

犯罪得益

Proceeds of Crime



犯罪得益組在 2012 年取得多項佳績，包括針對從罪行中得益的罪犯取得創紀錄的 36 項限制令及 17 項沒收令。在 2012 年，被限制的資產總額多達 13.9 億元，是過去三年來的最大數額。法院也命令香港特區政府沒收其中的 5,000 萬元。

在 2012 年，犯罪得益組由黃惠沖先生監督，同年 6 月何詠光先生接替何偉萬女士出任主管，成員有兩名高級檢控官陳鳳珊女士及陳冰華女士。

《打擊洗錢及恐怖分子資金籌集（金融機構）條例》自 2012 年 4 月 1 日起實施，把金融機構不遵守客戶盡職審查規定定為罪行，從而作出規管。自該條例制定以來，聯合財富情報組收到的可疑交易報告急劇上升。單是首六個月收到的報告，已較去年增加 29%。往後就限制資產和沒收令所進行的法律程序必然有所增加，對本組律師來說，這確實是一項挑戰。

香港訂有嚴厲和全面的法例，凍結和追討不法之徒的犯罪得益及打擊恐怖分子融資活動。當局可根據《有組織及嚴重罪行條例》和《販毒（追討得益）條例》向法院申請發出限制令和沒收令。此外，《聯合國（反恐怖主義措施）條例》賦權予法院檢取、扣押和充公恐怖分子的財產。

在 2012 年，我們在香港以至境外的地方均達到成功阻截非法得益進出的目標。為達到這個目標，本組與司法互助組及其他司法管轄區的檢控人員加強合作，以追討資產。

2012 年 4 月，本組與美國司法部緊密合作，成功地反對一宗向法院申請解除在香港取得並在美國執行的國際限制令，該限制令牽涉在香港和美國境內凍結總值 4.7 億元的資產。本組又在 2012 年 4 月根據國際刑警提供的情報，取得限制令凍結三名來自埃及、西班牙和土耳其的逃犯所控制總值 2.86 億元的資產。這些款項屬跨境洗黑錢罪行的得益。2012 年 8 月，本組取得一項限制令，凍結總值 2.37 億元的本地銀行帳戶款項和物業。這些資產由兩名中國內地罪犯持有，屬跨境洗黑錢罪行的得

The year 2012 witnessed many achievements in the Proceeds of Crime Section. A record of 36 restraint orders and 17 confiscation orders were obtained against offenders who had benefited from their crimes. In 2012, the amount of restrained assets, at \$1.39 billion, was the largest for the last three years. The courts ordered \$50 million to be confiscated by the HKSAR Government.

In 2012, the Proceeds of Crime Section was supervised by Mr Wesley Wong. Mr Paul Ho succeeded Ms Winnie Ho as Head of the Section in June 2012 and was assisted by two Senior Public Prosecutors, Ms Denise Chan and Ms Eva Chan.

On 1 April 2012, the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance came into force. Offences were introduced to regulate the failure of financial institutions to observe customer due diligence requirements. Since the enactment of the Ordinance, there has been a dramatic rise in the

number of suspicious transactions reports received by the Joint Financial Intelligence Unit. In the first six months alone, there was a surge of 29% over the previous year's figure. The inevitable resultant increase in the number of restraint and confiscation proceedings in the coming years will present a real challenge for counsel of the Section.

Stringent and comprehensive laws are in place in Hong Kong to freeze and recover crime proceeds from offenders and to combat terrorist financing. Restraint and confiscation orders are made under the Organized and Serious Crimes Ordinance and the Drug Trafficking (Recovery of Proceeds) Ordinance. In addition, the United Nations (Anti-Terrorism Measures) Ordinance empowers the court to seize, detain and forfeit terrorist property.

The objective to stop the flow of illicit proceeds was not only achieved locally but also beyond Hong Kong in 2012. To this end, the Section has enhanced



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益。2012年12月，在司法互助組和新西蘭律政事務處(Crown Law Office)協助下，我們在新西蘭延長了一項限制令的有效期並予以執行，從而凍結該地多項資產，涉及受限制的2.74億元資產屬詐騙和洗黑錢罪行的得益。上述成功的檢控個案，傳遞了一個重要信息，就是罪犯無法透過以轉移資產到海外逃避我們的追討資產行動。

年內，法院就香港關乎犯罪得益的法律作出多項重要裁決。2012年3月，一名獲發第三債務人命令的判定債權人申請修改限制令，試圖從已凍結的資產撥出款項以清償判定債項。法院同意本組律師的論點，認為與普通債權人的獲償債項相比，法律上對履行沒收令是給予優先權。即使法院作出對無抵押債權人有利的判決，相對預期發出的沒收令，也不會獲得優先權。鑑於修改限制令以清償判定債項可能會影響預期發出的沒收令，因此駁回該項申請。

