

分科四 (商業罪案)

Sub-division IV (Commercial Crime)

本分科專門負責就白領罪行提供法律指引，以及作出檢控和上訴。白領罪行的例子有商業詐騙、網上欺詐、洗黑錢、貪污行賄及稅務詐騙等。

本分科也專責處理涉及《保險業條例》(第 41 章)、《稅務條例》(第 112 章)、《防止賄賂條例》(第 201 章)、《選舉(舞弊及非法行為)條例》(第 554 章)、《證券及期貨條例》(第 571 章)及《一手住宅物業銷售條例》(第 621 章)的刑事違規案件。

This Sub-division specializes in advising on and prosecuting the trials and appeals of white-collar crimes such as commercial fraud, online fraud, money laundering, corruption and bribery, and revenue fraud.

It also specializes in dealing with cases arising from breaches of a criminal nature of the Insurance Ordinance (Cap. 41), the Inland Revenue Ordinance (Cap. 112), the Prevention of Bribery Ordinance (Cap. 201), the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), the Securities and Futures Ordinance (Cap. 571), and the Residential Properties (First-hand Sales) Ordinance (Cap. 621).



此等罪案由執法機關負責調查，當中包括香港警務處（通常為商業罪案調查科或財富情報及調查科）、保險業監管局（保監局）、廉政公署、稅務局、證券及期貨事務監察委員會（證監會）及一手住宅物業銷售監管局（銷售監管局）。

此外，廉政公署所調查普通法中的公職人員行為失當罪也屬本分科的職責範疇。

分科律師會就證據是否充分向執法機關提供法律指引。如證據足以確使有合理機會達致定罪，分科律師也會考慮提出檢控是否符合公眾利益；如是，則適當的控罪及審訊法院的級別為何。分科律師在審訊後會仔細審視結果，並決定應否提出上訴或覆核。律師也會盡量出庭進行檢控，並處理上訴和覆核案件。

本分科在 2022 年有一些轉變，但職責範疇大致依舊。前分科四（訟辯）一訟辯組因重行調配人手而解散，其訟辯職務由其餘四組承擔。此外，該四組分別改稱分科第四 1A 組、第 1B 組、第 2A 組及第 2B 組。首兩組就警方（主要為商業罪案調查科和財富情報及調查科，但也有警方其他單位）調查的案件提供法律指引，而第 1B 組同時就保監局、稅務局、證監會及銷售監管局調查的案件提供法律指引。第 2A 組及第 2B 組就廉政公署調查的案件提供法律指引，一般分別負責處理涉及公營機構貪污和選舉罪行的案件，以及私營機構貪污案件。隨着《選舉（舞弊及非法行為）條例》（第 554 章）第 27A 條在 2021 年 5 月 31 日實施，把在選舉期間內藉公開活動煽惑另一人不投票或投白票或無效票的行為訂為刑事罪行，第 2A 組在 2022 年給予法律指引，對干犯此新訂罪行的合共九人提出檢控。

在 2022 年，分科四由副刑事檢控專員林穎茜資深大律師掌管，共有 30 名律師。分科下四個組別分別由高級助理刑事檢控專員黃堅邦先生、陳鳳珊女士、陳淑文女士和何偉萬女士率領。本分科的律師在 2022 年曾提供 1,715 項書面及口頭法律指引，出庭日數共 782.5 日。下文載述各組別在年內處理的一些案件。

These crimes are investigated by law enforcement agencies. They include the Hong Kong Police (usually by their Commercial Crime Bureau (“CCB”) or Financial Intelligence and Investigation Bureau (“FIIB”)), Insurance Authority (“IA”), Independent Commission Against Corruption (“ICAC”), Inland Revenue Department (“IRD”), Securities and Futures Commission (“SFC”) and Sales of First-hand Residential Properties Authority (“SRPA”).

In addition, the common law offence of misconduct in public office investigated by the ICAC is also within the Sub-division’s specialty.

Counsel advise these law enforcement agencies on the sufficiency of evidence. Where there is sufficient evidence to secure a reasonable prospect of conviction, counsel also consider whether it is in the public interest to institute a prosecution, and if so, what the appropriate charges are and which level of court at which the trial should take place. After trial, counsel carefully scrutinise the outcome and decide whether any appeal or review should be initiated. Whenever possible, counsel will prosecute the trials and argue the appeals and reviews.

2022 saw a few changes to the Sub-division. Whereas its portfolio remained roughly the same, the previous Section IV (Adv) – Advocacy Section was disbanded as a result of re-deployment of manpower and its advocacy portfolio was absorbed by the remaining four sections. Further, those four sections were renamed into Sections IV(1)(A), IV(1)(B), IV(2)(A) and IV(2)(B). The former two sections advise on cases investigated by the Police, mainly the CCB and FIIB but also other formations of the Police. Section IV(1)(B), in addition, advises the IA, IRD, SFC and SRPA on cases investigated by them. Sections IV(2)(A) and IV(2)(B) advise the ICAC on their cases and in general they handle, respectively, public sector corruption and electoral crimes, and private sector corruption. With the implementation of section 27A of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) on 31 May 2021, which criminalizes the conduct of inciting another not to vote or to cast a blank or invalid vote by way of public activity during an election period, Section IV(2)(A) advised to prosecute a total of 9 persons for having committed this new offence in 2022.

