

The Correlation of money laundering and Fraud from a Practical perspective

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INTRODUCTION

The tremendous amounts of illicit profits generated encourage the criminals involved to discover innovative methods of controlling their ill-gotten funds without jeopardizing their underlying activity or identity. They do this by disguising the sources of the funds, changing their form, or moving them to a place where they are less likely to attract attention.

The United Nations Office on Drugs and Crime (UNODC) reported that criminal proceeds amounted to an estimate of 3.6% of the global GDP in 2009, with around 2.7% (or USD 1.6 trillion) laundered throughout that year. Although it is impossible to calculate with certainty the amount of money that is globally laundered every year due to the illegal nature of the whole process, other studies have estimated that the overall value of criminal proceeds being laundered each year amounts to USD 3 trillion.

International agreements and UAE national laws strongly associate money laundering with fraud. The connection between both crimes will be explored throughout this article.

THE DISTINCT NATURE OF MONEY LAUNDERING

Practically, INTERPOL considers any act or attempted act to conceal or disguise the identity of illegally obtained proceeds in order to appear to have originated from legitimate sources to be a crime of Money Laundering.

Therefore, money laundering is a derivative crime that mandates a predicate offense as the source of the illicit proceeds subject to laundering. A predicate offense is a crime that has been concluded before the commencement of money laundering. Both crimes shall have distinct legal elements but not any predicate crime qualifies as a prerequisite for money laundering. Legislation limits predicate crimes subject of money laundering to certain offenses. Examples of such predicate offenses are bribery, embezzlement, breach of trust and fraud. In other words, money laundering as a crime only occurs after the perpetration of certain prior crimes such as those previously mentioned.

However, the aforementioned should not be interpreted to entail that criminals accused of money laundering must be the same as those who committed the predicate offense. It is legally acceptable to be solely accused of committing money laundering, if the criminal being accused of such crime did not take part in seizing the illicit proceeds being laundering.

THE EMIRATI APPROACH IN COMBATING MONEY LAUNDERING

Money laundering in the United Arab Emirates is primarily criminalized by Federal Law No. 4 of 2002 and supported by the Federal Penal Law No. 3 of 1987 and Federal Penal Procedures Law No. 35 of 1992. The aforementioned Federal Law No. 4 of 2002 regarding criminalization of money laundering sets out the rules governing such crime in line with the international treaties ratified by the UAE, in order to penalize dealing in the proceeds of certain crimes, including but not limited to, drug trafficking, illegal arms

dealings, bribery, embezzlement, breach of trust and fraud.

The aforementioned law mandates that any suspicious transaction must be reported to the Anti-Money Laundering and Suspicious Cases Unit (AMLSCU) of the Central Bank of the UAE. The said unit investigates such reports, gathers intelligence and decides whether further prosecution should follow. After evaluating the gravity of reported suspicious transactions, the said unit decides whether to freeze the suspected properties and refer the matter to public prosecution, or disregard further investigation. It is worthy to note that the UAE Attorney General has exclusive authority to initiate criminal actions in relation to money laundering accusations.

A PRACTICAL APPROACH

In a recent cassation case, the public prosecution charged eleven accused parties (two of which are companies) with money laundering, on the basis that they intentionally transferred into the UAE, GBP 4,209,625 and USD 380,461.95, illegally obtained from a fraud in order to conceal and disguise the illicit origins of such proceeds.

The prosecution claimed that the accused parties conspired to deceitfully forge documents on behalf of an airline company after hacking its private bank account. They also forged signatures of the representatives of the said airline company and sent instructions, by misrepresenting such company, to its bank to transfer the aforementioned monies to their private bank accounts.

The First Instance Criminal Court sentenced each of the accused natural persons to one year imprisonment, fined each an amount of AED 30,000 and ordered the confiscation of the proceeds. The same court fined each of the two accused companies an amount of AED 300,000. However, the judgment was appealed by the convicts. The Appeals Court upheld the challenged judgment but amended it to relieve the convicts from the ordered confiscation of their illicit proceeds.

The matter was brought forward to the Cassation Court on grounds that the lower courts erred in their reasoning, misconstrued presented evidence and misapplied the law. It was argued that the lower courts mistakenly characterized the attributed crime as money laundering on grounds that money laundering is a derivative crime that requires a prior separate crime as the source of the illicit proceeds being laundering. In addition, the said prior committed crime has to be one of those crimes exclusively set out by Article 2 of Federal Law No. 4 of 2002 regarding criminalization of money laundering.

