

Extended Confiscation of Criminal Proceeds Centered on Money Laundering

Yu-Hsiung Lin*

Abstract

Different from the general confiscation of criminal proceeds, the extended confiscation is an independent type of confiscation, which has been provided in German Criminal Code § 73d since 1992 and was substantially amended by the new Criminal Confiscation Law in 2017. Nonetheless, we haven't introduced the same system as Germany's to our Criminal Code. Although our confiscation law was amended in 2016, it was not until 2017 that the concept of extended confiscation was adopted for the first time in our Money Laundering Control Act § 18 II. According to the legislative explanation, the provision is mainly based on German Criminal Code § 73d and § 261, which are regulations of extended confiscation concerning money laundering in German Criminal Law (including conditions of organized group and frequent basis), therefore, the interpretation of the German Criminal Code is of great value.

This article centered on the extended confiscation provisions in both German Criminal Code and Taiwanese Money Laundering Control Act, and attempts to analyze the relationship between the confiscation of money laundering and specified unlawful activity, compare the application of the general confiscation with the extended confiscation of money laundering, and also deal with the property crimes of unknown origin and its confiscation. Conclusions of this article listed as follow: Firstly, fine shall not be served as method of depriving criminal proceeds; secondly, the confiscation of money laundering will not interfere with the claim for the returning proceeds of victims of specified unlawful activity; thirdly, compared to the general confiscation of money laundering which owns

* Professor of Law, College of Law, National Taiwan University.
E-mail: yslmy41@yahoo.com.tw

priority, the extended confiscation merely possesses complementary feature; fourthly, the application of the general confiscation in the Money Laundering Control Act § 15 shall be limited; and lastly, the legislative proposal of property crimes of unknown origin shall adopt the means of criminal proceeds confiscation rather than penalty.

Keywords: money laundering, money laundering control, extended confiscation, confiscation of criminal proceeds, Property crimes of unknown origin, non-conviction-based confiscation(NCBC)