In 2022, Sub-division IV comprised 30 counsel and was headed by Ms Vinci Lam, SC, Deputy Director of Public Prosecutions. The four sections were led by Senior Assistant Directors of Public Prosecutions Mr Michael Wong, Ms Denise Chan, Ms Alice Chan and Ms Winnie Ho respectively. Counsel of the Sub-division gave 1,715 pieces of advice, written and oral, and attended court for a total of 782.5 court days in 2022. Below are some of the cases handled by each section in the year.

分科四第 1A 組

在香港特別行政區訴 *Chang Yau-hung, Alexander* (高院刑事案件 2020 年第 350 號) 一案中，被告是一名前執業律師，擔任中區少年警訊永遠名譽會長。他被控“盜竊”罪，以及“處理已知道或相信為代表從可公訴罪行的得益的財產”(一般稱為“洗黑錢”)的交替控罪。控方案情指受害人被誘使投資一項欺詐投資計劃。受害人被告知被告會以在法律事務有往來者的身分收取並代其持有資金，以及受害人其後不論任何原因決定停止交易，又或交易一經終止，均會獲發還資金。受害人於是把 1,000 萬美元轉入被告的個人帳戶。被告之後與受害人見面，向受害人確認他負責以信託方式代受害人持有投資本金，保證不會盜用/轉移投資本金，並會在投資計劃完成後向受害人交還全數本金。然而，被告其實在受害人不知情和未經其許可下從其個人帳戶轉出該筆資金。受害人其後得知被告被指參與另一宗刑事案件，因而擔心其投資本金不保，於是聯絡被告，要求發還投資本金，但被告不斷以諸多藉口逃避向受害人還款，受害人遂向警方報案。

被告承認盜竊控罪。法庭將量刑起點定為監禁 10 年，考慮到被告遲至交付審判程序後才認罪，遂把刑期扣減 25%。鑑於被告從受害人收取 1,000 萬美元前便已向全球多個執法機關舉報，有效制止了其他罪犯進一步犯案，法庭因此再扣減刑期三個月，最終刑期為七年零三個月。

香港特別行政區訴 *Or Chi-ming* (東區裁判法院刑事案件 2022 年第 380 號) 是一宗詐騙案。此詐騙案的被告循“防疫抗疫基金”下的“零售業資助計劃”(計劃)提交六份有欺詐內容的申請，其中兩份成功獲批合共港幣 16 萬元資助，餘下四份則被拒絕。他被控兩項“欺詐”罪及四項“企圖欺詐”罪。

申請商戶須在香港擁有固定地址及獨立營運的實體商店，並以零售為主要及實質業務，以及在 2020 年 1 月 1 日前已經開業，才符合資格循計劃申請資助。每家合資格零售店可獲一次過港幣 80,000 元的資助。

Section IV(1)(A)

In *HKSAR v Chang Yau-hung, Alexander* HCCC 350/2020, the defendant is a former practising solicitor and Permanent Honorary President of the Junior Police Call Central District. He was charged with the offence of “theft” and with “dealing with property known or believed to represent proceeds of an indictable offence” (or “money laundering” in common parlance) which was laid as an alternative charge. The prosecution case was that the victim was induced into investing in a fraudulent investment scheme. He was told that the defendant would act as the legal affiliate to receive and hold the fund for him. He was further told that the fund would be returned to him if he subsequently decided to stop the trading for any reason or the trading ended. The victim therefore transferred US\$10 million to the personal account of the defendant. Afterwards, the defendant met up with the victim and confirmed with the victim that he was responsible for holding the investment capital on trust for the victim. The defendant assured that he would not embezzle/transfer the investment capital and would, upon conclusion of the investment program, return the whole sum of capital to the victim. However, the defendant had in fact, without the knowledge and approval of the victim, transferred the sum out of his personal account. The victim subsequently learnt of the defendant’s alleged involvement in another criminal case and was thus concerned about his investment capital. He contacted the defendant for the return of his investment capital but the defendant had kept using various excuses to avoid repaying the victim. The victim then made a report to the police.

The defendant pleaded guilty to the charge of theft. The court adopted a starting point of sentence of 10 years’ imprisonment and gave the defendant a 25% discount in view of his late guilty plea which was only entered after committal proceedings. The court gave a further discount of 3 months for the defendant’s reports, made before receipt of the US\$10 million from the victim, to various law enforcement agencies over the world which had in effect stopped the other culprits from further offending. The ultimate sentence passed was 7 years and 3 months’ imprisonment.

