

Crimes of Embezzlement and Bribery in the Financial Field and Their Investigation

Jun Jin
Director
Hubei Province People's Procuratorals
P.R. China

Recently the south-east financial crisis has clouded over the global financial world and greatly affected the international economy. Professionals in the financial field agree that financial crime is an important factor responsible for the financial crisis, apart from other factors like inadequate banking systems, disproportionate loans and large amounts of dead accounts. In China, with the development of the socialist market economy, financial systems have undergone an essential revolution, especially with the development of professional banks, commercial banks, stocks and future markets. Financial business has become a key financial resource of national economy and a key regulator of the national macro-economy. But as the financial market itself operates a large-scale capital and the operation is largely predictive, speculative and risky and as the operation of the financial market lacks a competent macro-management system and financial supervision system, crimes of embezzlement and bribery in the financial field is not decreasing, but on the contrary, tremendously increasing. Furthermore, the means of bribery and corruption is upgraded with time passes by and the capital involved is becoming larger and larger.

International financial crimes and cross-border financial crimes have been increasing too. Crimes of embezzlement and bribery in the financial field have not only seriously impaired China's financial and economic systems, but also resulted in heavy loss of public funds. Furthermore, it seriously impedes the development and implementation of the socialist market economic system. Thus, a correct understanding of the critical condition of embezzlement and bribery in the financial field is significant. We should research and plan according strategies to effectively curb the financial crimes and eradicate the hidden dangers of regional financial risks and crisis. In this way, the smooth running of the market economy and healthy development of national economy will be guaranteed.

1. Present development trend of crimes of embezzlement and bribery in the financial field.

(1) The crime has expanded from the ordinary practices such as capital deposit and capital loan transactions to diversified, comprehensive and

trans-industry practices such as stock exchange, capital loans and bills discount market. In the past, embezzlement and bribery practices were comparatively limited to bank's routine businesses, such as credit loan, capital deposit, account settling and exchange. Recently, financial crimes have penetrated into various fields of the financial market, esp. those new financial fields well adapted to the market economy. One of the financial fields is capital loans market where there have been rampant financial crime practices. The criminals mostly take advantage of their right of different parties in the capital loans to get their "processing fee" or "information fee" from the public funds. Another financial field where there have been rampant financial crime practices is the stock exchange market. Criminals steal or confiscate stockholders' stock deposit with their processing right in the security and stock exchange transactions. They make profits in trading stocks and state credit bills when there are price differences between that in different periods and places. They sometimes ask for "processing fee" or embezzle transactions' profits when they are entrusted to sell enterprises' stocks. The third financial field is the bills discount market. In order to collect more short-term money in the financial market, more and more companies tend to sell their bills in discount to banks or other financial services in exchange of cash. So bills have been involved in the bills discount market. At the same time, criminals in the financial services begin to embezzle state funds in this way.

(2) Financial crimes have developed from taking the sole advantages of "power of position" to taking the double advantages of "power of position" and "convenience of job". With the development of financial systems, financial crimes convicted by solely taking advantage of "power of position" are not so easy. So the following situations might take place. One, to embezzle money by taking advantage of one's job to collect and keep enterprises' bills. The criminals collect more money than they draw and offset the spending with other financial items so that they can embezzle or keep a part of the funds to circulate repeatedly. Two, criminals take advantage of their business relationship with other financial services and help these financial services to loan funds in order to embezzle or ask for bribery. Three, take advantage of one's familiarity with a certain kind of financial business. Criminals usually commit crimes with a third party (someone that has a very special relationship with the criminals), when him/herself could not have direct access to the kind of business.

