Asia/Pacific Group
on Money Laundering

ASIA/PACIFIC GROUP
ON MONEY LAUNDERING

APG MUTUAL EVALUATION REPORT ON

Chinese Taipei

Against the FATF 40 Recommendations (2003) and 9 Special Recommendations

ADOPTED BY APG MEMBERS

24 JULY 2007

PREFACE - INFORMATION AND METHODOLOGY USED FOR THE EVALUATION

The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Chinese Taipei was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004. The evaluation was based on the laws, regulations and other materials supplied by Chinese Taipei, and information obtained by the evaluation team during its on-site visit to Chinese Taipei from 28 January to 10 February 2007, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Chinese Taipei government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

The evaluation was conducted by a team of assessors composed of APG experts in criminal law, law enforcement and financial regulatory issues. The evaluation team consisted of:

- Mr Razim Buksh, Director, Financial Intelligence Unit, Reserve Bank of Fiji – financial expert,
- Ms Hyun Soo Kim, Deputy Director, Korea Financial Intelligence Unit – financial expert,
- Detective Sergeant Craig Hamilton, New Zealand Police Force – law enforcement expert, and
- Ms Janet Maki, Ombudsman, Cook Islands – legal expert; and
- Mr Ian Knight - APG Secretariat.

The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in Chinese Taipei as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). It also sets out Chinese Taipei's levels of compliance with the FATF 40+9 Recommendations (see Table 1).

TABLE OF CONTENTS

EXECUTIVE SUMMARY

1. Background Information

1) The government of Chinese Taipei is divided into central, provincial/municipal, and county/city levels, each of which has specifically defined powers. Chinese Taipei has a civil law legal system.

2) There is a strong focus on anti money laundering (AML) measures, but less emphasis on measures to combat the financing of terrorism (CFT) – evidenced primarily by the fact that terrorist financing is not yet criminalized.

3) The statistics provided reflect an increasing number of money laundering prosecutions with the number increasing each year for the last 4 years.

4) Drug seizures indicate a lucrative trade in illicit drugs in Chinese Taipei. This is of some concern, given a lack of ML prosecutions arising from narcotics investigations.

5) Chinese Taipei has various authorities that supervise the banking, insurance, futures and securities industries. The supervisory authority of the financial industry and creation of a single financial regulator (the Financial Supervisory Commission) was achieved through legislation that became effective in July 2004.

6) Chinese Taipei had an established banking industry with assets of NT$36,970.7 billion (USD 1,105.4 billion).

7) The Insurance industry has 24 non-life and 30 life insurance companies with premium income of USD 3,543 million and USD 43,474 million respectively.

8) In respect of the DNFBPs in Chinese Taipei, casinos are outlawed; real estate (in 2004) recorded 727,537 transactions in land and 418,187 transactions in housing; jewellery shops play a major substitute role of financial institutions and exchange large amounts of money to foreign currency in addition to dealing in gems and gold; lawyers have broad scope of business and notaries exist in civil practice as well as within the court system; accountants number 2,398 (as at December 2005); all trust business is conducted by banks and as at December 2005 was USD 85.5 billion in size.

2. Legal Systems and Related Institutional Measures

9) The Money laundering Control Act (MLCA) is the principal law on AML in Chinese Taipei. A threshold approach applies for defining predicate crimes, along with some specifically listed crimes. The threshold for defining predicate crimes is too high and the offence provision lacks some of the elements outlined in Article 3(1)(b)(c) of the Vienna Convention and Article 6(1) of the Palermo Convention. A conviction for a predicate offence is required to prove the money laundering offence.

10) The authorities are prosecuting a significant number of cases for ML, with the bulk originating from economic crime areas. Statistics suggest that in 2005 a total of 1,678 suspects were identified, about NT$ 7.7 billion (US$240 million) was laundered and NT$213 million (US$6.6 million) was seized. The majority of ML cases involved the use of banking channels with only 5 cases being identified as using non-financial industries (underground banking, real estate or jewellery stores).

11) Chinese Taipei has not yet criminalised terrorist financing. A draft Counter-Terrorism Bill has been prepared but has not yet been tabled with the Legislative Yuan.

12) The FIU of Chinese Taipei is embodied in the Money Laundering Prevention Centre (MLPC), which presents as a mature, well functioning and effective FIU.

13) There are two key law enforcement agencies which, in partnership with prosecutors, have primary responsibility for ML/FT investigations. It is apparent that the bulk of money laundering prosecutions emanate from economic crime investigations – and predominantly relate to amounts of less than USD 30,000. There is an obvious gap in terms of money laundering prosecutions arising from narcotic investigations – given the high number of predicate narcotics investigations.

14) Statistics reflect a significant weakness in relation to cross-border currency movements. There is a need to review sanctions for non-declaration and the smuggling of cash.

15) Legal provisions that provide for the confiscation, freezing and seizing of proceeds of crime (POC) are scattered throughout several laws, namely the MLCA; the Criminal Code; the Criminal Procedure Code; the Statute for Narcotic Hazards Control; the Police Powers Act and the Organised Crime Prevention Act.

16) ML is not a qualifying offence for POC, i.e there must be a predicate offence.

3. Preventive Measures – Financial Institutions

17) Chinese Taipei has implemented a system of generally comprehensive AML/CFT measures for financial institutions. However, many of the measures take the form of guidelines; this is contrary to the FATF Recommendations, which provide that laws, regulations or other enforceable means are the appropriate instruments. Thresholds for Customer Due Diligence (CDD) obligations remain high and there is a need for clearer requirements to establish beneficial ownership as part of CDD.

18) Chinese Taipei is compliant with international standards regarding third parties and introduced business as well as the financial institution secrecy or confidentiality obligations.

19) Record-keeping requirements are inadequate in areas including records for non-cash transactions, records for cash transactions below NT$1 million, requirement to keep records capable of reconstruction for evidentiary purposes, requirement to keep records for five years following completion of a transaction or termination of an account, international transaction records are not captured, and no requirement to keep account files or business correspondence. Financial institutions in Chinese Taipei are generally complying with those transaction and customer record-keeping rules that are in place.

20) With the exception of the banking sector, there are no specific obligations on financial institutions to monitor and keep record of complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose.

21) Requirements for reporting suspicious transactions for terrorist financing fall short of the minimum requirements.

22) The requirement to maintain AML internal controls and systems by financial institutions in Chinese Taipei is embedded in the laws and is well supported by regulatory initiatives. Overall the obligations on financial institutions to have internal controls are comprehensive. However, requirements imposed on the securities sector fall short of the independent audit function requirement. Overall, the Ministry of Justice Investigation Bureau (MJIB), financial sector regulatory and supervisory authorities, and relevant self regulatory organisations (SROs) have developed a good AML/CFT culture among the financial institutions – evident also at the executive management levels of those institutions.

23) Although there is no specific direct prohibition in Chinese Taipei's laws and regulations on the establishment and operation of shell banks, permission to enter into correspondent banking relationships with shell banks, and use in foreign country of accounts by shell banks, such activities are indirectly not permitted under the banking laws.

24) The MLPC engages proactively with financial institutions by publishing case studies, conducting AML/CFT education and providing AML/CFT information.

25) The Financial Supervisory Commission (FSC) is the single financial sector regulator in Chinese Taipei and is the competent authority in charge supervisory and oversight system for financial institutions and financial businesses for AML/CFT. The sanctions imposed by the FSC are assessed as inadequate in view of levels of findings of compliance breaches for the banking sector. It is also noted that insurance agents and brokers are exempted from the current AML/CFT requirements and that they have only recently been introduced for money changing services and the foreign currency exchange sector.

26) Apart from Article 29 of the Banking Act that bars non-banks from providing domestic or foreign remittance services, Chinese Taipei does not have any specific laws or regulations governing the money or value transfer service providers.

27) The licensing, regulation and supervision of money or value transfer service providers is unclear. The AML/CFT monitoring and compliance framework for the money or value transfer service providers is also not clear.

4. Preventive Measures – Designated Non-Financial Businesses and Professions

28) Dealers in precious metal and stones are the only category of the DNFBP sector covered under MLCA Act and there are currently no specific AML/CFT requirements imposed on lawyers, notaries, real estate agents, accountants, or trust and company services providers.

29) The scope of CDD and record-keeping for all covered financial institutions, including the dealers in precious metals and stones, is applied for cash transactions above NT$1,000,000 or US$31,000 which is well above the international standard.

30) AML/CFT obligations on dealers in precious metal and stones fall substantially short of requirements for preventive measures under the standards and no obligations are in place for other categories of DNFBPs.

31) Dealers in precious metal and stones are the only DNFBP sector that is required to report suspicious transactions, however, the effectiveness is in doubt due to lack of any STR being made to date.

32) There is an urgent need to ensure AML/CFT obligations, including STR reporting, apply to all DNFBP sectors in Chinese Taipei.

33) There are concerns about the capacity of competent authorities to ensure and enforce full compliance with the FATF requirements for all categories of the DNFBP sector. Supervision and monitoring of dealers in precious metal and stones is not fully covered under the current framework – with supervision only occurring in the incorporated end of the market – leaving a large group unsupervised.

34) The interim measures for monitoring the real estate sector fall short of the essential criteria in many ways.

35) Chinese Taipei's AML/CFT regulatory regime does not cover lawyers and accountants. There has been little or no discussion and consultation initiated by the MLPC or the Ministry of Justice (MOJ) with the legal profession including the bar association to assess ML/FT vulnerability for the sector. Only little awareness has been provided to the Certified Practicing Accountant (CPA) sector.

5. Legal Persons and Arrangements & Non-Profit Organisations

36) Chinese Taipei recognizes the following types of corporations: *Unlimited Company; Limited Company; Unlimited Company with Limited Liability Shareholders; and a Company Limited by Shares.*

37) Chinese Taipei utilizes a combination of a central registration system and the authorities' general compulsory powers to maintain transparency of legal persons. These obligations are limited to legal persons declaring details of immediate ownerships. The obligation falls short of a requirement to identify beneficial ownership, that is the natural persons who exercise ultimate effective control over a legal person or arrangement.

38) Private trusts are not subject to any upfront disclosure or registration requirement. The competent authority's ability to get information about the beneficial ownership and the control structure of private trusts relies almost entirely on their powers to conduct inspection or investigation.

39) For charitable trusts, the regulatory authority of the relevant industry may carry out inspections from time to time and may revoke approvals granted to the trusts if they are in breach of the conditions trust or if they disobey supervisory orders. With respect to trust enterprises, the powers to conduct examination and to require submission of documents given to the competent authorities under the Banking Act apply mutatis mutandis.

40) There are robust and thorough safeguards in place in place with regards national NPOs. Additionally there are in excess of 10,000 smaller NPOs, which are supervised at a local government level. The risk-based approach appears to be robust and identifies that local charities pose a very low risk and on this basis the 10,000 local charities and their regulation was not assessed.

6. National and International Co-operation

41) Chinese Taipei has not signed or become a party to the UN Vienna, Palermo or Terrorist Financing Conventions. Chinese Taipei has still not fully implemented the relevant conventions.

42) Through the provisions of the US Mutual Legal Assistance Agreement with Chinese Taipei and the Guidance decree made setting out further processes in terms of granting assistance to the US, it is open to conclude that where a jurisdiction enters into a MLAA with Chinese Taipei, the widest possible range of assistance is available given that Chinese Taipei is able to utilise all the legal authority or power that is available for their own domestic AML/CFT investigations, prosecutions and related proceedings. So for jurisdictions with no MLAA with Chinese Taipei, they can only receive Mutual Legal Assistance (MLA) through court order or letters rogatory.

43) Chinese Taipei currently has a draft Undercover Investigation Act that is aimed at protecting the rights and interests of undercover investigators and through this, enable police to utilise this provision.

44) It is of interest to note Chinese Taipei's policy of distributing confiscated property upon application by any department that was involved in the confiscation of the property in question. However, for reasons that are not clear, no property has yet been distributed under this process.

45) Chinese Taipei has no law or processes that requires it to cooperate with a requesting jurisdiction when it comes to prosecuting its own nationals under Article 4 paragraph 2 of the Extradition Law. As Terrorist Financing offences have not been criminalized, they are not extraditable offences under the Extradition Law.

46) Chinese Taipei authorities have not received or made any extradition requests due to Chinese Taipei's international political status. As a result Chinese Taipei authorities advised that Chinese Taipei uses "deportation procedures" instead of extradition.

47) The Drug Crime Prevention Year Book 2006 states that the MJIB have direct communication with over 20 countries or territories in Europe, America, Hong Kong, Macau, Southeast Asia and North East Asia. During 2005, for example, 811 cases of intelligence exchange took place between Chinese Taipei and other countries in relation to narcotics. A number of examples where Chinese Taipei has worked with other countries including Philippines, Vietnam, Australia, United States, Japan, Malaysia, Hong Kong and Macau to successfully conclude drug investigations.

48) It would appear from the information provided including statistics, that Chinese Taipei has effective systems in place to exchange information with other jurisdictions, particularly through the MLPC. However, there appears to be little information in terms of exchanging information and enquiries made by other competent authorities including the police. Whereas the MLPC has legal authority under its operations Regulations to exchange information and conduct enquiries, other competent authorities do not.

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system
Table 3: Authorities' Response to the Evaluation (if necessary)
Table 4: Progress since the last Mutual Evaluation

1 GENERAL

1.1 GENERAL INFORMATION ON CHINESE TAIPEI

1) The area over which the government of Chinese Taipei exercises administrative control encompasses the islands of Taiwan, Penghu (the Pescadores), Kinmen, Matsu, and a number of smaller islands. The total population was about 22.83 million as of October 2006.

2) The government is divided into central, provincial/municipal, and county/city levels, each of which has specifically defined powers. The central government consists of the Office of the President and five branches (called "Yuan"), namely the Executive Yuan, Legislative Yuan, Judicial Yuan, Examination Yuan, and Control Yuan.

3) The Executive Yuan is the highest organ of the State and there are currently 8 ministries and 28 ministerial-level organizations under the Executive Yuan. The Yuan 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 president of the Executive Yuan is appointed by the president of the republic.

4) The Legislative Yuan is the highest legislative body of the state, consisting of popularly elected representatives who serve for three years and are eligible for re-election.

5) 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.

6) The Judicial Yuan (Judiciary) is the highest judicial organ and its chief powers are to interpret the Constitution, to unify the interpretation of laws and orders, and to adjudicate civil, criminal, administrative cases, cases concerning disciplinary sanctions of public functionaries, and cases concerning the dissolution of political parties violating the Constitution. The judiciary of Chinese Taipei 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 for compliance with pertinent laws or regulations. 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.

7) Matching the judiciary system, the procuratorial organ in Chinese Taipei also has three levels. The first level is the Prosecutor’s Office of Supreme Court. The intermediate level is the prosecutor’s offices of high courts and the branches, and the third level is the prosecutor’s offices of district courts. Based on the principle of the unity of the procuratorial organ, the attorney general of the Supreme Court directs and supervises all the prosecutors from the various levels of prosecutor’s offices to investigate criminal activities, carry out public prosecution, assist private prosecution, command the execution of criminal punishment and execute other functions which are vested by laws and decrees.

8) The annual growth of the Chinese Taipei economy reached 4.03% in 2005 due to the strong growth of external trade.

Major Economic Indicators					
Item	*Unit*	*2002*	*2003*	*2004*	*2005*
Economic growth rate (real GDP increase)	%	4.25	3.43	6.07	4.03
Gross national product (GNP)	US$ billion	301.8	309.3	333.4	355.4
Per capita GNP	US$	13,476	13,752	14,770	15,690
Changes in consumer price index (CPI)	%	-0.20	-0.28	1.62	2.30
Exchange rate (average)	NT$ per US$	34.58	34.42	33.43	32.18
Unemployment rate	%	5.17	4.99	4.44	4.13
Foreign exchange reserves (year end)	US$ billion	161.7	206.6	241.7	253.3
*Preliminary figures					
Source: Directorate-General of Budget, Accounting and Statistics, CBC					

9) Chinese Taipei is the world's 16th largest economy and 15th largest trading nation and it has the third largest foreign exchange reserves in the world. The economic profile of 2005 is as follows, GDP: US$346.4 billion; GNP: US$355.4 billion; Per Capita GNP: US$15,690; Per Capita GDP: US$15,291; Economic Growth Rate: 4.03%; Natural Resources: Small deposits of coal, natural gas, limestone, marble, and asbestos; Agriculture: 1.7% of GDP; Industry (including Manufacturing): 24.9% of GDP; Service: 73.33% of GDP. The service sector consists chiefly of wholesale and retail (18.27% of GDP), finance and insurance (10.72%), as well as real estate and leasing (8.31%). The total trade volume is US$381 billion which including exports US$198.4 billion and imports US$182.6 billion. The major export markets include China (21.99%), Hong Kong (17.15%), United States (14.67%), Japan (7.62%), Singapore (4.05%), and the major import countries include Japan (25.22%), United States (11.59%), China (11.0%), Korea (7.25%) and Germany (3.38%). The approved inward/outward investment is US$4.22 billion/ US$2.45 billion. Foreign exchange reserves are US$253.29 billion.

1.2 GENERAL SITUATION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

10) As shown by the statistics for the past few years of prosecuted cases, the money laundering threats from serious crimes are as follows (in order from serious to less serious): economic crimes, corruption, drug related crimes, racketeering and others. Taking the statistics of 2005 as an example, there are 1,173 prosecuted money laundering cases, which includes 1,081 cases from economic crimes, 7 cases from corruption, 2 cases from drug related crimes, 2 cases from organized crimes and 78 from others. There were 1,678 suspects in total, about NT$ 7.7 billion (US$240 million) being laundered and NT$213 million (US$6.6 million) being seized.

11) Generally speaking there are many industries being used as money laundering channels and the banking industry is the most common way. In 2005, there were 871 money laundering cases in which the illegal proceeds were laundered through banks, 287 cases through postal offices, 6 cases through credit unions, 2 cases through farmers' and fishermen's credit associates, 2 cases through securities companies and 5 cases through non-financial industries (underground banking, real estate or precious stone stores).

12) The usual methods to launder money in this jurisdiction include cash couriers, structuring, purchasing portable valuable commodities, wire transfers, alternative remittance systems, using offshore shell companies/corporations, using offshore banks and offshore businesses, using family members or third parties, using foreign bank accounts and using false identification etc. The emerging trends of money laundering threats include utilizing new technological methods, cross-border financial transactions and currency movement, and increasing use of mule accounts. These new threats have materialised in recent years.

13) From the analysis of statistics from STRs and CTRs and tracing illegal funds in criminal cases, the MLPC (FIU of Chinese Taipei) has found many non-profit organizations might be abused to engage in illegal activities, including money laundering, breach of trust, embezzlement, tax evasion etc.

14) Authorities have identified money laundering cases that involved alternative remittance systems operated by jewellery stores and which usually use couriers to move currency cross-border.

15) Chinese Taipei recognized the threats from terrorist activities after the event of 11 September 2001. On 9 October 2001, the president presided over a project meeting attended by the heads of related authorities seeking measures to combat terrorism. A series of plans on curbing terrorist activities, including legislation to combat terrorism, interruption of terrorism financing, enhancement of international cooperation, prevention of terrorist attack, compliance the requirements from international community and an office named “Anti-terrorism Action Control and Supervision Office” in charge of the coordination and project control, has been established under the Executive Yuan.

16) For curbing the new threats from emerging trends of money laundering and complying with the new standards of the international community on AML/CFT, Chinese Taipei passed amendments to the MLCA in 2003, adding clauses to allow the freezing and confiscating of assets related to money laundering. In addition, the drafted “Anti Terrorist Activities Act” also includes a clause for freezing and confiscating assets related to terrorist financing.

1.3 OVERVIEW OF THE FINANCIAL SECTOR AND DNFBP

17) The financial sector has played an important role in the economic development of Chinese Taipei and accounts for an increasing share of the economy. Chinese Taipei does not have a single financial regulator; instead, there are different authorities to supervise the banking, insurance, futures and securities industries. Furthermore, on-site examinations of banks are carried out by three different agencies - the Central Bank, the Ministry of Finance and the Central Deposit Insurance Corporation. In order to integrate the supervisory authority of the financial industry and meet the need for a single financial regulator, the “Organic Act Governing the Establishment of the Financial Supervisory Commission, Executive Yuan” (hereafter referred to as the FSC Organic Act) was passed by the Legislative Yuan and promulgated by the President on July 23, 2003.

18) The Financial Supervisory Commission (“FSC”) was set up on 1 July 2004 as a single financial regulator that consolidates the functions of monitoring and rule setting for the banking, securities, futures, and insurance industries. Pursuant to Article 2 of the FSC Organic Act, the FSC is in charge of the development, supervision, administration, and examination of the financial markets and financial service industry. The above-mentioned financial markets comprise the banking market, bills market, securities market, futures and derivatives market, insurance market, and clearance system. The financial service industry includes financial holding companies, the Financial Restructuring Fund, Central Deposit

Insurance Corporation, the banking industry, securities industry, futures industry, insurance industry, electronic financial transactions, and other financial service industries. However, the Central Bank is the competent authority in charge of the financial payment system.

19) In sum, the FSC is the competent authority in charge of laws and regulations governing the financial institutions and financial businesses of Chinese Taipei. In addition, the Agricultural Finance Act was officially implemented on 30 January 2004. The Bureau of Agricultural Finance (BOAF), COA, Executive Yuan, as prescribed in the "Organizational Act of the Bureau of Agricultural Finance, Council of Agriculture, Executive Yuan" was established on the same day. The BOAF is responsible for supervising agricultural finance institutions, planning and promoting agricultural loans in policy aid.

20) The financial sector in Chinese Taipei mainly includes banking institutions, securities and futures institutions, insurance institutions and agricultural finance institutions.

Banking industry

21) As of the end of December 2005, Chinese Taipei had 45 domestic banks, 36 foreign bank branches, 29 credit cooperatives, 253 farmers' association credit departments, 25 fishermen's association credit departments, 2 trust investment companies, 14 bills finance companies, and 1 Postal Savings System. The financial sector had 5,853 branch units, more than 160,000 bank service employees, assets of NT$36,970.7 billion, deposits of NT$23,923.5 billion, loans of NT$17,198.4 billion, and an average Net profit to loss ratio of 2.19%.

22) The term "banking enterprise" includes banking institutions, credit cooperatives, bills finance companies, credit card companies, trust enterprises, the Postal Saving and Remittance Services of Chunghwa Post Co., and other businesses and institutions providing banking services.

Securities & futures industry

23) Chinese Taipei defines "securities enterprise" and "futures enterprise" as follows:

a) The term "securities enterprise" includes securities exchanges, OTC exchanges, securities firms, securities investment trust enterprises, securities finance enterprises, securities investment consulting enterprises, centralized securities depository enterprises, urban renewal investment trust enterprises, and other businesses and institutions providing securities services.

b) The term "futures enterprises" includes futures exchanges, futures commission merchants, leveraged transaction firms, futures trust enterprises, futures consulting enterprises, and other businesses and institutions providing futures services.

Insurance industry

24) As of the end of 2005, Chinese Taipei had 24 non-life insurance companies (15 domestic, 9 foreign; not including 2 reinsurance companies), with aggregate premium income of NT$118,502 million for the year; and 30 life insurance companies (21 domestic, 9 foreign), with aggregate premium income of NT$1,457,632 million for the year, and aggregate assets of NT$6,784,607 million.

25) The term "insurance enterprise" includes insurance companies, insurance cooperatives, insurance agents, insurance brokers, insurance surveyors, the simple life

insurance business of Chunghwa Post Co., and other businesses and institutions providing insurance services.

Overview of designated non-financial businesses and professionals (DNFBPs)

Casinos:

26) Chinese Taipei has no law to allow the operation of casinos in the jurisdiction.

Real estate agents

Land Administration Agent

27) A land administration agent is a kind of professional occupation. Its major work is to represent clients to register the rights of real estate, and it focuses on the property rights of the public. Based on the consideration of maintaining the security of real estate transactions and protecting the property rights of public, the Land Administration Agent Act regulates all land administration agents who have to be qualified to operate a business based on sincerity and honesty. According to the Act, all land administration agents have to pass the qualification examination, own a certificate of land administration agent, obtain a business operation license and join the Association of Land Administration Agents before commencing operations. Since 1 September 1990 until the end of January 2006, there were 25,579 persons who had passed the qualification examination and received a certificate, and there are 16,411 persons who owned a business operation license.

Real Estate Broking Agency

28) According to the regulations of the Real Estate Broking Management Act, all real estate broking agencies, including real estate intermediators and dealers, need to obtain license from authorities, register to set up a company to operate a business, and join the membership of the local trade association before commencing operations. In addition, all real estate broking agencies are required to deposit a sum of money as a business guarantee and have to employ a certain number of qualified real estate agents to operate the business. The employees of real estate broking agency can be classified into two categories: 1) real estate agents who have passed the national qualification examination; and 2) business practicianers who own the qualification of real estate agent or complete the professional training course and have registered / received a certificate of authority. Up to the end of January 2006, the authorities have issued 5,602 certificates to real estate agents and 63,946 certificates to the business practicianers.

29) According to the statistics from the real estate administration authorities in charge of the registration of real restate transactions, the market scale of real estate is as follows:

Year	Transactions of Land	Transactions of housing
2001	517900	259494
2002	654745	320285
2003	639550	349706
2004	727537	418187

30) The business of Land Administration Agent and Real Estate Broking Agency has been strictly regulated by laws and decrees and the specific mechanism of real estate registration means that all real estate transactions have to register in Chinese Taipei.

Precious metals and stones distributors (jewellery shops)

31) Due to traditionally high confidentiality and based on mutual benefits, some jewellery shops are pleased to act as a substitute for formal financial institutions to exchange large amount of money to foreign currency, precious metals and stones for customers. This situation has become a significant challenge for law enforcement agencies to prevent money laundering and terrorism financing.

Lawyers, notaries and other independent legal professionals

32) **Lawyers**: In Chinese Taipei, attorneys play the role of non-governmental jurists who are charged with the responsibility for safeguarding human rights, ensuring social justice and promoting democracy and the rule of law. They should discipline themselves and fulfill their duties honestly so that they can contribute to law and order in society and the improvement of the legal system. This is provided for in Article 1 of the nation's Attorney Regulation Act. As soon as one passes the bar examinations and obtains an attorney certificate issued by the Ministry of Justice, one can engage in the practice of law as an attorney. An attorney must be a member of a Bar Association to practice. Besides, he/she must apply for registration with the court. Before application for registration, and attorney has to go through pre-service training. This is provided for in Article 7 and Paragraph 1 of Article 11 of the Attorney Regulation Act. Still, Paragraph 1 of Article 20 of the same law states: "An attorney may engage in the practice of law when so employed by a client or appropriated by a court."

33) **Notaries**: Matters of notarization are within the exclusive jurisdiction of court notary or civil notary as provided in Article 1, Paragraph 1 of the Notary Law. By the end of July 2006, there were 47 court notaries who perform their duties according to the Notary Law. In addition, the number of the civil notaries is 178, which includes 121 lawyer-notaries, who perform signatures and private writings authentication only, and 57 single-profession notaries, who perform all functions of a notary. The performance of a notary for the notarial affairs is governed by the Notary Law and related rules.

34) **Accountants**: Article 1 of the CPA Act provides that "a citizen of Chinese Taipei who has passed the CPA examination and holds a CPA certificate may practice as a CPA." And Article 9 of the same Act provides that "to file an application for registration, a CPA must have worked in the accounting field with a public or a private institution or as an assistant with a CPA firm, for at least two years." As of 31 December 2005, there were 2,398 practicing CPAs in Chinese Taipei. Article 15 of the CPA Act provides as follows: "A CPA may perform the following types of professional services within the area in which he is registered:

a) To perform, upon assignment by government agencies or judicial authorities or engagement by a client, services with regard to planning, management, auditing, verification, arrangement, liquidation, appraisal, financial statement analysis, and evaluation of assets as may be required in connection with accounting.
b) To perform services with regards to examination and certification of financial reports.
c) To serve as an inspector, liquidator, bankruptcy administrator, or executor of a will, or in any other fiduciary capacity.
d) To serve as an agent in cases involving taxation.

e) To serve as an agent in cases in connection with registration of business firms or trademarks, and in other cases relevant to such registration.

f) To perform services regarding other accounting matters.

35) **Trusts and company service providers**: The legal framework for Chinese Taipei's trust business is provided by the Trust Act (promulgated on 26 January 1996) and the Trust Enterprise Act (19 July 2000). Trust enterprises conducting a trust business are required to abide by these two laws and related regulations. At this point in time, all trust business in Chinese Taipei is conducted by banks. As of 31 December 2005, Chinese Taipei had 54 trust enterprises, including 43 operated concurrently by domestic banks, and 11 concurrently operated by the Chinese Taipei branches of foreign banks. The types of trust business operated by trust enterprises include money trusts, securities trusts, chattel trusts, and real estate trusts. As of 31 December 2005, the size of the trust market in Chinese Taipei was NT$2.86 trillion, with money trusts accounting for far and away the greatest share (NT$2.46 trillion). In addition, Chinese Taipei promulgated the Financial Asset Securitization Act on 24 July 2002 and the Real Estate Securitization Act on 23 July 2003 to provide a legislative framework for the securitization activities of trust enterprises.

1.4 OVERVIEW OF COMMERCIAL LAWS AND MECHANISMS GOVERNING LEGAL PERSONS AND ARRANGEMENTS

36) A trust enterprise in Chinese Taipei is defined as an institution that has applied with and obtained permission from the competent authority, pursuant to the provisions of the Trust Enterprise Act, to conduct a trust business. It may be organized as a trust company, or conducted concurrently by a bank. All trust businesses in Chinese Taipei at this time are concurrently operated by banks. They are subject primarily to the Trust Act and the Trust Enterprise Act.

37) The Financial Asset Securitization Act provides that Chinese Taipei trust enterprises may engage in financial asset securitization by means of either a special purpose trust (SPT) or a special purpose company (SPC). All financial asset securitization in Chinese Taipei at this time is carried out by SPTs, with the SPT acting as trustee. No SPCs exist at this point.

1.5 OVERVIEW OF STRATEGY TO PREVENT MONEY LAUNDERING AND TERRORIST FINANCING

a. AML/CFT Strategies and Priorities

38) Chinese Taipei has set a high priority on AML, but has had some delay in implementing the high priority on CFT. Chinese Taiepei has criminalised money laundering and legislated for the freezing, seizing and confiscating the proceeds related to ML, preventive measures taken by financial institutions and enhancement of international cooperation.

39) The Anti-terrorism Activities Bill has been prepared and sets out the objectives of Chinese Taipei on CFT, however the draft Bill has not yet been tabled with the Legislative Yuan.

40) Chinese Taipei has introduced new technology into its intelligence and law enforcement systems, including the MLPC and related law enforcement agencies.

41) The National Police Administration (NPA) enforces the Government’s policies for AML as set out in the “Major Objectives for Prevention of Money Laundering by the Police Administration”. Their focus is on investigation, monitoring criminal organizations and ML

prevention through establishing investigation units dedicated to economic crimes, raiding underground money lenders and exchange channels. They also focus on AML/CFT training.

New initiatives

42) **Amendment of MLCA**: The MLCA is undergoing third round amendments which will include:

a) revising the scope of 'serious crimes' - the predicate crimes of money laundering;

b) adding in some new Articles for establishing an integrated international cooperation mechanism on AML/CFT;

c) requiring in legislation that the declared information of cross-border currency movement be forwarded to MLPC and expand the declaration scope to bearer financial instruments; and

d) prolonging the period of freezing the proceeds of money laundering to 1 year.

43) **Promoting the legislation of Counter Terrorism Act**: Article 2 of the Anti-Terrorism Activities Bill defines terrorists as people who perpetrate any terrorist act or join or finance any terrorist organization. Any individual who finances terrorist organization will be regarded as a terrorist and will face criminal sanction.

44) **Setting up a unified command and coordination mechanism**: The "Anti Terrorism Activities Control and Command Office" has been established. Moreover, the NPA has formed a "Counter-Terrorism Response Program" and anti-money laundering prevention has been included in the chapter of the "Operation Program of Criminal Investigation Taskforce", so as to prevent terrorist organizations from funding their activities through money-laundering.

45) **Finalising Undercover Investigation legislation**: The draft Undercover Investigation Act has been submitted to the Executive Yuan for further review and it will be transferred to the Legislative Yuan for completing the legislation in the near future. After the Act comes into force, it will provide the legal basis for undercover investigation and it will be helpful to detect concealed and organized crimes and protect the rights and benefits of undercover investigators.

46) **Investigation of underground remittance**: The MLPC has raised a proposal in a meeting of the Economic Crime Prevention Forum (see paragraph 79 below) held in April 2006 with the following initiatives:

a) Guiding related financial institutions to provide a speedy, convenient and low cost remittance service for attracting customers to use the regulated financial institutions to transact foreign exchange and remittance that can partly compress the existing space of underground remittance businesses.

b) Encouraging prosecutor's offices and law enforcement agencies to reinforce detection on illegal activities of foreign exchange, remittance and money laundering.

c) Requiring prosecutor's offices and courts to speed up the process of prosecution and adjudication and consider heavier punishment for interrupting the related crimes.

d) Assisting financial institutions to recognize the financial transaction characteristics of underground remittance businesses utilizing regulated financial institutions to operate their business and promptly file STR to the MLPC when any financial transaction matches the suspicious indicators. The MLPC has published "Preventing Underground Remittance Guidance for Banks" guidance in May 2006 that describes the background, threats, criminal responsibilities, operating profile, financial transaction indicators of underground remittance and case studies. The guidance has been delivered to related financial institutions for reference.

47) **Assisting financial institutions to establish an integrated mechanism of money laundering prevention**: The financial supervisory authorities and the MLPC intend to continuously undertake proper measures including the improvement of financial supervision, publication of related guidance and education to the employee of financial institutions for strengthening the recognition and implementation of the related laws and regulations about CDD, STR and CTR.

48) **International cooperation**: In addition to actively participating in the activities held by the APG and the Egmont Group for implementing members' responsibilities, Chinese Taipei will positively seek any opportunity to sign a mutual legal assistance treaty, agreement or MOU with foreign counterparts based on the principles of equality and reciprocity.

b. The institutional framework for combating money laundering and terrorist financing

Ministry

49) **The Ministry of Justice (MOJ)**: The MOJ is the central competent authority of the legislation of MLCA and is in charge of the formulation of policies and affairs regarding mutual legal assistance with other jurisdictions on AML/CFT, and is also the competent organization of judicial administration, including the administrative affairs of all prosecutors offices in the jurisdiction. With these, the MOJ can carry down the line criminal investigations under the criminal judicial system. Currently, the MLPC under the Ministry's Investigation Bureau (MJIB) also acts as the nation's FIU, which is in charge of the collection and analysis of domestic financial intelligence and information exchange with other jurisdictions' counterparts.

50) **The Ministry of Finance (MOF)**: MOF is responsible for drawing up the strategies on establishing the cross-border currency movement declaration mechanism and supervising the effectiveness of implementation.

51) **The Ministry of Foreign Affairs (MOFA)**: MOFA plays an important role in coordination with the international community on AML/CFT, especially by promoting such mechanisms to sign MOUs or other agreements with its counterparts in other countries. It also assists domestic authorities and private institutions to join international organizations and attend relevant activities and meetings on anti-money laundering crimes.

52) **Ministry of the Interior (MOI)**: MOI is responsible for drawing up the developing strategies on AML/CFT and supervising the operations of NPOs (the Department of Social Affairs and the Department of Civil Affairs) and Real Estate Agents (the Department of Land Administration).

Criminal Justice and Operational Agents

53) **District Prosecutors' Offices**: The prosecutorial offices under the Ministry of Justice include the Supreme Prosecutors Office (which commands the prosecutorial affairs of all prosecutors offices in the nation), the Taiwan High Prosecutors Office (which has four branch offices and 19 district prosecutors offices), the Kinmen Branch of Fujian High Prosecutors Office (which oversees the Kinmen District Prosecutors Office and the Lienchiang Prosecutors Office). There are a total of more than 1,000 prosecutors, in charge of field criminal investigations, indictments and execution of criminal penalties in accordance with the Criminal Procedure Code and the Organic Law of Courts.

54) **Investigation Bureau (MJIB)**: The MJIB is one of the major law enforcement agencies in Chinese Taipei and is responsible for the investigation oF violations against national security and interests, and matters concerning internal security. Its functions include the following nine areas of crime-prevention and investigation: 1) Sedition; 2) Treason; 3) Unauthorized disclosure of national secrets; 4) Corruption and bribery during election; 5) Drug trafficking; 6) Organized crime; 7) Major economic crime and money laundering; 8) National security; 9) Other matters relating to national security and interests, specifically assigned by superior government authorities.

55) **State and local police forces**: In accordance with Articles 4 and 9 of the "Criminal Investigation Bureau Organization Act", the Criminal Investigation Bureau of the NPA has established various responsible departments:

a) The "Crime Investigation Affairs Section" is responsible for prevention of money laundering, and detecting economic crimes.

b) The International Criminal Affairs Section is responsible for cooperating with the counterparts of other countries for investigating transnational crimes. Criminal police liaison officers have also been deployed in the Philippines, Thailand and Vietnam.

c) The "Interpol Radio Station" maintains contact with the headquarters of Interpol.

d) The "Electronic Monitoring and Surveillance Center" undertakes monitoring of communications involved in "serious crimes" and other crimes endangering national security or social order.

e) The 7th Investigation Brigade also investigates economic crimes.

56) **Directorate General of Customs**: Has four Customs Offices separately located in the harbour or airport of Keelung, Taipei, Taichung and Kaohsiung, and is responsible for managing Chinese Taipei cross-border declaration system.

57) **Money Laundering Prevention Center (MLPC)**: MLPC, which is affiliated with the Investigation Bureau, was established in 1997. It performs the role of FIU in Chinese Taipei.

Financial sector bodies - government

58) **Financial Supervisory Commission (FSC)**: The FSC was established in 2004 as the competent authority for development, monitoring, regulation, provision of guidance and examination of financial markets and financial service enterprises. The FSC provides guidance to banks, securities firms, insurers, and other financial institutions and helps them properly abide by the MLCA. To keep abreast of the measures that financial institutions have adopted to comply with the MLCA, and to track the effectiveness of such measures, the FSC regularly dispatches personnel to conduct on-site financial examinations. Where legal

infractions are discovered, the FSC will impose administrative fines in accordance with the provisions of the MLCA.

59) **Central Bank of China (CBC)**: The primary operating objectives of the CBC include: promoting financial stability; guiding sound banking operations; maintaining the stability of the internal and external value of the currency, and fostering economic development. After the establishment of FSC the CBC no longer supervises or regulates any individual financial institutions regarding AML/CFT.

60) **The Ministry of Economic Affairs (MOEA)**: The MOEA is the supervisory authority of precious metals and stones distributors and in charge of the strategic planning, implementation and monitoring the effectiveness of AML/CFT in this sector.

61) **The Bureau of Agricultural Finance (BOAF)**: The BOAF is responsible for supervising agricultural finance institutions. BOAF has a role in improving supervisory and inspection systems and improving information disclosure and transparency of agricultural finance.

Financial sector bodies - associations

62) **Bankers Association**: The Bankers Association had 64 member institutions as of the end of 2005. The Bankers Association has issued a “Checklist of Money Laundering Prevention Guidelines and Procedures for Banks”, which member institutions are to use as a basis for formulating their internal AML rules. Such rules are implemented upon approval by the institution's board of directors, and are also reported to the FSC; the same applies to any amendments.

63) **Credit Cooperative Union**: All credit cooperatives in Chinese Taipei are currently members of the Credit Cooperative Union. As credit cooperatives are financial institutions, they are required to abide by the applicable provisions of the MLCA and to adopt money laundering prevention guidelines and procedures.

64) **Agriculture Training Association**: Formed to train members of farmers’ groups, the Association has taken many measures on AML/CFT including establishing a “Checklist of Money Laundering Prevention Guidelines and Procedures” for its members to develop their own money laundering prevention guidelines.

65) **Securities Investment Trust & Consulting Association (SITCA)**: SITCA has adopted a “Checklist of Money Laundering Prevention Guidelines and Procedures for Securities Investment Trust Enterprises and Securities Investment Consulting Enterprises", which SITCA members are to use as a basis for formulating their internal AML rules.

66) **Trust Association**: The Trust Association was established on 7 March 2001 for the primary purposes of educating the public about the basic concept of trusts, safeguarding the rights and interests of trust settlors and beneficiaries, coordinating relationships between Association members, and promoting the common interests of all trusts. The Trust Association has adopted a "Checklist of Money Laundering Prevention Guidelines and Procedures for Trust Enterprises”.

67) **Taiwan Securities Association**: In order to help monitor the implementation of AML rules, the Taiwan Securities Association adopts a “Checklist of Money Laundering Prevention Guidelines and Procedures for Securities Firms”.

68) **Taiwan Futures Association (CNFA)**: The CNFA has adopted a "Checklist of Money Laundering Prevention Guidelines and Procedures for Futures Commission Merchants", which CNFA members are to use as a basis for formulating their internal AML rules.

69) **Life Insurance Association**: As required under Article 6 of the MLCA, the Life Insurance Association has issued a "Checklist of Money Laundering Prevention Guidelines and Procedures for Life Insurance Companies", which member institutions are to use as a basis for formulating their internal AML rules. The checklist has to be submitted to the board of directors for approval prior to implementation reported to the FSC; the same applies to any amendments.

70) **Non-Life Insurance Association**: As required under Article 6 of the MLCA, the Non-Life Insurance Association has issued a "Checklist of Money Laundering Prevention Guidelines and Procedures for Non-Life Insurance Companies". The member institutions are to use as a basis for formulating their internal AML rules. The checklist has to be submitted to the board of directors for approval prior to implementation and reported to the FSC; the same applies to any amendments.

DNFBP and other matters

71) **Bar Associations:** Paragraph 1 of Article 11 of the Attorney Regulation Act stipulates that an attorney at law is not entitled to practice until he/she has become a member of a bar association. Therefore, the bar association is an essential organization by law for attorneys to practice business, and all bar associations have to meet the legal requirements. In Chinese Taipei there are two forms of the associations, including the national bar association and 16 county/city (local) bar associations.

72) **Certified Public Accountants Association**: If a CPA engages in improper conduct, violates or neglects his professional duties, is sentenced to punishment for a criminal offence, receives administrative sanction for a legal infraction that is serious enough to affect the CPA's reputation, or otherwise violates any provision of the CPA Act, Articles 17, 39, and 41 of the CPA Act empower the Certified Public Accountants Association to report the pertinent facts and evidence to the local competent authority, which must refer the case to the central competent authority, i.e. the FSC, for disciplinary action against the CPA named.

Real Estate related Associations:

73) **Associations of Land Administration Agent**: there are two different levels of association at the local level and national level. The local level has 22 associations which are scattered in various municipalities, counties and cites and there is a national association.

74) **Associations of Real Estate Broking agencies**: Real estate intermediators have established 21 associations at a local level and there is a national association. The real estate dealers have established 11 associations at local level and no national association. Any member of the associations who violates the Ethic Guidance shall be punished according to related laws and regulations.

75) **Jewellery Shops related Association**: The number of jewellery shops in Chinese Taipei is very large. There is no exclusive competent authority in charge of supervising the business operation of jewellery shops, only the Department of Commerce, Ministry of Economic Affairs and local governments are respectively in charge of the registration and the management. Moreover, there is no decree to regulate the business to act as banks to require customers to open accounts for getting related information before conducting

transactions. At present, the local jewellery associations have required members to actively cooperate with law enforcement agencies to investigate crimes and take proper measures on AML/CFT including law compliance training.

76) Jewellery associations are legal persons which are established according to the regulations of the Business Group Act, Enforcement Rules of Business Group Act and other relevant laws. Businesses dealing in jewellery including manufacture and trade of all kinds of jewellery and stones, have to join the local jewellery association.

c. Approach concerning risk

77) According Article 6 of the MLCA, every financial institution has to establish compliance guidance based on the threats of ML/FT and submit it to the FSC and the business supervisory authority for recording. In addition, Article 7 and Article 8 of the MLCA require the FSC to coordinate with the Ministry of Justice, the Central Bank and Ministry of the Interior for establishing the authorized regulations about verifying the identification of customer, keeping records of transaction and reporting CTRs and STRs. There are some exceptions in the authorized regulations that permit financial institutions to exempt from reporting CTRs under certain patterns of currency transactions which expose almost no risk to ML/FT and the exemption will be reviewed by the MLPC every year according the requests from financial institutions.

78) At the strategic level on AML/CFT, there is a specific forum called the “Public Security Coordination Forum” which is organized by the Executive Yuan and directly hosted by the Premier. In the forum, the Ministers from relevant Ministries and the CEOs of law enforcement agencies discuss the emerging criminal trends, typologies and the methods for addressing the issues - including AML/CFT. The authorities including judicial, law enforcement and financial supervisory agencies have to take measures for effectively implementing the strategies.

79) At the operational level on AML/CFT, there is a specific forum called “Economic Crime Prevention Forum” which is organized by the Investigation Bureau and attended by the representatives from judicial, law enforcement, financial supervisory, immigration, international trade and intelligence agencies. In the forum, all operational problems on economic crimes and money laundering are discussed and solutions sought.

d. Progress since the last mutual evaluation

80) The first mutual evaluation report of Chinese Taipei (of May 2001) listed some detailed recommendations. Progress against those recommendations is outlined and discussed in detail at **Table 4** of this report.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 CRIMINALISATION OF MONEY LAUNDERING (R.1 & 2)

2.1.1 DESCRIPTION AND ANALYSIS

Recommendation 1

81) The offence of Money Laundering ("ML") is criminalised under the Money Laundering Control Act 1996 ("the MLCA"). The MLCA has been amended twice in February 2003 and May 2006. Article 2 of the MLCA provides as follows:

> *"As used in this Act, the crime of "money laundering" is defined as any person who –*
> *1. Knowingly disguises or conceals the property or property interests obtained from a serious crime committed by themselves or;*
> *2. Knowingly conceals, accepts, transports, stores, intentionally buys, or acts as a broker to manage the property or property interests obtained from a serious crime committed by others."*

82) . The offence of money laundering does not cover all the elements of Article 3(1)(b) and (c) of the Vienna Convention or Article 6(1) of the Palermo Convention in terms of the following:

a) It does not include "conversion…for the purpose of concealing or disguising the origin of the property;"

b) It does not specify the purpose as being one of helping any person involved evade legal consequences of action;

c) It does not cover concealment of the "source"; "disposition" or "ownership of" the property or "rights";

d) It does not cover "use" of property;

e) It does not cover "acquisition" of property.

83) The terms "property" or "property interests" are not specifically defined but Article 4 of the MLCA provides:

> *"As used in this Act, the "property or property interests obtained from the commission of the crime" means:*
> *1. The property or property interests obtained directly from the commission of the crime.*
> *2. The remuneration obtained from the commission of the crime.*
>
> *The property or property interests derived from the above two subsections. This provision, however, is not applicable to a third party who obtains in good faith the property or property interests prescribed in the preceding two subsections."*

84) Article 2 refers to "property or property interests obtained from a serious crime" and bearing in mind that the term "serious crime" is defined, it is noted that Article 4 omits the word "serious" which in some jurisdictions would raise an issue as to whether Article 4

impacts upon Article 2 or not but Article 12 which sets out the confiscation regime for ML, refers to "the property or property interests obtained from the commission of a crime by an offender violating the provisions set forth in Article 9 of this Act". Article 9 is the penalty provision for the ML offence. The Chinese Taipei authorities have also confirmed that the omission of the word "serious" from Articles 4 and 12 does not present any legal difficulties in the application of these articles to the ML offence.

85) There are provisions set out in other statutes that refer to property that can be confiscated but the term "property" remains undefined:

The Criminal Code

"Article 38
The following things shall be confiscated:
1. *A prohibited thing* [the word *'contraband'* is used in another English version]*;*
2. *A thing used in the commission of or preparation for the commission of an offence;*
3. *A thing acquired through the commission of an offence.*

A thing specified in item 1 of paragraph I of this Article shall be confiscated whether or not it belongs to the offender.

A thing specified in items 2 or 3 of paragraph I of this Article may be confiscated only if it belonged to the offender; Provided, that if special provision has been made therefore, such provision shall apply.

Organised Crime Prevention Act

Article 7
The overall property of a criminal organization owned by an offender acting in contravention of Article 3 of this Act shall be traced for collection or confiscated after deducting any portion belonging to the victims. Where the property can not be confiscated in part or in whole, then an amount equivalent to the ascribed monetary value of the said property shall be traced and levied.

If the source of obtaining the property can not be legally established, any property obtained by an offender acting in contravention of Article 3 of this Act after participating in the criminal organization shall be traced for collection or confiscated subsequent to deducting the portion to be returned to the victims. Where the property can not be confiscated in part or in whole, then an amount equivalent to the ascribed monetary value of the aside property shall be traced for levied.

The prosecutor may where necessary sequester the property of the said offender referred to in the preceding two paragraphs to facilitate the process of tracing for collection, confiscation, or tracing for levying.

Narcotics Act

Article 19
In the case of a person who has committed any of the offenses set forth in Articles 4 through 9, article 12, Article 13 or Paragraph 1 or 2 of Article 14 thereof, the property either used in committing such offenses or acquired from his committing such offenses shall be confiscated. In the event the whole or a part of such property is nonconfiscable, the offender shall be required to pay the equivalent value of such property either by cash or by offsetting the price thereof with his/her property.

In order to secure the payment or offsetting the price of the nonconfiscable portion of the property under the preceding paragraph, the property of the offender may be judicially attached if it is deemed necessary.

The means of water, land and/or air transportation that have been used by the offender in committing the offense specified in Article 4 hereof shall be confiscated."

86) The main provision relied upon in terms of the predicate offences (other than those listed for the Organised Crime Prevention Act, the Narcotics Hazards Control Act and paragraph 2 of Article 3), is Article 38 of the Criminal Code. The terms "prohibited thing" (or "contraband") and "thing" are not defined in the legislation. As it stands, it is not clear from either Article 38 of the Criminal Code or Article 5 of the MLCA whether these provisions cover "all forms of property" i.e. real property, capital, other forms of economic gain, enforceable rights of action and other intangible or incorporeal property although, the Chinese Taipei authorities assured the Evaluation Team that all types of property are covered in practice.

87) When proving that property is the proceeds of crime, the legislation does not stipulate that it is unnecessary for someone to be convicted of a predicate offence.

88) The predicate offences for ML are defined in Article 3 of the MLCA and combine both a threshold and list approach:

"As used in this Act, "serious crimes" include the following crimes:

1. *The crimes of which the minimum punishment is 5 years or more imprisonment.*
2. *The crimes prescribed in Articles 201 and 201-1 of the Criminal Code.*
3. *The crimes prescribed in Paragraph 1 of Article 240, Paragraph 2 of Article 241, and Paragraph 1 of Article 243 of the Criminal Code.*
4. *The crimes prescribed in Paragraph 1 of Article 296, paragraph 2 of Article 297, Paragraph 2 of Article 298, and Paragraph 1 of Article 300 of the Criminal Code.*
5. *The crimes prescribed in Paragraphs 2, 4, 5 of Article 23, and Paragraph 2 of Article 27 of the Act for the Prevention of Child Prostitution.*
6. *The crimes prescribed in Paragraph 2 of Article 8, and Paragraph 2 of Article 11, Paragraphs 1-3 of Article 12, Paragraphs 1 and 2 of Article 13 of the Statute for Fire Arms, Ammunition and Harmful Knives Control.*
7. *The crimes prescribed in Paragraphs 1 and 2 of Article 2, Paragraph 1 and 2 of Article 3 of the Statute for Punishment of Smuggling.*
8. *The crimes prescribed in Article 171 of the Securities and Exchange Act, in violation of Paragraphs 1 and 2 of Article 155, and Paragraph 1 of Article 157-1 of the Securities and Exchange Act.*
9. *The crimes prescribed in paragraph I of Article 125 of the Banking Act.*
10. *The crimes prescribed in Articles 154 and 155 of the Bankruptcy Law.*
11. *The crimes prescribed in Paragraph 1 and 2 of Articles 3, 4 and 6 of the Organized Crime Prevention Act.*

The following crimes also fall into the category of the "serious crimes" if the property or property interests obtained from the commission of the crime(s) exceeds NT 20 million dollars:

1. *The crimes prescribed in Paragraph 2 of Article 336 of the Criminal Code.*
2. *The crimes prescribed in Articles 87 and 91 of the Government Procurement Act."*

89) In terms of the "designated categories of offences", Chinese Taipei is yet to criminalise terrorism, including terrorist financing.

90) Article 3 of the MLCA does not refer or extend to conduct that occurs in another country however, Articles 5 and 6 of the Criminal Code apply the Code to certain categories of offences committed outside the territory of Chinese Taipei, whereby dual criminality may apply if the offences fall within the scope of Article 3 of the MLCA and constitute an offence in the other jurisdiction:

> *"**Article 5***
> *This Code shall apply to each of the following categories of offences committed outside the territory of the Republic of China:*
> 1. *Offenses against the internal security of the State;*
> 2. *Offenses against the external security of the State;*
> 3. *Offenses of interference with public functions as specified in Article 135, 136 and 138.*
> 4. *Offenses against public safety as specified in Paragraph 1 of Article 185 and Paragraph 2 of Article 185.*
> 5. *Offenses of counterfeiting currency.*
> 6. *Offenses of counterfeiting valuable securities as specified in Article 201 and 202*
> 7. *Offenses of forging documents as specified in Article 210, 214,218 and 216 of putting into circulation a document specified in one of the Article 211, 213 and 214.*
> 8. *Offenses relating to drugs, but using drugs and holding drugs, seeds, using drugs implements are not included.*
> 9. *Offenses against personal liberty as specified in Article 296 and 296-1.*
> 10. *Offences of Piracy as specified in Article 333 and 334.*
>
> ***Article 6***
> *This Code shall apply to each of the following categories of offences committed by a public official of the Republic of China beyond the territory of the Republic of China.*
> 1. *Offenses of malfeasance in office as specified in Articles 121 through 123, 125, 126, 129, 131, 132 and 134.*
> 2. *Offenses of releasing prisoners as specified in Article 163.*
> 3. *Offenses of falsifying documents as specified in Article 213.*
> 4. *Offenses of misappropriation as specified in paragraph 1 of Article 336".*

91) Article 2(1) of the MLCA includes "any person who knowingly disguises or conceals the property or property interests obtained from a serious crime committed by themselves". In this regard therefore, the offence of ML does apply to persons who commit the predicate offence. The Chinese Taipei authorities also confirmed that persons who commit the predicate offences are considered to have committed the crime of ML if they are involved in the ML.

92) In terms of ancillary offences, the MLCA does not itself provide for ancillary offences however, Chapters 3 and 4 of the Criminal Code covers a range of ancillary offences. By virtue of Articles 3 to 8 of the Criminal Code, these ancillary offences may apply to the offence of ML. It is noted however, that any person who has participated only in the planning of the principal offence, is not "punished". The Chinese Taipei authorities advise that this is "based on the principle of not punishing ideological offenders".

Additional elements

93) Where the proceeds of crime are derived from conduct that occurred in another country, which is not an offence in that other country but would have constituted a predicate offence

had it occurred domestically, this constitutes a ML offence if it falls within the provisions of Articles 5 and 6 of the Criminal Code and Article 3 of the MLCA.

Recommendation 2

94) Article 9 of the MLCA is the penalty provision for ML offences:

> ***"Article 9***
> *Any person engaging in money laundering activity referred to Subsection 1 of Article 2 of this Act shall be sentenced to imprisonment of not more than five years and, in addition thereto, be fined not more than 3 million NT.*
>
> *Any person engaging in money laundering activity referred to Subsection 2 of Article 2 of this Act shall be sentenced to imprisonment of not more than seven years and, in addition thereto, be fined not more than 5 million NT.*
>
> *The representative of a legal entity, the agent, employee or other worker of a legal entity or a natural person engaging within the scope of his or her employment in money laundering activities as set forth in the preceding three paragraphs shall be punished in accordance with the provisions set forth in the preceding three paragraphs of this Article. In addition, the legal entity or the natural person that the offender represents or works for, shall also be fined in accordance with the provisions set forth in the preceding three paragraphs, unless the representative of a legal entity or a natural person has done his or her best to prevent or stop the money laundering activities.*
>
> *Any person who surrenders himself or herself to the authorities within six months after he or she has engaged in money laundering activities as set forth in the preceding three paragraphs, his or her sentence shall be exempted. Any person who surrenders himself or herself in later than six months after he or she has engaged in any of the money laundering activities set forth in the preceding four paragraphs, his or her sentence shall be reduced or exempted. Any person who confesses during the custodial interrogation or the trial that he or she has engaged in the money laundering activities set forth in the preceding four paragraphs, his or her sentence shall be reduced."*

95) In accordance with the above provision and also Article 2 of the MLCA, the offence of ML does apply to natural persons that knowingly engage in ML activity.

96) The law does not specifically permit the intentional element of the offence of ML to be inferred from objective factual circumstances. The wording of Article 13(2) of the Criminal Code implies that a subjective approach is taken:

> *"An act is considered to have been committed intentionally if the actor foresaw that the act would accomplish the constitution elements of an offence and such accomplishment was not contrary to his will."*

97) There is no definition of "person" in the MLCA and it was noted that the term "juridical person" is more commonly used in Chinese Taipei instead of 'legal person'. Article 9 of the MLCA reproduced above, does include reference to legal persons as employers or principals of an offender, in paragraph 3 (underline by author):

> ***"****The representative of a legal entity, the agent, employee or other worker of a legal entity or a natural person engaging within the scope of his or her employment in*

money laundering activities as set forth in the preceding three paragraphs shall be punished in accordance with the provisions set forth in the preceding three paragraphs of this Article. In addition, the legal entity or the natural person that the offender represents or works for, shall also be fined in accordance with the provisions set forth in the preceding three paragraphs, unless the representative of a legal entity or a natural person has done his or her best to prevent or stop the money laundering activities".

98) It is noted however that a legal person's liability under the MLCA is restricted to this circumstance unless there is another law in Chinese Taipei which defines the term "person" to include both natural and legal persons – which is common for most jurisdictions.

99) The Chinese Taipei authorities were unable to confirm whether or not making legal persons subject to criminal liability for ML, precludes any parallel criminal, civil or administrative proceedings. The Evaluation Team was however provided with selected provisions from the Act Governing Non-Litigation Procedure and the Civil Code.

100) The selected provisions of the Act Governing Non-Litigation Procedure indicate that the authorities and the prosecutor can apply for the dismissal of "the post of director or controller" and a "dismissal declaration of a juridical person". The Chinese Taipei authorities spoken to however were unable to confirm whether such a provision had been used against any legal person found guilty of ML.

101) Article 28 of the Civil Code provides that a "juridical [legal] person is jointly liable with the wrongdoer for the injury caused by its directors or other persons who are entitled to represent the juridical person in the performance of their duties". Article 34 of the Civil Code further provides that "if a juridical person violates any conditions under which the license has been granted, the authorities concerned may revoke the license to the juridical person."

102) It was further noted under various legislation relating to legal persons that these included administrative sanctions such as the following:

a) Insurance companies - Article 148 of the Insurance Act, provides for the competent authorities to impose disciplinary actions where an insurance enterprise "violates laws or regulations or is suspected of improper management". Such disciplinary actions include:

   i) restricting the scope of its business or the amount of its new contracts;

   ii) revoking resolutions adopted in statutory meetings;

   iii) ordering the removal of its managers or employees from their positions;

   iv) dismissing its directors or supervisors; or

   v) dissolution of the insurance enterprise.

103) Banks - Article 61-1 of the Banking Act provides that if a Bank has violated "laws and regulations, its articles of incorporation or disturbed the sound operation [of the financial system]" the Competent Authority may take any of the following actions in addition to ordering correction or improvement by the Bank within a specified period of time:

   i) revoke resolutions of statutory meetings;

ii) suspend part of the Bank's business;

iii) order the Bank to discharge Managers or staff members;

iv) discharge directors and supervisors or suspend them from performance of their duties for a specified period of time; or

v) other necessary measures.

104) Foreign exchange - Article 22 of the Foreign Exchange Control Act provides that people engaging in foreign exchange transactions illegally as a regular profession shall be subjected to a prison term or detention of less than 3 years and/or a fine that amounts to their total business turnover along with the foreign exchange and payment or proceeds. If the person represents a juristic person and violates the provision while conducting business, the juristic person shall be fined as imposed on the offender.

105) Securities and Exchange - Under Article 66 of the Securities and Exchange Act, where a securities firm violates the Act or an order issued under it, "in addition to being subject to the punishment provided under this Act", the Competent Authority may, depending upon the severity of the offence, impose certain sanctions including:

a) ordering the securities firm to remove its directors, supervisors or managers from their office;

b) suspending the business in whole or in part for a period of not more than 6 months;

c) revoking the business licence of the company or its branch.

106) Article 3-1 of the MLCA includes in its list of "serious crimes" for the purposes of ML, Article 171, Art 155-1 and 155-2 and Art 157-1 of the Securities and Exchange Act.

