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ESSENTIAL INTELLIGENCE:

Fraud, Asset Tracing & Recovery

Contributing Editor:

Keith Oliver

Peters & Peters Solicitors LLP

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OF FINANCIAL CRIME LITIGATORS

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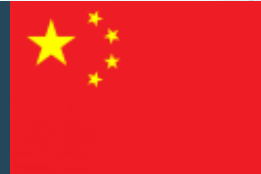
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I Executive summary

In recent years, we have increasingly received inquiries from foreign clients regarding the tracing and recovery of funds wrongfully remitted to the People's Republic of China (PRC) due to acts of fraud, especially those perpetrated over the internet. A typical example is that the fraudsters fabricate a transaction (e.g., the purchase of goods or shares), impersonate a key player in the transaction (e.g., a director or manager of the victim) and request the victim to facilitate the transaction by remitting funds to certain accounts held with a PRC financial institution.

In this chapter, we will introduce the legal framework which victims of fraud may utilise to trace and recover assets in the PRC, with an emphasis on potentially relevant substantive remedies and useful procedural measures, causes of action, the interplay between civil and criminal proceedings, cross-border mechanisms, recent legal developments regarding cryptocurrencies and the potential liability of financial institutions.

II Important legal framework and statutory underpinnings to fraud, asset tracing and recovery schemes

The legal landscape in the PRC pertinent to combatting fraud and protecting the rights of victims comprises a number of laws, such as the Civil Code, the Civil Procedure Law, the Criminal Law, the Criminal Procedure Law, the Administrative Law, the Company Law, the Securities Law, the Anti-Internet and Telecom Fraud Law and the Anti-Money Laundering Law.

The PRC adopts a civil law system, so in general prior court judgments do not serve as binding precedent. The PRC Supreme People's Court and the PRC Supreme People's Procuratorate can promulgate interpretative rules (i.e., judicial interpretations) which have binding force on the judicial authorities involved in the application of laws and judicial activities. The central governmental ministries (e.g., the PRC Ministry of Public Security) can also promulgate rules that the respective ministry and its local counterparts must follow in their administrative activities.

In addition, some bilateral or multilateral treaties (e.g., treaties on judicial mutual assistance or investment protection) to which the PRC is a party may also be relevant in certain circumstances in combatting fraud.

Civil proceedings

A victim may initiate civil proceedings against the fraudster and/or relevant parties to seek the recovery of assets.

Procedural remedies/measures

A party may request the court to freeze the opposing party's assets, order that the opposing party take or cease certain actions and/or order the opposing party to disclose certain documents solely in the requested party's possession. A party may also request the court to join relevant parties as co-defendants or necessary third parties to maximise the chances of recovery. Furthermore, a party may request the court to issue investigation orders to third parties, requesting them to disclose certain information or documents relevant and material to the resolution of the case.

In the context of a fraud, the victim may sue in the same proceeding the fraudster, the fraudster's director(s) and/or managers, as well as the bank that handles the funds, and request the court to: (i) freeze the identifiable assets of the relevant defendants; (ii) order that the bank retain the funds until the issuance of a judgment; (iii) order the bank to disclose certain documents that may be critical for investigating the fraud or establishing the defendants' liability; and (iv) order other third parties (e.g., police bureau(s)) to disclose information or documents relevant and material to the recovery.

Substantive remedies

There is no standalone fraud claim under PRC law. Rather, provisions relating to fraudulent conduct are found within different laws and administrative regulations. Thus, victims of fraud may seek recourse through the above-mentioned laws and regulations to trace and recover their assets.

Under the PRC Civil Code, a victim of fraud may assert claims against the fraudster under various causes of action, which are illustrated below:

- where the victim's assets have been wrongfully transferred to a PRC entity due to a fabricated transaction, the victim may request the company to return the assets under a claim of unjust enrichment;
- where the victim of fraud is induced to enter into a contract against its will, courts or arbitral tribunals will generally find the contract to be revocable at the option of the victim, and award the victim damages that may cover resale losses, production losses and operating losses, among others;

- where the victim of fraud is induced to negotiate a contract with the fraudster who has no real intention of entering into the contract (e.g., the fraudster's only purpose is to solicit certain information from the victim useful for the fraudster's other acts of fraud), courts or arbitral tribunals may also award the victim reliance damages (e.g., direct cost of disbursements); and
- where the fraud is perpetrated by a conspiracy involving multiple fraudsters, the victim may also request joint and several compensation. In particular, a third party who knowingly assists a perpetrator in carrying out a fraudulent act may bear joint and several liability with the perpetrator.

