

FIRST PROSECUTION IN SINGAPORE OF A DIRECTOR FOR COMPANY MONEY LAUNDERING

The Singapore High Court has convicted and sentenced a director to imprisonment for charges relating to money laundering activities carried out by the company. The case is the first reported case of a director being sentenced to imprisonment for failing to exercise reasonable diligence under the Companies Act (CA).

The landmark case demonstrates that directors and officers (including local resident non-executive directors) may be held liable and sentenced to imprisonment for money laundering activities facilitated by their companies.

BRIEF FACTS

The Director in *Abdul Ghani bin Tahir v Public Prosecutor* [2017] SGHC 125 was a chartered accountant who provided corporate secretarial services to small and medium businesses.

The Director agreed to incorporate four companies in Singapore on behalf of foreign nationals. The companies included Kassar Logistics Pte Ltd (Kassar), World Eastern International Pte Ltd (World Eastern) and two others.

Because the executive directors of these companies were based overseas, the Director agreed to act as the local resident director for all these companies, even though he had neither met nor spoken with the directors of the companies or their shareholders.

THE CDSA CHARGES

The charges were brought under the Corruption, Drug Trafficking and other Serious Crimes (Confiscation of Benefits) Act (CDSA), in particular section 47(1)(b), under which it is an offence for any person to transfer the benefits of criminal conduct; and section 59(1), which states that where an offence by a body corporate is proved to have been committed with the consent or connivance of an officer, or to be attributable to any neglect on their part, the officer as well as the body corporate shall be guilty of the offence.

An officer convicted under section 59(1) of the CDSA may be fined up to SGD500,000, or imprisoned for a term not exceeding 10 years, or both.

RED FLAGS

It emerged that the Director was aware and suspected that Kassar and World Eastern were involved in money laundering activities, and had failed to act on

Key issues

- The authorities will vigorously pursue enforcement action against individuals to deter AML crimes.
- Directors and officers – including non-executive directors – can be convicted and sentenced to imprisonment if they negligently discharged their duties.
- Directors and officers should exercise vigilance to avoid personal liability.

certain "red flags" that illicit activities were being conducted by these companies.

These included bank account applications having been rejected after the directors failed to pass the bank's due diligence checks. The Director admitted he had chosen to ignore his suspicions and had proceeded to incorporate the companies.

He had also chosen to ignore multiple discrepancies in the name, address and contact details of one of the companies and ignored seven rejected payment notices from the bank that should have alerted him to a probable fraudulent transaction.

The Director had earlier been informed by the Commercial Affairs Department that it was investigating Kassar in relation to possible CDSA offences.

The High Court held that the circumstances above ought to have put the Director on notice that illicit activities were being carried out through World Eastern, and that he ought to have stepped up his supervision of World Eastern's activities.

NEGLIGENCE

The High Court held that the illicit activities carried out by World Eastern were attributable to the Director's negligence, clarifying that any degree of attribution will be sufficient to substantiate a charge under section 59(1) of the CDSA. This interpretation is in line with Parliament's intent to hold officers criminally liable for the actions of corporate bodies that they manage or control.

To prove neglect, it must be shown that the officer knew or ought to have known of the existence of facts requiring him to take steps which fell within the scope of the functions of his role to prevent the commission of the offence by the company, and that he failed to take such steps.

The High Court held that negligence was clearly proven on the facts. Had the Director made a police report in view of the "red flags", it was entirely possible that World Eastern's bank accounts would have been frozen before the money laundering transactions took place.

NON-EXECUTIVE DIRECTORS

The High Court held that even in the Director's limited role as a non-executive director, the surrounding facts and circumstances ought to have made him aware of the money laundering activities and whether there were steps which he could have taken to ensure that World Eastern was not engaging in criminal acts.

LIABILITY AND SENTENCE

An officer is liable under section 59(1) of the CDSA, if it is proved that an offence has been committed by his company with his consent or connivance or was attributable to any neglect on his part.

Whilst the starting point for a pure "neglect" charge would usually be a fine, the High Court said that a custodial sentence can be imposed in the presence of aggravating factors such as where the conduct has been reckless or the offence committed for financial gain.

The High Court found that the Director's lack of vigilance evolved from mere negligence to sheer recklessness by the time he received the fourth rejected payment notice from the bank alerting him to a probable fraudulent transaction.

Against that background, the Director was sentenced to 12 months' imprisonment and a fine of SGD50,000.

On the separate CA charge, of failing to act honestly and use reasonable diligence in the discharge of his duties as a director (section 157(1)), the High Court found that the Director had breached his duty to exercise reasonable diligence.

As with the CDSA charges, the High Court found that the Director was initially negligent, but became reckless when he failed to act on the fourth recall notice by the bank.

A custodial sentence of four weeks was imposed, and this was ordered to run concurrently with the sentence under the CDSA charges.

ANALYSIS

Money laundering and other financial crimes are issues that are being scrutinised very closely by the authorities in the current climate. The case shows that the authorities will pursue enforcement action against directors and officers to deter such crimes, as they are the gatekeepers of organisations.

Directors and officers (including non-executive directors) should exercise vigilance in detecting and preventing illicit activities within their companies. Otherwise, there is a real risk that they will be prosecuted by the authorities and fined or even sentenced to imprisonment, regardless of whether they masterminded the crime.

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