107) Articles 9 and 10 of the MLCA set out the penalties for persons engaging in ML. These provisions do apply different penalties depending on certain circumstances regarding the offenders. For example, Article 9-1 provides a lesser penalty for persons laundering their own proceeds (not more than 5 years and a fine of not more than 3 million NT) than a person laundering the proceeds of a crime committed by others (not more than 7 years and a fine of not more than 5 million NT). Article 9-3 provides that any person engaged in ML as their major source of income shall be sentenced to imprisonment between 3 years and 10 years and in addition thereto, a fine of between 1 million NT and 10 million NT. A legal person or natural person as an employer or principal of the offender is also fined in accordance with these provisions unless the entity can show that it did "his or her best to prevent or stop the money laundering activities". When asked for examples as to how the courts interpret or apply this provision, the Chinese Taipei authorities were unable to provide any examples.

108) There are lesser penalties for persons who surrender within 6 months after he or she has engaged in ML activities – in such a case this persons sentence is "exempted" and if he or she surrenders later than 6 months, his or her sentence shall be "reduced or exempted". If a person confesses during custodial interrogation or the trial, his or her sentence shall be reduced.

109) Pursuant to Article 10, any person engaged in ML as set out in Article 2-2 (i.e. regarding a predicate offence committed by another person), if the 'money launderer' is a

relative of the person who committed the predicate offence, he or she may have his or her sentence or fine reduced.

110) In terms of other civil or administrative sanctions available, these include:

a) A chartered public accountant will be subject to disciplinary sanctions if he has been sentenced to punishment for committing a criminal offence (Article 39 of the Certified Public Accountant Law);

b) A solicitor who has violated the MLCA, shall have his or her registration as an Insurance Solicitor revoked (Article 7-5 of the Regulations Governing the Supervision of Insurance Solicitors 2005);

c) A lawyer can lose their practicing certificate and be expelled by the Lawyers' Discipline Committee on account of a conviction for imprisonment of more than one year under a final judgment (Article 4 of the Lawyers' Law 1941).

111) Although no information has been provided as to the effectiveness of the sanctions, based on the penalties and fines under the MLCA if combined with such civil and administrative sanctions as referred to above, the sanctions would appear to be proportionate and dissuasive but for some of the 'safe harbour' penalty provisions.

Recommendation 32

The following statistics were provided at the end of the evaluation:

Statistics of ML prosecutions 2006:

Crime Type	Crime Name	MJIB	Prosecutors	Police	Total
General	Fraud Kidnapping			44 1	44 1
General l				45	45
Drug related	Sale of Class 1 Drugs			1	1
Drug related				1	1
Corruption	Anti-Corruption Statute Article 6-1, subparagraph 4 violated Fraud Embezzlement Enhanced Bribery Bribery	1 1 2 2 5			
Corruption total		11			11

Economic	Insider Trading Stock Manipulation Breach of Insurer Trust Professional usury Professional fraud Embezzlement in the Pursuit of social activities Securities and Exchange Act 155-1 subparagraph 1 violated Banking Law 125 Violation Breach of Banking Trust	2 4 1 11 1 1 3	16 1	 7 584	2 4 1 7 611 1 1 3 1
Economic		23	17	591	631
#		24	17	637	688

Table 3 - Statistics of ML Convictions 2004

Crime Type		Grand Total	Penalty - Imprisonment													Not Guilty	Dismissal	Other	Confiscation
			Total	Life	6 mths or less	Less than 1 yr	Less than 2 yrs	Less than 3 yrs	Less than 5 yrs	Less than 7 yrs	Less than 10 yrs	Less than 15 yrs	More than 15 yrs	Detention	Fine				
Economic Crimes	Professional fraud	680	654		450	79	68	9	14	3	1			30		9	10	7	279
	Professional usury	1	1		1														
	Counterfeiting	1	1						1										1
	Securities Counterfeiting	1	1		1														
Drug-related crimes	Sale of class 1 Drugs	1	1					1											1
	Sale of class 2 Drugs	2	1									1					1		1
Corruption	Embezzlement	1	1							1									1
	Bribery	1														1			
General crimes	Fraud	69	64		44	12	4		1					3			4	1	11
	Extortion	7	5		4	1										1	1		1
	Theft	1	1		1														
	Forgery	3														2	1		1
	Usury	1															1		
	Kidnapping	1	1										1						

It is noted that Table 3 indicates 770 cases prosecuted. Table 1 indicates that 809 cases were prosecuted. There is a discrepancy of 39, the reason for which has not been provided by the authorities.

Table 4 - Statistics of ML Convictions 2005

Crime Type		Grand Total	Penalty – Imprisonment													Not Guilty	Dismissal	Other	Confiscation
			Total	Life	6 mths or less	Less than 1 yr	Less than 2 yrs	Less than 3 yrs	Less than 5 yrs	Less than 7 yrs	Less than 10 yrs	Less than 15 yrs	More than 15 yrs	Detention	Fine				
	Professional fraud	979	917		734	89	38	18	7	2	1			28		15	26	21	356
	Professional usury	3	1		1											2			
	Insider trading	1	1													1			
	Counterfeiting	2	2		2														
	Securities Counterfeiting	1	1					1											1

Economic Crimes	Credit card Counterfeiting	1	1		1														
	Copyright infringement	1	1		1														
	Banking Law 125 violation	3	3						2	1									3
Drug-related crimes	Sale of class 1 Drugs	2	2		1		1												1
Corruption	Enhanced bribery	1	1		1					1									1
	Embezzlement	1	1					1											
General crimes	Fraud	61	58		46	9	1							2			3		15
	Extortion	8	8		1		5		1					1					4
	Theft	1	1		1														
	Kidnapping	2	1								1					1			1

It is noted that Table 4 indicates 1,067 cases prosecuted. Table 1 indicates that 1,173 cases were prosecuted. There is a discrepancy of 106, the reason for which has not been provided by the authorities.

Table 5 - Statistics of ML Convictions 2006

Crime Type		**Grand Total**	**Penalty – Imprisonment**													**Not Guilty**	**Dismissal**	**Other**	**Confiscation**
			Total	Life	6 mths or less	Less than 1 yr	Less than 2 yrs	Less than 3 yrs	Less than 5 yrs	Less than 7 yrs	Less than 10 yrs	Less than 15 yrs	More than 15 yrs	Detention	Fine				
Economic Crimes	Professional fraud	354	344		298	20	6	2	2					16		1	6	3	69
	Professional usury	4	4		4														1
	Stock manipulation	2	2					2											
	Securities and Exchange Act	1	1		1														1
	Banking Law 125 violation	2	2				1	1											
General crimes	Fraud	26	25		19	1	2							3			1		4
	Kidnapping	4	4			2	2												

It is noted that Table 5 indicates 393 cases were prosecuted. Table 2 indicates that 688 cases were prosecuted. There is a discrepancy of 295, the reason for which has not been provided by the authorities.

It is further noted that according to Tables 3, 4 and 5 for the years 2004, 2005 and 2006, no penalty fines were imposed.

2.1.2 RECOMMENDATIONS AND COMMENTS

112) As the offence of ML does not fully encompass Article 3(1)(b)(c) of the Vienna Convention and Article 6(1) of the Palermo Convention, it is recommended that Chinese Taipei authorities amend the definition of ML to ensure that ML is criminalised on the basis of these provisions.

113) Given that the terms "property" and "property interests" are not defined, it is recommended that the Chinese Taipei authorities amend the legislation to include a provision that specifically identifies these terms, to ensure that the offence of ML extends to all types of property that directly or indirectly represents POC.

114) It is further noted from interviews with Chinese Taipei authorities that ML itself is not a qualifying offence for POC. i.e, there must be a predicate offence. It is therefore recommended that the authorities amend the MLCA to provide that conviction for a predicate offence is not necessary when proving that property is POC.

115) Given Chinese Taipei has applied a combined approach that includes a threshold approach in defining "serious crime", and that it does have a minimum threshold for offences in its legal system, it is recommended that the Chinese Taipei authorities amend the MLCA to reduce the threshold to 6 months. For example, Article 23 of the Act for the Prevention of Child Prostitution imposes a penalty of imprisonment from "one year to up to 7 years" for a person convicted of inducing a child to engage in a "sexual transaction". Given that this provision is not listed but falls within a designated category offence, and the threshold is a "minimum punishment" of 5 years or more, it could be argued that this type of offence is not covered by the MLCA.

116) It is recommended that the Chinese Taipei authorities prioritise the passing of legislation to criminalise terrorism, including terrorist financing.

117) Regarding "ancillary offences", given that the term "offence" in the Criminal Code is not defined and there is no reference to Chapters 3 and 4 of the Code in the MLCA, it is recommended that the Chinese Taipei authorities consider amending the legislation to clarify that the ancillary offences of the Code apply to the offence of ML.

118) As the law does not permit the intentional element of the offence of ML to be inferred from objective factual circumstances, it is recommended that the Chinese Taipei authorities amend the MLCA to reflect this requirement.

119) In the last evaluation of Chinese Taipei in 2001, reference was made by the 2001 evaluation team to Article 9, paragraph 1 of the MLCA which provides that the representative or employee of a natural or legal person "engaging within the scope of his or her employment in ML activities" is punished in accordance with the ML penalty provisions. The employer or principal may also be fined unless he or she "has done his or her best to prevent or stop the ML activities".

120) In regard to this provision, the 2001 evaluation team concluded that this article "provides a safe harbour from prosecution for companies and individuals" and expressed fears that it "undermines the otherwise clear liability of corporations and their employees in accordance with FATF recommendation 6." The Evaluation Team agrees with this concern and reiterates the conclusion that "this issue should be addressed through proof of criminal intent or evidence in contravention, if the defendant chooses to offer it." It is therefore recommended that Chinese Taipei delete this provision from Article 9.

121) In addition to the above, the 2001 Evaluation Team also expressed a concern over Article 10 of the MLCA which provides for a reduction of sentence for ML involving blood and other relatives in that it "undercuts the effectiveness of the law". The Evaluation Team shares this concern and reiterates the conclusion that "this is a matter that should be addressed to the sound discretion of the prosecutor in determining whether to prosecute and not legislated as a matter of law". It is therefore recommended that Chinese Taipei remove Article 10 and insert it in any Prosecution Guidelines on ML that may be held by the Prosecutors' Office.

122) It is noted from the ML statistics provided, that no fines were imposed although Article 9 of the MLCA provides that a person engaging in ML "shall be sentenced o imprisonment … and in addition thereto, be fined". It is queried therefore whether the statistics listing the predicate offences include any ML convictions or are restricted to the predicate offences only. The discrepancy between the figures given in the Chinese Taipei MEQ and those given to the Evaluation Team on the final day of the onsite visit, are queried also. It is therefore recommended that the Chinese Taipei authorities consider improving the statistics by:

a) clearly identifying which cases led to ML convictions as opposed to the convictions for serious crimes;

b) including or identifying any fines or penalties that may have been imposed on legal persons involved in the ML;

c) noting for inclusion in the statistics, whether the convicted persons (both natural or legal) were subjected to any civil or administrative sanctions;

d) having one body responsible for gathering all ML statistics from the various law enforcement and judicial authorities to ensure consistency and improve reliability for the purposes of assessment as to the effectiveness of the Chinese Taipei AML/CFT regime.

123) It was also noted from comments made by the Chinese Taipei authorities during interviews, that more training is required for the judiciary and police on the area of ML to improve their understanding of the law and also the legal elements required to prove ML. The Evaluation Team was also advised that more training is required in ML investigation for Police. It is therefore recommended that the Chinese Taipei authorities provide practical case workshops (as opposed to seminars) for:

a) the judiciary aimed at improving their understanding of the legal elements required to prove ML; and

b) the Police to improve their ML investigation skills.

2.1.3 COMPLIANCE WITH RECOMMENDATIONS **1 & 2**

	Rating	**Summary of factors underlying rating**
R.1	PC	• The ML offence lacks some of the elements outlined in Article 3(1)(b)(c) of the Vienna Convention and Article 6(1) of the Palermo Convention • The threshold for what is a serious offence is too high • Predicate offence conviction required that a ML offence is proved • Terrorism and terrorist financing are not predicate offences

R.2	PC	• The law does not permit the intentional element of the offence of ML to be inferred from objective factual circumstances • The penalty provisions legally set out circumstances that could be used as "safe harbours" from prosecution which undermines the otherwise clear liability of corporations and their employees
R. 32	LC	• Discrepancies in recording statistics in relation to penalties arising out of ML prosecutions. (NB, this is a composite rating)

2.2 CRIMINALISATION OF TERRORIST FINANCING (SR.II)

2.2.1 DESCRIPTION AND ANALYSIS

Special Recommendation II

124) Chinese Taipei has not criminalised terrorist financing. A draft Counter-Terrorism Bill ("the draft law") has been prepared but has not yet been tabled with the Legislative Yuan.

125) Article 2 of the draft law provides as follows:

> ***"Article 2***
> *The terrorist acts mentioned in this Act refer to the following planned, organized acts motivated from personal or organized political, religious, racial, ideological or other specific faith and intended to stir fears among the public:*
> *1. Committing homicides*
> *2. Inflicting critical wounds*
> *3. Setting fires*
> *4. Hurtling, planting, or detonating an explosive contrivance*
> *5. Abducting people*
> *6. Hijacking public or private boats, vehicles, aircraft or controlling their movement*
> *7. Interfering in or sabotaging electronic, energy, or information systems*
> *8. Setting off nuclear energy, radioactivity*
> *9. Releasing poisons, gases, bacteria or other matters harming to human health*
>
> *The terrorist organizations mentioned in this Act refer to syndicates formed by more than three persons and possessing an internal management structure aimed at engaging in terrorist acts.*
>
> *The terrorists mentioned in this Act refer to people who perpetrate a terrorist act or join **or finance** a terrorist organization."*

126) Article 13 paragraph 2 also provides:

> *"Those who have **financed** a terrorist organization shall be sentenced to imprisonment between one year and seven years, and may be imposed a fine not more than ten million New Taiwan Dollars (NT10 million) in addition thereto."*

127) There is no definition of the term "finance" or "terrorist financing", but Article 11 provides the following:

> *"If there are facts that terrorists **use accounts, money transfer, currency or other instruments of payment for terrorist acts**, the minister of Coast Guard Administration, Executive Yuan, the director-general of Investigation Bureau of the Ministry of Justice and the director-general of National Police Agency of the Ministry of the Interior may apply, within a period of six months, to the court for an order to ban the withdrawal, account transfer, payment, disbursement, or take*

other related disposal. In an emergency if there is reason to believe that without such an order a terrorist act cannot be prevented, the minister of Coast Guard Administration, Executive Yuan, the director-general of Investigation Bureau of the Ministry of Justice and the director-general of National Police Agency of the Ministry of the Interior may directly order an execution of such a measure, but they shall appeal to the court within three days to issue an after-the-fact order. If the court does not issue the order within three days, the execution shall be stopped.

In case of discontentment with the order mentioned in the preceding paragraph, the provisions on complaints set forth in Section Four of the Criminal Procedure Code shall apply mutatis mutandis."

128) Article 11 is the only provision in the draft law which would assist in determining what is meant by "finance" i.e. "terrorists" who "use accounts, money transfer, currency or other instruments of payment for terrorist acts". There is no reference to a person who "collects funds by any means, directly or indirectly with the unlawful intention that they be used or in the knowledge that they are to be used in full or in part to carry out a terrorist act by a terrorist organisation or by an individual terrorist".

129) The term "terrorist act" is defined in Article 2 of the draft law as set out above but does not include:

a) civil aviation safety and security at airports other than hijacking of aircraft;

b) crimes against internationally protected persons including diplomatic agents;

c) safety of maritime navigation other than hijacking of boats; or

d) safety of fixed platforms located on the continental shelf.

130) Some of the "terrorist acts" set out in Article 2 of the draft law are contained in the Criminal Code in more detail, however, it is noted that there is no reference to these provisions in the draft law which raises the issue as to whether such provisions would be covered under the draft law.

131) It is also of concern that the preamble to this Article refers to an intention "to stir fears among the public" as to how this intention is to be applied or interpreted in a court of law.

132) The terms "terrorist organisation" and "terrorist" are defined in Article 2 of the draft law:

"*The **terrorist organisations** mentioned in this Act refer to syndicates formed by more than three persons and possessing an internal management structure aimed at engaging in terrorist acts."*

133) Under this interpretation, the question arises as to whether this captures an entity that does not have an "internal management structure" or that does not directly engage in terrorist acts or may be only facilitating the commission of a terrorist act.

*"The **terrorists** mentioned in this Act refer to people who perpetrate a terrorist act or join or finance a terrorist organisation."*

134) In terms of the above definitions, it could be interpreted to include an 'individual terrorist' and it is further noted that Article 2 also includes terrorist acts "planned, organised acts motivated from personal" beliefs. Article 6 also refers to intercepting the

communications of “individual terrorists” and Article 8 provides that law enforcement can detain a person when facts have led to the suspicion that “he or she is a terrorist”.

135) It is noted however, that there is no reference in the draft law to any United Nations Security Council lists as contained for example in UNSCR 1267.

136) Other than the reference to “accounts, money, transfer, currency or other instruments of payment for terrorist acts” in Article 11 of the draft law, Article 10 provides that if it is necessary “for preventing a terrorist act”, officials can order the detention of, or a disposal ban on “movable, immovable, or other assets when facts have lead to suspicions that terrorists are using them for terrorist acts”. Apart from these two references, there is no definition in the draft law of the funds to which terrorist financing offences extend.

137) The draft law is not specific as to whether the FT offence requires that the funds were actually used to carry out or attempt a terrorist act or be linked to a specific terrorist act. It could be argued that under Article 2 and Article 13 paragraph 2, by simply making it an offence to “finance a terrorist organisation”, this means that the prosecution do not have to prove that the funds were actually used to carry out a terrorist act. However it is noted that under Article 10, an order to “detain, dispose of movable, immovable, or other assets” can be made “when facts have led to suspicion that terrorists are using them for terrorist acts”. Article 11 also provides that “If there are facts that terrorists use accounts, money transfer, currency or other instruments of payment for terrorist acts” then the authorities can apply for an order to “ban” the account or transfer.

138) Article 12, being the penalty provision for those engaged in terrorist acts, also provides that “an attempt offense” is also “punishable”. It further provides a sentence of not more than 2 years imprisonment for a “preparatory offence” – this Article relates to terrorist acts only and does not cover FT or being a member of a terrorist organisation. There is no specific provision in the draft law which makes it an offence to attempt FT or participate as an accomplice or organise or direct others to commit FT. Article 2 and Article 13 paragraph 2 provide that it is an offence to “finance” a terrorist organisation which indicates that there must be evidence that such a person has or is financing a terrorist organisation.

139) Article 3 of the Criminal Code applies the Code to “an offence committed within the territory of” Chinese Taipei and contains ancillary offences that include attempts, aids, incites, joins or solicits others in an offence but there is no definition of the term “offence” in the Code or reference to it in the draft law which would clarify for the avoidance of doubt that the ancillary provisions of the Code apply to the FT offence. As mentioned earlier, the Chinese Taipei authorities advise that if a person has “participated in the planning but have no power to dominate the act of offence, they shall not be punished, that is based on the principle of not punishing ideological offenders”. This may have an impact on any counter-terrorism legislation that Chinese Taipei may introduce - for example, where a person has assisted in the planning of a terrorist attack.

140) Article 15 of the draft law provides that FT “shall be regarded as a felony prescribed in paragraph 1 of Article 3 of the MLCA”. Paragraph 1 of Article 3 is the ‘threshold’ for “serious offence” which is a “minimum punishment of 5 years or more imprisonment”. The penalty for FT under Article 13, paragraph 2 is “between 1 year and 7 years, and may be imposed a fine not more than ten million NT in addition thereto.”

141) It is noted that the “minimum” punishment for FT is 1 year which falls below the MLCA “serious crime” threshold of a “minimum of 5 years or more”. If the Chinese Taipei

authorities amend the MLCA to reduce the threshold to 6 months, for the avoidance of doubt, this would indeed capture the FT offence.

142) Article 14 of the draft law provides that a citizen of Chinese Taipei who has committed the offence of FT or committing a terrorist act outside the country, "shall be punished according to this Act whether it is punishable or not in the place where the crime is perpetrated." Article 19 further provides that the Chinese Taipei government and authorities can enter into "anti-terrorism treaty or other international pact of anti-terrorism cooperation" on the basis of reciprocity. There is no specific provision in the draft law however that extends the definitions of terrorist organisation or terrorist act to another jurisdiction outside Chinese Taipei.

143) The draft law does not permit the intentional element of FT to be inferred from objective factual circumstances.

144) There is no definition of "person" in the draft law and neither does it contain any provision which specifies or indicates that criminal liability extends to legal persons.

145) As to effective, proportionate and dissuasive penalties, whereas the fine of NT 10 million for FT seems substantial, the imprisonment penalty being a minimum of 1 year and a maximum of 7 years, falls well below what one would expect for such an offence. Once FT is criminalised, the existing civil or administrative sanctions against natural and legal persons, could be utilised against a person or entity that has been charged with or found guilty of FT.

Recommendation 32

146) There are no statistics for FT in Chinese Taipei given that it has not yet been criminalised.

2.2.2 RECOMMENDATIONS AND COMMENTS

147) It is recommended that the authorities review and re-draft the draft Counter-Terrorism Act Bill to ensure that it satisfies the requirements of the UN Terrorist Financing Convention and SR II before submitting it to the Legislative Yuan.

148) Chinese Taipei is encouraged to finalise the draft law and have the law passed by the Legislative Yuan as soon as possible.

2.2.3 COMPLIANCE WITH SPECIAL RECOMMENDATION II

	Rating	Summary of factors underlying rating
SR.II	NC	• FT has not been criminalised
R.32	LC	• There are no statistics as FT has not been criminalised (NB, this is a composite rating)

2.3 CONFISCATION, FREEZING AND SEIZING OF PROCEEDS OF CRIME (R.3)

2.3.1 DESCRIPTION AND ANALYSIS

Recommendation 3

149) The legal provisions that provide for the confiscation, freezing and seizing of proceeds of crime ("POC") are scattered throughout several laws, namely the MLCA; the Criminal Code; the Criminal Procedure Code; the Statute for Narcotic Hazards Control; the Police Powers Act and the Organised Crime Prevention Act.

150) Article 4 of the MLCA provides:

> *"As used in this Act, the "property or property interests obtained from the commission of the crime" means:*
> 1. *The property or property interests obtained directly from the commission of the crime.*
> 2. *The remuneration obtained from the commission of the crime.*
>
> *The property or property interests derived from the above two subsections. This provision, however, is not applicable to a third party who obtains in good faith the property or property interests prescribed in the preceding two subsections."*

151) Article 12 paragraphs 1 and 2, of the MLCA further provides:

> *"The property or property interests obtained from the commission of a crime by an offender violating the provisions set forth in Article 9 of this Act, other than that which should be returned to the injured party or a third party, shall be confiscated, regardless of whether the property or property interests belong to the offender or not. Whenever the above property or property interests can not be confiscated in whole or in part, the value thereof shall be indemnified either by demanding a payment from the offender or by offsetting such value with the property of the offender.*
>
> *The offender's property may be seized, if necessary, to protect the property or property interests obtained from the commission of a crime by an offender violating of the provisions set forth in Article 9 of this Act."*

152) This phrase is also used in paragraph 3 of Article 3 which lists the predicate offences for ML:

> *"The following crimes also fall into the category of the "serious crimes" if the property or property interests obtained from the commission of the crime(s) exceeds NT 20 million dollars:*
> 1. *The crimes prescribed in Paragraph 2 of Article 336 of the Criminal Code.*
> 2. *The crimes prescribed in Articles 87 and 91 of the Government Procurement Act."*

153) Article 336, paragraph 2 of the Criminal Code refers to the offence criminalised under Article 335 of the Criminal Code (it is an offence for "a person who has lawful possession of a thing belonging to another and who misappropriates it with intent illegally to defraud for himself or for a third person") and refers to a person having lawful possession pf a thing resulting from "his occupational fiduciary relationship".

154) Articles 87 of the Government Procurement Act makes it an offence to use "violence, coercion, drugs or hypnosis" in an attempt to force a firm to bid or not to bid for government tenders. Article 91 makes it an offence for a person or firm entrusted with the "plan, design, screen, oversee construction, take charge of special-case management, or do procurement" to seek illegal private gains or obtain profit by violating the law related thereto.

155) Article 2 which criminalises ML refers to "property or property interests obtained from a serious crime":

> *"As used in this Act, the crime of "money laundering" is defined as any person who –*
> 1. *Knowingly disguises or conceals the property or property interests obtained from a serious crime committed by themselves or;*
> 2. *Knowingly conceals, accepts, transports, stores, intentionally buys, or acts as a broker to manage the property or property interests obtained from a serious crime committed by others."*

156) Articles 38 to 40 of the Criminal Code also contain general provisions which provide for confiscation of POC:

> "***Article 38***
> *The following things shall be confiscated:*
> 1. *Contraband;*
> 2. *A thing used in the commission of or preparation for the commission of an offence;*
> 3. *A thing acquired through the commission of an offence.*
>
> *A thing specified in item 1 of paragraph I of this Article shall be confiscated whether or not it belongs to the offender.*
>
> *A thing specified in items 2 or 3 of paragraph I of this Article may be confiscated only if it belonged to the offender; Provided, That if special provision has been made therefore, such provision shall apply."*
>
> ***Article 39***
> *If punishment is remitted, confiscation may, nevertheless, be imposed independently.*
>
> ***Article 40***
> *Confiscation, except special provision has been made therefore, shall be pronounced at the time of the decision.*
>
> *A prohibited thing may be pronounced confiscated separately."*

157) The term "thing" as referred to in Article 38 above, is not defined in the Criminal Code although the Chinese Taipei authorities advise that this term means "real property and any personal property" and is defined in the Civil Code – the relevant provision of which has not been provided.

158) In addition, the laws provide for POC confiscation in terms of certain specific offences:

a) where a public official receives POC as a result of accepting a bribe or other improper benefit, any benefit received can be confiscated or the value thereof collected from the offender - **Article 121 of the Criminal Code;**

b) the property of a criminal organisation and a participant of a criminal organisation minus any portion belonging to the victims. If the property cannot be confiscated in part or in whole, then an amount equivalent to the ascribed monetary value of the said property can be levied against the offender – **Article 7 of the Organised Crime Prevention Act**;

c) narcotics and implements that are used for manufacturing drugs and other property used in committing drug offences. Where the "whole or part of such property is nonconfiscable the offender is required to pay the equivalent value of such property either by cash or by offsetting the price thereof with his/her property". There is also provision to confiscate "means of water, land and/or air transportation that have been used by the offender in committing the offence" – **Articles 18 and 19 of the Statute for Narcotic Hazards Control.**

159) The legal authority to freeze or seize POC is set out in Article 8-1 paragraphs 1 to 4 of the MLCA:

> *"Whenever the prosecutor obtains sufficient evidence to prove that the offender has engaged in money laundering activity by transporting, transmitting, or transferring a monetary instrument or funds through bank deposit, wire transfer, currency exchange or other means of payment, the prosecutor may request the court to order the financial institution to freeze that specific money laundering transaction to prevent withdrawal, transfer, payment, delivery, assignment or other related property disposition of the involved funds.*
>
> *The prosecutor on their own authority may freeze a specific money laundering transaction and request the court's approval within three days whenever the prosecutor has probable cause to believe that the property or property interests obtained by the offender from the commission of crime are likely to disappear under exigent circumstances. The prosecutor must immediately remove the hold on transaction if the prosecutor fails to obtain the court's approval within three days.*
>
> *During the trial proceeding, the presiding judge has discretion to order a financial institution to freeze the offender's money laundering transactions for purposes of withdrawal, transfer, payment, delivery, assignment or other related property disposition.*
>
> *The order to freeze the offender's money laundering transactions for withdrawal, transfer, payment, delivery, assignment or other related property disposition in a financial institution must be in writing and meet the requirements set forth in Article 128 of the Criminal Procedure Code."*

160) Article 128 provides that the search warrant required to conduct a search, must contain:

a) Offence charged;

b) The accused or suspect to be searched or the property to be seized; if the accused or suspect is unknown, the same can be waived;

c) The place, person, property or electronic record to be searched;

d) The period that the warrant remains valid shall be specified; no search can be made after the expiration date; search warrant shall be returned after its execution.

161) A search warrant shall be signed by a judge; the judge may specify proper instructions, to be followed by the person executing the search, on the search warrant. The procedure in issuing of the search warrant shall not be open to the public."

162) In terms of paragraph 2 of Article 8-1, an application under Article 8-1 can be made ex parte:

> *"The prosecutor on their own authority may freeze a specific money laundering transaction and request the court's approval within three days whenever the prosecutor has probable cause to believe that the property or property interests obtained by the offender from the commission of crime are likely to disappear under exigent circumstances. The prosecutor must immediately remove the hold on transaction if the prosecutor fails to obtain the court's approval within three days."*

163) Article 12, paragraph 2, provides that property of an ML 'offender' "may be seized if necessary, to protect the property or property interests obtained from the commission of ML.

164) Chapter XI of the Code of Criminal Code also sets out provisions relating to search and seizure:

165) Article 128-1 - during the investigation stage, if the public prosecutor deems that a search is necessary, he or she can apply for a search warrant in writing, containing information regarding the accused or suspect to be searched and property to be seized, together with the reason thereof. Under this provision, a police officer, for the purpose of investigating the offence and gathering evidence, may, after obtaining permission from the public prosecutor, apply for a search warrant from the court.

166) Article 130 – authorises the prosecutor and police to search without warrant, an accused or a suspect detained or arrested (with or without a warrant) including the "items he is carrying, the transportation vehicle he is using, and the premises within his immediate control".

167) Article 131 – authorises the prosecutor or police to search a dwelling or other premises without a search warrant, during the investigation stage, if there is probable cause to believe that circumstances are exigent and there are sufficient facts to justify an apprehension that the evidence shall be destroyed, forged, altered, or concealed within twenty four hours unless a search is conducted immediately. Such a search is to be reported to the court within 3 days and if the court decides hat the search should not be approved the court shall cancel it within five days.

168) Article 133 – authorises "a thing which can be used as evidence or is subject to confiscation" to be seized and that the "owner, possessor, or custodian of the property subject to seizure may be ordered to surrender or deliver it".

169) Article 138 – provides that if the "owner, possessor, or custodian of property which should be seized refuses to surrender or deliver it or resists the seizure without justified cause, such seizure may be effected by force".

170) The Police Powers Act 2003 provides further powers to identify and trace proceeds:

a) Article 11 – authorises Police officers to collect information through surveillance methods or 'visual observation' for a period of time not exceeding 1 year (one extension can be granted if necessary), where the Police believe a suspect is about to commit any crime punishable by imprisonment of more than 5 years; or it is believed that a suspect threatens to participate in a professional, criminal, group or organised crime.

b) Article 12 – authorises the Police to instruct a willing "Third Party" to covertly or secretly collect information in the interests of "preventing damage or crime, if the police consider that public security, public order, or personal life, body, freedom, reputation or property will be damaged or that criminal laws will be violated". A "Third Party" can include a person or persons contacting or meeting with the suspect.

c) Article 16 – authorises the Police to transmit personal data upon receipt of other authorities' request. Other authorities may, based on a police request, also transmit personal data which such authority holds

d) Article 17 of this Act provides that any information collected "shall be used in accordance with the Law within the requisite scope of legal duties and shall meet the specific purpose of collection".

171) The Communication Protection and Monitoring Act also sets out powers whereby the Police may intercept private communications during the course of an investigation into crimes punishable by at least 3 years imprisonment.

172) Article 5 paragraph 3 of the Organic Act Governing the Establishment of the Financial Supervisory Commission, Executive Yuan also sets out the FSC's powers to seek a search warrant enabling the FSC to accompany judicial police authorities to enter and search for account books, documents, electronic files and other evidence:

"In a case involving suspected financial crime, the FSC and any subordinate agency thereof may present the facts of the case to a prosecutor in seeking permission from the latter to file a motion in the court of jurisdiction for issuance of a search warrant. Once the search warrant has been issued, the FSC or its subordinate agency may, accompanied by judicial police authorities, enter and search the suspected hiding place of the relevant account books, documents, electronic files, and other such materials or evidence. No one other than the parties mentioned above may take part in the search. The personnel who conduct a search shall transport all relevant materials and evidence obtained during the search to the FSC or a subordinate agency thereof, where it shall be handled in accordance with the law."

173) Protection for the rights of bona fide third parties is provided under Articles 4 and 12 of the MLCA. Article 4, paragraph 3 exempts a third party who "obtains in good faith the property or property interests" prescribed in the preceding paragraphs. Article 12 also exempts from confiscation any property "which should be returned to the injured party or a third party". Where property or property interests cannot be confiscated, the value thereof "shall be indemnified either by demanding a payment from the offender or by offsetting such value with the property of the offender".

174) There are no specific statutory provisions which make void any actions, whether contractual or otherwise, where the persons involved knew or should have known that the authorities would be prejudiced in their ability to recover property as a result of their actions. However the Chinese Taipei authorities refer to Articles 416-1 and 470-1 whereby any person disagreeing with the decision of a judge or prosecutor to confiscate POC can apply to the court to have such decisions set aside or altered.

"*Article 416-1*
A person who disagrees with one of the following measures taken by a presiding judge, commissioned judge, requisitioned judge or prosecutor may apply to the court to which such officer is attached to have measures set aside or altered.

Article 470-1
A decision imposing a fine, pecuniary penalty, confiscation, forfeiture, recovery of money, compulsory execution and compensation shall be executed in accordance with the order of the prosecutor; Provided that a fine or pecuniary penalty may be executed under the instructions of a judge in open court if, after the judgment is pronounced, the sentenced person agrees with the decision and the prosecutor is not present."

Additional elements

175) With regard to the property of organisations that are found to be primarily criminal in nature, Article 7 of the Organised Crime Prevention Act 1996 provides:

*"**Article 7***
The overall property of a criminal organization owned by an offender acting in contravention of Article 3 of this Act shall be traced for collection or confiscated after deducting any portion belonging to the victims. Where the property can not be confiscated in part or in whole, then an amount equivalent to the ascribed monetary value of the said property shall be traced and levied.

If the source of obtaining the property can not be legally established, any property obtained by an offender acting in contravention of Article 3 of this Act after participating in the criminal organization shall be traced for collection or confiscated subsequent to deducting the portion to be returned to the victims. Where the property can not be confiscated in part or in whole, then an amount equivalent to the ascribed monetary value of the aside property shall be traced for levied.

The prosecutor may where necessary sequester the property of the said offender referred to in the preceding two paragraphs to facilitate the process of tracing for collection, confiscation, or tracing for levying."

176) Article 3 is the penalty provision for an "indicted instigator, principal, controller or commander" and "participant" of a "racketeering criminal organisation".

177) The laws of Chinese Taipei do not provide for civil forfeiture.

178) Whereas Article 161 of the Criminal Code clearly places the burden of proof on the prosecutor as to the facts of the crime charged against the accused, the Chinese Taipei authorities advise that an exception exists in Article 7 paragraph 2 of the Organised Crime Prevention Act, whereby the onus for proving that the property is from legitimate sources is placed on the offender.

Recommendation 32

Additional elements

179) The Chinese Taipei authorities do keep statistics on the number and type of predicate offences that have resulted in confiscation. These tables are set out in Section 2.1.1 and Section 2.6.1.

2.3.2 RECOMMENDATIONS AND COMMENTS

180) It was noted that Article 2 utilises the phrase "property or property interests obtained from a serious crime" whereas Article 4 and 12 refer to "property or property

interests obtained from the commission of a crime". This may raise an issue as to whether ML is covered under Articles 4 and 12 given that Article 2 refers to "serious" crime and there is a distinction between "serious crime" (being a predicate offence) but Article 12 does refer to "the property or property interests obtained from the commission of a crime by an offender violating the provisions set forth in Article 9 of this Act". Article 9 is the penalty provision for the ML offence. The Chinese Taipei authorities have also confirmed that the omission of the word "serious" from Articles 4 and 12 does not present any legal difficulties in the application of these articles to the ML offence but the Chinese Taipei authorities may want to clarify this in the legislation by ensuring the exact phrase used in Article 2 is used in Articles 4 and 12.

181) It is noted under Article 38 of the Criminal Code that "a thing used in the commission of or preparation for the commission of an offence" and "a thing acquired through the commission of an offence", can "only be confiscated if it belonged to the offender". Although Article 12 of the MLCA does not have such a restriction for "property or property interests", it does raise an issue as to whether Article 38 could raise any difficulties in confiscating instrumentalities of POC that are under the name of a third party.

182) Given that the terms "property" and "property interests" are not defined, it is recommended that the Chinese Taipei authorities amend the MLCA to include a provision that specifically identifies these terms, to ensure that the offence of ML extends to all types of property that directly or indirectly represents POC.

183) Given that there are no specific provisions in the law which prevent or void actions, whether contractual or otherwise where persons involved knew or should have known that as a result the authorities would be prejudiced in their ability to recover the property, it is recommended that the Chinese Taipei authorities consider amending the law to clearly reflect this requirement.

2.3.3 COMPLIANCE WITH RECOMMENDATIONS 3

	Rating	Summary of factors underlying rating
R.3	LC	• No definition of "property" or "property interests" in the MLCA to ensure that offence of ML extends to all types of property • Unclear whether instrumentalities used or intended to be used can be confiscated if they are under the name of a third party given the provisions of Article 38 of the Criminal Code
R.32	LC	NB. This is a composite rating

2.4 FREEZING OF FUNDS USED FOR TERRORIST FINANCING (SR.III)

2.4.1 DESCRIPTION AND ANALYSIS

184) Chinese Taipei lacks effective laws and procedures to freeze terrorist funds or other assets of entities designated by the UN 1267 Committee or to freeze terrorist assets of persons designated in the context of UN SCR 1373.

185) Chinese Taipei does not yet criminalise FT but has drafted a Counter Terrorism Act ("the draft law"). In terms of those 'terrorist acts' that are listed in the draft law which are already offences identified in the Criminal Code, any confiscation under the general provisions of the Criminal Code would be available for POC arising out of such cases. The provisions of the Organised Crime Prevention Act could for example, be used to

trace terrorist property belonging to terrorist organisations for "collection and confiscation".

186) Entities designated by the UNSCR 1267 are not 'statutorily recognised' in any legislation.

187) Obligations to give consideration to the 1267 lists or any other lists issued by countries under 1373 relate only to enhanced CDD and reporting suspicious transactions, which does not address the requirements at SR III. The Regulations Regarding Article 8 of the MLCA, require financial institutions to report an STR for "transactions where the ultimate beneficiary or transaction party is a terrorist or terrorist group as listed by the MOF based on information provided by foreign governments". As a result FI regulating authorities have issued ML Control Guidelines that include the quoted regulation. For example, clause 4(17) of the Bankers Association "Checklist of ML Prevention Guidelines and Procedures for Banks" provides the following as a circumstance in which a teller should "exercise extraordinary diligence" and "declare the case to the Investigation Bureau, Ministry of Justice":

> *"Where the end beneficiary or transaction counterpart is found to be a terrorist individual or entity as advised by foreign governments via the Financial Supervisory Commission, Executive Yuan; or where the transaction is suspected or bears reasonable reason to suspect to have been linked with a terrorist activity, terrorist organisation or subsidy to terrorism"*

188) This guideline was also issued by the FSC on 4 August 2004, demanding all financial institutions to file STRs with the MLPC should there be a suspicion that the final beneficiary or parties of the financial transaction are terrorists or a terrorist group.

189) The MLPC has a website which the Chinese Taipei authorities advise provides links to both UN and US Government websites that list terrorist entities which are relied upon by financial institutions and other investigative authorities. It is also understood that lists of terrorist entities are regularly provided by the American Institute in Chinese Taipei to the Securities Association. The Securities Association advised that it has passed on 59 official letters to its members from 2001 to 2006 provided by the American Institute, listing terrorists and terrorist organisations. It is not clear what actions would be possible by Association members.

190) The draft law includes 3 provisions that relate to the freezing and confiscation of terrorist funds and assets:

a) Article 9 – authorises law-enforcement authorities to inspect a place suspected of being used by terrorists to "keep their articles or equipment for use in a terrorist act, and the cars, boats, aircraft or other transportation vehicles that may be used".

b) Article 10 – authorises the detention of or disposal ban on movable, immovable, or other assets when there is suspicion that terrorists are using them for terrorist acts.

c) Article 11 – where terrorists use "accounts, money transfer, currency or other instruments of payment for terrorist acts", the authorities may apply, within a period of six months, to the Court for an order to ban the withdrawal, account transfer, payment, disbursement, or "take other related disposal". In an emergency if there is reason to believe that without such an order a terrorist act cannot be prevented, the authorities may directly order an execution of such a

measure, but are required to appeal to the Court within three days to issue an after-the-fact order. If the Court does not issue the order within three days, the execution must cease.

191) The provisions in the draft law do not appear to address the requirements under the international standards to establish clear legal provisions and procedures to freeze terrorist funds or other assets of persons designated in the list pursuant to UNSCR 1267.

Recommendation 32 (terrorist financing freezing data)

192) There are no statistics on property frozen under FT or terrorism offences.

2.4.2 RECOMMENDATIONS AND COMMENTS

193) It is recommended that :

- Chinese Taipei should establish clear legal provisions and procedures to freeze terrorist funds or other assets of persons designated in the list pursuant to UNSCR 1267.
- Chinese Taipei should have effective laws and procedures to freeze terrorist funds or other assets of person designated pursuant to UNSCR 1373.
- The said freezing pursuant to UNSCR 1267 and 1373 should be ex parte and without delay.
- Chinese Taipei should have effective laws and procedures to examine and give effect to the actions initiated under the freezing mechanisms of other jurisdictions.
- The freezing actions should extend to funds or other assets wholly or jointly owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organisations and funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organisation.
- Chinese Taipei should have effective systems for communicating actions taken under the freezing mechanisms to the financial sector.
- Chinese Taipei should provide clear guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms.
- Chinese Taipei should have effectively and publicly-known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed person or entities.
- Chinese Taipei should have effective and publicly-known procedures for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.
- There should be clear provisions for persons or entities affected by the freezing actions to obtain relief.
- There should be procedures for persons or entities whose funds or other assets have been frozen to challenge that measure with a view to having it reviewed by a court.

2.4.3 COMPLIANCE WITH SPECIAL RECOMMENDATION III

	Rating	Summary of factors underlying rating
SR.III	NC	• Chinese Taipei lacks effective laws and procedures to freeze terrorist funds or other assets of entities designated by the UN 1267 Committee or to freeze terrorist assets of persons designated in the context of UN SCR 1373.
R.32		• No freezing actions have been taken pursuant to SRIII (NB, this is a composite rating)

Authorities

2.5 THE FINANCIAL INTELLIGENCE UNIT AND ITS FUNCTIONS (R.26, 30 & 32)

2.5.1 DESCRIPTION AND ANALYSIS

194) The Money Laundering Prevent Centre (MLPC) located within the Ministry of Justice Investigation Bureau (MJIB) is the Financial Intelligence Unit for Chinese Taipei. The MLPC is categorised as a law-enforcement type FIU.

195) The MLPC was established in 1997 pursuant to the Money Laundering Control Act (1996). The MLPC is a National Centre that has six specific functions;

a) receiving Suspicious Transaction Reports, Currency Transaction Reports, Cross-border Currency Movement Declaration Reports and requesting further additional information when required;

b) researching AML/CFT trends and typologies and studying preventive measures;

c) analysing and disseminating ML/FT information;

d) assisting authorities to investigate ML/FT cases and coordinating related matters;

e) international cooperation on ML/FT information exchange and related matters; and

f) creating and maintaining ML/FT computer database.

196) The content of reports and reporting procedures are clearly outlined within Article 8 of the Money Laundering Control Act (MLCA). This provision has been actively promoted by the MLPC with reporting entities clearly understanding the requirements.

197) Submission forms and a secure computer software package have been designed by the MLPC to enhance the efficient transfer of reports from reporting entities directly to the MLPC. This software system provided free of charge to reporting institutions is being actively used. In relation to Currency Transaction Reports (CTRs), for example, 99% of all CTRs are reported to the MLPC via electronic means utilising this software. When this software is distributed detailed information regarding the operation of the system is also provided.

198) With regard to Cross-border Currency Declaration Reports specific software has been provided to the Customs Service for collection of information relating to these reports. This information is forwarded to the MLPC every 30 days. Both the Customs Service and the MLPC report that there is an intention to refine this process to enable

instant electronic reporting however this process was not operating at the time of the onsite visit.

199) The MLPC have been active in the provision of guidance to reporting entities.

200) This guidance is provided in published form and through both formal and informal training provided by the MLPC. This guidance relates not only to the submission of actual reports but also includes typologies and case study presentations which serve to increase the awareness of accurate reporting.

Formal training presentations undertaken by the MLPC

Year	Number of Lectures	Number of participants
2003	166	12,833
2004	109	7087
2005	131	15,488

201) On 31 occasions between 2002 and 2005 the MLPC have made recommendations that financial institutions and employees be rewarded for reporting suspicious transactions that have directly assisted with investigations. These rewards in the form of written commendations provide positive feedback to the reporting agencies.

202) The MLPC also provide feedback to the Financial Supervisory Commission (FSC) or other regulatory bodies. When the MLPC identify an instance of non-compliance of the MLCA, this is reported to the regulatory body for review and sanction if appropriate.

203) Pursuant to Article 23 of the Investigations Bureaus Organisation Act and Article 230 of the Criminal code, all MLPC staff have the status of law enforcement officer and are thereby authorised to access law enforcement information to undertake their tasks. In addition Decree #09510002020, which was promulgated in May 2006 by the FSC, provides that the MLPC members are able to seek additional information from financial institutions upon the authority of the Director General of the Investigation Bureau. This allows the MLPC authority to actively seek any additional information required to properly undertake its function.

204) Upon receipt of an STR or CTR an analysis is commenced using an 'integrated computer system'. This system allows searches to be undertaken of a subject's criminal history and any intelligence held on databases shared by the law enforcement community. Accessible within the 'integrated system' are customs border movement data, identities of family members and employment details. Provided by the tax authorities are records of all citizens' bank account details and specific income related information is available upon request.

205) The 'integrated system' also provides as an analysis tool, internal control system and training system. This system and capability provides the MLPC with an excellent data base to assist with the analysis of reports and ensures reports are processed effectively and efficiently.

206) Having undertaken an analysis if there is suspicion that the report may relate to criminal conduct the STR or CTR is forwarded to either the MJIB or the CIB of the National Police Authority for the matter to be further investigated. The agency which the report is disseminated to is determined by the nature of the suspected predicate activity. Internal guidelines titled 'Working Manual of the MLPC' and 'Operation Regulation of MLPC' provides guidance on when and how to disseminate the reports.

207) The MLPC also disseminates reports to other agencies such as the taxation authorities when appropriate.

208) The MLPC although allied to the Investigation Bureau has its own operating budget and operates with independence and can work autonomously. The evaluation team was informed of analysis work that was undertaken in relation to the misappropriation of funds by a high level political figure. This reflects that the MLPC is free from outside unauthorised influence or interference in its functions and decisions.

209) The MLPC database is contained within the MJIB database. The database is 'backed up' to both local and remote storage devices daily. There would be no issue of immediate recovery in the event of a disaster.

210) The computer database maintained by the MLPC is a resource that is available to all investigators subject to the required criteria. The MLPC advise that data base is widely used and the CIB for example have used this database on more than 250,000 occasions over the last 4 years. Access to the data base is strictly controlled. When appropriate, officers outside of the MLPC are given individual access via the intranet with controls linked to individual IP addresses. The database records details of all enquiries made and supervisors have oversight ability.

211) The MLPC office is contained within the Investigation Bureau Head Quarters where strict security of the buildings and environs is in place.

212) There are legislative measures to secure the information held by the MLPC, including:

a) The First Section of Article 11 of the MLCA: Any government official, who reveals, discloses or turns over documents, pictures, information or things relating to the reported suspect financial transaction or reported suspect money laundering activity to others shall be sentenced to imprisonment of not more than three years.

b) Article 132 of Criminal Code: Any government official who discloses or turns over documents, pictures, information or things of secret nature relating to matters other than national defence shall be sentenced to imprisonment of not more than three years.

213) The MLPC has prepared an annual report each year since 1997. The annual report has included the related statistics, trends, typologies and the achievements of the MLPC and events from within that year. A number of these reports were reviewed by the Evaluation Team and they were found to be comprehensive and informative.

214) In addition the MLPC has various publications and reports which have been disseminated to law enforcement agencies, courts, prosecutors, financial supervisory agencies, financial institutions, legislative bodies and research organisations for references including:

a) “Cases Collection and Study on Money Laundering” from Vol 1 to Vol 4;

b) “Q&A in relation to Reporting Suspicious Transactions”;

c) “The Challenge and Prospect of Money Laundering Prevention”;

d) “AML/CFT Laws and Decrees Collection”; and

e) “Translation of 100 Cases from the Egmont Group”.

215) The MLPC also post information on the MJIB website. This includes the annual reports, the MLCA, the definition of money laundering and explaining who the MLPC are and what they do. There are also general guidelines and contact details for the MLPC.

216) A “Forum for Compliance Officers of banks” is hosted by the MLPC. At this forum, all the compliance officers of AML/CFT from domestic and foreign banks are invited to discuss new methods, trends, techniques of ML/FT, the problems that banks may face and the solutions on AML/CFT requirements and the feedback mechanism between MLPC and banks. The forum is held every two years.

217) The MLPC organise the “Amending MLCA Seminar”. At this seminar, scholars who the experts in this field, judges, prosecutors, financial supervisory authorities, Investigation Bureau, Criminal Investigation Bureau, staff of MLPC and representatives from the Ministry of Justice, are invited to discuss the practical problems caused by the existing MLCA and the amending suggestions of the Act. This seminar is held about once or twice per year.

218) In 1998 the MLPC was accepted as a formal member of the Egmont Group. Since then the MLPC has been an active member attending various plenary and working group meetings.

219) The MLPC recognises the Egmont Group Statement of Purpose and its principles for information exchange between Financial Intelligence Units. The MLPC spontaneously exchanges information with foreign counterparts through the Egmont secure Website on most ML / FT cases.

Recommendation 30

220) MLPC employs 26 staff including 1 Director, 1 Deputy Director, 1 Senior Specialist, 3 Assistant Directors and 20 Investigator / Analysts. The Investigator / Analysts are divided into 3 sections. Section 1 comprising 8 staff, has the responsibility for handling STRs from financial institutions. Section 2, with 6 staff, has responsibility for administrative affairs, strategy research and international co-operation. Section 3, with 6 staff, processes CTRs and assists with the tracing of illegal funds.

221) All personnel within the MLPC are graduates from either a University or College. Skills contained within the MLPC include law, accountancy and languages.

222) All investigators in the MLPC have completed investigation training through the MJIB training academy; a component of the investigative training includes specific training on economic crime, which includes fraud and money laundering. Prior to commencing work within the MLPC staff must have at least 5 years investigation service. A number of staff have extensive experience as field agents both domestically and in overseas field offices. On the job training is also provided to investigator / analyst staff in the MLPC and a detailed best practice-working manual has been designed to provide guidance to staff. Training in money laundering typologies has been received by the MLPC staff through attendance at regional style workshops and through close interaction with investigative agencies.

223) There has been significant investment in equipment within the MLPC illustrated by the $10 Million NTD (USD 303,000) invested in a new database.

224) During the process of recruitment into the MJIB, character and integrity are examined to ensure that applicants who are recruited into the Investigation Bureau are of high ethical standing. Confidentiality of the information retained by the MLPC is reinforced

by Article 11 of the MLCA and Article 132 of the Criminal Code which prohibit the disclosure of information received by the MLPC except for proper purpose to authorised recipients.

Statistics

225) The MLPC retain statistics on STRs and CTRs filed by financial institutions and Cross Border Declaration Reports forwarded by the Customs Service. These statistics include a breakdown of the type of institute filing the STR, the type of criminal activity associated with the STR and where the report is disseminated. The following tables are examples of the statistics provided to the Evaluation Team by the MLPC.

Table 1: Statistics of STRs

STRs Reported	**2002**	**2003**	**2004**	**2005**
Domestic Banks	1,036	1,318	4,496	4,773
Foreign Banks	49	69	104	90
Credit Co-operatives	1	7	23	14
Credit Departments of Farmers & Fishermans Association	5	23	25	17
Securities Institutions	18	15	5	4
Futures Commission Merchants	1	0	4	7
Chunghwa postal Co. Ltd	28	33	15	6
Taiwan Securities Central Depository	2	15	17	236
Credit Card Companies	0	5	0	2
Insurance Companies	0	0	0	4
Securities Financing Companies	0	0	0	1
Total	**1,140**	**1,485**	**4,689**	**5,154**

Table 2: Statistics of disseminating STRs to relevant authorities after analysis

Receiving Authorities	**2002**	**2003**	**2004**	**2005**
Investigation Bureau	76	92	86	69
Police and other Administrative Authorities	132	76	213	170
Total	208	168	299	239

Table 3: Statistics of CTRs.

CTRs Reported	**2003**	**2004**	**2005**
Domestic banks	357,918	845,664	853,977
Foreign Banks	2,532	7,117	6,330
Credit Co-operatives	26,400	55,834	55,332
Credit Departments and Farmers & Fishermans Associations	23,262	65,629	71,676
Trust Investment Companies	971	2,061	4,067
Chunghwa Postal Co. Ltd	297,305	26,464	36,975
Others		5,993	477
Total	**708,388**	**1,008,762**	**1,028,834**

[The currency transaction reporting system was initiated from 6 August 2003]

Table 4 Statistics of disseminating CTRs to relevant authorities for analysis;

Receiving Authorities	2003	2004	2005
Investigation Bureau	2	24	42
Police and Other Administrative Authorities	0	22	72
Total	**2**	**46**	**114**

Table 5 Statistics of cases where the MLPC has directly assisted with an investigation.

Agency Assisted	2003	2004	2005	2006	Total
MJIB Units	26	34	19	12	91
Police Agencies	0	4	2	5	11
Prosecuting Agencies	11	10	10	12	43
Others	4	14	0	1	20
International Co-operating or Exchange	36	93	99	89	317
Total					**482**

226) Further statistics provided by the MLPC identified that of the 515 STR and CTR reports disseminated in 2003 and 2004, 210 were actively investigated by authorities. Of those investigations 48 resulted in prosecutions (which included 26 reports being merged with existing cases), 7 resulted in convictions. No statistics were available on property that was seized and subsequently confiscated as a result of the prosecutions.

227) In relation to Non-Profit Organisations 55 reports were disseminated relating to suspicious activity associated to those NPOs. Authorities undertook investigations, which resulted in 11 cases being submitted for prosecutions. The crimes identified were largely theft and misappropriation of funds.

228) With regard to Terrorist Financing 11, STRs were identified as suspicious and investigated by the MJIB. It was established that 9 of those transactions related to companies and 2 related to foreign workers and upon thorough investigation the funds and transactions were cleared of any association with terrorist financing.

229) Overall the statistics maintained by the MLPC illustrates an upward trend in the number of reports being submitted, reflecting increasing awareness and an effective reporting regime.

2.5.2 RECOMMENDATIONS AND COMMENTS

230) The MLPC presents as a mature, well functioning effective FIU. During the course of the evaluation the financial sector spoke of the co-operation that exists between the MLPC and that sector. This extended to consultation both prior to and after the submission of an STR report. This relationship allows for a very constructive and practical environment, which only enhances the effectiveness of the MLPC.

231) A number of reporting agencies were canvassed about the MLPC Annual Report and no individual claimed to have seen a copy of the report. This cannot be a criticism of the MLPC but it is important that the report is distributed to the key people involved in AML/FT compliance. A review of the distribution list may be warranted to ensure the report reaches the right people.

232) The initiative being developed to forward Cross-border Currency Declarations to the MLPC in a more efficient and timelier manor is to be encouraged. The potential for

delay of up to 30 days between a cash courier entering the country and the matter being reported to the MLPC creates a risk. This current process allows opportunity for the funds to be concealed or laundered or used in further criminal enterprise before authorities can appropriately respond to the incident. The current review of this process by both the Customs Service and the MLPC is very positive.

233) The Evaluation Team conclude that the MLPC contains high quality personnel and is well structured and resourced to carry out its function.

2.5.3 COMPLIANCE WITH RECOMMENDATIONS 26, 30 & 32

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	C	• This rating is fully observed
R.30	LC	• Composite rating – see section 7 for summary of factors
R.32	LC	• Composite rating – see section 7 for summary of factors

2.6 LAW ENFORCEMENT, PROSECUTION AND OTHER COMPETENT AUTHORITIES – THE FRAMEWORK FOR THE INVESTIGATION AND PROSECUTION OF OFFENCES, AND FOR CONFISCATION AND FREEZING (R.27, 28, 30 & 32)

2.6.1 DESCRIPTION AND ANALYSIS

234) There are five agencies with jurisdiction to enforce anti-money laundering activity in Chinese Taipei:

a) Ministry of Justice Investigation Bureau (MJIB) which includes the MLPC;

b) National Police Authority of the Ministry of Interior including the Criminal. Investigation Bureau (CIB) and localised Police services;

c) Chinese Taipei Customs;

d) Coast Guard Administration; and

e) Military Police Command.

235) The two primary agencies with the responsibility of investigating money laundering activity are the MJIB and the CIB (the function of the MLPC in support of this role has previously been outlined).

236) Important partners in the investigation process undertaken by the MJIB or the CIB are the Prosecutors of the various prosecutorial agencies under the Ministry of Justice. According to the Criminal Procedure Code, the investigative body in Chinese Taipei is the Prosecutor. All prosecutions identified by either the Investigation Bureau or the CIB are forwarded to the Prosecutor who then directs additional investigation as appropriate and determines if sufficient evidence exists to take the matter to court. The prosecuting authorities are an important component of the enforcement / investigation process.

Recommendation 27

237) In summary in Chinese Taipei there are two key law enforcement agencies who, in partnership with Prosecutors have primary responsibility for ensuring that all

investigations of ML / FT are properly investigated. The Customs Service has the responsibility for anti-smuggling and the receiving and forwarding of border declaration reports.

238) The MJIB has a designated responsibility for the investigation of violations against national security and interests and matters concerning internal security. On 30 October 1998 these functions were redefined into nine key areas by the Executive Yuan. One of these specific nine areas of responsibility was the investigation of "Major Economic Crime and Money Laundering".

239) The CIB of the National Police Authority has key investigative responsibility to investigate extortion, organized crimes, professional telecommunication fraud, drug trafficking including street drug dealing and street racketeering. The Bureau has a dedicated brigade to engage in serious economic crime investigation including money laundering, fraud, and violations of the 'Futures Trading Act' and the 'Securities and Exchange Act'.

240) In addition, Police districts of the wider National Police Authority have respectively set up economic crime investigation teams in localised police stations which are dedicated to the investigation of money laundering, smuggling, counterfeiting and other economic crimes.

241) The Chinese Taipei Customs Service is the border control agency. The prime focus of the Customs Service centres on anti-smuggling activities including cash and contraband items. When such activities are detected they are referred to the MJIB or the NPA for investigation. In relation to ML/FT, the Director General of Customs is tasked with receiving and examining border declarations from passengers, confiscation of false or undeclared currency movements and the forwarding of all declarations to the MLPC each month.

242) Upon the completion of an investigation by the MJIB or the CIB, the matter is referred to a Prosecutor who will determine what further action needs to be undertaken and if there is sufficient evidence for the preparation of indictments for filing with the court.

243) With regard to the postponement and / or waiver of an arrest during the course of a ML/ FT investigation, there is no specific legislation process that allows or prohibits this practice. Subject to the assessment of risk and the exercise of controls, law enforcement upon consultation with the Prosecutors Office has the ability to postpone or waive arrest.

244) Under the Criminal Code there are provisions for law enforcement and prosecutors to conduct searches and seize evidence and subpoena witnesses as required. The provisions of the Criminal Code are routinely used during the course of ML investigations.

245) The interception of private communications (wire tapping operations) during the course of an investigation into money laundering is authorised by the Communication Protection and Surveillance Law and the Police Powers Act.

246) Under Article 5 of the Communication Protection & Surveillance law, powers of the police units extend to "crimes punishable by at least 3 years imprisonment", "Intention to Commit Sedition under the Criminal Code", and offences under the Punishment of Corruption Act, Punishment of Smuggling Act, Pharmaceuticals Act, Banking Act, Securities and Exchange Act, Futures Trading Act, Weapons Control Act, Public Functionaries Election Act, Farming Societies Act, Fishery Societies Act, Child & Juvenile Sex Transaction Prevention Act, and Organized Crime Prevention Act.

247) Under Article 11 of the Police Powers Act, surveillance powers of the police authorities extend to persons whom either “the facts show there is likelihood of commitment of a crime punishable by at least 5 years imprisonment”, or whom “the facts show there is likelihood of involvement in professional, customary, group or organized crime”.

248) The Police Powers Act also permits other information gathering including surveillance in the form of visual observations and the use of hi-tech instruments to conduct observations.

249) Pursuant to Articles 12 and 13 of the Police Powers Act, the Director of the Police Authority or Branch may approve the appointment of a third party to legally but secretly collect relevant information. When this third party is to be a witness, provisions of the Witness Protection Act will also apply.