HKSAR v Or Chi-ming ESCC 380/2022 is a case of fraud where the defendant made 6 fraudulent applications to the Retail Sector Subsidy Scheme (“RSSS”) under the Anti-epidemic Fund. He successfully obtained HK\$160,000 of subsidy in 2 of his applications while the other 4 applications were rejected. He was charged with 2 counts of “fraud” and 4 counts of “attempted fraud”.



2020年4月至5月間，被告向政府提交六份申請，訛稱其公司在不同地址設有六家零售店，當中首兩份獲得批准。之後，被告被發現就其後的申請填報其他申請商戶使用過的地址，觸發當局對其全部申請進行覆檢。實地視察發現，被告在關鍵時間沒有在填報的地址開設任何業務。他為獲得資助而向計劃提交的所有照片均在不明地點或位於同一大廈內，鋪面固設了臨時紙板的店鋪拍攝。因應上述調查結果，被告所提交的餘下四份申請均遭拒絕。

被告承認一項“欺詐”罪及三項“企圖欺詐”罪。考慮到被告及時認罪、沒有刑事紀錄，以及已向政府悉數清還款項，法庭判處他履行200小時社會服務令。

分科四第 1B 組

律政司司長 訴 江智喬 (答辯人) [2023] 1 HKLRD 72 一案是由律政司司長申請覆核答辯人被判處的刑罰。答辯人承認 13 項詐騙和兩項洗黑錢罪。案情指答辯人開設一間假公司，通過社交媒體和聘請代理人推廣高回報投資。她收取了回應者的資金，但從沒替他們投資。12 名已知受害人向答辯人存入款項合共

To be eligible for the subsidy under RSSS, an applicant must be conducting a substantial and substantive retail business at a fixed physical and individually operated store in Hong Kong which had commenced business before 1 January 2020. Each eligible retail store would receive a one-off subsidy of HK\$80,000.

Between April and May 2020, the defendant made 6 applications to the Government, falsely claiming that his company had six retail stores in different addresses. His first 2 applications were approved. It was later revealed that the addresses he used for his subsequent applications had already been used by other applicants which triggered a review of all the defendant's applications. Site visits were conducted and it was found that the defendant did not establish any business at the addresses provided at the material time. All the photos submitted to RSSS for approval of the subsidy were either taken at unknown locations or at shops in the same building with temporary cardboards fixed at the shop front. As a result of the aforesaid investigation, the remaining 4 applications made by the defendant were rejected.

The defendant pleaded guilty to 1 count of “fraud” and 3 counts of “attempted fraud”. Considering his timely guilty pleas, that he had no previous criminal record and that he had made full restitution to the Government, the Court sentenced the defendant to 200 hours of community service.

Section IV(1)(B)

Secretary for Justice v Kong Chi-kiu (“Respondent”) [2023] 1 HKLRD 72 concerns an application by the Secretary for Justice (“SJ”) to review the sentence imposed on the Respondent, who had pleaded guilty to 13 counts of fraud and two counts of money laundering. The facts were that the Respondent set up a sham company to promote high-yield investments via social media and agents employed by her. Despite receiving funds from those who responded, she never made any investment for them. 12 identified victims deposited a total sum of \$1,798,638 with the Respondent for investment and suffered a total loss of \$1,666,675. The two charges of money laundering involved sums of \$2.4 million and \$1.16 million in the Respondent's two bank accounts respectively, including funds from the identified victims and other unidentified victims. The judge in the District Court sentenced the Respondent to concurrent sentences of 2 years and 3 months' imprisonment for all charges.

On the SJ's application, the Court of Appeal identified the aggravating features of online fraud and made a clear ruling that for investment fraud, whether a defendant has any professional qualification or he only held out to be so, such is regarded as

1,798,638 元用作投資，淨虧損合共 1,666,675 元。兩項洗黑錢控罪涉及分別存放於答辯人兩個銀行帳戶內的 240 萬元及 116 萬元款項，包括來自己知受害人和其他尚未確定身分的受害人的資金。區域法院法官判處答辯人所有控罪的刑期同期執行，監禁兩年零三個月。

就律政司司長的申請，上訴法庭指出網上詐騙的加刑因素，並明確裁定就投資騙案而言，不論被告確實具備或僅顯示其具備專業資格，均視為構成“違反誠信”，屬加刑因素。上訴法庭就網上詐騙控罪以四年監禁為量刑起點，並重新判處答辯人洗黑錢控罪的刑罰。考慮到整體量刑原則，法庭下令部分刑期分期執行。答辯人因在覆核刑期期間所受的困苦而獲得減刑。覆核後最終改判的刑期為三年零九個月。

