

On 28 February 2016 the **Law of Ukraine № 1019-VIII “On Changes to the Criminal and Criminal Procedure Codes of Ukraine concerning carrying out of the recommendations contained in the sixth report of the European Commission on implementation by Ukraine of the Action Plan for liberalization of the EU visa regime for Ukraine regarding the improvement of procedures for seizure of property and the institute of special confiscation”** came into force. Major changes made by this Law to the current criminal procedure legislation are as follows:

➤ **The Law expanded the list of cases of special confiscation application.**

Before such a measure of criminal law as special confiscation was applied to relatively small, clearly defined list of criminal offenses: trafficking, terrorism, drug trafficking, money laundering, corruption-related crimes and so on.

From now on special confiscation may be applied to any criminal offense committed intentionally and for which imprisonment or fine of more than three thousands of non-taxable minimum incomes of citizens is provided.

➤ **The Law introduced a new order regarding the use of special confiscation in respect of third parties (persons who have not committed a criminal offense, but are the owners of property that is subject to special confiscation).**

Earlier the property of third parties (a person or entity) could be seized in the procedure of the special confiscation only if (1) corrupt assets were received or acquired by a third party from a suspect, accused person, convicted person for free or in exchange for an amount significantly below market value; or (2) the third party knew or should have known that the purpose of transfer of the property is to avoid confiscation or special confiscation.

Now property (including money and values) is subject to special confiscation from a third party regardless of the assessed value of purchase/receipt by such third party and the presence of fictitious purpose of transfer of the property (to avoid confiscation), provided that the purchaser of the property could or had to guess that this property was obtained by the purchaser as a result of the offense and/or is an income from such property; was destined or used for inducement of a person to commit a crime, financing and/or material support of the crime or reward for having it done; was the subject of a crime.

➤ **The Law introduced a list of procedural documents, solely on the basis of which can be applied special confiscation, which shall guarantee a possibility to bona fide purchaser of property to prove in court the absence of the grounds for the removal of his property in order of special confiscation. At the same time, the property of a third party, in respect of which there is a set of grounds or reasonable suspicion to believe that it is subject to special confiscation, may be seized for the whole period of pre-trial investigation in criminal proceedings.**

- **The Law classified third parties (persons or entities), in respect of whose property the issue of arrest is decided, as parties to the criminal proceedings with rights granted to suspect, accused person in part related to arrest of property.**

Accordingly, introduced by the Law № 1019 amendments to the criminal legislation on the grounds and procedure of special confiscation, on the one hand formalize participation in this process of property owners – third parties who are participants in criminal proceedings with certain procedural rights, on the other hand creates the real risk of loss of property by bona fide purchasers because of the lack of clear and understandable reasons to use a special confiscation of third-parties property, the issue on use of this measure of criminal law will depend solely on the court's subjective assessment of the circumstances of the disputed property acquisition.

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This Legal Alert is intended as a general overview of latest changes in legislation of Ukraine and does not constitute a legal advice.

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