



# Supreme Prosecutors Office

## News Release

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The Special Investigation Division of the Supreme Prosecutors Office has conducted investigations into alleged corruption by former Vice-Premier Tsai Ying-wen and others. The investigations ended on August 14, with the official conclusion that no criminal involvement by any party has been found. **With regards to whether company registrations of Jie Sheng Investment Co. (潔生投資公司), TaiMed Biologics Co. (台懋生技公司) and Yu Chang Biologics Co. (宇昌生技公司) involved the offense of making false business recordings under Articles 216 and 214 of the Criminal Act, and whether Hu Sheng-cheng (胡勝正), former Minister without Portfolio of the Executive Yuan and Chief Commissioner of the CEPD, had violated the “revolving door” prohibition under the Civil Servants Services Act, these matters have been assigned for investigation by the Taipei District Prosecutors Office. With regards to whether Ho Chun-Hui (何俊輝), the Deputy Executive Secretary of the National Development Fund Management Committee, was guilty of any administrative liabilities in visiting Tsai Ying-wen’s home and office to provide his comments regarding the versions of the “investment plan”, the matter has been transferred to the Control Yuan for investigation.**

### I. Investigation Process

On November 27, 2011, the television program “TVBS 2100 Weekend Talk” set as its discussion topic “Using public office for private gains: Tsai Ying-wen creams the rich to be Robin Hood?” According to discussions on the program, former Premier Su Chen-chang had issued a special case approval for the National Development Fund of the Executive Yuan (“NDF”) to invest NT\$264 million in Yu Chang Biologics Co. (“Yu Chang”), and to invest NT\$875 million in TaiMed Inc. (“TaiMed”, 台懋生技創業投資股份有限公司). However, Tsai subsequently served as the chairperson of Yu Chang in the name of the juristic person representative for TaiMed Biologics Co. (“TaiMed Biologics”, 台懋生技股份有限公司), and TaiMed Biologics Co. was in fact an investment of Jie Sheng Investment Co. (“Jie Sheng”). The program therefore discussed whether any corruption was involved in these proceedings. Prosecutor-General Huang of this Office has therefore directed that a transcript be made of the aforementioned television program, and on December 1, 2011 instructed that the matter be assigned for investigation (Cha-Zi No. 153 of 2011). In the mean time, certain members of the public have also lodged complaints against Tsai Ying-wen and Ho Mei-yueh for alleged corruption by e-mails to the Prosecutor-General’s Mailbox; these complaints were also assigned for investigation (Cha-Zi No. 154 of 2011).

After the assignments, the responsible prosecutors had obtained and reviewed relevant case files and documents from the Executive Yuan, the CEPD, National Development Fund Management Committee, the Ministry of Economic Affairs, and the Taipei City Government, in order to preserve relevant evidence. As it was during the sensitive timing of the presidential election, the Special Investigation Division upheld the “non-disclosure of investigation principle”, and had reviewed the documents and carried out other acts of investigation on a “confidential” basis.

After studying the files and documents, the Special Investigation Division summoned relevant

witnesses to be interrogated by the prosecutors on almost 30 occasions, and continued to call for additional relevant information from the Executive Yuan and other authorities, as well as relevant information from financial institutions, to determine the facts of the case. As witnesses David Ho and Chen Liang-po, academicians of the Academia Sinica, normally reside in the United States, the prosecutors had coordinated their interrogations of these two academicians to coincide with their return to Taiwan for the Academicians Conference in July 2012. After interrogating these two witnesses, the prosecutors then separately summoned former Premier Su Chen-chang, former Vice Premier Tsai Ying-wen and others in late July to give their versions of the facts. As the investigations have been thoroughly conducted, the matter has now been concluded.

