

**2014 Modularization of Korea's Development Experience:
Experience of Korea Policy Formulation
for Drug-free Country:
Deprive Proceeds Acquired
from Illegal Transaction of Narcotics**

2014



검찰
PROSECUTION SERVICE

Supreme Prosecutors' Office
Republic of Korea

KIC

Korean Institute of Criminology

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2014 Modularization of Korea's Development Experience

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Preface

The study of Korea's economic and social transformation offers a unique window of opportunity to better understand the factors that drive development. Within about one generation, Korea transformed itself from an aid-recipient basket-case to a donor country with fast-paced, sustained economic growth. What makes Korea's experience even more remarkable is that the fruits of Korea's rapid growth were relatively widely shared.

In 2004, the Korean Ministry of Strategy and Finance (MOSF) and the Korea Development Institute (KDI) launched the Knowledge Sharing Program (KSP) to assist partner countries in the developing world by sharing Korea's development experience. To provide a rigorous foundation for the knowledge exchange engagements, the KDI School has accumulated case studies through the KSP Modularization Program since 2010. During the first four years, the Modularization Program has amassed 119 case studies, carefully documenting noteworthy innovations in policy and implementation in a wide range of areas including economic policy, administration-ICT, agricultural policy, health and medicine, industrial development, human resources, land development, and environment. Individually, the case studies convey practical knowhow and insights in an easily accessible format; collectively, they illustrate how Korea was able to kick-start and sustain economic growth for shared prosperity.

Building on the success during the past four years, we are pleased to present an additional installment of 19 new case studies completed through the 2014 Modularization Program. As an economy develops, new challenges arise. Technological innovations create a wealth of new opportunities and risks. Environmental degradation and climate change pose serious threats to the global economy, especially to the citizens of the countries most vulnerable to the impacts of climate change. The new case studies continue the tradition in the Modularization Program by illustrating how different agents in the Korean society including the government, the corporations, and the civil society organizations, worked together to find creative solutions to challenges to shared prosperity. The efforts delineated include overcoming barriers between government agencies; taking advantage of new opportunities opened up through ICT; government investment in infrastructure; creative collaboration between the government and civil society; and painstaking efforts to optimize

management of public programs and their operation. A notable innovation this year is the development of two “teaching cases”, optimized for interactive classroom use: Localizing E-Government in Korea and Korea’s Volume-based Waste Fee System.

I would like to express my gratitude to all those involved in the project this year. First and foremost, I would like to thank the Ministry of Strategy and Finance for the continued support for the Modularization Program. Heartfelt appreciation is due to the contributing researchers and their institutions for their dedication in research, to the former public officials and senior practitioners for their keen insight and wisdom they so graciously shared as advisors and reviewers, and also to the KSP Executive Committee for their expert oversight over the program. Last but not least, I am thankful to each and every member of the Development Research Team for the sincere efforts to bring the research to successful fruition, and to Professor Taejong Kim for his stewardship.

As always, the views and opinions expressed by the authors in the body of work presented here do not necessarily represent those of the KDI School of Public Policy and Management.

December 2014

Joon-Kyung Kim

President

KDI School of Public Policy and Management



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Summary

1. Necessity of Drug Control Policy

Since the enactment of the 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.」 in 1995, Korea has fundamentally blocked the motivation of drug organization and given people the impression that profits from drug transaction would be confiscated in the end no matter how much profit they got, with the ultimate aim of making them give up drug transaction. With this as its objective the Act has played a part in Korea maintaining its position as a drug-free country so far.

From 1980s, with liberalization of overseas trips by the Chun Doo Hwan Administration, increase in the number of foreigners living in or travelling to Korea rapidly grew due to increase in international marriage and inflow of foreign workers, which made it more difficult to control narcotics offenders. In particular, with Seoul Asian Games in 1986 and Seoul Olympics in 1988, the cases of methamphetamine transaction and abuse rapidly increased. In 1990s, the number of foreign drugs flowing into Korea increased along with the accelerated trend of globalization owing to continuous expansion of trading and diplomacy between countries. In particular, as the large amounts of methamphetamine which were manufactured around Busan for the purpose of export to Japan, could not be exported due to reinforcement of control by investigation agencies in Japan, this drug was rapidly distributed throughout the country with adult entertainment district of Japan. In this regard, it became necessary to control drug crimes more systematically.

The reason why the drug organizations can engage in illegal trafficking in the world stage is because they have enormous financial power so the most effective solution to eradicate drug rings is to deprive their operation fund or sales profit. If we confiscate the funds that

earned through illegal drug trafficking, the continued survival of drug trafficking may become impossible or their activities will contract substantially. Furthermore, it may lead to decrease in supplies of illegal narcotics, and contraction in activities of drug organizations.

2. Trend in Nature of Drug Offenders

The reason why the drug problems has emerged as serious social problem is because the numbers of drug users increase daily. So that importance of accurate identification of narcotics users cannot be emphasized enough. Since the number of narcotics take may be counted differently depending on the scope, it is extremely difficult to accurately estimate the number of drug abusers. In addition, the type of narcotics people prefer differs depending on the times and certain pattern continues at certain period. That is, narcotics users do not stop using the narcotics if control or punishment on specific type of drug is reinforced, but revert to other type of narcotic that is less likely to be punished when they get caught. This can be another reason why we cannot say that drug abuse population decreases since there are lesser number of people using a specific type of drug.

In reality, in terms of the number of drug offenders arrested by the investigation agency from 1990 to 2013, the number of narcotics offender arrested throughout the country was highest in 2009 with 11,875 persons for a half a century. Such statistics mean that the number of people arrested per 100,000 persons (narcotics crime index) never exceeds 25 persons, which means that number of narcotics offenders is substantially low compared to Japan, USA, France and Thailand.

In particular, after early 1990s, foreign drug organizations or crime organizations were found to be involved in domestic smuggling. While there was no clear sign that foreign criminal organization intervened in narcotics drug in Korea, Yakuza of Japan, Tirad of China, Mafia of Russia and the Drug Cartels of Central and South America also seemed to watch for an opportunity to penetrate the Korean market. Along with the globalizing trend, the number of foreigners staying in Korea increased and there were more cases where they were involved in narcotics crime in connection with the narcotics smuggling organization of their own countries. Involvement of Southeast Asians from Golden Quadrangle in narcotics crime also increased. There are more cases of foreigners, who just carried the drugs via Korea toward a third country in the past, than those who have directly intervened or used narcotics smuggled to Korea. While such cases stopped shortly with increased monitoring they showed a pattern of growth again. The involvement in narcotics transactions of foreigners increased and the scale grew, substantially raising the social threat.

On the other hands, the amount of foreign drug smuggled with intelligent trafficking method also increased substantially with development of internet. In the past, if Korea was the final destination of consumption rather than stopover, methamphetamine was imported from China or Philippines, or raw materials such as ephedrine, ephedrine chlorate, etc. were smuggled from Taiwan and Hong Kong. However, the types of narcotics have diversified since 1990s and the path of import has also diversified.

3. Basic Policy for Drug Control and Vulnerability

Narcotics control measures, methods of controlling the supply and demand of narcotics take considerable percentage of resource. Concrete alternatives for restricting demand and supply include: first, a generalized alternative for restricting the demand is to enlighten people on the toxification of narcotics, to treat simple abusers, to remove the possibility of a second offense, to punish the habitual abusers and to improve general prevention efforts. Second, widely adopted are alternatives for restricting supply such as the method of control of lawful distribution of raw materials, control of smuggling of raw materials or finished products, control of hemp and opium cultivation, control of illegal drug, handling of illegal narcotics and control of distribution and severe punishment of supply offenders. It is urgently required to construct a mutual information exchange and cooperation system in connection with international anti-drug organization. Change in demand for narcotics does not have direct influence on amount of supply of narcotics, the change of supply does not affect the demand. Therefore, narcotics control measures having more percentage on restriction of supply cannot be regarded wrong. In this situation, it is difficult to expect a decrease in the narcotics abuser population. There must be some reason why more emphasis is given to restriction of supply, rather than demand. For example, it is not an exaggeration to say that questions like how to start restriction of demand of narcotics; against who to act; and how to end it are vague. In addition, while alternatives for restricting the demand take lots of investments, it takes time for it to show results.

4. Legislation Related to Deprivation of Profits of Illegal Transaction of Drug

Since technique of narcotics crime is very intelligent and tricky, it is insufficient to arrest a couple of users or drug runners at the end of the supply-chain without dislodging the big organization in the background. That is, it is required to present exceptional means other than ordinary investigation procedure for effective control since there is limit in existing investigation of drug crime. That is, it is very difficult to effectively control the crime

organization that constructs an international network, distributes narcotics globally and obtains tremendous profits if the property obtained through illegal narcotics trafficking is not completely confiscated. To address this, the international organization, UN, drafted the 「United Nations Convention against Illicit Narcotic Drugs and Psychotropic Substances」 specifying the deprivation of proceeds obtained through illegal narcotics transaction, recognizing the necessity for preparing realistic alternatives, and adopted this at the UN General Assembly session held at Vienna, Austria on Dec. 20, 1988 (hereinafter ‘1988 UN Drug Convention’).

The ‘1988 UN Drug Convention focuses on monitoring illegal trafficking of narcotics and drug organization and depriving property and income of narcotics organization. In detail, its contents include the requirements and procedures to (1) control money laundering, (2) reduce scope of financial security, (3) check identification of bank customers, (4) identify suspicious financial transactions and report, (5) reinforce regulation on financial institution, (6) expand international cooperation, (7) facilitate the development of developing countries.

In Dec. 1994, 「Act on Special Cases Concerning Forfeiture of Offenses of Public Officials」 was enacted and took effect. In 1995, legislation bill of 「Act on Special Cases Concerning Prevention of Illegal Trafficking in Narcotics」, etc., drafted by the international crime department of the Ministry of Justice and resolved by Cabinet Meeting was notified in the official gazette dated May 23 (Notice of the Ministry of Justice No. 1995-18). After that, the Ministry of Justice and Korean Institute of Criminology jointly launched the bill, went through deliberation process of the Legislation-Judiciary Committee of the National Assembly, resolution process of the Legislation-Judiciary Committee of the National Assembly, and it was put into force on Dec. 6, 1995. Enacted bill includes contents relevant to the conditions for subscription to 1988 UN Drug Convention. It specified the procedure and standard required to trace and redeem illegal proceeds from the narcotics crime and to give additional punishment to the narcotics crime for profit. The act of camouflaging the source of drug trafficking fund through domestic financial institution was specified as the crime, international cooperation procedure for execution of confiscation and collection trial of foreign countries as well as devices required in reality to confiscate the property obtained through narcotics trafficking in details.

In USA, 「RICO Act (Racketeer Influenced and Corrupt Organization Act)」 and CCE (Counting Criminal Enterprise) was enacted in 1974 to introduce criminal confiscation system in addition to civil confiscation system which was accepted in the past and to cope with international agreement. Confiscation in 「RICO Act」 is the criminal confiscation and allows the federal government to confiscate the illegal property and property obtained by

rackeering activities. In particular, 「Comprehensive Drug Abuse (the Comprehensive Forfeiture)」 was enacted after continuous modification and supplementation of 「RICO Act」, reinforcing control on drug crime. This Act divides the property related to drug crime into 5 categories and allows the federal government to confiscate this. Confiscation system under 「Comprehensive Drug Abuse」 also specifies criminal confiscation and civil confiscation. Further, it also specified forfeiture of the proceeds of illegal drugs in 1978. In 1986, confiscation was expanded to the area of money laundry as 「Money Laundering Control Act」 was enacted, removing the obstacle to confiscation of illegal profit and specifying the proceeds from money laundering as the target of confiscation.

Features of confiscation and collection of profit from various countries include a strong response to crime through confiscation and international response. Initial international response includes Vienna Convention of 1988 and 40 recommendations of FATA of 1990. Relatively recently in 2003, international UN Convention against Corruption was entered and registration obligation was imposed on the signatory countries including preparation of checking, tracing, freezing and seizure action of the property subject to confiscation, preparation of third-party regulation, recommendation to transfer collection, confiscation and proving obligation of profits from crime. Accordingly, various countries rearrange confiscation system to cope with international agreement, enact the 「Proceeds of Crime Act」 to unify existing confiscation system.

In particular, with regard to drug crime, confiscation and collection system has been prepared, expanding the target of confiscation and collection to the economic profit and indirect profit from this. In particular, rapid increase in drug crime led to each country introducing a crime profit confiscation system. As the drug crime gets serious, there was a declaration of war against drug and measures were explored to restrict the drug transaction. The confiscation system has been evaluated as the most effective system. Thus, confiscation system was institutionalized, confiscation and collection preservation procedure was stipulated to facilitate collection and confiscation of crime and to alleviate the burden of proof which was kept strict in ordinary criminal procedure.

5. Factors of Successful Confiscation and Collection of Drug Crime

The factor for successful confiscation and collection of profits from drug transaction with regard to drug crime control policy is the procedural system in executing confiscating and collecting the drug crime. First of all, target is determined, his surrounding people and

property of the related persons are identified and the details of accounts at commercial banks and security companies are actively examined. In addition, by securing tax related data, the assets are identified and illegal profits are evaluated and examined. Then, the profits of drug crime is controlled through the order of preservation for confiscation of illegal profit and its execution.

However, there also coexisted insufficient matters as seen from several cases. First, while strict management was required in consideration of serious addictive situation of drug substitutes such as romilar and S pill, this substitute is just classified as medicine abused, it is difficult to monitor the illegal distribution and to punish abusers.

In addition, to facilitate the confiscation and collection of the illegal profits of illegal drug substitute romilar, S pill, which recorded tremendous sales, Enforcement Ordinance of 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.」 was revised to designate romilar, S pill as psychoactive drug. Second, since the conditions for order of preservation for confiscation, Article 52 (1) of 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.」 is restricted to the (Article 52 (1) of the Act), the order of preservation for confiscation was limited to “the case of collection when the property from illegal profit cannot be confiscated.” In addition, the requirements for order of preservation for confiscation was specified as “in case it can be confiscated under this Act or other regulations (Article 33 (1) of the Act)”, the order of preservation for collection cannot be issued for the collection if it was possible to confiscate the drug, facility, equipment, fund and means of transaction specified in Article 67 of the Act. Accordingly, in accordance with the requirements of order of preservation for confiscation, Article 52 (1) of the Act, it was revised to “in case when it is necessary to collect under this Act or regulation of other laws.

Fortunately, however, there was no such large-scale drug case that came to light. This means that Korean concerns might be totally different from that of other countries where large-scale narcotics treatment have existed. In addition, it means it is easy for the police, prosecutors, customs and intelligent information to trace the trend of drug organization or the drug transaction. However, we have never neglected tasks of collection and confiscation of the drug transaction profits even if the drug transaction was done in small scale.

6. Suggestion for Establishment of Policy for Keeping Position as a Drug-Free Country

First, it is required to actively secure means for drug crime investigation and to cope with the situation. Investigation of drug crime can be compared to contest between investigation institution and drug organization. Since the drug organizations may do illegally while investigations should comply with rules and procedure, investigation of drug crime is disadvantageous to investigation companies. It is more difficult to overcome such limits when tracing the upper hierarchy of the drug supply organizations as well as arresting abuser. Due to this situation, investigation of drug crime requires lots of means of exception. In reality (based on determination that drug crime is not that severe), there are more and more factors restricting the investigation of drug crime. In order to suppress the supply organization that becomes more and more intelligent, mobilized, globalized and internationalized, it is not easy even if various equipment are given to investigation organization, but the reality is like tying the hands and feet of the investigation organization instead.

Second, it is required to overcome the investigation expediency. Financial institutions should be able to have confidence on the investigation agency in order to maintain good relation between investigation agency and financial authority. To create such an atmosphere, we should maintain an attitude of being wary of investigation expediency. It is difficult to get away from the criticism of self-contradiction since the request of information beyond the scope specified in law or by the warrant issued by the judge or the order of court to submit is regarded as violation of law. Therefore, if tracing fund is inevitable, necessary transaction information can be requested, but there should be no case that unconditionally requests the data on saving of person due to petition or anonymous letter or probability only. Request of information without legal and procedural requirement should be regulated. The situation when a problem gets serious with regard to tracing of illegal fund is the case when the tracing activities are expanded to his family members and relatives in addition to the suspect. That is, it may cause public criticism if we try to find the location of the fund concealed intelligently, as it may result in indiscriminate examination of the accounts of good surrounding people. Given this charge, there is a possibility that similar situations may occur so that special cautions are required.

Third, it is necessary to secure professional investigation personnel and to give education on fund tracing. The case of disguising the illegal fund obtained through illegal drug trafficking, accumulating property or enjoying luxurious life has emerged as the common pending issue of investigation agency of each level. As the eradication of irrationality of

public office community and block of source of finance of criminal organization have been emphasized repeatedly as the priority assignment, it becomes more necessary to control the act of disguising the source of fund day by day. If the investigation staffs of the prosecutors' office and police who took charge of this act are not sufficiently secured, it is difficult to disclose illegal profit of drug organizations and to achieve performance of confiscation and collection. After sufficient personnel is secured, it is necessary to carry out education on fund tracing so that they can have sufficient knowledge on production process of illegal fund and various camouflage skill. It is also necessary to conduct education to expand the scope of understanding on the severity of situation that may cause if such camouflage of crime organization is neglected. Therefore, command unit of investigation organization of each level should remind the employees of the importance of the issue, intensively cultivate the investigation staffs tracing this, and cope with attempts to camouflage the source of illegal fund anywhere by any method, securing early disclosure of such attempts.

Fourth, it is required to reinforce the principle of saving confidentiality and to expand the obligation of financial institutions. 「Emergency Order on Real Name Financial Transactions and Guarantee of Secrecy (hereinafter 'Presidential Emergency Order')」 indicates that financial institutions shall notify contents of information when presented with the warrant issued by the court, personal information of the person, purpose of use and contents of information requested, causing considerable inconvenience and difficulty in monitoring and disclosing any attempt to disguise source of illegal fund. While there is a clause (Article 5 ①) inserted, which allows report by financial institutions in the Act mentioned below, the scope of application is restricted to the drug transaction cost only and "only when he is known that the property is an illegal property or transaction party conceals the illegal profit," so that it cannot be reported without proof positive even if there is a suspicion. Related articles should be revised to exempt the employees of financial institutions and related departments from civil and criminal liability for disclosing the information for their report in good faith even if obligation of report is not obligated. In addition, reporter reward system should be introduced, exclusive institution (or department) should be installed to systematically manage and utilize reported information. If exclusive institution is installed, it must be helpful in identifying the area of business and transaction of crime organization. There should be no neglectful actions for protection of reporter.

Fifth, it is required to expand the role of Korea Financial Intelligence Unit (FIU). The United State installed 'Financial Crime Enforcement Network' named 'FinCEN' under the Department of the Treasury and has focused all energies to trace the illegal fund of terrorist organization and drug organization. FinCEN is connected to the information database

of Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI), Secret Service of the Department of the Treasury, National Tax Service (IRS), Drug Enforcement Administration (DEA), National Security Agency (NSA), Intelligence Investigation Bureau of the State Department (INR), National Security Committee (NSC) in addition to the financial information network and database of the Department of the Treasury. Search staffs consist of professionals of various information organizations and staffs in the organization. In a word, it is like pan-national- supralegal ‘Total Situation Room’ collecting and analyzing various kinds of data collected by famous information and investigation authority in the United States. Therefore, by maximizing the function to collect, analyze the financial information of Korea Financial Intelligence Unit (FIU), to supply information in developing countries, it is necessary to completely block the possibility that domestic banks are used as the path for movement or laundering of drug fund. Since money laundering method becomes intelligent when regulation on money laundering is reinforced, it is necessary to reinforce cooperation between national organization and financial organization. On the other hand, existing measures to prevent drug transaction fund from being disguised as the legal fund, have been devised under the premise that source of illegal fund is camouflaged through certified financial institution. Therefore, it is necessary to expand the official and unofficial cooperation channel between Korea Financial Intelligence Unit (FIU, Korea) and similar organizations of foreign countries since it is difficult to capture the suspect with the resources of a single country only, preparing fully to operate it at all times.

Sixth, it is required to keep close cooperative investigation and cooperation system. It is necessary to continuously expand the cooperation between police, prosecutors, customs and drug investigation agencies. In particular, foreign drug organizations are highly like to penetrate into Korean market due to increase in international exchange and globalization, resolutions of 「Drug Countermeasure Meeting」 should be implemented promptly and cooperation system with drug producing country and neighboring countries should be reinforced. As almost all methamphetamine flown into Korea are found to be made in China, it is necessary to realize conclusion of ‘Memorandum of Understanding on Extradition of Drug Offender’ devised by Korea-China prosecutors. If Korean people are caught in China for manufacturing and sales of drug, the Chinese investigation authority will extradite them to Korea and supply the personal matter of accomplice and if Chinese drug offender is caught in Korea, we can cooperate with China in the same manner. In addition, as there are more and more actions explored to control the act of camouflaging the source of fund, the skill of camouflaging the source of fund gets creative. If law professional or financial professional manage the illegal fund as an agency, it might be difficult to locate the suspect

without sufficient knowledge in advance. Therefore, it is necessary to promptly cope with the intelligent attempt of crime by keeping close cooperation with several organizations including various financial institutions in private sectors.

Lastly, it is required to prevent the disguise of illegal funds of criminal organization into legal fund by expanding criminal justice cooperation with neighboring countries. Since existing measures to prevent conversion of illegal fund of crime organization into legal fund were devised under the presumption that illegal fund could be camouflaged through certified financial institution, it is more difficult to control it if the source of fund is camouflaged through a bogus company or bank in black market. That is, more efforts should be made to expand cooperative investigation system between neighboring countries since it is difficult to capture the criminal without such close cooperation. The prosecution of Korea has played pivotal roles in international cooperation for drug combating for 25 years through Anti-Drug Liaison Officials' Meeting for International Cooperation (ADLOMICO) and constructed mutual trust with the member states through drug combating support project. As of Oct. 2014, Korea and 9 ASEAN countries except Malaysia are member states.

2014 Modularization of Korea's Development Experience
Experience of Korea Policy Formulation for Drug-free Country:
Deprive Proceeds Acquired from Illegal Transaction of Narcotics

Chapter 1

Introduction

1. Introduction: Korean Government Efforts to Keep the Country Drug-Free
2. Change in the Environment and Threat Factor

Introduction

1. Introduction: Korean Government Efforts to Keep the Country Drug-Free

1.1. Purpose and Method of Study

A drug-free country is a country safe from drugs. But there is no clear standard on contents or standard of a drug-free country. In general, it is understood as less than 20 narcotics offenders in 100,000 populations. Accordingly, if population is 50 million, narcotics offender index should be less than 10,000 people to keep the status.

United Nations Office on Drugs and Crime (UNODC) is the UN institution established in 1997 to prevent narcotics crime and to regulate drugs. It has the function to establish international strategies to fight drugs, to support establishment of various strategies to fight drugs, to take legislative measures for compliance of drug related agreement by member countries, to provide cooperation for technical support, to collect, analyze and spread information on drug problems, and to supervise implementation of international agreement related to drugs. This institution issues a comprehensive annual report on narcotics problem – a world drug report. It provides forecast and information on drugs such as stimulants, opium/heroin, coca/cocaine and hemp. This report is based on data provided by each government. World drug report also does not mention concept or position of drug-free country at all. But, given that population is 50 million in Korea, and drug offenders are less than 10,000 persons, Korea is called a drug-free country and international community seems to accept this position.

Recently, however, the position was threatened. According to data on comprehensive measures for narcotics management in 2014, drug related offenders reach about 9,700 persons, which shows that the position of drug-free country is threatened. Various causes include change in historical and social environment, and change in international factors.

This experience module will examine efforts of Korea to reach the position of drug-free country up to now and to keep this position as well as legal and institutional factors, factors threatening such position, thereby attracting attention of international community and exploring plans of the international society to eradicate drug offenders. To achieve such a goal of study, this study aims to focus on the present status based on legal system to eradicate drug offenders, analysis of various official statistical data and policy. In particular, since Korea has the system to confiscate illegal criminal proceeds in order to eradicate drug offenders, this study will adopt methods of literature and case study by introducing and presenting actual cases.

1.2. Theoretical Foundation of Narcotics Regulation in Korea

Since attackers and victims cannot be specified in ordinary crimes such as murder, robbery, rape and theft, suitable direction and contents are determined in establishing measures by targeting potential criminals and potential victims. For example, to establish measures to prevent robbery, measures are drawn mainstream people who are suspected to commit robbery, while reinforcing protection and enlightenment of people who are likely to get robbed.

Since there is no separate offenders or victims of narcotics crime, however, plans are established in a way to specify consumers and suppliers and to reduce both at the same time. Measures for controlling narcotics crime are in the form of combining the alternative that can effectively relieve the drug abusers and drug suppliers at the same time. In this regard, there lies belief on the bottom of narcotics control measures in any countries that 「narcotics crime will be eradicated if restricting demand and supply at the same time」.

Aspects of controlling narcotics differ depending on country. One country may focus more on controlling consumers, while other country focuses more on controlling of suppliers. Since the area of focus differs depending on which political party comes into power in one country, direction and contents of policy in each period is different. Since this reality just means that priority of policy differs depending on the opinion of people or circumstance of country, however, leaning of interest toward one side does not necessarily mean different theoretical foundation of measures.

1.3. Basic Framework of Narcotics Control Measures in Korea

1.3.1. Restriction of Demand and Supply

In narcotics control measure, methods of controlling the supply and demand of narcotics take considerable percentage of resource. Concrete alternatives for restricting demand and supply are as follows.

First of all, generalized alternative for restricting the demand is to enlighten people on the toxification of narcotics, to treat simple abusers, to remove possibility of second offense, to punish the habitual abusers and to improve general prevention effects.

Second, widely adopted are alternatives for restricting supply such as the method of control lawful distribution of raw materials, control of smuggling of raw materials or finished products, control of hemp and opium cultivation, control of illegal drug, handling of illegal narcotics and control of distribution and severe punishment of supply offenders. It is urgently required to construct a mutual information exchange and cooperation system in connection with international anti-drug organization.

a. Narcotics Control System

The following <Table 1-1> shows the relation of roles and narcotics control system prepared by Supreme Prosecutors' Office and is useful reference for understanding basic framework of narcotics control measures in Korea.

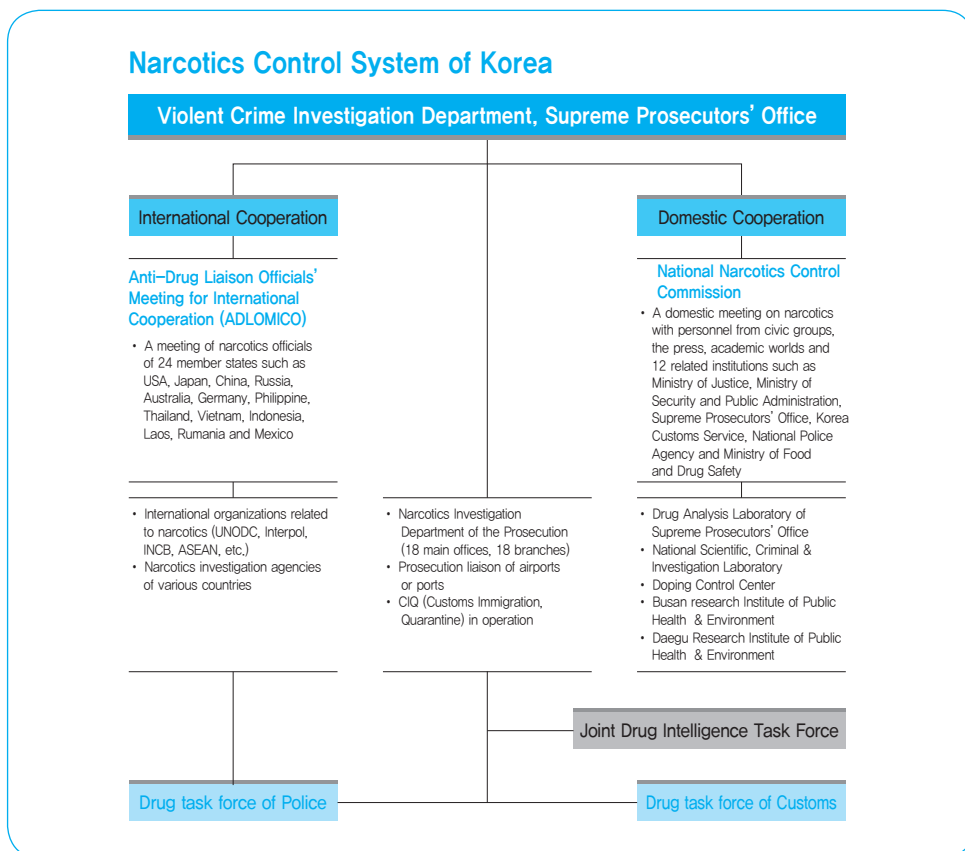
Table 1-1 | Comprehensive Control System of Narcotics Offenders

Supply Cut	Prevention of Leak of Legal Narcotics	Thorough Management and Control (Ministry of Health and Social Affairs)
	Block of Domestic Smuggling	Professional Control and Investigation (Prosecution, Police, Customs)
	Control of Users	Crush Domestic Supply Organization
Restrict Demand	Prevention of Second Offender	Return to Fundamental Treatment (Ministry of Health and Social Affairs, Ministry of Justice)
	Prevent Expansion to General Public	Systematic Enlightenment, Education (Ministry of Health and Social Affairs, Ministry of Education, Korean Anti-drug Campaign Center, Civil Organization, Press)

Source: Supreme Prosecutors' Office, 'Narcotics Crime White Paper,' 1993, 1994, Mar. 3, p. 22.

<Table 1-1> shows that narcotics control measures of Korea have taken comprehensive and dynamic forms with participation by national institutions, civil organizations and media. While it is not shown in the table, military authority has made efforts to prevent exposure of military soldiers to narcotics. National Security Planning Agency has focused on collecting information on international distribution of narcotics, and Korea Criminal Policy Institute has performed continuous studies using the narcotics problem as intensive area of study. Therefore, narcotics control measures of Korea retain dynamic aspects. This domestic narcotics control system has obtained the following organization system as of 2013 with change in organization and human resources.

Figure 1-1 | Domestic Narcotics Control System (As of 2013)



Source: Supreme Prosecutors' Office, 『Narcotics Crime White Paper』 2013, p. 362.

b. Main Contents of Comprehensive Measures for Narcotics Management

Comprehensive Measure for Narcotics Management

Under this narcotics control system, contents of Comprehensive Measure for Narcotics Management in Korea as of 2014 are as follows.¹

- A. Reinforce rapid response system of new type of similar drugs
- B. Reinforce control on areas vulnerable to smuggling distribution of illegal narcotics
- C. Establish regular monitoring system of medical narcotics
- D. Activate project to treat and return narcotics addicts to society
- E. Strengthen international cooperation
- F. Diversify promotion education to prevent misuse and abuse of narcotics and hallucinogen.

1.3.2. Severe Punishment of Offenses

In Korea, it is regulated that those who are engaged in narcotics crime under 「Act on Narcotics Management」 are punished by death sentence, life sentence or imprisonment for over 10 years, and habitual offenders or attempted offenders are punished by imprisonment for a limited term over 3 years. In addition, any person who conceals or disguises the nature, location, origin, or ownership of illegal profits, etc. for the purpose of hindering the detection of narcotics crimes or the investigation of the origin of illegal profits, etc. or avoiding the confiscation of illegal profits, etc. may be punished by imprisonment for not more than 7 years or by a fine not exceeding 30 million Won, or both penalties may be imposed concurrently. According to such regulations on narcotics control, narcotics offenders are subject to strong punishment, showing its focus on suspension of demand and supply activities.

In addition, it imposes certain obligation on the person who engages in financial company, that is, when he gets to know that the assets he received in the course of business are illegal profits or the other party related to the tasks committed acts of concealment or disguise of illegal profits, he shall report to the Public Prosecutor General. Violation of such obligation to report may be punished by imprisonment for not more than 2 years or to a fine not exceeding 10 million Won. It was regulated to strongly deal with failure to report illegal profit, expanding policies to deprive or eradicate illegal profits.

1. Press Media, Ministry of Food and Drug Safety, Comprehensive Measures for Narcotics Management in 2014.

1.4. Limit of Narcotics Control Policy

1.4.1. Increase in Narcotics Offender and Necessity of Control

The cases of foreign drugs smuggled into Korea began to increase, taking advantage of the trend of globalization and internationalization of global village accelerated with continuous expansion of trade and diplomacy between countries and regions since 1990s. In particular, great quantities of methamphetamine (meth), manufactured around Busan for export to Japan, rapidly expanded to Daegu, Gwangju, Daejeon, Seoul and Incheon, with the adult entertainment district of Busan as a point of origin as its export route was blocked with rigid reinforcement of regulations of investigation agency in Japan.² From 1980s, more people went abroad and were exposed to narcotics due to liberalization of overseas trips by the Chun Doo Hwan Administration. The number of foreigners living in or accessing Korea rapidly increased due to increases in international marriage and inflow of foreign workers, making it more difficult to control narcotics offenders. In particular, the case of methamphetamine transaction and abuse rapidly increased with Seoul Asian Games in 1986 and Seoul Olympics in 1988 and gained momentum (3,320 persons arrested for 1 year in 1988), it became necessary to control narcotics crime more systematically.

