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Anti-Money Laundering Law in Hong Kong for International Traders
(国际贸易洗黑钱法律要点)

(A) Introduction (引言)

The term “money laundering” (洗黑钱) is certainly not a strange term to international traders. However, the harsh scope of the relevant legislations in Hong Kong may be beyond most traders’ imagination. For that very reason, international traders now encounter high level of legal risks in their business.

One of the challenges that international traders face is the method by which money may be remitted to their home countries upon the completion of trade transactions in foreign countries. Conducting trading business in developing countries, such as Africa and South America, has now been made easier due to trade globalisation. However, government corruption (贪污钱), foreign-currency black market (黑市外汇) and illegal underground money changers (地下钱庄) can be common in these countries. International traders, without their prior knowledge, can sometimes handle money which might have been obtained from unlawful sources.

Like the western countries, Hong Kong has a set of draconian anti-money laundering legislations. When conducting international trading business in developing countries, traders in or connected with Hong Kong are not only regulated by the anti-money laundering legislations of the foreign countries, but are also caught by those in Hong Kong.

(B) Legal Definition (法律定义)

In Hong Kong, money laundering is governed by two pieces of almost identical legislations, namely Section 25 of the Organized and Serious Crimes Ordinance (Cap. 455) (“*OSCO*”) (有组织及严重罪行条例) and Section 25 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) (“*DTRPO*”) (贩毒(追讨得益)条例).

As specified in section 25(1) of *OSCO*,

“A person commits an offence if, knowing (知道) or having reasonable grounds to believe(有合理理由相信) that any property in whole or in part directly or indirectly represents any person's proceeds of an indictable offence, he deals with that property.”

(i) **Draconian Implication of “having reasonable grounds to believe” (有合理理由相信)**

The belief of many international traders is that one would be guilty (有罪) of the offence of money laundering only if he or she “knows” (知道) that the money originates from an indictable offence (刑事犯罪) and nonetheless deals with it. This is legally true as it would satisfy the “subjective test” (主观标准). However, these traders may not be aware of the hidden danger behind the wording of the “objective test” (客观标准) i.e. “having reasonable grounds to believe” (有合理理由相信).

In order for a court judge to come to a conclusion as to whether a defendant is guilty of the offence, the judge is required to consider the facts of the case (案件事实) in great depth. If the facts before the judge do lead him to believe that the defendant (被告) had “reasonable grounds to believe” that the money was illegal, the Court will conclude that although the defendant in reality did not know or believe that the money was illegal, the defendant would be guilty of money laundering upon the application of the “objective test” i.e. he ought to know (应该知道是黑钱).

(ii) **Court Case (法院案例)**

HKSAR v. Lai Kam Yee Teresa (CACC 120/2009)

Brief facts (案情)

The defendant was a primary school teacher and her former husband was a businessman. The Defendant had no previous criminal record. The defendant trusted her former husband and accepted from him a deposition of a total amount of HK\$2.5M into her bank account. The defendant followed her former husband’s instructions and distributed the money in small sums to a number of anonymous persons suggested by him. The defendant, however, did raise questions about the source of funding and the identity of those persons. The former husband stressed that the money came from investments and winnings from gambling in Macau.

The Court said that the unknown identity of depositors, short duration of deposition and frequent withdrawals were the unusual circumstances of the case. The ex-wife should be alert about those circumstances. The Court therefore ruled that the defendant, at all material times, had the “reasonable ground to believe” that the money was illegal. Sadly, she was convicted (宣告有罪) by the judge.

(C) **Practical Advice** (有用建议)

The rule of thumb for all international traders is that you should always find out and understand more about your trading counterparts (贸易对手). Be aware of any unusual or strange features in the trade transactions and keen to question your customers or trading partners on those features until you can put “your heart at ease”. We have here a couple of tips:

(i) **Due Diligence** (合理调查)

- (1) Traders can conduct a search on their counterparts’ background from the Companies Registry in Hong Kong or overseas. By doing this, traders can understand more about the company history, identities of the directors and shareholders behind the company.
- (2) Another useful thing to do is to talk to the traders’ business contacts in order to understand more about the reputation of the company and people behind the operation.
- (3) Traders can contact and seek further information from local chambers of commerce concerning the local trade practices and the legal procedures by which money can be remitted in foreign countries.
- (4) Traders can verify with the local banks and government authorities for the proper licensing status of money changers.
- (5) Traders can demand bank credit reference of the counterpart.
- (6) Traders can consult lawyers about the law of foreign currency control.

(ii) **Examples of unusual circumstances** (特殊环境因素)

- (1) The money in question comes from anonymous third parties and not from proper bank transfers of customers.
- (2) The invoice is not settled by a lump sum but instead by small fractions of money from different sources.
- (3) Customers are able to remit a large sum of money to you from a country with stringent foreign currency controls.
- (4) Customers avoid settling your invoice through bank payment and insist on paying cash.

As an international trader, you must be curious about things around the trade transactions. The law requires you to enquire all relevant circumstances and refuse to accept any sum of money coming from suspicious and unusual circumstances.

Nothing shall constitute legal advice to any person by Messrs. Maurice WM Lee Solicitors (Tel: (852) 2537 5833) (Website: www.wmleehk.com)

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