## **II. Investigation Findings**

1. Based on a thorough investigation of fund movements and funds of Yu Chang, the funds invested by Tsai Ying-wen's family all came from their own sources. The funds to be injected into the investment were all duly remitted into the account on the dates and in the amounts expected. Based on fund movements in Yu Chang's account, there was no embezzlement or illegal misappropriation. No illegalities were found in respect of fund movements or investigation of funds in Yu Chang's account.
2. The assessment process for the National Development Fund's involvement in the Taiwan Biopharmaceuticals Co. ("TBC", 南華生技公司) investment did not contravene the provisions of "Executive Yuan Development Fund Investment Procedures Regulations" (hereinafter "NDF Investment Regulations"), Chapter IV. Assessment of Investment Projects, Article 4: Authority for Investment Decisions, as amended and passed in the second meeting of the National Development Fund on April 17, 2007. The assessment procedures for the National Development Fund's decision not to participate in the TBC investment does not contravene the "Executive Yuan Guidelines Governing Establishment of the Development Fund Investment Evaluation and Assessment Committee" passed by the National Development Fund Management Committee's 91<sup>st</sup> meeting on July 12, 2006, and the "Executive Yuan Guidelines Governing Establishment of the National Development Fund Investment Evaluation and Assessment Committee" passed by the National Development Fund Management Committee's 91<sup>st</sup> meeting on October 12, 2006.
3. The National Development Fund had decided not to participate in the investment in TBC because Tanox was acquired by the U.S. company Genentech, and TBC had failed to provide clear explanations regarding the future source of technology and the investment structure, when so required by the National Development Fund. The National Development Fund Investment Evaluation Committee had therefore resolved not to participate in the investment. In addition, while the goals of both TBC and Yu Chang were to ultimately set up mass production plants in Taiwan, in fact in TBC's case, this was a construction project where Tanox was to provide 80% of the purchase orders to TBC, who would then commission OEM plants to produce these orders; in Yu Chang's case on the other hand, this was a biotech new drug development project where Genentech had decided that it would not continue developing TMB-355 (TNX-355) within the Genentech structure, but would instead collaborate with Yu Chang in the development before having the drug be mass produced. Clearly there are certain differences in the two investment projects, although there is also certain room for collaboration without their necessarily being mutually exclusive. The testimonies of witnesses Hu Sheng-cheng, Ho Mei-yueh (何美玥), Su Lai-shou, Huang Chao-hsi and Ho Chun-hui all collaborated, in that there had been no high level instructions or external interference. In light of the committee panel meetings, registered and secret voting procedures adopted by the National Development Fund Investment Evaluation

Committee, one cannot find that the National Development Fund's decision to approve or disapprove of involvement in the TBC investment project had any connection with the establishment of Yu Chang.

4. With regards to the proposed investment in TBC, the National Development Fund had requested that David Ho (何大一) make an investigatory visit to Tanox on its behalf. However, the e-mail opinion subsequently issued by David Ho on August 21, 2006 was probably not the basis for the decision by the National Development Fund Investment Evaluation Committee. Former and later conveners of the Fund – Hu Sheng-cheng and Ho Mei-yueh both believe that David Ho had not explicitly expressed an objection to the investment proposal. When the NDF Investment Evaluation Committee discussed the TBC investment proposal during its 29<sup>th</sup> meeting on September 15, 2006, it had resolved that “in light of the Government’s industrial policies, we support this proposal in principle”; clearly the aforementioned David Ho opinion did not particularly influence the NDF’s decision as to whether to invest in TBC. Subsequently the NDF had also requested on several occasions that TBC provide explanations regarding its investment proposal and other developments, but these questions bore no relation to the contents of the e-mail opinion issued by David Ho. These circumstances indicate that the opinion issued by David Ho was not the basis for NDF Investment Evaluation Committee’s subsequent determination of whether to invest in TBC.
5. Review of NDF’s full files on the “TBC Investment Proposal” showed no facts or evidence of any external interference. Based on the above, there are no definite facts or evidence to support the allegation that NDF’s assessment decision regarding whether to participate in the TBC investment had been subject to the instructions of high levels of Government at the time.
6. NDF’s assessment regarding participation in the TaiMed investment did not contravene the provisions of the “National Development Fund Guidelines for Assessment and Management of Venture Capital”, “II. Application Procedures for Venture Capital Businesses, 2. Procedures for Applications for NDF Investment by Venture Capital Businesses”, or the “Guidelines Governing the Establishment of the National Development Fund Venture Capital Assessment Committee”. While the investment plan previously submitted by TaiMed contained provisions that did not conform with the requirements of the “National Development Fund Guidelines for Assessment and Management of Venture Capital”, corrections were nonetheless made subsequently to conform to the said Guidelines after the NDF indicated the non-conformities. Therefore, one cannot directly find that the NDF’s assessment to participate in the TaiMed investment did not conform with the “Guidelines Governing the Establishment of the National Development Fund Venture Capital Assessment Committee” or that the NDF had acted illegally, merely on the basis of the early version of the investment plan first produced by TaiMed.
7. NDF’s Executive Secretary, Ho Chun-hui’s visits to Tsai Ying-wen’s home and office to provide comments regarding the versions of the “Investment Plan”, did contravene the provision “V. Assessment of Investment Plan: (2) Assessment Stage, a. Stage 1 – Initial Contact, (a) Interview: invite the applicant to attend an interview at the NDF to ascertain.... And advise the applicant of the assessment results” of the NDF Investment Regulations. However, this contravention does not give rise to criminal liabilities.
8. With regards to NDF’s participation in the TaiMed investment, TaiMed was not formed as it did not raise sufficient capital, The NDF Management Committee therefore did not make the advance.
9. NDF’s participation in the Yu Chang investment had originated in the Executive Yuan’s

“Bio-Technology Conference”, and was an understanding from the January 2007 San Francisco meeting of the “Hsinchu Bio-Med Park Guiding Team”. The driving forces behind this understanding were probably David Ho, Chen Liang-bo (陳良博), Chi-hui Weng (翁啟惠) and Patrick Yang (楊育民). There are no facts or evidence to show that high levels of the Government or other persons had interfered with this decision.