香港特別行政區 訴 鍾沛傑 (覆核申請 2022 年第 9 號) 是一宗特殊的網上詐騙案。被告留意到信用卡的卡號有固定排序，並偶然發現某類信用卡的相應保安碼。他遂利用一些網上應用程式計算出信用卡號碼、檢查數位、到期日和保安碼的可能組合。經過多次反覆試驗，他成功利用 44 張他人持有的信用卡資料，向不同的網店提交 53 張網購訂單，已派遞給他的貨品總值超過港幣 95 萬元。他在收取其餘所購貨品的派遞時當場被捕。他被控一項“盜竊”和一項“企圖盜竊”罪。被告認罪後被判處監禁合共兩年。考慮到刑罰屬明顯不足及 / 或原則上錯誤，分科四第 1B 組律師代表律政司司長申請覆核刑罰。上訴法庭在 2023 年 3 月 23 日就有關申請進行聆訊。法庭裁定律政司司長的申請得直，就兩項控罪分別採納六年和兩年零六個月的監禁為量刑起點。由於被告認罪，被捕後表現合作，確認詐騙計劃及交易，而 he 已服畢原有刑期，以及由於這是對刑罰的覆核，因此法庭改判刑罰為三年監禁。

在東區裁判法院刑事案件 2022 年第 1927 號中，證監會與警方對一個有組織的“唱高散貨”集團採取聯合行動，落案檢控 14 名被告，其中六人被控干犯普通法、《證券及期貨條例》第 300 條及《刑事罪行條例》第 159A 及 159C 條所訂明的串謀欺詐罪，以及串謀在涉及證券的交易中意圖欺詐或欺騙而使用計劃罪的交替控罪。該六名被告被指與多名人士串謀

constituting “breach of trust” which is an aggravating factor in sentencing. The Court of Appeal adopted a starting point of 4 years of imprisonment for the online fraud charges. It also sentenced the Respondent for the money laundering charges afresh. Having considered the principle of totality, a partly consecutive sentence was imposed. In view of the hardship faced by the Respondent during the review of sentence, a discount was given and the final sentence substituted on review was 3 years and 9 months’ imprisonment.

Secretary for Justice v Chung Pui-kit Billy CAAR 9/2022 is an online fraud case with a special feature. The defendant noticed that there was a sequence in the credit card numbers and he accidentally found the corresponding security code of a particular type of credit card. He then used some online programmes to calculate the possible combination of credit card numbers, check digits, expiry dates and security codes. After many times of trial and error, he successfully used the information of 44 credit cards of other persons to place 53 online purchase orders at different online shops. The total value of the goods delivered to the defendant was more than HK\$950,000. He was caught red-handed when he was receiving the delivery of the outstanding purchased items. He was charged with one count of “Theft” and one count of “Attempted Theft”. Upon his own guilty pleas, the defendant was sentenced to 2 years’ imprisonment in total. Considering the sentence manifestly inadequate and/or wrong in principle, counsel of Section IV(1)(B) made an application on behalf of the SJ to review the sentence. The application was heard on 23 March 2023 before the Court of Appeal. The Court allowed the SJ’s application and adopted a starting point for sentence of 6 years and 2 years 6 months of imprisonment for the two charges respectively. Since the defendant had pleaded guilty, cooperated by identifying the fraudulent scheme and transactions after being arrested and completed his original sentence, and because this was a review of sentence, the Court substituted a sentence of 3 years’ imprisonment.

In ESCC 1927/2022, fourteen defendants were charged following a joint operation of the SFC and the Police against a sophisticated ramp-and-dump syndicate. Six of the defendants were charged with the offences of Conspiracy to defraud with an alternative charge of Conspiracy to employ a scheme with intent to defraud or deceive in transactions involving securities under common law, section 300 of the Securities and Futures Ordinance (SFO) and sections 159A and 159C of the Crimes Ordinance. The six defendants were alleged to have conspired with a number of individuals between October 2018 and May 2019 to use multiple nominee accounts to corner the shares of the target stocks and drive up the price of those shares. At a later stage, the syndicate

在 2018 年 10 月至 2019 年 5 月期間，使用多個代名人帳戶對目標股份進行挾倉，推高股價。據稱，該集團後來通過不同社交媒體平台誘使投資者買入該等股份，其後積極拋售股份獲利，而當市場對該等股份再沒有需求時，股價便隨之大跌。14 名被告中，有三人被加控聯同另外八名被告干犯洗黑錢罪。各被告無須答辯，案件押後至 2023 年 10 月 4 日提堂。

在香港特別行政區 訴 *Li Shuangkai* 及另兩人（區院刑事案件 2022 年第 68 號）一案中，三名被告被控合共四項洗黑錢罪。案中涉及一連串典型電話騙案，身分不明的騙徒向四名受害長者訛稱是其“兒子”。受害人信以為真，準備現金營救騙徒聲稱遭遇不同危急狀況的“兒子”，而親自與受害人交收現金的正是本案各被告。四宗騙案均在同一個月內發生，涉及的犯罪得益介乎港幣 6 萬元至港幣 10 萬元。各被告認罪，獲扣減刑期，區域法院分別判處第一被告、第二被告及第三被告監禁 18 個月、24 個月及 25 個月。