在2012年3月另一宗案件聆訊中，答辯人質疑某項限制令，理由是該命令不應該單方面作出，而有關的執法機構亦未能披露充足資料以顯示在作出該限制令之前，並沒有存在資產真正被耗散的風險。法院接納本組律師的論點，裁定基於答辯人的財產有相當可能被耗散這個合理疑慮，因此單方面作出申請是正確和必要的。法院強調，限制令的主要目的是防止資產被耗散及確保其後發出的沒收令具有成效；期望限制令申請人向法院交代所有細節是不切實際的，亦致使申請人負上更大的舉證責任，即證明其申請是超乎有充分爭辯證據。答辯人的撤銷限制令申請因而被駁回。

本組亦舉辦多個工作坊及講座，與本地和海外執法人員及其他專業人士分享我們的知識和經驗。在4月，何詠光先生應邀在印尼舉行的美國反洗錢專家資格認證協會第四屆反洗錢及恐怖分子籌資活動年會上，就《打擊洗錢及恐怖分子資金籌集(金融機構)條例》帶來的影響及有效遵守該條例發表演說。在5月，何先生在一項由香港警務處及澳洲聯邦警察合辦的工作坊上，向兩地的執法人員講述香港打擊洗黑錢的法律框架。在6月，何先生向200名廉政公署高級調查人員講解有關追討資產的法例和技巧。

為加深認識並更有效地運用香港打擊犯罪得益的法律，本組會以具針對性和積極進取的方式，繼續加強和提升我們處理限制及沒收非法得益的能力。我們的目標是透過不斷努力，使沒收令成為大多數刑事案件量刑程序的一個相關環節。

its cooperation with the Mutual Legal Assistance Unit (“MLAU”) and counterparts in other jurisdictions in our asset recovery work.

In April 2012, the Section worked closely with the United States Department of Justice in successfully opposing an application for the dissolution of a global restraint order obtained in Hong Kong and enforced in the United States. The total value of assets frozen in Hong Kong and the United States was \$470 million. Also in April 2012, based on information received from Interpol, a restraint order was obtained freezing \$286 million worth of assets controlled by three fugitives from Egypt, Spain and Turkey. The money represented proceeds of cross-border money laundering. In August 2012, a restraint order was obtained freezing local bank account credit balances and landed properties to the value of \$237 million. The assets were held by two offenders from Mainland China and represented proceeds of money laundering committed across the border. In December 2012, with the assistance of MLAU and the New Zealand Crown Law Office, we successfully extended and enforced a restraint order in New Zealand, freezing various assets located there. The restrained assets of \$274 million represented the proceeds of fraud and money laundering. These successful prosecutions send out an important message that offenders cannot avoid our asset recovery action by transferring their assets overseas.

During the year, important court decisions were made on the crime proceeds law in Hong Kong. In March 2012, an application was made by a garnishee order judgment creditor to vary a restraint order in an attempt to release funds from the frozen assets to satisfy the judgment debt. The court agreed with our counsel that the law gave priority to the satisfaction of a confiscation order over general creditors. A judgment in favour of an unsecured creditor has no priority over a prospective confiscation order. A variation of the restraint order to satisfy the judgment debt might pre-empt a prospective confiscation order and therefore the application must be dismissed.

In another case also heard in March 2012, the respondents challenged a restraint order on the grounds that the order should not have been made ex parte and that the enforcement agency had failed to disclose materials which showed that there was not a real risk of dissipation of assets before the restraint order was made. The court accepted the argument from our counsel and ruled that the ex parte application was rightly made and warranted in view of the reasonable apprehension that the respondents' property was likely to be dissipated. The court emphasized that the predominant purpose of a restraint order was to prevent the disposal of assets and to ensure that a subsequent confiscation order would be efficacious. To expect the applicant of a restraint order to apprise the court of every detail is unrealistic and elevates the applicant's duty to prove beyond a good arguable case. The respondents' application to discharge the restraint order was accordingly dismissed.

The Section conducted various workshops and lectures to share our knowledge and experience with local and overseas law enforcers and other professionals. In April, Mr Ho was invited to speak at the 4th Annual Association of Certified Anti-Money Laundering Specialists Anti-Money Laundering and Counter-Terrorist Financing Conference held in Indonesia on the impact of, and effective compliance with, the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance. In May, Mr Ho spoke at a workshop jointly held by the Hong Kong Police Force and the Australian Federal Police, talking to law enforcers from both jurisdictions about the anti-money laundering legal framework in Hong Kong. In June, Mr Ho addressed 200 senior investigators of the Independent Commission Against Corruption on the law and the techniques of asset recovery.

To promote better awareness and deployment of the crime proceeds law in Hong Kong, the Section will continue to enhance and expand our capacity in seeking restraint and confiscation of illicit proceeds with a targeted and proactive approach. Our goal is that, through our constant effort, confiscation orders will form part of the ordinary sentencing process in the majority of criminal cases.