Strengthening the Function of the Investigation Supervision Unit for Economic and Financial Crimes

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Chou, Shih-Yu*

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I. Preface

Major economic crimes have multiple characteristics such as being syndicated, organized, interlocking, secretive, and international in nature, and are thus not easy to detect. The investigation and evidence collection of their related cases require professional knowledge of the cases involved, knowledge of international trade regulations and information technology, and foreign language proficiency to understand the techniques and contours of such economic crimes. Hence, the Taiwan High Prosecutors Office (hereinafter, THPO), although not the first-line prosecutor's office in investigating major economic crimes, has set up a task force for many years to coordinate and supervise the investigation of these major economic crimes.

II. Founding

(I) Economic Crimes Investigation Center

In light of the evolving nature of economic crimes, which seriously endangers social stability and economic order, the THPO in July 1987 established the Economic Crimes Investigation Center. To integrate expertise in finance and economics, domestic governance, and foreign relations' administrative resources, the Advisory and Coordinating Committee meets periodically or on an ad hoc basis as needed, to cooperate on government sector's implementation efforts for investigating major economic crimes requiring coordinated responses, alleviating any difficulties encountered, proposing solutions, and being responsible for providing expert evaluation, review, or professional expertise assistance.

(II) Investigation Supervision Unit for Financial Crimes

To meet the needs of Taiwan's economic transformation and development, to construct an internationally competitive financial environment, to enhance the international competitiveness of Taiwan's financial system, and further to assist the nation's economic development, THPO, on November 4, 2002, held a preparatory meeting for the "Investigation Supervision Unit for Financial Crimes (hereinafter, ,the Unit)" to discuss the operation of the Unit. It is confirmed that when the prosecutors of the Unit receive a

supervisory case, they will first visit the chief prosecutor of the District Prosecutors Office to find out the case distribution, the reasons for it being unresolved, and whether there is any need for the Unit to coordinate, accommodate, or support the case. The Unit shall prepare a report on the supervisory situation, analysis, evaluation, and recommendation and provide for the Chief Prosecutor's reference. The Unit shall also evaluate the list of unresolved cases on a monthly basis and eliminate closed cases to facilitate regular tracking and control.

（III）Anti-Stock Market Vultures Unit

In 2016, when the Special Investigation Division of the Supreme Prosecutors Office raid for cases related to CTBC Financial Holding Co., Ltd., a marked increase in short-selling of securities was apparent on the day before the raid. Not long after, when Hsinchu District Prosecutors Office investigated the financial fraud case of the listed company “Phison”, the stock of Phison was also subject to shorted positions before the raid. The Economic Crimes Investigation Center of THPO, convened a meeting with various government sectors to discuss preventive measures and established “the Anti-Stock Market Vultures Unit”.

（IV）Example of investigated casest

In 2006, the Investigation Supervision Unit for Financial Crimes of THPO found out that the senior management of CTBC were involved in violations of the Securities and Exchange Act referred to as the "Red Fire Case". This was one of the rare cases in which THPO prosecutors were directly involved in the investigation. At that time, Taipei District Prosecutors Office and the Kaohsiung District Prosecutors Office also had related cases, therefore THPO convened a meeting for the two District Prosecutors Offices to coordinate. After the meeting, Taipei District Prosecutors Office undertook the case and direct the Northern Region Mobile Unit of the Investigation Bureau, MOJ and Prosecutor's Investigators outsourced from the Taipei District Prosecutors Office to assist in tracking the money flows. THPO also allocated equipment funds to support Taipei District Prosecutors Office in investigating the case. As a result, the case was successfully investigated and indicted, and the main defendant was convicted by the courts of different instances (but not yet finalized).

III. Current Status Quo

(I) THPO established a financial task force

The Taiwan High Court from January 1, 2019 began a trial implementation of its enhanced Criminal Financial Special Tribunal (hereinafter, the Tribunal) project. The Tribunal staged ten judges in three courts and ten dockets to handle cases involving violations of the Banking Act, Credit Cooperatives Act, Financial Holding Company Act, Governing Bills Finance Business Act, Trust Enterprise Act, Insurance Act, Securities and Exchange Act, Securities Investment Trust and Consulting Act, Futures Trading Act, Money Laundering Control Act (for cases involving sums over NTD$100,000,000), and the Agricultural Finance Act. Prior to the establishment of the Tribunal, THPO's aforementioned task force on major economic crimes were to coordinate and supervise the investigation of related cases by the District Prosecutors Offices, and did not focus on trial proceedings in major economic crimes. In response to the establishment of the Tribunal, THPO established the Financial Crimes Trial Section (hereinafter, the Section) on August 27, 2020. At the initial stage of its creation, THPO conducted a comprehensive assessment of the seniority, financial professional licenses, financial professional qualifications, case handling experience, and willingness of the prosecutors, selected seven prosecutors for the Section. Adding two other prosecutors who are in charge of major cases with focus attention, a total of nine prosecutors have been appointed to the Investigation Supervision Unit for Economic and Financial Crimes (IUEFC) (including the Economic Crimes Investigation Center, the Investigation Supervision Unit for Financial Crimes, and the Anti-Stock Market Vultures Unit). In addition, these prosecutors are also responsible for reconsideration of complex economic and financial crimes, in cases of "mandatory appeal for reconsideration " and "appeal for reconsideration".

(II) Regular Meetings of the Economic Crimes Investigation Center Advisory and Coordinating Committee

Since the establishment of the Economic Crimes Investigation Center in 1987, THPO has been holding regular meetings every six months in accordance with the Operational Guidelines for the Economic Crimes Investigation Center, for discussing issues and difficulties encountered by government sectors in investigating major economic crimes. The most recent meeting was held on March 4, 2021, with representatives from the Criminal Department of Judicial Yuan, and representatives delegated by other agencies. During the meeting, the Nantou District Prosecutors Office proposed to solve the problems relating to fraudulent syndicate nominal accounts; the Shihlin District Prosecutors Office proposed to solve problems relating to fraudulent money laundering in the issuance of digital points by technology game companies, and the National Police Agency of the Ministry of Interior proposed solving problems related to fraudulent money laundering of digital games points issued by Technology Game Companies; the Criminal Investigation Bureau of National Police Agency, Ministry of Interior requested the Department of Foreign Exchange of the Central Bank and the Investigation Bureau of Ministry of Justice to assist in notification of suspicious nominal accounts. Prior to the meeting, THPO had assigned prosecutors of the Investigation Supervision Unit for Financial Crimes to review the abovementioned issues and provide opinions. Those assigned prosecutors attended meetings and provided detailed discussion and proposed resolutions.

IV. Policy directions

(I) Combining external resources

1. Establishing a database of external experts: including forensic accounting scholars and experts.

2. Close liaison with financial crime investigation units: including the Investigation Bureau of the Ministry of Justice, the Seven Unit of the Criminal Investigation Bureau of National Police Agency, and the Second Special Police of the National Police Agency of the Ministry of Interior.

3. Close contact with government related sectors: including the Central Bank, the Financial Supervisory Commission, The Investment Commission of the Ministry of Economic Affairs.

4. Close contact with related legal entities: including the Taiwan Stock Exchange, Taipei Exchange, Joint Credit Information Center, Fiscal Information Agency of the Ministry of Finance, National Credit Card Center, Securities and Futures Investors Protection Center.

（II）Organize education and training programs

1. Analysis of acquittals in major financial crime cases: THPO regularly holds meetings with the prosecutors who indicted the defendants, attended trials of the first and the second instance to discuss acquittals of major economic and financial crimes, and announces the possible reasons for acquittals after the review for future reference in the investigation of similar cases.

2. Examples of court trial strategies in major economic and financial crimes: including to collect and organize excellent pleadings, defense briefs, and presentation of final arguments.

3. Training for prosecutors and prosecutor's investigators on economic and financial crime cases in District Prosecutors Offices nationwide to strengthen their professional competencies.

4. Organize related seminars: Depending on the nature of the seminar or workshop, and whether outside funding is available from interested units, seminars are regularly held at locations outside the agency. For example, a few years ago, the Banking Association held an annual seminar on credit card fraud prevention at a suburban hotel, inviting members of the Association, prosecutors, police and investigation units, and other interested units to participate, to observing and learning from each other, and to exchange experiences and become familiar with each other. Also, some organizations which focused in external trainings, such as the Accounting Research and Development Foundation and the Securities and Futures Institute, have accumulated a database of teachers and courses over the years. The Securities and Futures Institute previously relied on the District

Prosecutors Office's Probation Fund to allow prosecutors and prosecutor's investigators to attend their classes.

（III） Coalescing with prosecutorial responsibilities

1. There is a set of rules governing investigation of economic and financial crimes by prosecutorial entities, serving as guidelines for prosecutors' investigation of similar cases, and as a reference for the subsequent inspection of prosecutorial operations.

2. The prosecution of the second instance will review and supervise the District Prosecutors Office for its operations in relation to cases of economic and financial crimes.

3. Regularly reviewing effectiveness of the relevant guidelines.

（IV）Establishing a knowledge database of economic and financial crimes cases

1. Establishing a library: Purchasing books in Chinese and foreign languages about economic and financial crime investigation and financial knowledge, and initially stationed at the office of specialized financial prosecutors in the second office of THPO.

2. Establishing a digital database of economic crimes and a pool of manpower.

3. Establishing a list of experts for consultation.

（V）Establishing a database of information on economic and financial crime investigation

Allocating specialized manpower to build the relevant software and hardware equipment for establishing a database of information on economic and financial crime investigation:

1. Accumulating and extending the relevant information on major economic crime cases investigated by prosecutors nationwide to establish a database. Taking personal experiences as an example, in the investigation of illegal securities cases, it is often found that the same or similar type of unlawful transactions are often connected with the same group of people, and the securities and financial accounts used may also be related. By collecting information on similar cases and establishing a database for other prosecutors to consult when investigating related cases, we believe we can obtain twice the result with only half the effort.

2. We can select the types of cases which have special needs and start to build from them. At present, the District Prosecutors Offices have already started to build a database of drug or election bribery cases, and the database can be upgraded to a higher level and scope for collecting and organizing information from previous investigations nationwide. The rest of the cases are such as the abovementioned securities cases, Ponzi schemes or bank fraud cases, and banking law violations. Since most of the wrongdoers involved in these cases have existed in the industry for decades and even have an authoritative or monopolistic position, other prosecutors may have already investigated related or similar cases and may have identified some of the members of the criminal syndicate involved. If the relevant database can be set up to provide for investigation needs, we can avoid duplicative investigations.

3. To prevent the loss of important information due to the time factor, much of the criminal information required by prosecutor to handle a case is limited by timeframe for access and will be lost in a short time. For example, telephone contact records may only be available for a few months, whereas the communication monitoring must be done in advance or immediately. Therefore, if the relevant communication records of the person involved in the case have been accessed or monitored in other investigations, then at least the information previously accessed for other investigations can be used, even though the circumstances have changed and the information cannot be accessed again.

4. In time, after collecting the information of each case and gaining experience in using the crime database, we will review which specific information is needed in specific types of cases and gradually expand and refine searches and results.

（VI）Compilation of the Annual Report of Economic and Financial Crime Investigation and Detection (Interdiction) Supervision

THPO may compile annual reports for information that is suitable for public use, along with manuals for internal communication. Since 2006, the Economic Crime Prevention Division of the Investigation Bureau has been publishing the "The Prevention and Investigation of Economic Crime Annual Report". The Annual Report relays the organization of the Division,

its works (including meetings, investigation of related crimes, corporate anti-corruption efforts, cross-strait cooperation in combating crimes, and mutual legal assistance), future work directions, and special research reports. It is also available to the public electronically for reading on the Investigation Bureau's official website. The Anti-Money Laundering Division of the Investigation Bureau has also published the "Anti-Money Laundering Annual Report" in 2006 and since 2016 for the public to download from the official website.