(3) Financial criminals turn from the working staff in the financial services to a complex group with both the interior staff of the financial services and their external accomplices. Observing from the cases in recent years, the financial crimes in the financial field are mostly conducted by groups. The major characteristics are: (1) joint commission of crimes by internal working staff members. Some collaborate with computer operators to embezzle stock

holder's deposit; Some take advantage of each other's power of position (such as one supplies for a loan and the other ratifies the application) to embezzle the loans. (2) Joint commission of crimes by internal working staff and external accomplices. Some transfer accounts through private enterprises' accounts; Some ask for bribery by providing cash; Some get profits from buying stocks. (3) joint commission of crime by offering a bribe. Some illegally ratify loans after taking a handsome bribe; Some conspire and co-operate with people in other circles of society in order to embezzle bank funds. And usually this kind of crime is complex and sophisticated. "Group Crime" or "Series of Crimes" are thus formulated when criminals in the financial services commit financial crimes jointly with criminals in other business areas, other regions or other countries.

(4) The motivation and aim of the crimes have changed from squandering money for life enjoyment to laundering money in speculative trading of stocks, real estate and futures. At the beginning of our country's transferring period from planned economy to market economy, most of the criminals tend to squander their money embezzled on themselves or their families, on gambling and on going whoring with prostitutes. So the money illegally obtained is unable to be recovered. Recently, criminals have begun to put their embezzled money into the stock market, real estate market and futures market. They are now inclined to launder their embezzled money in the speculative business to legalise their money via setting up companies, investing at real estate businesses, trading in the stock exchange market or investing at foreign enterprises.

(5) The means of crime have developed from the former altering bills making false account or taking bribery at the convenience of the power of position to making use of hi-tech and modern credit measures. The complex specified profession and specified business of the financial field define its technical character in this field. The staff members of the financial field apply modern techniques in the embezzlement practice, such as the embezzlement practice using letter of credit or credit card. Especially in the financial crimes conducted in the account settling transactions between domestic banks or international credit loans, the techniques used are more complex than ordinary crimes.

(6) The crimes have developed from domestic ones into international ones, i.e. overseas-oriented ones and overseas-penetrating ones. With the opening of the market economy, it is necessary to break the regional barriers to get accord with the international economy. Embezzlement and bribery practices in the financial field are liable to get accord with the international economic crimes too. Criminals make use of the open-up policy, the domestic and foreign markets and difference between countries legal systems to conduct cross-border financial crimes. And their security rate is much higher than

ordinary financial crimes. Recently, some criminal suspects transfer their embezzled money or property to overseas through financial channels or entry or exit opportunities. Some criminals abscond with embezzled money to overseas prior to or after the case is broken. Nowadays, financial crimes are more and more internationalised in that; one, overseas criminals commit crimes of swindling by falsifying and cheating of loans, credit cards and letters of credit. Or they co-operate with domestic criminals to conduct well-planned, well-organised financial swindling practices. Usually these financial swindling criminals must make use of other people's power and wealth so as to bribe VIPs in the financial field. Two, make use of the international financial market to squander money.

2. Main Problems Confronted by the Investigation of the Embezzlement and Bribery Practices in the Financial Field.

(1) The Problem of Criminal's Anticipation of Anti-investigation and Prosecution Services Insufficient Investigation Measures. The specification of the financial business determines that embezzlement and bribery practices in this field are bound to be secret and intriguing. Criminals design comprehensive plans before their criminal practices and make their utmost efforts to hide away from public attention, trying not to leave a single clue. Usually they design their anti-investigation strategies during their criminal practices and they destroy evidence to protect themselves. Once their criminal practices are detected they would try every means to escape investigation and punishments. Particularly under the establishment and development of the socialist market economy criminal's anti-investigation ability has developed. It bears some new characteristics and trends. The most outstanding of which are: One, the person with the power to ratify loans takes bribery, but he could be justified by saying that he is carrying out his routine duty as a loaner. Thus, his bribery practice is hard to be detected.