250) The Ministry of Justice has drafted an Under Cover Investigation Act which will allow Police investigators specific authority and protections to undertake undercover investigations. This has yet to be enacted.

251) Both the MJIB and the CIB report they have intercepted private communications and utilised surveillance as an investigative technique in money laundering investigations on several occasions. For example, during the investigation of a male person private communications were intercepted that evidenced he was attempting to launder 4.5 billion NTD that he had illegally obtained through violations of the Banking and Securities Exchange Act. The result of this successful investigation was that the person was sentenced to 9 years imprisonment.

Proceeds of Crime

252) As outlined earlier in this report, the MLPC has the specialised function of assisting the court prosecutors and other law enforcement agencies with tracing the flow of illegally acquired funds and property. Having identified such funds, the Prosecutor is required to take action to recover the funds.

253) Although having specific authority to investigate proceeds of crime, neither the MJIB nor the CIB have specific dedicated units with this sole focus. The Drug Enforcement Centre (DEC) of the MJIB reports they are in the process of seeking authority from the Executive Yuan to establish the formation of these dedicated units. The CIB also reported that they were trying to recruit more persons with the skills required to focus on proceeds of crime.

Table 6. Statistics of Proceeds of Crime Actions

Statistics				
Prosecutions, Convictions, Property Frozen, Seized and Confiscated				
Year	2003	2004	2005	2006
Number of cases	89	302	809	1,173
Number of prosecuted persons	791	1140	1485	1678
Money Laundered	28,056,881,500	1,497,521,108	25,173,894,214 ($765,229,083 USD)	7,709,658,074 ($234,364,605 USD)
Property siezed	537,243	22,126,122	4,154,117,032	213,253,506
Property confiscated	946,200	55,716,300	33,169,295 ($1,008,263USD)	57,028,401 ($1,733,913 USD)

254) Statistics provided by the Ministry of Justice identifies that only a very small amount of laundered funds are being recovered as proceeds of crime. For example in 2005 $25,173,894,214 NTD (765 million USD) was identified as laundered funds and $33,169,295 NTD ($1.008 million USD) was confiscated. Authorities in Chinese Taipei identified that criminal proceeds were being smuggled offshore through various means particularly to Mainland China and therefore recovery was extremely difficult.

255) In respect of co-operation between authorities, law enforcement, prosecutors and other agencies involved in anti-money laundering take part in the annual Economic Crime Forum. This forum provides opportunity for those involved in anti money laundering to share ideas and review methods, trends and techniques and present case studies of interest.

Recommendation 28:

256) Through judicial process, law enforcement and prosecutors have the ability to compel the production of records and can conduct searches of persons and places (including financial institutions) and can seize any relevant records related to money laundering investigation or prosecution.

257) Law enforcement officials and prosecutors also have the authority to conduct investigations and take statements of witnesses and suspects for use in criminal proceedings regarding ML and predicate offences.

258) Chapter 2 of the Customs Anti Smuggling Act, Article 12, allows for the interrogation of a suspect witness or other person concerned with the suspected smuggling of contraband.

Recommendation 30 (Law enforcement and prosecution authorities only):

259) All investigators with the MJIB and the CIB have a generalised responsibility to investigate the laundering of money.

260) Within both the MJIB and the CIB there are defined structures and dedicated resource and staff tasked with the specific investigation of economic crime (economic crime includes fraud, misappropriation, usury, smuggling, tax evasion, counterfeiting, violation of bank laws, securities exchange laws, fair trade law, infringement of intellectual property laws and money laundering).

261) There does not exist in either organisation a dedicated resource with a specific investigative responsibility to investigate money laundering, with the exception of the MLPC.

262) Both the MJIB and the CIB reported that they have sufficient staff and resource to investigate money laundering when presented with an investigation.

263) A review of the predicate offences giving rise to money laundering prosecutions identifies that the majority originate out the economic crime investigative units.

Table 7 Identifies predicate offences that have given rise to a money laundering conviction.

Predicate Offence	2003	2004	2005
Economic Crime	396	712	1081
Curruption	27	11	7
Narcotic	5	2	2
Other Criminal cases	25	84	83
Total	447	809	1173

264) Other income generating crime types like narcotics investigations have identified only a small number of money laundering cases.

265) Statistics are available to reflect the amounts of money involved in each case, table 8 refers.

Table 8 The values involved in money laundering prosecutions

SUM OF MONEY INVOLVED	CASES
Below 10 Thousand NTD (USD$304)	161
10,000 NTD - 100,000 NTD (USD$304 - $3,040)	519
100,000 NTD - 200,000 NTD (USD$3,040 - $6,060)	195
200,000 NTD - 1 Million NTD (USD $ 6060 - $30,300)	193
1 Million - 3 million (USD$30,300 - $91,000)	39
3 Million - 5 Million (USD$91,000 - $152,000)	8
5 Million - 10 Million (USD$152,000 - $304,000)	11
10 Million - 20 Million (USD$304,000 - 608,000)	13
20 Million - 30 Million (USD$608,000 - $912,000)	8
Above 30 Million (above USD$912,000	26
Total	**1173**

266) This table reflects that 58% of all money laundering cases involve money of less than $100,000 NTD ($6,000 USD) and 91% of all money laundering cases prosecuted relate to amounts of less than $1,000,000 NTD ($30,000 USD).

267) In summary, these two tables reflect that the majority of money laundering prosecutions are derived from economic crime involving amounts of less than $1,000,000 NTD ($30,000 USD).

268) Drug seizures indicate there is a potential lucrative drug industry in Chinese Taipei. For example in 2004 there were 8,547 kilograms of narcotics seized nationally, 650 kilograms of which comprised heroin, cocaine and morphine. In 2005 seizures totalled 13,133 kilograms comprising 341 kilograms of heroin and 3451 kilogram's of methamphetamine produces. Further in relation to narcotic crime in 2005, 792 persons were prosecuted for manufacturing, trafficking and dealing in narcotics.

269) Drug dealing by its very nature is intrinsic with the crime of money laundering and the figures indicate that a disproportionately small number of money laundering prosecutions stem from activity associated with narcotics. As previously mentioned in this report the DEC acknowledges and identifies a need to dedicate resources to address the lack of money laundering and proceeds of crime recovery associated with drug related crime.

270) It was identified by the Evaluation Team that a performance policy exists within the CIB where groups of staff are rewarded for successful outcomes of certain types of investigations. A copy of this policy was sought to determine where the status of money laundering fell within the terms of this performance review policy. The policy was not however made available and therefore it cannot be determined if this policy prohibits in anyway the priority that might be placed on money laundering by field investigators.

271) Law enforcement and prosecutors expressed generally an opinion that it was often difficult to clearly identify the predicate offence from which the income was derived and this was a difficulty that often prohibited prosecutions advancing.

272) Law enforcement reported that they have sufficient resources in the form of staff and technology to effectively perform their functions. This was supported by case study presentations, which reflect there has been some highly successful money laundering prosecutions, which have used a variety of investigative techniques. This indicates that there are investigators (and prosecutors) with the skills and resource to undertake these functions.

273) Prosecutors reported that investigating money was time consuming and more support was needed to allow this to take place. It was identified that on occasions only superficial enquiries were undertaken due to do time and resource constraints.

274) The Customs Service plays an important role in the anti-money laundering regime in Chinese Taipei. There is a specific role of receiving declarations and forwarding them to the MLPC. To enforce the declaration system Customs Service officers are authorised by Article 9 of Chapter 2 of the Customs Anti-smuggling Act to search baggage and persons.

275) Customs identify a significant lack of resources and capability to effectively enforce the cross-border declaration system. Customs report they are currently 400 staff short and this is placing significant pressure on the ability to protect the border. Customs further reported that they lacked the ability to access international intelligence and sought better training and additional equipment in the form of ion scanners and narcotic detection dogs (currently there are only 2 for the entire jurisdiction) to confidently protect the border.

276) The Investigation Bureau agents are required to follow the procedures stipulated in the internal working guidance “Criminal Investigation Manual” when undertaking a criminal investigation. In addition, a supervisory system is in place for monitoring all investigation procedures to ensure work ethic and confidentiality is being fully complied with. Any investigator who violates the regulation of working guidance or ethic regulation will face punishment according to the “Investigation Bureau Agents Rewards and

Punishments Norms". With regard to promoting professional techniques, all newly employed investigators have to accept one year's professional training and employees have many opportunities to attend advanced professional trainings and further education.

277) The Criminal Procedure Code regulates, in detail, the functions of prosecutors. In addition, the MOJ has formulated internal control measures like the "Points of Attention for Prosecutorial Agencies' Handling of Criminal Procedure" to ensure all investigations are conducted in accordance with the Criminal Procedure Code. With regard to the professional ethics of prosecutors, the Ministry has prescribed a "Code of Conduct for Prosecutors" requiring prosecutors to observe the principles of keeping secrets, conducting investigations, avoiding conflict of interests, forbidding participation in politics, and working honestly. If necessary, a violating prosecutor may be referred to the Prosecutors Performance Evaluation Committee for appropriate discipline.

278) In relation to the National Police Authority, the CIB, Prosecutors and the Customs Service, Article 4 of the Civil Servant Service Act provides as follows: "Civil servants have an absolute obligation to safeguard the confidentiality of information in the possession of government agencies, and may not leak information pertaining to confidential matters regardless whether their arm of the government serves as competent authority for the matter in question, and the same prohibition applies after termination of employment. Without the consent of one's superior, a civil servant may not at will issue statements regarding their official duties, either in one's own name or as representative of the agency".

279) Prosecutors advise they receive specific training in relation to money laundering. Some of these training programmes are facilitated through localised prosecutor's offices and others through the 'Training Institute for Judges and Prosecutors'. The Evaluation Team was unable to determine if there was specific training for judges in relation to ML offences and the seizure and freezing and confiscation of property.

280) The MJIB and the CIB report that they do receive training with regard to money laundering investigation techniques, and law. There also has been exposure to international training provided by the US Ministry of Justice Drug Enforcement Administration which has focused on money laundering and the proceeds of crime.

2.6.2 RECOMMENDATIONS AND COMMENTS

281) There is a need for more resources to be focused on ML investigations that relate to the proceeds of drug trafficking. A closer alignment of drug and AML investigators may increase the number of prosecutions that stem from narcotic offending.

282) DEC and drug investigators within the CIB need to have the capacity to investigate the acquisition of assets and the laundering of drug income. Statistics reflect this is not currently occurring.

283) It is recommended that key law enforcement agencies establish dedicated money laundering and proceeds of crime units with additional resources and specialist forensic accountancy capacity to investigate and take action over criminal proceeds.

284) Chinese Taipei should review the problems faced by law enforcement where there is difficulty in proving funds were derived from a specific offence. If the findings warrant it, Chinese Taipei may consider a reverse onus provision as part of a civil forfeiture regime.

2.6.3 COMPLIANCE WITH RECOMMENDATION 27, 28, 30 & 32

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	LC	• Designated authorities do have responsibility for the investigation of ML or TF and recovery of proceeds of crime. • Statistics reflect that currently there has only been limited success in the recovery of proceeds of crime. • There currently exist limitations on measures that can be used to conduct investigations in ML - for example the undercover investigations this is recognised and is actively being worked on by the jurisdiction.
R.28	C	• This rating is fully observed
R.30	LC	• There is a noticeable absence of M/L prosecutions that stem from income generating crime other than economic crime (such as narcotics offending). This reflects a lack of focus on the investigation of ML across all law enforcement. • Narcotics investigators lack the focus (at this time) to investigate the laundering of drug related income as part of their investigations and the ability to recover and confiscate that income • There is a lack of dedicated units to recover proceeds of crime. • There are significant deficiencies with regards to capacity of border control to implement AML/CFT measures at the border, in particular cross-border movement of currency and bearer negotiable instruments
R.32	LC	NB, this is a composite rating.

2.7 CROSS-BORDER DECLARATION OR DISCLOSURE (SR.IX)

285) Article 11 of the Foreign Exchange Control Act stipulates that passengers or service personnel of a transportation vehicle, who carry foreign currency into or out of Chinese Taipei, shall declare the currency movement to the Customs Service. Article 24 outlines that failure to report or falsely declaring a currency movement will result in all or the excess portion of the carried currency being confiscated.

286) On 21 March 2003 the Ministry of Finance stipulated that the declaration threshold be set at $10,000 USD or the equivalent in other foreign currency.

287) The declaration is completed on the 'Cross-border Currency Movement Declaration' form. This form includes details such as the passenger's details and identification documents, travel information and the amount of currency carried. On 1 January 2006 the form was amended to include two additional columns being 'purpose' and 'the signature of the traveller'.

288) There also exists a specific 'Inward Passengers Carrying Baggage and Good Clearance Regulation' which requires all inward passengers to declare in the form of a written declaration and pass through the 'Goods to declare' counter when carrying:

a) foreign currency exceeding USD$10,000 or equivalence in total;

b) new Taiwan Dollar exceeding NT$60,000;

c) gold exceeding a total value of US$20,000; or

d) China currency exceeding RMB $20,000

289) Upon receipt of the declarations the Customs Service is required by Article 9 of the MLCA to forward these declarations to the MLPC.

2.7.1 DESCRIPTION AND ANALYSIS

Special Recommendation IX

290) In circumstances where currency is detected and there has not been a declaration or when a declaration has been submitted and it is false or misleading, the Customs Service has the ability to interrogate the passenger. The extent of that interrogation and investigation would appear to be very limited, however there is the ability to seek further information from the passenger.

291) If there is suspicion that the funds are evidence of a ML/FT offence, Customs Service Officials are required to report the incident pursuant to article 241 of the Criminal Procedure Code to the Police authorities who can initiate restraint of the funds subject to statutory requirements.

292) The Customs Service retains records and information relating to currency or bearer negotiable instrument movements. Article 12 of the Customs Law permits this information to be shared with investigative authorities involved with ML/FT investigations.

293) Commencing in September 2003 the Director General of Customs began to forward Cross-border Declarations that exceeded $1,500,000 NTD (approx $45,000 USD) to the MLPC. On 1 July 2006 this threshold was abolished and now all Cross-border Currency Declaration Reports are forwarded to the MLPC.

294) During the on site visit these reports were being forwarded every 30 days to the MLPC. The Customs Service and the MLPC are currently working together to install a process to allow for these reports to be filed electronically with the MLPC to avoid the delays that currently exist. When these reports are received they are recorded in the MLPC database and are therefore available for further investigation and are able to be accessed by competent authorities for ML/CFT purpose.

295) There is a close working relationship between the Customs Service and other authorities involved in ML/FT compliance. In June 2005 the MOJ established the 'Improving AML/CFT Measures Co-ordination Forum'. This forum meets to review current measures and discuss operational issues that can improve compliance with the international standards.

296) The jurisdiction identifies it has taken efforts to establish co-operation channels with foreign customs and immigration counterparts. Co-operation with the United States did lead to a successful interception of $2 million counterfeit US dollars in transit between mainland China and the US in August 2005. In general Customs report that there are limited formal international relationships that exist between Chinese Taipei Customs and other jurisdictions.

297) As noted previously, when a person falsely reports or fails to report a currency movement, the excess of the prescribed amount can be confiscated. This is the only sanction in place in relation to failure to report or false reporting.

298) If it can be determined that the physical cross-border transportation of currency or bearer negotiable instruments relates to money laundering then in addition to the

sanctions mentioned in the proceeding paragraph additional sanctions are available pursuant to the MLCA.

299) The draft Counter Terrorism Act will provide additional sanction in relation to physical cross-border transportation of currency or bearer negotiable instruments. As the legislation is in draft there is currently no specific sanction in relation to physical cross-border transportation of currency or bearer negotiable instruments that are related to terrorist financing.

300) In the event where an unusual border movement of gold or precious metals is detected, it would be referred to the MLPC which would initiate enquiry with their international counterparts to establish the purpose of the movement and direct appropriate action as required. At the time of the evaluation no such reports had ever been generated.

301) Customs have had extremely limited success in identifying undeclared border movements. Between 2003 and 2006 there were 85 million passenger movements across the border and only 13 cases where persons were detected with undeclared or falsely declared currency movements. This reflects a very serious lack of capacity and resources in the Customs agency.

302) An urgent review of customs powers and resources is required. A system of profiling potential cash couriers needs to be established and implemented and the number of random inspections needs to be increased. A review of Customs Service powers and training in relation to immediate investigative response to the persons who are discovered at the border with cash needs to be undertaken. The capability to prevent the movement of funds over the border needs to be increased to complement other effective measures in place within the jurisdiction.

Recommendation 32

Table 9. Statistics in relation to the number of Cross-border Currency Reports received by the Customs Service

Year	2003		2004		2005		2006	
	Inward	Outbound	Inward	Outbound	Inward	Outbound	Inward	Outbound
Keelung Customs	11	0	23	1	3	0	0	0
Taipei Customs	153	116	615	355	576	796	1373	1091
Kaohsiung Customs	15	3	46	5	66	12	137	31
Total	298		1045		1453		2632	

303) The statistics on the number of Cross-border Movement Reports reflect there is a steady increase in the number of reports received. As referred earlier no declarations in relation to gold and precious stones and metals have ever been submitted.

Table 10. Detections of unreported or falsely reported declarations 2003 - 2006

Year	2003	2004	2005	2006
USD	1 ($90,000)		1 ($31,950)	
JPY			1 (4,820,000)	2 (53,890,000)
EUR			1 (13,000)	

HKD		2 (620,000)	2 (6,443,000)	
Other		1(294,000)		3 (505,500)
Total	**1**	**3**	**5**	**5**

304) 13 cases of false or failed declaration have been identified during 2003 – 2006 in which there were 96 million passenger movements.

2.7.2 RECOMMENDATIONS AND COMMENTS

305) An urgent review of customs powers and resources should be undertaken.

306) A review of the declaration systems needs to be undertaken to determine if the lack of resources available to the Customs Service to enforce the system is undermining its effectiveness.

307) A system of profiling potential cash couriers needs to be established and implemented and the number of random inspections needs to be increased.

308) A review of Customs Service powers and training in relation to immediate investigative response to the persons who are discovered at the border with cash needs to be undertaken. The capability to prevent the movement of funds over the border needs to be increased to compliment other effective measures in place within the jurisdiction.

309) A review of the sanctions available for non-declaration and the smuggling of cash is required. There needs to be a strong deterrent for smuggling or failure to declare currency movements. Sanctions in addition to confiscation of excess funds are required to encourage compliance with the declaration system.

310) A specific sanction for the smuggling of cash needs to be implemented.

2.7.3 COMPLIANCE WITH SPECIAL RECOMMENDATION IX & RECOMMENDATION 32

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	PC	• There is a lack of resources available to the Customs Service to enforce the declaration system, which appears to be undermining its effectiveness. • There is a deficiency in the sanctions available for non-compliance with the declaration system. • There is a lack of implementation of a specific sanction for the smuggling of cash
R.32	LC	NB, this is a composite rating

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Customer Due Diligence & Record-keeping

General

311) The definition of "financial institutions" in the Money Laundering Control Act (MLCA) includes the following institutions:

a) Banks;

b) Trust and investment corporations;

c) Credit cooperative associations;

d) Credit departments of farmers' associations;

e) Credit departments of fishermen's associations;

f) Postal service institutions;

g) Negotiable instrument finance corporations;

h) Credit card companies;

i) Securities brokers;

j) Securities investment and trust enterprises;

k) Securities finance enterprises;

l) Securities investment consulting enterprises;

m) Securities central depository enterprises;

n) Futures brokers; and

o) Jewellery shops.

312) Currency exchange bureaus are not included in the definition of financial institutions in the MLCA. Under the Regulations Governing Establishment and Administration of Foreign Currency Exchange Bureaus, the following entities can apply for license to operate currency exchange bureaus:

a) Hotels, travel agencies, department stores, handicraft shops, jewellery stores, convenience stores, administrative offices of national scenic areas, tourist sightseeing service centers, railway stations, temples, museums;

b) Institutions and associations providing services to foreign travellers or hotels and stores located in remote areas

313) The Central Bank of China amended the Regulations Governing Establishment and Administration of Foreign Currency Exchange Bureaus on 25 January 2007. The amendment introduced CDD and STR obligations for currency exchange bureaus. The amendment had been in force for only about a week when the Evaluation Team visited Chinese Taipei, and it was too early for the Evaluation Team to form judgment on the effectiveness of the regime.

314) The CDD regime in Chinese Taipei covers all the 13 financial activities listed in the Glossary to the FATF 40 Recommendations with the exception of financial leasing. Currently, entities that provide financial leasing are registered under the Company Act and are regulated by the Ministry of Economic Affairs. They are, however, "finance companies" under the Draft Finance Company Act, which is still in the legislative process. According to the statistics provided by the Ministry of Economic Affairs, the amount of

capital of companies engaged in the businesses related to the purchase of accounts receivables and leasing is as follows: 152 companies with over NT$ 500 million, 93 companies with NT$ 1 billion ~ 2 billion, and 43 companies with 2 billion ~ than NT$ 3 billion.

3.1 RISK OF MONEY LAUNDERING OR TERRORIST FINANCING

Law Regulation and Other Enforceable Means

315) Chinese Taipei has adopted an approach to AML/CFT where different components of CDD regime apply to different sectors within the financial system. CDD requirements explicitly set out in the MLCA cover only customer identification procedures for transactions that trigger STR or CTR obligations. CDD requirements for account opening and occasional transactions that do not trigger CTR obligations are not captured in the MLCA and are scattered in several laws, regulations, and internal control guidelines.

316) Article 6 of the MLCA requires financial institutions to establish their own money laundering prevention guidelines and procedures. The same Article also provides that such guidelines and procedures must at a minimum include the following:

a) internal control procedures for anti-money laundering operations;

b) on-the-job AML training instituted or participated in by the financial institution;

c) designation of a responsible person to coordinate and supervise the implementation of the money laundering prevention guidelines and procedures; and

d) other cautionary measures prescribed by the competent authority and the Ministry of Finance

317) Various “commercial associations” as are defined by the Commercial Group Act have published Money Laundering Prevention Guidelines and Procedures for their respective members, and individual financial institutions have established their internal guidelines based on the Guidelines issued by their respective commercial groups. The following commercial groups have published Money Laundering Prevention Guidelines and Procedures:

a) Bankers’ Association;
b) Securities Investment Trust and Consulting Association;
c) Trust Association;
d) Taiwan Securities Association;
e) China National Futures Association;
f) Life Insurance Association; and
g) Non-life Insurance Association.

318) With the sole exception of the Securities Investment Trust and Consulting Association, which has regulatory functions under Article 88 of the Securities Investment Trust and Consulting Act, these commercial associations have no self-regulatory powers. Their roles are limited mostly to training and education of the employees of the member

institutions, liaison between the government and the members, and promotion of economic policies and commercial decrees of the government.

319) Chinese Taipei authorities cited the Money Laundering Prevention Guidelines and Procedures as the primary legal bases for many of the CDD measures, even for a few measures where there are laws or regulations that provide for such measures.

320) The Evaluation Team had discussions among the team members and with Chinese Taipei government authorities about the nature of Guidelines and whether they can be recognized as "other enforceable means." The government authorities responded to the Evaluation Team's questions about the nature of the model guidelines as the following:

a) The Guidelines have clear legal basis as they were published and adopted pursuant to Article 6 of the MLCA;

b) The Guidelines and the individual financial institutions' internal control guidelines were reviewed and approved by the FSC as is stipulated in the MLCA;

c) The Guidelines were incorporated in their entirety into the internal control guidelines of individual financial institutions;

d) The FSC's AML/CFT examination of financial institutions includes examination on compliance with the Guidelines and the FSC can order correction when it discovers non-compliance.

321) The Evaluation Team saw good implementation of the Guidelines. As was emphasized by the government authorities, the general practice in the financial sector was that the Guidelines were indeed incorporated in their entirety into the internal control procedures of individual financial institutions. The analyses contained in this report, therefore, have taken the approach of considering laws or regulations that explicitly set out specific requirements as the primary bases of rating and considering the Guidelines as "other enforceable means".

3.2 CUSTOMER DUE DILIGENCE, INCLUDING ENHANCED OR REDUCED MEASURES (R.5 TO 8)

3.2.1 DESCRIPTION AND ANALYSIS

Recommendation 5

Anonymous Accounts

322) Article 5 of the Name Act, which was promulgated by order of the President in 1953, provides that real names shall be used in any registration of acquisition, loss, change, or deposit of assets and that transactions that do not use real names shall not be processed. There is no specific restriction on interpretation of the term "asset" in the provision, and the term is interpreted to encompass both real property and liquid assets.

323) Along with the customer identification requirements under the MLCA and the Money Laundering Prevention Guidelines and Procedures issued by commercial associations, the requirement to use real names stipulated in the Name Act effectively prevents financial institutions from opening anonymous accounts or accounts under fictitious names.

324) All the financial institutions interviewed by the Evaluation Team said that they do not have any anonymous accounts or any accounts under fictitious names.

When CDD is required

Banking Sector

325) **When establishing a new business relationship:** The Regulations Governing Bank Handling of Accounts with Suspicious or Unusual Transactions, which was promulgated by the Financial Supervisory Commission in accordance with Paragraph 3 Article 45-2 of the Banking Act, sets out CDD requirement for banks when handling account opening. Article 13 of the Regulations requires banks to verify the customer's identity by checking two different ID documents, one of which should be the national ID card or an ID document with equivalent status and the other of which should be an ID document with sufficient identification capability.

326) The same Article also lists cases where banks should not accept an application for opening of an account. It stipulates that banks should turn down an application for account opening if any of the following is the case:

a) the customer uses a fake name, a nominee, or a shell entity to open an account;

b) the ID document provided by the customer is a forged or a photocopied document;

c) documents provided by the customer are dubious or unclear;

d) the customer procrastinates in providing identification documents in an unusual manner;

e) another deposit account of the customer is reported as a Watch-listed account; or

f) other unusual circumstances exist and the customer fails to provide a reasonable explanation.

327) The Banking Bureau of the FSC said that any financial institution violating the said Article can be fined not less than NT$500,000 (approximately US$15,000) and no more than NT$2,500,000 (approximately US$75,500) under Article 132 of the Banking Act.

328) The Regulations, however, do not provide any guidance on the specific types of customer information to be obtained and retained.

329) The Money Laundering Prevention Guidelines and Procedures for Banks published by the Bankers' Association also set out CDD requirements for account opening. The Guidelines require banks to verify customer identity by checking two different types of ID documents. The Guidelines also require banks to verify the identity of the agent/consignee if the account opening is handled by an agent or a consignee.

330) **Occasional transactions**: Under Article 7 of the MLCA and the Regulations Regarding Article 7 of the MLCA, financial institutions are required to verify customer identity when handling any cash transaction exceeding NT$1 million (approximately US$30,000), which is about double the threshold specified in the FATF Recommendations. Under the aforementioned Regulations, banks must verify the customer's identity based on the identification document provided by such customer and

keep records of the name, birth date, address, telephone number, transaction account number, transaction amount, and the ID number. If such a transaction is processed by an agent, the bank must record the name, birth date, telephone number and the ID number of the agent as well.

331) **Wire transfer:** The Directions for Confirming Customer Identity in Domestic Remittance Operations of Financial Institutions require financial institutions to perform CDD for any domestic cash remittance of NT$30,000 (approximately US$900) or more. For such remittances, financial institutions are required to record the remitter's full name, national identity card number (or Uniform Invoice Number for a non-natural person), and phone number (or address). To perform such CDD, financial institutions are required to ask the originator to present proof of identity and check if the remitter's identity is consistent with the information on the remittance application form.

332) Under the Directions Governing Banking Enterprises for Operating Foreign Exchange Business issued by the Central Bank of China, a financial institution must check the ID card (or a copy of the registration certificate for a juristic person) of the originator for any cross-border remittance that it handles. The wire transfer remittance shall show the full name, the account number, I.D. number and address of the originator.

333) **When there is a suspicion of money laundering**: Under Article 8 of the MLCA, financial institutions are required to verify customer identity for any transaction suspected to be money laundering activity. The Regulations regarding Article 8 of the Money Laundering Control Act list specific indicators of suspicious activities that must trigger the customer identity verification obligation. The Regulations require financial institutions to verify customer identity for any suspicious transactions as are determined according to their internal anti-money laundering guidelines. The same Regulations also require financial institutions to perform CDD for transactions where the ultimate beneficiary or transaction party is a terrorist or terrorist group as listed by the Ministry of Finance based on information provided by foreign governments.

334) **When there are doubts about the veracity of previously obtained customer identification data**: An obligation to perform CDD when previously obtained customer identification information is dubious is set out in the Money Laundering Prevention Guidelines and Procedures adopted by the Bankers' Association, but not specifically captured by a law or a regulation. The Guidelines requires banks to reconfirm customer identity by phone, by letter, or in person in cases where the customer is not found to be suspicious until after the completion of account opening.

Securities Sector

335) **When establishing a new business relationship**: Regulations governing establishment and operation of securities sector entities promulgated by the FSC based on the Securities and Exchange Act, the Futures Trading Act, and the Securities Investment Trust and Consulting Act set out basic CDD requirements for the securities sector. The regulations require financial institutions to enter into brokerage contract/consignment contract with the customer before accepting trade orders from the customer. The table below sets out the types of customer identification information to be included in such brokerage/consignment contracts:

Table 11

Laws	Regulations prescribed under those laws	Customer ID required in brokerage/consignment contract
Securities and Exchange Act	Regulations Governing Securities Firms (Article 34)	- Name, domicile, and mailing address - Occupation and age - Asset condition - Investment experience - Reason for opening account - Other necessary information
	Regulations Governing Securities Investment and Consulting Enterprises (Article 8)	- Names and addresses of the parties
Futures Trading Act	Regulations Governing Futures Commission Merchants (Article 29)	- Name, age, occupation, domicile, telephone number, and ID number if the principal is a natural person - Name, the representative, domicile, and government uniform invoice number of principal juristic person - The ID number issued to the principal by the Stock Exchange Corporation or Futures Exchange Corporation of overseas Chinese or foreign national principals
	Regulations Governing Managed Futures Enterprises (Article 23)	- Names and addresses of the parties - Provisions regarding designation of the custodian institution and its execution of related matters - The name of the futures broker consigned for trading
	Regulations Governing Futures Advisory Enterprises (Article 12)	- Names and addresses of the parties
Securities Investment Trust and Consulting Act	Regulations Governing the Conduct of Discretionary Business by Securities Investment Trust Enterprises and Securities Investment Consulting Enterprises (Article 22)	- Names and addresses of the parties - Designation of the securities broker and any change in that designation

336) The Operating Rules of the Taiwan Stock Exchange Corporation set out more detailed procedures for securities brokers accepting trading consignments. The Rules provide that upon opening a new account, a securities broker must enter into a consignment contract with the principal specifying the date of account opening, name of the principal (the name of the agent, if the application is handled by an agent), his/her sex, age, occupation, address, telephone number, and National Identity Card number. Where the principal is a juristic person, its name, address, and uniform invoice number must be included in the contract.

337) When a securities broker accepts account opening from a custodian institution representing the principal consigning discretionary account investments, the name of both principal and consignee must be specified in the account name. Furthermore, the following documents must be submitted:

a) a photocopy of written agreement signed by the principal, consignee, and the custodian institution regarding respective rights and obligations;

b) where the principal is a natural person, photocopy of his/her National Identity Card;

c) where the principal is a juristic person or other institution, a photocopy of the registration document of the juristic entity, photocopy of the notice of issuance of uniform number for taxable entities issued by the tax authorities, a photocopy of the National Identity Card of the responsible person of the juristic entity; and

d) a photocopy of the registration document of the consignee as a company, and photocopy of the National Identity Card of the responsible person of such company

338) When a trustee applies for opening of an account, the securities broker must indicate in the account name that it is a segregated trust account and must obtain the following documents:

1. Where the trustee is a trust enterprise:

a) Photocopy of the juristic person registration documentation of the trust enterprise and photocopy of the notice of issuance of uniform number for taxable entities issued by the tax authorities.

b) Power of attorney and photocopies of the National Identity Cards of the representative of the juristic person and the attorney in fact.

c) Where the settlor is a natural person, a photocopy of the person's National Identity Card; where it is a juristic person, a photocopy of the documentation of its juristic person registration.

d) Summary terms and conditions of the contract for the trust

2. Where the trustee is not a trust enterprise:

a) Where the settlor and trustee are natural persons, photocopies of their National Identity Cards; where they are juristic persons, photocopies of their juristic person registration documentation, and the power of attorney and photocopies of the National Identity Cards of the representative of the juristic person and the attorney in fact.

b) Photocopy of the notice of issuance of uniform number for taxable entities issued by the tax authorities.

c) Photocopy of the trust deed.

3. Where a trading account belongs to a charitable trust, a photocopy of the approval document by the competent authority for the relevant industry must also be submitted.

339) To open an account at a securities broker, an overseas Chinese or a foreigner must first appoint a domestic agent/representative to apply for registration at the Taiwan Stock Exchange Corporation. After the registration is completed, the agent/representative must submit the following documents to a securities broker for account opening:

a) The power of attorney issued by the applicant authorizing a domestic agent to handle the account opening.

b) Copy of the National Identity Card, Alien Resident Certificate or company registration (or amendment registration) certification of the domestic agent or representative.

340) Securities firms are allowed to open omnibus accounts, but since Chinese Taipei still has some ceilings on foreign investment, each securities firm, be it a head office or a branch, is allowed to open only two omnibus accounts in its own name for use by offshore overseas Chinese and foreign nationals, branches established in Chinese Taipei by foreign banks or insurance companies, domestic institutional investors, and discretionary investment customers. A principal may use an omnibus trading account only after opening a securities trading account. If a principal has mandated a mandatory to conduct trades and handle allocation of trade prices and volumes, it must provide a power of attorney and specify the allocation of trade price and volume and relevant authorized matters. If a mandatory is an institutional investor, the power of attorney must be signed/sealed by that institutional investor. However, where a same mandatory is mandated by offshore overseas Chinese or foreign nationals, domestic funds, or units of a same group, the mandatory must provide a statement specifying the principals' ID numbers or uniform invoice numbers, names, and other relevant information. When a securities firm accepts orders to trade securities through an omnibus trading account, it must note the name or symbol of the principal or the mandatory on the order form or the trading order record.

341) The Operating Rules of the Taiwan Futures Exchange Corporation also set out detailed procedures for futures commission merchants' handling of account opening. When a futures commission merchant is mandated to open an account, it must enter into a brokerage contract with the principal specifying the account opening date, and the name, gender, age, profession, address, telephone number, and personal identification card number of the principal; where the principal is a juristic person the contract must specify the name, address, and the uniform invoice number of the principal.

342) When a futures commission merchant accepts application for account opening from a custodian institution representing a principal that mandates discretionary futures trading, the names of both principal and the custodian must be specified in the account name. A brokerage contract for account opening and discretionary futures trading must be signed, and an agreement must be signed mandating the custodian institution to work as the agent for collection/payment and settlement of margin and premium. The following documents must also be obtained:

a) a photocopy of the written agreement signed by the principal, mandatory, and custodian institution regarding their respective rights and obligations;

b) where the principal is a natural person, a photocopy of his/her National Identity Card; where the principal is a juristic person, a photocopy of its juristic person registration document, photocopy of the notice of issuance of uniform number for

taxable entities issued by the tax authorities, and a photocopy of the National Identity Card of the representative of the juristic entity must be submitted;

c) photocopies of the company registration documents of the mandatory and the custodian institution, and photocopies of the National Identity Card of the responsible person; and

d) photocopy of the National Identification Card of the person who makes decisions in the discretionary trading (including any deputy thereof) and of any other associated persons who execute trades, and original copy of power of attorney issued by the discretionary futures trading mandatory to the aforesaid personnel.

343) Overseas Chinese and foreign nationals can engage in domestic futures trading only after submitting the relevant documents and carrying out identity registration as required in accordance with the Directions for Applications by Overseas Chinese and Foreign Nationals for Registration for Domestic Securities Investment or Trading of Domestic Futures. An offshore overseas Chinese or a foreign national trading through a foreign futures commission merchant with an omnibus account at a domestic futures commission merchant must also complete identity registration before doing transactions. For such registration, the following documents must be submitted:

a) a power of attorney for the agent or a letter of appointment for the representative;

b) identity documents (for a natural person, passport or other identification certificate with a photo attached which can prove the applicant's nationality; for a non-natural person, registration certificate issued by a local governing authority); and

c) other documents as required by the competent authority or the Futures Exchange Corporation.

344) When processing account opening for an offshore overseas Chinese or a foreign national, a futures commission merchant must obtain the following documents which are signed or sealed by the domestic agent or representative before it may open an account:

a) photocopy of the certificate of completion of identity registration;

b) the power of attorney/agency letter authorizing a domestic agent or representative to handle the procedures pertaining to domestic futures trading account opening, trade settlement, information reporting, exercise of rights associated with purchased products, applying for foreign exchange settlement, and payment of taxes;

c) photocopy of the national identity card, alien resident certificate or company registration (or amendment registration) certification of the domestic agent or representative; and

d) the photocopy of the contract with the custodian institution.

345) When opening an account for an onshore overseas Chinese or foreign national, the futures commission merchant must obtain the following documents:

a) photocopy of the certificate of completion of identity registration;

b) passport and overseas Chinese identity certificate (or alien resident certificate) for a natural person; and

c) ministry of Economic Affairs recognition certificate, company registration certificate, business registration certificate, and national identity card (or alien resident certificate or passport) of the responsible person for an institutional investor.

346) Offshore foreign futures commission merchants can open omnibus accounts at domestic futures commission merchants that are qualified clearing members of the Futures Exchange Corporation. Offshore foreign futures commission merchants opening omnibus accounts at domestic futures commission merchants cannot accept orders to engage in domestic futures trading through the omnibus account by any person other than offshore overseas Chinese and foreign nationals. Where an offshore overseas Chinese or foreign national places orders with an offshore foreign futures commission merchant that has opened an omnibus account at a domestic futures commission merchant, the offshore foreign futures commission merchants, the custodian institution, or the domestic futures commission merchant must submit itemized report of futures transactions of the individual clients under omnibus accounts to the Futures Exchange Corporation.

347) **Occasional transactions**: All the CDD requirements that apply to cash transactions exceeding NT$1 million stipulated in Article 7 of the MLCA and the Regulations Regarding Article 7 of the MLCA apply to the securities sector. In practice, however, cash transactions are handled only in a very limited range of situations because settlements with customers are mostly carried out through wire transfers under the full-scale book entry settlement system.

348) **When there is a suspicion of money laundering**: Article 8 of the MLCA and the Regulation Regarding Article 8 of the MLCA, which require financial institutions to ascertain the identity of the customer for any suspicious transaction apply to the securities sector. The CDD obligations for any transaction where the ultimate beneficiary is a terrorist or a terrorist group as listed by foreign governments also apply to the securities sector.

349) The Money Laundering Prevention Guidelines and Procedures issued by the Taiwan Securities Association, the Securities Investment Trust & Consulting Association, and the China National Futures Association for their respective members also set out examples of signs of suspicious activities and require the member institutions to verify customer identity and file STRs to the Money Laundering Prevention Center when they see suspicious activities.

350) When previous obtained customer information is dubious: Obligation to perform CDD when previously obtained customer information is dubious is captured neither by any law/regulation nor any guidelines.

Insurance Sector

351) **When establishing new business relationships**: Articles 55 and 108 of the Insurance Law, which specify the information to be included in insurance contracts, contain the basic levels of CDD obligations for insurance companies' establishment of new business relationship. Article 55 states that the names and addresses of the parties must be specified on insurance contracts. Article 108 provides that life insurance contracts, in addition to the customer information stipulated in Article 55, must specify the name, sex, age and address of the insured and the names of beneficiaries and their relations to the insured.

352) The Life Insurance Association and the Non-life Insurance Association have issued Money Laundering Prevention Guidelines and Procedures for their respective sectors. The Guidelines set out detailed CDD procedures for establishment of new business relationships by insurers. The Guidelines require insurers to verify the identities of the applicant and the insured by checking two different ID documents, one of which should be the national ID card for natural persons and the business registration certificate for legal persons. The Guidelines also require insurance companies to check a second ID document to reconfirm the customer identity.

353) The Guidelines for life insurance companies also set out CDD procedures for underwriting operations. the require underwriters to check if the policy application was written by the applicant himself/herself and if the identification information written in the solicitation report is true.

354) General practice in the sector is that insurance companies perform quite comprehensive CDD procedures even though it is not for the explicit purpose of AML/CFT but for underwriting risk control.

355) Occasional transactions: Article 7 of the MLCA and the Regulation Regarding Article 7 of the MLCA, which require financial institutions to ascertain the identity of the customer for any cash transaction exceeding NT$1 million, apply to insurance companies.

356) When there is a suspicion of money laundering: Under Article 8 of the MLCA and the Regulation Regarding Article 8 of the MLCA, financial institutions are required to verify customer identity for any transaction suspected to be money laundering activity.

357) The Money Laundering Prevention Guidelines and Procedures published by the Life Insurance Association and the Non-life Insurance Association set out examples of suspicious activities and require member institutions to verify customer identity when they see such suspicious activities.

358) When previous obtained customer information is dubious: Obligation to perform CDD when previously obtained customer information is dubious is captured neither by any legislation nor by any guidelines.

Required CDD Measures

ID Verification Using Reliable Documents

359) **Banking sector**: When handling account opening, banks are required to verify customer identity by checking two ID documents. Regulations Governing Bank Handling of Accounts with Suspicious or Unusual Transactions provides that when processing account opening, a bank must require dual identification documents, one of which must be the National ID Card (or Incorporation Certificate), and the other of which must be an identification document with sufficient identification capability.

360) The “Money Laundering Prevention Guidelines and Procedures for Banks” issued by the Bankers’ Association sets out more detailed guidelines as to the types of ID documents acceptable for identity verification when processing account opening. Under the Guidelines, one of the two customer ID documents that banks check when processing application for account opening must be the national ID card for a natural person and the certificate of incorporation or other official documents verifying registration for a juristic person. For the secondary ID document, banks must check an ID document with sufficient identification capability. Examples of such secondary ID documents acceptable

for natural persons include the National Health Insurance Card, passport, driver's license, student ID card, and household registry book or certificate. For non-natural persons, such documents include articles of incorporation, minutes of board of directors meeting, and financial statements.

361) **Securities sector**: Article 75-1 of the Operating Rules of the Taiwan Stock Exchange Corporation sets out the types of ID documents that a securities broker must check when handling account opening. If the principal is a natural person, he/she must appear in person and present his/her original ID Card. If the principal is a juristic person, the authorized person must present a copy of the registration document of the juristic person, a copy of the notice of issuance of uniform number for taxable entities issued by the tax authorities, the power of attorney, and photocopies of the identification cards of the responsible person of the juristic entity and the authorized person.

362) Article 44 of the Operating Rules of the Taiwan Futures Exchange Corporation also sets out the types of ID documents that a futures commission merchant must check when opening an account. A principal who is a natural person must open the account by appearing in person with his or her National ID Card and affixing his or her signature or seal on site. Where the principal is a juristic person, the juristic person and the representative must affix their signatures or seals on the brokerage contract and shall bestow a power of attorney.

363) The Money Laundering Prevention Guidelines and Procedures published by the Taiwan Securities Association, the Securities Investment Trust and Consulting Association, and the China National Futures Association also set out the types of ID documents acceptable for CDD purposes. They require their member institutions to use the National ID Card for natural persons and the certificate of incorporation or other certificate of registration for legal persons. In addition, the Guidelines issued by the Securities Investment Trust & Consulting Association and the China National Futures Association require the member institutions to check a second ID document.

364) **Insurance Sector**: For the insurance sector, the types of ID documents acceptable for CDD purposes are set out only in the Money Laundering Prevention Guidelines and Procedures issued by the Life Insurance Association and the Non-life Insurance Association. Under the guidelines, insurers are required to verify customer identity by checking ID documents such as the national ID card, passport, or driver's license for natural persons and corporate registration certificate, company license, business license, or certificate of profit-seeking enterprise business registration if the customer is a legal person. The Guidelines also require the member institutions to check a second ID document

Legal Persons and Legal Arrangements

365) The obligation to check if a person purporting to act on behalf of a legal person is so authorized is not fully captured by laws or regulations.

366) **Banking sector**: The Money Laundering Prevention Guidelines and Procedures for Banks adopted by the Bankers' Association contain requirements that address the issue. According to the Guidelines, when an applicant mandates or authorizes another to open an account on its behalf, the bank must confirm the facts of the mandate/authorization and must refuse to open an account if verification of such facts proves difficult. Where a non-individual applies to open an account, the bank must obtain a copy of the certificate of incorporation registration and check a second document showing the status of the juristic person such as the minutes of its Board of Directors

meeting, a copy of the articles of incorporation, or financial statements before approving the account opening.

367) **Securities sector**: The Operating Rules of the Taiwan Stock Exchange Corporation and the Operating Rules of the Taiwan Futures Exchange Corporation set out requirements for securities brokers and futures commission merchants to check if a person applying for account opening is so authorized. Article 75-1 of the Operating Rules of the Taiwan Stock Exchange Corporation provides that when handling account opening for a juristic person, a securities broker must obtain a copy of the notice of uniform number for taxable entities issued by the tax authorities, power of attorney, and photocopies of the identification cards of the person acting on behalf of the juristic person.

368) Article 47 of the Operating Rules of the Taiwan Futures Exchange Corporation provides that a futures commission merchant should not accept an application to open an account for a juristic person if the person acting on behalf of the juristic person is unable to present a document evidencing the authorization. Article 44 of the same Rules provides that a principal that is a juristic person must present a photocopy of its juristic person registration document, a photocopy of the notice of issuance of uniform number for taxable entities issued by the tax authorities (a profit-seeking enterprise may be exempt from submitting such copy of notice), and a photocopy of the National Identity Card of the representative to open an account.

369) Article 25 of the Regulations Governing Futures Commission Merchants provides that a futures commission merchant must not accept application for account opening if the customer is acting on behalf of a juristic person but fails to present the documents issued by such juristic person authorizing the opening of the account.

370) The Money Laundering Prevention Guidelines and Procedures adopted by the Securities Investment Trust & Consulting Association states that when the customer is a legal person, the authorized person handling the transaction must present Power of Attorney.

Beneficial Ownership

371) Explicit requirements for financial institutions to verify the beneficial owner are confined to situations where they know that the person carrying out a financial transaction is acting on another person's behalf. Such situations include the following examples:

a) The Financial Supervisory Commission issued directions for wealth management businesses undertaken by banks, securities firms, and life insurance companies respectively. Under these directions, a financial institution engaging in wealth management business must perform additional due diligence measures in situations where a customer authorizes another person to sign and open an account on his/her behalf. The financial institution must conduct due diligence on such an authorized person and identify the ultimate beneficial owner.

b) When signing a trust agreement, a trust enterprise must identify both the trustor and the beneficiary.

c) When a securities broker or a futures commission merchant accepts account opening from a custodian institution representing the principal consigning discretionary account investments, the name of both principal and consignee must be specified in the account name.

d) When a trustee applies for opening of an account, a securities broker must indicate in the account name that it is a segregated trust account and must identify both the trustor and the trustee.

e) When a securities firm or a futures commission merchant accepts orders to trade securities through an omnibus trading account, it must make trading quotes corresponding to the orders placed by the principals or the mandatories, and should note the name or symbol of the principal or the mandatory on the order form or the trading order record.

372) But other than these situations, there is no law or regulation that explicitly requires financial institutions to take reasonable measures as a routine CDD procedure for all customers to check if the customer is acting on behalf of another person. Nor are there any explicit requirements for financial institutions to take reasonable measures to understand the ownership structure of a customer that is a legal person or to identify the natural person that ultimately owns or controls the legal person.

Purpose and Nature of Business Relationship

373) **Banking sector**: For banks, there is no specific requirement to obtain information on the purpose and intended nature of all business relationships. Under the Money Laundering Prevention Guidelines and Procedures issued by the Bankers' Association, banks are required to, as far as possible, look into the motive behind financial transactions that are complex, unusual or lack any reasonable economic purposes. Banks, however, are not required to understand the purpose of business relationship on a routine basis for all business relationships.

374) **Securities sector**: Under the Regulations Governing Securities Firms and the Regulations Governing Futures Commission Merchants, securities firms and futures commission merchants are required to establish the reason why the customer is opening the account when handling application for account opening.

375) **Insurance sector**: The requirement for insurers to establish an understanding on the intended purpose and nature of business relationship addresses only wealth management engaged by life insurers. The Directions for Life Insurance Enterprises Engaging in Wealth Management Business requires life insurers to have in place procedures for evaluating their KYC performance. The matters to be evaluated depend on the nature of the insurance business in question, but should in any case include at least the following: a customer acceptance policy, account opening due diligence policy, assessment of customer investment capacity, and regular monitoring. As part of the account opening procedure, life insurers engaging in wealth management are required to establish an understanding on the purposes and needs for opening such an account.

On-going Monitoring

376) **Banking sector**: The Regulations Governing Bank Handling of Accounts with Suspicious or Unusual Transactions require banks to establish clear 'Know Your Customer' policies and procedures that include standards for monitoring of deposit accounts and transactions.

377) The same Regulations also require banks to establish information systems to help inspect for unusual deposit account transactions. Banks are required to establish early warning criteria focusing on transaction amounts exceeding a certain threshold, transaction amounts clearly inconsistent with average account balances, or frequent use over a short period of time electronic transaction functions. Banks are also required to

assign a specific individual to inspect at least once per day, follow up as necessary, and prepare an inspection record, which is delivered in accordance with internal procedures to the proper supervisor for review.

378) Article 8(4) of the Directions for the Conduct of Wealth Management Business by Banks provides that banks operating wealth management businesses must establish for its wealth managers to stay up-to-date on any change in a customer's financial or business status by regular telephone calls or face-to-face visits, to update customer data files in a timely manner, and to review and assess customers' investment capacities accordingly.

379) **Securities sector**: The Money Laundering Prevention Guidelines and Procedures issued by the Taiwan Securities Association, the Securities Finance Enterprises Association, the Securities Investment & Trust Association, and the China National Futures Association require their respective member institutions to check customer transaction reports regularly. The Guidelines also require member institutions to establish and track each customer's transaction pattern and use the patterns to identify abnormal or suspicious transactions.

380) Article 8(3) of the Directions for the Conduct of Wealth Management Business by Securities Firms provides that the "Know Your Customer" rules of securities firms engaged in wealth management business must include mechanisms for updating customer evaluation information in a timely manner.

381) **Insurance sector**: The Directions for Life Insurance Enterprises Engaging in Wealth Management Business require life insurers to formulate procedures for evaluating their KYC performance. The matters to be evaluated depend on the nature of the insurance business in question, but should in any case include at least the following: a customer acceptance policy, account opening due diligence policy, assessment of customer investment capacity, and regular monitoring.

382) Article 8(4) of the same Directions provides that life insurers operating wealth management businesses must establish for its wealth managers to stay up-to-date on any change in a customer's financial or businesses status by regular telephone calls or face-to-face visits, update customer data files in a timely manner, and review and assess customers' investment capacities accordingly.

Risk

Enhanced Due Diligence

383) The obligations to apply enhanced due diligence measures that are explicitly set out in laws or regulations are limited to cases where there is suspicion of money laundering or other illegal activities and wealth management customers.

384) Article 15 of the Regulations Governing Bank Handling of Accounts with Suspicious or Unusual Transactions requires banks to establish enhanced due diligence procedures for transactions processed through professional intermediary institutions, deposit accounts which used to be classified as Watch-listed Account but have since been de-listed, or for other transactions involving deposit customers or transactions identified as high risk. The same Article also provides that the due diligence procedure used for such high risk customers/transactions must include (1) senior level approval for account opening; (2) gathering of information on the source, destination, and reasonableness of funds; (3) on-going monitoring and control of the transactions in such accounts.

385) The directions issued by the FSC for banks, securities firms, and life insurance companies engaged in wealth management business require such financial institutions to tailor their "Know Your Customer" evaluating rules according to the characteristics of each type of their businesses. The directions also require such financial institutions to apply stricter due diligence and approval procedures to individuals of certain background or professions and their family members identified as high risk customers.

386) The Money Laundering Prevention Guidelines and Procedures for Banks issued by the Bankers' Association set out a list of cases where banks should take extraordinary caution in customer verification. The Guidelines, however, do not specify what types of enhanced measures are required. The examples of cases where banks should take extraordinary caution include the following:

a) customers who handle transactions through an agent or a professional intermediary and those clients who are found to present a high risk toward the bank's goodwill;
b) non-resident customers;
c) private banking customers;
d) customers who have been rejected by other banks;
e) customers who are not in face-to-face transactions; and
f) transactions where the bank know or has reason to assume that the fund come from corrupt sources or misuse of public assets

Simplified CDD Measures for Low Risk Transactions

387) The obligation to perform customer identification, record-keeping and CDD for cash transactions exceeding NT$ 1 million as is stipulated in Article 7 of the MLCA does not apply to transactions between low risk entities. Under the Regulations Regarding Article 7 of the Money Laundering Control Act, financial institutions are exempt from the requirement to verify customer identity, keep transaction records, and to file CTR for the following transactions even if the amount is NT$1 million or larger:

a) transactions that involve receivables or payables that are due, in connection with statutory or regulatory provisions or contractual relationships, to/from government agencies, government owned businesses, agencies acting with power delegated by the government, public/private schools, public enterprises or foundations established by the government;
b) transfers between financial institutions except those arising from cashing a cheque from another financial institution by a customer in the amount of NT$1,000,000 or larger;
c) lottery ticket purchases by lottery merchants;
d) margins posted by securities firms or futures commission merchants;
e) transfers received when acting as collection agent (excluding special subscription accounts) where the collection agent has provided the relevant parties' names; and
f) cash transactions with entities that have frequent need to make cash receipts/payments such as department stores, supermarkets, gas stations, hospitals, transportation businesses, and restaurants where the list of such entities is approved by the Investigation Bureau of the Ministry of Justice and is renewed at least once a year

388) Other than the exemption described above, there is neither law/regulations nor guidelines that specify simplified CDD measures for any situation where CDD is required as is described in Recommendation 5.2.

Timing of verification and failure to satisfactorily complete CDD

389) According to Article 13 of the Regulations Governing Bank Handling of Accounts with Suspicious or Unusual Transactions, a bank must verify the identity of a customer before processing his/her deposit account opening application. A bank must reject a customer's account opening application, if any of the following is the case:

a) the customer is suspected of using a fake name, a nominee, a shell entity, or a shell corporation to open a Deposit Account;
b) the customer uses forged or fraudulent identification documents or only provides photocopies of the identification documents;
c) documents provided by the customer are suspicious or unclear, or the customer refuses to provide other documents, or the documents provided cannot be authenticated;
d) the customer procrastinates in providing identification documents in an unusual manner;
e) another Deposit Account opened by the same customer has been reported as a Watch-listed Account; or
f) other unusual circumstances exist and the customer fails to provide a reasonable explanation.

390) The Money Laundering Prevention Guidelines and Procedures issued by the Life Insurance Association and the Non-life Insurance Association require insurance companies not to accept an application to buy a policy until satisfactory identity verification is completed.

391) Under the Money Laundering Prevention Guidelines and Procedures issued by their respective commercial associations, life insurance companies, non-life insurance companies, securities investment and consulting businesses, and futures commission merchants are required not to accept application to open an account or buy a policy until satisfactory identity verification is completed.

392) The Operating Rules of the Taiwan Stock Exchange Corporation provide that a securities broker must not accept any consignment to trade in or subscribe to securities from the principal before it completes the account opening, confirms the account information, and keys-in the information and account number into the computer system of the Taiwan Stock Exchange Corporation. The Operating Rules of the Taiwan Futures Exchange Corporation also have similar provisions. They provide that a futures commission merchant must not accept a mandate to engage in futures trading until after the account opening procedure has been completed and the required information and account number have been entered into the computer files of the Taiwan Futures Exchange Corporation.

Existing Customers

393) Chinese Taipei has no specific legislation or guideline that address the issue of applying CDD measures for “existing customers” as is defined in the international standards (existing customers as at the date that the national requirements are brought into force). CDD is to be performed on such an account only when a transaction that triggers CDD obligation is conducted on the account. Examples of such transactions include cash withdrawal/deposit of over NT$1 million, domestic remittance of over NT$30,000(approximately US$900), overseas remittance of any amount, and any suspicious transaction.

Recommendation 6

394) Chinese Taipei has no explicit requirement for financial institutions to apply enhanced customer due diligence measures to Politically Exposed Persons (PEPs). The Regulation Governing Bank Handling of Accounts with Suspicious or Unusual Transactions, Directions Governing Suspected Illegality or Obviously Irregular Activities, and the Money Laundering Prevention Guidelines and Procedures issued by commercial groups require financial institutions to put in place appropriate risk management system for customers or transactions identified as high risk. However, none of the financial institutions interviewed during the on-site visit said that PEPs were categorized as high risk in their internal control systems.

395) The Money Laundering Prevention Guidelines and Procedures for Banks issued by the Bankers' Association state that a bank should refuse to handle a transaction or terminate the banking relationship altogether if it discovers or finds it necessary to assume that the funds flowing through a customer's account come from corruption or misuse of public assets. But other than this requirement not to accept funds coming from an obviously corrupt source, there is neither law/regulation nor any guideline that requires financial institutions to take proactive measures to find out if a customer is a PEP or to establish the source of wealth.

396) The other sectors do not have specific requirements regarding PEPs.

397) Chinese Taipei is not a signatory to the UN Convention against Corruption. The complex political issues have prevented Chinese Taipei from signing or ratifying the Convention. The authorities, however, cited Chinese Taipei's participation and support for APEC Course of Action on Fighting Corruption and Ensuring Transparency (COA) as one of the channels through which Chinese Taipei works with the international community in the fight against corruption. The concrete actions outlined in COA include taking all appropriate steps, consistent with each member economy's status, towards ratification of, or accession to, and implementation of the United Nations Convention Against Corruption (UNCAC). To work for the goal, Chinese Taipei designated the Ministry of Justice Investigation Bureau as the dedicated agency in October 2006.

Recommendation 7

398) The Money Laundering Prevention Guidelines and Procedures for Banks contain guidelines with respect to cross-border correspondent banking that are in full compliance with the FATF Recommendations. Point 3 Paragraph 10 of the Guidelines states that a financial institution must:

a) gather publicly available information to understand the nature of a respondent's business and to determine the reputation of the institution and the quality of supervision;
b) assess whether the respondent institution's AML/CFT control policy is adequate and effective;
c) obtain approval from senior management officers prior to establishing new correspondent relationships;
d) document the respective AML/CFT responsibilities of each institution; and
e) ensure that the respondent institution has duly performed CDD measures and is able to provide information related to customer identification where the correspondent relationship involves the maintenance of payable-through accounts.

399) Banks that the Evaluation Team interviewed had KYC questionnaires for correspondent banking that were in compliance with the Guidelines. However, this part of the Guidelines was added only about two months before the Evaluation Team's onsite

visit (November 2006). Before the revision of the Guidelines, banks' due diligence procedures for respondent banks focused mostly on credit assessment.

Recommendation 8

400) The Operating Rules of the Taiwan Stock Exchange Corporation set out detailed procedures for securities firms' handling of orders placed through non-face-to-face methods:

a) When an order is placed by telephone, letter, or telegraph, the associated person of the securities broker taking the order must complete the order form in writing or electronically and print a record of the order, and process it.

b) When an order is made by electronic transaction methods such as voice mail, the Internet, dedicated line, or closed dedicated network, the securities broker is not required to prepare and complete trading order records; provided that it prints records of the trading orders in the sequence that they were received, and upon closing of the market, the processing person and the chief of the department sign such records. The trading order records must contain the name or account number of the principal, time of order, type of securities, number of shares or par value, limit price, period of validity, name or code number of the associated person taking the order, and the order method. When the principal places an order through the internet, the content of the order record must bear the internet protocol (IP) and electronic signature. Where the principal places an order through voice mail, the incoming telephone number shown on the system of the telecommunications institution must be recorded. When the order records are printed out on real-time basis, the said items may be waived.

c) The transmission of the order for purchase/sale of securities, order report, trading report, and other electronic documents between a securities broker and the principal who uses an electronic transaction method other than voice mail must carry the electronic signature issued by a certificate authority; however, this restriction do not apply for orders placed between a principal and securities broker electronically over a dedicated line if the connection access points are all located outside the Chinese Taipei and the connection method complies with the local laws and regulations of the country(countries) in which they are located.