Under the PRC Company Law (as revised and effective July 1, 2024), if the fraud is perpetrated by the directors or officers of a company, the victim may initiate a civil action against the company, as well as the directors or officers, and claim for damages.

Under the PRC Securities Law, if an issuer or securities firm misrepresents or omits material information during the offering and issuance of securities or information disclosures that affect the investors' decision-making and harms their interests, such conduct may constitute "fraud" in a legal sense. The investors may report the conduct to the relevant authorities (e.g., China Securities Regulatory Commission, police bureaus, etc.) and/or initiate civil



litigation against the wrongdoers. The wrongdoers and relevant responsible persons could be subject to administrative liability, such as penalties and revocation of their business licence, or civil liability, such as damage compensation.

Administrative proceedings

Procedural remedies/measures

Administrative proceedings consist of administrative review and administrative litigation. If the tracing and recovery of funds require assistance from administrative departments (e.g., police bureaus, the National Financial Regulatory Administration, SAFE, etc.), but they refuse to act, the victim may request the competent department to review the administrative department's decision. The victim may request the reviewing department to obtain relevant and material information from relevant third parties.

The victim may also initiate administrative litigation proceedings against the relevant administrative department, and apply for the same procedural remedies/measures applicable in civil litigation proceedings.

Substantive remedies

For legal violations of a public law nature (e.g., those under the Company Law or the Securities Law), the victim may also report the wrongdoer's conduct to the relevant authorities (e.g., State Administration for Market Regulation, China Securities Regulatory Commission). The wrongdoer and relevant responsible persons could be subject to administrative punishment, such as penalty, suspension of business and revocation of business licences.

Criminal proceedings

Procedural remedies/measures

Criminal proceedings are mainly conducted by the police bureaus, the procuratorates and the courts' criminal divisions. After a police bureau has accepted a matter reported by the victim, the bureau will initiate an investigation of the matter and attempt to trace the proceeds of the fraud. If the police bureau determines that the suspect has committed a crime, it will recommend the procuratorate to initiate a criminal prosecution against the suspect. If the procuratorate confirms that the evidence is sufficient to establish a crime, it will initiate the prosecution. The proceeds will be returned to the victim after the court has decided that they are indeed proceeds of the crime. On some occasions, the proceeds can be returned to the victim at the investigation and prosecution stage by the police bureaus and procuratorates, respectively.

In a criminal proceeding, the police bureau, the procuratorate and the court generally have greater power and authority to investigate and gather information, to freeze relevant assets and to restrict the activities



of relevant persons or request cooperation by relevant third parties. This makes criminal proceedings a more effective means of asset tracing and recovery compared to civil proceedings. However, the victim may have limited access to and control of the criminal proceedings. The police bureau, the procuratorate and the court are not generally obligated to share relevant information or materials with the victim.

Substantive remedies

The Criminal Law provides for various criminal fraud offences, such as fraud, contract fraud, illegal taking of deposits from the public, fraudulent fundraising and financial fraud. The remedies available to the victim are generally limited to a return of the property or compensation for the actual losses in criminal proceedings.

A party who knowingly assists in criminal fraud may become a joint defendant to the crime if there is common intent. Standalone criminal sanctions may apply where the party knowingly harbours, transfers, acquires, sells on behalf of others or conceals by other means the proceeds or benefits derived from criminal fraud.

International negotiation and arbitration proceedings

In certain circumstances, a foreign victim of fraud may consider seeking recovery through an applicable bilateral or multilateral treaty; for example, if the victim believes that the relevant governmental authorities are not responsive to its legitimate requests for asset



tracing, or it has been unfairly treated in the relevant administrative or judicial proceedings. The PRC has entered into bilateral treaties with many countries. Most of these treaties provide for standard obligations of a contracting state, such as fair and equitable treatment, full protection and security and national treatment, for the purpose of protecting an investor's "qualified investment" in that state. The victim may seek remedies, such as damages, if it can establish that the contracting state has breached the obligation(s) under the treaty or customary international laws. Attention should be paid to whether the victim's remittance of funds into the PRC may constitute a qualified investment under the applicable treaty. Disputes under the treaties are generally resolved via international arbitration under *ad hoc* arbitration proceedings or arbitration proceedings administered by ICSID.