Two, while using the old ordinary criminal measures, the criminals have made use of some new criminal measures which caused a lot of trouble for the investigation. More and more "Edge Cases" and "Brink Cases" emerged when criminals make use of the confusion of management systems in the transferring period and the void & short-coming in the weakening of the supervision and management systems. Three, criminals counter prosecutions services' investigation by using modern scientific techniques in committing the crime and destroying evidences. They use modern telecommunication tools to collude with others to devise consistent confessions and evidences. They also use modern transportation tools to transfer embezzled money or property. The investigation measures of the procuratorate services are comparatively insufficient, facing the embezzlement and bribery practices in the financial field. The criminal practices are secretive, intriguing, and their

anti-investigation ability is becoming more and more competent.

One reason is because that the quality of the investigation personnel does not meet the demand of the increasingly complex criminal situation. Another reason is the problem of how to implement the legal investigation measures. In practice, compulsory legal measures can not be taken before the investigation. But the public-open investigation will expose the investigation intention to the criminals, so that they could have abundant time to destroy evidence or to collude with others to devise consistent confessions. Procuratorate services are forbidden to take technical investigation measures. But it is hard and inefficient to acquire evidence via secret investigation. The period of compulsory measures like detention and arrest is relatively short. All these are the weak measures in the investigation of the embezzlement and bribery practices in the financial field. Only when the prosecution services are equipped with more investigation measures and techniques, can their investigation be more competent.

(2) The Conflict between the panoramic development of criminal practices and the limited view of investigation. With the expanding and broadening of their criminal field and regions, financial crimes have seen a panoramic development in space. The first manifestation is the expanding and broadening of the criminal field. Judging from the former cases, the embezzlement and bribery practices in the financial field are mostly related with financial business. It also developed from the former credit and deposits fields to other fields like currency, insurance, futures, credit card, letter of credit. Criminals would snatch every chance to commit crimes in every new financial business. The second manifestation is that in the joint commission of crime, the criminals usually do not have any direct or specified relationship with related financial departments. They usually commit crimes with the help of financial market, stock market or trading companies. As their criminal practices are related to various departments and units, their crimes are hard to be detected and cracked.

The third manifestation is that domestic financial criminals have broadened their practices to overseas. The overseas and foreign criminals penetrate into the mainland and introduce new criminal means making their sphere of crime larger and larger. The fourth manifestation is retarded detection of the crime. The traditional criminal crimes tend to conduct their criminal practices "face to face" but financial crimes usually make use of economic measures to achieve "Remote Control". Because the wide time span and space span between the criminal practices and detection, the prosecution services will be delayed in setting up and investigate the case. The fifth is because of the inefficient communication between the financial services and justice services, it is difficult for the investigation department to notice the "power protected fields". Some units with exposed cases usually lock the

information to protect their reputation and credit.

Once the case is exposed, they usually make "soft management to make big case small, or make a small one nay." Sometimes they even hide the case from reporting. Some financial department only give criminals "Party Punishment" or "Politics Punishment" instead of reporting to the justice services to make criminal accusation. Cases are reported only when the financial crime has engendered heavy irrevocable economic losses, usually too late to be attacked effectively. These problems all show that our investigation's limited view has well lagged behind the criminal practices of embezzlement and bribery in the financial field.

3. The conflict between the hi-tech criminal practices and the backward investigation equipment.

Modern financial business is not operated usually, separately or independently. The application of computer has realised a cross- business and cross-regional cross network. But it also provide possibilities for intellectual crime. The embezzlement and bribery practices in the financial field have introduced power of position to the market system of capital exchange, it also bears the technological and informational tendency. One is to commit crime by using advanced modern printing, duplicating equipment and computers. Among these kind of crimes are credit card falsifying crime or embezzlement of public capital or interest at the position of managing the code of computer. Or alter the calculation results of the database to embezzle bank funds. Two is to commit crime by using the computer management information. This kind of criminals are professionals proficient with computer techniques, esp. computer networks. They are adapt at making use of the shortcomings of the network to alter and destroy the information in the computer network. This kind of crime makes it hard for investigation, because of the hi-tech they use and the short span of time and complexity of criminal practices. The mode of crime to use advanced scientific technology has the characteristics or large capital involvement but very difficult to be detected. If the kind of crimes are not attacked effectively, many more criminals are likely to be lured to follow suit.

