SPP Guiding Case No. 219: Case of Leather Co. A and Zhou Moumou et al. for Fraudulent Bond Issuance, and Ma Mou for Issuing Materially False Certification Documents

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

Decided at the 36th meeting of the 14th Procuratorial Committee of the Supreme People's Procuratorate on September 13, 2024; issued on January 3, 2025.

Keywords

Fraudulent bond issuance / private placement bonds of small and medium-sized enterprises / personnel of intermediary organizations / issuing materially false certification documents / industry governance

Holding

In handling criminal cases of fraudulent bond issuance, the scope of "corporate and enterprise bonds" as provided in the Criminal Law shall be accurately determined in accordance with the current provisions of China's financial administration laws. Where a newly emerging financial product satisfies the provisions of the Company Law and the Regulations on the Administration of Enterprise Bonds, it may be determined to constitute the fraudulent issuance of "corporate and enterprise bonds." For personnel of the intermediary organizations involved, the crime of joint fraudulent issuance of securities, the crime of providing false certification documents, or the crime of issuing materially false certification documents shall be determined in accordance with the principle of consistency between subjectivity and objectivity. Procuratorial organs shall attach importance to extending their functions from the punishment of individual securities crimes to the prevention of financial risks, and promote the industry governance of the capital market through procuratorial performance of duties.

Basic Facts

The defendant unit was Suqian Leather Co., Ltd. A ("Company A"), Jiangsu Province.

The defendant Zhou Moumou was the former legal representative, controlling shareholder, and executive director of Company A. The defendants Lin Moumou and Ye Moumou were, respectively, the former general manager and chief financial officer, and the former financial manager, of Company A. The defendant Wang Moumou was a former partner of Accounting Firm B. The defendant Ma Mou was the former head of the Beijing branch of Accounting Firm C Co., Ltd.

In the second half of 2012, upon a decision by Zhou Moumou, Company A planned to raise funds by issuing private placement bonds for small and medium-sized enterprises. Company A entrusted Wang Moumou with the on-site audit work for the bond issuance. Because Accounting Firm B, where Wang Moumou worked, lacked the qualification to conduct securities-related audit business, Wang Moumou contacted Ma Mou, the head of the Beijing branch of Accounting Firm C Co., Ltd. ("Beijing Branch C"), which held such qualification, and it was agreed that after Wang Moumou's on-site audit, Beijing Branch C would review and issue the formal audit report. Zhou Moumou assigned Lin Moumou, the company's general manager and chief financial officer, and Ye Moumou, the financial manager, to provide Wang Moumou with the financial materials required for the bond issuance.

During the on-site audit, Wang Moumou discovered that Company A's actual financial situation did not meet the conditions for issuing bonds, and therefore proposed that the company's financial statements could be adjusted according to the scale of the bond issuance by increasing operating revenue and net profit. With Zhou Moumou's consent, Lin Moumou directed Ye Moumou to falsify the financial data and prepare false tax

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declaration forms and other financial materials as required by Wang Moumou, while Wang Moumou prepared on-site audit working papers with untrue content based on the false financial materials. To enable the on-site audit working papers to pass review, Ye Moumou, according to the requirements of Lin Moumou and Wang Moumou, used a graphic designer introduced by Wang Moumou to forge financial vouchers through computer image editing and other means, and affixed Company A's official seal to them. The on-site audit working papers recorded that Company A's operating revenue for 2010 and 2011 totaled more than RMB 1.257 billion, with net profit totaling more than RMB 120 million; compared with its actual operating situation, operating revenue had been inflated by more than RMB 677 million and net profit by more than RMB 104 million.

As the signing certified public accountant for the bond issuance audit report, Ma Mou was seriously irresponsible: he failed to review the untrue on-site audit working papers and false financial vouchers provided by Wang Moumou, signed and confirmed the audit report, and directed others to affix the seals of other certified public accountants who had not participated in the audit work. Ultimately, an audit report with seriously untrue content was issued in the name of Beijing Branch C. Wang Moumou paid RMB 90,000 to Beijing Branch C.