10. Ho Mei-yueh served as a minister without portfolio of the Executive Yuan from January 25, 2006 to January 29, 2007; minister without portfolio and commissioner of the CEPD from January 20 to May 20, 2007 and from June 12, 2007 to May 19, 2008; and commissioner of the CEPD from May 21 to June 11, 2007. Ho Mei-yueh had been advised of understanding of the “Hsinchu Bio-Med Park Guiding Team” from the January 2007 San Francisco meeting by Patrick Yang, who was informed by Chi-hui Weng; she then made the decision to submit the proposal for NDF’s participation in the Yu Chang investment for a special-case approval by the Premier on February 9, 2007. The “March 21, 2007 Submission” was a progress report, and it was therefore approved by the former Vice-Premier Tsai Ying-wen. The “February 9 and March 21, 2007 Submissions” were made on a “most confidential” basis, on the considerations of avoiding unauthorized disclosure of Taiwan’s authorization conditions, not yet completed merger between Genentech and Tanox, unsuitability for media knowledge, and unfamiliarity with the classification requirements of the National Secrets Protection Act.
11. Of the current investment portfolio of the NDF, there are 5 other cases besides the Yu Chang project that had been submitted for special-case approval of the Executive Yuan. A review of these case histories show that “special-case approvals” were either submitted by countersigning supervisory authorities to the Premier, or the NDF would submit the proposal for approval by the Premier, or the Executive Yuan might issue written instructions, or the Secretary-General of the Executive Yuan might issue a written request for the NDF’s collaboration; the processes are not uniform. The NDF had always considered its participation in the Yu Chang investment to be a matter for “special-case approval by the Executive Yuan”. The facts that the NDF Management Committee did not require Yu Chang to produce an investment plan, and the fact that the proposal was submitted by a minister without portfolio of the Executive Yuan, did not contravene the NDF Investment Regulations or other relevant regulations.
12. Witnesses Lin Chien-ju (林倩如), Ho Chun-hui, Huang Chao-hsi (黃肇熙) and Ho Mei-yueh have all unanimously testified that the investment project had received “special-case approval by the Executive Yuan”. According to the statement of witness and former Premier Su Chen-chang, the Executive Yuan had agreed to participate in the investment under certain conditions, and Chi-hui Weng, an academician of the Academia Sinica, had been appointed to represent the Executive Yuan in negotiating the bio-tech companies collaboration with Genentech in the United States; proper authorization had been given regarding the scope of the negotiations. There was no procedural error regarding the NDF’s understanding of the Yu Chang investment as having the “special-case approval of the Executive Yuan”.
13. The NDF Investment Regulations require that “where necessary, the fund advance procedures may be carried out in coordination after submitting an application to the chief commissioner or obtaining the approval of the Management Committee; the status of the implementation shall also be reported to the Management Committee”. This provision clearly shows that the “fund advance procedures” can be carried out after “being approved by the chief commissioner” or “being submitted for approval by the Management Committee”, and the status of the implementation should be reported to the Management Committee. As the NDF believed that the Yu Chang investment

proposal was a matter for “special-case approval of the Executive Yuan” that had been submitted by the chief commissioner, then it was sufficient to initiate the “fund advance procedures” once the NDF obtained the “approval of the chief commissioner”. In light of the legal principle of “weightier evidence evidencing the lighter facts”, the procedures for the NDF’s holding of business seminars on March 30 and 31, and writing off said costs under the NDF public relations funding and exchange activities funding, cannot be said to have violated the NDF Investment Regulations.

