分科四—商業罪案

Sub-division IV - **Commercial Crime**

隸屬商業罪案分科的律師專門負責各種通常稱為白領罪行的刑事檢控工作，該等罪行包括嚴重詐騙、洗黑錢、證券及稅務詐騙、行賄及貪污，以及與海關有關的罪行。他們就該等罪行的證據是否充足向執法機關提供法律指引，並不時負責其後的審訊和上訴。金融或商業詐騙和行賄或許並非新罪行，但科技發展的運用，加上交易或犯罪活動日益複雜，有時甚或跨越國界，致使把犯案者繩之於法的難度倍增。儘管面對該等挑戰，分科內律師仍致力繼續打擊商業罪案，以維持香港作為世界領先金融中心之一的聲譽。

分科下設五個組別，下文扼述各組別在 2020 年處理的一些值得注意的案件：

分科四第 1 組 — 嚴重詐騙

香港特別行政區 訴 曾彩嫦（刑事上訴案件 2019 年第 330 號）是一宗典型案件，申請人擬備虛假合同和送貨單，以兩宗仿真交易作掩飾，藉以收取兩筆犯罪得益，涉案金額分別為 99,936 美元和 98,143.19 美元。申請人偽裝成售賣紅酒並經營會計業務的精明女商人。法庭得出不可抗拒的推論，即申請人所提供的合同和送貨單均屬偽造。申請人被控兩項處理已知道或相信為代表從可公訴罪行的得益的財產罪，經審訊後被定罪，判處監禁兩年半。上訴法庭駁回她就定罪提出的上訴許可申請。

在*香港特別行政區 訴 陳鑑清*（刑事上訴案件 2019 年第 230 號）一案中，申請人是擁有一家律師事務所的執業律師。他代表一名男子，協助其以 300 萬港元把一間村屋以欺詐方式出售予其妻子，以從一家金融機構獲得 150 萬港元的按揭，惟從未支付過該 300 萬港元。就申請人在這宗欺詐交易中的角色而言，他因向土地註冊處註冊虛假“買賣協議”和虛假“轉讓契”而被控兩項使用虛假文書罪。申請人還因向金融機構提供該宗交易的虛假“買賣協議”副本，使其批出按揭貸款而被控一項使用偽造文書副本罪。申請人被判處監禁合共八個月，緩刑兩年。上訴法庭駁回申請人就定罪提出的上訴許可申請。

Counsel in the Commercial Crime Sub-division specialize in the prosecution of a wide variety of criminal offences, often referred to as white-collar crimes, ranging from major frauds, money laundering, securities and revenue frauds, bribery and corruption and offences relating to customs and excise. They give legal advice to law enforcement agencies on the sufficiency of evidence in respect of these offences and take up the subsequent trials and appeals from time to time. Financial or commercial fraud and bribery may not be new crimes, but the deployment of technological development coupled with an increase in complexity of transactions or criminal activities, which may at times transcend national boundaries, often render it more difficult for perpetrators to be brought to justice. Despite these challenges, counsel in the Sub-division strive to continue to combat commercial crimes in order to maintain Hong Kong's reputation as one of the world's leading financial centers.

The Sub-division comprises 5 sections and highlights of some notable cases handled by each section in 2020 are set out below:

Section IV(1) – Major Fraud

HKSAR v Tsang Choi-sheung, Wendy CACC 330/2019 was a typical case where the applicant prepared sham contracts and delivery notes so as to receive 2 sums of crime proceeds under the guise of 2 genuine transactions. The sums involved were US$99,936 and US$98,143.19 respectively. The applicant portrayed herself as an astute business woman who sold red wine and had her own accounting business. The Court drew the irresistible inference that the contracts and delivery notes produced by the applicant were forged. The applicant was convicted after trial and was sentenced to 2.5 years' imprisonment for 2 counts of dealing with property known or believed to represent proceeds of an indictable offence. The Court of Appeal dismissed her application for leave to appeal against conviction.

In *HKSAR v Chan Kam-ching* CACC 230/2019, the applicant was a practising solicitor who owned a law firm. He acted for a man to facilitate a fraudulent sale of a village house to the latter's wife for HK$3 million with a view to obtain a mortgage of HK$1.5 million from a financial institution. The consideration of HK$3 million was never paid. For his role in this fraudulent transaction, the applicant was charged with 2 counts of using a false instrument for registering a false "Sale and Purchase Agreement" and a false "Assignment" with the Land Registry. The applicant was also charged with 1 count of using a copy of a forged instrument for furnishing the financial institution with a copy of the false "Sale

在*香港特別行政區 訴 馬振傑*（高院刑事案件 2018 年第 20 號）一案中，被告在一家位於香港的韓國公司任職會計部副經理。他在七年間從公司盜取達 386,955,303.70 港元。被告被控四項盜竊罪。他在韓國經理或董事總經理不知情的情況下，使用他們名下的保安編碼器以網上銀行系統轉帳。一旦款項存入其個人帳戶，被告便把該等款項轉至他的其他銀行帳戶或用以支付其信用卡帳項。被告被陪審團裁定罪成，判處監禁共 15 年。

