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# Prosecutors and International Economic and Trade Legal Affairs

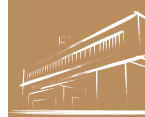
Lin Liang-Jung

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## I. Foreword

As we know, prosecutors are on behalf of the country to prosecute the defendants and in charge of criminal cases. In fact, being a national lawyer, there have been few prosecutors dealing with international economic and trade affairs for a long time. In particular, since Taiwan has become the 144th member of WTO on Jan.1, 2002, international economic and trade affairs in every industry have increased. So have the demand to international economic and trade legal profession. Taiwan is an economy highly dependent on international trade for its growth. The Office of Trade Negotiations was formerly established under the Ministry of Economic Affairs (MOEA) on Mar. 3, 2007 to participate in and push for multilateral and bilateral trade negotiations. It was reorganized to Office of Trade Negotiations, Executive Yuan in September, 2016. After the Office was set up, two prosecutors was sent to the Office on secondment from the Ministry of Justice in charge of international economic and trade legal affairs. It turn over a new leaf to second prosecutors for implementing international economic and trade legal affairs and for comprehensively participating trade negotiations and dispute settlement.<sup>2</sup>





## II. International economic and trade affairs are bound up with law

Our country was the original contracting party of General Agreement on Tariffs and Trade (GATT) but withdrew for the KMT government retreatment to Taiwan. Later, with regards to long term interests, our country applied for membership of GATT in the name of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Jan.1,1990. From GATT to acced to the WTO, it's the most enormous and complicated negotiation, and it also took the most time since the beginning of history.

International trade norms are values and codes of conduct negotiated between countries that are willing to comply with each other. Joining international organizations in line with international standards, in the scope of international trade is to make our trade regulations and conduct in compliance with WTO agreements. Therefore, any part of the negotiations, whether tariff concessions or trade rules, involve mastery of substantive

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- 1.The author of this article is one of the two second prosecutors. Her experience is as follows: the prosecutor of Taipei District Prosecutors Office, Yunlin District Prosecutors Office, Taoyuan District Prosecutors Office; prosecutor of Special Investigation Unit on Military Procurement Corruption, Supreme Prosecutors' Office, Taiwan; visiting scholar of Yale Law School, USA; legal advisor of Office of Trade Negotiations, the Ministry of Economic Affairs, Taiwan (The author of this article is one of the two second prosecutors. Her experience is as follows: the prosecutor of Taipei District Prosecutors Office, Yunlin District Prosecutors Office, Taoyuan District Prosecutors Office; prosecutor of Special Investigation Unit on Military Procurement Corruption, Supreme Prosecutors' Office, Taiwan; visiting scholar of Yale Law School, USA; legal advisor of Office of Trade Negotiations, the Ministry of Economic Affairs, Taiwan (2007.8.29-2010.6.29) ; Junior Counsel of Advisory Centre on WTO Law; director of The Prosecutors Association, ROC; member of International Association of Prosecutors(IAP); lecturer of Academy for the Judiciary, the Ministry of Justice, Taiwan; attorney at Law, New York State, USA; attorney at Law, Taiwan; Senior Advisor of National Security Council, Taiwan. Now she is Chairperson of Coordination Council for North American Affairs.) ; Junior Counsel of Advisory Centre on WTO Law; director of The Prosecutors Association, ROC; member of International Association of Prosecutors(IAP); lecturer of Academy for the Judiciary, the Ministry of Justice, Taiwan; attorney at Law, New York State, USA; attorney at Law, Taiwan; Senior Advisor of National Security Council, Taiwan. Now she is Chairperson of Coordination Council for North American Affairs.
  - 2.The history of prosecutors dealing with international economic and trade affairs before December,2007can refer to Chen Wen-Chi, new role of prosecutors in the international world in Cross-Age Justice 295-333 ( Ministry of Justice, May 2008).



issues (industry, agriculture, service) and industrial conditions, as well as the understanding of relevant domestic regulations, WTO agreements, content and even other member's domestic regulations and GATT historical documents, these are the most basic preparations. As for the negotiating position of a specific issue, it must be based on a comprehensive understanding, and

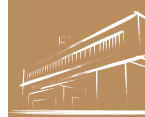
be considered and decided after communicating with the industry, relevant ministries, and the public to confirm the legality. Regardless of the preparation of the negotiations in advance, the communication with the industry, the people and relevant agencies, the drafting of the draft position, the exchange of transactions in the negotiations, the revision of the draft provisions in accordance with the results of the negotiations, from the beginning to the end, from the preparation before the start of negotiations to the end of the negotiations, it is necessary to accurately understand and apply the law in each stage. If the law is the language for constructing international economic and trade relations, it is not an exaggeration.

### **III. Office of Trade Negotiations of the Ministry of Economic Affairs has established a legal team**

In view of the fact that economic and trade is no longer a simple issue, even involving the diplomatic strategy of each country and the national economic security layout, those who have participated in the longest, largest and most complicated membership negotiations of GATT and the WTO in history, and those who have contacted with other countries, thought there should be a dedicated negotiating team. After years of brewing, the government finally established the "Office of Trade Negotiations of the Ministry of Economic Affairs" on March 30, 2007, which is responsible for integrating foreign economic and trade policies and resources and acting as actual negotiators<sup>3</sup>.

Deng Zhenzhong, the first general negotiator of Office of Trade Negotiations of the Ministry of Economic Affairs, and Chen Zhengyi, the negotiator of the legal issues, all have





a master's degree in law. Both and the deputy general negotiators, Yang Zhenni, are from the special expatriate commercial staff of the Ministry of Economic Affairs, and have actually experienced our membership negotiations, met the legal capabilities and operational methods of other countries' negotiating teams, and sent our "Resident World Trade Organization Delegation". They understand the

importance of legal personnel's participation in the negotiations and know how to let the legal personnel help the negotiations. The establishment of a dedicated negotiating team and legal personnel team is a long-awaited idea, but the idea of seconding the prosecutor to the negotiating office is from the Supreme Commander - At that time, the Vice president of the Executive Yuan, Tsai, Ying-Wen, made such a suggestion to the general negotiator of Deng, and also assisted the inter-departmental coordination with the consent of the MOJ. However, the Vice president also instructed the negotiating office to cultivate economic and trade legal talents.

In August 2007, the two prosecutors were seconded to the department, plus three legal assistants in law responsible for legal issues negotiators. All members of the legal team were established. In order to enrich the energy of the legal team, International Economic and Trade Personnel Special Test (that is, the former economic personnel of the Ministry of Economic Affairs abroad) increased International Economic and Trade Law Group. The Negotiating Office also strived to open a job vacancy for international economic and trade legal counselors, and employs lawyers with domestic or foreign practice experience. In August 2007, the MOJ agreed to second the two prosecutors to the negotiating office. It was very supportive to construct national economic and legal capacity. The number of cases handled by prosecutors in various places was huge. If lack of two prosecutors, the burden on other prosecutors would be increased. The two prosecutors staggered the time of returning to office, so that the new seconded prosecutor could be inherited at the same time. The Prosecutor Zhou Huai Lian (Kelong District Prosecutors' Office), Lin Liangrong (Taipei

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3. The background of the establishment of Office of Negotiation of the Ministry of Economic Affairs can be found in Yang Guanghua, "The Formation Mechanism of Our Trade Negotiation Strategy", Yang Zhenni, "The Formation Mechanism of Our Trade Negotiation Strategy", Taiwan and WTO, the first edition of June 10, 2011, 223-233 pp, 234-241 pp.



District Prosecutors' Office), Chen Yayu (Taoyuan District Prosecutors' Office), Zhang Yinmin (Changhua District Prosecutors' Office), Huang Zhaoyang (Taipei District Prosecutors' Office), Wu Meiling (Kaohsiung District Prosecutors' Office) and Huang Zhaoyang (Taipei District Prosecutors' Office) all worked at negotiating office.. After September 2014, because of the prosecutors' heavy work. The MOJ changed to sent only one prosecutor. the Prosecutor Huang Zhizhong (New Taipei District Prosecutors' Office) and Zhang Anzhen (Taipei District Prosecutors' Office) are secondment at the negotiating office.

Generally, the construction of the legal team consists of: negotiators coordinating legal affairs (still arguing with other negotiating issues), prosecutors, lawyers (including senior lawyers with practical experience, and other younger lawyers) and legal staffs. At present, the legal team of the Economic and Trade Negotiation Office of the Executive Yuan, the former negotiator responsible for legal issues was external release. It has no suitable candidates until now. . Therefore, the general negotiator has appointed the prosecutor Zhang Anzhen to be as the head of the legal team, as well as two lawyers, two professional secretaries , two appointment legal staffs and an secondment staff of immigration agency.<sup>4</sup>

The legal team of the entire country's economic and trade, in addition to the negotiating office, the Permanent Mission of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu to the World Trade Organization hired a lawyer to handle the WTO legal affairs. In addition , the International Department of Legal Affairs and the Cross - Straits Law Department of the MOJ still has some economic and trade businesses , mainly assisting various ministries in economic and trade related legal issues .

## IV. Business of international economic and trade laws

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4. information from OTN, April 27, 2019.

5. check WTO website · Dispute Settlement: The Disputes/ Disputes by Member · [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm), checked on April 28, 2019.

6. DS377: European Communities and its Member States — Tariff Treatment of Certain Information Technology Products, [https://www.wto.org/english/tratop\\_e/cases\\_e/ds377\\_e.htm](https://www.wto.org/english/tratop_e/cases_e/ds377_e.htm), checked on April 28, 2019





The Office of Trade Negotiations had its priorities and focal points varying by the government policies of different periods. In 2007, its legal team started with the key work of WTO related negotiations and dispute resolutions, and in 2008, the team added into the negotiations and signings of multilateral WTO government procurement agreement and some bilateral agreements, including Economic Cooperation Framework Agreement (abbreviated as ECFA), trade agreement between Taiwan and Singapore, and trade agreement between Taiwan and New Zealand; in addition, the review and revision of existing trade agreements was also included. In recent years, the government promoted the New Southbound Policy, and expected to deepen the trade relationship with the South Asia countries, Association of Southeast Asian Nations, New Zealand and Australia. Consequently, the legal affairs involved the study of laws of every relating country in the aspects of trade, investment, dispute resolution.