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Money Laundering Prevention

Su, Pei-Yu*

I. Introduction to international anti-money laundering organizations

II. APG Mutual Evaluation Procedure

III. Taiwan High Prosecutors Office participates in the APG mutual evaluation process

IV. Future outlook for anti-money laundering matters

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* The author, who wrote this Chapter in 2021, then serving as a Head Prosecutor of this offices.

*1 Office of Money Laundering Prevention, Executive Yuan, ed. From Failing to No. 1 in Asia: A Record of the APG 2019 Third Round Mutual Evaluation in Taiwan, December 2020.

*2 Ko, I-Fen, International Anti-Money Laundering Regulations and Policy Directions for Taiwan, in "New Money Laundering Prevention Law: A Practical Analysis of Legal Compliance", Angle Publishing, August 2017, pp. 115-133.

I. Introduction to international anti-money laundering organizations

Growing drug trafficking became a global concern in the late 1980s, whereas drug crime and its' proceeds flowed freely between countries. No country can tackle the problem regardless in regulations or law enforcement. Thus, at the 15th Economic Summit in Paris, France, the Group of Seven (G7) proposed the creation of the Financial Action Task Force (hereinafter, the FATF) in July 1989. As the problem of drug-related crime has become increasingly widespread throughout the world, the FATF was formed to develop international approaches to detecting and confiscating the proceeds of such crimes.

The FATF developed its 40 recommendations in its second year so that countries will have powerful tools to prevent money laundering and develop international consensus on preventing drug money laundering. As a result, the threat to the international financial system is no longer limited to drug-related crimes that lead to money laundering. Financial institutions are also being used as conduits for financing terrorism, proliferating weapons of mass destruction, and laundering illicit proceeds from corruption. Besides promoting global standards to fight against money laundering, the FATF has also been instrumental in protecting the integrity of the global financial system.

In order to ensure the order of the global financial system, the FATF works closely with eight regional organizations (FSRBs), which each require their members to follow the FATF's recommendations. As a result, 190 countries worldwide have committed to following FATF's recommendations. The Asia-Pacific Group (APG) on Money Laundering was founded in 1997 in Bangkok, Thailand as a self-governing international cooperation organization. With Taiwan as one of its founding members, APG has grown from 13 to 41 members since its founding in 1997, making it the largest regional organization in the FATF.

In the June 1998 Declaration and Plan of Action against Money Laundering adopted by the UN General Assembly, countries and regions were asked to adhere to the following principles: 1. To further prevent, detect, investigate and prosecute money laundering crimes, members shall enact legislation to criminalize money laundering of felony proceeds. 2. Criminal proceeds

should be Identified, frozen, and confiscated. 3. Establish efficient financial systems and regulations that prevent criminals and their proceeds from using national or international financial systems, protecting the global financial order, and ensuring that anti-money laundering laws and regulations are being followed. As a result, the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption demand all members adopt further steps at combating transnational organized crime and corruption. Various UNSC measures have arisen in the battle against the financing of terrorist activities and the financing of weapons proliferation.

The above-mentioned UN solutions, treaties, and FATF international standards for combating money laundering are always used by APG member countries to set and define norms, financial policies, and law enforcement standards. Taiwan, as a member of the APG, shall adhere to these rules and regulations.

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II. APG Mutual Evaluation Procedure

（I） Introduction to the Mutual Evaluation Procedure

The FATF was founded as a self-reporting program for member countries in order to improve the FATF's ability to evaluate the effectiveness of member countries' implementation of the recommendations and to understand whether the measures taken by each member country are effective in detecting, preventing, and punishing financial system abuse. This process has since evolved into the Mutual Evaluation Procedure. In 1991, the FATF developed the Mutual Evaluation Procedure, a peer review mechanism between the FATF and member countries of regional anti-money laundering organizations, to implement the system arising from the FATF 40 Recommended Standards. Taiwan is a member of the Asia Pacific Group (APG) and is located in the Asia Pacific area. The Peer Review Process is an assessment performed by other APG member countries, of Taiwan's compliance with the FATF International Standards in all elements of anti-money laundering and counter-terrorism. After 30 years of operational experience, the Mutual Evaluation is now about the efficiency of national anti-money laundering and counter-terrorism measures, not merely compliance with specified technical concerns.

The Mutual Evaluation System gives the FATF a powerful tool for enforcing compliance with all aspects of a successful AML/CFT system. For example, to accomplish desired outcomes, legal mechanisms and enforcement structures must be in place. A comprehensive risk assessment to identify specific risks in a certain region, particularly country risks, so that the nation's risk-equivalent resources may be allocated to remove money laundering and counter-financing problems. Others include juridical person transparency and the ability to know who controls the juridical person's actual beneficiary information. Furthermore, a follow-up mechanism for countries with insufficient anti-money laundering and counter-terrorism measures will ensure that flaws in their anti-money laundering and counter-terrorism measures are adequately addressed over time.

（II）Review Taiwan's participation in the Mutual Evaluations

Although the FATF issued the revised 40 recommendations in 1996, the evaluation only looked at whether the framework of relevant regulations and systems complied with the FATF's 40 recommendations, and the evaluation team recognized the effectiveness of our anti-money laundering measures because Taiwan had adopted the first anti-money laundering law in Asia.

FATF has issued particular recommendations pertaining to fight against financing terrorism since 2001. As a result, when Taiwan undertook its second round of mutual evaluation in 2007, the applicable international standard was composed of FATF's 40 items plus nine specific suggestions. Taiwan receive an evaluation result of partial compliance or non-compliance for 24 items out of 40 for the following reasons: the threshold of felony of Money Laundering Control Act cannot comply with rules in the Vienna Convention on the Law of Treaties and the United Nations Convention against Transnational Organized Crime (UNTOC)(also known as the Palermo Convention); not to criminalize financing terrorism, not to regulate people in important political positions, insufficient customer screening and transaction monitoring mechanisms, failure to include designated non-financial businesses or personnel in the anti-money laundering mechanism, lack of established prevention and countermeasures mechanisms for the FATF's high-risk countries, and no targeted financial

sanctions mechanism. The APG changed the evaluation process in 2010, introducing three levels of post-evaluation tracking processes to check the effectiveness of inadequacies, including biannual, general tracking, and enhanced tracking. According to the updated evaluation system in 2010, the results of Taiwan's 2007 evaluation were placed in the general tracking level, then owing to limited progress in 2012, they were moved to the general (accelerated) tracking level (equivalent to the "enhanced tracking" level in the third round of mutual evaluation). After efforts of improvement, Taiwan was later replaced for the general tracking level in 2014. The APG developed a transitional follow-up procedure in 2015 to focus on improving the flaws of the second round of member country mutual evaluation, and Taiwan was included in the "transitional tracking process." Fortunately, the Ministry of Justice, which was in charge of the evaluation's preparation, has been pushing for changes to relevant laws and regulations since 2015, including amendments to the new criminal law confiscation system, the Money Laundering Control Act, and adoption of the Counter-Terrorism Financing Act. Since the legal system has made significant progress, Taiwan was then removed from the transition tracking procedure in July 2017.

The Third Round Mutual Evaluation Procedures examines the legal system, institutional structure, authority and responsibility, operation the procedures of law, law enforcement departments, financial supervision departments, and financial institutions in order to prevent criminals from laundering illegal funds and materially supporting terrorist organizations and elements engaging in terrorist activities. In addition, the New York State Department of Financial Services (NYDFS) penalized Mega Bank's New York branch with a fine of $180 million in 2016, which certainly acted as a stern and loud wake-up call to the public and private sectors across our nation. The public and private sectors' long neglect of anti-money laundering and anti-financial terrorism efforts has resulted in such a significant disparity with international standards. The lack of a dedicated body to coordinate money laundering and counter-terrorism efforts in the country prompted a wave of critical rethinking, culminating in establishment of the Executive Yuan's Anti-Money Laundering Office.

The Office of Money Laundering Prevention and Control of the Executive Yuan coordinated Taiwan's money laundering prevention and anti-terrorism financing policies and implementation strategies, conducted the national risk assessment, and supervised and coordinated the evaluation. Under joint efforts of public and private sectors, Taiwan received its third round of APG mutual evaluation in November 2018. At the APG Annual Meeting in August 2019, Taiwan achieved the highest score for "General Tracking."

(III) The third round follow-up reports and the fourth round of mutual evaluation procedures

According to pertinent documents issued by the FATF and the APG Secretariat, Taiwan's future tracking and evaluation procedures will be as follows.

1.Cancellation of the 5-year follow-up assessment (hereinafter, FUA)

The FATF addressed the elimination of this requirement at its annual conference in February 2020, and the 5-year follow-up procedure was formally eliminated in January 2021. As a result, Taiwan's FUA scheduled in 2024 has been cancelled.

2. Follow-Up Report (hereinafter, FUR)

Our follow-up reports are due in 2021, 2023, and 2025. For that matter, we have requested assistance from necessary authorities in providing data and information. The 2021 follow-up report has presented to the APG Secretariat on October 1, 2021.

3. APG fourth round mutual evaluation

Taiwan will participate in the fourth round of the APG mutual evaluation process from 2027 to 2028, and Secretary General of the Executive Yuan has issued a letter of No. 1100184756 on September 10, 2021, requesting that all agencies (units) shall plan ahead of time to help with mutual evaluation preparation.

III. Taiwan High Prosecutors Office participates in the APG mutual evaluation process

(I) Actively participate in money laundering prevention matters

Pursuant to Article 11 of the Money Laundering Control Act, in order to cooperate with international actions in preventing money laundering and combating financial terrorism, Financial institutions, designated non-financial businesses, or personnel must strengthen customer identification measures for relevant transactions in countries or regions with a high risk of money laundering or financial terrorism. They should limit and restrict financial institutions, selected non-financial businesses, and personnel from sending remittances or engaging in other activities with high risk nations or regions where money laundering or terrorism prevails. They should also implement other required and efficient preventive actions commensurate with the risk. And those countries or jurisdictions at high risk of money laundering or financing terrorism are the ones that have been declared by International Anti-Money Laundering organizations to have serious anti-money laundering and anti-terrorism financing deficiencies, or those that have not or have not fully complied with the recommendations of the International Anti-Money Laundering Group; or other countries or jurisdictions with specific evidence of a high risk of money laundering and financing terrorism. Similarly, if Taiwan is found to have serious AML/CFT deficiencies or to have not followed or fully followed the recommendations of international anti-money laundering organizations through the mutual evaluation process, we will face restrictions or prohibitions on remittances or other transactions in other countries. Thus, the economic impact on our country cannot be underestimated.

To deprive the offenders of their earnings, Taiwan High Prosecutors Office has always mandated prosecutors of subordinated prosecutors' offices to diligently investigate and seize the proceeds of money laundering and financing terrorism offences. Since the establishment of the Anti-Money Laundering Office of the Executive Yuan in March 2017, the position of Executive Secretary of that office has frequently been occupied by prosecutors from Taiwan High Prosecutors Office. During the APG's third round of mutual

evaluation process, Taiwan High Prosecutors Office also detailed prosecutors to participate in the third round of mutual evaluation sessions, actively engaging in various money laundering prevention matters.

（II）Establish the Money Laundering Evaluation Working Group

The APG third-round mutual evaluation report found Taiwan to have 94 deficiencies , including: "Inadequate operational coordination; cooperation between the Financial Intelligence Center and the investigative unit, and between law enforcement authorities and financial supervision agencies, should be reinforced." "Prior to referral cases to prosecutors, statistics on money laundering investigations launched by law enforcement agencies are not maintained." "In the investigation of capital tracing in anti-money laundering cases, there is no objective gauge of the degree of collaboration between the Money Laundering Prevention Office and the other agencies." "The number is small for anti-money laundering crimes under investigation; and (1) shall investigate more on the third-party money laundering and illicit foreign proceeds money laundering; and (2) notice that even though money laundering investigations have increased, but they are centered on cases involving fraud, organized crime, and third-party money laundering. All the above issues involve coordination and cooperation between law enforcement authorities and entities.