Company A entrusted Ding Securities Co., Ltd. ("Ding Securities") as the underwriter. On December 26, 2012, Ding Securities issued an offering memorandum based on the audit report of Beijing Branch C and the false financial data for January to September 2012 provided by Company A. The offering memorandum showed that from January 2010 to September 2012, Company A's operating revenue was more than RMB 1.7 billion and net profit was more than RMB 156 million; compared with its actual operating situation, operating revenue had been inflated by more than RMB 1.057 billion and net profit by more than RMB 145 million. Zhou Moumou, Lin Moumou, and Ye Moumou signed and confirmed the offering memorandum in their respective capacities as executive director, general manager, and financial manager of Company A.

On February 5, 2013, after filing with the Shenzhen Stock Exchange, Ding Securities issued "Company A's 2012 private placement bonds for small and medium-sized enterprises by non-public offering," raising a total of RMB 150 million, which was subscribed by seven companies including Wu Securities Co., Ltd. Company A successively paid three installments of interest totaling more than RMB 21 million. On February 5, 2015, when the private placement bonds matured, Company A was unable to repay the principal and remaining interest, causing major economic losses to investors.

Procuratorate Performance of Duties

(1) Review of arrest. On November 10, 2017, the Shanghai Municipal Public Security Bureau requested the First Branch of the Shanghai Municipal People's Procuratorate to approve the arrest of criminal suspects Lin Moumou and Ye Moumou on suspicion of the crime of fraudulent bond issuance. On November 17 of the same year, the procuratorial organ decided to approve the arrest of the two, and put forward to the public security organ its opinions on continued investigation and evidence collection: first, Zhou Moumou, the legal representative, controlling shareholder, and executive director of Company A, was a major criminal suspect, and it should be ascertained whether he was the organizer of the fraudulent bond issuance; second, the division of labor among various personnel in the bond issuance process should be ascertained, including the actual performance of Lin Moumou and Ye Moumou in the process; third, accountants Wang Moumou and Ma Mou should be investigated to determine whether they were suspected of joint fraudulent bond issuance, the crime of providing false certification documents, or the crime of issuing materially false certification documents; and fourth, the documents relating to Company A's issuance of private placement bonds for small and medium-sized enterprises and other relevant documentary evidence should be further supplemented.

According to the procuratorial organ's requirements for continued evidence collection, the Shanghai Municipal Public Security Bureau placed Ma Mou on file for investigation on March 6, 2019. Zhou Moumou was suspected of other crimes and fled; he was later captured by the Jiangsu public security organs. On

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March 2, 2020, Zhou Moumou was sentenced to eight years of fixed-term imprisonment for combined punishment for multiple crimes by the Lianyungang Intermediate People's Court of Jiangsu Province for his other crimes. On July 29 of the same year, the Shanghai Municipal Public Security Bureau transferred Zhou Moumou back for further investigation.

(2) Review for prosecution. On January 17, 2018, May 7, 2019, and September 21, 2020, the Shanghai Municipal Public Security Bureau successively transferred Company A, Lin Moumou, Ye Moumou, Wang Moumou, and others to the procuratorial organ for prosecution on suspicion of the crime of fraudulent bond issuance, Ma Mou on suspicion of the crime of issuing materially false certification documents, and Zhou Moumou on suspicion of the crime of fraudulent bond issuance.

Regarding the determination of the acts of the two intermediary organization personnel, Wang Moumou and Ma Mou, the procuratorial organ held upon review that Wang Moumou conspired with Zhou Moumou and others and, using his professional knowledge, participated in the entire process from the falsification of the original financial data to the falsification of the audit report, helping Company A to issue bonds despite failing to meet the conditions, which constituted the crime of joint fraudulent bond issuance. Although Ma Mou did not conspire to participate in the falsification, he violated the professional standards for certified public accountants and the rules of Beijing Branch C, arbitrarily lent out the audit qualification, and signed and confirmed Wang Moumou's audit report without review, which constituted serious irresponsibility and resulted in a materially false audit report, enabling an enterprise that did not meet the conditions for bond issuance to issue bonds and causing major economic losses to investors, which constituted the crime of issuing materially false certification documents.

On July 24, 2018, May 7, 2020, and January 13, 2021, the First Branch of the Shanghai Municipal People's Procuratorate successively initiated public prosecution before the Shanghai No. 1 Intermediate People's Court against the defendant unit Company A and defendants Lin Moumou, Ye Moumou, and Wang Moumou for the crime of fraudulent bond issuance, defendant Ma Mou for the crime of issuing materially false certification documents, and defendant Zhou Moumou for the crime of fraudulent bond issuance.

