



CHINESE TAIPEI 2ND TRANSITIONAL FOLLOW-UP REPORT 2017

I. PURPOSE

1. In accordance with the *APG Transitional Follow-up Procedures 2015*, this report presents for members' consideration the APG review team's analysis of Chinese Taipei's 2nd transitional (detailed) follow-up report.

Key findings

Chinese Taipei requested re-ratings to exit transitional follow-up.

The analysis report finds that the amendments to the MLC Act which came into effect on 28 June 2017, and the CFT Act which came into force and effect on 27 July 2016 have provided the foundation for tangible progress as outlined above against the core and key recommendations remaining at NC/PC. There has been progress on R.1 (ML offence), R.35/SR.1 (International Conventions), SR.II (TF offence), SR.III (TFS –TF), SR.IV (STRs –TF) and SR.V (International Cooperation). With the exception of SR.III, progress is equivalent to largely compliant on all remaining recommendations at PC/NC.

Recommendation

- **Agree**, as per paragraph 3.1 of the APG Transitional Follow-Up Procedures, the exit of the transitional follow-up process for Chinese Taipei as it has no remaining NC/PC ratings for the six core (2003) Recommendations and at most only one NC/PC rating for the 10 key Recommendations.

II. BACKGROUND

2. This detailed review was conducted by the following APG Review Team:
 - Ronald Bei Talasasa, Director of Public Prosecutions, Solomon Islands
 - Michelle Harwood, Executive Officer, APG Secretariat.
3. In Chinese Taipei's MER adopted in 2007, 24 of the 40 plus 9 recommendations were rated NC/PC including 11 of the 16 core and key FATF recommendations, per the following table:

Chinese Taipei – MER core and key Recommendations rating as at July2007

CORE Recommendations ¹ rated NC or PC	
PC	R.1, R.5, R.10, R.13
NC	SR.II, SR.IV
KEY Recommendations ² rated NC or PC	
PC	R.35, R.40
NC	SR.I, SR.III, SR.V

¹ The core Recommendations as defined in the FATF procedures are R.1, SR.II, R.5, R.10, R.13 and SR.IV.

² The key Recommendations are R.3, R.4, R.23, R.26, R.35, R.36, R.40, SR.I, SR.III, and SR.V. Such recommendations are carefully reviewed when considering removal from the follow-up process.

OTHER Recommendations rated NC or PC	
PC	R.2, R.11, R.18, R.25, R.33, R.34, SR.IX
NC	R.6, R.12, R.16, R.20, R.21, R.24

4. In July 2014, at the conclusion of 2nd round ME follow-up in accordance with members' decision at the 2013 Annual Meeting (to phase out the APG's 2nd round follow-up process in 2014 for all members on regular follow-up which includes Chinese Taipei), Chinese Taipei achieved progress equivalent to largely compliant on 4 of the core/key Recommendations rated NC/PC in the MER. Therefore 7 of the core and key Recommendations remained at NC/PC level, namely – R.1 (ML offence), R.35 (international conventions – ML), SR.I (international conventions – TF), SR.II (TF offence), SR.III (targeted financial sanctions), SR.IV (STR – TF) and SR.V (MLA – TF) - as summarised in the following table:

Chinese Taipei - MER core and key Recommendations rating and progress as at July 2014 (end of 2nd round follow-up for those under regular-follow-up)

Rec.	MER rating	Sufficient progress to LC?	Rec.	MER rating	Sufficient progress to LC?
R.1	PC	No	R.35	PC	No
R.3	LC		R.36	LC	
R.4	C		R.40	PC	Yes (2011)
R.5	PC	Yes (2014)	SR.I	NC	No
R.10	PC	Yes (2014)	SR.II	NC	No
R.13	PC	Yes (2011)	SR.III	NC	No
R.23	LC		SR.IV	NC	No
R.26	C		SR.V	NC	No

5. In this year's detailed progress report submitted on 3 March 2017, Chinese Taipei reported on progress against the recommendations remaining at NC/PC, and requested re-ratings for seven FATF Recommendations as per paragraph 3.2 of the procedures. A Review Team was formed to undertake the re-ratings as required under the transitional procedures.

