



## News Release by Supreme Prosecutors Office

Issue Date: February 18, 2011

Issued by: Special Investigation Division

In the prosecution of former President Chen Shui-Bian for misappropriation of the secret diplomacy fund, the Taiwan High Court has previously found former President Chen not guilty. The judgment was received by the prosecutors of the Taiwan High Prosecutors Office (THPO) on February 8. After studying the judgment, the Special Investigation Division (SID) of the Supreme Prosecutors Office is of the view that the judgment is contrary to the law, and has prepared an Appeal Recommendation Brief on February 15 requesting that the THPO proceed accordingly. The THPO has therefore lodged an appeal against the judgment on February 17.

The Appeal Recommendation Brief states: The offense of misappropriation under the Criminal Code is a discontinuing offense, and the offense is constituted when a person converts possession of a property to another person for possession for his own benefit. Subsequent disposition or concealment of the stolen property, or other subsequent acts that are not punishable may be additional factors to be evaluated in criminal sentencing, but do not affect the fact that the offense of misappropriation has been constituted. The Indictment found that the Defendant has factually misappropriated US\$330,000 from the diplomacy fund, and the prosecutors have produced as supporting evidence the testimonies from witnesses Ma Yong-Chen, Lin De-Xun, Huang Zhi-Fang, Tian Hong-Mao, Jian Yo-Xin, Wu Zi-Dan and Lin Jin-Chang, as well as documentary evidence such as the relevant claim receipts. **The prosecutors have fulfilled their substantive burden of proving the facts of the offense by the Defendant, and the allegations against the Defendant for misappropriation of public funds are clearly constituted.** The list of exhibits attached to the Indictment also itemize the details of remittances from Chen Zhen-Hui to Chen Zhi-Zhong, but these are merely a supplementary explanation of the “possible destinations of misappropriated funds” after the Defendant misappropriated the public funds; **as the prosecutors have not indicted the Defendant of the offense of money laundering, it is not within the scope of the prosecutors’ burden of proof to show whether the aforementioned remittances from Wu Shu-Zhen to Chen Zhi-Zhong had in fact come from the secret diplomacy fund and gifts & entertainment allowance claimed by the Defendant.** In requiring the prosecutors to also bear the burden of proving acts related to subsequent disposal of the misappropriated property, the original judgment has clearly violated the law by mis-application of the rules of evidence.

The Appeal Recommendation Brief also states: While the Defendant in criminal proceedings is not obliged to testify against himself nor bear any burden of proof, **the Defendant shall nonetheless bear “the burden of producing evidence” where the Defendant is more knowledgeable than others regarding where evidence relevant to the facts favorable to his case can be obtained, such as a defense argument that the facts constituting the offense do not exist. This is the Defendant’s burden to produce evidence relevant to his defense case (as provided in the latter part of Article 96 of the Code of Criminal Procedure).** The original Court has investigated the evidence in this case; however, although the whereabouts of the US\$330,000 diplomacy fund is still unknown, the Court has not ordered the Defendant to indicate the method of proving whether said US\$330,000 had indeed been used in diplomatic matters. This is not different to a failure to investigate before directly

**issuing a judgment, and constitutes a violation of the law for failing to investigate evidence that should have been investigated during the adjudication period.**

**The original judgment also found that the “secret diplomacy fund” and “gifts & entertainment allowance” are in the nature of a “special allowance”. In this regard, the prosecutors also believe that the judgment has violated the law for mis-application of the law.**

Special Investigation Division