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UNIVERSIDADE DE MACAU

Faculty of Law

Master and Postgraduate Program in

International Business Law

2010/2011

Anti-Money Laundering Law

Course description

Course outline

Sources

Compulsory reading materials

Other materials for further research

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Last updated 20 Feb 2011



澳門大學

UNIVERSIDADE DE MACAU

Course description

This course description refers to the second part of the discipline of Anti-Money Laundering Law, which amounts to half of the sessions (10 hours).

This part attempts a panoramic overview of a range of international and European efforts to prevent and combat international crime by the financial or patrimonial flank, an area which we broadly designate as *patrimonial (or financial) strategies of crime control* (PSCC).

The first key objective of the discussion is to identify the main legal instruments applicable in this area of the law, and the manner in which they address each of the individual patrimonial strategies of crime control or, in other words, which requirements are imposed on State Parties of Member States. This exercise is pursued in three areas:

- a) *General international law*, concentrating on UN instruments;
- b) *European law*, concentrating on efforts pursued under all three 'pillars' of the EU legal framework;
- c) *domestic law*, taking the law of the Macau SAR as an example of one possible manner in which these standards have been implemented in the domestic order.

The second broad objective is to identify particular areas where problems as to effectiveness and impact on human rights have emerged and therefore where further research is needed.

A special reference shall be made to the evolving Ao Man Long corruption and money laundering case in Macau, which has now generated two decisions of the Macau Court of Final Appeal (relating to Ao Man Long) and three of the Court of Second Instance (relating to family members and various businessmen). These cases are quite important due namely to the fact the courts advance many detailed interpretations on points of anti-money laundering law.



澳門大學
UNIVERSIDADE DE MACAU

Course outline

1. The concept of patrimonial strategies of crime control
2. Evolution of patrimonial strategies of crime control
3. The crime of money laundering
4. The crime of financing of terrorism
5. Confiscation of proceeds of crime
6. Prevention and detection mechanisms
7. Asset freezing
8. Civil confiscation
9. The Ao Man Long corruption and money laundering case



澳門大學

UNIVERSIDADE DE MACAU

Key international sources (in force)

A. United Nations (conventions)

1966	UN	International Covenant on Civil and Political Rights (ICCPR)
1988	UN	Vienna Convention
1999	UN	Suppression of the financing of terrorism
2000	UN	Transnational organized crime convention
2003	UN	Convention against corruption

B. United Nations Security Council Resolutions

2001	UN SC	Res 1373
2009	UN SC	Res 1904

C. Council of Europe

1950	CoE	European Convention on Human Rights
1999	CoE	Criminal law convention on corruption
2005	CoE	Convention 198

D. FATF

2001	FATF	Eight special recommendation on financing of terrorism
2003	FATF	Forty recommendations

E. Basel Committee

2001	Basel Committee	Customer due diligence for banks
2003	Basel Committee	Shell banks and booking offices

F. EC/EU

2002	EU	European arrest warrant
2003	EU	Framework Decision on freezing assets and evidence
2004	EU	Mutual recognition of confiscation orders
2005	EU	Framework Decision 2005/212/JHA, on



澳門大學

UNIVERSIDADE DE MACAU

		expanded confiscation
2005	EC	Directive 2005/60/EC, Third anti-money laundering Directive
2007	EU	Treaty on the Functioning of the European Union (TFEU)

II. Key international sources (revoked or being superseded)

1988	Basel Committee	Statement on money laundering
1990	FATF	Forty recommendations
1990	CoE	Convention 141
1991	EC	First anti-money laundering Directive
1996	FATF	Forty recommendations
1998	EU	Joint Action on confiscation
2001	EC	Second anti-money laundering Directive

III. Macau Instruments (in force)

1993	DL 32/93/M	Customer identification for banks
1995	Penal Code, art.103	Confiscation of proceeds of crime (general rules)
2002	Law 4/2002	Application of international law in the SAR
2003	Law 11/2003, art. 28	Confiscation of proceeds of crime with reversal of the burden of proof (corruption cases)
2005	Circular 007/B/2005-DSB/AMCM	Terrorist financing
2006	Law 2/2006	Money laundering
2006	Law 3/2006	Financing of terrorism
2006	Administrative Regulation 7/2006	Regulation of Law 2/2006 and 3/2006
2006	DICJ	Instruction 2/2006



澳門大學

UNIVERSIDADE DE MACAU

2006	Macau Lawyers' Association	Instruction 1/2006
2006	GIF	Dispatch of the Chief Executive no. 227/2006 (creation of GIF)
2009	Law 17/2009	Drug trafficking
2009	AMCM	AMCM guidelines for financial institutions
2009	AMCM	AMCM guidelines for cash transactions

IV. Macau Instruments (revoked)

1991	DL 5/91/M	Confiscation of proceeds of crime (drug trafficking cases)
1997	Law 6/97/M	Law on organized crime (partly revoked) (crime of money laundering, art. 10)
1998	DL 24/98/M	Reporting of suspicious transactions
2002	AMCM Circular 073/B/2002	Guidelines for financial institutions
2002	AMCM	guidelines for cash transactions
2006	AMCM	AMCM guidelines for financial institutions
2006	AMCM	AMCM guidelines for cash transactions

V. Macau case law

(available at www.court.gov.mo)

Court of Final Appeal (TUI)