In China, in order to control and protect various kinds of economic crimes, anti-corruption bureau has been set up in the prosecution services. In the past few years, the investigation personnel have become stronger and their investigation skills have been improved greatly. But the development is still far from enough to attack the rampant financial criminal practices. Because the technique and equipment of prosecution services can not simultaneously develop with that of the criminal practices. and because of the poor equipment and other backward related facilities, the prosecution service is not capable of fast reaction. This enables the criminals to escape, causing

serious problems for case cracking and capital recovery.

4. The conflict between the component complexity of criminal practices and the relative independence of investigation.

With the development of the financial system relevant legal and supervision systems have been implemented. Because of the attack and prevention of the embezzlement and bribery practices by the prosecution services, individual criminal practice is hard to work and easy to be detected. Therefore, financial criminal practices have been transferred from individual criminal practice to group criminal practice. The former loose and speculative organisation of the criminal group have accordingly become tight stable ones. It has two characteristics: One, the organisation is well co-ordinated. In well-organised criminal practices, hi-tech transportation and communication means are used, which make it easy for them to communicate, manage and escape. Most of the criminals are well educated with professional knowledge of modern financial management and operation and proficiency with hi-tech means. These criminals each have specified duties in the criminal practices and they are well co-ordinated to cover their crime after their commission of crimes. With the strengthening of the counter attacks against the embezzlement and bribery practices in the financial field, these criminals have instinctively become more and more sophisticated and well planned. Once the case is exposed, they would frequently collude with others to devise consistent confessions and evidences when justice services are not able to meet every criminal suspects at the same time. In this case it is very difficult to collect evidence and determine the commission of a crime.

Two, multiple subjects of the crime: Financial crime does not only concern "natural person", it also concerns units or legal representative of the units. In the crimes committed by "natural person", there are crimes committed by civil servants of the state financial services and those dispatched to the non-state run financial services by the state financial services; there are crimes committed by the working staff in the bank or other financial organisations. Along the crimes committed by units or legal representative of the units, there are crimes committed by the state financial organisations, state insurance companies and non-state financial organisations. In the present justice practices, some big financial cases are usually committed or co-committed by units or legal representatives. These multiple subjects usually co-operate with each other out of mutual profit through different motivations. They constitute a serious threat to the society.

In China, various state functional organs are restrictive as well as co-operative to each other. But viewing from the counter-attacks of the embezzlement and bribery practices in the financial field, there is a problem,

i.e. the inadequate collaboration between the investigation of the prosecution services and that of the public security bureaux. One, there is serious problem of cross supervision of criminal cases. Financial crimes committed in the process of financial operations include the crime against the control of financial order and the crime of financial fraud which are to be managed by the public security organs. They also include crime of embezzlement; crime of bribery taking, crime of misappropriating of public funds and crime of unauthorised partition of public funds which are to be managed by the prosecution services. In many joint committed crimes, duty crimes cross over non-duty crimes, which makes it hard to detect between the primary criminal and the accessory. In this case, the prosecution services and the public security organs would usually delay in their case transmission and collaborate ineffectively during the investigation.

Two, the efficiency of the investigation is largely blocked by the separation of the right to apply the compulsory measures and the right to execute. In the investigation assignment, the prosecution services and the public security organs are restrictive as well as co-operative to each other. But the public security bureau usually does not have sufficient police to collaborate with the prosecution services in investigation, esp., in taking such compulsory measures like detain, arrest, living at home under surveillance. This causes negative effects for the investigation. Fighting against well organised criminal practices has become a very hard work of the investigation services. In the modern legal society, it is unavoidable for different investigation organs of justice services to have each assigned duties, sometimes even crossed. uncovered or restrictive. But in order to deal with the increasing crimes of embezzlement and bribery taking practices in the financial field, it is a necessity for the justice services to for an integrated and effective system.

