



**COUNTRY
COMPARATIVE
GUIDES 2023**

The Legal 500 Country Comparative Guides

Hong Kong

WHITE COLLAR CRIME

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This country-specific Q&A provides an overview of white collar crime laws and regulations applicable in Hong Kong.

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HONG KONG

WHITE COLLAR CRIME



1. What are the key financial crime offences applicable to companies and their directors and officers? (E.g. Fraud, money laundering, false accounting, tax evasion, market abuse, corruption, sanctions.) Please explain the governing laws or regulations.

There is no definition of “financial crimes” in the laws in Hong Kong. Under the Complex Commercial Crimes Ordinance (Cap 394) (“**CCCO**”), complex commercial crime relates to serious and complex criminal offences of fraud or dishonesty in a commercial context. Adopting this definition of criminal offences of a fraud or dishonesty in a commercial context, the key financial crime offences applicable to companies and their directors and officers include: –

Dishonesty offences

Fraud

Under s16A Theft Ordinance, Cap 210 (“**TO**”), a person commits fraud if he by any deceit with intent to defraud induces another party to commit an act or make an omission, which results in benefit, prejudice or substantial risk of prejudice to the relevant parties.

Conspiracy to defraud

Apart from Ordinances, criminal common law also applies to Hong Kong. This common law offence covers a broad spectrum of dishonest acts. It arises if a person agrees with any other person to use dishonest means with the purpose of causing economic loss to or putting at risk the economic interests of another; or with the realization that the use of those means may cause such loss or put such interests at risk. While an intention to defraud is a necessary element, actual detriment need not be shown.

Theft

Under s9 TO, a person commits theft if he dishonestly

appropriates property belonging to another with the intention of permanently depriving the other of it.

False accounting

Under s19 TO, false accounting involves destroying, defacing, concealing, or falsifying a document required for accounting purposes, or producing false or misleading account information. The offender must have acted dishonestly with a view to gain for himself or another, or with intent to cause loss to another.

Under s9(3) Prevention of Bribery Ordinance (Cap 201) (“**POBO**”), any agent who, with intent to deceive his principal, uses any receipt, account, or other document—

(a) in respect of which the principal is interested; and (b) which contains any statement which is false or erroneous or defective in any material particular; and (c) which to his knowledge is intended to mislead the principal, shall be guilty of an offence.

Money laundering

Under s25 Organised and Serious Crimes Ordinance, Cap 455 (“**OSCO**”), a person commits money laundering if, knowing or having reasonable grounds to believe that any property in whole or in part directly or indirectly represents any person’s proceeds of an indictable offence, he deals with that property.

Tax evasion

For tax evasion, the applicable law is under s82(1) Inland Revenue Ordinance (Cap 112). It arises if a person wilfully, with intent, evades tax in Hong Kong by making any false statements in the tax return or any other documents or statements submitted to the Inland Revenue Department.

Market misconduct

Market misconduct under s245(1) Securities and Futures Ordinance, Cap 571 (“**SFO**”) means:

- insider dealing (s291);
- false trading (s295);
- price rigging (s296);
- disclosure of information about prohibited transactions (s297);
- disclosure of false or misleading information inducing transactions (s298); or
- stock market manipulation (s299).

For insider dealing, generally it means:

- when a person connected with a Hong Kong listed company has privileged information which could impact the company's share price when it becomes publicly known, and trades or procures someone else to trade the company's securities or derivatives so as to make a profit or avoid a loss before the information becomes publicly available; or
- a person obtains information from another person they know to be connected with a listed company and trades or procures another person to trade in the company's securities or derivatives so as to make a profit or avoid a loss before the information becomes publicly available.

Bribery and Corruption

The main legislation for bribery and corruption offences is the POBO. S9 POBO applies mainly to the private sector. The offences comprise three key elements:

1. The offer, solicitation or acceptance of an advantage;
2. As an inducement to or reward for certain conduct; and
3. Such conduct is related to the principal's affairs or business.

Without any lawful authority or reasonable excuse, both the offeror and the recipient of the advantage will be liable under s9 POBO.

With respect to public sector corruption, there is a similar provision under s4 POBO which governs civil servants and the Chief Executive of Hong Kong during their performance of official duties. Unlike s9, s4 has extraterritorial application.

Sanctions

Under some ordinances in Hong Kong such as the United Nations Sanctions Ordinance (Cap 537), Hong Kong will observe sanctions directed by the United Nations using regulations to prohibit the supply of goods or provision of assistance to certain countries unless with a

licence from the relevant authority. A breach of the sanctions is a criminal offence.