401) The Operating Rules of the Taiwan Futures Exchange also sets out similar procedures for futures commission merchants:

a) When an order is made in writing or by telephone, telegram, or other means, the associated person accepting the order must fill out the trading order form in accordance with the particulars of the order.

b) When an order is made through an electronic medium such as an IC card or the Internet, the futures commission merchant is not required to prepare and complete an order form on the principal's behalf; provided that it immediately prints records of the trading orders in the order that they were received, and upon closing of the market, the processing person and the chief of the department sign such records. The record of the trading order must contain the name and account number of the principal, order method, date and time of the order, period of validity, the name of the futures exchange, the name of the futures contract, volume, and the delivery month, type of order (market order, limit order, or other), and the name or code number of the associated person taking the order. When an order is made over the Internet, the futures commission merchant should record the principal's IP

address and electronic signature; where an order is given by telephone, the futures commission merchant must record the principal's telephone number by using the caller ID display function provided by telecommunications institutions; Unless the principal places the order in person and signs/seals the order form or the parties commit otherwise by prior agreement, a futures commission merchant must deliver the order form to the principal to sign or seal after the order is placed unless the principal is asked in advance to fill out a Non-in-Person Order Signature/Seal Waiver Consent Form.

c) When a futures commission merchant accepts and executes futures trading orders by telephone, it shall make a synchronous tape recording and keep the record at its business place.

d) When a futures commission merchant accepts transmission of the contents of a futures trading order by fax, telegram, computer system, or other equipment, the transmitted contents must be kept on file for inspection.

e) Transmission of futures trading orders, order confirmations, trade confirmations, and other electronic documents between a futures commission merchant and a principal employing an IC card, the Internet, or other mode of electronic trading shall carry an electronic signature issued by a certificate authority.

f) Printouts of order records made through electronic media such as IC card or the Internet and computer file order records must be kept for no less than five years; recordings and transmission contents must be kept on file for no less than two months.

402) Article 36 of the Regulation Governing Futures Commission Merchants also provides that when a futures commission merchant accepts and executes a consignment order for futures trading by telephone, it shall make a tape recording of the phone call. The same article also provides that when a futures commission merchant transmits the contents of a consignment order form by fax, telegram, computer system, or other equipment, the transmitted contents must be kept on file for future reference. Futures commission merchants are required to keep the tape recording and transmitted contents on file for at least two months.

403) The Money Laundering Prevention Guidelines and Procedures for Banks requires banks to implement procedures that allow them to verify customer identity on non-face-to-face transactions just as effectively as they do on transactions conducted in person. The same Guidelines also require banks to take extraordinary and adequate measures so as to minimize risks.

404) The primary risk management controls banks apply for non-face-to-face transactions are transaction limits placed on electronic banking. Most banks limit the amount of withdrawal at the ATM per each transaction to NT$30,000(approximately US$900) when the transaction is conducted on an ATM owned by the account holder's own bank is limited to NT$30,000 (the limit is NT$20,000 when using ATMs owned by other banks for cross-bank services). The total amount of withdrawals is limited to NT$100,000(approximately US$3,000) in one single day by most banks.

405) Similar limits are applied to fund transfers conducted at the ATM. Each fund transfer is limited to NT$30,000. When the fund is transferred to designated account, the maximum amount per transaction is NT$2 million.

3.2.2 RECOMMENDATIONS AND COMMENTS

406) A considerable part of Chinese Taipei's AML/CFT regime, which according to the FATF Recommendations should be explicitly stipulated in laws or regulations, are captured only by guidelines. Chinese Taipei should ensure that key CDD obligations are contained in laws or regulations in keeping with the requirements under the international standards.

407) Chinese Taipei should:

a) lower the thresholds that trigger CDD obligations for occasional transactions and consider ways to encourage use of more secure and transparent means of transactions;
b) introduce explicit requirements for financial institutions to identify the beneficial ownership as part of the routine CDD procedures;
c) require financial institutions to take reasonable measures on all customers to check if the customer is acting on behalf of another person and to identify the natural person who ultimately controls or owns the customer;
d) require financial institutions to identify the natural person with ultimate effective control over customers that may be legal person/arrangements;
e) require financial institutions to perform customer due diligence and record-keeping for cash transactions of large amount that are exempt from CTR; and
f) require financial institutions to perform CDD and to keep transaction records on large-value cash transactions even when they are exempt from CTR filing.

3.2.3 COMPLIANCE WITH RECOMMENDATIONS 5 TO 8

	Rating	Summary of factors underlying rating
R.5	PC	• The threshold for occasional cash transactions that triggers CDD obligation (NT$1 million, which is approximately US$30,000) is too high. • There is no explicit requirement for financial institutions to take reasonable measures to check if a customer is acting on behalf of another person and to identify the beneficial owner as part of the routine CDD procedure for all customers. • The financial leasing sector is not covered by the AML/CFT regime • Only the securities sector has explicit requirement to obtain information on the purpose and intended nature of the business relationship • The requirement to perform CDD when the previously obtained customer information is dubious is captured only by the Money Laundering Prevention Guidelines and Procedures for the banking sector, and there is no specific requirement for the securities and the insurance sectors. • The obligation to verify customer identity using reliable information is captured only by the Money Laundering Prevention Guidelines and Procedures and is not clearly captured by a law or a regulation for the insurance sector. • The obligation to check if a person purporting to act on behalf of a legal person is so authorized is not captured by a law or regulation for the banking sector and the insurance sector.

		• There is neither legislation nor any guideline that specifically addresses the treatment of existing customers.
R.6	NC	• There is no specific legislation or guideline that requires financial institutions to have appropriate risk management procedures for PEPs.
R.7	LC	• Guidelines were introduced only two months before the Evaluation Team's onsite visit, and therefore, it is too early to form a judgment on the effectiveness or the implementation of the Guidelines.
R.8	LC	• Banks lack effective measures to monitor all individual transactions conducted electronically.

3.3 THIRD PARTIES AND INTRODUCED BUSINESS (R.9)

3.3.1 DESCRIPTION AND ANALYSIS

408) **Banking sector**: The FSC's "Directions for the Outsourcing of Financial Institution Operations" requires that banks outsourcing some of their operations must ensure that the FSC, the Central Bank, the Central Deposit Insurance Corporation, and other competent authorities have access to relevant records and reports and can carry out financial examinations.

409) The same Directions also provide that financial institutions' outsourcing of their operations must not violate any legal provisions, disturb public order or accepted morals, and that such outsourcing must not adversely affect the institutions' business operations, management, or the rights and interests of their customers. Under the Directions, financial institutions must also ensure compliance with the Banking Act, the MLCA, the Data Protection Law, or other laws and regulations.

410) A financial institution may outsource matters related to the conduct of its registered lines of business or customer information only if such matters are among the following:

a) data processing including input, processing and output of data in the relevant computer system and improvement, control and maintenance of such computer system, and logistical support for data processing in connection with the financial institution's business;
b) the marketing of credit cards, input of customer information, printing of relevant forms and statements, matters regarding envelope stuffing, matters regarding sorting and mailing, matters regarding computerized or manual card activation, reporting of lost cards, cash advances and emergency services;
c) transporting securities, checks, forms and statements, and cash, and delivering cash to ATMs;
d) hiring a law firm or real estate closing agent to handle relevant legal matters, and approaching other institutions to handle matters related to taking over title to collateral;
e) locating services and auctioning services for automobiles, where repayment on a car loan is overdue (excluding the determination of the floor price for such auctions);
f) appraisal of real estate;
g) warehousing of relevant documents such as forms, statements and certificates;
h) collection of debts;

i) matters related to marketing, management (other than the granting or denial of loan applications), [customer] service and consulting for auto loans;

j) internal audits (provided that such audits may not be conducted by the certified public accountant who audits such financial institution's finances);

k) matters related to drawing negotiable instruments (e.g., checks and drafts) for customers;

l) back office functions for international trade financing activities (e.g., the issuance and negotiation of letters of credit and import and export collections);

m) verification of the identities and signatures of consumer loan applicants;

n) marketing of housing loans;

o) electronic customer services (including: automated telephone voice menu systems; telemarketing; management of and response to customer e-mail; inquiries about, and assistance for, electronic banking and electronic commerce customers; and specialized electronic banking customer services);

p) marketing of, and identity confirmation for, consumer loans;

q) evaluation, classification, packaging and sale of non-performing loans; provided, that such outsourcing agreements shall provide that the service providers and their employees shall not engage in any work or provide any consulting or advisory services which give rise to a conflict of interest with the outsourced services during the term of such outsourcing agreements or for a reasonable period of time after termination/expiry thereof;

r) customs clearance, deposit, transportation and delivery of precious metals such as gold bars, silver bars and platinum bars;

s) compiling and editing credit analysis reports on customers to whom credit has been extended; and

t) other matters as approved by the MOF.

411) If the outsourcing of financial institution operations results in harm to the rights and interests of a customer due to some mistakes on the part of a third-party provider or its employees, the financial institution is liable to the customer. If a financial institution that outsources operations fails to exercise due care in overseeing the activities of a third-party provider, thereby harming the rights and interests of a customer or affecting the proper management of the financial institution itself, the FSC may impose sanctions or suspend the outsourcing of operations.

412) On 1 April 2006, the FSC issued an order requiring banks to suspend outsourcing of credit card, cash card, and consumer loan marketing, as well as the outsourcing of identity verification.

413) Operations that banks outsource overseas are all internal back-office activities that have nothing to do with account opening, withdrawals, deposits, wire transfers, or anything else that would trigger AML customer due diligence requirements.

414) **Insurance sector**: Article 15 of the Regulations Governing Supervision of Solicitors provides that insurance solicitation by a solicitor authorized for that purpose is deemed an activity within the scope of authorization granted by the employing company. The same Article also provides that the employing company should administer rigorous supervision of solicitation by its solicitors. The term "insurance solicitation" as referred to in Article means any of the following:

a) explanation of the content of an insurance product and the relevant policy provisions;

b) explanation of any points for attention in filling out an insurance proposal; and

c) forwarding of an insurance proposal document or insurance policy.

415) The Money Laundering Prevention Guidelines and Procedures issued by the Life Insurance Association sets out different CDD measures for the solicitation and the underwriting stages of life insurers' operations. Under the Guidelines, solicitors are required to obtain all the necessary ID documents, and underwriters are required to check whether the policy application was written by the applicant himself/herself and to verify the identification information written in the solicitation report.

3.3.2 RECOMMENDATIONS AND COMMENTS

416) Chinese Taipei is compliant with this recommendation.

3.3.3 COMPLIANCE WITH RECOMMENDATION 9

	Rating	Summary of factors underlying rating
R.9	C	• The recommendation is fully observed

3.4 FINANCIAL INSTITUTION SECRECY OR CONFIDENTIALITY (R.4)

3.4.1 DESCRIPTION AND ANALYSIS

417) Under Article 48 of the Banking Act, banks must keep confidential all information regarding deposits, loans, or remittances of their customers. The secrecy obligation, however, can be overruled if required by other law or by order of the central competent authority. Article 8 Paragraph 2 of the MLCA provides that financial institutions filing STRs to the designated authority are discharged from the confidentiality obligation if they can provide proof that they acted in good faith.

418) Several laws empower competent authorities to obtain information for AML/CFT purposes. Under the Organic Act Governing the Establishment of the Financial Supervisory Commission, Executive Yuan, the FSC is empowered to obtain relevant information from financial institutions when conducting examinations: the FSC can (1) require a financial institution and related parties or a public company to produce account books, documents, electronic files, and other materials; or (2) order an examinee to appear at a designated office to answer questions. When dealing with a case of suspected financial crime, the FSC can seek permission of a prosecutor to file a motion in the court for issuance of a search warrant. Once the search warrant is issued, the FSC can, accompanied by judicial police authorities, can conduct a search.

419) Under the Investigation Bureau Organization Act and the Criminal Procedure Code, the MLPC has directly or indirectly access to the financial, administrative and law enforcement information that it needs for analysis of suspicious transaction reports and for tracing of illegal funds. And according to the authorization of Decree #09510002020, which was promulgated on May 23, 2006 by the FSC, the MLPC has the power to obtain additional information from financial institutions including accounts and banking records in the course of carrying out analysis of STRs.

420) Competent authorities can share information. The MLPC receives International Currency Transportation Reports (ICTRs) from the Directorate General of Customs and can make information enquiries to the FSC and CBC in the course of analyzing STRs. It can also disseminate financial intelligence to relevant law enforcement agencies including

the Prosecutors' Office, other departments in the Ministry of Justice Investigation Bureau, the National Police Agency, the FSC, etc.

3.4.2 RECOMMENDATIONS AND COMMENTS

421) Chinese Taipei is in full compliance with this recommendation.

3.4.3 COMPLIANCE WITH RECOMMENDATION 4

	Rating	Summary of factors underlying rating
R.4	C	• The recommendation is fully observed

3.5 RECORD-KEEPING AND WIRE TRANSFER RULES (R.10 & SR.VII)

3.5.1 DESCRIPTION AND ANALYSIS

Recommendation 10

Transactions Records (c.10.1)

422) Record-keeping requirements are broadly provided under Article 7 of the MLCA that requires financial institutions to keep transaction and customer identification records for five years for only cash transactions exceeding NT$1,000,000. Article 8 of the MLCA also requires financial institutions to keep transaction and customer identification records for suspicious transactions.

423) Although "transaction records" is extensively used in the governing AML/CFT laws and regulations, its definition is not provided. Regarding the method and time period of safe-keeping transaction records as provided under Regulation Article 7.1.2.i, financial institution are required to keep the records such as name, account number and amount in relation to a transaction.

424) There are no requirements under the MLCA on financial institutions to retain records of currency transaction reports submitted to MLPC. However, the currency transaction reporting form that was issued as attachment 2 under Regulation Article 7 provides a list of reportable fields when a cash transaction above NT$1,000,000 is reported to MLPC and includes among other things the following transaction information:

a) account number;
b) account name;
c) date and time of transaction;
d) transaction amount;
e) type of transaction;
f) name of customer; and
g) customers address.

425) A financial institution that violates the provisions above record-keeping obligations could be fined NT$200,000 NT to NT$1 million under the MLCA.

426) The requirement to keep transaction records under Chinese Taipei's AML/CFT laws and regulations is inadequate and does not fully satisfy the essential elements under the FATF Recommendations as follows:

a) financial institutions are not required to keep transaction records for any non-cash transactions;

b) financial institutions are not required to keep transaction records for cash transactions below NT$1,000,000;
c) laws and regulations do not specifically require financial institutions to keep transactions records that would allow individual transactions to be reconstructed by the financial institutions for evidentiary purposes;
d) retention period exclude the requirement to keep transaction records for five years following the completion of a transaction; and
e) International transaction records are not captured under the current record-keeping regime;

Customer ID Records, Account Files and Business Correspondence (c.10.2)

427) Regulations regarding Article 7 of the MLCA require financial institutions to keep certain customer identification and verification records for five years for cash transactions exceeding NT$1,000,000. Regulations regarding Article 8 of the MLCA also require financial institutions to keep customer identification records for suspicious transactions. The originals of verified customer records are to be retained. The following customer information is required to be kept:

a) name;
b) birth date;
c) address;
d) telephone number; and
e) identification document number.

428) In addition to the above, the currency transaction reporting form requires financial institutions to record the nationality of the customer, however, keeping of nationality verification records is not evidenced in the laws or regulations.

429) The requirement to keep customer records under Chinese Taipei's AML/CFT laws and regulations is lacking in similar ways noted above including in the following areas:

a) financial institutions are not required to keep account files;
b) financial institutions are not required to keep business correspondence; and
c) retention period exclude the requirement to keep customer records for five years following the termination of an account or business relationship.

Availability of Information to Competent Authorities (c.10.3)

430) Transaction and customer records noted in preceding paragraphs are also required to be submitted to the designated authority, the Investigation Bureau of the Ministry of Justice. Other relevant agencies such as the FSC have specific examination powers under their respective establishments to compel financial institutions to make available all necessary records. Records are available on a timely basis to competent authorities upon appropriate authority.

Additional Information for Assessing Compliance with R10

431) Requirements for keeping of transaction and customer information are also imposed under other supporting regulations, guidelines and checklists. The Evaluation Team is mindful of the assessment guidelines and criteria in the Methodology for

assessing compliance with R10 that require that record-keeping requirements must be set out in law or regulations.

432) CT has other supporting laws that obligate intuitions to keep certain records. One such law is the Business Accounting Act. This legislation is also referred as the Business Entity Accounting Act that was first promulgated on 7 January 1948 by the National Government and was last amended on 26 April 2000 by Presidential Promulgation. The businesses referred to in this law refer to profit-making institutions; and require all business dealings to be in accordance with the Business Registration Act, corporate laws and other laws. The law stipulates the accounting affairs for business entities in regards to record keeping must address the recognition, measuring, recording, classification, consolidation and composition of financial reports. The law also refers to business transactions above a certain amount, either it be money order, cashier`s cheque, business cheque, appropriate transfer, telegraphic transfer, transfer of accounts or other payment tools or methods that need to be approved by a competent authority with payee clearly specified.

433) According to Article 38 of the Business Accounting Act, all accounting documents, except those which should be permanently kept or which are related to unsettled accounting events, shall be kept for at least five years after the completion of annual closing procedures; all the accounting books and financial statements shall be kept for at least ten years after the completion of annual closing procedures except for the unsettled accounting events. The responsible person representing a business, its managerial officers, in-charge accountants, and assistant accountants, or a person entrusted to handle the accounting affairs of another according to law involved in violation of the said Article shall be fined not less than NT$60,000 and not more than NT$300,000. It could be construed from the above that the said provisions have general applicability as to all kinds of transactions. As such, financial institutions are required to keep transaction records for all kinds of transactions, including cash, non-cash, international and domestic ones.

434) According to Article 15 of the Business Accounting Act, business entity accounting documents are divided into the following two categories: 1. Source document: The documents which prove the course of an event, based on which bookkeeping slips are prepared. 2. Bookkeeping slip: The documents, which prove the responsibilities of the person handling accounting events and serve as the basis for account keeping. The requirements imposed under Article 15 are general requirements for all business entities in CT. Financial institutions that are covered under Chinese Taipei’s AML/CFT framework must be required to implement additional specific rules on record-keeping as noted in R.10 and in the essential criteria 10.1 to 10.3.

Transactions Records

435) Articles 26 and 27 of the regulations Governing Regulation by Tax Collection Agencies of Profit-seeking Enterprise Account Vouchers and Article 38 of the Business Accounting Act provide that, with the exception of open accounts, the account books established by a profit-seeking enterprise must be maintained on file for at least ten years after the annual closing of accounts. In addition, voucher stubs or duplicate vouchers and other account vouchers that by tax law must be obtained from or furnished to another party must be maintained on file for at least five years after the annual closing of accounts; the preceding does not apply, however, to vouchers that must be kept in perpetuity, or to vouchers pertaining to accounts that remain open.

436) In addition, the Bankers Association has adopted the Checklist of Money Laundering Prevention Guidelines and Procedures for Banks, which requires that banks:

(1) should pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose; (2) should, as far as possible, examine and keep a written record of the background and purpose of such transactions; and (3) should keep such written records on file for at least five years. Customer identification records and transaction vouchers must be kept on file in their original form for five years.

437) The Taiwan Securities Association, the Securities Investment Trust and Consulting Association, and the Taiwan Futures Association have each issued a Checklist of Money Laundering Prevention Guidelines and Procedures for their respective members, and the Checklists address this issue. Confirmation statements or reconciliation statements and other documents relating to the purchase, redemption, transfer, or trading of offshore trust units must be maintained in the form and for the time period required by the Business Accounting Act and other applicable legal provisions (for at least five years in any case). In addition, records maintenance requirements are also set out in the Regulations Governing Centralized Securities Depository Enterprises and the Business Accounting Act.

438) Chinese Taipei's national associations for both non-life and life insurance have each issued a Checklist of Money Laundering Prevention Guidelines and Procedures for their respective members. Each checklist sets out a list of transactions (insurance applications, collection of premiums, insurance benefits payments, policy loans, and policy loan repayments) that insurers are required to maintain on file for five years without destroying.

439) The Bankers Association's Model Accounting System for Banking Enterprises requires that an accountant who discovers any one of the following situations upon inspection of an original voucher must require corrective action or refuse to sign the voucher:

a) the purpose or reference number of the transaction is not indicated;
b) documentation that is required under law or customary practice is missing or provided in an improper format;
c) the transaction has not been handled in accordance with laws and regulations applying to procurement or disposal of property;
d) the voucher should have been signed or chopped by a supervisor or other such person, but was not;
e) the voucher should have been signed or chopped by an access person, checker, or custodian, but was not; or the voucher should have been (but was not) accompanied by proof that quality or quantity had been checked;
f) the transaction involved an increase/decrease in property, or custody or transfer thereof, and therefore should have been (but was not) signed or chopped by the person in charge of the business in question;
g) there are signs that the numerals or text in the documentation have been altered, but the responsible person has not endorsed the alteration with a signature or chop;
h) written and Arabic numerals in the documentation pertaining to dollar amounts or quantities do not match up; and
i) other matters not in keeping with the law.

Customer ID Records

440) the Checklist of Money Laundering Prevention Guidelines and Procedures for Banks requires banks to keep transaction reports and transaction vouchers on file in their original format for five years. For accounts that have already been closed, the Checklist requires banks to keep related records (e.g. photocopies of customer ID documents, account records, and communications records) on file for at least five years.

441) The Checklist of Money Laundering Prevention Guidelines and Procedures for the securities and futures sectors also addresses this issue. In addition, these matters are also set out in the Regulations Governing Centralized Securities Depository Enterprises and the Business Accounting Act.

Availability of Information to Competent Authorities

442) In a circular dated 2 March 2005, the FSC ruled that judicial, military, tax, government oversight, public budget and accounting, and other government agencies with legal authority to carry out investigations are entitled under the various applicable laws and regulations to contact banks directly when they need to access records relating to customer deposits, loans, wire transfers, and safe deposit boxes.

443) Since December 2005, the NPA, MOI and MJIB have been allowed on a case-by-case basis to contact the Joint Credit Information Center to access credit information as necessary for the purpose of investigation criminal matters.

444) When the FSC and its subordinate agencies conduct financial examinations, they are empowered under Article 5, Paragraph 1 of the "Organic Act Governing the Establishment of the Financial Supervisory Commission" to require a financial institution to produce relevant documents. Overseas Chinese and foreign nationals investing in domestic securities do so in accordance with the provisions of the "Regulations Governing Investment in Securities by Overseas Chinese and Foreign Nationals."

445) Article 148 of the Insurance Act provides that "the competent authority may, at any time, dispatch officers to inspect the business and financial conditions of an insurance enterprise, or order an insurance enterprise to report, within a prescribed limit of time, the condition of its business," and "the competent authority may engage an appropriate agency or professional expert to conduct the inspection referred to." All customers as well as all transaction records and data fall within the scope of such financial examinations.

Special Recommendation VII

446) In Chinese Taipei, only banks, credit cooperatives, Farmers' association credit departments, fishermen's association credit departments, and Postal Savings System of Taiwan Post Company are allowed to handle remittance.

447) Under the Directions for Confirming Customer Identity in Domestic Remittance Operations of Financial Institutions issued by the FSC, banks are required to record the name, the ID number (or government uniform invoice number), and telephone number (or address) of the originator for any domestic remittance of NT$30,000 or more.

448) Under the Directions Governing Banking Enterprises for Operating Foreign Exchange Business issued by the Central Bank of China, a financial institution must check the ID card (or a registration copy of the corporate registration certificate for a corporation) of the originator for any cross-border remittance that it handles.

449) Any domestic wire transfer message must include full originator information according to the Rules for Handling of Financial Information System Interbank Operations of the Financial Information Service, Co., which operates the interbank funds transfer system. And under the Directions Governing Banking Enterprises for Operating Foreign Exchange Business, any outward cross-border wire transfer message must include the full name, the account number (or I.D. number), and address of the originator.

450) There is no clear law/regulation or guidelines that require beneficiary financial institutions to adopt risk-based procedures for identifying and handling wire transfers that are not accompanied by full originator information. But the banks that the Evaluation Team interviewed said that, as a matter of business practice, they reject any inward remittance that does not come with full originator information.

451) As part of its examination of banks, FSC checks if they comply with AML requirements regarding wire transfers. According to the Examination Manual, FSC examiners check if banks' internal control guidelines require inclusion of full originator information in cross-border wire transfer messages. The examiners review banks' anti-money laundering operations according to the Money Laundering Control Act, the Money Laundering Prevention Guidelines and Procedures for Banks issued by the Bankers' Association, and Central Bank Letter # Taiwan-Central-Foreign-VII-0930053089, and the Directions for Confirming Customer Identity in Domestic Remittance Operations of Financial Institutions issued by the Banking Bureau of the FSC. Under Article 61-1 of the Banking Act, the FSC can impose sanctions in the form of official reprimand or order of corrective action within a specified period of time. Depending on the severity of circumstances, the FSC may also take other necessary actions, such as suspension of part of the banks' business, order of discharge of officers or other employees.

3.5.2 RECOMMENDATIONS AND COMMENTS

452) Financial institutions should be required under MLCA to keep transaction and customer records:

a) for all transactions including international transactions and not just for cash transactions above NT$1,000,000;

b) that would allow individual transactions to be reconstructed by the financial institutions for evidentiary purposes;

453) Retention period should include the requirement to keep:

a) transaction records for five years following the completion of a transaction;

b) customer records for five years following the termination of an account or business relationship.

454) Financial institutions should be required to keep account files and keep business correspondence.

455) The record-keeping provisions in the MLCA should be extended and applied to all transactions and customer records as required in the FATF Recommendations.

456) Financial institutions in Chinese Taipei are generally complying with transaction and customer record-keeping rules although some requirements are not specifically provided in laws and regulations.

457) Prosecutorial, law enforcement, regulatory and supervisory authorities do not have difficulty accessing records kept by financial institutions.

458) Chinese Taipei is advised to introduce explicit requirement for financial institutions to put in place clear procedures to deal with inward remittances that do not come with full originator information.

3.5.3 COMPLIANCE WITH RECOMMENDATION 10 AND SPECIAL RECOMMENDATION VII

	Rating	Summary of factors underlying rating
R.10	PC	• The requirement to keep transaction records under the MLCA is inadequate in the following areas: • Financial institutions are not required to keep transaction records for any non-cash transactions; • Financial institutions are not required to keep transaction records for cash transactions below NT$1,000,000; • Laws and regulations do not specifically require financial institutions to keep transactions records that would allow individual transactions to be reconstructed by the financial institutions for evidentiary purposes; • Retention periods exclude the requirement to keep transaction records for five years following the completion of a transaction; • International transaction records are not captured under the current record-keeping regime; • Financial institutions are not required to keep account files; • Financial institutions are not required to keep business correspondences; • Retention period exclude the requirement to keep customer records for five years following the termination of an account or business relationship.
SR.VII	LC	• There is no clear requirement for banks set out in any legislation or a guideline to have in place procedures for handling inward cross-border remittances that do not come with full originator information.

Unusual and Suspicious Transactions

3.6 MONITORING OF TRANSACTIONS AND RELATIONSHIPS (R.11 & 21)

3.6.1 DESCRIPTION AND ANALYSIS

Recommendation 11

459) The regulations governing bank handling of accounts with suspicious or unusual transactions issued by the FSC in April 2006 attempt to impose certain requirements to monitor transactions. The regulations require banks to make use of information systems to help inspect for unusual deposit account transactions and to establish early warning criteria focusing on transaction amounts exceeding a certain threshold, transaction amounts clearly inconsistent with average account balances, or frequent use over a short period of electronic transaction functions, and to assign a specific individual to inspect at least once per day, follow up as necessary, and prepare an inspection record, which is

required to be delivered in accordance with internal procedures to the proper supervisor for review.

460) The regulations further provide that the inspection record and data should be maintained for at least five years, and may be provided to the competent authority, relevant units, and internal audit units for review. These are required under Article 16 of the Regulations that came into force only recently on 1 January 2007.

461) Checklist issued by Bankers Association also requires banks to establish internal control procedures for money laundering prevention, in particular:

a) to make use of information systems to identify questionable transactions;
b) to strengthen control over high risk accounts;
c) to exercise extraordinary diligence over complicated transactions, transactions of huge amounts or unusual transactions which are done without economic or legal purpose;
d) as far as possible, to look into the backgrounds and motivation behind the these transactions; and
e) to set up documented data on all findings for 5 years.

462) Other checklists issued by the BOAF, the Taiwan Securities Association, the Securities Investment Trust and Consulting Association, and the Taiwan Futures Association indirectly address some of the requirements on monitoring of transactions.

463) For example, according to Article 3, Paragraph 1 of the “Taiwan Stock Exchange Corporation Directions for Announcement or Notice of Attention to Trading Information and Dispositions”, to ensure security of settlement for securities trades, when TSEC analysis reveals any of the following circumstances in intraday trading at a securities firm, it will, promptly after market closing, issue written notice to the internal auditing or operations department of the aforesaid securities firm, with a copy to the general manager of its head office; in the case of the Taiwan branch office of a foreign securities firm, it will bring the matter to the attention of the branch office manager:

a) where the difference between an investors' purchase/sale orders for the given security at the given securities firm exceeds NT$300 million and also exceeds 100% of the net worth of the given securities firm, and where the volume of its purchase (or sale) orders accounts for 20 percent or more of the total monetary volume of total purchase (or sale) orders for the given security;

b) where the difference between orders accepted by a securities firm for purchase/sale of the given security exceeds NT$500 million and also exceeds 1.5 times the net worth of the given securities firm, and where the volume it accepted in purchase (or sale) orders accounts for 40 percent or more of the total monetary volume of all purchase (or sale) orders for the given security;

c) where the difference between an investor's confirmed purchases/sales of the given security through the given securities firm exceeds NT$100 million and also exceeds 0.3 times the net worth of the given securities firm, and where the volume of its confirmed purchases (or sales) accounts for 10 percent or more of the total monetary volume of all confirmed trades in the given security;

d) where the difference between confirmed purchases/sales of the given security by a securities firm exceeds NT$200 million and also exceeds the net worth of the given securities firm; and

e) where the volume of the confirmed purchases (or sales) thereby accounts for 20 percent or more of the total monetary volume of confirmed trades in the given security. When the circumstances under subparagraphs 1 or 2 of the preceding paragraph apply to a securities firm, the TSEC may inform the persons referred to in paragraph 1 by telephone when the trading order is placed or the trade is executed.

464) The provision of subparagraph 7 of paragraph 1 of article 2 of the Template Guidelines for Anti-Money Laundering Operations by Securities Investment Trust Enterprises and Security Investment Consulting Enterprises prescribed by the Securities Investment Trust & Consulting Association of the R.O.C. provides that if there is an unusually large subscription amount that is not in keeping with the investor's status or income, it is necessary to be especially alert to the possibility of money laundering. The provision of subparagraph 2 and 3 of paragraph 3 of Article 2 of the above-mentioned Guidelines provide that if any of the following occurs after the signing of a discretionary investment agreement, the discretionary depository institute should be informed to monitor whether there is a sign of money laundering in the cash inflows and outflows of the investment account, e.g. a customer's shows a precipitous increase investment amounts or frequency at some point during the discretionary investment agreement period and it is not in keeping with the status and income of the customer.

465) Paragraph 2 of article 2 of the Model Money Laundering Control Guidelines for Securities Finance Enterprises requires that whenever there is unusual or large–volume transaction activity by a customer, a securities finance enterprise shall verify the customer's identity, visit the customer in person, and make a record of the visit. Paragraph 1 of Article 2 of TDCC Money Laundering Control Guidelines requires that when processing deposit and withdrawal operations, pledge operations and erroneous transactions for participants, the TDCC discovers any large-volume or unusual transaction or suspected money laundering transaction, it shall submit a suspicious transaction report to the Ministry of Justice Money Laundering Prevention Center (MLPC). Relevant provisions have been set out in Item 1 through Item 6 and Item 8 through Item 11, Subparagraph 5 of Article 2 of the CNFA's Template Guidelines for Anti-Money Laundering Operation by Futures Commission Merchants.

466) Article 16 of the Regulations Governing Bank Handling of Accounts with Suspicious or Unusual Transactions requires banks to establish information systems to help inspect for unusual deposit account transactions. The same Article also requires banks to establish early warning criteria focusing on transaction amounts exceeding a certain threshold, transaction amounts clearly inconsistent with average account balances, or frequent use over a short period of electronic transaction functions, and shall assign a specific individual to inspect at least once per day, follow up as necessary, and prepare an inspection record, which is delivered in accordance with internal procedures to the proper supervisor for review.

467) The Money Laundering Prevention Guidelines and Procedures for Banks issued by the Bankers' Association have similar requirements. Under the Guidelines, banks are required to put in place and utilize information systems to find questionable transactions. The same guidelines also require banks to apply strengthened control over high risk accounts and to exercise extraordinary diligence over complicated transactions, transactions of huge amounts or unusual transactions which lack reasonable economic or legal purpose.

468) Article 6 of the Directions Governing Banks Engaging in Wealth Management Business provides that banks engaging in wealth management business must establish

and implement an internal control system, which must at least include "Know Your Customer" rules and monitoring rules for unusual and suspicious transactions.

469) Article 8(4) of the same Directions provides that banks operating wealth management businesses must establish for their wealth managers to stay up-to-date on any change in a customer's financial or business status by regular telephone calls or face-to-face visits, update customer data files in a timely manner, and review and assess customers' investment capacities accordingly.

470) Under the Money Laundering Prevention Guidelines and Procedures issued by their respective commercial associations, securities companies, securities investment trust & consulting companies, securities finance companies, and futures commission merchants are required to monitor transaction reports regularly and to establish trading patterns for each customer for reference in identifying unusual transactions.

471) Article 9 of the Directions for the Conduct of Wealth Management Business by Securities Firms requires securities firms operating wealth management business to establish a management system that identifies, tracks, and controls unusual or suspicious transactions. Article 8(3) of the same Directions provides that the “Know Your Customer” rules for such securities firms must include mechanisms for updating of customer evaluation information in a timely manner.

472) Article 8(4) of the Directions for the Conduct of Wealth Management Business by Life Insurance Companies provides that life insurers operating wealth management businesses must establish for its wealth managers to stay up-to-date on any change in a customer’s financial or businesses status by regular telephone calls or face-to-face visits, update customer data files in a timely manner, and review and assess customers’ investment capacities accordingly.

Recommendation 21

473) There is no obligation on financial institutions to give special attention to business relationships and transaction from or in jurisdictions that do not or insufficiently apply the FATF Recommendations.

474) Authorities do not have measures in place to advise financial institution of concerns about weaknesses in the AML/CFT systems of other jurisdictions.

475) Section 1(2)iii of the The Regulations Regarding Article 8 of the Money Laundering Control Act address filing an STR if inward remittance of funds from countries or territories on the FATF NCCT list is withdrawn or transferred within five business days of the receipt where the amount is not consistent with the customer’s status or income or is unrelated to the nature of the customer’s business. This obligation does on address monitoring and places a narrow set of circumstances in which the originating jurisdiction’s compliance with the FATF Recommendations would suggest a need for enhanced scrutiny of a transaction. In the absence of an FATF list, this section of the regulation is not applicable at present.

3.6.2 RECOMMENDATIONS AND COMMENTS

476) Authorities should ensure requirements on monitoring of transactions under the MLCA that would cover the banking sector and all other covered financial institutions and are fully implemented.

477) When the MLCA is amended, the relevant regulatory, supervisory and SROs may consider including these requirements in their respective guidelines.

478) The banking regulation on monitoring of transactions had only recently come into force and therefore its implementation and its effectiveness could not be fully determined.

479) Securities and insurance sectors have adopted a common and more general approach to monitoring of transactions that is intended to complement their suspicious transactions reporting framework. This approach falls short of the requirements of FATF.

480) Chinese Taipei should

- oblige financial institutions to give special attention to business relationships and transaction from or in jurisdictions that do not or insufficiently apply the FATF Recommendations;
- establish positive measures to advise financial institution of concerns about weaknesses in the AML/CFT systems of other jurisdictions; and
- provide guidance to all sectors on how to monitor business relationships with persons from countries not or insufficiently applying the FATF standards, and the various guidance should more specifically deal with this point.

481) The existing Regulations that addresses transactions from an NCCT listed jurisdiction is too narrow and in the absence of an FATF list, this section of the regulation is not applicable at present.

3.6.3 COMPLIANCE WITH RECOMMENDATIONS 11 & 21

	Rating	Summary of factors underlying rating
R.11	PC	• With the exception of banking sector there are no specific obligations under FSC's regulations on financial institutions to monitor complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose. • Similar exceptions are noted on requirement to keep record of such findings for 5 years. • Requirements for the banks are only very recent and implementation and its effectiveness could not be fully determined.
R.21	NC	• No obligation on financial institutions to give special attention to business relationships and transaction from or in jurisdictions that do not or insufficiently apply the FATF Recommendations. • Authorities do not have measures in place to advise financial institution of concerns about weaknesses in the AML/CFT systems of other jurisdictions. • The existing Regulations that addresses transactions from an NCCT listed jurisdiction is too narrow and in the absence of an FATF list, this section of the regulation is not applicable at present.

3.7 SUSPICIOUS TRANSACTION REPORTS AND OTHER REPORTING (R.13-14, 19, 25 & SR.IV)

3.7.1 DESCRIPTION AND ANALYSIS[1]

Recommendation 13

482) Paragraph 1 of Article 8 of the MLCA legally obligates financial institutions to report suspicious transactions along with a requirement that they ascertain the identity of the customer involved in the transaction and that they retain all relevant records relating to that transaction.

483) Regulations regarding Article 8 define that the report must be submitted to the MLPC and further define the scope, and handling procedures for the reports.

484) The regulations clearly define and describe situations that are suspicious. These situations describes situations the include transactions that may relate to FT and the transactions involving the FATF list of NCCT.

485) Although not clearly defined in Law or regulation that there is a requirement to report attempted transactions, the Evaluation Team has been advised that this actually occurs in practice.

486) The Money Laundering Prevention Guidelines approved by the Ministry of Finance, and FSC, further define situations where transactions are suspicious. These guidelines frequently refer to values that are 'large' or are 'huge' which are subjective and do not provide sufficient guidance to fully comply with this Recommendation.

Recommendation 14

487) Pursuant to Paragraph 2 of Article 8 of the MLCA, financial institutions and their employees are discharged from their confidentiality obligations to the customers when reporting suspicious financial transactions to the MLPC in good faith.

488) Under Paragraph 2 of Article 11 of the MLCA, any employee of a financial institution is subject to imprisonment of not more than two years or a fine of not more than NT$500,000 if he/she reveals, discloses or hands over documents, pictures, information or things relating to the reported suspect financial transaction or reported suspect money laundering activity to others.

Recommendation 19

489) The FSC's Regulation regarding Article 7 of the MLCA establishes that all cash transaction of NT$1 million or more shall be reported via electronic means to the MLPC within 5 business days.

490) At present 99.9 % of CTRs are transmitted by electronic means from the financial institution to the MLPC. These reports are stored on the MLPC database and are available to competent authorities for AML/CFT purposes.

491) To safeguard and control the proper use of the CTR reports the MLPC 'Operation Regulation of MLPC' defines regulations that include:

[1] The description of the system for reporting suspicious transactions in s.3.7 is integrally linked with the description of the FIU in s.2.5, and the two texts need to be complementary and not duplicative.

a) the transaction records shall be kept for at least 10 years in the computer database; and

b) the MLPC and relevant authorities including law enforcement agencies, prosecutor officers and courts can access the data base for investigating prosecuting and convicting criminal cases.

492) The detailed conditions to access CTRs database are as follows:

a) If any suspicious transactions are found from the CTRs database, the MLPC shall initiate analyzing procedures and the information will be disseminated to authorities for further investigation when there is reasonable ground to suspect any criminal involved;

b) the staff from other divisions of Investigation Bureau can access the database for investigating criminal cases are obtaining prior permission from the director of the division; and

c) relevant authorities can access the database for investigating, prosecuting and convicting criminal cases, and it is necessary to raise a formal request to the MLPC.

493) Supervision of the database is as follows:

a) the Director of the MLPC makes a sample check each month of the query records that were raised by the MLPC and other divisions of the Investigation Bureau, and the ratio of the sample must be no less than the total query records. The check must be recorded and submitted to the Director General of the Investigation Bureau for further review;

b) the records of query raised by relevant authorities are printed out quarterly and delivered to the authorities for internal review; and

c) the Ministry of Justice may check the records.

494) Any violation of this regulation or other decrees are found, the MLPC shall coordinate the relevant authorities to ascertain responsibility for the violation and take necessary actions including administrative and legal punishments.

Recommendation 25

Feedback

495) The MLPC has provided the following feedback to financial institutions:

a) delivering the printed reports published by the MLPC;

b) assisting financial institutions to educate employees to comply with AML/CFT requirements;

c) maintaining an updated website for providing the newest information to financial institutions including the related laws and regulations, compliant guidance for financial institutions, CTR and STR blank forms and reporting guidance, related research papers etc;

d) providing online consultations to financial institutions for AML/CFT compliance; and

e) suggesting that financial supervisory authorities and financial institutions give appropriate rewards to the employees who report STRs in time and have contributed to the investigation of criminal cases.

Statistics of MLPC suggesting authorities to reward financial institution and its employees for reporting STRs in time which are contributive to criminal investigation				
Year	2002	2003	2004	2005
Cases number	5	3	9	14

496) In addition to the above feedback the MLPC has taken various measures to review the ML/FT methods, trends and techniques in this jurisdiction which include:

a) publishing “ML/FT Case Study Collections”. In each Collection, some important ML/FT cases which happened in this jurisdiction have been collected, the methods and techniques of money laundering analysed, and the indicators of ML that might appear in the financial transactions and the experiences that can be referred on AML/CFT in the future have been identified;

b) hosting “Forum for Compliance Officers of banks”: In the forum, all the dedicated compliance officers for AML/CFT from important domestic and foreign banks are invited to get together to discuss the new methods, trends, techniques of Ml/FT, the problems that banks may face, the solutions on AML/CFT requirements and the feedback mechanism between MLPC and banks. The forum is held about once every two years;

c) Organizing “Amending MLCA Seminar”. In the seminar, scholars expert in this field, judges, prosecutors, representatives from the Ministry of Justice, financial supervisory authorities, Investigation Bureau, Criminal Investigation Bureau and all staff of MLPC are invited to discuss the practical problems caused by the existing MLCA and to suggest amendments to the Act. This seminar is held about one or twice per year; and

d) maintaining an updated website for providing AML/CFT information: For providing the newest information to relevant authorities and financial institutions, the MLPC creates a specific web page on the Investigation Bureau website. All the related laws and regulations, compliant guidance for financial institutions, CTR and STR blank forms and reporting guidance, related research papers etc have been posted in the web page.

SR.IV

497) Financial institutions are not required under MLCA to report STRs for terrorist financing. Regulation regarding Article 8 of the MLCA on the scope of handling a suspicious money laundering transaction states that:

1(2)(iv): “Transactions where the ultimate beneficiary or transaction party is a terrorist or terrorist group as listed by the MOF (FSC) based on information provided by foreign governments”.

498) In addition to the above the FSC issued a guideline on 4 August 2004, demanding all financial institutions to file STRs with the MLPC should the final beneficiary or parties of the financial transaction have been found to be a terrorist or terrorist group for further investigation.

499) The Money Laundering Prevention Guidelines and Procedures for Banking Industry requires bank tellers to exercise extraordinary diligence if the transaction of a client meets, among other things, the situation listed below and to report the case to the Investigation Bureau, Ministry of Justice:

> "Where the end beneficiary or transaction counterpart is found to be a terrorist individual or entity as advised by foreign governments via the Financial Supervisory Commission, Executive Yuan; or where the transaction is suspected or bears reasonable reason to suspect to have been linked with a terrorist activity, terrorist organization or subsidy to terrorism."

500) The Money Laundering Prevention Guidelines and Procedures for Securities Firms require securities firm to verify the identity of the customer and, when necessary, visit the customer in person and make a record of the visit when the following sign of suspicious activity suggesting money laundering is seen:

> "A party opening a securities trading account, or a trading or settling party, or an agent, or an ultimate beneficiary, is a terrorist or a terrorist organization whose identity has been provided by a foreign government and forwarded by official letter of the Financial Supervisory Commission."

501) The Money Laundering Prevention Guidelines and Procedures for Life and Non-life Insurance Industries require the insurer to declare to the Investigation Bureau of Ministry of Justice within 10 business days when the facts of the following transaction are found:

> "Any insurance contract's Applicant, Assured or Beneficiary, who are the terrorists or their gangs listed by the transferring letter from the competent authorities, and other transactions with personal or their gangs or their final beneficiary."

502) The MLPC has received 11 STRs related to FT since the above guidelines were issued. two of the STRs were related to a match of last names of foreign workers in Chinese Taipei and 9 STRs were linked to export companies. The information was disseminated to domestic authorities and foreign counterparts for further investigations.

3.7.2 RECOMMENDATIONS AND COMMENTS

503) Chinese Taipei should ensure that:

- there is a clear obligation in law or regulation that obliges a financial institution to report a transaction that is suspicious irrespective of the amount; and
- there is a requirement in law for a financial institution to report attempted transactions that are suspicious in nature.

504) The current requirements to report suspicious transaction reports for terrorist financing under the MLCA Regulations and AML guidelines fall short of the minimum requirements as defined under SR.IV as they do not adequately cover the mandatory reporting of suspicious transactions or attempted transactions when financial institutions suspect or have reasonable grounds to suspect that funds are linked or related to, or to

be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism.

505) It is therefore recommended that the clear obligations incorporating all elements as defined under SR.IV should be expressively adopted in the MLCA.

506) The MLPC should ensure that adequate feedback on STRs is provided (STR cases that fhave been completed) and that acknowledgement of the receipt of STRs is provided.

3.7.3 COMPLIANCE WITH RECOMMENDATIONS 13, 14, 19 AND 25 (CRITERIA 25.2), AND SPECIAL RECOMMENDATION IV

	Rating	Summary of factors underlying rating
R.13	PC	• There is an absence in law that requires a financial institution to report attempted transactions that are suspicious in nature.
R.14	C	• This recommendation is fully observed
R.19	C	• This recommendation is fully observed
R.25	PC	• MLPC does not provide feedback on or acknowledgement of the receipt of STRs and STR cases that have been completed.
SR.IV	NC	• The requirements to report suspicious transaction for terrorist financing under the MLCA Regulations and AML guidelines fall short of the requirements under SR.IV. • Financing of terrorism is not covered as a serious offence as FT is not yet criminalized in Chinese Taipei. • Shortcomings and deficiencies identified in R.13 also apply and contribute to the assessment and rating of SR.IV.

Internal controls and other measures

3.8 INTERNAL CONTROLS, COMPLIANCE, AUDIT AND FOREIGN BRANCHES (R.15 & 22)

3.8.1 DESCRIPTION AND ANALYSIS

Internal controls

507) Article 6 of the MLCA requires financial institutions to establish money laundering prevention guidelines and procedures. Financial institutions are required to submit the guidelines and procedures to the competent authorities for review as a prerequisite to their implementation.

508) In addition to powers of competent authorities to prescribe additional cautionary measures under the MLCA, financial institutions are required to include the following items in their money laundering prevention guidelines and procedures:

a) the operation and the internal control procedures for money laundering prevention;

b) the regulatory on-the-job training for money laundering prevention; and

c) the designation of a responsible person to coordinate and supervise its implementation.

509) Chinese Taipei has adopted a simple and clear approach to implement this requirement on internal control, compliance and audit. The responsibility to develop money laundering prevention guidelines and procedures is shared between the financial institution and their respective SROs. The SRO would receive guidance and directive from the competent authorities, namely the supervisory authority or the MJIB. As required under Article 6, the SRO would seek approval of the internal control procedures for money laundering prevention and submit to its members to accordingly incorporate these in their own internal procedures. It is a common practice in Chinese Taipei that financial institutions would adopt the entire procedures as their internal document. This approach is more common in the smaller categories of financial institutions. As for larger financial institutions, the guidelines and procedures are implemented in a manner where by it adopts an even higher requirement that is consistent with their internal business rules. For example, while the internal control guidelines template issued by a SRO would require records to be kept for 5 years, these financial institutions may in fact keep records for 10 years in order to comply with their internal business rules.

510) The banking sector SRO, the Bankers Association of the Republic of China (BAROC) has continuously updated its "Specimen of points for attention by banks on money laundering prevention". (The terms Specimen, Model, Template, Guideline and Checklist are used interchangeably primarily due to translation from original text.) Banks are required to adopt the specimen in their internal controls. The following areas are covered:

a) procedures for verifying the client identities;

b) methods and duration of keeping transaction and voucher records;

c) rules for checking and verifying clients' identities;

d) continual control over accounts and transactions and its monitoring;

e) notes for bank staff in dealing with clients;

f) requirements on internal declaration procedures;

g) requirements on non-disclosure;

h) regular examination of the internal control measures to ensure its compliance;

i) powers and duties of the audit office on the tasks of money laundering prevention;

j) extension and application of money laundering prevention measures to banks other business areas such as if the bank operates bills business;

k) cross-border correspondent banking requirements;

l) application of AML/CFT measures to foreign branches and subsidiaries;

m) requirements on educational and training programs; and

n) incentives to tellers who are outstanding in performance in money laundering prevention.

511) BAROC has also issued other guidance such as a model for AML for credit card, remittance, new accounts, foreign branches and phantom account prevention and requires banks to incorporate these in their internal procedures, policies, and controls.

512) Similar guidelines and checklists have been issued by supervisory authorities and SROs of other sector namely to the securities firms, life insurance industry, non-life

insurance industry, and precious metals and stones distributors. The guidelines and checklists also require financials to adopt the requirements into their own internal control system. The securities sector SRO, the Chinese Securities Association, prescribes the template guidelines for AML operation by securities firms. According to the statistical records compiled by the Chinese Securities Association, as of the end of December 2006, all 156 member securities firms of the Association established their respective anti-money laundering rules or operation measures in compliance with the requirements set forth in the Template Guidelines for Anti-Money Laundering Operation by Securities Firms prescribed by the Chinese Securities Association. Relevant anti-money laundering rules are also provided in the Guidelines for Securities Firms Engaging in Financial and Asset Management, such as: associated persons shall perform the customer examination procedure to determine whether the customer has laundered money and conducted illegal trading, and file a written confirmation report; the internal auditing division shall enhance the auditing of know-your-customer procedures, the suitability of the investment limit and scope of customers, and the status of the anti-money laundering measures taken, and etc. and ensure the effectiveness of the relevant controls and system.

513) In August 1997, the Securities Investment Trust & Consulting Association prescribed the Template Guidelines for Anti-Money Laundering Operation by Securities Investment Trust Enterprises and Securities Investment Consulting Enterprises, which include anti-money laundering operation guidelines, the internal control procedures, holding or participating in periodical anti-money laundering training courses, and outstanding anti-money-laundering personnel encouragement and awarding measures, and etc.), based on which member enterprises (SITEs and those SICEs engaging in discretionary investment management) have established their respective anti-money laundering operation regulations and internal control procedures, and submitted the same to the Commission for recordation.

Compliance Management Arrangements

514) As mentioned earlier, Article 6 of the MLCA requires financial institutions to designate a responsible person to coordinate and supervise the implementation of the money laundering prevention guidelines and procedures.

515) BAROC’s checklist requires banks to appoint an assistant general manager or another person of equivalent or higher rank as AML compliance officer to coordinate implementation of the bank's money laundering prevention guidelines and procedures. It also require banks to designate a specific unit to handle AML matters. The assistant general manager is required to have previously participated in AML training, and if a person is newly appointed to the position, the checklist requires that AML training is provided within six months. Under the checklist a branch business unit should also designate a senior supervisor to oversee AML work.

516) The checklist issued by the Taiwan Securities Association, the Securities Investment Trust and Consulting Association, and the Taiwan Futures Association requires their respective members to appoint an assistant general manager (or person of equivalent position) who has previously attended money laundering training courses to have exclusive responsibility for coordinating and supervising the execution of the money laundering control guidelines.

517) The checklist issued by the national associations for non-life and life insurance also requires its members to develop appropriate compliance management arrangements.

Access to Information and Records

518) Financial institutions are not specifically required under the regulations, guidelines and checklist to allow the AML compliance officer timely access to customer and transaction records. However, since the designated AML compliance officer is usually the vice president or equivalent senior officer of the financial institution, access to information and transaction records in a practical sense is not difficult.

Audit Function

519) The internal control procedures for money laundering prevention under the AML Checklist for the banking industry provide for the following powers and duties of the Audit Office in relation to ML prevention:

a) the Audit Office shall conduct audit on a periodic basis in accordance with the Guidelines for Internal Control Measures and other provisions concerned;

b) the Audit Office shall, whenever noticing a defect or fault by any units in the enforcement of the management measures, report the cases to the Vice President or personnel of the equivalent level and shall provide the cases for reference in the on-the-job educational and training programs of tellers;

c) in the event that an auditor is found having wilfully concealed a gross offense from report, the case shall be reported to the responsible unit of the Head Office so that due action may be taken as the actual situations may justify; and

d) the Audit Office shall provide designated personnel to conduct sample checks on huge amount transactions of all units concerned to look into and make sure that transactions are justifiable.

520) The AML Checklist for the insurance industry requires insurers to make an examination of their internal control system and review once a year. It also requires auditors to itemize the key checking items according to the conducting of requirements of AML guidelines and procedures by all departments of the insurer.

521) The AML Checklist for the securities sector does not specifically require its covered institutions to maintain an adequately resourced and independent audit function to test compliance with the AML procedures, policies and controls.

522) However, as advised by Chinese Taipei authorities, Article 11 of the Regulations Governing the Establishment of Internal Control Systems by Service Enterprises in Securities and Futures Markets provides that a service enterprise shall establish an internal audit unit in a direct reporting line to the board of directors and, except as otherwise required by the competent authority, shall appoint qualified persons in an appropriate number as full-time internal auditors according to its business size, business condition, management needs, and the provisions of other applicable laws and regulations.

523) Furthermore, Article 22-1, Paragraph 5 of the Regulations Governing Securities Investment Trust Enterprises and Article 23 of the Regulations Governing the Offering of Securities Investment Trust Funds by Securities Investment Trust Enterprises provide that the internal control systems of SITEs and domestic funds distribution institutions shall include operating principles regarding control of money laundering, and principles to be observed in accordance with relevant laws.

524) Paragraph 1 of Article 7 of the Regulations Governing the Establishment of Internal Control Systems by Securities Investment Trust Enterprises and by Securities

Investment Consulting Enterprises Conducting Discretionary Investment Business (amended on 28 November 2006) requires that internal control systems of SITEs and SICEs conducting discretionary investment business should include the control operation of AML in securities investment trust business and discretionary investment business. The said enterprise shall include AML activities as an audit item in its annual audit plan according to Paragraph 3 of Article 13 of the said Regulations.

525) Other supplementary requirements contained in the Regulations Governing Implementation by Banks of Internal Control and Auditing Systems issued by the FSC require banks to establish an internal audit committee directly under the board of directors to implement audit affairs in a spirit of independence and impartiality. The internal unit should report the results of such audits at least semi-annually to the boards of directors and supervisors. Banks are required to establish a chief auditor system to exercise overall administration of audit matters. The chief auditor must possess leadership ability and the ability to effectively oversee audit work, and must possess qualifications that satisfy the provisions of the "Regulations Governing Qualification Requirements for Responsible Persons of Banks." The chief auditor's occupational rank shall be the equivalent of assistant general manager, and he or she may not concurrently hold any position that might conflict with or otherwise impede the audit work.

526) The BAROC AML checklist also provides as follows:

"A bank's internal audit unit shall determine what matters require auditing and carry out periodic audits in accordance with the internal control measures and other related rules that it has adopted. If it discovers that any unit has committed an error in implementing the management measures, it shall periodically submit reports for review by the assistant general manager in charge of auditing, or by another person of equivalent occupational rank, and shall make the information available for reference in on-the-job training. Where an auditor discovers upon inspection any deliberate cover-up of a material regulatory violation, the proper unit from the head office shall handle the matter appropriately. A bank's audit unit may charge a specific individual with responsibility for randomly checking transactions involving large amounts and ascertaining the propriety of such transactions."

527) The FSC's regulations governing internal controls and auditing mentioned above provide that when a bank carries out a general audit, its internal audit report should assess and disclose among other things internal controls, operational controls and internal controls for each type of business and the status of implementation of self-audits. The insurance sector is also required to undertake similar audit scope as provided in FSC’s regulations governing the insurance sector.

528) The BOAF has also issued similar regulations governing internal controls and auditing that requires all the Credit Departments of Farmers' and Fishermen's Associations to comply with the requirements.

529) The AML checklist issued by the Securities Association, the Securities Investment Trust and Consulting Association, and the Taiwan Futures Association requires their respective members to regularly review their internal control measures for adequacy in preventing money laundering, however, as mentioned above, it does not require their members to establish independent audit function.

Employee Training Programme

530) As mentioned earlier, Article 6 of the MLCA requires financial institutions to establish money laundering prevention guidelines and procedures that should include

among other things on-the-job training for money laundering prevention. Regulatory authorities and SROs have addressed these extensively requiring financial institutions to adopt requirements as part of their internal control and operational systems.

531) Banks are required under BAROC checklist to hold on-the-job educational and training programs on a regular basis and also provides for a mandatory attendance by their employees. The checklist includes the following provisions:

a) Pre-job training;

b) Training programs for new employees must at least provide certain minimum hours of education and training on AML laws and regulations as well as the legal liability of financial services personnel; and

c) On-the-job educational and training programs.

532) Initial publicity of laws: banks are required to complete the publicity of AML laws as soon as possible so that the bank staff members are able to familiarize themselves with the basic requirements of the laws and regulations concerned. It also requires banks to ensure that that this is undertaken in a coordinated manner so that it is made known to all trainees. After the department in charge of the money laundering prevention affairs completes the training plan, it should submit the planning results to the unit in charge of training so that further educational and training programs may be carried out accordingly.

Routine on-the-job training:

533) Banks may consolidate the educational and training programs into other educational and training programs as appropriate.

534) Banks are required to foster and develop the trainers and instructors AML related educational and training programs.

535) In addition to providing courses on AML laws and regulations banks are required to provide their employees with hands-on examples so that become aware of all possible practices of money-laundering that would also help in the identification of money laundering transactions.

536) In addition to in-house educational and training programs, banks may provide their staff with externally sourced training programs.

537) Project lectures: Banks may also sponsor project lectures and workshops where scholars and experts could be invited as part of their AML training program.

538) The AML checklist for the insurance sector also requires insurance companies to hold, or arrange for their employees to participate in, regular AML training programs.

539) The AML checklist issued by the Taiwan Securities Association, the Securities Investment Trust and Consulting Association, and the Taiwan Futures Association requires its members to hold or arrange participation in relevant training courses or seminars for its employees on a regular annual basis, to enhance their employees' ability to recognize money laundering and thoroughly familiarize them with the characteristics of money laundering and types of suspicious transactions.

540) Discussions during private sector industry meetings generally showed a high level of understanding of AML/CFT requirements for most of the financial institutions.

Financial institutions provide a number of structured and on-going training and awareness programs for their staff. In addition to financial institutions' initiatives to provide training, the respective SROs, law enforcement and supervisory authorities have also conducted numerous awareness and training workshops and seminars for the private sector financial institutions.

541) The Investigation Bureau of MOJ delivered 195 AML/CFT training programs in 2006 which were attended by more than 12,000 staff of financial institutions.

542) The Insurance Bureau of FSC delivered 6 AML/CFT seminars in 2006 and 15 in 2005 which were attended by more than 1,000 staff of insurance companies.

Training Incentives

543) It is important to note that the AML checklist for the banking sector provides incentives to tellers and who are eligible to receive rewards for outstanding performance in money laundering prevention for (a) identifying and reporting alleged offences that results in remarkable contribution to the police, prosecutor authorities in crime prevention, and (b) a teller who participates in the AML educational and training programs in Chinese Taipei or abroad and makes prominent achievements, or searches and obtains valuable data regarding the laws and regulations concerned prevalent in foreign countries which prove valuable and conducive to financial institutions in the money laundering prevention activities.

544) Chinese Taipei authorities, in particular the FSC and BAROC, must be commended for providing such incentives to the private sector.

Employee Screening

545) Chinese Taipei has thorough internal controls and audit regimes for covered financial institutions that set out the procedures and rules pertaining to personnel management systems, including hiring, promotions, evaluations, recognition and discipline, training, job rotation, mandatory vacation, and other personnel management operations. Under the internal personnel management rules of financial institutions, a person to whom any one of the following applies is not allowed in principle to be financial institution employee:

a) has received a final and un-appellable conviction for engaging in civil disorder, treason, or corruption, or is subject to a warrant for arrest in connection with such a crime and the case remains unclosed;
b) his or her citizen's right has been revoked, and is not reinstated;
c) has received a prison sentence, and the sentence has yet to expire;
d) has been declared bankrupt and his or her rights is not reinstated, or has been placed under judgment of interdiction and the interdiction has not been voided;
e) has received or guaranteed a loan from a financial institution and the loan remain unpaid beyond the due date;
f) has engaged in embezzlement of funds;
g) has previously been fired by the competent authority or a financial institution;
h) has been convicted of fraud or breach of fiduciary duty; and
i) is currently blacklisted by financial institutions.

546) The AML checklist for the banking sector provides that when any of the following situations applies with respect to a bank employee, the bank must conduct random

checks of the business matters handled by that employee, and may as necessary request assistance from its audit unit:

a) the bank employee leads an extravagant lifestyle that is inconsistent with his or her level of income;

b) the bank employee is required by rule to take a vacation but refuses, without reason, to do so; and

c) the bank employee is unable to provide a reasonable explanation for a large amount of money in his or her personal account.

