

A stylized, light-colored illustration of a plant with several leaves and a cluster of small, round buds or flowers, positioned on the left side of the slide against a dark brown background.

# FAST AND FAIR — Non-Conviction-Based Confiscation Reform in TAIWANESE LEGAL SYSTEM

Wen-chi Huang

April 5-7, 2017, Busan

# Overview

- Value and Purposes of Confiscation Reform
- 2015-16 NCBC Reforms
  - Brief introduction and definitions
  - Positive Changes After the Reform
- 2016-17 Anti-money laundering reforms
- Future outlook



Crime does not pay

# PURPOSES OF CONFISCATION REFORM

# Purposes of Confiscation Reform

- Prevent crimes
- Help investigate crimes
- Increase governmental income
- Protect and compensate victims

Seize fast, forfeit right

# THE 2015-16 CONFISCATION REFORM



# Example

- X Company is owned by Y
  - Running business for selling cooking oil
  - Adding an illegal coloring agent
  - The cooking oil is sold at high price
  - Earned NTD 1 billion for 7 years
- 
- Y is committed fraud and convicted
  - The charge of violation of the Act governing Food Safety Sanitation is found not guilty

- Before the Reform
  - NTD 1 billion was owned by X
  - NTD 1 billion can't be confiscated
- After the Reform
  - NTD 1 billion is illegal asset
  - NTD 1 billion can be confiscated
  - Criminal Code §38-1 II
  - No need to deduct the cost

# The 2015-16 Confiscation Reform

- Brief introduction
- Primary amendments of **the Criminal Code**
  - Passed by the Legislative Yuan(Congress) on Dec. 17, 2015, enacted on Jul. 1, 2016
    - Re-defining the nature of forfeiture
    - Expanding the range of forfeiture
    - Speeding the process of forfeiture



# The 2015-16 Confiscation Reform

- Brief introduction
  - Primary amendments of **the Criminal Procedure Law**
  - Passed by the Legislative Yuan(Congress) on May. 27, 2016, enacted on Jul. 1, 2016
  - Refining forfeiture process in the court
  - Refining seizure process for forfeiture
- Primary amendment of **the Court Organic Act**
  - Passed by the Legislative Yuan(Congress) on May. 27, 2016, enacted on Jan. 1, 2017
    - Establishing special court for compulsory order

# The 2015-16 Confiscation Reform

- Positive changes after the reform
  - Confiscation is no longer deemed “accessory punishment”
    - Previously, confiscation was bound with principal punishment such as incarceration prior to these reforms
    - Independent effect-deprivation of illegal assets
  - Expand the range of objects subjected to be forfeited
    - If the entire or partial forfeiture fails to be completed, the value thereof shall be collected from the offender.

# The 2015-16 Confiscation Reform

- Positive changes after the reform
  - Expand the range of parties eligible for forfeiture
    - Proceeds of the crime obtained by natural persons, legal persons or an unincorporated body other than the offender shall be forfeited under any of the following conditions:
      - Knowingly obtained illegal proceeds from the offender
      - Obtained illegal proceeds from the offender for free or at considerably non-reciprocal cost
      - The party benefits from illegal act committed by the offender for said party.

# The 2015-16 Confiscation Reform

- Speeding the process
  - Seizure at the outset of case
  - Non-conviction based confiscation
- Fugitive Disentitlement Doctrine forecloses fugitives from contesting the forfeiture
- The scope and value of the proceeds of crime may be based on an estimation if the valuation is deemed difficult

# The 2015-16 Confiscation Reform

- Special confiscation procedures:
  - Regulating the confiscation of property of a third person in criminal cases
  - Applying for a declaration of forfeiture alone
  - Confiscation decisions can be appealed alone with no relevance to the main judgment
  - Adding relevant complementary measures
- The principle of seizure is generally court-based
  - Exceptions such as seizure attached to searching, under the consent of creditor and emergencies
  - Weighing the purpose of seizure and the principle of proportionality

# The 2015-16 Confiscation Reform

- Set up special unit for recovering the proceeds of crime
- Established a specialized area for seizure and appraisal at current rate



# The 2015-16 Confiscation Reform

- Taipei District Prosecutors Office has successfully seized 197 real properties
- Totally amount NTD1,195,334,221 (USD38,952,463) including:
  - Real Properties
  - Fancy cars
  - Diamonds
  - Illegal funds

A stylized, light-colored illustration of a plant with several large, pointed leaves and a cluster of small, round buds or flowers on a thin stem, set against a dark brown background on the left side of the slide.

Do not let money flow away

**THE 2016-17  
ANTI-MONEY  
LAUNDERING REFORM  
IN TAIWAN**



# The 2016-17 Anti-money laundering reform

- Brief introduction
  - A member of APG
  - Amendments of **the Money Laundering Control Act**
    - Passed by the Legislative Yuan(Congress) on Dec. 9, 2016
    - Enacted on Jun. 28, 2017
      - Meet the FATF standards
      - Expanding the scope of “serious crimes” in the Act.
      - Imposing obligations on lawyers, accountants, realtors, etc., to inform the law enforcement of possible money laundering act.
      - Extended confiscation(§18 II )

# The 2016-17

## Anti-money laundering reform

- The Anti-Money Laundering Office was launched on Mar. 16, 2017
- The Anti-Money Laundering Office is created under the Executive Yuan and composed of professionals from different fields in both the public and private sectors. More professionals will be recruited to help the government incorporate new technology to combat criminal activities.
- 19 staff members in the office
- Office to be headed by Deputy Minister of Justice.



Money talks...

# FUTURE OUTLOOK

# Future Outlook

- Successful NCBC is essential for the criminal justice system
- A consolidated agency of Confiscation within the government is necessary
- Balance the necessity of the seizure and the right of the third party
- More frequent collaborations among different private sectors and jurisdictions

A stylized, monochromatic illustration of a plant with several large, pointed leaves and a cluster of small, round buds or flowers on the left side. The illustration is rendered in a dark brown color against a lighter brown background.

wch237@gmail.com

**THANK YOU!**