

# VIVIEN CHAN & Co.

YOUR GREATER CHINA LAWYERS

HONG KONG | BEIJING

## Roadmap to Tackling Cyber Frauds and Email Scams in Hong Kong

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**Vivien Chan** SBS BBS JP

SENIOR PARTNER

LLM, King's College, University of London

Lifetime Achievement Award, AmChams WOI Awards 2017



**Owen Tse**

PARTNER

LLB (Hons), BSc (Surveying)(Hons)

MHKIS, MRICS, RPS(QS)

• Head of Dispute Resolution Practice

Cyber frauds, in particular email scams have become one of the most common forms of fraud perpetrated against individuals and organizations internationally with the rise of the digital economy and electronic communication. Fraudsters continue to find ways to hack into electronic communication systems and they would often impersonate a business partner or employee to deceive victims in remitting funds to bank accounts held by them. Such bank accounts are frequently held outside the jurisdiction to delay and hinder the process of tracing and recovering the funds by the victims, and we have seen fraudsters taking advantage of the relatively relaxed restrictions on fund transfers in Hong Kong for directing such funds to be remitted to Hong Kong bank accounts.

In the unfortunate event which you fall victim to the scam and have been falsely induced into remitting fund to the fraudster's bank account in Hong Kong, time is of essence and taking prompt actions is the key to recovering your fund. We summarize below the actions which you shall immediately take once the fraud is discovered.

### I. CONTACTING YOUR BANK IMMEDIATELY

Fraudsters will often dissipate the funds immediately upon receipt of the same with multiple layers of recipients. Further, these cyber frauds are often well planned and form a larger fraudulent scheme whereby multiple victims may be falsely induced to remit funds to the same bank account of the fraudster.

Once the fraud is discovered, the first step is therefore to promptly alert your local bank and the recipient's Hong Kong bank, demanding return and/or preservation of the defrauded fund. Taking such immediate action will greatly enhance your chance of success in recovering the fund, especially when there are competing claims from different victims.

## II. REPORTING TO POLICE

An immediate report shall also be made to your local authority and the Hong Kong Police. While an online system is available for reporting crimes to the Hong Kong Police, we do recommend you sending your local representative to report the case in person, which from our experience, will usually expedite the process. A timeline of the events and all supporting documents, in particular those showing the relevant bank account details and your communication with the banks shall be prepared and submitted to the police. If you do not have a local representative, it is often helpful to engage a local lawyer to report the case to the police on your behalf and to follow up on the investigation with the police.

Upon considering the case, the Hong Kong police may impose administrative measures on the Hong Kong bank involved, which in practice, leading to the funds in the fraudster's account with such bank be temporarily frozen. However, civil action must still be taken for recovery of your defrauded fund, and interlocutory injunctions may sometimes also be helpful to your case.

## III. INJUNCTIONS AND ANCILLARY DISCLOSURE ORDERS

Under certain circumstances, you should consider applying for interlocutory injunctions in parallel with the Hong Kong courts, including a Mareva Injunction, which is an asset-freezing order to prevent dissipation of the fund, and a proprietary injunction, which preserves your proprietary claim on the fund.

In urgent cases, the applications can be made on an ex parte basis, i.e. based on sole application on your

side and without notice to the fraudster or defendant, and the injunctions may be obtained immediately after the urgent hearing generally fixed for the same day or the next day of application.

Ancillary disclosure orders may also be applied to compel the Hong Kong bank involved to disclose the fraudster's bank account records. This will assist the tracing of the defrauded fund and potential actions against recipients of the fund in the subsequent layers.

## IV. CIVIL ACTION FOR RECOVERY OF THE DEFRAUDED FUND

Given that fraudsters will seldom contest the action filed against them, we may explore obtaining default judgment, which is a final judgment to be granted by the Court upon failure by the defendant to file the notice to defend or the defence without the need of a full trial. A default judgment can be obtained in a relatively short time, and it can be relied upon in subsequent actions to compel the Hong Kong bank to release the misappropriated fund from the fraudster's bank account to you.

## V. KEY TAKEAWAY

Upon discovering the cyber fraud whereby you have been defrauded to transfer fund to the fraudster's Hong Kong bank account, taking prompt actions to alert your local bank and the recipient's Hong Kong bank, as well as your local authority and the Hong Kong Police is the key to successfully recovering the defrauded fund. It is also advisable to seek legal advice from local lawyers to analyze the case and to determine the best course of actions against the fraudster.