



分科四 — 商業罪案

Sub-division IV - Commercial Crime

顧名思義，商業罪案分科專門負責通常稱為白領罪行的商業罪案。不過，除商業詐騙、網上欺詐、洗黑錢、稅務詐騙、行賄、貪污、內幕交易，以及《證券及期貨條例》(第 571 章)所訂的其他證券罪行等白領罪行外，分科亦專責處理公職人員行為不當罪行、選舉罪行、《一手住宅物業銷售條例》(第 621 章)所訂罪行，以及《保險業條例》(第 41 章)所訂罪行。

As its name connotes, the Commercial Crime Sub-division specializes in commercial crimes, often referred to as white-collar crimes. However, apart from white-collar crimes such as commercial frauds, online frauds, money laundering, revenue frauds, bribery, corruption, insider dealing and other securities crimes under the Securities and Futures Ordinance (Cap. 571), the Sub-division also specializes in handling the offence of misconduct in public office, electoral crimes, offences under the Residential Properties (First-hand Sales) Ordinance (Cap. 621) and offences under the Insurance Ordinance (Cap. 41).

此等罪案由香港警務處（通常交予其商業罪案調查科或財富情報及調查科負責）、稅務局、廉政公署、證券及期貨事務監察委員會、一手住宅物業銷售監管局及保險業監管局等執法機關負責調查。如適合提出檢控，分科律師會就證據是否充分、適當的控罪和適合的審訊法院，向此等執法機關提供法律指引，並決定是否應就該等案件提出上訴或覆核。律師亦會盡量出庭進行檢控，並處理上訴和覆核案件。

在 2021 年，分科設有五個組別，下文扼述各組別在年內處理的一些值得注意的案件。

分科四第 1 組 — 嚴重 詐騙及分科四第 2 組 — 證券、稅務及詐騙

這兩個組別處理商業詐騙、網上欺詐、洗黑錢、《稅務條例》（第 112 章）所訂的稅務罪行、《證券及期貨條例》（第 571 章）所訂的證券罪行、《一手住宅物業銷售條例》（第 621 章）所訂罪行，以及《保險業條例》（第 41 章）所訂罪行。此等罪行或許並非新罪行，但隨着犯案者運用先進科技，加上交易或犯罪活動日益複雜、數量與日俱增，有時甚或跨越國界，要把犯案者繩之於法，倍費神思。

我們從日常工作中注意到各種新興罪案出現，其中涉及加密貨幣和其衍生產品的案件，上升趨勢尤為明顯。

處理此類案件殊不簡單。首先，我們須了解加密貨幣運作所涉及的複雜技術細節，例如加密貨幣屬於何等形式的財產，以及如何收藏、買賣和轉讓。我們往往須憑藉調查人員的知識和技術，搜集相關證據，方可掌握上述各項細節，從而評估提出何等控罪方為適合，故此極為重要。這亦帶出另一困難：就是把原本為常見財產形式而設的現行法例和法律原則應用於此一嶄新財產形式。為此，我們必須先行透澈了解每宗案件的具體案情及法律本身，才可為每宗案件擬定合適的控罪。

儘管遇到上述困難，該兩個組別的律師仍繼續致力打擊此等罪案，以維持香港作為主要國際

These crimes are investigated by law enforcement agencies such as the Hong Kong Police (very often by their Commercial Crime Bureau or Financial Intelligence and Investigation Bureau), Inland Revenue Department, Independent Commission Against Corruption (ICAC), Securities and Futures Commission, Sales of First-hand Residential Properties Authority and Insurance Authority. Counsel advise these law enforcement agencies on the sufficiency of evidence, the proper charges and the appropriate venue for trial, where institution of prosecution is apposite. Counsel also decide on whether an appeal or review should be initiated in those cases. Whenever possible, counsel will prosecute the trials and argue the appeals and reviews.

In 2021, the Sub-division comprises five sections. Highlights of some notable cases handled by each section in 2021 are set out below.