Recently, drug offenders have increased consistently. Smuggling of methamphetamine or new types of drugs increased rapidly, which is at its highest level since 2004. The reason why methamphetamine smuggling increased is because international drug smuggling organization was caught at Incheon International Airport, while trying to smuggle a great quantity methamphetamine using Korea as a transit point.³ According to narcotics control status in 2014, methamphetamine, the type of narcotics abused in the highest quantity in Korea, 50.8kg was caught for one year of 2014, and it is the maximum amount of exposure since 2004. The main features of recent smuggling of drugs are smuggling of methamphetamine by international crime organization and diversification of narcotics supplier. In particular, there were attempts of drug smuggling organization to smuggle drugs hiding it in the cargo using a woman carrier at Incheon Airport from China, or increase in smuggling of new types of drugs for personal consumption at e-mail. On the other hand, the number of teenage narcotics smugglers rapidly increased. There are more and more cases that teenagers purchase new type of drugs as a result of curiosity or misled by ads disguising

2. Cho Byeong In, "Crackdown Plans of Illegal Profits of International Criminal Organization," "Criminal Policy Study," Vol. 6, No.2 [Serial No. 22, Summer of 1995], Korean Institute of Criminology, pp. 145-173.

3. 2013 Narcotics Drug White Paper, pp. 44-45.

them as legal ones in Internet drug sales site.⁴ Accordingly, comprehensive measures of narcotics management are urgently required. Government also evaluated performance of narcotics management policy through conference on narcotics measures, prepared and released comprehensive measures. Conference on narcotics measure is the conference under prime minister (chairman is the director of social coordination office under prime minister's office, and director-level officers of 12 departments including Ministry of Food and Drug Safety, Public Prosecutor's Office, National Policy Agency, Ministry of Education, Ministry of Health and Welfare, food and drug policy officer, and those who have sufficient knowledge and experience in the related areas, and appointed by the chairman, and the assistant administrator is the director of drug policy under Ministry of Foods and Drug Safety, to comprehensively consult and adjust the measures for narcotics and construction of cooperation system between related organizations on narcotics problem).

On the other hands, recent trends of narcotics distribution include rapid increase of new narcotics such as synthetic hemp, increase in smuggling through new path such as international mail, and increase in illegal use of medical narcotics including propofol. Recently, the number of narcotics offenders in Korea for recent 3 years is 9,000 persons on average and among them, offenders of psychoactive drug takes about 80%.⁵

1.4.2. Success and Threat Factor

As shown above, Korea has taken very strict control policy in terms of demand and supply of narcotics, and has achieved some level of success. From trends of narcotics offense, strict control and punishment on narcotics manufacturing offender and severe punishment policy on narcotics offender can be evaluated to be effective.

Such evaluation does not stop at domestic evaluation but clearly reflected internationally in that Korea is classified as drug-free country. And increase in case of methamphetamine smuggling has threatened its position as drug-free country. As indicated above, methamphetamine is the main type of narcotics in Korea, has recently increased. Smuggling of hemp is also increasing. It is attributable to the fact that there are more and more cases of narcotics smuggling involved by domestic and foreign crime organization or using Korea as a transit point for drug laundry, utilizing multinational drug carriers, Korean or foreigners, utilizing Korea's status as a drug-free country.⁶

4. Korea Customs Service, Data on Trends of Narcotics Smuggling Control for 2014.

5. Press Media, Ministry of Food and Drug Safety, Comprehensive Measures of Narcotics Management for 2014.

6. 2013 Narcotics Drug White Paper, p. 45.

More than anything else, new types of narcotics have increased throughout the world, which has rapidly spread through Internet. Control on smuggling of new types of drugs should focus on control of smuggling of narcotics including control and investigation on delivery using international mail or carriers and punishment of narcotics purchaser directly from foreign countries. International response to narcotics offenders is also required in that it is strongly required to reinforce information sharing with foreign control institutions such as drug enforcement office as well as communication and cooperation with related domestic institutions. With this, an assignment is given to reinforce position of Korea as a drug-free country.

On the other hand, there are more and more cases that international drug crime organizations use Korea as the stopover or employs Korean as a drug carrier, making ill use of the fact that Korea is a drug-free country. As the number of drug smuggling into Korea increased, there are many threat factors. According to data of parliamentary inspection for 2014, number of drug exposure for recent 3 years gradually increased from 174 cases in 2011, 232 cases in 2012, to 254 cases in 2013. Amount of exposure increases from 61.9 billion and 61 million Won in 2011, 63.5 billion and 86 million Won in 2012, to 92.9 billion and 74 million Won in 2013. The number and amount of drug exposure in Korea have increased annually, showing that it is not easy to keep the position of a drug-free country and thus, strong control and punishment are required.

More than anything else, there are many concerns that continuous increase in domestic drug offenders may result in the deprivation of a drug-free country status, as specified by UN. It shows that while Korea can have international position due to strong restriction on demand and supply as well as control policy, threat factors are also considerable.

<Table 1-2> shows the number of narcotics offenders arrested by investigation institutions for 24 years until 2013 from 1999 when aggregation and analysis of narcotics crime started with publication of <Narcotics Drug White Paper> after establishment of Narcotics Dept. in Supreme Prosecutors' Office in Feb. 1989. As shown in the table, trend of arrest of narcotics offender continuously decreased from 2003 to 2006 since the narcotics offender removal strategy started in 2002. Provided, however, that the number increased to 11,975 persons from 2007 to 2009; decreased to 9,174 persons in 2011 and began to increase again to 9,764 persons in 2013. Such statistics mean that there is no more than 25 Narcotics Crime Index per 100,000 people. More than anything else, most narcotics smuggling organizations and large-scale first supply organizations are almost removed, showing considerable success as a result of crackdown on narcotics.⁷

7. 2013 Narcotics Drug White Paper, p. 44.

Table 1-2 | Arrest of Narcotics Offenders after 1990 by Year

(Unit: persons)

Classification	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Drug	1,215	838	949	3,364	1,314	1,135	1,235	1,201	892	923	954	661
Hemp	1,450	1,138	1,054	1,509	1,499	1,516	1,272	1,301	1,606	2,187	2,284	1,482
Psychoactive	1,557	1,157	965	1,900	1,742	2,767	3,682	4,445	5,852	7,479	7,066	7,959
Total	4,222	3,133	2,968	6,773	4,555	5,418	6,189	6,947	8,350	10,589	10,304	10,102
Classification	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Drug	790	1,211	1,203	768	868	958	1,396	2,198	1,124	759	582	685
Hemp	1,965	1,608	1,231	1,032	835	1,170	1,045	1,712	1,837	1,189	1,042	1,177
Psychoactive	7,918	4,727	5,313	5,354	6,006	8,521	7,457	7,965	6,771	7,226	7,631	7,902
Total	10,673	7,546	7,747	7,154	7,709	10,649	9,898	11,875	9,732	9,174	7,255	9,764

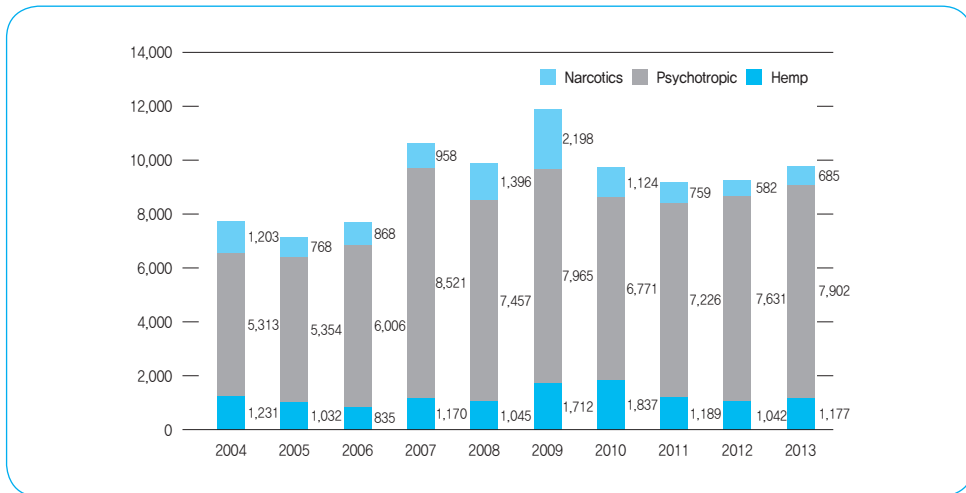
Source: White Paper on Drug Crime of the Supreme Prosecutor's Office.

<Table 1-2> shows that the number of narcotics offenders arrested rapidly increased for 8 years from 1996 to 2002. In addition, it also shows that it is attributable to rapid increase in number of psychotropic drug offenders arrested. [Figure 1-1] and [Figure 1-2] visually confirm that rapid increase in number of narcotics offenders arrested from 1996 to 2002 is attributable to rapid increase in psychotropic drug offenders. This means that drug issue of Korea is closely related to psychotropic drug. It also means that monitoring and tracing activities of investigation agency on proceeds of narcotics trafficking have focused on smuggling, sales, arrangement and administration of psychotropic drug. Actual successful cases of confiscation and collection to be introduced later positively confirm such presumption.

Meanwhile, according to trend of narcotics offender in Korea, narcotics offenders in Korea are considerably low compared to Japan, USA, France and Thailand. <Table 1-3> shows that in terms of Narcotics Crime Index of various countries, Korea has kept around 20 from 2005 to 2009, which is 1/350 of that of USA. This is one reason why Korea has maintained its position as a drug-free country.

[Figure 1-2] shows the trend of narcotics offender for last 10 years.

Figure 1-2 | Trend of Domestic Narcotics Offenders for Past 10 Years



Source: White Paper on Drugs Crime of the Supreme Prosecutor's Office.

Table 1-3 | Narcotics Crime Index of Main Countries
(Number of Narcotics Offenders Cracked Down per 100,000 People)

(Unit: persons)

Country \ Year	2005	2006	2007	2008	2009
Korea	15	16	22	20	24
Japan	18	17	17	16	17
USA	6,970	7,112	7,027	6,926	-
France	-	278	338	442	-
Thailand	157	191	247	280	270

Source: White Paper on Drugs Crime of the Supreme Prosecutor's Office.

2. Change in the Environment and Threat Factor

2.1. Continuous Increase in Narcotics Offenders

2.1.1. Present Status

<Table 1-4> shows the status of exposure of various investigation institutions for 6 years from 1990 when Supreme Prosecutors' Office announced the number of narcotics arrested through the [Narcotics Crime White Paper] before 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.」 (hereinafter 'Act') was enacted and took effect.

According to the table, the number of narcotics offenders arrested for remaining 5 years after one year, 1993, per year did not exceed 6,000 persons, and for 2 years from 1991 to 1992, it was just about 3,000 persons. While it decreased some years from previous year, overall trend shows that it has continuously increased every year. While we could not conclusively determine the trend of increase, the control of narcotics crime cannot slacken. It is because the drug crime has the remarkable feature of spreading its root to other place like toadstool, if the reins of monitoring are loosened.

[Figure 1-3] visually confirms the gradual trend of increase in narcotics offenders. The reason why the number of persons arrested doubled in 1993 from the previous year is that there were many narcotics (opium, heroine) offenders arrested. However, increase in psychotropic drug offenders mainly swayed the increase and decrease in number of drug offenders arrested after that.

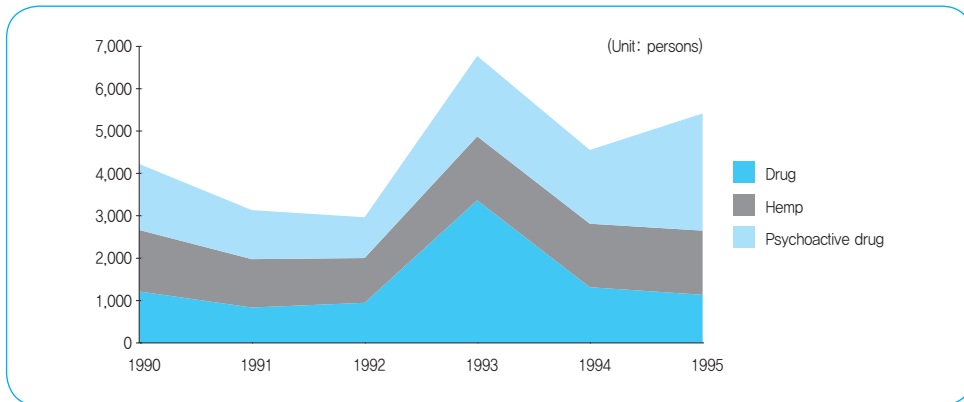
Table 1-4 | Trend of Arrest of Narcotics Offenders for 6 Years after 1990

(Unit: persons)

Classification \ Year	1990	1991	1992	1993	1994	1995
Narcotics	1,215 (337)	838 (100)	949 (113.2)	3,364 (401.4)	1,314 (156.8)	1,135 (135.4)
Hemp	1,450 (442)	1,138 (100)	1,054 (92.6)	1,509 (132.6)	1,499 (131.7)	1,516 (133.2)
Psychotropic	1,557 (311)	1,157 (100)	965 (83.4)	1,900 (164.2)	1,742 (150.6)	2,767 (239.2)
Total	4,222 (355)	3,133 (100)	2,968 (94.7)	6,773 (216.2)	4,555 (145.4)	5,418 (172.9)

Source: White Paper on Drugs Crime of the Supreme Prosecutor's Office.

Figure 1-3 | Trend of Arrest of Narcotics Offender for 6 Years after 1990

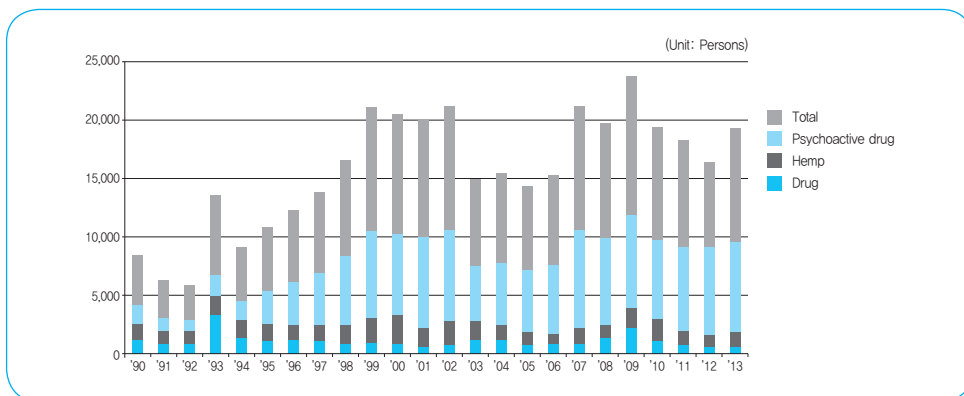


Source: White Paper on Drugs Crime of the Supreme Prosecutor's Office.

The number of narcotics offenders arrested for 4 years from 2003 to 2006 decreased to less than 8,000 persons mainly due to decrease in number of psychotropic drug offenders arrested. Narcotics offenders might reduce or the control activities of investigation agency were poor due to some reason, but the statistics on control for 8 years thereafter supports that it was a temporary phenomenon.

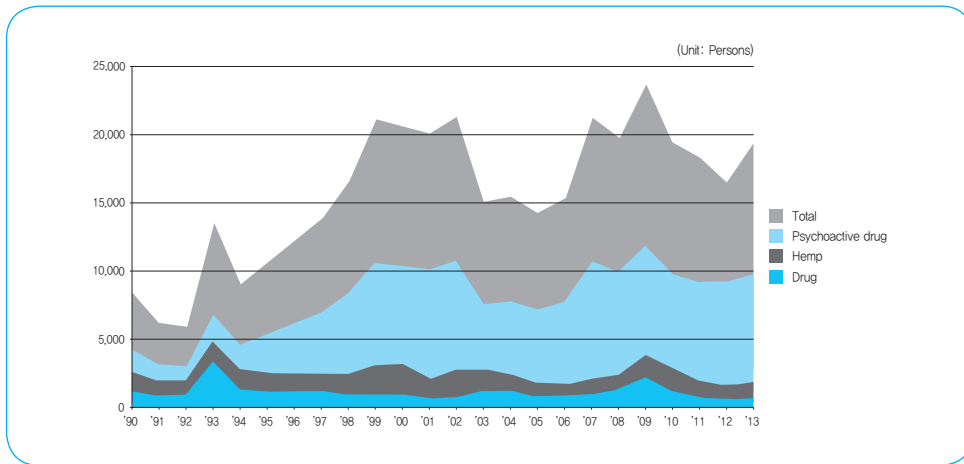
The number of narcotics offenders arrested for 7 years from 2007 to 2013 increased to about 10,000 persons again around 2000. [Figure 1-4] and [Figure 1-5] visually confirm that rapid increase in number of narcotics offenders arrested from 2003 to 2006 was attributable to rapid increase in number of psychotropic drug offenders.

Figure 1-4 | Trend of Arrest of Narcotics Offender after 1990 by Year (1)



Source: White Paper on Drugs Crime of the Supreme Prosecutor's Office.

Figure 1-5 | Trend of Arrest of Narcotics Offender after 1990 by Year (2)



Source: White Paper on Drugs Crime of the Supreme Prosecutor's Office.

Narcotics Division of Supreme Prosecutors' Office analyzed that there appears some factors threatening Korea's drug-free country rank. First of all, cases of narcotics smuggling involving international narcotics crime organization increased. It is attributable to increase in number of abuses as a result of the passage and smuggling drugs for domestic consumption by international narcotics crime organization. For 3 years from 2009 to 2011, 10 cases of large-scale methamphetamine smuggling by drug smuggling organizations of Southeast Asia, Republic of South Africa, Nigeria, Triad of China, Yakuza of Japan, as well as 2 cases of drug raw material smuggling using Korea as the place of drug laundering were caught.

Second, the narcotics supply crime by criminal organizations increased. Recently, the share of supply offenders in narcotics crime of criminal organizations was found to exceed 50%. In Jan. 2011, 21 persons of 14 domestic criminal organizations and 3 members of Triad were caught while smuggling lots of methamphetamine in connection with Triad of China.

Table 1-5 | Percentage of Supply Offenders in Narcotics Crime of Criminal Organization

(Unit: persons)

By Year	2006	2007	2008	2009	2010
Share of Supply Offenders	20.4	29.7	21.4	31.3	51.0

Source: White Paper on Drugs Crime of the Supreme Prosecutor's Office.

If criminal organizations, commanding many members and systematic command and supervision system, intervene in narcotics crime, narcotics are highly likely to expand. In addition, given the fact that such criminal organizations are likely to grow as big criminal organizations like Mafia of the USA, Yakuza of Japan and Triad of China, it is necessary to be fully prepared for this.

Third, there are trends of diversification of narcotics and smuggling countries. Smuggling of new type of narcotics such as Ketamine, MDMA, Salvia divinorum, Psilocybin, JWH-018 and kratom by students studying abroad and foreign instructors and workers occur regularly. International mail transactions by overseas narcotics manufacturers and supplies have increased. Since tracing of investigation agency can be avoided and burden of risk by transportation are low, the cases of smuggling using international mail and express delivery have rapidly increased.

In conclusion, it is difficult to evaluate the performance of the enactment of the Act, given the data analyzed by Narcotics Division of Supreme Prosecutors' Office and <Narcotics Crime White Paper>. The strategy to confiscate the proceeds from the illegal trafficking of narcotics might not be that useful or the investigation authority was negligent in enforcing the law. We also cannot exclude the possibility that both occurred.

However, since the statistics on narcotics crime is widely utilized the gap from the actual situation is highly like to be wide, but we cannot accept it as it is. It is not accurate and even if we unreasonably jump to conclusions, there are few people who will believe it. While statistics on narcotics crime announced by national organization are a useful index for determining success of policy, it can have various limitations and weakness at the same time.

2.1.2. Limitation of Official Statistics

To prepare statistics on narcotics crime, standard on narcotics crime should be clarified first. The reality when horizontal comparison is difficult since each country has different totalization methods clearly shows the limit of official statistics. Even if we determine the scope arbitrarily, another problem is left, which is to accurately identify the people who are included in the category. Strictly speaking, there exists no method to accurately collect the number of narcotics criminals.

First of all, official statistics on increase and decrease in the number of narcotics offenders are just collections of narcotics offenders controlled by regulatory bodies. Therefore, while numbers of narcotics offenders, amounts of raw materials and complete products in official statistics are meaningful as the data that shows the working performance (performance of control) of the law-enforcing organizations, it was not actually so. We cannot deny the

fact that it is highly probable that there are more narcotics offenders with increase in the number of people caught by law-enforcing organization. However, it becomes clear that official statistics are not helpful in checking the number of narcotics users, given that the number of narcotics offender may increase as the related organization reinforces control, even if the number of narcotics offenders decreased. There was a limit in discussing the number of crimes based on official statistics for ordinary crimes. While there is a direct proportion between the official statistics and actual number of occurrences since ordinary crime results in victims, narcotics offender have no other victims other than the user so that proportionality are totally different.

If official statistics aggregating the number of narcotics offenders cracked down by the law-enforcing institution, is like this, the number of drug crime index (number of narcotics offenders per 100,000 populations) calculated based on this, may not be used well in identifying the number of drug users. While the method of estimating the status of narcotics abuse based on the result of questionnaire on the general public has been frequently used recently, given the limitation of survey technique, it is difficult to trust the estimation obtained from that method.⁸

In conclusion, since official statistics introduced in ‘Narcotics Crime White Paper’ only presents the performance of enforcement, it is not logical and undesirable to identify increase and decrease status of narcotics users based on this since it analyzed the narcotics abuse status from other point of view (enforcement) and may lead to misunderstanding. Accordingly, it is more desirable to have the approach that closely examines the effects of the Act on the politics, economy and society, rather than the method of checking the trend of official statistics when discussing the performance of enactment or execution of the Act.⁹

In sum, it might be more desirable and persuasive to examine the situation that may occur when the Act was not enacted or executed from logical and empirical ways, rather than the approach of examining the performance of enactment and execution of the Act simply based on the statistics on control of drug offenders. Based on this, we can arrange it sequentially and in three dimensions.

8. Cho Byeong In, *op. cit.*, p. 159.

9. Cho Byeong In, *op. cit.*, pp. 149~150.

2.2. Change in Narcotics Abuse Population

Various symptoms identified in the course of narcotics control may serve as a ground to determine increase/decrease in narcotics abuse population. It is not difficult to capture the phenomenon that can serve as detrimental clue in discussing increase and decrease in narcotics abuse population when you carefully examine situation of control field using experienced observation and basic common sense on narcotics.¹⁰

First of all, increase in cases that are detected after attempt to smuggle foreign drugs into Korea as well as the expansion of new types of narcotics that were rarely found in the past including cocaine, are good grounds that the number of drug users has not decreased. Such phenomenon shows that drug policy thus far fails to reduce the number of drug abusers while it may change the type of drugs supplied.

Second, is the possibility that the method of taking narcotics has becomes more intelligent. In the measures to restrict the demand of narcotics, reinforcement of control on drug users takes the biggest percentage and the most frequent methods are to check the marks of injection needle or to carry out a urine test. While the authorities reinforced control on drug abusers, however, new methods of narcotics abuse were devised and spread to abusers, making it more difficult for the authorities to control them. For example, there was a case that they take ringer solution to remove the narcotic element left in the body after taking narcotics, errhine cocaine or mix methamphetamine in drink and take, which shows that reduction in performance of control by the authority does not necessarily mean decrease in narcotics abuse population. Third, alternative drugs, not subject to regulation, appears without exception after the authorities reinforced control on specific type of narcotics and satisfies the desire of narcotic users until control starts. This implies that the decrease in amount of narcotics confiscated does not necessarily mean decrease in narcotic users. The case of methadone shock in 1965 clearly demonstrates the fact that people do not stop abuse narcotics because it is difficult to obtain the narcotics they prefer.¹¹ After control on methamphetamine, a psychotropic drug was reinforced, nalbuphine hydrochloride, the pain reliever for operation or childbirth, was distributed as an alternative hallucinogen. It clearly demonstrates that supply amount of specific drugs does not necessarily decrease the number of narcotics user. Fourth, the reality that narcotics transaction organizations continue to get

10. Cho Byeong In, *op. cit.*, pp. 150-151.

11. Korea Criminal Policy Institute (1), 「Status and Development Plan of Narcotics Control Policy」, Jun. 1992, p. 66.

bigger and globalized supports the size of supply and demand still increased despite strong control on abuse and distribution of narcotics.¹²

According to International Criminal Police Organization (I.C.P.O.), the member of organizations who belong to world 3 major criminal organizations such as the Mafia of the Italy, Triad of China and Yakuza of Japan act outside the law in an underground network that exceeds 200,000 persons. They are analyzed to resort to violence in the background of power of big organization and to obtain economic gains continuously through illegal acts such as drug smuggling, fraud or gambling.

In sum, the fact that the number and scale of international criminal organization continues to increase and their area of business continues to expand demonstrates that drug smuggling, the main source of income, is still rampant. This also strongly suggests that the number of drug abusers does not decrease at all under the strong control of intake and distribution of narcotics.

Fifth, the type of narcotics people prefer differs depending on the times since control on abuse and distribution of narcotics starts (reflux of type of narcotics). This strongly suggests that measures so far have no different effect in reducing the demands of narcotics.¹³

According to study results, the type of narcotics people prefer differs depending on the times and certain pattern continues at certain period. Up to 1960s, opium types of drug was the mainstream in Korea. As the control of the authorities on opium was reinforced, however, hemp (happy smog) was widely used in the 1970s. When control on this was reinforced, methamphetamine began to spread throughout the country.

That is, narcotics users do not stop using the narcotics if control or punishment on specific type of drug is reinforced, but move on to other types of narcotics that are less likely to be attract punishment when they get caught. This can be another reason why we cannot say that drug abuse population decreases since there is less people using a specific type of drug.¹⁴

12. Cho Byeong In, *op. cit.*, p. 150.

13. Cho Byeong In, *op. cit.*, pp. 151~152.

14. Cho Byeong In, *op. cit.*, p. 152.

2.3. Diversification of Narcotics Supplier

After early 1990s, foreign drug organization or crime organization were found to intervene in domestic smuggling. While there was no clear sign that foreign criminal organization intervened in narcotics drug, Yakuza of Japan, Tirad of China, Mafia of Russia and Drug Cartel of Central and South America also seemed to watch for an opportunity to penetrate into Korean market. Along with international and opening trend, the number of foreigners staying in Korea increased and there were more cases that they intervened in narcotics crime in connection with the narcotics smuggling organization of their own countries. Intervention of Southwest Asian from golden crescent moon area in narcotics crime also increased.

Recently, there are more cases that foreigners, who just carried the drugs via Korea toward the 3rd country in the past, have directly intervened or used narcotics smuggling in Korea. While such cases stopped shortly depending on strength of control but showed the pattern of increase again, the intervention of narcotics transaction of foreigners increased and the scale grew, substantially raising the social threat.

On the other hands, the amount of foreign drug smuggled with intelligent trafficking method also increased substantially with development of internet. In the past, if Korea is the final destination of consumption rather than stopover, methamphetamine was imported from China or Philippines, or raw materials such as ephedrine, ephedrine chlorate were smuggled from Taiwan and Hong Kong. However, the type of narcotics were diversified since 1990s and the path of import was also diversified.

2.4. Possibility of Connection between Narcotics Crime and Terror Organization

It is rare in Korea that narcotics problem is connected to terror. However, expansion of consumption and increase in production of illegal drugs caused appearance of new international drug organizations, and drug dealers has accumulated new power through connection with newly emerging international terror organizations in order to recover the powers reduced under pressure from government. In South America, there is a deep concern of narco-terrorism where narcotics crime is connected with terror as the traditional left-wing guerrilla organization and city terror organizations, whose power was reduced in South America, intervene in drug smuggling or in connection with narcotics organizations. Relation between drug and terror organization can be checked in that drug transaction plays a substantial role in source of fund of terror organization. It is also argued that the biggest source of fund of Al-Qaeda, the world biggest terror organization, is from the transaction of drug.

In Jul. 2008, one Afghanistani staying in Korea, tried to import 12 tons of acetic anhydride, used for production of heroine, to Korea and to export it back to the stronghold of Taliban, the antigovernment organization of Afghanistan, and got caught. He was found to export acetic anhydride camouflaged as hydrogen peroxide before he was caught. This amount 30 tons of heroine. It shows that Korea is not free from activities of international drug organizations in that acetic anhydride, a substance internationally monitored, was delivered to a guerrilla group via Korea and used for production of drug.

2.5. SWOT Analysis

Table 1-6 | SWOT Analysis

Strength	Weakness
<ul style="list-style-type: none"> · Reinforce foundation of support for restriction of narcotics · Elaborate DB basis for narcotics offenders · Organic cooperation between related organization · Development of infrastructure for analysis of narcotics · Supervise Anti-Drug Liaison Officials (ADLOMICO) 	<ul style="list-style-type: none"> · Geopolitical factors – peninsula where 3 sides are seabound · Increase in entry and stay of foreigners in Korea · Demand for simplification and speeding-up of immigration procedure · Increase in opportunity to contact narcotics due to increase in overseas trip · Use international airport/harbor in Korea as stopover
Opportunity	Threat
<ul style="list-style-type: none"> · Adopt and take effect '88 UN Drug Convention · Easy monitoring of drug fund with real-name financial transaction system · Establish Financial Intelligence Unit (FIU) and expand roles · Carry out public official property registration system 	<ul style="list-style-type: none"> · Increase in smuggling by students who study abroad at an early age · Increase in use of Internet and international mail · Possibility of inflow of drug from North Korea · Continuous inflow and expansion of new type of narcotics · Intelligence and diversification of fund concealing methods

Source: White Paper on Drugs Crime of the Supreme Prosecutor's Office.

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Experience of Korea Policy Formulation for Drug-free Country:
Deprive Proceeds Acquired from Illegal Transaction of Narcotics

Chapter 2

Criminal Proceeds Confiscation System for Restriction of Narcotics Offenders

1. Background of the Legislation
2. Introduction of Criminal Proceeds Confiscation System
3. Meaning of Criminal Proceeds Confiscation System

Criminal Proceeds Confiscation System for Restriction of Narcotics Offenders

1. Background of the Legislation

1.1. Domestic Situation

1.1.1. Increase in Narcotics Offenders

The reason why drug problems have emerged as a serious social problem is that the numbers of drug-users increase day by day. So the importance of accurate identification of narcotics users cannot be emphasized enough. Since the number of narcotics takers may be counted differently depending on the scope (variability), it is extremely difficult to accurately estimate the drug-abusing population. For example, the number of narcotics offender may totally differ when we restrict the scope to ‘the person who illegally produces, sells, deals and uses narcotics prohibited under law’ and when we expand it to any person who produces, sells, deals and uses any kinds of substances or chemicals that contain drugs. Then, what is the most reasonable standard in identifying the number of narcotic users? To identify the answers for this question, it is necessary to recall the reason why we prohibit abuse of narcotics in the first place.¹⁵

The ultimate reason why abuse of narcotics is prohibited by law is that not only the drug abuser but also his/her family and community may be destroyed in the end if it is neglected. In this regard, we may realize that it is less necessary to focus on the number of persons who use narcotics prohibited under law, and accept the fact that the number of persons who use materials containing narcotic elements is more significant.

15. Cho Byeong In, “A Study on Present Status and Measures of Narcotics Problem,” *Criminal Policy Study*, Vol.5 No.4 [Serial No. 20. Winter of 1994], pp. 147-148.

In reality, those who worry about the health problem of people recommend that it is better to regard medicines that contains narcotic elements as that of illegal drugs if it is legally manufactured and distributed, and to discuss solutions. Those who stick to this position add that antitussive expectorants, nervous sedative and cold medicine that contains small amount of narcotic elements among the general medicines as well as coffee containing caffeine and cigarette containing nicotine should be regarded equally.¹⁶

But if we regard the people who love items that contains caffeine or nicotine as suggested by healthcare professionals, as the narcotics users, the entire population fall into the narcotic users category, diluting the intention to discuss severity of narcotic problems, which puts everyone in an embarrassing position. For example, while the number of people who use the substance containing narcotic elements is meaningful when we simply discuss the status of narcotics abuse, such a number is not that meaningful in the discussion regarding solutions for abuse of narcotics. In the discussion for exploring the measures to prevent abuse of narcotics, it is necessary to narrow the scope of interest to the person who uses such substance from unsound motif or by ignorance among the people who use substance containing narcotic elements in reality. That is, targets of interest are people who use narcotic element as a means of escaping from the present or pursuing hallucinosis or pleasure, take prohibited drugs according to voluntary decision without prescription of doctors, figuring out why they use narcotics, rather than whether the type of narcotics they use is prohibited under law or not. If we reduce the scope like this, the number of drug users will substantially decrease.¹⁷

1.1.2. Formation of Sympathy on Introduction of Criminal Proceeds Confiscation System

While there were public opinions that proceeds from the illegal drug trafficking should be deprived completely terms of criminal justice practice and academic world in Korea, we could not fulfill the conditions for joining 「1988 UN Drug Convention」 due to laws and regulations that guarantee secret of financial transaction as well as execution of financial real-name transaction system in 1993 (Aug. 12). In addition, there were difficulties for the investigation authorities to trace illegal drug transaction due to various kinds of banking practice originated from excessive competition for performance among financial institutions.

In the meantime, a party of Korean American descent smuggled the methamphetamine (so-called “philopon”) obtained in Hawaii into Korea 15 times for the purpose of

16. Ju Wang Gi (Compilation), 「Drug Abuse」 (Seoul: World History), 1989, pp. 276-279.

17. Cho Byeong In, *op. cit.*, p. 148.

camouflaging the source of US 840,000 dollars, and deposited them in 16 banks and got caught with cooperative investigation between Seoul District Public Prosecutors' Office and Federal Bureau of Investigation (FBI). With this as an opportunity, a bond of sympathy was developed to thoroughly control money laundering.

