



ANTI-CORRUPTION INITIATIVE
FOR ASIA AND THE PACIFIC

ASSET RECOVERY IN CORRUPTION INVESTIGATIONS



Kobus Cheung
Senior Forensic Accountant

Karen Law
Chief Investigator

Independent Commission Against Corruption
The Hong Kong Special Administrative Region
of the People's Republic of China



Agenda

- 01 An **Overview** of the Asset Recovery Regime in Hong Kong
- 02 **International Cooperation** in Asset Recovery
- 03 **Best Practices** in Asset Recovery
- 04 **Case Studies** – Challenges and Lessons Learnt

01

An Overview of the Asset Recovery Regime in Hong Kong



Quick Transfer of Funds

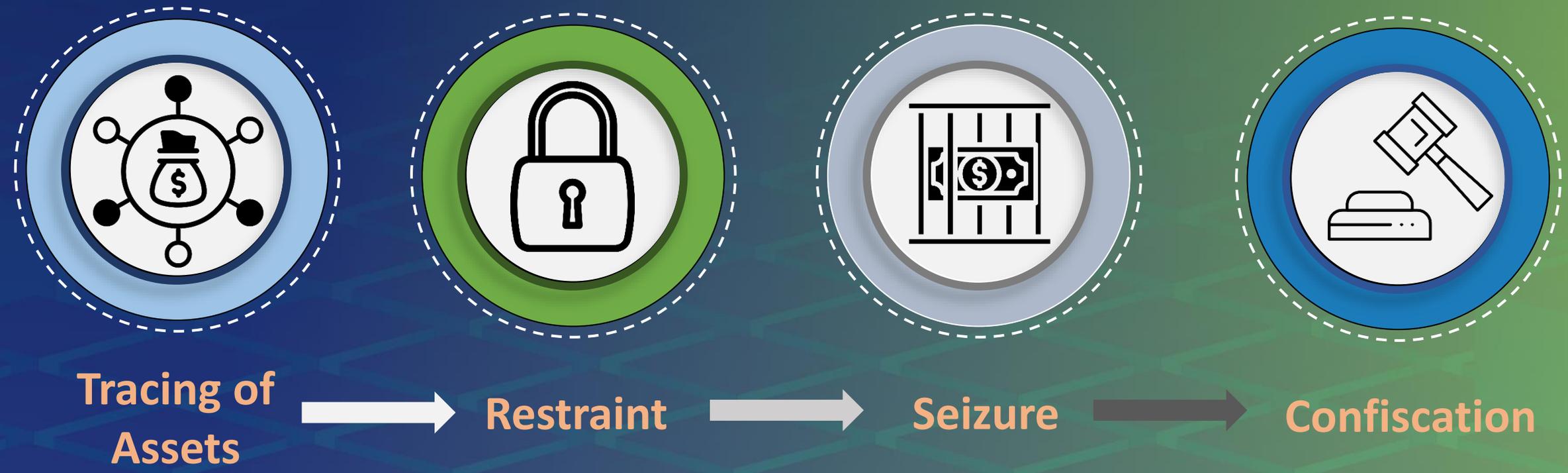


**International
Financial Centre/
Banking System**



**Technological
Advances**

Strategy for Asset Recovery



Strength of ICAC

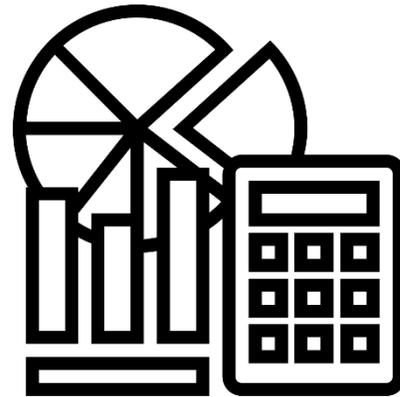
**Committed &
Qualified
Investigators**



**Computer
Forensic
Group**



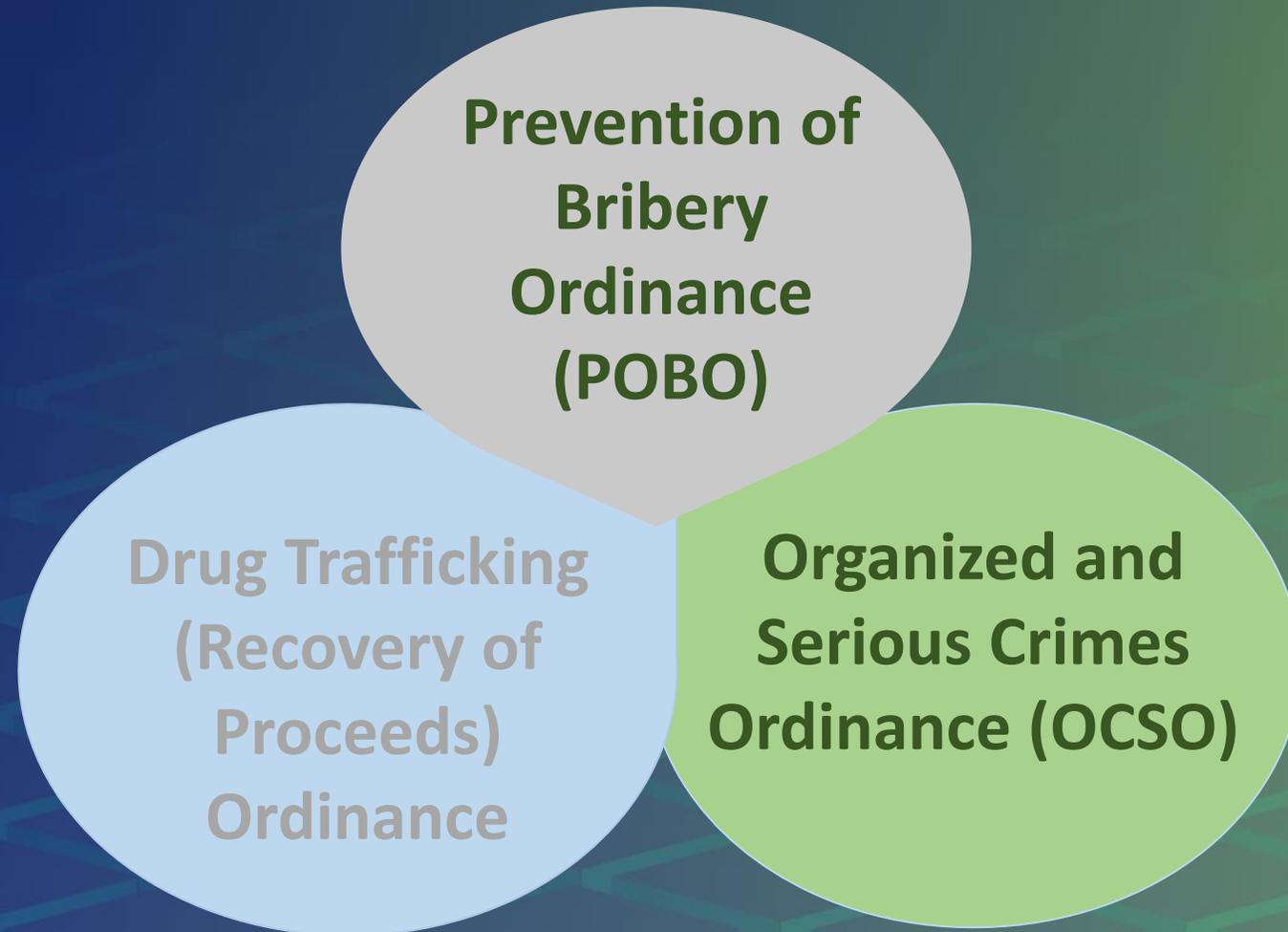
**Forensic
Accounting
Group**



**Asset
Recovery
Office**



Asset Recovery Legislations in Hong Kong



Prevention of Bribery Ordinance

- Provides for restraint
- No provision for confiscation except for Chief Executive or prescribed officer being in control of pecuniary resources or property disproportionate to official emoluments
- Restitution Orders

Organized and Serious Crimes Ordinance

- **Restraint and Confiscation of proceeds of crime**
- **Organized and serious crimes**
- **Specified offences (Schedule 1 & Schedule 2)**
- **Corruption Offences are specified in Schedule 2**

Comparison

	POBO*	OSCO#
1	Applied for during investigation	Applied for after charges are finalized
2	Restraint limited to corrupt proceeds	Can also restrain profits derived from proceeds of crime
3	Limited to assets specified in Restraining Order	Global assets are restrained
4	No disclosure of assets	Disclosure of assets required
5	Restraining Order lapses upon conclusion of criminal proceedings	Does not lapse upon conclusion of proceedings. Application to discharge can be made

