

Civil recovery: Hong Kong sees the light

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The Hong Kong Government is working on a new rule that will help prosecutors recover assets in civil cases even if the authorities have not obtained a conviction under the money laundering and drug trafficking laws.

The *Organised and Serious Crimes Ordinance* will, if released, allow the authorities to press for a seizure of assets in a criminal suit if they have 'reasonable grounds to believe' that the concerned property represents proceeds of crime. The present law does not allow civil recovery until a court has awarded a conviction.

"Sometimes it may not be possible to establish a conviction for a technical reason, although the government has sufficient reasons to believe that the property directly or indirectly represented proceeds of crime," Kevin P Zervos, the senior assistant director of prosecutions in the Hong Kong Special Administrative Region, told *Complinet*.

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— Rohan Bedi, PwC

Zervos said that civil recovery in such cases was allowed in Australia and that it had recently been introduced in the United Kingdom. The Hong Kong administration has long wanted to make civil recovery a fact of life for criminals.

Future plans

It is, however, not yet clear if the government wants to add a provision in this respect to the original ordinance or to go to the creative effort of drafting a new law.

"The Financial Action Task Force's revised recommendations do not go far enough. It merely says that the authorities need to establish that an accused had knowledge that a certain piece of an asset was the proceeds of unlawful activity. Our law gives wider scope by permitting the authorities to act if they have 'reasonable grounds to believe' that the accused had knowledge about it," he said on the sidelines of a conference about money laundering in Singapore on Friday.

Cyber laundering

The conference saw presentations on many sides of this vast topic, including one on the fast-growing phenomenon of cyber laundering.

"Asia will soon account for 25 per cent of worldwide e-commerce. The dangers of cyber laundering in Asia are real and extensive, more so because most financial institutions and some regulators are not sufficiently plugged in to ways to control this menace," said **Rohan Bedi**, the head of AML services at PricewaterhouseCoopers in Singapore. PwC hosted the event.

A Hong Kong police officer pointed out that there were several obstacles that could stop the police from enforcing AML laws in Asia. They include the ease of setting up shell companies; the fact that nominee shareholders are allowed; the production and promotion of drugs; a wide range of financial facilities, ineffective legislation and fast-growing economies.

Financial institutions should carefully examine transaction patterns in order to identify businesses that make little or no commercial sense, said Terence Leung Lap Fun, the superintendent in charge of financial investigations in the Hong Kong police.