III Case triage: main stages of fraud, asset tracing and recovery cases

Assume the following hypothetical email fraud: the victim – a company in the U.S. and the buyer in a sale of goods transaction – receives an email from a PRC fraudster pretending to be the director of the seller in the PRC. The fraudster asks the victim to transfer the payment of goods to an account other than that specified in the sales contract. The victim acts accordingly. The victim later discovers that the email was from the

fraudster and the funds had been remitted to the PRC bank account of a PRC company that the victim has never heard of.

Below are the general steps for tracing and recovering the company's assets under the PRC legal regime and relevant legal tools introduced above.

Step 1: Evidence collection and preliminary analysis

The first step is to ascertain the facts of the case and to collect all relevant documentary evidence. In particular, statements should be prepared at this stage to be presented to the relevant parties, such as the receiving bank and relevant governmental authorities, explaining why these parties should provide assistance under the applicable laws.

It is advisable for attorneys from the relevant jurisdictions to be engaged as early as possible to increase the chances that evidence can be effectively preserved and strategies carefully formulated.

Step 2: Approach relevant entities, regulators and organisations in the relevant jurisdictions

For cross-border frauds like the hypothetical case, parallel actions in the relevant jurisdictions are often necessary.

U.S.

The victim may immediately contact the U.S. local bank which remitted the funds to the PRC bank. Specifically, the victim may report the matter to the U.S. bank and ask the U.S. bank to immediately contact the PRC bank, requesting the latter to return or place a hold on the funds. The victim should also try to approach the supervising entities of the U.S. bank if there are clues indicating that the bank may have violated relevant rules on the remittance of the funds to the PRC bank.

The victim should also report the matter to the local police and see to what extent the police become involved. However, the actions of the local police may be limited in



the case that the funds were remitted to another country such as the PRC. It is advisable for the victim to also seek advice from a local attorney on how to approach INTERPOL and request it to forward relevant requests (e.g., the return of funds, investigation of crimes, etc.) to its counterpart in the PRC (i.e., the International Cooperation Bureau of the PRC Ministry of Public Security), which will review the request and decide to forward the same to the relevant local police bureaus.

PRC

The victim may immediately contact the recipient bank in the PRC and request it to return the funds held in the bank's receiving account, or at least retain the funds. In parallel, the victim may also contact the competent PRC police bureaus and request them to: (1) help persuade the bank to take the above-mentioned actions; and (2) accept the matter and initiate criminal investigations. That said, PRC police bureaus may hesitate to accept a matter such as the hypothetical case. They may generally consider the matter a foreign one, and only act if the matter has first been reported to the local police in the foreign country and referred by INTERPOL to the relevant PRC police bureaus. In our experience, the local police bureaus generally take these requests seriously and act accordingly once they receive the request forwarded by INTERPOL and then the International Cooperation Bureau of the PRC Ministry of Public Security.

It is also advisable for the victim to try to obtain relevant materials from the bank regarding the disposal of the funds as well as documents the PRC recipient provided to the bank justifying the acceptance of the funds. If, in the documents provided to the bank, the PRC recipient states that it has delivered the goods to the victim, the victim should carefully examine the documents to see if any faked contents can be identified on the face of the documents (e.g., bill of lading, commercial invoice, packing list, airway bill, shipping advice, letter of credit, etc.). The victim may also try to verify the authenticity of the relevant documents with related entities (e.g., shipping company, customs, etc.).

The victim may put pressure on the PRC bank to return the successfully intercepted funds if it can establish that the documents presented by the recipient to the PRC bank contain obviously faked content that should have been discovered. If the bank refuses to cooperate, the victim should also be prepared to report the matter and the bank's failure to the relevant regulatory authorities such as the People's Bank of China, the National Financial Regulatory Administration, the State Administration of Foreign Exchange, etc. The regulators are generally responsive and willing to provide assistance.

Step 3: Plan and commence legal actions

The victim may further consider initiating legal action

against the relevant entities, not necessarily limited to the identified fraudsters, if the actions taken in Steps 1 and 2 are not productive.

A combined civil, administrative and/or criminal approach may also be necessary.

