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New anti-money laundering legislation in Taiwan: Implementation of the newly amended Money Laundering Control Act on June 28 2017

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On June 28 2017, the most significant anti-money laundering legislation took effect in Taiwan. The Taiwan Legislative Yuan approved the amendments to the Money Laundering Control Act (Act) on December 28 2016 and offered a sixmonth period for preparation of the enforcement of the Act. This legislation is the largest amendment to the Act, which was first enacted on October 23 1996, with the purpose of fostering Taiwan's sound and robust financial environment and of coping with mutual evaluations of the members of the Asia/Pacific Group on Money Laundering (APG) in 2019. The Act, and all relevant regulations and rules thereunder, became effective on June 28 2017.

The APG is an autonomous and collaborative international organisation founded in 1997 in Bangkok, Thailand. The APG consists of 41 members and a number of international and regional observers and is the largest regional body of the Financial Action Task Force (FATF)-style (FSRB) in the world. Taiwan is a member of the APG and is subject to mutual evaluations of APG members.

New Anti-Money Laundering Office at Cabinet Level and FIU in Taiwan

In order to set forth the nationwide anti-money laundering policy and coordinate anti-money laundering activities across all government agencies, the Taiwan Executive Yuan established the Anti-Money Laundering Office (AML Office) at the cabinet level on March 16 2016. The AML Office, led by the Minister without Portfolio, is in charge of the policy-making process and also monitors implementation of anti-money laundering activities in Taiwan.

In addition, the Anti-Money Laundering Division, part of the Ministry of Justice's Investigation Bureau, is the Taiwan financial intelligence unit (FIU), as required in FATF Recommendation 29 that serves as a national center for the receipt and analysis of suspicious transaction reports; and other information relevant to money laundering, associated predicate offences, and for the dissemination of the results of such analysis.

Summary of Newly Amended Money Laundering Control Act

The Act includes the following new requirements and/or mechanisms:

Expansion of the Definition of "Money Laundering"

By reference to the definition of "money laundering" in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, concluded in Vienna in 1988 (Vienna Convention), and FATF 40 Recommendations of February 2012, the definition of "money laundering" in Article 2 of the Act has been expanded to include three broader types of money laundering activities as follows:

- (i) knowingly disguises or conceals the origin of the proceeds of specified criminal offences, or transfers or converts the proceeds of a specified criminal offences activity to help others avoid criminal prosecution;
- (ii) disguises or conceals the true nature, source, the movement, the location, the ownership, and the disposition or other rights of the proceeds of specified criminal offences; and
- (iii) accepts, obtains, possesses or uses the proceeds of specified criminal offences committed by others.

Expansion of the Scope of Predicate Offences

Per FATF 40 Recommendations, Article 3 of the Act has been revised to include all predicate offences

which are punished by a minimum penalty of more than six months imprisonment under Taiwan Criminal Code and other criminal laws, which was not the case in the old version of the Act.

Adding the New Concept of Designated Non-Financial Businesses and Professions (DNFBPs)

For the purpose of rigorously enforcing the anti-money laundering requirements under the Act, the concept of DNFBPs has been incorporated into the Act. Compared with the old version of the Act imposing the due diligence, record-keeping and reporting obligations on financial institutions only, the jewelry retail businesses, and attorneys, notaries, accountants, land administration/registration agents and real estate brokers when performing certain services, have been included in the scope of DNFBPs as defined in the Act. In addition, the financial leasing service providers have been included in the scope of 'financial institutions' as defined in the Act.

Introduction to the Concept of Politically Exposed Persons (PEPs)

The Act includes the concept of the PEPs to further monitor the money laundering activities of high-risk politicians. According to the Recognition Standards of the Persons with Important Political Duties and Their Family Members and Close Associates issued by the Ministry of Justice, Taiwan President, Taiwan Vice President, heads of the Taiwan central government and local governments, members of Legislative Yuan and the chairman, general manager and other similar positions at state owned corporations, among others, fall into the scope of the PEPs.