* Prevention of Bribery Ordinance

Organized and Serious Crimes Ordinance

Victims

Ascertain from victim: **Government should not compete with victims of crime**

Whether the victim intends to institute civil proceedings to establish his claim having regard to the mandatory nature of the Confiscation Order which, once made, takes priority over any subsequent civil claim;

Where the victim has no such intention, whether he would contest the Government's application for restraint; and

If the victim does not contest, whether he would be prepared to support the Government's restraint application or adopt a neutral stance

Stance of Victim



Victim Should be Informed

If the S for J has applied for Confiscation Order and all legal requirements have been met, the making of a Confiscation Order by the Court is mandatory



Confiscation Order takes priority over any civil claim by the victim

Variation of Restraint Order

In case: No other assets from which to pay legal/ living expenses



Respondent
(with Burden of proof)



Apply to vary
[Order 117 r. 5(1)]



Reasonable living expenses



Reasonable legal expenses



Rolls-Royce Life Style

Discharge of the Restraint Order



Grounds:

Prosecutor / Respondent

Mareva
Injunction
obtained by
Victim

Insufficient
Evidence
against the
Defendant

Order of
Acquittal

Respondent
runs out of
money

Confiscation
Order
made

Application for Confiscation Order

**Upon
conviction**

**Before
sentencing**

**Absconder
proceedings**

**Deceased
Proceedings**

Application for a Confiscation Order

Court's determination upon application

Defendant has been convicted of a specified offence



Whether defendant has benefited from the specified offence



Value of defendant's benefit from the specified offence [at least HK\$100,000]



Amount to be recovered will be that amount unless the defendant proves the value of his realizable assets is less than the value of his benefit

Secretary
for Justice

Enforcement of the Confiscation Order

Fix the period
for defendant
to pay



Fix the term of
imprisonment
defendant has to
serve for any
amount not duly
paid

Appoint an Enforcement Receiver

Default Sentence

Unpaid Amount	Term of Imprisonment
Not exceeding HK\$200,000	12 months
Exceeding HK\$200,000 but not exceeding HK\$500,000	18 months
Exceeding HK\$500,000, but not exceeding HK\$1 million	2 years
Exceeding HK\$1 million, but not exceeding HK\$2.5 million	3 years
Exceeding HK\$2.5 million, but not exceeding HK\$10 million	5 years
Exceeding HK\$10 million	10 years

Challenges Faced in Tracing Assets

Gatekeepers

**Shell
Corporations**

**Off-shore
Companies**

**Identification
of Beneficial
Ownership**

**Virtual
Assets**

02



International Cooperation

International Co-operation

**Bilateral
Agreements
(MLA)**

**Multilateral
Agreements
(e.g. UNCAC, UNTOC)**

**Reciprocity
undertaking**

**Agency-to Agency
Assistance**

International Co-operation

Relevant Provisions of UNCAC

Chapter IV

- **State Parties are obliged to assist one another in every respect of the fight against corruption.**
- **Co-operation includes freezing, seizure, and confiscation of assets (Art.31), International Mutual Legal Assistance (Art.43), and other law enforcement assistance**

International Co-operation

Relevant Provisions of UNCAC

Chapter V

Establishes asset recovery as a fundamental principle of the Convention

- **Prevention and detection of transfers of proceeds of crime (Art.52)**
- **Direct recovery of property (Art.53)**
- **Recovery of property through international co-operation (Art.54-55)**
- **Return and disposal of assets (Art.57)**

Principle for International Co-operation in Asset Recovery

**Ill gotten
gains must be
returned to
the rightful
owner**

**Deterrent
effect**

**No safe haven
to park
proceeds of
crime**

03



Best Practices in Asset Recovery

Best Practices in Asset Recovery

Dedicated Force

- Asset Recovery Office
- Experienced investigators, preferably with accounting background
- Familiar with assets / fund tracing

Perform Due Diligence

- Identify the beneficial ownership of the asset to be restrained or confiscated
- Compute and ascertain the benefits derived by the defendant from the offence

Best Practices in Asset Recovery

Seek Legal Assistance

- Is a restraint order required as a provisional measure?
- Is foreign restraining order or MLA required?

