

Proceeds of Crime Act

Article 1. (Purpose)

The purpose of this Act is to contribute to the maintenance of a sound social order by regulating activities that disguise the acquisition of criminal proceeds related to specific crimes, conceal criminal proceeds for the purpose of encouraging specific crimes, or disguise such assets as legitimately acquired, and by fundamentally eliminating economic factors that encourage specific crimes through prescribing special cases regarding confiscation and collection of equivalent value with regard to proceeds of crime related with specific crimes.

Article 2. (Definitions)

For the purpose of this Act, the definitions of terms shall be as follows:

1. The term “specific crime” shall mean crimes committed for the purpose of acquiring illegal profits as prescribed in the Schedule (hereinafter referred to as “serious crimes”) and under subparagraph 2 b of this Article. In the case of crimes other than ones related to Article 40 of the Criminal Act, such other crimes shall also be included. And in case a foreign national commits a crime outside the Republic of Korea and his/her acts fall under serious crimes or crimes referred to in subparagraph 2 b if committed in the jurisdiction of the Republic of Korea and under the jurisdiction where such a crime had been committed, such crimes shall also be included.
2. The term “criminal proceed” refers to any of the following subparagraphs:
 - a. Property generated by committing serious crimes or acquired in return for such crimes; and
 - b. Funds or properties related to crimes under Article 25 (1) 3 of the Prevention of Prostitution, etc. Act, Article 5 (2) and Article 6 of the Punishment of Violences, etc. Act (limited to the attempted offense of Article 5 (2)), Article 3 (1) of the Act on Combating Bribery of Foreign Public Officials in International Business Transactions, and Article 4 of the Act on the Aggravated Punishment etc. of Specific Economic Crimes.
3. The term “property derived from criminal proceeds” shall mean any property acquired as the fruit of criminal proceeds, property acquired as compensation for criminal proceeds, property acquired as compensation for the two above

types of property, and property acquired from the possession or disposition of criminal proceeds.

4. The term “criminal proceeds, etc.” refers to criminal proceeds, property derived from criminal proceeds, and any other property in which either one of the above properties is indistinguishably mixed with other kinds of property.

Article 3. (Concealing and Disguising Criminal Proceeds, etc.)

- (1) Persons falling under any of the following subparagraphs shall be punished by imprisonment of no more than 5 years or a fine of no more than 30 million won:
 1. Any person who disguises the acquisition or disposition of criminal proceeds, etc.;
 2. Any person who disguises the origin of criminal proceeds; and
 3. Any person who conceals criminal proceeds for the purpose of encouraging specific crimes or disguising criminal proceeds as legitimately acquired
- (2) The attempted offense of paragraph 1 of this Article shall be punished.
- (3) Any person who, with the intent to commit an offense prescribed in paragraph 1 of this Article, prepares for such offense shall be punished by imprisonment of no more than 2 years or a fine of no more than 10 million won.

Article 4. (Accepting Criminal Proceeds, etc)

Any person who knowingly accepts the criminal proceeds, etc. shall be punished either by imprisonment of no more than 3 years or by a fine of no more than 10 million won. This shall not apply to such cases where the person who accepted the criminal proceeds, etc. presented as a performance of an obligations under a law or regulation or any person who received the criminal proceeds, etc. presented as a performance of an obligations under a contract (such contract shall be limited to one under which a creditor is to offer substantial property interest) not knowing that the performance of such obligations would be performed with the criminal proceeds, etc. at the time of the contract.

Article 5. (Reports by Financial Institutions, etc)

- (1) Any person who is employed by the financial institutions, etc. under subparagraph 1 of Article 2 of the Financial Transaction Reports Act (hereinafter referred to as “financial institutions”) shall report to competent law enforcement authorities without delay, notwithstanding the provisions of other Acts and subordinate statutes, when he/she

becomes aware of the fact that properties he/she accepts with respect to the financial transactions referred to in subparagraph 2 of Article 2 of the same Act are criminal proceeds or that the concerned counter-party of the said transaction commits an act that falls under the crimes prescribed in Article 3 of this Act.