III. ANALYSIS OF PROGRESS

6. The APG Review Team has analysed the progress made by Chinese Taipei for each core/key Recommendation rated NC or PC in the MER using the information provided by Chinese Taipei in its Detailed Progress Report on 3 March 2017.
7. The amendment to the Money Laundering Control Act (MLCA) was successfully passed on 28 December 2016, and came into effect on 28 June 2017. The new MLCA incorporates many aspects of the FATF recommendations and certain provisions are analysed below. A series of workshops for judges, prosecutors, law enforcement officers, FIs, DNFBPs and a number of other private sector participants have been held.
8. The new Counter Financing of Terrorism Act (CFT Act) was passed and came into force and effect on 27 July 2016.
9. The Financial Supervisory Commission (FSC) has promulgated amendments to the 'guidelines governing anti-money laundering and combating the financing of terrorism' for the banking, securities and futures sector along with the insurance sector.
10. Details were provided of successful money laundering cases.
11. The follow up report analyses the new provisions of the MLCA.

Analysis of progress against core/key Recommendations remaining at NC/PC

Legal issues and international cooperation

Recommendation 1 (R.1): Criminalisation of Money Laundering

12. The MLCA was passed on 28 December 2016 and came into force and effect on 28 June 2017. The MLCA addresses deficiencies identified in the MER, namely (i) the ML offence lacks some of the elements outlined in the Vienna and Palermo Conventions (ii) the threshold for what is a serious offence is too high; (iii) conviction for a predicate offence is necessary when proving that property is the proceeds of crime (iv) terrorism and TF are not predicate offences to ML. The underlying issue of a lack of a TF offence is addressed with the enactment of the CFT Act on 27 July 2016. With the amendment to the definition of serious offence, it is clear that the offence of terrorism is now a predicate offence to ML.
13. The MLCA amendments articulate the definition of the ML offence at Article 2. The definition of property has been amended via changes to s38 of the Penal Code which states that ‘property and property interests’ are both proceeds of crime. For any ML offence, Article 38-1 of the Penal Code applies. Article 2 now has greater compliance with the Palermo Convention. It is noted however that a person who ‘accepts, possesses or uses the proceeds of specified unlawful activity committed by others’ is criminalised. There is no requirement as required by the Palermo Convention that a person commit this offence **knowing** that property is the proceeds of crime. Chinese Taipei confirm that this requirement is contained in the Penal Code which confirms that conduct is not punishable unless committed intentionally.
14. Chinese Taipei confirmed that the definition of predicate offences takes a combined approach. It confirms that a predicate offence is an offence which is punishable by a minimum penalty of six months imprisonment. Alternatively there are categories of listed serious offences. Combined, the two satisfy the requirement at R.1.
15. There is no provision covering conduct which occurs in another country and would constitute an offence in Chinese Taipei and which would have constituted a predicate offence had it occurred domestically.
16. Chinese Taipei confirmed that the intentional element of the ML offence may be inferred from objective factual circumstances and that there are several court judgments to support this inference. This issue however relates to R.2 and is not taken into account in assessing compliance with R.1.
17. Article 4 of the MLCA now confirms that it is not necessary that a person is convicted of specified unlawful activity to prove that property is the proceeds of specified unlawful activity.
18. Chinese Taipei provided updated information on ML investigations and prosecutions. From 2012 to 2015, there were 95 ML prosecution cases and 48 persons convicted of ML.
19. In summary, with the revised MLCA coming into force and effect, Chinese Taipei now largely complies with R.1. The gaps remaining relate to conduct that occurs in other jurisdictions that would otherwise constitute a predicate offence in Chinese Taipei. The review team finds that Chinese Taipei is now at a level equivalent to largely compliant with R.1.