The Ministry of Justice is preparing for the future follow-up report and the fourth round of mutual evaluation in order to effectively handle the improvement of important shortcomings and to face the future follow-up report and mutual evaluation. In accordance with the conclusion of the Third Asia-Pacific Anti-Money Laundering Organization (APACAML) Mutual Evaluation Meeting on April 13 and 16, 2021, the Ministry of Justice tasked the Taiwan High Prosecutors Office to establish a money laundering review team to oversee the prosecutors' office and related law enforcement agencies' implementation of the relevant improvement plan, by letter No. 11004512410 dated April 29, 2021. Taiwan High Prosecutors Office forwarded the Money Laundering Evaluation Team's staff list to the Ministry of Justice on May 27, 2021, by letter No. 11080000700.

（III）Establish the Money Laundering Evaluation Working Group

On August 3, 2021, the Money Laundering Evaluation Team of Taiwan High Prosecutors Office invited the Anti-Money Laundering Office of the Executive Yuan, the Investigation Bureau of the Ministry of Justice (hereinafter, MOJ), the Agency against Corruption of MOJ, the National Immigration Agency of Ministry of Interior Matters (hereinafter, MOI), the Criminal Investigation Bureau of MOI, the Ocean Council (hereinafter, OAC), the Coast Guard Administration of OAC, and the Banking Bureau of the Financial Supervisory Commission (hereinafter, FSC), to conduct the first meeting of 2021. The conference was to discuss and reach an agreement on recommendations for the APG's third round mutual evaluation.

（IV）Participation in amending the Money Laundering Control Act

The Ministry of Justice convened ten sessions from January 6, 2021 to August 18, 2021 to discuss revisions to the Money Laundering Control Act. Prosecutor Huang, Shih-Yuan of Taiwan High Prosecutors Office, attended the meetings and actively provided the most up-to-date information on Germany's legal system, as well as explain the current situation and investigation difficulties for the Ministry of Justice's reference in amending the law.

IV. Future outlook for anti-money laundering matters

The problem in practice is deficiency in money laundering prevention, especially when dealing with identity fraud crimes, money laundering cases, and cross-border telecom fraud cases, which also reflects the difficulty for law enforcement agencies and border investigations. It is critical to continue to follow worldwide standards and trends in order to prevent money laundering, combat crime, develop the anti-money laundering system, ensure a stable financial order, promote financial flow transparency, and strengthen international cooperation.

Although Taiwan had received the best score in the APG's third round of mutual evaluation process for "general tracking," the APG's "Chinese Taipei Mutual Evaluation Report," released in October 2019, revealed 94 deficiencies remained. In addition, the FATF's 40 recommendations, which were updated in October 2020, include new issues on countering weapons proliferation

financing, and the latest regulations on "virtual assets and virtual asset service providers" in the "Use of New Technologies" section, which require the cooperation of relevant law enforcement agencies in actively detecting these newly emerging crimes.

The Money Laundering Evaluation Team of Taiwan High Prosecutors Office will continue to oversee the implementation of the APG evaluation deficiency improvement plan by the respective prosecutors' offices and relevant law enforcement agencies in the future, with the hope that improvements can be made in the third round of mutual evaluation follow-up reports, and that the best results can be obtained in the upcoming fourth round. Furthermore, we will focus on front-end crimes such as drugs, money laundering, and cross-border fraud, as well as effectively enforcing the law to disrupt the flow of money and stop money laundering, in order to enhance Taiwan's financial order and comply with applicable international standards.

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Investigating and Prosecuting Crimes against Trade Secrecy

Chu, Shuai-Chun*

I. Preface

II. Establishing the rules of trade secret crimes

III. Observations on trade secrecy criminal cases

IV. Developing Trends in Trade Secrets Criminal Cases

V. Conclusion

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I. Preface

Due to the rapid development of global technology and the wide use of Internet during the 1990s, protecting intellectual property rights has become a core focus in domestic and international societies. As a result, governments amended the Copyright Act, the Trademark Act, and the Patent Act as well as other intellectual property laws. However, as a highly developed country, the trade secrets protection in Taiwan is not enough.

At the time, Taiwan was negotiating the accession to the World Trade Organization (WTO); and the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), the WTO's predecessor, obliged member countries to safeguard trade secrecy legally, pursuant to the General Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Our government drew inspiration from international legislation and drafted the "Trade Secrets Act" in response to the industries competition and economic environment at the time. The Trade Secrets Act specifically provides for: 1. Defining trade secrets and rights' attribution. 2. A trade secret may not be utilized as the subject of a pledge or compelled attachment or execution. 3. Confidentiality is required of civil servants and those involved in court and arbitration processes.4. Calculating infringement and damages. 5. The court has the authority to close the trial to the public and/or restrict access to the files containing litigation-related material if it deems it necessary. 6. the principle of reciprocity. The Legislative Yuan passed the Act, and the President proclaimed it law on January 17, 1996.

II. Establishing the rules of trade secret crimes

The initial legislation of the Trade Secrets Law only covered civil matters. Until 2011, along with the rising complexity of international commercial activities, Governments amended their legal framework of trade secrets protection, notably with an important trend to add or raise criminal responsibility for violations of trade secrets. Furthermore, the development of high-tech sectors in Taiwan, South Korea, and mainland China are structurally comparable in the worldwide competitive environment, producing a "technology tri-national clash across the seas." South Korea and Mainland China frequently recruit and poach, or inappropriately acquire domestic high-tech industry talent and expertise, high-end technologies, and process

operations secrets. The results are to damage our high-tech industries which are the lifeblood of our economy, to erode our industries' international competitiveness, to stifling the fruits of industrial innovation, and to jeopardize our national security. The legal system, on the other hand, was confined to a civil restriction of tortious interference with competition to prevent the ruthless poaching and raiding of high-level technical and managerial staff. The Trade Secrets Act, which protects advanced technology and processes, is only a civil regulation; whereas Article 317 of the Criminal Law, which defined obstructing industrial secrecy as a crime, was the only criminal rule and it carried only a nominal penalty. Because the legal system at the time was insufficient to effectively resolve the dilemma, industry frequently requested legal revisions to provide criminal culpability for trade secret theft or violations to strengthen trade secret protection and prevent the loss of industrial niche competitive advantage. As a result, the government, private sector, and Legislative Yuan collaborated to amend the Trade Secrets Act in a short period of time, and the President proclaimed it on January 30, 2013. The amendments adding Articles 13-1 to 13-4 as follows: 1. Adding criminal trade secrecy acts of infringement, which includes obtaining, using, or disclosing information through improper means, such as theft; reproducing, using, or disclosing information without authorization or beyond the limit of authorization; failure to delete, destroy, or conceal a trade secret after being advised to do so; and a malevolent transferor's acquisition, use, or disclosure, and its criminal liabilities. 2. A aggregated liability for purposeful extraterritorial for violation under the amended new Article 13-1. 3. Prosecution for trade secrecy crimes may be instituted only upon a complaint, but the filing or withdrawal of a complaint against one of several co-offenders shall not be considered to be a filing or withdrawal of a complaint against the others, and the principle of separate lodging of criminal information will apply. 4. Criminal penalties combined with fines or additional penalties: In addition to the penalties imposed by this Act, if an appointed representative of a juridical entity, a representative of a juridical entity or a natural person, an employee or other staff member or agent, is criminally liable for trade secrecy infringement in the performance of business, the employer of the business organization shall be subject to the fines imposed under each Article. These aim to successfully combat the

major problem of aggressive poaching and illegal acquisition of human capital and business secrets in high-tech companies from both within and outside Taiwan.

Since adding criminal provisions of Articles 13-1 to 13-4 of the Trade Secrets Act on January 30, 2013, the Ministry of Justice and the Intellectual Property Office of the Ministry of Economic Affairs (MOEA) actively promote and advocate the new rules. As a result, domestic companies have gradually gained a better understanding of the relevant trade secret regulations and have begun to pursue wrongdoings and protect their rights through the civil and criminal law protections under the Trade Secrets Act. However, due to the inconsistent practices of local prosecutors offices dealing trade secrets cases, the Ministry of Justice commissioned the Intellectual Property Branch of Taiwan High Prosecutors Office to draft the Guidelines for prosecutors in handling Major Trade Secret Cases in the Prosecuting Authority (hereinafter, the Guidelines). Mr. Shih, Ching-Tang, the former chief prosecutor of Taiwan High Prosecutors Office, convened prosecutors from the office and from local prosecutors' offices with experiences investigating trade secret infringement cases to draft the Guidelines. The Guidelines then submitted to the Ministry of Justice and was promulgated on April 19, 2016. The Guidelines stipulate: 1. Specialized prosecutors shall be assigned to handle cases involving major violations of the Trade Secrets Act. 2. In investigating major violations of the Trade Secrets Act, Prosecutors shall be strictly comply with the principle of non-disclosure and directing complainant or victim to comply therewith. 3. Trade secret evidence preservation, prevention measures, methods to prevent the defendant from escaping, tracking the illegal monetary proceeds, and conducting search and seizures procedures. 4. The process of gathering evidence from abroad, seeking external opinions, the applicable provisions of the Witness Protection Act, and the procedures for public prosecution and seeking appropriate sentencing should all be considered in investigation of major violations of the Trade Secrets Act. 5. The press release of a major violation of the Trade Secrets Act, and the handling of evidence and case files after conviction.

Another concern is that because the Trade Secrets Act lacks a system according a Prosecutor authority to issue secrecy protective orders during the investigation stage, Prosecutors are

unable to order the relevant persons who have access to the investigation information to fulfill their obligation of secrecy when investigating cases of trade secret infringement. This default causes the owner of the trade secrets concern about possible subsequent disclosure of their trade secrets, which has a negative impact on efficacy and correctness in investigations and prosecutions. The Legislative Yuan amended the "Investigation Confidentiality Protective Order" mechanism in Articles 14-1 to 14-4 of the Trade Secrets Act, which was proclaimed by the President on January 15, 2020. The key provisions of the amendments are: 1. When a prosecutor believes it is necessary while investigating a case involving trade secrets, they may issue a "Investigation Confidentiality Protective Order" to anyone who has access to the material under investigation, such as a representative of the complainant or defense counsel. 2. After gaining access to the contents of the investigation, the person subject to the Investigation Confidentiality Protective Order must not use or disclose the information for any purpose other than the investigation process.3. A person who violates an Investigation Confidentiality Protective Order faces up to three years in prison, a short-term prison sentence, and/or a fine of up to NT$1 million. Extraterritorial violations are subject to the same sanctions as domestic violations. 4. During the investigation and after the investigation is concluded, the Investigation Confidentiality Protective Order can be altered or cancelled, and can be linked to a court-issued secrecy protective order after indictment. The amendment will elevate effectiveness for prosecutors in investigating trade secrets cases, strengthening protection of corporate internal secrets, and improving the protection accorded trade secrets in Taiwan.

