟動洗錢調查的統計數據。</li> </ul>   |
| 34. Guidance and feedback<br>指引與回饋  | C            | <ul style="list-style-type: none"> <li>The recommendation is fully met<br/>建議完全符合</li> </ul>   |
| 35. Sanctions<br>處罰   | PC           | <ul style="list-style-type: none"> <li>The range of monetary penalties available to regulators and supervisors are not proportionate or dissuasive.<br/>主管機關和監理機關可處罰緩之範圍不合乎比例原則或具勸阻性。</li> <li>It is not clear that sanctions can be applied to directors and senior managers of DNFBPs who are legal persons.<br/>尚不清楚處罰是否適用於具法人格 DNFBP 的董事和高階管理人員。</li> </ul>  |
| 36. International instruments<br>國際相關公約與規範                                | LC           | <ul style="list-style-type: none"> <li>Chinese Taipei are not a party to the UN Conventions however implement their requirements to a large extent.<br/>中華臺北雖然不是聯合國公約的簽署國，但在很大程度上執行公約的要求。</li> <li>The smuggling of migrants is not a predicate offence for ML.<br/>偷渡不是洗錢的前置犯罪。</li> <li>There are minor gaps in the TF and ML offence.</li> </ul>  |

| Compliance with FATF Recommendations                                 |              |   |
|--|--------------|---|
| Recommendation<br>建議   | Rating<br>評等 | Factor(s) underlying the rating<br>評等因素   |
|  |              | 資恐及洗錢犯罪有輕微缺失。   |
| 37. Mutual legal assistance<br>司法互助                                  | LC           | <ul style="list-style-type: none"> <li>There are shortfalls in the powers of LEA, dual criminality is required for non-coercive measures<br/>執法機關的權力存在缺失，非強制性措施需具備雙重可罰性。</li> </ul>   |
| 38. Mutual legal assistance: freezing and confiscation<br>司法互助:凍結和沒收 | LC           | <ul style="list-style-type: none"> <li>MLA will not be able to apply in relation to the proceeds of the smuggling of migrants<br/>司法互助無法適用有關偷渡的非法所得。</li> <li>As the provision of MLA is restricted by that which is able to be carried out domestically, the minor gaps in relation to R.4 apply.<br/>由於司法互助的提供受到能夠在國內進行的限制，因與 R.4 相關的輕微落差在此適用。</li> </ul>   |
| 39. Extradition<br>引渡  | LC           | <ul style="list-style-type: none"> <li>In circumstances where Chinese Taipei does not extradite suspects, there are no obligations to refer them to a domestic court.<br/>在中華臺北不引渡嫌犯的情況下，沒有義務將受請求引渡之人移送到國內法院審判。</li> <li>The scope gap relating to the smuggling of migrants affects Chinese Taipei's ability to provide extradition in a very minor way.<br/>有關偷渡的範疇落差以非常輕微的方式影響中華臺北提供引渡的能力。</li> </ul>  |
| 40. Other forms of international cooperation<br>其他形式之國際合作            | LC           | <ul style="list-style-type: none"> <li>Given Chinese Taipei's heavy reliance on MOUs it should continue to agree MOUs with a wider range of jurisdictions.<br/>鑑於中華臺北非常依賴備忘錄，應繼續與更廣泛的司法管轄區簽署備忘錄。</li> <li>Some agencies don't have direct information exchange agreements with foreign counterparts, however other domestic agencies may provide that information on their behalf.<br/>有些機關沒有與外國對等機關簽訂直接交換資訊的協議，但其他國內機關可能代表他們提供這些資訊。</li> </ul> |