14. Tsai Ying-wen did not decide to become involved in the Yu Chang investment and to serve as Yu Chang’s chairperson until late August, 2007. The company had not planned to have Tsai Ying-wen serve as the chairperson from the start.
15. Ho Mei-yueh had made a submission on September 12, 2007 due to changes in the conditions being negotiated with Genentech. There was no error in making a separate submission to amend the conditions previously approved by former Premier Su Chen-chang.
16. Jie Sheng, Tai-Med Biotech and Yu Chang were all established with the registered address of “3F, No. 129, Sec. 3, Minsheng E. Road, Taipei City”. This address adjoined the address of the registration agent, Attorney-at-Law Yang Ching-Yun (楊清筠) (K&L Gates) at “2F, No. 131, Sec. 3, Minsheng E. Road, Taipei City”. When applying for company registrations, the “Jie Sheng Investment Co. Minutes of Board of Directors Meeting” (August 21, 2007), “TaiMed Biologics Co. Minutes of Board of Directors Meeting” (August 30, 2007), “Yu Chang Biologics Co. Minutes of Board of Directors Meeting” (September 3, 2007) and “Yu Chang Biologics Co. Minutes of Extraordinary Shareholders Meeting” (September 3, 2007) submitted all stated the meeting location as being “Conference Room of the Company”. However, according to the statements of the witnesses and the NDF Letter Kao-Fa-Zi No. 090004045 dated November 27, 2007, said meeting location of “Conference Room of the Company” was clearly not a fact. Since Jie Sheng, TaiMed Biologics and Yu Chang did not engage in any substantive business acts at their place of business registration, it is not beyond question whether the contents of the aforementioned meeting minutes might be false and might give rise to the offense of “making false business recordings”.
17. There was the question of whether Ruentex Financial Group’s purchase of 13.2 million Tai-Med Biologics shares sold by Jie Sheng at the price of NT\$11.5 per share was at fair value. The witness Samuel Yin (尹衍樑) had stated during interrogations that: “(Question: How was the final price of NT\$11.5 per share for the share transaction determined?) NT\$11.5 per share was the result of price negotiations between the party. The bio-tech industry is not about the price-earnings ratio, but about the price-dreams ratio. All bio-tech investments burn money in the start, so one cannot evaluate them based on net value. One must look at its future developments, and will customarily also add the interest on the invested capital. Since Tsai Ying-wen’s family holds more directorships in TaiMed Biologics and has control power, the price of NT\$11.5 per share was determined by interest plus control rights (the number of Jie Sheng’s directorships). I thought it was a reasonable price. The payment was probably made by check.” As a comparison, Taiwan Cement Co. had sold its entire shareholding to Oneness Biotech Co., Ltd. (合一生技公司, formerly TaiMed Biologics) on July 29, 2011 for the total price of NT\$327 million (NT\$10.9 per share); Taiwan Cemerent Co. had held 30 million shares (NT\$300 million), but had held only one directorship in Oneness Biotech Co., Ltd. (formerly TaiMed Biologics); Jie Sheng held only 13.2 million shares (NT\$132 million), but held 2 directorships in Oneness and one directorship in Yu Chang. One can therefore find merit in Ruentex Financial Group’s statement that it had purchased the shares at such price based on Jie Sheng’s control

rights in TaiMed Biologics.

18. According to the “Yu Chang Biologics Co. Joint Venture Agreement” executed between the National Development Fund, TaiMed Biologics, President International and Taiwan Liposome Company, Yu Chang had planned to grant David Ho technological shares and to pay Genentech patent license fees since its initial conception.
19. Technological shares were to be granted to David Ho in return for access to his contributions in developing AIDS drugs; this practice of European, U.S. and Japanese companies was adopted to increase Yu Chang’s chances of being licensed by Genetech to carry out clinical trials for the TMB-355 drug. TaiMed Biologics (renamed as “中裕新藥公司”) had entered into a “Technological Consideration Agreement” on May 26, 2009, with the IPAMA producing an evaluation report for the “Ibalizumab-guided Clinical Trials R&D Technology”; the Investment Commission of the Ministry of Economic Affairs issued Letter Jing-Sheng-1-Zi No. 09800327580 dated September 10, 2009 allowing the license of David Ho’s patented technology to be used by the invested business as consideration for a capital investment of NT\$100 million. Yu Chang had also paid Genentech US\$5 million as the exclusive license fee for TNX-355 (including a tax of US\$1 million), as evidenced by transaction details regarding Yu Chang’s account at the Hua Nan Bank Fuxing Branch, account no. 1271XXXXXXXXXX, the Megabank foreign remittance slip, ROC income withholding slip, and Genentech’s letter dated October 16, 2007. These circumstances are collaborated by the statement of witness Chang Hung-jen (張鴻仁).
20. The “Act for the Development of Biotech and New Pharmaceuticals Industry” bill had been drafted by the Academia Sinica, and Ho Mei-yueh, Chen Chien-jen and Tsai Ying-wen had all been involved in revising the draft. Tsai Ying-wen had assisted in pushing the bill through legislature only after May 21, 2007, when she no longer served as the Vice-Premier. In addition, the negotiations for a proposed collaboration with Genentech had already failed in April 2007. Therefore, the actual driving force behind the bill turning into legislation should have been accredited to Chi-hui Weng. Tsai Ying-wen did not decide to become involved in the Yu Chang investment until August 2007, while the “Act for the Development of Biotech and New Pharmaceuticals Industry” had been promulgated and had entered into force on July 4, 2007. It is clear that there was a certain interval in the timing of the two events.