Section IV(1) – Major Fraud and Section IV(2) – Securities, Revenue and Fraud

These two sections dealt with commercial frauds, online frauds, money laundering, revenue crimes under the Inland Revenue Ordinance (Cap. 112), securities crimes under the Securities and Futures Ordinance (Cap. 571), offences under the Residential Properties (First-hand Sales) Ordinance (Cap. 621) and offences under the Insurance Ordinance (Cap. 41). While these offences may not be new crimes, the deployment of technological advancement coupled with an increase in complexity and quantity of transactions or criminal activities by their perpetrators, which may at times transcend national boundaries, makes it more intellectually challenging to bring the perpetrators to justice.

We see in our day-to-day work an emergence of new types of crime, with one noticeable trend being the increase in the number of cases involving cryptocurrency and its derivatives.

When dealing with this type of cases, we face the challenges of first having to understand the technical intricacies of how cryptocurrency operates, such as what form of property it is and how it can be stored, traded and transferred. Very often we have to rely on the investigators' knowledge and know-how in gathering the relevant evidence and presenting us with a clear picture on the above. This is of vital importance as it will facilitate our assessment of the appropriate charges to be laid, which brings to another challenge that we encounter, that is, having to apply the existing law and legal principles which are traditionally developed for application to more conventional forms of property to this new form of property. This will require both a good understanding of the particulars facts of each case as well as the law on our part so that we can suitably formulate the charges to be laid which are appropriate in each case.

金融中心的聲譽。下文扼述有關組別在 2021 年提出檢控的一些個案：

在香港特別行政區 訴 唐智靈 (高院刑事案件 2021 年第 32 號) 一案中，被告被控六項盜竊罪。被告是板前壽司前會計部經理，職責包括每天從各分店收集現金，並把款項存入板前壽司的銀行帳戶。在 2007 年年中，被告未有把相關的會計文件交予核數師審閱。在 2007 年 9 月，板前壽司董事到被告的辦公室尋找被告不果。被告被發現在 2005 至 2007 年期間，從板前壽司偷取合共約港幣 2,420 萬元。為隱瞞盜竊罪行，被告偽造銀行入數紙，一方面把偷取的款額視作公司開支，另一方面把入數紙充當已將各分店的現款存入板前壽司銀行帳戶的證明。警方在 2019 年 3 月接獲舉報，遂通緝被告並將他列入目標名單。被告其後在 2019 年 7 月 17 日準備經羅湖管制站離港時被捕。被告在警誡下承認控罪，並表示已把所有贓款花在賭博上。被告承認全部控罪，在 2021 年 6 月 29 日被判監禁六年零八個月。

在香港特別行政區 訴 Leung Moon-cheung (東區裁判法院刑事案件 2021 年第 1303 號) 一案中，被告向政府的“零售業資助計劃”申請一次過港幣 80,000 元的資助，但被拒絕。該計劃在“防疫抗疫基金”下推出，旨在資助經營零售業務的實體商店。警方的調查發現，該申請涉及使用虛假證明文件。被告就“企圖欺詐”罪接受審訊時，聲稱對該申請並不知情，懷疑該申請由其員工提出。他也聲稱雖經營“電業工程業務”，但同時經營“樓上”服裝零售店。法院不相信該申請由其他人提出，經審訊和考慮相關案情後，包括該申請列明以被告的個人銀行帳戶為收取資助的帳戶，裁定被告罪名成立。法院又指即使“樓上”零售店屬實，也不可能是被告的主要業務，最終判他監禁九個月。



Despite these challenges, counsel in these two sections strive to continue to combat those crimes in order to maintain Hong Kong's reputation as one of the leading international financial centres. Cases prosecuted in 2021 include:

In *HKSAR v Tong Chi-ling Eric* HCCC 32/2021, the defendant was charged with six counts of theft. The defendant was a former accounting manager of "Itamae Sushi". The defendant's duties included collecting the daily cash from each of the branches and depositing monies into the bank accounts of Itamae Sushi. In mid 2007, the defendant failed to provide the relevant accounting documents for inspection by the auditor. In September 2007, the director of Itamae Sushi went to look for the defendant at his office who however became out of reach. It was found out that the defendant had stolen a total sum of around HK\$24.2 million from Itamae Sushi between 2005 and 2007. In order to conceal the theft, the defendant had forged bank-in slips by treating the stolen amounts as the expenses of the company and to purportedly show that the cash collected from the branches was deposited into the bank accounts of Itamae Sushi. A report was made to the Police in March 2019. The defendant was put on the wanted and watch lists. The defendant was subsequently arrested on 17 July 2019 when he was about to leave Hong Kong via the Lo Wu Control Point. The defendant admitted the offences under caution and stated that he had spent all the stolen money on gambling. The defendant pleaded guilty to all the charges. On 29 June 2021, the defendant was sentenced to six years and eight months' imprisonment.

In *HKSAR v Leung Moon-cheung* ESCC 1303/2021, the defendant applied for a one-off subsidy of HK\$80,000 with the Government's Retail Sector Subsidy Scheme under the Anti-epidemic Fund, which aimed at subsidizing retail businesses run in physical shops. His application was rejected. On investigation by the Police, it was found that false supporting documents were used in the application. In the trial of "attempted fraud", the defendant alleged he had no knowledge about the application and he suspected the application was submitted by his staff. He also alleged he was operating an "upstairs" retail shop selling clothes, although he was also engaging in "electrical project business" at the same time. The defendant was convicted after trial. The Court disbelieved the application was submitted by the others. The Court considered the circumstances of the case, including the fact that the personal bank account of the defendant was stated in the application as the recipient account of the subsidy. The Court also noted even if the "upstairs" retail shop was true, it could not be the main business of the defendant. The defendant was sentenced to nine months' imprisonment.

分科四第 3 組 — 廉政公署 (公營機構)

公務員及公職人員因其角色及獲賦權力，履行公職須廉潔奉公，守正忠誠。廉政公署 (公營機構) 組負責就公職人員刑事不當行為的相關事宜，向廉政公署及其他政府部門及決策局提供意見。為保障和維護公職人員的誠信，該組就有證據支持而且提出檢控符合公眾利益的案件提出檢控。下文扼述該組在 2021 年提出檢控的一些案件：

在香港特別行政區 訴 龍少泉 (區院刑事案件 2021 年第 410 號) 一案中，一名警司訛稱所購買的單位由家人使用，隱瞞單位實質租予他人，欺騙政府及銀行向其批出購屋和按揭貸款共約港幣 600 萬元。根據《盜竊罪條例》(第 210 章) 第 16A 條被控兩項欺詐罪，經審訊後被裁定罪名成立，判監 18 個月；

在香港特別行政區 訴 陳玉娟 (西九龍裁判法院刑事案件 2020 年第 3134 號) 一案中，一名女子為處理兒子的身分證申請和加快她的公屋申請，向入境事務處、房屋署及社會福利署人員提供合共超過港幣 3,000 元。她被裁定三項向公職人員提供利益罪罪成，違反《防止賄賂條例》(第 201 章) 第 4 條，判監 12 個星期；

在香港特別行政區 訴 黃世雄 (粉嶺裁判法院刑事案件 2021 年第 1088 號) 一案中，一名警長接受同事的非法貸款合共港幣 216,000 元 (港幣 55,000 元由七名下屬提供，其餘港幣 161,000 元由一名警員提供)。他沒有向下屬還款，只向警員償還港幣 49,500 元。他承認 11 項訂明人員接受利益罪，違反《防止賄賂條例》第 3 條，判監四個月；

在香港特別行政區 訴 許紹基 (東區裁判法院刑事案件 2021 年第 2339 號) 一案中，一名郵差以內部文件欺騙香港郵政，偽稱沒有從事外間工作，實質於前僱主的健身集團工作九個月。他承認兩項代理人意圖欺騙其主事人而使用文件罪，違反《防止賄賂條例》第 9(3) 條，判處 120 小時社會服務令。

