

BUSINESS CRIME DEFENCE

FRAUD AND ASSET RECOVERY



Here we take a look at the issues surrounding fraud and asset recovery by speaking exclusively to Carlo Zaccagnini, Attorney at Law from Studio Legale Zaccagnini in Rome, Italy. Carlo has represented individuals and corporations, including major defense contractors and corporations, in connection with criminal investigations or prosecutions across the country. The firm was founded in 2001 and maintains a substantial white collar crime practice covering Ponzi schemes, Carousel frauds, international V.A.T. frauds, money laundering, international corruption, financial crimes, bank offences and bankruptcy frauds. The firm is also experienced in the European Arrest Warrant (E.A.W.) procedure and in precautionary measures to be enforced abroad.

Economic crime in Italy – such as fraud and corruption continues to be a major concern for businesses of all sizes regardless of the industry they operate. Is still like that in your experience?

Italy is a country full of excellences in all sectors of sciences and laws. It is largely recognized that my country is affected by two main macro issues: organized crime - such as Mafia, Camorra, 'ndrangheta' and the rest of Sacra Corona Unita - and a high average of corruption affecting the public administration. In Italy, organized annual crime revenues were estimated at € 150 billion in 2011 (in the United Kingdom in 2006 organized criminal revenue was estimated at £15 billion). Italy's Court of Auditors - so called "Corte dei Conti" - estimate that corruption costs the Country €60 billion per year; unfortunately, only €293 million in penalties were recovered in 2010. The aforesaid elements - organized crime and corruption, which have been recently linked in a police operation called Mafia Capitale which brought to arrest 38 people and under investigation previous Major of Rome G. Alemanno - are followed by a third component which plays a significant role in terms of illegality : I am talking of the endemic tax evasion attitude of Italians; I guess I am not far from the truth if I say that the people perceive political parties to be the most corrupt institution in the country and seem therefore indisposed to their fiscal duties.

Provided this general framework, Judiciary power (and in criminal sector of Judicial system) the power of Public Prosecutor (or District Attorney for the U.S.), is, since 1993, considerably increasing. However it should be said that some of the most relevant

investigations lately undertaken by the Prosecutors of Milan and Rome suffered of a gap of coordination between different offices of law enforcement agencies and a misplacement of resources.

As an experienced lawyer in this field, how do you advise your clients when it comes to avoiding fraud?

It should be said that each fraud needs a proper attitude to be detected; we could scrutinize for example the "Ponzi scheme": this kind of fraud promises high financial returns or dividends unavailable through traditional investments. Instead of investing the funds of victims, however, the fraudster pays "dividends" to initial investors using the funds of subsequent investors. The scheme generally falls apart when the agent flees with all of the proceeds or when a sufficient number of new investors cannot be traced to allow the continued payment of "dividends." This fraud is named by its creator, Charles Ponzi Italian-American of Boston. For avoiding Ponzi Schemes, one must be careful of any investment opportunity that makes exaggerated earnings claims. One should exercise due diligence in selecting investments and the people with whom they invest. It is very simple to say, but very difficult to apply in practice because, as Saint Paul teaches, "Radix omnium malorum avaritia est.(Greed is the root of evils)" (First letter to Timothy, 10,2)

What are the main legal challenges raised by these preventative measures?

Coming back to Preventative Measure and Confiscation Law or Precautionary Freezing it was imagined and enforced as a tool against

organized crime: with the amendments operated by the Legislator in 2011, it could be enforced also against individuals not accused of being a part of a criminal organization. It was studied that the application of non-conviction based confiscation as the Preventative Measure and Confiscation Law consisting in freezing and confiscating assets irrespective of a prior conviction of the owner in a criminal court may had a substantial impact on organized crime. In Italy the enforcement of the aforesaid non-conviction based confiscation allowed Public Prosecutors, in 2010, to freeze, in a single case, assets estimated to be worth € 700 million. Moreover, in 2008, Italy passed legislation which could prevent the heirs from a deceased defendant, whose assets have been frozen, from legally inheriting the assets and having them released. The core of the Preventative Measure and Confiscation Law, from a pure juridical perspective, leans on an inversion of the burden of proof: if the accused is incapable of explaining the legal origin of all these assets, nor the disproportion between their declared revenues and the frozen assets the latter will be confiscated.

How would you change the law on anti-corruption, if you could?

The government's efforts to tackle corruption include the recent ratification of the Council of Europe's Criminal and Convention on Corruption in 2012. More must be done on the side of Trafficking in human beings: the phenomenon is globally worth USD 42.5 billion per year according to the Council of Europe. **LM**