Establish Liaison Contacts

- Designated Central Authorities
- Agency-to-Agency

Attend Regular Training

- Enhance officers' knowledge on the subject matter
- Understand latest global trend and practices

04



Case Studies - Challenges and Lessons Learnt

“With the community, the ICAC is committed to fighting corruption through effective law enforcement, education and prevention to help keep Hong Kong fair, just, stable and prosperous.”

Recap: Some Specific Features

POBO*	OSCO#
Restraint limited to corrupt proceeds	Can also restrain profits derived from proceeds of crime
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* Prevention of Bribery Ordinance

Organized and Serious Crimes Ordinance

Recap: Some Specific Features

Court's determination upon application

Defendant has been convicted of a specified offence



Whether defendant has **benefited** from the specified offence



Value of defendant's **benefit** from the specified offence [at least HK\$100,000]

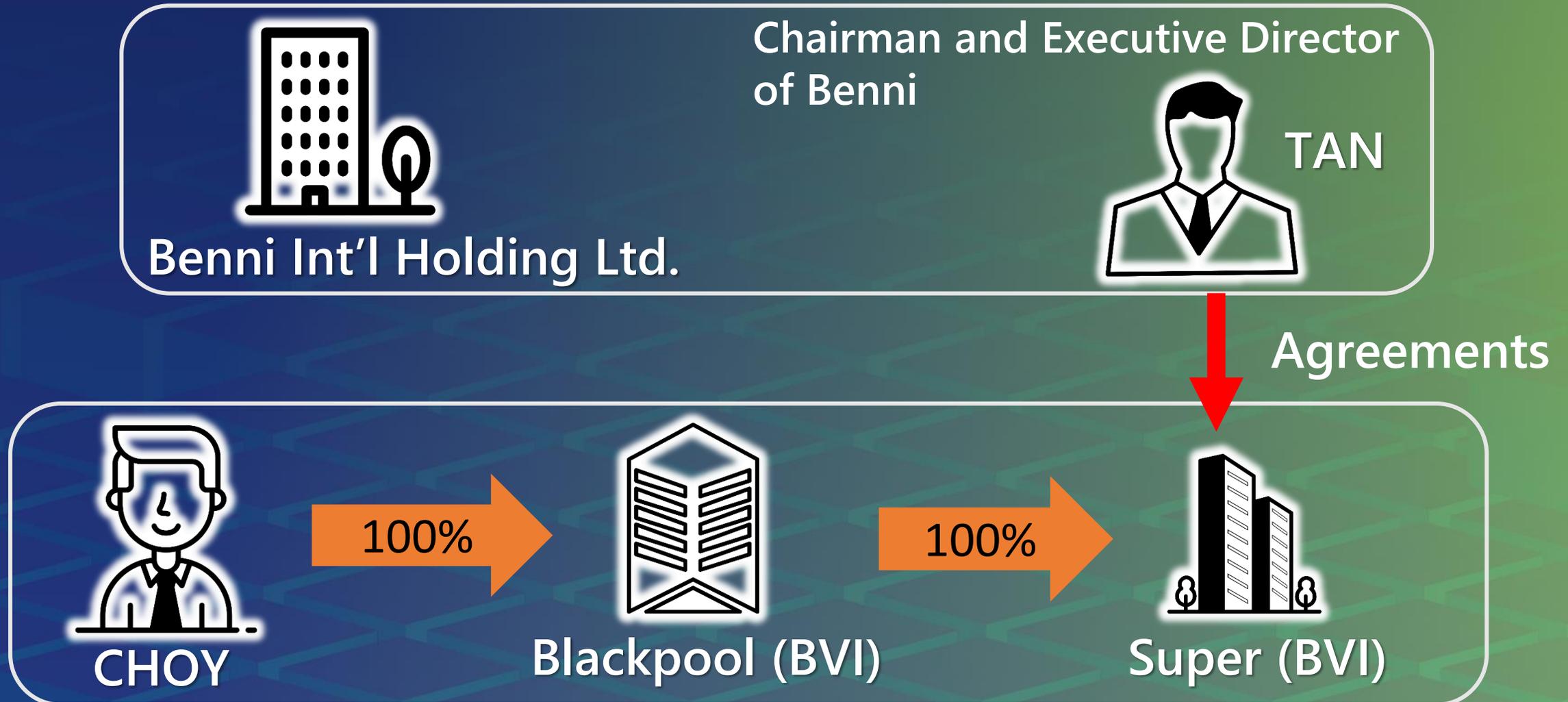


Amount to be recovered will be that amount unless the defendant proves the value of his realizable assets is less than the **value of his benefit**

