



Press Release:

Ministry of Justice

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Contact Person: Jianhong Lin, Senior Executive Officer

Telephone: 886-2-21910189 ext. 2203

The amendment to the Article 127 of the Administrative Procedure Act stipulates that an administrative authority shall request the restitution of the unjust enrichment without the need of filing a lawsuit.

When an administrative disposition to grant benefits is withdrawn, revoked, and becomes ineffective retroactively, or is firmly determined to be of no effect, the beneficiary is obligated to return the unjust enrichment. For example, an unlawful award received, periodical subsidy, etc., should be returned in order to conform to the principles of fairness and justice. However, there is controversy over the measures of an administrative authority requesting the restitution of the unjust enrichment that should render an administrative disposition to request the obligation of the restitution performance or file with the administrative court an action for performance in terms of prevailing theory and court practice. The Supreme Administrative Court issued the first resolution in the Joint Conference for the Presiding Judge in June, 2015 to express its opinion that: since prevailing provisions do not expressly stipulate that an administrative authority could use a written administrative disposition to request the unjust enrichment back, an administrative authority is not authorized to do so. In other words, an administrative authority should file with the administrative court an action for performance. In order to prevent a certain amount of the withdrawn cases of administrative dispositions to grant benefits that will need to be filed with the administrative court actions for performance of each case requesting restitution of the unjust enrichment for all, and requiring that citizens go to the court, pay the

court costs and expenses and seriously impacting administrative efficiency, and for preventing such difficulty for government agencies that request restitution of the unjust enrichment described above, the Ministry of Justice proposed the amendment to Article 127 of the Administrative Procedure Act and submitted it to the Executive Yuan and transferred it to the Legislative Yuan today (December 11th). The amendment draft to Article 127 of the Administrative Procedure Act was passed on the third reading and added Section 3, which expressively stipulates that when an administrative disposition to grant benefits is withdrawn or similar reasons by an administrative authority and requests restitution of the unjust enrichment, the administrative authority shall specify the scope of the restitution in a written administrative disposition, and order the beneficiary to comply within a prescribed period, to conform to principles of administrative economy, and to eliminate the controversy.

Since the beneficiary may not comply with the previous disposition of the restitution and file for administrative remedy, and in order to prevent the administrative authority from referring the case for administrative execution before the irreversibility of the disposition described above, Section 4 was added to stipulate that, in order to protect the beneficiary's interests, the administrative authority shall not refer the case for administrative execution before the administrative disposition of the restitution is final and irreversible.