在香港特別行政區 訴 高譽投資有限公司（九龍城裁判法院傳票案件 2022 年第 16225 至 16235 號）一案中，高譽投資有限公司（高譽）是九龍美善同道 80 號發展項目“翰畋”的賣方，須遵守《一手住宅物業銷售條例》（第 621 章）各項有關銷售安排及銷售文件的規定。銷售監管局經審查後，發現高譽在 2020 年 8 月 27 日至 2022 年 4 月 21 日期間不時違反各項規定，包括未能 (i) 在售樓處和賣方的互聯網網站提供最新的售樓說明書以供閱覽；(ii) 在賣方的互聯網網站提供有關銷售安排的資料以供閱覽；以及 (iii) 在售樓處提供有關發展項目的鳥瞰照片和分區計劃大綱圖以供閱覽。當局向高譽發出共 11 張傳票。高譽承認八張傳票的控罪，最終被裁定罪名成立，罰款合共港幣 74,000 元。這宗案件是銷售監管局自《一手住宅物業銷售條例》在 2013 年 4 月生效後採取的第 13 次檢控行動。

was alleged to induce investors to purchase those shares through different social media platforms. The syndicate then disposed of their shares aggressively at a profit and the price of the target stocks collapsed once the demand was exhausted. Among the fourteen defendants, three faced additional charges of money laundering together with eight other defendants. No plea was taken and the case was adjourned to 4 October 2023 for mention.

In *HKSAR v Li Shuangkai and Two Others* DCCC 68/2022, three defendants were charged with a total of four counts of money laundering. The facts showed a series of typical telephone deceptions. Four senior citizens were victimized by unidentified scammer(s) who falsely represented themselves to be their respective “son”. Believing the false representations, the victims prepared cash to bail their “son” out of different dire circumstances presented by the scammer(s). The defendants in the present case were persons who collected the cash from the victims in person. All four incidents took place within one month. The “tainted” proceeds involved ranged between HK\$60,000 and HK\$100,000. The defendants pleaded guilty to their respective charges. After affording the usual guilty plea discount, the District Court sentenced the three defendants to prison for 18 months (for D1), 24 months (for D2), and 25 months (for D3).

In *HKSAR v Fame Top Investment Limited* KCS 16225-16235/2022, Fame Top Investment Limited (“Fame Top”) was the vendor of a development “80 Maidstone Road” at No.80 Maidstone Road, Kowloon. As the vendor, Fame Top was required to comply with various requirements on sales arrangement and sales documents imposed by the Residential Properties (First-hand Sales) Ordinance (Cap. 621) (“RPFSSO”). Upon inspection by the SRPA, Fame Top was found in breach of various requirements from time to time which covered the period from 27 August 2020 to 21 April 2022, including failing to provide, *inter alia*, (i) an updated sales brochure available for inspection at the sales place and on the vendor’s website; (ii) information about the sales arrangement available for inspection on the vendor’s website; and (iii) aerial photograph and outline zoning plan related to the development available for inspection at the sales place. A total of 11 summonses were taken out against Fame Top. It was ultimately convicted, upon its guilty pleas, of 8 summonses and was fined to a total of HKD74,000. This case was the SRPA’s 13th prosecution action since the commencement of the RPFSSO in April 2013.

分科四第 2A 組

在香港特別行政區 訴 何嘉雯及另六人 (觀塘裁判法院刑事案件 2022 年第 429 號) 一案中，負責在社區疫苗接種中心為市民接種新冠疫苗的一名護士 (第一被告) 與另六人 (第二至第七被告) 串謀，向他們發出紙本疫苗接種紀錄，但實際上並無為他們任何一人接種疫苗。第一被告承認兩項串謀詐騙罪，被裁定罪名成立，判處監禁合共六個月。第二至第七被告各被控一項串謀詐騙罪，第二被告承認控罪，判處監禁兩個月，第六及第七被告經審訊後被裁定罪名成立，各判處監禁三個月。第三至第五被告在案中的角色被動，被法院頒令簽保守行為 12 個月。

在香港特別行政區 訴 戴耀廷及另二人 (區院刑事案件 2021 年第 683 號)，第一被告涉嫌在 2016 年立法會換屆選舉招致未經授權的選舉開支，即在兩份本地中文報章上三度刊登廣告，藉以宣傳一個策略性投票計劃，最終目標是在上述選舉的最後一刻作出投選候選人的建議。第一被告是推展該計劃的關鍵人物。招致的廣告開支總額為 253,540 元。所有被告被控四項在選舉中作出招致選舉開支的非法行為，違反《選舉 (舞弊及非法行為) 條例》(第 554 章) 第 23(1) 條。第一被告承認全部控罪，被裁定罪名成立，判處監禁合共十個月。第二及第三被告在案中的角色較被動，被法院頒令簽保守行為 12 個月。

在香港特別行政區 訴 甘啟文 (區院刑事案件 2021 年第 353 號) 一案中，被告為衛生署醫務微生物學顧問醫生，承認四項普通法中的公職人員行為失當罪及兩項欺詐罪，違反《盜竊罪條例》(第 210 章) 第 16A 條，被裁定罪名成立。被告涉嫌向三個國際衛生組織訛稱他獲衛生署授權與其簽訂協議，並就協議收取服務費，而事實上衛生署對這些協議並不知情，他被判處監禁合共 31 個月。