After the Trade Secrets Law was amended to include provisions governing Investigation Confidentiality Protective Orders in Articles 14-1 to 14-4, the Intellectual Property Branch of the Taiwan High Prosecutors Office, led by Head Prosecutor Chen, Wen-Chi, invited Judge Chang, Ming-Huang of the Intellectual Property Court (now renamed the Intellectual Property and Commercial Court) to join prosecutors with the Intellectual Property Branch of Taiwan High Prosecutors Office, and other District Prosecutors' Office prosecutors with experience investigating trade secrecy infringement to formulate the aforesaid Guidelines, which were then promulgated by the Ministry of Justice (MOJ) on November 19, 2020. During the discussion of the Guidelines, the second level of alert for COVID-19 applied which "work from home" policy was enforced. The Taiwan High Prosecutors Office's Intellectual Property Branch,

regardless the difficulties, has not only developed a uniform approach to the Trade Secrets Act's "Investigation Confidentiality Protective Order" mechanism, but has also worked in accordance with the 2016 amendments to the Criminal Procedure Law, the Money Laundering Control Act, the new system of criminal law confiscation, and the most recent practical insights of international mutual legal assistance in criminal matters, to comprehensively review and amend the Guidelines. The core points of these amendments to the Guidelines are as follows. 1. The word "Major" has been removed from the title, and it has been renamed as "Guidelines for Handling Trade Secret Cases in the Prosecuting Authority." The terminology has also been harmonized, and the applicable rules have been updated. 2. Amend the scope of trade secrets and the objective criteria in determine cases for Chief Prosecutor. 3. The wording of Guidelines has been changed to comply with the rules of the Criminal Procedure Law relating to the restriction of departure from the country, search warrant, and application for summary judgment. 4. The new provisions on the issuance and revision of Investigation Confidentiality Protective Orders issued by prosecutors when necessary. 5 To add activities barred or restricted by Investigation Confidentiality Protective Order; and if the goal is to avoid or eliminate infringement, civil procedure remedies should apply. 6. To add the procedural rules for prosecutors to issue the Investigation Confidentiality Protective Order and to manage cases. 7. Add the rules of revocation or revision of Investigation Confidentiality Protective Orders. 8. Amend procedural rules for mutual legal assistance to comply with the new international mutual legal assistance regulations. Add procedural rules to access foreign electronic data or digital evidence, as well as the application for assistance when requested. 9. Amend the provisions regarding consultation with experts or competent authorities. 10. Add rules regarding case file management during investigation and after indictment, including notification to the court to restrict access to the case file, and request to the court not to conduct an open trial or to issue a secrecy protective order so as to protect trade secrets from unauthorized disclosure. 11. Add provisions for prosecutors to convey their views on sentencing and confiscation during trials. 12. Add new provisions on the processing of seizures or forfeitures which are affected by a final probational prosecution and not covered by indicetment.

III. Observations on trade secrecy criminal cases

The following are data on the number of cases filed since criminal liabilities were added in the Trade Secrets Act on January 30, 2013.

Table 1: Statistics on trade secret infringement cases handled by District Prosecutors' Offices

Statistics on trade secret infringement cases handled by District Prosecutors' Offices

Case Types	New Cases under Investigation	individuals of Investigation Concluded					Final convicted individuals			Conviction rate A/(A+B)x100
		Totals	Indictment	Probational Prosecution	Not to prosecuted	Other	Totals	Guilty A	Not guilty B	
	Cases	Individuals	Individuals	Individuals	Individuals	Individuals	Individuals	Individuals	Individuals	%
2014 through Oct. 2021	**863**	**2,032**	**517**	**33**	**1,303**	**179**	**144**	**56**	**38**	***59.6***
2014	22	52	11	2	28	11	-	-	-	-
2015	77	153	34	-	113	6	5	1	1	*50.0*
2016	92	312	93	10	179	30	7	1	5	*16.7*
2017	126	264	68	2	180	14	23	4	2	*66.7*
2018	125	305	84	2	189	30	25	9	5	*64.3*
2019	132	317	78	-	205	34	29	11	9	*55.0*
2020	160	352	82	14	234	22	29	22	5	*81.5*
Jan.-Oct.2021	129	277	67	3	175	32	26	8	11	*42.1*

Data from: Statistics Office, MOJ

Explanation: 1. Data collected from January 2014.

2. Indictment includes the procedures to prosecute and to summon for summary judgements

As you can see in the table above:

(1) The number of identified (new case) incidents of trade secret infringement have risen yearly

There were 22 cases in 2014 and a peak of 160 cases in 2020. However, from January to October in 2021, there have only been 129 cases, it indicated that the infringement seems to be slowing down or stabilizing.

(II) The number of indictments and the prosecution rates are both low (including applications for summary judgements and probational prosecution, mutatis mutandis)

The Ministry of Justice utilizes the number of individual defendants as the statistical unit, and the total number of defendants is 2032, whereas the number of not-to-prosecute is 1,303. The indictment rate is less than 50%.

(III) Unstable conviction rates

Although the conviction rate was as high as 81.5% in2020, it was only 16.7% in 2016. The overall average conviction rate for all cases was 59.6%, but if the low statistic for 2016 is omitted, the conviction rate was only 59.9%. The conviction rates of trade secret infringement cases are low when compared to other types of cases or charges, indicating there is indeed room for improvement in investigation tactics and trial proceedings.

Table 2: Average number of days required for handling trade secrects infringement cases by the District Prosecutors' Office

Unit: days

Case Types	Intellectual property infringement cases	Trade Secrets Act infringement cases
2014	67.9	144.1
2015	66.5	110.5
2016	65.5	170.2
2017	64.1	150.7
2018	62.1	145.6
2019	68.2	158.5
2020	67.2	160.8
Ja.n-Oct. 2021	70.8	145.8

Data from: Statistics Office, MOJ

As one can see from the Table above: while the total average of 66.5 days required to detect infringement of intellectual property rights cases, the total average of 148.275 days is required to detect infringement of trade secrets cases. The latter is 2.22 times than the former, which demonstrating that detecting trade secrets infringement cases remains difficult even though after on-the-job training and the formulation of the Guidelines.

Tables 3 and 4: District Prosecutors' Office Statistics on new cases involving Investigation Confidentiality Protective Orders and the number of individual defendants

Statistics on District Prosecutors' Offices on new cases involving Investigation Confidentiality Protective Orders
December 2020 to August 2021

Unit:Cases

Case Types	Issuing Investigation Confidentiality Protective Orders (pursuant to Paragraph 1, Article 14-1 of the Trade Secrets Act) during investigations			Revocation or revision of Investigation Confidentiality Protective Orders (pursuant to authority of Paragraph 1, Article 14-3 of the Trade Secrets Act) during investigations	After conclusion of investigation, the Prosecutor petitions for amendment or revocation of Investigation Confidentiality Protective Orders (pursuant to Paragraph 2, Article 14-3 of the Trade Secrets Act)
	Totals	Testimonial / Hearings	Evidentiary Documentation / Pleadings		
Totals	4	1	3	-	-
Taipei DPO	-	-	-	-	-
Shilin DPO	-	-	-	-	-
New Taipei DPO	2	-	2	-	-
Taoyuan DPO	1	-	1	-	-
Hsinchu DPO	-	-	-	-	-
Miaoli DPO	-	-	-	-	-
Taichung DPO	1	1	-	-	-
Changhua DPO	-	-	-	-	-
Nantou DPO	-	-	-	-	-
Yunlin DPO	-	-	-	-	-
Chiayi DPO	-	-	-	-	-
Tainan DPO	-	-	-	-	-
Kaohsiung DPO	-	-	-	-	-
Ciaotou DPO	-	-	-	-	-
Pingtung DPO	-	-	-	-	-
Taitung DPO	-	-	-	-	-
Hualien DPO	-	-	-	-	-
Yilan DPO	-	-	-	-	-
Keelung DPO	-	-	-	-	-
Penghu DPO	-	-	-	-	-
Kinmen DPO	-	-	-	-	-
Lienchiang DPO	-	-	-	-	-

Data from: Statistics Office, MOJ
Explanation: Data collected from December, 2020 for Investigation Confidentiality Protective Orders cases.

Statistics on District Prosecutors' Offices on new cases involving Investigation Confidentiality Protective Orders
December 2020 to August 2021
Unit:Cases

Case Types	After investigation is concluded, a person subject to an Investigation Confidentiality Protective Order petitions for an amendment of revocation of the Investigation Confidentiality Protective Orders (pursuant to Paragraph 2, Article 14-3 of the Trade Secrets Act)	Petitioning the Court to issue Investigation Confidentiality Protective Orders in accordance with the Intellectual Property Case Adjudication Act (pursuant to Paragraph 4, Article 14-3 of the Trade Secrets Act)	Petitioning the Court for revocation of Investigation Confidentiality Protective Orders (pursuant to Paragraph 5, Article 14-3 of the Trade Secrets Act)
Totals	-	3	-
Taipei DPO	-	-	-
Shilin DPO	-	-	-
New Taipei DPO	-	-	-
Taoyuan DPO	-	-	-
Hsinchu DPO	-	-	-
Miaoli DPO	-	-	-
Taichung DPO	-	3	-
Changhua DPO	-	-	-
Nantou DPO	-	-	-
Yunlin DPO	-	-	-
Chiayi DPO	-	-	-
Tainan DPO	-	-	-
Kaohsiung DPO	-	-	-
Ciaotou DPO	-	-	-
Pingtung DPO	-	-	-
Taitung DPO	-	-	-
Hualien DPO	-	-	-
Yilan DPO	-	-	-
Keelung DPO	-	-	-
Penghu DPO	-	-	-
Kinmen DPO	-	-	-
Lienchiang DPO	-	-	-

Statistics on District Prosecutors' Offices on new cases involving Investigation Confidentiality Protective Orders
December 2020 to August 2021
Unit: Individuals

Case Types	Issuing Investigation Confidentiality Protective Orders (pursuant to Paragraph 1, Article 14-1 of the Trade Secrets Act) during investigations			Revocation or revision of Investigation Confidentiality Protective Orders (pursuant to authority of Paragraph 1, Article 14-3 of the Trade Secrets Act) during investigations	After conclusion of investigation, the Prosecutor petitions for amendment or revocation of Investigation Confidentiality Protective Orders (pursuant to Paragraph 2, Article 14-3 of the Trade Secrets Act)
	Totals	Testimonial / Hearings	Evidentiary Documentation / Pleadings		
Totals	5	1	4	-	-
Taipei DPO	-	-	-	-	-
Shilin DPO	-	-	-	-	-
New Taipei DPO	2	-	2	-	-
Taoyuan DPO	2	-	2	-	-
Hsinchu DPO	-	-	-	-	-
Miaoli DPO	-	-	-	-	-
Taichung DPO	1	-	1	-	-
Changhua DPO	-	-	-	-	-
Nantou DPO	-	-	-	-	-
Yunlin DPO	-	-	-	-	-
Chiayi DPO	-	-	-	-	-
Tainan DPO	-	-	-	-	-
Kaohsiung DPO	-	-	-	-	-
Ciaotou DPO	-	-	-	-	-
Pingtung DPO	-	-	-	-	-
Taitung DPO	-	-	-	-	-
Hualien DPO	-	-	-	-	-
Yilan DPO	-	-	-	-	-
Keelung DPO	-	-	-	-	-
Penghu DPO	-	-	-	-	-
Kinmen DPO	-	-	-	-	-
Lienchiang DPO	-	-	-	-	-

Data from: Statistics Office, MOJ
Explanation: Data collected from December, 2020 for Investigation Confidentiality Protective Orders cases.

Statistics on District Prosecutors' Offices on new cases involving Investigation Confidentiality Protective Orders
December 2020 to August 2021

Unit: Individuals

Case Types	After investigation is concluded, a person subject to an Investigation Confidentiality Protective Order petitions for an amendment of revocation of the Investigation Confidentiality Protective Orders (pursuant to Paragraph 2, Article 14-3 of the Trade Secrets Act)	Petitioning the Court to issue Investigation Confidentiality Protective Orders in accordance with the Intellectual Property Case Adjudication Act (pursuant to Paragraph 4, Article 14-3 of the Trade Secrets Act)	Petitioning the Court for revocation of Investigation Confidentiality Protective Orders (pursuant to Paragraph 5, Article 14-3 of the Trade Secrets Act)
Totals	-	17	-
Taipei DPO	-	-	-
Shilin DPO	-	-	-
New Taipei DPO	-	-	-
Taoyuan DPO	-	-	-
Hsinchu DPO	-	-	-
Miaoli DPO	-	17	-
Taichung DPO	-	-	-
Changhua DPO	-	-	-
Nantou DPO	-	-	-
Yunlin DPO	-	-	-
Chiayi DPO	-	-	-
Tainan DPO	-	-	-
Kaohsiung DPO	-	-	-
Ciaotou DPO	-	-	-
Pingtung DPO	-	-	-
Taitung DPO	-	-	-
Hualien DPO	-	-	-
Yilan DPO	-	-	-
Keelung DPO	-	-	-
Penghu DPO	-	-	-
Kinmen DPO	-	-	-
Lienchiang DPO	-	-	-

Since the new provisions governing Investigation Confidentiality Protective Orders were issued from January 15, 2016, the number of cases and involved to date are small, but because most Investigation Confidentiality Protective Orders are issued to District Prosecutors' Offices of jurisdiction over Science Parks, it is clear that the approval of Investigation Confidentiality Protective Orders are mostly used in cases involving technological trade secrets..