In Dec. 1994, 「Act on Special Cases Concerning Forfeiture of Offenses of Public Officials」 was enacted and took effective. In 1995, legislation bill of 「Act on Special Cases Concerning Prevention of Illegal Trafficking in Narcotics, etc.」, drafted by the international criminal department of the Ministry of Justice and resolved by Cabinet Meeting was notified in the official gazette dated May 23 (Notice of the Ministry of Justice No. 1995-18). After that, the Ministry of Justice and Korean Institute of Criminology jointly presented the bill, went through deliberation process of the Legislation-Judiciary Committee of the National Assembly, the resolution process of the Legislation-Judiciary Committee of the National Assembly, and it was put into force on Dec. 6, 1995.

In Korea, 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.」 aims to enact the laws for implementation of 1988 UN Narcotics Agreement in Korea and focuses on fundamental blocking of the motivation of drug organization and given people. It was enacted to give people an impression that profits from drug transaction would be confiscated in the end no matter how much profit they got, ultimately making them give up drug transaction. For this purpose, it specified the procedure and standards required to trace and redeem illegal proceeds from the narcotics crime and to give additional punishment to the narcotics crime for profit. It specifies the act of camouflaging the source of drug trafficking fund through domestic financial institution was to be treated as the crime, international cooperation procedure for execution of confiscation and collection trial of foreign countries as well as devices required in reality to confiscate the property obtained through narcotics trafficking in details. Enactment of such Act aims to stabilize Korea's position of a drug-free country and safe country from drugs, effectively blocking supply of narcotics. Enforcement of such strong legal system accomplishes purpose of legislation to some degree.

1.2. International Situation: Introduction of Criminal Proceeds Confiscation System in 「1988 UN Drug Convention against Illegal Traffic of Narcotic Drugs and Psychotropic Substance」

1.2.1. Overview

111 countries joined or expected to join 1988 UN Drug Convention against Illegal Traffic of Narcotic Drugs and Psychotropic Substance which aimed at confiscation of properties obtained through illegal drug trafficking in early 1990s. This means that the strategy to control illegal drug trafficking has definitely changed. This trend is also illustrated by the Basel Convention declared to prevent the financial institutions from becoming the means of camouflaging the source of illegal funds among the representative members of the world financial market who voluntarily gathered at Basel, Switzerland in Dec. 1998. Besides, the expression of Levi, identifying “Deposit secret is dying in the UK” implies recognition of European society on the deprivation of profits from illegal drug transaction.¹⁸

1.2.2. Gist and Feature of Criminal Proceeds Confiscation System under 1988 UN Drug Convention

a. Adopt 「United Nations Convention against Illicit Narcotic Drugs and Psychotropic Substances」

Since technique of narcotics crime is very intelligent and tricky, it is general to arrest a couple of users or the drug runners at the end only without disclosing big organizations in the background. That is, it is required to identify exceptional means other than existing investigation procedure for effective control since there is limit in existing investigation of drug crime.

That is, it is very difficult to effectively control the crime organization that constructs international networks, distributes narcotics to the world stage and obtains tremendous profits if the property obtained through illegal narcotics trafficking is not completely confiscated.

In this regard, the international organization, UN, drafted the 「United Nations Convention against Illicit Narcotic Drugs and Psychotropic Substances」 specifying the deprivation of proceeds obtained through illegal narcotics transaction, recognizing the necessity for preparing realistic alternatives, and adopted this at the UN General Assembly held at Vienna, Austria on Dec. 20, 1988 (hereinafter ‘1988 UN Drug Convention’).

18. Michael Levi (a), “Regulating Money Laundering: The Death of Bank Secrecy in the UK,” *The British Journal of Criminology*, Vol.31, No.2, Spring 1991, p. 113.

b. Gist of 1988 UN Drug Convention

UN Strategy can be summarized to (1) make them give up dream of making a fortune at one stroke by depriving all the proceeds from drug trafficking, (2) pull down the foundation of drug organizations by blocking the source of fund, the life line of drug organization.¹⁹ To implement such strategy, it is specified to indiscriminately deprive land, building and other private property used by the drug organization as well as the proceeds from the drug trafficking for implementation of such strategy. Furthermore, various international organizations including UN strongly recommend reconsideration of basic principle of criminal litigation established after lots of cost and sacrifice. It is recommended to set aside the principle of presumption of innocence as well as right to counsel, self-incrimination right and right to remain silent as exceptions if necessary for investigation of drug. It also recommends transfer of burden of proof of necessary for identification of drug organization and terror organization. The reason why international community thinks so unprecedentedly is that there is gradual increase in possibility that the entire society will be destroyed due to expansion of narcotics.

1988 UN Drug Convention focuses on monitoring illegal trafficking of narcotics and drug organization and depriving property and income of narcotics organization.²⁰ In details, its contents include the requirements and procedures to (1) control money laundering, (2) reduce scope of financial secrecy, (3) check identification of bank customers, (4) encourage reporting of suspicious financial transactions, (5) reinforce regulation on financial institution, (6) expand international cooperation, (7) facilitate the development of developing countries.

c. Condition of Subscription to 1988 UN Drug Convention

An international Seminar on Organized Crime was held in Russia (Suzdal) in Oct. 1991 and 「Effective Organized Crime Control Plan」 was adopted. This contains detailed conditions required for subscription to 1988 UN Drug Convention. Major countries (15 countries), UN Office on Drugs and Crime, Helsinki Institute for Crime Prevention and Control, Affiliated with the United Nations (HEUNI), International Criminal Police Organization,

19. Cho Byeong In, 「Modern Society and Crime」 (3rd edition), Beom Mun Sa, 2000, pp. 357-361; Lee Byeong Gi-Lee Gyeong Jae, 「A Study on Drug Crime Profit Confiscation System」, Report of Korea Criminal Policy Institute (1994).

20. Cho Byeong In, 「Crackdown Plans of Illegal Profits of International Criminal Organization」, 「Criminal Policy Study」 Vol. 6, No. 2 (Serial No. 22), Korea Criminal Policy Institute, Summer of 1995, pp. 137-170; Financial Action Task Force I, Report on Money Laundering (1989-1990), pp. 14-27; Bank of Korea. The Bank Supervisory Board, 「Recommendation of Financial Activity Special Committee Report on Fund Laundering」, 「Trend of International Response to Fund Laundering」 (translation) Annex, Jul. 1990.

professionals from University of Chicago in the U.S. participated. The following are the conditions for admission in an agreement.

a) Legal Actions

Criminal Act should be arranged so that the head of crime organization and those who participated in the crime would be punished. Financial rules should be enacted for each country so that all the financial institutions comply with the matters indicated in 「United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances」, concluded in Vienna, Austria in 1988.

It should be obligated to report to the related institute and to punish the violators if the transaction amount exceeds certain amount or there is something suspicious. Suitable means should be prepared for mutual exchange on suspicious transaction. Financial institutions should be obligated to preserve documents on identity of customers and to cooperate with the activities to control illegal fund of investigation agency. Control on works of bank should be reinforced and information on suspicious transaction should be intensively managed. The violator should be punished by specifying the fund camouflaging act as a crime. The act of camouflaging the source of profits obtained through crime other than illegal narcotics trafficking should be defined as a crime and violator should be punished.

Since corruption is the factor that encourages organized crime, a 「Special Act on Prevention of Corruption」 should be enacted. Anti-corruption Recommendations adopted in 8th UN Crime Prevention Meeting should be implemented and Manual on Practical Measures against Corruption should be actively utilized.

We should explore plans restricting the property ownership/place of residence/group subscription/daily life/acquisition of license/conclusion of agreement other than imprisonment or penalty. If acquiring the proceeds illegally obtained by camouflaging as legal corporation, actions will be taken including imposition of fine, deprivation of proceeds and deprivation of legal right. Freezing/seizure/confiscation procedure of the property to be deprived should be arranged and the confiscated property should be used for development fund of control institution. International agreement on the issues distributing illegal proceeds confiscated through cooperation between countries should be adopted.

Property accumulated through drug crime includes the assets obtained based on such property as well as the land, building and other private property already used (including partial use, regardless of method) or expected to be used for facilitating the crime of criminal organization. If there is no other source of income, all the properties obtained at the time

when the crime is suspected to occur will be regarded as the proceeds of crime. But, act on the confiscation should be enacted within the limit that it will not violate the freedom and property right of the person guaranteed in the Constitution.

b) Arrangement of Procedural Act

Investigative agency should have discretionary authority to investigate the member of crime organization or to exempt criminal liability so that it would be helpful in identifying the chief manager of the organization. Probative value of evidence on the information obtained through electronic monitoring, arrangement of secret agent, controlled delivery, statement of accomplice and other prior internal investigation should be admitted. It is prohibited that information obtained through prior internal investigation should be accepted within the scope of legal requirements and criminal litigation principle. Detention during pendency for member of crime organization should be allowed and the requirements of compulsory release on bail should be reinforced.

It is required to examine the operation status of various systems and to explore improvement plans for guaranteeing safety of witness from the revenge of drug organization. If it is deemed necessary, dwelling/position/appearance of witness should be changed, and guard and economic support should be reinforced. Protective measure for witness in confinement in correction facility should be explored. It should be cautioned not to cause children confinement accompanying change of dwelling of witness. In addition, it should be prepared for the possibility that the people who commit a crime with changed position may occur.

c) Reinforce Control System

It is necessary to systematically collect and analyze various kinds of information related to organized crime and to establish the strategy to control illegal fund. It is also necessary to prepare equipment and technology exceeding those of crime organization. A centralized online database should be maintained so that investigative agencies all over the country can jointly use it. If possible, it should be allowed to foreign investigative agency to use it.

We should pay attention to the information obtained from intelligence agency (including complainant) or international organization. Data of financial institution or taxation authority should be utilized usefully and reply materials/records of public office/open materials of the assembly hearing should not be neglected. Information on the assets that can be confiscated and figure protected should be collected too.

Related information should be collected using intelligence agency and secret agent without general public knowing this. If necessary, technique of tap/electronic monitoring/

nighttime vision/video taking/audio recording should be utilized, but such method should be used to the minimum. More criminals should be induced to cooperate with investigation of organized crime by reducing or exempting the sentence of the suspect who cooperates with indictment of the public prosecutor.

d) Reinforce Cooperation between Related Institutions

Organic cooperation between central department and working department should be achieved and close cooperation between information department and investigation department should be maintained. In case of federal state, it is necessary to explore ways for federal institution to effectively adjust jurisdiction, information activity and progress of information of the local government offices. Investigative department in charge of corruption, act of camouflaging the source of fund and illegal drug trafficking should be installed. Corruption should not be encouraged with exclusive application of investigation jurisdiction.

Supervisory organization that consists of top brass should be installed in all independent investigative agencies to supervise the control and investigation of drug crime and there should be no case of infringing the human right or violating the positive law by way of excuse of investigation of narcotic crimes. Personnel who have ability, experience, morality and tenacity should be appointed as the person in charge of investigation. Continuous education should be conducted on the public prosecutors and the judge as well as the police officer. Organic cooperation system should be maintained between police officers, public prosecutors and the court.

e) International Cooperation

Investigation on drug crime should be conducted by constructing close cooperation system between investigation authorities all over the world. Before an international court was opened, cooperation for criminal justice should be pursued in a way to adopt agreement between two countries, but agreements between multiple countries should be adopted like '1988 UN Drug Convention'.

Education and training, technical support, survey research and information exchange should be pursued jointly. In particular, projects should be pursued, which may be helpful to developing countries. If necessary, UN Crime Prevention Program should be referred to. Organization and function of International Criminal Police Organization should be suitably utilized in reference to agreements concluded between countries of the region.

Related laws and regulations should be arranged so that the court and the investigation authority of its own country can suitably cope with the request of judicial cooperation of other country. Information on drug crime should be exchanged between countries and cooperation should be expanded further to include cooperation on criminal extradition, supply of refuge for witness, judicial cooperation for freezing and confiscation of proceeds of the crime, education and support on the drug control staffs.

2. Introduction of Criminal Proceeds Confiscation System

To control illegal narcotics trafficking, organization (person), items (narcotics) and transaction profits should be controlled definitely. Since late 1980s, main advanced countries have captured the trend of profits of transaction rather than the organization or item (drugs), and devoted all energies to deprive profits without exception. The main background of such change is that bond of sympathy was formed throughout international society while narcotics crime has been controlled for long period of time.

First of all, it was repeatedly proven that the organization would not collapse only with the action of removing the head of the drug organization. If the head is removed, the organization's second-in-command will become a new leader and if this leader is executed, the person who is strong next in line will become a leader and command the organization. When those who were arrested and isolated are released, almost all of them return to the organization and become members again. Through this experience, it was determined that organized crime cannot be eradicated by targeting 'people'. In addition, it became more difficult to monitor activities of criminal organization due to development of means of communication and transportation, and advancement of opening. It has been recognized that there would be legal restrictions in punishing the head of the organization even if the illegal activities are exposed.

Second, formula was proven, that is, the supply of narcotics will not decrease no matter how hard we try to take out narcotics and new drug will appear if we crack down on one type of drug. For example, to reduce the amounts of marijuana smuggled into USA, resettlement funds were given to hemp cultivators to change jobs, and then the hemp cultivators in the USA increased the area of cultivation to satisfy the lacking supply. As a result of reinforcing control on transaction of narcotics, criminal organizations were expanded to new types of crimes including human body organ transaction, nuclear weapon transaction, international human trafficking or credit card crime.

The reason why the drug organizations can engage in illegal trafficking in the world stage is that they have enormous financial firepower. So that if we confiscate the fund that is earned through illegal drug trafficking, their existence itself may be impossible or their activities will contract substantially. Furthermore, it may lead to decrease in supply amount of illegal narcotics, and contraction in activities of drug organization.

So that each country regards that method of depriving ‘operating fund or sales profit’ of drug organization can be a definite alternative to crack down drug organizations of the world at one time. That is, money of drug organization can be reverted to the country under the reason that it is the property obtained through crime, but confiscation of this money can also result in preventing further crimes.

The problem is that it is necessary to prepare procedures and scope for monitoring movement and formation of fund thoroughly and for confiscating illegal funds exposed in order to deprive illegal fund of drug organizations in reality. In particular, thorough monitoring activities should be done on illegal fund. If the criminal wants to live a rich life with the property obtained through narcotics transaction, he should disguise the source of fund, which requires commercial financial institutions for complete camouflage. And if the fund is to be received in the financial institution, a record is left. Thus, receipt and withdrawal situation of the illegal fund should be closely identified to deprive profits and properties obtained through illegal drug trafficking. Accordingly, main developed countries have explored the actions to trace the flow of illegal funds including arrangement of related laws since early 1980,²¹ and in particular, have removed the obstacles in obtaining financial information stage by stage.²²

21. Data of International Meeting on Prevention and Regulation of Use of Proceeds of Crime and Camouflage of Fund Source’ held in Italy (Aosta Valley) under the sponsorship of UN Criminal Justice Program in Jun. 1994, analyzed that alternatives devised by various countries of the world to crack down the action of camouflaging the source of illegal fund include 6 such as ① making fund camouflaging as criminal, ② restriction of financial secret, ③ check identity of customers, ④ report of suspicious transaction, ⑤ reinforcement of restriction on financial institutions, ⑥ confiscation of illegal property.

International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme, Report and Recommendations of the International Conference on Preventing and Controlling Money-Laundering and the Use of the Proceeds of Crime: A Global Approach, Jun. 1994, pp.143-145.

22. Among Global Action Plan Against Organized Transnational Crime, adopted in world cabinet meeting on international organization crime held in Napoli, Italy in Nov. 1994, Clause F [39] describing the action plan for Prevention and Control of Money-Laundering and Control of the Proceeds of Crime, specifies that ‘all countries should actively consider the problem of reinforcing legislation and restriction means that restrict the confidentiality of financial information so as to effectively control money camouflaging and to reinforce international cooperation.

Public Prosecutors’ Office, ‘Report on Participation of World Cabinet Meeting on International Organization Crime’, Feb. 1995 pp. 89-100.

3. Meaning of Criminal Proceeds Confiscation System

3.1. Protection of Democratic Fundamental Right

If we understand that essence of criminal justice action is to keep stability and order of society, expansion of drug fund must be a serious threat to the basic order of society itself. In this regard, the authorities should completely identify any acts of camouflaging the source of fund obtained from drug trafficking no matter how hard it is, and get fully prepared to deprive it without exception.

If we neglect free movement and accumulation of drug fund, fundamental order of liberal democracy will collapse, which can be described in details as follows.

First, there will be public officials who protect the criminal organization and the entire society will turn into hotbed for irrationality.

Criminal organizations spare no cost to buying off officials in order to promote the safety of business regardless of its size. Bigger organizations spend more to buy off public officers. If the negotiation is established, they don't have to worry about the police dragnet so that the managers of drug organizations regard this course as a natural investment.

If people engaged in various criminal justice institutions conspire with the drug trafficking organizations, cynicism and opportunism will increase, distrust on government and authorities of criminal justice will be amplified, bringing constitutionalism to an end. In addition, when the public officers tolerate the drug trafficking with the bribe, irrationality will be spread to in the society, resulting in stagnation of national development. In the end, most public projects ordered by the government or public organizations may be constructed with poor quality.

Second, national economy will fall in crisis as the free competition order falls and sound corporations go bankrupt.

Narcotics organization will get carried away for dream of making a fortune and dominate business by fair means or foul. If the scale of fund gets bigger beyond certain level, they will fly their assets abroad or expand illegal business disguising it with legality, bringing national economy into failure.

If the country is in isolation, the scale of drug fund exceeds annual budget of the country so that the foreign exchange rate may change depending on how the criminal organization manages cash, inflation may be intensified, or domestic financial system may fall into chaos.

Third, drug fund flow into politics and a competent politician may end up as the puppet of criminal organization.

In any country, a politician who wants to be elected as the representative of people needs political funds or election campaign funds. Therefore, when his funds are not sufficient, he may receive donation and spend it regardless of nature of the fund. This is how camouflaged drug funds flow into the area of politics.

In elections where a candidate or political party does not have sufficient ability to cover election campaign cost and mass media (in particular, TV) airtime it has detrimental effects on their success, it is more likely that drug fund will be supplied in such cases as political fund. If the criminal organizations searches for potential politicians at early stage and starts to support him before he enters the world of politics, politician may fall into the employee of narcotics organization.

Fourth, drug fund may flow into the world of media, turning all the people into fools. Influence of press media on public opinion is considerably high. If the narcotics organizations buy broadcasting corporations or newspaper with legalized fund, or buys off the executives of the press media dominating it, the general public will be swayed by the intention of bought media.

For example, people may have no choice but to accept it even if drug traffickers announce their expectation as if it is opinion of journalists. If this deception repeats, people will regard the narcotics crusade policy unreasonable and ignore efforts of government.

Fifth, international economic order will fall into confusion as there appears a financial instruction that specially camouflage the source of fund.

Since banking industry is also profit-pursuing project, there will be banks that show attention to this fund if drug fund is scattered here and there. If such interest continues to become a management policy of receiving deposit without asking the source of fund, it will become a bank specializing in camouflaging the source of fund, serving as the main instigator that will mess up the international economy order. If there are more banks that camouflage the source of illegal funds for more commission without doing original works of the bank like BCCT (Bank of Credit and Commercial International of UK, dissolved by force in Jul. 1991, leading companies of the world may be sold to the drug organizations.

The first goal of '1988 Vienna Convention' is prevent the democratic basic right from being destroyed by the drug organization by effectively controlling the drug fund of the international crime organization.

That is, this Convention is the international document led by UN International Drug Control Programme (UNDCP) to actively support the investigation and indictment activities for the acts of camouflaging the fund of drug sales fund, to arrange the laws for the signatory to confiscate the property obtained through drug transaction while punishing the act of camouflaging the source of drug transaction fund.

Article 5-3 of the Convention grants the authority to command submission or seizure of bank records and accounting record by the court and other authorities of third countries and specifies that financial authority should not to reject the exercise of such authority under the cause of protection of deposit secrets. That is, this article is not to encourage voluntary cooperation of the financial institution, but to request the financial institution to have the obligation of information provision, clarifying that the principle of the saving confidentiality protection cannot be an obstacle to tracing the illegal fund.

3.2. Protection of Public Confidence of Financial Institutions

It is necessary to keep in mind that control of illegal fund is inseparable to the problem of protecting the public confidence and life of financial institutions.

As indicated in Article 1 of 「Bank Act」, every financial institution is obligated to contribute to national economic development by protecting account holder and to keep the credit order. Therefore, financial institution should not deal with the work that disturbs the sound financial order, identify such factors in advance and do its best to solve it at the earliest possible.

Role of financial institutions in national economy is considerably high. If the financial institution degenerates into the means of camouflaging the source of illegal profits, it may result in loss of public confidence whether it was on purpose or by negligence or ignorance.

In the meantime, it is not easy for the financial institutions to comply with order of credit and it is more difficult to identify the fund that has the intention to camouflaging source of drug fund. That is, a case may occur in which the financial institution camouflages the source of fund unknowingly if the skill of drug organization is intelligent. From this viewpoint, it becomes more urgently required not to cause damage to the public confidence by thoroughly tracking out such drug fund.

If the investigation authority receives financial information, the authority does not just utilize such information, but spread various intelligences caught in the investigation course to the financial world, preventing public confidence from being tarnished. That is, it is to

supply the latest information obtained through international cooperation continuously so as to prepare in advance. Given this, the financial authority should pay more attention in monitoring and exposing such attempt of drug fund than investigation authority.

“Declaration of Principle on Financial Control and Supervision Practice” adopted in 1988 (Basel Statement) is the guideline that financial world voluntarily prepares to prevent itself from being reduced to means of camouflaging the source of illegal fund in advance.²³

The statement recommends the management of financial institution to ① accurately check the identity of customers; ② to comply with positive law; ③ to explore measures necessary to keep cooperation relation with law enforcing authority. And to encourage financial institutions to execute the above 3 recommendation, it recommends each bank ① to officially adopt the policy corresponding to this principle mentioned in the statement, ② to inform policy of bank to all executives, ③ to check the identity of customers and to implement special procedures required for preserving the internal transaction records; ④ to expand internal accounting audit to obtain means of effectively inspecting implementation of the statement

Council of Europe Convention on Money Laundering, Search, Seizure, and Confiscation of the Proceeds of Crime (hereinafter ‘EC Convention on Confiscation of Proceeds of Crime’) signed by representative of EU members at Stras Bourgeois, France in Nov. 1990 is the comprehensive international document adopted to recommend ① the international society to cooperate effectively in inspecting, searching, seizing and confiscating the illegal profits obtained through grave crime such as drug crime, illegal weapon trafficking, terrorism and traffic in children, ② and to supplement imperfection of existing Conventions concluded led by the Council of Europe.

The Convention specifies exploration of legal and other measures required to give the authority of confiscation or review of various records kept by the bank for the court or other related authorities per party country (clause 1) and adds that no country rejects implementation of agreement under the reason of saving secret protection principle, calling attention that there should be no interference in control of illegal data due to position of financial institutions.

23. In 1990 before Basel statement [The Statement of Principles of the Basel Committee on Banking Regulations and Supervisory Practices] is released, it was recommended that EU Cabinet Committee would explore methods of prohibiting safekeeping and transfer of illegal profits obtained through crime (in particular, kidnapping), but this could not receive good response from international society.

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Chapter 3

Introduction and Operation Trends of Criminal Proceeds Confiscation System of Various Countries

1. Criminal Proceeds Confiscation System of Various Countries
2. Comparison of Criminal Proceeds Confiscation and Collection System of Various Countries

Introduction and Operation Trends of Criminal Proceeds Confiscation System of Various Countries

1. Criminal Proceeds Confiscation System of Various Countries

1.1. U.S.A.

1.1.1. 「RICO Act」 and Regulation of Crime Profit

In USA use of narcotics started as a part of resistance to the existing value and power as the antiwar demonstration against the Vietnam War was intensified and racial conflict built up. In 1962, drug problems got too serious. As a result, 1st drug war was declared by Nixon Administration in 1970 and federal law 「Comprehensive Drug Abuse Prevention and Control Act」 of 1970 was enacted. This Act is to facilitate treatment and rehabilitation measures for narcotics addict as well as to effect prevention of crime involving abuse of Narcotics, and to pursue suitable punishment on narcotics crime and reinforce control for prevention and regulation of Narcotics abuse. Chapter 2 of Comprehensive Drug Abuse is the legal ground for government-level eradication for drug abuse as Controlled Substance Act (CSA), which integrated various acts that regulate the manufacturing and distribution of chemicals used for production of illegal substance, steroid agent, stimulant drug and hallucination. Since enactment of this Act, drug related investigation systems which were split were integrated to create Drug Enforcement Administration (DEA).²⁴ Drug Enforcement Administration independently carries out investigation related to drugs.

24. A study on drug eradication policy of Korea – in comparison with cases of foreign country – Korean Anti-drug Campaign Center, 2014.

In the meantime, 「RICO Act」 (Racketeer Influenced and Corrupt Organization Act) and CCE (Counting Criminal Enterprise) was enacted in 1974 to introduce criminal confiscation system in addition to civil confiscation system which was accepted in the past and to cope with international agreement. Confiscation in 「RICO Act」 is for criminal confiscation and allows the federal government to confiscate the illegal property and property obtained by racketeering activities.

In particular, 「Comprehensive Drug Abuse (the Comprehensive Forfeiture)」 was enacted after continuous modification and supplementation of RICO Act, reinforcing control on drug crime.²⁵ This Act divides the property related to drug crime into 5 categories and allows the federal government to confiscate this. Confiscation system under 「Comprehensive Drug Abuse」 also specifies criminal confiscation and civil confiscation. Further, it also specifies forfeiture of the proceeds of illegal drugs in 1978. In 1986, confiscation was expanded to the area of money laundry as 「Money Laundering Control Act」 was enacted, removing the obstacle to confiscation of illegal profit and specifying the proceeds from money laundering as the target of confiscation.²⁶

1.1.2. Targets of Forfeiture

Target of criminal confiscation under 「RICO Act」 ① any interest the person has acquired or maintained in violation of section § 1962 (18 U.S.C. § 1963(a)(1)), ② any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of 1962 (18 U.S.C. § 1963(a)(2)), ③ any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activities or unlawful debt collection in violation of (18 U.S.C. § 1963(a)(3)).²⁷ In addition, with enactment of 「Money Laundering Control Act」 in 1986 in U.S.A., forfeiture of proceeds of crime is accepted up to the money laundering act, removing any obstacles to confiscation of proceeds from crime, as well as establishing the proceeds from crime of money laundering itself as the target of forfeiture.

With this, any interest acquired or secured in violation of § 1962 is confiscated. Accordingly, any interest acquired by basic crime specified in 1962 as well as repetition of racketeering, can be confiscated regardless of whether the profit from this is legal or

25. Jeong Hyeon Mi, "Consideration and Improvement Plans of Confiscation - Collection System in terms of Comparative Law," p. 64.

26. Lee Dong Myeong/An Tae Jong, Study of Illegal Profit Deprivation System in Criminal Act, Korea Law Association, Law Study. No. 23, Aug. 2006, pp. 356-357.

27. U.S. Code Chapter 96, § 1961-1968.

illegal. There was a conflict concerning whether the above clause is applied to the income or proceed not mixed to the group in the form of re-investment when it was obtained from crime with regard to interest.²⁸ It was legislatively solved by creation of § 1963(a)(3) with revision of RICO Act Statute by 「Comprehensive Drug Abuse」 in 1984.²⁹

Next, any interest that may influence the group even if the defendant is not actually engaged in the group or any interest that may manage the group can be all confiscated. Voting right on obligation of group, management control on group, and the right on political office or union office are also included here. Further, this article is also applied to the profit from bank used for money laundering proceeds from drug trafficking, building or vehicle used for drug trafficking if it may influence illegal organizations.³⁰ And alternative confiscation system is also accepted, which allows to confiscate the other property of the defendant if it is impossible to confiscate the property to confiscate (18 U.S.C. § 1963(m)).

1.1.3. Commands of Confiscation

Upon conviction of a person under this section, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper (18 U.S.C. § 1963(e)). Since confiscation order is issued after convicted, confiscation shall not be indicated in the indictment other than forfeiture request. It is required to specify the scope of the property or interest subject to confiscation when preparing the confiscation request (「Federal Rule of Criminal Procedure」 § 7(c)(2)).

1.1.4. Degree of Demonstration

In case of criminal confiscation under RICO Act, degree of demonstration is the demonstration beyond reasonable doubt.³¹

However, there are conflicting opinions that preponderance of evidence is enough in that it satisfies suitable procedure and that criminal confiscation cannot be used if requesting demonstration exceeding reasonable doubt for 21 U.S.C. § 853 on drug crime. Precedents suggest that evidence may be proven sufficient to be the preponderance of evidence.³²

28. Cho Kyun Seok, *Fund Taxation Regulation Theory* Gyeongjinsa Publisher, 1993, p.120.

29. Cho Kyun Seok, *Fund Taxation Regulation Theory* Gyeongjinsa Publisher, 1993, p.120 (Query: Ibid. or short title as below).

30. Cho Kyun Seok, *Fund Taxation Regulation Theory* p.115 (Query: Ibid., p. 115).

31. Provision on forfeiture in lascivious crime specifies this in text (18 U.S.C. § 1467(e)(1)).

32. *McMillan v. Pennsylvania*, 447 U.S. 79, 91-92 (1986) specified that it is not against the suitable procedure by a preponderance of the evidence.

1.1.5. Confiscation Preservation Procedure

Since confiscation is executed after conviction, it is highly likely that the defendant conceals the property subject to confiscation in the U.S.A. To cope with this risk more properly, 「RICO Act」 was revised by 「Comprehensive Drug Abuse」 in 1984 and the confiscation preservation procedure was arranged. According to this, federal district courts may issue restrain order, injunction or order payment of performance bond at the request of prosecutor to secure the efficiency of property to be confiscated, or take other necessary actions. Among them, preservation order is separated into preservation order by indictment, preservation order before indictment and provisional preservation order. Preservation order before indictment is notified to the person who is acknowledge to have understanding on the property to be subject to the preservation order and it if it is highly likely that such property may be damaged or moved outside jurisdiction of the court if preservation order is not issued. It is acknowledge when the necessity to preserve usefulness of property by commencing preservation order is deemed to be higher than the burden of the person himself (18 U.S.C. § 1963(d)).³³

1.1.6. Effects of Confiscation and Procedure to Protect Rights of the Third Party

A retroactive effort for effects of forfeiture under 「RICO Act」 is recognized. That is, the effects of forfeiture are applied retroactively to generation of crime (18 U.S.C. § 1963(c)). Accordingly, the ownership of the forfeited property reverts to the country in case of crime and the disposition of property subject to forfeiture by the offender after crime will become null. But there is relief procedure for the third party in good faith (18 U.S.C. § 1963(1)). If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property or the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture, the court shall amend the order of forfeiture in accordance with its determination (18 U.S.C. § 1963(1)(6)).

33. 18 U.S.C. § 1963(1)(6).

1.1.7. Civil Forfeiture

Civil forfeiture is acknowledge according to 「Comprehensive Drug Abuse (21 U.S.C. § 881)」 specifying the forfeiture of the property intended for use or used for drug crime in USA. That is, 「Comprehensive Drug Abuse (21 U.S.C. § 881)」 specifies ① materials used for controlled substance or its manufacturing, ② property used or intended to use as storage of controlled substance, ③ means of transported used or intended for transfer of controlled substance or to facilitate transfer, sales, receipt, possession or concealment, ④ money prepared for transaction, profits from such transaction, money used or intended for use to facilitate violation, profits from such transaction and money prepared for transaction, etc., ⑤ property used or intended for use to perform or facilitate violation, and the right under real estate, as the targets of forfeiture.³⁴ In addition, forfeiture of proceeds from drug crime of foreign country is also recognized (18 U.S.C. § 981(a)(1)(B)).³⁵

Civil forfeiture procedure is based on forfeiture process of 「Customs Law」 in principle and is performed according to federal administration rule. Civil forfeiture starts with seizure of property. Since the civil forfeiture process is the litigation for object, the object subject to forfeiture is seized. In addition, Attorney General may seize without a warrant if there is a reasonable cause (21 U.S.C. § 881(b)).³⁶

In case of civil forfeiture, if the country proves considerable cause, the petitioner shall prove that the property is not subject to forfeiture by preponderance of evidence (19 U.S.C. § 1615).³⁷ Accordingly, it is not required to prove the profit from drug transaction is related to specific transaction.

The right of the third party in good faith is protected in case of civil forfeiture. Judgment of the Supreme Court of 1974 indicates that “the owner who does not know that his property is used illegally and performed prevention measures required reasonably not to be used illegally shall be protected.”³⁸

34. 21 U.S.C. § 881.

35. 18 U.S.C. § 881(a)(1)(B).

36. 21 U.S.C. § 881(b).

37. 19 U.S.C. § 1615.

38. *Austin v. United States*, 113 S. Ct. 2801, 2809 [1993] indicates that civil forfeiture is based on the fact that owner of forfeited object is culpable and that guilty nature of object has not been applied to the owner without negligence even once.

1.1.8. Operation and Status of Confiscated Property Fund

In the U.S.A., crime organization lies behind the drug crime frequently and since this crime organization has division of labor system for maximization of efficiency, and minimizes risks while maximizing the profits, the organization survives even if members of crime organization is arrested. Like this, drug crime is performed mostly in the form of organized crime and crime profit forfeiture system starts from the fact that it is not easy to cope with the drug crime due to features of organized crime.

The U.S. "Department of Justice operates Asset Forfeiture Program,"³⁹ which intended to reinforce public safety and stability by depriving the proceeds from the crime, assets of the criminal and the person who continuously encourages criminal act. It aims to eradicate the crime by removing the function of criminal organization since indictment or detention of criminal cannot result in dismantling of criminal organization.