So far, in the aspect of WTO dispute resolutions, the number of cases that Taiwan participated in, as the third party, was one hundred and twenty. In these cases, Taiwan proposed opinions for the issues it concerned about, took the opportunities to observe the practices of the two parties involved, and rehearsed itself to get acquainted with the procedures. The number of cases that Taiwan acted as the plaintiff was six; the first two cases of them were still in the stage of consultation and did not enter the stage of trial yet. In 2008, after the foundation of the Office of Trade Negotiations, Taiwan, together with Japan and US, filed a lawsuit against EU on the issue that EU did not grant zero tariff to the products in accordance with Information Technology Agreement. In 2014, Taiwan filed a lawsuit against Canada on the issue that Canada imposed anti-dumping duties on Taiwanese products. In 2015, Taiwan filed a lawsuit against Indonesia on the issue that Indonesia took defensive measures against the flat-rolled products of iron or non-alloy steel, of clad. Taiwan won the the aforementioned cases against EU, Canada, and Indonesia, so WTO requested

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7.DS482: Canada — Anti-Dumping Measures on Imports of Certain Carbon Steel Welded Pipe from The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu · [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds482\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds482_e.htm) · checked on April 28, 2019

8.DS490: Indonesia — Safeguard on Certain Iron or Steel Products · [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds490\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds490_e.htm) · checked on April 28, 2019

these defendants to amend their measures that violated the WTO agreement. Thus, Taiwan safeguarded its economic and trade interests. As to the issue that India imposed anti-dumping duties on the USB disks from Taiwan, Taiwan had already proposed a counseling, according to the mechanism of dispute settlement of WTO, and the case was still in progress.<sup>9</sup>

## **V. Challenges for prosecutors dealing business of international economic and trade**

When a prosecutor transferred his position to become a member of an administrative team and to deal law business of international economic and trade, it was a brand new change. The prosecutor should not only get acquainted with the economic laws and promote his English capability, especially oral express and writing ability of law papers, but also learn the diplomatic etiquette, including the unspoken rules, to act properly and decently. In addition, most of the prosecutors handle individual operations and command judicial police officers in the process of dealing with larger cases. However, as legal counsel, they must "see" and "question" the owners and customers' problems and needs, incorporate into the administrative system, comply with the administrative ethics, cooperate with negotiators on major issues or geographies and assist in cross-departmental (That is you have to put yourself in others shoes) and cross-border communication and coordination.

The planning of time is also different. The prosecutor can decide the rhythm of investigation, the destination the case and working overtime by himself. As a legal consultant, we must be customer-oriented and determine the deadline depends on the needs of the work content. We would experience the hard work of diplomats and foreign business personnel from leaving family through being on regular business trips.

We must ponder, organize and predict comprehensively from the perspective of each stakeholder from the level of national strategy and security in the process of dealing with

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9.DS498: India — Anti-Dumping Duties on USB Flash Drives from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu › [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds498\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds498_e.htm) › checked on April 28, 2019





economic and trade affairs. It's different from the duties of prosecutor which have to find out the circumstances of the incident that has occurred in the past and focus on specific cases. When it comes to industry, trade, and economic benefit, the operators, guilds, individual authorities, and governments have their own different concerns and positions domestically. And the benefits of trade, economy, politics, strategy and security are also different for each country in the international arena. The international environment, domestic factors, and various stakes may be changed in the process of negotiation, and compared with criminal investigations focusing on the discovery of established facts, economic and trade negotiations need to constantly observe current situation.

## VI. Conclusion

The government employment system in our country is mainly based on examinations and It is not easy for professionals to be transferred to public service. The salary of civil servants is relatively unattractive compared with the pay of civil society to professionals. The economic and trade legal professionals required by the government basically rely on training them yourself. In the situation of various conditions and restrictions, it's not easy to establish and maintain the team of economic and trade affairs. It seemingly disadvantageous for detrimental to the retention and inheritance of institutional experience because it may be in just a few short years for the prosecutors were sent to the Office of Trade Negotiations and the proficient lawyers at home and abroad were hired as the legal counsel. But the prosecutors and lawyers with practical experience usually become skilled and provide legal services for economic and trade affairs, negotiations and litigation through a learning curve after joining the team of economic and trade affairs. It's a process of making contributions and learning that they could teach their accumulated experience to young colleagues in the process of team work. Relatively speaking, prosecutors return to original work positions with different visions, thinking models and international affairs experience could inject new international elements into the prosecutorial community and add to the energy of prosecutors in response to globalization and internationalization.

# Prosecutors Taking On International Trade Negotiation Challenges

Huang Jaw-Yang

- I. Prosecutor as government attorney and trade negotiator
- II. Negotiating and concluding trade agreements and the challenges
- III. Negotiating and signing bilateral investment agreement and the challenges
- IV. Conducting WTO dispute settlement litigation and its challenges
- V. Concluding remarks

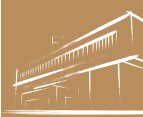
## I. Prosecutor as government attorney and trade negotiator

Taiwan acceded to the World Trade Organization (WTO) on January 1, 2002. In March 2007, the Government founded the Office of Trade Negotiations (OTN) – a specialized task force to respond to the rapidly-growing volume of trade-related affairs. A Chief Negotiator and two Deputy Chief Negotiators lead a team of senior trade officials in all agricultural, industrial, and services negotiations. One negotiator supervises the office's legal team, which during my secondment from 2012 to 2014, included two seconded prosecutors, two lawyers (one Taiwan-licensed, the other US-licensed), two economic secretaries with law degrees, and other paralegal and assistants.

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1. Under Taiwan's system, public officials serving in the executive agencies take respective national exams that are separate from the bar/judicial exam. Thus, bar-licensed lawyers are generally not public servants. Conversely, very few public officials also hold bar certifications. Prosecutors and judges – who are required to pass the judicial exam that also grants the bar license – are the exceptions.





In Taiwan, prosecutors have dual credentials as both a licensed lawyer and a public official<sup>1</sup>. This duality makes prosecutors ideal for serving in the Office of Trade Negotiations. Most Taiwan prosecutors, however, handle only domestic criminal cases until their retirement. They are neither required to be an expert on treaty law or foreign affairs, nor be skilled at commanding legal English. Trade negotiations demand all these skills as well as other disciplines such as teamwork. In many of these aspects I started from zero. Even to this day I am constantly thinking about how prosecutors can serve as effective government lawyers in a trade negotiations team to achieve the maximum result for the country.

The Chinese translation for “Trade Negotiator” is “Negotiations Representative”, which implies that whoever holds this role is authorized to represent the government. OTN prosecutors become authorized when he or she is assigned to perform a particular negotiations task. When in multilateral or bilateral meetings, or even when sitting at desk sending emails, prosecutors acting as negotiator shall be aware of any possible effects their expression would generate according to international law. For example, Section 32 of the Vienna Convention on the Law of Treaties (VCLT) includes preparatory work of the treaty and the circumstances of its conclusion as supplementary means of (treaty) interpretation<sup>2</sup>. Prosecutors acting as negotiator, therefore, should always ensure that any state action they are proposing or formulating shall be proper, lawful and bring out long-term economic and diplomatic benefits for their country. In contrast, prosecutors attending academic seminars without such legal nature can feel free to express their own opinions.

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2. For example, upon conclusion of a trade agreement with a trading partner, the other side’s lawyer proposed a meeting hopefully to confirm that both sides agree that a new legislation of the other side would not contradict the concluded agreement. Our side shall be aware, when responding to the other side, not to quickly offer any consent without due consideration in case that any related dispute will arise in the future.

## II. Negotiating and concluding trade agreements and the challenges

International politics often impact domestic trade policy. During the sixteen years before U.S. President Trump's administration, economic integration accelerated in the form of regional free trade agreements. Taiwan has also participated in this trend. From 2003 to 2007, we signed several trade pacts with our diplomatic allies in South America. In 2010, we concluded the Economic Cooperation Framework Agreement (ECFA) with China. In 2013, we concluded free trade agreements with two trading partners, New Zealand and Singapore, both with whom we have no diplomatic ties. Free trade agreement covers a wide range of topics and liberalizes markets that are outside of the traditional WTO framework. To a large extent domestic laws must be amended in order to conform to new international commitments. Negotiating parties either promise to adjust their domestic laws to higher international standards or persuade the other parties to lower their ambition to maintain existing laws. Negotiators must understand and manage all competing stakeholders and interests; they must consult internally and externally, back and forth, to explore room and space for any possible consensus. Lawyers should precisely locate the parties' different starting positions and gradually bring the parties closer to consensus through effecting proper and effective legal terms.

There is no legally right or wrong answer on formulating a negotiation position. It is a matter of national interest and strong will. The more certain we know what we want, the more prepared and focused we will be. Trade negotiation often involves diplomatic or political (non-trade) factors. It requires cross-sector consultations. Sometimes we face a unique situation that has no precedent for reference in international law. The negotiations team then depends on lawyers to propose creative solutions for both sides' assessment or compromise.



Prosecutor as negotiator can also preside over a certain negotiation depending on the subject matter. First, if the subject is purely legal, such as the transparency and dispute settlement chapters of a FTA, the prosecutor in the office has large discretion over formulating the government's position. Second, if the subject relates to a treaty's general and final provisions or institutional matters that also involve the Ministry of Foreign Affairs, the prosecutors can also present the government positions after consulting with the relevant agencies. Third, when the subject of negotiation covers market access and technical regulations in sectors such as in telecom, financial or transportation services, the prosecutor serving as negotiator can sometimes take lead in consulting widely with the cross-sector stakeholders to ensure their core interests are reflected in the final legal mechanism.

As a team member, a lawyer cannot simply act on his or her expertise. No matter how professional or confident we are in certain subject issues, we must always follow formal decision-making procedures in a prudent manner. There were times we were sleepless when we were translating agencies' proposals into treaty texts in the Annex of non-conforming measures (prescribing exception to treaty obligation), because agencies only illustrated existing laws and did not provide clear policy mandate. We were afraid by simply copy-and-pasting existing laws, we would fail to demand more policy space of our side and eventually "leave cash on the negotiation table" and not achieve the maximum outcome.

### **III. Negotiating and signing bilateral investment agreement and the challenges**

Due to Taiwan's impressive outbound investment, especially in Southeast Asia, another important subject of trade negotiations is the negotiation of bilateral investment agreements (BIA). From 1990s on, Taiwan respectively entered BIAs with



Vietnam, Thailand, Indonesia and India. With increasing regional integration such as the Association of Southeast Asian Nations (ASEAN), Taiwan felt a strong need to upgrade or establish new investment regimes with Southeast Asia to secure and boost bilateral business prosperity. BIA, usually a chapter in a free trade agreement, can also be singled out as top priority for regional trade promotion.

BIA contains various legal guarantees including non-discrimination, fair and equitable treatment, compensation for expropriation, free transfer of capital, limitation of performance requirements, and the investor-state-dispute settlement provisions. BIA is designed to protect one party's outbound investment in the other party's territory. Because many provisions are of legal and judicial nature, seconded prosecutors are always tasked with promoting and negotiating BIAs with our major trading partners.

To promote new BIAs, we first draft statements of feasibility and mutual benefits to incentivize our trade partners to proceed. In the meantime, we collect and identify needs of our investors in their investment territories to better identify areas of concerns and resolutions. We research treaty procedures of our trading partners and their domestic laws related to investment and business operations. We also provide our laws to them and answer any legal questions about Taiwan's treaty formation and procedures. These tasks require collecting sufficient information and local knowledge through various channels.

Through such promotion of bilateral relationship, prosecutors have entered the frontlines of the nation's trade and diplomatic policies. Instead of questioning whether such work belong to traditional lawyers or prosecutors, I would argue that these assignments are best-suited to develop a lawyer's command of the law. The law is a useful tool to promote and negotiate a better future. I believe that practicing or

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3. For example, the anti-China violent protests occurred in Vietnam in 2014 caused damage to many local Taiwanese investors. While our legal analysis showed that we had a good chance of winning in international investment arbitration, due to other considerations, the government and investors decided not to recourse to formal international investment arbitration.




applying laws in different contexts will enrich and deepen our understanding of the law and eventually strengthen our legal skills.