Section IV(3) – ICAC (Public Sector)

Civil servants and public officers, because of the role they play and the powers with which they are entrusted, are required to discharge their public duties free of bribery and with integrity and fidelity. ICAC (Public Sector) Section is responsible for advising ICAC and other government departments and bureaux on matters relating to criminal misconduct by persons exercising public functions. To protect and uphold the integrity of our public service, prosecutions were instituted for cases which were supported by evidence and in the public interest to proceed. Cases prosecuted in 2021 include:

In *HKSAR v Lung Siu-chuen* DCCC 410/2021, a Superintendent of the Police deceived the Government and a bank into granting him housing and mortgage loans totaling about HK\$6 million by falsely representing that a flat he purchased would be used by his family when in fact it would be let to others. He was convicted after trial of two charges of fraud under section 16A of the Theft Ordinance (Cap. 210) and was sentenced to 18 months' imprisonment;

In *HKSAR v Chan Yujian* WKCC 3134/2020, a woman offered a total of over HK\$3,000 to officers of the Immigration Department, Housing Department and Social Welfare Department for processing her son's application for an identity card and expediting her application for public housing. She was convicted of three charges of offering an advantage to a public servant, contrary to section 4 of the Prevention of Bribery Ordinance (Cap. 201) ("POBO") and sentenced to 12 weeks' imprisonment;

In *HKSAR v Wong Sai-hung* FLCC 1088/2021, a police sergeant accepted unauthorized loans totaling HK\$216,000 from his colleagues (HK\$55,000 from seven subordinates and HK\$161,000 from a police constable). He made no repayment to his subordinates and only repaid HK\$49,500 to the police constable. He was sentenced to four months' imprisonment after pleading guilty to 11 charges of prescribed officer accepting an advantage, contrary to section 3 of the POBO.

In *HKSAR v Hui Siu-kei* ESCC 2339/2021, a Postman used internal documents to deceive the Hong Kong Post by falsely stating that he had not engaged in outside work when in fact he had worked at his former employer's fitness group for nine months. He pleaded guilty to two charges of agent using document with intent to deceive his principal, contrary to section 9(3) of the POBO and was sentenced to a community service order of 120 hours.

In *HKSAR v Li Kai-tik* KCCC 3491/2021, a Field Officer of the Agriculture, Fisheries and Conservation Department used false

在香港特別行政區 訴 李啟迪 (九龍城裁判法院 刑事案件 2021 年第 3491 號) 一案中，漁農自然護理署 (漁護署) 一名農林督察處理四宗流浪狗個案時使用虛假內部文件，誤導漁護署指主要證人不會協助檢控。該人員承認八項《防止賄賂條例》第 9(3) 條下使用虛假文件誤導其主事人的控罪，被裁定罪名成立，判處 160 小時社會服務令。

除處理公職人員刑事不當行為的案件外，廉政公署 (公營機構) 組亦負責選舉罪行的檢控工作。

在 2021 年，《選舉 (舞弊及非法行為) 條例》(第 554 章) 加入了兩項新罪行，分別是在選舉期間內藉公開活動煽惑另一人不投票、投白票或無效票，以及故意妨礙或阻止另一人投票，以規管操縱或破壞選舉的行為。自此該組一直與廉政公署緊密合作，處理執行新選舉法例的事宜。

另須注意一點，原訟法庭在 2021 年 10 月在一宗裁判法院上訴案 (高院裁判法院上訴 2021 年第 294 號) 中表明，就沒有根據選舉法例規定提交選舉申報書的罪行判處扣押刑罰，實屬恰當。法庭裁定案中上訴人 (在區議會選舉落敗的候選人) 的適當刑罰為監禁四個月。

分科四第 4 組 — 廉政公署 (私營機構)