That is, it is to punish criminal acts by depriving assets of the offenders obtained from illegal act or used for illegal act according to the purpose of crime profit forfeiture system, and further to improve cooperation with related organization executing forfeiture by distributing the assets obtained through this program equally, and to secure budgets through forfeiture of institution while reinforcing law enforcement on the offender.⁴⁰

In particular, as the drug transaction increased since 1970, federal asset forfeiture program began to focus on forfeiture for seizure of assets related to drug. In 1980s, thousands cases of illegal assets were seized as a result of investigation of drug investigation, which correspond to several times of forfeited amount in 1970. Provided, that forfeiture of assets related to drug was the forfeiture of assets in small amount and was executed by civil forfeiture procedure than criminal forfeiture according to "RICO Act".

In the meantime, illegal fund after 1980 evolved into new type of crime. Accordingly, law-enforcing institute began to focus their investigation ability on forfeiture of illegal fund generated at the workplace of organized crime. In the United States,

In the U.S.A., Drug Investigation Agency and FBI were allowed to use the property obtained for drug crime by civil forfeiture according to "Comprehensive Crime Control Act" of 1984. Confiscated asset fund was created at Department of Justice and the remaining of income from civil and criminal confiscation was put into this fund which allow for expenditure for forfeiture cost and law-enforcing costs. As the confiscated amount increased

39. See, A Study on Establishment and Utilization Plan of Laundering Crime Profit Deprivation Fund, by Jang Juno and more regarding asset confiscation system of the U.S., 2003, p.48 et seq.

40. See www.usdoj/ag/readingroom/seized.htm#statement.

substantially according to 「Comprehensive Crime Control Act」, law-enforcing institution receives benefit from this. But, it was criticized that law-enforcing institution determines the targets of investigation and indictment with priority on confiscation.⁴¹

1.2. UK

In the UK, confiscation of drug crime was allowed by 「The Misuse of Drugs Act」 enacted in 1971, but the scope of forfeiture was all the properties related to drug crime if it is recognized so by the court so that only tools or substance used or provided for crime can be confiscated. In the so-called judgment of “Cuthbertson case” the public prosecutor tried to confiscate assets worth of 750,000 pound obtained by drug offenders who sold LSD, but the Supreme Court judged that proceeds from crime cannot be confiscated, but the tools or materials used or those that provide for the crime can be confiscated since there is no regulation on confiscation of proceeds from crime.⁴² At this time, it was criticized that this ruling was contradictory to sentiment or sense of justice of people, and legislation on confiscation of proceeds from crime was considered. In 1994, 「Drug Trafficking Offences Act」 was enacted to allow confiscation of proceeds from drug crime. Acts related to confiscation of proceeds from drug crime include 「Criminal Justice Act 1988」 enacted in 1988 and then fully revised by 「Proceeds of Crime Act 1995」. With this, there is regulation on confiscation of proceeds applicable to general crime.⁴³ And in 2002, as 「Proceeds of Crime Act」 was enacted, regulations related to confiscation of proceeds from crime were integrated by 「Drug Trafficking Offense Act」. In particular, as the Assets Recovery Agency was installed and took charge of order of forfeiture of proceeds from crime, execution of detention order as well as investigation of property status.⁴⁴

41. Lee Sang Eun, Do Jung Jin, Effective Utilization Plan of Crime Profit Confiscation Property-Trend of Legislation of Various Countries and Suggestion to Our Country. New Trend of Criminal Act, Serial No. 27, Aug. 2010, p. 28 et. sequens.

42. R.V. Cuthbertson, 1981 A.C.470.

43. Edward Rees and Richard Fisher, The 「Proceeds of Crime Act」 2002, Second series, Oxford University press, 2004, p.19; the opportunity that the crime profit confiscation system was introduced in UK is the ruling of ‘Cuthbertson case’ known as the Operation Julie, the public prosecutor tried to confiscate the assets worth of 750,000 pound obtained by drug offenders who sell LSD, but the Supreme Court judged that proceeds from crime cannot be confiscated, but the tools or materials used or provide for the crime can be confiscated since there is no regulation on confiscation of proceeds from crime. At this time, it was criticized that this ruling was contradictory to sentiment or sense of justice of people, and the Supreme Court also tries to revise the existing law as it recognizes such problems. With regard to this, the Hodgson Committee considered the legislation on ‘forfeiture of proceeds from drug crime’ and as a result, 「Act on Drug Trafficking Crime」 (Im Wung and 5 co-authors, organized crime and criminal act, p. 157 and hereunder).

44. Jeong Eung Seok, Plans for securing effectiveness of imposition of levy – focusing on introduction of detention in workplace for levy -, Project of Ministry of Justice in 2007, 2007, p.72.

1.2.1. Target of Confiscation under 「Proceeds of Crime Act」

「Proceeds of Crime Act」 recognizes the jurisdiction to the Crown Court only to concentrate the right of confiscation distributed to several courts and to promote efficiency of law enforcement. The criminal court calculates the profit obtained by the defendant and issues the order of confiscation in this scope.

1.2.2. Transfer of Substantiation

In the meantime, transfer of transfer of substantiation is specified for confiscation of proceed from crime. That is, Article 10 of 「Proceeds of Crime Act」 transfers the substantiation liability of criminal procedure to the defendant by introducing the concept that defendant has a criminal lifestyle, generating the proceeds from the criminal act.⁴⁵

1.2.3. Asset Restraint Order

It is regulated that the Crown Court may impose restraint order so that specific person cannot hide realizable property related to proceeds from crime. In particular, if there is a default for proceeds from crime, the UK accepts the imprisonment sentence for the default,⁴⁶ default imprisonment may not be remitted, but the effect of sentencing of confiscation will not be elapsed even if he serves sentence of imprisonment.

45. 「Proceeds of Crime Act」 Article 10 (Assumptions to be made in case of criminal lifestyle)

(1) If the court decides that the defendant has a criminal lifestyle it must make the following four assumptions for the purpose of deciding whether he has benefited from his general criminal conduct and deciding his benefit from the conduct.

(2) The first assumption is that any property transferred to the defendant at any time after the relevant day was obtained by him as a result of his general criminal conduct at the earliest time he appears to have held it.

(3) The second assumption is that any property held by the defendant at any time after the date of conviction was obtained by him as a result of his general criminal conduct at the earliest time he appears to have held it.

(4) The third assumption is that any expenditure incurred by the defendant at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct

(5) The fourth assumption is that, for the purpose of valuing any property obtained (or assumed to have been obtained) by the defendant, he obtained it free of any other interests in it.

46. Article 139 (4) of 「Powers of Criminal Courts Act 2000」 specifies the maximum periods of imprisonment or detention and amounts of fine as 7 days for an amount not exceeding £200; 14 days for amount of £200~£500; 28 days for amount of £500~£1,000; 45 days for an amount £1,000~£2,500; 3 days for £2,500~£5,000; 6 months for £5,000~£10,000; 12 months for £10,000~£20,000; 18 days for £20,000~£50,000; 2 years for £50,000~£100,000; 3 years for £100,000~£250,000; 5 years for £250,000~£1 million; 10 years for over £1 million (Jeong Eung Seok, Plans for securing effectiveness of imposition of levy – focusing on introduction of detention in workplace for levy, p. 73).

1.2.4. Institution Operating Confiscated Property Fund

While confiscation was recognized for all the products obtained as a result of price or criminal act, or the products served to the conducts of crime in the limited scope, its scope of target has been expanded to all the crimes by Criminal Justice Act. Due to this, policy was established to restrict illegal money laundering of international organization crime including terror organization and to restrict the utilization of proceeds from crime.

In the meantime, as the measure for drug illegal trafficking, confiscation order system was introduced by 「Drug Trafficking (Offences) Act」 in 1986 and 1994.⁴⁷ After that, for more effective confiscation of proceeds from crime, as 「Proceeds of Crime Act」 was enacted in 2002, integrating the Criminal Justice Act of 1988 and the 「Act on Drug Illegal Trafficking」 of 1994, the authority to trace the proceeds from crime was expanded. That is, according to 「Proceeds of Crime Act」, ‘Assets Recovery Agency’ was installed in Feb. 2003. This agency takes charge of confiscation and collection related to organized crime organization, financial fraud, medical insurance fraud, smuggling and drug smuggling crime. Assets Recovery Agency consists of the judge and financial professionals. In particular, Assets Recovery Agency plays an important role in effectively controlling organized crime by depriving the assets of organized crime organization and restricting fund laundering, and realizing the purpose of 「Proceeds of Crime Act」 to activate the professional financial investigation technique in crime investigation.⁴⁸

In UK, the confiscated and collected amount reverts to the Home Office, and half of it is paid to Assets Recovery Agency in incentive style, which is distributed further to the law enforcing institutions performing confiscation and collection.⁴⁹

1.3. Germany

1.3.1. Confiscation System of Germany

In Germany, Article 73 of the Criminal Code separately specifies the confiscation of an object (‘Einziehung’) and confiscation of profit (‘Verfall’). Provided, however, that confiscation of profit is not targeted on the profit only, confiscation of interest for the object is also accepted.

If an unlawful act has been committed and the principal or a secondary participant has acquired proceeds from it or obtained anything in order to commit it, the court shall order

47. Do Jung Jin, p. 44.

48. Do Jung Jin, p. 45 (Query: Ibid., p. 45?).

49. Asset Recovery Agency, Annual Report 2005/2006.

the confiscation of what was obtained (Article 73 (1)).⁵⁰ Confiscation shall not be ordered to the extent it would constitute an undue hardship for the person affected (Article 73 (c)).⁵¹ In addition, according to Article 73 (2) of 「Criminal Code」, The order of confiscation shall extend to benefits derived from what was obtained. It may also extend to objects which the principal or secondary participant has acquired by way of sale of the acquired object, as a replacement for its destruction, damage to or forcible loss of it or on the basis of a surrogate right. If the confiscation of an object is ordered title to the property or the right confiscated shall pass to the state once the order becomes final if the person affected by the order has a right to it at the time (Article 73 (e) (1)).⁵² In Germany 「Criminal Code」, the court shall order the confiscation of a sum of money which corresponds to the value of what was obtained (Article 73 (a)).⁵³ But, confiscation shall not be ordered to the extent it would constitute an undue hardship (unbillige Härte) for the person affected (Article 73 (c)).⁵⁴

50. Article 73 (Conditions of Confiscation) ① If an unlawful act has been committed and the principal or a secondary participant has acquired proceeds from it or obtained anything in order to commit it, the court shall order the confiscation of what was obtained. This shall not apply to the extent that the act has given rise to a claim of the victim the satisfaction of which would deprive the principal or secondary participant of the value of what has been obtained.

② The order of confiscation shall extend to benefits derived from what was obtained. It may also extend to objects which the principal or secondary participant has acquired by way of sale of the acquired object, as a replacement for its destruction, damage to or forcible loss of it or on the basis of a surrogate right.

③ If the principal or secondary participant acted for another and that person acquired anything thereby, the order of confiscation under subsections (1) and (2) above shall be made against him.

④ The confiscation of an object shall also be ordered if it is owned or subject to a right by a third party, who furnished it to support the act or with knowledge of the circumstances of the act.

51. Section 73 c (Hardship) ① Confiscation shall not be ordered to the extent it would constitute an undue hardship for the person affected. The order may be waived to the extent the value of what was obtained is no longer part of the affected person's assets at the time of the order or if what was obtained is only of minor value.

② As to conditions of payment section 42 shall apply mutatis mutandis.

52. Article 74 e (Effect of Confiscation) If the confiscation of an object is ordered title to the property or the right confiscated shall pass to the state once the order becomes final if the person affected by the order has a right to it at the time. The rights of third parties in the object remain unaffected.

② Prior to its becoming final the order shall have the effect of a prohibition to sell within the meaning of section 136 of the Civil Code; the prohibition shall also cover dispositions other than sales.

53. Article 73 (a) (Confiscation of monetary value) To the extent that the confiscation of a particular object is impossible due to the nature of what was obtained or for some other reason or because confiscation of a surrogate object pursuant to section 73 (2) 2nd sentence has not been ordered, the court shall order the confiscation of a sum of money which corresponds to the value of what was obtained. The court shall also make such an order in addition to the confiscation of an object to the extent that its value falls short of the value of what was originally obtained.

54. Article 73 (c) (Hardship) ① Confiscation shall not be ordered to the extent it would constitute an undue hardship for the person affected. The order may be waived to the extent the value of what was obtained is no longer part of the affected person's assets at the time of the order or if what was obtained is only of minor value.

② As to conditions of payment section 42 shall apply mutatis mutandis.

1.3.2. Extended Confiscation

In the meantime, it is allowed to confiscate saving and cash of the offender who is convicted guilty due to possession or smuggling of drug. That is, Article 73(d)⁵⁵ of 「Criminal Code」 specifies that the property of the actor may be confiscated if there is a justifiable situation that it was obtained from act in violation of act even if the crime of the actor is not serious to impose the sentencing.

1.3.3. Confiscation and Preservation Action before Indictment

If the requirement exists independently, independent disposition is allowed regardless of indictment of the criminal exceptionally. If for reasons of fact no person can be prosecuted or convicted of the offence, confiscation or deprivation of the object or the monetary value or destruction must or may be independently ordered (Article 76 (a) (1)) if the conditions under which the measure is prescribed or available otherwise are met (Article 76 (a) (1)).⁵⁶

Preservation measures for execution of confiscation may be ordered for Germany (Article 111 (b) and hereunder of 「Criminal Procedure Act」).⁵⁷

55. Article 73 (d)(Extended Confiscation) ① If an unlawful act has been committed pursuant to a law which refers to this provision, the court shall also order the confiscation of objects of the principal or secondary participant if the circumstances justify the assumption that these objects were acquired as a result of unlawful acts, or for the purpose of committing them. The 1st sentence shall also apply if the principal or secondary participant does not own or have a right to the object merely because he acquired the object as a result of an unlawful act or for the purpose of committing it. Section 73(2) shall apply mutatis mutandis.

② If the confiscation of a particular object has, after the act, become impossible in whole or in part section 73a and section 73b shall apply mutatis mutandis.

③ If after an order of confiscation pursuant to subsection (1) above, due to another unlawful act which the principal or secondary participant committed before that order, a decision must again be taken as to the confiscation of objects of the principal or secondary participant, the court in doing so shall take into account the previous order.

④ Section 73c shall apply mutatis mutandis.

56. Article 76 (a)(Independent Orders) ① If for reasons of fact no person can be prosecuted or convicted of the offence, confiscation or deprivation of the object or the monetary value or destruction must or may be independently ordered if the conditions under which the measure is prescribed or available otherwise are met.

② Subsection (1) above shall, under the provisions of section 74(2) No 2, (3) and section 74d, apply if.

1. prosecution of the offence is barred by the statute of limitations

2. for other reasons of law no person may be prosecuted and the law does not provide otherwise

Deprivation or destruction must not be ordered in the absence of a request or authorization to prosecute or a request by a foreign state.

③ Subsection (1) above shall apply if the court orders a discharge or if the proceedings are terminated pursuant to a provision allowing this in the discretion of either the public prosecution service or the court or with their mutual agreement.

57. Article 111 (b) of 「Criminal Procedure Act」 et seq.

1.3.4. Asset Confiscation System of Germany

In Germany, the amount from financial sanction against the crime is made as fund. Victim fund for protection of the youth victim is one example. In the meantime, certain portion of amounts confiscated and collected with regard to drug crime was made as fund. In this case, it has the system where the public prosecutor and the judge directly order to use part of amounts collected and confiscated as fund.⁵⁸ This is different from UK and the United State where the criminal justice organization uses some of the confiscated fund as its fund for public use.

1.4. Japan

1.4.1. Legislation of Crime Proceed Confiscation System of Japan

In Japan, to cope with the international trend that it is required to effectively confiscate the enormous fund obtained from the transaction as well as punish drug transaction by reinforcing restriction on the drug crime as the drug crime has been expanded globally and becoming more serious, Vienna Convention was signed on Dec. 19, 1989 and as the enforcing legislation for ratification of Convention, 「Special Act on Narcotics」 was enacted. After that, 「Act on Punishment of Organized Crime」 was enacted on Aug. 12, 1999, which was to implement the recommendation of FATF: Financial Action Task Force on Money Laundering.

1.4.2. 「Organizational Crime Punishment Act」 and Confiscation of Proceeds of Crime

「Act on Punishment of Organized Crime」 and Confiscation of Crime Profit, 「Act on Punishment of Organized Crime」 was enacted to block the procurement of crime profit while reinforcing punishment on organized crime. It is featured to reinforce and arrange the system on confiscation and collection in addition to the punishment of acts aiming for management of business including corporation, using the proceeds from crime. As 「Act on Punishment of Organized Crime」 was enacted, regulation on confiscation and collection process was deleted from 「Special Act on Narcotics」 and revised to comply with 「Act on Punishment of Organized Crime」. That is, 「Special Act on Narcotics」 complies with regulation on confiscation and collection preservation procedure of 「Act on Punishment of Organized Crime」. Terms such as illegal profits and assets derived from illegal profit in

58. Do Jung Jin, *op. cit.*, p. 51.

「Special Act on Narcotics」 were changed to drug crime profits, assets derived from drug crime profits, and drug crime profits. In the mean time, ‘illegal profits’ used in Article 15 of 「Special Act on Narcotics」 before revision is used as a term for the offense aiming to dominate the Article 9 (Business Management) of 「Act on Punishment of Organized Crime」.

1.4.3. Targets of Confiscation

「Act on Punishment of Organized Crime」 regulates the confiscation in addition to the offense of accepting bribe, crime profit, concealment crime, crime profit and drug crime, and adopts the interest in addition to the property converted, changed or intangible property other than material things as the target of confiscation. If confiscation is impossible, it is regulated to collect the asset value. If the property, the target of confiscation is mixed with other property, it is regulated to confiscate the area corresponding to the value or amount of illegal property as long as the value or quantity of illegal property mixed is determined.

1.4.4. Collection of Proceed from Drug Crime

「Act on Punishment of Organized Crime」 has the regulation on collection for recognition of illegal profit, and specifies that it is possible to collect the profit of drug crime if the value obtained by the offender for the period when he has drug crime by a profession is unreasonably high in consideration of operation status of crime of situation under law.

In the meantime, if the value is deemed high in consideration of the operation situation of the offender or situation under law for the period as the property of crime drug related to Article 5, it shall be estimated as the profit of drug crime related to the offense (Article 14).

Here, 'Crime Profit'⁵⁹ is ① the property that is generated by criminal acts of offense specified in the appendix for the purpose of obtaining unlawful profit or the property obtained as remuneration of the criminal act or the property obtained by such criminal act, ② Offense under Article 41 (10) (Supply of Fund Related to Import of Drug Materials) of 「Drug Control Act」, offense under Article 13 (Supply of Fund) of 「Anti-Prostitution Act」, offense under Article 31 (Supply of Fund) (13) of 「Gun and Sword Possession Control Act」, fund provided to the offense of Article 7 (Supply of Fund) of 「Act on Prevention of Damage to Human by Sarin, etc.」, ③ Property given by criminal act of Article 21 (2)(7) (Supply of Unlawful Profit to Foreign Public Officials) related to acts of violations of Article 18 (1) of 「Unfair Competition Prevention Act」, ④ fund related to the offense specified in Article 2 (Supply of Fund) of 「Act on Punishment of Supply of Fund, etc. for Criminal Act of Threatening the Public」.

And the property derived from 'crime profit'⁶⁰ Is the property obtained as a result of crime profit, property paid for crime profit, and the property obtained from such property and the property based on possession or disposition of crime profits.

59. Article 2 of 「Act on Punishment of Organized Crime」, for the purpose of this law, 'Crime Profit' means the property specified below.

1. the property that is generated by criminal acts of offense (including the offense in place other than Japan that will be offense if committed in Japan or offense corresponding to offense under the law of the place where it occurred) specified in the appendix for the purpose of obtaining unlawful profit or the property obtained as remuneration of the criminal act or the property obtained by such criminal act.

2. Fund supplied to the criminal act of offense specified below (including the offense in place other than Japan that will be offense if committed in Japan or offense corresponding to offense under the law of the place where it occurred)

A. Offense under Article 41 (10) (Supply of Fund Related to Import of Narcotic Materials) of 「Drug Control Act」 (No. 2052)

B. offense under Article 13 (Supply of Fund) of 「Anti-Prostitution Act」 (No. 208)

C. offense under Article 31 (Supply of Fund) (13) of 「Gun and Sword Possession Control Act」 (No. 6)

D. fund provided to the offense of Article 7 (Supply of Fund) of 「Act on Prevention of Damage to Human by Sarin, etc.」.

3. Property given by criminal act of Article 21 (2)(7) (Supply of Unlawful Profit to Foreign Public Officials) related to acts of violations of Article 18 (1) of 「Unfair Competition Prevention Act」 (No. 47) (including the offense in place other than Japan that will be offense if committed in Japan or offense corresponding to offense under the law of the place where it occurred).

4. fund related to the offense specified in Article 2 (Supply of Fund) of 「Act on Punishment of Supply of Fund, etc. for Criminal Act of Threatening the Public」.

60. Article 2 (3). For the purpose of this law, 'Property derived from crime profit' is the property obtained as a result of crime profit, property paid for crime profit, and the property obtained from such property and the property based on possession or disposition of crime profits.

1.4.5. Compulsory Confiscation of Criminal Proceeds from the Offense of Business Management Using Proceeds of Drug Crime

Article 13 (4) of 「Act on Punishment of Organized Crime」 specifies that the property indicated in each of the following subparagraph will be confiscated: ① Property obtained using the illegal profit of drug as equity or stock related to position of the shareholders related to the offense of Article 9, ② Obligations related to Article 9 (2) or (3) obtained using the illegal profits from drug crime (illegal profits of drug crime if the obligation aims to return the property which is the illegal profit of drug crime used for its acquisition), ③ property obtained with crime specified in Article 9 (1) to (3) using illegal profit of drug crime or the property obtained as remuneration of criminal act, ④ property obtained as a result of property from ① to ③, at the cost of property in ① to ③, and the property obtained with possession or disposition of property obtained at the cost of such property or the property from ① to ③ (Article 13 (4)).

However, if the offense of business management domination is related to the illegal profit of drug crime or property where other property is mixed, and if it is not suitable to confiscate all, part of it can be confiscated (Article 13 (4)).

1.4.6. Confiscation and Collection Preservation Order before Indictment

If there is a considerable cause and needs to give confiscation preservation or incidental confiscation preservation disposition, the court may give confiscation preservation or incidental confiscation preservation at the request of the prosecutor or judicial police officer before indictment (Article 23 (1)).

The prosecutor shall notify the purpose to the person who received confiscation preservation order (except the defendant) if it does not lose its effect due to institution of litigation. In this case, if the whereabouts of the person is not known or it is impossible to notify due to other cause, the purpose shall be published and notified for 7 days at the board (Article 22 (7)).

The court may issue collection preservation order to prohibit disposition of the property by the defendant at the request of prosecutor or ex officio if there is a considerable cause to collect the amount of illegal property (Article 42 (1)). Collection preservation order should be issued for the specific property by determining the amount reasonable to preserve for execution of collection trial (Article 42 (2)).

In the meantime, the judge may give a disposition specified in this clause by the request of prosecutor before indictment before institution of litigation if collection preservation is deemed necessary (Article 43 (1)).

2. Comparison of Criminal Proceeds Confiscation and Collection System of Various Countries

Features of confiscation and collection of profit from various countries are strong response to crime through confiscation and international response. Initial international response includes Vienna Convention of 1988 and 40 recommendations of FATF of 1990. Relatively recently in 2003, international UN Convention against Corruption was entered and registration obligation was imposed on the signatory countries including preparation of checking, tracing, freezing and seizure action of the property subject to confiscation, preparation of third party regulation, recommendation to transfer collection, confiscation and proving obligation of profits from crime. Accordingly, various countries rearrange confiscation system to cope with international agreement, and enact the 「Proceeds of Crime Act」 to unify existing confiscation system.⁶¹

In particular, with regard to drug crime, confiscation and collection system has been prepared, expanding the target of confiscation and collection to the economic profit and indirect profit from this. In particular, rapid increase in drug crime is the background where each country introduced crime profit confiscation system. As the drug crime gets serious, there was a declaration of war against drug and measures were explored to restrict the drug transaction. Such a crime confiscation system has been evaluated as the most effective system. In this regard, crime confiscation system was institutionalized, confiscation and collection preservation procedure was stipulated to facilitate collection and confiscation of crime proceeds and to alleviate the obligation of proof which was kept strict in ordinary criminal procedure.⁶²

While crime profit confiscation and collection system was introduced to restrict the drug crime, drug offender or drug crime organization engage in transnational activity crossing the country. In this regard, it is recognized that international cooperation is necessary to restrict drug crime and the organized crime that encourage drug crime in the background since drug crime cannot be controlled with efforts of one country (need for judicial cooperation).

61. Hong Chan Gi, Plans for arrangement of crime profit confiscation and collection system. 2014, p. 91.

62. See Legal system arrangement plan for securing collection and confiscation by Park Mi Sook/Kim Seong Kyu for details. 2008, p. 106 et seq.

With regard to confiscation of proceeds from drug-related crime, each country has operated confiscated property as special fund, or unified operation of such special fund so that operation organization installed in Ministry of Justice assumes full charge or operates the system in dual system by entrusting to operation organization installed under Ministry of Justice and separately installing a committee to supervise and manage this.

2014 Modularization of Korea's Development Experience
Experience of Korea Policy Formulation for Drug-free Country:
Deprive Proceeds Acquired from Illegal Transaction of Narcotics

Chapter 4

Enactment and Operation Status of 「Act on Special Cases Concerning the Confiscations of Criminal」 Proceeds

1. Enactment of the 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.」
2. Granting of Duty of Cooperation on Financial Institutions
3. Construction of Pan-National Narcotic Crime Response System
4. Creation of the Organization in Charge of Confiscation of Crime Profit

Enactment and Operation Status of 「Act on Special Cases Concerning the Confiscations of Criminal」 Proceeds

1. Enactment of the 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.」

1.1. Background of Introduction

As mentioned previously, 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc. (Hereinafter “The Special Act on Narcotics”)」 was enacted on Dec. 6, 1995, to punish narcotic crime by depriving its profit purpose as per the Vienna Convention, to prepare international cooperation procedure for enforcement of confiscation and collection system as well as an institutional device to thoroughly confiscate and collect illegal profits obtained from criminal acts related to narcotics. Main contents of this Act includes expansion of target for confiscation (Article 2, Article 13), Confiscation of Mixed Property (Article 14), Requirements of Confiscation and Collection (Article 15, Article 16), Collection of Illegal Profits (Article 17), Special Case on Confiscation Procedure (Article 19~Article 22), Special Case on Application for Intervention by third Party (Article 23), Preservation Procedure (Article 33~59).

1.2. Main Contents

1.2.1. Concept of Proceeds in 「The Special Act on Narcotics」

Article 1 of Vienna Convention, which serves as the foundation of 「The Special Act on Narcotics」, defines proceeds as the property that is obtained or directly, indirectly occurred

through execution of crime.⁶³ In addition, such Convention defines ‘Property’ as all the legal documents or evidence proving all kinds of properties including tangible, intangible property, movable assets or real estate, regardless of type, and any rights or authority of such properties.

According to the concept under this Convention, the term ‘illegal profit’ is specified as any property acquired from a criminal action in narcotics crime, any property acquired as payment for such criminal acts or any funds involved in a crime (Article 2 (5)). Here, the term “illegal profits, etc.” means illegal profits, any property deprived from illegal profits, or any property which is a mixture of such property and any other property, and the term “property derived from illegal profits’ means any property acquired as the fruits of illegal profits, any property acquired in consideration for illegal profits, any property acquired in consideration for such properties, or any property acquired from the possession or disposition of illegal profits, expanding its target.

1.2.2. Requirements of Confiscation and Collection of Illegal Proceeds

Confiscation under the Act is limited to the case when illegal property or mixed property does not belong to the person other than the criminal. What is important here is that confiscation or collection of illegal profits under this 「Special Act on Narcotics」 is based on assumption that their illegal property or mixed property do not belong to the person other than the criminal. In this regard, 「The Special Act」 specifies special act on application for intervention by the third party (See Chapter 4 of 「Special Act on Narcotics」).

1.2.3. Special Provisions on Application for Intervention by third Party

a. Application for Intervention or Notice of Process including Application for Intervention

According to the Act, when it is deemed necessary to confiscate property that belongs to a person other than a defendant or property on which any surface rights, mortgage, or other rights of a person other than a defendant exist, the following matters shall be immediately notified in writing to the person to whom the property or the surface right, mortgage, or any

63. Article 1 (Definition) of Vienna Convention

(p) ‘Proceeds’ refers to the property that is obtained or directly, indirectly occurred through execution of crime defined in Article 3 (1).

(q) ‘Property’ means all the legal documents or evidence proving all kinds of properties including tangible, intangible property, movable assets or real estate, regardless of type, and any rights or authority of such properties.

other right on the property belongs and who is not the defendant (hereinafter referred to as “third party”): (Article 23 (1) of the Act).

Any third party whose property is likely to be confiscated may apply for an intervention in any criminal case proceedings against a defendant in writing to the court in which the criminal case against the defendant is pending before a trial of first instance commences; Provided, that where any notification has been made in accordance with Article 23 (1) or (2), the third party may apply for the intervention within 14 days after the date thereof (Article 24 (1) of the Act).

b. Trial of Courts

In cases where a court permits intervention, but it later becomes clear that the property to be confiscated or any surface rights, mortgage, or other rights on the property to be confiscated do not belong to the person who has obtained permission for intervention (hereafter referred to in this Chapter as “intervenor”), the court shall cancel the judgment following the trial which allowed the intervention, and, if the court deems that the public prosecutor’s opinion that the confiscation is impossible or unnecessary is reasonable, the court may cancel the judgment following the trial which allowed the intervention.

The adjudication on the intervention shall be made after considering the opinions of the public prosecutor, the applicant for intervention, the intervenor, the defendant, or the defense counsel. A public prosecutor, an applicant for intervention or an intervenor may immediately appeal a decision to dismiss an application for intervention or a decision to cancel a judgment following a trial which allowed intervention (Clause 7). Withdrawal of an application for intervention shall be in writing: Provided, that on the trial date, it may be made verbally. An intervenor has the same judicial rights concerning confiscation as the defendant, except as otherwise provided for in this Act (Clause 25 (1) of the Act). Paragraph (1) shall not hinder the examination of the intervenor as a witness.

1.2.4. Collection of Illegal Profits, etc.

Article 17 on 「Special Act on Narcotics」 indicates that if there appears to be a reasonable probability to think the acquired property had been formed by a crime, such property shall be presumed to be illegal profits related to such crime.⁶⁴

1.2.5. Preservation Procedure

In cases where a court has issued or is going to issue an order of preservation for confiscation of the property over which surface rights, mortgage, or other rights exist, if there exists a reasonable ground to judge that the above rights might be extinguished by the confiscation and it is deemed necessary to confiscate the property, or if there is a reasonable ground to judge that the above rights are fictitious, then the court may prohibit the disposition of the rights by issuing a supplemental preservation order additionally upon the request of the public prosecutor or ex officio.

An order of preservation for collection shall be issued upon a specific property after fixing a specific amount that is deemed reasonable to preserve for the execution of a judgment of collection (hereinafter referred to as “amount preserved for collection”): and in cases of corporeal movables, property may be unspecified.

An order of preservation for collection shall be executed by an order of a public prosecutor. In such cases, the public prosecutor’s order shall have the same effectiveness as the provisional seizure order set forth in 「the Civil Execution Act」 (Article 54 (1) of the Act). The obligor of a money claim which is preserved for collection by an order of preservation for collection may deposit an amount equivalent to the amount of the money claim. In such cases, it shall be deemed that an order of preservation for collection has been executed on the obligee’s right to claim payment of deposit money (Article 55).

64. Article 17 of 「Special Act on Narcotics」 indicates “In estimating illegal profits related to a crime prescribed in Article 6, if a property an offender acquires during a period in which the offender conducts an activity under the same Article for business purposes is found to be markedly high-valued considering the property operation status or the receipt status of any payment according to Acts and subordinate statutes during such period, and there appears to be a reasonable probability to think the acquired property had been formed by illegal profits acquired by a crime under the same Article considering all circumstances, such as the amount of illegal profits and the time of property acquisition, such property shall be presumed to be illegal profits related to such crime.”

1.3. International Cooperation Procedure Concerning Execution of Judgment of Confiscation or Collection and Preservation of Property

The Act emphasizes importance of international cooperation with regard to confiscation and collection of illegal profits from narcotics. That is, Article 64 (1) specifies that in cases where a foreign country requests cooperation concerning a foreign criminal case against an act that falls under narcotics crimes in the execution of a final and conclusive judgment of confiscation or collection or in the preservation of a property for confiscation or collection purposes under a treaty, cooperation may be provided in response to the request.

1.4. Punishment of Violator and Reward of Contributor

1.4.1. Regulation and Punishment of Criminal Proceeds Concealment

The Act specifies that a person who interrupts the confiscation or collection of criminal proceeds from illegal trafficking in narcotics by concealment shall be punished by imprisonment for not more than 5 years or by a fine not exceeding 30 million Won (Article 3 of 「Act on Regulation of Punishment of Criminal Proceeds Concealment」).

1.4.2. Rewards for Contributor to Return of Criminal Proceeds

A reward can be paid to a person who contributes to successful confiscation or collection of property acquired through illegal trafficking of narcotics in accordance with the regulations specified in 「Act on Regulation of Punishment of Criminal Proceeds Concealment」. With regard to the scope of meritorious deeds, the criteria, methods, and procedures, etc. of the payment of the reward, and other necessary matters, it is prescribed in Enforcement Decree of 「Act on Regulation of Punishment of Criminal Proceeds Concealment」. Under this, the contributor to return of criminal proceeds may be rewarded with up to 100 million Won (Ministry of Justice, Enforcement Decree started from May 29, 2014).