The Cassation Court concluded that lower courts have full discretion to evaluate the facts of the case and the evidence submitted by the parties. It restated that the appeal judgment had duly illustrated the facts of the case to establish all the legal elements of the charged crimes and properly correlated the undertaken criminal actions with logical prosecution evidence pursuant to the documents and testimonies.

When interpreting Article 2 of the Federal Law No. 4 of 2002, the Cassation Court stated that the material aspect of money laundering as a crime is composed of any criminal behavior undertaken by the perpetrator with the effect of concealing or disguising the origins of the proceeds of one of the crimes exclusively set out by the abovementioned article including, among others, fraud and breach of trust. The court maintained that a predicate crime has to be concluded from which the illicit proceeds are obtained and that the criminality relates to the possession of such proceeds, regardless of the purpose of such possession as long as the perpetrator had prior knowledge at the time of receiving such proceeds of its "dirty nature" and with no consideration to whether the perpetrator is a natural or judicial person.

The Cassation Court demonstrated that money laundering is an intentional crime entailing a criminal intent. Such criminal intent is prior knowledge that the proceeds possessed by the perpetrator stem from a crime punishable by law.

In addition, the convicts argued before the Cassation Court that their actions ought to be interpreted as forgery and not fraud as misconstrued by the lower courts and, therefore, their undertaken actions do not

fall within the scope of Article 2 of the Federal Law No. 4 of 2002. Accordingly, the whole case has to be dismissed against them. The court established that the law intended to penalize dealing in the proceeds of certain crimes as fraud. Moreover, fraud implies actions undertaken by the perpetrator to seize for himself or for others, the possession of any movable property by using fraudulent practice, assuming a false name or quality whenever it is intended to deceive the victim and bring him to surrender a legal right.

Accordingly, the Cassation Court reached a conclusion that the Appeals Court properly applied the law when it concluded from the presented evidence that all the legal elements of fraud were present and that despite the forgery of documents, such forgery was a step towards a bigger fraudulent scheme to deceive the victim into surrendering the proceeds that were afterwards attempted to be laundered.

In line with the above, the Cassation Court restated that the Appeals Court properly applied the law on the facts and sustained its view to relieve the convicts from confiscation of the crime proceeds but instead such proceeds should be restituted to the victim of the crime. The reasoning behind this is that, despite the fact that Federal Law No. 4 of 2002 explicitly states that criminal proceeds shall be confiscated, the proper application of the general rules of law according to Article 82 of the Federal Penal Law No. 3 of 1987 limit confiscation to cases where there is no prejudice to the rights of any bona fide third party (i.e. other parties having good faith or the victim of the crime).

In summary, the Cassation Court rejected all the arguments and claims of the convicts, reaching an ultimate decision that the challenged judgments are in conformity with the law and consequently upheld the judgment of the Appeals Court.

CONCLUSION

Concealing or disguising the proceeds of fraud is considered as money laundering. Fraud entails any false representation of a matter of fact that deceives and is intended to deceive a victim so that the latter will act upon it to his legal injury and detriment. The foregoing illustrates the gravity of both crimes and that the deceptive nature of both crimes needed harsh punishments by laws in order to deter criminals.

Unfortunately, money launderers exploit the complex existing global financial systems and the differences between the respective national anti-money laundering laws and systems. Also, they exploit jurisdictions with weak or ineffective controls in order to move their funds more easily without detection. In that sense, money laundering has several negative impacts such as undermining the integrity and stability of financial institutions and systems, discouraging foreign investments, distorting international capital flows and ultimately destroying societies by allowing criminals to attempt committing the same crimes again and again.

In addition, the previous problems are further aggravated by the fact that the UAE is one of leading business hubs world wide with its well known free market. Therefore, the UAE courts interpret money laundering broadly to combat all perpetrations as long as the prior committed crime constitutes one of those prohibit by the money laundering law.

Finally, the UAE is making concerted efforts to tackle this problem by implementing stern measures and modern safeguards along with signing and implementing mutual judicial cooperation agreements and extradition treaties.