Civil proceedings

In the civil context, the victim may request the first-layer funds recipient(s) to return the funds on the basis of unjust enrichment; the victim may also join the subsequent layers funds recipient(s) as co-defendants if the funds can be identified as coming from the victim. The victim may also request the bank to compensate for the loss under tort claims if it can establish that the bank violated certain rules and regulations during its handling of the funds.

The victim may utilise the procedural remedies/measures introduced above to facilitate its asset tracing and recovery. For example, the victim: may request the court to freeze the funds at the bank; may request the court to order that the funds recipient, the fraudster and/or the bank disclose certain information and documents material to the adjudication of the case; and may request the court to issue investigation orders to relevant third parties, such as the police bureau, requesting it to disclose certain information and documents material to the adjudication of the case. The obtained information may also be useful for parallel informal, administrative and/or criminal actions.



In particular, the victim should try to characterise the matter to be adjudicated in civil proceedings as a civil matter; otherwise, the court may forward the case to the local police bureau, or may suspend the proceedings pending the result of the criminal proceeding. Achieving this objective may sometimes be difficult, because the court might be hesitant to accept the case if it senses any criminal aspects. This is especially so when the recipient company or the fraudster does not show up. Without asking questions from and clarifying the issues with the recipient company or the fraudster, the court may not feel comfortable concluding that the issues are purely civil and independent from any criminal issues.

Administrative proceedings

As discussed above, the victim may seek assistance from the relevant authorities such as police bureaus, the local counterparts of the People's Bank of China, the National Financial Regulatory Administration, the State Administration of Foreign Exchange, etc. If they refuse to respond to the victim's relevant requests, and if any of their decisions constitute an administrative action or inaction, the victim may appeal the decision through the administrative review procedure. If the victim cannot overturn the decision in such procedure, it may sue the relevant authorities via administrative litigation.

Criminal proceedings

If the police bureau accepts the matter, it may initiate a criminal investigation. If the bureau confirms that crimes have been committed and the perpetrators should be prosecuted, it will transfer the matter to the procuratorate and recommend criminal actions be instituted against the perpetrators. The procuratorate will then examine the matter independently and consider whether the evidence is sufficient to establish criminality, in which case it will file criminal charges. Victims have limited opportunity to participate in the criminal process. Neither the police bureau nor the procuratorate will generally share their findings and relevant information or documents with the victim. The victim may have to wait until the court holds a hearing, at which the victim is entitled to attend and make statements.

If the court rules that the perpetrators have committed crimes, the court may order the defrauded funds to be returned to the victim (returned by the suspects or collected by the police bureau).

IV Parallel proceedings: a combined civil and criminal approach

PRC law contains detailed rules on the interplay between the civil and criminal actions. The key is to what extent the issues in the civil proceedings and those in the criminal proceedings are interrelated:

- **Concurrent parallel civil and criminal proceedings.** This typically occurs where the matter can be divided into civil and criminal matters independent from each other, or where the civil and criminal issues can be isolated from each other and the victim's interests can be better protected by the timely adjudication of the civil issues.
- **Civil proceeding suspended pending the result of the criminal proceeding.** This occurs where the adjudication of the issues in the civil proceeding is dependent on the outcome of the criminal proceeding.
- **Refusal to accept the civil claim.** A court will refuse to accept a civil claim where the issues in the civil proceeding and the criminal proceeding itself arise from the same matter, and either the court finds that the victim has been fully compensated through the criminal proceedings or determines the matter should first be handled by the police bureau.

V Key challenges

Key challenges usually concern access to information, willingness of the relevant entities to assist or cooperate,





uncertainty of the competence of the relevant authorities, duration of legal proceedings and identifying the fraudsters' assets for enforcement purposes.

Consider this hypothetical: in the early stages of asset tracing, the victim may not have enough information to characterise the nature of the matter and justify its requests for the return of the funds or assistance. The bank may need a decision from the court or the police bureau to return the funds. The police bureau may consider the request a civil matter and suggest the victim file a civil lawsuit. After the victim files a civil lawsuit against the recipient and identifiable fraudster, the defendants may not participate in the proceedings, and the court may refuse to accept the case, suspecting that it is a criminal matter. Instead, the court may forward the case to the police bureau; however, there is no guarantee the police bureau will accept the matter for investigation. The police bureau may consider the request a foreign matter and require the victim to report it to local law enforcement in its home country and forward its request through INTERPOL.