With regard to introduction of system to reward the contributor to return of criminal proceeds, “High Fine Execution Team” has been formed at 58 Public Prosecutors’ Office over the recent 5 years, executing forfeiture of a total of 441.5 billion Won, but execution rate of forfeiture has reached only less than 1%, since technique of hiding criminal proceeds has been diversified gradually, confiscation and collection of criminal proceeds become difficult. In details, this enforcement, (1) provides the clue of investigation for concealment, disguise and reception of specific crime or criminal proceeds which are the foundation for

return of criminal proceeds, (2) if providing important information for checking location of property subject to confiscation, (3) if reporting concealed property of person completing confiscation and collection sentence, general public is subject to 5 million Won up to 100 million Won, public officer to 0.5 million up to 10 million Won. Provided, however, that if the reward is received with illegal method, it will be returned.

Amount of reward is not paid to the reporter of concealed property. It corresponds to concealment, disguise and acceptance of criminal proceeds under regulation on criminal proceeds or specific crime. It corresponds to the case when the property to be confiscated is sentenced to confiscation and collection, and is finally confiscated and collected. Accordingly, ‘property from crime’ obtained from the victim by the crime corresponding to the offense of embezzlement or malpractice cannot be confiscated under regulation on concealment of criminal proceeds, will not be returned to national treasury so that it is not target for payment of rewards.

2. Granting of Duty of Cooperation on Financial Institutions

2.1. Obligation of Reporting by Financial Companies

Article 5 of 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.」 imposes the obligation of reporting to the financial companies to secure effectiveness of confiscation, collection and preservation of profits through illegal trafficking of narcotics, etc.

That is, any person who is employed at a financial company, etc. under subparagraph 1 of Article 2 of the 「Act on Real Name Financial Transactions and Confidentiality」 (hereinafter referred to as “financial company, etc.”) and who carries out a financial transaction under subparagraph 3 of the same Article shall promptly report to the Prosecutor General in writing as prescribed by Presidential Decree, when the person becomes aware that the property he/she accepts in the course of carrying out his/her duty is illegal profits, etc. or that the counterparty to the relevant transaction has committed any crime prescribed in Article 7.

In addition, he/she shall not disclose such fact to the counterparty to the relevant transaction or anyone related to the counterparty (See Article 5).

2.2. Responsibility of Financial Institution to Report

Each financial company, etc. shall immediately report any of the following cases to the Commissioner of the Korea Financial Intelligence Unit for the property estimated as an illegal property with regard to financial transaction. That is, according to 「Act on Reporting and Using Specified Financial Transaction Information」, each financial company shall report this if it is suspected to be illegal property (see Article 4). In this case, financial institution shall clarify reasonable grounds for this. In addition, financial company shall be obligated to check opening of new account of customer, financial transaction and identity of customers with regard to financial transaction with reasonable care (Article 5-2). Financial companies shall reject new transaction with the customer such as opening of account in case when the customer rejects supply of information for identification so that customer cannot be identified; or exit the transaction if transaction relationship is already established. If the transaction is rejected or terminated, financial companies shall review reporting of transactions suspected according to Article 4.

2.3. Responsibility to Provide Certain Information on Financial Transaction

「Act on Reporting and Using Specified Financial Transaction Information」 specifies that if it is deemed necessary for investigation of criminal cases related to illegal assets, money laundering or financing of terrorism, tax investigation to verify a suspicion of violation under Article 3 of 「The Punishment of Tax Evaders Act」, tax crimes and customs violations, and a violation of 「the Political Funds Act」 or financial supervision (hereinafter referred to as “investigation, etc. of specific criminal cases”), the Commissioner of the Korea Financial Intelligence Unit shall provide each of the following information (hereinafter referred to as “certain information on financial transactions”) to the Public Prosecutor General, the Commissioner of the National Tax Service, the Commissioner of the Korea Customs Service, the National Election Commission or the Financial Services Commission (Article 7).

Besides, it specifies exchange, etc. of information with foreign financial service (See Article 8). Provided, however, that above information on financial transaction shall be guaranteed confidentiality. That is, information on financial transaction that he becomes aware of in the course of performing his duty, shall not be provided to, divulged to others or used for other purposes (See Article 9 of 「Act on Reporting and Using Specified Financial Transaction Information」).

3. Construction of Pan-National Narcotic Crime Response System

“Drug Management Dept.” installed under the Ministry of Welfare in Mar. 1946 had supervised the overall narcotics policy for about 42 years from liberation in 1945 to end of 1987. Polices, prosecutors and customs have controlled and investigated the drug offense, but no department installed in charge of drug crimes. While it is required to secure investigation means, to achieve scientific investigation, to expand international cooperation and to monitor money laundry, however, the most urgent measure was to establish pan-national drug crime response system where several national institutions share their own roles. In this regard, as several departments in charge of drug crime had been continuously created under the related ministries of government for 6 years from the late 1980 to early 1990, pan-national drug crime response system had been established within very short period of time.

Table 4-1 | Construction of Pan-National Drug Crime Response System

Classification	National Policy Agency	Supreme Prosecutors' Office	Korea Customs Office	FDA	National Intelligence Service
Date of installation	Aug. 1991	Feb. 1989	Jan. 1988	Mar. 1946	Feb. 1994
Dept.	Narcotics Div. Criminal Affairs Dept.	Narcotics Div. Violent Crime Dept.	Examination Planning Div. Intelligence Div.1 Narcotics Dept.	Welfare Ministry Narcotics Management Dept.	International Crime Information Center International Organization Crime Dept.

Source: Byeong In Cho, *International Strategies of Countering Illegal Drug Trafficking*, Korean Criminological Review, No.13 Vol.2(Serial No.50, Summer 2002), pp.231~237.

Starting from ‘Narcotics Div.’ under Intelligence Div. 1, Examination Planning Div. Korea Customs Office in Jan. 1988, ‘Narcotics Div.’, Violent Crime Dept. of Supreme Prosecutor’s Office was created in Feb. 1989, and in the following year, 1990, 『Narcotics Drug White Paper』 was published annually in addition to the existing 『Crime White Paper』 to systematically observe the trend of narcotics crime. In the following year, Aug. 1991, ‘Narcotics Div.’ was created in Crime Affairs Dept. of the National Policy Agency in Aug. and ‘International Organized Crime Dept.’ international crime center was created under National Intelligence Service in Feb. 1994, creating the environment for organic cooperation and information exchange on narcotics crime.

However, after 1993, methamphetamine offenders began to rapidly increase, foreign cocaine takers were arrested and the amount of smuggling of cocaine gradually increased. In addition, as the Korean smuggled lots of heroine from ‘golden triangle’ of Southeast Asia but was caught, it became more necessary to thoroughly monitor penetration of international drug organization into Korean society.

While investigation of narcotics is under supervision of public prosecutors, the police increasingly take charge of most activities of controlling and arresting the offenders. Therefore, it is naturally required to reinforce the ability of the police to deal with this even if pan-national drug crime response system is established. In addition, the international nature of narcotics supply crime makes it necessary to have the international cooperation department. In this regard, police authorities reorganized the lower organization of the narcotics division under the National Police Agency to match the realistic demand and increased the number of persons in charge of this to have a consistent narcotics investigation command system.

Along with professional education of the investigation personnel in the frontline, the National Police Agency has cultivated the ability of investigators to trace illegal funds. In consideration of the increasing trend of women drug takers, narcotics investigators were selected among women police officers and they were trained. Investigation activities aimed at narcotics supply organization have been continuously reinforced with sufficient request of funds at the time of application of budget. In addition, advanced equipment, which prevents smart criminal from getting away from police agency, has been secured continuously and utilized.

4. Creation of the Organization in Charge of Confiscation of Crime Profit

4.1. Overview

On May 1, 2005, 『A Squad for Money Laundering and Redemption of Proceeds of Crime』 (hereinafter ‘A Squad for Redemption of Proceeds of Crime’) was installed under high Tech and Financial Crimes Investigation Division, Central Investigation Dept. Supreme Prosecutors’ Office to take charge of tasks regarding tracing and forfeit of proceeds from illegal transaction of narcotics.

A squad consists of a total of 10 members including 1 prosecutor, 2 team leaders (1 deputy director, 1 grade 6 officer), 3 team members (1 grade 7 member, 2 grade 8 members),

2 workers dispatched from the National Tax Service and 2 workers from Financial Supervisory Service.

Two dedicated teams are installed in the squad for redemption of proceeds of crime; 2 prosecution staffs, and 2 employees dispatched from Financial Supervisory Service and National Tax Service are appointed for each team, and the senior prosecution staff serves as the team leader. This squad for redemption of proceeds of crime was officially granted 5 duties.

- A. Investigate specific crime or money laundering crime for tracking of proceeds of crime
- B. Confiscate, collect and preserve proceeds of crime before (and/or after) indictment
- C. Command, consult, support investigation of redemption of proceeds of crime
- D. Manage statistics, data and research of investigation skill related to redemption of proceeds of crime
- E. International cooperations including judicial cooperation related to redemption of proceeds of crime

4.2. Operation Goal

Operation goal of the squad for redemption of proceeds of crime is focused on 3 things ① improve performance of redemption of proceeds of crime, ② construct related cooperation system, ③ construct confiscation cooperation system with foreign countries.

First, to improve the performance of redemption of proceeds of crime, the squad strives to activate the investigation for fund laundering crime exposed in the course of specific crime investigation and to systematically support and encourage active utilization of confiscation and collection preservation system. In addition, to improve performance of redemption through direct investigation of the squad for redemption of proceeds of crime, the squad carried forward the introduction of civil confiscation system, confiscated asset fund law, spread of exemplary cases, evaluation and award of redemption performance and national statistics management.

Second, to construct the cooperation system of related organization, the squad formed 『Related Organization Council』 with FIU, National Tax Service, Korea Customs Service and Financial Supervisory Service to exchange and share related information and data. To redeem the proceeds of crime laundered, it was necessary to track the fund, to identify property status of the real estates of related persons, as well as foreign currency transactions for the purpose of outflow abroad. When concealed property of the owner of insolvent

enterprise and tax evasion data are found in the course of tracing the proceeds of crime, they were provided to the related organizations such as National Tax Service or Korea Deposit Insurance Corporation.

Third, focus on construction of confiscation system with foreign countries was to cope with increase in trend of evading proceeds of crime to overseas countries such as U.S.A., China and Hong Kong. In addition, it was necessary to prescribe the requirements and procedure of international cooperation in advance if there is a request for cooperation of property preservation for confiscation or collection or execution of final and conclusive judgment of confiscation and collection in foreign countries. Since the money confiscated or collected by the request of cooperation reverts to the Treasury, it was necessary to prepare separate legal foundations for receiving of money confiscated from foreign government or foreign distribution.

4.3. Performance of Operation

As the ‘Performance of Applying 「Act on Regulation of Proceeds of Crime」’ was set as the performance index of the Ministry of Justice in 2005, the performance of application continued to increase to 2 cases in 2002, 9 cases in 2003, 25 cases in 2004, 73 cases in 2005. The actual case of redemption of proceeds of crime was rather rare and it was mainly on bribery charges. Out of 73 cases of performance in 2005, only 3 cases were actually collected and preserved, and remaining 65 cases involved laws and regulation of confiscation or punished with money laundering crime.

Table 4-2 | Status of Collection of Levy

(Unit: 1 million Won)

Year	Sentenced amount of forfeit (A)	Amounts in arrears		Default rate (B+C/A)×100
		Impossible to enforce (B)	Outstanding (C)	
1997	1,012,077,154,258	11,564,102,911	904,465,469,841	90.51%
1998	1,021,501,851,000	41,412,187,746	812,624,496,219	83.61%
1999	1,188,416,020,814	49,995,812,685	1,115,662,656,276	98.09%
2000	1,262,495,862,756	57,801,287,076	1,169,868,448,945	97.24%
2001	1,257,258,850,864	118,058,274,927	1,089,387,047,994	96.04%
2002	1,192,905,670,338	96,985,024,843	1,069,981,263,834	97.83%
2003	1,380,819,066,908	145,062,741,625	1,206,557,983,305	97.89%
2004	1,532,341,771,856	59,851,831,478	1,415,696,704,908	96.29%

Year	Sentenced amount of forfeit (A)	Amounts in arrears		Default rate (B+C/A)×100
		Impossible to enforce (B)	Outstanding (C)	
2005	24,559,738,196,230	60,594,048,770	24,465,728,039,762	99.86%
2006	24,637,687,330,872	53,589,328,278	24,541,558,066,290	99.83%

⋮

(Unit: 1 million Won)

Year	Forfeit (A)	Enforce (B)	Not enforce (C)	Default rate (A/C×100)
2008	25,091,379	107,745	24,983,634	95.57%
2009	25,181,646	38,423	25,143,223	95.85%
2010	25,307,383	54,956	25,252,427	95.78%
2011	25,490,911	92,112	25,398,799	95.64%
2012	25,596,856	145,394	25,451,462	95.43%
Aug. 2013	25,457,380	39,781	25,417,599	95.84%

Source: Internal sources of the Supreme Prosecutor's Office.

4.4. Problem Identified in the Course of Execution

First, traditional investigation techniques cannot be used any more. With rapid political democratization, expectation of people on guarantee of human right and compliance of procedure has increased, resulting in considerably low efficiency of investigation on narcotics crime. Now, an environment has been created for a drug organization to engage in drug transactions more safely and comfortably than in the past.

There are lots of restrictions and limitations in following the investigation method such as tracing, seizure, search of deposit account and communication monitoring as the warrant principle is strictly applied. In particular, as everyone has a mobile phone and uses calls in daily lives, interception of mobile phone was technically impossible and the communication interception technique, which had been useful for long period of time, could not be used any more in the field of drug investigation.

People who transact drugs use 'cloned phone' of which the owner is not known. They have dozens of cloned phone, contact with different phone and it is difficult to trace the transaction line through communication interception, leave alone the technical problems involved. It is also difficult to trace and arrest a suspect who uses 'illegal car' whose registration is erased when transporting drugs or moving to another place of contact.

In addition, as there are more and more cases in which investigators violate regulations while overcoming abovementioned difficulties with different sense of justice and responsibility as well as lack of personnel, the tendency of avoiding drug investigation has spread. As there are frequent situations in which investigators endure disciplinary actions instead of being valued over mistakes made after enormous investigative efforts, thus, remaining investigators become passive in investigation of drug crime.

Second, due to rapid development of means of transportation and liberalization of overseas trip, it became very difficult to trace and arrest the overseas Korean or foreigner who bring drugs into the Korean market, get proceeds through concealed sales and immediately flee overseas. While there is a method called international criminal and judicial cooperation, many restrictions follow actual cooperation, including ‘reciprocity’, and it takes time so that there are many difficulties in following cooperation procedure with insufficient human resources.

While illegal transaction of drugs are dealt through expansion of cooperation for international investigation and reinforcement of cooperation system between related organizations at home and abroad, it becomes more difficult to control illegal distribution of narcotics. As the level of expectation of people on guaranteeing of basic right and compliance of legitimate procedure increases, legal restriction on investigation activities gets more serious and strict. In addition, since the guaranteeing of basic right and compliance of due procedure are the elements key to liberal basic orders there is almost no possibility of leeway from people before the entire country suffers from a fatal blow.

Third, a problem is exposed, that is, it is not that easy to identify the property subject to confiscation. While real name financial transaction system has been conducted, it is very difficult for the investigation agency to identify the properties if they are possessed or registered under the name of a third party.

Fourth, it was also very difficult to prove relevancy between the property subject to confiscation and criminal acts. Even if the property suspected for confiscation is identified, it is very difficult and inconvenient to prove whether they are proceeds of crime or originated from criminal proceeds.

Fifth, there is lack of experience in operation of confiscation, collection preservation procedure and professional investigation personnel. It was difficult to gain experience of various cases through investigation works since there have been few cases when law on confiscation, collection and preservation procedures are applied in reality. In addition, the limited number of professional investigation staffs is inadequate to track the proceeds of

drug transactions skillfully concealed with intelligent technique to the end and finally to confiscate and collect them.

4.5. Severity of Restriction on Communication Interception

Current 「Protection of Communications Secrets Act」 specifies that investigation agency should request the court to approve if it is set to intercept quickly and should stop interception if it fails to receive a warrant within 36 hours in order to prevent abuse of emergency interception. It should be notified in writing to the person within 30 days in case of interception. In the past, the time limit for issuing a warrant was restricted to ‘48 hours’ in case of emergency interception and it was not necessary to notify it to the person himself. In addition, punishment for illegal interception and those who open and disclose such contents was reinforced to suspension of qualification less than 5 years and imprisonment less than 10 years, from the existing punishment of imprisonment for less than 7 years.

Current 「Act on Real Name Financial Transaction」 specifies that financial institution should notify the holder of a title deed in writing within 10 days from the date of providing transaction information if the financial institution provides transaction information to the investigation institution (end date of notification grace period in case of notification postponement). When requiring financial transaction information, it shall indicate the transaction period in addition to existing data such as legal ground of request, purpose of use, contents of transaction information requested, as well as personal information of the person in charge and supervisor of the requesting institution. If there is a risk of threat to safety of body and life or interception to progress of fair judicial procedure, or to progress of administrative procedure such as question or investigation, the notification can be postponed up to 1 year, but the existence of “clear requirement” should be proven.

In Mar. 2002, the Supreme Court published 「Handbook on Practice of Warrant Trial including Seizure and Search」 about guaranteeing of freedom of communication and privacy of people by interpreting 「Revised Protection of Communications Secrets Act」 strictly and limitedly, and distributed it to the judges. The handbook specifies that “If allowing interception according to Protection of Communications Secrets Act, more strict explanation should be requested than arrest or seizure, and the infringement of basic right should be minimized including rejection of warrant if target is not specified.” Revised act specifies the ‘Censorship of Mail’ and ‘Interception of Telecommunication’ as the target of restriction, while the handbook includes ‘Recording or Listening of Conversation Undisclosed between Others’ as the target of regulation.

It interprets the requirements of interception approval, ‘sufficient causes of execution of crime’ more strictly than requirements of seizure, and specifies that request for extension of interception period should be rejected if there is no special explanation. It is also specified to reject if it exceeds the scope and target of approval or it has other contents. It also specifies that warrant for seizure and search for tracking the deposit account shall be carefully examined, not to allow ‘exploratory search’ to find the clue of crime, but to restrict the period indicated in the warrant to the period closely related to crime. In addition, it specifies that indiscriminate tracking by investigation agency of the connected accounts should be cut with addition of reasonable restriction if there is a possibility of excessive investigation on the accounts immediately before and after specific account.

Factors for Successful Confiscation and Collection – Main Examples

1. Factors for Successful Confiscation and Collection
2. Confiscation and Collection of Proceeds from Smuggling and Trafficking of Methamphetamine [Case 1]
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Factors for Successful Confiscation and Collection – Main Examples

1. Factors for Successful Confiscation and Collection

1.1. Prepare Procedure to Trace and Confiscate Proceeds from Drug Trafficking

1.1.1. Determine Targets of Tracing

The person with sufficient evidence for conviction is selected from among the people who accumulate a large amount of illegal profits from drug crime. It might be sufficient to confirm the crime of the suspect if it is possible to directly prove that such property was obtained through drug crime. But, since it is not easy to directly prove that such property was obtained through drug crime, the Article 17 of the 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.」 (Presumption of Illegal Profits) will be applied.

Article 17 of the Act (Presumption of Illegal Profit) is applied only when the target of the trace is punished as the person who deals with drugs for business purpose. While it is possible to punish the suspect as a person who deals with drugs for business purpose if one criminal fact is identified in theory, it is not easy for it to be recognized by the court. In this regard, it is necessary to specify the criminal fact of the target as abundantly as possible, and that the suspect has sold drugs by a profession with the statement of the related witness. If the suspect is indicted as the person who deals with drugs for business purpose, the property obtained by the criminal during the period he is engaged in drug trafficking as a profession shall be presumed as the illegal profit.

1.1.2. Identify Surrounding People of Targets of the Trace Such as Relatives

Since the target of the trace frequently conceals the illegal profit under the name of others, it is required to identify the target's circle including relatives who are suspected to form or conceal the asset of illegal property obtained from drug crime from discovery.

Secure issue of copy of resident registration, copy of family census registration and copy of census removal registration (original register), examine the lineal, collateral and relatives of the target, establish the scope of human suspected to conceal the property based on this and identify the name, resident registration number, domicile, address and occupation. Since there are many cases that properties are concealed under the name of roommate or ex-wife that are not disclosed in official record, it is required to collect sufficient information, examine circle and determine the scope of the trace.

1.1.3. Identify Assets of Targets of Trace and Related Persons

a. Overview

Identify existence and details of the target or related persons at the commercial bank or securities company by obtaining warrant of seizure or search or obtaining written consent from the party. At the same time, request the performance of property tax payment to the relevant local government office and identify assets.

b. Identify Details of Accounts in Commercial Banks and Securities Company

The investigator is allowed to request information by two methods by 「Provision of information by consent of the holder of a title deed」 and 「provision of information by a warrant issued by the judge」 in accordance with the Article 4 of the 「Act on Real Name Financial Transactions and Guarantee of Secrecy」.

a) Check Account by Consent of the Account Holder

Obtain written consent from the account holder indicating his agreement to tracing and investigation of his own saving bank, and request the financial institution to review transaction details by attaching this.

b) Check Account by a Warrant of Seizure · Search

A warrant of seizure-search should indicate the name of suspect, name of offense, object to seize, place to search, gist of suspected crime and expiration date, and shall be attached with the explanatory materials explaining the necessity of seizure and search and the data that may force the suspect to admit the criminal fact.

If it is required to examine the account connected to this account before and after investigation, results of seizure and search of the specific account, it is allowed to examine the accounts connected directly before and after the investigation first without receiving separate warrant.

c. Identify Assets by Securing Tax-Related Data

a) Secure Data of National Tax Service

Check the date of acquisition and transfer of the real estate of the related persons, location, area, land category, and current possession status, type of income for income tax, name of business operator, competent tax office, income amount, amount of revenue and the income tax paid.

While regulation on national tax database management of National Tax Service restricts the case of providing data on acquisition or transfer of real estate to external institution to the case of control purpose on 「Real estate speculation offender」 and 「tax evasion」, the confiscation and collection of illegal property of the drug offender under 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.」 includes investigation on tax evasion and national tax database can be used.

If requesting official notice to the taxation management department of the tax office adjacent to the Public Prosecutor's Office, the requested tax office will obtain approval from the main office of National Tax Service through provincial branch of National Tax Service and provide the data.

For smooth cooperation of works, purpose of investigation shall be sufficiently explained to the department in charge at National Tax Service before requisition of public office.

b) Secure Related Data of Property Tax of Local Government Office

Secure data related to property tax of the competent local government office by requesting public officers in the levy department of competent city, gun and gu office of the place of the domicile (location of building) and checking the performance of taxation payment of the person.

Local tax elapsing 5 years under the Article 30 (5) (Extinctive Prescription of Authority to Collect Local Tax) of the local Tax Act cannot be imposed. Only space and purpose of the building indicated in taxation ledger remain for collection data and the amount of taxation is not known.

Due to integration of computer data, data of National Tax Service and that of local government office are mostly duplicate; it is not useful for securing taxation data of the local government office if already securing data of National Tax Service.

c) Check Possession Relation of Cars or Ships

Information on car can be checked at car management office of each city using the personal information of the suspect and ownership relation of ship can be checked at the Crew and Maritime Affairs Dept. of regional Maritime Affairs & Port Administration.

1.1.4. Evaluate Examine Illegal Profit

Based on the data collected above, identify value of real estate, financial asset, debt, performance of income tax payment or property tax payment of the target of the trace and related persons, and confirm the actual property of the target of the trace. Among them, arrange the properties suspected to be illegal profit and the properties estimated to be legal profits.

Examine the process of formation of process suspected to be illegal profit and collect the evidence that can prove that the above property is the illegal profit. Secure the data that shows the holder of the property is old or the recipient of livelihood program or he does not have performance of tax payment such as income tax, prove passively that it is not the property of the registered holder of right, and actively prove that the property is formed with drug trafficking money by securing the data showing that the money received in the account of the drug trafficking offender is flown to the registered holder of right through account tracing.

Since it is difficult to achieve the goal of investigation and the target of the trace may dispose the property if examining the target of the trace first without securing sufficient data, it is desirable to secure sufficient data through account trace, take preservation actions by receiving the order of preservation for confiscation from the court and then to investigate the target of the trace.

1.1.5. Determine Illegal Profit

Examine the formation process of assets suspected to be illegal profit and determine it as illegal profit if there is considerable cause to recognize that such asset is illegal profit.

- Concept of illegal profit (Article 2 of the Act)

Illegal Profit: any property acquired from a criminal act in a narcotics crime, any property acquired as payment for such criminal act, or any funds involved in a crime (including any

criminal attempt) under Article 60 (1) 2 or 3 of 「The Act on the Control of Narcotics」, etc. or Article 61 (1) 3 of the same Act.

Property derived from illegal profit: any property acquired as the fruits of illegal profits, any property acquired in consideration for illegal profits, any property acquired in consideration for such properties, or any property acquired from the possession or disposition of illegal profits.

Illegal Profits, etc.: illegal profits, any property derived from illegal profits, or any property which is a mixture of such property and any other property.

○ Requirements and Scope of Confiscation and Collection (Article 13~ 16 of the Act)

Illegal profit and the property derived from illegal profit should be confiscated in principle and the part corresponding to the amount or quantity of illegal property shall be confiscated for the mixed property.

Properties related to concealment and disguise of illegal profits (Article 7 of the Act), acceptance of illegal profits (Article 8 of the Act) shall be confiscated.

In practice, secure the account used by the drug trafficking offender in application of the regulation of Article 17 (Presumption of Illegal Profits), add up total amounts of receipt for the period where he sells drugs by a profession out of the above amount of receipt, and calculate the illegal profit by excluding the parts where the suspect clearly proves the source of income. If there is a property to confiscate, demand a collection for the amount deducting the value of the confiscated property out of the illegal profit calculated as above.

1.1.6. Order and Execute Preservation for Confiscation

To confiscate the illegal profit determined as above, request the order of preservation for confiscation before indictment at the stage before indictment, and the order of preservation for confiscation after indictment at the stage after indictment to the court, receive issue of written decision and execute. The procedure to request preservation for confiscation and the procedure to execute the order for preservation are specified in details in 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics. etc.」, Rule on Preservation Procedure Related to Drug Crime, etc. (Supreme Court Rule No. 1419) and work rule of prosecution case.

Trial on preservation for confiscation is executed under the command of supervisor and delivery of copy of written decision is served by the court. Execution on real estate is entrusted for registration by the prosecutor. Execution on the movable asset is performed by

servicing the copy of written sentence to the owner (including the occupant if the occupant is different) of the movable assets. For the movable asset not seized or the movable asset for which chief guard is placed, or owner or suitable person can be set to preserve, the prosecutor shall take actions to notify it by suitable means using public notice.

Public notice shall indicate 「indication of movable asset」, 「date, month and year of order of preservation for confiscation, court and case number」, 「date, month and year of public notice」, 「prosecutor of public notice」 and 「a sentence warning that damaging the public notice may be subject to rendering null and void symbol of official secrecy under Criminal Act」. Execution for ships, airplanes and car are handled in accordance with execution of real estate, but shall be in accordance with the execution method of movable asset if not registered.

Execution on obligation shall be done by serving the copy of the written decision to the debtor and the creditors. If there exists other rights, surface right, mortgage and property of the third party other than the defendant for the confiscated property, matters on Article 23 of 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.」 shall be notified in writing to the person who has that property or above right holder.

Effects of preservation for confiscation shall take effects when it is registered in case of movable asset registered or real estate, or when it is delivered to the owner or debtor for other movable assets or obligation.

1.2. Construct Dynamic and Comprehensive Drug Investigation System

Create the drug investigation division, and construct professional investigation system for the drug crime in 1995, arrange 259 drug investigation staffs to 36 district prosecutors' office and branch offices so that they could perform drug investigation tasks. In 2002, it was transferred to integrated investigation system, resulting in establishment of national single investigation supervision system and maximization of drug investigation capacity. In addition, 24 hour monitoring system of airport and port was constructed by installing and operating the drug investigation liaisons, resulting in 24-hour monitoring system of international airport or port.

In 1989, Anti-Drug Liaison Officials (ADLOMICO) was created with 4 member states of Korea, U.S.A., Japan and Taiwan for international cooperation, expanded to 25 countries and 5 international organizations as of 2014, raising its position as the leading country to fight drugs in Asia-Pacific Area. ADLOMICO is the international meeting directly held by

the prosecutors and has been evaluated as a successful and exemplary cooperation system between regions from international organizations such as UN.

Since 2007, drug extermination support started on drug abuse country in ASEAN and Korea has performed projects to support drug extermination for handing down the investigation skill and equipment to the countries producing and supplying drugs. Countries for support are Laos, Cambodia, Vietnam, Philippines and Indonesia, aiming to block drug smuggling into Korea through improvement of drug control ability of drug producing countries.

Hotline has been operated and information exchanged with overseas drug investigation agency such as Drug Enforcement Administration (DEA) of USA, NPA (National Policy Agency) of Japan, National Narcotics Control Commission of China (NNCC), Philippines Drug Law Enforcement Agency (PDEA) of Philippines, Office of the Narcotics Control Board (ONCB) of Thailand, Central Narcotics Bureau (CNB) of Singapore, Vietnam (SODC), Cambodia (NACD), Laos (LCDC) and Indonesia (BNN). Besides, 「Joint Investigation Team of Prosecution · Customs」 has organized and operated under the competent Public Prosecutors' Office of international airports or ports, and cooperation meeting has been held with related organizations such as National Intelligence Service (NIS), National Police Agency, Korea Customs Service, Food and Drug Agency and Korea Coast Guard per quarter.

2. Confiscation and Collection of Proceeds from Smuggling and Trafficking of Methamphetamine [Case 1]

2.1. Overview of Investigation

In Apr. 2002, the Drug Investigation Division (chief prosecutor, Jeong Seon Tae) of Seoul Western District Prosecutor's Office introduced professional account tracing method in drug investigation first in Korea, caught 224 persons of 10 main factions of methamphetamine smuggling-trafficking organizations, arrested 162 persons including Seol O Nam (male, 55 years old), Kim O Ho (male, 34 years old), searched for 57 persons including Woo O Sik (male, 42 years old), Park O Wun (male, 41 years old), and seized 8kg of methamphetamine.

「Account Trace Team」 was installed to cope with the 「Direct Transaction」 trick that delivers drug by quick delivery service or express bus after receiving money, rather than directly meeting the purchase and for a transaction, and started extensive investigation of account tracing for the account of drug transaction for long period of time. By utilizing the account tracing technique, it was possible to secure objective data on the scale of transaction

and family tree of national supply organization, preparing remarkable turning-point to break from existing drug investigation method that depended on statement of the party.

Most smuggling and trafficking offenders were included in 10 main fractions of methamphetamine smuggling and trafficking organizations caught at that time. It was the biggest smuggling and trafficking cases ever in terms of quantity as 224 persons got caught and 48kg of methamphetamine (dose for about 1.6 million persons, market value of 160 billion Won) were handled. As the drug supply route was mostly intercepted in the aftermath of the case, transaction of methamphetamine shrank extremely and wholesale and retail price of methamphetamine increased (6~7 million Won; 10 million Won per 100g, 80,000~100,000 Won → 120,000~130,000 Won per 1 dosage).

Through active cooperative investigation with Daegu District Prosecutors' Office, Suwon District Prosecutors' Office, Incheon District Prosecutors' Office, Seongnam Branch of Suwon District Prosecutors' Office, Uijeongbu District Prosecutors' Office, Daegu Local Police Agency, search was conducted over a very wide area. While continuing monitoring and tracing the wanted criminals at large, it has obtained high performance of eradicating the drug offenders by fundamentally blocking the supply path of the drugs through planning investigation for long period of time and account tracing investigation.

2.2. Background and Progress of Investigation

While investigating the methamphetamine supply offenders arrested by Seoul Central District Court, 10 saving accounts were discovered, which were used for trafficking of methamphetamine smuggling, and account tracing investigation started in Oct. 2001. Account tracing investigation was conducted to cope with the transaction of methamphetamine through borrowed-name bank account which was recognized to be relatively safe transaction method.

As the account tracing investigation was performed in full scale, it became necessary to create systematic and continuous task force as the outline of main smuggling and trafficking organization was disclosed in Korea. On Apr. 17, 2002, account tracing task force was created to collect and distribute drug crime information including account tracing to the inspection room, establishing professional account tracing investigation system. After that, about 100 drug transaction accounts were traced to conduct investigation on 600 persons.

Through account tracing investigation and arrest activities, persons in charge of methamphetamine smuggling and trafficking such as Seol O Nam, Kim O Ho, Wun O Jong, Hwang O Cheol, Lee O Jae, Jeong O Hwa were arrested. Currently, arrest and investigation

activities have continued by requesting criminal extradition of Woo O Sik; Im O staying in China. Employees were sent to Daegu, Busan, Changwon and Cheongju to arrest main offenders and stayed for long period of time, actively engaging in arrest activities.

2.3. Investigation Method

2.3.1. Direction of Investigation

Active arrest activities have been conducted on related persons while identifying the accounts used for methamphetamine trafficking, actual account holders, the person who deposited or the person who withdrew the money through extensive account tracing and analysis based on information collected. Crime of related persons including the person in upper line and lower line as well as the details of sales exposed as a result of account tracing were checked against the drug sellers arrested, in addition to the accounts of methamphetamine trafficking exposed in the course of investigation.

