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The Confidentiality Preservation Order in Taiwan — Review and Response

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Abstract

The Legislative Yuan of Taiwan enacted “the Investigation Confidentiality Protective Order” (hereinafter referred to as “the Order”) which granted the prosecutor to issue during criminal investigation, as the method of balancing substantive justice and protection of trade secrets. It is not applied the criminal discovery rule in Taiwan, taking opportunity to legally explore the trade secret of the rivals during a criminal investigation. The Order is constituted in response to the demands of domestic investigating practices in Taiwan. Since it lacks foreign legislation and practical precedents, it is necessary to discuss how to legislate and enforce the system of the Order.

Since the Order is derived from “the Confidentiality Preservation Order,” this article reviewed domestic and foreign literatures and practical opinions of the Con-

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Confidentiality Preservation Order, also conducted in-depth interview with practitioners about the issues of the enforcement of Confidentiality Preservation Order in trials, and made quantitative research of the ruling of Confidentiality Preservation Order. The text analyzed implementation of the Confidentiality Preservation Order between the domestic and foreign trial practices, and presented the results of the empirical research and the related observations. Also, this article claimed the significance of the legislation of the Order, and reminded the precautions in the application of the Order by observing the implementation of the Confidentiality Preservation Order.

The study expected to make practitioners have a deeper and broader understanding of the practical implication of the Confidentiality Preservation Order, and develop the system of the Order and the Confidentiality Preservation Order without hesitation. The purpose of legislation is to balance trade secrets protection and procedural due process.

Keywords: Trade Secret, Protective Order / Confidentiality Preservation Order / Investigation Confidentiality Protective Order, Examination Factor, Discovery