Secretary
for Justice

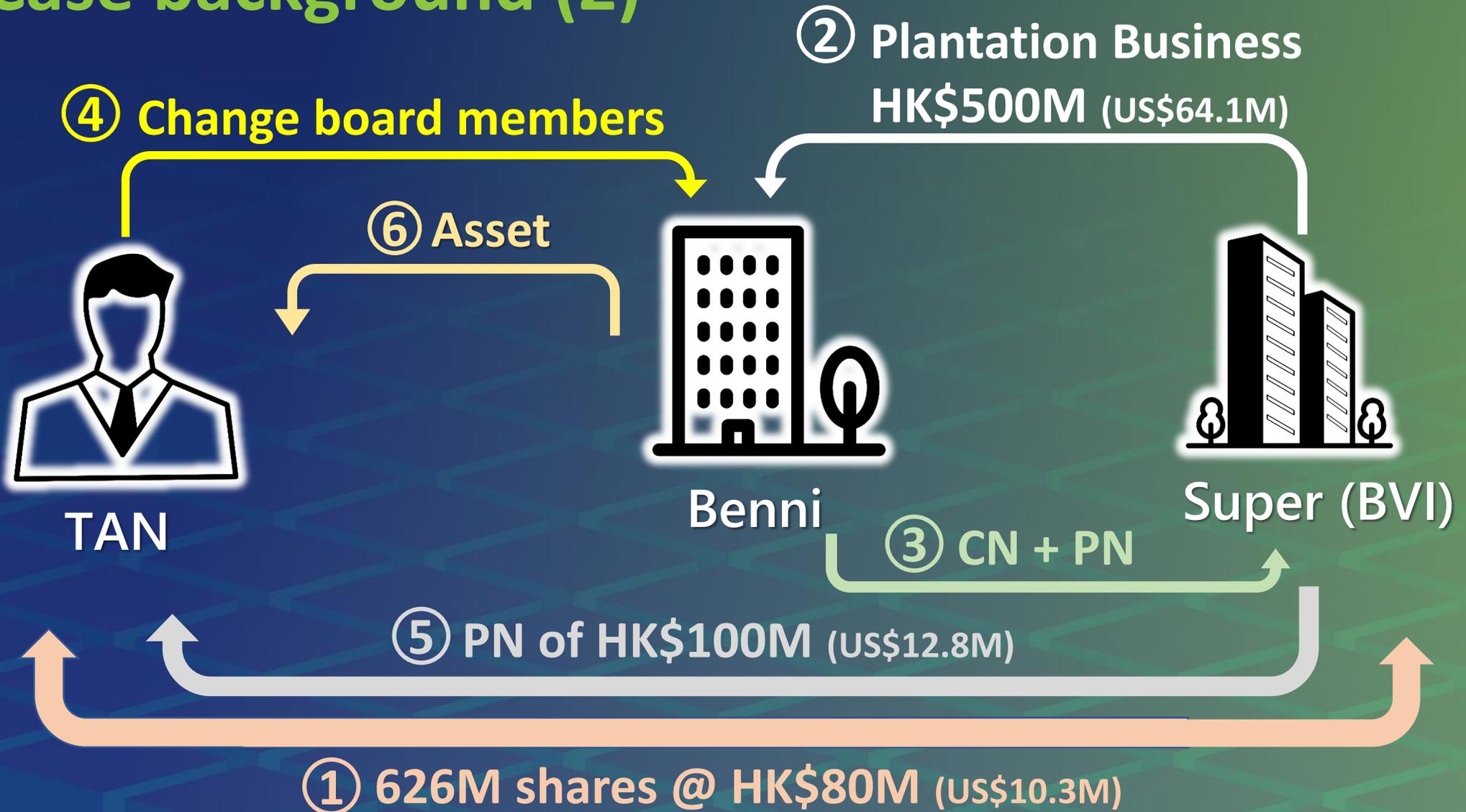
Benni Case

Case background (1)