2. Can corporates be held criminally liable? If yes, how is this determined/attribution?

Corporates can be held criminally liable for most offences in Hong Kong.

Under the Interpretation and General Clauses Ordinance, Cap. 1, the term 'person' in any statute is defined as including any public body and anybody of persons, corporate or unincorporate.

Accordingly, a corporation can technically commit most offences, except those for which imprisonment is the only penalty available (e.g., murder), and that by their nature can only be committed by natural persons in their personal capacity rather than as an agent of the corporation (e.g., common assault, rape).

Hong Kong has followed the common law principle of England and Wales in ascribing corporate criminal liability under two main heads:

The identification principle – a corporation may be criminally liable for the criminal acts of the directors and managers who represent its directing mind and will, and as an embodiment of the company. It generally applies to senior officers or board members of a company whose acts are capable of being imputed to the company under this principle.

Vicarious liability – a corporation may be held criminally liable for the unlawful acts of its employees or agents, typically in strict liability offences or regulatory matters such as industrial safety, environmental regulations, food and hygiene, and so on.

3. What are the commonly prosecuted offences personally applicable to company directors and officers?

All the financial crimes stated in Q1 are generally applicable to company directors and officers, provided that sufficient evidence is shown to establish their individual liabilities.

In addition, under s20(1) TO and s390 SFO, where a certain offence is committed by a corporation (such as false accounting or insider dealing), its officers may also be personally liable if such offences are committed with their consent or connivance.

S101E Criminal Procedure Ordinance (Cap 221) provides

that: “where a person by whom an offence under any Ordinance has been committed is a company and it is proved that the offence was committed with the consent or connivance of a director or other officer concerned in the management of the company, or any person purporting to act as such director or officer, the director or other officer shall be guilty of the like offence.”

4. Who are the lead prosecuting authorities which investigate and prosecute financial crime and what are their responsibilities?

The Hong Kong Police Force (“Police”) is the primary law enforcement agency in Hong Kong with powers to conduct criminal investigations and commence prosecutions. The Police has a number of specialised bureaux that are responsible for investigating financial crimes:

Financial Intelligence and Investigation Bureau

This bureau is responsible for money laundering and terrorist financing investigations and also heads the Joint Financial Intelligence Unit (“JFIU”), with the Hong Kong Customs and Excise Department that processes and analyses suspicious transaction reports and exchanges financial intelligence with other relevant stakeholders.

Commercial Crime Bureau

Investigates serious and complex commercial fraud; computer crime; and the counterfeiting or forgery of currency, coinage, credit cards, other commercial instruments and travel and identity documents.

The Independent Commission Against Corruption (“ICAC”)

ICAC is an independent investigative authority formed under the Basic Law and report to the Chief Executive, and mainly detects and prosecutes bribery and corruption offences in the public and private sectors.

The Securities and Futures Commission (“SFC”)

The SFC has extensive powers to investigate, discipline and prosecute financial institutions, licensed persons and market participants on various forms of market misconduct including insider dealing, price rigging, false trading and market manipulation, together with other types of regulatory offences.

The Department of Justice (“DOJ”)

DOJ works with the aforesaid authorities by providing legal advice, making prosecution decisions, and

representing the government in criminal proceedings, particularly those that are complex in nature or involve important points of law or public interest considerations.

5. Which courts hear cases of financial crime? Are trials held by jury?

In Hong Kong, there is no specialised court for financial crime cases. Legal proceedings, including those of financial crimes, are carried out at different levels of criminal courts depending on the gravity of the offence and the potential sentencing that the charges would attract.

Magistrates’ Courts

Most cases would start at the Magistrate’s Court, which can impose a maximum of two years’ imprisonment for a single charge and three years’ imprisonment for multiple charges. Under CCCO, for a person who is accused before a Magistrate of an indictable offence, and the Secretary of Justice is of the opinion that the evidence of the offence would be sufficient for the accused to be committed for trial and reveals a case of fraud or dishonesty in a commercial context, of such seriousness and complexity that it is appropriate that it be transferred to the Court of First Instance, the Secretary of Justice may apply to the Magistrate for an order of transfer.

District Court

For more serious cases, the proceedings can be transferred to the District Court, the jurisdiction of which is up to a maximum of seven years’ imprisonment. Nowadays, white-collar crimes with significant monetary amount involved are more commonly prosecuted at the District Court.

Court of First Instance of High Court

For offences of a severe gravity or substantial scale, prosecution authorities may commit those to the Court of First Instance of the High Court, which can impose a substantial sentence of imprisonment.

