
Polish Investigations into Delaware Companies Highlight Vulnerabilities to Laundering

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By Colby Adams

Investigations by Polish prosecutors into money laundering and other financial crimes in the United States are pointing to gaps in Delaware's incorporation laws, according to compliance consultants.

In the past two years, Polish prosecutors have asked the U.S. Attorney's Office in Delaware to assist in gathering evidence and witness statements for at least three separate criminal cases in which fraud proceeds were allegedly laundered by exploiting Delaware's incorporation process. Polish officials filed the queries between August 2006 and March 2009.

The requests paint Delaware as an easy integration point for illicit foreign assets, said Fred Abrams, a New York-based attorney specializing in asset recovery. Abrams discovered the documents while investigating a separate case.

One request, filed in November 2008 by the public prosecutor's office in Bydgoszcz, details an alleged energy trading scheme in which a broker took payments from Polish companies for Russian fuel he never delivered. The broker then transferred over \$30,000 to Dorian Investment Ltd., a Dover, DL-based company incorporated by an associate, according to the documents.

A separate request filed in November 2009 by the Kozalin public prosecutor's office asserts that another Delaware-based company, Hunter Universal, LLC, was used to transfer nearly \$400,000 via Chase Manhattan Bank to the personal accounts of Polish businessman Vladyslav Hubenko, for "consulting and marketing services."

Frequent cash out-payments of the money transferred from Hunter Universal and asset transfers from personal accounts for business payments point to likely "money laundering and taxation crimes," according to the letter of request.

Two of the three letters arose from alleged violations of Poland's anti-money laundering laws, while the third involves purported violations of fraud statutes. That the prosecutions arose from the breaking of foreign statutes could entail separate violations of U.S. money laundering laws, according to Abrams.

Both Dorian Investment and Hunter Universal list the same street address, which also belongs to a company formation agency in Dover.

Foreign investigations into Delaware companies are not unique to Poland, according to Abrams. Instead, the cases reflect how a well-known gap in state regulations has been regularly abused by foreign criminals, he said.

"There are likely many, many other suspected financial fraudsters abusing shell companies in Delaware," said Abrams.

The U.S. Attorney's office in Delaware did not respond to calls and e-mails seeking the number of letters delivered from Polish prosecutors relating to alleged financial crimes. The Office of the Secretary of State of Delaware declined to comment.

Critics of the U.S. incorporation industry point out that Delaware, along with Nevada, Oregon and Wyoming, have formation and reporting requirements favorable to criminals conducting illicit financial activity. But while the latter three states require that incorporation applicants provide names and addresses of all company members, Delaware does not.

While regulatory gaps aren't limited to Delaware, the state does offer distinct advantages to criminals, according to Kenneth Rijock, a financial crime consultant with London-based consultancy World Check and a convicted money launderer.

"You have a window of opportunity where, if you file properly in Delaware, you won't have to provide [names of officers and directors] until the next year," he said. "Then the state automatically closes the business for failure to file reports and pay fees, so no one ever knows who the beneficial owner is or was. You could drive a truck through that loophole."

The low cost of company formation in Delaware also attracts foreign clients, according to Richard Murphy, chairman of the Tax Justice Network, a London-based advocacy group that named Delaware in November 2009 as the most financially secretive jurisdiction in the world.

A limited liability company can be formed in Delaware for a few hundred dollars, providing "many of the secrecy features that tax haven jurisdictions provide," according to Murphy. Currently, there are over four million corporations in Delaware, or five per Delaware resident, he said.

The Tax Justice Network in November 2009 ranked the United States as the top financial secrecy jurisdiction in the world, and ranked Delaware the most financially secretive state. Among other criticisms, the advocacy group said that Delaware doesn't disclose details of trusts in public records and allows protected cell companies.

A September 2006 report from the Paris-based Financial Action Task Force ranked Delaware as the second most secretive jurisdiction, behind Singapore.

A third investigation taken up by the U.S. Attorney in Delaware on behalf of Poland seeks information on Prime Invest LLC, based at 1220 N. Market St in Wilmington, which over 40 separate companies listed as an address when the request was made in October 2009, according to a March 2009 letter of request made to the U.S. Attorney's Office in Delaware by Warsaw prosecutors.

In the letter, Polish prosecutors question the source of a \$1.8 million loan issued by Prime Invest to Warsaw company SESA Polska to purchase a former Evita water processing plant located in Biskupiec, about 150 miles north of Warsaw.

Financial transactions through Delaware shell companies should be considered a red flag for suspicious financial activity, requiring a thorough investigation to determine if a suspicious activity report is warranted, according to Geoff Doyle, a former FBI agent and founder of Doyle Carden Group LLC, a New York-based AML consultancy.

Red flags for money laundering can include numerous transfers of assets from unclear sources, very brief payment titles, frequent cash-out payments of the money transferred and transfers of assets from personal accounts for business payments, according to the November 2009 data request on Hunter Universal, LLC.

In November 2006 guidance, the U.S. Treasury Department's Financial Crimes Enforcement Network called on financial institutions to be wary of potential abuses of shell companies.

"Lack of transparency in the formation process poses money laundering vulnerabilities both domestically and internationally," the bureau said. "The use of domestic shell companies allows the movement of billions of dollars internationally by unknown beneficial owners."