Synergising Public-Private Partnership to Combat Corruption

Empowering our partners in the war against corruption

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The fight against corruption has come a long way since elements of the then Royal Hong Kong Police Force marched on the newly established ICAC housed in part in the Murray Street Car Park[1]. On the other hand, I am not sure whether there is any less corruption about the world, albeit today Hong Kong is in so many ways a rather different place than it was in the 1970s and the rampant corruption and self-dealing of those days has long gone.[2] While the eradication of corruption, which some thought possible - primarily through education, has certainly not taken place and probably never will, a great deal has been achieved – not least by ICAC, which in my opinion is still the 'gold standard' for governments that are properly concerned to address the threats posed by corruption.

I was privileged to have been involved in a minor way in fashioning Hong Kong's wider response to economic crime[3] and while the threats to stability have morphed into other manifestations, much was also achieved in this wider context. Of course, then as now a great deal depends upon the efficacy of the criminal justice system both in terms of competence and resources. It is also the case that traditionally very few issues relating to the administration of justice and in particular policing have been as simply defined as in many other jurisdictions[4]. While few would doubt the commitment of the United Kingdom to the rule of law[5] and the maintenance of justice – almost as an end in itself,

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[1] See generally M Hampton, "British Legal Culture and Colonial Governance: The Attack on Corruption in Hong Kong 1968 – 1974," 5 *Britain and the World* (2012) 223, R Lee (ed), *Corruption and its control in Hong Kong,* (1981) Chinese University Press and G Lee, *Police Corruption in Comparative Perspective,* (2020) Routledge.

[2] Of course, this is not to say that there was not concern and, indeed, efforts to address economic crime, see for example, *R v Hong Kong Dragon Co Ltd* (Crim App No 889, 1971 Hong Kong, 12 April 1972 and B Rider, "The Regulation of Insider Trading in Hong Kong," 17 *Malaya Law Review* (1975) 310, continued 18 *Malaya Law Review* (1976) 157 and B Rider, "Insider trading, Hong Kong Style," 128 *New Law Journal* 897.

[3] B Rider, Report to the Attorney General of Hong Kong on combatting economic crime, (1978) which contributed to a number of initiatives including the establishment within the Legal Department of a dedicated commercial crime unit.

[4] The return of Hong Kong to the sovereignty of the PRC, while not changing the legal system, has inevitably complexed the political and administrative realities, see generally, B Rider (ed), *A Research Agenda for Economic Crime and Development,* (2023) Elgar at *6 et seq.* An illustration of the potential for constitutional and political sensitivity might be the various recommendations made by the special independent committee in 2012 after the conviction of Mr Donald Tsang which are still under consideration.

[5] We will not attempt in this short paper to canvas the different approaches to the rule of law, but see generally F Pirie, *The Rule of Laws*, (2021) Profile, T Bingham, *The Rule of Law,* (2010) Penguin and Ji Li, The Evolving Rule of Law with Chinese Characteristics and Its Impacts on the International Legal Order, 8 *UC*

the vast majority of frauds – the most prevalent crime, are wholly inadequately addressed – if they are at all, by my criminal justice system[6]. Furthermore, it is said – even on occasion by cabinet ministers, that the City of London is one of the world's leading money laundering centres. So it might well be the case that certain areas of criminal and anti-social activity – today and in all probability in the past, have become almost non-justiciable. In other words, the traditional criminal justice system just cannot be expected to deliver. Indeed, some would contend that it is so poor in achieving convictions and handing down sentences that achieve any sensible objective, there is a profound question mark against whether the rule of law is being maintained?[7] The tendency – to some extent first espoused in the days of Colonial Hong Kong, in addressing the threats posed by then rampant organised crime with a subversive inclination,[8] to move away from traditional law enforcement focused on the courts, to processes of disruption,[9] may well underlined this concern. It is difficult to advocate the necessity of the rule of law and extol its virtue, when such important threats remain beyond the reach of the traditional criminal justice system - victims unsatisfied and such action and intervention as we are capable of, being 'under the carpet' and in the main unaccountable.

