Interpretations on Several Issues Concerning Application of the Law in Trials of Criminal Cases Such as Money Laundering

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China's Supreme People's Court (SPC) has issued the *Interpretation on Several Issues Concerning Specific Application of the Law in Trials of Criminal Cases Such as Money Laundering* (Anti-Money Laundering Interpretation), increasing the legal burden on defendants who claim they didn't know they were laundering money and expanding the types of activities that can constitute the crime of money laundering. Published on November 4, and effective a week later, the Anti-Money Laundering Interpretation is designed to help the government crack down on various types of economic crime.

The Anti-Money Laundering Interpretation addresses the crime of money laundering as defined in Article 191 of the PRC Criminal Law. Money laundering is a problem in China. In October 2006, the Standing Committee of the National People's Congress broadly addressed the issue at an administrative level by enacting the PRC Anti-Money Laundering Law and creating a nationwide regulatory scheme to combat money laundering.

Legal Definitions

Money laundering is defined as a crime under Article 191 of the PRC Criminal Law, which provides for the seizure of funds, fines and up to ten years' imprisonment. Article 191 says any person who "obviously knows" that funds were obtained illegally from drug-related crimes, organized crime, smuggling or terrorism and commits any of the following acts to "conceal the source or nature of the funds" is guilty of money laundering:

- Providing an account for storing or depositing the money.
- Helping to exchange valuables into cash or any other form of negotiable instrument.
- Helping to transfer capital through a bank account or any other form of settlement.
- Helping to send funds out of China.
- Any other means of concealing or covering up the source or nature of illegally obtained proceeds or funds.

Presumption of Guilt

The Anti-Money Laundering Interpretation places a substantial burden on those accused of money laundering, presuming them guilty, in some circumstances, unless they can otherwise show they did not know how the illegally obtained money was gotten.

That presumption of guilt will apply in the following circumstances:

- A person with knowledge of a crime helps to transfer or convert valuables into cash.
- A person assists in the transfer or conversion of valuables through illegal channels without justification.
- An individual accepts valuables at a price that is obviously lower than market value without justification.
- An individual assists in the transfer or conversion of valuables and, without justification, receives a commission well above market value.
- Someone helps another person to deposit "huge" (not otherwise defined) amounts of cash into several different bank accounts, or frequently transfers money between accounts without justification.
- A person helps relatives or others to whom he is close transfer or convert valuables that do not correspond to the relatives' or others' occupation or financial status.
- Other circumstances where the individual can be considered to "obviously know" the illicit origin of property.

Expanded Activities That Constitute the Crime of Money Laundering

The Anti-Money Laundering Interpretation also adds six activities that may be considered "covering up or concealing the source or nature of illegally obtained proceeds and gains" as defined under the PRC Criminal Law, thus expanding the scope of money laundering activities from finance and banking to other fields.

Under this expanded definition, improper means of transferring or converting the illegal proceeds and gains may include:

- Through mortgages, leases, trades, investments and other similar activities
- Through mixing illegal proceeds or gains with the legal turnover of shopping centers, hotels, entertainment venues and other businesses that have a large cash turnover
- Through fraudulent transactions, financial misstatements, bogus bonds and similar means
- Through trade in lottery or similar tickets
- Through gambling
- Through helping to carry, transport or otherwise deliver the illegal proceeds or gains into or out of China

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