對廉政公署 (私營機構) 組來說，2021 年依然充滿挑戰。該組的律師主要負責就私營機構 (包括物業管理行業、建造業、金融和保險機構、上市公司) 的貪污案件向廉政公署提供法律指引，以確保調查所得的證據足以支持檢控。此外，該組律師亦就貪污及其他案件作出檢控和上訴。

在 2021 年檢控的私營機構貪污案件中，以下案件重要且值得注意：

在香港特別行政區 訴 蘇錦威 (第一被告) 及蘇潤餘 (第二被告) (區院刑事案件 2018 年第 415 號) [2021] HKDC 393 一案中，第一和第二被告在一家律師事務所分別任職法律文員和法律行政人員。第一被告處理一宗購買私人住宅物

internal documents in relation to four stray dog cases and misled his department that the key witnesses would not assist the Prosecution. The officer was convicted upon his own plea of eight charges of using false documents to mislead principal under section 9(3) of the POBO and was sentenced to 160 hours of Community Service.

Apart from handling cases of criminal misconduct by public officers, ICAC (Public Sector) Section is also responsible for the prosecution of electoral offences.

With the introduction of two new offences under the Elections (Corrupt & Illegal Conduct) Ordinance (Cap. 554) to regulate acts that manipulate or undermine elections in 2021, the Section worked closely with the ICAC on matters relating to the enforcement of the new electoral laws (namely, the offences of inciting another not to vote, to cast a blank or invalid vote by way of public activity during an election period and wilfully obstructing or preventing another from voting).

It is pertinent to note that the Court of First Instance made it clear in a magistracy appeal (HCMA 294/2021) in October 2021 that it would be appropriate to impose a custodial sentence for the offence of failing to lodge an election return as required under the electoral laws. The Court held that the appropriate sentence to be imposed on the appellant (a defeated candidate of the District Council Election) in that case was four months' imprisonment.

Section IV(4) – ICAC (Private Sector)

The year of 2021 continued to be a challenging year for the ICAC (Private Sector) Section. Counsel in the section are mainly responsible for giving advice to the ICAC on cases related to corruption in the private sector, which include the building management industry, construction industry, financial and insurance institutions as well as listed companies. Legal advice is provided to the ICAC to ensure that the evidence gathered during investigation is sufficient to support the prosecution of corruption cases. Apart from giving legal advice, counsel in the section also prosecute trials and appeals concerning corruption and other cases.

Amongst the private sector corruption cases prosecuted in 2021, the following are of interest and significance:

In *HKSAR v Kevin So Kam-wai (D1) and Jacky So Yun-yue (D2)* DCCC 415/2018, [2021] HKDC 393, D1 and D2 were respectively legal clerk and legal executive of a solicitors' firm. D1 handled the purchase of a private residential property by a limited company controlled by a married couple. After the transaction was completed, D1 falsely represented to a licensed money lender (L1) that he was authorized



業的交易，買家為一家有限公司（由一對夫婦控制）。交易完成後，第一被告向持牌放債人（第一放債人）偽稱獲物業擁有人授權處理港幣 1,000 萬元的按揭貸款申請。貸款申請獲正式批准，港幣 1,000 萬元貸款存入由第二被告控制的一家離岸公司的銀行帳戶，超過港幣 710 萬元轉入第一被告的銀行帳戶。由於拖欠還款，第一放債人向物業擁有人和其丈夫等提出民事申索。第一被告利用兩封據稱由物業擁有人和其丈夫簽發的信函，指示另一家律師事務所（第一被告當時的僱主）在該宗民事申索中代表物業擁有人和其丈夫行事。同時，第一被告再次向另一持牌放債人（第二放債人）偽稱物業擁有人已授權他處理另一宗港幣 1,000 萬元的按揭貸款申請。有關貸款獲正式批准，並用以償還第一放債人的貸款。物業擁有人從未指示任何人獲取該兩筆合共港幣 2,000 萬元的貸款。第一被告被裁定兩項欺詐罪名和一項使用虛假文書的副本罪名成立，又與第二被告共同被裁定處理已知道或相信為代表從可公訴罪行的得益的財產罪名成立。第一和第二被告分別被判處監禁 47 個月和 30 個月。兩名被告已就定罪和刑罰提出上訴通知，而律政司司長已申請覆核第一被告的刑罰。