Even if the court accepts the case, it may suspend the proceedings pending the outcome of the criminal proceeding. The civil and criminal proceedings may take years to complete, especially given the possibility of appeal. Even if the proceedings conclude

favourably for the victim, there is no guarantee that the perpetrators will have identifiable assets sufficient to satisfy a judgment. Though PRC courts have efficient means to discover assets of the defendants or the suspects, the funds may have been divided into multiple tranches and transferred to unknown entities through many tiers of ownership, and may even have been expended or laundered. This could make the courts' tracing of assets extremely difficult.

To mitigate the effects of these challenges, victims should obtain assistance from relevant experts, such as lawyers, to carefully plan the tracing actions, including strategies for communications with relevant entities. Lawyers from the relevant jurisdictions should also work closely together to ensure each recovery action proceeds smoothly. In our experience, an early recovery can sometimes be achieved through effective communication with the bank and the early involvement of the police bureau. Funds may be returned to the victim without the need of a court decision or the police bureau's acceptance of the case.

VI Coping with COVID-19

The effects of COVID-19 on the activities and the



operation of the judicial and administrative departments in the PRC have generally been extinguished. Through dealing with the pandemic, relevant judicial and administrative departments have developed efficient electronic tools (e.g., online hearing platforms) for people to work and communicate online. This may greatly facilitate asset tracing and recovery on matters involving multiple cities. Working on online systems also ensures better record keeping for the relevant authorities.

VII Cross-jurisdictional mechanisms: issues and solutions in recent times

As to civil actions in foreign proceedings, injunctive relief issued by foreign courts cannot be enforced in the PRC, and the foreign judgment may need to be enforced by a PRC court on the basis of reciprocity or international treaties concluded or acceded to by the PRC, based on which the enforcement cannot be guaranteed. As to PRC proceedings, the victim may confer with attorneys in the relevant jurisdiction to see if the court at that jurisdiction may provide assistance in aid of the PRC proceedings.

As to criminal proceedings, on April 22, 2024, the PRC National Supervisory Commission, the PRC Supreme People's Court, the PRC Supreme People's Procuratorate, the PRC Ministry of Foreign Affairs, the PRC Ministry of Public Security, the PRC Ministry of State Security and the PRC Ministry of Justice jointly issued a trial provision aimed at refining and improving the implementation procedures of the Law on International Criminal Judicial Assistance of the PRC.

Key highlights of the provision include:

- **Clear Processing Timelines:** International criminal judicial assistance matters are categorised as general or priority. General matters must be processed in 45–90 days, while priority matters require completion within 30 days. Complex cases may have flexible timelines.

- **Enhanced Procedural Coordination:** The competent authority is determined based on the case nature and stage. If foreign authorities provide a valid confiscation order, the PRC Supreme People's Court and the PRC Supreme People's Procuratorate are the competent authorities.
- **Clearer Review Standards for Foreign Requests:** The review process and specific scenarios are clarified, requiring foreign parties to submit additional materials or requests as necessary. If the competent authority refuses to assist, a written explanation must be provided.
- **Establishment of the Working Mechanism Office:** Chinese institutions, organisations or individuals must report to the Office within 30 days when receiving foreign requests for criminal judicial assistance. The Office coordinates with the relevant authorities to determine the next steps. To proactively provide criminal evidence to foreign entities, Chinese institutions or individuals must submit a written application to the Office, and the application will also be reviewed and determined by Chinese state authorities. This ensures compliance with national judicial sovereignty and data security principles. However, further clarification is needed with respect to detailed rules on specific standards of review, procedures for handling requests that fail the review and legal consequences for providing assistance without reporting.

VIII Use of technology to aid asset recovery

The development of legal artificial intelligence (AI) is flourishing around the world, including in China. Based on our communications with relevant practitioners in that field, we understand the current developments mainly focus on the following aspects: document/contract review; legal research; basic legal consulting; and evidence analysis.

While these AI products are still under development, we expect that the following use scenarios may facilitate asset tracing and recovery in the near future.

- AI products may help attorneys to quickly identify relevant documents and the underlying relationships among them. In particular, these products may discern the flows of funds among a large volume of remittance records.
- AI products may, based on their “understanding” of the matter, help identify patterns of fraud and suggest new search terms or issues for the attorneys to consider.
- AI products may, based on their access to online information, help identify potentially enforceable assets of the defendants in judicial proceedings, such





as bank accounts, real estate, automobiles, accounts receivable under judgments and awards, etc.