(3) Charging and proving the crime. On October 19, 2018, September 24, 2020, and June 10, 2021, the Shanghai No. 1 Intermediate People's Court held public hearings in this case.

During the trial, in response to the defense counsel's opinions that private placement bonds of small and medium-sized enterprises did not belong to the types of bonds stipulated by the crime of fraudulent bond issuance and that Wang Moumou could be exempted from criminal punishment, the public prosecutor responded as follows:

First, regarding the crime of fraudulent bond issuance. The defense counsel argued that this crime was provided for in the 1997 Criminal Law, when the Chinese market had only public bonds issued to the general public. The bonds issued by Company A were private placement bonds of small and medium-sized enterprises, which emerged in 2012 and were issued by non-public offering only to qualified investors, whose number was small and whose professionalism and risk-bearing capacity were stronger than those of the general public, and therefore did not belong to the "corporate and enterprise bonds" stipulated by this crime.

The public prosecutor held that private placement bonds of small and medium-sized enterprises were "corporate and enterprise bonds" as stipulated by the crime of fraudulent bond issuance. First, the private placement bonds issued by Company A were financial products introduced by the Shanghai Stock Exchange and the Shenzhen Stock Exchange in 2012 to facilitate the financing channels of small and medium-sized enterprises, and satisfied the substantive characteristics of bonds under the Company Law and the Regulations on the Administration of Enterprise Bonds, namely "negotiable securities issued in accordance with statutory procedures and under which repayment of principal and payment of interest within a certain period are agreed." Second, although when the 1997 Criminal Law provided for the crime of fraudulent bond

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issuance, China's bond market issued only public bonds, Article 160 of the Criminal Law did not impose a restriction that "corporate and enterprise bonds" must be publicly issued. The object protected by this crime is the broad mass of investors; private placement bonds of small and medium-sized enterprises extend the types of investors from the ordinary general public to qualified investors, and equally protecting the property rights and interests of different investors conforms to the legislative purpose of this crime.

Second, regarding Wang Moumou's punishment. The defense counsel argued that the principal offender in the crime of fraudulent bond issuance in this case was Company A, that Wang Moumou was merely a third-party accountant with small gains and minor criminal circumstances, and that he could be exempted from criminal punishment.

The public prosecutor pointed out that accountants bear an important "gatekeeper" duty in the bond issuance process. Wang Moumou not only derelicted his duty and failed to perform his review obligation, but also actively instructed and assisted Company A's staff in falsification, playing an active and important role in the joint crime. His conduct did not constitute minor criminal circumstances and did not meet the conditions for exemption from criminal punishment, and he should be punished in accordance with the law; as to his circumstances of truthful confession, the prosecutor recommended that the court may give a lighter punishment in accordance with the law.

(4) Outcome. On February 22, 2019, September 29, 2020, and June 30, 2021, the Shanghai No. 1 Intermediate People's Court successively rendered first-instance judgments, determining that the defendant unit Company A had committed the crime of fraudulent bond issuance and imposing a fine of RMB 4.5 million; determining that defendant Zhou Moumou had committed the crime of fraudulent bond issuance and sentencing him to four years and six months of fixed-term imprisonment, which, combined with the punishment for his previous crimes under combined punishment for multiple crimes, resulted in a decided term of eleven years of fixed-term imprisonment and a fine of RMB 340,000; determining that defendants Lin Moumou, Wang Moumou, and Ye Moumou had committed the crime of fraudulent bond issuance, and that defendant Ma Mou had committed the crime of issuing materially false certification documents, and sentencing them respectively to fixed-term imprisonment ranging from three years to one year and six months, with probation applied to some, and imposing fines on Wang Moumou and Ma Mou.

Wang Moumou and Zhou Moumou appealed. On May 24, 2019 and November 1, 2021, the Shanghai Higher People's Court respectively rendered second-instance rulings, dismissing the appeals and affirming the original judgments.

(5) Issuance of procuratorial recommendations. In handling multiple cases of fraudulent issuance of private placement bonds by small and medium-sized enterprises, the procuratorial organs discovered that some accounting firms, in undertaking private placement bond issuance projects, had problems such as serious failure of internal control mechanisms, review and check processes existing in name only, and insufficient industry self-discipline. After review by the Supreme People's Procuratorate and transfer, the Shanghai Municipal People's Procuratorate issued a procuratorial recommendation to the Chinese Institute of Certified Public Accountants, proposing specific recommendations such as strengthening legal knowledge training and professional ethics education for intermediary organization personnel, establishing and improving a whole-process risk control system, and giving play to the role of industry supervision. The Chinese Institute of Certified Public Accountants attached great importance to it, formulated and actively implemented ten rectification and improvement measures, and replied to the procuratorial organ in a timely manner. The Shanghai Institute of Certified Public Accountants launched a three-year special rectification campaign, effectively promoting the improvement of the governance level of the certified public accountant industry.