Court of Appeal and Court of Final Appeal

Criminal appeals are generally handled by the Court of First Instance, the Court of Appeal and the Court of Final Appeal.

Court of First Instance criminal trials are normally conducted before jury, whilst those in the lower courts will be heard by a single magistrate or judge.

6. How do the authorities initiate an investigation? (E.g. Are raids common, are there compulsory document production or evidence taking powers?)

Initiation of investigations

Investigations are normally initiated upon information from a complaint. It could also be from the law enforcement agencies' intelligence or information provided or referred by other law enforcement agencies or regulators, Government departments or overseas law enforcement agencies or Government authorities. It is noteworthy that the ICAC also accepts anonymous complaints.

In addition, the SFC monitors the stock market through its market surveillance system containing real-time transaction data, which enables it to timely identify irregular market activities and commence investigations.

'Dawn raids'

Law enforcement agencies and regulators such as the Police, ICAC and SFC can conduct 'dawn raids' against corporations and its employees by obtaining search warrants from Magistrates' Courts to search suspicious premises and seize documents, records, computers and electronic devices. This often occurs if the authorities take the view that any advance notice to the relevant parties may likely prejudice the investigation or tip-off the suspects at large, particularly in serious financial crimes with substantial scale.

Evidence gathering powers.

In addition, the Police, CCB, ICAC also have powers to arrest suspects and detain them for up to 48 hours, interview suspects under caution, and freeze bank accounts. The SFC also has the power to issue a notice compelling a person to produce documents or to answer questions relevant to the investigation, whereas the ICAC has the power to compel a suspect to produce a statutory declaration setting out particulars of his properties, expenditures and liabilities and provide all documents in relation to such.

7. What powers do the authorities have to conduct interviews?

Authorities such as the Police and ICAC have powers to arrest and detain suspects, and interview them under caution, if there are reasonable grounds to suspect that the suspects have committed an offence.

With respect to market misconduct, the SFC has the

power under s183 SFO to issue a notice compelling suspects and witnesses to attend investigation interview. Failure to comply with these notices would constitute a criminal offence under the SFO.

8. What rights do interviewees have regarding the interview process? (E.g. Is there a right to be represented by a lawyer at an interview? Is there an absolute or qualified right to silence? Is there a right to pre-interview disclosure? Are interviews recorded or transcribed?)

Interviewees have the following rights during investigation interview process:

Right to legal representation

Article 35 of the Basic Law enshrines the general constitutional right to confidential legal advice and legal representation for timely protection of lawful rights and interests. Hence, interviewees have the right to be represented by a lawyer at investigation interviews.

Right to silence

Both the common law and the Hong Kong Bill of Rights Ordinance (Cap 383) ("BOR") provide that a person has the right not to be compelled to testify against himself or to confess guilt. The right to silence echoes the overarching principle of presumption of innocence under Article 87 of the Basic Law, BORO and the common law. No adverse inference can be drawn from a person's silence in a criminal investigations and proceedings.

Exceptions to right to silence

It should be noted that for an interview with the SFC, if the SFC invokes its power under the SFO by issuing the relevant notice on a person under investigation to attend an interview and answer questions put to the interviewee by the SFC officers, there is no right to silence as that is abrogated by the virtue of the SFO. The interviewee is under a strict duty to answer all the questions raised by the SFC, failing which it would constitute a criminal offence.

Nevertheless, the interviewee can protect himself by making a 's187 declaration' under SFO if he considers that his answer to a particular question might tend to incriminate him. Once the declaration is made, any answers in that connection shall not be admitted as evidence in criminal proceedings against him.

There is generally no right to pre-interview disclosure.

The interviews could be recorded in writing, audio recorded, or video recorded. The use of video recording is becoming more common by law enforcement agencies. The SFC tends to have the interviews audio recorded. The interviewee will be provided with a copy of the recording after the interview.

9. Do some or all the laws or regulations governing financial crime have extraterritorial effect so as to catch conduct of nationals or companies operating overseas?

Hong Kong is a common law jurisdiction adopting the territoriality principle in respect of criminal jurisdiction, and generally the criminal laws and regulations governing financial crimes do not have extraterritorial effect.

One exception is under s 4 POBO where any offer or acceptance of bribes involving public servants (comprises of civil servant and staff and agents of public bodies), even if done outside Hong Kong, will be caught by POBO. Another example is specified in the Criminal Jurisdiction Ordinance (Cap 461) which confers jurisdiction to Hong Kong courts to adjudicate certain conspiracy, incitement or attempt to commit the specified crimes that took place offshore.