在*香港特別行政區 訴 Chow Lai-ying, Candy*（區院刑事案件 2019 年第 656 號）一案中，被告是一名重要三合會頭目的妻子，其家人和黨羽經營非法收受賭注網絡。被告在 2013 年 7 月其丈夫被警方拘捕不久之前失去聯絡，於 2019 年 4 月 18 日返回香港時被捕。被告承認四項處理已知道或相信為代表從可公訴罪行的得益的財產控罪，在五年七個月間處理的犯罪得益涉及 1.029 億港元。被告被判處監禁共兩年七個月。

分科四第 2 組 — 證券、稅務及詐騙

在*香港特別行政區 訴 王安妮*（高院刑事案件 2020 年第 113 號）一案中，被告曾於香港一家大學任職教學助理。她承認 16 項詐騙及一項洗黑錢的控罪，被裁定罪名成立。被告聲稱自己從事奢侈品貿易（主要為名貴手錶），並承諾向受害人提供豐厚回報，誘使他們投資其計劃。詐騙及洗黑錢控罪的涉款總額分別為逾 8,100 萬港元及約 1.5 億港元。杜麗冰法官在判刑時形容被告策劃的計劃非常邪惡，令受害人蒙受天文數字的金錢損失。被告被判處監禁 12 年。

在*香港特別行政區 訴 同明有限公司*（觀塘裁判法院傳票案件 2019 年第 21847 號）一案中，同明有限公司以招標方式出售一發展項目的住宅物業，被控沒有在成交紀錄冊清晰明確列出支付條款(即“提前付清樓價現金回贈”的條款詳情)，違反《一手住宅物業銷售條例》（第 621 章）第 59(1)(g) 及 (6) 條。具體而言，被告僅列出該回贈的“名稱”，但並無述明購買相關物業所涉回贈的“百分比 / 金額”。該違例事項對銷售一手住宅物業的透明度和公正性及相關買方的權益有實

and Purchase Agreement" of the said transaction which led to the granting of the mortgage loan. The applicant was sentenced to a total of 8 months' imprisonment suspended for 2 years. The Court of Appeal dismissed the applicant's application for leave to appeal against conviction.

In *HKSAR v Ma Chun-kit* HCCC 20/2018, the defendant was a deputy manager of the accounting department of a Korean company in Hong Kong. He stole HK$386,955,303.70 from the company over a period of 7 years. The defendant was charged with 4 counts of theft. He transferred the sums via online banking system using security tokens held under the name of the Korean managers or managing directors without their knowledge. Once the money was deposited into the defendant's personal accounts, the sums were transferred to the defendant's other bank accounts or used to pay his credit-card expenses. The defendant was found guilty by the jury and was sentenced to a total of 15 years' imprisonment.

In *HKSAR v Chow Lai-ying, Candy* DCCC 656/2019, the defendant was the wife of a prominent triad leader whose family members and associates operated an unlawful bookmaking network. The defendant became out of reach shortly before her husband's arrest by the Police in July 2013. She was arrested on 18 April 2019 upon her return to Hong Kong. She pleaded guilty to 4 counts of dealing with property known or believed to represent proceeds of an indictable offence and she had dealt with crime proceeds involving HK$102.9 million for a period of 5 years and 7 months. The defendant was sentenced to a total of 2 years and 7 months' imprisonment.

Section IV(2) – Securities, Revenue and Fraud

In *HKSAR v Wong On-ni* HCCC 113/2020, the defendant, who was a former teaching assistant of a university in Hong Kong was convicted of 16 counts of fraud and 1 count of money laundering on her own plea. The defendant claimed herself to be engaged in trading luxury goods, mainly luxury watches, and deceived the victims into investing in her schemes, by undertaking to provide them with lucrative returns. The total amounts involved in the fraud charges and the money laundering charge were over HK$81 million and about HK$150 million respectively. In sentencing the defendant, Hon J Toh described that the scheme devised by the defendant was a very nefarious one and the total losses suffered by the victims were astronomical. The defendant was sentenced to imprisonment for 12 years.

In *HKSAR v Double Bright Limited* KTS 21847/2019, Double Bright Limited had sold the residential properties of a development by

質不利影響。於 2020 年 1 月 14 日，被告在認罪後被裁定罪名成立，罰款 50,000 港元。

在*香港特別行政區 訴 黎煥賢及另一人*（高院刑事案件 2018 年第 66 號）一案中，涉案公司（前稱中國金屬再生資源（控股）有限公司（中國金屬））的一名非執行董事（第一被告）和一名公司經理（第二被告）被控於 2009 年在中國金屬上市一事上串謀詐騙香港交易所。該公司首次公開招股的收益合共約 10 億港元。其後，證券及期貨事務監察委員會於 2015 年以公眾利益為由申請把該公司清盤，使該公司成為首家因此清盤的公司。在刑事訴訟方面，案中大部分證據牽涉分析從該公司的澳門附屬公司取得的資料，而控方也須通過法院請求書以取得居於澳門的控方證人的證供。有關法律程序由澳門檢察機關在澳門法院進行，控方亦特別小心確保所得證據符合香港及澳門兩地法院的程序和證據規則。最終，陪審團於 2019 年 12 月裁定兩名被告罪名成立。於 2020 年 1 月，第一及第二被告分別被判處監禁七年和八年。正如法官在判刑時指出，“本案所揭露的詐騙行為近乎同類案件最為嚴重的一宗”。其後，第一被告就其定罪提出上訴申請，案件仍在進行中。