## IV. Conducting WTO dispute settlement litigation and its challenges

In 2014, Taiwan challenged Canada's antidumping measures imposed on Taiwanese steel companies in WTO's dispute settlement system. This was the first time Taiwan litigated a case in the WTO as a sole complainant. I participated in the consultations stage, which is designed under WTO rules for disputing parties to either reach an early settlement or perform facts finding and legal verification for the subsequent panel phase. As the complainant, we must discover sufficient facts and identify the correct laws in order to better evaluate our litigation position. Applied to the Canadian case, we collected information about the operation of anti-dumping measures and Canada's legal basis on which it imposed anti-dumping duties on our companies. We obtained information about Canada's legal position and arguments under relevant WTO agreements. We reviewed Canada's speeches on WTO conferences and other bilateral meetings. We collected industry evidence and searched Canadian laws and practices. We discussed WTO case law with domestic and foreign lawyers in this field, including the Advisory Centre on WTO law. Through intense preparation we anticipated every scenario and drafted our submission.

Whether the government should bring an WTO lawsuit against our trading partners is not purely legal question. The final decision must take into consideration politics, diplomatic relation, economic policies and industrial interests. It is not about simply winning a lawsuit. It is about achieving the greatest overall benefit among interested parties in the long run<sup>3</sup>.



Prosecutors participating in the WTO litigation process will compare and learn how foreign lawyers provide relevant international legal services, how foreign governments conduct litigation, what procedures are required to formulate our international litigation decisions, and how to obtain evidence and key information concerning different jurisdictions. Reading and discussing WTO law or international case law enables us to better understand international litigation jurisprudence and its legal methodology. All these experiences enhance the quality of our trade negotiations, as well as our work in the traditional domestic prosecution capacity.

## **V. Concluding remarks**

Prosecutors seconded to the OTN have participated in multilateral and bilateral trade negotiations, treaty making, potential trade disputes management and international litigation. Through this work we will not only learn international law and foreign affairs, but also effective communication, team work, administrative skills and leadership. This learning-by-doing experience is helpful to future prosecution work and public interest initiatives as well as judicial internationalization. The secondment project also benefits the Justice Department by creating synergies with various other agencies in the Executive Branch. I am grateful for such a rewarding experience during my secondment to OTN and continue to share that love and passion with as many of my colleagues as possible.



# The Department's management of the Financial Supervisory Commission (hereinafter referred to as FSC)

Huang Yu-Jen  
Chang Wen-Cha

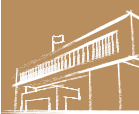
- I. Foreword
- II. Present Circumstances
- III. Achievements

## I. Foreword

In May 2005, the Ministry of Justice (hereinafter referred to as MOJ) established a joint action mechanism for combating financial crimes with the FSC. The Procurator's Office, FSC is established. The MOJ sent the prosecutors who are senior, high-quality, well-informed, or familiar with relevant financial regulations to FSC to concurrently handle legal affairs such as legal consultation and criminal investigation, and is assigned to the procurator of FSC.

Due to the Prosecutors' office located in the Central Government, the Department is also the center of the domestic financial economy. In the past, major financial and economic crimes had occurred in the country, such as the China Merchants Bank fraud case, the CTBC Holding fraud case, Mega Bank fraud case and Bank SinoPac fraud case had occurred within the jurisdiction of the Prosecutors' office. According to statistics, the FSC has issued a total of 190 investigations to all parts of the Prosecutors' office from January 2008 to the end of September 2018. Nearly 50% of the cases were reported to Taiwan Taipei District Prosecutors' office.

Written by Prosecutor Hunag Yu-Jen and Prosecutors Investigator Chang Wen- Chia,



Since the establishment of The Procurator's Office, FSC in May 2005, MOJ had sent the prosecutors with experience in investigating major economic and financial crimes. Since July 1, 2011, the FiSC has been assigned to obtain a senior license from the MOJ's Finance Professional Courses for the three-level license. The Prosecutors' office is strengthening the coordinating and improving the management of MOJ, the prosecution authorities and FSC. In addition to the effectiveness of the case. We also sent a prosecutor investigator who is senior, high-quality financial expertise, and assisted in major economic and financial crime cases to FSC to assist the prosecutor of FCS.

In the past years, the procurators of FSC (the term of office in brackets) were Xu Yongqin (2005.5.11-2005.7.8), Zhuang Zheng (2005.7.11-2008.8.26), Zhang Jieqin (2008.8.27-2009.10.28), Huang Shiyuan ( 2009.10.29-2010.9.28 ), Zhang Shuhua (2010.9.29-2012.10.5), Wang Xinjian (2012.10.8-2013.11.19), Zheng Disheng (2013.11.20-2014.10.9), Chen Shuyi (2014.10.13- 2016.1.28), Chen Zonghao (2016.12.8-2018.3.2), Gao Yishu (2018.3.05-2019.12.7), Huang,Yu-Ren was from 2018.12.10 until now. in the past years, the procurator investigators of FSC (the term of office in brackets) were Cai Chongxi (2005.5.11-2006.12.29), Lei Jinshu (2007.1.2-2008.12.31), Zheng Nairen (2009.1.5-2009.12.31), Wu Bingbiao (2010.1.4-2010.11.1), Tang Zhengyu (2010.11.1 -2012.11.30 ) , Yang Shici ( 2012.12.3-2013.12.24), Chen Mingzong ( 2013.12.25-2014.12.2 ), Zhong Huiqin ( 2014.12.3-2017.12.15 and agented 2018.3.1-7.6 ) , Zhang Wenjia ( 2018.12.18 until now).

## **II. Present Circumstances**

### **A. The liaison between the departments under the Ministry of Justice and the departments under the FSC**



The office of the stationed prosecutor currently located in the Financial Examination Bureau of FSC. The prosecutor investigator has to assist in processing every Tuesday, Thursday and Friday during the period of the prosecutor was quartered in the FSC. The phone line of the office of prosecutor is always kept clear in order to ensuring that there is no communication barrier between the Ministry of Justice and the FSC and dealing with emergency financial cases. The management of the FSC is extensive and complicated, and the division of labor of the FSC is distinct. The Banking bureau, the Insurance bureau, the Securities and Futures Bureau ("SFB" hereafter), and the Financial Examination Bureau under the jurisdiction of the FSC will manage different businesses individually. And the affiliated civil organizations such as the Taiwan Insurance Guaranty Fund, the Taiwan Stock Exchange Corporation ("TWSE" hereafter), and the Taipei Exchange ("TPEX" hereinafter) also provide necessary support. Besides inspection of administrative agencies, the investigation of district prosecutors offices and Investigation Bureau, Ministry of Justice play important roles when there are financial crime cases. The prosecutor of Residents shall build close relationships with the liaisons of the departments under the Ministry of Justice and the departments under the FSC in order to playing a communication liaison role between the FSC, the Ministry of Justice, Taiwan High Prosecutors Office and prosecutorial agencies when the financial crime case occurs. Drafting countermeasures for rapid change of case and public opinion and offering advice and information to the prosecutor in charge of the case for the purpose of curbing financial crime efficiently and maintaining financial stability.

## **B. The case seminars**

The departments under the FSC and the affiliated civil organizations usually found general law evasions after routinely inspecting the banks, the insurance companies, the securities firms, the exchange-listed and the OTC-listed companies. If

the undertaker knows there is a suspicion of an offense having been committed after collecting the relevant evidence, he shall report the stationed prosecutor and convene to hold a case seminar. In principle, the contractors of each bureau should make a summary of the case and draft opinions on the second day before the seminar, And submit relevant evidence to the prosecutor investigator if necessary. The prosecutor investigator will compile an analysis report to the prosecutor for reference according to the report and evidence provided by the the organizers.

The stationed prosecutor will discuss with the reporting bureau about the suspected case, provide legal opinions and request additional information in the case seminar.

If the case is suspected of criminal suspicion and should be sent to the judicial investigation, it will be

recommended to transfer it to the district prosecutors offices, Investigation Bureau, Ministry of Justice and other investigation agencies. The number and statistics of cases reported to the illegal meeting by the FSC in each year until 2018 are as follows :

Year	Case number	Number of Assistant Investigation Illegal Cases
2005	001-010	10
2006	011-047	37
2007	048-116	69
2008	117-164	48
2009	165-192	28
2010	193-215	23
2011	216-246	31
2012	247-272	26
2013	273-303	31
2014	304-340	37
2015	341-354	14
2016	355-380	26
2017	381-396	16
2018	397-429	33
Average Number of Cases Per Year		30.6





The exchange-listed and OTC-listed company illegal cases sent by SFB took up the largest proportion in the reporting unit of illegal meeting cases. For example, in 2018, among the 33 illegal cases, the number of cases reported by the SFB is 24, the Insurance Bureau has 7 cases and the Financial Examination Bureau has 2 cases. The cases sent by the SFB were mainly false financial reports, abnormal transactions, special breach of trust, stock speculation and insider trading. In order to avoid news leakage leading to vulture speculation, before the reporting of FSC, the resident prosecutor will contact the prosecutors office in the jurisdiction or the contact person of the Economic Crime Prevention Office of the Investigation Bureau of the Ministry of Justice in advance, and then the FSC will report the case to investigate with confidential documents to ensure the confidentiality of the case.

### **C. Handling assistance matters from the procuratorial agencies of the Ministry of Justice**

In order to strengthen the interaction and coordination between the Ministry of Justice and its affiliated prosecuting agencies and the FSC, according to the third point of the Ministry of Justice's dispatch of prosecutors to the Financial Supervisory Committee of the Executive Yuan to do joint business, when the prosecuting agencies of the Ministry of Justice investigate the financial crime cases, they can use the resident prosecutor as the contact person and request the resident prosecutor to coordinate with the FSC or its affiliated agencies to provide relevant information as soon as possible or to assign relevant professionals to assist in the search of evidence. In addition, according to the " FSC and the prosecuting and investigatory agencies strengthen liaison with handling the financial institution responsible person involving

major illegal cases reference principle "passes by the Ministry of Justice and the FSC's work contact meeting, after the case is sent to be investigated by prosecutor or investigator, they can contact the undertaking procurator through the resident procurator and the relevant business bureau of the FSC to exchange information and coordinate with the case, or the FSC may assign staff to assist in the analysis of the financial and accounting information collected by the prosecuting or investigatory agencies, or to provide the auditors' report of the liquidity. In the cases proactively investigated by the prosecuting or investigatory agencies, the undertaking prosecutor may also exchange information and discuss the case with the various bureaus depending on the needs of the case through the resident prosecutor's contact mechanism, and through the supervision authority of the FSC to go to the relevant companies to conduct a project auditing or a liquidity check. At present, when the resident prosecutor's office met the aforementioned matters requested by prosecutors office, they have actively contacted the FSC for assistance. Hopefully to actively integrate the functions of both parties through the resident prosecutor mechanism and make appropriate use of financial supervision authority and criminal investigation resources, and to accelerate the time histories of investigating cases to balance fairness and justice with market stability.