547) The Regulations Governing Responsible Persons and Associated Persons of Securities Investment Trust Enterprises and the Regulations Governing Responsible Persons and Associated Persons of Securities Investment Consulting Enterprises set out positive and negative qualification requirements for personnel associated with these two types of enterprises. In addition, Article 7, Paragraph 1 of the Regulations Governing the Establishment of Internal Control Systems by Service Enterprises in Securities and Futures Markets expressly requires service providers in securities and futures markets to give important consideration to “employees’ integrity and values” when establishing their internal control systems.

548) For the insurance sector, a person to whom any of the following applies may not be hired as an insurance solicitor/agent:

a) has no legal disposing capacity or limited disposing capacity;

b) has made a false statement in a registration application document;

c) has previously been convicted by a final and unappealable judgment of a crime under the Organized Crime Prevention Act, and has not completed serving the sentence, or five years have not elapsed since completion of the sentence, expiration of the suspended sentence, or pardon;

d) has received a final and unappealable sentence for a fixed prison term or a sentence of greater severity for committing forgery, embezzlement, fraud, or breach of trust, and execution of the sentence has not been completed or three years have not yet passed since execution of the sentence was completed, probation expired, or pardon was granted, as the case may be;

e) has received a final and unappealable sentence for violating the Insurance Act, Banking Act, Financial Holding Company Act, Trust Enterprise Act, Act Governing Bills Finance Business, Financial Asset Securitization Act, Real Estate Securitization Act, Securities and Exchange Act, Futures Trading Act, Securities Investment Trust and Consulting Act, Foreign Exchange Control Act, Credit Cooperative Act, Money Laundering Control Act, or any other financial regulatory act, and execution of the sentence has not been completed or three years have not yet passed since execution of the sentence was completed, probation expired, or pardon was granted.

f) has been declared bankrupt, and his or her rights have not been reinstated;

g) has undergone a material loss of creditworthiness that has yet to be settled or three years have not yet passed since settlement; and

h) there is factual proof that the solicitor has engaged in or otherwise been involved with any other dishonest or improper activities in the past three years.

549) Discussions with the private sector industry generally showed adequate implementation of employee screening procedures by financial institutions. Most financial institutions undertake a character check from police.

550) Recruitment by some financial institutions is commissioned to the Chinese Taipei financial training institute. As a prerequisite, the applicants are required to go through the institute and they are also required to undertake formal special examination. If they pass, the HR section would then check on the person's background and would check and verify identification details. The Evaluation Team was also advised that an official government website has capability of checking a citizens ID number, which covers criminal backgrounds for financial frauds only and all new employees go through that process. However, the Evaluation Team was unable to confirm the government agency in Chinese Taipei that is responsible for this process.

Additional Element: Compliance Officer's ability to act independently

551) The designated AML compliance officers of financial institutions in the banking, securities, and futures sectors are usually at the vice president or equivalent senior officer level. Due to the seniority and reporting protocol structures within the financial institutions, the AML/CFT compliance officers are able to act independently and also able to report AML/CFT reporting and compliance matter to the financial institutions executive management and when required to the board of directors.

552) As mentioned above, the FSC's Regulations Governing Implementation by Banks of Internal Control and Auditing Systems require banks to designate a head office management unit under the board of directors or the general manager to bear responsibility for planning, managing, and implementing the legal compliance system, and also requires banks to appoint a senior officer to serve as the head office legal compliance officer and exercise overall administration of legal compliance matters, reporting at least once every half-year to the board of directors and board of supervisors. The head office, domestic business units, overseas branches, information unit, asset custody unit, and other administrative units are also required to appoint a person to serve as compliance officer and bear responsibility for implementing legal compliance matters. Similar requirements are provided in the checklists issued for the securities and insurance industries.

Foreign Branches

553) Article XI of AML checklist issued by BAROC requires the banking industry in Chinese Taipei to apply the same CDD, record-keeping, and reporting provisions applicable to itself to its foreign branches and majority owned subsidiaries as follows:

> "Financial institutions should ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements to the extent that local laws and regulations of host country permit. Where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries should be required to apply the higher standard; provided, however, where there is any question about the level of standards, the opinion of the home country supervisor should be dispositive. Financial institutions should be required to inform the FSC when a foreign branch or subsidiary is unable to observe measures consistent with home country requirements due to prohibition of local laws and regulations in host countries."

554) The Banking industry in Chinese Taipei includes banking institutions, credit cooperatives, bills finance companies, credit card companies, trust enterprises, the Postal Saving and Remittance Services of Chunghwa Post Co., and other businesses and institutions providing banking services.

555) The FSC's Directions Concerning the Establishment of Foreign Branches by Domestic Banks provides as follows: "Any offshore branch conducts a business according to the local financial regulations and business practices but does not comply with the financial regulations of Chinese Taipei. It shall be first reported to the competent authority for approval."

556) Article 6, Paragraph 1 of the Regulations Governing the Establishment of Internal Control Systems by Service Enterprises in Securities and Futures Markets provides that a service enterprise must consider the overall operational activities of its "head office" (interpreted to include branch offices) and subsidiaries to establish effective internal control systems.

557) The Directions for Review of Establishment of Overseas Branch Units by Insurance Enterprises require insurance enterprises to file with the competent authority if an overseas subsidiary or branch office intends, in order to accommodate local insurance laws and regulations or business practices, to operate a particular line of insurance but does not comply with the insurance laws and regulations of Chinese Taipei.

558) The banking, securities and futures, and insurance bureau confirmed that their respective covered financial entities' foreign branches and subsidiaries observe the AML/CFT measures required under Chinese Taipei laws, regulations, guidelines and internal control and policies. Article 2 of the The Provisional Organic Regulations of the Financial Examination Bureau of the Financial Supervisory Commission, Executive Yuan authorizes the Financial Examination Bureau to carry out financial examinations on financial holding companies, banking enterprises, securities enterprises, futures enterprises, insurance enterprises, and their overseas branch units. The examination bureau further confirmed that their examination scope includes checking compliance of AML/CFT requirements of foreign branches and covered domestic financial institutions. The examination bureau conducted onsite inspections of foreign branches in the United States of America, the United Kingdom, Hong Kong, Japan, Singapore and other countries wherever there is a presence of a foreign branch except Panama.

559) Furthermore, supervisory and examination authorities of foreign jurisdictions have also conducted inspection visits of a foreign financial institution operating a branch in Chinese Taipei. The securities and futures bureau and Taiwan Securities Exchange Commission also have undertaken similar compliance examinations of foreign branches of securities and futures sectors.

560) Discussions with the private sector financial institutions in the banking, insurance, securities and futures sectors also confirmed that their foreign branches are required to adopt the head office AML/CFT internal procedures, policies, and control and they are also subject to scrutiny and audit by the head office.

3.8.2 RECOMMENDATIONS AND COMMENTS

561) The requirement to maintain AML internal controls and systems by financial institutions in Chinese Taipei is embedded in the laws and is well supported by regulatory initiatives. Overall the obligations on financial institutions to have internal controls are comprehensive and do not have major shortcomings.

562) The securities sector should be clearly required to establish an independent audit function that addresses AML/CFT functions. It should be noted though that Chinese Taipei authorities have advised that correct reference to “tellers” in the AML checklist for the banking sector is “all staff members” and is not limited to tellers.

563) MJIB, financial sector regulatory and supervisory authorities, and relevant SROs have over the years undertaken extensive awareness and educational programs and Chinese Taipei now has a good AML/CFT culture within the covered financial institutions. Assessment findings also strongly evidenced a high level of understanding of AML/CFT requirements for most of the financial institutions primarily as a result of commitment from executive management level to ensure AML/CFT compliance and internal training programs for their employees.

564) Insurance and securities sectors should:

- explicitly require financial institutions to pay particular attention to their branches and subsidiaries in countries which do not or insufficiently apply the FATF recommendations and
- impose obligation on financial institutions that where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries are required to apply the higher standard, to the extent that local laws and regulations permit.

3.8.3 COMPLIANCE WITH RECOMMENDATIONS 15 & 22

	Rating	Summary of factors underlying rating
R.15	LC	• The requirements imposed under the AML checklist for the securities sector falls short of meeting the requirement on independent audit function. • Financial institutions are not specifically required under the regulations, guidelines and checklist to allow the AML compliance officer timely access to customer and transaction records.
R.22	LC	• Insurance and securities sectors do not explicitly require financial institutions to pay particular attention to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations. • No formal obligation on financial institutions that where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries are required to apply the higher standard, to the extent that local laws and regulations permit.

3.9 SHELL BANKS (R.18)

3.9.1 DESCRIPTION AND ANALYSIS

565) There is no specific prohibition of either the establishment or operation of shell banks in the laws and regulations in Chinese Taipei. The laws and regulations also do not specifically prohibit banks in Chinese Taipei to deal with correspondent banking relationships with shell banks.

566) However, Article 52 of the Banking Act provides that "a bank is a juristic person and, shall only be organized in the form of a company limited by shares." It further provides that "the stock of a bank shall be publicly issued."

567) Banks in Chinese Taipei are subject to a rigorous system of regulation and licensing. Under Article 21 of the Banking Act on the requirement of formation procedures, a bank or a branch office is not permitted to commence business operations before having completed the formation procedures. Pursuant to Article 27 of the Banking Act a bank is also required to seek approval of the Central Bank of China and the Banking Bureau before establishing a branch overseas.

568) Article 53 of the Banking Act further requires that in order to establish a bank in Chinese Taipei applicants must submit a number of key information as follows to the competent authorities for approval:

a) type of bank, name and type of company organization;

b) total capital;

c) business plan;

d) locations of head office and branch offices; and

e) names, native places, home addresses and curriculum vitae of each promoter and the amount of shares subscribed by each promoter.

569) To commence business operations, a bank at its head office and branch offices, is required under Article 55 of the Banking Act to publicly announce the particulars of its business license as issued by the central competent authority.

570) Pursuant to Article 57 of the Banking Act if a bank wishes to establish a branch office, it is required to apply to the central competent authority for approval and for a business license for such branch office by submitting a business plan and specifying the proposed location of such branch office. If a bank wishes to relocate or close a branch office, such bank should apply to the central competent authority for approval. A bank wishing to establish, relocate, or close a non-business operation office or a automated service facility outside a place its business is also required to apply in advance to the central competent authority

571) Article 56 of the Banking Act provides that "after a business license has been issued to a bank, the central competent authority must revoke the bank's permit if the particulars in the original application are discovered to have been materially untrue."

572) Paragraph 10 of the AML checklist issued by BAROC requires banks to adopt certain policies and procedures in relation to cross-border correspondent banking and other similar relationships. At a minimum the policies and procedures should include the following measures:

a) gather sufficient publicly available information about a respondent institution to understand fully the nature of the respondent’s business and to determine the reputation of the institution and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action;

b) assess whether the respondent institution’s AML/CFT control policy is adequate and effective;

c) obtain approval from senior management officers prior to establishing new correspondent relationships; and

d) document the respective AML/CFT responsibilities of each institution.

573) Where a correspondent relationship involves payable-through accounts, financial institutions should ensure that the respondent institution has duly performed CDD measures and is able to provide information related to customer identification when necessary.

3.9.2 RECOMMENDATIONS AND COMMENTS

574) Although there is no specific direct prohibition in Chinese Taipei's laws and regulations on the establishment and operation of shell banks, permission to enter into correspondent banking relationships with shell banks, and use in foreign country of accounts by shell banks, such activities are indirectly not permitted under the banking laws.

575) Chinese Taipei authorities should ensure that banks established in Chinese Taipei are prohibited from: (1) establishing or maintaining a correspondent banking relationship with any shell bank; and (2) acting as a correspondent bank for any foreign bank that permits its accounts to be used by shell banks.

3.9.3 COMPLIANCE WITH RECOMMENDATION 18

	Rating	Summary of factors underlying rating
R.18	PC	• Laws do not explicitly prohibit establishment of shell banks, however, the licensing requirements and policies under the Banking Act indirectly preclude the licensing of a shell bank in Chinese Taipei. • Chinese Taipei does not have a prohibition against its banks establishing correspondent banking relationships with shell banks, or serving as a correspondent bank for any foreign institution that permits its accounts to be used by shell banks.

Regulation, supervision, monitoring and sanctions

3.10 THE SUPERVISORY AND OVERSIGHT SYSTEM - COMPETENT AUTHORITIES AND SRO'S ROLE, FUNCTIONS, DUTIES AND POWERS (INCLUDING SANCTIONS) (R.17, 23, 25, 29, 30 & 32)

3.10.1 DESCRIPTION AND ANALYSIS

Regulation & Supervision

Recommendation 23

576) The FSC as a single financial regulator in Chinese Taipei is the competent authority in charge of laws and regulations governing the financial institutions and financial businesses for the banking, securities, futures, and insurance industries.

577) Pursuant to Article 2 of the FSC Organic Act, the FSC is in charge of the development, supervision, administration, and examination of the financial markets and financial service industry. The above-mentioned financial markets comprise the banking market, bills market, securities market, futures and derivatives market, insurance market, and clearance system; the financial service industry includes financial holding companies,

the Financial Restructuring Fund, Central Deposit Insurance Corporation, the banking industry, securities industry, futures industry, insurance industry, electronic financial transactions, and other financial service industries.

578) The financial institutions to which the AML/CFT law and regulations apply in Chinese Taipei are banks, investment and trust companies, cooperatives, the credit departments of farmers' associations, the credit departments of fishermen's associations, bills financing enterprises, credit card companies, postal institutions that handle deposits and remittances, trust companies, securities firms, securities investment trust enterprises, securities financing enterprises, securities investment consulting enterprises, securities central depository companies, futures firm, insurance companies and jewellery dealers. Insurance brokers and agents are excluded from AML/CFT coverage under the MLCA. Article 6 of the MLCA requires all financial institutions to implement AML-related internal control procedures. It is against these internal control rules that the competent authorities are required to subject their regulatory and supervisory systems for financial institutions' AML/CFT compliance.

579) The FSC carries out cross-sector financial examinations to ensure that all financial institutions covered under its scope are effectively implementing the AML/CFT requirements.

580) The Banking Bureau set up in accordance with the Article 26 of the Organic Act of FSC, Executive Yuan, is entrusted with the responsibility for monitoring and regulating the banking market, bills market, and banking enterprises, and for formulating, planning, and implementing policies, laws, and regulations connected therewith as follows:

a) supervision and regulation of financial holding companies;
b) supervision and regulation of domestic banks;
c) supervision and regulation of local branches and representative offices of foreign banks;
d) supervision and regulation of offshore banking units;
e) supervision and regulation of bills finance companies and bills depository companies;
f) supervision and regulation of credit cooperatives;
g) approval and regulation of financial asset service companies;
h) supervision and regulation of credit card business and institutions;
i) supervision and regulation of trust business and investment trust companies;
j) supervision and regulation of financial asset and real estate securitization business;
k) supervision and regulation of service enterprises engaging in interbank credit information processing and exchange;
l) supervision and regulation of deposit insurance enterprises;
m) supervision and regulation of foundations and associations related to entities described in items a to j above;
n) joint supervision and regulation of postal savings and remittance business with the Ministry of Transportation and Communications;
o) supervision and regulation of foreign exchange administration;

p) studying and proposing the formulation, revision, and revocation of laws and regulations relating to entities described in items a to k above;

q) handling and conducting necessary follow-up and review of financial examination reports of financial institutions under the Bureau's jurisdiction;

r) consumer protection work relating to the business of the Bureau; and

s) supervision and regulation of other institutions and businesses relating to the foregoing provisions.

581) As at October 2006, the scope of the Banking Bureau extended to the following types and number of entities:

Financial Institutions	**Head Offices**	**Branch Units**
Domestic Banks	43	3,276
Foreign Banks	33	65
Credit Cooperatives	28	289
Credit Dept of Farmer's Associations	253	817
Credit Dept of Fishermen's Associations	25	40
Trust and Investment Companies	2	20
Bills Finance Companies	14	43
Postal Savings System	1	1,320

582) The Securities and Futures Bureau set up in accordance with the Article 27 of the Organic Act of FSC, Executive Yuan, is entrusted with the responsibilities for monitoring and regulating securities and futures markets as well as securities and futures enterprises, and for formulating, planning, and implementing policies, laws, and regulations connected therewith as follows:

a) approval, regulation and supervision of securities placement and issuance;

b) approval, regulation and supervision of securities listing;

c) approval, regulation and supervision of futures contracts;

d) approval, regulation and supervision of options contracts;

e) approval, regulation and supervision of securities trading over the counters of securities firms;

f) approval, regulation and supervision of securities investment trust enterprises, securities financing enterprises, securities investment consulting enterprises, securities centralized depository enterprises, and other securities and futures service enterprises;

g) approval, regulation and supervision of securities firms and futures commission merchants;

h) direction and supervision of securities dealers associations and futures associations;

i) approval, regulation and supervision of the establishment of the securities exchange, futures exchange, and OTC securities markets;

j) regulation and supervision of responsible persons and associated persons of securities firms, futures commission merchants, the securities exchange, and the futures exchange;

k) regulations of public-held companies and supervision of their finance and operations;

l) regulation and coordination of margin purchases and short sales;

m) analysis and computer operations of securities and futures;

n) research, development, and evaluation of the regulation of securities and futures;

o) drafting and of promulgation of securities and futures regulations;

p) administration and supervision of the audits of public-held companies' financial reports carried out by certified public accountants; and

q) other matters related to administration of securities and futures.

583) The number of financial institutions subject to the supervision and administration of the Securities and Futures Bureau, including securities firms, securities investment trust enterprises, Securities finance enterprises, securities investment consulting enterprises, centralized securities depository enterprises, and futures commission merchants, as at December 2006 are as follows:

Financial Institutions	**Number**
Securities firms	156
Securities investment trust enterprises	42
Securities investment consulting enterprises	171
Centralized securities depository enterprise	1
Securities finance enterprises	4
Discretionary investment business concurrently conducted by other professional enterprises	21
General agents of offshore funds (including securities investment trust enterprises, securities investment consulting enterprises, and securities brokers)	32
Futures commission merchants	67

584) The Financial Examination Bureau set up in accordance with the Article 29 of the Organic Act of FSC, Executive Yuan, is entrusted with the responsibilities of financial institution supervision and examination as well as the drafting, planning and implementing of the polices and regulations with regard to the above functions. As at August 2006 the scope of the FEB extends to the following types and number of entities:

Scope of Financial Examination August 2006

Financial Examination Bureau

Type of Financial Institutions	**Numbers**
(1) Financial Holding Companies	14
(2) Domestic Banks	45
(3) Chunghwa Post Co. Ltd.	1
(4) Investment and Trust Company	2
(5) Branches of Foreign Banks	33
(6) Credit Cooperative Association	28
(7) Credit Department of Farmers' Associations	253
(8) Credit Department of Fishermen's Associations	25
(9) Life & Property Insurance Companies	50
(10) Bills Finance Companies	14
(11) Securities and Futures Companies	26
(12) Securities Finance Companies	4
(13) Information Centers	6
(14) Financial Information Service Co.	1
(15) Securities Investment Trust Enterprises	45
(16) Reinsurance Companies	2
Total	549

585) The Insurance Bureau set up in accordance with the Article 28 of the Organic Act of FSC, Executive Yuan, is entrusted with the responsibilities for monitoring and regulating insurance markets and insurance enterprises, and for formulating, planning, and implementing policies, laws, and regulations connected therewith as follows:

a) supervision on RBC of Insurers, Supervision on Appointed Actuary (AA) and Actuary, Supervision on Reserving & Pricing, Supervision on Solvency of Insurers;

b) internal Control & Audit System of Insurers, Financial Reporting, Report on Examination of Insurers;

c) supervision on insurers' investments, Supervision on insurers' capital, Regulatory action against Troubled Insurers;

d) reviewing non-life insurance products: Fire Insurance, Marine Insurance, Land and Air Insurance, Liability Insurance, Bonding Insurance, Automobile Insurance, Other Non-life Insurance, Export Insurance, Promoting and managing new types of non-life insurance products, Reforming non-life insurance product review system and revising relative regulations, Promoting and developing new non-life insurance products to meet policy goals of governments, Promulgating model clauses of non-life insurance contracts, Issuing and explaining the relative notes about non-life insurance products;

e) reviewing life insurance products: Life Insurance, Health Insurance, Personal Accident Insurance, Annuity Insurance, Investment-Linked Insurance, Promoting and managing new types of life insurance products, Reforming life insurance product review system and revising relative regulations, Promoting and developing new life insurance products to meet policy goals of governments, Promulgating model clauses of life insurance contracts, Issuing and explaining the relative notes about life insurance products;

f) complaints and disputes mediation & Consumer protection, Insurance education propaganda, Insurance fraud prevention & Anti-money laundering;

g) supervision on non-life insurance companies & Reinsurance business, Liberalization of non-life insurance premium structure;

h) supervision on life insurance companies, Amendment of Insurance Law and relative regulations, Corporate governance & Information disclosure;

i) supervision on insurance agents, brokers and surveyors, Reinsurance brokering business & E-commerce; and

j) compulsory Automobile Liability Insurance, Collaboration in making the new Labor Pension Act, Residential Earthquake Insurance, and International Affairs.

586) Regarding the coverage of the insurance industry for AML/CFT purposes, only insurance companies are covered as provided under Article 5 of the MLCA. As confirmed by the authorities, although the scope of FSC's Insurance Bureau includes the general prudential supervision of insurance agents and brokers, they are widely exempted from the current AML/CFT requirements.

587) In addition to implementing AML/CFT rules in accordance with the applicable provisions of the MLCA, financial institutions are also required, in order to effectively achieve the goal of preventing money laundering, to appoint a vice president (or another person of equivalent or higher rank) who has previously participated in AML training, to oversee the effective implementation of the institution's money laundering prevention guidelines and procedures.

Structure and resources of the supervisory authority R.30

588) The organization structure of FSC has 4 bureaus (Monetary Affairs, Securities and Futures, Insurance, and Examination Bureau), 4 departments (Planning, International Affairs, Legal Affairs, and Information Management Department), and 4 offices (Secretariat, Personnel, Accounting, and Anti-Corruption Office).

589) The FSC appears to carry out its policy making and enforcement work in a professional, fair, and independent manner. In addition to providing for an annual budget to pay for staff salaries and administrative expenses, the Organic Act also provides for the establishment of a Financial Supervisory Fund to bolster the funding of financial supervisory activities, ensure the FSC's development as a regulator of financial markets and financial service enterprises, and guarantee its independence in the performance of monitoring and examination.

590) The total staffing resources of the FSC as at the end of 2005 was 792 staff of whom 707 staff were allocated for the 4 FSC bureaus.

591) More than 90% of staff at the Banking Bureau are university graduates and postgraduates who work for the six divisions within the Banking Bureau, that is, R&D and legal affairs, domestic banking, community banking, non-banking and specialized banking and international banking and financial holding companies supervision. Prospective staff are required complete civil service examinations before they could join the Banking Bureau. The Banking Bureau provides specialized training on financial regulatory expertise, fiduciary relations of trust business, on-site examination skills, computer software and foreign language proficiency. Staff are also sent to study abroad or visit foreign regulatory authorities to further enhance their supervisory capabilities.

592) As at the end of 2006 the FEB had a total of 296 staff members of whom about 200 are staff involved in conducting actual examination functions. Examination staffs are generally well trained to conduct AML/CFT examinations of financial institutions.

593) The FEB is structured into eight functional divisions to conduct offsite monitoring and examinations of covered entities.

594) The SFB is also structured into eight functional divisions, namely, Corporate finance, Securities firms administration, Securities market administration, Securities service industries, Securities and futures research and education, Accounting administration, Futures, International affairs.

595) The Insurance Bureau is structured into four divisions, namely, prudential requirements, insurance product regulation, market protection & consumer protection, and policy insurance.

596) By virtue of statutory functional responsibilities assigned to it under the Organic Act, staff of FSC are required to maintain high professional standards at all times. Article 4 of the Civil Servant Service Act provides that civil servants are obligated to safeguard the confidentiality of information. Furthermore, Point 12 of the Directions for the Examination of Financial Institutions by the Financial Supervisory Commission, Executive Yuan provides as follows: “Examination personnel shall bear an obligation to maintain the confidentiality of matters under examination, examination schedules, and the operational status of examined institutions, and may not leak such information. “

597) In addition, the FSC has formulated the "Code of Conduct for Financial Examination Personnel of the Financial Supervisory Commission, Executive Yuan." In addition to barring examiners from demanding or receiving improper gratuities, accepting entertainment or gifts, or granting lobbying requests or favours, the Code of Conduct also

requires that examiners voluntarily exclude themselves from cases in which they have an interest.

598) The human resource capacity of the FEB, in particular, staff involved in the routine and special examinations, needs to be reviewed to determine adequacy of staffing resources in line with a substantially large size of the financial institutions that are captured under its mandate.

599) In the recent past, questions were reportedly raised on FSC's capability to supervise Chinese Taipei's financial system when the FEB's former director-general Mr Lee Chin-cheng was involved in an insider-trading scandal and corruption and was later convicted in June 2006 (pending appeal).

Recommendation 29

Supervisory powers and compliance (c.29.1)

600) Article 45 of the Banking Act provides as follows: "The central competent authority may, 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 of a bank or related parties. It may also direct a bank or related parties to prepare and submit, within a prescribed period of time, balance sheets, property inventories or other relevant documents for examination." In addition, Article 129-1 of the Banking Act provides for an administrative fine of not less than NT$2 million and not more than NT$10 million for a bank that commits any of the following acts:

a) refuses to be investigated or refuses to open the vault or other storage facilities;

b) conceals or damages books and documents related to business or financial conditions;

c) refuses to reply, or responds falsely, to inquiries of the investigator without legitimate reason; and

d) fails to provide financial reports, property inventories, or other related data or reports in a timely, honest, or complete manner, or to pay investigation fees within the specified period(s) of time.

601) According to the regulation of Paragraph 1, Article 7 of the Agricultural Finance Act, the Council of Agriculture, Executive Yuan may entrust the FSC to conduct on-site examinations of the agricultural financial institutions and the information sharing centers. In addition, according to the regulations of Paragraph 2 and 3, Article 7 of the same Act, the Council, at any time, may dispatch personnel to inspect the operations, finance and other related responsibilities of the Agricultural Bank of Taiwan, the Credit Department of Farmers' and Fishermen's Associations and related parties or order the bank, credit departments or related parties to prepare and submit, within a prescribed period of time, balance sheets, property inventories or other relevant documents for examination. The Council may also authorize professional specialists to inspect the required items, reports or information mentioned in the preceding paragraph and the expenses should be burdened by the bank or credit departments. In addition, Article 48 of the Agricultural Finance Act provides for an administrative fine of not less than NT$2 million and not more than NT$10 million for violating any of the following acts:

a) refuses to be investigated or refuses to open the vault or other storage facilities;

b) conceals or damages books and documents related to business or financial conditions;

c) refuses to reply, or responds falsely, to inquiries of the investigator without legitimate reason; and

d) fails to provide financial reports, property inventories, or other related data or reports in a timely, honest, or complete manner, or to pay investigation fees within the specified period(s) of time.

602) Supervisory agencies are authorized by law to monitor securities investment trust enterprises, securities investment consulting enterprises operating discretionary investment services, securities finance enterprises, centralized securities depository enterprises, and the general agents and sub-distributors of offshore funds, to ensure that they run their businesses in compliance with the MLCA.

603) Article 148 of the Insurance Act provides that "the competent authority may, at any time, dispatch officers to inspect the business and financial conditions of an insurance enterprise, or order an insurance enterprise to report, within a prescribed limit of time, the condition of its business," and "the competent authority may engage an appropriate agency or professional expert to conduct the inspection referred to." All customers as well as all transaction records and data fall within the scope of such financial examinations.

604) Article 168-1 of the Insurance Act provides: The competent authority may at any time dispatch an officer or commission an appropriate institution or expert to inspect the business and financial conditions of an insurance enterprise, or order an insurance enterprise to report the status of its business within a specific time limit. A responsible person or an employee of the insurance enterprise who commits any of the following acts shall be assessed an administrative fine of not less than NT$1.8 million and but not more than NT$9 million:

a) refuses to be investigated or refuses to open the vault or other storage facilities;

b) conceals or damages books and documents related to business or financial conditions;

c) refuses to reply, or responds falsely, to inquiries of the investigator without legitimate reason; and

d) fails to provide financial reports, property inventories, or other related data or reports in a timely, honest, or complete manner, or to pay investigation fees within the specified period(s) of time.

605) Any financial institution that fails to confirm a customer's identity, keep transaction records on file, or file with the designated authority in accordance with Articles 7 and 8 of the MLCA, is subject to an administrative fine of not less than NT$200,000 and not more than NT$1 million. Furthermore, Paragraphs 1 and 2, Article 11 of the same Act provide for criminal liability.

Inspections/Examinations (c.29.2)

606) Article 45 of the Banking Act provides as follows: "The central competent authority may, 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 of a bank or related parties. It may also direct a bank or related parties to prepare and submit, within a prescribed period of time, balance sheets, property inventories or other relevant documents for examination."

607) Article 2 of the Provisional Organic Regulations of the Financial Examination Bureau of the Financial Supervisory Commission, Executive Yuan authorizes the Financial Examination Bureau (FEB) to carry out financial examinations of certain financial institutions and their overseas branch units.

608) The FEB is responsible for the examination of financial holding companies, banking industry, insurance industry, bill finance industry, securities finance companies, and securities investment trust companies. The Stock Exchange, Futures Exchange, and GreTai Securities Market are in charge of the routine examination of securities, futures industries, and public companies. However, the FEB is in charge of the examination of subsidiaries under a financial holding company that engage in securities business and the FEB is also in charge of the routine examination of TSEC/GTSM listed securities firms.

609) The FEB also acts on behalf of the Bureau of Agricultural Finance of the Council of Agriculture, Executive Yuan to examine agricultural financial institutions.

610) Points 4 and 5 of the Directions for the Examination of Financial Institutions by the Financial Supervisory Commission, Executive Yuan (which were issued pursuant to authorization under Paragraph 2, Article 2 and Article 29 of the FSC Organic Act) empower the FSC, acting either on its own or in consultation with other institutions, to appoint personnel to carry out on-site financial examinations. The methods for conducting financial examinations are:

a) on-site examinations: the FSC assigns its personnel or accompanies with other agencies' personnel to conduct examinations;

b) regular examinations: conducting risk-based examinations on finance, business and overall operations;

c) targeted examinations: conducting examinations on designated business;

d) off-site monitoring: reviewing relevant statements or reports submitted by financial institutions; and

e) business interview: inviting the responsible persons or the chief operating personnel of financial institutions to provide reports and express opinions on specific matters.

611) The general frequency for on-site examinations of financial institutions is as follows:

a) Head offices: conducting examination on head Offices of financial institutions at least once every two (2) years, but adjusting the examination frequency according to their business performances; and

b) Branch offices: conducting sampling examinations on branch offices according to the most recent examination reports of their head office and other analytic materials.

612) The FSC may, as necessary, conduct examinations of securities enterprises, futures enterprises and other financial service enterprises depending on their operational conditions.

613) The frequency of examinations entrusted by other agencies is provided for in the relevant regulations governing entrusted affairs.

614) When conducting examinations, examiners may require examinee institutions to produce relevant reports and provide related documents and account books, or give detailed explanations. The institutions should provide the documents based on their real conditions. Examiners may as necessary copy the documents and require in-charge personnel of institutions to sign off on the related documents.

615) If examinee institutions produce or provide significant fake financial or operational information, or refuse, quibble or delay to provide real information, the institutions and managements should take relevant responsibilities. Under such circumstances, examiners may consider the case as an emergency or a material event.

616) Examiners are required keep the examined items, the examination schedule and the operations of examinee institutions confidential. However, the examiner-in-charge may have a meeting with relevant personnel about the examined items.

617) If the FSC Financial Examination Bureau discovers during a financial examination that the examinee has failed to confirm a customer's identity, that it has opened an account for a party that has previously been reported to the Joint Credit Information Center with a possible fraud account, or that it has failed to report a customer's possible money laundering transaction to the MLPC as required by the MLCA, the Bureau will include such matters in its examination opinion.

618) According to the regulations of Paragraph 2 and 3, Article 7 of the Agricultural Finance Act, the Council, at any time, may dispatch personnel to inspect the operations, finance and other related responsibilities of the Agricultural Bank of Taiwan, the Credit Department of Farmers' and Fishermen's Associations and related parties or order the bank, credit departments or related parties to prepare and submit, within a prescribed period of time, balance sheets, property inventories or other relevant documents for examination. The Council may also authorize professional specialists to inspect the required items, reports or information mentioned in the preceding paragraph and the expenses should be burdened by the bank or credit departments. Furthermore, according to Items 2 and 4 of the Guidelines for Examining the Agricultural Financial Institutions and Information Sharing Centers by FSC Entrusted by COA, the FEB will be responsible for conducting the examination in the frequency already described above.

619) The FEB also established a “Mobile Inspections Team” in 2006 to ensure the soundness management of financial institutions, maintain the financial stability, effectively investigate financial illegalities, and set up an impartial and disciplined financial environment.

620) The team members include FEB personnel who are qualified as certified public accountants or who are specialized in banking, securities, insurance and bills finance, and coordinate with staff members from the MJIB, the Investigation Supervision Unit for Financial Crimes of the High Court Prosecutor’s Office, Taiwan Stock Exchange Corporation (TSEC), Gre Tai Securities Market (GTSM), and judicial police authorities.

Table below shows onsite examination of financial institutions conducted by the FSC:

	2005		2006	
	Number of Onsite Examinations	Number of Targeted AML Examinations	Number of Onsite Examinations	Number of Targeted AML Examinations
Domestic Banks	134	94	124	69
Local Branches of Foreign Banks	13	13	20	20
Credit Cooperative Associations	14	12	20	16
Trust and Investment Companies	2	2	6	2
Bills Finance Companies	9	9	11	11
Postal Savings System of Chunghwa Post Co.	5	5	5	5

621) In the first quarter of 2006 only, the FEB completed regularly scheduled financial examinations on 99 financial institution head offices and 16 branch units, as well as unscheduled financial examinations on 14 financial institution head offices. In addition, the FEB collaborated with the MOEA, FSC Securities and Futures Bureau, and other government agencies on 67 audits.

622) The FSC conducts examination of credit departments of farmers' & fishermen's association when authorized and requested by the Bureau of Agriculture Finance. This arrangement is merely mutual between the authorities and a report of examination is forwarded to the BOAF for taking remedial measures or imposing sanctions on this sector.

623) The on-site examination findings reports are comprehensive and well documented by FEB. Some of the types of examination findings by the FEB when examining the AML/CFT measures of financial institutions, are as follows:

a) Examination findings on laws and regulations

   i) such company has not established (amended) guidelines for anti-money laundering operations;

   ii) the head office (branch) has established guidelines for anti-money laundering operations, but failed to submit the guidelines to the competent authority for recordation. (A violation of Article 6 of MLCA);

   iii) the auditing manual is not amended to become consistent with relevant laws and regulations, or important matters are not incorporated into the examination items for internal auditing or self-auditing.

b) Examination findings on training programs

   i) failure to hold periodical training courses or seminars on anti-money laundering operations each year or failure to have their staff members participate in such courses or seminars;

ii) failure to designate a vice president or its equivalent position who has taken the training courses on anti-money laundering operations to act as the responsible person for coordinating and supervising the implementation of guidelines for anti-money laundering operations;

iii) failure to establish complete files to track the employees who have taken training programs for anti-money laundering operations, and failure to make the schedule and to compile the contents of the training programs for employees of the respective Division. (A violation of Article 6 of MLCA).

c) Examination findings on list of terrorists

i) failure to establish files for the list of terrorists or terrorist groups sent by letter by the competent authority, and failure to make inquiries or keep the records for examination when a customer makes inward remittances from offshore and outward remittances. (A violation of the letter, Ref. No.: Tai-Cai-Rong-(6)-Zi-0906000070, dated 2 October 2001);

ii) while having established files for the list of terrorists or terrorist groups, computer systems with instant automatic-linked verification have not been developed and, as a result, it would entail manual verification and may easily cause omission;

iii) although files on the list of terrorists or terrorist groups have been established, the records for verification have not been kept. Moreover, when conducting outward remittance, if the ultimate beneficiary is a terrorist, the computer cannot automatically verify and lock the transaction;

iv) there are no internal control procedures regarding funds remitted from non-cooperative countries listed by the FATF, or withdrawal or transfers made within five business days. (For example, no form of administrative statement is available to the clerk in charge to review whether the transaction is commensurable to the identity and income of the customer or is relevant to the customer's business nature, and to keep such review record.) (A violation of Article 8 of MLCA).

d) Examination findings on account opening

i) failure to verify the relevant materials of the customer, ID card, signature and seal to ascertain customer's identity when dealing with the opening of an account;

ii) failure to fill in the residential address, nationality, or occupation in the account opening documents when dealing with the opening of an individual's account;

iii) failure to keep records of the ultimate holders or controlling persons when dealing with the opening of a corporate account;

iv) failure to keep the basic transaction information conducted by the company's agent. (For example, name, date of birth, identity documents) (A violation of Article 7 of the Money Laundering Control Act and administrative order, Ref. No.: Tai-Cai-Rong-(1)-0928011641, issued by the Ministry of Finance on Examination findings on account opening).

e) Examination findings on large amount transactions

i) all information of large amount transactions is established manually, which easily causes omissions, and customers are found to have failed to fill out the Declaration of At-the-Counter Transactions;

ii) for cash deposited or withdrawn, respectively, from the same account with an accumulated transaction amount of NT$1 million or more on the same business day, it has failed to ascertain whether the transaction and the client's identity and income are obviously not commensurable, and whether the transaction is relevant to the customer's business. (A violation of the administrative order issued by the Commission on November 4, 2005, Ref. No.: Jin-Guan-Yin-(1)-Zi-0940022159);

iii) for cash deposited or withdrawn, respectively, from the same account with an accumulated transaction amount of NT$1 million or more on the same business day, although the relevant information of the parties to the transaction has been registered pursuant to relevant regulations, such information is not completely keyed-in to the computer, and no analysis has been made on the suspected money laundering and no declaration has been filed. (Noncompliance with Article 8 of the Money Laundering Control Act);

iv) when the amount of a single transaction of cash received, paid or converted from or into New Taiwan Dollars exceeds NT$1 million, the cashier has keyed-in the name, ID card number, etc. of the parties to the transaction into the computer system of Entry of Customers' Information of Large Amount Currency Transaction, and attached the same to the reverse side of the voucher of such transaction. However, a column for keying in the addresses of the parties to the transaction is not made available in the computer entry system, which leads to the incompleteness of the entry information.

f) Examination findings on remittance information

i) the application for outward remittance does not include a column for "remitter's ID card number";

ii) when accepting remittance, the bank fails to comply with the principle of know-your-customer, and allows the large-amount remittance solely on the basis of the oral statement of the customer, and fails to report such transaction to the Bureau of Investigation, Ministry of Justice;

iii) when the customer conducts offshore inward transactions or outward remittances, the bank fails to make inquiries and keep the transaction records for inspection. (A violation of the administrative order issued by the Ministry of Finance on October 22, 2001, Ref. No.: Tai-Cai-Rong-(6)-Zi-0906000070).

g) Examination findings on offshore branches operating in Chinese Taipei

i) the head office and its auditing office fail to timely review and take corrective actions against its Hong Kong branch respecting operation procedures for know-your-customer and anti-money laundering. (For example, the new provisions of Guidelines on Prevention of Money Laundering promulgated by HKMA in 2004.) The auditing office fails to list them as significant items to be audited in an on-site inspection;

ii) in the Key Points Governing Risk Categorization of Anti-Money Laundering Operations, the branch categorizes the depositing customers into company, individual, and investment transactions, sets three different risk levels for the accounts thereof, and adopts different supervision standards for each transaction of different level. However, other characteristics such as industry, permanent residence, shelf company, and connections with politically-related persons have not been taken into consideration so as to distinguish the risk level. Better risk categorization measures should be framed pursuant to the policy on customer admission set forth in the Supplement to the Guidelines on Prevention of Money Laundering Activities of HKMA;

iii) the schedule of review is not attached when reviewing the account opening of customers. Moreover, neither is the schedule signed or chopped by clerks and authorized personnel, nor is the residence information included, which is inconsistent with the Guidelines on Prevention of Money Laundering Activities of HKMA;

iv) the branch fails to question and verify the motive, actual background and source of funds when a client, without a decent occupation and the recommendation of a domestic business unit, goes directly to Hong Kong for account opening. In addition, it fails to question the inconsistency between the client's identity and large-amount remittance and different remitters. Moreover, it fails to verify or report the motive of the client in intentionally concealing the actual beneficiary of the remittance;

v) the branch fails to verify or report the account into or out of which the funds of suspected money laundering flow;

vi) according to the Guidelines on Prevention of Money Laundering of HKMA, the legal compliance officer must review each transaction in the daily transaction statement, including inward and outward remittances transactions, L/C transactions, and frequent transactions, and check the connection between the transactions, terrorists and money laundering. The branch under examination does not have a statement designed for frequent transactions, which increases the difficulty of the legal compliance officer's review and verification.

624) The FEB has adopted follow-up measures in relation to on-site examination findings as a result of examining the AML/CFT measures of financial institutions.

625) Depending upon the severity of the failure and non-compliance by individual financial institutions to implement their anti-money laundering operations, financial institutions are directed to prepare recommendations for improvement. The FEB compels financial institutions to comply with such recommendations and include such recommendations in the default examination list of the FEB.

626) The Evaluation Team was advised by the FEB that on-site examination of financial institutions overseas branch units by the FEB is conducted in some visits in consultation with the host country supervisors. Similarly, when the home country supervisor conducts on-site examination of foreign branches operating in Chinese Taipei, the FEB is also consulted and the visit is also coordinated by the FEB.

Production of Records (c.29.3)

627) Article 5 of the FSC Organic Act provides as follows: "In carrying out a financial examination, the FSC and its subordinate agencies may, as necessary: (1) require a financial institution, a related party thereof, or a public company to produce relevant account books, documents, electronic files, and other such materials; or (2) notify an examinee to appear at a designated office to answer questioning." Article 5 further provides: "In a case involving suspected financial crime, the FSC and any subordinate agency thereof may present the facts of the case to a prosecutor in seeking permission from the latter to file a motion in the court of jurisdiction for issuance of a search warrant. Once the search warrant has been issued, the FSC or its subordinate agency may, accompanied by judicial police authorities, enter and search the suspected hiding place of the relevant account books, documents, electronic files, and other such materials or evidence. No one other than the parties mentioned above may take part in the search. The personnel who conduct a search shall transport all relevant materials and evidence obtained during the search to the FSC or a subordinate agency thereof, where it shall be handled in accordance with the law."

628) In addition, Point 10 of the Directions for the Examination of Financial Institutions by the Financial Supervisory Commission, Executive Yuan provides as follows: "While an examination is ongoing, an examiner may notify the examined institution to prepare relevant statements and furnish pertinent vouchers, documents, and account books so the examiner can inspect them or request detailed explanations, and the examined institution shall prepare and furnish such items truthfully. An examiner may make photocopies of them as necessary. An examiner may request relevant personnel of an examined institution to sign records furnished by the examinee."

629) With respect to a financial institution that fails to furnish all material records, Chinese Taipei has the following penal provisions:

a) Article 5 of the FSC Organic Act provides as follows: "Where an examinee obstructs, avoids, or refuses to allow an examination of the type set forth under paragraph 1, refuses to furnish relevant account books, documents, electronic files, or other such materials, or refuses without legitimate reason to appear for questioning, the FSC or a subordinate agency is empowered, unless another law provides to the contrary, to impose an administrative fine of not less than fifty thousand and not more than two-hundred fifty thousand New Taiwan Dollars, and may impose consecutive penalties until the examinee cooperates with the examination, appears for questioning, or furnishes the relevant account books, documents, electronic files, or other such materials."

630) In addition, related penal provisions are also set out in Article 129-1 of the Banking Act, Article 178 of the Securities and Exchange Act, and Article 168-1 of the Insurance Act.

631) According to the Paragraph 2 and 3, Item 5 of the Guidelines for Examining the Agricultural Financial Institutions and Information Sharing Centres by FSC Entrusted by COA, the staff of the agricultural financial institutions and information sharing centres should honestly provide related paper documents and computer media records for the business examination and should not be allowed to make any excuse to delay or conceal. It is also applicable to other departments of the Farmers' and Fishermen's Associations when involving the business with the credit departments.

632) If an examinee refuses to furnish relevant account books, documents, electronic files, or other such materials for business examination, or refuses without legitimate reason to appear for questioning, the FSC shall pass the situation with evidence to the COA for further handling. Furthermore, the Article 48 of Agricultural Finance Act provides

for an administrative fine of not less than NT$2 million and not more than NT$10 million for violating any of the following acts:

a) refuses to be investigated or refuses to open the vault or other storage facilities;

b) conceals or damages books and documents related to business or financial conditions;

c) refuses to reply, or responds falsely, to inquiries of the investigator without legitimate reason; and

d) fails to provide financial reports, property inventories, or other related data or reports in a timely, honest, or complete manner, or to pay investigation fees within the specified period(s) of time.

633) The power to compel production of or to obtain access for supervisory purposes does not require court order. The authorities have confirmed that no financial institution has ever neither refused an examination nor refused to produce records to the examination authorities.

634) Please also refer to write-up under R.17 regarding the requirements under c.29.4 on adequacy of powers of enforcement and sanction against financial institutions.

Recommendation 17

635) Paragraph 3, Article 7 and Paragraph 4, Article 8 of the MLCA provide for administrative fines, and Paragraphs 1 and 2, Article 11 of the same Act provide for criminal liability.

636) The Checklist of Money Laundering Prevention Guidelines and Procedures for Banks issued by the Bankers Association under the authorization of Article 6 of the MLCA was promulgated in 26 March 1997 upon approval of the Ministry of Finance. Under Article 45-1 of the "Banking Act" and "Enforcement Regulations for Bank Internal Audit Control System Banks", banks are required to incorporate the said Checklist into their internal control policy and procedures based on the principles of safe and sound banking practices. Pursuant to Points 2 and 3 of the said Checklist, banks are required to conduct customer due diligence and maintain related transaction records. Violators of the said Points are regarded as violations of Article 45-1 of the Banking Act, and shall be punished by an administrative fine of not less than NT$2,000,000 and not more NT$10,000,000 under Article 129, Subparagraph 7 of the Banking Act.

637) Under Article 45-1 of the Banking Act a bank is required to establish an internal control system and audit system; regulations governing the objectives, principles, policies, operating procedures, qualifications and conditions for internal auditors, scope of internal control audits that a certified public accountant shall be engaged to undertake, and other matters requiring compliance.

638) A bank is required to establish an internal processing system and procedures with respect to the evaluation of asset quality, the creation of loan loss provision, the clearing of and writing off of non-performing and non-accrual loans.

639) Where any bank operations are entrusted to another person to handle, the bank is required to adopt an internal operation system and procedures covering the scope of the matters entrusted, protection of customer rights and interests, risk management, and

internal control principles. Applicable regulations with respect of the above are prescribed by the Competent Authority.

640) Furthermore, under Article 129 of the Banking Act, the commission of any of the following acts would be punished by an administrative fine of not less than Two Million New Taiwan Dollars (NT$2,000,000) and not more than Ten Million New Taiwan Dollars(NT$10,000,000):

a) violations of Article 21, Article 22 or Article 57 or violations of Article 47-2 applying Article 4, Article 123 applying Article 21, Article 22 or Article 57 of this Act;

b) issuing share certificates in violation of Article 25 of this Act;

c) violations of Article 28, Paragraph 1 through Paragraph 3 or violation of Article 123 applying Article 28, Paragraph 1 through Paragraph 3;

d) violations of restrictions imposed by the Competent Authority under Article 33-3 or Article 36 or Article 47-2 or Article 123 applying Article 33-3 or Article 36 of this Act;

e) violations of a prescription on the minimum ratios prescribed by the Competent Authority in accordance with Article 43 or Article 123 applying Article 43 of this Act by failing to make the adjustment required thereby within the period of time prescribed therein;

f) violations of the restrictions prescribed by the Competent Authority in accordance with Article 44 of this Act;

g) failure to establish or diligently conduct an internal system in accordance with Article 45-1 or Article 47-2 applying Article 45-1 or Article 123 applying Article 45-1;

h) failure to apply for approval in accordance with Article 108, Paragraph 2, or in violation of Article 123 applying Article 108, Paragraph 2, of this Act;

i) violation of Article 110, Paragraph 4, or violation of Article 123 applying Article 110, Paragraph 4, of this Act by failing to appropriate a special reserve; or

j) violation of Article 115, Paragraph 1, or violation of Article 123 applying Article 115, Paragraph 1, of this Act in publicly offering common trust funds.

641) Paragraph 1, Article 61-1 of the Banking Act provides: If there is a possibility that a bank has violated laws and regulations or its articles of incorporation, or disturbed the sound operation [of the financial system], the competent authority, in addition to issuing an official reprimand and ordering corrective action within a prescribed time period, may also take any of the following actions, as the circumstances merit:

a) revoke the resolutions of board or shareholders meetings;

b) suspend part of the bank's business;

c) order the bank to discharge managers or staff members;

d) dismiss directors or supervisors from their positions or suspend them from execution of the duties of those positions for a specified period; and

e) take any other necessary action.

642) When an investment trust enterprise, securities investment consulting enterprise operating discretionary investment services, securities finance enterprise, centralized securities depository enterprise, or a general agent or sub-distributor of an offshore fund violates the MLCA, supervisory agencies are authorized by law to impose appropriate sanctions.

643) Article 149 of the Insurance Act provides: If an insurance enterprise violates laws or regulations or is suspected of improper management, the competent authority may first issue an official reprimand or order it to take corrective action within a specified period of time, and may, depending on the circumstances, take the following disciplinary actions:

a) restrict the scope of its business or the amount of its new contracts; and

b) order the insurance enterprise to increase its capital.

644) If an insurance enterprise does not comply with the disciplinary actions of the preceding paragraph, the competent authority shall take the following disciplinary actions as circumstances merit:

a) revoke the resolutions of board or shareholders meetings;

b) order removal of its managers or employees from their positions;

c) dismiss its directors or supervisor(s), or suspend them from their duties for a certain period of time; and

d) take any other necessary action. (Information source: FSC, CBC, BOAF)

645) The statistics provided by authorities on the number of administrative sanctions applied to financial institutions for violating the provisions of MLCA for the past 7 years for the financial institutions as well as DNFBP sectors are as follows:

May 2002	A bank was been fined NT$600,000 for Article 7 of MLCA.
June 2002	A bank was been fined NT$400,000 for violating Paragraph 1 of Article 7 of MLCA.
July 2005	A precious metals and stones distributor (Jewellery shop) was fined NT$400,000 and NT$1,000,000 for violating the regulation of Paragraph 1, Article 7 and Paragraph 1, Article 8 of MLCA.
Feb 2007	Taiwan Post Co. was fined NT$200,000 for violating Article 7 of MLCA.
May 2007	An insurance company was fined NT$200,000 for violating CTR obligation.

Measures to prevent criminals controlling a financial institution (R23)

646) The Regulations Governing Qualification Requirements for Responsible Persons of Banks provide a very wide range of cases which would preclude a person from serving as a responsible person of a bank.

647) The Securities Investment Trust and Consulting Act and various secondary regulations set out both positive and negative qualification requirements for anyone who would serve as a responsible person at a securities investment trust or consulting enterprise. Article 68 of the Securities Investment Trust and Consulting Act, for example, bars anyone who has violated a relevant law or committed a relevant crime within a certain period of time from acting as a promoter (regardless whether exercising such duties as a natural person, or as the representative or designated representative of a juristic person), responsible person, or associated person of a securities investment consulting enterprise; and where such a person is already serving as a responsible person or associated person, he or she shall be dismissed, and may not serve as a director, supervisor, or manager, and the competent authority shall request the competent authority for corporate registration by letter to void or revoke the registration of such person.

648) Anyone who has completed a criminal sentence within the past certain period of time is prohibited under a number of laws from acting as a promoter, director, supervisor, manager, or associated person of futures exchange, futures clearing house, or futures enterprise. These include the Futures Trading Act (Subparagraphs 1 and 5, Paragraph 1, Article 28; Article 44 as applied mutatis mutandis under Article 28; and Article 55 as applied mutatis mutandis under Article 28), the Standards Governing the Establishment of Futures Commission Merchants (Subparagraphs 1 and 5, Paragraph 1, Article 4), the Standards Governing the Establishment of Managed Futures Enterprises (Subparagraphs 1 and 5, Paragraph 1, Article 6), and the Regulations Governing Futures Advisory Enterprises (Subparagraphs 1 and 5, Paragraph 1, Article 19).

649) The Regulations Governing Required Qualifications for Responsible Persons of Insurance Enterprises provide a very wide range of criteria which would preclude serving as a responsible person of an insurance enterprise.

650) As mentioned above, the directors and senior management officials of financial institutions are evaluated on the basis of “fit and proper” criteria. In relation to an executive of a financial institution who refused to answer to summons issued by the prosecutions office in 2006, the FSC as the financial regulator conducted a special review to establish whether that person was ”fit and proper” for the job. The authorities have issued specific fit and proper instructions for financial institutions for example in 2001 the MOF issued a fit and proper test and reporting requirements for shareholders holding more than 15% outstanding shares with voting rights. The MOF also promulgated a proper test for the promoter and responsible persons of financial institutions in accordance with the rules change on payment rejection and blacklist for non-payment of checks.

Money or value transfer service, or a money or currency changing service

651) Chinese Taipei has foreign exchange controls and has a complex system of regulating the foreign currency exchange bureaus and business.

652) The financial institutions regulated by the FSC that provide foreign exchange business in Chinese Taipei are as follows:

Type of Financial Instruction	Number of Institutions	Number of Branches
Domestic Banks	39	3,049
Foreign Banks		63
Credit Corporation	19	215
The Credit Departments of farmers and Fishermens' association	26	16
Chunghua Post Co., Ltd.		111
Foreign currency Exchange Bureaus	253	

653) Money/value transfer services and foreign exchange business in Chinese Taipei is subject to control principally by the Foreign Exchange Control Act.

654) Article 29 of the Banking Act bars non-banks from providing domestic or foreign remittance services. It also requires the competent authority to act in concert with the judicial police authorities to take enforcement actions against violators and to refer cases for prosecution; and if the organization concerned is a juristic person, the responsible person shall be jointly and severally liable for repayment of the relevant obligations.

655) The financial examination of foreign exchange business on AML/CFT is covered under the general scope and mandate of regulation, supervision and examination conducted by the FSC.

656) There is also a presence of other non-banks entities that provide money or value transfer service in Chinese Taipei and evaluation findings are provided under section 3.11 of this report.

Foreign currency exchange bureaus

657) The establishment and administration of foreign currency exchange bureaus is regulated by the Regulations Governing the Establishment and Administration of Foreign Currency Exchange Bureaus that is prescribed pursuant to Paragraph 2, Article 35 of the Central Bank of the Republic of China Act.

658) The CBC has entrusted Bank of Taiwan to handle administrative affairs concerning the approval of the establishment of foreign currency exchange bureaus, cancellation of such approval and performance of operational audits when necessary. The above operational audits may be performed by the CBC solely or jointly with the Bank of Taiwan.

659) The following outlets may establish and operate a foreign currency exchange bureau in Chinese Taipei:

a) Hotels;
b) travel agencies;
c) department stores;
d) handicraft shops;
e) gold, silver and jewellery stores (generally called jewellery stores);
f) convenience stores;

g) administrative offices of national scenic areas;

h) sightseeing service centers;

i) railway stations;

j) temples; and

k) museums.

660) The table below shows the volume of foreign currency transactions conducted by various categories of foreign currency exchange bureaus in Chinese Taipei.

Type of Foreign Currency Exchange Bureau	Value of Annual Transactions (US$)		
	2004	2005	2006
Hotel	30,883,998	32,149,006	30,995,288
Handicraft	6,096,725	9,626,600	8,544,887
Department Store	4,775,183	5,154,872	4,407,651
Travel Agency	233,726	289,815	2,599
Jewellery Store	0	0	138,227
Other Duty Free	852,352	632,852	719,135
TOTAL	**42,843,988**	**47,855,150**	**44,809,793**

661) The above outlets intending to establish foreign exchange bureau by are required to apply to the CBC through Bank of Taiwan for approval. The license of a foreign currency exchange bureau is issued by Bank of Taiwan.

662) Institutions and associations providing services to foreign travellers or hotels and stores located in remote areas may also make application for licensing and registration.

663) Other than the tourist hotels, each foreign currency exchange bureau is required to hang combined Chinese and English identification signs at easily visible locations outside the door.

664) Article 2 of the regulations restricts a foreign currency exchange bureau to deal in exchanges foreign currency cash or traveler's checks for local currency with only foreign travelers holding passports of foreign countries and overseas Chinese coming to Chinese Taipei for tourism. Furthermore, pursuant to Article 3 the amount of each transaction handled by a foreign currency exchange bureau must not exceed ten thousand US Dollars (US$ 10,000) or its equivalent.

665) Article 6-1 of the above regulations was only very recently amended on 25 January 2007 to bring the money changing services sector within the scope of AML/CFT requirements. It states that when handling the foreign currency exchange business, foreign currency exchange bureau is required to ascertain the identify of the customer and keep the transaction record as evidence, and report any financial transactions suspected of money laundering to Money Laundering Prevention Center, Investigation Bureau, Ministry of Justice.

666) The actual implementation and its effectiveness could not be established as the AML/CFT requirements for the foreign currency exchange bureaus came into force only recently in January 2007.

667) Bank of Taiwan may revoke or cancel the license of a foreign currency exchange bureau in any of the following situations:

a) the foreign currency exchange bureau is in serious violation of these Regulations or other relevant regulations;

b) the foreign currency exchange bureau has not conducted any foreign currency exchange transactions for two successive quarters or the total amount of transactions has not amounted to five thousand US Dollars or its equivalent for four successive quarters;

c) the foreign currency exchange bureau suspends its business, is dissolved, or becomes bankrupt; and

d) after a foreign currency exchange business is approved, the documents in the original application are found to be materially false.

Oversight for other FIs

668) Under Article 52 of the Banking Act, the requirements for the establishment of banks or other financial institutions to be established in accordance with the Banking Act or other laws shall be as prescribed by the central competent authority.

669) Article 5 of the MLCA defines the term "financial institution" to include banks, trust investment companies, credit cooperatives, farmers' association credit departments, fishermen's association credit departments, bills finance companies, postal organizations that operate saving and remittance services, bills finance companies, credit card companies, insurance company, securities firms, securities investment trust enterprises, securities finance enterprises, securities investment consulting enterprises, centralized securities depository enterprises, futures commission merchants, and trust enterprises. Each of the above is governed by its own set of regulations, and is subject to regulation and oversight regarding its AML/CFT measures.

670) The Financial Services Act currently being drafted by the FSC contains provisions that will allow the FSC to exercise differential regulatory treatment with respect to financial service enterprises. The provisions also authorize the FSC to adopt regulations dealing with differential regulatory treatment.

Responsibilities of designated competent authorities

671) The MLCA and the accompanying regulations on Article 7 and 8 designate the functions and responsibilities for AML/CFT regulatory and supervisory system in Chinese Taipei to the competent authority. However, the MLCA does not designate any particular authority as the authority responsible for ensuring compliance with the Act.

672) The Organic Act governing the establishment of the FSC provides that the FSC is the competent authority for development, monitoring, regulation, and examination of financial markets and financial service enterprises. The BOAF is responsible for supervising agricultural financial institutions, planning and promoting agricultural loan in policy aid.

673) As mentioned earlier, the FEB is one of the four bureaus under the FSC, and is entrusted with the responsibilities of financial institution supervision and examination as well as the drafting, planning and executing of the polices and regulations with regard to these functions.

674) The FEB has developed and implemented a financial examination manual or handbook to include key points and procedures for financial examinations regarding

money laundering matters. The examination manual is sector specific and includes the domestic banks, foreign banks, insurance enterprises, securities firms, bills finance companies, credit departments of farmers and fishermen's associations, credit cooperatives.

Prudential Supervision and AML/CFT Supervision

675) Chinese Taipei's single financial supervisory authority the FSC has the oversight of the banking, securities and insurance industries. With this broad mandate the FSC monitors these industries to ensure the stability of financial institutions and financial markets. In doing so, the FSC is engaged in an ongoing effort to bring Chinese Taipei's financial system more closely in line with the international system. Accordingly, the prudential supervisory system incorporates measures for implementing and complying with the AML/CFT objectives. The FSC has adopted the Core Principles and guidance issued by the Basel Committee, IOSCO and IAIS for benchmarking financial system soundness and stability.

Licensing of Financial institutions and oversight for AML/CFT purposes

676) Under Article 52 of the Banking Act, the requirements for establishment of banks or other financial institutions to be established in accordance with the Banking Act or other laws is prescribed by the central competent authority. And Article 137 of the Insurance Act also sets forth requirements regarding the criteria for establishing an insurance enterprise.

677) Article 3 and Article 28 of the Agricultural Finance Act, the Regulation Governing Business of the Credit Department of Farmers' and Fishermen's Associations and the Regulations Governing the Establishment and Approvals of the Agricultural Bank of Taiwan respectively provide regulations for the establishment of agricultural financial institutions.

