

Money-laundering bill has no teeth

Written by Carol Lin 林曉芳

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Earlier this year, Mega International Commercial Bank's New York branch was punished with a fine of US\$180 million by the US Department of Financial Services for breaching the US Bank Secrecy Act and money-laundering laws. The news shocked the nation.

Taiwan's Money Laundering Control Act (洗钱防制法) lags far behind international standards: It does not punish unsuccessful attempts at money laundering, touch on criminal liability of legal entities, its regulations on financial inspection and law enforcement are incomplete, penalties for violations are mild and reporting obligations are low. In addition, confiscation powers are inadequate, making it impossible to completely seize illegal profits.

Because of this gap in the regulations, the nation's financial sector stumbled badly at the starting line of financial competition in the international community, showing that an immediate amendment to the act is necessary.

Besides, the Asia-Pacific Group on Money Laundering (APG) is to conduct an evaluation in Taiwan in 2018. If Taiwan does not pass the evaluation, it would be listed as a high-risk area for money laundering, and such an outcome would have serious consequences for trade and capital, the financial sectors and foreign affairs.

Although Taiwan is a founding member of APG, the nation has failed to keep up with the times and it has been on the group's watch list since an evaluation in 2007.

Taiwan has also joined the Financial Action Task Force (FATF) on money laundering on the basis of its APG membership. With 37 members and nine international organizations, including the APG, the FATF is the world's most important and largest network against money laundering.

The FATF in 2012 announced that it would end Turkey's membership of the organization if it were unable to strengthen its legislation against money laundering and terror financing. The announcement forced Turkey to promptly pass the Act on the Prevention of the Financing of Terrorism to keep its membership.

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If Taiwan does not pass the 2018 evaluation, it would not only hurt the willingness of foreign banks to work with their Taiwanese counterparts, it would also hurt the willingness of foreign companies to invest in the nation. It could also mean that the FATF would end Taiwan's membership.

Although the Legislative Yuan is trying to catch up by amending the act, the legislation has been delayed due to a controversy over the confiscation of property.

Instead of stipulating a US civil confiscation model, articles 15 and 18 of the draft amendment to the act adopt a German-Austrian model, stating that if prosecutors obtain sufficient evidence to prove that there is a connection between an offender's property and money laundering, that property could be seized if the accused is unable to clarify the source of the property.

If the offender is found guilty of money laundering in a criminal trial, the property can then be confiscated.

Also, if prosecutors obtain sufficient evidence to prove that an offender's property is acquired through other illegal conduct, the property can be seized if the offender is unable to clarify the source of the property.

Compared with the civil confiscation procedures of the US rules against money laundering, the regulations proposed in Taiwan's draft bill are limited.

The US law sees illegal profits resulting from money laundering as illegal objects. Regardless of whether money laundering was carried out, confiscation can still be implemented.

The burden of proof, which says that "there must be sufficient fact to recognize" that money laundering has taken place, is also greater than the judge's discretion to evaluate evidence in the US civil confiscation procedure.

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According to the proposed amendment, even if a Taiwanese prosecutor meets the burden of proof, the offender's property would not be seized if the offender can provide a reasonable explanation for the source of that property.

It is clear that Taiwan's confiscation rules are weaker than the rules in the US and other nations. Also, the draft bill fails to address the liability of financial institutions as legal entities.

As for violations of reporting obligations, these are defined as administrative misconduct in the draft bill and the fines are far too low compared with international standards.

Take Singapore for example: Several years ago, it classified not reporting violations as a criminal offense.

It is questionable if this nation's draft bill would be enough to meet the APG's evaluation criteria.

Taiwan cannot afford the risk of another huge fine or to be labeled as a high-risk nation for money laundering. Hopefully, the draft bill will be passed soon to allow the nation to build a healthy legal system that fights money laundering in line with international standards.

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Translated by Eddy Chang

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