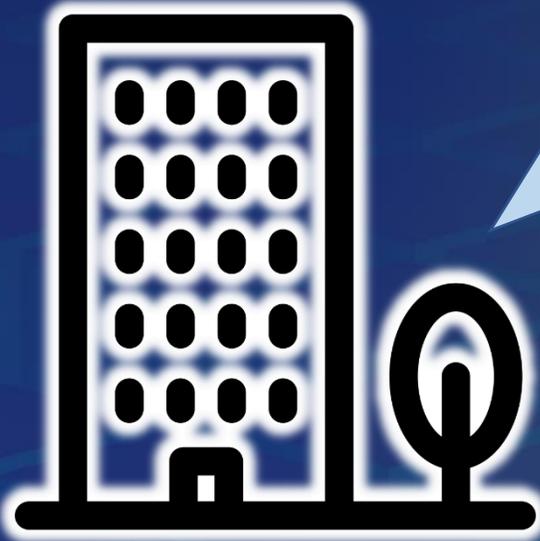
Benni Case

Case background (2)



Benni Case

Case background (3)



Benni

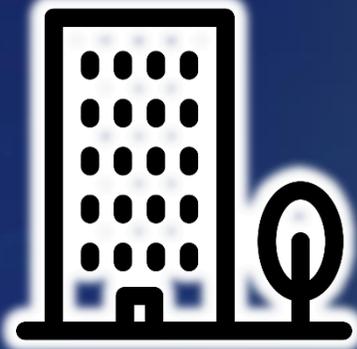
Announcement:

- Acquisition not a connected transaction.
- No change in control of the Benni resulting from acquisition.

False Statement

Benni Case

Case background (4)



Benni

HK\$400M convertible notes



Blackpool

Benni's consideration of HK\$500M to be settled by

- **HK\$400M** convertible notes (CN)
- HK\$100M promissory notes (PN) (given to TAN as a bribe)



CHOY

CHOY converted **HK\$110M** CN into 1.7 billion shares in Benni @ \$0.064 per share

Benni Case

Benefit Derived by CHOY?

- a) Entire HK\$400M CN to Blackpool,
or
- b) HK\$110M value of 1.7 billion
shares in Benni at the time of
offence, or
- c) 1.7 billion shares in Benni

Assets held by CHOY (HK\$):

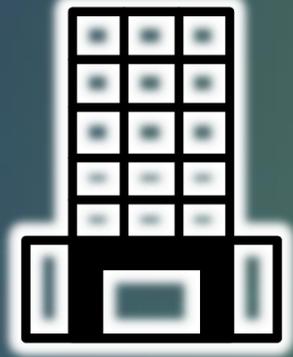
a) Cash	\$0.10M
b) Bank accounts	\$0.27M
c) Insurance policies	\$0.27M
d) Securities accounts	\$1.19M
e) Benni shares	<u>\$1.44M</u>
	\$3.27M

Benni Case



CHOY

- Sole Director of Sky (BVI)
- Sole signatory of the bank account



Sky (BVI)

In possession



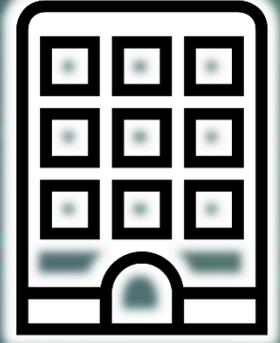
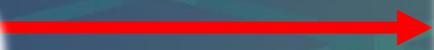
HK\$29.5M
(US\$3.8M)

ownership



LAM
Mainlander

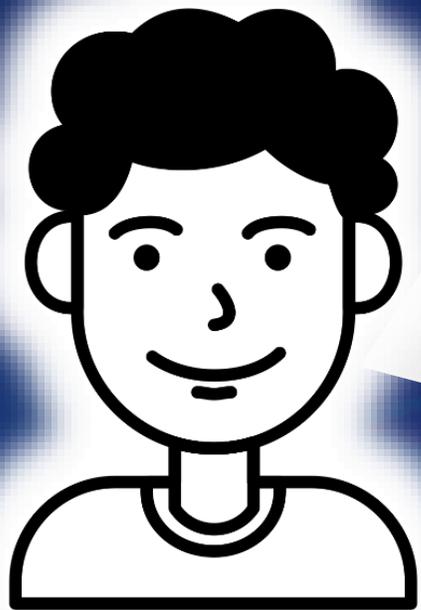
ownership



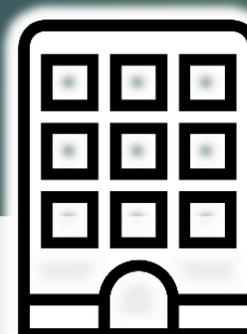
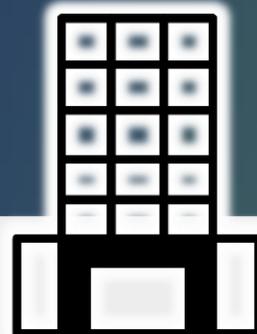
Smart (BVI)