分科四第 3 組 — 廉政公署（公營機構）

公職人員行為不當罪行具有重要作用，可確保公職人員的誠信得以保障維護。只有獲賦予並行使或履行權力、職責、責任或酌情權以謀求公眾利益的人，才會干犯這罪行，但這些人不一定受僱於政府。在*香港特別行政區 訴 蕭志勇及其他人*（西九龍裁判法院刑事案件 2018 年第 2550 號）一案中，一名由香港考試及評核局委

tender, and it was prosecuted for failing to set out the terms of payment, namely, the details of the "Early Settlement Cash Rebates", clearly and precisely in the register of transactions, contrary to section 59(1)(g) and (6) of the Residential Properties (First-hand Sales) Ordinance (Cap. 621). In particular, the defendant had set out "the title" of the said rebate only, and had omitted the "percentage/amount" of such rebate in connection with the purchase of the relevant properties. The contravention involved had materially and adversely affected the transparency and fairness in the sales of first-hand residential properties and the interest of the relevant purchasers. On 14 January 2020, the defendant was convicted on its own plea, and was fined for a sum of HK$50,000.

In *HKSAR v Lai Wun-yin & another* HCCC 66/2018, a non-executive director ("D1") and a company manager ("D2") of the company formerly known as China Metal Recycling (Holdings) Limited ("China Metal") were prosecuted for conspiring to defraud the Hong Kong Stock Exchange in the listing of China Metal in 2009. A total of about HK$1 billion was yielded from the company's initial public offering. In 2015, the company subsequently became the first one to be wound up on public interest grounds on the application of the Securities and Futures Commission. For the criminal proceedings, a major part of the evidence involved analyzing materials obtained from the company's Macao subsidiary, and Letter of Request proceedings had to be initiated to obtain testimonies from prosecution witnesses residing in Macao. As proceedings were conducted in Macao Courts by our Macanese prosecutorial counterparts, much care had to be taken to ensure that the evidence obtained conformed to the court procedures and rules of evidence applicable to Hong Kong and Macao respectively. Ultimately, the 2 defendants were convicted by jury in December 2019. In January 2020, D1 was sentenced to 7 years' imprisonment and D2 was sentenced to 8 years' imprisonment. As noted by the sentencing judge, "the fraud revealed in the present case comes very close to the worst of its type". Since then, D1 has lodged an application to appeal against her conviction which is underway.

Section IV(3) – ICAC (Public Sector)

The offence of misconduct in public office plays an important role in ensuring that the integrity of the public service be protected and upheld. The offence can be committed only by persons who are invested with powers, duties, responsibilities or discretions which they are obliged to exercise or discharge for the benefit of the general public but such persons may or may not be employed by the Government. In *HKSAR v Siao Chi-yung Weslie & others* WKCC 2550/2018, which involved the leakage of examination questions and marking criteria of the Diploma of Secondary Education examinations by oral examiners appointed by the Hong Kong

任的口試主考員向一教育中心導師洩露香港中學文憑考試的考試題目及評分準則，法院在決定是否構成公職人員行為不當罪行時，所考慮的因素為口試主考員（非政府僱員）是否公職人員。經考慮口試主考員獲委以並為大眾利益而行使的權力、職責和責任後，法院裁定口試主考員為公職人員，並裁定申請人各自被控的串謀公職人員行為失當罪罪名成立。申請人就定罪提出的上訴在2021年5月被駁回。