New Strategies and new partners

In these circumstances it is important that we look for additional ways in which we can challenge unacceptable and inimical conduct – at home and abroad, and better discourage those who seek, for whatever reason – whether simply that of greed or because they have a political and or religious objective, to threaten the very fabric and well-being of our economies and societies. There is, of course, much that can be done within and adjacent to the legal system to render it more accessible, efficacious and sensitive to the way in which business is actually done in the modern world. In many respects this inevitably comes down to the availability of adequate and competent resources whether at the investigative stage or on the bench.[10] Laws may well be better fashioned and we might be smarter in making sure that such resources as we have, are better targeted. Indeed, to simply aspire to intelligence led action, achieves little if the intelligence is itself problematic, inappropriate or simply too expensive in terms of its use. After all intelligence is not evidence and our traditional legal systems depend in the final analysis

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Irvine Journal of International, Transnational and Comparative Law (2023) 151 and in particular Lin Laifan, "The Chinese Model of the Rule of Law," 10 *Frontiers of the Law in China* (Renmin University) (2015), 656.

[6] See B Rider (ed), *A Research Agenda for Financial Crime*, (2022) Elgar, Ch 1 and in particular the preface by Sir Ivan Lawrence KC, and B Rider, "Fraud -how serious are we?" 42 *The Company Lawyer* (2021) 299. See also J Heathershaw *et al, The UK's Kleptocracy Problem – How Servicing Post-Soviet Elites weakens the Rule of Law*, December 2021, Royal Institute for International Affairs.

[7] See B Rider, "Protecting investor confidence – an issue of proportionality," 45 *The Company Lawyer* (2024) 39 reproducing an address to the Annual Beijing Financial Street Conference, under the auspices *inter alia* of the Bank of China and Supreme People's Procuratorate, Beijing, November 2023.

[8] See B Rider (ed), *A Research Agenda for Organised Crime*, (2023) Elgar, Ch 1.

[9] See A Leong, *The Disruption of International Organised Crime,* (2007) Ashgate, S Keene, *Threat Finance, Disconnecting the lifeline of organised crime and terrorism*, (2012), Gower and B Rider (ed), *A Research Agenda for Economic Crime and Development*, (2023), Elgar, Ch 1 and in particular S Keene, in Ch 9 in B Rider (ed), *A Research Agenda for Organised Crime*, (2023) Elgar.

[10] See generally, B Rider (ed), *Research Handbook on International Financial Crime* (2015), Elgar, Ch 60.

of evidence.[11] Improving witness protection, something that ICAC has always seen as of practical importance, facilitating whistle blowing – perhaps through financial incentives, deferred prosecution agreements[12] and even plea bargaining, may all assist in redressing the balance. However, what I wish to address in more detail here is the role of 'others' in combatting corruption and the environment of economically motivated crime that corruption inhabits.

While references to history are always capable of correction and contextual debate, it is at least arguable that it was the Americans, after the so called 'New Deal' legislation in the USA in the 1930s, who began to recognize the importance of compliance and placing responsibility and to some extent liability, on those who supervised others within the financial sector.[13] The importance of compliance procedures and policing became increasingly more apparent in a number of SEC civil enforcement actions and in new areas of legislation, most notably in regard to money laundering and corruption. Whereas in the UK, outside the very narrow reach of the City Panel on Take-overs and Mergers,[14] compliance until the mid to late 1980s[15] was seen as something you did if you could not do business!

Of course, the effect of in particular the anti-money laundering laws is to place an increasing burden, on anyone who in the course of their business minds other people's wealth – and those who advise and assist them, to put in place appropriate and adequate compliance. Section 7 of the UK's Bribery Act 2010 took this approach to a new level. In the case of bribery of a public official – anywhere in the world, by an agent of a business operating in the UK - to further the interests of that business, the company would be automatically liable for the criminal offence of bribery, unless it could prove that not with standing what had happened, it had put in place adequate procedures to address this threat of misconduct. The approach of criminalizing a mere failure to prevent, was extended in 2017 to assisting in tax fraud[16] and now by section 199 of the Economic Crime and Corporate Transparency Act 2023, to a wide range of fraud offences, with a real (possibly relatively imminent) extension to money laundering offences.[17] I will not go into the details of this new offence here, albeit to point out that it only applies to large

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[11] See B Rider, "Intelligent Investigations and the misuse of intelligence – a personal perspective," 20 *Journal of Financial Crime,* (2013) 293

[12] See Schedule 17, Crime and Courts Act 2013, UK and the Serious Fraud Office for England, Wales and Northern Ireland's Code of Practice for Deferred Prosecution Agreements.