678) As described earlier, the banking, securities, and insurance bureaus are responsible for the licensing of their respective financial institutions and their supervisory oversight including oversight for AML/CFT purposes.

Statistics

679) The FSC maintains adequate and transparent statistics of regulatory and supervisory outputs including adequate records of sanctions imposed by the FSC. The Evaluation Team also found the statistics on the number of AML/CFT inspections conducted by the FSC to be adequate.

Guidelines

680) Article 6 of the MLCA requires a covered financial institution to establish its own money laundering guidelines and procedures and then submit those guidelines and procedures to the competent authority for review.

681) As mentioned in part 3.8 of this report the responsibility to develop money laundering prevention guidelines and procedures is shared between the financial institution and their respective SRO. The SRO would receive guidance and directive from the competent authorities, namely the supervisory authority or the MJIB. As required under Article 6, the SRO would seek approval of the internal control procedures for money laundering prevention and submit to its members to accordingly incorporate these in their own internal procedures. It is a common practice in Chinese Taipei that financial

institutions would adopt the entire procedures as their internal document. This approach is more common in the smaller categories of financial institutions.

682) The following AML/CFT guidelines have been issued for the financial institutions and the DNFBP sectors:

a) Money Laundering Prevention Guidelines and Procedures for Banking Industry;

b) Money Laundering Prevention Guidelines and Procedures for Securities Firms;

c) Money Laundering Prevention Guidelines and Procedures for life Insurance Industry;

d) Money Laundering Prevention Guidelines and Procedures for Non-life Insurance Industry;

e) Money Laundering Prevention Guidelines and Procedures for Precious metals and stones distributors;

f) Regulations Regarding Article 7 of the Money Laundering Control Act;

g) Regulations Regarding Article 8 of the Money Laundering Control Act;

h) Regulations Governing Bank Handling of Accounts with Suspicious or Unusual Transactions;

i) Directions for Confirming Customer Identity in Domestic Remittance Operations of Financial Institutions.

683) As mentioned elsewhere in the report, the relevant financial sector supervisory authorities and the relevant SROs take a wider supportive approach when dealing with guidelines. The SROs on one hand work closely with their members when initially developing the guidelines and on the other hand liaise with the regulatory authorities to ensure that the guidelines are properly authorized. The SROs again provide conduit for distributing these guidelines to the members and also ensure its compliance.

684) Chinese Taipei has a somewhat complex system of involving various authorities and agencies in establishing and implementing AML/CFT regulations and guidelines. The MOJ is the central competent authority in Chinese Taipei for implementing the MLCA.

685) The FSC provides guidance to banks, securities firms, insurers, and other financial institutions and helps them properly abide by the MLCA.

686) After the establishment of FSC in 2004, the CBC no longer supervises or regulates any individual financial institutions regarding AML/CFT.

687) The Ministry of Economic Affairs (MOEA) is the competent authority for the precious metals and stones distributors and in charge of the strategic planning, implementation and monitoring the effectiveness on AML/CFT. The MOEA has established a Checklist of Money Laundering Prevention Guidelines and Procedures for the businesses dealing in jewellery.

688) The BOAF is responsible for supervising agricultural finance institutions, planning and promoting agricultural loan in policy aid. BOAF however does not directly regulate AML/CFT measures for these institutions.

689) The Bankers Association is the primary financial sector SRO body and has 64 member institutions as of the end of 2005. As required under Article 6 of the MLCA, the Bankers Association has issued a "Checklist of Money Laundering Prevention Guidelines and Procedures for Banks", which member institutions are to use as a basis for formulating their internal AML rules.

690) The authorities have advised that the Credit Cooperative Union and the Agriculture Training Association also indirectly issue money laundering prevention guidelines and procedures, i.e. the checklist and hold training seminars for their members.

691) The SITCA has adopted a Checklist of Money Laundering Prevention Guidelines and Procedures for Securities Investment Trust Enterprises and Securities Investment Consulting Enterprises.

692) The Trust Association has adopted a Checklist of Money Laundering Prevention Guidelines and Procedures for Trust Enterprises. Since all trust enterprises in Chinese Taipei are concurrently operated by banks, the Trust Association formulated its checklist with reference to the Checklist of Money Laundering Prevention Guidelines and Procedures for Banks.

693) The Taiwan Securities Association has adopted a "Checklist of Money Laundering Prevention Guidelines and Procedures for Securities Firms".

694) The CNFA has adopted a Checklist of Money Laundering Prevention Guidelines and Procedures for Futures Commission Merchants, which CNFA members are to use as a basis for formulating their internal AML rules.

695) The Life Insurance Association has issued a Checklist of Money Laundering Prevention Guidelines and Procedures for Life Insurance Companies. The Non-life Insurance Association has issued a Checklist of Money Laundering Prevention Guidelines and Procedures for Non-Life Insurance Companies. As mentioned earlier, insurance agents and brokers are exempted from the current AML/CFT requirements. The FSC's Insurance Bureau has confirmed that the reason for excluding the brokers and agents is mainly due to the current market practice in Chinese Taipei where they work under the control of the insurance companies and it would be the responsibility of insurance companies to check if proper AML/CFT procedures are followed by the insurance brokers and agents.

696) The National Bar Association, the Certified Public Accountants Association, the Associations of Land Administration Agent and the Associations of Real Estate Broking Agencies have not yet undertaken consultation on the issuance of regulatory guidelines primarily because these sectors are currently not covered under the MLCA.

697) In January 2006 the MLPC disseminated to financial institutions the revised AML/CFT guidance on "Q&A of Reporting Suspicious Transaction".

3.10.2 RECOMMENDATIONS AND COMMENTS

698) It is recommended that the authorities should:

a) amend the provisions of the MLCA to clarify the supervisory authorities' ability to use their sanctioning powers to enforce compliance with AML/CFT standards;

b) clarify AML/CFT supervisory responsibilities over the foreign exchange and wire transfer and MVT service providers; and

c) impose a wider range of sanctions by authorities for AML/CFT violations.

699) The scope of AML/CFT requirements in the MLCA and the guidelines should be expanded to include insurance agents and brokers.

700) The approach taken by Chinese Taipei to deal with implementing R25 on establishing guidelines under the MLCA is not clear. In fact, the MLCA shifts the obligation to issue guidelines from the relevant competent authorities to the financial institutions themselves. It is believed that as a result of this approach the financial institutions are unduly burdened to ensure that the guidelines are developed in a manner that meets requirements expected by the competent authorities. The competent authorities are required to merely "review" the guidelines and procedures. The FSC however has been more proactively involved in the issuance of such guidance to the banking, securities and insurance sectors.

701) Authorities should consider streamlining the approach to establishing guidelines under the MLCA.

702) The human resource capacity of the FEB, in particular, staff involved in the routine and special examinations, needs to be reviewed to determine adequacy of staffing resources in line with a substantially large size of the financial institutions that are captured under its mandate.

703) Authorities should review ML & FT risk posed by outlets that provide foreign currency exchange services.

704) The authorities have only recently extended the AML/CFT requirements to the money changing services sector and special attention to this sector should be given to establish its effectiveness.

705) Authorities should re-examine the sharing of statutory responsibilities between the CBC and the Bank of Taiwan concerning the approval of the establishment of foreign currency exchange bureaus, cancellation of such approval and performance of operational audits.

3.10.3 COMPLIANCE WITH RECOMMENDATIONS 17, 23, 25, 29, 30 & 32

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	LC	• The type and nature of sanctions actually imposed to date by the FSC are inadequate in view of the many AML/CFT non-compliance findings for the banking sector. • The authorities have not adequately reviewed the appropriateness of sanctions in light of the large number of warnings issued to financials institutions for AML/CFT non-compliance.
R.23	LC	• Insurance agents and brokers are exempted from the current AML/CFT requirements. • The authorities have only recently extended the AML/CFT requirements to the money changing services sector and its effectiveness could not be established.
R.25	PC	• The approach taken to establishing guidelines under the MLCA is

		not clear and shifts the obligation to issue guidelines to financial institutions. The competent authorities are required to merely "review" the guidelines and procedures. • Guidelines are not detailed to adequately capture requirements specific to each industry.
R.29	LC	• The actual implementation and its effectiveness could not be established as the AML/CFT requirements for the foreign currency exchange sector came into force only recently in January 2007. • Supervisory framework for the foreign exchange sector is unclear.
R.30	LC	• The adequacy of staffing resources of the FEB involved in the routine and special examinations is lacking when compared with the large size of the financial sectors captured under its mandate.
R.32	LC	• Authorities have yet to undertake a comprehensive review to ascertain the extent to which the DNFBP entities may pose money laundering and terrorist financing risks. • The compliance rating in this box is an aggregate rating of R.32 across the various parts of the report.

3.11 MONEY OR VALUE TRANSFER SERVICES (SR.VI)

3.11.1 DESCRIPTION AND ANALYSIS

706) Only banks are authorized to provide domestic or foreign remittances service. As provided under Article 3 on the scope of business of banks under the Banking Act, a bank may handle domestic and foreign remittances business.

707) It is apparent that Chinese Taipei has a significant informal remittance sector in addition to the banking remittance sector. Factors supporting the size of the informal remittance sector include the limit on widespread low cost non-bank remittance and the significant populations of overseas foreign workers in Chinese Taipei who may take up alternative remittance services outside of the available banking remittance channels. It is estimated that there are presently over 100,000 Filipinos and around 300,000 Vietnamese in Chinese Taipei, while the number of foreign laborers from Thailand and Indonesia is gradually rising. Foreign students and businesspeople, including high-tech professionals from India employed in Chinese Taipei's high-tech industries, also account for a significant portion of money transfers in Chinese Taipei.

708) In cases of unauthorised domestic or foreign remittance, the FSC is authorized to take remedial action with the assistance of the police and refer any violations to the court for action. Article 29 also states that if the organization concerned is a juristic person, the responsible person shall be jointly and severally liable for repayment of the relevant obligations. When investigating the violations, "a suspected party's accounting books and documents may be searched and detained in accordance with the law, facilities including signs may be torn down and/or other necessary actions may be taken."

709) Article 125 of the Banking Act states that "those who violate Article 29, Paragraph 1, of this Act shall be punished by imprisonment for not less than three (3) years and not more than ten (10) years, and may be fined a criminal fine of not less than Ten Million New Taiwan Dollars (NT$10,000,000) and not more than Two Hundred Million New Taiwan Dollars (NT$200,000,000). Those who thereby obtain criminal income of One Hundred Million New Taiwan Dollars (NT$100,000,000) or more shall be punished by imprisonment for more than seven (7) years, and may also be fined a criminal fine of

not less than Twenty Five Million New Taiwan Dollars (NT$25,000,000) and not more than Five Hundred Million New Taiwan Dollars (NT$500,000,000)."

710) Article 29 of the Banking Act bars non-banks from providing domestic or foreign remittance services. Those in violation of the said Article shall be punished pursuant to Article 125 of the Banking Act. In other words, there are no money or value transfer service (MVT) operators other than banks allowed to provide remittance services to customers in Chinese Taipei.

711) In order to render remittance services in a more efficient or cost-effective way, banks in Chinese Taipei are allowed to establish agency relationships with foreign remittance service providers.

712) Money or value transfer service providers are required to obtain a licence from the MOEA. In August 2005, the MOEA granted a licence to Western Union to operate as an "electronic service provider". Western Union is limited to operating through existing banks when providing remittance services.

713) The authorities have also advised that Western Union in Chinese Taipei is only a marketing unit and as a financial institution, has no business operation and branches in Chinese Taipei. As Western Union in Chinese Taipei does not provide remittance services to customers, they consider that it does not fall within the purview of financial institutions supervised and inspected by the FSC.

714) In terms of the AML measures for remittances by banks using the Western Union services, banks are required to still adhere to the "Guidance for Banking Enterprises to Operate Foreign Exchange Business", "Checklist of Money Laundering Prevention Guidelines and Procedures for Banks" and all related AML laws and regulations.

715) As at January 2007 four banks provide Western Union service from a total of 172 branches throughout Chinese Taipei. 11% of all remittance by the preceding four banks is undertaken through the licensed Western Union 'marketing unit'.

716) The Chinese Taipei authorities provided further clarification after the on-site visit regarding enforcement of Article 29 of the Banking Act for the regulation and monitoring of the money or value transfer service providers. The competent authorities have worked closely to detect and investigate underground banking remittance.

717) The enforcement appears to be effective based on a number of prosecutions undertaken by Chinese Taipei as follows:

a) 25 cases in 2005 involving NTD$6.7 billion; and

b) 30 cases in 2006 involving 131 suspects and an amount of NTD$77.9 billion.

718) MOEA indicates that "Western Union estimates that there is an annual demand of up to USD 56 billion for foreign currency remittances by individuals, not including business remittances", in Chinese Taipei.

3.11.2 RECOMMENDATIONS AND COMMENTS

719) No remittance providers are licensed to operate outside of the banking channels. There is only a general requirement for money or value transfer services to be licensed or registered with the MOEA. The authorities could not provide information on the existence of other money or value transfer service providers. Apart from Article 29 of the Banking

Act that bars non-banks from providing domestic or foreign remittance services, Chinese Taipei does not have any specific laws or regulations governing the money or value transfer service providers.

720) The licensing, regulation and supervision of money value transfer service providers should be clearly defined in the MLCA and in regulatory policies.

721) Large scale unregulated remittance channels exist and are used predominantly by non-nationals, with a continuing need for structures or strategies to support increased uptake of remittance through formal channels.

722) The authorities should undertake further study of the nature of informal remittance business carried out from Chinese Taipei and consider additional measures to build incentives that encourage a shift of remittance from informal to regulated channels. Such a review may seek to consider information from government and the private sectors and may include an outreach programme to the informal remittance sector. The reviewers may wish to have regard to the experiences of other countries and typologies and best practices identified by international bodies including FATF, APG and World Bank for supporting better regulation of remittance for AML/CFT.

3.11.3 COMPLIANCE WITH SPECIAL RECOMMENDATION VI

	Rating	Summary of factors underlying rating
SR.VI	LC	• Apart from Article 29 of the Banking Act that bars non-banks from providing domestic or foreign remittance services, Chinese Taipei does not have any specific laws or regulations governing the money or value transfer service providers that operate outside of banking channels. • No remittance providers are licensed to operate outside of the banking sector, despite the existence of unregulated remittance channels exist, with a continuing need for structures or strategies to support increased uptake of remittance through formal channels; • The regulation, supervision and compliance framework for money or value transfer service providers that is undertaken by the FSC should be reflected in their policy framework. • The enforcement of Article 29 of the Banking Act is effective however, underground banking vulnerabilities remain and need to be continuously assessed.

4 PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

723) Chinese Taipei's scope of coverage of AML/CFT preventative measures for the DNFBP sector extends to trust businesses and dealers in jewellery while the establishment and operation of casinos are prohibited by law.

724) Trust business in Chinese Taipei is conducted by banks and the AML/CFT regulatory regime for trust business is largely similar to the regulatory framework for banks. Therefore, the description and analysis under some parts of this section may exclude the trust business as these are covered under the general scope of description and analysis for financial institutions under other parts of section 3 of this report.

725) Trust and company services providers, that is, persons that assist in the setting up of companies and trusts is provided by a certified public accountant or a lawyer and this sector is generally largely unregulated for AML/CFT purposes.

726) The jewellery sector was brought under the ambit of MLCA in October 2003. The AML/CFT obligations that are imposed under the MLCA on "financial institutions" are equally applied to the jewellery sector. The scope of CDD and record-keeping as provided under regulations regarding Article 7 of the MLCA is applied for cash transactions above NT$1,000,000 or US$31,000. This amount falls short of the US/€ 15,000 threshold set under the FATF standards for dealers in precious metals and stones.

727) The MOEA is the relevant AML/CFT supervisor for the jewellery sector and the ministry has issued a "Checklist of Money Laundering Prevention Guidelines and Procedures" for the businesses dealing in jewellery.

728) Lawyers, notaries, real estate agents and accountants are not presently covered under the specific scope of AML/CFT preventative measures in Chinese Taipei.

4.1 CUSTOMER DUE DILIGENCE AND RECORD-KEEPING (R.12)
(applying R.5 to 10)

4.1.1 DESCRIPTION AND ANALYSIS

Jewellery Shops

729) There are 3,725 jewellery shops operating in Chinese Taipei. 554 of them are corporations, and the rest are non-incorporated business entities. Opening of a jewellery shop does not require a license, but according to Article 12 of the Commercial Group Act, any jewellery shop, regardless of whether it is incorporated or established in accordance with the Commercial Registration Act, must join the relevant business association of jewellery shops. There are currently three business associations of jewellery shops: The Taipei Business Association of Jewellery Shops, the Kaoshung Business Association of Jewellery Shops, and the United Association of Jewellery Shops Association for Taiwan Province. The three associations combined have a total of 3,583 jewellery shops as their members.

730) The business associations established the Money Laundering Prevention Guidelines and Procedures for Precious Metals and Stone Distributors in accordance with Article 6 of the Money Laundering Control Act. However, other than the establishment of the Guidelines, the business associations' functions in the realm of AML/CFT are mostly

limited to education of their members and liaison between the government authorities and members.

731) Under Article 7 of the MLCA, the Regulations Regarding Article 7 of the MLCA, and the Money Laundering Prevention Guidelines and Procedures for Precious Metals and Stone Distributors set out CDD requirements for jewellery shops. A jewellery shop must require the customer to provide identification document and keep a record of the ID information when the amount of a single currency transaction is over NT$1 million.

732) The aforementioned Regulation and the Guidelines specify the types of ID documents that a jewellery shop must check to conduct CDD: the National ID Card or Passport if the customer is a natural person; and the legal registration certificate and the ID document of the representative if the customer is a legal person.

733) The Guidelines require jewellery shops to verify the identity of the agent and keep the identity record when a transaction is conducted by an agent.

734) Any jewellery shop that fails to verify customer identity for a cash transaction exceeding NT$1 million is subject to a fine between NT$200,000 to NT$1 million.

735) Article 8 of the MLCA, the Regulations Regarding Article 8 of the MLCA, and the Guidelines require a jewellery shop to verify customer identity when money laundering or terrorist financing is suspected. The Guidelines sets out examples of indicators of suspicious activities. The examples include the following:

a) the customer has sudden and unusually large transactions in precious metals or stones;

b) the customer makes several cash transactions divided into several consecutive transactions of slightly less than CTR reporting threshold;

c) other abnormal transactions activities.

736) The Guidelines also require jewellery shops to verify customer identity via phone or by visit when any of the following is discovered after a transaction is completed:

a) the customer does not exist;

b) the customer denies having made the transaction;

c) obvious evidence showing that the customer used a fake name.

737) Any jewellery shop that fails to verify customer identity or to file a report to the MLPC on any suspicious transaction is subject to a fine between NT$200,000 to NT$1 million.

738) There is no legislation or guideline that requires a jewellery shop to identify the beneficial owner.

739) Neither is there any legislation/guideline that requires a jewellery shop to apply enhanced due diligence measures for high risk customers/transactions. The customer due diligence measures set out in the Money Laundering Prevention Guidelines and Procedures apply uniform measures to all customers.

740) Chinese Taipei has no legislation or guideline for jewellery shops that addresses requirements to address politically exposed persons or non-face-to-face transactions.

741) The Model Money Laundering Prevention Guidelines and Procedures for Precious Metals and Stone Distributors require jewellery shops to pay special attention to customers that conduct sudden large amount of transactions and other obviously abnormal transactional activities.

742) For cash transactions exceeding NT$1 million, jewellery shops who fail to verify customer identity and report to the Ministry of Justice Investigation Bureau as required are subject to a find of between NT$200,000 to NT$1 million (Article 7 Paragraph 3 of the MLCA).

743) For suspicious money laundering transactions, jewellery shops who fail to verify customer identity and report to the Ministry of Justice Investigation Bureau are subject to a fine of between NT$200,000 to NT$1 million (Article 8 Paragraph 4 of the MLCA).

744) Article 7 of the MLCA provides the broad requirements for record-keeping where the jewellery sector is required to keep transaction and customer identification records for five years for only cash transactions exceeding NT$1,000,000. Article 8 of the MLCA also requires dealers in jewellery business to keep transaction and customer identification records for suspicious transactions.

745) Regarding the method and time period of safe-keeping transaction records as provided under Regulation Article 7.1.2.i, dealers in jewellery business are required to keep the records such as name, account number and amount in relation to a transaction;

746) The same concerns relating to the record-keeping requirements for “financial institutions” under the MLCA, as described in Section 3.5 above, are also applicable to jewellery sector.

747) There are currently no AML record-keeping obligations imposed on lawyers, notaries, real estate agents, accountants or trust and company services providers and businesses.

748) The MLCA does not require dealers in jewellery business to undertake any monitoring of transactions. However, the Checklist of Money Laundering Prevention Guidelines and Procedures for the businesses dealing in jewellery provides some measures on this requirement.

749) The measures provided in the checklist under “points for attentions of suspected money laundry” states that transactions with the following conditions would be of concern as suspected money laundry operations:

a) customers with sudden large amount transactions;

b) customers with frequent transactions with cash slightly less than one million Taiwanese dollars;

c) other obviously abnormal transactional activities.

750) The measures on monitoring of transactions for the dealers in jewellery business as provided under the AML checklist fall short of the essential criteria under R.11 as they do not require jewellers to examine the background and purpose of such transactions.

751) There are currently no specific AML transaction monitoring obligations imposed on lawyers, notaries, real estate agents, accountants or trust and company services providers and businesses.

752) Paragraph 3, Article 7 and Paragraph 4, Article 8 of the MLCA provide for administrative fines, and Paragraphs 1 and 2, Article 11 of the same Act provide for criminal liability.

753) A business dealing in jewellery which violates the CDD, record-keeping and CTR reporting provisions is liable be punished by a fine between $200,000 NT to $1 million NT.

754) A business dealing in jewellery which violates the STR reporting provisions is liable be fined between 200,000 NT and 1 million NT. However, the MLCA states that if the jeweler is able to prove that the cause of such violation is not attributable to the intentional act or negligent act of its employee(s), no fine will be imposed.

755) Any employee of a businesses dealing in jewellery [without a government official position] who reveals, discloses or hands over documents, pictures, information or things relating to the reported suspect financial transaction or reported suspect money laundering activity to others, is liable to be sentenced to imprisonment of not more than two years, detention, or fined not more than 500,000 NT.

756) The MOEA has fined a jewellery shop NT$400,000 under Article 7 of the MLCA for failure to report a cash transaction above NT$1 million. Another jewellery shop was fined NT$1 million for failure to report suspicious transaction report that involved some NT$20 million.

757) The following are general sanctions that may be imposed on the remaining sectors.

Real estate sector

758) According to the regulation issued under Article 26 of the Land Administration Agent Act, for securing real estate transactions and safeguarding the property rights of people, land administration agents should not have any improper behaviour to violate the Act when accepting trust from clients to engage in professional business. If any violation of the Act that has caused interest loss of the clients or third thirties, the agents must compensate the loss. Article 27 of the Act stipulates that the land administration agents are forbidden to 1) to operate a business; 2) permit others to operate a business by using his professional certificate; 3) soliciting business by illegal ways; 4) spreading ads beyond the permitted business scope; 5) intentionally request, arrange or receive remuneration in contravention of the Act; 6) register the ownership of real estate to authorities with fake certificate. In addition, according with Article 28 of the Act, the land administration agents should provide the business operation records to authorities for supervision under request. Any violation of Article 27, 28 of the Act, the ethic code or the terms of reference of the associations, the land administration agents shall be punished by documentary warning, suspending business operation or revoking the professional certificate.

759) In order to effectively perform the obligations of real estate broking businesses and brokers to ascertain their clients' identity and verify the entrusted real estate targets,

real estate broking businesses should designate a broker to sign the real estate description and the written contact and comply with the Ethic Rules stipulated by the National Real Estate Broking Agency's Association. Any real estate broking business which violates the Act or the Ethic Rules shall be fined between NT$ 60,000 to NT$ 300,000, and the broker will be punished with a written warning.

Lawyers and Notaries

760) Although there is a self-disciplinary mechanism and penalty procedure under the Attorney Regulation Act and the Attorney Ethics Code, there is no criminal, civil or administrative penalty to obligate an attorney to observe the FATF Recommendations on AML/CFT. An attorney who seriously violates attorney code of ethics articles of the Bar Association in which they are members is liable for disciplinary action including a warning, a reprimand, suspension of the right to practice law for a period not exceeding two years or disbarment. The obligations of a notary to verify the applicant's identity and preserve the notarial documents and registers when performing the notarial duties are explicitly stipulated in the Notary Law and the Rule for Preservation and Destruction of the Notarial Documents and Registers. If violated, the supervisory authority may give notice to, warn or take disciplinary against a notary based on the seriousness of the breach.

Accountants

761) CPAs are subject to administrative sanctions and civil liabilities if they commit legal infractions through either intention or neglect as set out in the CPA Act. Administrative sanctions are applied under Articles 17, 39, and 41 of the CPA Act. That is, if a CPA engages in improper conduct, violates or neglects his professional duties, is sentenced to punishment for a criminal offense, receives administrative sanction for a legal infraction that is serious enough to affect the CPA's reputation, or otherwise violates any provision of the CPA Act, an interested party, the competent authority for a particular case, or the National CPA Association, may report the pertinent facts and evidence to the local competent authority, and the local authority is required to refer the case to the central competent authority for disciplinary action against the CPA named.

762) Civil liability sanctions are applied under Articles 17 and 18 of the CPA Act that provide that "a CPA shall not engage in any improper conduct, nor violate or neglect his professional duties in the performance of any assigned or requested service," and that "a CPA shall be liable to compensate his appointing party, client, or any interested party for losses caused by him in violation of the aforementioned provision."

763) Disciplinary sanctions are prescribed both in the CPA Act and in the Securities and Exchange Act. The CPA Act is applied to all CPAs and the process of a disciplinary sanction is actioned by resolution of the CPA discipline Committee. It states that a CPA who is in any one of the following situations shall be subject to disciplinary sanction:

a) if he has been sentenced to punishment for a criminal offence;

b) if he has evaded tax payments or assisted or incited other person(s) to evade tax payments for which disciplinary actions have been taken and recorded by the tax authority;

c) if he has issued a false certification of the financial statements of a company which publicly issues stocks or corporate bonds;

d) if he has seriously violated other regulations and has received an administrative sanction such that the reputation of the CPA profession has been impaired;

e) if he has seriously violated the constitution of the CPA association of which he is a member;

f) if he has violated any provision of this law.

764) Disciplinary sanctions under CPA Act include warning, reprimand, suspension or expulsion from the CPA.

765) Disciplinary sanctions under the Securities and Exchange Act apply only to public companies. Disciplinary actions are taken only against the CPAs that have been approved by FSC for auditing and certifying the financial reports of public companies and will target at their professional services about public companies. The process of a disciplinary sanction here is actioned by the resolution of the FSC committee. Disciplinary sanctions under Securities and Exchange Act include warning, suspension revocation of the permission to provide public companies' certification services.

766) There are currently no specific AML sanctions that could be imposed on lawyers, notaries, real estate agents, accountants, trust and company services providers and businesses.

4.1.2 RECOMMENDATIONS AND COMMENTS

767) Jewellery shops in Chinese Taipei have no CDD requirements for transactions under NT$1 million. Chinese Taipei should lower the threshold that triggers CDD obligation on cash transactions.

768) The authorities should:

a) conduct a detailed assessment of the appropriateness of the current threshold of NT$1,000,000 for dealers in precious metal and stones;

b) raise awareness on AML/CFT standards and obligations for the wider non-covered institutions;

c) provide specific AML/CFT requirements under the MLCA for lawyers, notaries, real estate agents, accountants, trust and company services providers and businesses;

d) issue separate regulations that detail the obligations of DNFBPs to the nature and size of their operations;

e) issue sector-specific comprehensive guidelines to the newer DNFBPs;

f) designate appropriate AML/CFT supervisory authorities for the DNFPB sector are thorough consultations with the SROs and the industry;

769) The authorities should, as a matter of important priority, examine the capacity and resources of the relevant competent authorities to ensure and enforce full compliance with the FATF requirements for all categories of the DNFBP sector.

4.1.3 COMPLIANCE WITH RECOMMENDATION 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	NC	• Dealers in precious metal and stones are the only category of the DNFBP sector covered under MLCA. • There are currently no specific AML requirements that could be imposed on lawyers, notaries, real estate agents, accountants, trust and company services providers and businesses. • The scope of CDD and record-keeping for all covered financial institutions including the dealers in precious metals and stones is applied for cash transactions above NT$1,000,000 or US$31,000. This amount falls short of the US/€ 15,000 threshold set under the FATF standards. • The obligations of dealers in precious metal and stones fall substantially short of the requirements of Recommendations 5, 6, 8-11, & 17. Due to the exclusion of other categories of DNFBPs, these requirements are also not imposed on them. • There are concerns on capacity of competent authorities to ensure and enforce full compliance with the FATF requirements for all categories of the DNFBP sector, including dealers in precious metal and stones.

4.2 SUSPECT TRANSACTION REPORTING (R.16)

4.2.1 DESCRIPTION AND ANALYSIS

Applying Recommendation 13

770) Under Article 8 of the MLCA, jewellery shops are required to report any transaction carrying signs of suspicion of money laundering specified in the Money Laundering Prevention Guidelines and Procedures or any transaction identified as abnormal based on the internal procedure to the Ministry of Justice Investigation Bureau.

771) Under the Regulations Regarding Article 8 of the MLCA, transactions where the ultimate beneficiary or transaction party is a terrorist or terrorist group as listed by the MOF based on information provided by foreign governments, must be reported.

Applying Recommendation 14

772) Article 8 of the MLCA provides that reporting entities will be discharged from their confidentiality obligation to the customer if the institution can provide proof that it was acting in good faith when reporting the suspect financial transaction to the Ministry of Justice Investigation Bureau.

773) Under Article 11 of the MLCA, any employee of a jewellery shop will be subject to punishment by imprisonment of not more than 2 years or a fine of not more than NT$500,000 if he/she discloses or hands over documents, pictures, information or things relating to the reported suspect financial transaction or reported suspect money laundering activity to others.

Applying Recommendation 15

774) Under Article 6 of the MLCA, jewellery shops are required to establish their own internal control guidelines and submit those guidelines and procedures to the competent authority for review. The same Article provides that content of such internal control guidelines must at a minimum include the following items:

a) the operation and the internal control procedures for money laundering prevention;

b) the regulatory on-the-job training for money laundering prevention instituted or participated in by the financial institution referred to in this Act;

c) the designation of a responsible person to coordinate and supervise the implementation of the established money laundering prevention guidelines and procedures;

d) other cautionary measures prescribed by the competent authority and the Ministry of Finance.

775) The Model Money Laundering Prevention Guidelines and Procedures issued by the Ministry of Economic Affairs require jewellery shops to establish internal control guidelines that include the following measures:

a) retaining of records on transactions of more than NT$1 million that are suspected to be involved in money laundering for five years;

b) supervision and monitoring of employees for suspicious behaviors;

c) keeping confidential customer identification information;

d) regular review of the guidelines and reporting of revisions to the Ministry of Finance.

Internal control requirements for DNFBP

776) Article 6 of the MLCA requires dealers in jewellery business to establish money laundering prevention guidelines and procedures. Dealers in jewellery business are required to submit the guidelines and procedures to the competent authorities for review as a prerequisite to its implementation.

777) In addition to powers of competent authorities to prescribe additional cautionary measures under the MLCA, financial institutions are required to include the following items in their money laundering prevention guidelines and procedures:

a) the operation and the internal control procedures for money laundering prevention;

b) the regulatory on-the-job training for money laundering prevention;

c) the designation of a responsible person to coordinate and supervise its implementation.

778) The MOEA, in consultation with the Associations of Jewellery Shops, also referred to the as Taipei Jewellery Association, has issued an AML checklist for precious

metals and stones distributors. Under this checklist dealers in jewellery business are required to implement internal control and procedures on key AML issues including:

a) points for attentions to anti money laundry operations;

b) internal control procedures of anti money laundry operations; and

c) regular participation of training for anti money laundry operations.

779) The MOEA commissioned audit inspections of 20 jewellery shops in 2006 which did not reveal any violations of Articles 6 of the MLCA (which deals with requirements on internal control systems).

780) There are currently no specific requirements on AML internal control systems that could be imposed on lawyers, notaries, real estate agents, accountants, trust and company services providers and businesses.

781) The suspicious transactions reporting obligations under the MLCA applies to the dealers in precious metal and stones as described in Section 3.7 above.

782) The Evaluation Team was provided with conflicting statistics on STRs reported by dealers in precious metal and stones. According to the MOEA the dealers in precious metal and stones have reported 2 STRs to MOJ. However, this figure was not included in the statistics kept by MLPC. The Evaluation Team believes that these reports were CTRs and not STRs.

783) There are currently no specific requirements on reporting of suspicious transactions that could be imposed on lawyers, notaries, real estate agents, accountants, trust and company services providers and businesses. The conditions on submission of STRs by remaining categories of DNFBP under c.16.2 are therefore not applied.

784) However, as an interim measure, the MOI has notified the real estate sector that they should, among other things, report suspicious transactions to their respective SRO.

785) The applicability of R.13, 14 & 21 (c. 16.3) for the DNFBP sector only extends to the dealers in precious metal and stones and the same shortcomings noted in Sections 3.7 and 3.8 of the Report are applicable to DNFBPs but more specifically to the dealers in precious metal and stones.

786) Due to the exclusion of the accountants sector, the MLCA does not impose on auditors and the other professional activities of accountants (c.16.5), obligations to report suspicious transactions.

787) Regarding the reporting of suspicion that funds are the proceeds of a predicate offence (c.16.6), the reporting obligation Article 8 and regulations regarding Article 8 of the MLCA generally include suspicion that a transaction relates to the commission of a serious offence and the same is applicable only to the dealers in precious metal and stones.

Applying Recommendation 17

788) Any jewellery shop that fails to verify customer identity, file STR, or keep transaction records as is stipulated in Article 8 of the MLCA is also fined between NT$200,000 and NT$1 million.

789) Any employee of a jewellery shop who discloses or turns over documents, pictures, information or things relating to reported suspicious money laundering transactions or activities shall be subject to an imprisonment of no more than two years, forced labor service or fine of not exceeding NT$500,000 (Article 11 Paragraph 2 of the MLCA)

Applying Recommendation 21

790) Under the Regulations Regarding Article 8 of the MLCA, jewellery shops are required to report to the Ministry of Justice Investigation Bureau if an inward remittance from a jurisdiction listed by FATF as a “Non-cooperative Country or Jurisdiction" is withdrawn or transferred within five business days after receipt and the amount is not consistent with the customer's status or income or is unrelated to the nature of the customer's business.

4.2.2 RECOMMENDATIONS AND COMMENTS

791) The authorities should urgently impose obligations to report suspicious transactions to all other DNFBP sectors.

792) Authorities should focus more AML/CFT inspections along with the education efforts for jewellery shops.

793) Authorities should provide training to the DNFBP in detecting unusual and suspicious transactions.

794) The authorities should consider launching a progressive awareness campaign on the methods, trends, and typologies on ML and TF for the DNFBP sectors.

795) The authorities have advised that there are plans to amend the CPA Act. It is recommended that the authorities engage in consultation with the accountants sector to include AML/CFT obligations in the revised CPA Act as may be appropriate.

4.2.3 COMPLIANCE WITH RECOMMENDATION 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	NC	• Dealers in precious metal and stones are the only DNFBP sector that is required to report suspicious transactions, however, the effectiveness is in doubt due to lack of any STRs being made to date. • The underlying reason for lack of reporting of STRs by the dealers in precious metal and stones is largely correlated with the lower threshold for CDD and other AML requirements. • There are currently no specific STR reporting obligations that could be imposed on lawyers, notaries, real estate agents, accountants, trust and company services providers and businesses. • Concerns were noted from some category of DNFBPs who reported lack of consultation, awareness and guidance on the wider need for implementing and complying with FATF recommendations.

4.3 REGULATION SUPERVISION AND MONITORING (R.24-25)
(applying R.13 & 14)

4.3.1 DESCRIPTION AND ANALYSIS

Applying Recommendation 24

796) The Ministry of Economic Affairs is the regulatory authority in charge of implementation of MLCA with regards to jewellery shops.

797) The Ministry of Economic Affairs issued the Money Laundering Prevention Guidelines and Procedures for Precious Metals and Stones Distributors on 23 July 2003.

798) In 2006, the Ministry of Economic Affairs commissioned CPAs to conduct AML audit on 20 jewellery shops.

799) For jewellery shops registered as corporations, any hindrance, refusal or evasion of the documentary examination by the competent authority shall be subject to a fine of between NT$20,000 to NT$20,000 to NT$100,000 (Article 20 of the Company Act). Any hindrance or evasion of the onsite inspection will be subject to a fine between NT$20,000 to NT$100,000. Repeated violations shall be subject to consecutive fines, with an amount between NT$40,000 to NT$200,000 (Article 22 of the Company Act).

Applying Recommendation 25

800) The Ministry of Economic Affairs is working in collaboration with the Jewellery Shop Associations in organizing relevant education activities.

801) Since jewellery shops were brought into the scope of the AML/CFT regime in 2003, the Ministry of Economic Affairs has organized 7 educational seminars on MLCA.

Regulation of Casino Sector

802) Establishment and operation of casinos in Chinese Taipei are prohibited. The prohibition of casino operation is covered under the broad definition of “gambling” as provided under Article 268 of the Criminal Code as follows:

> “A person for the purpose of gain furnishes a place to gamble or assembles persons to gamble shall be punished with imprisonment for not more than 3 years; in addition thereto, a fine of not more than 3,000 yuan may be imposed.”

803) Regarding internet casino and internet gambling, under Chinese Taipei’s criminal code, a crime is punishable where the "site" of the crime is within Chinese Taipei's territory. Furthermore, the "site" of crime is defined as the site where the criminal act is conducted or the site where the "effect" of the criminal act takes place. That is to say that if a casino website is providing gambling services in Chinese Taipei, it would be deemed a violation of the criminal code even if the internet website is registered in a country out of Chinese Taipei. In 1998 a case was tested before the court for the gambling offense whereby, via internet, a website site re-transmitted a casino cable television channel located in the another jurisdiction. The site successfully solicited many gamblers from Chinese Taipei and attracted millions of wagers. Because the gambling "site" was located within Chinese Taipei, the persons running the internet website were prosecuted for criminal offence under the criminal code.

Monitoring, Compliance & regulation of DNFBP Sector

Trust Business

804) With the exception of trust businesses and dealers in jewellery, the DNFBP sector is largely not covered under Chinese Taipei's AML/CFT framework.

805) The legal framework for Chinese Taipei's trust business is provided by the Trust Enterprise Act (19 July 2000) and the Trust Act (promulgated on 26 January 1996). Trust enterprises conducting a trust business are required to abide these two laws and related regulations.

806) Currently, all trust business in Chinese Taipei is conducted by banks and the AML/CFT regulatory regime for this sector, in most ways, is similar to the regulatory framework for banks. As of 31 December 2005, Chinese Taipei had 54 trust enterprises, including 43 operated concurrently by domestic banks, and 11 concurrently operated by the Chinese Taipei branches of foreign banks. The types of trust business operated by trust enterprises include:

a) money trusts;
b) securities trusts;
c) chattel trusts; and
d) real estate trusts.

807) In addition to the above, the securitization activities of trust enterprises are covered under the Financial Asset Securitization Act and the Real Estate Securitization Act. The Financial Asset Securitization Act provides that Chinese Taipei trust enterprises may engage in financial asset securitization by means of either a special purpose trust or a special purpose company. Special purpose companies do not currently exist in Chinese Taipei and all financial asset securitization in is currently carried out by special purpose trusts that act as the trustees. As of 31 December 2005, the size of the trust market in Chinese Taipei was NT$2.86 trillion out of which NT$2.46 trillion was for money trusts.

Company Service Providers

808) The Company Act limits company formation agents to a certified public accountant or a lawyer.

Dealers in Jewellery Business

809) In October 2003, the MOJ revised Article 5 of the MLCA to designate jewellery shops as covered financial institutions under Chinese Taipei's AML/CFT regime. The Act does not distinguish between financial institutions in terms of obligations except what may be provided in the regulatory guidelines. The Act therefore does not exclude from application of certain requirements such as enhanced due diligence for higher risk customers or the strict requirements on the timing of verification which could have been relaxed for DNFBPs. Like other covered financial institutions, the jewellery sector is also required to undertake CDD and other measures for only cash transactions above NT$1,000,000.

810) Regarding the licensing regime of dealers in precious metal and stones, the MOEA is responsible for the general registration of companies in Chinese Taipei. There is no specific licence or regulation of jewellery shops except as mentioned below that once incorporated they are required to become a member of a SRO. The following relevant information is kept by the MOEA for company incorporation purposes:

a) the name of the company;
b) the scope of business to be conducted;
c) the name, domicile or residence of each shareholder;
d) the location of the head office and the branch office(s);
e) the name of the shareholder designated to represent the company; and
f) the name of the shareholder(s) who is (are) designated to conduct the business operations of the company;

811) The following relevant information of any company registered in Chinese Taipei is available to the public:

a) the name of the company;
b) the scope of business of the company;
c) the location of the company;
d) the shareholder(s) executing the business operations or representing the company;
e) the name of directors and supervisors and their respective shareholdings in the company;
f) the name of the manager;
g) the amount of authorized capital stock or of the paid-in capital; and
h) the Articles of Incorporation of the company.

812) Jewellery shops are required to be members of SROs under Article 12 of the Business Entity Act. There are 3 associations at district level. TGA was established in 1945 and has 3,735 members that operate their business from some 12,000 outlets. The associations cooperate with the authorities to supervise their members for compliance with AML/CFT measures. The associations provide education programs including holding AML seminars for its members. The association is also responsible to deliver government information to members. The association is generally well aware of AML requirements as it has participated in several meetings organized by MOF, MOEA, and BOI since 1998. According TGA, almost 99% of its members are aware of the AML obligations and realize its importance. 10% of the jewellery shops are not members as these shops provide mixed business.

813) In March 2003, the MOEA was designated as the competent authority for the implementation of MLCA for jewellery shops. The MOEA is responsible for keeping a register of all jewellery shops in Chinese Taipei. The SRO maintains comprehensive records of its members including the size of the shop, its capital structure and size, number of employees, and this information is then provided to MOEA.

814) In July 2003, the MOEA issued a Checklist of Money Laundering Prevention Guidelines and Procedures for the businesses dealing in jewellery. Since 2003, the MOEA has organised 7 sessions on MLCA educational activities.

815) The penalties provided under the MLCA and regulations are applicable to all “financial institutions” covered by the MLCA Act, including businesses dealing in jewellery. The assessment on applying R.17 to the DNFBP sector is limited to the businesses dealing in jewellery as the remaining category of DNFBPs are excluded from penalty provisions of the MLCA.

816) The SROs are not responsible for monitoring and ensuring compliance of jewellery shops with the AML/CFT requirements. The SROs also do not have the powers to impose sanction. Compliance powers are vested in the MOEA.

817) The MOEA commissioned a CPA to conduct audit inspections of 20 jewellery shops in 2006 to check AML/CFT compliance of jewellery shops. The examinations findings did not reveal any violations of Articles 6-8 on the MLCA.

818) The MOEA has fined a jewellery shop NT$400,000 under Article 7 of the MLCA for failure to report a cash transaction above NT$1 million. Another jewellery shop was fined NT$1 million for failure to report suspicious transaction report that involved some NT$20 million.

819) According to the authorities the jewellery sector poses some risk of money laundering in Chinese Taipei. Statistics shows that illegal proceeds were laundered through non financial industries for underground banking, real estate and precious stone stores for 5 out of the 1,173 money laundering cases.

820) The Ministry of Economic Affairs engaged CPAs to conduct AML/CFT inspections on jewellery shops. However, all the 20 jewellery shops inspected in 2006 were incorporated entities, which are relatively large businesses and have relatively good AML/CFT internal control procedures. By focusing on larger incorporated entities, Chinese Taipei may run the risk of focusing supervisory efforts on the ones with relatively better control procedures while leaving the smaller but more vulnerable ones not inspected.

Real Estate Sector

821) The DLA of the MOI is responsible for the general regulation of the real estate sector in Chinese Taipei. The real estate sector is not covered as a financial institution under the scope of MLCA. However, pursuant to Article 5 of the MLCA Act the MOJ may designate any business or financial institution as a covered institution for AML/CFT purposes. As a member of the national coordinating committee the MOI has attended seminars and meetings at the MOJ and is aware of the scope of AML/CFT requirements.

822) The business of Land Administration Agent and Real Estate Broking Agency is regulated by laws and decrees. In addition to this, all real estate transactions are required to be registered.

823) The Land Administration Agent Act regulates all land administration agents in Chinese Taipei. The agents are required to be qualified of professional knowledge and operate business based on sincerity and honesty. According to the Act, all land administration agents have to pass the qualification examination, own the certificate of land administration agent, get business operation license and join the membership of the Association of Land Administration Agent before commencing their business operation. There are 16,411 persons who own the business operation license in Chinese Taipei. 25,579 persons have passed the qualification examination and received the certificates since 1990.

824) The real estate broking agency sector is regulated under the Real Estate Broking Management Act. All real estate broking agencies, including real estate inter-mediators and dealers, need to get a license from authorities, register to set up a company to operate business, and join the membership of the local trade association before commencing their business operation. In addition, all real estate broking agencies are required to deposit a sum of money as business guarantee and have to employ a certain number of qualified real estate agents to operate the business. The employees of real estate broking agency can be classified into two categories:

a) real estate agents who have passed the national qualification examination; and

b) business practitioners who own the qualification of real estate agent or complete the professional training course and have registered and received certificate from the authority. As at January 2006, the authorities have issued 5,602 certificates to real estate agents and 63,946 certificates to the business practitioners.

825) All real estate transactions are reported to the real estate administration authorities and proper transactions records are maintained as follows:

	Year	Number of land transactions	Number of housing transactions
a)	2001	517,900	259,494
b)	2002	654, 745	320,285
c)	2003	639,550	349,706
d)	2004	727,537	418,187

826) The authorities believe that real estate business exposes comparatively low risks to ML and TF threats in Chinese Taipei.

827) As an interim measure to provide some coverage of AML/CFT requirements for the real estate sector, in March 2006 the MOI advised the National Business Union of Real Estate Associations, Land Administration Agent Association and Real Estate Selling Agent Associations of local municipalities, counties and cities to inform its members of the need to enhance money laundering prevention initiatives. The real estate sector has been advised to ascertain clients' identities and keep records or receipts of the transactions and report any suspicious transaction to their respective associations who would then forward the STR to the MLPC. The Evaluation Team was also advised that the associations are required by MOI to include the policies of preventing money laundering into their constitutions or regulations of business ethic code and impose proper sanctions to those who do not comply with the self-regulated constitutions and ethic code.

Lawyers & Notaries Sector

828) Lawyers and notaries are not covered that the current AML/CFT legislative and regulatory regime in Chinese Taipei. Therefore there are no criminal, civil or administrative penalties to obligate an attorney to implement AML/CFT requirements.

829) Regarding the notaries sector, there were 47 court notaries who perform their duties according to the Notary Law as well as those public servant personnel regulations as at end of July 2006. As at the same date there were 178 civil notaries who include 121 lawyer-notaries, who perform signatures and private writings authentication only, and there were 57 single-profession notaries, who perform all functions of a notary. The performance of a notary for the notarial affairs is governed by the Notary Law and related rules such as the regulations relating to the execution of authentication by overseas consular official of Chinese Taipei, and the rules for preservation and destruction of the notarial documents and registers.

830) Attorneys in Chinese Taipei play the role of non-governmental jurists who are charged with the responsibility for safeguarding human rights, ensuring social justice and promoting democracy and the rule of law. They are required to discipline themselves and fulfill their duties honestly so that they can contribute to law and order in society and the improvement of the legal system. This is provided for in Article 1 of the nation's Attorney Regulation Act. A person may practice law as an attorney after he/she passes the bar examinations and obtains an attorney certificate issued by the Ministry of Justice.

831) An attorney must be a member of a Bar Association to enable him/her to the practice. Besides, he/she must apply for registration with the court. Before application for registration, an attorney has to go through pre-service training. This is provided for in Article 7 and Paragraph 1 of Article 11 of the Attorney Regulation Act.

832) Article 4 of the Attorney Regulation Act stipulates clear criteria by which unsuitable persons are disqualified from practicing law.

833) An attorney may apply for registration with a Court. Prior to being registered, an attorney must complete a "New Admittees Training Program". Exempt from this requirement are former judges, prosecutors, public defenders, and military judges. The Ministry of Justice establishes the requirements and procedures for the New Admittees Training Programs.

834) Under Article 8 of the Attorney Regulation Act a Roll of Registered Attorneys is posted at all courts and Prosecutor Offices of parallel jurisdiction with said courts.

835) Under Article 20 of the Attorney Regulation Act an attorney may engage in the practice of law when so employed by a client or appointed by a court. The practice of law includes, but is not limited to: handling trade marks, patents, commercial and industrial registrations, land registrations and other legally permissible law related business.

836) An attorney in the course and scope of his/her practice is required in all circumstances to observe and abide by relevant statutes. The attorney is liable for the penalties set by law for non-compliance.

837) An attorney may employ a non-citizen as an assistant or a consultant. The regulations governing the requirements for granting approval of such employment and administrative matters connected with such employment is established by the Ministry of Justice in association with the Council of Labor Affairs, the Executive Yuan.

838) Upon establishing a law firm, the attorney is required to join the local bar association in that jurisdiction. Attorneys are required to notify the District Court and the District Court Prosecutors Office in that jurisdiction of the address of the attorney's place of business. Article 21 of the Attorney Regulation Act prohibits an attorney from maintaining more than one place of business nor is any form of branch office permitted within one jurisdiction. The attorney is also prohibited from establishing another law firm under another name.

839) There are currently 16 local bar associations, one for each county or each city and there is only one national bar association. According to information provided by MOJ there are currently around 9,800 people who are licensed out of which around 5,500 are practicing lawyers in Chinese Taipei. Although specific statistics are not maintained, the Evaluation Team was advised by authorities that most lawyers in Chinese Taipei are single practitioners. There is only 1 law firm that has more than 100 lawyers, 2 law firms that have 50 to 100 lawyers, and about 20 law firms that have 5 or fewer lawyers.

840) The authorities believe that the bar association would be the most appropriate authority to undertake AML/CFT supervisory role in Chinese Taipei. The authorities further advised that the basic position of the Judicial Yuan is to maintain its independence and not to be involved in the AML/CFT regulatory and compliance regime. The Judicial Yuan itself reserved its comments on this matter due to its reluctance to meet and discuss AML/CFT assessment of Chinese Taipei with the Evaluation Team.

841) Although the MOJ is the bar association's governing authority, the association operates and functions independently. The association has establishment of various functional committees under Article 14 of the Articles of Incorporation of the Taiwan Bar Association. The General Assembly of Delegates is the supreme organization of the bar association and is vested with many powers including the power to constitute and amend the code of ethics and conduct for lawyers and approve disbarment of any membership. The board of directors of the bar association also has a number of powers including the following:

a) powers to review and approve the articles of incorporation, codes, regulations, rules and provisions of the association;

b) to review and approve the qualification of membership;

c) to handle matters stipulated by other related laws, regulations and rules.

842) In view of the above it is recommended that the bar association is the most appropriate agency to be designated as the competent authority responsible for implementing, monitoring and ensuring compliance with AML/CFT obligations for lawyers in Chinese Taipei.

843) There has been little if any discussion and consultation initiated by the MJIB, MLPC or the MOJ with the legal profession including the bar association to assess ML/FT vulnerabilities for the sector.

Accountants

844) The CPA industry is not presently covered under Chinese Taipei's AML/CFT regime. Accountants are governed and regulated under the CPA Act and related regulations. The current CPA Act and related regulations set out a number of requirements for how to handle violations of the law by CPAs in the course of their professional practice.

845) Statement on Auditing Standards No. 29 (Consideration of Laws and Regulations in an Audit of Financial Statements) requires CPAs to be alert when auditing financial statements about possible legal compliance failures by the audited party, and to consider as necessary the possibility of giving a qualified opinion or an adverse opinion, or of withdrawing from the audit.

846) Under the CPA Act, a person who passes the CPA examination, possesses the qualification of a certified public accountant (CPA) and has acquired a CPA certificate may practice as a CPA in Chinese Taipei. A CPA is required to file an application for registration with the authority in a province (municipality) before commencing his practice. A CPA is also required to have worked in the accounting field with a public or a private institution or as an assistant with a CPA firm, for at least two years, to qualify for filing his application for registration.

847) Article 15 of the CPA Act requires that a CPA may perform the following types of professional services within the area in which he is registered:

a) to perform, upon assignment by government agencies or judicial authorities or engagement by a client, services with regard to planning, management, auditing, verification, arrangement, liquidation, appraisal, financial statement analysis, and evaluation of assets as may be required in connection with accounting;

b) to perform services with regards to examination and certification of financial reports;

c) to serve as an inspector, liquidator, bankruptcy administrator, or executor of a will, or in any other fiduciary capacity;

d) to serve as an agent in cases involving taxation;

e) to serve as an agent in cases in connection with registration of business firms or trademarks, and in other cases relevant to such registration;

f) to perform services regarding other accounting matters.

848) The current administration structure of the CPA sector is shared between the DOC of MOEA, the FSC and the SROs. Out of the 307 CPA firms that are accountants and auditors for publicly listed companies, only 104 firms are regulated by the Securities Bureau. There are 3 regional SROs that provide several regulatory mechanisms for the general practice and operation of CPAs in Chinese Taipei. The National Federation of CPA was established as a single nationwide CPA association to strengthen the management of the CPA industry. The NFCPA has a self-disciplinary committee that is also responsible for ensuring monitoring of ethics and standards. As mentioned earlier, the NFCPA and the FSC have powers to discipline members. Discussions with the NFCPA indicated the since they were a self-regulatory organization, the AML/CFT regulatory and supervisory role would be best handled by the government. However, the SROs would be happy to provide their members with appropriate awareness and training to ensure that members are continuously updated of AML/CFT regulatory developments in Chinese Taipei.

849) The Evaluation Team was informed that the Chinese Taipei authorities are planning to amend the CPA Act. Among other changes, the competent authority will be empowered to examine the operations and operations-related financial matters of accounting firms.

4.3.2 RECOMMENDATIONS AND COMMENTS

850) It is recommended that the Ministry of Economic Affairs undertake inspections of non-incorporated entities on a random sampling basis.

851) Chinese Taipei should consider stronger sanctions to ensure illegal casinos do not operate.

852) It is recommended that the authorities (especially MOJ and MLPC) carry out a comprehensive review to ascertain the extent to which the DNFBP entities may pose ML and TF risks and to determine the competent authorities that would be responsible for the AML/CFT regulatory and supervisory regime for DNFBP.

853) Ensure that sufficient resources, capacity and suitable powers are available for competent authorities to ensure AML/CFT requirements for all DNFBPs, including dealers in precious metal and stones.

4.3.3 COMPLIANCE WITH RECOMMENDATION 24 AND 25

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	NC	• While casinos are prohibited in Chinese Taipei, authorities may consider providing more severe penalties for the offenders. • The jewellery sector is not fully covered under the current framework. • The interim measures for monitoring the real estate sector falls short of the essential criteria in many ways. • Chinese Taipei's AML/CFT regulatory regime does not cover lawyers and accountants sector.
R.25	PC	• The authorities are yet to undertake consultation on the issuance of regulatory guidelines for lawyers, accountants and the real estate agents • The rating in this box is an aggregate rating of R.25 across the various parts of the report.

4.4 OTHER NON-FINANCIAL BUSINESSES AND PROFESSIONS – MODERN SECURE TRANSACTION TECHNIQUES (R.20)

4.4.1 DESCRIPTION AND ANALYSIS

854) Chinese Taipei does not appear to have given serious consideration to the possibility of bringing non-financial professions and businesses other than the DNFBPs into the scope of the AML/CFT regime.

4.4.2 RECOMMENDATIONS AND COMMENTS

855) Chinese Taipei has brought only one of the DNFBPs into the scope of its AML/CFT regime.

856) Chinese Taipei should reviews the vulnerability of other non-financial businesses and professions that may be vulnerable to ML and TF, for example dealers in arts and antiques.

4.4.3 COMPLIANCE WITH RECOMMENDATION 20

	Rating	Summary of factors underlying rating
R.20	NC	• No indication that serious consideration has been given to the possibility of bringing other non-financial professions and businesses into the scope of the AML/CFT regime.

5 LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1 LEGAL PERSONS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.33)

This section of the report addresses only profit-seeking organizations recognized as legal persons. Trusts and non-profit organizations will be discussed in Section 5.2 and 5.3 respectively. This section will, therefore, analyze only corporations and the matters that apply to corporations regardless of whether they are listed companies or unlisted companies.

5.1.1 DESCRIPTION AND ANALYSIS

857) Chinese Taipei recognizes the following types of corporations:

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.

b) **Limited Company**: a company organized by one or more shareholders, with each shareholder being liable for the company in an amount limited to his/her contribution of capital.

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; among them the shareholder(s) with unlimited liability shall bear unlimited joint liability for the obligations of the company, while each of the shareholders with limited liability shall be held liable for the obligations of the company only in proportion to his/her contribution of capital.

d) **Company Limited by Shares**: a company organized by two or more or one government or corporate shareholder, with the total capital of the company being divided into shares and each shareholder being liable for the company in an amount equal to the total value of shares subscribed by him.

858) Chinese Taipei utilizes a combination of a central registry system and the government authorities' power to conduct inspections and to order submission of documents to ensure transparency of corporations.

Registration and Recognition

859) Under the Civil Code of Chinese Taipei, no juristic person can be established unless it has been registered with the authorities concerned. If a juristic person, after its registration, fails to register any entry which should have been registered, or fails to register any amendment to any of the entries already registered, such entry or amendment therein should not be a valid defense against any third party.

860) To establish a company in Chinese Taipei, the responsible person must submit an application together with a complete set of required documents to the Ministry of Economic Affairs Depart of Commerce. In case the application is submitted by an agent, the agent must present power of attorney. Only a CPA or a lawyer can work as an agent in such application.

861) Article 19 of the Company Act provides that a company may not conduct its business operations or commit any juristic act in the name of its company, unless it has completed the procedure for company incorporation registration.

862) Article 387 of the Company Act provides that in applying for company registration or recognition, an application together with a complete set of the documents as required shall be filed with the central competent authority by the responsible person who represents the company for its approval. In the case the application is filed by an agent, a power of attorney shall be attached thereto. The same Article also provides that only lawyers or public accountants can work as agents in company registration.

863) Before applying for company incorporation, or for alteration of the registered amount of capital of the company, the company must first obtain an audit certificate from an independent certified public accountant.

864) Article 15 of the Rules Governing Company Registration and Recognition provides that application for amendment of registration must be files within 15 days of any change in the particulars registered in a company or a foreign company registration.

865) Article 48 of the Civil Code sets out the entries to be registered when a corporation is established and includes requirements for the following:

- purpose;
- name;
- the principal and branch offices;
- the name and domicile of the director; and same of the controller, if any;
- the total assets; and
- the name of the director who represents the juridical person, if any.

866) The same Article also provides that a copy of the company's bylaw should be annexed to the application for registration. Information to be included in the articles of incorporation include:

Type of Company	Specifics to be included in Articles of Incorporation
Unlimited Company	– The scope of business to be conducted; – The name and address of each shareholder; – Details of the amount and form of shareholder capital stock and the equity capital; – The location of the head and offices; – The name of the shareholder designated to represent the company, if any; – The name of the shareholder(s) who is (are) designated to conduct the business operations of the company, if any;
Limited Company	– The scope of business to be operated; – The name and address of each shareholder; – The aggregate of capital stock and the capital contribution made by each shareholder; – The location of the head and branch offices; – The number of directors;
Unlimited Company with Limited	– The scope of business to be conducted;

Liability Shareholders	– The name and address of each shareholder; – Details of the amount and form of shareholder capital stock and the equity capital; – The location of the head and branch offices; – The name of the shareholder designated to represent the company, if any; – The name of the shareholder(s) who is (are) designated to conduct the business operations of the company, if any;
Company Limited by Shares	– The scope of business to be operated; – The total number of shares and the par value of each share certificate; – The location of the company; – The number of directors and supervisors, and the term of their respective offices;

867) For limited companies, unlimited companies, and unlimited companies with limited liability shareholders, the shareholder or the director who is designated to represent the company is imposed with a fine in an amount not less than NT$10,000 but not more than NT$50,000 if articles of incorporation are not made available at the head office of a company. For consecutive refusals to prepare and make the articles of incorporation available, a fine in an amount not less than NT$ 20,000 but not more than NT$ 100,000 is imposed for each consecutive violation.

868) For a company limited by shares, the following matters do not take effect unless stipulated in the articles of incorporation:

a) establishment of branch office;

b) the number of shares to be issued upon incorporation of the company, if the total authorized number of shares are to be issued in instalments;

c) the cause(s) for dissolution of the company, if any;

d) the kind of special shares and the rights and obligations covered by such beneficiaries;

e) special benefits to be accorded to promoters and the name of such beneficiaries.

869) In the case of any false statements in the report of the matters listed above, each of the promoters is imposed with a fine not exceeding NT$60,000.

