

# **China's Special Confiscation Procedure: Rules and Practice**

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# Why is SCP included into China's CPL?

## ✓ **UNCAC obligation**

Article 54 (c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

## ✓ **Needs of combating crimes related to corruption and terrorism**

# What is SCP ?

## Criminal Procedure Law

### Part Five: Special Procedures

- Chapter 1: Procedures for Criminal Cases Committed by Minors
- Chapter 2: Procedures for Reconciliation Between Parties Concerned in Cases of Public Prosecution
- Chapter 3: Procedures for Trial in Absentia
- ***Chapter 4: Procedures for Confiscating Illegal Gains in Cases where the Suspect or Defendant Has Escaped or Died***
- Chapter 5: Procedures for Compulsory Medical Treatment for Mentally Ill Persons who Are not Held Criminal Responsible

# Where the rules can be found?

## ✓ Legislation

**CPL:Part V, Chapter 4**

**Article 298-- Article 301**

**(Initially introduced in 2012 amendment as Article 280-283, and has been restructured as current sequence asince 2018 amendment )**

## ✓ Judicial interpretation

**Supreme People's Court**

**Supreme People's  
Procuratorate**

# Judicial interpretation

- **Legislation Code of the People's Republic of China**

Article 104 The interpretations issued by the Supreme People's Court and the Supreme People's Procuratorate on the specific application of the law during adjudication and procuratorial work shall mainly focus on specific legal provisions, and be consistent with legislative purposes, principles and intent.

**Scope of crimes**

**Scope of persons**

**Scope of Property**

**Authorities**

**Courts' procedure**

**Rights**

**Interantional cooperation**

# What is the scope of crimes SCP may apply to?

## ➤ **Corruption related crimes**

**Corruption (382), Bribery(385), Misappropriates public funds, Holding huge amount of property from unknown sources (395 ), embezzlement of confiscated property(396) , etc. (should be defined by Penal Code);**

**(other crimes relating to terrorism, national security, drug, money laundering , etc.) more than 30 crimes.**

## ➤ **"Grave"**

- **life imprisonment or heavier punishments**
- **national or provincial influence**
- **escape to other countries**

# Who is the target?

Suspects or defendants

➤ Escaped

➤ died



# What is the scope of property?

- **Illegal gains involved in the case shall be confiscated pursuant to the Penal Code**
  - Property directly or indirectly incurred or obtained by committing a crime ;
  - Where illegal income is transformed or converted, in part or in whole, to other property, the property upon such transformation or conversion shall be deemed to be "illegal income";
  - Profit from the illegal income shall be deemed to be "illegal income";
- **Other property involved in the case shall be confiscated pursuant to the Penal Code**

# Who can trigger the SCP?

## ➤ A people's procuratorate

- make application to the court (intermediate level)

## ➤ A Police organ via procuratorate

- shall prepare the letter of opinions on confiscation of illegal gains, and refer the cases to the people's procuratorate

## ➤ A court? (when necessary and only for seize or freeze)

## **An application for SCP shall contain:**

- Name, ID and other information of the suspect or defendant;
- Case summary;
- Description of the situation that suspects or defendants have escaped or died (arrest warrant or death certificate);
- Description of the illegal gains and property to be confiscated, including their types, amounts and locations;
- Evidence concerning the facts of the crime and the illegal gains and property;
- Reason and legal basis for the application;
- Information of close relatives and other interested parties (if there is any) ;

# What does the court do?

- **Reviewing the application** (30 days, " evidence to support the facts of a crime", acceptance/ send back/withdraw /supplementary materials )
- **Issuing a Notice** (15 days, 6 months, case summary, interested parties)
- **Hearing** (court session)
- **Ruling** (returning to the victims/ confiscation/ dismissing the application and setting free the seized or frozen property)

# How to safeguard suspects/defendants' right ?

- **right to notice**
- **right to participating in court proceeding**
- **right to appeal**
- **termination of the trial**
- **right to compensation**

# How to proceed a MLA request based on SCP judgement ?

- MLA law (Chapter 7, Section I and II)
- Bilateral treaty (55/65 MLA and Asset recovery, 39/56 extradition)
- UNCAC

# A case study

- ✓ Suspect of corruption: Mr. H
- ✓ Amount of illegal asset confiscated through SCP: 5 million
- ✓ Ruling of SCP
- ✓ UNCAC based MLA request to country: A
- ✓ Country A returned the illegal asset

**Thank you!**