[13] Particularly the Securities Act 1933 and Securities Exchange Act 1934. But note also the development in US law of liability for those 'control' others.

[14] See for example, B Rider and EJ Hew, "The role of the City Panel on Take-overs and Mergers in the regulation of insider dealing in Britain," 20 *Malaya Law Review* (1978) 315 and B Rider, *The Regulation of the British Securities Industry,* (1979) Oyez.

[15] See generally, B Rider, C Abrams and N Ashe, *Guide to Financial Services Regulation* (3rd ed, 1997) CCH and in particular B Rider, K Alexander, S Bazley and J Bryant, *Market Abuse and Insider Dealing* (4th ed., 2022) Bloomsbury,

[16] Criminal Finances Act 2017. An offence in Hong Kong similar to section 10 of the UK's 2010 Act has been advocated, see Glenville Cross, "A law criminalizing the failure to prevent bribery could prove an effective tool in Hong Kong," SCMP, 6 February 2017. A limited number of countries have enacted such laws and China has gone some way in doing so.

[17] See section 200 of the Act and Schedule 13.

organisations[18] and the statutory defence refers to "such prevention procedures as it was reasonable in all the circumstances to expect' the company or partnership to have in place. While fashioning such an offence and throwing the net so widely is not confined to the UK, the UK is one of the few jurisdictions which provides official guidance[19] as to what business might be expected to actually do, to have some confidence that 'compliance' procedures will offer protection. What these do already and will in the case of section 199 underline, is that for a business to be able to establish a defence its compliance, must be carefully designed to fit the particular business, properly focused on the real risks, adequately maintained with training and supervised by senior management.[20]

It is important to recognize that the offence of failure to prevent corruption and now fraud, gives rise to other potential areas of liability. For example, in the case of regulated financial institutions these offences must be seen within the context of enhanced obligations imported through the Financial Conduct Authority's senior managers regime and therefore the potential for administrative liability.[21] Directors of companies also now have a clear duty under the civil law to take appropriate steps to protect their companies from liability. It is also the case that those actually responsible for the corruption and or fraud remain fully accountable in both the civil and criminal law, albeit the operation of the process in the UK involved in arriving at a deferred prosecutions agreement for companies in the case of bribery, has tended to undermine individual accountability. On the other hand, the FCA and National Crime Agency have indicated concern that individual responsibility should remain very much in focus. Given the emphasis that has been placed, in recent years, on putting responsibility on those who facilitate – professionally or otherwise, the commission of crime, those working in compliance have perceived that they are real targets. Where there is a failure of compliance then those responsible are likely to be called to account as employees, whether there is a real prospect of administrative, let alone criminal liability, or not. Dismissal and other disciplinary action is in many instances a real and immediate punishment that arguably has greater deterrence effect than the rather more laborious processes of the law. Indeed, Edwin Sutherland's classic theories[22] and in particular his 'cost benefit' analysis of the

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[18] Section 201 provides that a large organisation in relation to section199 must in the financial year prior to the offence satisfy two of the following conditions: turnover of more than £ 36 million, a balance sheet total of more than £ 18 million and more than 250 employees. See generally D Thomas-James, "Economic Crime in 2024, the role of integrity," 45 *The Company Lawyer* (2024), 73.

[19] See section 204. For example, section 18 of the Corruption Act 2018 in the Republic of Ireland has in regard to corporate liability a defence if reasonable steps and due diligence are proven and similarly in regard to section 38A of the Theft and Fraud Act 2021. However, no official guidance is provided.

[20] See *The Bribery Act 2010, Guidance* (2011), Ministry of Justice and *The Bribery Act 2010, Joint Prosecution Guidance* (2019), Director of the Serious Fraud Office and Director of Public Prosecutions, Crown Prosecution Service. ICAC given the importance it has always attached to prevention has long offered advice, see for example, *Corrupt Practices Guide for Banks,* March 2023, ICAC and the Hong Kong Monetary Authority.