- Ac. TUI 16 March 2001, pr. 16/2000 [Wan Kuoc Koi case]
- Ac. TUI 20 October 2004, pr. 37/2004 [Wan Kuoc Koi related case]
- Dispatch of rapporteur 12 December 2007, pr. 36/2007 [first Ao Man Long case: interim decision on right to appeal]
- Ac. TUI 30 January 2008, pr. 36/2007 [first Ao Man Long case: final decision]
- Ac. TUI 22 April 2009, pr. 53/2008 [second Ao Man Long case]



澳門大學

UNIVERSIDADE DE MACAU

- Ac. TUI 17 July 2009, pr. 20/2009 [fixation of jurisprudence regarding money laundering]

Court of Second Instance (TSI)

- Ac. TSI 14 June 2007, pr. 437/2006-II [the case of the kidnapping in Taiwan]
- Ac. TSI 30 October 2008, pr. 450/2008 [first case of family and businessmen]
- Ac. TSI 19 March 2009, pr. 572/2008 [second case of family and businessmen]

VI. Other case law

United States Supreme Court

- *California Bankers Association v. Shultz*, 416 U.S. 21 (1974)

European Court of Human Rights

- *Phillips v. UK* (2001)

European Court of Justice

- Cases C-402/05 P and C-415/05 P, *Yassin Abdullah Kadi and Al Barakaat International Foundation*, 3 September 2008 (joined cases)

Court of First Instance

- Case T-306/01, *Yusuf and Al Barakaat International Foundation v Council and Commission*, 21 September 2005, [2005] ECR II-3533
- Case T-315/01, *Kadi v Council and Commission*, 21 September 2005, [2005] ECR II-3649



澳門大學

UNIVERSIDADE DE MACAU

Reading Materials

Compulsory reading materials

- JORGE GODINHO, 'Financial strategies of crime control in the Macau SAR', in JORGE GODINHO (ed.), *Studies in Macau civil, commercial, constitutional and criminal law*, LexisNexis, Hong Kong, 2010, pp. 249 ff.
 - Portuguese and Chinese versions of this text, slightly more dated, have been published: Jorge Godinho, 'Estratégias patrimoniais de combate à criminalidade: o estado actual na Região Administrativa Especial de Macau', in Leonel Alves e Paulo Cardinal (coords.), *Primeiras Jornadas de Direito e Cidadania da Assembleia Legislativa*, Coimbra Editora, Coimbra, 2009, pp. 139-177 (Portuguese/Chinese). [Portuguese version available at SSRN: <http://ssrn.com/abstract=1374164>]
- JORGE GODINHO, 'When Worlds Collide: Enforcing United Nations Security Council Asset Freezes in the EU Legal Order', *European Law Journal*, vol. 16, no. 1, January 2010, pp. 67–93 [electronic version available at SSRN: <http://ssrn.com/abstract=1502106>].
- JORGE GODINHO, 'Civil confiscation of proceeds of crime: a view from Macau', in SIMON YOUNG (ed.), *Civil forfeiture of criminal property: Legal measures for targeting the proceeds of crime*, Edward Elgar, 2009, pp. 321-334.

Other reading materials

- JORGE GODINHO, 'The Ao Man Long corruption and money laundering case in Macau', in *Freedom from Fear* [magazine published by the United Nations Interregional Crime and Justice Research Institute –



澳門大學

UNIVERSIDADE DE MACAU

UNICRI, Turin, Italy], 2009 (available at www.freedomfromfearmagazine.org)

- JORGE GODINHO, 'Do crime de «riqueza injustificada» (Artigo 28.º da Lei n.º 11/2003, de 28 de Julho)', *Boletim da Faculdade de Direito da Universidade de Macau*, vol. 11, no. 24, 2007, pp. 17 ff. (available in Portuguese and Chinese) [Portuguese electronic version available at SSRN: <http://ssrn.com/abstract=1097243>].



澳門大學

UNIVERSIDADE DE MACAU

SUGGESTED READING MATERIALS FOR FURTHER RESEARCH

A catalogue reference to the library of the University of Macau (<http://library.umac.mo/lib.html>) is given below, between square brackets, whenever possible.

Please report any questions, updates or corrections to jgodinho@umac.mo.

1. English language

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- AMBOS, KAI — 'The International Criminal Court and the traditional principles of international cooperation in criminal matters', *Finnish Yearbook of International Law*, 1998, 413 ff.
- BANTEKAS, ILIAS — 'The international law of terrorist financing', *American Journal of International Law*, 2003, 315 ff.
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- BETLEHEM, DANIEL — 'The European Union', in VERA GOWLLAND-DEBAS (ed.), *National implementation of United Nations sanctions. A comparative study*, Martinus Nijhoff, Leiden/Boston, 2004, 123 ff.
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澳門大學

UNIVERSIDADE DE MACAU

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澳門大學

UNIVERSIDADE DE MACAU

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- FIANDACA, GIOVANNI and COSTANTINO VISCONTI — ‘Theoretical and criminal policy foundations for a model of ‘extended’ confiscation in the ambit of organized crime’, in VICENZO MILITELLO and BARBARA HUBER, *Towards a European criminal law against organised crime. Normative Proposals of the joint European project to counter organised crime*, Max-Planck-Institut für ausländisches und internationales Strafrecht, Freiburg im Breisgau, 2001, 73 ff.
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澳門大學

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For materials in other European languages (Portuguese, Spanish, Italian, French, German) please contact Prof. Godinho directly.