

**Side Event to the 61<sup>st</sup> Annual Session of  
Asian-African Legal Consultative Organization (AALCO)**

**“Challenges, Strategies and Best Practices of  
Asset Recovery Effort in Hong Kong”**

**18 October 2023 | Nusa Dua Convention Centre, Bali, Indonesia**

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Honourable Director General, Mr. Cahyo Rahadian Muzhar, Honorable Attorney General, Mr. Mark Temple, distinguished guests, ladies and gentlemen,

**Introduction**

Good afternoon. I would like to thank the Government of the Republic of Indonesia for organizing this event and for inviting me to speak at this important side event to the 61<sup>st</sup> Annual Session of AALCO. I would like to share with you the experience of the Hong Kong Special Administrative Region of the People’s Republic of China (the “HKSAR”) on asset recovery.

2. Asset recovery is a crucial part of our criminal justice system. An effective asset recovery regime can, among other things, deter and swiftly disrupt criminal activity. In that way, not only the interests of the victims of crime are protected, the

integrity of the overall financial system can also be safeguarded.

3. Hong Kong, as a major international financial centre, is committed in the combat against organized criminal activities and cross-border illicit fund flow. We are pleased to have contributed our part in the global recovery action of tainted assets in the P.T. Century case and will certainly continue our effort to ensure that a good result is achieved.

#### **Part A. Constitutional Set-up**

4. The Hong Kong Special Administrative Region was established in accordance with Article 31 of the Constitution of the People's Republic of China<sup>1</sup> upon resumption of sovereignty in 1997. The Constitution and the Basic Law of the HKSAR together provide the constitutional framework for the HKSAR to implement the principle of "one country, two systems", under which we maintain, among others, our common law legal system.

5. Pursuant to Article 96 of the Basic Law<sup>2</sup> and with the authorization of the

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<sup>1</sup> Article 31 of the Constitution: The state may establish special administrative regions when necessary. The systems instituted in special administrative regions shall, in light of specific circumstances, be prescribed by laws enacted by the National People's Congress. (國家在必要時得設立特別行政區。在特別行政區內實行的制度按照具體情況由全國人民代表大會以法律規定。)

<sup>2</sup> Article 96 of the Basic Law:

"With the assistance or authorization of the Central People's Government, the Government of the Hong Kong Special Administrative Region may make appropriate arrangements with foreign states for reciprocal juridical assistance."

Central People's Government, the HKSAR has concluded a number of bilateral Mutual Legal Assistance agreements with foreign jurisdictions, including Indonesia. All of these agreements have been duly implemented in our domestic legislation, and all of them contain provisions for legal cooperation in the recovery of proceeds of crime.

6. Further, Article 153 of the Basic Law<sup>3</sup> provides the basis for the application of international conventions to the HKSAR. There are 13 multilateral conventions containing provisions on MLA that are applied to the HKSAR. In particular, the United Nations Convention against Corruption (UNCAC) and the United Nations Convention against Transnational Organized Crime (UNTOC) have specific provisions governing international cooperation in asset recovery<sup>4</sup>.

## **Part B. Domestic Legal Framework**

7. Turning to our domestic legal framework, MLA requests, including requests

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<sup>3</sup> Article 153 of the Basic Law:

“The application to the Hong Kong Special Administrative Region of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Region, and after seeking the views of the government of the Region.

International agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may continue to be implemented in the Hong Kong Special Administrative Region. The Central People's Government shall, as necessary, authorize or assist the government of the Region to make appropriate arrangements for the application to the Region of other relevant international agreements.”

<sup>4</sup> UNTOC: see in particular Article 12 (Confiscation and seizure), Article 13 (International cooperation for purposes of confiscation) and Article 14 (Disposal of confiscated proceeds of crime or property); UNCAC: see Chapter V on Asset Recovery, in particular Article 54 (Mechanism for recovery of property through international cooperation in confiscation), Article 55 (International cooperation for the purposes of confiscation), Article 57 (Return and disposal of assets)

for assistance in asset recovery, are processed according to the provisions under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525, “MLAO”). MLAO entered into force in 1997 and created the legal mechanism for processing MLA requests to and from the HKSAR. Under MLAO, assistance may be provided pursuant to bilateral agreements, applicable multilateral conventions or based on the principle of reciprocity.

