論跨國洗錢之追回與分配*

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摘　要

犯罪所得數量龐大後，贓款藏匿已非易事，跨國化藏匿成為一種趨勢。聯合國已注意犯罪所得跨國藏匿問題，於 1988 年通過《聯合國反毒公約》，2000 年通過《聯合國打擊跨國組織犯罪公約》，2003 年通過《聯合國反貪腐公約》，要求各國對於跨國藏匿犯罪所得予以扣押或沒收，鼓勵各國經由司法互助，共同查扣或沒收犯罪所得。在有被害人時，應將犯罪所得返還被害人，如無被害人時，建議各國依雙邊協議進行贓款分配制度。美國基於絕不容許犯罪者從犯罪中獲利的理念，制定行政沒收、刑事沒收、民事沒收三種制度，近年對於犯罪所得跨國藏匿至美國嚴加追查，並儘量返還被害人與受害國家，本文有深入探討，同時檢視我國追回跨國犯罪所得法制之缺漏，並提出制定跨國洗錢追回與分配條例之可行性。

Comments on the Recovery and Distribution Percentage of Transnational Money Laundering.

Chiang, Ti-Wen

Abstract

As the amount of crime gains grows larger, to hide the illegal money has become more difficult, and thus the trend of transnational concealment of the illegal money arises. The United Nations has long been award of the problems of transnational concealment of illegal money and cross-border money laundering; therefore the UNA anti-Drug Convention in 1988, UN Convention against Transnational Organized Crime in 2000, and UNC convention against Corruption were enacted in 2003. These conventions not only require countries to enforce seizure and confiscation of illegal money from laundering hidden transnationally, but also encourage the joint seizure and confiscation by countries though mutual legal assistance. Moreover, the illegal money from laundering need to be returned back to victims separately. If no victim exists, then it is recommended that the money or assets recovered should be allocated per countries based on bilateral agreements.

Insisting on that perpetrators should never profit from committing crimes, the US government has developed the systems of administrative, civil and criminal forfeiture, and in recent years has also further adopted stricter enforcement to track down hidden illegal money from such a crime and had the money return to victims or repatriation to victims' countries. This article has an in-depth discussion on the appropriateness of aforementioned distribution ratio of illegal money from laundering, a scrutiny of the flaws in our legal system which regulates recovery of cross-border illegal money, and finally we give an opinion regarding the feasibility in making laws of how to repatriate and allocate the illegal money recovered.