

## **EXECUTIVE SUMMARY**

### **Challenges in prosecuting white-collar crimes**

This article provides insight into the challenges of prosecuting financial and commercial crimes, and how advancements in technology has made it more difficult to nab the masterminds behind criminal syndicates.

The piece starts off by providing an interesting perspective on the distinction between white-collar and blue-collar crime, before diving into greater details on how prosecutors and investigators plough through voluminous amount of information and, at times, work with other jurisdictions in order to solve the cases as white-collar crime often transcend national boundaries. After a case concludes, prosecution will help victims recover their lost monies where possible. However, chances of a victim recovering the full amount that he has lost are generally slim.

## **Challenges in prosecuting white-collar crimes, technology advancements adds on the woes**

There are blue-collar and white-collar jobs, but is there a similar distinction between blue-collar and white-collar crimes?

In May 2019, a managing partner of a law firm was found to have misappropriated \$33 million of monies belonging to a client. Two months later, a senior investment banker, who allegedly misappropriated \$60 million in funds from 11 clients, absconded before the trial commenced. These high profile crimes were committed by working professionals, but is white-collar crime related to a criminal's profession?

In this issue of "Know the Law", Mr. Christopher Ong, Senior State Counsel, and Mr. Leong Weng Tat, Deputy Senior State Counsel, who oversee financial, commercial and technology crimes for the Attorney-General's Chambers' (AGC) Crime Division, explain what white-collar crime is.

### **What is a white-collar crime?**

White-collar crime is a colloquialism; it is not a clearly-defined legal term. Mr. Ong explained that the informal term "white-collar crime" actually refers to financial crimes, such as criminal breach of trust (CBT), cheating, forgery, securities fraud, internet scams and corruption. In contrast, blue-collar crime refers to non-financial crimes, such as drug offences, sexual offences and violent crimes.

"However, white-collar crime is not a clearly-defined legal term. It should not be used to ascertain a criminal's identity since working professionals may also commit so-called blue-collar crimes, and vice versa."

He said that if too much focus is given to the "white-collar" label, some may feel that phone and parcel fraud cases do not fit into their perceived definition of "white-collar crime"—although these are also considered financial and commercial crimes.

Mr. Ong said that white-collar crime does not necessarily involve astronomical figures; even a cashier pocketing tens of dollars from customers would be considered to be financial crime.

### **Is technology lending criminals a helping hand?**

Technology has indeed become a handy tool for criminals. One can use Facebook to meet new friends and tempt them into becoming money mules, or impersonate police and government agencies over the phone, tricking people into obediently handing over money and their personal data

Mr. Ong said that when Singapore inherited her penal code from India, crimes such as cheating and CBT were already included within. Therefore, financial and commercial crimes are not considered new forms of crime. What has changed over the years, however, is the modus operandi of the criminals, and one of the major factors behind the changes is the use of technology.

"Technological development, coupled with the increasing complexity of transactions, have made criminal activities more complex and harder to detect. The number of technology crimes has increased, involving larger sums of money than ever before. Now, millions of dollars can be stolen without you knowing it, just through a few taps on the keyboard."

Mr. Leong added that technology allows criminals to phish, especially so for parcel and love scams. Traps can be set up through phone calls or social media chat rooms. Even if only 0.1% of the people fall for the traps, the absolute number of victims is still very considerable.

AGC also shared that the workload for financial and commercial crimes has more than doubled from 2015 to 2018.

Such work would include cases handled, investigation papers reviewed, charging decisions made, pieces of advice rendered to other government agencies, and so forth.

### **What are some of the challenges faced in solving financial and commercial crimes?**

When investigating financial and commercial cases, one cannot rely on physical evidence such as fingerprints, footprints and DNA. Investigators must painstakingly plough through mountains of documents just to find evidence.

These documents include bank transaction records, audit reports, and electronic communications records such as emails and text messages.

Mr. Ong said, "The sheer volume of information containing potential evidence presents a challenge, because it is difficult for prosecutors and investigators to go through and analyse everything—it can be like searching for a needle in a haystack. After finding the evidence, there is still a need to process and organise the information in a way that helps prosecutors build their case."

He pointed out that some transactions may appear fine on the books but further probing will reveal that money has ended up in places where it should not be. Therefore, the job of the investigator is to "follow the money trail". Transactions completed via electronic platforms are generally harder to detect. Such records can also be destroyed or encrypted, which is yet another challenge posed by technological advancements.

In addition, it is also difficult to find the masterminds behind huge criminal networks.

Mr. Leong explained that many of these masterminds are not based locally, and they conceal the network addresses that they use. Criminal syndicates also use money mules to withdraw cash from bank accounts and physically transfer the money overseas. While it is easy to arrest these money mules, the masterminds operating behind the scenes will not come to Singapore in person. Ferreting them out requires cooperation with law enforcement agencies in other countries.

### **How are jurisdictions' boundaries drawn?**

Compared to criminal offences such as murder and rape, financial and commercial cases often involve transnational criminal elements. Local authorities can only get involved in the investigations and handling of cases which are related to Singapore.

Mr. Ong gave an example of a case in which the victim was in Singapore when the offence took place, or the crime was committed in Singapore. If a scammer sent an email to Singapore from a foreign country, and the email recipient was tricked into remitting monies to the scammer, the case would then count as being within Singapore's jurisdiction. However, the line may sometimes be blurred due to the use of technology.

In cases where the scam took place abroad, so long as the criminal proceeds eventually reached Singapore, local authorities would still have the right to intervene. In such cases, although they cannot press charges against the accused for cheating, they can charge him with money laundering instead.

As financial and commercial cases often involve cross-border transactions, Mr. Leong said that it is necessary to work with other countries to deal with criminals, which was what happened in the 1Malaysia Development Berhad (1MDB) money laundering case. Through close cooperation with our foreign counterparts, Singapore became the first country to prosecute several persons of interest. Singapore also helped Malaysia by tracing and obtaining court orders to repatriate \$50 million to 1MDB.

“AGC works with other international financial centres such as the United States of America, the United Kingdom and Switzerland in the fight against white-collar crime. Through sharing information and documents with these countries, we are able to respond quickly and take effective actions against persons of interest and their tainted assets in Singapore.

### **Can the victim recover the lost monies?**

Although a suspect's assets will be frozen once the police initiates investigations against him, the victim may not be able to recover the monies cheated, misappropriated or stolen.

In general, police will freeze a suspect's bank account and assets as soon as possible after investigation commences. Once the case is over and the accused is convicted by the court, the prosecution will apply to the judge to confiscate or return the illicit monies (to the rightful owners) obtained during the investigation.

However, there is generally little chance of a victim recovering the full amount that he had lost. Mr. Leong explained that accused persons often take risks in committing crimes because they face financial difficulties, such as gambling losses and mounting credit card debts, and therefore will not deposit the ill-gotten gains into the banks. While the victim may opt to recover lost monies through initiating and winning subsequent civil proceedings, it is still dependent on the accused person's/defendant' ability to pay back.

Mr. Ong said that the prosecution's top priority is to ensure that perpetrators of crime are duly punished. Where possible, prosecution will also help victims to recover their lost monies. During the course of negotiations, if the accused is willing to make restitution to the victim, the prosecution may consider reducing charges.