8. Our Mutual Legal Assistance Unit discharges the responsibility of the Central Authority of the HKSAR for MLA matters on behalf of the Secretary for Justice.

9. Under MLAO, legal assistance can be provided in relation to a criminal matter, which is defined to cover investigations, prosecutions; or ancillary criminal matters, that is, the restraining of dealing with, or the seizure, forfeiture or confiscation of any property in connection with an external offence, or the obtaining, enforcement or satisfaction of an external confiscation order.

10. “External confiscation order” (“ECO”) is the key in the processing of an MLA request to the HKSAR for asset recovery. In particular, our law permits action to be taken in cases of confiscation following a criminal conviction, or civil “in rem” proceedings against identifiable property arising from criminal conducts, but not necessarily requiring a criminal conviction. In other words, the asset recovery action

can be proceeded against a defendant of criminal proceedings, as well as a property in civil proceedings.

### **Part C. Practices in the HKSAR**

11. In general, there are 4 steps in our MLA asset recovery process, starting with the tracing and identifying of assets; followed by the freezing or restraining of the identified assets. Then, after the requesting place has obtained a confiscation order upon the conclusion of its court proceedings, we will seek to enforce the foreign confiscation order by registering it as an ECO; to be followed by the realization of the confiscated assets; and ultimately to arrange for sharing and repatriation of the confiscated assets through consultation with the requesting place.

12. In the HKSAR, the tracing and identification of assets, together with the gathering of evidence for investigations are generally performed by the law enforcement agencies such as the Police or anti-corruption officers. Our law enforcement agents may also provide assistance through informal international cooperation and intelligence exchange.

13. After asset identification, the foreign place may consider issuing an MLA request for the restraint of the proceeds of crime. Under MLAO, our Court will grant a restraint order if it is satisfied that: (a) proceedings in which an external confiscation order may be made have been instituted or are to be instituted in the

requesting place; (b) the proceedings have not been concluded; and (c) either an external confiscation order has been made in the proceedings or there are reasonable grounds for believing that an external confiscation order may be made.

14. The restraint order granted by the Court will remain in force in the HKSAR until a further order of the Court. Where necessary, a receiver may be appointed by the Court to manage the restrained assets that require active management e.g. shares in companies or businesses, as the requesting jurisdiction will often need time to conclude the criminal or confiscation proceedings in order to obtain the final confiscation or forfeiture orders.

15. Once a final forfeiture or confiscation order is obtained in the requesting place, a request may be sent to the HKSAR to register and enforce the order. The court will need to satisfy itself a number of matters, including the external confiscation order is in force and is not subject to appeal at the time of registration and there is proper notice of the proceedings in the requesting place.

16. Once an application has been made to the Court to register the external confiscation order, notice of the registration must then be served on the defendants and other affected parties. There will be a fixed period of time within which they may apply to the court to set aside the registration. If no such steps are taken or the registration is successfully defended, further applications will be made to the Court

for enforcing the external confiscation order, and the relevant assets will be confiscated.

17. Once funds are realised through the enforcement of the registered external confiscation order, they will be paid into an account held by the Court. The Court will hold the funds for a period of 5 years pending a request made by or on behalf of the government of a “prescribed place” for sharing and repatriation, that is a place which has concluded a bilateral MLA agreement with the HKSAR or is a party to relevant multilateral conventions (such as UNCAC or UNTOC). Otherwise, the funds paid into the Court will go to the HKSARG’s general revenue.

18. Each MLA sharing request will be considered on a case-by-case basis and, where applicable, the HKSAR’s obligations under international instruments will be taken into account. For example, under Article 57(3)(a) of UNCAC, property confiscated pursuant to an MLA request in cases of embezzlement of public funds shall be returned to the requesting party.