10. Do the authorities commonly cooperate with foreign authorities? If so, under what arrangements?

The Hong Kong law enforcement agencies co-operate with foreign authorities in investigation, prevention of crimes, conduct of criminal proceedings and surrender of fugitive offenders pursuant to the terms of international treaties, bilateral agreements of mutual legal assistance (“**MLA**”), or memoranda of understanding between law enforcement authorities. The relevant ordinances are the Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525) and the Fugitive Offenders Ordinance (Cap 503).

In recent years, some of these arrangements are significantly affected by the changing political situation between Mainland China and other countries. As of August 2021, the bilateral agreements on surrender of fugitive offenders and MLA between Hong Kong and Australia, Canada, Finland, France, Germany, Ireland, the Netherlands, New Zealand, the United Kingdom, and the United States of America have been suspended.

11. What are the rules regarding legal professional privilege? Does it protect communications from being produced/seized by financial crime authorities?

The concept of legal professional privilege (“**LPP**”) is well-recognised in Hong Kong, and the right to confidential legal advice is provided under Article 35 of the Basic Law.

The two main categories of LPP are:

Legal advice privilege

This applies to communications between clients and their lawyers made for the purpose of obtaining legal advice; and

Litigation privilege

This applies to communications between lawyers (and in some circumstances their clients) and third parties made for the dominant purpose of obtaining legal advice or collecting evidence in respect of existing or contemplated litigation.

When the authorities seize or request production of documents during investigations, the corporation or individual concerned can assert LPP on privileged materials, and such documents will be placed in sealed envelopes by the authorities and shall not be used for investigation purposes until the LPP issues are resolved by parties or by the Court.

Under the Interception of Communications and Surveillance Ordinance (Cap 589) (“**ICSO**”), law enforcement agencies such as the Police and the ICAC may apply for authorization to carry out interception of communication or cover surveillance on suspects to assist in criminal investigation. S62 ICSO provides that any information that is subject to LPP is to remain privileged notwithstanding that it has been obtained legally under the ICSO.

12. What rights do companies and individuals have in relation to privacy or data protection in the context of a financial crime investigation?

In Hong Kong, personal data and privacy protection are governed by the Personal Data (Privacy) Ordinance (Cap. 486) (“**PDPO**”).

The PDPO sets out six data protection principles which

seek to regulate the collection, retention, use, security, transparency as well as access and correction of personal data. However, if the data is used for purposes such as crime prevention and prosecution or is required by a court order or in connection with any legal proceedings in Hong Kong, such usage will be exempted from the protection under the PDPO.

Therefore, if a search warrant or other forms of court order is properly obtained, it leaves very limited room for a company or individual to refuse compliance on the basis of data privacy claims.

13. Is there a doctrine of successor criminal liability? For instance in mergers and acquisitions?

No, in Hong Kong successor liability only covers civil not criminal liabilities.

In other words, corporate successor is not liable for the criminal liabilities of its predecessor in mergers and acquisitions.

14. What factors must prosecuting authorities consider when deciding whether to charge?

DOJ has overall responsibility for making the decision to charge, free from any interference as provided under Article 63 Basic Law. DOJ issued a Prosecution Code as a code of conduct for prosecutors to promote fair, just and consistent decision-making at all stages of the prosecution process. The Code stipulates two requisite components: sufficiency of evidence and public interest.

Sufficiency of evidence

When assessing the sufficiency of evidence, DOJ must consider whether there is admissible and reliable evidence to support a prosecution and, together with any reasonable inferences that can be drawn from it, that the offence is likely to be proved. The test is, therefore, whether the evidence demonstrates a reasonable prospect of conviction.

Public interest

The DOJ will consider the following non-exhaustive list of factors when evaluating whether a prosecution would be in the public interest:

- a. Nature and circumstances of the offence, including any aggravating or extenuating circumstances;

- b. Seriousness of the offence: more serious offences, including those where a victim has suffered significant harm or loss, or where there have been multiple victims, are more likely to be prosecuted in the public interest;
- c. Effect of a prosecution on Hong Kong law enforcement priorities;
- d. Any delay in proceeding with a prosecution and its causes;
- e. Whether or not the offence is trivial, technical in nature, obsolete or obscure;
- f. Level of the suspect's culpability;
- g. Involvement of other suspects in the commission of the offence;
- h. Any cooperation from the suspect with law enforcement or demonstrated remorse: the public interest may be served by not prosecuting a suspect who has made admissions, demonstrated remorse, compensated a victim and/or cooperated with authorities in the prosecution of others;
- i. Any criminal history of the suspect;
- j. Attitude, age, nature or physical or psychological condition of the suspect, a witness and/or a victim;
- k. Likely final disposition of the case;
- l. Prevalence of the offence and any deterrent effect of a prosecution;
- m. Special circumstances that would affect the fairness of any proceedings;
- n. Availability and efficacy of alternatives to prosecution, such as a caution, warning or other acceptable form of diversion.