[21] See generally *supra* at note 15, B Rider*, et al* and also note section 196 of the Economic Crime and Corporate Transparency Act 2023 which addresses the problem of attributing a state of mind (*mens rea*) to a company or other organisation.

[22] See E Sutherland, "White-Collar Criminality," 5 *American Sociological Review* (1940) 1 and E Sutherland, *White Collar Crime: The Uncut Version* (1983) Yale University Press, particularly at 240 *et seq*.

temptation to commit acquisitive crime in a white collar – professional context, illustrates this. The predictability of employment related consequences is a much more likely threat to the would-be financial criminal in many situations.[23]

That the compliance industry, probably not yet quite a profession, has recognized these challenges is clear in most developed jurisdictions. Indeed, in China the Chinese Communist Party has emphasized the importance of effective leadership in compliance and has taken a number of steps to improve the competence of compliance in the financial sector.[24] In any analysis of the operation of the law relating to issues such as corruption, insider dealing and abuse, fraud and money laundering, it is clear that compliance plays an important role. It not only provides additional and 'early' barriers to the misconduct in question, but facilitates detection and may well assist in better enforcement. Of course, there is a counter argument in that it may persuade individuals to become rather more sophisticated in their attempts to evade it – the so called 'slippery slope' to more serious, but perhaps more detectable, crime. The procedures that compliance creates and reinforce also play a very significant role in the generation of financial intelligence, which while perhaps not assisting as much as might be assumed in traditional law enforcement, is at the heart of disrupting continuing criminal and subversive activity.

Therefore, in considering the partnering of activity and organisations outside the immediate structures of law enforcement, the role of compliance, whether in or outside, specific institutions, is in so many jurisdictions, of critical significance. While this is well appreciated it is only recently that governments have taken meaningful steps to reinforce the role of compliance in law and provide legally acceptable mechanisms for law enforcement to support the compliance function. The ICAC has always recognized the importance and value of working closely with business and in particular financial institutions. Indeed, I emphasized this in a report I was commissioned to write on addressing economic crime in Hong Kong for the then Attorney General in 1978[25] – so it

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[23] Where an individual is subjected to an array of interventions and legal liabilities at different levels in a legal system, perhaps magnified by parallel proceedings in other jurisdictions, there are issues of proportionality, fairness and human rights, which are sometimes given insufficient attention. See also A Verity, *Rigged, the incredible true story of the whistleblowers jailed after exposing the Rotten Heart of the Financial System* (2023), Flint, but also note J Hurley, "Rate-rigging traders lose their appeal," 28 March 2024, *The Times* and "Hayes case judge faces conflict of interest claim," 3 April 2024, *The Times.*

[24] President Xi Jin Ping at the 19th National Congress of the Chinese Communist Party, October 2017, when referring to the fight against corruption emphasized the importance a wider approach – that of stewardship and the importance of actively promoting integrity. He again returned to the vital importance of good governance at the 20th Congress, October 2022. See also, Li Hong Xing, "Taking a stand in China," 40 *The Company Lawyer* (2019) 273. See also B Rider, Haiting Yan and L Hong Xing, *The Prevention and Control of International Financial Crime,* (2010), The People's Bank of China (published in Chinese). For similar sentiments in regard to Islamic finance see B Rider, "Corporate governance for institutions offering Islamic financial services," Ch 5, in C Nethercott and D Eisenberg (eds), *Islamic Finance, Law and Practice*, (2nd ed 2018) Oxford University Press.