5. Strategies to curb the crimes of embezzlement and bribery taking practices in the financial field.

Stable economic environment and security of bank funds guarantee the smooth running of the national economy. Under the present critical condition regarding the crimes of embezzlement and bribery taking practices in the financial field, it is urgent for the prosecutions services to establish and implement a scientific and efficient operational system. It will protect the financial procedures and decrease the crimes of embezzlement and bribery taking practices in the financial field to the lowest possible rate. The prosecution services should make full use of the modern scientific measures to collect evidence, to confirm a crime and expose a crime. The prosecution services should have more investigation measures to further display its professional function: And prosecution services should broaden its co-

operation with foreign countries to deal with global financial crimes.

Establish a scientific, efficient, and forceful interior operating system in the prosecution services to improve efficiency in the investigation of crimes of embezzlement and bribery taking practices in the financial field.

(1) *The discovery system of criminal clues.* The presupposition of the investigation of the crimes of embezzlement and bribery taking practices is to acquire the information of duty crime. The foundation of the investigation is to collect and acquire crime related information quickly from every possible channels, angles, and ways. It enables us to manage the anti-crime work actively and it strengthens our ability to confirm a crime and control and crime. Firstly, a clue discovery and transferring system should be established. The system to communicate regularly or irregularly with the Discipline Inspection Department, Supervision Department, Industrial & Commercial Department and Auditing Department must be established. Second, the prosecution liaison system should be established in the financial services. Crime-preventative organisation should be set up to detect crime in time. Prosecution services should actively communicate with financial services like banks, insurance companies, stock and futures market etc., and it should set up effective systems to detect or predict financial crimes. Thirdly, prosecution services should improve its supervision computer techniques in order to improve the ability to detect and keep the crime clues and crime site. Fourthly, the prosecutor services should enhance its financial crime reporting system and organisation. Especially, we should enhance the protection of the crime reporters. A comprehensive crime reporting network under the leadership of the prosecution services should be built with the masses as the base with the crime exposed unit as the key. The network will enable the crime clues to pass quickly, achieving the aim of timely and efficient handling of the crimes.

(2) *The system of leading.* Attacking the crimes of embezzlement and bribery taking practices demands the optimisation of the integrated fighting organisation. The common task of the prosecution services at various levels. Only when our sophisticated fighting force is co-ordinated together, can we investigate, punish and curb the financial crimes the most effectively. In China the upper prosecution service is in the leading position of the lower prosecution service. The upper level of anti-corruption bureau in the prosecution services is in the leading position of the lower level. This leading mode is well adapted to the tendency of integration of the investigation and accusation. For the investigation services, the command of the upper level should be followed absolutely by the lower level. The upper level prosecution service is authorised to dispatch the investigation personnel and equipment of the lower level prosecution service. The Anti-Corruption Bureau of the Supreme People's Procuratorate Office has set up

Its Investigation Command Centre. And according centres have been set up in the prosecution services in each province, autonomous region, and municipality directly under the Central Government. When processing seriously difficult cases, the prosecution services at the upper level will dispatch personnel to the prosecution services at the lower level as either as participants or leader of the investigation. When handling cross-region, cross-province or cross-city cases, the investigation will be conducted and co-ordinated by prosecution services in different areas with jurisdiction. Their investigation will be co-ordinated by internal command so as to improve the efficiency and competence of the investigation.