在香港特別行政區 訴 歐頌賢 (東區裁判法院刑事案件 2021 年第 1494 號) 一案中，被告被控在選舉中作出向他人提供娛樂和賄賂選民的舞弊行為罪，分別違反《選舉 (舞弊及非法

Section IV(2)(A)

In *HKSAR v Ho Ka-man Carmen and 6 others* KTCC 429/2022, a nurse (D1), who was responsible for inoculating citizens with COVID-19 vaccine at a Community Vaccination Centre, had conspired with 6 other persons (D2 to D7) to issue paper vaccination records to them without actually inoculating any of them with the vaccine. D1 was convicted of 2 counts of conspiracy to defraud on her own plea and sentenced to a total of 6 months' imprisonment. Each of D2 to D7 was charged with 1 count of conspiracy to defraud. D2 pleaded guilty to the charge and was sentenced to 2 months' imprisonment, while D6 and D7 were convicted of the charge after trial and each of them was sentenced to 3 months' imprisonment. D3 to D5, who took a passive role in the case, were ordered to be bound-over for 12 months.

In *HKSAR v Tai Yiu-ting and 2 others* DCCC 683/2021, D1 was alleged to have incurred unauthorized election expenses in the 2016 Legislative Council General Election by placing advertisements in 2 local Chinese newspaper on 3 occasions for the purpose of promoting a strategic voting scheme with the ultimate aim of providing last minute recommendations of candidates in the said election. D1 was the key person involved in introducing and promoting the scheme. The total advertising expenses incurred were \$253,540. All defendants were charged with 4 counts of engaging in illegal conduct at an election, contrary to section 23 (1) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554). D1 was convicted of all counts on his own plea and was sentenced to a total term of 10 months' imprisonment. D2 and D3, who played a more passive role, were ordered to be bound over for 12 months.

In *HKSAR v Kam Kai-man Joseph* DCCC 353/2021, the defendant, a Consultant Medical Microbiologist of the Department of Health, was convicted on his own pleas of 4 counts of the common law offence of misconduct in public office and 2 counts of fraud, contrary to section 16A of the Theft Ordinance (Cap. 210). It was alleged that the defendant made false representations to 3 international health organizations that he had the authority of the Department of Health to enter into agreements with these organizations and to receive service fees from them, when in fact the Department of Health had no knowledge of these arrangements. He was sentenced to a total imprisonment term of 31 months.

In *HKSAR v Au Chung-yin* ESCC 1494/2021, the defendant was convicted after trial of the offences of engaging in corrupt conduct to provide entertainment to others and to bribe electors in an election, contrary to section 12(1)(a) and section 11(1)(a) of

行為)條例》(第554章)第12(1)(a)和第11(1)(a)條，經審訊後被裁定罪名成立。控方案情指，被告在參選2019年區議會選舉期間曾安排兩名歌手向他人提供歌唱娛樂。她也向他人提供免費書法班，意圖誘使他人該選舉中投票給她。她被判處監禁共四個月零兩星期，並已就定罪及刑罰提出上訴。

在香港特別行政區 訴 黃瑪莉 (高院刑事案件2020年第98號)一案中，被告承認七項欺詐罪，違反《盜竊罪條例》(第210章)第16A條，被裁定罪名成立。被告使用虛假授權書，宣稱涉案物業的業主委任她為該等物業的合法受權人，藉以向不同財務機構及一名人士申請和取得貸款。受害的業主是被告的親戚(包括其家姑、大伯及大伯母)和前保險客戶。該等欺詐罪共涉及超過港幣3,200萬元。法官在判刑時指出，該等罪行經精密策劃，並對受害者的所有人權益構成莫大風險。法官以12年為總量刑起點，判處被告監禁九年。

在香港特別行政區 訴 蘇浚鋒 (西九龍裁判法院刑事案件2022年第2641號)一案中，被告被控在選舉期間內藉公開活動煽惑另一人不投票或投白票或無效票的新訂罪行。被告涉嫌在其Facebook專頁發布煽惑瀏覽者在2021年立法會換屆選舉中投“空白票”的帖文。該帖文在上述選舉期間公開給公眾瀏覽。被告質疑有關法例條文是否合憲不遂後承認控罪，判處監禁兩個月，緩刑18個月。他已經以案件呈述方式向高等法院原訟法庭提出上訴。

分科四第 2B 組

在香港特別行政區 訴 黃天龍 (區院刑事案件2021年第869號)一案中，被告是一間酒店的工程師，負責監督該酒店所有工程和維修項目。在2017年12月至2019年10月期間，他就39個項目向一間工程公司的董事兼股東索取和接受非法回佣共47萬元。這些項目包括在該酒店和酒店餐廳進行冷氣、消防及照明工程，合約總額約為230萬元。被告承認索取並接受工程承辦商承辦工程的大約一半淨利潤，並要求更高回佣以安排酒店員工協助承辦商完成這些項目。被告承認一項串謀使代理人接受

the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) respectively. The prosecution case was that while she was running as a candidate of the 2019 District Council Election, the defendant arranged 2 singers to provide singing entertainment to others. She also provided a free calligraphy class to others with the intent to induce others to vote for her in the said election. She was sentenced to a total imprisonment term of 4 months and 2 weeks. She has lodged an appeal against her conviction and sentence.