Guiding Significance

(1) The scope of "corporate and enterprise bonds" as provided in the Criminal Law shall be accurately determined in accordance with the current provisions of China's financial administration laws. With the rapid

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development of modern finance, in punishing new types of securities and futures crimes such as fraudulent bond issuance in accordance with the law, the spirit of the rule of law contained in the relevant specific provisions should be deeply understood, and, on the premise of adhering to the principle of legally prescribed crimes and punishments, the Criminal Law provisions should be correctly understood and applied in light of the legislative purpose and the relevant contents of the current financial administration laws. Since the revision of the Criminal Law in 1997, major changes have taken place in the bond market and the relevant financial administration laws, with new financial products such as private placement bonds of small and medium-sized enterprises, short-term financing bonds, medium-term notes, super short-term financing bonds, and targeted debt financing instruments emerging. Any product that conforms to the definition in the Company Law and the Regulations on the Administration of Enterprise Bonds of "negotiable securities issued by companies or enterprises and under which repayment of principal and payment of interest on schedule are agreed" shall be determined in accordance with the law as "corporate and enterprise bonds" as provided in the Criminal Law. Whoever fraudulently issues the above bonds, seriously infringing the property rights and interests of investors and disrupting the order of bond issuance administration, shall, where the act constitutes a crime, be prosecuted in accordance with the law.

(2) For intermediary organization personnel involved in a case, different charges shall be applied in accordance with the law based on the principle of consistency between subjectivity and objectivity. For intermediary organization personnel who issue false certification documents such as audit reports, it shall be determined respectively whether they constitute the crime of providing false certification documents or the crime of issuing materially false certification documents, by distinguishing whether they subjectively knew of the issuer's financial falsification and deliberately issued false certification documents, or whether they were seriously irresponsible, failed to discover the falsification that should have been discovered, and caused serious consequences. Where intermediary organization personnel conspire with the issuer to issue false certification documents in order to assist in the fraudulent issuance of securities, and the act simultaneously constitutes the crime of fraudulent issuance of securities and the crime of providing false certification documents, they shall be convicted and punished under the provision with the heavier punishment.

(3) Persist in extending from the punishment of individual cases to risk prevention, and promote the industry governance of the capital market through procuratorial performance of duties. Preventing and defusing financial risks is the foundation and guarantee of the high-quality development of the capital market. Procuratorial organs shall attach importance to analyzing and summarizing the risk problems reflected in case handling in capital operation, self-discipline management, administrative supervision, and other aspects, and, through the issuance of procuratorial recommendations and other means, assist supervisory organs and industry self-discipline organizations in filling loopholes, strengthening supervision, and promoting industry governance, so as to do a good job in the "second half" of case handling.

Relevant Legal Provisions

Article 160 and Article 229(1) and (3) of the Criminal Law of the People's Republic of China (1997 Revision) (currently Articles 160 and 229(1) and (3) of the Criminal Law of the People's Republic of China apply).

Article 154 of the Company Law of the People's Republic of China (2005 Revision) (currently Article 194 of the Company Law of the People's Republic of China applies).

Article 2 of the Securities Law of the People's Republic of China (2005 Revision) (currently Article 2 of the Securities Law of the People's Republic of China applies).

Article 5 of the Regulations on the Administration of Enterprise Bonds.

Item (1) of Article 5 of the Provisions of the Supreme People's Procuratorate and the Ministry of Public Security on the Standards for Filing and Prosecution of Criminal Cases under the Jurisdiction of Public Security Organs (II) (Gong Tong Zi [2010] No. 23) (currently item (1) of Article 5 of the Provisions of the Supreme People's Procuratorate and the Ministry of Public Security on the Standards for Filing and

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Prosecution of Criminal Cases under the Jurisdiction of Public Security Organs (II) (Gong Tong Zi [2022] No. 12) applies).

Article 3 of the Provisions on Procuratorial Recommendation Work of People's Procuratorates.

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