870) According to Article 393 of the Company Act, the competent authority must provide details of company registration to the public, including:

a) the name of the company;

b) the scope of business of the company;

c) the location of the company;

d) the shareholder(s) executing the business operations or representing the company;

e) the name of directors and supervisors and their respective shareholdings;

f) the name of the manager.

871) Access to such corporate registration information is possible via the information web site of the competent authority (Industrial Commerce Services Portal).

Access to Information about Ownership

872) Limited companies and companies limited by shares are required to make the shareholders' roster available at the head office. The director who is authorized to represent the company and fails to make the shareholders' roster available at the company shall be imposed with a fine not less than NT$ 10,000 but not more than NT$ 50,000. For successive refusals to make the shareholders roster available at the company, the amount of the fine is increased to not less than NT$ 20,000 but not more than NT$ 100,000 for each successive refusal.

873) For limited companies, the shareholders' roster must specify the following:

a) the amount of capital contribution made by each shareholder, and the serial number of the share certificate issued to him/her;
b) the name or title, domicile or residence of each shareholder; and
c) the date of payment of share equity by each shareholder.

874) For companies limited by shares, the shareholders' roster must specify the following:

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.

875) Assignment/transfer of shares cannot be set up as a defence against the issuing company, unless name/title and residence/domicile of the assignee/transferee have been recorded in the shareholders' roster.

876) Issuance of bearer shares is not allowed in Chinese Taipei. Consequently, there is transparency concerning the identity of the owner of a share.

Decisions/Resolutions by the Shareholders' Meeting and Board of Directors' Meeting

877) Companies limited by shares are required to record resolutions adopted at shareholders' meetings and the proceedings of the board of directors' meeting. Such minutes must be distributed to all shareholders within 20 days after the close of the meeting and be kept at the company for the life of the company. The Director authorized to represent the company is fined not less than NT$10,000 but not more than NT$50,000 if he/she fails to fulfil the duties.

Recognition of Foreign Companies

878) A foreign company cannot apply for recognition without incorporating registration in its own country and conducting its business operation therein. In addition, a foreign company may not transact business within the territory of the Chinese Taipei without obtaining a certificate of recognition from the government of the Chinese Taipei and completing the procedure for branch office registration.

879) After being given the certificate of recognition, foreign companies have the same rights and obligations and are subject to the same jurisdiction of the authority as a domestic company. A foreign company must keep a copy of its articles 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 shareholders must also be kept. The responsible persons who fail to keep a copy of the articles of incorporation or the roster of unlimited liability shareholders are severally subject to a fine of not less than NT$ 10,000 but not more than NT$ 50,000. For any further failure of the same nature, a fine of not less than NT$10,000 but not more than NT$100,000 is imposed for each successive failure. Whenever necessary, a foreign company may also be subject to examination of its books, records and documents relating to its business by the Authority.

Examination by Government Authorities

880) Under the Company Act, the competent authority may, at any time or from time to time, send its officers to conduct examination of the annual report and financial statements or may require a company by an order to submit such documents within a given time limit. The responsible of a company that impedes, refuses, or evades such examination or fail to make the submission is fined in an amount not less than NT$20,000 but not more than NT$ 50,000; or is imposed with a fine of not less than NT$ 20,000 but not more than NT$ 100,000 if the company impedes, refuses or evades the examination or fails to submit the documents after expiry of the deadline date.

881) Under the same Act, the competent authority may, in conjunction with the authority in charge of the end enterprise concerned, at any time or from time to time, conduct inspection of the operation and financial conditions of a company. The responsible person of a company who impedes, refuses or evades such inspection is imposed with a fine of not less than NT$ 20,000 but not more than NT$ 100,000. For successive acts in terms of impeding, refusing or evading such inspection, the responsible person of a company shall be imposed successively in each case a fine of not less than NT$ 40,000 but not more than NT$ 200,000.

882) In examining the documents and statements submitted by a company or in inspecting the operation and financial conditions of a company, the competent authority can order the company to present evidential documents, vouchers, books and statements and other relevant information. The responsible person of a company who refuses to provide evidentiary documents is imposed with a fine of not less than NT$ 20,000 but not more than NT$ 100,000. For successive failure to provide such information, the responsible person of a company is imposed in each case a fine of not less than NT$ 40,000 but not more than NT$ 200,000.

883) Chinese Taipei utilizes a combination of a central registration system and the government authorities' general compulsory powers to maintain transparency of legal persons. Anybody can access the information about a company stored in the central registry including the name of the shareholder(s) executing the business operations or representing the company, the name of directors and supervisors, and their respective shareholdings in the company. Companies are required to disclose changes to the registered information within a prescribed time. All companies are also required to maintain roster of shareholders.

884) The concept of "ownership" in the central registry, however, differs from the concept of "beneficial ownership" under the FATF Recommendations. The registry provides information about only the immediate ownership, whereas the FATF Recommendation defines the term "beneficial owner" as "the natural person(s) who

ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted" or "those persons who exercise ultimate effective control over a legal person or arrangement."

5.1.2 RECOMMENDATIONS AND COMMENTS

885) Chinese Taipei should ensure that legal persons are required to disclose in the central registry accurate and up to date information on the beneficial owner, that is those persons who exercise ultimate effective control over a legal person or arrangement.

5.1.3 COMPLIANCE WITH RECOMMENDATIONS 33

	Rating	Summary of factors underlying rating
R.33	PC	• There is no obligation to maintain and make available beneficial ownership information for legal persons

5.2 LEGAL ARRANGEMENTS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.34)

5.2.1 DESCRIPTION AND ANALYSIS

Private Trusts

886) Private trustees are regulated by the Trust Law and treated by the court in accordance with the contractual relationship between the parties. Under Article 2 of the Law, trusts are established by a contract or a will.

887) Registration of trust assets: Trust assets that are registrable must be registered with respect to the fact that the assets are owned by the trust through trustees, otherwise it will not be valid against third parties. If securities are the subject of a trust property, the trust is not valid unless the particular stock certificates or other documentary certificates of rights specify that they appertain to the trust. No trust established in respect of a stock certificate or corporate bond is valid against the issuing company unless the issuing company has been advised of the trust.

888) For trust of land rights, Chapter IX of the "Land Registration Regulation" sets out detailed procedures for such registration. If the trust is created by a contract, the mandatory and the trustee must jointly apply for the registration. If the trust is created by a testament, after the inheritors have completed the registration of inheritance, the mandatory and the trustee must jointly apply for the registration. In case the executor of the testament is specifically designated by the testament, after completion of the registration of the executor of the testament and inheritance, the trustee and the executor must jointly apply for registration.

889) Supervision of trusts: All trusts other than business trusts or charitable trusts are 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.

890) Moreover, if no beneficiary is specified or exists or if protection of the rights and interests of the beneficiary is deemed necessary, the court may, upon application of the interested party or the prosecutor, appoint one or more trust supervisors.

Charitable trusts

891) The Trust Law allows for establishment of charitable trusts. A “charitable trust" is defined as a trust established for such purposes as promotion of charity, culture, academic studies, craft, religion, religious sacrifice offering or other public interests. Charitable trusts operate under the supervision of their respective industry’s regulatory authority. The industry’s regulatory authority can from time to time inspect the business and financial conditions of the trust. Trusts must at least once every year deliver the statement of both business and financial conditions of the trust to the trust supervisor for review and approval and then file the same with the competent authority for approval.

892) The relevant industry's regulatory authority may revoke the approval granted or take other necessary official actions if a charitable trust breaches the conditions of its establishment, disobeys the order of the supervisory authority or acts in any way detrimental to the public interest. The same applies if the trust performs no activities for three consecutive years without any good cause.

893) 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 for any of the following:

a) the trustee misrepresents any books of account, property inventory or statement of receipts and payments;
b) the trustee refuses, obstructs or bypasses the inspection of the industry's regulatory authority;
c) the trustee misrepresents or conceals any material;
d) the trustee omits in publishing a public notice or misrepresents the public notice published; or
e) the trustee violates any supervisory order of the industry's regulatory authority.

Trust Enterprises

894) Trust enterprises are regulated by the Ministry of Finance. Trust enterprises include trust corporations set up for conducting trust business or banks involved in the trust business. Except for banks approved to conduct trust businesses, trust enterprises must be organized as a company limited by shares regulated under the Company Act.

895) The Trust Enterprise Act provides that trust agreements must be in writing and contain the following items:

a) name, title and address of the trustor, trustee and beneficiary;
b) purpose of the trust;
c) type, name, amount and value of the trust assets;
d) term of the trust;
e) the means of managing the trust and employing the trust assets;
f) time of, and methods for, calculating and allocation of trust gains;
g) means of liquidation and delivery of the trust assets upon termination of the trust agreement; responsibilities of the trustee;
h) standards, types, calculation method, payment period and method of the remuneration of the trustee;
i) expenses and method of payment thereof;

j) amendment, suspension and termination of the agreement;

k) execution date; and

l) other matters required by other laws or by regulations promulgated by the Ministry of Finance.

896) If a trust enterprise accepts property which requires registration as trust assets, the trust enterprise must register such property as required by applicable regulations. If a trust enterprise accepts securities as trust assets, it must indicate such fact on the relevant certificates or the documents evidencing the rights. If a trust enterprise accepts shares or corporate bonds as trust assets, the trust enterprise must notify the issuer of such fact.

897) To raise collective trust funds, a trust enterprise must file an offering plan to the Ministry of Finance for approval. Such an offering plan must include the scope and ratio of investment of the funds, the offering method, transfer of rights, asset management, calculation of net asset value, the distribution of the gains, the prohibition on activities of, and liabilities of, a trust enterprise and other necessary matters. A trust enterprise may not raise collective trust funds unless approved to do so by the Ministry of Finance. The collective trust fund beneficial certificates are issued in registered form. Collective trust fund beneficial certificates may be transferred by endorsement of the beneficiary. Unless the identity of the transferee is notified to the trust enterprise, the transfer is not valid against such trust enterprise.

898) The Ministry of Finance may, 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 of a trust enterprise or related parties, or direct a trust enterprise or related parties to prepare and submit, within a prescribed period of time, balance sheets, property inventories or other relevant documents for examination. Any of the following acts by a trust enterprise's director, supervisor, manager or other staff member is punished by imprisonment for not more than three years, detention, and/or a fine of not more than NT$10,000,000:

a) refusing to turn over business operations;

b) concealing or destroying accounting books or other documents regarding the trust enterprise's business or financial situation;

c) concealing or destroying the trust enterprise's properties, or making other decisions to the detriment of creditors;

d) failing to reply, without justification, to inquiries from the officials sent by the ministry of finance to supervise or take over business operations; and/or

e) fabricating debts or accepting false claims.

899) Trust Registration Roster is compiled for public viewing of copying.

5.2.2 RECOMMENDATIONS AND COMMENTS

900) Private trusts are not subject to any upfront disclosure or registration requirement. The competent authority’s ability to obtain information about the beneficial ownership and the control structure of private trusts relies almost entirely on its powers to conduct inspection or investigation. Courts may conduct inspection of private trusts’ affairs upon request of interested parties or a prosecutor. Under the trust law of Chinese Taipei, the court may also appoint a supervisor of a trust upon request of interested parties or a prosecutor.

901) For charitable trusts, the regulatory authority of the relevant industry may carry out inspections from time to time and may revoke approvals granted to the trusts if they are in breach of the conditions trust or if they disobey supervisory orders. With respect to trust enterprises, the powers to conduct examination and to require submission of documents given to the competent authorities under the Banking Act apply mutatis mutandis.

902) Chinese Taipei, however, should introduce processes to enable competent authorities to access information about the beneficial ownership and control structure of trusts in a more timely manner.

5.2.3 COMPLIANCE WITH RECOMMENDATIONS 34

	Rating	Summary of factors underlying rating
R.34	PC	• Competent authorities have only limited powers to have timely access to information on the beneficial ownership and control of trusts.

5.3 NON-PROFIT ORGANISATIONS (SR.VIII)

5.3.1 DESCRIPTION AND ANALYSIS

903) Both the Ministry of the Interior (MOI) and the Local Governments undertake the supervision of non-profit organisations. Currently the MOI has responsibility for 148 national social welfare organisations, 148 religious organisations and 6,905 social groups. Local government has responsibility for the supervision of over 10,000 local social welfare groups nationwide.

904) Government supervision is undertaken through laws, regulations and governing policies. All charities and NPOs must be registered. If the scope of the NPO operations is across a special municipality, city or county, the application for registration must be made to the MOI. If the scope of operation is within a specific county or city, the application for registration is made to the local city or county government.

905) Chinese Taipei conducted a review of the adequacy of domestic laws and regulations that relate to NPOs in 2006. At the same time Chinese Taipei considered issues regarding the relative risk of the various NPO sectors.

906) Chinese Taipei authorities indicate that their NPO sector, due to location and the historic background of Chinese Taipei, is not a high risk for terrorist activities. However there are strict controls on the NPO sector with active measures in place to prevent their exploitation by terrorist organisations. These measures include compulsory registration, transparency of finances, reinforcement of administrative regulations and information sharing with other authorities.

907) Authorities have undertaken outreach to the NPO sector to promote transparency, accountability and integrity. However, outreach has not occurred in relation to specific risk of terrorist abuse.

908) Chinese Taipei has introduced a comprehensive regime of registration and supervision of NPOs. The rules and regulations and the auditing requirements are enforced and sanctions have been imposed against organizations that do not meet the required standards or provide authorities with budget reports, operations plans and reports and end of year financial statements.

909) When a foundation has been approved by the relevant authority the Director of the legal person must register with the local court. Having been registered a registration certificate must be sent within 30 days to the MOI for future reference.

910) After registration all assets contributed by donors must be transferred into the control of the legal person within 3 months and the authorities must undertake an examination of the charity to ensure it has been established in accordance and comply with the 'Civil Code', 'Rules for Interior Affairs Guidance for Legal Persons' and the 'Statute of Benevolent Contribution' failure to comply will result in the registration certificate being repealed.

911) Upon registration the court must make a public announcement detailing details of the foundation the address and details of the director, and other general information.

912) According to Article 16 of the 'Regulations on Supervision of Interior Business Incorporated Foundations' a foundation shall submit an annual budget and business plan within 3 months before the beginning of a year, and an annual report on final settlement and business performance within 3 months after the end of a year to the authorities. In order to know more about the status of a foundation, the authorities may at any time notify the foundation to submit a business and financial report and may send personal to perform inspection and audit of the charity. The MOI has developed accounting system software that has been disseminated to all social welfare organisations to assist them to establish accounting systems that can be audited by authorities.

913) In 2005 the MOI conducted a nationwide evaluation of the 129 national social welfare foundations that existed before 2004. The evaluated items included organizational affairs, operational affairs, financial management and the achievements of operations. Any faults identified through this process were reported to the foundations which were then given a specified time period to make improvements. Authorities actively monitored the improvements.

914) There are only four national charities. All members of the various boards of directors are vetted to ensure they are fit and proper persons to be involved in the operations of a charitable entity. Further, through the registration and supervision process, safeguards are in place to make it difficult for a terrorist organisation to pose as a legitimate NPO in Chinese Taipei.

915) All fund raising groups must provide detail of who the donators are and what has been donated and any other relevant information to the MOI.

916) Prior to engaging in any international involvement, an application is required to be submitted to the MOI seeking permission for involvement in a special project. Only when permission is granted can funds be transferred and only pre-designated use of funds can occur. Upon completion of the charity work, a report is submitted back to the MOI outlining a detailed financial report of the work undertaken.

5.3.2 RECOMMENDATIONS AND COMMENTS

917) Additional outreach should be conducted to raise awareness in the NPO sector in relation to specific risk of terrorist abuse.

5.3.3 COMPLIANCE WITH SPECIAL RECOMMENDATION VIII

	Rating	Summary of factors underlying rating
SR. VIII	LC	• Outreach has not been undertaken to raise awareness of specific vulnerabilities in the NPO sector in relation to specific risk of terrorist abuse.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 NATIONAL CO-OPERATION AND COORDINATION (R.31)

6.1.1 DESCRIPTION AND ANALYSIS

Recommendation 31

918) The Investigation Bureau and the MLPC are divisions or departments of the MOJ and are responsible for the administration of the MLCA and will be administering the Counter Terrorism Act when this Act is passed. As a result, the formulation of and facilitation of discussion on policies relating to ML and FT is their responsibility.

919) The Prosecutors Office also falls under the MOJ and has the authority to direct officers of the Investigation Bureau, National Police Administration and the National Coastguard Administration, when conducting criminal investigations. Through this continual contact, a close working relationship is maintained with these other law enforcement agencies.

920) On 1 July 2004, Chinese Taipei also established the Financial Supervisory Commission (FSC) to integrate all financial supervision which was previously being carried out under different government entities.

921) Certain provisions of the MLCA also require consultation between entities such as Article 7, paragraph 2 which provides that the FSC in consultation with the MOJ and the CBC , shall establish the amount and scope of a currency transaction, the procedures for ascertaining the identity of a customer and the method and length of time for keeping transaction records as evidence. Article 8 also requires consultation between the FSC, MOJ and CBC in establishing similar rules or guidelines for CTR.

922) All law enforcement and financial supervisory agencies have identified or assigned an AML/CFT representative or contact person who attends AML/CFT meetings or fora organised by the MOJ. For example, since June 2005, the MOJ established an “Improving AML/CFT Measures Coordination Forum” to review AML/CFT measures and discuss ways to improve Chinese Taipei’s AML/CFT regime in terms of compliance with international standards. This Forum meets every 2 months and is chaired by the Deputy Director of MOJ.

923) In addition to the above, Chinese Taipei has a specific forum called the “Public Security Coordination Forum” which is organised by the Executive Yuan and hosted by the President. In this forum, Ministers and CEOs of law enforcement agencies discuss emerging criminal trends and typologies including AML/CFT. Any strategies that are identified by the Forum are referred to the relevant judicial, law enforcement and financial supervisory agencies for effective implementation.

924) Another mechanism established by the Economic Crime Prevention Center (a division of the Investigation Bureau) is the "Economic Crime Prevention Forum" which involves participants from:

a) other divisions within the IB such as the MLPC;
b) judicial departments;
c) law enforcement agencies;
d) immigration departments;
e) financial supervisory agencies;
f) international trade and commercial administration departments.

925) The main objective of the forum is to coordinate the work of the authorities in combating economic crime, seeking fugitives and in AMLCFT. The authorities advise that the Forum was held every 3 months up until last year when the frequency was increased to once a month.

926) Concerns are noted regarding delays with introducing CFT legislation which may reflect a lack of coordinated efforts between authorities to support CFT implementation.

Additional elements

927) In terms of consultation between competent authorities, the financial sectors and other sectors (DNFBP), the authorities advise that the MOJ consults with these agencies to seek their views on AML/CFT implementation. The MOJ has authority to regulate the law profession but does not have any authority to regulate other professionals such as accountants, real estate broking agencies and land administration agents. Chinese Taipei authorities further advise that the MOJ and in particular the MLPC as the AML/CFT coordinator, is generally consulted by these sectors over any queries regarding the policy and relevant laws. Where necessary, MOJ will call meetings with these agencies to discuss the issues with a view to finding solutions. During the Evaluation Team's onsite visits with the financial and other sectors, this interaction with MLPC was evident.

928) The MLPC utilises the following mechanisms:

a) Hosting the "Forum for Compliance Officers from Banks" which is attended by all compliance officers of AML/CFT from domestic and foreign banks whereby discussion of new AML/CFT methods, trends and techniques, and any problems faced by banks takes place. It also acts as a "feedback mechanism" between the banks and MLPC and provides an opportunity to discuss and consider solutions to any problems in implementing any AML/CFT requirements. This forum is held every two years.

b) Organising the annual "Amending MLCA Seminar" whereby academic experts or scholars specialising in AML/CFT are invited to present papers to those Chinese Taipei authorities involved in AML/CFT – this includes judges, prosecutors, MOJ representatives, financial supervisory authorities, officers of the Investigation Bureau, Criminal Investigation Bureau and staff of MLPC. The Seminar provides an avenue for participatory discussion of the practical problems in the implementation of the MLCA and to recommend or suggest amendments to the MLCA aimed at rectifying these problems. The last seminar was held in December 2006 whereby an academic expert from Germany was invited.

929) The MLPC also has a website which provides capacity for online discussion with the financial institutions over AML/CFT compliance and also with other law enforcement agencies regarding ML/FT investigations. This website is updated after international meetings such as APG and Egmont and also following any AML/CFT workshops or conferences attended or held by the Chinese Taipei authorities. The Chinese Taipei authorities further advise that the MLPC website provides links to both UN and US Government websites that list terrorist entities.

930) The MLPC regularly assigns experts from within their department to other agencies upon request, for the purpose of assisting these agencies trace the flow of illegal funds.

Recommendation 32

931) It could be concluded from the above, that Chinese Taipei is reviewing the effectiveness of their systems for ML and FT on a regular basis.

6.1.2 RECOMMENDATIONS AND COMMENTS

932) Chinese Taipei appears to be pursuing regular consultation to identify and discuss outstanding issues that undermine the effectiveness of their AML/CFT systems. It is noted that the systems set up by the financial institutions and DNFBPs under the guidance of various regulatory bodies and with the assistance of the MLPC and FSC, are proving effective in terms of their implementation of the MLCA.

933) Areas of weakness still exist among law enforcement agencies as have been identified under Section 2.6.

934) Authorities should focus on domestic cooperation to support the implementation of AML/CFT measures by law enforcement agencies in areas such as border control and drug law enforcement.

935) It is also queried as to why there has been a delay in introducing CFT legislation which is a major component of the AML/CFT regime - and also when financial institutions are already being required to monitor accounts or transactions that may involve terrorist entities.

936) Chinese Taipei should enhance cooperation to support CFT implementation.

6.1.3 COMPLIANCE WITH RECOMMENDATION 31

	Rating	Summary of factors underlying rating
R.31	LC	• There is extensive national cooperation but weaknesses still exist among law enforcement agencies and to support the development and promulgation of CFT measures.
R.32	LC	• A number of forums have been held to review the effectiveness of AML/CFT systems

6.2 THE CONVENTIONS AND UN SPECIAL RESOLUTIONS (R.35 & SR.I)

6.2.1 DESCRIPTION AND ANALYSIS

937) Chinese Taipei has not ratified or otherwise become a party to the UN Vienna and Palermo Conventions or the Terrorist Financing Convention. Chinese Taipei withdrew from the UN in 1971 and does not appear to have ratified relevant UN conventions since that time. Chinese Taipei advises that the UN would not accept their attempts to sign, ratify or accede to UN conventions.

938) Authorities advise that Chinese Taipei is determined to implement the requirements of the Vienna and Palermo conventions and the Terrorist Financing Convention by enacting or revising AML/CFT related laws and equipping law enforcement and judicial agencies in the implementation of such legislation.

939) Chinese Taipei lacks effective laws and procedures to implement UNSCR 1267 and 1373.

6.2.2 RECOMMENDATIONS AND COMMENTS

940) Chinese Taipei should take the steps necessary to fully implement and ratify (if possible) or otherwise become party to the Vienna, Palermo and Terrorist Financing conventions.

941) It was noted that the ML offence is lacking some of the elements set out in Article 3(1) of the Vienna Convention and Article 6(1) of the Palermo Convention. It is further noted that terrorism, terrorist acts, terrorist organisations and FT have not yet been criminalised. In light of these findings, it is concluded that full implementation has not occurred.

942) It is recommended that the Chinese Taipei authorities amend and introduce legislation to fully implement the relevant provisions of these Conventions.

6.2.3 COMPLIANCE WITH RECOMMENDATION 35 AND SPECIAL RECOMMENDATION I

	Rating	Summary of factors underlying rating
R.35	PC	• Chinese Taipei has not become party to the Vienna, Palermo or Terrorist Financing conventions • Chinese Taipei has not fully implemented the Vienna and Palermo conventions • Chinese Taipei has not implemented the terrorist financing convention
SR.I	NC	• Chinese Taipei has not implemented or become a party to the Terrorist Financing convention • Chinese Taipei lacks effective laws and procedures to implement UNSCR 1267 and 1373.

6.3 MUTUAL LEGAL ASSISTANCE (R.36-38, SR.V)

6.3.1 DESCRIPTION AND ANALYSIS

943) MLA requests made to Chinese Taipei:

	United States	Other Countries	Total
2002	2		2
2003	8		8

2004	5		5
2005	10	11	21
2006	2	14	16
Total	**27**	**25**	**52**

944) Other countries includes Switzerland, Belgium, United Kingdom, Germany, Poland, Demark, Austria, Liechtenstein, Korea, Australia and China.

945) MLA request made by Chinese Taipei:

	United States	**Other Countries**	**Total**
2002	1		1
2003	4		4
2004	7		7
2005	8		8
2006	3	5	8
Total	**23**	**5**	**28**

946) Chinese Taipei provides MLA through MLA agreements or treaties and can also provide MLA where no such agreement or treaty exists under the Law Supporting Foreign Courts on Consigned Cases Act 1963 ("the LSF Act").

947) To date, Chinese Taipei has entered into an MLA agreement with the USA whereby the parties agree to provide the following MLA:

a) taking the testimony or statements of persons;
b) providing documents, records and articles of evidence;
c) locating or identifying persons;
d) serving documents;
e) transferring persons in custody for testimony or other purposes;
f) executing requests for searches and seizures;
g) assisting in proceedings related to immobilisation and forfeiture of assets, restitution, or collection of fines; and
h) any other form of assistance not contrary to the laws of the territory represented by the requested party.

948) The US MLAA sets out how requests are to be made, the processes to be followed and restrictions on the use of the information provided.

949) There are also provisions in the MLCA under which assistance can be given to countries that enter into a MLAA or MLAT with Chinese Taipei.

950) Article 8-1 of the MLCA sets out the authority for a prosecutor to either request the court to freeze a specific ML transaction or on the prosecutor's own authority freeze the transaction. Paragraph 2 of Article 8-1 provides:

> *"The first paragraph of this Article also applies to foreign governments, foreign institutions or international organizations requesting our government to assist in a*

particular money laundering activity based on the reciprocal treaties or agreements entered with our government relating to the prevention of money laundering activities, whenever the activity engaged by the offender constitutes a crime under Article 3 of this Act regardless of whether such activity is being investigated or tried in this jurisdiction."

951) Article 12 of the MLCA incorporates the confiscation of POC. Paragraph 3 of Article 12 provides:

"The first two paragraphs of this Article also applies to foreign governments, foreign institutions or international organizations requesting our government to assist in a particular money laundering activity based on the reciprocal treaties or agreements entered with our government relating to the prevention of money laundering activities, whenever the activity engaged by the offender constitutes a crime under Article 3 of this Act regardless such activity is being investigated or tried in this jurisdiction."

952) Article 14 of the MLCA also provides -

"The government of Chinese Taipei may, based on the principle of reciprocity, enter into cooperative treaties or other international written agreements relating to the prevention of money laundering activities with foreign governments, institutions or international organizations to effectively prevent and eradicate international money laundering activities."

953) In reference to the kind of assistance that can be provided to other jurisdictions where there is no MLAA or MLAT, the Chinese Taipei authorities refer to the LSF Act. This Act facilitates the granting of assistance where a foreign court requests a court in Chinese Taipei to "take charge of civil or criminal cases". Such assistance is available if:

a) the request does not conflict with the laws of Chinese Taipei;

b) the requesting jurisdiction declares reciprocity in providing similar assistance to Chinese Taipei.

954) Further provisions of the Act provide as follows –

"***Article 5***
The documents of civil or criminal cases for which a court is consigned by a foreign court to help take charge shall be duly served according to document service provisions in the Civil Code or Criminal Procedure Code.
The service document shall expressly bear the name, nationality, domicile, address or office of the party to be served.

Article 6
The exhibits or evidence of civil or criminal cases for which a court is consigned by a foreign court to help investigate shall be duly handled according to evidence investigations in the Civil Code or Criminal Procedure Code.

For consigned investigation into evidence, the power of attorney shall expressly bear the names of the involved parties, methods and categories of evidence, the name, nationality, domicile, address or office of the parties to be investigated, and the subjects of investigation, and in case of a criminal case, summary of the case.

Article 7

Chinese translation versions, along with the affidavit of faithful conformity between Chinese and foreign language shall accompany the Power of attorney or other documents in a foreign language.

Article 8

The service and investigation costs shall be duly handled according to the relevant regulations of the Republic of China in civil cases, and shall be counted at actual spending and reimbursed by the country of the consigning foreign court in criminal cases."

955) In terms of timeliness in providing MLA, the Chinese Taipei authorities advise that upon receiving a request, the MOJ as a rule, immediately passes the request to the High Prosecutor's Office who then dispatches it to the Prosecutors' Office of the relevant jurisdiction to assign a prosecutor proficient in the language of the request to take charge of the required investigation. If necessary, the MOJ will agree with the requesting jurisdiction to send prosecutors or judicial police to Chinese Taipei to assist or join the investigation. No information has been provided as to how long on average it takes to respond to a request under the LSF Act.

956) Under the US MLAA, Article 4 sets out the limitations on assistance:

1. The Designated Representative for the Requested Party may deny assistance if:

(a) the request relates to an offense under military law that would not be an offense under ordinary criminal law;
(b) the execution of the request would prejudice the security, public order, or similar essential interests of the territory represented by the Requested Party;
(c) the request is not made in conformity with the Agreement; or
(d) the request is made pursuant to Article 15 and relates to conduct which, if committed in the territory represented by the Requested Party, would not be an offense in that territory.

2. Before denying assistance pursuant to this Article, the Designated Representative for the Requested Party shall consult with the Designated Representative for the Requesting Party to consider whether assistance can be given subject to such conditions as it deems necessary. If the Designated Representative for the Requesting Party accepts assistance subject to these conditions, authorities of the territory represented by it shall comply with the conditions.

3. If the Designated Representative for the Requested Party denies assistance, it shall inform the Designated Representative for the Requesting Party of the reasons for the denial."

957) In terms of other jurisdictions that do not have an MLAA or MLAT with Chinese Taipei, the Law in Supporting Foreign Courts Act provides that any documents received from a foreign court will be "duly served according to document service provisions in the Civil Code or Criminal Procedure Code", as is the case for exhibits, evidence gathering and investigation. Such processes therefore would be subject to the same rules and procedures set out under these two Codes.

958) Under the Chinese Taipei/USA MLAA, in addition to the processes set out in the MLAA, the Chinese Taipei authorities also refer to the "Guidance for Prosecutorial and Police Agencies Implementing the Agreement on Mutual Legal Assistance in Criminal

Matters". This decree which was issued by the MOJ on 29 August 2002, sets out key points in providing the MLA. In terms of the USA making a request to Chinese Taipei, it sets out the following:

a) **Acceptance of a request for assistance**: When a prosecutor's office is instructed by the MOJ to handle a US MLA request, the prosecutor's office "shall immediately classify it as a 'mutual assistance case'" and assign a special prosecutor to the case "immediately". The prosecutor may execute the request himself or direct judicial police to execute it. The prosector's office is then required to file a report with the MOJ who shall then relay the report to the US Department of Justice (USDOJ).

b) **Restriction of mutually punishable requirement**: In a request for assistance, a search or detention is limited to an act that also constitutes an offence in Chinese Taipei. But Chinese Taipei cannot reject a request for assistance on the grounds that the act does not constitute an offence in Chinese Taipei.

c) **Execution postponement for a request**: The prosecutor can postpone the execution of a request that will hamper any ongoing Chinese Taipei criminal proceeding and immediately report this to the MOJ. If the prosecutor's office deems that the request can be carried out under an added condition, the MOJ shall be advised and will relay that to the USDOJ for agreement.

d) **Confidentiality for requested assistance**: If USDOJ asks that a MLA request be kept confidential, the Chinese Taipei authorities shall keep the matter confidential. If there is danger of the request not being kept confidential, the executing organisation shall report it to the MOJ who shall ask USDOJ whether they still want the execution of the request to continue.

e) **Request for getting testimony or a statement**: The prosecutor is required to act in accordance with the Code of Criminal Procedure when summoning and taking evidence of a witness. "If witness fails to appear without justification and a compulsory measure is needed to make him or her appear, the prosecutor may bring him or her in by force." If the USDOJ requests to have a US official attend the "interrogation", such a request will depend on the prosecutor determining whether it would be appropriate or proper for that person to be present or to join in the taking of evidence. If the prosecutor agrees, the US official may be allowed to question the witness directly or through an interpreter and record the statement "depending on the situation of the case and procedural necessity".

959) A witness brought in under this provision is required to sign an affidavit pursuant to the provisions of the Code of Criminal Procedure. If the witness refuses to give evidence under US law, "the prosecutor shall also try to get the evidence" but will report the refusal to the MOJ who shall relay the information to the USDOJ. If the witness is requested to supply a document he or she has made or taken custody of in the course of his or her employment or business responsibilities, he or she shall be ordered to sign a certificate of agreement as set out in the Chinese Taipei/US MLAA.

960) Request for escorting a detainee to appear in US court: If the USDOJ requests a prisoner held in Chinese Taipei to appear in a US court, the agreement of the judge or prosecutor in charge of the case shall be sought. The competent prosecutors' office shall report the case, together with letters of agreement from the judge or prosecutor and the detainee, to the MOJ for approval. Once approved by the MOJ, detainee can be sent to the US but has to be escorted back to Chinese Taipei within 30 days.

961) Request for supply of government documents or records: Where the MLA request is for the supply of documents or records in the possession of a government agency, the prosecutor shall immediately write to the respective agency to request a copy or duplicate of the document or record. The prosecutor shall also ask the agency to sign in his or her presence a certificate to ensure authenticity of the copy or duplicate in the form attached to the Chinese Taipei/US MLAA.

962) Request for persuading citizen of Chinese Taipei to stand Witness in USA: If the USDOJ requests a Chinese Taipei citizen to give evidence in a US court, the prosecutor or investigative organisation "shall immediately" contact the person and enquire as to his or her willingness to do so and report his or her findings to the MOJ, to be relayed to the USDOJ. "No compulsion shall be used and the willingness of the said person shall be respected".

963) Request for delivering document: In an MLA request for the service or delivery of documents, the prosecutors' office shall direct judicial police to deliver the document directly to the correct person "or cohabitant or employee who has ability to discern a fact". The judicial officer is also required to complete a delivery certificate, to be provided to the MOJ for relaying to the USDOJ. If a person refuses to accept a document without legal justification, the document may be left at the person's address and the situation registered in the delivery certificate.

964) Request for search and detention: If the MLA request requires the search of the place or premises of a specific person "or impounding or transferring piece of evidence, the prosecutor shall first examine the crime described in the request. Only when the crime also constitutes a crime under the law of Chinese Taipei, can a prosecutor request the court to issue a search warrant in accordance with the provisions of the Code of Criminal Procedure and direct investigative assistants and judicial police to carry out the search and impound the evidence, in accordance with the provisions of the Code.

965) Direct contact by the execution organisation: A prosecutorial or investigative organisation that is dealing with a MLA request can enter into direct contact with its US counterpart via telephone facsimile or email but is required to keep a record of the contact and inform the MOJ.

966) Assistance not officially requested: "As long as the initiation and exercise of public power is not involved", a prosecutorial or investigative organisation may enter into direct contact with related US law enforcement agencies for the "exchange and collection of criminal intelligence or other administrative mutual assistance". Where this takes place, the Chinese Taipei organisation is to keep a record of such dealings and report to the head of the organisation.

967) In the absence of an MLAA or MLAT, the Chinese Taipei authorities advise that in practice, the implementation procedure of any request made by another jurisdiction is also based on the processes set out in the Guidance decree as referred to in the above paragraphs.

968) The Chinese Taipei authorities advise that MLA requests are not refused on the sole ground that the offence is also considered to involve fiscal matters nor is such a request refused on the grounds of laws imposing any secrecy or confidentiality requirements on financial institutions or DNFBPs. The Chinese Taipei authorities also confirm that no MLA request received has been rejected on those grounds.

969) Chapter XI of the Criminal Procedure Code, which sets out the "search and seizure" provisions, are available for use in MLA requests. Article 122 of the Code

authorises the search of "a person, property, electronic record, dwelling, or other premises of an accused or a suspect". The "person, property, electronic record, dwelling or other premises of a third party may be searched only when there is probable cause to believe that the accused or the suspect, or property or electronic record subject to seizure is there".

970) Chinese Taipei has not yet devised or applied any mechanism for determining the best venue for prosecution of defendants in cases that are subject to prosecution in more than one country. The Chinese Taipei authorities advise that Chinese Taipei has not yet faced such a situation.

971) The Chinese Taipei authorities advise that the powers of the competent authorities required under R28 are available for use where a request is made under the Law in Supporting Foreign Courts on Consigned Cases, i.e. it is not available agency to agency or where there is a direct request from a foreign judicial or law enforcement authority to its domestic counterpart.

Recommendation 37

972) Under the Chinese Taipei/USA MLAA, the dual criminality requirement depends on the nature of the MLA request. The Guidance decree provides as follows:

> ***Restriction of mutually punishable requirement:*** *In a request for assistance, a search or detention is limited to an act that also constitutes an offence in CT. But Chinese Taipei cannot reject a request for assistance on the grounds that the act does not constitute an offence in CT.*
>
> ***Request for search and detention:*** *If the MLA request requires the search of the place or premises of a specific person "or impounding or transferring piece of evidence, the prosecutor shall first examine the crime described in the request. Only when the crime also constitutes a crime under the law of CT, can a prosecutor request the court to issue a search warrant in accordance with the provisions of the Code of Criminal Procedure and direct investigative assistants and judicial police to carry out the search and impound the evidence, in accordance with the provisions of the Code.*

973) The Chinese Taipei authorities refer to the LSF Act in explaining that "Chinese Taipei is willing to provide assistance even in the absence of dual criminality as long as the commissioning foreign court declares, according to the Law in Supporting Foreign Courts on Consigned Cases, that if a court of the nation commissions the foreign nation to make an investigation, that foreign nation will do accordingly".

974) The Chinese Taipei authorities confirm that where dual criminality is required, technical differences between the laws in the requesting and requested states, such as differences in the manner in which each country categorises or denominates the offence do not pose an impediment to the provision of MLA.

Recommendation 38

975) In terms of ML and predicate offences, the same laws and procedures as are available to the Chinese Taipei authorities in the identification, freezing, seizure and confiscation of POC, are available in the execution of MLA requests relating to FT subject of course to –

a) an MLAA or MLAT existing between Chinese Taipei and the requesting jurisdiction; or

b) a request being made by a jurisdiction through its courts;

c) the restrictions in terms of dual criminality as identified in the Guidance decree issued under the Chinese Taipei/USA MLAA and the Law in Supporting Foreign Courts Act.

976) The Chinese Taipei authorities confirm that where the request relates to property of corresponding value, the same provisions that apply in domestic cases are available for MLA requests subject to the conditions set out in the above clause.

977) In terms of what arrangements Chinese Taipei has with other countries for coordinating seizure and confiscation with other countries, the Statute for Narcotic Hazards Control Act 2003 contains a controlled delivery provision:

> "***Article 32-1 -*** *To prosecute international narcotics crime, a prosecutor or a judicial police officer installed under Article 229 of the Criminal Procedure Code may make, through the chief prosecutor or the head of the officer's highest-up organization, an investigation plan for submission, together with related materials, to the National Prosecutor-General's Office and request the Prosecutor-General to approve issuing an investigation command edict so he/she can enjoin the entry-exit control authority to allow the exit or entry of the narcotics or personnel.*
>
> *The regulations governing the entry and exit of the said personnel or narcotics shall be prescribed separately by the Executive Yuan.*
>
> ***Article 32-2***
> *The investigation plan mentioned in the foregoing article shall carry the following items:*
> *1. Age of the suspect(s)*
> *2. Name of the crime*
> *3. Fact about the crime*
> *4. The need for subjecting the case to investigation.*
> *5. Quantity of the narcotics and the places to and from*
> *6. The flight number, time, and mode of smuggling used by the suspect(s) and the narcotics*
> *7. Measures for preventing the distribution of the said narcotics and escape by the said suspect(s)*
> *8. The period required for the investigation and other information*
> *9. The state of international cooperation.*"

978) Chinese Taipei authorities advise that Regulations have been passed under this provision but a copy of these regulations although requested, has not been provided.

979) Although not identified as an "asset forfeiture fund", Article 12-1 of the MLCA provides as follows:

> "***Article 12-1***
> *The property or property interests confiscated, other than cash, investment securities or negotiable instruments, may be distributed by the Ministry of Justice to the prosecutor offices, the police departments, or other government agencies assisting the investigation of the money laundering activities for official use, in accordance with the provisions set forth in paragraph I of Article 12.*

The Ministry of Justice may distribute the confiscated property or property interests in whole or in part to a foreign government, foreign institution or international organization which enters a treaty or agreement in accordance with Article 14 of this Act to assist our government in confiscating the property or property interests obtained by an offender from his or her commission of a crime or crimes.

The Executive Yuan shall promulgate regulations for management, distribution and use of the property or property interests mentioned in the preceding two paragraphs."

980) "Regulations Governing Management, Allocation, and Utilisation of Confiscated Properties Confiscated due to ML" have been promulgated by the Executive Yuan. Article 2 of these Regulations provide that the Regulations are limited to "properties that can be used for public service, not including cash and securities". Article 3 further adds that the Regulations do not cover "those appropriated to a foreign government, institution or international organisation". Other articles set out the procedure for applying for an allocation of confiscated property:

Article 4 *– A prosecutorial or judicial police organisation or other organisation that has assisted in cracking down on ML may within 3 months of receiving a notice, apply to the MOJ for an allocation of confiscated property for public use. If it fails to do so within the time stipulated, it can still petition the MOJ for a deferment but only one deferment is permitted. If the MOJ does not receive any application under this article, it shall inform the prosecutorial organisation that has custody of the property to dispose of the property according to law.*

Article 6 *– the MOJ is required to organise a Confiscated Property Allocation and Utilisation Review Committee to be in charge of case review and allocation. The members of this committee comprise of the Justice Minister as Chair with the remaining representatives being from other prosecutorial and judicial organisations such as the Supreme Prosecutors Office, the National Coast Guard Administration, the National Police Agency, the Investigation Bureau and others.*

Article 7 *– the Review Committee is required to consider several matters when deliberating over the allocation of property. This includes the nature of the confiscated property and the practical need of the applicant organisation for the property; the actual participation of the applicant organisation in the case and its connection with the confiscated property; amount and value of the properties to be allocated under the Regulations if there are more than 2 organisations applying.*

Article 8 *– the MOJ notifies the organisation who has custody of the property to deliver the property to the receiving organisation within 2 months of the notice.*

Article 9 *– a receiving organisation is required to maintain, use or "make profit" from the property in accordance with the National Assets Act and related laws. The receiving organisation becomes responsible for managing the property and is required to complete registration under this Act and to keep an account of the properties under its management.*

981) The above Regulations do contain a provision under which sharing of confiscated assets with a foreign jurisdiction can occur:

"Article 10 *– According to the provisions of Paragraph 2 of Article 12-1 of the Act, the properties that are confiscated through the assistance of a foreign country,*

institution or international organisation shall be handed over to the government of this country and shall be placed under custody of an organisation designated by the MOJ and the MOJ shall be responsible for making a list for information of the prosecutorial and judicial police organisations in-charge, the assisting organisations and the related foreign governments, institutions and international organisations.

According to Article 14 of the Act, the foreign government, institution or international organisation that has signed an agreement on mutual assistance in judicial matters may, within 6 months of receiving the said notice, make a claim to the MOJ through the Ministry of Foreign Affairs for allocation of the property. The provisions of Article 7 are applicable mutatis mutandis to the procedure of application for allocation and use of said property.

The MOJ may directly refer the confiscated property mentioned in paragraph 1 to the Review Committee for deliberation and allocation to the foreign government, institution, and international organisation without waiting for their application."

982) The Chinese Taipei authorities advise that property has not yet been allocated under these provisions either within Chinese Taipei or to the aforesaid foreign entities.

983) The US MLAA, refers to asset sharing in Article 17, paragraph 3 whereby either party may transfer all or part of any POC or instrumentalities or the proceeds of their sale, to the other party to the extent permitted by the laws of the territory represented by the transferring party and upon such terms as it deems appropriate.

984) Foreign non-criminal confiscation orders cannot be recognised or executed by Chinese Taipei given that Chinese Taipei does not recognise civil forfeiture nor does it have any "confiscation system for civil cases".

Special Recommendation V

985) Although Chinese Taipei has not yet criminalised FT, the Chinese Taipei authorities advise that if the act is culpable, it could be dealt with under other laws such as the Organised Crime Prevention Act or the Criminal Code if for example it involved the hijacking of aircraft. If the offence could fall within the existing criminal law, then assistance could be given if the requesting country made a request by way of the Law in Supporting Foreign Courts Act.

986) Under the draft law of the Counter Terrorism Act, Article 19 provides that the government and its authorised organisations may on the basis of reciprocity, enter into an anti-terrorism treaty "or other international pact of anti-terrorism cooperation".

987) There is little in the draft that adds any further MLA measures to what has been already identified. Article 10 authorises Chinese Taipei authorities to order the detention or ban on movable, immovable or other assets when there is suspicion that terrorists are using them for terrorist acts; Article 11 authorises Chinese Taipei authorities to ban the withdrawal, account transfer, payment, disbursement or other related disposal of terrorist funds or accounts. Article 15 of the draft law provides that in terms of confiscating articles used in committing terrorist acts (Article 12, paragraph 3) and financing a terrorist organisation (Article 13, paragraph 2) "shall be regarded as a felony under paragraph 1 of Article 3 of the MLCA", i.e. as a "serious crime" whereby the related provisions of the MLCA shall apply – and also under the Communications Protection and Surveillance Act which will allow telecommunication interceptions.

988) Once CFT offences are criminalised in Chinese Taipei, the Chinese Taipei authorities can provide assistance either through MLAA or MLAT with other jurisdictions or without an agreement by way of the Law in Supporting Foreign Courts on Consigned Cases process. In terms of dual criminality, as already mentioned, Article 2 of this law provides as follows;

> "A court, when consigned by a foreign court to help take charge of civil or criminal cases, shall not conflict laws of" Chinese Taipei.

989) As indicated previously, Chinese Taipei is yet to criminalise FT, engaging in a terrorist act or participating in a terrorist organisation. Once these offences are criminalised, the same processes as have been referred to for existing offences such as ML and predicate offences, are available to the Chinese Taipei authorities in the identification, freezing, seizure, confiscation of POC, will be available in the execution of MLA requests relating to TFC offences subject of course to:

a) reciprocity by the jurisdiction in matters of foreign 'consigned cases';

b) MLAA or MLAT entered into with Chinese Taipei;

c) the restrictions in terms of dual criminality as identified in the Guidance decree issued under the US MLAA.

990) In terms of foreign non-criminal confiscation orders, the current Counter Terrorism draft law does not introduce any new laws whereby these can be executed by the Chinese Taipei authorities.

Recommendation 32

991) The Chinese Taipei authorities do maintain statistics on MLA received and provided but the statistics do not identify the offence – whether ML or predicate offences – the nature of the request nor the time required to respond. The authorities were asked how long on average it takes to respond to a MLA request but that information was not provided.

992) MLA requests made to Chinese Taipei

	United States	**Other Countries**	**Total**
2002	2		2
2003	8		8
2004	5		5
2005	10	11	21
2006	2	14	16
Total	**27**	**25**	**52**

6.3.2 RECOMMENDATIONS AND COMMENTS

993) It is recommended that Chinese Taipei:

- amend the law to ensure or clarify that it is not necessary for judicial proceedings to have been commenced in the requesting jurisdiction for an MLA request to be accepted by Chinese Taipei;

- consider devising and applying mechanisms for determining the best venue for prosecution of offenders in cases that are subject to prosecution in more than one country;

- in terms of the practical effectiveness of Article 32-1 of the Statute for Narcotic Hazards Control Act 2003, the authorities advised of a difficulty in its implementation in that there is no legal protection for police officers who may be required to go undercover as drug dealers or buyers, or handle any narcotics that are under border surveillance for example. Chinese Taipei currently has a draft Undercover Investigation Act that is aimed at protecting the rights and interests of undercover investigators and through this, enable police to utilise this provision. It is recommended that Chinese Taipei give priority to passing the Undercover Investigation Act.

994) It is of interest to note Chinese Taipei's policy of distributing confiscated property upon application by any department that was involved in the confiscation of the property in question. It is further noted that no property has been distributed under this process but it is not certain whether or not the reasons for this is because no applications have been made. Given that a "receiving organisation" is required under Article 9 of the "Regulations Governing Management, Allocation and Utilisation of Confiscated Properties" to "make profit" from the property in accordance with the National Assets Act and other related laws, this raises the issue as to whether a law enforcement agency or prosecutors office for example, would want this added responsibility.

6.3.3 COMPLIANCE WITH RECOMMENDATIONS 36 TO 38, AND SPECIAL RECOMMENDATION V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	LC	• For jurisdictions with no MLAA with Chinese Taipei, that jurisdiction can only receive MLA through court order or letters rogatory.
R.37	C	• This recommendation is fully observed.
R.38	LC	• Law enforcement unable to utilize controlled delivery provision.
SR. V	NC	• FT and other terrorism offences have not been criminalized.
R.32	LC	• Statistics for international cooperation (MLA, extradition etc) do not identify whether request relates to ML or predicate offence or when requests were received and when responded to.

6.4 EXTRADITION (R.37 & 39, & SR.V)

6.4.1 DESCRIPTION AND ANALYSIS

Recommendation 39

995) Chinese Taipei has entered into 7 extradition agreements with the Commonwealth of Dominica, the Dominican Republic, the Republic of South Africa, the Kingdom of Swaziland, Republic of Malawi, the Republic of Costa Rica, and the Republic of Paraguay.

996) Regarding other jurisdictions with which Chinese Taipei has no extradition agreement, Chinese Taipei will accept extradition requests in accordance with the

provisions of the Law of Extradition 1954. Article 1 of the Law of Extradition provides as follows:

> *"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."*

997) Article 2 of the Extradition Law provides:

> *"Extradition may be approved if the offense is committed within the territory of the country making requisition therefor and if it is punishable both under the laws of the Republic of China and those of the country making such requisition; provided, that this shall not apply where under the laws of the Republic of China the maximum basic punishment for such offense is a punishment of imprisonment for not more than one year or higher.*
>
> *Extradition may be approved if the offense is committed outside the territory of the country making requisition therefor and that of the Republic of China and if it is punishable under the laws of both of the two countries, provided, that this shall not apply where under the laws of the Republic of China the maximum basic punishment for the offense committed is a punishment of imprisonment for not more than one year or higher."*

998) ML is an extraditable offence in Chinese Taipei. There are no separate specific laws or procedures to extradite individuals charged with ML. It is unknown whether any of the extradition agreements contain any provisions relating to ML specifically.

999) Article 4 of the Extradition Law sets out the procedure regarding a request for the extradition of a Chinese Taipei national -

> *"Extradition shall be refused if the person whose surrender is requested for is a citizen of the Republic of China; provided, that this shall not apply if the person acquired the citizenship after the requisition for extradition is made.*
>
> *A citizen of the Republic of China who commits an offense specified in the provisions of Articles 2 and 3 of this Law in the territory of a foreign country shall, after the requisition for extradition made by a foreign government is refused, be referred to a court which has jurisdiction over the case for trial."*

1000) The Chinese Taipei authorities also refer to Articles 6 and 7 of the Criminal Code which cover offences committed by a public official 'beyond the territory of' Chinese Taipei. These articles provide that in such cases, the Criminal Code shall apply. It is therefore the duty of the prosecutorial agencies and court to pursue such cases if Chinese Taipei rejects a request for the extradition of a national who is a public official.

1001) There is no legal requirement in the Extradition law which require Chinese Taipei to cooperate with the other requesting country in a case involving a Chinese Taipei national, however the Chinese Taipei authorities indicate that "it will be processed rapidly and efficiently within the limits of the law". Whether or not such a requirement is or can be covered in an extradition agreement is not known.

1002) As mentioned earlier, there is no specific law or process relating specifically to the extradition requests and proceedings relating to ML. The Chinese Taipei authorities advise that "any request for an extradition is raised by other nation, Chinese Taipei is willing to process the request rapidly and efficiently within the limits of laws".

1003) Pursuant to Article 10, the requesting country prepares an extradition request and forwards it to Chinese Taipei through diplomatic channels to MOFA. Under Article 15, MOFA is required to forward the same together with other relevant documents to MOJ for relegation to the Prosecutors' Office having jurisdiction over the place of residence of the person requested to be extradited. If the place of residence is unknown, the documents are sent to the District Prosecutors' Office. (No information has been provided as to what happens to the documents once it reaches this office). Where the person is found, pursuant to Article 17, the prosecutor is required to "interrogate the accused within 24 hours after he is arrested, inform him of the requisition for extradition and forward the case as soon as possible to the court". The court will then issue a warrant to apprehend and hold the accused in custody in accordance with the provisions of the Criminal Code.

Additional elements

1004) In terms of "simplified procedures of extradition", there are no processes allowing direct transmission of extradition requests between appropriate ministries or a process for "consenting persons" but Article 12 of the Extradition Law provides –

> *"In case of emergency, a foreign government may, before presenting the written requisition for extradition, request by correspondence or cablegram the arrest and detention of the person to be extradited. However, the correspondence or cablegram shall state the matters listed in Article 10 and the fact that a public prosecution has been brought against such person or that a judgment of guilty has been pronounced.*
>
> *In the circumstance specified in the preceding paragraph, the written requisition for extradition shall be presented within thirty (30) days from the date the accused is detained, failing which the detention shall be cancelled, and no requisition for extradition may be made on the same case."*

1005) Article 10 of the Extradition Law sets out the matters to be covered in a request for extradition which includes:

a) the name, sex, age, native place, occupation, domicile or residence, or other features of identification of the accused;

b) the facts and evidences of the offence and articles of the law violated;

c) intent of requisition for extradition and assurance of reciprocity;

d) assurance to observe the limitations specified in the first part of paragraph 1 of Article 7 and the first part of Article 8.

Recommendation 37

1006) Article 2 of the Extradition Law requires dual criminality except where (if the offence is committed in or outside the requesting country), under the Chinese Taipei laws the maximum penalty for the offence is "imprisonment of not more than one year or higher".

1007) Where dual criminality is required, there is no legal, practical or technical impediment to rendering assistance.

Special Recommendation V

1008) As CFT offences have not been criminalised, they are not extradictable offences under the Extradition Law.

6.4.2 RECOMMENDATIONS AND COMMENTS

1009) It recommended that Chinese Taipei establish a process whereby it can cooperate with a requesting jurisdiction when it comes to prosecuting its own nationals under Article 4 paragraph 2 of the Extradition Law.

1010) When the Chinese Taipei authorities were asked whether they kept statistics of extradition requests received and made, the Evaluation Team was advised that there were no statistics for extradition, given that the authorities had not received or made any extradition request due to their international political status. However they did advise that their requests have been rejected which indicate requests have been made. As a result Chinese Taipei authorities advised that Chinese Taipei uses “deportation procedures” instead of extradition.

6.4.3 COMPLIANCE WITH RECOMMENDATIONS 37 & 39, AND SPECIAL RECOMMENDATION V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.37	C	Fully observed
R.39	LC	• Chinese Taipei does not have any process in place whereby they will cooperate with another jurisdiction when prosecuting their own nationals
SR. V	NC	• TF offences have not been criminalised and are not extraditable offences
R.32	NC	• There are no statistics for extradition or for ‘repatriation’. • This is a composite rating and appears at a number of points in the report.

6.5 OTHER FORMS OF INTERNATIONAL CO-OPERATION (R.40 & SR.V)

6.5.1 DESCRIPTION AND ANALYSIS

Recommendation 40

1011) Chinese Taipei has signed agreements and MOUs with 5 countries to facilitate assistance and information exchange on AML/CFT. Chinese Taipei also actively participates in related international fora and activities held by the APG and the Egmont Group.

1012) Chinese Taipei has several measures in place for enhancing international cooperation:

a) membership on AML/CFT international organizations for exchanging information, such as Egmont;

b) assignment of law enforcement liaison officers to posts in other countries;

c) close communication and cooperation with other country’s law enforcement liaison officers;

d) maintaining cooperation channels with related international organizations such as Interpol;

e) providing information to international counterparts or upon request, based on the principles of mutual benefits and reciprocity, and subject to the Data Protection Law.

1013) With regard to MLA requests made by foreign jurisdictions (where there is no agreement or MOU with Chinese Taipei), the MOJ in accordance with established procedure, forwards the requests to the relevant prosecutors' office to provide the assistance requested. In recent years, Chinese Taipei has received and provided assistance in 52 MLA requests received from jurisdictions including USA, UK, Poland, Denmark, Switzerland, Belgium and Liechtenstein. The Chinese Taipei authorities advise that all requests were met and "completed satisfactorily".

1014) The Chinese Taipei authorities further advised that in terms of the exchange of ML intelligence, the Investigation Bureau is able to respond quickly and efficiently to requests through the Egmont Group Secured Website. Through this website, the MOJ, the Investigation Bureau and Criminal Investigation Bureau are able to provide timely and effective assistance to their foreign counterparts.

1015) The MLPC prioritises all requests from foreign counterparts and assigns staff members to deal with each of the matters. On average, the majority of requests take one to two weeks to respond to, with more complicated cases taking longer.

1016) The MLPC also exchanges information through the following channels.

a) if the counterpart is a member of Egmont, the MLPC will exchange information through the Egmont Secured Website;

b) if the counterpart is not a member of Egmont but has signed an MOU or agreement with Chinese Taipei, the MLPC can exchange information directly with the foreign counterpart by fax, letter or email depending on the urgency and confidentiality concerns of the case;

c) where the counterpart is not a member of Egmont and does not have an MOU or agreement with Chinese Taipei, the MLPC can still exchange information based on the "principles of mutual benefits and reciprocity through other government communication channels such as the diplomatic channel".

1017) The MLPC is also vested with the authority to exchange information spontaneously and upon request under the following principle:

> *"The information or documents obtained from the respective Authorities will not be disseminated to any third party, nor be used for administrative or prosecutorial or judicial purposes without prior consent of the disclosing Authority. The information obtained can only be used in connection with investigations related to money laundering originating from specific categories of criminal activity. The predicate offenses for the offense of money laundering are defined as acts that would be criminal offenses under both jurisdictions penal laws, had the offense been committed in that jurisdiction."*

1018) With a view to ensuring that all competent authorities are authorized to conduct inquiries on behalf of foreign counterparts, the MOJ intends to amend the MLCA, by adding the following new provision:

> **Article 8-2**: *"When a foreign government or an international organization requests this nation for legal assistance in investigating and pursuing a criminal offense, unless otherwise prescribed in the law, the Investigation Bureau under the Ministry of Justice may, on the basis of reciprocal favoured treatment, provide it with the notification data and investigation results set forth in Articles 7, 8, and 8-2 of this law."*
>
> This article will ensure that the Investigation Bureau has the authority to exchange intelligence with a foreign organization. This is also consistent with the provisions of the Data Protection Law.

1019) If an inquiry is made for information exchange only, competent authorities can comply within their own respective procedures or mechanisms in providing the information requested to their foreign counterparts based on the "principles of mutual benefits and reciprocity" and without breaching the Data Protection Law.

1020) As mentioned, formal MLA requests are referred to the MOJ and are referred by MOJ to the Prosecutors' Office who in turn refer it to the judicial police for investigation.

1021) The MLPC is authorised by the Executive Yuan through the "Operation Regulation of Money Laundering Prevention Center", to exchange information with foreign counterparts and is authorized to conduct inquiries relating to information on behalf of foreign counterparts. The information that can be provided includes searching its own database with respect to STRs, CTRs and Cross-border Currency Movement Reports; and searching certain other law enforcement databases, administrative databases, commercial databases and other public commercial databases.

1022) The MLPC is subject to the conditions stipulated in MOUs, Agreements, MLCA and Data Protection Law when exchanging information with foreign counterparts. In general terms however, there is no disproportionate or unduly restrictive condition if the information exchange is based on the principles of mutual benefits and reciprocity, and for "facilitating public security".

1023) The MLPC exchanges information with foreign counterparts subject to the policies and regulations mentioned above and advises that it would not refuse any request which solely involved fiscal matters. Neither is there any impediment to the provision of that assistance on the grounds of any secrecy or confidentiality requirements for financial institutions or DNFBP.

1024) Paragraph 1, Article 11 of the MLCA provides:

> *"Any government official who reveals, discloses or turns over documents, pictures, information or things relating to the reported suspect financial transaction or reported suspect money laundering activity to others, he or she shall be sentenced to imprisonment of not more than three years".*

1025) The MLPC advise that information provided by foreign counterparts is treated as relating to a "reported suspect financial transaction" or "suspect money laundering activity" and safeguarded according to the above provision. In addition, if the information has to be disseminated to competent authorities, the conditions of using the information will be clearly outlined prior to such dissemination.

Additional Elements

1026) Currently all MLA requests from non-counterparts are handled in accordance with the LSF Act (except for the US). The Chinese Taipei authorities further advise that as long as a request for assistance comes through the MOFA, they will do their utmost to handle it "flexibly".