- (2) When a person who is employed by the financial institutions has reported or will make a report in accordance with paragraph 1, he/she shall not disclose the contents of the report to the concerned counter-party of the transaction or anyone related to the above party.
- (3) Any person who violates the provisions of paragraph 1 or 2 of this Article shall be punished by imprisonment of no more than 2 years or a fine of no more than 10 million won.

Article 6. (Dual Imposition of Imprisonment and Fine)

Any person who violates the provisions of Articles 3 and 4 and paragraph 3 of Article 5 may be imposed with both penalties of imprisonment and fine.

Article 7. (Joint Penal Provision)

In cases where the representative of a juristic person, an agent, an employee, or another person engaging in the business of a juristic or natural person commits an offense referred to in Articles 3 through 5 in relation to the business of the juristic or natural person, not only shall the perpetrator be subject to punishment, but the juristic or natural person shall also be subject to the fine prescribed by the corresponding Articles.

Article 8 (Confiscation of Criminal Proceeds, etc.)

- (1) Any of the following properties shall be confiscated:
 1. Criminal proceeds;
 2. Any property derived from criminal proceeds;
 3. Criminal proceeds, etc. related to the criminal acts specified in Article 3 or 4;
 4. Any property generated by the criminal acts specified in Article 3 or 4, or any property acquired in return for such criminal acts; and
 5. Any Property acquired as a fruit of or in compensation for any property under the provisions of subparagraph 3 or 4, any property acquired as compensation for these properties, or any other property acquired by the possession or disposition of the property

- (2) In cases where the property that is subject to confiscation in accordance with the provisions of paragraph 1 (hereinafter referred to as “property subject to confiscation”) is mixed with properties other than the property subject to confiscation and said property should be confiscated, the equivalent of the value or quantity of the property subject to confiscation (within the limits of the part related to the mixture) from among the property generated by the mixture (hereinafter referred to as “mixed property”) may be confiscated.
- (3) Notwithstanding the provisions of paragraph 1 above, when the property of any of the subparagraphs of the same paragraph are crime victim property (which hereinafter shall mean property acquired from the party injured by a criminal act constituting an offense against property, an offense provided in Article 5-2 (1) 1 and (2) 1 of the Act on the Aggravated Punishment, etc. of Specific Crimes, an offense referred to in Articles 366, 368 and 370 of the Bankruptcy Act, or properties acquired as a result of the possession or disposition of the aforementioned properties), such property shall not be subject to confiscation. The same shall apply when any part of properties under any of the subparagraphs of paragraph 1 above are crime victim property.

Article 9. (Requirements for Confiscation)

- (1) The confiscation pursuant to the provisions of paragraph 1 of Article 8 shall be limited to cases where the property subject to confiscation or mixed property does not belong to any person other than the criminal. However, in cases where a person other than the criminal knowingly acquires the mentioned property subject to confiscation or mixed property (excluding cases in which the acquisition of the mentioned property subject to confiscation or mixed property falls under the provisions of Article 4) after such crime has been committed, the mentioned property subject to confiscation or mixed property may be confiscated even though it belongs to a person other than the criminal.
- (2) In cases where any property on which the superficies, hypothec, or any other right exists is to be confiscated pursuant to the provisions of Article 8 (1), such right shall be left to stand as if any person other than the criminal had acquired such right before the commission of the offense or has unknowingly acquired such right after the commission of the offense.

Article 10 Collection of Equivalent Value

- (1) In cases where it is impossible to confiscate the property under the provisions of Article 8 (1) or where it is deemed to be inappropriate to confiscate the property in light of the nature of such property, the conditions of its use, the existence of a right of any person other than the parties to the offense to such property, or other circumstances, the monetary equivalent to the value of such property may be collected from any of the parties to the offense.

- (2) In cases where the property under Article 8 (1) is crime victim property, such collection shall not be made notwithstanding the provisions of paragraph 1 above.