Special Recommendation II (SR.II): Criminalising TF and associated ML

20. The CFT Act, passed and in force as of 28 July 2016 criminalises terrorist acts, terrorism and prohibits terrorist organisations.
21. Article 8 prohibits directly or indirectly collecting or providing property or property interests to commit or abet any listed offences or which intimidates the public or coerce a foreign government, institution or international organisation. Chinese Taipei confirmed that the provision of property interests includes the provision of financial services to designated entities and individuals. It also confirms that the term ‘property interests’ means any interest that has market value or could be valued monetarily.

22. Article 9 criminalises knowingly collecting on behalf of or providing any property or property interests on behalf of or for the benefit of an individual, legal person or entity that meets the following criteria. The criteria is:
- A designated individual or entity under Articles 4 or 5;
 - An undertaking or entity formed for the purpose of intimidating the public or coercing a government, foreign government, institution or international organisation committing any crime set out in paragraph 1 of Article 8;
 - An individual, legal person or entity committing any crime set out in para 1 of Article 8 and intimidating the public or coercing a government, foreign government, institution or international organisation.
23. Article 9 further elaborates that there is no requirement to prove the property or its interests is used for a specific act to sustain the charge. Attempts are punishable and offences in Article 8 and 9 are predicate offences to ML .However, Chinese Taipei has not confirmed the remaining elements of the TF convention, namely participation as an accomplice, organising or directing others to commit an offence and contributing to the commission of one or more offences by a group of persons acting with a common purpose. Relevant Penal Code provisions should be referenced.
24. Chinese Taipei should clarify the use of the term ‘person **committing any crime** set out in para 1 of Article 8’. In particular, the evidence that would be required to prove that a person is committing a crime, or whether they intend to commit a crime or are undertaking preparatory acts etc.
25. There have not been any TF investigations or prosecutions since passage of the CFT Act.
26. Overall, despite the noted gaps, the team finds that Chinese Taipei has made progress on the TF offence and is likely to be a level equivalent to largely compliant.

Special Recommendation III (SR.III): Freezing and Confiscating Terrorist Assets

27. The CFT Act provides legal provisions and procedures to freeze terrorist funds or other assets. Chinese Taipei confirms that the correct translation of Article 7 states that any person cannot, for the benefit of any individual, legal person or entity designated under Articles 4 or 5 do the following actions :
- a. withdraw, remit, make transfer or payment provide or assign its financial account, currency or other payment instrument;
 - b. transfer, amend, dispose of, utilize its property or interests thereto or act in a manner that would affect the quantity, quality, value or location of such property;
 - c. collect or provide any property or any property interests.
28. The review team notes that the prohibition on the provision of funds only applies if the transfer is for the benefit of a designated person or entity. This is not in keeping with the UNSCR requirements of a general freeze on all transactions for any purpose.
29. Sanctions for Article 7 can be found at Article 12 however only for institutions in Article 5(I) and (II) of the MLCA. The sanction is a penalty of more than NTD20,000 and no more than NTD1 million.
30. Article 9 criminalises the collection or provision of property or property interests, directly or indirectly on behalf of or for the benefit of designated individuals or entities as discussed above. It does not specify that this extends to funds or assets wholly or jointly owned, or controlled directly or indirectly by designated persons, or funds and other assets derived or generated from funds or assets owned or controlled directly or indirectly.
31. Any person who knowingly provides sponsorship, directly or indirectly, in any form of property or property interests, to an individual, legal person or entity for training purposes is punishable.