#### **D. Participating in the contact meeting between the Ministry of Justice and the Financial Supervisory Commission**

For the purpose of maintaining the fairness of market and striking financial crimes, the Ministry of Justice and the Financial Supervisory Commission had hold contact meetings periodically, since 2008, to discuss, coordinate, exchange the issues relating to investigation of financial criminal cases, and other cooperative affairs. In the begining, the Ministry of Justice and the Financial Supervisory Commission took turns to hold the contact meetings every two to three month, while every half year



since 2015. So far, the meeting had been hold for 35 times. The chairman of these meetings were deputy minister of Ministry of Justice alternated with the deputy chairman of Financial Supervisory Commission; the participators of these meetings included the prosecutor and prosecutor's investigator stationed in the Financial Supervisory Commission, the leaders of each divisions subordinate to the Financial Supervisory Commission, the head of the Taiwan Stock Exchange Corporation, the head of the Taipei Exchange, and representitives of Taiwan High Prosecutors Office. Taking the 34th and 35th meetings as examples, the issues discussed at the meetings included the development of the information system for querying OBU accounts, the plan of holding seminars of anti money laundering and anti terrorism financing, procedures of claiming civil compensation in the criminal cases involving large financial or Insurance company, and procedures of seizure and confiscation conducted by bank side.

### III. Achievements

Since May 2005, the Minister of Justice chose and assigned excellent prosecutors or prosecutors investigators of Taipei District Prosecutors Office, who had abundant experience in investigation of large economic or financial criminal cases, to be stationed in the Financial Supervisory Commission. With the effort and experience of these rposecutors, Taipei District Prosecutors Office had assisted the Financial Supervisory Commission or other prosecutors offices to deal many large-scale financial criminal cases of famous companies, including cases of illegal stock speculation , cases of insider trading, cases of hollowing up companies, cases of unconventional transactions, cases of securities fraud, etc. Thus, this mechanism had no doubt achived its goal. The prosecutors stationed in the Financial Supervisory Commission would continually assist the Commission and other prosecutors offices to investigate financial criminal cases and promote the efficiency of investigation.

# Lafayette Procurement Case

Liu Yi-Ting  
Huang Sueng-Yuan

- I. Temptation of Enormous Kickbacks
- II. Turning Point of Criminal Investigation
- III. The Conviction of the Kuo Brothers
- IV. Confiscation of Wang's Proceeds of Crimes
- V. Conclusion

## I. Temptation of Enormous Kickbacks

In November 1987, The ROC Navy ("ROCN") started the process of the procurement of Patrol Craft Escort with Guided Missile frigates ("PCEG frigates"). Among all, ROCN chose Korean ULSAN frigates made by Hyundai Corporation ("Hyundai") as the most feasible objective to be implemented. Henceforth in 1989, the Ministry of National Defense ("MND") approved and instructed that the ROCN in principle continue the negotiation with the Korean party on issues of sale terms, technology transfer, contract clauses and price of the PCEG frigates procurement. Therefore ROCN had almost set the plan for purchasing Korean ULSAN frigates made by Hyundai.

Meanwhile, Li-Heng Kuo served as then Captain and Deputy Section Chief of the Integral Logistics Section in charge of large procurement projects of ROCN. Li-Heng Kuo had been in the knowledge of the "No involvement of intermediary agent of arrangements of commissions are permitted" policy by ROCN. Regardless, Li-Heng

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Written by Prosecutor Liu Yi-Ting and Prosecutors Investigator Huang Shun- Yuan.





Kuo and Chuan-Pu Wang – an arms broker – conspired with a complicit intention to obtain enormous kickbacks by assisting the French representatives – they arranged several secret meetings and leaked confidential military intelligence to the French in order to alter the PCEG procurement from Korean frigates to the French ones.

Later in June 1989, the six-member (Li-Heng Kuo included) delegation of the ROCN visited France and upon return, they recommended the MND that the French Lafayette frigates be one of the procurement back-up options. Their recommendation was later approved. On the other hand, Chuan-Pu Wang and his wife Shiu-Jun Yeh, on behalf of CATHAY Co., jointly signed a commission agreement with THOMSON-CSF (the French Lafayette frigates provider, "THOMSON"), in which CATHAY and THOMSON agreed that CATHAY be entitled to a remuneration of 15% assessed on the said procurement contract value. However, in January 1990, without prior notice, the French government suddenly informed Taiwan that the procurement contract should be ceased. Henceforth the follow-up contract negotiation process were all paused at once.

Despite this situation, ROCN and the French still discussed about this matter for several times. The French party proposed that the Lafayette frigates shall be sold by blocks built in France and then be assembled in Taiwan. ROCN agreed. In response, the remuneration percentage in the commission contract between Chuan-Pu Wang and THOMSON increased from 15% to 18% of the total value of procurement contract price.

On August 31st 1991, the contract for Lafayette frigates procurement was formally signed by CHINESE SHIPBUILDING CORPORATION and THOMSON. The total contract value was US \$2.5 billion plus any potential price-level adjustments. Once more, both parties agreed upon the "no commission clause" – as the MND had long time readdressed. Later in June 1993, the contract was again amended that frigates

be constructed and assembled wholly in France, and that the contract price was increased by FFR 1.23 billion consequently.

Meanwhile, to obtain the illicit commissions paid by the French party, Chuan-Pu Wang, Shiu-Jun Yeh and their four children – Chia-Hsing Wang, Chia-Ming Wang, Chia-Yung Wang, and Chun-Ling Wang – incorporated SPVs including EUROMAX and MIDDLEBURY, and opened several bank accounts under their names in Switzerland. On the other hand, the French duly performed their obligations according to their commission agreements with Chuan-Pu Wang, and transferred the commission to whatever Swiss bank accounts as per Chuan-Pu Wang's instructions. During the period between 1991 and September 1998, Chuan-Pu Wang obtained a total value of approximately US \$520 million from THOMSON. Some of the illicit kickbacks were subsequently transferred to Li-Heng Kuo's bank account located in Switzerland.

## **II. Turning Point of Criminal Investigation**


On December 10th 1993, the body of Captain Ching-Feng Yin, former Chief Executive Officer of the Naval Weapon Acquisition Management Office ("NAWAMO"), was found off the coast of Tung-Ao Township of Yi-Lan City. One week later, Li-Heng Kuo was suspected about his involvement in another corruption case and was detained by the ROCN. Ever since Li-Heng Kuo's detention, Chuan-Pu Wang stopped wiring the above-mentioned commission into Li-Heng Kuo's Swiss bank account. By the time of his detention, Li-Heng Kuo had obtained a total of approximately US \$17.59 million. During Li-Heng Kuo's time in detention and imprisonment afterwards, Wen-Tien Kuo (Li-Heng Kuo's older brother) served as Li-Heng Kuo's authorized signatory of the said account. Therefore Wen-Tien Kuo visited Switzerland for several times – not only to withdraw money from Li-Heng Kuo's Swiss bank account, but also to open another Swiss bank account of his own for the purpose of further laundering those illicit kickbacks for his personal use. On the other hand, Chuan-Pu Wang and Shiu-Jun Yeh, for fear that their receipt of kickbacks from THOMSON exposed, fled from



Taiwan in late December 1993. Their four children later left Taiwan in 2000 as well. Ever since, the Wang family had remained at large and never returned.

On August 1st 2000, then Prosecutor General Jen-Fa Lu established Special Investigative Unit ("SIU", later reorganized and became part of Special Investigative Division ["SID"] of Supreme Prosecutors Office in 2011). Members of SIU included Chief Prosecutor of Taiwan High Prosecutors Office and Taiwan Taipei District Prosecutors Office, prosecutors of both offices and agents of Investigative Bureau of Ministry of Justice. The sole purpose of SIU was to investigate the Lafayette procurement scandal mentioned above. Later in 2001, the press in Europe widely reported that there were suspicious transactions between bank accounts under the Wang family's name located in Switzerland, and that the Swiss authorities had augmented investigations and found that these were related to the Lafayette frigates commission. The Wang family's Swiss accounts were therefore frozen by the Swiss authorities. This became the turning point of our investigations and opened up the opportunity for Taiwan prosecutors to request for the mutual legal assistance ("MLA") from abroad.

In 2001, our Office contacted the presiding judge of this case in Switzerland and officially requested for their assistance. After long-time negotiation and coordination for four years, the Swiss authorities finally approved Taiwan's MLA request. Switzerland assisted Taiwan's investigations in terms of providing a great amount of documents collected during the Swiss investigation. Furthermore, the Swiss authorities also seized bank accounts of the Wang family and the Kuo brothers as per Taiwan's request. The total value of the amount being frozen was approximately US \$630 million at that time. After thoroughly looking into those the documents from the Swiss, SIU found that kickbacks received by the Wang family had been already widely transferred to sixteen different countries/regions. To further obtaining the evidence and freezing assets controlled by the Wang family, prosecutors sent MLA requests to countries related to the Wang family. In addition, we also dispatched prosecutors and their investigators to countries where the accounts located. We sought opportunities



to contact local authorities in charge of MLA matters and to express our hope for freezing the proceeds of crimes obtained by the Wang family. Among the sixteen countries/regions, there were six countries (including Switzerland) approved our MLA requests and provided assistance in terms of transmitting evidence and seizure. The total amount seized by the six countries was approximately US\$1 billion.

### **III. The Conviction of the Kuo Brothers**

In addition to obtaining the evidence from abroad, Taiwan prosecutors and their investigators not only looked into documents regarding ROCN's procurement procedure and local bank accounts, but also subpoenaed persons related to the procurement process. After thorough investigations, Taiwan prosecutors of our Office indicted Li-Heng Kuo, Chuan-Pu Wang, Shiu-Jun Yeh and their four children for receiving illegal kickbacks, which violated the Anti-Corruption Act of Taiwan. Wen-Tien Kuo was indicted for violating the Money Laundering Control Act.

Because the Wang family had been at large before the indictment, Taiwan Taipei District Court issued circular warrants against them on May 8th 2009. The Kuo brothers, on the other hand, were convicted on April 16th 2014 by a Supreme Court judgment, which read that (abridged) Li-Heng Kuo should be sentenced to imprisonment of fifteen years plus a fine of NTD 200 million. Wen-Tien Kuo was sentenced to imprisonment of two years plus a fine of NTD 10 million. In its judgment, the Supreme Court reaffirmed and held that Li-Heng Kuo (and Chuan-Pu Wang) were both principal offenders in terms of receiving those illegal kickbacks, and that the proceeds of crimes (amounted to more than US \$ 340 million) shall all be jointly confiscated, if all or parts of the proceeds are unable to be traced, the defendants shall be ordered to make restitution equivalent to the value of the proceeds from their own properties. The Enforcement Division of our Office had duly executed the said judgment and confiscated the Kuo brothers' assets amounted to US \$35 million (this was previously seized in Switzerland and then transferred back to our Office by the Swiss authorities under the Kuo brothers' consent in June 2007).