## Glossary of Terms

## 縮寫表

|              |   |
|--------------|---|
| <b>AAC</b>   | Agency Against Corruption, MOJ 法務部廉政署                                     |
| <b>ABT</b>   | The Agricultural Bank of Taiwan 全國農業金庫                                    |
| <b>AEA</b>   | Administrative Enforcement Agency, MOJ 法務部行政執行署                           |
| <b>AML</b>   | Anti-Money Laundering Division, MJIB (Chinese Taipei's FIU)               |
| <b>AML</b>   | 法務部調查局洗錢防制處 (中華臺北FIU)   |
| <b>AMLO</b>  | Anti-Money Laundering Office, EY 行政院洗錢防制辦公室                               |
| <b>BOAF</b>  | Bureau of Agricultural Finance, COA 行政院農委會農業金融局                           |
| <b>BOT</b>   | Bank of Taiwan 臺灣銀行   |
| <b>CA</b>    | Customs Administration, MOF 財政部關務署  |
| <b>CCAPO</b> | Cooperative & Civil Association Preparatory Office, MOI<br>內政部合作及人民團體司籌備處 |
| <b>CIB</b>   | Criminal Investigation Bureau, NPA, MOI 內政部警政署刑事警察局                       |
| <b>CPF</b>   | combating the financing of proliferation of WMD<br>打擊資助大規模毀滅性武器擴散         |
| <b>DCA</b>   | Department of Civil Affairs, MOI 內政部民政司                                   |
| <b>DLA</b>   | Department of Land Administration, MOI 內政部地政司                             |
| <b>DPO</b>   | District Prosecutors office 地方檢察署   |
| <b>EY</b>    | Executive Yuan 行政院  |
| <b>ERA</b>   | Enterprise risk assessment 企業風險評估   |
| <b>FISC</b>  | Financial Information Service Co 財金資訊股份有限公司                               |
| <b>FSC</b>   | Financial Supervisory Commission 金融監督管理委員會                                |
| <b>HPO</b>   | High Prosecutors Office 高等檢察署   |
| <b>JCIC</b>  | Joint Credit Information Centre 財團法人金融聯合徵信中心                              |
| <b>JY</b>    | Judicial Yuan 司法院   |
| <b>MAC</b>   | Mainland Affairs Council 大陸委員會  |
| <b>MJIB</b>  | Investigation Bureau, MOJ 法務部調查局  |
| <b>MLCA</b>  | Money Laundering Control Act 洗錢防制法  |
| <b>MOE</b>   | Ministry of Education 教育部   |
| <b>MOEA</b>  | Ministry of Economic Affairs 經濟部  |
| <b>MOF</b>   | Ministry of Finance 財政部   |
| <b>MOFA</b>  | Ministry of Foreign Affairs<br>外交部  |
| <b>MOHW</b>  | Ministry of Health and Welfare<br>衛生福利部                                   |
| <b>MOI</b>   | Ministry of the Interior 內政部  |
| <b>MOJ</b>   | Ministry of Justice 法務部   |
| <b>MOTC</b>  | Ministry of Transportation and Communications 交通部                         |
| <b>MPB</b>   | Maritime Port Bureau 交通部港務局   |
| <b>NIA</b>   | National immigration Agency, MOI 內政部移民署                                   |
| <b>NPA</b>   | National Police Agency, MOI 內政部警政署  |
| <b>NRA</b>   | National Risks Assessment 國家風險評估  |
| <b>NSB</b>   | National Security Bureau 國家安全局  |
| <b>NSC</b>   | National Security Council 國家安全會議  |
| <b>OBU</b>   | Offshore Banking Unit 國際金融業務分行  |
| <b>OHS</b>   | Office of Homeland Security 行政院國土安全辦公室                                    |
| <b>OIU</b>   | Offshore Insurance Unit 國際保險業務分公司   |
| <b>OSU</b>   | Offshore Securities Unit 國際證券業務分公司  |
| <b>SFAA</b>  | Social and Family Affairs Administration, MOHW<br>衛生福利部社會及家庭署             |
| <b>SPO</b>   | Supreme Prosecutors Office 最高檢察署  |
| <b>SRA</b>   | Sectoral risk assessment 產業風險評估   |

**TA (MOF)** Taxation Administration, Ministry of Finance 財政部賦稅署  
**TDCC** Depository & Clearing Corporation 臺灣集中保管結算所股份有限公司  
**TFRC** TF Review Committee 資恐審議委員會