Production Order served on the company service providers revealed

Benni Case



LAM
Mainlander



- Never heard of Sky (BVI) or Smart (BVI)
- Did not know he was the shareholder of Smart (BVI)
- Did not know Sky (BVI) had a bank account
- Came to HKG and signed bank documents on the instructions of KAM (CHOY's ex-wife)
- Signed blank pages and gave KAM



Benni Case



CHOY

CHOY's assets @
HK\$32.8M
(US\$4.2M)



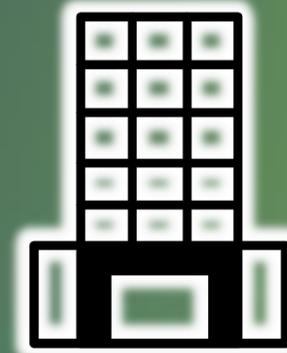
Benni Case

Civil Proceedings



Glory (BVI)

Recovery of HK\$12.5M



Sky (BVI)

- Forestry Maintenance Agreement (believed to be false)
- HK\$12.5M (US\$1.6M) held on trust by Sky (BVI)
- LAM / (Sky (BVI) agreed to receive this on trust for Glory (BVI) (denied by him)
- Glory (BVI) obtained judgment against Sky (BVI)

Benni Case

Defence case

- Shares allotted to CHOY were his benefit – confiscate all the Benni shares.

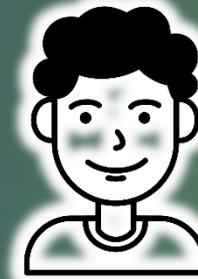
Prosecution case

- Value of shares at the time of offence was HK\$110M (US\$14.1M).
- 200M shares were sold for HK\$23M (US\$2.9M).
- Although shares are now valued below HK\$3M (US\$0.4M), value of benefit to be considered for confiscation.

Benni Case

Reasons for settlement:

- LAM refused to travel to HKG to testify
- Defence insisted on cross-exam of LAM
- Unable to set up a video link with LAM
- No evidence that CHOY instructed LAM to be his nominee



LAM



Benni Case

Reasons for settlement:

- CHOY was no longer signatory of Sky (BVI)
- All instructions to LAM were given by KAM



- In the absence of LAM, difficult to prove that Sky (BVI) was under the effective control of CHOY

Benni Case Conclusion



or



Case Sharing



Case 2

Derivative Warrants (DWs) Case

Derivative Warrants (DWs) case (HKSAR v WU)

Case background



- Case involved fraudulent trading of DWs.
- Operated a warrant pushing scheme based in the mainland CHINA to trade DWs listed in Hong Kong.
- DWs are financial instruments that give the investor the right but not the obligation to buy or sell an underlying asset at a pre-determined price prior to a specified expiry date.

Derivative Warrants case

Case background (con'd)



Derivative Warrants case

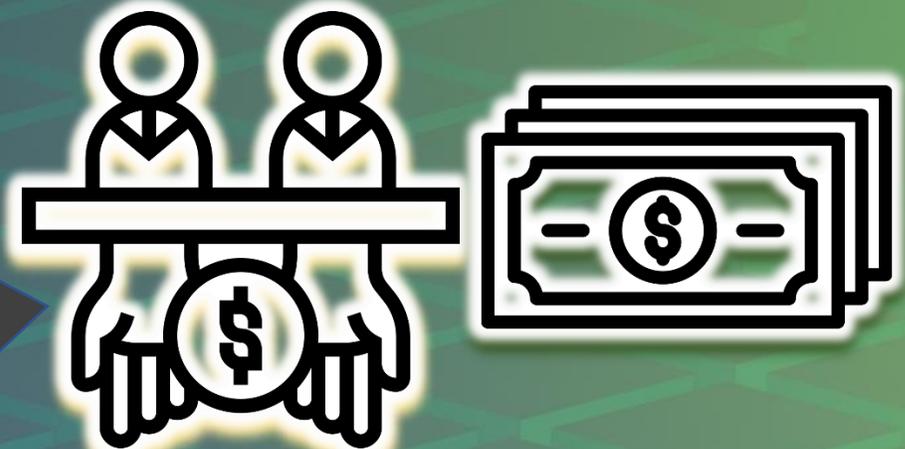
Case background (con'd)