(3) Investigation Assistance System. The biggest advantage for the investigation of the prosecution services is its organisation from the upper to the lower level. The realisation of the advantage requires it to have a well-organised and well-operated investigation assistance system. Various investigation assistance systems has been built to adjust to the characteristics of crimes of embezzlement and bribery taking practices in the financial field. Such integrated systems are privileged in dealing with financial crimes whether they are individual, dispersed or group criminal practices. The systems realised the transfer of the former independent investigation to the group integrated investigation under concentrated leadership. The Investigation Assistance System has four elements. One, direct assistance in evidence collection. In other words, at the request of the B prosecution service, the A prosecution service dispatches staff to collect evidence and send the evidence and materials to the B prosecution service. Two, assistance in collecting evidence: Dispatch staff to co-operate with prosecution service in other areas in investigation and evidence collection. Three, co-investigation when dealing with the cross-region cases, prosecution services dispatch staff to conduct co-investigation if it is required. Four, assist in taking compulsory measures and recovering of money and articles of property illegally obtained.

6. Pursue and Capture System.

The old pursue and capture system is ineffective in curbing the financial crimes and they are at high cost. Under the old system, more and more cases of absconding with funds emerged. The establishment of the new pursue and capture system enables us to make use of the modern news media to circulate wanted orders. To capture escaped criminals with the participation of the masses in fighting against the crimes, and with the help of the crime reporting system and crime report reward system. This will curb the escape of criminal suspects of crimes of embezzlement and bribery taking practices in the financial field. On the other hand, enhance the co-operation with the public security bureaux. With their co-operation and assistance, to make full use of the investigation assistance report and technical Investigation

techniques in the pursue and capture of criminals. The pursue and capture of criminals should be well organised and planned. The routine arrest should be combined with the uniform arrest, and pursue and tracing should be combined with by the site waiting.

7. Supporting System, in order to safety the demands of fighting against crimes in the financial field, a set of investigation equipment should be supplemented, including that of transportation. communication, investigation facilities police tools and data restoration and application accessories. The Supporting System should include:

(1) The government should have bigger investment in the personnel facilities and finance of the prosecution services. Efforts should be made to improve the backward telecommunication and transportation means so that the crimes of embezzlement and bribery taking practices in the financial field will be detected, cracked quickly. And the criminals and the illegally obtained money will be arrested or recovered quickly. This will solve the conflict between prosecution service's poor investigation equipment and criminals sophisticated criminal practices. This is the material base required for the correct and efficient investigation of the prosecution services.

(2) Trained professionals needed for the fight against the crimes of embezzlement and bribery taking practices in the financial field. Establish a team that is well qualified, hard-willed, talented and experienced in facing various challenges. This team of professionals should not only equipped with all the essential skills, but also have the knowledge of finance, insurance, credit and loans, computer and telecommunication application

8. Make full use of **modern techniques** in evidence collection so as to further improve the capability to detect and confirm a crime. The modern society attaches great importance to technical development and technical application. The penetration of technologies in social life has greatly affected the criminal justice field. Application of modern technology has been popular in the world. The application of modern technology plays an important role in the detection, collection and confirmation of evidence when it is unable or difficult for the old measures to detect evidence. The application of the scientific technologies include: One. Collect and restore evidence with the help of audio and video technology. Audio and video material is the kind of evidence obtained via audio and video means. Referring to the present development of scientific technology, these audio and video materials include recordings, tapes, materials saved by computers and other information materials obtained by using professional technologies. Audio and video evidence is not only sufficient and genuine but it also records the whole process of criminal practice in a constant mode. The audio and video technology can be used in the interrogations which prevents the

criminal suspects from overthrowing confession or testimony.

Two, use the modern technology to examine documents. The appraisal of the judicial accountant should be authoritative and scientific. It plays a significant role in confirming the crime of the suspects. During the investigation professional scientific technology can be applied in investigating the financial account and crime concerned account in order to obtain scientific evidence. Three, applying modern technology in the investigation and examination at the crime scene, it was assumed that the crimes of embezzlement and bribery do not have any "crime scene". Nowadays in the information era, the development of the computer crimes in the financial field has changed the traditional conception. The technologies used in this kind of crime can not be separated from the specified science and technology environment, which is the "crime scene" in the modern sense. In order to obtain direct evidence, great importance should be attached to the investigation and examination of this kind of "crime scene."