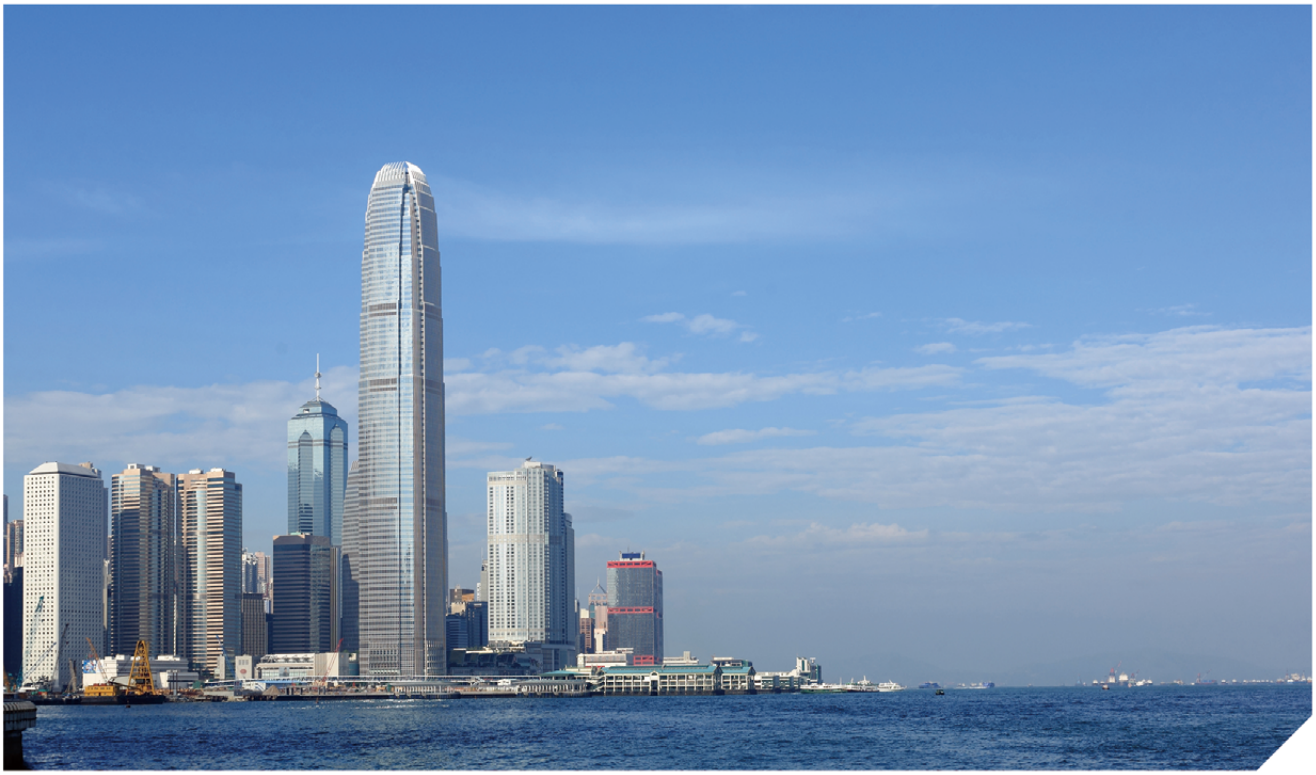
在*香港特別行政區 訴 徐聖智* (2020) 23 HKCFAR 290一案中，終審法院審理的是公職人員行為不當的案件，涉及一名醫生濫用職權，為其不合資格的家人安排醫療服務。終審法院駁回該名醫生提出的上訴許可申請，並表明案中所涉的不當行為極為嚴重，申請人不能以其親屬可只支付些微費用甚或免費也在其他公共設施獲得有關服務作為免責辯護。

同年，終審法院在*香港特別行政區 訴 鄭永健* (2020) 23 HKCFAR 83一案中，就《選舉（舞弊及非法行為）條例》（第554章）第2部所訂的罪行確立重要原則。上訴人因為向與本土派政治組織有關連的人士提供金錢，作為他們在區議會選舉中參選或他們令第三者參選的誘因，被裁定在選舉中作出舞弊行為罪名成立（違反第554章

Examinations Authority to a tutor of an education centre, the Court considered whether oral examiners (who were not Government employees) were public officers for the purpose of the offence of misconduct in public office. Having considered the power, duty and responsibility entrusted to the oral examiners and exercisable for the public good, they were held to be public officers. The applicants were convicted of their respective charges of conspiracy to commit misconduct in public office. Their appeals against conviction were dismissed in May 2021.

In *HKSAR v Chui Sing-chi Grace* (2020) 23 HKCFAR 290, the Court of Final Appeal considered a case of misconduct in public office in which a medical officer had misused her position by arranging medical services for her ineligible family members. In dismissing her application for leave to appeal, the Court of Final Appeal made it clear that the misconduct involved was plainly serious; and it was no defence that the applicant's relatives could have obtained such services at other public facilities at little or no cost to themselves.

In the same year, the Court of Final Appeal, in the case of *HKSAR v Cheng Wing-kin* (2020) 23 HKCFAR 83, laid down important principles in relation to the offences under Part 2 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554). The appellant was convicted of offences relating to corrupt conduct at an election contrary to sections 6 and 7(1) of Cap. 554 for offering money to persons associated with localist political organizations as an inducement for them either to stand themselves, or to get others to stand, as a candidate in the District Council Election. The sole issue on appeal