Article 11. (Implementation of Mutual Cooperation)

When a foreign country has requested cooperation in relation to a foreign criminal case against an act that falls under specific crimes and the crimes referred to in Articles 3 and 4 of this Act in the execution of a finally-binding adjudication of confiscation or collection of equivalent value or in the preservation of property for the purpose of confiscation or collection of equivalent value, mutual assistance may be provided except in any of the following cases:

1. In cases where activities related to the crimes that require mutual cooperation take place in the Republic of Korea and such activities are not regarded as specific crimes or the crimes referred to in Articles 3 and 4 of the Acts and subordinate statutes of the Republic of Korea;
2. In cases where there is no assurance of the requesting country providing assistance for similar requests made by the Republic of Korea; and
3. In cases where the aforementioned crimes fall under any subparagraph of Article 64 (1) of the Act on Special Cases Concerning the Prevention of the Illegal Trafficking of Narcotics, Psychotropic Substances, and Hemp

Article 12. (Application of the Act on Special Cases Concerning the Prevention of the Illegal Trafficking of Narcotics, Psychotropic Substances, and Hemp)

The provisions of Articles 19 through 63, Article 64 (2), and Articles 65 through 78 of the Act on Special Cases Concerning the Prevention of the Illegal Trafficking of Narcotics, Psychotropic Substances, and Hemp shall apply to the international cooperation for the confiscation and collection of equivalent value in accordance with this Act.

Addenda

(1) (Date of Enforcement)

This Act shall go into effect after two months from the date of promulgation.

(2) (Examples of the Application of Activities of Concealing and Accepting Criminal Proceeds, etc.)

The provisions under Articles 3 and 4 shall apply to the activities carried out after this Act is enforced with respect to the criminal proceeds acquired before the enforcement of this Act.

(3) (Amendment of Other Acts)

The Act on the Persons Performing the Duties of Judicial Police Officers and Scope of Their Duties shall be amended as follows:

Subparagraph 14 of Article 6 shall be amended as follow:

14. The following crimes for the person provided in subparagraph 19 of Article 5

- a. Violation of the Customs Duties Act, the Foreign Trade Act, infringement of intellectual property rights related to customs clearance of goods that are exported and imported, illegal export and import of means of payment, precious metals or securities under the Foreign Exchange Transactions Act, violation of the Foreign Exchange Transactions Act concerning export and import transactions and service transactions that have a direct bearing on said transactions, taking place within the territorial jurisdiction of a department attached to the central government agency
- b. Violation of the Proceeds of Crime Act with respect to crimes taking place within the territorial jurisdiction of a department attached to the central government agency, as prescribed in a above.
- c. Crimes concerning narcotics, psychotropic substances, and hemp taking place at airports, harbors, and bonded areas, where aircraft and vessels plying between the Republic of Korea and foreign countries arrive and depart, within the territorial jurisdiction of a department attached to the central government agency

[Schedule]

Serious Crimes (with respect to subparagraph 1 of Article 2)

1. Crimes falling under any of the following of the Penal Code
 - a. an offense provided in Article 114 (1) of Crimes Injurious to Public Peace in Chapter 5 of Volume 2
 - b. an offense provided in Articles 129 through 132 of Crimes Concerning the Duties of Public Officials in Chapter 7 of Volume 2
 - c. an offense provided in Articles 207, 208, 212 (limited to the attempted offense of Articles 207 and 208), and 213 of Crimes Concerning Currency in Chapter 18 of Volume 2
 - d. an offense provided in Articles 214 through 217, 223 (limited to the attempted offense of Articles 214 through 217), and 224 (limited to the preparation or conspiracy of Articles 214 and 215) of Crimes Concerning Valuable Securities and Postage and Revenue Stamps
 - e. an offense provided in Articles 225 through 227-2, Article 228 (1), Article 229 (excluding Article 228 (2)), Articles 231 through 234, and 235 [limited to the attempted offense of Articles 225 through 227-2, Article 228 (1), Article 229 (excluding Article 228 (2)), Articles 231 through 234 of Crimes Concerning Documents in Chapter 20 of Volume 2
 - f. an offense provided in Article 246 (2) and Article 247 of Crimes Concerning Gambling and Lotteries in Chapter 23 of Volume 2
 - g. an offense provided in Articles 250, 254 (limited to the attempted offense of Article 250), and Article 255 (limited to the preparation or conspiracy of Article 250) of Crimes of Homicide in Chapter 24 of Volume 2
 - h. an offense provided in Articles 314 and 315 of Crimes against Credit, Business and Auction in Chapter 34 of Volume 2
 - i. an offense provided in Articles 323 through 324-5, 325, and 326 of Crimes of Obstructing Another from Exercising His Right in Chapter 37 of Volume 2
 - j. an offense provided in Articles 329 through 331, 333 through 340, 342 (excluding the attempted offense of Articles 331-2, 332 and 342), and 343 of Crimes of Larceny and Robbery in Chapter 38 of Volume 2
 - k. an offense provided in Articles 350 and 352 (limited to the attempted offense of Article 350) of Crimes of Fraud and Extortion in Chapter 39 of Volume 2