Also, the provisions of Paragraph 1, Article 13-2 of the Trade Secrets Act stipulate that: "Any person committing a crime prescribed in the first paragraph of the preceding article for the purpose of using the trade secret in foreign jurisdictions, mainland China, Hong Kong, or Macau shall be sentenced to imprisonment between 1 year and 10 years, in addition thereto, a fine between NT$3 million and NT$50 million may be imposed." This provision was enacted in response to the frequent and improper poaching and acquisition of domestic high-tech industrial talent, high-end technologies, and process secrets from abroad, which has severely harmed our industries' international competitiveness, killed the

fruits of industrial innovation, and even jeopardized Taiwan's national security. In the table below, the efficiency of this provision after implementation will be observed and evaluated.

Table 5: Statistics on District Prosecutors' Office handling of cases in violations of Article 13-2 of the Trade Secrets Act

Statistics on District Prosecutors' Office handling of cases in violations of Article 13-2 of the Trade Secrets Act

Unit: Individuals

Case Types	Investigation Concluded		Implementation of final determination of guilt
	Prosecutions	Probational Prosecution	
2014 through Oct. 2021	**188**	**16**	**23**
2014	1	-	-
2015	7	-	1
2016	35	6	-
2017	31	-	2
2018	31	1	2
2019	41	-	1
2020	19	9	17
Jan. - Oct. 2021	23	-	-

Data from: Statistics Office, MOJ

Explanation: 1. Data collected from January 2014.

2. Prosecution includes the procedures for indictment and applications for summary judgements.

As observed from Table 5, supra:

1. Observing the volume of individuals in cases involving extraterritorial infringements of trade secrets from 2016 through October 2021, except for the year 2020, when the number of such cases decreased to 19 persons, otherwise the number of persons involved in the remaining years remained high, indicating that the trend demonstrates such infractions have not been effectively curtailed by the criminal provisions added to the Trade Secrets Act.

2. While extraterritoriality is involved in this sort of case, the time spent on cross-border inquiry and trial is lengthy and the majority of cases remaining under prosecutorial investigation or at trial.

3. Although there were 188 individuals indicted, only 23 were found guilty and sentenced. Aside from the lengthy investigation and trial procedure, the percentage of people who are convicted and executed is rather low, indicating that the conviction rate is low. Even though such cross-border cases are inherently arduous to handle, there is still a need to improve the investigation and trial skills.

IV. Developing Trends in Trade Secrets Criminal Cases

Given that modern nation-to-nation competition is no longer restricted to military equipment, but also involves competition among industries and technology in the global market. National security is defined as matters impacting economic development and industrial competitiveness on national development, in addition to any military relevance. To protect the competitiveness of our high-tech industries and national economic interests, as well as to prevent foreign countries, mainland China, Hong Kong, Macau, or various organizations, institutions, groups, or individuals dispatched by foreign rival forces or those established or substantially controlled by them from infringing on the trade secrets of national core critical technologies, a hierarchical protection system for trade secrets must be established so as to protect Taiwan's national security and the lifelines of economic progress. As a result, the Legislative Yuan is now debating draft revisions to several parts of the National Security Law, with the following primary points:

(I) Specifying that no person acting on behalf of a foreign country, mainland China, Hong Kong, or Macao, or any organization, institution, or group established or substantially controlled by a foreign hostile power, or any person dispatched by such a power, shall infringe upon the national critical technologies' trade secrets. To protect national security and industrial competitiveness, no one intending to use the national core critical technologies' trade secrets in foreign countries, the Mainland, Hong Kong, or Macau, shall engage in any act for the purpose of infringing on the said national critical technologies' trade secrets.

(II) To specify the criminal penalties for violating the foregoing prohibitions, as well as any aggravating factors in the imposition of fines, and to encourage confessions and surrenders to have penalties reduced or eliminated, comporting with the principle of proportional justice.

(III) When the prosecutor investigates such cases, the provisions of Article 14-1 to Article 14-3 of the Trade Secrets Act regarding Investigation Confidentiality Protective Orders are explicitly applied to protect trade secrets involving national critical technologies from secondary leakage during the investigation and to promote investigational efficiency. To fulfill the procedural requirements applicable at the trial stage, it is also noted that such cases are deemed intellectual property cases and lie within the jurisdiction of the intellectual property and commercial courts.

(IV) To comply with the principle of proportionality in crimes and punishment, and to resolve disputes, the criminal penalties for violating the Investigation Confidentiality Protective Orders under this law, as well as any violations of Investigation Confidentiality Protective Orders in foreign countries, mainland China, Hong Kong, or Macao, also apply, mutatis mutandis, regardless of whether the laws of the place of crime have no penalty provisions.

Furthermore, the Judicial Yuan is currently studying the draft of Intellectual Property Case Adjudication Act (the "Adjudication Act"), to take into account judgments essential to criminal cases involving trade secrets which are highly technical and professional in nature, and that crimes under the Trade Secrets Act involving infringement of technical or commercial trade secrets may involve those exercising unique competitive advantages over the industry or special damages proximately caused from trade secret infringement. The Act is designed to defend industry's legitimate business interests, encourage and protect ongoing innovation and research development, preserve industrial ethics and the competitive order, and prevent spread of adverse affects from infringements of victims' trade secrets. As a result, to achieve the goal of professional, appropriate, and timely trial of the criminal cases of the trial of the first instance for trade secrets, it is necessary to transfer the criminal cases of the trials of the

first instance for violations of the Trade Secrets Act to the Intellectual Property Court. Hence, paragraph 2, Article 55 of the draft Act intends to regulate:

(I) Indictment of cases of infringement of the Trade Secrets Act must be made to the Intellectual Property Court as the first instance trial court.

(II) When the prosecutor petitions for a summary judgement, the requirements in the preceding two articles shall apply.

(III) The petition for compulsory measures during investigation shall be handled by the local court of jurisdiction, pursuant to sub-paragraph 1 of Paragraph 2.

Additionally, Article 55 of the proposed amendment to the Adjudication Act stipulates that, in accordance with the provisions of the (draft) National Security Act, a new sub-paragraph 2 of Paragraph 2 shall be added: Cases of violation of Paragraphs 1 to 3, Article 5-2 of the National Security Act shall be brought before the Intellectual Property Court 's trial court of the second instance. That is to say, cases of infringement of trade secrets in violation of the National Security Act shall be heard by the Intellectual Property Court's trial court of the second instance, acting as the trial court of the first instance therein.

V. Conclusion

As seen in the draft of National Security Act and the Adjudication Act, in the future:

(I) The District Prosecutor's Office shall conduct the prosecutorial investigation of the first instance in cases of trade secret infringement, but the indictment or petition for a summary judgement will be brought to the Intellectual Property Court's trial court of first instance.

(II) Infringement of trade secrets in violation of the National Security Act shall also be brought to the Intellectual Property Court's trial court of the second instance. However, it is still under consideration whether a National Security Act violation will be investigated and prosecuted by the Taiwan High Prosecutors Office or the Intellectual Property Branch of that Office.

Furthermore, the Supreme Court is required by paragraph 2, Article 62 of the Adjudication Act to establish a specific division or docket for intellectual property matters. In accordance with the aforesaid provisions of the National Security Act and the Adjudication Act, the Taiwan High Prosecutors Office, the Intellectual Property Branch of Taiwan High Prosecutors Office, and the Supreme Prosecutors Office, shall ensure deployment of professional manpower and specialized docket personnel and tasking assignments, to ensure expeditious planning of requisite adjustments and allocations in response to the said new provisions.

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Investigating and Prosecuting Bribery, Corruption and Public Integrity Crimes

Chiu, Chih-Hung*
Chen, Shu-Yun

I. Preface

II. Prosecutorial entities' effectiveness when dealing with corruption cases

III. Cause analysis of the reasons for low conviction rates in corruption cases

IV. Taiwan High Prosecutors Office's Current Measures to Improve Corruption Investigations' Efficiency

V. Progress and prospects

VI. Epilogue

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* The part of "Refine the calculation of conviction rates in District Prosecutor's Offices investigation and prosecution of corruption cases Statistics" was written by Prosecutor, Chen, Shu-Yun of this office in 2021; the rest was written by Prosecutor, Chiu, Chih-Hung.

I. Preface

Prosecutorial work focuses on prosecuting corruption and clarifying officials' governance, whereas Government's important policy is to run a clean and capable administration.

It is difficult for prosecutors, investigators, and other law enforcement officers to collect evidence in corruption cases for the high number of unreported crimes, the diversified criminal methods, and the complex and highly secretive structure among accomplices. Prosecutors often find it is difficult to convict after a lengthy prosecution, which have consumed a large amount of judicial resources but do not punish those who commit corruption crimes, nor effectively curb crimes. In addition, it undermines public confidence in justice. The Taiwan High Prosecutors Office shall actively address the phenomenon of low conviction rates of corruption cases, identify the reasons, take diligent actions, and thus to increase conviction rates, to effectively combat lawlessness and corruption, and to demonstrate the determination to build a clean government.

II. Prosecutorial entities' effectiveness when dealing with corruption cases

Our government has implemented the National Integrity Building Action Plan since July 2009 to carry out the UN Anti-Corruption Convention as to achieve the goal of "government with public integrity, a transparent Taiwan", to lay a solid foundation for government integrity, and to promote national competitiveness. This demonstrates the determination of government heads at all levels to govern with integrity, cements the electorates trust in public sectors' integrity and at the same time lead the private sectors to operate with integrity with joint implementation to the action plan. The eighth point of the plan's specific strategy is to amend anti-corruption laws, strengthen anti-corruption energy, and implement protection for whistleblowers. Enforcement activities closely related to the tasks of the Taiwan High Prosecutors Office and the subordinated District Prosecutors Office are as follows: To monitor the investigations of corruption offenses and to analyze the conviction rate of corruption cases. To enhance the practice of the Corruption Eradication Implementation Team of District Prosecutors' Offices by convening meeting periodically headed by the Chief Prosecutor and discuss corruption cases with Head Prosecutors or Prosecutors designated by the Chief

Prosecutor, along with Prosecutor's Investigators, clerks, staff detailed by the Director of Civil Service Ethics Office, designees from the Director of Division, Agency Against Corruption, MOJ, Director of Field Offices of the Investigation Bureau, MOJ, and Directors of Sections or Director of Maneuvering Workstation. With the Chief Prosecutor as the convener, and a Head Prosecutor or a Prosecutor as the executive secretary, the meeting can also conduct intensively when necessary to review, investigate, and close cases as soon as possible. The priority investigation targets are cases seriously jeopardizing the public integrity in government [meaning officials at the 10th civil service grade (or equivalent thereto), groups involving more than three people, or illegal gains of more than 10 million yuan] to safeguard the nation's public integrity.

Since implementation of the National Integrity Building Action Plan from July 2009, which ended in February 2022, prosecutors received 10,228 new corruption cases, among which prosecuted 4,506 cases and indicted 13,103 individuals. Amongst these, 9,767 were charged with corruption (1,295 for profiteering crime and 8,472 for Non-profiteering crimes) and 3,336 were charged with non-corruption crimes (such as forgery, fraud, etc.). The average conviction rate is 76.7%. The finally convicted for the crime of profiteering totaled 549 crimes, whereas those finally convicted for Non-profiteering crimes numbered 8,748 with final convictions for 6,649 non-corruption offenses. (see Table 1) Compared to the average conviction rate of 96% in recent years, the conviction rate of corruption cases is obviously lower.

