

**The Modernization of Criminal Confiscatory System:
The Legislative Issues about Substantive Law of Confiscation in
2015**

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Abstract

After a series of food safety scandals broke out and the events highlighted the loopholes of illegal benefits confiscation, in the end of 2015, the legislative yuan legislated the draft amendment of criminal law hastily and reformed the criminal confiscatory system in a significant way. The core idea of the new provision is to abolish the quality of subordinate sentence of criminal confiscation and make it an independent effect which is different from the penalty and the rehabilitative measure. Except for fragmentarily amending the existing confiscatory provisions about criminal tools and benefits, the most important reforms are typing the confiscation of criminal benefits a balanced measure quasi-unjustified enrichment, adding provisions about confiscating criminal incomes of third-party, and judges can announce confiscation independently, and above all are based on the spirit of depriving criminal benefits as far as possible. Besides, legislators also proclaimed the retroactive effect of the new provision. This amendment has been hailed as a century-old change in criminal law field and has been placed on high hopes of cracking down on economic crimes. Nevertheless, this article will point out that the new provision improperly abolishes the sentenced quality of criminal confiscation, persists in loosening the possibilities of confiscating criminal benefits, ignores to revise the defects in old provision about confiscating criminal tools and outcomes, and it removes sloppily from applying to the principle of no penalty without a law and the principle of culpability. On the whole, whether the

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new confiscating law can improve the effectiveness of crime prevention is still unknown, however it has been difficult to avoid the excessive damage to property rights. The new provision has no doubt promoted the modernization of criminal confiscatory system, but the fact is, it's based on the idea of "Desperate Diseases Must Have Desperate Remedies". Look forward to reforming it again.

Keywords: confiscation, confiscation of criminal benefits, confiscation of criminal tools and outcome, confiscation of criminal contraband, confiscate independently, independence of law effect, the balanced measure quasi-unjustified enrichment, principle of culpability, principle of non-retroactivity