## IV. Confiscation of Wang's Proceeds of Crimes

The principle that “Crime Doesn’t Pay” is the core concept of the amendment to the confiscation system of the Criminal Code of Taiwan, which also serves as the most effective way to fight against economic crimes. Since 1991, Chuan-Pu Wang and Li-Heng Kuo et al. had continuously obtained enormous amounts of illegal kickbacks from the Lafayette procurement. In its judgment, the Taiwan High Court found the co-offender Li-Heng Kuo guilty of receiving illegal kickbacks, and as mentioned above, after the Kuo brothers’ appeal to the Supreme Court was overruled, this judgment was therefore finalized and binding. However, due to the fact that the co-offenders Chuan-Pu Wang et al. have remained at large and refused to stand trial in Taiwan, no confiscation decision could be issued against the proceeds of crimes with the defendants’ absence of the trial under the Criminal Code at that time. What was worse, Chuan-Pu Wang passed away in the UK on January 20th 2015, and the Court announced a judgment of Case-Not-Entertained. Although with the assistance of six countries via the MLA channels, the Taiwan prosecutors were unable to obtain a final and binding judgment to enforce and to confiscate the Wang family’s proceeds of crimes seized in those six countries.

On July 1st 2016, the newly-amended Articles of the Criminal Code with regards to the confiscation system went into force, which provided the applicable instruments for dealing with the proceeds of crimes obtained by the Wang family. On the same date, prosecutors of the SID of the Supreme Prosecutors Office applied for an independent confiscation order concerning the proceeds of crimes obtained by the Wang family and EUROMAX, SABLEMAN, and LUXMORE, BVI companies which were actually controlled by the Wang family. According to the application, the principals received was totaled as US \$480 million, and the derivative incomes accrued from the portion of the illegal kickbacks transferred to bank accounts in the six countries was approximately 490 million. After the SID of the Supreme Prosecutors Office ceased to be effective in 2017, the Taiwan Taipei Prosecutors Office took over the MLA matters





and the independent confiscation order of this case.

On July 21st 2017, the Taiwan Taipei District Court announced its decision regarding the Lafayette independent confiscation case. In the main text of the decision, the Court ordered that the proceeds of crimes in the amount of US \$900,146,887.18 and the derivative incomes accrued till the date the confiscation were ultimately carried out. Part of the prosecutor's application regarding the estimation of derivative incomes accrued was overruled because the Court found "no basis to estimate the said derivative incomes." Both the prosecutors and defense attorneys filed for appeal to the Taiwan High Court as the second instance. As the liaison office of the MLA matters in this case, our Office continuously cooperated with Taiwan High Court prosecutors in terms of providing arguments and legal opinions to the Taiwan High Court judge. On November 28th 2018, the Taiwan High Court announced its decision, and ordered that the proceeds of crimes should be confiscated in the amount of US \$953,324,920.60 plus any derivative incomes accrued till the date the confiscation were ultimately carried out. Currently both parties have filed for re-appeal to the Supreme Court as the third and final instance in March 2019.

## V. Conclusion

More than eighteen years have passed since the establishment of SIU in 2000. Looking back to our investigations, indictments, court proceedings, MLAs and finally the independent confiscation application, these were filled with dozens of prosecutors and their investigators' great contribution and hard work. Without reservation, we



are thankful for the pioneer work of our team members, especially their courage, wisdom, persistence and perseverance in this case. We are also grateful for the long time support and the assistance provided by the six countries including Switzerland. Meanwhile, the Ministry of Foreign Affairs and the Ministry of National Defense have been our strongest allies in this case. We would like to express our appreciation for their help as well.

Our Office has been actively participating in the Lafayette procurement case ever since the establishment of SIU. From the very beginning, our Office appointed prosecutors and their investigators into the SIU team and brought the indictment to the Taiwan Taipei District Court. We closely cooperated with the SID prosecutors during the court proceedings and assisted in the conviction of the Kuo brothers. After the SID ceased to be effective, we took over the MLA and independent confiscation matters all at once. The Taiwan Taipei District Prosecutors Office is honored to have the opportunity to participate and contribute in all the said milestones of the Lafayette procurement case. Currently we have obtained the court ruling to confiscate proceeds of crimes amounted to more than US \$1 billion, and this great accomplishment would never be achieved without our friends and allies in Taiwan and from abroad. Our Office would make every effort to retrieve the proceeds of crimes through the MLA channel, once the independent confiscation order to become finalized and enforceable. Only by doing so, can the concept of "Crime Doesn't Pay" be ultimately implemented and realized.

# The New Role, Contribution and Growth of Prosecutors in the Field of Anti-Money Laundering/Counter-Terrorism Financing (AML/CFT)

Tsai Pei- Ling

- I. Preamble
- II. Sharing of Experiences in APG Annual Meeting Participation
- III. Sharing of Experiences in Being an APG Assessor
- IV. Sharing of Experiences in the Process of Founding the Anti-Money Money Laundering Office of Executive Yuan, and Its Implementation Proces
- V. Experience Sharing of Participation in the Third-Round Mutual Evaluation Process
- VI. Conclusion

## I. Preamble

The Money Laundering Control Act was enacted in 1996, and at that time, the government intended to position Taiwan as a major Asia-Pacific operation center, and a distribution center for business and finance in Asia. The Money Laundering Control Act was introduced as the first specialized Anti-Money Laundering Act in the Asia-Pacific region. Although such law was introduced early, the concept of such legal and regulatory practices was not consequently cultivated, and subsequently, policy was not sustained due to government changes. Although Taiwan introduced the concept of anti-money laundering early on, nevertheless, given the un-sustained government policy support, there was then limited understanding of prevention concepts and

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The author of this article is currently the Division Chief of the Anti-Money Laundering Office, Executive Yuan, as well as a Prosecutor of Department of Prosecutorial Affairs, Ministry of Justice, previously served in Taoyuan District Prosecutors Office, and Taipei District Prosecutors Office.



measures. In addition, since the Ministry of Justice was designated as the competent authority, however, in the concept of money laundering prevention, the protocol in prevention has always been more important than that of the criminal justice, since the authority of the Ministry of Justice is more focused on criminal justice, as well as not having the main function in regulating financial industries, national education and publicity were harder to foster which led to the stagnation of money-laundering prevention initiatives and work for a time. It all came to the end until the second half of 2016, by that time the New York branch of MEGA Bank was fined up to NT\$180 million, that has shocked the entire nation. It was unbelievable to imagine that a country having introduced anti-money laundering regime for 20 years, and its largest government-owned bank with the best revenue record was severely penalized because of its violation of the most basic level of money-laundering preventative measures.

In September, 2014, I was rotated from Taipei District Prosecutor's Office to the Department of Prosecutorial Affairs of Ministry of Justice, to be in charge of tasks related to financial criminal matters and relevant foreign correspondence, including criminal proceeds confiscation, intellectual property rights, money-laundering prevention, as well as liaison to Financial Supervisory Commission, Ministry of Economic Affairs, and Ministry of Finance, etc., while managing international liaison with Taiwan-US and Taiwan-European economic and trade issues talks, participation in the annual meetings of International Financial Action Task Force (FATF), and Asia-Pacific Group On Money Laundering, (APG). The task I have been working on was under the leadership of, and with the efforts of several predecessors, including Head Prosecutor C.R. Ching, Chief Prosecutor L.B. Lin, Head Prosecutor Y.K. Huang, Head Prosecutor T.C. Lin, and Head Prosecutor C.Y. Hsieh. From that, Head Prosecutor C.R. Ching was in charge of leading the first-round APG mutual-evaluation process in the 2001, with Head Prosecutor K.Y. Huang was in charge of the second-round APG mutual-evaluation process in the 2007, while I was fortunate to be put in charge of

the APG third-round of mutual-evaluation process in the 2018. Given that the mutual-evaluation process is conducted based on mutual evaluation amongst members, along with increasing member jurisdiction, and an even complicated procedure, each round of mutual evaluation takes longer process and efforts.

## **II. Sharing of Experiences in APG Annual Meeting Participation**


When I took over the aforementioned task, although I had participating involved in the annual meeting of the International Association of Prosecutors (IAP) during my years in District Prosecutor Office, I have only had a very little experience in international organizations and operations .Since APG is a professional organization, which operates differently when compared with that of experience-exchange organization such as IAP, or political issue driven organization such as APEC, as not only is the content of the proceedings quite arduous, but the agenda of the discussion also focuses on professional standard debates. The conference uses a large number of standards and documents promulgated by the FATF, with the use of professional terms and abbreviations, therefore if without a certain degree of understanding of professional terminology, concept interpretation, or organizational use patterns and agendas, it was difficult to learn from such experiences and exchanges, nor will it facilitate the opportunities to speak, let alone driving policies domestically. I still remember that in the very initial stage of taking over the aforementioned tasks with minimal knowledge in AML/CFT field, there was a large amount of effort spent in international literature research and reading books, trying different ways like watching movie and TV programs to broaden my knowledge in AML/CFT, and participating in a large number of related activities to ensure my fast learning on the right track. The most memorable event was in accompanying Head Prosecutor C.Y. Hsieh in attending APG annual meeting as a first-time participant, there was a deep sense of frustration in a low level of comprehension of the whole meeting, as it was conducted with lots of professional terms and abbreviations, but along the way, senior officials





in the delegation have always shown patience in their tutelage, which led to my rapid progression. I have benefited a lot from the examples of these senior officers, and humbled by the essence of such educational legacy. Given a large part of the exploration and deepening of international affairs must have relied on individual personality traits and capacity to learn from observations of representatives of other countries, an excellent representative can accumulate experience over a long period of time, inherit and advance, for the country he/she represents. But, many of the performance in foreign countries are not necessarily readily seen domestically, so whether they are willing to work in accumulating experiences and strength over time, as well as having the ambition to be bold and inclusive to guide the junior personnel depends on their belief on the value of passing down, and the legacy.

During my tenure as a prosecutor, including criminal cases inspections or command the investigation in strategy, there were always opportunities for program leadership or external communications, but in most of cases, as the case owner, and the system of command was also the law enforcement system, with high awareness of what can be communicated. When being rotated to the new post, the task became much challenging because criminal cases which I was familiar with were replaced by multi-discipline new issues which I have to digest in a short period of time. Also, I'm not the one to give command all the time, but have to learn to communicate with courage and wisdom, and coordinate with the professionals across various ministries, it was then possible to achieve the set goal and becoming a true partner in policy promotion. If this is the case in domestic conferences, the international conferences are filled with professionals from all over the world, and additionally, in a non-native-language environment filled with professional terminology, it was indeed very challenging. At the 2015 annual meeting, although having been rotated for almost a year, that was the first time in facing such challenge, demanding oneself in getting out of one's comfort zone, training oneself in public-speaking, with increasing frequency and content, which has finally seen some result in the third-round of

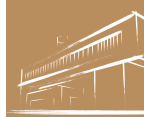


mutual-evaluation. This has been a similar experience to that of the time of being a prosecutor with tasks coming from all directions that required sharp learning curve, but with a farther distance spanned from having walked out of one's comfort zone.

### **III. Sharing of Experiences in Being an APG Assessor**

After being rotated to MOJ for approximately one year, with growing familiarity in administration procedure, as well as in the field of AML/CFT, relevant policy was on the verge of launching domestically, there was the task of preparing for the third-round mutual evaluation for 2018 APG. As previously mentioned, given the low-level attention paid by domestic government and private sector, it was not easy in driving the domestic policy, and always difficult in coordinating inter-agencies meetings. At that time, since the completion of the amendment of AMLA is not expectable, there was a conscious decision in starting the work in rectifying confiscation mechanism in the criminal law in raising the awareness of the importance of “follow the money” policy amongst the law enforcement. The amendment was done on the 1st of July, 2016, which is almost the timing to revisit the agenda of money-laundering law revision and evaluation preparation work.

