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General Secretariat

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Press release – Medienmitteilung – Communiqué de presse – Comunicato stampa

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Bellinzona, 28 August 2024

## **The Criminal Chamber sentences two managers of Geneva-based PETROSAUDI to 6 and 7 years' imprisonment for embezzling over 1 billion dollars from Malaysian sovereign wealth fund 1MDB (SK.2023.24)**

*The Criminal Chamber of the Federal Criminal Court found that the two defendants, acting in concert with persons working for the Malaysian sovereign wealth fund 1MALAYSIA DEVELOPMENT BERHAD (1MDB), had set up a fraud which enabled them, to the detriment of 1MDB, to collect USD 1 billion on the basis of a false joint venture partnership between PETROSAUDI and 1MDB. The Court also found that, after converting the joint venture into an Islamic loan, the defendants provided support, as part of acts of criminal mismanagement to the detriment of 1MDB, in the diversions of two additional payments of respectively USD 500 million and USD 330 million, falsely legitimizing them with alleged investment opportunities, and then laundering the entire amount diverted.*

### **Joint venture**

In August and September 2009, the defendants have developed an investment partnership proposal consisting of an alleged government-to-government partnership between Saudi Arabia – for which the PETROSAUDI group was falsely presented as the vehicle – and Malaysia – through 1MDB. They acted in concert with Jho LOW – a confidant of the then Malaysian Prime Minister Najib RAZAK and an informal consultant holding no official position within 1MDB – as well as with the support of two members of 1MDB management and Najib RAZAK himself.

The defendants attempted to make the members of 1MDB's Board of Directors believe that PETROSAUDI was linked to the Saudi Arabian government on one hand, and that PETROSAUDI would contribute significant oil assets to the joint venture on the other hand, both of which they knew to be untrue. The defendants' actions gave rise to a degree of trust on the part of the dupe (i.e. certain members of 1MDB's Board of Directors) and placed the

latter in a delicate position. These circumstances made it possible to carry out the erroneous belief, which was aimed at transferring USD 1 billion to the joint venture, only to embezzle it. In accordance with the plan drawn up by the defendants and their co-conspirators, this amount left 1MDB's corporate accounts on September 30, 2009. Seven-tenths of this sum were transferred to a bank account held by a company owned by Jho Low, which in turn transferred part of it back to the defendants; the remainder was used by the participants in the offence for their own benefits.

For these facts, the Criminal Chamber found the defendants guilty of fraud.

### **Conversion to an Islamic loan and (false) additional investments**

In December 2009, shortly after the embezzlement of USD 1 billion, the defendants came up with the idea of converting the joint venture into an Islamic loan; this instrument, presented to 1MDB as more stable and profitable, was in fact aimed solely at cashing out new funds from the company. In this context, in July 2010, the defendants required from 1MDB an additional payment of USD 500 million, allegedly for the purchase of a stake in a French energy industrial group at a price 20% below the market price. This request was finally approved by 1MDB's Board of Directors on September 9, 2010. In reality, this investment opportunity did not exist, and the funds were ultimately misappropriated by the participants in the offence, without any benefits to 1MDB.

Following the same pattern, in May 2011 – after a small portion of the previously misappropriated funds had been repaid to 1MDB as interests, to give the impression that the previous investments were profitable –, USD 330 million was withdrawn from the sovereign wealth fund in order to finance an alleged – non-existent – drilling project to be carried out in eastern Saudi Arabia.

For both above-mentioned sets of facts, the Court held that the members of 1MDB's Board of Directors had not been the victims of an erroneous belief. Indeed, although the arguments put forward by the participants in the infringement were largely the same as in the first set of facts, a series of factors should have prompted 1MDB to exercise a certain degree of caution. Due to the lack of an erroneous belief, the Court retains the subsidiary qualification of aggravated criminal mismanagement as mentioned in the indictment; since the defendants did not have the status of manager within 1MDB, it convicted them of complicity, due to the assistance they gave to one of the members of 1MDB's management team (already a co-perpetrator in the previous fraud) who did have this status.

### **Money laundering**

Once the money had been embezzled, the defendants carried out a large number of acts aimed at frustrating the identification of the origin, the tracing or the forfeiture of assets. According to the Court's findings, the first defendant committed 370 acts of money laundering, on 12 bank accounts, for a total of around 7 billion USD, 175 million CHF, 80 million GBP and 12 million EUR, while the second defendant committed 220 acts of money laundering, on 11 bank accounts for a total of around 5 billion USD, 19.5 million GBP and 5 million CHF. The Court held that both had acted through commercial money laundering, given the time and energy they had devoted to this activity, as well as the income they had derived from it, and consequently found them guilty of aggravated money laundering.

## Sentences, civil claims and forfeitures

The Court found that a custodial sentence was required, given the circumstances in which the offences were committed. To set the sentence, the Court took into account the very high amounts involved, the intensity of the criminal activity, the selfish motive and, as a reducing factor, the time elapsed. The difference in the sentences imposed is explained by the fact that one of the two PETROSAUDI managers enriched himself more than the other and committed a higher number of acts of money laundering. For the rest, the Court ordered the defendants jointly and severally to return to 1MDB the amounts diverted from it, as well as part of the assets under seizure, and ordered the forfeiture of certain elements of their assets.

This judgment has not become effective yet.

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### About the Federal Criminal Court:

The Federal Criminal Court, based in Bellinzona, consists of the Criminal Chamber, the Lower Appeals Chamber and the Higher Appeals Chamber, as well as the General Secretariat.

The Criminal Chamber decides (as a single judge or with three judges) at first instance on the offences listed in articles 23 and 24 of the Swiss Criminal Procedure Code (CrimPC). In addition, it has jurisdiction over certain general criminal law and administrative law matters based on other federal laws.

The Lower Appeals Chamber rules (always in a three-judge composition) on appeals against the procedural acts of the Criminal Chamber, the Federal Criminal Police and the Office of the Attorney General of Switzerland, as well as against certain decisions of the Compulsory Measures Court. In addition, it rules on matters of international mutual assistance in criminal matters and administrative criminal law pursuant to art. 37 para. 2 of the Federal Act on the Organization of Federal Criminal Justice Authorities (CJAA).

The Higher Appeals Chamber decides (always in a three-judge composition) at second instance on appeals against judgments on the merits rendered by the Criminal Chamber. It also decides on applications for review of judgments and decisions of the three courts that have become effective, as well as summary penalty orders of the Office of the Attorney General of Switzerland that have become effective.

<p><b>Note:</b> The press release is for public and media information. The expressions used may differ from the wording of the judgment. For case law purposes, only the written version of the judgment is authoritative.</p>
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