第 6 及 7(1) 條）。上訴所涉的唯一爭議點是第 554 章第 7(1) 條中“舞弊”一詞的意思。法院在駁回上訴時指出，該條文所指的舞弊行為應理解為會導致破壞“公平、公開和誠實的”選舉的任何行為；而第 554 章第 7 至 21 條應按立法目的詮釋為訂明進一步的罪行，而有關罪行受第 554 章第 3 條列明的法定目的（即推動公平、公開和誠實的選舉，以及禁止與選舉有關的舞弊及非法行為）所規限。法院裁定上訴人的行為明顯屬於第 554 章第 7(1) 條所指的行為：他意圖作出第 554 章第 7(1) 條所指明的舞弊行為，即其行為涉及誘使同案被告為個人利益而參選，以分薄目標參選人的得票，藉以操縱選舉結果，對目標參選人不利，破壞公平、公開和誠實的選舉。

分科四第 4 組 — 廉政公署（私營機構）

根據《防止賄賂條例》（第 201 章）第 9 條作出的檢控在打擊私營機構貪污方面發揮重要作用。在 2020 年，法院就《防止賄賂條例》第 9 條頒布以下重要裁決：

在*香港特別行政區 訴 司徒健群*（終院刑事雜項案件 2019 年第 60 號）一案中，終審法院上訴委員會釐清《防止賄賂條例》第 9 條下各類罪行的犯罪思想元素要求。凡代理人索取利益，即屬干犯索取利益罪行，對方是否準備提供代理人所索取的利益則無關重要。犯罪思想元素的要求着眼於其所圖的利益。換言之，適當的犯罪思想元素是指代理人意圖索取的利益屬違禁性質。另一方面，就代理人接收獲提供的利益而言，適當的犯罪思想元素要求則為其所知或所信。在此情況下，代理人明知或相信向其提供的利益屬違禁性質而仍然接受，即招致刑事法律責任。

於 2020 年 6 月 30 日，終審法院就違反《防止賄賂條例》第 9 條的代理人接受利益罪頒下重要判決（見*香港特別行政區 訴 趙鶯* (2020) 23 HKCFAR 194 一案）。法院一致裁定控方上訴得直，並解釋應如何引用終審法院早前的兩個案例，即*香港特別行政區 訴 陸健* (2016) 19 HKCFAR 619 案及*律政司司長 訴 陳志雲* (2017) 20 HKCFAR 98 案的裁決。法院裁定，任何人同意或選擇在某情況下“代對方辦事”，而該情況令人產生合理期望並且令該人有責任摒除自身利益、誠實地為對方的

was the meaning of the word “corrupt” in section 7(1) of Cap. 554. In dismissing the appeal, the Court pointed out that corrupt conduct under that section should be understood as any activity having a tendency to subvert “fair, open and honest” elections; and sections 7 to 21 of Cap. 554 should be construed purposively as creating offences which advance and are confined by the statutory objectives set out in section 3 of Cap. 554 (i.e. promoting fair, open and honest elections, and prohibiting corrupt and illegal conduct in relation to elections). The Court concluded that the appellant’s conduct clearly fell within section 7(1) of Cap. 554: he intentionally engaged in specified acts under section 7(1) of Cap. 554 corruptly in that his conduct involved inducing his co-defendants to stand for election for personal gain in order to divert votes away from targeted candidates with a view to manipulating the election results against them in a way which tended to undermine a fair, open and honest election.

Section IV(4) – ICAC (Private Sector)

Charges laid under section 9 of the Prevention of Bribery Ordinance (Cap. 201) (“POBO”) play an important role in combating corruption in the private sector. During the year 2020, the following significant decisions concerning section 9 of POBO were handed down:

In *HKSAR v Seto Kin-kwan Franco*, FAMC 60 of 2019, the Appeal Committee of the Court of Final Appeal clarified the *mens rea* requirements of the different variants of section 9 of POBO offences. For the solicitation offence, the criminality lies in the agent soliciting an advantage. It does not matter whether the other party is prepared to offer the advantage solicited or not. The requirement of mens rea focuses on what he intends the advantage to be. In other words, the appropriate mens rea is the agent’s intention that the advantage that he solicits has the prohibited character. On the other hand, knowledge or belief is the appropriate *mens rea* requirement when the agent is at the receiving end of an offer of an advantage. In such event, it is the acceptance by the agent of the advantage offered, knowing that the advantage offered to him has the prohibited character or believing that it has such a character, which attracts criminal liability.

On 30 June 2020, the Court of Final Appeal handed down an important judgment in respect of the offence of agent accepting an advantage, contrary to section 9 of POBO. See *HKSAR v Chu Ang* (2020) 23 HKCFAR 194. The Court unanimously allowed the Prosecution’s appeal and explained how 2 of its earlier decisions, namely *HKSAR v Luk Kin Peter Joseph* (2016) 19 HKCFAR 619 and *Secretary for Justice v Chan Chi-wan Stephen* (2017) 20 HKCFAR 98 should be applied. The Court held that a person is an “agent” for the purposes of section 9(1)(a) of POBO where he or she “acts