Interestingly, as FATF has gone through an overhaul of mutual evaluation methodology, with concern over no leads in evaluation preparation in 2013, as Director General of Department of Prosecutorial Affairs B.L. Lin attended the APG annual meeting that year, Thailand delegation approached and expressing wishes in having assessors from Taiwan, a civil law jurisdiction. Thailand believed that they were disadvantaged in the previous round of evaluation, as their assessors were from common law jurisdictions, as Thailand shall be subject to third-round mutual-evaluation in November, 2016. Encouraged by Director Lin, I attended the assessor training at the end of that year in India, which, apart from responding to the request of Thailand, also hope to benefit Taiwan in being assessed in APG third-round mutual-evaluation in 2018, by gaining further and comprehensive understating of the process



of evaluation, as the basis of the future preparation for our country. In fact, the experience of being an assessor brought me the insight into the thinking and decision process inside the assessment team, which also give access to the preparation method of other countries for the reference of better practices, and more importantly, being able to have good professional rapport with APG personnel or representatives of other countries. The experience of being an assessor for Thailand subsequently did benefit our third-round mutual evaluation, as mutual familiarity and trust the year-long collaboration in evaluation has been achieved and yielded great feedback.

At the end of December, 2015, Section Chief, Ms. W.Y. Liu of Financial Supervisory Commission and I departed for India to receive assessor training. For the week-long training, apart from the initial written test, there was a full two-day test of mock-up evaluations after a week of instruction curriculum, which included mock-up mutual evaluation report drafting and mock-up on-site evaluation. I was accepted and consulted to be the assessor for Thailand.

As the assessment team usually comprises of APG Secretariat personnel as the leader and the deputy leader, in offering principle guidance to team members during assessment; the rest of the team will also be divided into some sub-group specialized in different categories such as legal, finance, and law-enforcement, etc.. Based on my personal observation and experience, having been working as a prosecutor would prevail and contribute well in assisting the team in both legal and law-enforcement sides. As similar as the role of a prosecutor in seeking out evidence to establish the facts for a case, assessors must be familiar with international standard, as well as the legal system and structure of the country being assessed, gathering all of the relevant data and precedence proposed by the country in reaching the final report. An outstanding assessor is the one who is most familiar with the standard while raising the most constructive querying questions. I recalled that in the mock-up on-site examination of the assessor training, it was revealed that through asking the right and quality questions, the examinee could be access to the most of information

and data from the examiner which would contribute to quality report that is able to withstand challenges from all sides, hence better chance to be accepted. The most valuable part to me is to expand horizon beyond what I have as being a prosecutor, which would be a path any aspiring prosecutor may undertake. As being an assessor, it's required to be face-to-face interviewed by all member representative at the Annual Meeting, and furthermore, during the 14 months tenure of assessor, there were many opportunities of interactions on professional and personal level pivotal in this regards. As the written reports by the assessment team shall be reviewed not only by FATF but also by experts from more than 200 member jurisdictions, which was indeed challenging yet highly rewarding. Up until now, I have maintained great relationship with the anti-money laundering office of Thailand, as well as being invited to be the follow-up workshop expert held by APG and Thailand Government. Even in the following years after representing as an assessor, I kept close relationship with Thailand authorities and received a lot of assistance in experience sharing of AML/CFT.

#### **IV. Sharing of Experiences in the Process of Founding the Anti-Money Money Laundering Office of Executive Yuan, and Its Implementation Process**

Between 2015 and 2016, there was effort on one hand in driving the new regulation of criminal confiscation, and on the other hand, the pressure of the Third-Round mutual evaluation of 2017 also came to bear. Though it might be the best timing to make all-out effort into the preparation of mutual evaluation; however, based on the methodology of third round mutual evaluation, a national risk assessment report is required to be completed as a requisite basis for the judgment of the adequacy of the mitigation measures. The most depressing of all was that none of the convening experts from each department had any real knowledge of how to conduct a national risk assessment, and I found no relevant information available in



all open sources. Since if the assessment task was not completed, then it was almost impossible to begin the evaluation preparation. I began to write to every international organization that I know, in an attempt to find ways of securing experts. However, some attempts were met with no response, and the others were responded with political-driven refusal. Just at the moment I felt most depressed and almost gave up, it's like hardship is a blessing in disguise. I found the suitable consultants eventually through Taiwan Academy of Banking and Finance, and International Certified Anti-Money Laundering Specialist Association, before being able to start the national risk assessment process.

In the second half of 2016, there was the event of the New York Branch of MEGA Bank fined by the US that shocked Taiwan. From the superficial point of view, it was a setback; however, it was also because of MEGA event came the social pressure and international pressure to restore the financial order and reputation of our country. The pressure also consequently formed consensus amongst all sides, which in turn, activated the Money-Laundering Control Act in the legislative process, and many subsequent much-needed changes in terms of legal system and structure. The fundamental change in legal system aspect involved modification of Company Act, Foundation Act, Mutual Assistance Act in Criminal Matters, as well as others, together with the structural aspect of the changes in the founding of the Anti-Money Laundering Office under the highest administration, the Executive Yuan.

In the second half of 2016, the legislative process of the Money Laundering Control Act was rapidly underway, and passed on the 28th, December, 2016. However, as the preparation period for the evaluation has only a year or so left, and till that time there has not yet any specialized personnel in charge of the work of mutual evaluation, in the face of the procedural pressure of the upcoming mutual evaluation, the resource was apparently insufficient. While amid the Second-Round mutual evaluation process, the preparation work was done with regular inter-agencies meetings; however, in considering the methodology of the Third-Round mutual

evaluation as promulgated by FATF in 2013, it dramatically reinforce the top-down and risk-based national initiative. Since between the Second-Round and Third-Round evaluations of almost 10 years, there's no inter-agencies meetings being held, if the objective was to restore Taiwan's reputation and credibility in financial supervision and governmental effectiveness, the ever-adopted inter-agencies base platform may not be the prime option for the preparation of mutual evaluation. Also, as mentioned before, the preparation work is cross-domain and cross-discipline involved, from the experience of Thailand's evaluation, as well as the structural design of other countries, their experience in having designated authority in its management, have given rise to the analysis of "Taiwan Money-Laundering Control Policy and Strategies", which was to recommend the founding of a dedicated office. Nevertheless, as this recommendation was raised, it was not accepted due to unknown effectiveness, as well as there were already many existed initiative offices under Executive Yuan, which made it seem somewhat superfluous. It was until it received adamant support from Ex-Premier of Executive Yuan, the Honorable C. Lin and the previous Minister of Ministry of Justice, the Honorable T.S. Chiu, which was then formally set up as the temporary task force. The Anti-Money Laundering Office of the Executive Yuan was founded formally in the 16th, March, 2017.

When the Anti-Money Laundering Office of Executive Yuan was founded, all of its members originated from various authorities without common office culture or the sense of identity acceptance of the Office. Besides, as the Office itself was of a new team format, which was quite in contrast to other administrative units in its all new job scope, how to lead a team of colleagues of different professional backgrounds to familiarize with professional standard in the shortest time-frame, along with aligning their sense of team and mission acknowledgement, was indeed a management challenge. After all, there needed to be familiarity with professional standard before confidence could be spoken of, and sense of identity of acceptance before exerting all possible efforts in reaching objective.



In light of most of the AMLO members have never been involved in AML/CFT professions, which may result in their lack of confidence or being challenged for lack of profession. With the full support of the Deputy Minister of Ministry of Justice, the Honorable, B.C. Tsai, all AML members passed the CAMs certification examination and obtained Certification of the International Anti-Money Laundering Specialist, by which not only the confidence level of the Office members but the extent the Assessors has placed premium on our presentation were raised tremendously. In considering that the AMLO members may have to represent in the plenary meeting, in order to familiarize all members with rules and procedures of the Annual Meeting, along with considerations for the effort of knowledge reconciliation in rules and procedures, full English-speaking simulation sessions and internal programs were also well designed and held. The working experience in AMLO is very different from my previous life in the Prosecutor Office or the Department of Prosecutorial Affair in MOJ. As far as the professional tenure in the Prosecutors Office, the role of Prosecutor is mainly the core of the mission of the Prosecutors Office, without so many facets of impact and challenges. Whereas being working in AMLO, it's a grand challenge in itself, encompassing considerations of envisioning, planning, rectification, external liaison, and personnel management and also involves multi-tasking in dealing with issues such as complex procurement procedure, press release, budget shortage, etc., and the role of coordination as maintaining liaison with 37 government offices, and 31 private-sectors. Being explored in the AML/CFT field, not only a leap grown-up in professional knowledge, but the opportunity of participating in the operation of a brand-new unit would be a rewarding in cultivating capabilities and mentality.

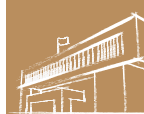
## V. Experience Sharing of Participation in the Third-Round Mutual Evaluation Process

After the AMLO was founded in 2017, along with quick adjustment of manpower quality and broad promotion, the social atmosphere of supporting of



AML/CFT policy was formed prior to the coming up third-round mutual-evaluation in 2018. In terms of the preparation work, basically, according to the methodology of third-round mutual evaluation, the assessment of mutual-evaluation comprises of technical compliance and effectiveness compliance. Technical compliance means that a country's legal provisions are aligned with international standards, and effectiveness compliance refers to a country's actual legal effectiveness under the laws of that country. For example, in the case that a country penalize money laundering acts according to its law, which is consistent with international standards, but if there's no case has ever prosecuted with money-laundering offences, the country is technically compliant but does not achieve effectiveness compliance. The difficulties in the preparation of these two parts are different, where as far as the technical compliance is concerned, the most important thing is to complete the comprehensive regulatory overview while completing the legislative procedures for the regulatory shortfalls. There are more than 100 legal regulations been reviewed in our country which is indeed a major project. However, due to the occurrence of MEGA Bank event, the implementation of this part, especially in the lobby work to be done in the Legislative Yuan, has reduced difficulties to some extent. The most challenging part was to achieve effectiveness compliance, which is to present appropriate statistics and cases examples to prove that our in-country effort has been effective.

Generally speaking, mutual evaluation phases consist of three stages, one, for countries being assessed shall submit written reports in technical compliance(TC) and effectiveness immediate outcome(IO), second, after reviewing of the TC and IO report, the assessment team would pay an on-site visit to the country assessed to examine the effectiveness and clarify the questions generated from the TC and IO submission, and third, in the APG annual plenary, the country assessed as well as the assessment team have to take member jurisdictions' questions for the adoption of the report. I personally believe that the training and experience of a prosecutor is quite suitable for processing the task of evaluation, as in terms of processing investigations, there



needs to be thoughts going into what kind of direct or indirect evidences could be effective in clarification and illustration of investigation cases, as prosecutors shall face the issue of conviction in public prosecution. With the long-term experience working as a prosecutor, the judgement in evidence evaluation or relevancy in reasoning would be more precise than ordinary people. For instance, in the third round mutual-evaluation, several prosecutors have presented themselves with clear reasoning, complemented by written report in opportune moments to provide convincing argument, while having predetermined the direction in issue of law at preparation stage, which has won much credit during the evaluation process. In fact, since the mutual evaluation process is very much profession-based process, many participants either from government or private sectors involved in the proceeding were surprised that the familiarity of the assessment team with the law of our country was more than expected. In fact, the assessment team members are not only consisting of professional representative from each country, some of whom, served as assessors several times previously with sound experience, have raised sharp questioning that have caught many underprepared country representatives off guard. I believe that given the legal logic training of prosecutors in investigation and defeningd for the justification of case in court, compared with other working experience and backgrounds, are much qualified onto help with the strategic preparation of our country representatives. Furthermore, resulting from their experience in collaboration with other units during cases investigation, the comprehensive way of thinking and skill of negotiation becomes the indispensable strength during on-site meetings with the assessment team.