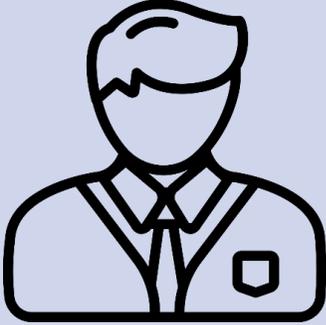
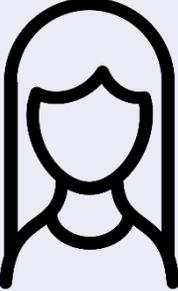
Employed 50 dummy trading accounts in 27 brokerage firms to keep buying / selling DWs to create a false impression of active trading so as to enhance the price.



Insiders from Liquidity Providers helped to buy back the unsold DWs to ensure profitability of the scheme. The money generated was taken out in cash.



Derivative Warrants case

Charges		Confiscation Orders
WU 	CONVICTED 4 X Conspiracy to Defraud	HK\$28.9M (US\$3.7M)
CHENG (WU's wife) 	CONVICTED 17 X Money Laundering	HK\$81.5M (US\$10.4M)

Derivative Warrants case



Derivative Warrants case

Valuation of Assets: HK\$136.9M (US\$17.6M)

	WU	CHENG
Cash	5M	34.9M
Cash Bail	0.2M	-
Bank Balances	8.9M	33.5M
Shares	-	13.9M
10 Real Properties	17.3M	22.8M
Personal Properties	0.4M	-
Total:	31.8M	105.1M

Derivative Warrants case

Defence case (1)

- Cash was given to wife for household expenses and children education
- Some of the cash originated before the charge period
- Cash bail borrowed from friend
- Some of the assets represent profit derived from share speculation



Derivative Warrants case

Defence case (2)



CHENG

- HK\$2M (US\$256K) held by wife in a bank account was borrowed from a friend
- Money held in CHENG's bank accounts belongs to her as it represents sale proceeds of two properties, one of which was gifted to her and the other was purchased before the charge period.



Derivative Warrants case

Prosecution response (1)



- Affirmation of disclosure made by CHENG – Property funded by husband
- Gift caught by S.12(9)(a) of OSCO
- CHENG only earned HK\$95,000 (US\$12K) during the 4 years that she was employed

Derivative Warrants case Defence case (3)



WU

3 real properties are
his matrimonial home



WU



Gift



CHENG

Derivative Warrants case Prosecution response (2)



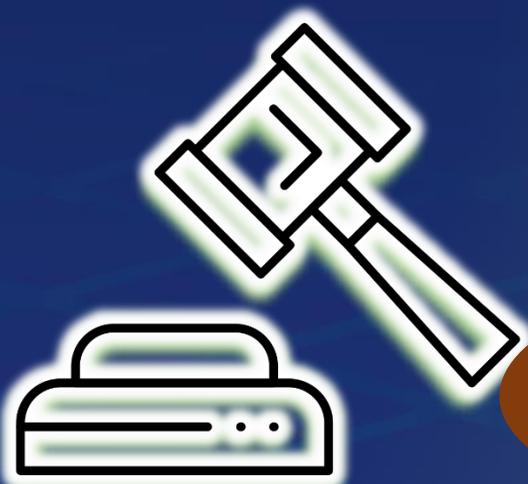
The 3 properties claimed as matrimonial home, one was **rented out**.

None of the properties were adjacent or adjoining flats. One was on a different floor.

Properties gifted to wife are caught by S.12(9)(a) of OSCO.



Derivative Warrants case Conclusion



HK\$111M
(US\$14.1M)

or



Confiscation Order

9 years

Settled in August 2018

From Pandemic to Recovery:
**Building Resilient Economies through
Transparency, Integrity, and Trust**

Thank you!