In *HKSAR v Wong Mary* HCCC 98/2020, the defendant was convicted on her own pleas of 7 counts of fraud, contrary to section 16A of the Theft Ordinance (Cap. 210). The defendant used forged powers of attorney through which the owners of the properties purportedly appointed her to be the lawful attorney in respect of the properties to apply for and obtain loans from different financial institutions and an individual. The victimized property owners were the relatives of the defendant, including her mother-in-law, brother-in-law and sister-in-law and her former insurance clients. The total amount involved in the fraud charges was over HKD32 million. In sentencing the defendant, the judge pointed out that the offences involved sophistication and posed profound risks to the victims' proprietary interest. A total starting point of 12 years was adopted and the defendant was sentenced to imprisonment of 9 years.

In *HKSAR v So Tsun-fung* WKCC 2641/2022, the defendant was charged with the new offence of inciting another not to vote or to cast a blank or invalid vote by way of public activity during an election period. It was alleged that he had displayed a post on his Facebook page which incited viewers to cast "blank votes" at the 2021 Legislative Council General Election. The said post was viewable by the public within the election period of the said election. After an unsuccessful challenge on the constitutionality of the statutory provision, the defendant pleaded guilty to the charge. He was sentenced to 2 months' imprisonment suspended for 18 months. He has lodged an appeal by way of case stated to the Court of First Instance of the High Court.

Section IV(2)(B)

In *HKSAR v Wong Tin-lung* DCCC 869/2021, the defendant was an engineer of a hotel responsible for supervising all engineering and maintenance works of the hotel. He had solicited and accepted illegal rebates totalling \$470,000 from a director-cum-shareholder of an engineering company for 39 projects between December 2017 and October 2019. The projects included air-conditioning, fire services and lighting works conducted at the hotel and a restaurant in the hotel, and the total contract sum amounted to about \$2.3 million. The defendant admitted that he



利益罪，判處監禁兩年。他也被勒令向酒店歸還約 40 萬元。

在香港特別行政區 訴 田德浩 (第一被告) 及 譚文燦 (第二被告) (區院刑事案件 2021 年第 645 號) 一案中，第一和第二被告分別是一間保險公司的高級分行經理和保險代理。2017 年 12 月，該保險公司接獲十份由第一被告提交的保單申請表，申請表據稱由九名人士以投保人身分簽署，並由第二被告以經辦代理身分簽署。事實上，第一和第二被告協議由第二被告訛稱為第一被告所處理的保單申請的經辦代理。第二被告並無銷售該十份保單或與相關投保人會面。涉案首期保費由第一被告安排支付，而第二被告則把從公司收取的佣金交予第一被告。涉案投保人中有五人確認從未申請有關保單，案情披露第一被告是在他們不知情下偽造有關申請表。兩名被告承認一項串謀詐騙罪，第一和第二被告分別判處監禁 37 個月和 12 個月。

在香港特別行政區 訴 何子俊 (九龍城裁判法院刑事案件 2021 年第 1381 號) 一案中，被告是一間保險公司的高級營業經理。他在每周會議上告訴團隊成員，團隊中最低職級的成員除可獲取基本月薪外，還會獲安排收取由公司發

had solicited and accepted roughly half of the net profits of the projects contracted to the works contractor. He had asked for a larger amount of rebate where staff members of the hotel were arranged to assist the works of the contractor in completing those projects. The defendant pleaded guilty to one count of conspiracy for an agent to accept advantages and was sentenced to two years' imprisonment. He was also ordered to pay about \$400,000 as restitution to the hotel.

In *HKSAR v Tin Tak-ho (D1) and Alvin Tam Man-chan (D2)* DCCC 645/2021, D1 and D2 were respectively a senior branch manager and insurance agent of an insurance company. In December 2017 the insurance company received 10 insurance policy application forms submitted by D1. The application forms were purportedly signed by nine persons as applicants and D2 as the handling agent. In fact, the duo had reached an agreement for D2 to falsely represent as the handling agent of insurance policy applications handled by D1. D2 did not procure the 10 insurance policies or meet the relevant applicants. The relevant initial premiums were arranged by D1 and D2 returned the commissions received from the company to D1. Five of the relevant applicants confirmed that they had not applied for the insurance policies and it was revealed that the relevant application forms were forged by D1 without their knowledge. Both defendants pleaded guilty to one count of conspiracy to defraud. D1 and D2 were respectively sentenced to 37 months and 12 months' imprisonment.