1. an offense provided in Article 355 of Crimes of Embezzlement and Breach of Trust in Chapter 40 of Volume 2 [limited to cases where a person who is provided in subparagraph 1, 2, or 4 (limited to a person who assists the person provided in subparagraph 1 or 2, and who is in charge of part of the accounting affairs) of Article 2 of the Liability of Accounting Personnel, etc. Act commits an offense provided in the same Article in relation to his/her duties, with the recognition that it might cause any loss to the national treasury or the local governments]
 - m. an offense provided in Article 362 of Crimes Concerning Stolen Property in Chapter 41 of Volume 2
- 2 An offense provided in Articles 23, 24, 26, and 27 of the Bicycle and Motorboat Racing Act
 - 3 An offense provided in Article 269 and Article 271 (2) (limited to would-be criminals of Article 269) of the Customs Duties Act
 - 4 An offense provided in paragraph 3 of Article 54 of the Foreign Trade Act
 - 5 An offense provided in Article 111 of the Attorney-at-Law Act
 - 6 An offense provided in Article 5 of the Illegal Check Control Act
 - 7 An offense provided in Article 30 (1) of the Act on Special Cases Concerning the Regulation and Punishment of SpeculativeAct, etc.
 - 8 An offense provided in Articles 622 and 624 (limited to the attempted offense of Article 622) of the Commercial Act
 - 9 An offense provided in Article 93 of the Trademark Act
 - 10 An offense provided in Article 95-8 of the Futures Trading Act
 - 11 An offense provided in subparagraph 1 of Article 40 and Article 42 of the Child Welfare Act
 - 12 An offense provided in Article 70 (1), (2) 3 and (5) of the Specialized Credit Financial Business Act
 - 13 An offense provided in Article 24, Article 25 (1) 1 and 2 of the Prevention of Prostitution, etc. Act
 - 14 An offense provided in Article 29 (1) of the Sound Records and Video Products Act
 - 15 An offense provided in Article 30 (1) and (2) of the Political Fund Act
 - 16 An offense provided in Article 207-2 of the Securities and Exchange Act

- 17 An offense provided in Article 46 and subparagraph 1 of Article 47 of the Employment Security Act
- 18 An offense provided in Article 70 of the Control of Firearms, Swords, Explosives, etc. Act
- 19 An offense provided in Articles 3, 5, and 7 of the Act on the Aggravated Punishment, etc. of Specific Economic Crimes
- 20 An offense provided in Articles 2, 3, 5, 5-2, 5-4, 6, 8 (limited to cases of getting a tax refund for crimes provided in Paragraph 1 of Article 9 of the Punishment of Tax Evaders Act), and 10 of the Act on the Aggravated Punishment etc. of Specific Crimes
- 21 An offense provided in Articles 366, 368, and 370 of the Bankruptcy Act
- 22 An offense provided in Articles 2 through 4, Article 5 (1) and Article 6 [limited to attempted offense of Articles 2, 3, Article 4 (2) (excluding an offense under Articles 136, 255, 314, 315, 335, the latter part of 337, the latter part of Article 340 (2), and Article 343), and Article 5 (1) of the Punishment of Violence, etc. Act
- 23 An offense provided in Articles 50, 51, 53, 54, 58, and 60 of the Act on Korea Racing Association