

SUMMARY OF KEY POINTS

of law no. 10 192, dated 03.12.2009 "On prevention and suppression of organized crime and trafficking throughout preventive measures on property.

The purpose of the law is the prevention and suppression of organized crime and trafficking through the confiscation of the property of persons that have an unjustified economic level as a result of suspected criminal activity.

The scope of this law covers the assets of persons, on which there is a reasonable suspicion, grounded on evidence, of participation in criminal or terrorist organizations, or of committing certain criminal acts, for example, kidnapping, female or child trafficking etc. The provisions of this law shall also apply to the assets of relatives and other persons when the assets of the latter have facilitated or assisted in carrying out illegal activities. This law also applies to the assets of persons, created before the entry into force of this Law, provided that the assets are created as a result of alleged involvement in criminal activity.

I. **Types of preventive measures and the conditions of their application**

According to this law, preventive measures include sequestration and confiscation.

A. **Sequestration of property**

Upon the motivated request of the prosecutor, the court decides the sequestration of somebody's property when the following criteria are met:

- ✓ Existence of a reasonable doubt, grounded on evidence, indicating that the person may be involved in criminal activity;
- ✓ The owning of properties or the existence of a lifestyle that manifestly do not correspond to the declared income and economic activity;
- ✓ Alternatively, one of the following has to be present:
 - Existence of a real risk of loss or alienation of the properties
 - Existence of reasonable doubt that these properties are used from or facilitate criminal activities.

B. **Confiscation of property**

Confiscation measures are taken upon the motivated request of the prosecutor. In general, confiscation is requested for properties already under sequestration but not necessarily.

The court admits a request of confiscation when all the following conditions are fulfilled:

- ✓ Existence of a reasonable doubt, grounded on evidence, indicating that the person may participate in criminal activities;
- ✓ The property is, directly or indirectly, in the full or partial ownership of the person;
- ✓ The holdings of the person are not proved to be of legal origin or his wealth is not justified from the legal economic activities declared by him.

The corner stone of this law consists in the fact that the burden of proof to attest the lawfulness of the property and wealth lies with the person whose property is object of confiscation measures.

Another fundamental aspect of the law relates to the autonomy of the confiscation measure with regard to criminal proceedings or criminal judgements. It may happen, therefore, that the tribunal decide the confiscation of property even if the charges against the person are dropped, if he is declared innocent or if the offence is requalified into another that is outside the scope of the law.

II. The procedure of establishing preventive measures

Before dealing with the procedure of adoption of the preventive measures, it is important to draw again your attention about its autonomy towards the phase or the outcome of the criminal proceedings against the persons upon whose properties the confiscation measures are purported to be taken. The prosecutor or the judicial police may act upon its own initiative or upon notice of a third party. The prosecutor's request to take preventive measures is judged, in first instance, by the tribunals of first instance of criminal offences and, in appeal, by the Appellate courts of criminal offences.

Verifications, investigation and trial for the implementation of this law are subject, besides the procedural rules provided by this law, to the code of civil procedure and, surprisingly, not to the code of criminal procedure even though the object of the law are the properties of persons suspected of committing crimes. The delay of the hearing by the tribunal is 5 days for sequestration measures and 3 months for confiscation measures, up to 12 months if the case is particularly complex.

Assets sequestered or confiscated are managed by the Sequestered and Confiscated Assets Management Agency. Against the court decision, appeal may be made under the terms and conditions established by the Code of Civil Procedure.

If the decision to confiscate becomes final and binding, confiscated assets become property of the state, irreversibly. If, afterwards, their former holder proves that the confiscation is illegal or groundless, he may request only just compensation.

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