We understand the courts are actively exploring the means to increase the efficiency of judicial proceedings by incorporating relevant AI-based tools, such as generative AIs based on large language models. Judicial appraisal institutes have already begun referring to relevant industry standards and utilising blockchain technology, probe technology, AI and reverse engineering to trace transactions, analyse the flow of funds in virtual currencies and collect evidence from public information and subpoenaed data.

IX Highlighting the influence of digital currencies: is this a game changer?

Cryptocurrencies are strictly regulated in the PRC. Previously, PRC courts had held that cryptocurrencies did not share the same legal status with official currencies. Certain transactions concerning cryptocurrencies had also been invalidated by PRC courts on the basis of violation of public order and morals. Certain plaintiffs' claims for the return or provision of cryptocurrencies were also rejected by the courts on the grounds that the transactions were illegal, and the plaintiffs should therefore assume

the risk of incurring loss by engaging in such illegal transactions.

That said, the legal landscape is developing. On April 13, 2023, the PRC Supreme People's Court issued the Minutes of the National Conference on Financial Trial in the Courts (consultation draft) (the Draft). The Draft illustrates the following notable changes on previous judicial practice:

- Contracts stipulating payment for goods or services with a limited amount of cryptocurrency should generally be considered valid. Courts should generally support claims for cryptocurrencies or, if the cryptocurrencies cannot be provided, alternative claims for equivalent compensation. However, courts should find invalid contracts which stipulate that cryptocurrency is to be used as a recurring payment instrument for official currencies or goods in kind.
- Courts may order that a defendant transfer or return cryptocurrency to the plaintiff. If a court discovers that the cryptocurrency cannot be transferred or returned, the court may also provide guidance to the party on raising reasonable claims and encourage the parties to reach an agreement on the satisfaction of financial claims.
- At the enforcement stage, a court may regard the losing party's cryptocurrency as an enforceable

asset, just as other conventional assets, such as cash or real estate.

- Courts should transfer a case to law enforcement if it finds evidence of criminal acts in the course of adjudicating a civil or commercial case involving cryptocurrency, such as illegal fundraising, illegally issuing securities, illegally offering tokens or coupons, or other crowd-related economic crimes.

The Draft remains unclear as to whether a plaintiff may request the court to freeze the defendant's cryptocurrencies during litigation proceedings. A prior court decision suggests such a possibility. In the case of (2022) Shan Cai Bao No. 166, the court froze five of the defendant's bank accounts and an "internet account" (with RMB 0.15 being frozen). While it was unclear if the court had actually frozen any cryptocurrencies, freezing currencies in an "internet account" suggests such a possibility.

The Draft has not been officially promulgated and, in any event, would not be binding if and when it is promulgated. Despite this, we expect most courts will follow the Draft's content and spirit in trying cases involving cryptocurrency.

On August 19, 2024, the PRC Supreme People's Court and the PRC Supreme People's Procuratorate jointly issued the Interpretation on Several Issues Concerning the Application of Laws in Handling Criminal Money Laundering Cases (Fa Shi [2024] No. 10), explicitly including virtual asset transactions as a potential form of money laundering. The Interpretation stipulates that transferring or converting criminal proceeds and gains through "virtual asset" transactions or financial asset exchanges can be determined as "otherwise concealing or disguising the source and nature of proceeds obtained from the crime and the gains derived therefrom", under Article 191, Paragraph 1(5) of the Criminal Law.

In addition to national regulations, various provinces, municipalities and departments have issued more detailed and specific rules on virtual currencies, providing guidance on the entire process of handling cases involving such currencies, including investigation and evidence collection, seizure and custody, and transfer and disposition. Courts, public security agencies and finance departments have acknowledged the urgency of resolving issues of virtual currencies such as ownership and value assessment. Relevant regulations are expected to be introduced soon to address these matters comprehensively.

X Recent developments and other impacting factors

In recent years, laws and regulations have become increasingly more specific on the obligations and liabilities of financial institutions in the circumstances of fraud, especially telecommunication and

internet fraud. Banks are required to exhibit independent and professional judgment in their customer due diligence and requests in many circumstances, rather than simply acting as a tool for customers to receive and dispose of funds.