利益行事，該人就因“代他人辦事”而成為《防止賄賂條例》第 9(1)(a) 條所指的“代理人”。代理人與主事人之間無須有事先存在的法律關係，只要接受辦事的要求便已足夠，甚至代理人不曾收到要求但選擇代對方辦事，或許亦已足夠。已作出或不作出的相關作為，必須“針對主事人的事務或業務”破壞代理關係中的誠信，以致損害主事人的利益。主事人蒙受的經濟損失並非有關罪行的元素。《防止賄賂條例》第 19 條特別說明，不得依據收取佣金屬“慣常做法”這事實來免除法律責任。任何人只要誠實和真誠地行事，代人辦事時向對方披露而非隱瞞佣金安排，就可輕易免除《防止賄賂條例》的法律責任。

分科四第 5 組 — 海關

該組負責就有關反走私、保護版權及商標、保障政府收入、保障消費者權益、不良營商手法和打擊洗錢罪行的各類條例向香港海關提供法律指引。於 2020 年，該組共提供 859 項法律指引。以下為該組在年內處理的一些比較重要的案件：

在香港特別行政區 訴 Huang Ping（第一被告）及另二人（第二及第三被告）（屯門裁判法院刑事案件 2020 年第 103 號）一案中，香港海關與水警於 2020 年 1 月 16 日在屯門某公眾碼頭採取聯合行動，打擊海上走私活動。執法人員發現碼頭內有數人下車把一些載有貨物的紙箱運上內河商船，形迹可疑。該船接着離開碼頭，駛向香港西部水域邊界。其後，警務人員在船隻駛近水域邊界時截停該船，登船後在操舵室找到該船的船長（第一被告）、船員（第二被告）和輪機員（第三被告），又在船員艙暗格內搜出 65 箱貨物，包括一批食用燕窩、手提電話和電子產品，總值逾港幣 2,700 萬元。案件其後交由海關人員調查。第一至第三被告未能出示任何與該批貨物相關的艙單，最後共同被控企圖輸出未列艙單貨物罪。三名被告全部承認控罪，第一被告判處監禁 14 個月，第二及第三被告各判處監禁 10 個月。

在香港特別行政區 訴 Chan Chi-kin（第一被告）及另一人（第二被告）（屯門裁判法院刑事案件 2020 年第 532 號）一案中，香港海關於 2020 年 4 月 21 日在元朗一個內有可疑貨櫃的圍起的場地採取反私煙行動，檢獲共 10,030,000 支私煙，

for another", having agreed or chosen so to act in circumstances giving rise to a reasonable expectation, and hence a duty, to act honestly and in the interest of that other person to the exclusion of his or her own interests. There is no need for any pre-existing legal relationship between the agent and the principal. Acceptance of a request to act may suffice and it may even be sufficient for the agent to choose to act for another without a request to do so. The relevant act done or not done must be "aimed at the principal's affairs or business" which subverts the integrity of the agency relationship to the detriment of the principal's interests. Economic loss suffered by the principal is not an element of the offence. One cannot escape liability by relying on the fact that the commissions received were "normal practice" as section 19 of POBO specifically makes this clear. A person acting honestly and in good faith can easily avoid POBO liability by disclosing the commission arrangement rather than keeping it secret from the person for whom he or she is acting.

Section IV(5) – Customs and Excise

This section is responsible for advising the Customs and Excise Department on a wide spectrum of ordinances covering offences relating to anti-smuggling, copyright and trademark protection, revenue protection, consumer rights protection, unfair trade practices and anti-money laundering. In the year 2020, a total of 859 pieces of advice were given. Examples of some of the more significant cases that were handled by the section in 2020 are as follows:

In *HKSAR v Huang Ping (D1) and 2 others* (D2 & D3) TMCC 103/2020, The Hong Kong Customs and Excise Department ("C&ED") and the Marine Police mounted a joint operation to combat sea smuggling activities at a public pier in Tuen Mun on 16 January 2020. Officers spotted a few persons from a vehicle were suspiciously conveying some loaded carton boxes to a river trade vessel at the pier. The vessel then departed the pier, heading for the western water boundary of Hong Kong. Subsequently, Police officers intercepted the vessel when it navigated close to the water boundary. Upon boarding, a captain of the vessel (D1), a crew member (D2) and an engineer (D3) of the vessel were found in the steering room. As a result of a vessel search, 65 cartons of goods including a batch of edible bird's nest, mobile phones and electronic goods, valued over HK$27 million, were found inside a secret compartment in a crew cabin. The case was subsequently handed over to Customs officers for investigation. D1to D3 failed to produce any manifest to cover the goods and were at the end jointly charged with attempting to export unmanifested cargo. All 3 defendants pleaded guilty as charged. D1 was sentenced to 14 months' imprisonment whilst D2 and D3 were each sentenced to 10 months' imprisonment.