在 *HKSAR v Leung Chun-hei* (區院刑事案件 2021 年第 361 號) [2021] HKDC 1249 一案中，被告是一家照明產品公司的高級銷售經理，負責處理客戶訂單，其中包括其妻子為唯一股東兼董事的貿易公司 (X 公司)。被告獲授權動用客戶促銷資金補貼 X 或給予 X 折扣。X 在 34 個月間共下了約 3,800 份採購訂單，發票總額約港幣 1.07 億元，促銷資金共撥出約港幣 1,200 萬

by the property owner to handle a mortgage loan application of HK\$10 million. The loan application was duly approved and the loan of HK\$10 million was paid into the bank account of an offshore company controlled by D2. Over HK\$7.1 million was transferred to D1's bank account. As the repayments of the loan ran into arrears, L1 instituted a civil claim against, inter alia, the property owner and the husband. D1 used two letters purportedly issued by the property owner and the husband to instruct another solicitors' firm (D1's then employer) to act for the property owner and the husband in the civil claim. Meanwhile, D1 again falsely represented to another licensed money lender (L2) that the property owner had authorized him to handle another mortgage loan application of HK\$10 million. The loan was duly approved and was applied to repay the loan owed to L1. The property owner never instructed anyone to obtain the two loans totaling HK\$20 million. D1 was convicted of two charges of fraud and one charge of using copies of false instruments, and was further found guilty jointly with D2 of dealing with property known or believed to represent proceeds of an indictable offence. D1 and D2 were respectively sentenced to 47 months' and 30 months' imprisonment. Both defendants have filed notices of appeal against conviction and sentence while the Secretary for Justice has filed an application to review D1's sentence.

In *HKSAR v Leung Chun-hei* DCCC 361/2021, [2021] HKDC 1249, the defendant was a senior sales manager of a lighting product company and was responsible for handling orders placed by customers including company X, a trading company in which his wife was the sole shareholder-cum-director. The defendant was authorized to utilize promotion funds for clients to subsidize or give discount to X. Over a period of 34 months, X had placed about 3,800 purchase orders for total invoiced amount of about HK\$107 million and a total sum of about HK\$12 million from the promotion funds was used to subsidize X. The defendant was fully aware that he should promptly disclose any actual or potential conflict of interest to the company but he never made any declaration to the company about his wife's

元補貼 X。被告明知應及時向公司披露任何實際或潛在的利益衝突，但從未向公司申報其妻子在 X 的角色和利益。被告承認一項欺詐罪。法院表示被告故意且有預謀欺騙公司，其行為違反誠信，與盜竊無異，判處被告監禁 56 個月。被告已就刑罰提出上訴通知。

在香港特別行政區 訴 麥光耀 (第一被告) 及另三人 (第二至第四被告) (區院刑事案件 2019 年第 657 號) [2021] HKDC 1370 一案中，四名被告被裁定一項串謀詐騙罪罪名成立，而第一、第三和第四被告更被裁定另一項類似罪名成立。康宏理財控股有限公司 (康宏控股) 為上市公司。鼎成證券有限公司 (鼎成) 和康宏證券投資服務有限公司 (康宏證券) 均提供屬受規管活動的證券交易服務，例如債券配售。第一被告和康宏控股另外兩名執行董事持有大量康宏證券的股份。康宏控股在年報披露康宏證券是其有關連人士。康宏控股在六個月內四度委聘鼎成為四次債券配售的配售代理。其間，被告一同串謀安排鼎成委聘康宏證券為四次債券配售的分配售代理。根據分配售安排，康宏證券其後經鼎成向康宏控股收取約港幣 4,960 萬元的分配售佣金，以及從鼎成獲取港幣 120 萬元的獎金。實際上，鼎成沒有向任何投資者配售債券，康宏證券才是實際配售代理。康宏控股、其董事局和股東，以及香港聯合交易所從未獲披露康宏證券為四次債券配售的實際配售代理。第一被告被判處監禁七個月，第四被告鼎成總經理被判處監禁五個月。第二被告康宏控股的財務總監和第三被告康宏控股的經理，分別判處監禁五個月及四個月，緩刑 18 個月。所有被告已就定罪提出上訴通知，而律政司司長已申請覆核刑罰。