In addition, these politicians' lineal relatives by blood or by marriage within the first degree of relationship, sibling, sibling-in-law and equivalent-to-spouse cohabiting partner are included in the scope of "family members" and subject to the same treatment of the PEPs. The "close associates" of the PEPs with the close social and occupational relationship with the PEPs (such as the employees of the PEPs, the persons acting as the director, supervisor or senior officer of the same entity which the PEPs also have the above positions, the persons having close commercial transactions or financial relationship with the PEPs) will also be subject to the same regulatory requirements as the PEPs.

Customer Due Diligence (CDD)

The financial institutions and DNFBPs should undertake CDD measures, including identifying and verifying the identity of the customers and their beneficiary owners, when establishing business relationship with them and carrying out any transactions above the applicable designated threshold (currently NTD500,000 (\$16,666 approximately) in Taiwan) under Articles 7 and 8 of the Act.

New Confiscation Scheme

Article 12 of the Act permits Taiwan customs to confiscate the cash, securities and items without the required declaration if a person carries into or out of Taiwan more than NTD100,000 in cash, more than RMB20,000 in cash, or other foreign currency and negotiable securities (including traveler checks) worth over \$10,000 (or its equivalent) and gold and items suspected of being used for the purpose of money laundering or exceeding certain thresholds. The same confiscation requirements apply to cross-border delivery of cash, securities and items through goods delivery, courier and mailing services.

In addition, Article 18 of the Act permits the customs or the court to confiscate such proceeds or instrumentalities without requiring a criminal conviction (non-conviction based confiscation).

International Cooperation

Under the authorisation of Article 21 of the Act, Taiwan government may enter into treaties or agreements on cooperation of combating cross-border money laundering activities with foreign governments, institutions or international organizations on the reciprocity principle. With regard to requests for assistance made by foreign governments, institutions or international organisations, unless otherwise stipulated in applicable treaties or agreements, the information concerning declarations, reports or investigation results collected under the Act may be shared based on the reciprocity principle.

Challenges for Implementation of the Act

Because of the broad and comprehensive amendments to the Act, Taiwan financial institutions, DNFBPs, courts, prosecutors' offices and Taiwan society will have a real learning curve to position themselves on how to earnestly implement the new requirements or mechanisms in the Act to prevent money laundering from happening. In particular, attorneys, notaries, accountants, land administration/registration agents and real estate brokers have no prior experience in enforcing their combating money laundering policies and internal rules in their daily operations before June 28 2017, the effective date of the Act. How to deep root the customer due diligence measures, record-keeping, reporting obligations and other regulatory requirements under the Act into these DNFBPs' workflow will be a challenge for them.

Unlike DNFBPs, financial institutions in Taiwan are more experienced in performing their obligations in combating money laundering. However, this is also a tough and costly practice for them because these new requirements under the Act significantly deviate from their current anti-money laundering operations. New facilities and arrangements (such as additional IT supports, recruitment of more staff and optimise their current processes) will be needed to address these issues.

Taiwan is Committed to Combatting Money Laundering

This new anti-money laundering legislation shows Taiwan's commitment to combat money laundering. The new requirements and mechanisms in the Act following the international standards by reference to FATF 40 Recommendations, Vienna Convention and other international conventions, enhance Taiwan's ability to fight against those illegal activities and offences covered by money laundering arrangements. This new development will also drive Taiwan's market to a more well-developed and healthy one.

As a member of the APG, Taiwan also commits itself to adopting policies in line with the international guidance and practice. The mutual evaluation in the APG scheduled for 2018 will be a challenge for Taiwan. If Taiwan fails this evaluation and is included in the FATF blacklist, other countries will apply enhanced due diligence measures, which will increase the costs of Taiwanese inward and outward transactions and impair all of Taiwan's industries and sectors. Therefore, Taiwanese regulators, financial institutions and DNFBPs in Taiwan will need to exhaust their great efforts in the second half of 2017 for this difficult task next year.

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