

Fraud in trade finance

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The history of commodity finance is punctuated by frauds whose typical forms the practitioner in Zug must know. The most common are the double financing of the same goods by different banks, through the presentation of the same or duplicated documents; the financing of goods that do not exist, through forged bills of lading, warehouse receipts or inspection certificates; the circular trading of goods between related companies to generate receivables that are financed several times; and the diversion of the proceeds of sale away from the accounts pledged to the lenders.¹ The frauds uncovered in 2020 involved several of these techniques at once. Swiss criminal law addresses these frauds through the offences of fraud, forgery of documents and misappropriation, and, where the proceeds are laundered, through the offence of money laundering.² The prosecution of such frauds is often international, since the goods, the documents, the banks and the perpetrators are located in several jurisdictions. The cantonal prosecutors of Zug and the Office of the Attorney General therefore cooperate with foreign authorities through mutual assistance. The civil recovery of the losses requires the tracing of the proceeds through the bank accounts and companies of several jurisdictions, a task that practitioners in asset tracing undertake with the help of the attachment procedures and the disclosure orders available in Switzerland and abroad.

1 Notes

1. Global Trade Review, "Analysis: Hin Leong's 'vicious cycle' of trade finance fraud", 19 August 2020, gtreview.com: fictitious trades in which one cargo was sold to several parties, double pledging, forged bills of lading, invoices and bank statements, and a financing scheme sustained by further financing; Public Eye, "The Intricacies of Commodities Trade Finance", September 2020, p. 11: funding for the same cargo from numerous banks (ZenRock) and sale of the collateral securing letters of

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credit (Hin Leong); South China Morning Post, "Qingdao Port says 400,000 tonnes of metals involved in financing fraud", scmp.com: the same metals pledged multiple times at different banks. ↩

2. Art. 146 (fraud), Art. 251 (forgery of documents) and Art. 138 (misappropriation) StGB (SR 311.0), swissrights.ch; Art. 305bis StGB (money laundering), droit-bilingue.ch. ↩

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Online version: helveticaregister.com/zug-fraud-in-trade-finance