15. What is the evidential standard required to secure conviction?

In Hong Kong, the evidential standard for securing a conviction in a criminal case is "beyond reasonable doubt." This means that the burden of proof lies on the Prosecution to prove each and every element of the offence beyond reasonable doubt. In layman term, the jury or court must be sure of the suspect's guilt. Any doubt benefits the accused and can lead to an acquittal.

Before initiating a prosecution, DOJ must assess the evidence they possess whether it is sufficient to secure a reasonable chance of conviction. This assessment aligns with public interest. Factors to consider include the gravity of the offence and potential penalties.

The high "beyond reasonable doubt" standard maintains fairness and ensures the presumption of innocence is upheld. The accused's burden of proof, if called for, is on a balance of probability.

16. Is there a statute of limitations for criminal matters? If so, are there any exceptions?

In Hong Kong, the statute of limitations for criminal matters varies based on the nature of the offence.

For summary offences, i.e., offences less serious in nature and can only be tried in Magistrates' Courts, prosecution must initiate within 6 months of the commission of the offence unless the legislation creating the offence specifies a different time limit. However, it is important to note that there are exceptions to the general rules. For example, under s14A Criminal Procedure Ordinance (Cap 221), offence shall be triable summarily unless:

- The offence is declared to be treason;
- The words "upon indictment" or "on indictment" appear; or
- The offence is transferred to the District Court in accordance with Part IV of the Magistrates Ordinance.

For indictable offences, i.e., offences more serious in nature, and can be tried in the Magistrates' Courts, the District Court or the Court of First Instance of the High Court, there is no formal time limit for commencing a prosecution. This means that, in general, there is no specific time limit for prosecuting indictable offences.

Further, where any provision in any Ordinance dictates that an offence to be triable either summarily or upon indictment or to be punishable on summary conviction or on indictment, the offence shall be triable either on indictment or summarily.

For some offences a longer period might be specified in the relevant legislation. An example of such an exception is seen in the Anti-Money Laundering Ordinance and Counter-Terrorist Financing Ordinance, authorities have up to 12 months from the discovery of the offence to initiate prosecution.

17. Are there any mechanisms commonly used to resolve financial crime issues falling short of a prosecution? (E.g. Deferred prosecution agreements, non-prosecution agreements, civil recovery orders, etc.) If yes, what factors are relevant and what approvals are required by the court?

Hong Kong does not have deferred prosecution or non-

prosecution agreements.

Having said that, for disciplinary proceedings commenced by the SFC, a party to be disciplined by the SFC may make a resolution proposal to the SFC, which may accept the proposal if it is in the public interest to do so.

18. Is there a mechanism for plea bargaining?

The legal system in Hong Kong does not incorporate a formal plea bargaining mechanism whereby the trial judge provides indications on potential sentences based on the accused's plea. Any involvement in such arrangements can lead to convictions being overturned on appeal.

However, an alternative form of plea bargaining exists-charge bargaining. This involves agreements between the prosecution and defence, where the accused pleads guilty to a lesser offence and the prosecution accepts the lesser plea. It is important to note that such arrangements do not usually require approval from court, but judges do have discretions to reject such agreements if it is against the law. This ensures transparency and fairness in the process, maintaining the integrity of the judicial system. It is however important to note that the parties cannot plea bargain on sentence.

19. Is there any requirement or benefit to a corporate for voluntary disclosure to a prosecuting authority? Is there any guidance?

Apart from certain exceptions, for example, under s4 Factories and Industrial Undertakings Ordinance (Cap 59) and s24(3) Occupational Safety and Health Ordinance (Cap 509) where corporate entity is compelled to assist in a criminal investigation, generally speaking, there is no specific legal requirement for a corporate entity to voluntarily disclose information to a prosecuting authority in Hong Kong. Nonetheless, voluntary disclosure can be considered as a mitigating factor during sentencing if the corporation is convicted of an offence. SFC and ICAC offer guidance on co-operation and self-reporting by corporations in regulatory matters. Such co-operation may lead to a more lenient approach by regulatory authorities and can be considered during enforcement actions.