總值港幣 2,800 萬元。第一被告當時在附近一輛輕型貨車上，而第二被告正在打開該場地的大閘，並以手勢示意第一被告倒車。第二被告看見海關人員後企圖逃走。海關人員截查後發現貨櫃左後門大開，貨櫃內紙箱上的標記與貨車上紙箱的標記相同。海關人員在貨車上搜獲 230 箱合共 2,300,000 支私煙，另在貨櫃內搜獲 773 箱合共 7,730,000 支私煙。第一及第二被告被控兩項處理《應課稅品條例》適用的貨物罪，二人承認控罪。第一被告就每項罪行判處監禁 15 個月，同期執行；第 二被告就每項罪行判處監禁 16 個月，同期執行。

在香港特別行政區 訴 Lau Kiu-chak （第一被告）及另一人（第二被告）（西九龍裁判法院刑事案件 2020 年第 2959 號）一案中，分別任職旺角某健身中心推銷員和董事的第一被告和第二被告被控作出具威嚇性的營業行為。於 2019 年 9 月，一名女受害人在旺角城市中心內被一名推銷員截停並請求簽署一份表格，好讓她能完成當天的工作。受害人簽署表格後被帶到健身中心接受體能測試。另一推銷員在健身中心內向受害人介紹健身器材並讓她試用。當被問到會付多少款項參加健身計劃時，受害人起初表示沒有興趣參加，後來被追問就回答“或許 500 元”。受害人其後收到一份宣稱是免責聲明的文件，她閱畢後簽署。第一被告繼而把另一份文件（後來得悉是顧客協議 / 個人訓練協議）交給受害人。受害人按照第一被告的指示在“付款條款”和“聲明”的部分簽署，“計劃費用”和“購買日期”的部分則留空。第二被告其後接觸受害人，聲稱受害人早前簽署的申請已獲批准，而該健身計劃 100 節的費用為港幣 50,000 元。受害人感到震驚，要求立即取消計劃。第二被告再告訴受害人，根據公司訂立的程序規定，受害人如欲取消計劃，必須把其銀行帳戶結餘減至少於港幣 50,000 元。在第一被告和第二被告陪同下，受害人在附近的自動櫃員機分四次交易提取港幣共 19,000 元，使其帳戶結餘減至少於港幣 50,000 元。第二被告取去受害人該筆港幣 19,000 元的現金，聲稱可於稍後安排全額退款。不久之後，第二被告又要求受害人透過銀行轉帳支付餘下港幣 31,000 元，以清繳該健身計劃的全部費用並因而符合全額退款的資格。該筆港幣 31,000 元的款項轉帳到第一被告的銀行帳戶後，第二被告告訴受害人尚有更多規定。經多番理論後，受害人收到港幣 500 元現金回贈和港幣 21,000 元退款，但被要求抄

In *HKSAR v Chan Chi-kin (D1) and another (D2)* TMCC 532/2020, C&ED seized a total of 10,030,000 sticks of illicit cigarette, valued at HK$28 million, during an anti-illicit cigarette operation mounted in a fenced area in Yuen Long with a suspicious container inside on 21 April 2020. D1 was aboard a light goods vehicle nearby whilst D2 was opening the main gate of the fenced area and giving hand signals to direct D1 to reverse the vehicle. D2 tried to flee when he spotted Customs officers' presence. Upon interception, officers found that the container's left rear door was widely opened and the markings of carton boxes inside the container were identical to those marked on the carton boxes found inside the vehicle. A total of 230 carton boxes containing 2,300,000 sticks of illicit cigarette were found on the vehicle whereas a total of 773 carton boxes containing 7,730,000 sticks of illicit cigarette were found in the container. D1 and D2 were charged with 2 counts of dealing with goods to which the Dutiable Commodities Ordinance applies. They pleaded guilty as charged. D1 was sentenced to 15 months' imprisonment for each count of offence, both to run concurrently whilst D2 to 16 months' imprisonment for each count of offence, both to run concurrently.

In *HKSAR v Lau Kiu-chak (D1) and another (D2)* WKCC 2959/2020, D1 and D2, respectively as the salesperson and director of a fitness centre in Mong Kok, were prosecuted for engaging in an aggressive commercial practice. In September 2019, a female victim was stopped by a salesperson inside Mongkok City Centre, begging her to sign a form so that she could finish work that day. After signing the form, the victim was brought to the fitness centre for a fitness test. Inside the fitness centre, another salesperson introduced the fitness equipment to the victim and let her try. The victim was asked how much she would pay for joining the fitness package. The victim initially expressed no interest to join but later replied "may be $500" after being pressed. Later, a document purported to be a disclaimer was given to the victim who signed after reading. D1 then handed another document (later known as Customer Agreement / Personal Training Agreement) to the victim. Acting under D1's instruction, the victim signed the "payment terms" and "declaration" sections with the "package fee" and "date of purchase" left blank. Subsequently, D2 approached the victim to claim that the application form the victim signed earlier had been approved and such fitness plan costed HK$50,000 for 100 sessions. The victim felt shocked and requested to cancel the package immediately. The victim was further prompted by D2 that it was a procedural requirement laid down by the company for her to reduce the balance of her bank account to less than HK$50,000 if she wanted to cancel such package. Accompanied with D1 and D2, the victim withdrew a total sum of HK$19,000 in 4 transactions via a nearby ATM to reduce her account balance below HK$50,000. D2 took the cash of HK$19,000 from the victim claiming that a full refund could be arranged later. Shortly afterwards, D2 further prompted the victim to settle the remaining HK$31,000 by bank transfer so that the fitness package