Table 1 District Prosecutors' Offices Public Integrity Crime Case Statistics for the National Integrity Building Action Plan according to the year of indictment

Year of indictment						total	July-December, 2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
New cases accepted					case	10,228	470	894	927	893	1,102	959	845	722	667	603	654	695	679	118
Original complaints initiated					case	4,506	268	394	375	440	401	477	368	301	287	269	279	325	271	51
Defendants indicted	Total				person	13,103	734	1,208	1,060	1,118	1,300	1,648	1,082	997	703	748	805	860	692	148
	Public integrity crimes	Profiteering crimes			person	1,295	94	211	147	132	131	134	121	76	61	60	34	37	50	7
			Percentage		%	*9.9*	*12.8*	*17.5*	*13.9*	*11.8*	*10.1*	*8.1*	*11.2*	*7.6*	*8.7*	*8.0*	*4.2*	*4.3*	*7.2*	*4.7*
		Non-profiteering crimes			person	8,472	451	664	654	791	783	1,152	613	690	467	488	528	651	462	78
			Percentage		%	*64.7*	*61.4*	*55.0*	*61.7*	*70.8*	*60.2*	*69.9*	*56.7*	*68.6*	*66.1*	*65.3*	*65.5*	*76.0*	*66.8*	*66.9*
	Non-corruption crimes				person	3,336	189	333	259	195	386	362	348	231	175	200	243	172	180	63
			Percentage		%	*25.5*	*25.7*	*27.6*	*24.4*	*17.4*	*29.7*	*22.0*	*32.2*	*23.2*	*24.9*	*26.7*	*30.2*	*20.0*	*26.0*	*42.6*
Rates for guilty, not guilty, and convictions	Number of crimes (according to cause of action in the judgments)	Guilty judgement		①	Number of crim	15,946	820	1,581	1,676	1,568	1,815	2,779	1,468	1,256	542	896	859	626	60	-
		Guilty for public integrity crimes		②	Number of crim	9,297	411	789	823	988	1,010	2,032	572	662	304	603	607	459	37	-
			Profiteering crimes	③	Number of crim	549	52	106	42	53	56	16	58	38	6	32	47	42	1	-
			Non-profiteering crimes	④	Number of crim	8,748	359	683	781	935	954	2,016	514	624	298	571	560	417	36	-
		Guilty for non-corruption crimes		⑤	Number of crim	6,649	409	792	853	580	805	747	896	594	238	293	252	167	23	-
		Not guilty		⑥	Number of crim	4,843	435	629	517	610	657	778	394	370	197	147	64	45	-	-
		Guilty for public integrity crimes		⑦	Number of crim	3,102	326	393	338	420	346	479	263	229	137	101	46	24	-	-
			Profiteering crimes	⑧	Number of crim	661	62	149	116	77	59	71	44	25	27	14	8	9	-	-
			Non-profiteering crimes	⑨	Number of crim	2,441	264	244	222	343	287	408	219	204	110	87	38	15	-	-
		Guilty for public integrity crimes		⑩	Number of crim	1,741	109	236	179	190	311	299	131	141	60	46	18	21	-	-
	conviction rate	Total		①/(①+⑥)*100	%	76.7	65.3	71.5	76.4	72.0	73.4	78.1	78.8	77.2	73.3	85.9	93.1	93.3	100.0	---
		Guilty for public integrity crimes		②/(②+⑦)*100	%	75.0	55.8	66.8	70.9	70.2	74.5	80.9	68.5	74.3	68.9	85.7	93.0	95.0	100.0	---
			Profiteering crimes	③/(③+⑧)*100	%	45.4	45.6	41.6	26.6	40.8	48.7	18.4	56.9	60.3	18.2	69.6	85.5	82.4	100.0	---
			Non-profiteering crimes	④/(④+⑨)*100	%	78.2	57.6	73.7	77.9	73.2	76.9	83.2	70.1	75.4	73.0	86.8	93.6	96.5	100.0	---
		Guilty for non-corruption crimes		⑤/(⑤+⑩)*100	%	79.2	79.0	77.0	82.7	75.3	72.1	71.4	87.2	80.8	79.9	86.4	93.3	88.8	100.0	---

Note: 1. This table presents investigation and prosecutions following implementation of the National Integrity Building Action Plan, as well as judgments enforcement for each defendant, till the end of the statistical time.
2. "---" in this table means that both guilty and not guilty totals are 0, and "0.0" means that the guilty count is 0 and the not guilty count is greater than 0.
3. Juvenile criminal cases defendants whose records are deleted are not included in this table.

III. Cause analysis of the reasons for low conviction rates in corruption cases

As for the low conviction rate in corruption cases, according to the compilation of cases resulting in acquittals by courts in recent years, the reasons are as follows:

(I) It is not easy to obtain evidence

Corruption incidents are usually committed in secret, and most of those involved are "white collar" criminals with high degrees of intelligence and professionalism. In such cases, defendants usually deny the crime; there is also lacking of witnesses or disappeared or lost evidence over time. It is thus relatively difficult to unveil wrongdoings or collect evidence.

（II）The investigation was not meticulously thorough and the evidence collected was incomplete

In the cases where the court acquits the defendant, it is largely due to insufficient evidence.

（III）cognitive gap

Prosecutors and judicial police officers are unfamiliar with administrative regulations and administrative agencies practices. In addition, there is frequently a cognitive gap between law enforcement officers and civil servants about what constitutes a crime. For example, whether civil servants are acting for profit or for public convenience is a fine line to distinguish, which increase the risk to acquit defendants. What is even more unfavorable is that the elements of profiteering crime have become stricter in recent amendments and practical opinions. On November 7, 2001, Article 131 of the Criminal Code and Article 6 of the Anti-Corruption Act were amended and later promulgated. The amendment added two statutory elements as “knowingly and intentionally violate the law” and "seeks to gain illegal benefits for himself or others and gains benefits;" and amended the crime as only punishable when result could be accomplished. The amendment deleted the punishment for attempted offenses, thus excluding the application of the offense when the National Treasury profited or the individual did not gain personally. On April 22, 2009, Article 6, paragraph 4 and paragraph 6 of the Anti-Corruption Law were amended and implemented to narrow down the meaning of “legislation” to “laws, statutory orders authorized by the law, authoritative orders, the self-government statutes, the self-governance rules, the rules of the commission, or the codes regulating unspecified persons and having legal effects.” Nevertheless, the meaning of "legislation" that has legal effects for most unspecified persons is somehow abstract, and its application to individual case is unclear. In addition, the Supreme Court in its No. 222 judgement of year 2016 stated that, "interests" of the profiteering crime in the Anti-Corruption Act refers to all profit that will increase properties’ economic value which belonged to defendant himself or any third party, whether tangible or intangible, passive or active. Thus, the "illegal interests" in this case means contractors benefited from civil servants’ profiteering acts which made contractors earn the balance

of project funds that they can receive after deducting costs, taxes, and other expenses. Therefore, even when it is proven that a civil servant "has knowingly violated the law," it is still difficult to prove that anyone benefit from his act, and how much the person earned.

（IV）Judges and Prosecutors have different perception regarding elements of crimes

The elements of the crime in the Anti-corruption Act are extremely abstract, and a discrepancy between prosecutors and judges in determining the elements of the crime of corruption or the applicable law. It may result in an acquittal or change of charges. For example, Judges of the Supreme Court long have disagreements with the theories that determine the scope of civil servant's authority. They swing between statutory authority and material influence,[1] which led to uncertainty to guilty judgements in corruption cases prosecuted by the Prosecutor's Office. The controversy was deliberated by the Supreme Court through its ruling on February 26, 2020, "On the offense of accepting bribes without neglecting one's duty under Article 5 (1) (3) of the Anti-Corruption Act, it is clear that we have recognized the theory of material influence. Therefore, conduct closely related to the exercise of civil servant's authority is included." However, the ruling is not a binding decision from the Supreme Court's Grand Justices. It remains uncertain whether the courts will unanimously adopt the theory of material influence in future cases.

（V）The legal penalties are too severe, as a result judges are stricter in accepting evidence

According to statistics from the Ministry of Justice, 66% of prosecuted corruption cases are requested a minimum sentence of five years imprisonment by prosecutors, but 68%

1. According to the "material influence" theory: Accepting bribes for duty is defined as "acts that civil officials should or can conduct within the scope of their duties", and is a crime under Article 5, paragraph 1, subparagraph 3 of the Anti-Corruption Act. The extent of their duties, in addition to the particular and general obligations of civil servants, should be recognized as the scope of duties, even if they are not stated in law but are closely related to their duties. As for acts closely related to the authority of their office, include those consistent with administrative practice or recognized by custom as the act of possessing authority or de facto authority over a person's position, along with the necessary auxiliary authority arising from or in connection with the officer's legal position, when sufficient to create a certain degree of influence through direction, supervision, intervention, or solicitation to make a specific public agency or civil servant to perform or refrain from his or her duties. In recent years, Supreme Court judgments that explicitly adopted this view include: Supreme Court 2018-Taishang Tzu No. 2052, 2021-Taishang Tzu No. 932, 2018-Taishang Tzu No. 2545 Judgment.

of those convicted by the court are sentenced to only two years or less in prison. Judging from the tendency of judges to impose low penalties, some provisions of the corruption offenses seem to have the phenomenon of legal penalties are too severe for the public to accept. For example, when a civil servant submit false documents to demand untrue and small amount of postage fees from the government, he is then facing a charge with minimum punishment of seven years of imprisonment, pursuant to Article 5, paragraph 1, subparagraph 2 of the Anti-Corruption Act. The severe penalty undermines the defendant's willingness to confess and make the judges apply extremely strict standards to accepting evidence, which resulting in a low conviction rate.

（VI）Case complexity delays trials and affects the likelihood of a conviction

Corruption cases often involve complex social facts, and the indictment files usually involve a large number of witnesses, documents, and physical evidence. During trial, the defendants usually enjoy high socioeconomic status which provide them with sufficient resources to hire many lawyers as defense counsels, and to submit a large amount of defense writs. The accumulation of evidence and documents prolongs the trial time, blurs the dispute, and confuse the judge's determination. If the case delayed for over 10 years,

2. A high prosecution rate may make court and trial prosecutor overburden, and lower the conviction rate. On the other hand, a low prosecution rate may increase conviction rates, it may also cause procurators to be too strict in applying the law to the case and spare the defendant, which is not the proper role of the rule of law.

the odds of an acquittal increased day by day.

IV. Taiwan High Prosecutors Office's Current Measures to Improve Corruption Investigations' Efficiency

The prosecution rate and conviction rate are usually correlated, and it is difficult to set a reasonable standard.[2] However, the conviction rate can be effectively improved when the Prosecutor rigorously collects evidence and prudently prosecutes cases. According to the Supreme Court of Japan's 2009 Annual Statistical Report, the conviction rate in Japan reached 97.9%, whereas 88.4% for corruption cases (i.e., bribery crime under Article 197 in the Japanese Penal Code). The impression of high conviction rate is deeply embedded in the electorate, which make Prosecutors have a high level of credibility in society. This prosecutorial system has always the reputation of "distinguished prosecution," which is worthy of emulation.[3]

To increase the conviction rate for nation's corruption cases, the Taiwan High Prosecutors Office has taken the following measures under the supervision of the Supreme Prosecutors Office:

3. See Lee, Hao-sung, A Comparative Study on Increasing Corruption Case Conviction Rates - Focusing on the Japanese Legal System, Official Report from Overseas Study Trip (Official Study Travel Abroad Delegation Type: 2011 Annual Research Report on Selecting Prosecutors for Official Study Trips Abroad), November 2, 2012, p. 1.