[25] See supra at note 2. ICAC has always worked closely in collaboration with the financial regulators in Hong Kong and has thus played a role in developing the present risked based compliance structures. A good example of ICAC's important role in maintaining integrity in the financial system is its recent (2023 and on-going) collaboration with the Securities and Futures Commission in a series of investigations into so called 'pump (or in Hong Kong ramp) and dump' schemes.

is not a novel approach. In the UK while relatively recent initiatives such as the Economic Crime and Corporate Transparency Act of 2023 have facilitated the exchange of information particularly in regard to suspect wealth many compliance officers complain that much uncertainty remains. There have, of course, been informal arrangements for exchange of information particularly with the security and intelligence services. While such arrangements have a utility, there have been problems[26] particularly in regard to the reliability of information and hence its useability. This is a greater concern because of the emphasis that is placed on interventions not always sanctioned by specific legal authority. There are, of course, legitimate concerns in how far those involved in compliance can and should be made privy to certain types of information. Furthermore, it also needs to be appreciated that in most legal systems the law relating to the handling and integrity of information is at best under-developed. Indeed, in the UK we have still to decide whether a 'Chinese Wall' within an institution, such as a bank or law firm, works effectively, from a legal perspective, in all cases.[27] It is also the case that while compliance personnel can be of real assistance to law enforcement they are not and if we are to retain much of what we value within the rule of law, cannot become part of the law enforcement apparatus. None the less, the compliance function within business, needs to be considered a viable and meaningful partner of law enforcement in the prevention and control of economic crime and the law should recognize and facilitate this.

Victim empowerment and new partners

The second area of partnership that I would like to address, again perhaps in the minds of some, from an unusual perspective, is partnering and thereby empowering, the victims of abuse and crime. While in most cases of fraud there is a more or less obvious victim, this is not the case in many instances of corruption, insider dealing and money laundering. While it is feasible to argue that, for example, in the context insider trading the market and all those who depend directly or indirectly on its integrity are victims, this is an argument that hardly justifies finding viable individual legal claims.[28] The same is often true in cases of bribery where the potential class of those harmed by the act of corruption is in terms of precise definition problematic. On the other hand, UNCAC[29]makes it clear that those who are harmed, should have a civil cause of action. In practice, at least in the common law tradition, civil claims have tended to focus on the breach of the duty of loyalty that those engaged in bribery owe to their company or principal.[30] Where there is a fiduciary duty then the common law is strict in requiring that any and all benefits that

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[26] In the litigation surrounding the collapse of BCCI exactly how much the UK authorities had been made aware of what was going on within the bank was hotly contested. See in particular B Rider(ed), *A Research Agenda for Economic Crime and Development*, (2023), Elgar at 32 *et seq.*

[27] See B Rider, K Alexander, S Bazley and J Bryant, *Market Abuse and Insider Dealing*, (4th ed, 2022) Bloomsbury, Ch 8 and B Rider and M Ashe, *The Fiduciary, the Insider and the Conflict,* (1995), Sweet & Maxwell, Ch 8.

[28] See *supra* at note 27, *Market Abuse and Insider Dealing*, Chs 1 and 2 and B Rider, "The Control of Insider Trading – Smoke and Mirrors," *1 International and Comparative Corporate Law Journal* (1999) 271.

[29] United Nations Convention Against Corruption, 2006.

[30] See for example, *Attorney-General for Hong Kong v Reid* [1994] AC 324

arise in the context of that relationship, unless they are expressly approved after full disclosure, must be handed over to the person to whom that duty is owed. [31] This personal obligation on those who take so called 'secret profits' is draconian and in no way depends upon proving fraud, in the legal sense, or loss to the person to whom the fiduciary duty is owed.[32] Liability to account is based on breach of the duty of loyalty and the fundamental obligation to avoid conflict of interest.[33] Thus, an agent who accepts a bribe is accountable to his principal for that bride as will be a company director who derives a secret profit, perhaps through the abuse of privileged information, to his company, but not the shareholders to whom in the ordinary circumstances he will be in no fiduciary relationship with. There are, of course, always practical and cost inhibitions on utilizing the civil courts and there is much to be said for facilitating the availability of class actions and regulators and even possibly law enforcement agencies providing assistance at least in the provision of advice and access to evidence. This has in the USA proved useful, but, of course, the US legal system has many aspects which are not found in many other jurisdictions.

