



Press Release of the Ministry of Justice

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"Code of Criminal Procedure (in respect of forfeiture, perpetuation of evidence) " the amendment of partial regulations have been completed through the Third Reading by the Legislative Yuan on May 27 this year(2016) ,completing the confiscation legal system

The amendment of partial Code of Criminal Procedure regulations have been completed through the Third Reading by the Legislative Yuan today (May 27), adding the "special confiscation procedures" monographs, regulating the confiscation of property of a third person in criminal cases and the applying for a declaration of forfeiture alone, including: expressly provides that the prosecutor may apply to the court for the confiscation of property of a third person whether in the investigation procedures or in trial. And if the expense for procedure are too high to meet the cost-effectiveness, the court may exempt the confiscation of property of a third person upon the agreement of prosecutors. And whether the court finds that the results should confiscate the property of a third person or not, such decision should be described in the main text of the judgment. Lastly, the confiscation decision can be appealed alone with no relevant to the main judgment.

Both in the investigation and in the trial procedures, the defendant may have released his asset or spend them all after conviction if the government fail to preserve the criminal proceeds in time. To ensure the implementation of confiscation after conviction, the amendment of partial Code of Criminal Procedure have added relevant complementary measures such as perpetuation of evidence and levy, expressly provides how to seize creditor's rights as well as its effect of injunction. The principle of seizure is generally court-based, an apply for the seizure of court decision is needed. However, for the purpose of getting the ball rolling in judicial practice, there are some exceptions such as seizure attached to searching, under the consent of creditor and emergencies don't need to apply for the seizure of court decision.(However, cases with emergencies should make an declaration to the court after the seizure.)

Other such as when assets which are in seizure have circumstances like devaluing or preservation expense are too huge, prosecutors may appraise at the current rate in the investigation procedure. Also, weighing the purpose of seizure and the principle of proportionality, adding the guarantee in place of seizure, hoping to keep the balance between confiscation and the utility right of creditor.

In response to the review of cases with the apply for Prosecutors' Order as well as allowing the court to review the apply for detention, search, monitoring and seizure quickly, the "Court Organization Law" Article 14-1 have also been updated this time, regulating the "criminal Prosecutors' Order tribunal" in District Court and the High Court should be set to review cases with the apply for Prosecutors' Order. A collateral resolution also has been passed which ask court type 1 to set the criminal Prosecutors' Order tribunal, while court type 2 and type 3 could set the special section instead depending on the number of staff and the complexity of workload by Judicial Yuan. Other types of court may choose not to.

The new confiscation of criminal law in ROC will be implemented on July 1, 2016, with relevant complementary amendment of law completed. The Ministry will hold workshop for confiscation procedure law, work on the drafting of guidebook for investigating confiscation cases, establish relevant official form as well as overall examining the investigation regulations, hoping that we can complete the preparation work before the new confiscation of criminal law go into effect and meeting the need for investigating by prosecutor, thoroughly implementing the judicial justice of "no one can take advantage from crime".