(I) Urge the subordinated Prosecutors office of the Taiwan High Prosecutors Office to handle cases diligently and expeditiously, to follow proper legal procedures, and to strictly adhere to the secrecy of the investigation: In corruption cases, the bribery is done in secret; therefore, it is not easy to gather evidence. It is then more important to rely on prosecutors and investigative authorities to gather evidence carefully. Especially during trial, defendants and defense attorneys often magnified and examined all the procedural errors that may occur during the investigation. These are to attack the admissibility of defendant's confession, key witness's testimony, and non-testimonial evidence. If the Prosecutor's case is unsubstantiated, the guilty argument is likely to collapse and the defendant will be acquitted. Therefore, prosecutors, police officers, and investigative agencies must keep in mind that any action during investigation may be scrutinized in future trials and they must adhere to due process requirements at all times. Moreover, the principle of secrecy of the investigation not only affects the fundamental rights of the accused guaranteed by the principle of presumption of innocence in the Constitution, but also protects the privacy and reputation of the accused, the victims and other persons related thereto. It also affects the effective discovery of the truth by the prosecution and investigative bodies. If investigative secrets are leaked prematurely, accomplices involved in the case may conspire to falsify testimony or destroy or despoil evidence, which may seriously affect the collection of evidence of corruption crimes and reduce the possibility for a conviction.[4]

(II) Uphold the principle of Prosecution Hierarchical, we must strengthen the authority and responsibilities of the Chief Prosecutor to oversee case processing, strive for equal case processing standards, and prevent prosecutors from misusing or abusing their authority, so as to maintain quality handling of cases.

(III) Use team spirit to the fullest and coordinate in case handling: In corruption cases, which are complex, involving a large number of levels, and attracting the attention of

4. See items 2 and 3 of Article 12 of the Implementation Points of the Prosecutorial Organ's Anti-Corruption Work, which stipulates that procurators shall properly exercise the statutory powers governing compulsory orders. Where necessary to search for evidence or detain a criminal suspect, an arrest warrant should issue, or a search warrant and a communications surveillance warrant should apply to the court for issuance. Prosecutors shall Implement the regulations on confidentiality and non-disclosure of investigations, and safeguard dignity and the rights of criminal suspects.

the society, Prosecutors should avoid to fight alone, which may result in no back-ups, imprudence, or even procedural errors. Therefore, teamwork should be established, which centered with the Head Prosecutor. The Head Prosecutor should develop investigation direction together with the Prosecutor in charge, after the case has be assigned to the Prosecutor. When it is necessary to coordinate, the Head Prosecutor shall ask approval from the Chief Prosecutor according to "the Guidelines Governing Collaborative Case Handling among District Prosecutors Office Prosecutors". In addition, team members should take different viewpoints and perspectives in the investigation, such as those of the judge, the defense attorney(s), and the defendant(s), to present facts and legal debate opinions to attack and defend each other. They should also discuss the value of the evidence which may acquitted the defendant. If the team members are insufficient, the Chief Prosecutor may assign additional Head Prosecutors or Prosecutors to join.

(IV) Stick to facts and evidence to decide whether to prosecute or not: A Prosecutor must investigate a suspect and decide whether to prosecute based on evidence. He must not rush to prosecute under the pressure of public opinion or undue influence from the authority who transfers the case. In addition, Prosecutor is the main body of investigation, and he should actively instruct the judicial police to conduct in-depth investigation. Any incomplete investigation should be sent back or to the judicial police agency who transferred for a continuous investigation.cases.

(V) Strengthen the function of a trial prosecutor: The aforementioned delay in the trial of corruption cases affects the conviction rate. The trial prosecutor, who is the representative of the public interest, should prepare extensively and perform the role to monitor the trial and to master trial progress. If the court is moving slowly or there are problems with the evidence or legal elements of crime, a trial prosecutor should submit replenish reasons to promote trial efficiency and should prepare offer oral argument. When necessary, the Chief Prosecutor may form a special team to jointly serve these functions.

(VI) Conduct on-the-job training: Invite senior judges and prosecutors to teach the essentials in handling corruption cases, and relevant administrative authorities or experts and

scholars to give lectures to elevate professional quality. On November 12, 2020, the Taiwan High Prosecutors Office held a "Seminar on Anti-Corruption" in Conference Room 341 of the Third Judicial Building (Bo Yi Building). Prosecutors with experience in investigating corruption cases reported on topics as follows: "Opinions on the (Court of) Second Instance in Corruption Cases Investigation (including the investigation of the crime of bribery and profiteering, matters that require attention in the investigation process, issues to be considered in indictments, review for reconsideration of non-prosecution cases, and trial experiences in second instance)", "the Team Model for Investigating and Handling Corruption Cases." The exchange of experiences with participants from a pragmatic perspective in handling cases make the seminar a good result.

(VII) Conduct analysis of acquittal cases to review and modify investigative actions and gain experience: In cases where the trial court of first instance has acquitted the defendant, the District Prosecutors Office shall hold an acquittal review meeting to review and analyze the judgement, decide whether to appeal or coordinate with the appropriate authorities to supplement the evidence, and prepare an acquittal review form to submitted to the second instance prosecutors office. The Supreme Prosecutors Office also notified the Taiwan High Prosecutors Office and the District Prosecutors Office on December 15, 2020, with document of Taiwanese Tzu No. 10912001980: In order to implement the mechanism of acquittals examinations and leadership by Chief Prosecutor, the Chief Prosecutor of the first instance prosecutors office shall personally preside over the acquittal examination meeting, unless there are special circumstances. the Taiwan High Prosecutors Office, when receive acquittal review reports from District Prosecutors Office, should hold an acquittal examination meeting to consider the appropriateness of an appeal, issue examination opinions, and forward reports to the Supreme Prosecutors Office.[5] If it determines to appeal, it may coordinate with relevant authorities to add

5. For example, on December 28, 2018, the Shilin District Court acquitted defendants Weng, GinHui and Chang Tsu and other defendants in the corruption case Haoding company. The Shilin District Prosecutors Office then convened 4 "acquittal review meetings" to analyze the reasons why the Court acquitted the defendants, and discussed whether to appeal. After the Supreme Prosecutors Office twice convened its prosecutors, the Head Prosecutor of the Taiwan High Prosecutors Office, the procurator and the Chief Prosecutor of the Shilin District Prosecutors Office, the procurator in charge to adequately discuss whether to appeal the case, it was finally concluded that: Evidence collected during the investigation of this case failed to meet the burden of prove to

relevant evidence, if necessary. For corruption cases acquitted by the court of second instance, the Taiwan High Prosecutors Office should also hold a meeting to review the acquittal to decide to appeal or not; and should review and analyze the reasons of the acquittal and prepare a report to submit to the Supreme Prosecutors Office.

V. Progress and prospects

(I) Establish a database for corruption cases, to accumulate and to share experiences

Since prosecutorial bodies have always divided cases among specialized dockets, and focused on individual case investigation, they have often lacked a systematic and unified case database in the past. However, with the development of digital technology and the emergence of the concept of Big Data databases in recent years, Prosecutors work as the brain to integrate five main investigative systems: police, investigative agency, maritime police, agency against corruption, and the immigration agency. The unification is beneficial to accumulate case data, to analysis crimes, and to reserve investigative energy for similar cases in the future. For example, the report of acquittal analysis prepared by the abovementioned acquittal review meeting serves not only as a reference for appeal as to increase the conviction rate, but also for streamlining the knowledge or ability of judicial police officers in investigating corruption cases. Consequently, the Taiwan High Prosecutors Office and its subordinated District Prosecutors Office should gradually build a systematic database of corruption cases to accumulate experiences and wisdom gained from handling corruption cases in the past and to use as the foundation to guide future investigations.

(II) Studying the appropriate punishments in corruption crimes from the prosecutorial perspective

beyond a reasonable doubt. After being evaluated by the court of first instance on the basis of the prevalent stricter standards for corruption cases, along with the inherent variability and uncertainty of testimonial evidence investigations, it is uncertain whether appeal to a court of second instance could result in a new verdict of guilty on appeal. In considering prosecutors' objective duty of impartiality, and proper exercise of discretionary prosecutorial powers, the decision was made not to appeal. See the Shilin District Prosecutor's Office press release of January 21. 2019.

Some of the current penalties for corruption crimes are very severe, ranging from 5-year imprisonment to life imprisonment (Articles 4 to 7 of the Anti-Corruption Act), and are relatively heavier than foreign legislation. This reducing defendants' willingness to confess and the judge's standard to accept evidence, which adversely affects the conviction rate. For example:

1. In Japan, Article 107 of the Criminal Law states that civil servant accepts bribes shall be punished for not more than 5 years imprisonment; accepting bribes upon request shall be punished for not more than 7 years imprisonment. (There is no special law punishing civil servants for corruption crimes of.)[6]

2. In Hong Kong, Article 12 of the Prevention of Bribery Ordinance stipulates that those who owns property without clear source regulated in Article 10 shall be punished to 10 years imprisonment and a HK$1,000,000 fine. A violation of Article 5 of the Criminal Law (assist based on contract and receive bribes) and a violation of Article 6 of the Criminal Law (bribe to withdraw bid), each shall be punished for 10-year imprisonment and HK$500,000 fine.

3. In Singapore, Article 5 of the Corruption Prevention Act stipulates that those who commit bribery shall be punished for not more than 5 years imprisonment or not more than S$100,000 fine. The crime of bribing a government agency for construction work in Article 7, or bribing a member of the Parliament in Article 11 against, or bribing a government employee in Article 12, will face imprisonment for no more than 7 years or a fine of up to S$100,000.

Furthermore, the relatively severe punishment for the crime of corruption in Taiwan completely eliminates the discretionary possibility for the prosecutor; especially for minor corruption cases in the public sector, such as a recycling squad member selling the recovered items. [7] Even when the defendant confessed, the Prosecutor would have no choice but to indict the defendant and to ask the court to use its discretion to apply a

6. See Taiwan Legislative Yuan Library Research Report, Introduction to Foreign Legislation - Anti-Corruption Acts, October 2018, p. 31.

lighter sentence. It is appears to be over zealous or overreaching prosecutions. Our Office will thus cooperates with the Ministry of Justice to discuss the need to amend regulations on sentences applicable for crimes of corruption or to expand the scope of cases where the Prosecutor's discretionary deferred prosecution may apply.

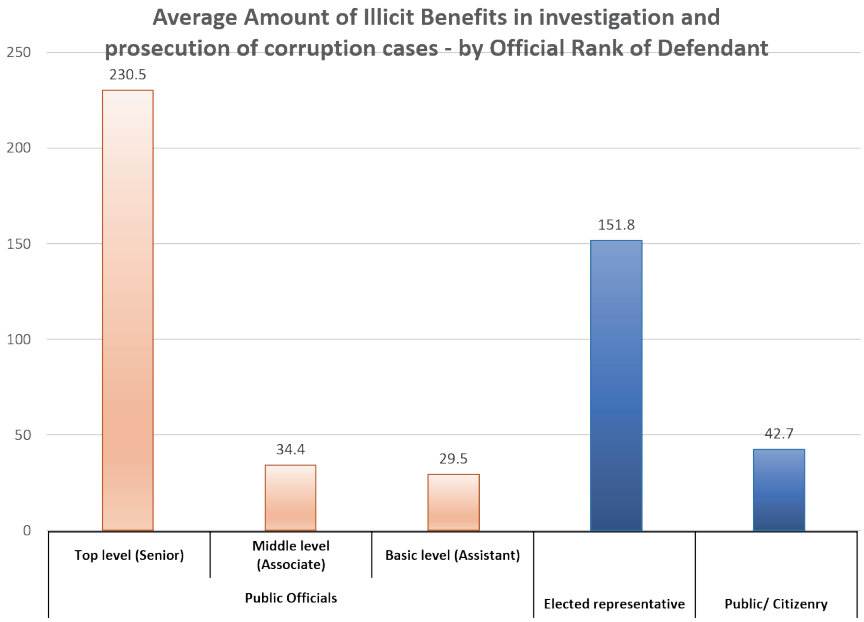
（III）Refine the calculation of conviction rates in "District Prosecutor's Offices investigation and prosecution of corruption cases Statistics"

1. Examine the feasibility of weighted calculation for conviction rates in corruption and cases by the rank of the defendant in the proceedings

In the same corruption case, the role of any defendant (perpetrator or accessory), the degree of their participation in the crime compared to co-conspirators, the degree of assistance rendered, and the amount of benefit received may all vary. The current District Prosecutor's Offices investigation and prosecution of corruption cases Statistics (National Integrity Building Action Plan) –are filed by year in statistical tables ("Corruption Case Statistics"). In corruption cases, the conviction rate is not calculated by distinguishing the nature of the defendant as determined by the court, but instead the conviction rate is calculated by the same standard, which does not faithfully represent the conviction situation and the effectiveness of the cases prosecuted by the District Prosecutor's Offices.