Allowing a claimant in such cases to trace the ill-gotten gains into other property acquired with the wealth in question and the making available of proprietary remedies in practice is extremely important.[34] This is not the place to enter into a discussion of the developments that have taken place over the last fifteen years in the English law of restitution, but suffice it to say that this area of civil law has become an important mechanism for pursuing bribes and the proceeds of corruption in many jurisdictions. At the heart of UNCAC is the recognition that corruption is economically driven and tainted asset interdiction should play a critical role in addressing bribery in particular. Conceptually at least, rather than - so far in practical terms, various initiatives by the international community to identify and pursue, with mutual assistance including funding and expertise, suspect wealth has much to commend it.[35]

While there are many issues to be addressed, it is probable that this area of 'indirect' enforcement could be greatly facilitated by allowing essentially private commercially

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[31] *Boardman v Phipps* [1967] 2 AC 46. While the common law and thus fiduciary obligations pertains in Hong Kong, in the PRC (and in many other civilian jurisdictions) fiduciary law has been 'imported' through legislation. In the case of directors of companies in China see, for example, Wang Jun, "Cases against corporate managers for breaching their duty of loyalty and/or duty of diligence in China," 10 *Frontiers of Law in China* (Renmin University) (2015) 76 and in particular 94, *et seq*.

[32] *Regal (Hastings) Ltd v Gulliver* [1967] 2 AC 135 and *FHR European Ventures LLP v Cedar Capital Partners LLC* [2014] UKSC 45

[33] See *supra* at notes 30 and 32.

[34] See for example, *Attorney-General for Hong Kong v Reid* [1994] AC 324. Indeed, much of the law in this area developed from a decision of a Hong Court in *Nanus Asia Co Inc v Standard Chartered Bank* [1990] 11 HKLR 396. The *Communique of the Global Fraud Summit*, 11 March 2024, hosted by the UK Government underlined the importance of strengthening asset recovery in cases of fraud and empowering victims.

[35] The Stollen Assets Recovery programmes of the UN, World Bank family of inter-governmental institutions and others, while recovering less than many would expect, are none the less to be commended. See for an early discussion of this, B Rider "Probing Probity: A discourse on the dark Side of Development," in S Schlemmer-Schulte and Ko-Yung Tung (eds), *Liber Amicorum Ibahim Shihata, International Finance and Development Law,* (2001, World Bank and Kluwer and more recently, B Rider (ed), *A Research Agenda for Economic Crime and Development*, (2023) Elgar, Ch 1.

driven actors to assume responsibility for the initiation and maintenance of these civil proceedings. Historically the common lawyers, as well as their civilian cousins – albeit invariably for different jurisprudential reasons, have disliked the 'commercialization' of civil litigation and the buying and selling of claims. Indeed, until very recently in most jurisdictions this was illegal and could result in criminal and in the case of legal practitioners - serious disciplinary penalties. For a variety of reasons, including some associated with the deliverability of justice, attitudes are changing especially in regard to third party funding and lawyers' fees. The issues are too many and too complex to address here – particularly given that different legal systems have different attitudes to all this – as do individual judges! None the less, there are those, including in governments and international organisations, who advocate a great involvement of those best placed to fund and pursue at an international level, those who have engaged in misconduct where there are viable civil claims and the prospect of significant financial recovery.[36] Some courts, including in my own jurisdiction, have gone some way in recognizing this and have developed what appears to be an ever increasing armory of orders that facilitate the identification and freezing of suspect wealth across the world.[37]

While the traditional fiduciary law provides a basis for these claims, it is important to recognize that UNCAC in effect commends the development of similar statute-based claims outside the common law world. As we have pointed out the recovery of assets associated with corruption is seen as an important element in the international fight against in particular bribery. Of course, there is also a significant overlap with the criminal law in regard to the forfeiture and confiscation of criminal property and anti-money laundering law. [38] Reliance, however, on domestic criminal justice systems to deliver the level of interdiction necessary to properly address serious corruption and other forms of economic crime, is sadly problematic.[39] Resources are inevitably limited, especially in developing countries and the public and administrative legal mechanisms that we have often cumbersome and vulnerable to political considerations. Therefore, the

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[36] In recent years a number of law firms have developed a practice based upon the identification and then acquisition of *locus standi* to maintain such claims often with third party or insurers' funding, sometimes on the basis of a more or less contingency fee. There are jurisdictions, including within the Commonwealth, which encourage this business. Professional investigators and firms of accountants have also shared in this activity. It is occasionally, albeit inaccurately (at least from a US perspective) referred to a 'bounty' hunting.