1027) In exchanging information, the MLPC is subject only to the conditions stipulated in the MOUs, agreements, the MLCA and Data Protection Law. There is no specific inhibition to exchange information with non-counterparts. In practice, the MLPC advises that most cases are conducted through direct contact with the requesting agency, with few being conducted indirectly through law enforcement liaison officers of both sides or through other authorities.

1028) With regard to the disclosure of the purpose of the request, in respect of MLA requests:

a) under the LSF Act, Chinese Taipei will only accept cases commissioned by foreign courts. Article 6 stipulates that for an investigation into evidence, the "power of attorney" shall include "the subjects of investigation, and in case of a criminal case, summary of the case". Chinese Taipei authorities also advise that the requesting country is required to clearly express the purpose of the request.

b) Chinese Taipei authorities further advise that an amendment to the LSF Act is being drafted, which will require the court or prosecutorial organisation of the requesting country to declare that "the materials obtained will not be used for any criminal proceedings not mentioned in the request."

c) Article 5 of the US MLAA provides that the request must contain the name of the organization that requests the investigation and the purpose of the investigation. Article 8 of the MLAA provides that the requested party may ask the requesting party not to use the materials and evidence obtained under the agreement for investigation, indictment and lawsuit proceedings not mentioned in the request unless the two parties have otherwise agreed on the matter.

1029) In respect of information exchange, as the MLPC is a member of Egmont, the authorities advise that MLPC is willing to comply with the statement of purpose on information exchange, which clearly requires the requesting authority to disclose the purpose of the request and on whose behalf the request is made.

1030) The MLPC advises that it can access and obtain relevant information from other competent authorities but such access is subject to the restrictions and control mechanism set out in the "Working Manual of Money Laundering Prevention" and "Operation Regulation of Money Laundering Prevention Center".

Special Recommendation V

1031) Once the Counter Terrorism Act is passed, Article 19 of the draft law will authorise Chinese Taipei to enter into cooperative treaties and agreements through which the full range of assistance can be given in TF matters.

1032) As mentioned earlier, the proposed amendment to the MLCA will also clearly authorise the Investigation Bureau to provide legal assistance –

Article 8-2 - *"When a foreign government or an international organization requests this nation for legal assistance in investigating and pursuing a criminal offense, unless otherwise prescribed in the law, the Investigation Bureau under the Ministry of Justice may, on the basis of reciprocal favored treatment, provide it with the notification data and investigation results set forth in Articles 7, 8, and 8-2 of this law."*

86. The Chinese Taipei authorities also refer to the fact that FT is listed as an indicator for reporting STRs by financial institutions (Regulations Regarding Article 8 of the MLCA) and the MLPC is vested with the power to share such information and take necessary steps to coordinate with foreign counterparts when handling ML cases.

Additional elements

1033) Article 4 paragraph 1 of the draft Counter Terrorism Act provides as follows;

"The National Security Bureau is in charge of orchestrating the collection and processing of counter terrorist intelligence and supplying the Executive Yuan's counter terrorist task force, intelligence agencies and other related agencies with information about internationally identified terrorist organizations, terrorists, or suspected terrorist organizations and suspected terrorists."

1034) Article 4 paragraph 2 of the draft law also provides:

"All intelligence agencies shall actively collect intelligence and information related to terrorist actions at home land and abroad, and disseminate them to the National Security Bureau in time; other government agencies obtain intelligence related to terrorist actions shall, besides disposing the intelligence according their power and responsibility, immediately forward it to the National Security Bureau regardless the secret-keeping provisions of other laws."

1035) The Regulations Regarding Article 8 of the MLCA also stipulates that "transactions where the ultimate beneficiary or transaction party is a terrorist or terrorist group as listed by the MOF based on information provided by foreign governments" are to be reported as STR and reported to the MLPC in 10 business days after being discovered.

Recommendation 32

1036) The Drug Crime Prevention Year Book states that the MJIB have direct communication with over 20 countries or territories in Europe, America, Hong Kong, Macau, Southeast Asia and North East Asia. During 2005 for example 811 cases of intelligence exchange took place between Chinese Taipei and other jurisdictions in relation to narcotics. A number of examples where Chinese Taipei has worked with other jurisdictions include Philippines, Vietnam, Australia, United States, Japan, Malaysia, Hong Kong Macau to successfully conclude drug investigations.

1037) Both the MLPC and the NPA have dedicated resources to attend to international requests and at the time of the onsite visit were undertaking 42 requests for assistance.

6.5.2 RECOMMENDATIONS AND COMMENTS

1038) Chinese Taipei appears to have effective systems in place to exchange information with other jurisdictions through the MLPC, however, there appears to be little exchange of information by other competent authorities including the police.

1039) Beyond the MLPC, other competent authorities lack legal authority to support information exchange with their foreign counterparts.

1040) It is recommended that Chinese Taipei introduce legislation pertaining to the respective competent authorities other than the MLPC, that –

- authorises the competent authority to exchange information and conduct enquiries on behalf of foreign counterparts on a reciprocal basis;

- identifies the information that can be requested and establishes controls and safeguards to ensure that information received by those competent authorities is used only in an authorised manner.

1041) Although statistics are kept as indicated above, a table of statistics was not provided and comment and rating is restricted to the information sighted.

6.5.3 COMPLIANCE WITH RECOMMENDATIONS 40 AND SPECIAL RECOMMENDATION V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.32	LC	• Statistics do not indicate number of spontaneous requests made by Chinese Taipei to foreign authorities or indicate the number of requests received and refused
R.40	PC	• Chinese Taipei utilises a number of formal and informal arrangements to receive and disseminate information relevant to Money Laundering, Terrorism Financing and predicate offences.
SR.V	NC	• Terrorism and FT are yet to be criminalised

7 OTHER ISSUES

7.1 RESOURCES AND STATISTICS

Section 7.1 of the report contains only the box showing the rating and the factors underlying the rating, and the factors should clearly state the nature of the deficiency, and should cross refer to the relevant section and paragraph in the report where this is described.

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R.30	**LC**	• There is a noticeable absence of M/L prosecutions that stem from income generating crime other than economic crime (such as narcotics offending). This reflects a lack of focus on the investigation of ML across all law enforcement. • Narcotics investigators lack the capacity to investigate the laundering of drug related income as part of their investigations and the ability to recover and confiscate that income • There is a lack of dedicated units to recover proceeds of crime. • There are significant deficiencies with regards to capacity of border control to implement AML/CFT measures at the border, in particular cross-border movement of currency and bearer negotiable instruments • The adequacy of staffing resources of the FEB involved in the routine and special examinations is lacking when compared with the large size of the financial sectors captured under its mandate.
R.32	**LC**	• Discrepancies in recording statistics in relation to penalties arising out of ML prosecutions • No freezing actions have been taken pursuant to SRIII • Authorities have yet to undertake a comprehensive review to ascertain the extent to which the DNFBP entities may pose money laundering and terrorist financing risks. • A number of forums have been held to review the effectiveness of AML/CFT systems • Statistics for international cooperation (MLA, extradition etc) do not identify whether request relates to ML or predicate offence or when requests were received and when responded to • Statistics do not indicate number of spontaneous requests made by Chinese Taipei to foreign authorities or indicate the number of requests received and refused

TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system
Table 3: Authorities' Response to the Evaluation (if necessary)

Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (na).

Forty Recommendations	Rating	Summary of factors underlying rating[2]
Legal systems		
1. ML offence	PC	• The ML offence lacks some of the elements outlined in Article 3(1)(b)(c) of the Vienna Convention and Article 6(1) of the Palermo Convention; • The threshold for what is a serious offence is too high • Predicate offence conviction required that a ML offence is proved • Terrorism and terrorist financing are not predicate offences
2. ML offence – mental element and corporate liability	PC	• The law does not permit the intentional element of the offence of ML to be inferred from objective factual circumstances • The penalty provisions legally set out circumstances that could be used as "safe harbours" from prosecution which undermines the otherwise clear liability of corporations and their employees
3. Confiscation and provisional measures	LC	• No definition of "property" or "property interests" in the MLCA to ensure that offence of ML extends to all types of property • Unclear whether instrumentalities used or intended to be used can be confiscated if they are under the name of a third party given the provisions of Article 38 of the Criminal Code
Preventive measures		
4. Secrecy laws consistent with the Recommendations	C	• The recommendation is fully observed
5. Customer due diligence	PC	• The threshold for occasional cash transactions that

[2] These factors are only required to be set out when the rating is less than Compliant.

		triggers CDD obligation (NT$1 million, which is approximately US$30,000) is too high. • There is no explicit requirement for financial institutions to take reasonable measures to check if a customer is acting on behalf of another person and to identify the beneficial owner as part of the routine CDD procedure for all customers. • The financial leasing sector is not covered by the AML/CFT regime • Only the securities sector has explicit requirement to obtain information on the purpose and intended nature of the business relationship • The requirement to perform CDD when the previously obtained customer information is dubious is captured only by the Money Laundering Prevention Guidelines and Procedures for the banking sector, and there is no specific requirement for the securities and the insurance sectors. • The obligation to verify customer identity using reliable information is captured only by the Money Laundering Prevention Guidelines and Procedures and is not clearly captured by a law or a regulation for the insurance sector. • The obligation to check if a person purporting to act on behalf of a legal person is so authorized is not captured by a law or regulation for the banking sector and the insurance sector. • There is neither legislation nor any guideline that specifically addresses the treatment of existing customers.
6. Politically exposed persons	NC	• There is no specific legislation or guideline that requires financial institutions to have appropriate risk management procedures for PEPs.
7. Correspondent banking	LC	• Guidelines were introduced only two months before the Evaluation Team's onsite visit, and therefore, it is too early to form a judgment on the effectiveness or the implementation of the Guidelines.
8. New technologies & non face-to-face business	LC	• Banks lack effective measures to monitor all individual transactions conducted electronically.
9. Third parties and introducers	C	• The recommendation is fully observed
10. Record-keeping	PC	• The requirement to keep transaction records under the MLCA is inadequate in the following areas: • Financial institutions are not required to keep transaction records for any non-cash transactions; • Financial institutions are not required to keep transaction records for cash transactions below NT$1,000,000; • laws and regulations do not specifically require financial institutions to keep transactions records that would allow individual transactions to be reconstructed by the financial institutions for evidentiary purposes; • retention period exclude the requirement to keep transaction records for five years following the

		completion of a transaction; • International transaction records are not captured under the current record-keeping regime; • Financial institutions are not required to keep account files; • Financial institutions are not required to keep business correspondences; • retention period exclude the requirement to keep customer records for five years following the termination of an account or business relationship.
11. Unusual transactions	PC	• With the exception of banking sector there are no specific obligations on financial institutions to monitor and keep record of complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose. • Requirements for the banks are only very recent and implementation and its effectiveness could not be fully determined. • Other sectors have adopted a common and more general approach to monitoring of transactions that is intended to complement their suspicious transactions reporting framework. This approach falls short of the requirements of FATF.
12. DNFBP – R.5, 6, 8-11	NC	• Dealers in precious metal and stones are the only category of the DNFBP sector covered under MLCA Act. • There are currently no specific AML requirements that could be imposed on lawyers, notaries, real estate agents, accountants, trust and company services providers and businesses. • The scope of CDD and record-keeping for all covered financial institutions including the dealers in precious metals and stones is applied for cash transactions above NT$1,000,000 or US$31,000. This amount falls short of the US/€ 15,000 threshold set under the FATF methodology. • The obligations of dealers in precious metal and stones falls substantially short of the requirements of Recommendations 5, 6, 8-11, & 17. Due to the exclusion of other categories of DNFBPs, these requirements are also not imposed on them. • There are concerns on capacity of competent authorities to ensure and enforce full compliance with the FATF requirements for all categories of the DNFBP sector, including dealers in precious metal and stones.
13. Suspicious transaction reporting	PC	• There is an absence in law that requires a financial institution to report attempted transactions that are suspicious in nature.
14. Protection & no tipping-off	C	• This rating is fully observed
15. Internal controls, compliance & audit	LC	• The requirements imposed under the AML checklist for the securities sector falls short of meeting the requirement on independent audit function.

		• Financial institutions are not specifically required under the regulations, guidelines and checklist to allow the AML compliance officer timely access to customer and transaction records.
16. DNFBP – R.13-15 & 21	NC	• Dealers in precious metal and stones are the only DNFBP sector that is required to report suspicious transactions, however, the effectiveness is in doubt due to lack of any STR being made to date. • The underlying reason for lack of reporting of STRS by the dealers in precious metal and stones is largely correlated with the lower threshold for CDD and other AML requirements. • There are currently no specific STR reporting obligations that could be imposed on lawyers, notaries, real estate agents, accountants, trust and company services providers and businesses. • Concerns were noted from some category of DNFBPs who reported lack of consultation, awareness and guidance on the wider need for implementing and complying with FATF recommendations.
17. Sanctions	LC	• The type and nature of sanctions actually imposed to date by the FSC is inadequate in view of the many AML/CFT non-compliance findings for the banking sector. • The authorities have not adequately reviewed the appropriateness of sanctions in light of the large number of warnings issued to financials institutions for AML/CFT non-compliance.
18. Shell banks	PC	• Laws do not explicitly prohibit establishment of shell banks, however, the licensing requirements and policies under the Banking Act indirectly preclude the licensing of a shell bank in Chinese Taipei. • Chinese Taipei does not have a prohibition against its banks establishing correspondent banking relationships with shell banks, or serving as a correspondent bank for any foreign institution that permits its accounts to be used by shell banks.
19. Other forms of reporting	C	• This rating is fully observed
20. Other NFBP & secure transaction techniques	NC	• No indication that serious consideration has been given to the possibility of bringing other non-financial professions and businesses into the scope of the AML/CFT regime.
21. Special attention for higher risk countries	NC	• No obligation on financial institutions to give special attention to business relationships and transaction from or in jurisdictions that do not or insufficiently apply the FATF Recommendations. • Authorities do not have measures in place to advise financial institution of concerns about weaknesses in the AML/CFT systems of other jurisdictions. • The existing Regulations that addresses transactions from an NCCT listed jurisdiction is too narrow and in the absence of an FATF list, this section of the regulation is not applicable at present.

22. Foreign branches & subsidiaries	LC	• Insurance and securities sectors do not explicitly require financial institutions to pay particular attention to their branches and subsidiaries in countries which do not or insufficiently apply the FATF recommendations. • No formal obligation on financial institutions that where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries are required to apply the higher standard, to the extent that local laws and regulations permit
23. Regulation, supervision and monitoring	LC	• Insurance agents and brokers are exempted from the current AML/CFT requirements. • The authorities have only recently extended the AML/CFT requirements to the money changing services sector and its effectiveness could not be established.
24. DNFBP - regulation, supervision and monitoring	NC	• While casinos are prohibited in Chinese Taipei, authorities may consider providing more severe penalties for the offenders. • The jewellery sector is not fully covered under the current framework. • The interim measures for monitoring the real estate sector falls short of the essential criteria in many ways. • Chinese Taipei's AML/CFT regulatory regime does not cover lawyers and accountants sector.
25. Guidelines & Feedback	PC	• The approach taken to establishing guidelines under the MLCA is not clear and shifts the obligation to issue guidelines to financial institutions. The competent authorities are required to merely "review" the guidelines and procedures. • Guidelines are not detailed to adequately capture requirements specific to each industry. • MLPC does not provide feedback on or acknowledgement of the receipt of STRs and STR cases that have been completed • The approach taken to establishing guidelines under the MLCA is not clear and shifts the obligation to issue guidelines to financial institutions. The competent authorities are required to merely "review" the guidelines and procedures. • Guidelines are not detailed to adequately capture requirements specific to each industry. • The authorities are yet to undertake consultation on the issuance of regulatory guidelines for lawyers, accountants and the real estate agents
Institutional and other measures		•
26. The FIU	C	• This rating is fully observed
27. Law enforcement authorities	LC	• Designated authorities do have responsibility for the investigation of ML or TF and recovery of proceeds of crime. • Statistics reflect that currently there has only been

		limited success in the recovery of proceeds of crime. • There currently exist limitations on measures that can be used to conduct investigations in ML - for example the undercover investigations this is recognised and is actively being worked on by the jurisdiction.
28. Powers of competent authorities	C	• This rating is fully observed
29. Supervisors	LC	• The actual implementation and its effectiveness could not be established as the AML/CFT requirements for the foreign currency exchange sector came into force only recently in January 2007. • Supervisory framework for the foreign exchange sector unclear.
30. Resources, integrity and training	LC	• There is a noticeable absence of M/L prosecutions that stem from income generating crime other than economic crime (such as narcotics offending). This reflects a lack of focus on the investigation of ML across all law enforcement. • Narcotics investigators lack the focus (at this time) to investigate the laundering of drug related income as part of their investigations and the ability to recover and confiscate that income • There is a lack of dedicated units to recover proceeds of crime. • There are significant deficiencies with regards to capacity of border control to implement AML/CFT measures at the border, in particular cross-border movement of currency and bearer negotiable instruments • The adequacy of staffing resources of the FEB involved in the routine and special examinations is lacking when compared with the large size of the financial sectors captured under its mandate.
31. National co-operation	LC	• There is extensive national cooperation but weaknesses still exist among law enforcement agencies and to support the development and promulgation of CFT measures.
32. Statistics	LC	• Discrepancies in recording statistics in relation to penalties arising out of ML prosecutions • No freezing actions have been taken pursuant to SRIII • Authorities have yet to undertake a comprehensive review to ascertain the extent to which the DNFBP entities may pose money laundering and terrorist financing risks. • • A number of forums have been held to review the effectiveness of AML/CFT systems • Statistics for international cooperation (MLA, extradition etc) do not identify whether request relates to ML or predicate offence or when requests were received and when responded to • Statistics do not indicate number of spontaneous

		requests made by Chinese Taipei to foreign authorities or indicate the number of requests received and refused
33. Legal persons – beneficial owners	PC	• There is no obligation to maintain and make available beneficial ownership information for legal persons
34. Legal arrangements – beneficial owners	PC	• Competent authorities have only limited powers to have timely access to information on the beneficial ownership and control of trusts.
International Co-operation		•
35. Conventions	PC	• Chinese Taipei has not become party to the Vienna, Palermo or Terrorist Financing conventions • Chinese Taipei has not fully implemented the Vienna and Palermo conventions • Chinese Taipei has not implemented the terrorist financing convention
36. Mutual legal assistance (MLA)	LC	• For jurisdictions with no MLAA with Chinese Taipei, that jurisdiction can only receive MLA through court order or letters rogatory;
37. Dual criminality	C	• This recommendation is fully observed
38. MLA on confiscation and freezing	LC	• Law enforcement unable to utilize controlled delivery provision
39. Extradition	LC	• Chinese Taipei does not have any process in place whereby they will cooperate with another jurisdiction when prosecuting their own nationals
40. Other forms of co-operation	PC	• Chinese Taipei utilises a number of formal and informal arrangements to receive and disseminate information relevant to Money Laundering, Terrorism Financing and predicate offences.
Nine Special Recommendations		
SR.I Implement UN instruments	NC	• Chinese Taipei has not implemented or become a party to the Terrorist Financing convention • Chinese Taipei lacks effective laws and procedures to implement UNSCR 1267 and 1373.
SR.II Criminalise terrorist financing	NC	• FT has not be criminalised
SR.III Freeze and confiscate terrorist assets	NC	• Chinese Taipei lacks effective laws and procedures to freeze terrorist funds or other assets of entities designated by the UN 1267 Committee or to freeze terrorist assets of persons designated in the context of UN SCR 1373.
SR.IV Suspicious transaction reporting	NC	• The requirements to report suspicious transaction for terrorist financing under the MLCA Regulations and AML guidelines fall short of the requirements under SR.IV. • Financing of terrorism is not covered as a serious offence as FT is not yet criminalized in Chinese Taipei. • Shortcomings and deficiencies identified in R.13 also apply and contribute to the assessment and level of compliance rating of SR.IV.

SR.V	International co-operation	NC	• FT and other terrorism offences have not been criminalized
SR VI	AML requirements for money/value transfer services	LC	• Apart from Article 29 of the Banking Act that bars non-banks from providing domestic or foreign remittance services, Chinese Taipei does not have any specific laws or regulations governing the money or value transfer service providers that operate outside of banking channels. • No remittance providers are licensed to operate outside of the banking sector, despite the existence of unregulated remittance channels exist, with a continuing need for structures or strategies to support increased uptake of remittance through formal channels; • The regulation, supervision and compliance framework for money or value transfer service providers that is undertaken by the FSC should be reflected in their policy framework. • The enforcement of Article 29 of the Banking Act is effective however, underground banking vulnerabilities remain and need to be continuously assessed.
SR VII	Wire transfer rules	LC	• There is no clear requirement for banks set out in any legislation or a guideline to have in place procedures for handling inward cross-border remittances that do not come with full originator information.
SR.VIII	Non-profit organisations	LC	• Outreach has not been undertaken to raise awareness of specific vulnerabilities in the NPO sector in relation to specific risk of terrorist abuse.
SR.IX	Cash Couriers	PC	• There is a lack of resources available to the Customs Service to enforce the declaration which appears to be undermining its effectiveness. • There is a deficiency in the sanctions available for non-compliance with the declaration system. • There is a lack of implementation of a specific sanction for the smuggling of cash

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	No text required
2. Legal System and Related Institutional Measures	
Criminalisation of Money Laundering (R.1 & 2)	• Amend ML definition to reflect Art 3(1)(b)(c) of Vienna Conv and Art 6(1) of Palermo • Amend legn to include provision identifying 'property' and 'property interests' • Amend MLCA so that conviction of a predicate offence is not necessary when proving that property is POC • Amend MLCA to reduce threshold to 6 months. • Prioritise passing legn to criminalise terrorism including terrorist financing • Amend legn to clarify that the ancillary offences of the Code apply to the offence of ML • Amend MLCA to reflect that intention in ML can be inferred from objective factual circumstances • Delete from Article 9 the provision regarding employees or representatives 'engaging within the scope of his or her employment in ML activities' • Remove Article 10 and insert it in Prosecution Guidelines on ML • Improve statistics by o clearly identifying which cases lead to ML convictions as opposed to the convictions for serious crimes; o including or identifying any fines or penalties that may have been imposed on legal persons involved in the ML; o noting for inclusion in the statistics, whether the convicted persons (both natural or legal) were subjected to any civil or administrative sanctions; o having one body responsible for gathering all ML statistics from the various law enforcement and judicial authorities to ensure consistency and improve reliability for the purposes of assessment as to the effectiveness of the Chinese Taipei AML/CFT regime. • Provide practical case workshops for the judiciary aimed at improving their understanding of the legal elements required to prove ML, and the Police to improve their ML investigation skills.
Criminalisation of Terrorist Financing (SR.II)	• It is recommended that the authorities review and re-draft the draft Counter-Terrorism Act Bill to ensure that it satisfies the requirements of the UN Terrorist Financing Convention and SR II before submitting it to the Legislative Yuan.

	• Chinese Taipei is encouraged to finalise the draft law and have the law passed by the Legislative Yuan as soon as possible. •
Confiscation, freezing and seizing of proceeds of crime (R.3)	• authorities may want to clarify the MLCA by ensuring the exact phrase "property or property interests obtained from a serious crime"used in Article 2 is used in Articles 4 and 12. • it is recommended that the Chinese Taipei amend the MLCA to specifically "property" and "property interests" to ensure that the offence of ML extends to all types of property that directly or indirectly represents proceeds of crime. • it is recommended that the authorities consider amending the law to clearly reflect the requirement to prevent or void actions, whether contractual or otherwise where persons involved knew or should have known that as a result the authorities would be prejudiced in their ability to recover the property,.
Freezing of funds used for terrorist financing (SR.III)	Chinese Taipei should: • establish clear legal provisions and procedures to freeze terrorist funds or other assets of persons designated in the list pursuant to UNSCR 1267. • have effective laws and procedures to freeze terrorist funds or other assets of person designated pursuant to UNSCR 1373. • The said freezing pursuant to UNSCR 1267 and 1373 should be ex parte and without delay. • have effective laws and procedures to examine and give effect to the actions initiated under the freezing mechanisms of other jurisdictions. • The freezing actions should extend to funds or other assets wholly or jointly owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organisations and funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organisation. • have effective systems for communicating actions taken under the freezing mechanisms to the financial sector. • provide clear guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms. • have effectively and publicly-known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed person or entities. • There should be clear provisions for persons or entities affected by the freezing actions to obtain relief. • There should be procedures to challenge measures with a view to having them reviewed by a court.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	• A review of the distribution list of the MLPC Annual Report may be warranted to ensure the report reaches the right people.
Law enforcement, prosecution and other competent authorities	• There is a need for more resources to be focused on ML investigations that relate to the proceeds of drug trafficking.

(R.27, 28, 30 & 32)	• DEC and Drug investigators within the CIB need to have the capacity to investigate the acquisition of assets and the laundering of drug income. Statistics reflect this is not currently occurring. • It is recommended that key law enforcement agencies establish dedicated money laundering and proceeds of crime units with additional resources and specialist forensic accountancy capacity to investigate and take action over criminal proceeds. • Chinese Taipei should review the problems faced by law enforcement where there is difficulty in proving funds were derived from a specific offence. If the findings warrant it, Chinese Taipei may consider a reverse onus provision as part of a civil forfeiture regime .
Cross-border declaration or disclosures (SR.IX)	• An urgent review of customs powers and resources should be undertaken. • A review of the declaration systems needs to be undertaken to determine if the lack of resources available to the Customs Service to enforce the system is undermining its effectiveness. • A system of profiling potential cash couriers needs to be established and implemented and the number of random inspections needs to be increased. • A review of Customs Service powers and training in relation to immediate investigative response to the persons who are discovered at the border with cash needs to be undertaken. The capability to prevent the movement of funds over the border needs to be increased to compliment other effective measures in place within the jurisdiction. • A review of the sanctions available for non-declaration and the smuggling of cash is required. There needs to be a strong deterrent for smuggling or failure to declare currency movements. Sanctions in addition to confiscation of excess funds are required to encourage compliance with the declaration system. • The available sanctions for non-compliance of the declaration needs to be reviewed to ensure that effective and dissuasive sanctions are available for smuggling or failure to declare currency movements. • A specific sanction for the smuggling of cash needs to be implemented.
3. Preventive Measures – Financial Institutions	•
Risk of money laundering or terrorist financing	•

Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• Chinese Taipei should ensure that key CDD obligations are contained in laws or regulations in keeping with the requirements under the international standards.
	• Chinese Taipei should:
	  • lower the thresholds that trigger CDD obligations for occasional transactions and consider ways to encourage use of more secure and transparent means of transactions.
	  • introduce explicit requirements for financial institutions to identify the beneficial ownership as part of the routine CDD procedures.

	• require financial institutions to take reasonable measures on all customers to check if the customer is acting on behalf of another person and to identify the natural person who ultimately controls or owns the customer. • require financial institutions to identify the natural person with ultimate effective control over customers that may be legal person/arrangements. • require financial institutions to perform customer due diligence and record-keeping for cash transactions of large amount that are exempt from CTR. • require financial institutions to perform CDD and to keep transaction records on large-value cash transactions even when they are exempt from CTR filing.
Third parties and introduced business (R.9)	
Financial institution secrecy or confidentiality (R.4)	

Record-keeping and wire transfer rules (R.10 & SR.VII)	• Financial institutions should be required under MLCA to keep transaction and customer records:
	  • for all transactions including international transactions and not just for cash transactions above NT$1,000,000;
	  • that would allow individual transactions to be reconstructed by the financial institutions for evidentiary purposes;
	• Retention period should include the requirement to keep:
	  • transaction records for five years following the completion of a transaction;
	  • customer records for five years following the termination of an account or business relationship.
	• Financial institutions should be required to keep account files and keep business correspondences.
	• The record-keeping provisions in the MLCA should be extended and applied to all transactions and customer records as required in the FATF Recommendations.
	• Chinese Taipei is advised to introduce explicit requirement for financial institutions to put in place clear procedure to deal with inward remittances that do not come with full originator information.

Monitoring of transactions and relationships (R.11 & 21)	• Authorities should ensure requirements on monitoring of transactions under the MLCA that would cover the banking sector and all other covered financial institutions and are fully implemented. • When the MLCA is amended, the relevant regulatory, supervisory and SROs may consider including these requirements in their respective guidelines. • Oblige financial institutions to give special attention to business relationships and transaction from or in jurisdictions that do not or insufficiently apply the FATF Recommendations. • Establish positive measures to advise financial institution of concerns about weaknesses in the AML/CFT systems of other jurisdictions. • provide guidance to all sectors on how to monitor business relationships with persons from countries not or insufficiently applying the FATF standards, and the various guidance

	should more specifically deal with this point.

Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• Chinese Taipei should ensure that:
	  • there is a clear obligation in law or regulation that obliges a financial institution to report a transaction that is suspicious irrespective of the amount.
	  • There is an requirement in law for a financial institution to report attempted transactions that are suspicious in nature.
	• It is recommended that clear obligations incorporating all elements as defined under SR.IV should be expressively adopted in the MLCA.
	• The MLPC should ensure that adequate feedback on STRs is provided (STR cases that fhave been completed) and that acknowledgement of the receipt of STRs is provided.

Internal controls, compliance, audit and foreign branches (R.15 & 22)	• The securities sector should be clearly required to establish an independent audit function that addresses AML/CFT functions.
	• Insurance and securities sectors should:
	  • explicitly require financial institutions to pay particular attention to their branches and subsidiaries in countries which do not or insufficiently apply the FATF recommendations.
	  • impose obligation on financial institutions that where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries are required to apply the higher standard, to the extent that local laws and regulations permit.

Shell banks (R.18)	• Chinese Taipei should ensure that banks established in Chinese Taipei are prohibited from: (1) establishing or maintaining a correspondent banking relationship with any shell bank; and (2) acting as a correspondent bank for any foreign bank that permits its accounts to be used by shell banks.

The supervisory and oversight system - competent authorities and SROs
 	
Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)
	• It is recommended that the authorities should:
	  • Amend the provisions of the MLCA to clarify the supervisory authorities' ability to use their sanctioning powers to enforce compliance with AML/CFT standards.
	  • Clarify AML/CFT supervisory responsibilities over the foreign exchange and wire transfer and MVT service providers.
	  • Impose a wider range of sanctions by authorities for AML/CFT violations
	• The scope of AML/CFT requirements in the MLCA and the guidelines should be expanded to include insurance agents and brokers.
	• Authorities should consider streamlining the approach to establishing guidelines under the MLCA.
	• The human resource capacity of the FEB, in particular, staff involved in the routine and special examinations, needs to be reviewed to determine adequacy of staffing resources in line with a substantially large size of the financial institutions that are captured under its mandate.
	• Authorities should review ML & FT risk posed by outlets that provide foreign currency exchange services
	• The authorities have only recently extended the AML/CFT requirements to the money changing services sector and

	special attention to this sector should be given to establish its effectiveness. • Authorities should re-examine the sharing of statutory responsibilities between the CBC and the Bank of Taiwan concerning the approval of the establishment of foreign currency exchange bureaus, cancellation of such approval and performance of operational audits.
Money value transfer services (SR.VI)	• The licensing, regulation and supervision of money for value transfer service providers should be clearly defined in the MLCA and in regulatory policies. • Large scale unregulated remittance channels exist, with a continuing need for structures or strategies to support increased uptake of remittance through formal channels; • The authorities should undertake further study of the nature of informal remittance business carried out from Chinese Taipei and consider additional measures to build incentives that encourage a shift of remittance from informal to regulated channels. • Underground banking vulnerabilities remain and need to be continuously assessed.
4. Preventive Measures –Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	• Authorities should lower the threshold that triggers CDD obligation on cash transactions for DNFBP. The authorities should: • Raise awareness on AML/CFT standards and obligations for the wider non-covered institutions; • Provide specific AML/CFT requirements under the MLCA for lawyers, notaries, real estate agents, accountants, trust and company services providers and businesses; • Issue separate regulations that detail the obligations of DNFBPs to the nature and size of their operations; • Issue sector specific comprehensive guidelines to the newer DNFBPs; • Designate appropriate AML/CFT supervisory authorities for the DNFPB sector are thorough consultations with the SROs and the industry; • The authorities should, as a matter of priority, examine the capacity and resources of the relevant competent authorities to ensure and enforce full compliance with the FATF requirements for all categories of the DNFBP sector.
Suspicious transaction reporting (R.16) (applying R.13-15, 17 & 21)	• The authorities should urgently impose obligations to report suspicious transactions to all other DNFBP sectors. • Authorities should focus more AML/CFT inspections along with the education efforts for jewellery shops. • Authorities should provide training to the DNFBP in detecting unusual and suspicious transactions. • The authorities should consider launching a progressive awareness campaign on the methods, trends, and typologies on ML and TF for the DNFBP sectors. • The authorities have advised that there are plans to amend the CPA Act. It is recommended that the authorities engage in consultation with the accountants sector to include AML/CFT obligations in the revised CPA Act as may be

	appropriate.
Regulation, supervision and monitoring (R.24-25)	• It is recommended that the Ministry of Economic Affairs undertake inspection of non-incorporated entities on a random sampling basis. • Chinese Taipei should consider stronger sanctions to ensure illegal casinos do not operate. • It is recommended that the authorities (especially MOJ and MLPC) carry out a comprehensive review to ascertain the extent to which the DNFBP entities may pose ML and TF risks and to determine the competent authorities that would be responsible for the AML/CFT regulatory and supervisory regime for DNFBP. • Ensure that sufficient resources, capacity and suitable powers are available for competent authorities to ensure AML/CFT requirements for all DNFBPs, including dealers in precious metal and stones.
Other designated non-financial businesses and professions (R.20)	• Chinese Taipei should reviews the vulnerability of other non-financial businesses and professions that may be vulnerable to ML and TF, for example dealers in arts and antiques.
5. Legal Persons and Arrangements & Non-Profit Organisations	•
Legal Persons – Access to beneficial ownership and control information (R.33)	• Chinese Taipei should ensure that legal persons are required to disclose in the central registry accurate and up to date information on the beneficial owner, that is those persons who exercise ultimate effective control over a legal person or arrangement.
Legal Arrangements – Access to beneficial ownership and control information (R.34)	• Chinese Taipei, however, should introduce processes to enable competent authorities to access information about the beneficial ownership and control structure of trusts in a more timely manner.
Non-profit organisations (SR.VIII)	• Additional outreach should be conducted to raise awareness in the NPO sector in relation to specific risk of terrorist abuse.
6. National and International Co-operation	•
National co-operation and coordination (R.31)	• Authorities should focus on domestic cooperation to support the implementation of AML/CFT measures by law enforcement agencies in areas such as border control and drug law enforcement. • Chinese Taipei should enhance cooperation to support CFT implementation.
The Conventions and UN Special Resolutions (R.35 & SR.I)	• Chinese Taipei should fully implement and ratify or otherwise become party to the Vienna, Palermo and Terrorist Financing conventions. • It is recommended that the Chinese Taipei authorities amend and introduce legislation to fully implement the relevant provisions of these Conventions.
Mutual Legal Assistance (R.32, 36-38, SR.V)	It is recommended that Chinese Taipei: • amend the law to ensure or clarify that it is not necessary for judicial proceedings to have been commenced in the requesting jurisdiction for an MLA request to be accepted by Chinese Taipei. • It is recommended that Chinese Taipei consider devising

	and applying mechanisms for determining the best venue for prosecution of offenders in cases that are subject to prosecution in more than one country. • It is recommended that Chinese Taipei give priority to passing the Undercover Investigation Act.
Extradition (R.32, 37 & 39, & SR.V)	• It recommended that Chinese Taipei establish a process whereby it can cooperate with a requesting jurisdiction when it comes to prosecuting its own nationals under Article 4 paragraph 2 of the Extradition Law.
Other Forms of Co-operation (R.32 & 40, & SR.V)	• It is recommended that Chinese Taipei introduce legislation pertaining to the respective competent authorities other than the MLPC, that – • authorises the competent authority to exchange information and conduct enquiries on behalf of foreign counterparts on a reciprocal basis; • identifies the information that can be requested and establishes controls and safeguards to ensure that information received by those competent authorities is used only in an authorised manner.

Table 3: Authorities' Response to the Evaluation (if necessary)

Relevant sections and paragraphs	Country Comments
R5	Chinese Taipei authorities advise that in addition to the Securities Sector having explicit requirements to obtain information on the purpose and intended nature of the business relationship, that the Banking Sector also has such requirements in Paragraph 2 of Article 12 of the Regulations Governing Bank Handling of Accounts with Suspicious or Unusual Transactions.
R25 in part 3.7	Chinese Taipei authorities advise that contrary to the position stated in the summary table of Recommendation 25, (which was that the MLPC does not provide feedback on or acknowledgement of the receipt of STRs and STR cases that have been completed), that in fact the MLPC does provide feedback to the filing FIs as soon as the STRs filed have been prosecuted. However, it is acknowledged that apart from this, feedback is limited to that described in the discussion.
R40	In addition to the arrangements described for the MLPC in the discussion at Part 6.5, Chinese Taipei authorities have detailed other specific arrangements for the formal exchange of information and cooperation with foreign financial supervisory authorities and Customs. For example, the FSC has entered into 29 MOUs with 26 countries. Furthermore, the FSC has been listed in Annex B of the IOSCO MMOU, as announced at the IOSCO annual meeting on 9 April 2007. The Customs service has officially become a member of Customs Asia Pacific Enforcement Reporting System (CAPERS). In addition agreements for exchange of Customs information have been signed with the US (2001), Philippines (2004) and Australian Customs Service (2006).
SR IV	The original translation provided to the Evaluation Team of sub paragraph 4 of paragraph 2 of the Regulations regarding Article 8 of the MLCA was deficient. The sub paragraph should read (with highlighted addition) "*Financial institutions are required to file STRs where the ultimate beneficiary or transaction party is a terrorist or terrorist group as listed by the FSC based on information provided by foreign governments, or where the transaction is suspected or bears reasonable reason to suspect to have been linked with a terrorist activity, terrorist organisation or financing of terrorism*

Table 4: Progress since the last Mutual Evaluation

Progress since the last mutual evaluation

1) The first mutual evaluation report of Chinese Taipei (of May 2001) listed some detailed recommendations. Progress against those recommendations is outlined and discussed in detail at **Table 4**.

Money Laundering Control Act and related matters

The MLCA could be enhanced by clearly stating what criminal intent is necessary to violate the law.

2) The definitions of “money laundering” has been redefined in the new MLCA, amended in 2003, as “knowingly disguises or conceals the property or property interests obtained from a serious crime committed by themselves or knowingly conceals, accepts, transports, stores, intentionally buys, or acts as a broker to manage the property or property interests obtained from a serious crime committed by others.”

Authorities should consider including statutory provisions for administrative, civil and criminal seizure and forfeiture of the proceeds and instrumentalities of money laundering with clearly defined rules of procedure, proof, duties of law enforcement, the prosecutor, and the courts.

3) The Criminal Procedure Code provides clear guidelines for seizures. In addition, §8-1, §12, §12-1of the new MLCA clearly define the procedures and duties of law enforcement agencies, prosecutor offices and courts for freezing, seizing, confiscating and sharing the proceeds of crime related to money laundering.

Procedures for the transfer of title to the government upon confiscation should be addressed, along with consideration of the rights of innocent owners.

4) §38 of the Criminal Code defines the objects that can be confiscated in criminal cases. §12-1 of the MLCA stipulates the sharing regulations of confiscated assets. In terms of forfeiture procedure, §470.1 of the Criminal Procedure Code defines the confiscating orders can only be issued by prosecutors and the regulations for safeguarding the interest of bona fide third parties can be found in §801 and §948 of the Civil Code.

Consideration should be given to the creation of an "assets forfeiture fund" into which confiscated funds are deposited, and to restrict the funds to certain uses, such as for law enforcement.

5) According to the Budget Law, there is no legal basis to establish an assets forfeiture fund. Nevertheless, §12-1 of the MLCA provides similar functions by stipulating that the property or property interests confiscated, other than cash, investment securities or negotiable instruments, may be distributed by the MOJ to the prosecutor offices, the police departments, or other government agencies for official use to assist with the investigation of money laundering. The “Regulations Governing the Management, Delivery and Reasonable Uses of Property Confiscated for Being Used in an Offense.” has been stipulated by the MOJ and promulgated on July 28, 2004.

Provisions should be introduced which allow for the freezing of assets at the request of another jurisdiction, facilitate the confiscation of property subject to confiscation in another jurisdiction and enforce value-based confiscation order obtained in another

jurisdiction. Laws or practices regarding the issue of sharing or receiving confiscated assets should be developed.

6) §12-1 of the new MLCA stipulates "The MOJ may distribute the confiscated property or property interests in whole or in part to a foreign government, foreign institution or international organization which enters a treaty or agreement in accordance with Article 14 of this Act to assist this government in confiscating the property or property interests obtained by an offender from his or her commission of a crime or crimes". Chinese Taipei may appropriate all or part of the forfeited property to the requesting governments, agencies, or international organizations after the forfeiture, but it needs MLAT or MLAA as premise.

Article 8 of the MCLA, which allows for "tipping off" of the customer when a financial institution files a suspicious transaction report with the designated agency, is in clear breech of the spirit and letter of FATF Recommendation 17 and should be removed.

7) The "tipping off" clause had been abolished in the amended MLCA in 2003.

§9 of the Act ("…. the preceding provision does not apply to the representative of a legal person or a natural person who has made best efforts to prevent the commission of offence") might provide a loophole for enterprises or employees to avoid criminal liabilities.

8) When the representative of a legal person or a natural person is the defendant in a case, and the said person claims best effort to oversee (its subordinates) or prevent money laundering from happening. The court, upon reviewing the case, shall take into account all objective circumstances and determine the following: (1) whether or not the defendant has exercised best effort to oversee (his subordinates) or prevent such crime; (2) whether or not the defendant was aware of the crime; and (3) whether or not the defendant had the criminal intention to commit such crime. In other words, the court cannot exempt the defendant from liability based solely on the defendants' claims. Moreover, as the revised Criminal Procedure Code requires criminal litigation proceedings to be adversary system, any evidence cannot be admissible in court without a cross-examination process by both parties and an approval by the judges presiding over the case.

The Act fails to provide a safe harbor from civil or criminal liability for financial institutions which file suspicious transactions reports in good faith. The Evaluation Team recommends that this be added to the legislation.

9) Paragraph 2 of Article 8 of the amended MLCA stipulates "The reporting financial institution will be discharged from its confidentiality obligation to the customer if the institution can provide proof that it was acting in good faith when reporting the suspect financial transaction to the designated authority in compliance with the preceding paragraph of this Article."

The Evaluation Team recognizes the societal reasons behind Article 10 of the MCLA, which provides for a reduction of sentence for money laundering involving blood and other relatives, but believes that this provision undercuts the effectiveness of the law.

10) The condition of "reduction of sentence" in Article 10 of the MLCA had been revised in 2003. Whether reducing the penalty of blood and other relatives as an accomplice in money laundering offence depends on judge's decision after considering the criminal intention, balancing of means and ends of the criminal activity, and related factors. In other words, a reduction of penalty is not applicable to every case.

§14 of the MLCA should be amended to spell out the procedures necessary to provide the mechanisms to make and receive mutual legal assistance requests and, in appropriate circumstances, to exchange information with law enforcement and regulatory authorities (see FATF Recommendations 33-35 and 37, 38, 39, 40).

11) §14 of the MLCA stipulates that the government, based on the principle of reciprocity, can sign treaties or other international written agreements with foreign governments, institutions or international organizations on AML/CFT, and the Law in Supporting Foreign Courts on Consigned Cases has detailed the procedures and needed documents for providing mutual legal assistance requests. In addition, Chinese Taipei signed MLAA with US in 2002, which also provide appropriate mechanism for both Parties making and receiving mutual legal assistance requests. It encourages the authorities to actively exchange information with counterparts from international community.

Co-ordination of Law Enforcement and Prosecution:

In regard to the cooperation mechanism combining financial intelligence agencies and financial institutions.

12) The MOJ is the competent authority of the MLCA, whereas its Investigation Bureau acts as the Financial Intelligence Unit which is in charge of coordinating and evaluating the operations of the law-enforcement agencies, financial supervisory agencies, and the Customs. To meet the standards proposed by the FATF and APG, the MOJ regularly calls the related government agencies into meetings to coordinate the operations on AML/CFT.

13) The MLPC maintains close cooperation with financial institutions through following measures: 1) hosting “Forum for Compliance Officers of banks”; 2) delivering the prints which published by the MLPC; 3) assisting financial institutions to educate employees to comply with the AML/CFT requirements; 4) maintaining an updated website for providing the newest information to financial institutions; 5) providing online consultations to financial institutions for AML/CFT compliance.

Law enforcement agencies should hold regular meetings to review whether cases that are currently under investigation involve money laundering activities and/or properties that may be subjected to forfeiture.

14) Article 12 of the MLCA stipulates “The property or property interests obtained from the commission of a crime by an offender violating the provisions set forth in Article 9 of this Act, other than that which should be returned to the injured party or bona fide party, shall be confiscated, regardless of whether the property or property interests belong to the offender or not. Whenever the above property or property interests can not be confiscated in whole or in part, the value thereof shall be indemnified either by demanding a payment from the offender or by offsetting such value with the property of the offender. The offender’s property may be seized, if necessary, to protect the property or property interests obtained from the commission of a crime by an offender violating of the provisions set forth in Article 9 of this Act”. In addition, there is a specific forum called “Economic Crime Prevention Forum” which is organized by the Investigation Bureau and attended by the representatives from judicial, law enforcement, financial supervisory, immigration, international trade and intelligence agencies. In the forum, all operational problems on economic crimes and money laundering will be discussed and seek solutions as possible including the review of investigation of money laundering activities and/or properties that may be subjected to forfeiture.

Law enforcement agencies, financial supervisory agencies, and bank unions shall review, on a regular basis, the latest money laundering prevention patterns and trends in neighboring countries and the world at large.

15) The MLPC has periodically held AML/CFT seminars which inviting scholars, judges, legislators, prosecutors, law enforcement agents, financial supervisors and private sector representatives to get together for researching the emerging trends of money laundering and terrorism financing and countering measures. In addition, the authorities and bank unions have offered a lot of training programs, seminars and workshops which invite speakers from other countries to deliver lectures on AML/CFT.

Utilizing coordination mechanism to build and strengthen Chinese Taipei's abilities to conduct investigation and crackdown on money laundering activities.

16) The Prosecutors' Office of the MOJ established the "Financial Crimes Investigation and Supervision Team" in November 2002 to assist District Prosecutors Offices, law enforcement agencies and financial supervisory agencies in their efforts to investigate major financial crimes and money laundering activities related to such crimes.

17) In addition, for effective enforcement on combating financial crimes and maintaining financial market order, the FSC is working with the MOJ to establish an interagency communications mechanism. On 11 May 2005, for example, the resident prosecutors' office of MOJ at the FSC was set up for integrating the expertise from justice and finance on deterring financial crimes. The FSC also established a special investigation unit under the Examination Bureau, which is dedicated to investigate and collect evidences of financial crimes. On March 16, 2005, the FSC and the Judicial Yuan established a Consulting Group for trials on major financial crime cases. The Consulting Group is composed of 12 financial professionals dispatched by the FSC to help judges examine account books, interpret financial statements, audit money flows, and process other relevant information.

Undercover Operations

Legislative amendments that would provide the necessary authority to conduct undercover operations and controlled deliveries in money laundering matters should be introduced. Legislative immunity and plea agreements and the guidelines for the conduct of undercover operations including the use of controlled deliveries should also be considered.

18) In terms of undercover investigation mechanism, the Legislative Yuan of Chinese Taipei is still reviewing the draft proposals on criminal immunity and the assessment of undercover investigators. As to the legislation of controlled delivery, §32-1 of the Statute for Narcotics Hazard Control is the dedicated legislation for the operation, and the guideline called "Coordination and Operation Guideline for Detecting and Controlling Transnational Narcotics Cross-border Movement" has been stipulated on January 7, 2004 to provide the detailed guidance for authorities.

Underground Banking

The governments should conduct thorough investigation on underground banking Activities because black market currency exchanges are still rampantly unabated.

19) According to the regulation of Article 29 of the Banking Act, unless otherwise provided by law, any organization other than a Bank shall not Accept Deposits, manage Trust Funds or public property under mandate or handle domestic or foreign remittances. Upon

a violation of paragraph 1 of this Article, remedial action shall be taken by the Competent Authority or the competent authority in charge of the particular enterprise, together with the juridical police authority, and the case shall be referred to the court for action. If the organization concerned is a juridical person, the responsible person shall be jointly and severally liable for repayment of the relevant obligations.

20) The government has added jewellery stores, a type of business most frequently associated with black market currency exchange, into the category of financial institutions regulated by the amended MLCA (2003). Furthermore, as black market currency exchangers usually use couriers to carry foreign currencies cross-border for conducting business, starting from September 2003 and on a monthly basis, the Directorate General of Customs provides the declaration records of passengers carrying foreign currency exceed NT$1.5 million equivalent in a single trip in/out of the country to MLPC by using electronic files. The threshold of forwarding declaration records has been revoked. Since July 1, 2006, all declaration records have to be forwarded to the MLPC. Regulations governing the cross-border currency transportation are as follows:

a) On 1 January 2003, the Central Bank set NT$60,000 as the maximum amount of passengers to carry in or out of the country.

b) On 21 March 2003, the Ministry of Finance regulated that passengers or members of transportation crews are required to make a customs declaration when carrying the equivalence of US$10,000 in foreign currency in or out of the country.

c) Since 28 September 2005, passengers or members of transportation crews have been required to declare to customs when carrying RMB 20,000 in or out of the country. Any amount over RMB 20,000 shall be kept in custody by customs and returned to the passengers when leave the country.

21) The CBC is the competent authority for supervising foreign exchange operations in Chinese Taipei. All foreign exchange transactions operated by financial institutions shall be reported to the CBC for keying into the computer database. If any irregular cross-border currency movement is found, the CBC will send the remittance information to law enforcement agencies for further investigation and will lend its cooperation with authorities to investigate financial crimes.

22) The CBC has contacted the Consulting and Coordination Committee of the Taiwan High Prosecutors Office Economic Crimes Investigation Center twice to suggest that prosecutors and police should step up efforts to crack down illegal exchange transactions and remittances as well as underground cross-strait banking activities that involve money laundering. The Central Bank has also urged the courts to speed the trials of financial and foreign exchange criminal cases and mete out heavy punishments.

23) The CBC submitted the aforementioned suggestions to the Executive Yuan Financial Reform Task Force and the Financial Crimes Investigation Unit in 2002, and the MOJ and the NPA of MOI subsequently sent out circulars instructing their subordinate agencies to crack down harder on illegal foreign exchange and remittance operations as well as underground cross-strait money laundering cases.

24) The MLPC has published the Guidelines for Banks to Prevent Underground Banking and delivered to financial institutions for reference.

Regulations/Guidelines for the Financial Sector

The Evaluation Team makes some recommendations regarding the sample set of guidelines issued by the Bankers Association. Responding to the recommendations, many improvements have been taken, including enhancement of CDD, know-your-customers, monitoring unusual financial transactions, suspicious financial transaction indicators and reporting mechanism which will be described more detail in the related parts of this document.

25) Upon the instruction of the FSC, the Bankers Association introduced major amendments to the Checklist of Money Laundering Prevention Guidelines and Procedures for Banks in March 2004 and again in January 2005. Drafted with reference to the criteria adopted by FATF and APG, key amendments to the Checklist include the following:

a) When opening an account (either individual or non-individual), a financial institution must ask for two identification documents and keep copies. When opening an individual account, in addition to a national ID card, the institution must also ask for other proof of identity, such as a health insurance card, passport, driver's license, or student ID. When opening a non-individual account, the institution, in addition to an incorporation certificate, the financial institution must also obtain the minutes of board meetings, the articles of incorporation, financial statements, and the like.

b) When the aggregate same-day deposits and/or withdrawals in a single account top NT$1 million (or its equivalent in foreign currency) and the amount involved is clearly out of keeping with the customer's status or income level, or with the nature of the customer's business, it must be reported as suspected money laundering.

c) If a customer is suspected of using false name, nominee, or shell organization to open account, or if its documentation appears suspicious or vague, the financial institution must not open an account for the customer.

d) Some new suspicious financial transaction indicators have been added to the Checklist, such as depositing multiple promissory notes or checks to a single account, selling large quantities of financial bonds and demanding payment in cash, frequently using traveler's cheques or foreign currency for big-ticket transactions without any reasonable grounds, opening letters of credit for high amounts without giving plausible data on quantities or prices, or attempting to open an account using an interbank cheque for a high amount (tens of millions of New Taiwan Dollars).

e) Know-your-customer provisions have been added to the Checklist. Financial institutions are required to: (1) take special care to confirm the identity of an individual or organization that opens a brokerage account, conducts transactions via a professional intermediary, or poses high risk to a bank's reputation; (2) deal extra cautiously with non-local customers and understand why they have chosen to set up an account outside their home country; (3) conduct more thorough background checks on customers seeking personal wealth management services; and (4) check more closely on customers that have been blacklisted by other financial institutions.

f) The amended Checklist includes new provisions regarding tighter scrutiny of high risk customers and other matters pertaining to "ongoing monitoring of accounts

and transactions." Financial institutions are required, for example, to make use of information systems to discover suspicious transactions, and exercise closer monitoring of high risk customers. Financial institutions should pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. The background and purpose of such transactions should, as far as possible, be examined, the findings should be established in writing, and be kept on file for at least five years.

g) Bank employees are required to refuse service and report to their immediate superior when customers attempt to persuade them to waive the reporting forms that must be filled out upon completion of the transactions, when customers ask about the possibility of evading reporting requirements, or when customer's description is clearly different from the actual transaction.

h) A provision has been added requiring that records on closed accounts be kept on file for at least five years.

i) A provision has been added requiring that banks regularly hold or arrange for employees to participate in anti-money laundering training programs.

j) Financial institutions are required to conduct annual reviews of their money laundering prevention guidelines and procedures.

k) Financial institutions are required to report to the MLPC within ten days of discovering a suspicious money laundering transaction, no matter how large or small the amount.

Suspicious Transaction

Review the secrecy provisions in Chinese Taipei law and amend laws where the secrecy provisions inhibit effective investigation of money laundering offences. The review of secrecy provisions should also include removal of any signage in Financial Institutions that may draw attention to potential reporting.

26) Article 48 of the Banking Act stipulates, “A Bank shall keep confidential all information regarding deposits, loans or remittances of its customers unless otherwise required by law or by order of the Central Competent Authority.” Therefore, information disclosure is allowed under the Banking Act where it is provided for by “other law” and “other regulations of the Central Competent Authority (i.e. the FSC)” Furthermore, Article 8.2 of the amended MLCA (2003) stipulates “When financial institutions report (suspicious transactions) according to the preceding section, such financial institutions shall be exempted from their obligations under the confidentiality agreements.” There should be no law on confidentiality privileges that might hamper the investigation of money laundering activities in this jurisdiction.

Role of Central Bank and MLPC

All financial monitoring programs should include reviewing the regular, newcomer, and annual on-the-job training programs. Also, the financial monitoring personnel should pay extra attention to related regulations concerning the report status of suspicious money laundering activities and opening of accounts. Lastly, the financial monitoring personnel should also pay attention to the quality and quantity of suspicious transactions reported.

27) After the establishment of the FSC, the Central Bank of China no longer conducts the general bank examination of individual financial institutions. The FSC has measures in place to monitor financial institutions through financial examination. The MLPC plays the role of Financial Intelligence Unit in Chinese Taipei. It was established and began to operate on April 23, 1997. The main functions of MLPC include: 1) Researching AML/CFT strategies; 2) Receiving STRs, CTRs and cross-border currency movement declaration reports; 3) Analyzing and disseminating ML/FT information; 4) Assisting authorities to investigate ML/FT cases and coordinating related matters; 5) International cooperation on ML/FT information exchange and related matters; 6) Creating and Maintaining ML/FT computer database.

Role of auditors

The internal auditing mechanism of financial institutions should be able to ensure the appropriateness of various training programs; inspection procedures should be applicable to newcomers and annual on-the-job trainings; and auditing personnel should make sure appropriate newcomer evaluation standards are in place for financial institutions and pay extra attention to related regulations on reporting suspicious money laundering activities and opening bank accounts.

28) Article 6 of the MLCA requires financial institutions to formulate their own money laundering prevention guidelines and procedures, and to hold or arrange for their employees to participate in regular anti-money laundering training programs focusing on the guidelines. Procedures are set out for the review of account opening, and there are provisions regarding reporting procedures for suspected money laundering transactions. In addition, audit units are required to include the aforementioned matters among items subject to periodic audits.

29) Also, in a letter sent out in February 2004, the MOF reminded financial institutions to bolster their AML-related internal control procedures, and to step up their AML training and awareness programs for financial services personnel.

30) In future audits of financial institutions, the competent authority is to pay close attention to how well the items listed above are being implemented, and the FSC's Financial Examination Bureau has revised its financial examination handbooks to include key points and procedures for financial examinations regarding money laundering matters.

Significant Currency Reporting

Lower the threshold of transactions to be reported to NT$1 million. Such reports shall be directed to the Money Laundering Prevention Center, made within the time limit, and done electronically. The aforementioned threshold should be regularly reviewed/adjusted to comply with international standards and ensure that all non-bank financial institutions to honor their obligation.

31) The Ministry of Finance on 18 November 2003 issued an amendment to the Regulations Regarding Article 7 of The Money Laundering Control Act (Cash Transactions), lowering the reporting threshold from NT$1.5 million to NT$1 million. Within five business days of a significant currency transaction, the financial institution is required to report it to the MLPC. Currently, about 99.9% of the reports are transmitted to the MLPC through electronic means.

32) The term "financial institution" is defined to include banks, trust investment companies, credit cooperatives, farmers' association credit departments, fishermen's

association credit departments, bills finance companies, credit card companies, postal organizations that operate saving and remittance services, trust enterprises, securities firms, securities investment trust enterprises, securities finance enterprises, securities investment consulting enterprises, centralized securities depository enterprises, futures commission merchants, and insurance companies.

Customs Information / cross-border reporting

Legal concerns about the validity under the MLCA of cross-border reports collected by the Customs Service being forwarded to the MLPC should be addressed. All information should form part of a financial database to assist in detecting money laundering and related illegal activity. It would also be advantageous if sanctions could be applied for illegal cross-border activity so as to complement efforts to combat money laundering.

33) The Ministry of Finance reviewed the relevant laws and regulations and made an announcement on July 23, 2003 that customs staff may provide information to the MLPC which is limited to the records of carrying over NT$1.5 million or equivalent foreign currency by an individual passenger and such information shall be provided by the Directorate General of Customs every month through electronic means. The legal issues of cross-border currency reporting mechanism will be defined in the coming MLCA amendment. All cross-border currency movement declaration records which are forwarded by the Directorate General of Customs have been integrated into the computer database in MLPC, and the database can be accessed by authorities for AML/CFT purposes. Anyone who fails to declare or falsely declares to Customs Service will face the all or excess portion of carried foreign currency being confiscated according with the regulations of the Foreign Exchange Control Act.

ANNEXES

Annex 1 - List of Abbreviations

BOAF	Bureau of Agriculture Finance
CIB	Criminal Investigation Bureau
CTR	Currency Transaction Report
DLA	Department of Land Administration, Ministry of Interior
DOC	Department of Commerce, Ministry of Economic Affairs
DOSA	Department of Social Affairs, Ministry of Interior
FSC	Financial Supervisory Commission
MJIB	Investigation Bureau, Ministry of Justice
MLAA	Mutual Legal Assistance Agreement
MLAT	Mutual Legal Assistance Treaty
MLCA	Money Laundering Control Act
MLPC	Money Laundering Prevention Center, FIU of Chinese Taipei
MOEA	Ministry of Economic Affairs
MOFA	Ministry of Foreign Affairs
MOI	Ministry of Interior
MOJ	Ministry of Justice
NPA	National Police Administration, Ministry of Interior
DCA	Department of Civil Affairs, Ministry of Interior

Annex 2 – Ministries / Agencies met during the Mutual Evaluation

Ministry of Justice
Ministry of Justice Investigation Bureau (MJIB)
Money Laundering Prevention Center (MLPC)
Financial Supervisory Commission
Central Bank
Ministry of Foreign Affairs
Bureau of Agriculture Finance
Department of Commerce, Ministry of Economic Affairs
Department of Customs Administration
Directorate General of Customs
Department of Social Affairs, Ministry of Interior
Department of Civil Affairs, Ministry of Interior
Department of Land Administration, Ministry of Interior
Criminal Investigation Bureau, Ministry of Interior
Prosecutors Office, Taiwan High Court
Ministry of Foreign Affairs
Prosecutor's Office, Taipei District Court
Taiwan Bar Association
Criminal Investigation Bureau, National Police Administration
Banking Bureau, FSC
Bureau of Agriculture Finance
Bankers Association
Chinatrust Bank
Representatives of Chunghwa Posts Co., Ltd.
Representatives of Citibank
Representatives of China bills Finance Corporation
Representatives of Cathay United Bank - International Banking Department
Life Insurance Association
Representatives of ING
CPA Association
Taiwan Securities Association
Representatives of Yuanta Core Pacific Securities
Jewellery Shops Association