20. What rules or guidelines determine sentencing? Are there any leniency or discount policies? If so, how are these applied?

Sentencing in Hong Kong is conducted as an autonomous and exclusive function of the judiciary. There is no single theory applicable to all cases. When determining a suitable sentence, judges will consider 4 principles: retribution, rehabilitation, prevention, and deterrence as well as evaluate the entirety of case-specific factors.

The practice of the courts, other things being equal, is to grant a sentencing discount of one-third to the accused who pleads guilty. This applies to both custodial sentences and those who are fined. If a plea of guilty is only entered after the trial has started, the discount will be less than 20% and will reflect the circumstances in which the plea was tendered.

In addition, the Court of Appeal has issued tariff sentence specifically for certain crime categories, e.g., drug trafficking, robbery etc. These guidelines are intended to foster a comprehensive uniformity in sentencing.

21. In relation to corporate liability, how are compliance procedures evaluated by the financial crime authorities and how can businesses best protect themselves?

In terms of corporate liability, prosecuting authorities assess compliance procedures to establish a corporation's responsibility for its directors, managers, and agents' actions, intentions, and knowledge. This evaluation hinges on the "doctrine of identification", attributing the corporation's state of mind to its "directing mind and will". However, recent case law indicates a nuanced approach, requiring a high threshold of control for corporate liability.

To mitigate such liability, businesses should prioritise robust compliance measures, including clear policies, internal controls, employee training, whistleblower mechanisms, and top-level commitment. Demonstrating proactive compliance efforts can minimise risks and foster a culture of integrity within the organisation.

Further, as compliance procedures may also be used to form the basis of a defence, it is therefore important for businesses to establish comprehensive compliance measures.

22. What penalties do the courts typically impose on individuals and corporates in relation to the key offences listed at Q1?

There is no hard and fast rule on sentencing and judges will try imposing different penalties based on the facts of each case.

Fraud

An immediate imprisonment is the norm, other than as exceptional circumstance. For more serious cases involving significant financial loss and breach of trust, 3 or more years are warranted. The maximum penalty is 14 years' imprisonment.

Conspiracy to Defraud

Substantial sentences of imprisonment are not uncommon. For example, conviction under OSCO upon indictment, a maximum penalty is fine of HK\$5,000,000 and 14 years' imprisonment; or on summary conviction, maximum penalty is fine of HK\$5,000,000 and 3 years' imprisonment.

Theft

Theft covers a wide range of offence and carries sentences of varying degrees. Breach of trust is an aggravating factor in sentencing. The maximum penalty is 10 years' imprisonment.

False Accounting

Penalties include fines and imprisonment. The seriousness of the offence, the amount involved, and the intent to deceive all contribute to the length of imprisonment and the amount of the fine. The maximum penalty is 10 years' imprisonment.

Money Laundering

The maximum penalty includes a fine of up to HK\$5,000,000 and 14 years' imprisonment.

Tax Evasion

Upon conviction on indictment, maximum penalty is 3 years' imprisonment, a fine at level 5, and a further fine of treble the amount of tax undercharged. Upon conviction at summary level, maximum penalty is 6 months' imprisonment, a fine at level 3, and a further fine of treble the amount of tax undercharged.

Market Misconduct

The civil regime is set out in Part XIII SFO, while the criminal regime is found in Part XIV. Penalties can

involve fines, disgorgement of profits gained through misconduct, and imprisonment, depending on the specific offence committed. For instance, if found guilty of insider dealing, maximum penalty is 3 years' imprisonment and a fine of HK\$1,000,000 on summary conviction. 10 years' imprisonment and a fine of HK\$10,000,000 on indictment conviction. Normally sentence will be immediate imprisonment and a fine, except in exceptional circumstances.

Bribery and Corruption

Conviction on indictment for an offence:

- Under s (10) POBO, is a fine of HK\$1,000,000 and 10 years imprisonment;
- Under s (5) or (6) POBO, is a fine of HK\$500,000 and 10 years' imprisonment;
- Any other offence under Part II POBO, is a fine of HK\$500,000 and imprisonment for 7 years.

Conviction on summary conviction for an offence:

- Under s (10) POBO is a fine of HK\$500,000 and imprisonment for 3 years; and
- For any other offence under Part II POBO, is a fine at level 6 and imprisonment for 3 years and shall be ordered to pay to such person or public body and in such manner as the court directs, the amount or value of any advantage received by him, or such part as the court may specify.

