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Legal Sidebar

DOJ Brings Forfeiture Action to Seize and Return $1 Billion Embezzled Malaysian Government Assets

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On July 20, 2016, the Department of Justice (DOJ) announced that it had filed civil forfeiture actions in the U.S. District Court for the Central District of California seeking to seize and return to the Malaysian government more than $1 billion worth of assets in the United States and abroad. These constitute or are derived from the proceeds of a conspiracy lasting from 2009 through 2015 embezzling $3.5 billion from the Malaysian government's sovereign wealth fund, 1Malaysia Development Berhad, (1MDB). The complaints allege that high-level officials of 1MDB and their associates, including Riza Aziz, the stepson of the premier of Malaysia, Najib Razak, embezzled 1MDB funds, placed them in various financial institutions in several countries, and through multiple shell companies and investment vehicles acquired specified assets in the United States, Switzerland, and the United Kingdom. It is further alleged that these assets are subject to forfeiture under the civil forfeiture statute, 18 U.S.C. § 981(a)(1)(C). That statute authorizes the forfeiture of the proceeds of money laundering offenses specified in 18 U.S.C. §§ 1956 and 1957. These statutes outlaw laundering of proceeds generated by designated federal, state, and foreign underlying crimes (predicate offenses) provided there has been an involvement of certain financial transactions or international wire transfers. The effort to recover assets for Malaysia relies on one of these predicate offenses, 18 U.S.C. § 1956(c)(7)(B)(iv), "an offense against a foreign nation involving ... theft, embezzlement, or misappropriation of public funds," provided it is "with respect to a financial transaction occurring in whole or in part in the United States."

The case is part of an international effort to fight foreign corruption embodied in the United Nations Convention Against Corruption, of which the United States is a state party. Foreign corruption offenses have been predicate offenses for federal money laundering prosecutions since the 2001 enactment of section 315 of the USA PATRIOT Act, P.L. 107-56. Treasury's Financial Crimes Enforcement Network (FinCEN) is the agency charged with issuing regulations to implement the Bank Secrecy Act's anti-money laundering requirements for financial institutions. Since 2001, FinCEN has included in its requirements for financial institutions to file Suspicious Activity Reports (SARs), instructions on monitoring transactions for red flags that may indicate foreign corruption. FinCEN's regulations also include due diligence requirements with respect to private banking relationships for senior foreign political figures. In 2001, FinCEN issued Guidance on Enhanced Scrutiny for Transactions That May Involve the Proceeds of Foreign Official Corruption. In 2008, FinCEN issued Guidance for Suspicious Activity Reporting on the Proceeds of Foreign Corruption.

The value of the assets sought in this case is larger than any case previously brought. This is the result of work by DOJ's Kleptocracy Asset Recovery Initiative (Initiative), a unit established in 2010 in the DOJ Criminal Division's Asset Forfeiture and Money Laundering Section. The Initiative includes teams of prosecutors partnering with federal law enforcement agencies, including the Federal Bureau of Investigation, the Internal Revenue Service, and the Department of Homeland Security. These teams focus on recovering and restoring funds to nations victimized by high level officials who have diverted national wealth to their personal use. These efforts resulted in the November 2015 return of over $1 billion in forfeited assets to the Republic of North Korea recovered in two civil forfeiture actions related to "a public corruption scheme orchestrated by former Korean President Chun Doo Hwan in the 1990's ... laundered to the United States by Chun's family members and associates."

Among the assets that DOJ is seeking for Malaysia are real estate in Los Angeles, New York City, and London, U.K.; a

private jet plane; French Impressionist art works; copyright and intellectual property rights; a limited liability company; and all assets of Red Granite Pictures, Inc., and its affiliates, that produced the Hollywood movie, "The Wolf of Wall Street." As a means of establishing federal jurisdiction, the court filings mention various U.S. and foreign banking and financial institutions as having handled transactions or accounts associated with the conspiracy. For example, Goldman Sachs International underwrote, for the sovereign wealth fund, two bond issuances. The proceeds of these issuances are alleged to have been misappropriated and moved through shell companies and Swiss bank accounts for the personal benefit of 1MDB officials and their associates. The filings also mention records of other financial institutions, including J.P. Morgan Chase and Wells Fargo, showing transfers of funds involved in the conspiracy, and an Interest on Lawyer Account held by the law firm Shearman & Sterling LLP in the United States. The complaints contain no allegation with respect to any involvement of these entities in the criminal money laundering conspiracy. However, there are reports that the Goldman Sachs dealings with the sovereign wealth fund are being investigated by the New York State Department of Financial Services, DOJ, the Federal Reserve, and the Securities and Exchange Commission.

The extensive investment in this case of the money laundered funds in real estate in Los Angeles and New York City may have contributed to FinCEN's action on July 28, 2016, in issuing geographic targeting orders (GTOs) that "temporarily require U.S. title insurance companies to identify the natural persons behind shell companies used to pay 'all cash' for high-end residential real estate in six major metropolitan areas." Earlier GTOs applied to Manhattan and Miami-Dade County, Florida. The new GTOs apply to (1) all boroughs of New York City; (2) Miami-Dade County and the two counties immediately north (Broward and Palm Beach); (3) Los Angeles County, California; (4) three counties comprising part of the San Francisco area (San Francisco, San Mateo, and Santa Clara counties); (5) San Diego County, California; and (6) the county that includes San Antonio, Texas (Bexar County).

For the 114th Congress, the case may be a means of directing attention to some current legislative proposals. It illustrates the difficulty that the lack of transparency of shell companies poses for law enforcement agencies seeking to trace the proceeds of criminal activity. According to the Attorney General, "[t]his case is a perfect example of how shell companies can be used by criminals and kleptocrats and other people to steal money, hide money, launder money and make it very difficult for law enforcement to find out who controls that money....It's a big problem globally but it's also a problem in the United States." That is equally true with respect to tracing funds destined to finance terrorist activities. In the 114th Congress there have been various legislative proposals to address this issue, as detailed in an earlier Legal Sidebar posting. In addition to releasing final rules requiring financial institutions to identify the beneficial owners of legal entities, the Department of the Treasury has requested that Congress enact a statute establishing a data base reflecting the beneficial ownership of recently established legal entities.

For further information, see CRS Report RS22401, Crime and Forfeiture In Short, and CRS Report RL3315, Money Laundering: An Overview of 18 U.S.C. 1956 and Related Federal Criminal Law,by Charles Doyle.

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