32. The review team notes that there does not seem to be a provision allowing a FI to collect or receive funds into an account and then freeze that account. Based on the current draft available to the review team, the collection of any property on behalf of a designated person or entity is prohibited.
33. For 1267 designations, per the CFT Act, a report is prepared by the Investigation Bureau and then provided to the competent authority (Article 5). The competent authority shall form a TF committee to review any proposal of listing or delisting a natural or legal person and entity in a sanction list. The head of the Ministry of Justice (MoJ) shall preside as the Chairperson with deputy directors across a number of key agencies forming the committee (Article 3). The Committee reviews the report of the MoJ and decides whether to designate an individual, legal person or entity meeting certain criteria. Article 5 provides that the competent authority shall designate an individual, legal person or entity who meets criteria which includes being designated by relevant UNSCRs and any successor resolutions on TF. Chinese Taipei confirmed that in practice, the can propose a name itself or on report of the Investigation Bureau and publish it publicly without the review of the TF Committee.
34. Chinese Taipei can implement domestic sanctions in line with UNSCR 1373 via Article 3 of the CTF Act. Article 3 notes that a TF committee comprised of high level officials and chaired by the head of the MoJ is established to review any proposal to list or de-list a natural person, legal person or entity. Article 4 provides that the MoJ shall designate individuals, legal persons or entities who meet the set criteria and the Committee confirms the decision to list. At this point the sanctions list is made available to the public. The criteria is whether a person is a suspect of committing any of the crimes set out in Article 8(1) and possessing an undertaking or plan intending to intimidate the public or coerce a government, a foreign government or institution, or an international organization.
35. Designations made by the UN Security Council are provided for in Article 5 and include both terrorism and proliferation. Chinese Taipei advised that in practice, the MoJ can designate itself without the need for the committee to meet. Chinese Taipei confirms that in practice, the competent authority itself, or by report from the MoJ investigation bureau may propose a name for the TF Committee to review and publish to the public as a sanctioned person or entity.
36. Article 6 allows for regulations to govern the measures of sub-paragraph 1 of Article 6 and the processes of implementing the restrictive measures of sub-paragraph II shall be prescribed by the competent authority. No regulations or procedures have been provided to the secretariat.
37. Institutions designated under Article 5(1) and (II) of the MLCA Act shall immediately report any of the following circumstances discovered under its authority to the Investigation Bureau:
 - i. any person who possesses or administers any property or property interests of a designated individual, legal person or entity;
 - ii. places where the property or property interests of a designated individual, legal person or entity are located.
38. The institution making the report in accordance with the foregoing paragraph shall be exempted from its obligation of confidentiality pertaining to its duty. The reporting methods, processes and other procedural guidance shall be prescribed by the central competent authority with consultation with other competent authorities.
39. The review team finds that there are still gaps as noted in the analysis above. The review team thus finds that in light of the analysis above, Chinese Taipei has not bought SR.III to a level equivalent to largely compliant.

Recommendation 35 (R.35) and SR1: International Conventions

40. Chinese Taipei is unable to become a party to the relevant UN Conventions. They have nevertheless taken steps to implement requirements of the conventions into domestic law. More specifically, the MER noted shortfalls in the ML offence as lacking elements of the Vienna and Palermo Convention. Further, terrorism, terrorist acts, organisations and TF had not yet been criminalised. Per the analysis in R.1 and SR.II, Chinese Taipei has made significant progress with the ML and TF offence.

41. The review team thus finds that in light of the analysis above, Chinese Taipei has brought R.35 to a level equivalent to largely compliant.