In February 2021, the People's Bank of China and the State Administration of Foreign Exchange published the Guidelines on Anti-Money Laundering and Counter-Terrorist Financing for Banks' Cross-Border Operations (Trial). The guidelines provide relatively specific requirements on the banks' due diligence with respect to the receipt and disposal of cross-border funds. For example, the guidelines require banks to examine whether the customer's cross-border business needs, source or use of funds, frequency, nature and route of fund transfer are consistent with the customer's scope of production, operation and financial status, and whether the scale of funds for cross-border business is consistent with the customer's actual scale of operation and capital strength.

On September 2, 2022, the Standing Committee of the National People's Congress adopted the Anti-Internet and Telecom Fraud Law of the PRC, which took effect on December 1, 2022. The law further specifies requirements for banks to prevent telecommunications and internet fraud, such as establishing internal risk control systems, conducting due diligence on transactions, and monitoring and reporting suspicious accounts and transactions to the relevant authorities. On January 1, 2025, the Anti-Money Laundering Law of the PRC came into effect. The revised Anti-Money Laundering Law broadens the definition of predicate offences to include all acts that use money laundering methods to disguise or conceal the source and nature of proceeds and gains from crimes. The law introduces a system for managing beneficial owner information and expands anti-money laundering obligations to specified non-financial institutions such as real estate developers or intermediaries, precious metal traders, and accounting or law firms.

Violation of such requirements may subject the financial and specified non-financial institutions to civil and administrative liabilities. Victims of fraud should pay special attention to the institution's compliance with the relevant requirements when formulating their asset tracing and recovery strategy, and may consider actions such as: (1) using the violations as leverage to push the institution to be cooperative in the tracing and recovery or negotiating a settlement with the institution; (2) reporting the violations to the institution's supervisory authority; and (3) instituting a civil claim for compensation against the institution. There are currently few judicial decisions concerning a financial institution's violation of these laws and regulations. It thus remains to be seen what role institutions will play in court rulings, as well as how and to what extent institutions may be liable for the losses incurred by the victims. **CDR**

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Han Kun Law Offices



Andy (Ronghua) Liao is a partner at Han Kun's dispute resolution department, specialising in litigation and arbitration, cross-border dispute resolution, fraud, asset tracing and recovery, foreign judgment and award enforcement, restructuring and insolvency, and in particular he has accumulated abundant experiences in handling corporate disputes as well as investment and financing disputes of private equity funds and assets management institutions.

In the area of fraud, asset tracing and recovery, Andy is one of the few PRC lawyers widely recognised by the international legal community. Over the years, he has represented Han Kun as the only Chinese law firm to author the China chapters of several international publications on fraud and asset recovery, including the *Asset Tracing and Recovery Review*, *Chambers and Partners Global Practice Guides – International Fraud & Asset Tracing*, as well as *CDR Essential Intelligence: Fraud, Asset Tracing & Recovery*.

Andy has enormous knowledge and in-depth understanding of his specialisations, and has represented a number of banks, companies and HNWI's from various jurisdictions, and successfully traced and recovered a substantial amount of defrauded funds. He is the China member of ICC FraudNet, an international network under the auspices of ICC Commercial Crime Services, comprising independent lawyers who are the leading civil asset recovery specialists in each jurisdiction. He is also a member of the asset recovery committee of the International Bar Association.

Based on his distinguished performance in dispute resolution, Andy has been rated by *The Legal 500* as a highly recommended dispute resolution lawyer in the Asia Pacific for 2019 and 2021.

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Yuxian Zhao is a partner at Han Kun's dispute resolution department, specialising in cross-border dispute resolution. Yuxian specialises in handling commercial dispute resolution cases concerning equity investment and financing, mergers and acquisitions, life science and pharmaceuticals, license in/out, international sale of goods, complex machinery and equipment, and production and supply of industrial materials, etc.

In terms of arbitration, Yuxian has represented clients in disputes subject to arbitration under the rules of CIETAC, SHIAC, SCIA, BAC, HKIAC, SIAC, ICC, AAA, SAC and UNCITRAL. He has also advised on the annulment and enforcement of arbitral awards.

In terms of litigation, Yuxian is skilled at utilising procedural tools in PRC court proceedings (e.g., mediation, interim measures, judicial audit, document production and alternative claims) to achieve clients' business objectives, and has obtained favourable outcomes for his domestic clients and foreign clients from various countries such as Germany, United States, France, Italy, etc. Yuxian has also assisted clients in litigation proceedings in Hong Kong or foreign countries involving PRC legal issues.

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