## VI. Conclusion

It has been more than five years since I has been involved in the field of AML/CFT, with transformations from exploration to familiarity, from simple work processing to the founding and management of new units, and given the frequent travel hence required to many places in the world, ranging from the poor to the affluent,



I have grown much appreciation for my own country, as well as appreciations and aspirations for the future. Recently , as there has been some gradual progress and constructive influences resulting from Taiwan's AML/CFT fruitful performance, I was recommended as a speaker for project of United Nations Office on Drugs and Crime in Vietnam, and promoting the achievement of Taiwan in its effort in AML/CFT regime in Singapore, all of which gave great rise in my professional standard and horizon, and ultimately leading to a new perspective on the importance and breadth of prosecutor's role. From my personal observations and experiences, the vocational training of prosecutors would be the optimal foundation, as the torch-passing legacy and experiences of the predecessors provides the fuel for the progress in moving forward. Even that they are usually passed down with hard work in obscured fashion, however, at a point of juncture, the legacy experience would be prove invaluable. In terms of the investigative role of prosecutors, there has always been emphasis on the flow of people and objects, whereas in the new era, especially in the society ruled with capitalism, the financial flow has become a key point of concern. Prosecutors shall notice the giant change of the society and the typology of crime, as the AML/CFT regime is at its budding phase in our country, there shall be much stronger collaboration between the financial industry and the law-enforcement community in the future. Currently we have more and more prosecutors being certified with Certified Anti-Money Laundering Specialist, which means a lot of prosecutors have sensed the change and look forward to more room to grow professionally, which would definitely provide the boost it needs in the development and the legacy establishment of AML/CFT policy and make things different.



# Forensic Medical Examiner Office

Li Shih-Tsung

- I. Foreword
- II. Present Circumstances
- III. Achievements

## I. History and Evolution

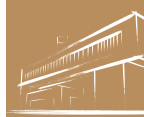
In reminiscence of the first time I interned at the Forensic Medical Examiner Office of Taipei District Prosecutors Office (hereinafter referred to as "the Office") in 1996, there were two forensic medical examiners and three forensic investigators in the Office, all of whom retired from the medical units in the military. They, even at their advanced ages, followed prosecutors to examine corpses, conduct forensic autopsy and evaluate injuries with professionalism and good conscience. The workload of forensic examinations once hit more than 150 cases per month at that time, as seven administrative areas of Taipei City, i.e. Zhongshan, Daan, Songshan, Xinyi, Zhongzheng, Wanhua and Wenshan, and nine administrative areas of Taipei County, i.e. Xindian, Shijie, Shenkeng, Pinglin, Wulai, Ruifang, Pingxi, Shuangxi and Gongliao, were under the jurisdiction of the Office. To react to the overwhelming demand for examinations and preserve the rights and interests of the family members of the deceased, the Office adopted two teams to conduct forensic examinations, which necessitated two prosecutors and two forensic investigators to stand by on a daily basis. As soon as we received reports from the police, we would immediately set

Written by forensic medical examiner Li Shih-Tsung.



out to the scene of the accident. On July 1, 1998, the jurisdiction of Ruifang, Pingxi, Shuangxi and Gongliao was adjusted to belong to Keelung Prosecutors Office, but the forensic examination workload of the Office still reached above 1,000 cases per year. As the proportion of urbanized population in the jurisdiction of the Office increased, the public's awareness of human rights gradually enhanced, so does the degree of difficulty and the time needed to perform forensic examinations. Accidental deaths and suicides remain to be the leading manners of death at present.

As time went by, veterans retired one by one, and the Office has continued to recruit newcomers who passed the Special Examinations for Forensic Medical Examiner held by the Examination Yuan and received hands-on training in forensic medicine. There were only four forensic investigators for a while, but we actively participated in various forensic medicine seminars and continued to acquire up-to-date knowledge; thus our professionalism has shown great improvement over time. On the other side, technological advancement facilitates criminal conducts. The types of crimes have become more complicated, variable and even "specialized," hence it has been difficult for prosecutors to cope with all kinds of cases independently. To assist and alleviate the burden of prosecutors in conducting criminal investigations, the Office adjusted the team to handle daily forensic examination work from two prosecutors with two forensic medical examiners to one prosecutor and one prosecutor investigator, each cooperated with a forensic medical examiner, in 2003. The prosecutor in charge would decide to head for the scene of the accident in person or appoint the prosecutor investigator instead, depending on the types and complexity of the cases. Nevertheless, with an influx of newly emerging narcotics and the abuse of controlled substances, the manners of death have changed dramatically over the past decade or so. By analyzing the examination data of the Office, the proportion of all kinds of manners of death, other than "unknown," has remained similar in the past few years, but the proportion of "unknown" category has lifted a lot, reflecting the escalating complication and difficulty of forensic examinations nowadays.



## II. Growth and Transformation

2006 is remembered to be the most turbulent and inspiring year in the history of forensic medicine in Taiwan. Following a series of vigorous promotion and serious debate among forensic and medical parties, Forensic Pathologist Act (hereinafter referred to as “the Act”) was finally enacted in 2006. Article 1 of the Act clearly specifies the legislative purpose; that is, to establish a sound forensic pathologist system, improve the performance of inspections and investigations, protect human rights, preserve social justice and promote democracy and the rule of law, this Act is specifically formulated. To enhance the quality of forensic examinations and respond to the enactment of the Act, the chief prosecutor of the Office supported and encouraged forensic investigators to pursue advanced degrees at the Institute of Forensic Medicine of National Taiwan University by offering salaries and the opportunity to be considered as on-the-job during their studying periods. During 2007 to 2015, two forensic investigators obtained Master’s degrees at the Institute of Forensic Medicine of National Taiwan University and acquired the qualification of forensic pathologists.

Examination is the beginning of criminal investigation, while forensic autopsy plays the most crucial part in the process of discovery of truth for prosecutors. Having well-rounded assortment of equipment is essential when it comes to improve the quality of forensic autopsy. There was, however, no dedicated forensic autopsy room in the Office, so that forensic autopsy had to be conducted at the forensic autopsy rooms in Taipei City Mortuary Services Office Second Funeral Parlor. The building, however, was obsolete, not only short of appropriate ventilation and poor in traffic flow, but incompatible with the stipulated health and safety requirements. To improve the environment of autopsy, we proposed a preliminary plan to establish forensic autopsy rooms in conformity with Biosafety Level 2+ at Taipei City Mortuary Services Office Second Funeral Parlor in 2013. The proposal was supported by the chief



prosecutor of the Office, and approved by the Mayor of Taipei City. The government funded the project and put it out to tender, while the Office assisted in planning and supervision. In July 2015, the Office and the Taipei Mortuary Services Office jointly established the "Taipei City Forensic Inspection and Autopsy Center (hereinafter referred to as "the Center"). The Center has not only provided the most advanced forensic autopsy facility that meets the Biosafety Level 2+ requirements, and greatly enhanced the judicial professionalism and the effectiveness of forensic science and technology of the Office, but defended the dignity of the deceased.

### III. Expectation

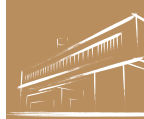
"There is nothing more important than human life; there is no punishment greater than death. A murderer gives life for life: the law shows no mercy. But to obviate any regrets which might be occasioned by a wrong infliction of such punishment, the validity of a confession and the sentence passed are made to depend on a satisfactory examination of the wounds. If an inquest is not properly conducted, the wrong of the murdered man is not redressed, new wrongs are raised up amongst the living, other lives sacrificed, and both sides roused to vengeance of which no man can foresee the end.<sup>2</sup>" The above lines, written by Song Ci in his General Remarks on Inquests of Chapter One of The Washing Away of Wrongs, is considered to be the duty and mission for all forensic workers, and keeps inspiring us. May these words motivate and encourage every forensic pathologist nationwide.



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2. Translated from the Chinese by Herbert A. Giles (1845-1935) Professor of Chinese, Cambridge University.





The Chronicle of Events of our Medical Examiner Office during 1996 to 2018:

- 1 In 1999, as the devastating 921 earthquake hit Central Taiwan, we supported to conduct forensic exams in Nantou and was in charge of the forensic examinations of the collapse of Dongxing Building in Taipei.
- 2 In 2002, we supported to conduct forensic examinations of the China Airlines flight 611 accident in Penghu.
- 3 In March 2002, we jointly held the “Judicial Examinations and Forensic Knowledge Seminar” with Banqiao District Prosecutors Office and Taipei County Medical Association.
- 4 In 2004, we jointly held the “Judicial Examinations and Forensic Knowledge Seminar” with Taiwan Association of Obstetrics and Gynecology and Taiwan Society of Forensic Medicine.
- 5 In 2006 and 2007, we appointed honorary forensic pathologists and hosted lectures on the practice of forensic examinations.
- 6 Since 2006, we have been in charge of the practical application and internship programs for graduate students at the Institute of Forensic Medicine of National Taiwan University.
- 7 In July 2015, we supported Shilin District prosecutors Office to perform forensic examinations of the crash of TransAsia Airways Flight GE235.
- 8 In October 2015, the Center, constructed by the Office and Taipei Mortuary Services Office, was put into formal use.
- 9 Since 2016, we have introduced investigation forms for the judicial examination and reporting procedures to our affiliated precincts.
- 10 In 2017, we supported Shilin District Prosecutors Office to conduct forensic examinations of the Dielianhua tour bus accident.
- 11 In 2017, we participated in the preliminary work to organize the “Medical Professional Consulting Team” to assist prosecutors in the investigation process.
- 12 In 2018, we participated in the preliminary work to revise the mechanism of reporting and discovery of the cause of death of children under the age of six.

# The Base of Intern Judiciary

Jiang Wen-Jun

I. Developing and enhancing skills

II. Cross disciplinary learning

## I. Developing and enhancing skills

**The 20 weeks of training comprise 3 sections:  
investigation, public prosecution and execution**

Located in the capital and the economic center, Taipei District Prosecutors Office (TDPO) has always been known for its excellent ability in investigating economic crimes and related cases. For the training of the intern judiciary, the case-practice is the main method, and the goal is to strengthen and expand professional skills.



Written by Prosecutor Jiang Wen-Jun.



In the 20-weeks of training, it is divided into three phases: investigation, public prosecution and execution. Through the various stages of study, the intern judiciary can fully grasp the functions of the prosecutor in the Criminal Procedure Law. At the same time, through the case-by-case practice, they can also be familiar with the skills of the actual work in the future.