In addition to any penalty imposed above, the court may also order a convicted person under s (10)(1)(b) to pay to the Hong Kong Government a sum not exceeding the amount of the pecuniary resources or a sum not exceeding the value of the property if the convicted person unable to give a satisfactory explanation to the court as to how such pecuniary resources or property came under his control.

Conviction under s (3) POBO is a fine at level 6 and 1 year' imprisonment and shall be ordered to pay to the Hong Kong Government in such manner as the court directs the amount or value of the advantage received by him or such part as the court may specify.

Sanctions

Contravention of sanctions under United Nations Sanctions Ordinance (Cap. 537) is punishable on conviction on indictment by an unlimited fine and imprisonment for a term not exceeding 7 years.

The Maximum penalty for contravention of the relevant provisions under United Nations (Anti-Terrorism

Measures) Ordinance (Cap. 575) ("**UNATMO**") on summary conviction is a fine of HK\$100,000 and imprisonment for 2 years, or on conviction on indictment by an unlimited fine and imprisonment for 14 years. S12(1) UNATMO requires a person to report his knowledge or suspicion of terrorist property to an authorised officer (e.g., JFIU).

Failure to make such a disclosure constitutes an offence and maximum penalty upon conviction is a fine of HK\$50,000 an imprisonment for 3 months.

23. What rights of appeal are there?

In Hong Kong, an accused individual convicted of an offence in a criminal case possesses the right to appeal decisions rendered from the Magistrates Courts, the District Court, or the Court of First Instance.

This encompasses the ability to appeal against conviction, sentence, or both.

Types of appeal

- Appeal from the Magistrates' Court to the Court of First Instance;
- Appeal from the District Court to the Court of Appeal;
- Appeal from the Court of First Instance to the Court of Appeal.

Leave to Appeal

Pursuant to s82 Criminal Procedure Ordinance (Cap 221), a person convicted of an offence on indictment may appeal to the Court of Appeal against his conviction and the appeal may be:

- a. On any ground which involves a question of law alone; and
- b. With the leave of the Court of Appeal, on any ground which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Court of Appeal to be a sufficient ground of appeal.

However, if the judge of the court of trial grants a certificate that the case is fit for appeal on a ground which involves a question of fact, or a question of mixed law and fact, an appeal under this section can be made without the leave of the Court of Appeal.

Procedure

For appeal from Magistrates' Court, the application for leave to appeal must be made within 14 days from the

date of conviction or sentence.

For leave to appeal from District Court or the Court of First Instance must be made within 28 days from the date of conviction or sentence.

For appeal from Magistrates' Court, a single judge of the Court of First Instance will sit as the appellate jurisdiction. For appeal from District or Court of First Instance, the appeal process will be overseen by the Court of Appeal, comprising two or three Justices of Appeal.

Outcome

For appeal against sentence, the court will consider whether the conviction was manifestly excessive or inadequate. In cases where an appeal concerning a sentence proves successful, the term of imprisonment may be reduced. On the other hand, if the appeal is unsuccessful, the Court of Appeal can potentially increase the sentence or order a loss of time for part of the sentence already served.

Further Appeals

All further appeals from the above appeals go directly to the Court of Final Appeal. The Court of Final Appeal acts as the forum of final appeal as it does not normally hear criminal appeals unless the provisions in the Hong Kong Court of Final Appeal Ordinance (Cap 484) is satisfied.

For appeal to the Court of Final Appeal, under s32 Hong Kong Court of Final Appeal (Cap 484), no appeal can be made unless leave to appeal has been granted by the Court. The Court will only grant such leave if a point of law of great and general importance is involved in the decision, or it is shown that substantial and grave injustice has been done.

24. How active are the authorities in tackling financial crime?

Hong Kong has been active in tackling financial crime and maintaining its reputation as a global financial hub. The authorities (see below) have been involved in various efforts to combat financial crime including implementing and enforcing regulations to prevent money laundering, terrorist financing, fraud, and other financial crimes. Hong Kong has also been co-operating with international organisations and other jurisdictions to share information and collaborate on investigations.

Police

Police is the primary law enforcement agency in Hong

Kong responsible for investigating and combating various criminal activities, including financial crimes. HKPF investigates cases of fraud, money laundering, cybercrime, and other financial crimes. It collaborates with other local and international law enforcement agencies to share information and intelligence.

SFC

SFC is the regulatory authority responsible for overseeing and regulating the securities and futures markets in Hong Kong. The SFC monitors market activities, enforces regulations to ensure market integrity, investigates market misconduct such as insider trading and market manipulation, and takes actions against individuals and entities involved in financial misconduct.