Special Recommendation V (SR.V): International Cooperation

42. Chinese Taipei was re-rated LC for R.35, but SR.V was rated NC because of the absence of the TF offence. As noted under SR.II, the CFT Act criminalises TF mostly in line with the FATF standards.
43. Chinese Taipei has built a basic case management system to manage MLA requests. In 2016 there were 23 cases of assistance between Chinese Taipei and the United States and 38 matters between Chinese Taipei and other countries.
44. Chinese Taipei continues to review the draft MLA Act. It is expected to be on the Executive Yuan's review in the first half of 2017. The draft act includes procedures of mutual legal assistance such as investigations, court proceedings and enforcement. However, the new MLCA contains some provisions detailing international cooperation including Article 18 which provides that in the event that assistance is sought for seizing and confiscation actions by a foreign government, institution or international organisation, based on treaties or agreements concluded in accordance with Article 21, Chinese Taipei will provide assistance on the principle of reciprocity and dual criminality.
45. Chinese Taipei has signed 12 extradition treaties and 1 MOU with other jurisdictions. Chinese Taipei has completed 1 MLA request from Thailand and 2 MLA requests from the Republic of Korea. Singapore responded to three MLA requests made by Chinese Taipei.
46. In light of the analysis above and the comments in relation to the TF offence, Chinese Taipei has reached a level equivalent to largely compliant with SRV.

Preventive Measures

Special Recommendation IV (SR.IV): Reporting suspicious transactions related to terrorism

47. Article 10 of the MLCA requires FIs and DNFBPs to report to the Investigation Bureau of the MoJ all suspicious transactions, including attempted transactions, which may involve any of the offences described in Articles 14 and 15. Article 14 provides the punishment for the ML offence as prescribed in Article 2 along with the attempted offence. Article 15 provides for the offence of unexplained wealth and offences of opening and holding accounts in other people's names. The Article 2 definition of ML encompasses ML based on Arts 9 and 9 of the TFSA which criminalise terrorist financing.
48. There are similar requirements in the CFT Act. Article. 7, paragraph 2 mandates FIs to file reports 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.
49. In addition, pursuant to Subparagraph 5 of Paragraph 1 of Article 7 of the "Regulations of Governing Cash Transaction Reports (CTR) and Suspicious Transaction Reports (STR) by Financial Institutions", pursuant to Paragraphs 2 and 3 of Article 7 of the Regulations, FIs institutions are required to file a STR of attempted transactions and transactions that are suspicious in nature, irrespective of the amount.
50. Based on statistics provided by Chinese Taipei, there 58 STRs related to TF from 2013 to 2016, out of a total 36,785 STRs received in the same period.
51. Chinese Taipei has reached a level equivalent to largely compliant with SR.IV.

IV. CONCLUSION

52. In conclusion, the amendments to the MLC Act which came into effect on 28 June 2017, and the CFT Act which came into effect on 27 July 2016 have provided the foundation for tangible progress as outlined above against the core and key recommendations remaining at NC/PC. There has been

progress on R.1 (ML offence), R.35/SR.1 (International Convention), SR.II (TF offence), SR.III (TFS –TF), SR.IV (STRs –TF) and SR.V (International Cooperation).

V. RECOMMENDATION

53. It is recommended that APG members:

- **Endorse**, as per paragraph 3.1 of the APG Transitional Follow-Up Procedures, the exit of the transitional follow-up process for **Chinese Taipei** as it has no remaining NC/PC ratings for the six core (2003) Recommendations and at most only one NC/PC rating for the ten key Recommendations.

APG Review Team
6 July 2017

Summary of progress in relation to core/key Recommendations rated NC or PC in the MER

Sufficient progress made on core/key Recommendations?

Rec.	MER rating	Sufficient progress to LC?	Rec.	MER rating	Sufficient progress to LC?
R.1	PC	Yes (2017)	R.35	PC	Yes (2017)
R.3	LC		R.36	LC	
R.4	C		R.40	PC	Yes (2011)
R.5	PC	Yes (2014)	SR.I	NC	Yes (2017)
R.10	PC	Yes (2014)	SR.II	NC	Yes (2017)
R.13	PC	Yes (2011)	SR.III	NC	No
R.23	LC		SR.IV	NC	Yes (2017)
R.26	C		SR.V	NC	Yes (2017)

Table 2: Current compliance with 16 core/key Recommendations

No. of core/key Recs rated NC/PC in MER	11
No. of core/key Recs where 'sufficient progress' made	10
No. of core/key Recs remaining at NC/PC level	1