[37] The English Courts in support largely of commercial litigation have long recognized the need to develop an arsenal of orders (some *ex parte*) for disclosure, search and seizure and freezing of wealth, see historically B Rider and M Ashe (eds), *International Tracing of Assets* (3 vols), FT Law and Tax and more recently at note 15, *Market Abuse and Insider Trading,* Ch 6.

[38] See generally B Rider and M Ashe (eds), *Money Laundering Control*, (1996) Sweet & Maxwell.

[39] Commonwealth Law Ministers meeting in Winnipeg, Canada in 1977 took the view that 'police force to police force' co-operation in fighting corruption and economic crime did not work and new strategies were required, see B Rider, *The Promotion of Cooperation in Combatting International Economic Crime* (1980) Report to Commonwealth Law Ministers, Barbados, which led to an initiative funded in part by the Hong Kong Government to develop alternative strategies based on alternative interventions including use of the civil law, see "Commonwealth drive against dirty money" *Commonwealth Currents,* April 1982, p 5. That the criminal justice system is problematic in terms of results, has sadly not changed, see generally, B Rider, *A Research Agenda for Financial Crime,* (2022) Elgar.

civil law has much in practice to offer.[40] Furthermore, in many common law jurisdictions the relevant legal principles to be applied to suspect wealth are those of the jurisdiction where it comes to rest. Thus, not with standing that Indonesia is not within the common law tradition, bribes paid to officials there, which ended up in Singapore, were held by the Singapore court to be subject to the common law.[41] Indeed, over many years China has shown considerable interest in using these principles to pursue suspect wealth overseas.[42]

Therefore, establishing and fostering 'partnerships' with professional and other organisations that are willing and able to take on appropriate claims and pursue them internationally could be an important development. Obviously there are many – some quite profound legal and other issues that need to be considered and in some instances there may need to be development in the law and its application. However, fostering and providing appropriate support for such private agents in the pursuit of fraudsters and those who seek to corrupt our societies may be one of the best and most viable approaches. They have the incentive, the expertise and the financial resources that government agencies rarely have access to. In attempting to harness these resources and making sure at least certain types of crime do not pay may be our best bet in maintaining the rule of law in regard to corruption. While this is no panacea, the threat of civil action particularly in places where fraudsters and corrupt officials are keen to 'invest' their ill-gotten gains, is a significant disincentive, even if the threat is largely of inconvenience, media attention and legal costs. Such certainly suitably disrupt their undeserving life-styles!

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[40] See B Rider, "Old weapons for new battles – The role of Stewardship in the development of the common law in its fight against corruption and self-dealing," Keynote Address, in Centre of Anti-Corruption Studies, ICAC, *Opening Ceremony Handbook*, April 2009 and also B Rider, "Commercial Crime co-operation in the Commonwealth" *Published Papers of the 7th Commonwealth Law Conference,* Hong Kong, 18 to 23 September 1983, at 433.

[41] *Sumitomo Bank Ltd v Kartika Ratna Thahir* [1993] 1 SLR 735 cited with approval by Lord Templeman in *Attorney-General for Hong King v Reid, supra* at note 30. But note rather more restrictive approach of the UK Supreme Court in *Byers v Saudi National Bank* [2023] UKSC 51 in regard to the need for a proprietary interest to subsist in the claimant to justify liability for knowing receipt of property transferred in breach of trust.

[42] See generally, B Rider, "Policing Corruption and Economic Crime – how can we do it better," 10 *Frontiers of Law in China* (Renmin University) (2015) 625 and B Rider, "Empowering civil asset recovery in the fight against corruption*," International Cooperation and Denying Safe Haven to Corruption,* published papers, 7th International Forum on International Cooperation regarding persons sought for corruption and asset recovery, Beijing Normal University, 11 and 12 November 2023, Shanghai, 363 and Li Hong Xing, "Denying safe haven to corruption offenders and their assets …G20 Bali Statement, 2022" 45 *The Company Lawyer* (2024) 100.

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