2.3.2. Account Tracing and Analysis

A warrant of seizure and search was requested for details of receipt and withdrawal, slips related to receipt and withdrawal, targeting the bank account, the target of arrest as well as the accounts connected immediately before and after crime. Since the account is always connected to other accounts, details of receipt and withdrawal were examined and if the method is account transfer, follow-up investigation was conducted for that connected accounts (In most cases, the account was also used for methamphetamine transaction).

An official notice was sent to the computer department of the account opening bank by warrant, and the details of the account from the time of opening to the current were sent. By analyzing the data sent from the bank, it was checked who, when and how it was sent (e.g., account transfer at bank windows, deposit without a bankbook, account transfer using ATM, phone banking or other remittance method and branch, location of the relevant bank teller).

By sending the public notice to the branch of remittance, documents prepared by the remitter at the time of remittance, CCTV film taken at the bank window or ATM, and micro film of related documents were submitted and the personal details of recipient were identified. In particular, the actual user of the account who withdrew money was mostly different from the account owner, CCTV film, which was set to store for about 1 or 2 month, was checked (can be identified in most cases if checking the photos obtained through investigation process of the related persons or source of information),

Based on the personal matters of recipient, address, history of crime of same type, dwelling, family information and photos were identified through review and analysis of crime history, resident, copy of resident registration, subscription of phone or mobile phone, and personal details of subscribers as well as review of total image information of the drug offenders.

With integration and analysis of the above data, the identity of actual remitter and withdrawer was identified. If there is a person with specific history among the surrounding people such as the account holder or his family members or spouse, he was found as the actual sender of drug payment.

2.3.3. Tracing Investigation of Upper and Lower Line and Related Persons

To identify criminal facts in details, it is required to secure statements of the related person in addition to details of deposit and withdrawal. In this regard, details of receipt and withdrawal as well as opening of account of the account holder including the person who is recognized to be actual person receiving or sending money were thoroughly examined.

It is important to find out the clue of punishment by carrying out thorough seizure and search, and urine examination at the time of arrest. Once a clue is obtained, most people confessed the details of trafficking. In case of drug offenders arrested for other suspicion, it was relatively easy to get confession and to keep the investigation as secret so that it was examined first.

If there is a special circumstance that it is not easy to confirm crime in details due to no arrest of actual account holder, contents of crime of other suspects should be examined under cooperation with 1 or 2 depositors.

The key to account tracing investigation is to arrest the people in upper and lower line with cooperation of figures who were arrested or on the list of investigation. But, it was confirmed in the investigation process that they could cooperate much easily if there were results of account tracing. Due to thorough tracing and investigation of the upper line and lower line, suspects related to account trace investigation as well as other trafficking organization not related could be identified.

2.4. Factors of Successful Confiscation and Collection

2.4.1. Active Utilization of Account Trace Method

Overall members of organization were arrested from the retail dealer to smuggler through account tracing and arresting activities for long period of time, breaking away from existing one-time only control type arresting a few people concerned. Epoch-making turning-point was achieved for drug investigation as the suspect could be questioned based on the account tracing data, rather than depending on the statement of the solving the problems due to bargain with the related persons or utilization of source of information.

2.4.2. Cooperation with Prosecution Institutions of the Whole Country

In the course of investigation and arrest activities throughout the country, there was active help and cooperative investigation from Daegu District Prosecutors' Office, Incheon District Prosecutors' Office, Suwon District Prosecutors' Office, Seongnam Branch of Suwon District Prosecutors' Office, Uijeongbu District Prosecutors' Office and Daegu Local Police Agency. In particular, Daegu District Prosecutors' Office and Local Police Agency actively cooperated by arresting the most wanted criminal, Yun O Jong and extraditing him to our Office. Incheon District Prosecutors' Office and Uijeongbu District Prosecutors' Office dispatched employees to the Account Tracing Team of Office, and national prosecutors' office conducted active arrest activities according to the instruction to arrest main smugglers and traffickers of the Drug Department of the Supreme Prosecutors' Office.

2.4.3. Subsequent Drug Organization Monitoring Activities

Efforts have been concentrated to arrest related persons and to supplement the family tree currently identified, intensively tracing the account off methamphetamine smuggling collected at the prosecutors' office throughout the country through account trace team of Drug Investigation Div. of Seoul District Public Prosecutors' Office. Investigation has been conducted on tracing of illegal profits obtained by smugglers and traffickers and the account from which methamphetamine smuggling money was remitted overseas.

With active cooperation with the department of public peace of China, Drug Administration Office of Thailand, Policy Agency of Japan, early arrest and reparation of the target for criminal indictment and stay of prosecution of those living overseas were pushed forward. In addition, in line with the trend of organized, internationalized and specialized drug transaction, existing unilateral investigation method was avoided, but more focus was

given on fundamentally blocking the supply source of drug and on eradicating root of drug criminals through long-term and planned investigation.

3. Large-Scale Arrest of Drug Substitute Traffickers [Case 2]

3.1. Overview of Investigation

The Drug Investigation Division (chief prosecutor, Jeong Seon Tae) of Seoul Western District Prosecutor's Office and Seosan branch of Daejeon District Prosecutors' Office (head of branch, Jeong Jin Young) had cooperated with each other to conduct overall crackdown on the illegal manufacturer or traffickers of fake Viagra, psychotropic drug, fenfluramine (so-called diet pill), carisoprodol (so-called "S"pill) and Dextromethorphan Hydrobromide (so-called romilar), distributed on a large scale as the drug substitute at Namdaemun, Seoul since 2002.

As a result of control, 2 illegal manufacturing and outflow offenders of romilar and S pill were arrested, indicted; 4 sales organizations, a total of 27 persons were caught, 17 persons arrested and indicted (3 indicted without detention, and 7 wanted for), a total of 489,700 pills of romilar (about 15 boxes, equivalent to about 100 million Won market price, about 200 Won per pill based on retail price) and 322,500 pills of S pills (about 20 boxes, equivalent to 130 million Won market price, 1 pill is about 400 Won in terms of retail price), about 6,000 pills of fenfluramine or Viagra were collected.

3.2. Background and Progress of Investigation

As it became difficult to get narcotics due to strong enforcement on drugs such as methamphetamine, there were more and more drug abusers who wanted to taste hallucination effects like drug from drug substitutes such as romilar and S pill which could be obtained easily and relatively cheap. As there was rapid increase in sales profit for drug offenders (drug selling woman) who sold to prostitute around Namdaemun, they received supply of drugs directly from the drug factory and began to sell throughout the country.

On the other hand, it became necessary to control the drug sellers as there occurred many cases of mental disorder due to drug addiction and strong criminal cases in which drug abusers took drug substitute and committed murder in hallucinosis (a drug abuser broke in the houses after taking romilar, and murdered 2 women and children around Dec. 2000;

a murder case of romilar seller around Mar. 2001; burglary cases when boys, Kim, Choi and Ga, committed robbery and injured people at oil station in the state of hallucinosis at Jamhong-dong, Seosan city in Jul. 2002). There was a case of an addict, Lee OO (man, 27 years old) who had habitually taken drug substitutes such as romilar for about 10 years and his family forced him to the mental hospitals thrice.

In this regard, investigation started by arresting the sellers who sell drugs around Namdaemun since Oct. 2002, tracing the merchant and arresting the retailers. By identifying illegal production and distribution process of drug substitute with general crackdown on pharmaceutical companies of romilar and S pill around Dec. 2 ~ 4, 2002, we arrested Kim O Il of Korea OOO Co., Ltd. and caught 5 companies violating the guidelines for medical manufacturers to comply with.

3.3. Factors of Successful Confiscation and Collection

3.3.1. Examine and Control from Production to Sales of Drug Substitute

Different from the past when only drug retailer called “Drug Selling Woman” was controlled, there was thorough tracing and investigation from production to the distribution and sales process of romilar and S pill. In addition, it was prepared to cope with illegal distribution of drug substitutes by identifying sales tree from the pharmaceutical companies to retailers, and constructing the data.

3.3.2. Investigate Source of Finance for Property from Illegal Profit

The persons in charge of selling are presumed to accumulate billions more Won by selling illegal drugs for several decades without occupation. Accordingly, their personal details were notified to the National Tax Service and fund source was examined on the illegal profit and properties.

3.3.3. Discover Point Organization and Family-like Secret Sales Network of Sellers

Drug substitute sellers systematically conspired between family members or brothers and sisters, rent unlicensed boarding houses at so-called “Yangdong Alley” of Namdaemunro 5-ga, Junggu, Seoul, Korea, concealed several hundred cases of romilar and S pill, and illegally sold them to the ordinary people and youth.

So O Sun, arrested as the person in charge of sales, and So O Sun wanted were sisters, and the daughter and the son of So O Sun, the friend of her son engaged in the sales.

Kim O Son arrested also illegally sold romilar along with son, Lee O Hyeon.

When the person in sales organization got caught, he admitted to only his own crime like a lizard that cuts of his own tail to flee and remained silent for his upper line. The person in upper line protected the lower line by arranging a lawyer if the lower line is arrested, constructing point organization and conducting illegal sales.

4. Confiscation of Illegal Profit and Property of Drug Crime [Case 3]

4.1. Overview of Investigation

The Drug Investigation Division (chief prosecutor, Jeong Seon Tae) of Seoul District Prosecutor's Office discovered that 7 narcotics seller including Kim O Ho (34 years old), So O Sun (female, 53 years old) obtained illegal profits and property worth 2 billion Won including real estate, and completed the preservation measures for confiscation of that property.

The Drug Investigation Division received and executed the order of preservation for confiscation from the court against 6 methamphetamine sellers including Kim O Ho, in accordance with 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.」and seized the property of So O Sun, the seller of drug substitute such as romilar and S pills since it was difficult to apply the above Act.

The Drug Investigation Division received sentence of confiscation from the court on the drug sellers in trials such as Kim O Ho, reverted the property to the National Treasury, and conducted disposition for failure in payment such as public sale regarding the property of drug substitute sellers. In addition, the Division also discovered the fact that 3 persons including Yun O Yeo (female, 44 years old) laundered the narcotics costs, applied the offense of violating 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.」 on Feb. 24, 2003. With this, it was recorded as the first successful case in punishing the drug fund laundering in Korea.

It was a meaningful case in that big scale illegal profit and property were identified and could be confiscated through long-term fund tracing activities by Drug Investigation Division of Seoul District Prosecutors' Office, while confiscation of illegal profits was not performed thus far.

4.2. Background and Progress of Investigation

As the size of drug transaction got bigger and the transaction skill got more intelligent. Punishment-oriented enforcement showed its limit in controlling the supply items. In this regard, the strategy of tracing and confiscating the illegal profit obtained by the sellers, thereby, eradicating the crime profit, was regarded as the effective means of controlling drug transaction.

「10 Chinese methamphetamine smuggling and trafficking organizations」 released in the press on Oct. 2002, and 「Drug Substitute (romilar-S Pill) illegal manufacturing -sales organization」, released in Dec., the same year were selected as the main target, commencing the investigation with fund tracing of the narcotics smugglers and traffickers from Nov. 2002.

The use of the fund received to the drug sales account was pursued with warrant of seizure and search. In addition, properties of the suspect himself and family members or acquaintances such as real estate, cars and ships were checked with cooperation from the National Tax Office. The order of preservation for confiscation under 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.」 was requested for the suspect for whom drug sales profit was used as the fund to acquire property in Jan. to Feb. 2003, the decision of preservation for confiscation was obtained from the court, and the execution of order of preservation for confiscation such as commission of registration and delivery.

Since drug substitutes such as romilar-S pill are not currently designated as the narcotics, the above Act cannot be applied, illegal profits identified as a result of investigation were notified to the competent taxation office of the suspect, and seizure action was taken for the property under the National Taxation Act in Feb. 2003. In addition, the circumstances and the source of fund were examined for the drug seller of which the property was identified and the owner of the property.

Two suspects were examined who managed the fund of the seller in the course of property acquisition from Jan. to Feb. 2003, indicted without physical detention as Concealment and Disguise of Illegal Profits, etc. Article 7 of 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.」 on Feb. 24, 2003.

4.3. Meaning and Features of Investigation

It takes long to conduct investigation for confiscation of illegal profit and property and has not been done throughout the country due to complexity of preservation for confiscation procedure. There was only one suspect case at Euijeongbu branch in 1999 and Busan branch

in 2000 (value of property for confiscation: about 400 million Won for Euijeongbu branch, and 60 million Won for Busan branch).

In this situation, as the large-scale illegal profit and property could be confiscated and preserved through investigation of Seoul Central District Prosecutor’s Office, investigation for confiscation of illegal profit and property was expected to be conducted actively. In addition, it was found that confiscation and collection of illegal profits were very useful in controlling the drug sales.

The biggest methamphetamine wholesaler, Kim O Ho, Yun O Jong purchased 2,000 pyeong of land in the development-prearranged area with the money he obtained with sales of methamphetamine so far, to cope with the situation after release from prison and took preservation action for confiscation of the above land.

For extradition of drug smugglers and traffickers at large in overseas countries, we have closely cooperated with Public Peace Dept. of China. If we confiscate and collect the property they concealed and disguised in Korea, it might be very helpful in encouraging their voluntary homecoming.

5. Confiscation and Collection of Methamphetamine Sales Profit [Case 4]

5.1. Criminal Acts

Table 5-1 | Status of Preservation for Confiscation of Illegal Profit and Property

No.	Suspect Defendant	Name holder (relation)	Property List	Market Price	Preservation Procedure and Handling
1	Yun O Jong (46 years old)	Yun O Yeo (husband of his sister)	224 pyeon paddies, at OO myeon, Dalseong-gun, Daegu	30,000,000 Won	<ul style="list-style-type: none"> · Preservation for confiscation on Jan. 3, 2003 · Yun O Jong indicted on Jul. 26, 2002 · Yun O Yeo indicted on Feb. 24, 2003
			Savings at Daegu bank	10,000,000 Won	
2	Kim O Ho (34 years old)	Kim O Seok (father)	2,000 pyeong of land, OO eup, Gunwi-gun, Gyeongbuk	600,000,000 Won	<ul style="list-style-type: none"> · Preservation for confiscation on Jan. 6, 2003 · Kim O Ho indicted on Aug. 26, 2002 · Preservation for confiscation on Jan. 6, 2003

No.	Suspect Defendant	Name holder (relation)	Property List	Market Price	Preservation Procedure and Handling
3	Jang O Bong (40 years old)	Jang O Bong (himself)	2 ships of small ships (speed boat)	20,000,000 Won	· Preservation for confiscation on Jan. 6, 2003 · Jang O Bong indicted on Dec. 20, 2002
		Kim O Ji (wife)	SM520 car	25,000,000 Won	
4	Park O Wun (41 years old)	Lee O Ja (cohabiter)	Chairman car	20,000,000 Won	· Preservation for confiscation on Jan. 4, 2003 · Indictment of Park O Wun suspended on Feb. 8, 2002
			25 pyeong villa at OO dong, Gyeongsan city	40,000,000 Won	
5	Kim O Tak (47 years old)	Choi O Nam (wife's mother)	Apartment Jeonse deposit at OO dong, Sasang-gu, Busan	70,000,000 Won	· Preservation for confiscation before indictment on Feb. 13, 2003 · Indictment of Kim O Tak Feb. 2012
6	Park O Young (Female, 45 Years old)	Oh O Soo and 12 persons	12 saving accounts at Woori Bank	136,000,000 Won	· Indictment of Park Young Seon stopped on Feb. 2012 suspended · Preservation for confiscation before indictment on Jan. 27, 2003
7	So O Sun (Female, 53 years old)	So O Sun	A 4-story multi-family house (a total of 156 pyeong) at 000 dong, Seodaemun-gu	1,000,000,000 Won	· Seizure by national disposition for failure in tax payment on Feb. 7, 2003 · Indictment of So O Sun suspended on Nov. 2002
			20 pyeong villat at OO dong, Seodaemnu-gu	130,000,000 Won	
Total				2,081,000,000 Won	

Source: Internal sources of the Supreme Prosecutor's Office.

5.1.1. Violation of 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.」

The defendant received the a box containing methamphetamine imported by his father through quick delivery service at the Bexco cargo parking lot at Woo-dong, Haewundae-gu, Busan on the afternoon, Apr. 2013, delivered it to Sun Motel located at 744, Chorang-ro, 13-gil, Dong-gu, Busa, around 22:00 on the same day, put it in the refrigerator of the room, that is, received, possessed and managed the psychoactive drug.

5.1.2. Violation of 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.」

The defendant received a box containing 2 million Won of methamphetamine sales amount at the order of the above Kim OO in the street in front of the Centum Square Officetel located at 26, Centum 3-ro, Haewundae-gu, around 10:00, next day, and from that time on, he received a total of 100 million Won in 8 transactions around the street near the above officetel by Jun. 2013, and kept at the house of defendant.

For the purpose of interrupting the source of methamphetamine sales profit, or avoiding the confiscation of the above profit, the defendant deposited the above 100 million Won with his aunt, Kim OO around Jun. 30, 2013 at the instruction of above Kim OO, who deposited 50 million Won to the Kookmin bank account of Kim OO (account no.: 110855-04-0000000) on Jun. 30, 2013, and rest 50 million Won around Jul. 4, 2013 into the same account. After that, defendant received the above 100 million Won from Kim OO on Jan. 22, 2014, and kept it at the trunk of SM7 car (02 Ju 0000).

With this, the defendant concealed or disguised the source and location of illegal profit in conspiracy with the abovementioned, Kim OO.

5.2. Factors of Successful Confiscation and Collection

When the police detained the suspect of this case and sent him to the Prosecutors', the overview of case was "Kim OO, the father of the suspect, was arrested for transporting the certain amount of methamphetamine imported, and we seized the sales price of 100 million Won the suspect kept. However, there was no confession from suspect, no reinforcing evidence so that the suspect might be released without charge. In addition, the seized 100 million Won was not evidence of criminal fact, the full amount should be returned."

Through thorough reinforcing investigation, source and laundering process of 100 million Won was identified, recognized and indicted for concealment of illegal profit and we could prepare foundation for sentencing of confiscation. That is, main success factor of this case can be the thorough and complete reinforcing examination against the suspect.

By questioning the defendant about the source of 100 million Won, it was found out that 2 million Won of methamphetamine sales profit was received around Apr. 2013, and he received this sales amount in a total of 8 transactions in Jun. 2013, and kept it at officetel, deposited at the account of the suspect's aunt from Jun. 30, to Jul. 4, 2013, received it in cash and kept it on Jan 22, 2014 when it was seized by the police.

The 2 million Won received in the middle of Apr. 2013, was specified for transportation of methamphetamine in Apr. 2013, but not specified in details. However, 100 million Won was the methamphetamine sales amount at the instruction of his father, corresponding to the acts in violation of the narcotic drugs of Article 2 (3) of 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.」 As it was concealed in the account of another person, he could be indicted for violation of the Article 2 (3) and received sentencing of confiscation under Article 13 (1) (3).

Since the money laundering crime is indicted based on the money laundering process, precondition crime was specified in details in general. Even if the precondition crime is not specified, a suspect can be indicted and confiscated if it is proven to be the property obtained through drug crime.

6. Problem and Improvement Plan for Deprivation of Narcotics Fund

6.1. Modification and Supplementation of Unsatisfactory Matters

First of all, while strict management was required in consideration of serious addictive situation of the drug substitutes such as romilar and S pill, this substitute is just classified as medicine abused, it is difficult to monitor the illegal distribution and to punish the abusers.

In addition, to facilitate the confiscation and collection of the illegal profits of illegal drug substitute romilar, S pill, which recorded tremendous sales, Enforcement Ordinance of 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.」 was revised to designate romilar-S pill as psychoactive drug.

Second, since the conditions for order of preservation for confiscation, Article 52 (1) of 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.」 is restricted to the Article 52 (1) of the Act, the order of preservation for confiscation was limited to “the case of collection when the property from illegal profit cannot be confiscated.” In addition, the requirements for order of preservation for confiscation was specified as “in case it can be confiscated under this Act or other regulations” (Article 33 (1) of the Act), the order of preservation for collection cannot be issued for the collection if it was possible to confiscate the drug, facility, equipment, fund and means of transaction specified in Article 67 of the Act.

Accordingly, in accordance with the requirements of order of preservation for confiscation, Article 52 (1) of the Act, it was revised to “in case when it is necessary to collect under this Act or regulation of other laws.”

6.2. Supplementation of Weakness of Real Name Financial Transaction System and Real Name Property Ownership System

Activities of tracing the movement route of drug fund are the means of making up for the weakness of real-name financial transaction system (‘Real-name financial system’).

Real-name financial transaction system is the financial system or practice to prohibit financial transaction under false name or unregistered transactions in deposit in the bank or purchase of stocks, and to regulate use of actual name of the transaction party. It aims to realize the justice of taxation by improving equity of taxation balance with total taxation by accurate identification of source of tax, to eradicate underground economy through normalization of financial transaction, pursuing sound development of national economy.⁶⁵

While the government announced that most borrowed name-false name-stolen name accounts were changed to real name after execution of real-name financial transaction system in Aug. 1993, it is presumed that there still remain agreed borrowed name accounts opened according to mutual agreement and latent borrowed name accounts which are not still transferred to real name. Many borrowed name accounts may exist by opening borrowed name account under the condition that actual account holder will pay taxation on the interest income through agreement between actual account holder and the name borrower(so-called, agreed borrow name)

Therefore, we should pay attention to exploring suitable measures by closely analyzing the problems according to execution of system while real-name financial transaction system is implemented. It must be the best alternative to reinforce the activity of the investigation agency to control the act of camouflaging the fund so that no space exists for such illegal fund to hide as a prescription for this purpose.

Next, Monitoring activities for flow of drug fund are the means supplementing weakness of real name property system enforced since Jul. 1, 1995. Real name property system aims to realize economic justice and to promote sound development of national economy by

65. Ministry of Finance, ‘White Paper on 1st Anniversary of Financial Real-Name System’, Aug. 12, 1994, pp. 9-22 ; Ha Yong In·Choi Won Hyeong, ‘Real-name financial transaction system of main countries’, ‘Survey Statistics Report’, No. 495, Bank of Korea, 1990. Feb. Issue. p. 42.

registering all rights on real estate under the name of actual owner in order to eradicate various kinds of illegal activities under the name of other person such as speculation of real estate, tax evasion, and concealment of property.⁶⁶

However, 「Act on the Registration of Real Estate under Actual Holder's Name」, the applicable act of real estate property system, may be also used as the hideout of illegal funds by allowing fictitious donation of real estates of families or spouse.⁶⁷ It is necessary to supplement the weakness by facilitating control activities of illegal funds of investigation agency since illegal motivation should not be interrupted even if admitting the situation that should be accepted in reality.

7. Analysis of Performance of Criminal Proceeds Confiscation System in Korea

Lots of drugs are transacted in the unit of tons in some cases in western countries including U.S.A. Accordingly, the profits obtained through illegal drug transaction are not deposited in the bank or transferred to other property, but left as the cash. High-tech arms can be obtained with tremendous profit from drug illegal transaction or such profit is used to bribe the enforcement public officials and use them as the drug ring's subordinate. However, no such case was identified in Korea.

Large-scale drug transaction has diverse meaning. First, the narcotic organization has obtained tremendous profits. Second, such drug fund forms an underground economy. Third, there might be more and more public officials who may be bribed and used to help or to ignore such illegal transactions. Fourth, they are likely to have tremendous influence on the area of politics, economy, society, culture, sports and media. Lastly, it means it is very difficult to control the drug organization with the governmental authority.

Fortunately, however, there was no such large-scale drug case caught. Such a situation means that the concern of our country might be totally different from that of other countries where large-scale narcotics treatment has existed. In addition, it means it is easy for the police, prosecutors, customs and intelligent information to trace the trend of drug organization or the drug transaction. However, we have never neglected on the tasks of

66. Ministry of Finance-Economy, 「Explanation on Real-name Property System」, 1995, Apr., pp. 5-6; Ministry of Finance-Economy Ministry of Justice, 「Data on Hearing of Act on Registration of Real Estate Owner [draft]」, 1995. Feb. 8, p. 2.

67. Chosun Daily, Jun. 18, 1995.

collection and confiscation of the drug transaction profits even if the drug transaction was done in small scale.

In 2013, Changwon District Prosecutors' Office identified the cash record and disclosed that it was the profit from selling of drug within a short period of time, and conducted confiscation and collection process. Even simple drug offender is not free from cash confiscation and collection. The drugs he has are confiscated and the amount corresponding to the total cost after calculating the number of drugs confiscated. If he spent 100,000 Won for 1 time, 100,000 Won will be collected. So that, every drug case accompanies confiscation and collection. The amount corresponding to sales price is collected from the drug seller. While it is not common, the case of smuggling from overseas country is also applied with confiscation and collection process specified in the Act.

Suggestion for Establishment of Policy for Developing Countries

1. Active Securing of Means of Investigation
2. Alert of Investigation Expediency
3. Securing Professional Investigation Personnel
and Fund Tracing Education
4. Relaxation of Saving Confidentiality Principle
5. Expansion of Obligation of Financial Institutions
6. Expansion of Role of Korea Financial Intelligence Unit
(FIU)
7. Close Cooperative Investigation and Cooperation Relation

Suggestion for Establishment of Policy for Developing Countries

1. Active Securing of Means of Investigation

Investigation of drug crime can be compared to contest between investigation institution and drug organization. Since the drug organizations may do illegally while investigations should comply with rules and procedure, investigation of drug crime is disadvantageous to investigation companies. It is more difficult to overcome such limits when tracing the upper hierarchy of the drug supply organizations as well as arresting abuser.

Due to this situation, investigation of drug crime requires lots of means of exception. In reality, (based on determination that drug crime is not that severe), there are more and more factors restricting the investigation of drug crime. In order to suppress the supply organization which becomes more and more intelligent, mobilized, globalized and internationalized, it is not easy even if various equipment are given to investigation organization, as the reality is like tying the hands and feet of the investigation organization instead.

Few people pay attention or have interest in the problems of investigation institutions. It is difficult to find a person who shows the difficulty of drug investigation when scholars, journalists, judges and lawyers, and civil organizations assert compliance of legal procedure and guaranteeing of basic rights.⁶⁸ It is not because we do not know the supreme ideology and value of the compliance of legal process and guaranteeing of basic rights, it is because the basic right and legal procedure may not be meaningful in some situations. If we do not take special measure in advance,⁶⁹

68. See the editorial dated Mar. 26, 2002, Dongah Ilbo.

69. United Nations, "The Impact of Organized Criminal Activities upon Society at Large," E/CN.15/1993/3, 11 Jan. 1993, pp. 9-14.

In May 1998, the investigation organizations of the United States, had traced drug organizations for three years (Casablanca operation) and exposed the biggest international money laundering organization (drug cartel) in history.⁷⁰ Through systematic long-term investigation, 143 persons including 26 related persons of 12 banks in Mexico were arrested and 35 million dollars of cash, 2 tons of cocaine and 4 tons of marijuana were seized. Staffs of Customs Service penetrated as the intermediate broker of bank and drug cartel since Nov. 1995 in disguise and collected the intelligence of crime at the risk of their life. They identified that Mexico bank branches adjacent to the U.S.A. is the route of drug money laundering and commenced the sting operation. Mexico drug organization 'Juarez' and 'Kali Cartel' of Columbia were caught in the police dragnet, and it was found out that 3 biggest banks including Medico, 'Bancomer and Conpia', 'Bangka Serpent' were engaged in money laundering.

Like this, tracing investigation of international drug organization is the series of processes to collect the evidence for long period of time, to penetrate and spy and to identify the transaction information through common monitoring for long periods of time, which are the hectic secret actions (underground activities). If such activities are impossible, big organization based overseas could not be arrested and only a few drug users or carriers can be arrested. Therefore, if the priority is legal procedure and basic rights only, drug investigation fails.

In a word, the basis of an argument for necessity of recognizing the specific features of drug investigation can be found in the reality when 10th-day-no-driving system is implemented to reduce the traffic jam. It is to yield by turns so that the greatest number of people can enjoy benefits, but it is possible because the reasonable thoughts are shared or authority is given to the investigation authority under the spirit of 'better safe than sorry'. Possibility of human rights abuse accompanying expansion of scope of exception can be overcome through judicial procedure. Therefore, investigation agency of each level should not keep silent, conscious of critical public opinion, but inform difficulties and actively secure means, preparing the conditions to strongly cope with drug crime. If the internal penetration of giant organization cannot be perpetrated without interest in securing the means, there will be no sympathy but only criticism and jealousy will prevail.

70. See Choseon Ilbo dated on May 19, 1998.

2. Alert of Investigation Expediency

Financial institutions should be able to have confidence on the investigation agency in order to maintain good relations between investigation agency and financial authority. To create such an atmosphere, we should maintain an attitude of being wary of investigation expediency.

It is difficult to get away from the criticism of self-contradiction since the request of information beyond the scope specified in law or by the warrant issued by the judge or the order of court to submit is regarded as violation of law.

Therefore, if tracing fund is inevitable, necessary transaction information can be requested, but there should be no case that unconditionally requests the data on savings of person due to petition or anonymous letter or probability only. Request of information without legal and procedural requirement should be regulated.

The situation when a problem gets serious with regard to tracing of illegal fund is the case when the tracing activities are expanded to his family members and relatives in addition to the suspect. That is, it may cause public criticism if we try to find the location of the fund concealed intelligently, as it may result in indiscriminate examination of the accounts of honest surrounding people. Given this charge, there is a possibility that similar situations may occur so that special precautions are required.

The Ministry of Government Administration, in charge of public disclosure and registration of personal assets of the public officials, is known to request the Ministry of Finance to explore ways of conducting due diligence on the financial assets on the target of public disclosure.⁷¹

Accordingly, when the public disclosure of personal asset of public officials was over on Aug. 11, 1993, it was expected to investigate the saving accounts on domestic banks, domestic brands of foreign banks, short-term investment finance company, investment trust company, insurance company and credit union. As the real-name account of relatives or secretaries were examined in the course of account tracing, it may threaten the credit order of finance market and drug fund tracing activities of investigation authority may get more difficult.

Therefore, when investigation authority or supervision organization of finance institutions examine financial assets, they should pay special attention to request the finance

71. See Joongang Ilbo dated Jul. 22, 1993.

information to the minimum extent only, and restrain from making a call frequently and sending a person to examine the savings status of specific person.

Recently, the Supreme Prosecutors' Office announced that persons related in financial authority who cooperate with the account tracing without legal process will be punished even if it is for actual inspection since there is a rare fundamental grounds for financial authority to trace the personal account at the instruction of Public Official Ethics Committee in the course of registering and disclosing the property of the public officials, which is regarded as desirable as it shows that investigation authority is strictly wary of investigation expediency.⁷²

3. Securing Professional Investigation Personnel and Fund Tracing Education

The case of disguising the illegal fund obtained through illegal drug trafficking, accumulating property or enjoying luxurious life has emerged as the common pending issue of investigation agency of each level. As the eradication of irrationality of public office community and block of source of finance of criminal organization have been emphasized repeatedly as the priority assignment, it becomes more necessary to control the act of disguising the source of fund day by day.

If the investigation staffs of the prosecutors' office and police who took charge of this act are not provided with sufficient personnel, it is difficult to disclose illegal profit of drug organizations and to achieve performance of confiscation and collection. After sufficient personnel are secured, it is necessary to carry out training on fund tracing so that they can have sufficient knowledge on production process of illegal fund and various camouflage techniques.

It is also necessary to conduct training to expand the scope of understanding on the severity of situation that may cause if such camouflage of crime organization is neglected. Therefore, command unit of investigation organization of each level should remind the employees of the importance of issue, intensively cultivate the investigation staffs tracing this, and cope with their attempt to camouflage the source of illegal fund anywhere at any method, securing early disclosure of such attempt.

As there are more crime organizations who were actively engaged in drug smuggling and trafficking as they secured new organization operation fund, Drug Division of Supreme

72. See Choseong Ilbo dated Jul. 24, 1993.

Prosecutors' Office actively pursues integration of drug crime investigation and organized crime investigation to retain Korea's position of drug-free country.

There was clear trend of integrating drug and organized crimes as 14 Korean gangs imported lots of drugs to Korea in connection with Triad, China in Jan. 2010. Throughout the country, drugs are the core source of funds for gangs and extreme confusion will be caused to national public orders if drug crime by gangs cannot be controlled like in Mexico. In Mexico, 29,000 persons died in the course of battle against the drug organization since 2000, and over 10,000 victims were generated due to drug organization in 2010.

In Korea, considerable number of gangs had participated in economic crime such as M&A, embezzlement or stock manipulation. Performance of controlling the gangs rapidly decreased to 50% since 2003 due to reduction of investigation staff and lack of professionalism caused by appointment system of investigators. Size expansion and re-emergence of gang is highly likely to cause deterioration in public order.

Since organized crime has certain discipline, organization system, violence and professionalism, elaborate internal investigation and collection of evidence for long period of time is essential as well as securing of professionalism of investigators. While the sources of finance of gang are diverse, the most important one is to manufacture and distribute drugs that guarantee considerable profits.

Rapid growth of Mafia in the U.S.A. in 1900s was attributable to considerable income due to drug smuggling and manufacturing of bootleg liquor owing to establishment of National Prohibition Act of Drinking. As more and more gangs engage in drug crime in Korea, and continuously get caught, and international gangs smuggle drugs into Korea, integration of organized crime investigation and drug investigation has been pursued in terms of efficiency of investigation.