The learning at each stage is carried out in a group tutor system. Each of the trainees will be assigned to different department of TDPO, of which the head prosecutor shall explain the comprehensive knowledge in the process, designate an excellent and competent prosecutor as a tutor. The intern judiciary follow the instruction of the tutor from researching volume, investigation, case decision, to preparing documents. At the same time, they are also on the same investigation court, internal and external duty with the instructors, which would allow them to closely observe the wisdom of their predecessors. Through this approach, the tutors can transfer their expertise and skill to the students.



### Imitation Court

To enhance skills, the interns participate in the court of which the procedure imitates a real one.



### International Communication

Intern judge from ENM FR. attended extracurricular activities with class 59.



### Weiya banquet

Lion-dance performance with appreciation for the tutors.

The imitation court is another important learning method. During the internship, although the trainees carefully observe how the teacher investigate the case and discuss with the teacher how to make a right decision, it is still different from handling case on their own. Only by personally intervening in the case, in-depth study on how to construct facts through interrogation and collecting evidence, and making judgments, can it be possible to have a deep understanding of the essence of prosecutors' work. Imitation court, through the above methods, precipitate the intern judiciary into actual case operation which has indeed benefited them a lot.

## II. Cross disciplinary learning

In addition to general training phase, cross-disciplinary learning is also highly valued. The courses will be arranged once a month. The training places are related units such as hospitals, private enterprises and government agencies, etc. The itinerary includes general operations briefings, interactive discussions and practical experiences.

For in-depth understanding of the diagnosis and treatment procedures of internal medicine, orthopedics, pediatrics, obstetrics and gynecology, the participants visit Tri -Service General Hospital, also follow the doctors to the clinic and ward, to closely observe the medical practice as the basis for investigating medical disputes in the future.





Coast Patrol Corps<sup>7</sup>, Fleet Branch, Coast Guard Administration, Ocean Affairs Council provided an unprecedented experience and the knowledge of marine disaster rescue, sea area criminal investigation, etc. The patrol teams have always been important partners of the prosecutors to investigate drug and human trafficking crimes.



During the visit of Evergreen Air, the generous company personnel provided flight simulators for trainees to experience the difficulty of flight and taught the relevant information of flight safety and air crash investigations. It will be helpful for the trainees to investigate the same type of cases when they officially serve.

National Taxation Bureau of Taipei, Ministry of Finance has always had a good relationship with TDPO on the issue of preventing tax crimes. In addition, the understanding of taxation helps prevention of money laundering and financial crime. The courses not only improve knowledge, but also strengthen the ability to find resource for handling cases.



# Creating a New Era of Scientific Investigation in Prosecutors Office-The History, Benefits and Prospects of the Implementation of Digital Forensics

Wu Bing-Biao

- I. Introduction
- II. Start- Developing database independently, using big data to investigate drug smuggling
- III. Funding application: Apply for funding under technology plan and strengthen database function
- IV. Carry out: Execution of the digital forensics
- V. Benefit: resource sharing and efficiency maximization
- VI. Vision: Creating a new era of scientific investigation in prosecutors office

## I. Introduction

On January 14, 2019, the Minister of Ministry of Justice Tsai, Ching-hsiang, the Deputy Minister Tsai, Pi-Chung, the Vice Minister Chang, Tou-Hui, the Prosecutor-General of the Supreme Prosecutors Office Chiang, Hui-Ming, the Chief Procurator of the Taiwan High Prosecutors Office, Wang, Tian-Sheng, other Chief Prosecutors and the Chief Prosecutor of Taiwan Taipei District Prosecutors Office(hereinafter referred to as "the Office") Shing,Tai-Chao co-hosted the inauguration ceremony of the "The

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Written by Prosecutors Investigator Wu Bing-Biao.





Northern Taiwan Training Center of Seized Property Auction and Digital Forensics " of the Office, it shows that the Office's scientific and technological investigation capability has reached a certain level and been in a leading position.

Applying technology to assist prosecutors of the Office in handling cases can be traced back to 2012 and 2013. During that time, the independent research and development of database system was used to assist prosecutors at the front end of the investigation of drug smuggling. In 2015, the center obtained funding under the program of the Ministry of Science and Technology for the science and technology project.



In addition to augmenting the anti-drug function of database, the funding also contributed to the first case of using the mobile communication device (mobile phone) procurement tool to assist in handling the case for the prosecutor office. By the year 2017, the evidence obtained from the center had effectively assisted prosecutors in many cases. The Office has captured great achievement of "Big Data Analysis", "Database Development" and " Digital Forensics".

## II. Start- Developing database independently, using big data to investigate drug smuggling

In March 2011, under the instruction of former Chief Prosecutor of the Office Yang,



Jyh-Yeu, the "Anti-Drug Database" became established. The Prosecutor Investigator Office, the Computer Crimes Group and the Information Management Office, and the Anti-drug Team are divided into divisions to write programs, provide information equipment and maintenance services, and construct anti-drugs database, etc. Less than one year, the Office successfully developed a anti-drug database to demonstrate great detection skills and staunch anti-drug determination. In 2014, the program for the establishment of anti-drug database was promulgated nationwide by the Ministry of Justice.

### **III. Funding application: Apply for funding under technology plan and strengthen database function**

The model of investigating drug smuggling of the Office's anti-drug database has reversed the tradition of waiting passively for the police to transfer drug offenders, into new thinking of "actively collecting intelligence and pursuing drug runner in the wholesale and retail market" (that is, "chasing people by case, chasing people by people"). The output of the anti-drug database has become a handy weapon for the police to handle the drug crime cases. However, the software and facilities of the Database are insufficient and the funds are required.

In September 2013, the Office established technology policy objectives and assigned the Head Prosecutor as the conductor of the project, the Prosecutor Investigator as the contact window for the "Technology Development Group" of the Ministry of Justice. They are responsible for handling the plans and applications for funding to the National Science Council (now the Ministry of Science and Technology). After a complicated review process, the Office's previous research project on "The Anti-Drug Tracking Database and Cloud-based Analysis System" was officially registered and monitored by the Ministry of Justice and successfully secured a budget of 2.25 million NT dollars in 2015. In the implementation



of the project (the second half of 2015), for resolving the problem that the information content of the contact via the wireless network is difficult to import into the database directly, the Office purchased a set of mobile communication devices intelligence collection tool of Cellebrite brand, which also means it's great progress in the digital forensics field.

## IV. Carry out: Execution of the digital forensics

The types of services and technical standards of today's mobile communication technologies are increasing year by year. Making a telephone call is no longer the only way to communicate. The majority have already switched to other various media (text, voice, image, video, etc.) of Instant-Messaging Application Software, such as LINE, Facebook Messenger and WeChat. Therefore, since 2016, the Office has appointed the prosecutor investigators to use the aboved tool of Cellebrite brand to start the development of digital forensics of the mobile phone. By evidence collecting , structured report producing and analyzing, it is really helpful for prosecutors' conviction. From 2016 to 2017, the operation of mobile communication device forensic system has been engaged in the investigation of various criminal cases in the Office. At that time, , the Office was the first to have the ability to execute the system among all the prosecutors offices.

## V. Benefit: resource sharing and efficiency maximization

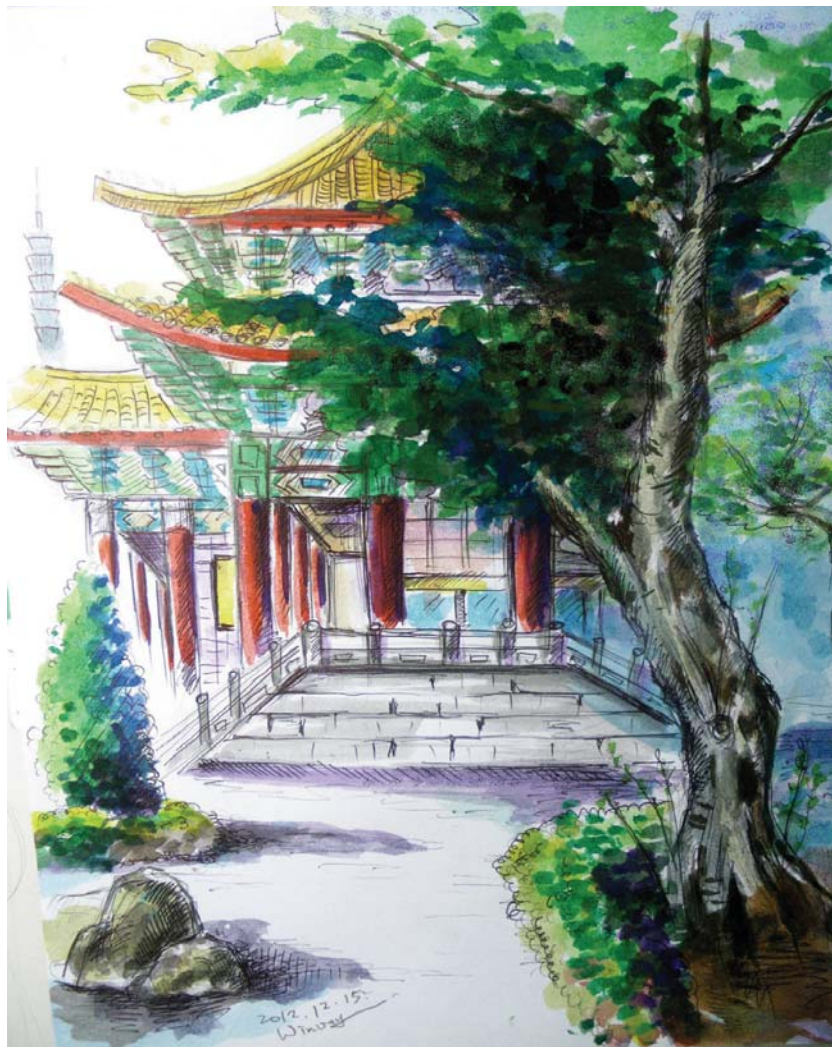
The main benefits of the implementation of mobile communication device forensic system are resource sharing and efficiency maximization. It can find all kinds of digital information needed for the investigation very quickly, besides it can greatly reduce the divulgation in operations. Not only has the Office been strengthening and improving the hardware equipments and software functions of the anti-drug database, continuing to accumulate a large number of suspect telephone numbers, criminal facts and other information available for data exploration, also using of the big data analysis function of the database to assist in the investigation of other types of crimes, such as the investigation of election bribery in 2018.

The Office's excellent experience in combining technical equipment, digital literacy and space for the anti-drug database and digital forensics system was highly valued by the Taiwan High Prosecutors Office and supported as major anti-drug policy in 2018. The Office has agreed to assign prosecutor investigators to the Taiwan High Prosecutor's Office for full-time support to promote the digital forensics across the country.

## **VI. Vision: Creating a new era of scientific investigation in prosecutors office**

In summary, the Office has achieved remarkable achievements in the promotion and implementation of the technical methods to assist in the investigation. The establishment of the "The Northern Taiwan Training Center of Seized Property Auction and Digital Forensics " has made a major step forward for the Office as a center of science and technology investigation in the future.





Chiang Kai-Shek Memorial Hall/Liao Yunwei • Prosecutors Investigator