寫一份現金回贈聲明和一份確認書，承認冷靜期不適用於其健身計劃，以及健身中心不曾以任何威嚇或恐嚇的方式銷售服務。第一被告和第二被告其後被捕，共同被控串謀作出具威嚇性營業行為。二 人承認控罪，各被判處監禁三星期。法院又命令第一被告和第二被告各向受害人賠償港幣 14,250 元。

在*香港特別行政區 訴 Liu Yong-shan*（西九龍裁判法院刑事案件 2019 年第 2611 號）一案中，一個從馬來西亞抵港的郵包被抽選進行清關程序。經檢驗後，發現郵包內有 10.3 公斤穿山甲鱗。郵包報稱載有“睫毛液”，收貨地址在元朗。被告在元朗郵政局收取郵包時被海關人員拘捕。漁農自然護理署確認，檢獲的穿山甲鱗是受《保護瀕危動植物物種條例》（第 586 章）規管的物種。調查發現，被告沒有為該等穿山甲鱗申請任何進口許可證。被告被控一項進口附錄 I 物種的標本罪，違反第 586 章第 5(1) 條，經審訊後被裁定罪名成立，判處監禁 20 星期。

在*香港特別行政區 訴 普藝拍賣有限公司及其他人*（東區裁判法院傳票案件 2019 年第 42848 號及東區裁判法院刑事案件 2020 年第 74 號）一案中，第一被告（普藝拍賣有限公司）是一家拍賣行；第二被告和第三被告是董事，而第四被告是古錢幣賣家。第四被告委託第一被告安排拍賣一枚“銀質幣 江南光緒 七錢二分”的古錢幣，當中顯示該枚錢幣已獲專業錢幣評級服務公司（評級公司）認可。於 2018 年 4 月 14 日，受害人以港幣 5,060 元（包括第一被告的佣金港幣 660 元）投得該枚錢幣。評級公司其後進行鑒定，確定從未認可該枚錢幣。第一被告至第四被告各被控一項供應已應用虛假商品說明的貨品罪。第四被告承認控罪，判處監禁三個月，緩刑 12 個月。第 一被告至第三被告經審訊後被裁定罪名成立，分別罰款港幣 10,000 元和港幣 5,000 元。法院又下令第一被告和第四被告各向受害人賠償一半佣金。該枚錢幣被沒收。

could be treated as settled by full payment, thereby qualifying for a full refund. After the transfer of HK$31,000 to D1's bank account, D2 told the victim that there were further requirements. After rounds of negotiation, the victim received cash rebate of HK$500 and refund of HK$21,000. However, the victim was asked to copy a cash rebate declaration and an acknowledgement admitting that the cooling-off period was not applicable to her fitness package and the fitness centre had not deployed any aggressive or threatening means for the sale of service. D1 and D2 were later arrested and jointly charged with conspiracy to engage in a commercial practice that is aggressive. Both pleaded guilty as charged and were each sentenced to 3 weeks' imprisonment. D1 and D2 each was also ordered to pay a compensation of HK$14,250 to the victim.

In *HKSAR v Liu Yong-shan* WKCC 2611/2019, an inbound postal parcel originated in Malaysia was selected for Customs clearance. Upon examination, 10.3 kilograms of pangolin scales were found inside the postal parcel. It was declared to contain "Mascara" with a consignee address at Yuen Long. Customs officers arrested the defendant when she collected the parcel in Yuen Long Post Office. The Agriculture, Fisheries and Conservation Department confirmed that the seized pangolin scales were of the species controlled under the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586). Investigation revealed that the defendant did not apply for any licence for importation of the pangolin scales. The defendant was charged with 1 count of importing specimens of Appendix I species otherwise than in accordance with the provisions of section 5(1) of Cap. 586. She was convicted after trial and sentenced to 20 weeks' imprisonment.

In *HKSAR v All Arts Auctioneers Limited and others*, (ESS 42848/2019 and ESCC 74/20), D1 ("All Arts Auctioneers Limited") was an auction house; D2, D3 were the directors whereas D4 was a seller in antique coins. D4 commissioned D1 to arrange auction of 1 antique coin "銀質幣 江南光緒 七錢二分" with an indication that it had been approved by PCGS (abbreviation of Professional Coin Grading Service). On 14 April 2018, the coin was successfully bid by the victim at a price of HK$5,060 which included D1's commission fee of HK$660. Subsequent authentication by PCGS confirmed that it never gave any approval in relation to the subject coin. D1 to D4 were each charged with 1 count of supplying goods to which a false trade descriptions was applied. D4 pleaded guilty to the charge and was sentenced to 3 months' imprisonment suspended for 12 months. D1 to D3 were subsequently convicted after trial and fined respectively HK$10,000 and HK$5,000. The court also ordered D1 and D4 each to make compensation of half of the commission to the victim. The subject coin was forfeited.