

UNLOCKING THE PROCEEDS OF FRAUD: HOW VICTIMS CAN EFFECTIVELY RECOVER ASSETS SEIZED BY THE POLICE

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“For criminals, the confusion, distraction and vulnerability stemming from (the Covid19) crisis spells opportunity... Fraud trends are rapidly emerging as bad actors look to turn a quick profit on the global pandemic” - Forbes (10 April 2020)”

Singapore’s role in catalysing international business flows within South East Asia has resulted in increased exposure to the risks of a dynamic cross-border environment.

According to PwC’s Economic Crime and Fraud Survey 2020, 42% of Singapore-based companies experienced incidents of fraud over the last 24 months. This is converging towards the global average of 47%. PwC posits that Singapore’s regional exposure is likely to be one of the drivers of its growing economic crime and fraud rates.

While there are civil remedies that victims of fraud can avail themselves of to recover the proceeds of fraud, there are occasions where Singapore’s law enforcement authorities will also commence criminal investigations and prosecution against the fraudsters.

This is particularly so when the fraud involves large-scale investment fraud schemes, or individuals cheating or committing criminal breach of trust offences against their employers or business partners.

In such cases, the police will likely invoke their powers of seizure under

section 35 of the Criminal Procedure Code (“CPC”) to seize the property or proceeds of the fraud and hold on to the same until the conclusion of the criminal inquiry or proceedings against the fraudster.

When this occurs, what can claimants do to effectively recover assets seized by the police?

We describe some of the steps to do so below.

I. Notify the police of an interest in the seized assets

First, a claimant should make his or her interest in the seized assets known to the police at the earliest opportunity.

While the police are usually very thorough in their investigations, and will likely contact all claimants to record their statements, it is prudent for a claimant to take proactive steps to follow up with the police on the status of their investigations or criminal proceedings.

A person who has an interest in the seized property should make enquiries with the police, and thereafter to assert an interest in the property. This is because there can be a great variety of interests in the seized property and it would be difficult and impractical for the police to identify all the persons who might possibly have a claim to the seized property.

Once a claimant does so, he or she will be entitled to be given notice of the hearing dates for the Disposal Inquiry.

II. Request for the investigation report

Second, a claimant should seek further information concerning the seized assets by requesting for a copy of the investigation report.

Under section 370 of the CPC, the police officer in charge of the investigations is required to tender an investigation report to the relevant court when he or she considers that the property is either (i) no longer relevant for the purposes of any investigation, inquiry, trial or other proceeding, or (ii) one year after the date of seizure of the property, whichever is earlier.

A person with a right to be heard at the Disposal Inquiry has a prima facie right to view the contents of the investigation report. This is not an absolute right and will be weighed against any potential prejudice to the public interest which the disclosure of sensitive information may cause.

The investigation report is a useful source of information for claimants as it typically contains a list of items for disposal, a list of potential claimants (although this is not conclusive), and describes the investigations conducted by the investigating officer. The investigating officer may also set out his or her proposed distribution of the seized properties in the investigation report.

It is important to review the investigation report closely to check if the information provided is correct as there may be aspects of the investigation report that can be challenged by the claimant.

III. Explore settlement options with the other competing claimants

Third, the claimant should try to negotiate with the other claimants to come to a settlement between themselves.

This is a good option to pursue if each claimant's entitlement to the seized assets is not seriously disputed. If the competing claimants are able to reach a settlement, this can be recorded by the Court as a consent order at the Disposal Inquiry.

On occasion, the Court itself may take the initiative to encourage the claimants to negotiate a settlement among themselves for the distribution of the seized assets.

IV. Apply to Court for an early release of the seized assets

Under exceptional circumstances, a claimant may make an application to the Court under section 35(8) of the CPC for an early release of the seized property prior to the Disposal Inquiry if he can show that he is under hardship and needs the money to cover his basic expenses, reasonable professional fees or service charges, or other extraordinary expenses.

If the claimant is a company, it can also apply for a release of the property to cover any day-to-day operations of the company.

It is also of interest to note that where the claimant has already obtained a default judgment in a civil suit against the fraudster, the Court is also empowered to release the property to the claimant (provided that the judgment was obtained before the said property was seized).

V. Participate actively in the Disposal Inquiry

If a claimant chooses not to settle out of court, it is possible for the claimant to take his or her chances in the Disposal Inquiry itself to recover the seized assets. However, there is the risk that the Court may decide on a distribution of assets that may be different from what one might expect.



The reason for this is that a Disposal Inquiry is a quick and informal hearing where the Court's objective is merely to distribute the seized assets which the police no longer need or have use for. The Court will not be interested in conducting a lengthy hearing to make a conclusive determination of title. A civil proceeding will be the appropriate forum for determining competing ownership interests.

At the Disposal Inquiry, the claimant must prove his or her interest in the property on the standard of a prima facie case, taking into consideration the following factors where applicable:

- (a) the nature and type of interest claimed in the seized property;
- (b) where there are claims by multiple parties, the relationship between each party claiming an interest in the property; and
- (c) whether documentary evidence of the interest in property is normally available, and if so, whether such evidence is produced.

In the typical Disposal Inquiry, there will be no procedure for discovery or inspection of documents. However, the Court may give directions for claimants to exchange statements pertaining to their respective interests in the property prior to the hearing or documentary evidence relevant to their claims prior to the hearing. The Court may also direct the claimants to tender their respective list of witnesses and bundles of documents to be used at the Disposal Inquiry. The claimants must tender the evidence they will be relying on at the hearing of the Disposal Inquiry through the relevant witnesses.

At the hearing of the Disposal Inquiry, the investigating officer will be called to produce his or her investigation report. The claimants will then have the opportunity to cross-examine the investigating officer on his or her report, especially if they disagree with the investigating officer's proposed manner of distribution. Each of the claimants will then have the opportunity to call their witnesses and have their witnesses cross-examined. At the end of the hearing, the Court may direct claimants to tender written submissions.

The Court is given broad discretion to make its decision, looking to the facts of each case to ascertain the party who is entitled to possession. Where entitlement to possession is difficult to ascertain, and there are competing claims due to factual complexities, a court will adopt a "rough and ready" approach and make an award in favour of the party it thinks has a better right to possession.

Conclusion

It is a common misconception that when matters are with the law enforcement agencies, a claimant can just sit back and wait for the criminal inquiries or proceedings to conclude, and that he or she will eventually receive back all the stolen assets from the Court. This is far from the truth.

Fraudsters often cheat other claimants as well by using the same property stolen from the original claimant, i.e., by transferring a portion of a new investor's capital to an earlier investor to give the illusion of being able to pay out high dividends from the fraudulent scheme.

As such, claimants should be proactive in taking steps to recover their stolen assets. Otherwise, there is a risk that they may not recover much or anything at all.