在香港特別行政區 訴 方錦榮 (區院刑事案件 2020 年第 810 號 [2021]HKDC 1409) 一案中，被告是中小企業香港樂天國際貿易有限公司 (樂天) 的唯一董事及股東，為了向兩家銀行申請融資服務，提交據稱由會計師行發出的樂天審計報告和財務報表副本，以及虛假的公司銀行帳戶月結單副本，作為證明。兩家銀行向樂天批出港幣 1,300 萬元及港幣 600 萬元的融資額，並會根據周年覆核的評估結果，決定會否延長、暫停或終止融資安排。周年覆核期間，被告再次提交虛假的公司審計報告、財務報表及銀行帳戶月結單副本，兩項融資因而獲准延期。被

role and interest in X. The defendant pleaded guilty to one count of fraud. In sentencing the defendant to 56 months' imprisonment, the Court said that the defendant had intentionally and premeditatedly deceived the company. His acts constituted a breach of trust and were no different from theft. The defendant has filed a notice of appeal against sentence.

In *HKSAR v Mak Kwong-yiu (D1) and three others (D2-D4)* DCCC 657/2019, [2021] HKDC 1370, the four defendants were convicted of one charge of conspiracy to defraud while D1, D3 and D4 were further found guilty of another similar offence. CFH was a publicly listed company. GS and CIS both provided dealing in securities regulated activity, such as bonds placement. D1 and two other executive directors of CFH held substantial shares in CIS. CFH's annual report disclosed that CIS was its connected person. On four occasions over a period of six months, CFH engaged GS as the placing agent of four bond placing exercises. The defendants conspired together to arrange GS to further engage CIS as the sub-placing agent of the four exercises. CIS subsequently received around HK\$49.6 million as sub-placing commission from CFH via GS and HK\$1.2 million as bonus from GS under the sub-placing arrangements. In fact, GS did not place any bonds with any investor and CIS was the actual placing agent. It was never disclosed to CFH and its board of directors and shareholders as well as the SEHK that CIS was the actual placing agent of the four bond placing exercises. D1 was sentenced to seven months' imprisonment while D4, general manager of GS was sentenced to five months' imprisonment. D2 and D3, financial controller and manager respectively of CFH were sentenced to five months' and four months' imprisonment respectively, both suspended for 18 months. All defendants have filed notices of appeal against conviction while the Secretary for Justice has filed notices of application for review of sentences.

In *HKSAR v Fong Kam-sang* DCCC 810/2020, [2021] HKDC 1409, the defendant was the sole director and shareholder of a small and medium enterprise (HKLIT) which applied for banking facilities from two banks. In order to support the applications, the defendant submitted to the two banks copies of audited reports and financial statements of HKLIT purportedly issued by an accounting firm, and copies of false bank statements of the company. The banks granted banking facilities of HK\$13 million and HK\$6 million to HKLIT which were subject to annual reviews in order to assess if the banking facilities would be extended, suspended or revoked. At the annual reviews, the defendant again submitted copies of false audited reports, financial statements and bank statements of the company. As a result, extension of the two banking facilities were approved. The defendant was convicted of five charges of using copies of false instruments and was sentenced to six years' imprisonment. The defendant has filed notices of appeal against conviction and sentence.