In *HKSAR v Ho Che-chun* KCCC 1381/2021, the defendant was a senior unit manager of an insurance company. He told his team members at weekly meetings that in order to maximise the commissions receivable by the whole team, arrangements would be made for the lowest ranking member in the team to receive commissions from the company apart from receiving basic monthly salaries. The relevant commissions received by those members should be passed to the defendant for handling. Between September and November 2017, the insurance company received eight insurance applications in which two down-line agents of the defendant were named as the handling agents. The defendant instructed the two down-line agents to return the commissions to him in five sums of cash, each ranged from \$38,000 to \$267,000, totalling over \$640,000. The defendant was found guilty of five charges of money laundering and was sentenced to 10 months' imprisonment. The defendant has filed notice of appeal against conviction.

In *HKSAR v Ngai Lok-kei*, DCCC 1171/2018, the defendant was an estate agent and the sole director of two property agencies (WTPA and GVP). He also held the shares of companies CJI and HVL. In early October 2014, the owner of a unit of a shopping

放的佣金，以盡量提高整個團隊可獲取的佣金，而有關成員在收取佣金後須交予被告處理。2017年9月至11月，該保險公司收到八份由被告兩名下線代理作為經辦代理的保單申請。被告指示該兩名下線代理把佣金分五筆現金退還給他，每筆金額介乎38,000至267,000元，合共超過64萬元。被告被裁定五項洗黑錢罪罪名成立，判處監禁十個月。被告已就定罪提出上訴通知。

在香港特別行政區 訴 蟻樂祺 (區院刑事案件 2018 年第 1171 號) 一案中，被告是一名地產代理及兩間地產代理公司 (盈信置業地產代理有限公司 (盈信) 和譽匯置業有限公司 (譽匯)) 的唯一董事，並持有愉欣投資有限公司 (愉欣) 和喜利創投有限公司 (喜利) 的股份。在 2014 年 10 月初，天水圍一個商場的一個鋪位的業主放售該鋪位，叫價 1,900 萬元。在 10 月中，被告安排原賣方與愉欣簽訂臨時買賣合約，成交價為 1,900 萬元，由譽匯作為該宗交易的地產代理。愉欣其後以確認人買賣方式將鋪位轉售予一對夫婦。被告向該對夫婦訛稱賣方愉欣叫價 3,200 萬元放售物業，並隱瞞自己在愉欣有實益權益，最終誘使對方以 2,856 萬元向愉欣購買物業，較原本叫價高出 956 萬元。此外，被告於 2014 年 12 月再向該對夫婦推介另一個位於九龍的物業，並隱瞞該物業的原賣方叫價 2,600 萬元放售物業。其後，喜利以 2,592 萬元購入該物業，由譽匯作為該宗交易的地產代理。被告最終誘使該對夫婦以約 3,143 萬元向喜利購買該物業，致使其多付約 551 萬元。被告被裁定兩項欺詐罪名成立，判處監禁六年半。他已就定罪和刑罰提出上訴通知。

在香港特別行政區 訴 朱冠輝 (西九龍裁判法院刑事案件 2022 年第 1457 號) 一案中，被告受僱於香港國際機場第三跑道項目的分判商，擔任一組水喉工的工頭。在 2020 年 9 月至 12 月期間，被告未經僱主批准，向組內兩名水喉工索取並接受非法回佣合共約港幣 6,300 元，以協助他們獲分判商聘用和繼續受僱。被告經審訊後被裁定七項代理人接受利益及一項代理人索取利益罪名成立，判處監禁合共六個月。

centre in Tin Shui Wai put up the unit for sale at \$19 million. In mid-October, the defendant arranged the original vendor and CJI to sign a provisional sale and purchase agreement at a price of \$19 million with GVP as the handling property agency. CJI later resold the unit to a couple by confirmatory sale. The defendant falsely represented to the couple that the vendor, CJI, offered to sell the property at \$32 million, and concealed from the couple his own beneficial interest in CJI. The defendant eventually induced the couple to purchase the property from CJI at \$28.56 million, which was \$9.56 million more than the original asking price. In addition, in December 2014, the defendant further recommended another property in Kowloon to the couple and concealed that the original vendor of the property offered to sell it at \$26 million. HVL subsequently purchased the property at \$25.92 million and GVP was the property agency of the transaction. The defendant eventually induced the couple to purchase the property from HVL at about \$31.43 million and caused them to pay about \$5.51 million more. The defendant was found guilty of two charges of fraud and was sentenced to six and a half years' imprisonment. He has filed notice of appeal against conviction and sentence.

In *HKSAR v Chu Kwun-fai* WKCC 1457/2022, the defendant was employed by a sub-contractor of the Third Runway Project of the Hong Kong International Airport to lead a team of plumbers. Between September and December 2020, the defendant, without the employer's approval, solicited and accepted illegal rebates totalling about HK\$6,300 from two plumbers in his team for assisting them to secure and continue their employment with the sub-contractor. The defendant was convicted after trial of seven counts of agent accepting an advantage and one count of agent soliciting an advantage, and was sentenced to a total of six months' imprisonment.