Hong Kong Monetary Authority ("HKMA")

HKMA is the central banking institution in Hong Kong responsible for maintaining the stability and integrity of the banking and financial system. HKMA enforces anti-money laundering and counter-terrorist financing (AML/CTF) regulations in the banking sector. It conducts inspections of banks' AML/CTF compliance, issues guidelines, and collaborates with other agencies to combat financial crime.

ICAC

ICAC is an independent anti-corruption agency responsible for investigating and preventing corruption in both the public and private sectors. Although primarily focused on corruption, ICAC also plays a role in preventing and investigating financial crimes that involve corrupt practices, such as bribery and embezzlement.

JFIU

JFIU is a specialised unit responsible for receiving, analysing, and disseminating financial intelligence relate to money laundering and suspicious transactions. JFIU works to combat money laundering, terrorist financing, and other financial crimes by analysing suspicious transaction reports submitted by financial institutions and co-ordinating with law enforcement agencies.

25. In the last 5 years, have you seen any trends or focus on particular types of offences, sectors and/or industries?

There has been a significant increase in the attention given to internet crimes, money laundering and financial crimes, particularly in the areas of AML/CFT over the

past 5 years. Regulatory authorities and law enforcement agencies have intensified their efforts to combat money laundering, tax evasion, and fraud across various sectors, including banking, real estate, and professional services. There has also been an emphasis on strengthening enforcement actions against individuals and entities involved in these activities.

26. Have there been any landmark or notable cases, investigations or developments in the past year?

In a recent legal development, the Court of Appeal overturned a High Court decision regarding Hong Kong's asset freezing mechanism in financial crime cases. The case of *Tam Sze Leung & Ors v Commissioner of Police* centred on the legality of the Letters of No Consent ("LNC") regime as operated under the Organised & Serious Crimes Ordinance ("OSCO"). The applicants, implicated in alleged pump and dump manipulation of Hong Kong stocks, challenged the LNC regime after their bank accounts were frozen due to suspicious transaction reports ("STRs") made by the Police. The High Court had initially found the regime to be ultra vires to OSCO, but the Court of Appeal ruled differently.

The Court of Appeal's verdict clarified that the LNC regime was indeed lawful, dispelling the notion that it operated as a "secret, informal and unregulated asset freezing power." It highlighted that banks were caught in a challenging position, having to balance customer instructions with potential criminal liability. The Court of Appeal emphasised that the regime did not hinge on the source of suspicion and the Police' proactive approach in alerting banks on money laundering investigations aligned with their duty to prevent and detect crime.

The decision underscores the importance of lawful and regulated procedures in freezing suspected criminal proceeds, while also emphasising the necessity for judicial review oversight and proportionality. This ruling holds significance in Hong Kong's banking and financial sectors, reinstating the legitimacy of the LNC regime within the context of financial crime investigations.

27. Are there any planned developments to the legal, regulatory and/or enforcement framework?

In July 2022, Hong Kong's Cybercrime Sub-committee of the Law Reform Commission released a consultation paper addressing cyber-dependent crimes and jurisdictional challenges. The paper proposes reforms to protect individual rights in light of technological advancements and the potential for cybercriminal activities. It focuses on cyber-dependent crimes, e.g., illegal access to data; interception of computer data; and illegal interference with computer systems. To date, Hong Kong lacks specific cybercrime legislation, rely mainly on various ordinances to address related offences.

The consultation paper recommends enacting bespoke legislation to cover the proposed cyber-dependent offences and address jurisdictional rules. It suggests creating new offences, for example, unauthorised access to data with intent for further criminal activity; unauthorised interception; use of computer data for dishonest purposes; and illegal interference with computer data and systems. The paper also highlights the need for extra-territorial application of Hong Kong law in cybercrime cases with connections to the region.

The recommended maximum sentences for the proposed offences range from 2 years' imprisonment for summary convictions to 14 years' imprisonment for convictions on indictment. The Sub-committee welcomes public input on the recommendations, which aim to balance the interests of citizens, the IT industry, and public safety in the evolving cyber landscape.

28. Are there any gaps or areas for improvement in the financial crime legal framework?

Whilst Hong Kong's financial crime legal framework is robust, certain areas can be improved. One key area is to enhance the efficiency of suspicious transaction reporting and analysis processes. This includes streamlining communication between reporting entities and law enforcement agencies, as well as improving the analysis of reported data to identify patterns of financial crime. Additionally, staying up to date with technological advancements and their potential use in financial crimes, such as artificial intelligence and cryptocurrencies, is crucial to ensure that the legal framework remains effective in addressing new challenges.

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