To actively cope with connection between organized crime and drug crime, Drug Division and Violent Crime Division of Supreme Prosecutors' Office were integrated into Drug and Organized Crime Division (changed to Violent Crime Division in Dec. 2009), but due to excellent field investigation ability of drug investigators and sentiment of prosecution office job against organized crime investigation, most drug investigators participate in organized crime investigation.

The goal of integration work is to absorb 259 drug investigators and to create violent crime investigation team of 500 investigators. The 250 prosecution investigators will increase and existing investigators of prosecution office will be granted with opportunity to transfer and to circulate to violent crime for early settlement of the team.

Once integration is proceeded as planned, it is expected to block reemergence of gangs of 1970–1980 along with active solution of the factor threatening the position of drug-free country as the drug investigation ability has been rapidly reinforced.

Investigators in violent crime team will take charge of organized crime and drug crime until retirement and are expected to improve professionalism and to cope with engagement case of drug crime more effectively. Prosecution office working in the existing area of organized crime will be utilized for investigation of special, public order and high-tech crime, contributing to overall reinforcement of prosecutors.

4. Relaxation of Saving Confidentiality Principle

Article 4 ① and ② of 「Enforcement Decree of the Presidential Financial and Economic Emergency Order on Real Name Financial Transactions and Guarantee of Secrecy (hereinafter ‘Presidential Emergency Order’)」 indicates that financial institutions shall notify contents of information when presented with the warrant issued by the court, personal information of the person, purpose of use and contents of information requested, causing considerable inconvenience and difficulty in monitoring and disclosing any attempt to disguise source of illegal fund.

While there is a clause (Article 5 ①) inserted, which allows report by financial institutions in the Act mentioned below, the scope of application is restricted to the drug transaction cost only and ‘only when he is known that the property is an illegal property or transaction party conceals the illegal profit’, so that it cannot be reported without proof positive even if there is a suspicion.

Related articles should be revised to exempt the employees of financial institutions and related departments from civil and criminal liability for disclosing the information for their report in good faith even if obligation of report is not obligated. In addition, reporter reward system should be introduced, exclusive institution (or department)⁷³ should be installed to systematically manage and utilize reported information. If exclusive institution is installed,

73. For example, National Crime Information Service of UK, Treatment of Information and Action against Clandestine Financial Circuits (TRACFIN) of France, Australian Transaction Reports and Analysis Center (AUSTRAC) of Australia, Disclosure Officer of Netherlands, National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM) of Norway are the departments or institutions in charge of tracing activities of illegal fund. The U.S.A. constructed ‘Financial Crime Control Network’ of national scale called, FinCEN (Financial Crimes Enforcement Network) connecting the distance record of national organization and private groups that have financial transaction information and database of the Ministry of Finance in Apr. 1990, utilizing them for tracing of illegal fund and organized crime investigation.

it must be helpful in identifying the area of business and transaction of crime organization. There should be no neglectful actions for protection of reporter.

It is known that legislation is pursued in the countries like Swiss, guaranteeing free report activities of employees of financial institutions in recognition of suspicious transaction.⁷⁴ While it is the movement led by socialists, it may be symbolic case of proving unsuitability of report prohibition article.

Next, Article 9 of 'Presidential Emergency Order' indicates that the financial institution shall indicate the contents supplied, purpose of use, receiver and date of supply to the name holder (account holder) within 10 days if providing transaction information to the investigation institutions. This clause is regarded to result in providing time for the criminal to evade property or to destroy evidence.

Since the notification can be delayed with the written statement of cause, and limitless notification can be given with application of extension, it is understood to be a symbolic article rather than brake system,⁷⁵ but given the purpose of information supply, it is regarded right to exempt the obligation of notice. This includes clauses prohibiting the disclosure of report matters in the Act mentioned earlier (Article 5 ②), but it is very difficult to expect the effects of releasing obligation of notice since its scope of application is extremely limited.

5. Expansion of Obligation of Financial Institutions

5.1. Expand Scope of Identification

To prevent the act of camouflaging the source of fund, it is essential to take actions that make everyone do financial transactions in their own name. Therefore, based on presumption not to allow saving account of anonymous or false name, FATF recommends that ① public document or identity certificate should be presented when opening account, credit transaction, borrowing saving or transacting with lots of amount and the identity of customers should be recorded (Clause 12), ② necessary actions should be taken to check the

74. Financial Action Task Force IV, 'Annual Report on Money Laundering: 1992-1993', Jun. 1993, pp. 15-16.

75. Article [9] ② of Regulation Article 4 of Emergency Order [May 30, 1994, Presidential Decree No. 14273] regulates that delay of notice can be requested with indication of cause in writing 1. If such notice is likely to threaten the life of person or safety of body, 2. if it is likely to intervene fair progress of judicial process including eradication of evidence or threatening of witness, 3. if it is likely to intervene or extremely delay the progress of administrative procedure such as question and investigation, Clause ③ indicates that if requesting extension by presenting the fact that cause of Clause ② continues, without limitation in number.

identity of true transaction party when it is suspected to deal with person who is just agency of someone (Clause 13). Interpretative Note released in 1995 explains method of checking actual account holder in details if dealing under the name of corporation.⁷⁶

But Article 3 of ‘Enforcement Decree of the Presidential Financial and Economic Emergency Order on Real Name Financial Transactions and Guarantee of Secrecy’, Article 3 of ‘Rule for Enforcement of Financial and Economic Emergency Order’ regard the name and resident number indicated in resident registration table (name and passport number indicated in passport in case of Korean resident abroad) when the person (natural person) does financial transaction, as real name, and the business registration or payment number (or unique number) can be used for real name in case of “group“ granted with unique number by Rule of Value Added Tax or corporation, providing possibility that it may be misused for motivation of illegal transaction of drug organization.

Therefore, it is necessary to accept FATF recommendation, to check the actual account holder for the opening of account and transaction under the name of corporation, and further to grant the obligation of identification for the non-financial businesses dealing with cashes like FATF note released in 1994 (cash exchange, travel agency, casino and moneylender)

5.2. Obligate Record Preservation

It is not an exaggeration to say that the task of tracing the movement of fund or profits obtained through illegal drug trafficking is serious of process to check the saving record that is left. That is why FATF indicates ① all kinds of transaction records should be preserved for over 5 years to cooperate promptly when the investigation institution requests information (Clause 14), ② background and purpose of large amount of transactions of which economic and legal purpose are complicated or specific should be recorded and utilized as reference for supervisor, inspector or investigation agency in the future (Clause 15).

But, financial institutions in Korea specify different preservation period of transaction related documents with separation of preservation period in 「Document Management Regulation」. It should be changed to preserve transaction records for over 5 years like FATF recommendation so as to promptly cooperate if the investigation agency traces the illegal funds of drug organization.

76. Financial Action Task Force V, op. cit., pp. 31-32. Note prepared in 1994 calls attention to the fact that identity of customers doing financial transaction under the name of corporation. That is, since it may be used as the means of camouflaging the source of operation fund or profit of the criminal organization, it is recommended to check the actual owner of the account by all means if transaction under the name of corporation rather than natural person.

In particular, after the emergency order was declared to perform all financial transaction under real name, case of transaction under the name of other person with agreement of other party (so-called borrowed-name bank account) has not still be destroyed. It is most desirable to preserve all the records related to cope with the situation when actual account holder should be identified.

While there is a concern or dispute on the taxation investigation when total financial taxation system is established, reducing the number of borrowed name bank account, it still requires preparation since complete eradication is not likely. Scope of records to preserve include records on identity of customers (e.g., resident ID, drivers' license, public official certificate) and the same obligation should be obligated for the companies in non-financial businesses, dealing with cash.

5.3. Reinforce Self Monitoring

To effectively control the act of camouflaging the source of finance through financial institution, it is necessary to reinforce education on the employees of financial institution so that they may be resolved not to neglect the concealment of illegal fund and fully aware of the tips of identifying the suspicion of illegal fund and reporting. Field instruction and supervision should be reinforced so that financial institution will not arrange borrowed-name transaction or tolerate the agreed borrowed-name transaction. In addition, new crime method should be immediately spread and obtained in close cooperation with the investigation institution.

In general, people engaging in financial institutions are in the position not to accurately know the background of his customer. In particular, it may be more difficult to identify whether such customer is a criminal or closes to him. Therefore, FATF recommends the financial institutions ① to prepare means of control and by-law procedure required for controlling the act of camouflaging source of fund, ② reinforce employee appointment procedure to prevent disqualified person from being appointed as an employee, ③ to carry out education on employee, ④ and to monitor the program implementation situation (Clause 20). In Korea, it is rare that financial institution in Korea implements the above for controlling the act of camouflaging the source of fund of crime organization.

In preparing the foundation for the financial institution to actively implement self-monitoring, it may be good to refer to 「OAS Model Rule」 adopted in May 1992 by 'Organization of American States' such as ① prepare system to evaluate the financial experience, employment experience and humanity of employees and to infuse high level

of honesty to employees, ② to introduce regular education program like ‘Learn Customer’ program to get them informed of obligation of financial institution, ③ to install separate monitoring department for supervising implementation status of program (Article 15). It is also useful to refer to the recommendation of appointing exclusive staff of manager level to keep transaction record, to report suspicious transaction and to apply self program and procedure, and to perform communication work with the related authority.

5.4. Arrange Means of Property Expansion

There are many kinds of financial goods widely used as the means for property expansion or credit transaction including the one ① that guarantees anonymity, ② that allows auto re-deposition at the time of maturity, ③ and that may be abused as the means of camouflaging the source of fund by the people with unreasonable motivation. Company money-in-trust, certificate of deposit (CD), cash management account (CMA), development trust, unspecified capital trust and bond are also included here. Since the fundamental purpose of implementing financial real name system is to clarify the property status of all people, it is necessary to carefully examine the method of transacting or using all the financial goods, which are likely to be space for concealment of illegal fund or means of camouflaging the source, under real name.

6. Expansion of Role of Korea Financial Intelligence Unit (FIU)

Various countries of the world devise and adopt ‘Drug Profit Deprivation Strategy’ to collapse the foundation of existence for drug organization.⁷⁷ Since the success and failure of profit deprivation strategy is swayed by the speed of identifying the movement and laundering process of drug fund, however, each country installs and operates special institution that professionally collects and analyzes financial information only. In particular, the existence of special institutions has attracted public attention, after the suicide terrorist attack by Islamic fundamentalist at Washington D.C. and New York of the U.S.A. in Sep. 2001.⁷⁸

77. Cho Byeong In, 『Modern Society and Crime』 (3rd volume), Beom Mun Sa, 2000, pp. 379-382; Edwin Kube, “The Criminal Justice System Facing the Challenge of Organized Crime,” Korean Institute of Criminology, Inviting Lecture Data, Sep. 22, 2000.

78. Cho Byeong In, “Block of Source of Fund of Terrorists,” 『Investigation Study』, Vol.19 No. 11 (Serial No. 217), Investigation Study, Nov. 2001, pp. 20-25.

The United State installed ‘Financial Crime Enforcement Network’ named ‘FinCEN’ under the Department of the Treasury and has focused all energies to trace the illegal fund of terrorist organization and drug organization. FinCEN is connected to the information database of Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI), Secret Service of the Department of the Treasury, National Tax Service (IRS), Drug Enforcement Administration (DEA), National Security Agency (NSA), Intelligence Investigation Bureau of the State Department (INR), National Security Committee (NSC) in addition to the financial information network and database of the Department of the Treasury. Search staffs consist of professionals of various information organizations and staffs in the organization. In a word, it is like pan-national-supralegal ‘Total Situation Room’ collecting and analyzing various kinds of data collected by famous information and investigation authority in the United States.

Therefore, by maximizing the function to collect, analyze the financial information of Korea Financial Intelligence Unit (FIU), to supply information in developing countries, it is necessary to completely block the possibility that domestic banks are used as the path for movement or laundering of drug fund. Since money laundering method becomes intelligent when regulation on money laundering is reinforced, it is necessary to reinforce cooperation between national organization and financial organization.

On the other hand, existing measures to prevent drug transaction fund from being disguised as the legal fund, have been devised under the premise that source of illegal fund is camouflaged through certified financial institution. Therefore, it is necessary to expand the official and unofficial cooperation channel between Korea Financial Intelligence Unit (FIU, Korea) and similar organizations of foreign countries since it is difficult to capture the suspicion with ability of individual country only, preparing fully to operate it at all times.

7. Close Cooperative Investigation and Cooperation Relation

7.1. Mutual Cooperation of National Institutions

It is necessary to continuously expand the cooperation between police, prosecutors, Customs and drug investigation agencies. In particular, foreign drug organizations are highly like to penetrate into Korean market due to increase in international exchange and globalization, resolutions of ‘Drug Countermeasure Meeting’ should be implemented promptly and cooperation system with drug producing country and neighboring countries should be reinforced.

As almost all methamphetamine flown into Korea are found to be made in China, it is necessary to realize conclusion of ‘Memorandum of Understanding on Extradition of Drug Offender’ devised by Korea- China prosecutors.⁷⁹ If Korean people are caught in China for manufacturing and sales of drug, the Chinese investigation authority will extradite him to Korea and supply the personal matter of accomplice along with the fact of suspicion, and if Chinese drug offender is caught in Korea, we can cooperate with them in the same method.⁸⁰

To blockade transportation of drugs between the U.S.A. and Mexico in 1997, the case of establishing 15 joint strategies including (1) restricting the production and distribution of drug, (2) convert the confiscated drug smuggling money to control drug, (3) eradicate the corrupt drug control staff, (4) strictly prohibit the laundering of drug fund, (5) conclude criminal extradition agreement, which will be a good reference for establishing joint strategy between Korea and China.⁸¹

To reinforce performance of investigation cooperation, controlled delivery technique should be actively utilized. It is to round up the entire transaction line with crackdown around arrival while continuing secrete monitoring until it arrives at the destination if the airplane, ships and vehicles loaded with contents suspicious as drug are captured. ⁸² In addition, “Special Provision on Arrival and Landing Procedure (Article 3)” and “Special Provision on Customs Procedure (Article 4)” of Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc. should be supplemented and applied in the course of tracing the flow of illegal fund through financial institutions.

7.2. Reinforce Mutual Cooperation between Related Institutions

As there are more and more actions explored to control the act of camouflaging the source of fund, the skill of camouflaging the source of fund gets intelligent. If law professional or financial professional manage the illegal fund as an agency, it might be difficult to find out the suspicion without sufficient knowledge in advance.⁸³ Therefore, it is necessary to promptly cope with the intelligent attempt of crime by keeping close cooperation with several organizations including various financial institutions in private sectors.

79. Choseon Ilbo, Mar. 12, 2002.

80. Yeonhap News, Dec. 20, 2000.

81. Choseon Ilbo, May 7, 1997.

82. Im Dae HWAN, ‘A Study on International Drug Crime’, 2002, p. 171-180.

83. Financial Action Task Force III, ‘Report on Money Laundering: 1991-1992’, Jun. 1992, pp. 16-18.

Next, the report prepared by FATF in 1994 analyzed that there were increase in the case of camouflaging source of profit or operation fund using the non-bank financial institution (insurance company, security company) and non-financial business (cash exchange, travel agency and secret fund raiser) using the weakness that existing actions are concentrated in controlling the act of camouflaging the source through banks. And it is known that there is a case in the country with poor monitoring system that a criminal dominates the financial institutions and camouflages the source of the fund at his disposal.⁸⁴

Therefore, it is necessary to create regular information exchange channel between investigation authority and financial institution supervisory board (the Bank Inspection Board, Insurance Inspection Board, Securities Supervisory Board, etc.), and to inaugurate consultation body covering the profit group or cooperation group (including hotel association, travel association and slot machine association) of non-financial businesses handling cash so as to immediately cope with changes of skill of camouflaging the source of fund.

7.3. Expand Criminal Justice Cooperation with Neighboring Countries

Since existing measures to prevent conversion of illegal fund of crime organization into legal fund were devised under the presumption that illegal fund could be camouflaged through certified financial institution, it is more difficult to control it if the source of fund is camouflaged through a bogus company or bank in black market. That is, more efforts should be made to expand cooperative investigation system between neighboring countries since it is difficult to capture the criminal charges without such close cooperation.⁸⁵

In the past, most methamphetamine brought to Korea was smuggled from China, but the path of smuggling diversified to include Philippines, Thailand, Cambodia, Malaysia, and Vietnam since 2008. We have concentrated on blocking the smuggling of drug into Korea fundamentally through improvement of drug control ability in drug producing country,

84. Therefore, same actions are requested to prevent financial institution from being used as the means of camouflaging the source of finance. Besides there are more and more cases of camouflaging the source of fund obtained through weapon smuggling, prostitution, transaction of animal hormone in addition to drug transaction. It is analyzed that there are more cases of camouflaging the source of illegal fund using the financial institutions in Central Europe and Asian countries.

85. See Drug Enforcement Administration, 「Asian Money Movement Methods」 (Drug Intelligence Report). Jul. 1994. This report analyzes that there are black market bank operated by Chinese in Asian region as well as those operated by Indian and Pakistan. The reason why criminal organization prefers such black market bank is analyzed to be, first, anonymity of user is guaranteed, second, fast process of work, third and convenient and cheap commission.

preparation of foundation for international cooperative investigation, acquisition of field information of the drug production and supply area.

As of 2014, we have pursued this project using budgets of 3 areas including ASEAN cooperation fund, budge of KOICA and ODA budget of the Ministry of Justice and more efforts are made for securing sufficient budget and close cooperation with related organizations for stable and continuous pursuit of the project against drug.

Besides, the Supreme Prosecutors' Office of Korea created Asia Pacific Information & Coordination Center for Combating Drug Crimes (APICC) to expand and reinforce international cooperation. APICC is the international cooperation system of drug control between regions to implement drug combating support, operate actual information sharing program and construct network between drug control agencies in member states with secretary at the Drug Division of the Supreme Prosecutors' Office. As of Oct. 2014, Korea and 9 ASEAN countries except Malaysia are the member states. While Japan and China pursued establishment of Asia Pacific committee similar to APICC, its function was lost due to low participation of member states.

The prosecution of Korea has played pivotal roles in international cooperation for drug combating for 25 years through Anti-Drug Liaison Officials' Meeting for International Cooperation (ADLOMICO).

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[Appendix] Gist of 「Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.」

1. Special Provisions on Confiscation Procedure

Chapter 4 of the Act specifies special cases of the procedure on the confiscation as follows. In cases where a court decides to confiscate property on which surface rights, mortgage, or other rights exist and declares the continued existence of such rights under Article 15 (2), the court shall not only order the confiscation but also declare the purport of the declaration of the continued existence of the rights (Article 19 of the Act). A public prosecutor shall dispose of confiscated property. In cases where a judgment to confiscate a claim becomes final and conclusive, a public prosecutor will notify the obligor of the purport of such judgment by sending an abstract of the judgment of confiscation to the obligor (Article 20 of the Act).

Following a judgment of confiscation of any property, the transfer of which requires registration or recording (hereinafter referred to as “registration, etc.”), a public prosecutor shall entrust registration, etc. (Article 21 (1) of the Act) In cases where a public prosecutor entrusts the agencies concerned with registration, etc. under paragraph (1), if a registration, etc. exists for any restriction on disposition which has already lost its validity due to confiscation, for the acquisition of a right which has already been extinguished due to confiscation, or for an order of preservation for confiscation or supplemental preservation order under Section 1 of Chapter 6, it shall be deemed that the public prosecutor also entrusts the cancellation of such registration, etc. to the agencies concerned.

In cases where a public prosecutor entrusts the agencies concerned with registration, etc. under paragraph (1), if a registration, etc. exists for any restriction on disposition which has already lost its validity due to confiscation, for the acquisition of a right which has already been extinguished due to confiscation, or for an order of preservation for confiscation or supplemental preservation order under Section 1 of Chapter 6, it shall be deemed that the public prosecutor also entrusts the cancellation of such registration, etc. to the agencies concerned (Article 21 (2) of the Act).

With regard to the criminal compensation for the execution of confiscation of property that is neither an immovable nor a movable, Article 5 (6) of the 「Act on Criminal Compensation and the Restoration of Honor」 shall apply *mutatis mutandis* (Article 22 of the Act).

2. Special Provisions on Application for Intervention by Third Party

Chapter 5 of the Act specifies the special provisions on application for intervention by third party as follows. In cases where a public prosecutor institutes a public action, when it is deemed necessary to confiscate property that belongs to a person other than a defendant or property on which any surface rights, mortgage, or other rights of a person other than a defendant exist, the following matters shall be immediately notified in writing to the person to whom the property or the surface right, mortgage, or any other right on the property belongs and who is not the defendant (hereinafter referred to as “third party”) (Article 23 (1) of the Act):

1. The court in which the criminal case against the defendant is pending;
2. The name of the defendant and name of the criminal case against the defendant;
3. The name, amount, and other description of the property to be confiscated, if available;
4. The abstract of facts supporting the reasons for the confiscation;
5. The purport that the application for intervention in the criminal case proceedings against the defendant is allowed;
6. The time period to apply for intervention;
7. The trial date, if the trial date of the criminal case against the defendant is set.

In cases where a public prosecutor cannot make a notification under paragraph (1) because a third party’s whereabouts is unknown or other grounds exist, the public prosecutor shall publish the matters specified in each subparagraph of paragraph (1) in the Official Gazette or any daily newspaper and post them on the bulletin board at the district public prosecutor’s office or the district public prosecutor’s branch office concerned for 14 days (Clause 2). After making a notification or public notification pursuant to paragraph (1) or (2), a public prosecutor shall submit to the court documents to prove such action has been taken (Clause 3).

Any third party whose property is likely to be confiscated may apply for an intervention in any criminal case proceedings against a defendant in writing to the court in which the criminal case against the defendant is pending before a trial of first instance commences (or, in cases of a trial by summary proceedings, before the deadline for requesting a formal trial expires or, if a request for a formal trial is made in such cases, before a trial of first instance according to the ordinary trial procedure commences; hereinafter the same shall

apply): Provided, that where any notification has been made in accordance with Article 23 (1) or (2), the third party may apply for the intervention within 14 days after the date thereof (Article 24 (1) of the Act).

In cases where a court which has received documents regarding notification or public notification under Article 23 (3) receives an application for intervention after transferring a criminal case against a defendant to another court, the original court shall send the application documents to the court to which the criminal case against the defendant is transferred. In such cases, it shall be deemed that the third party applies for intervention when he/she applies for intervention to the original court which transferred the criminal case against the defendant (Clause 2).

A court shall dismiss an application for intervention where a third party's application for intervention falls under any of the following subparagraphs: Provided, that where it is deemed that the applicant is not responsible for failing to apply for intervention within the time period under the proviso to paragraph (1), the intervention may be permitted before a trial of the first instance commences (Clause 3).

1. When the application for intervention is in violation of the proper legal procedures;
2. When the application has been made after the expiration of the time period under paragraph (1);
3. When it is clear that the property to be confiscated or any surface rights, mortgage, or other rights exist over the property to be confiscated do not belong to the applicant (Clause 4)

In cases where a court permits intervention, but it later becomes clear that the property to be confiscated or any surface rights, mortgage, or other rights on the property to be confiscated do not belong to the person who has obtained permission for intervention (hereafter referred to in this Chapter as “intervenor”), the court shall cancel the judgment following the trial which allowed the intervention, and, if the court deems that the public prosecutor's opinion that the confiscation is impossible or unnecessary is reasonable, the court may cancel the judgment following the trial which allowed the intervention (Clause 5).

The adjudication on the intervention shall be made after considering the opinions of the public prosecutor, the applicant for intervention, the intervenor, the defendant, or the defense counsel (Clause 6). A public prosecutor, an applicant for intervention, or an intervenor may immediately appeal a decision to dismiss an application for intervention or a decision to cancel a judgment following a trial which allowed intervention (Clause 7). Withdrawal of

an application for intervention shall be in writing: Provided, that on the trial date, it may be verbally (Clause 8).

An intervenor has the same judicial rights concerning confiscation as the defendant, except as otherwise provided for in this Act (Clause 25 (1) of the Act). Paragraph (1) shall not hinder the examination of the intervenor as a witness (Clause 2).

An intervenor may choose not to appear in court on the trial date (Article 26 (1)). When the intervenor's whereabouts is unknown, the court may choose not to serve the notice of the trial date and other documents (Clause 2). The court shall notify the intervenor who appears in court on the trial date of the summary of facts supporting the reasons for the confiscation, important matters relating to the hearings held before the intervention, and other matters deemed necessary to protect the rights of the intervenor and shall give the intervenor an opportunity to make a statement regarding the confiscation (Clause 3). The intervention of an intervenor shall not affect the application of Articles 310-2, 311 through 318, 318-2, and 318-3 of the 「Criminal Procedure Act」 (Article 27 (1) of the Act). In cases where a document or statement that is permissible as evidence under Article 318 and 318-3 (main sentence) of the 「Criminal Procedure Act」 has been investigated by a court, if the intervenor requests to examine as a witness the person who has prepared the document or statement and it is deemed necessary for the protection of the rights of the intervenor, the court shall examine such person. The same shall also apply in cases where the intervenor requests re-examination of the witness who has been examined before the intervention of the intervenor (Clause 2).

In cases where a third party fails to obtain permission for intervention, no judgment of confiscation shall be rendered for any property belonging to the third party or any property over which the third party has surface rights, mortgage, or other rights, except in cases falling under any of the following subparagraphs (Article 28 of the Act)

In cases where 14 days have passed after a notification under Article 23 (1) or a public notification under Article 23 (2) has been made: Provided, that in cases where the application for intervention falls under any of the following, no judgment of confiscation shall be rendered;

(a) Where the application for intervention has been dismissed due to the reason that the property to be confiscated or any surface rights, mortgage, or other rights on the property to be confiscated obviously do not belong to the intervenor or the applicant for intervention;

(b) Where the application for intervention has been dismissed according to the public prosecutor's opinion that the confiscation is impossible or unnecessary;

(c) Where the judgment following the trial which allowed the intervention is cancelled;

2. In cases where the application for intervention is dismissed because the application violates the proper legal procedures;

3. In cases where the application for intervention has been withdrawn.

The intervenor in the original court shall also maintain the status of the intervenor in the appellate court (Article 29 (1)). In cases where the intervenor appeals, the part of the judgment of the original court which relates to the confiscation shall not become final and conclusive, even if the public prosecutor or the defendant chooses not to appeal, waives the right to appeal, or withdraws an appeal (Clause 2). In cases under paragraph (2), the defendant may choose not to appear on the date of trial at the appellate court and the court of the next instance. In such cases, Articles 33, 282, and 283 of the 「Criminal Procedure Act」 shall not apply (Clause 3). Paragraphs (2) and (3) shall apply *mutatis mutandis* to cases where the intervenor requests formal proceedings in cases of a trial by the summary proceedings (Clause 4).

A third party who intervenes in criminal proceedings against a defendant under this Act may appoint an attorney-at-law as an attorney-in-fact to represent the third party and act on his/her behalf in the litigation. In such cases, Articles 32 (1) and 35 of the 「Criminal Procedure Act」 shall apply *mutatis mutandis* (Article (30) (1)). The attorney-in-fact may not withdraw the intervention or the application for formal proceedings and may not waive or withdraw the appeal without the written consent of the intervenor (Clause 2).

Articles 26 through 28 of the 「Criminal Procedure Act」 shall apply *mutatis mutandis* to a third party's competency to stand trial, and Articles 186 and 191 of the same Act shall apply *mutatis mutandis* to bearing litigation costs by the third party (Article 31 (1)). In regard to the procedure for confiscation of the property under Article 23 (1), the 「Criminal Procedure Act」 shall apply *mutatis mutandis*, except as otherwise prescribed by this Act (Article 2).

A decision to confiscate property under Article 23 (1) shall not affect any right of a third party who was unable to claim the right in criminal proceedings against a defendant through no fault of his/her own (Article 32).

3. Preservation Procedure

Section 1 of Chapter 6 of the Act specifies the procedure for preservation of property for confiscation as follows.

In cases where, with respect to a criminal case against a defendant involved in a narcotics crime, etc., a court has a reasonable ground to find that a property may be subject to confiscation under this Act, the Act on the Control of Narcotics, etc. and other Acts and subordinate statutes (hereinafter referred to as “property subject to confiscation”) and deems it necessary to confiscate the property, the court may prohibit the disposition of the property by issuing an order of preservation for confiscation upon the request of the public prosecutor or ex officio (Article 33 (1) of the Act).

In cases where a court has issued or is going to issue an order of preservation for confiscation of the property over which surface rights, mortgage, or other rights exist, if there exists a reasonable ground to judge that the above rights might be extinguished by the confiscation and it is deemed necessary to confiscate the property, or if there is a reasonable ground to judge that the above rights are fictitious, then the court may prohibit the disposition of the rights by issuing a supplemental preservation order additionally upon the request of the public prosecutor or ex officio (Clause 2).

An order of preservation for confiscation or a supplemental preservation order shall include the name of the defendant, the name of offense, the summary of the facts constituting the offense charged, the provisions of the Acts and subordinate statutes which constitute the basis of the confiscation, the specification of property or rights of which disposition is prohibited, the name of the person to whom the property or the rights belong, date of issuance, and other matters prescribed by the Supreme Court Regulations, and a judge rendering judgment shall sign the order and affix his/her seal thereto (Clause 3). Where emergent measures are necessary, the presiding judge may dispose of the property under paragraph (1) or (2) or have a member of the collegiate court dispose of it (Clause 4). Preservation for confiscation of movables or immovables shall not hinder any seizure under the 「Criminal Procedure Act」 (Clause 5).

Where it is deemed necessary and a reasonable ground under Article 33 (1) or (2) exists, a public prosecutor may obtain an order under paragraph (1) or (2) of the same Article by making a request to a judge of a district court even before the institution of public prosecution, and a judicial police officer may obtain an order by making a request to a public prosecutor and upon the public prosecutor’s request to a judge (Article 34 (1) of the Act). When an order of preservation for confiscation or a supplement preservation order is

issued, a judicial police officer shall immediately send the related documents to a public prosecutor (Clause 2). The request under paragraph (1) shall be made to the judge of the district court or the branch office of the district court that exercises jurisdiction over the place where the district public prosecutor's office or the branch office of the district public prosecutor's office is located (Clause 3).

A judge who receives a request under paragraph (1) shall have the same authority as the court or the presiding judge in regard to the preservation for confiscation (Clause 4). In cases where a public prosecutor has instituted public prosecution after the issuance of an order of preservation for confiscation under paragraph (1), he/she shall notify the person who received the order (excluding the defendant) of the summary of the action: Provided, that in cases where serving the notice is impossible because the whereabouts of the person is unknown or for other reasons, instead of serving the notice, the public prosecutor shall publish the summary of such prosecution by posting it on the bulletin board of the relevant district public prosecutor's office or the branch office of the district public prosecutor's office for seven days (Clause 5).

A judgment of preservation for confiscation shall be executed under the public prosecutor's command (Article 35 (1) of the Act). An order of preservation for confiscation under paragraph (1) may be executed even before the transcript of the order is served on the person who owns the property, the disposition of which is prohibited by the order (Clause 2).

Any disposition of the property which has been preserved for confiscation (hereinafter referred to as "property preserved for confiscation") after the preservation shall not be valid as it pertains to the confiscation: Provided, that this shall not apply to cases under the main sentence of Article 47 (1) (including cases where the provisions shall apply *mutatis mutandis* under Article 50 (4) and (5)) and to cases of a disposition which is carried out as the execution of the right of hypothecation that can be set up against an order of preservation for confiscation (Article 36 of the Act).

The preservation for confiscation of an immovable shall be carried out by an order of preservation for confiscation that prohibits any disposition of the immovable (Article 37 (1)). A transcript of an order of preservation for confiscation referred to in paragraph (1) shall be served on the owner of the immovable (Clause 2). An order of preservation for confiscation of the immovable shall be executed by registering the order of the preservation for confiscation (Clause 3). A public prosecutor shall entrust the registration referred to in paragraph (3) (Clause 4). The preservation for confiscation of an immovable shall become effective when the order of preservation for confiscation is registered (Clause 5).

In cases where an order of preservation for confiscation is registered after a temporary injunction for prohibition of disposition is registered to secure a right to demand the registration of an immovable, if the obligee of the injunction registers according to such right to demand the registration he/she intends to secure, any restriction on the disposition by the registration of the order of preservation for confiscation shall not affect the acquisition or extinction of rights by the registration of the temporary injunction (Clause 6).

Articles 83 (2), 94 (2), and 95 of the Civil Procedure Act shall apply *mutatis mutandis* to preservation for confiscation of immovables. In such cases, the term “obligor” in Article 83 (2) of the same Act shall be read as “person who owns a property preserved for confiscation,” the terms “paragraph (1)” in Article 94 (2) of the same Act and “Article 94” in Article 95 of the same Act as “Article 37 (4) of the 「Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics, etc.」,” and the term “court” in Article 95 of the same Act as “public prosecutor” (Clause 7).

The preservation for confiscation of the goods, such as vessels which can be registered, airplanes registered under the Aviation Act, automobiles registered under the Automobile Management Act, construction machinery registered under the Construction Machinery Management Act, and other goods, the transfer of rights to which requires registration or recording, shall be in the same manner as the preservation for confiscation of immovables (Article 38 of the Act).

The preservation for confiscation of a movable (referring to the items other than those provided for in Article 38; hereafter the same shall apply in this Article) shall be carried out by an order of preservation for confiscation which prohibits any disposition of the movable (Article 39 (1)). The transcript of the order of preservation for confiscation referred to in paragraph (1) shall be served on the owner (and the possessor, if the possessor is a person other than the owner) of the movable (Clause 2).