（1）According to the experience of most prosecutors, the criminal roles of defendants in corruption cases are usually related to their official ranks, and when the statistical offices of the District Prosecutors' Offices consider investigation and prosecution of corruption cases, they collect information on the "official ranks of defendants" and the "amount of unlawful benefits received" of such cases into the system. From the data for July 2009 through January 2020, when calculating average illegal proceeds in terms of official rank, it has been found that the higher the rank of the public officials, the higher the average illicit amount.

7. Case reports such as: Public recycling team members sentenced for corruption for handing recycled items to impoverished recyclers, October 2, 2017, in the Liberty Times, https://news.ltn.com.tw/news/society/breakingnews/2211213 (last viewed: 2021 /4/22)



（2）After calculating the conviction rates for different official positions, the weighted conviction rates were calculated based on the proportion of the average amount of unlawful benefits for each official position from July 2009 to January 2020, with the weighting of the senior civil servant as (47.2%), associate civil servant (7.0%), assistant civil servant (6.0%), elected representatives (31.0%) and public (7.0%). The weighted nationwide conviction rate after recalculation was 58.3%, a decrease of 17.0 percentage points from the unweighted rate of 75.3%. By agency, 19 District Prosecutor's Offices had lower conviction rates, with 10 of them decreasing by 30 percentage points or more.

July, 2009-January, 2020								
By agency	Unweighted conviction rate (current)						Weighted conviction rate(B)	Conviction Rate Difference (A-B)
	Total(A)	By official rank status of defendant						
		Public Officials			Elected representative	Public/ Citizenry		
		Top level	Middle level	Basic level				
	100.0%	47.2%	7.0%	6.0%	31.0%	8.7%		
Totals	**76.6**	**49.6**	**64.9**	**79.6**	**60.0**	**79.9**	**57.7**	***-18.9***
Taipei DPO	**80.5**	49.1	69.3	87.3	70.0	84.4	**61.3**	***-19.2***
Shilin DPO	**73.6**	5.7	65.9	86.0	---	72.4	**19.8**	***-53.8***
New Taipei DPO	**75.9**	86.1	60.0	80.6	58.8	81.5	**76.1**	***0.2***
Taoyuan DPO	**65.2**	45.1	60.1	58.3	60.0	76.0	**52.9**	***-12.3***
Hsinchu DPO	**73.0**	87.5	71.3	68.7	70.8	76.5	**79.6**	***6.6***
Miaoli DPO	**68.4**	22.2	46.0	75.4	50.0	79.5	**38.9**	***-29.5***
Taichung DPO	**82.6**	72.0	75.2	86.8	71.0	85.0	**74.0**	***-8.6***
Changhua DPO	**68.7**	60.8	62.9	59.9	85.4	77.1	**68.0**	***-0.7***
Nantou DPO	**70.2**	45.8	85.0	64.8	62.5	77.0	**56.7**	***-13.5***
Yunlin DPO	**65.0**	36.8	72.7	70.8	22.7	67.3	**40.8**	***-24.2***
Chiayi DPO	**69.3**	47.1	60.6	84.2	65.9	61.3	**57.0**	***-12.3***
Tainan DPO	**72.4**	51.4	48.7	82.7	42.1	72.9	**52.6**	***-19.8***
Kaohsiung DPO	**81.7**	57.3	78.3	85.0	66.0	83.6	**65.1**	***-16.6***
Ciaotou DPO	**93.8**	---	84.0	91.0	---	98.2	**20.1**	***-73.7***
Pingtung DPO	**79.6**	68.6	76.8	62.6	92.1	86.0	**75.7**	***-3.9***
Taitung DPO	**87.0**	73.7	62.2	95.6	89.3	85.9	**79.2**	***-7.8***
Hualien DPO	**83.3**	69.2	66.4	90.4	89.1	86.5	**76.8**	***-6.5***
Yilan DPO	**83.8**	12.5	45.9	84.1	100.0	91.9	**48.1**	***-35.7***
Keelung DPO	**66.0**	-	33.3	82.8	48.8	67.3	**26.0**	***-40.0***
Penghu DPO	**95.0**	100.0	93.8	97.4	100.0	91.4	**98.8**	***3.8***
Kinmen DPO	**84.4**	50.0	68.2	89.1	---	89.2	**44.1**	***-40.3***
Lienchiang DPO	**46.2**	-	50.0	-	---	100.0	**9.4**	***-36.8***

（3）In summary, although the above trial calculation shows that the current weighted conviction rate of corruption cases by prosecuting the defendant has reduced the conviction rate. However, it can truly reflect the effectiveness of the District Prosecutor's Office in prosecuting corruption crimes. When the conviction rate of corruption cases are thus presented differently, it enhances the efficiency of the investigation of corruption cases.

2. The "District Prosecutor's Offices investigation and prosecution of corruption cases Statistics" should faithfully present the case conviction rate for "cases instituted for corruption and with charges subsequently changed by the court, sua sponte, to final verdicts of guilty as non-corruption cases"

According to the current statistical method, it is not possible to demonstrate with fidelity how many investigation and prosecution of corruption cases that have been convicted by the court are "cases instituted for corruption and with charges subsequently changed by the court, sua sponte, to final verdicts of guilty as non-corruption cases"? In order to accurately determine the rate of convictions for charges of corruption that are confirmed by a final verdict of corruption crimes, the following statistical methods should be examined:

（1）Broadly speaking, statistics means the collection, organization, analysis and interpretation of data. Their purpose is to provide administrators with the information they need to make effective decisions, so that they can make more correct and reasonable decision-making, and significantly reduce the uncertainty of the results. Hence, the purpose of statistics is to transform a large amount of data into useful information. The accuracy, usability, and referential value of statistical data depends on the accuracy of the data used as the population. A population, or the study subjects, is a group of individuals or things with certain common characteristics. Each group usually contains a variety of characteristics, and can be classified to one parent according to one characteristic or to another parent according to another characteristic. Accordingly, the current Corruption Crime Statistical Report is designed to track the number of prosecutions and convictions of "corruption cases", and to calculate the conviction rate for "convictions of corruption crimes" and "convictions of non-corruption crimes", respectively. However, since the statistical report is designed for cases of corruption, it should accurately reflect the number of persons prosecuted for corruption, the number of convictions and acquittals for corruption, and the conviction rate. Such a precise reflection involves accuracy and precision in the selection of the parent for the statistical report of corruption cases.

（2）For "cases instituted for corruption and with charges subsequently changed by the court, sua sponte, to final verdicts of guilty as non-corruption cases", the current statistical report of corruption cases includes them as "instituted as corruption crimes but convicted for a crime other than corruption " and the conviction rate is calculated as "a conviction for a crime other than corruption ". However, in terms of the fundaments of "cases instituted for corruption and with charges subsequently changed by the court, sua sponte, to final verdicts of guilty as non-corruption cases", the conviction of non-corruption was determined by a change in the charges applied in the proceedings by the Court. When the case is already no longer a case of corruption, then there is indeed some doubt as to whether the case should be included in the parent of the statistical report for corruption cases. The inclusion of these cases in the statistical report of corruption cases is bound to give rise to the problem of distortion of the statistical report of corruption cases in terms of the number of new cases, the number of prosecutions, and the number of convictions and acquittals. Similarly, the same problem arises in "cases instituted for corruption and the court, does not express an opinion sua sponte, due to guilt of a duplicative corollary offense, to final verdicts of guilty as non-corruption cases". If the conviction of a charge of corruption or official malfeasance is to be controlled as a whole, then "cases instituted for corruption and with charges subsequently changed by the court, sua sponte, to final verdicts of guilty as non-corruption cases" and "cases instituted for corruption and the court, does not express an opinion sua sponte, due to guilt of a duplicative corollary offense, to final verdicts of guilty as non-corruption cases", can be respectively explicated by a footnote.

（3）The above proposal to exclude from the parent those "cases instituted for corruption and with charges subsequently changed by the court, sua sponte, to final verdicts of guilty as non-corruption cases" and "cases instituted for corruption and the court, does not express an opinion sua sponte, due to guilt of a duplicative corollary offense, to final verdicts of guilty as non-corruption cases" from the statistical report of corruption cases, is solely to ensure the statistical report of corruption cases is consistent with its name, and to accurately reflect the number of persons and cases

prosecuted for corruption, the number of convictions and acquittals for corruption, and the conviction rate, without regard to the calculation of the prosecutor's case record maintenance rate. Or, the problem of delimiting the parent in the statistical report of corruption cases should be delinked from the calculation of the prosecutor's case maintenance rate. For "cases instituted for corruption and with charges subsequently changed by the court, sua sponte, to final verdicts of guilty as non-corruption cases" and "cases instituted for corruption and the court, does not express an opinion sua sponte, due to guilt of a duplicative corollary offense, to final verdicts of guilty as non-corruption cases", in the calculation of the prosecutor's record maintenance rate, for the sake of fairness, the current system for calculating the maintenance rate is maintained in the same manner as for the general conviction rate in criminal cases.

（4）However, in terms of current statistical practice, the same defendant may have multiple case numbers (and the facts of the crime may be the same or different), and the associated cases are often quite complicated. The court's decision, due to appeals, is often based on the same case number and the same defendant's different charges are finally determined at different times. Therefore, it is not feasible to use the merge method to directly identify cases in which the court has changed the charges, but only to use the merge method to first identify those against whom proceedings were instituted for corruption but who have instead been convicted of non-corruption, and then manually read the ruling case by case to identify them. However, this method is time-consuming and may not be effective, so we need to further study a more streamlined method that can accurately interpret such cases.

（IV）"Administrative anti-corruption" and "judicial anti-corruption" complement each other in combining the Agencies against Corruption

When corruption occurs, it is frequently accompanied by legal infractions, abuses of administrative discretion, or other forms of negligence, all of which can be detected in advance by agencies against corruption. There were 1,156 agencies against corruption and 2,981 inspectors in central and local governments (including business institutions)

as of December 2017. Government organizations, including the Presidential Office, the Executive Yuan, the Judicial Yuan, the Examination Yuan, the Supervisory Yuan, and their subordinate ministries, have agencies against corruption. Municipalities and counties, including Taipei City, New Taipei City, Taoyuan City, Taichung City, Tainan City, and Kaohsiung City, also have agencies against corruption. These agencies against corruption are equal to legal system, which has approximately 3,000 interfaces across all public sectors. If these agencies can notify the prosecutor's office as soon as possible about corruption information and the prosecutors thereby can intervene to collect evidence at the earliest moment, which should be able to effectively break through the blind spots in evidence collection and improve the conviction rates.

VI. Epilogue

The Taiwan High Prosecutors Office and its subordinated prosecutorial organs have never stopped fighting against corruption or working to prevent fraud. Previously, anti-corruption efforts needed to be reviewed and improved. On the one hand, the Taiwan High Court Prosecutors Office has implemented policies and measures requiring colleagues in case investigations to focus on the legality of the procedure, the proper purpose, the successful process, and the correct result in order to achieve the goal of "streamlined investigation". It is anticipated that this will reduce disputes, enhance conviction rates, and aid in the eradication of corruption. On the other hand, the Taiwan High Prosecutors Office continue to discuss the creation of a crime database, study statistical methods in conviction rates, and pursue amendment suggestions in regulations from the perspective of investigation; so as to improve investigation efficiency in corruption cases, and ensure civil servants will not “dare to be greedy, engage in corruption, seek corruption, or need to corrupt.” In so doing, we seek to create a clean and effective government, thereby enhancing Taiwan’s national competitiveness and international image.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