

A Review on the Amendment to Money Laundering Offenses: Focusing on the Development of Taiwan's Criminal Practice

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Abstract

This article aims to discuss how to interpret the amendment to Money Laundering Control Act (MLCA). Discussion will focus on general money laundering offense (Paragraph 14 MLCA) and special money laundering offense (Paragraph 15 MLCA) together with two important cases in Taiwan's criminal justice: provider of dummy account as well as money mule. In addition, the author tries to justify the punishment of money laundering on the basis of its protective interests and propose a different point of view for legitimate judicial mechanism applicable to money laundering offenses:

(1) Not only general, but also special money laundering offense protect the judicial administration of the predicate crime with regard to its effective conviction, sentencing and sanction. The transparency of cash flow should not constitute the core ground for the incrimination of money laundering.

(2) "Disguise or conceal the crime proceeds" should be deemed as the fundamental act of general money laundering offense. Nevertheless, "transfer, transform, acquire, possess or use the crime proceeds" should be defined as an alternative act of "disguising or concealment of the crime proceeds" in terms of general money laundering offense.

(3) Special money laundering offense is not applicable to those cases in which the predicate crime has been confirmed.

(4) "Dummy account provider" may only constitute the accessory of money laundering through transferring the crime proceeds, if he knows the accomplices

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will use the dummy account for further transfer of the crime proceeds to escape from criminal investigation.

(5) "Money mule", who withdraws the crime proceeds from the bank account, may not commit the special money laundering offense, since the predicate crime has been identified. He may not constitute the general money laundering offense, if his involvement in the commission of the predicate crime, even as an accessory, is confirmed by court. However, he can commit general money laundering offense by possessing the crime proceeds, if he is not involved in commission of the predicate crime.

Keywords: money laundering, special money laundering, provider of dummy account, money mule, judicial administration, transparency of cash flow