In cases where an order of preservation for confiscation is issued for a movable which has not been seized pursuant to the 「Criminal Procedure Act」, a movable to which a custodian referred to Article 130 (1) of the same Act can be assigned, or a movable which can be placed under the custody of the owner or an appropriate person, a public prosecutor shall attach a public notice or take measures to publish the objectives of the order by other proper methods (Clause 3). The preservation for confiscation of a movable shall become effective when the transcript of the order of preservation for confiscation is served on the owner (Clause 4).

The preservation for confiscation of a claim shall be carried out by an order of preservation for confiscation that prohibits any disposition of the claim or the acceptance of performance by the obligee and that prohibits the obligee from paying to the obligor (Clause 1). (The transcript of the order of preservation for confiscation as referred to in paragraph (1) shall be served on both the obligee and obligor (Clause 2). The preservation for confiscation of a claim shall become effective when the transcript of the order of preservation for confiscation is served on the obligor (Clause 3).

An obligor of a claim for the payment of money (hereinafter referred to as “money claim”) preserved for confiscation by an order of preservation for confiscation (hereinafter referred to as “third party obligor” in Articles 46 and 50) may deposit the amount corresponding to the amount of the money claim. In such cases, it shall be deemed that the preservation for confiscation has been executed on the obligee’s right to claim on deposit money payment (Clause 4). Article 228 of the Civil Execution Act shall apply *mutatis mutandis* to preservation for confiscation of claims. In such cases, the terms “seizure” and “creditor” in Article 228 (1) of the same Act shall be read as “preservation for confiscation” and “public prosecutor,” respectively, and the term “order of seizure” in paragraph (2) of the same Article shall be read as “order of preservation for confiscation” (Clause 5).

The preservation for confiscation of property rights other than the property referred to in Articles 37 through 40 (hereinafter referred to as “other property rights” in this Article) shall be in the same manner as the preservation for confiscation of claims, except as otherwise provided for in this Article (Clause 1). In cases where there exists neither an obligor nor a similar person (except in cases under paragraph (3)), the preservation for confiscation shall become effective when the transcript of an order of preservation for confiscation is served on the owner of the other property rights (Clause 2).

Articles 37 (3) through (6) of this Act and Articles 94 (2) and 95 of the Civil Execution Act shall apply *mutatis mutandis* in cases where registrations, etc. are required for the transfer of other property rights. In such cases, the terms “paragraph (1)” in Article 94 (2) of the Civil Procedure Act and “Article 94” in Article 95 of the same Act shall be read as “Article 37 (4) applicable *mutatis mutandis* pursuant to Article 41 (3) of the 「Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics, etc.」,” and the term “court” in Article 95 of the same Act as “public prosecutor” (Clause 3).

In cases where the reason or necessity for preservation for confiscation ceases to exist or where the period of preservation for confiscation has been unjustifiably extended, the court shall decide to cancel the order of preservation for confiscation upon the request by

the public prosecutor or by the owner of the property subject to the order (or his/her defense counsel if the owner is the defendant or suspect) or ex officio (Article 42 (1) of the Act). When the court makes a decision under paragraph (1), except where it is made upon the request by a public prosecutor, it shall consider the public prosecutor's opinion (Clause 2).

An order of preservation for confiscation shall expire when a judgment without a sentence of confiscation (except in cases under subparagraph 2 of Article 327 of the 「Criminal Procedure Act」) becomes final and conclusive (Article 43 (1)). An order of preservation for confiscation shall expire when there is a judgment to dismiss a public prosecution under subparagraph 2 of Article 327 of the 「Criminal Procedure Act」 and no public prosecution concerning the case is instituted within 30 days after the judgment becomes final and conclusive (Clause 2). When an order of preservation for confiscation expires, a public prosecutor shall commission the invalidation of the registrations and remove the public notice document and take other necessary measures without delay (Article 44 of the Act).

In cases where a decision to commence compulsory sale by official auction is made after an order of preservation for confiscation has been already made on an immovable, ship, aircraft, vehicle, construction machinery, or other goods, the transfer of rights to which requires registration or recording as referred to in Article 38, or in cases where a seizure by compulsory execution is made on a corporeal movable which already became an object of the preservation for confiscation, no conversion to cash by compulsory execution procedure shall be allowed until the order of preservation for confiscation expires (Article 45 (1) of the Act).

In cases where an order of seizure by compulsory execution is issued on a claim preserved for confiscation, the execution creditor shall not be paid for the part of the claim preserved by the order of preservation for confiscation until the order of preservation for confiscation expires (Clause 2). Paragraph (1) shall apply mutatis mutandis in cases where a claim seized by compulsory execution after an order of preservation for confiscation has been issued is difficult to collect because the claim is conditional or time-limited or is related to the counter performances or because of other reasons (Clause 3). The compulsory execution on other property rights (referring to other property rights as referred to in Article 251 (1) of the Civil Execution Act) preserved for confiscation shall be in the same manner as the compulsory execution on claims preserved for confiscation.

A third party obligor of a money claim may deposit the total amount of the money claim to the district court or the branch office of the district court having jurisdiction over the location where payment is due when he/she is served with an order of seizure by compulsory

execution on the claim preserved for confiscation (Clause 46 (1) of the Act). The third party obligor shall report the reason for a deposit to the court that has issued the order of preservation for confiscation when he/she makes the deposit under paragraph (1) (Clause 2).

In cases where a deposit under paragraph (1) by a third party obligor is made, the execution court shall commence the distribution procedure for the amount corresponding to the amount preserved for confiscation when the order of preservation for confiscation expires and shall commence the distribution procedure for the remaining part of the money claim when the deposit is made (Clause 3). Paragraphs (1) and (2) shall apply *mutatis mutandis* in cases where an order of preservation for confiscation is issued for a money claim already seized by compulsory execution. In such cases, the term “court that has issued an order of preservation for confiscation” shall be read as “court that has issued a seizure order” (Clause 4).

In applying Article 247 of the Civil Execution Act to cases where a third party obligor makes a deposit under paragraph (1) (including cases where the provisions apply *mutatis mutandis* under paragraph (4)), “Article 248 (4)” in Article 247 (1) 1 of the same Act shall be read as “Article 46 (2) of the [Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics, etc.] (including cases where the provisions apply *mutatis mutandis* under paragraph (4) of the same Article)” (Clause 5).

There shall be no trial for confiscation of property on which a decision to commence an official auction by compulsory execution has been already made or which has already been seized by compulsory execution before the property is preserved for confiscation: Provided, that this shall not apply to any of the following subparagraphs (Article 47 (1) of the Act).

1. Where an execution creditor’s claim is found to be a fictitious one;
2. Where an execution creditor applies for a compulsory execution knowing a property to be subject to confiscation;
3. Where an execution creditor is the offender.

In cases where any surface rights, mortgage, or other rights which exist on a property subject to confiscation and the disposition of which is prohibited by a court’s supplemental preservation order are seized by a decision to commence a compulsory sale by official auction or by compulsory execution, before the prohibition of disposition is ordered, the court shall declare the continuance of the rights to the property when it confiscates the property and shall declare the purport simultaneously with its decision to confiscate property: Provided, that this shall not apply to any of the following subparagraphs (Clause 2).

1. Where an execution creditor's claim is found to be a fictitious one;
2. Where an execution creditor applies for a compulsory execution knowing that his/her right shall be extinguished by confiscation;
3. Where an execution creditor is the offender.

In cases where an order of preservation for confiscation is issued on a property which has already been seized by a decision to commence a compulsory sale by official auction or by compulsory execution, there shall be no trial for confiscation of the property unless the execution creditor (excluding any execution creditor who is a defendant) is permitted to intervene the relevant criminal procedure. The same shall also apply to the confiscation of property under paragraph (2) (Clause 3). Special provisions concerning application for intervention by a third party, etc. in Chapter 5 shall apply *mutatis mutandis* to the confiscation procedure under paragraph (3) (Clause 4).

In cases where a court issues an order of preservation for confiscation or intends to issue such order on a property which has already been seized by a decision to commence a compulsory sale by official auction or by compulsory execution, the court may make a decision to order a suspension of the compulsory execution upon a public prosecutor's request or *ex officio* when it has a reasonable ground to judge that reasons under the proviso to Article 47 (1) exist (Article 48 (1) of the Act). When a public prosecutor submits the transcript of the decision as referred to in paragraph (1), the execution court shall suspend the compulsory execution. In such cases, when the provisions of the Civil Execution Act apply, it shall be deemed that a document under subparagraph 2 of Article 49 of the same Act is submitted (Clause 2).

When a preservation for confiscation expires, when the reasons referred to in paragraph (1) cease to exist, or when a period of suspension of the compulsory execution is unjustifiably extended, a court shall cancel a decision made under paragraph (1) upon a public prosecutor's or an execution creditor's request or *ex officio* (Clause 3). In cases under paragraph (3), Article 42 (2) shall apply *mutatis mutandis* (Clause 4).

In cases where the right of hypothecation on a property preserved for confiscation is established after an order of preservation for confiscation is made or where its disposition is prohibited by a supplemental preservation order, the right of hypothecation (excluding seizure) shall not be exercised unless the prohibition of disposition by either the order of preservation for confiscation or the supplemental preservation order expires (Clause 1 of Article 49). In cases where a supplemental preservation order on the right of hypothecation

is issued after the official auction procedure to exercise the right has already commenced, if the public prosecutor submits the transcript of the supplemental preservation order, the execution court shall suspend the official auction procedure. In such cases, when the provisions of the Civil Execution Act apply, it shall be deemed that a document under the provisions of Article 266 (1) 5 of the same Act (including cases where the provisions apply *mutatis mutandis* under Articles 269 and 272 of the same Act) is submitted (Clause 2).

Article 45 shall apply *mutatis mutandis* to the limitation on the procedures in any of the following subparagraphs (Article 50 (1) of the Act):

1. Where property preserved for confiscation is seized for the collection of delinquent taxes (referring to various collection procedures under the provisions of the National Tax Collection Act and the Framework Act on Local Taxes; hereinafter the same shall apply);

2. Where an adjudication of bankruptcy or a decision to commence the composition (hereafter in this Article referred to as “adjudication of bankruptcy, etc.”) is made on a person who owns property preserved for confiscation;

3. Where a decision to commence a reorganization procedure is made on a company which owns property preserved for confiscation.

Article 46 shall apply *mutatis mutandis* to a deposit by a third party obligor in cases falling under any of the following subparagraphs (Clause 2).

1. Where a seizure for the collection of delinquent taxes is made upon a money claim preserved for confiscation;

2. Where a money claim for which a seizure has been made for the collection of delinquent taxes is preserved for confiscation.

Article 46 (1) and (2) shall apply *mutatis mutandis* to a deposit by a third party obligor in cases falling under any of the following subparagraphs (Clause 3).

1. Where a provisional seizure is made for a money claim preserved for confiscation;

2. Where a money claim for which a provisional seizure has been made is preserved for confiscation

Article 47 shall apply *mutatis mutandis* to the limitation on the confiscation of property in cases falling under any of the following subparagraphs (Clause 4).

1. Where there is a provisional seizure of property before it is preserved for confiscation;

2. Where there is a provisional seizure of any surface rights, mortgage, or other rights on a property subject to confiscation before the prohibition to dispose thereof is made by a supplemental preservation order.

The main sentence of Article 47 (1) shall apply *mutatis mutandis* to the limitation on the confiscation of property in cases falling under any of the following subparagraphs (Clause 5).

1. Where a property subject to preservation for confiscation is seized for the collection of delinquent taxes before the property is preserved for confiscation;

2. Where an adjudication of bankruptcy, etc. is made on a person who owns a property subject to preservation for confiscation before the property is preserved for confiscation;

3. Where a decision to commence a reorganization procedure is made on a company which owns a property subject to preservation for confiscation before the property is preserved for confiscation.

In connection with any surface rights, mortgage, or other rights on a property subject to confiscation, the disposition of which is prohibited by a supplemental preservation order, the main sentence of Article 47 (2) shall apply *mutatis mutandis* to the limitation on the confiscation of the property in cases falling under any of the following subparagraphs (Clause 6).

1. Where the rights are seized for the collection of delinquent taxes before the disposition of the rights is prohibited;

2. Where an adjudication of bankruptcy, etc. is made on a person who owns the rights before the disposition of the rights is prohibited;

3. Where a decision to commence a reorganization procedure is made on a company which owns the rights before the disposition of the rights is prohibited.

Article 48 shall apply *mutatis mutandis* to the suspension of compulsory execution in cases where an order of preservation for confiscation is already issued or is going to be issued (Clause 7)

The supplemental preservation order is effective only during the effective period of the preservation for confiscation (Article 51 (1)). The provisions on the preservation for confiscation shall apply *mutatis mutandis* to the prohibition of disposition by a supplemental preservation order, except as otherwise provided for in this Act (Clause 2).

4. Preservation for Collection

Section 2, Chapter 6 of the Act prescribes the preservation procedure for collection as follows.

In cases where a court deems that there is a reasonable ground to believe that a collection under Article 16 is necessary in connection with a criminal case against a defendant involved in a narcotics crime and deems that there is a concern that it will be unable to execute the judgment of collection or that the execution might be very difficult, the court may prohibit the defendant from disposing of his/her property by issuing an order of preservation for collection upon the public prosecutor's request or ex officio (Article 52 (1) of the Act).

An order of preservation for collection shall be issued upon a specific property after fixing a specific amount that is deemed reasonable to preserve for the execution of a judgment of collection (hereinafter referred to as "amount preserved for collection"): Provided, that in cases of corporeal movables, property may be unspecified (Clause 2). An order of preservation for collection shall specify the amount for the defendant to deposit to suspend the execution of the order of preservation for collection or to cancel the execution (hereinafter referred to as "amount for release from the preservation for collection") (Clause 3).

An order of preservation for collection shall include the name of the defendant, the name of the offense, the summary of the facts constituting the offense charged, the provisions of the Acts and subordinate statutes which constitute the basis of the collection, the amount preserved for collection, the specification of property, the disposition of which is prohibited, the amount for release from the preservation for collection, the date of issuance, and other matters provided by the Supreme Court Regulations, and the judge rendering judgment shall sign the order and affix his/her seal thereto (Clause 4). Article 33 (4) shall apply *mutatis mutandis* to the preservation for collection (Clause 5).

When a public prosecutor deems that there exist grounds and necessity for a preservation for collection as provided for in Article 52 (1), he/she may obtain an order provided for in the same paragraph by making a request to a judge of a district court even before the institution of public prosecution (Article 53 (1) of the Act). Article 34 (3) and (4) shall apply *mutatis mutandis* to the preservation for collection under paragraph (1) (Clause 2).

An order of preservation for collection shall be executed by an order of a public prosecutor. In such cases, the public prosecutor's order shall have the same effectiveness as the provisional seizure order set forth in the Civil Execution Act (Article 54 (1) of the Act). An order of preservation for collection may be executed even before the transcript of

the order is served on the defendant or the suspect (Clause 2). Except as otherwise provided for in this Act, the Civil Execution Act and other Acts and subordinate statutes regarding the procedure on the execution of a provisional seizure shall apply *mutatis mutandis* to an order of preservation for collection. In such cases, the court corresponding to the public prosecutor's office to which the public prosecutor, who issued the order under paragraph (1), belongs shall have jurisdiction over the enforcement of the provisional seizure the jurisdiction over which belongs to the court which issued the provisional seizure order under Acts and subordinate statutes (Clause 3).

The obligor of a money claim which is preserved for collection by an order of preservation for collection may deposit an amount equivalent to the amount of the money claim. In such cases, it shall be deemed that an order of preservation for collection has been executed on the obligee's right to claim payment of deposit money (Article 55). When a judgment of collection becomes final and conclusive or when a judgment of provisional payment is declared after an amount for release from the preservation for collection has been deposited, it shall be deemed that the collection or the provisional payment has been executed to the extent of the deposited amount (Article 56 (1) of the Act). When a decision to make collection is made and the deposited amount for release from the preservation for collection exceeds the collectible amount, the balance shall be refunded to the defendant by the court (Clause 2).

In cases where any reason or necessity for the preservation for collection ceases to exist or where a period of the preservation for collection is unjustifiably extended, the court shall cancel the order of preservation for collection upon the request by public prosecutor, the defendant or suspect, or his/her defense counsel or *ex officio*. In such cases, Article 42 (2) shall apply *mutatis mutandis* (Article 57 of the Act).

An order of preservation for collection shall expire when a judgment without a decision to make collection (except in cases under subparagraph 2 of Article 327 of the 「Criminal Procedure Act」) becomes final and conclusive (Article 58 (1) of the Act). Article 43 (2) shall apply *mutatis mutandis* to the effectiveness of an order of preservation for collection in cases where there is a judgment of dismissal of public prosecution under subparagraph 2 of Article 327 of the 「Criminal Procedure Act」 (Clause 2).

In cases where an order of preservation for collection expires or where an amount for release from the preservation for collection is deposited, a public prosecutor shall immediately cancel any order he/she made under Article 54 (1), while taking necessary measures to suspend or cancel the execution of the preservation for collection according to the order of the preservation for collection (Article 59 of the Act).

5. Service and Filing Objection, etc.

Section 3, Chapter 6 of the Act specifies regarding service of document for preservation for confiscation or preservation for collection as follows.

Acts and subordinate statutes on civil procedure shall apply *mutatis mutandis*, except as otherwise provided by the Supreme Court Regulations, to the service of documents concerning the preservation for confiscation or collection (excluding the execution of the preservation for collection according to an order of preservation for collection; hereafter the same shall apply in this Chapter). In such cases, the period before the effective time of service by publication under Article 194 (1) of the Civil Procedure Act shall be seven days, notwithstanding Article 196 (1) (main sentence) and (2) of the same Act (Article 60 of the Act).

If a disposition in regard to the preservation for confiscation or collection is required for a case from which an appeal has not yet been made during the period for appeal or which has been appealed but the record of which has not yet arrived at the appellate court, the court of original instance shall make the disposition (Article 61 of the Act).

A person may appeal a court's decision in regard to the preservation for confiscation or collection (Article 62 (1) of the Act). A person who is dissatisfied with a court's decision concerning the preservation for confiscation or collection may request cancellation or modification thereof to the court to which the judge who made the decision belongs (Clause 2) The procedural provisions regarding appeal for the cancellation or modification of a decision made under Article 416 (1) of the 「Criminal Procedure Act」 shall apply *mutatis mutandis* to the procedure of filing an objection under paragraph (2) (Clause 63 of the Act).

6. International Cooperation Procedure Concerning Execution of Judgment of Confiscation or Collection and Preservation of Property

Chapter 7 of the Act specifies concerning the international cooperation procedure concerning execution of judgment of confiscation or collection and preservation of property as follows.

In cases where a foreign country requests cooperation concerning a foreign criminal case against an act that falls under narcotics crimes in the execution of a final and conclusive judgment of confiscation or collection or in the preservation of a property for confiscation or collection purposes under a treaty, cooperation may be provided in response to the request except as provided for in the following subparagraphs (Article 64 (1) of the Act).

1. In cases where it is deemed impossible to penalize a cooperation crime (referring to a crime that is the object of a request for cooperation; hereinafter the same shall apply) under the Acts and subordinate statutes of the Republic of Korea;

2. In cases where a trial on a case regarding a cooperation crime is in progress in a court of the Republic of Korea or a judgment thereon has already become final and conclusive or in cases where an order of preservation for confiscation or collection has already been issued for a property subject to the cooperation;

3. In cases where a property relating to a request for cooperation in the execution of a final and conclusive judgment of confiscation or for cooperation in the preservation of property for confiscation purposes does not falls under the category of property that may be brought to a confiscation trial or become subject to the preservation for confiscation under the Acts and subordinate statutes of the Republic of Korea;

4. In cases where it is deemed impossible to make a judgment of collection or to preserve property for collection under the Acts and subordinate statutes of the Republic of Korea, in regard to a cooperation crime related to a request for cooperation in the execution of a final and conclusive judgment of collection or for cooperation in the preservation of property for collection purposes;

5. In cases where it is deemed that a third party who has a reasonable ground to be recognized as the owner of the property related to a request for cooperation in the execution of a final and conclusive judgment of confiscation or has any surface rights, mortgage, or other rights over the property was unable to claim such right at the relevant trial through no fault of such third party;

6. In cases where it is deemed that no grounds exist under Article 33 (1) or 52 (1) for cooperation in the preservation of property for confiscation or collection purposes: Provided, that this shall not apply if a request for cooperation in the preservation of property is based on a judgment executed by a court or judge of the foreign country making the request for the preservation of property for confiscation or collection purposes or if a request is made after a judgment of confiscation or collection becomes final and conclusive.

When a property on which surface rights, mortgage, or other rights exist is confiscated for the cooperation of the execution of a final and conclusive judgment of confiscation, if necessary under the Acts and subordinate statutes of the Republic of Korea, such rights shall continue to exist (Clause 2).

In cases where a request for cooperation is made regarding the execution of a final and conclusive judgment to confiscate, in lieu of illegal property, a property which is owned by a person who has been sentenced to such judgment and the value of which is equal to that of the illegal property, such final and conclusive judgment shall be deemed a final and conclusive judgment to collect an amount equivalent to the value of the property from the person as far as the cooperation is provided under this Act (Article 65 (1) of the Act). Paragraph (1) shall apply mutatis mutandis to requests for cooperation in the preservation of property which is not illegal property and the value of which is equivalent to the value of illegal property for the purpose of confiscating such property in lieu of the illegal property (Clause 2).

A request for cooperation shall be received by the Minister of Foreign Affairs and Trade: Provided, that in cases of emergency or special circumstances, the Minister of Justice may receive a request for cooperation with the consent of the Minister of Foreign Affairs and Trade (Article 66 of the Act). In cases where a request for cooperation concerns the execution of a final and conclusive judgment of confiscation or collection, a public prosecutor shall request a court to review whether it is a case which allows cooperation (Article 67 (1) of the Act)

The court shall dismiss the public prosecutor's request after review thereof where it deems the request for review to be unlawful, shall decide to allow a whole or partial cooperation where it deems the cooperation to be acceptable in all or in part of the final and conclusive judgment for which cooperation is requested, or shall decide to refuse to cooperate where it deems the request for cooperation to be totally unacceptable (Clause 2). In cases where the court decides to allow cooperation upon the request for cooperation in the execution of a final and conclusive judgment of confiscation, if there exist rights which are due to continue to exist under Article 64 (2), the court shall decide to maintain those rights as well (Clause 3).

In cases where the court decides to allow cooperation upon the request for cooperation in the execution of a final and conclusive judgment of collection, the court shall indicate the amount to be collected in Korean Won as well (Clause 4). In conducting its review pursuant to paragraph (1), the court may not review whether the final and conclusive judgment regarding the request for cooperation is properly made (Clause 5). In cases where the court conducts its review pursuant to paragraph (1), the court shall not decide to allow cooperation unless the court permits those who fall under any of the following subparagraphs (hereinafter referred to as the "interested person") to intervene the proceedings for the request for review (Clause 6).

1. An owner of a property related to a request for review or a person who may be recognized with reasonable ground as having surface rights, mortgage, or other rights on the property in cases of the cooperation in the execution of a final and conclusive judgment of confiscation, or an execution creditor or a creditor who has made a provisional seizure in cases where such property or rights are seized or provisionally seized by a decision to commence a compulsory sale by official auction or compulsory execution before they are subject to the preservation for confiscation;

2. A person who received a final and conclusive judgment of collection in cases of the cooperation in the execution of a final and conclusive judgment for collection.

When making a decision on a request for review, the court shall consider opinions of the public prosecutor and those who are allowed to intervene in the proceedings for the request for review (hereinafter referred to as the “cooperation review intervenor”) (Clause 7). In cases where a cooperation review intervenor intends to state his/her opinion verbally or where a court examines witnesses or experts, the court shall fix a hearing date and give the cooperation review intervenor an opportunity to attend the hearing. In such cases, if a cooperation review intervenor has an attorney-in-fact attend the hearing because the cooperation review intervenor is unable to attend the hearing or if the court allows the cooperation review intervenor to make a statement in writing, the cooperation review intervenor shall be deemed to have been given an opportunity to attend (Clause 8). The public prosecutor may attend the proceedings of the hearing under paragraph (8) (Clause 9).

A public prosecutor and a cooperation review intervenor may appeal a decision regarding a request for review (Article 68 (1) of the Act). The period for which the appeal must be made under paragraph (1) shall be 14 days (Clause 2). In cases where a decision to allow cooperation in the execution of a final and conclusive judgment of confiscation or collection becomes final and conclusive, such judgment of confiscation or collection shall be deemed a final and conclusive judgment of confiscation or collection made by the court of the Republic of Korea in the provision of cooperation (Article 69 of the Act).

In cases where a decision to allow cooperation in the execution of a final and conclusive judgment of confiscation or collection becomes final and conclusive, if the final and conclusive judgment of confiscation or collection is cancelled or is no longer effective, the court shall make a decision to cancel the decision to allow cooperation upon the request of the public prosecutor or an interested person (Article 70 (1)). In cases where the decision to cancel the judgment under paragraph (1) becomes final and conclusive, a compensation shall be made in the same manner as the compensation due to the execution of confiscation

or collection under the Act on Criminal Compensation and the Restoration of Honor (Clause 2). Article 68 shall apply mutatis mutandis to the decision upon request pursuant to paragraph (1) (Clause 3).

In cases where a request for cooperation concerns the preservation for confiscation, a public prosecutor shall request a judge to issue an order of preservation for confiscation. In such cases, the public prosecutor may request a supplemental preservation order if deemed necessary (Article 71 (1) of the Act). After a public prosecutor requests a review pursuant to Article 67 (1), any action regarding the preservation for confiscation shall be taken by the court which receives the request (Clause 2). In cases where a request for cooperation concerns the preservation for collection, a public prosecutor shall request a judge to issue an order of preservation for collection (Article 72 (1) of the Act). Article 71 (2) shall apply mutatis mutandis to any action regarding the preservation for collection (Clause 2).

In cases where a request for cooperation in the preservation of property for confiscation or collection relates to a case against which no public prosecution has yet been instituted, an order of preservation for confiscation or collection shall expire when 45 days have passed from the date of issuance of the order without a notice from the country requesting cooperation which indicates that a public prosecution is instituted against the case (Article 73 (1) of the Act).

In cases where there is a notice from the country requesting cooperation that it is impossible to institute a public prosecution within the period under paragraph (1) due to extenuating circumstances, a judge may renew the preservation for a period not exceeding 30 days upon the public prosecutor's request. The same shall also apply in cases where there is a notice that it is impossible to institute a public prosecution within the renewed period due to extenuating circumstances (Clause 2).

In cases where there is a notice of withdrawal of the request for cooperation, a public prosecutor shall immediately cancel the request for review, request for preservation for confiscation, or request for preservation for collection or shall request the cancellation of an order of preservation for confiscation or collection (Article 74 (1) of the Act). A court or a judge shall immediately cancel an order of preservation for confiscation or collection when requested under paragraph (1) (Clause 2).

Where it is deemed necessary to take a measure relating to any review or the preservation for confiscation or collection under this Chapter, a court or a judge may conduct an investigation of facts. In such cases, the court or the judge may examine a witness or make verification or may order appraisal, interpretation, or translation (Article 75 of the Act).

If deemed necessary for reviewing a request for the preservation for confiscation or collection, or for the execution of an order of preservation for confiscation or collection under this Chapter, a public prosecutor may demand an interested person to appear and make a statement, obtain appraisal, interpretation, or translation, investigate facts, demand the owner, possessor, or holder of papers or other matters to submit them, or demand a public agency or other organizations to ascertain facts or to report on necessary matters (Article 76 (1) of the Act).

If deemed necessary for reviewing a request for the preservation for confiscation or collection, or for the execution of an order of preservation for confiscation or collection under this Chapter, a public prosecutor may conduct seizure, search, or verification pursuant to a warrant issued upon the public prosecutor's request by a judge of a district court (Clause 2). A public prosecutor may order a judicial police officer to take a measure under paragraphs (1) and (2) (Clause 3).

A request for review, for the preservation for confiscation or collection, or for the issuance of a warrant under this Chapter shall be made by a public prosecutor to the district court which exercises jurisdiction over the site of the public prosecutor's office to which the public prosecutor making the request belongs or to a branch office of such district court or a judge of such district court or of its branch office (Article 77 of the Act).

Chapters IV through VI of this Act, the 「Criminal Procedure Act」, and the 「Criminal Procedure Costs Act」 shall apply mutatis mutandis to a review, measure, or issuance of warrant by a court or judge, a measure taken by a judicial police officer, etc., or the intervention by an interested person, except as otherwise provided for in this Chapter, and the 「Act on International Judicial Mutual Assistance in Criminal Matters」 and the 「Extradition Act」 shall apply mutatis mutandis to measures taken in cases where a request for cooperation is accepted, within the scope which does not contradict the nature of the respective Acts (Article 78 of the Act).

7. Punishment of Violator and Reward of Contributor

1. Regulation of Punishment of Criminal Proceeds Concealment

Article 3 “Concealment and Disguise of Criminal Proceeds, etc.” of 「Act on Regulation of Punishment of Criminal Proceeds Concealment」 specifies that a person who interrupts the confiscation or collection of criminal proceeds from illegal trafficking in narcotics by concealment shall be punished by imprisonment for not more than 5 years or by a fine not exceeding 30 million Won (Article 3 of the Act).

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1. A person who disguises the acquisition or disposition of criminal proceeds, etc.;
 2. A person who disguises the origin of criminal proceeds
 3. A person who conceals criminal proceeds for the purpose of encouraging specific crimes or disguising criminal proceeds as legitimately acquired. The attempted offense prescribed in paragraph (1) shall be punished (Clause 2). A person who prepares or conspires for the purpose of committing a crime prescribed in paragraph (1) shall be punished by imprisonment for not more than two years or by a fine not exceeding ten million Won (Clause 3).

2. Payment of Rewards for Contributor to Confiscation · Collection

A reward can be paid to a person who contributes to successful confiscation or collection of property acquired through illegal trafficking of narcotics in accordance with the regulations specified in 「Act on Regulation of Punishment of Criminal Proceeds Concealment」.

Where the property subject to confiscation belongs to the National Treasury after being confiscated and collected, the Minister of Justice may pay a reward to a person who reports to competent law enforcement authorities or who is meritorious for confiscation or collection: Provided, that where a public official reports with relation to his/her duty or a person employed by a financial company, etc. reports pursuant to Article 5 (1), such reward may be reduced or may not be paid to such person (Article 13 (1) of the Act).

Reporting subject to the payment of a reward under paragraph (1), the scope of meritorious deeds, the criteria, methods, and procedures, etc. of the payment of the reward, and other necessary matters shall be prescribed by Presidential Decree (Clause 2) and specified as follow in the Enforcement Decree.

The scope of reward or report 「Act on Regulation of Punishment of Criminal Proceeds Concealment」 (hereinafter “Act”) subject to the reward of Article 13 (1) of the Act is one of the following subparagraphs (Article 2(1) of the Enforcement Decree):

1. If providing the clue of investigation for the acts falling on specific crime of Article 2 (1) of the Act or the crime of Article 3-4 of the Act
2. If providing important information that enables to check the location of the property or reporting the property subject to confiscation under Article 8 (2) of the Act (hereinafter referred to as “property subject to confiscation”)

3. If reporting the concealed property of the person who was sentenced for confiscation and collection or providing important information that enables to check the location of the property.

“Concealed property” in Clause 1 (3) refers to the intangible and tangible property of monetary value including cash, saving and stocks concealed by the person who was sentenced for confiscation and collection. Provided, however, that it shall not be applied to the property falling on each of the following subparagraphs (Clause 2):

1. The property subject to litigation instituted to seek revocation of ruling of fraudulent act by the claiming of national or provincial local government in accordance with Article 30 of National Tax Collection Act
2. The property on which the prosecutor becomes aware of the concealment and start investigation or disposition for failure in tax payment according to 「National Tax Collection Act」

The Minister of Justice shall determine and pay the reward within a range of budget based on the amount of property subject to confiscation that belongs to the national treasury (hereinafter “Amount of Withdrawal to National Treasury”) within the scope of the upper limit amount in the following table (Article 3 (1) of the Enforcement Decree). The Minister of Justice shall consider each of the following subparagraphs if determining a reward in accordance with the Clause 1 above (Clause 2).

1. Accuracy of contents of clue for investigation including report or accusation
2. Degree of contribution to the relevant confiscation/collection
3. Degree of difficulties of cases
4. Severity and scale of crime

Details such as payment methods and procedure of reward shall be determined by the Minister of Justice (Clause 3).

A person who wants to receive a reward shall submit the application for reward payment as specified by the Minister of Justice to the superintendent public prosecutor of a competent district public prosecutor’s office (including head of district public prosecutor’s office. same hereunder) (Article 4 (1) of the Enforcement Decree).

Application per Clause 1 above may be made anonymously or under a pseudonym despite Article 2 (1) (3) of 「Enforcement Decree of Civil Petitions Treatment Act」. In this case, it shall be confirmed by the superintendent public prosecutor of a competent district

public prosecutor's office receiving such application with regard to cause (Clause 2). The superintendent public prosecutor of a competent district public prosecutor's office shall attach the documents specified by the Minister of Justice to the application and submit them to the Minister of Justice (Clause 3).

The Minister of Justice may redeem the reward if the person who received a reward falls on each of the following subparagraphs. Provided, however, that, a reward should be redeemed in each of the following cases (Article 5 of the Enforcement Decree):

1. If a reward is paid falsely or by other dishonest means
2. If a reward is paid wrong due to other causes such as mistake

The Minister of Justice and superintendent public prosecutor of a district public prosecutor's office may handle resident registration number, passport number, license number of driver's license or foreigner registration number in accordance with regulation of Article 19 (1) to (4) of the Enforcement Decree of the Act as well as sensitive information in accordance with Article 23 of Personal Information Protection Act if it is inevitable to handle affairs on payment of a reward (Article 6 of the Enforcement Decree).

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