告被裁定五項使用虛假文書的副本罪名成立，判處監禁六年。被告已就定罪和刑罰提出上訴通知。

分科四 (訟辯) — 訟辯組

該組律師主要負責出庭進行檢控和處理上訴，所處理的案件往往重大而複雜。他們也在可行情況下就該分科負責的案件協助提供法律指引。下文扼述該組在 2021 年提出檢控的一些案件：

在香港特別行政區 訴 林卓廷 (東區裁判法院刑事案件 2020 年第 2789 號) 一案中，被告被裁定三項披露受調查人身分罪罪成，違反《防止賄賂條例》第 30 條。在 2019 年 7 月及 10 月，廉政公署人員就 2019 年 7 月 21 日在元朗港鐵站聲稱發生的襲擊人羣案件與身為證人的被告會面。廉政公署人員告知被告該署調查涉事警方指揮官一事，並提醒他上述《防止賄賂條例》第 30 條的禁令。

在 2019 年 12 月 29 日及 2020 年 1 月 21 日，被告舉行記者會，過程在他和民主黨的 Facebook 專頁直播，其間披露上述正被調查的一名受調查人的身分，又於 2020 年 7 月 16 日在立法會綜合大樓會見傳媒時作出相若的披露。被告經審訊後被裁定全部控罪罪名成立，就控罪各判處監禁四個月，同期執行。他獲准保釋等候上訴。

在香港特別行政區 訴 劉文建 [2021] HKCFI 3078 一案中，上訴人是應用科技研究院研究及發展總監，據稱他代表該研究院批准向供應商採購總值逾 50 萬元的物品時，沒有披露他與妻子持有供應商的利益。他經原審裁判官審訊後，被裁定普通法公職人員行為不當罪名成立，判處監禁六個月，緩刑 30 個月。上訴人就定罪提出上訴，申訴指原審裁判官 (i) 沒有對上訴人在警誡會面作出的開脫罪責部分內容給予任何比重，實屬犯錯；(ii) 沒有充分考慮罪行的犯罪意圖元素及上訴人的良好品格；以及 (iii) 錯誤裁斷其行為屬嚴重不當行為。法庭駁回上訴人所有上訴理據。

Section IV (Adv) – Advocacy

Counsel in this section mainly prosecutes trials and appeals in court, very often significant and complex ones. At the same time, they assist in giving legal advice, whenever possible, on cases that fall within the Sub-division's purview. Cases prosecuted in 2021 include:

In *HKSAR v Lam Cheuk-ting* ESCC 2789 of 2020, the defendant was convicted of three charges of disclosing of identity of persons being investigated, contrary to section 30 of the POBO. In July and October 2019, officers of the ICAC interviewed the defendant as a witness in respect of case of alleged attack of persons at Yuen Long MTR station on 21 July 2019. The defendant was informed by ICAC of their investigation against the Police commanders in the matter and was warned of the prohibition under the said section 30 of the POBO.

On 29 December 2019 and 21 January 2020, the defendant held a press conference (live-streamed on the Facebook pages of himself and of the Democratic Party) during which he disclosed the identity of a subject person of the said ongoing investigation. On 16 July 2020, he made a similar disclosure during a media standup at the Legislative Council Complex. The defendant was convicted of all charges after trial and was sentenced to a concurrent sentence of four months' imprisonment. He was granted bail pending appeal.

In *HKSAR v Lau Man-kit* [2021] HKCFI 3078, the appellant, the research and development director of the Applied Science and Technology Research Institute, was convicted after trial of the common law offence of misconduct in public office. It was alleged that he had failed to disclose the interests of himself and his wife in the vendors when he endorsed over half of million dollars' worth of purchases from the vendors on behalf the said institute. Upon conviction, he was sentenced to six months' imprisonment suspended for 30 months. In appealing against his conviction, the appellant complained that the trial magistrate (i) erred in placing no weight in the exculpatory part of his cautioned interview; (ii) failed to properly consider the *mens rea* element of the offence and the good character of the appellant; and (iii) erred in finding his conduct to be serious misconduct. The Court dismissed all the appellant's grounds of appeal.