19. The HKSAR has a sound record for successful sharing and repatriation of assets with foreign jurisdictions under the MLA mechanism.

#### **Part D. Challenges**

20. Practitioners in this area may well appreciate that there are obstacles in achieving effective cross-border recovery of proceeds. According to a report

published by the Financial Action Task Force in 2021, it is estimated that “less than 1% of criminal proceeds are being routinely recovered”<sup>5</sup>. As such, improving outcomes on asset recovery has become the major focus of international organisations and bodies in recent years. For example, strengthening asset recovery has become one of the current presidency priorities of the Financial Action Task Force; and at the recent G20 Summit the leaders’ declaration has covered among others strengthening asset recovery mechanisms for combating corruption, and reaffirmed the support to enhance global efforts to seize, confiscate and return criminal proceeds to victims and states.

21. There is no dispute that under our law, the HKSAR has an effective and powerful asset recovery regime. On the other hand, it is worth pointing out that from the perspective of international cooperation, there are obvious challenges for the authorities to trace and identify assets abroad. For instance, the lack of easily accessible and timely information, especially for cross-border transactions where financial records are located abroad, poses a significant obstacle in the swift tracing and securing of the tainted assets.

22. Secondly, there may also be delays in taking action before the assets are dissipated. Relevant factors may include the delay by the victims to report the crime,

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<sup>5</sup> “*Operational Challenges Associated with Asset Recovery: Measures to Enhance Global Effectiveness*”, Risk and Trend Methods Group of Financial Action Task Force, paragraph 1 (at page 1) and 5 (at page 13)



the efficiency of the law enforcement agencies in the investigation in the requesting place, the necessary time needed to initiate court proceedings for freezing and restraining assets, etc. All of these factors call for effective and efficient cooperation by our foreign partners.

23. Furthermore, different jurisdictions have their own legal requirements to ensure due processes and such processes may differ due to the differences under the common law and civil law systems. For example, for a common law jurisdiction like Hong Kong, formal court proceedings will usually be required for restraint and confiscation whereas in some civil law jurisdictions, the power for ordering restraint or seizure of proceeds of crime is vested with an investigating magistrate or the prosecutor in charge of the investigation. There are also challenges in relation to non-conviction based confiscations as some jurisdictions may not provide criminal MLA assistance in these cases.

## **Part E. Way Forward**

24. Much as I wish, there is not a single quick and easy solution to the challenges. From practical experience, communication and partnership are crucial for both case-by-case cooperation and long-term cooperation.

25. An effective asset recovery regime needs to be backed up by sufficient resources and skilled personnel for implementation. Asset recovery is a specialized

work stream that requires financial investigators and legal officers armed with specific expert knowledge.

26. Further, an adequate domestic framework to execute international requests for asset recovery is fundamental to any successful system. The range of powers would have to include the ability to effectively recognize and enforce foreign confiscation orders and to provide for sharing of recovered assets.

## **Conclusion**

27. The HKSAR has the necessary legal and operational framework for processing of requests for asset recovery and we are pleased to work and cooperate with foreign jurisdictions to achieve the desired results.

28. Fostering partnership is the key to an effective asset recovery strategy. The HKSAR looks forward to building closer relationship with regional and international counterparts by negotiating legal cooperation agreements including MLA agreements. For example, in the P.T. Century case, we have established a close working relationship with our MLA agreement partner, the Government of Indonesia. We communicated regularly and conducted meetings throughout different stages of the heavily contested proceedings for working out the best solutions. The case is approaching the final stage in the HKSAR and we are confident that we would be able to achieve the desirable outcome for justice in due course.

29. We also welcome any collaboration opportunities in capacity-building or training initiatives in this area to step up the global effort towards a more robust asset recovery ecosystem.

30. If you are interested in learning more about the HKSAR's asset recovery regime, we have published a guide book and uploaded it onto our official website.

31. Thank you all and I wish today's event a great success.