

Office of the Attorney-General

Chair
Cabinet Social Welfare Committee

DISBURSEMENT OF RECOVERED CRIMINAL PROCEEDS TO CHINA

Proposal

1. I seek Cabinet approval to transfer 55 percent of the assets forfeited as criminal proceeds by Xiaohua Gong (\$38.712 million) to the People's Republic of China (PRC) from the Proceeds of Crime Fund.

Executive Summary

2. Xiaohua Gong allegedly committed large-scale fraud in the PRC and laundered the proceeds in New Zealand (among other jurisdictions). Proceedings against Mr Gong under the Criminal Proceeds (Recovery) Act 2009 settled following discussions between the relevant parties and approval by the High Court.
3. In accordance with the settlement, the High Court made asset forfeiture orders in respect of property to the total value of \$70,384,912.51. This money currently sits in the Proceeds of Crime Fund.
4. The Ministry of Foreign Affairs and Trade (MFAT) and New Zealand Police (NZP) negotiated an asset sharing arrangement in principle with the PRC of a 55/45 split in the PRC's favour. I seek the Cabinet Social Welfare Committee's approval for the disbursement of \$38,712,000 to the PRC.
5. Repatriating the money to the PRC would recognise the PRC's work in investigating the fraud and providing significant evidence in support of the New Zealand asset forfeiture proceeding. It would also reflect the PRC's expectations that the money recovered from Mr Gong would be shared, and be consistent with the recommendations of international bodies and international rules concerning the proceeds of crime, and domestic guidance on asset sharing.

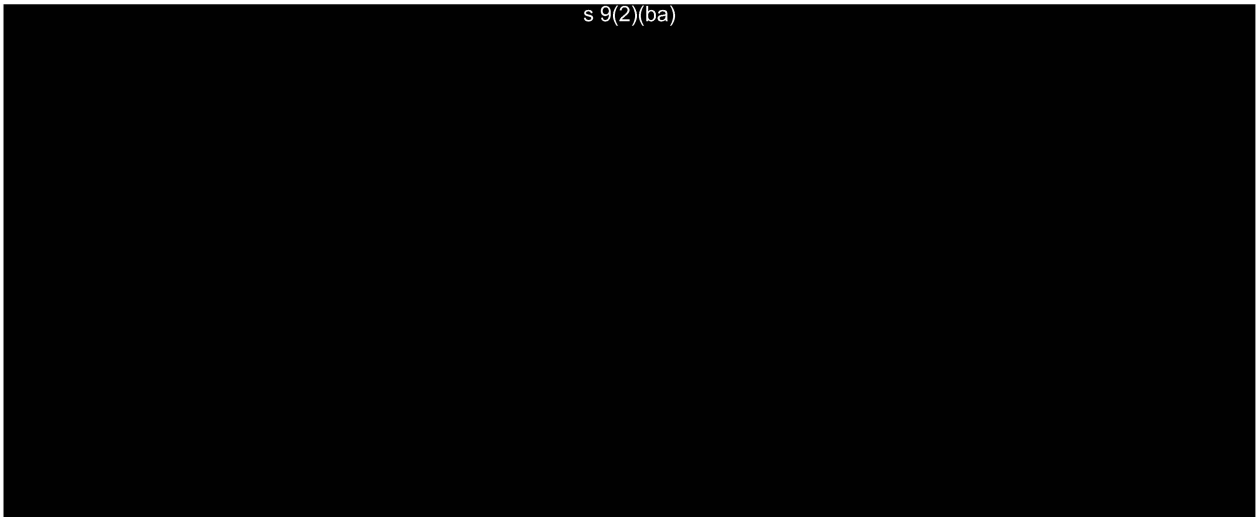
Background

6. Mr Gong is a Chinese national who has lived in Canada for the last 20 years. From 2009 to 2017, he allegedly committed large-scale frauds in the PRC and laundered the proceeds in Canada and New Zealand (primarily). The alleged fraud involved selling sets of "health products" and shares in Canadian and United Kingdom companies Mr Gong controlled to Chinese investors. Mr Gong allegedly misled the investors as to the value of the companies and promised returns of up to 4,000 per cent. Mr Gong never invested the funds received but diverted them to foreign bank accounts, including several in New Zealand.
7. Mr Gong's alleged fraud is estimated to have generated NZ\$418 million to NZ\$628 million. Between April 2009 and April 2016, over NZ\$77 million was

deposited into Mr Gong's New Zealand bank accounts by money remitters and associates.¹

8. In March 2017, the Commissioner of Police (the Commissioner) obtained High Court restraining orders over approximately NZ\$69 million of funds and property. Settlement discussions pre-empted the filing of a forfeiture application.
9. In February 2021, Mr Gong and the Commissioner settled the New Zealand proceeding. Under the terms of the settlement, Mr Gong:

s 9(2)(ba)



11. On 24 February 2021 the High Court approved this settlement agreement under s 95 of the Criminal Proceeds (Recovery) Act 2009. Its terms are confidential (save the headline figure, which has been disclosed by NZP press release).
12. The Official Assignee has discharged the assets forfeiture order and paid all expenses associated with its administration. NZ\$70,384,912.51 was paid to the Proceeds of Crime Fund,⁴ where it remains earmarked for the resolution of the asset sharing question.
13. The balance of the Proceeds of Crime Fund is \$72.882 million (as at 24 November 2022). Various agencies may make bids for initiatives to expand alcohol and other drug treatment services, fight organised criminal groups dealing in drugs, address mental health issues in the criminal justice system, and address crime-related harm to communities. This settlement with Mr Gong is the largest ever achieved by the Commissioner and substantially increased the Fund.
14. In July 2022 I authorised MFAT and NZP to negotiate an asset sharing agreement in principle with the PRC, pending Cabinet approval. In September 2022, representatives of MFAT and NZP met in Beijing with PRC officials from the Ministry for Public Security and Ministry of Foreign Affairs. New Zealand initially proposed a 50/50 split and the PRC proposed a 60/40 split in their favour. Following discussion, a 55/45 split in the PRC's favour was agreed (which the

¹ Approximately NZ\$10 million was transferred out of New Zealand before it was detected. These funds were subsequently restrained under a Canadian order.

² Mr Gong's company accepted criminal liability in Canada for related offending.

s 9(2)(ba)

⁴ This figure includes interest earned during the period of restraint. No further interest is attributed to the forfeited sum in the Proceeds of Crime Fund.

New Zealand side made clear was subject to Cabinet approval). Rounded to the nearest thousand, that comes to \$38,712,000.

Comment

It is appropriate to share the forfeited assets with the PRC

15. Proceeds of crime forfeited in New Zealand are paid to the Crown. The Crown then has a discretion about how to spend them. When states have cooperated to seize proceeds of crime in one jurisdiction based upon offending in another, various international bodies and conventions recommend asset sharing between those cooperating states. The Attorney-General, as the Central Authority for mutual assistance in New Zealand, supervises such asset sharing agreements.
16. New Zealand's only guidance on how to share such assets, the Attorney General's Guidelines Relating to the Sharing of Confiscated Assets approved in 1999, applies where New Zealand enforces a foreign country's forfeiture order. However, it may apply by analogy to this situation where New Zealand forfeiture orders have been obtained because of substantial assistance from the foreign country. The Guidelines suggest forfeited assets should be shared where their net value exceeds NZ\$100,000 or the requesting country's authorities facilitated the forfeiture action in a particularly significant manner.
17. Asset sharing would be in accordance with the Attorney-General's Guidelines because the forfeited assets exceed NZ\$100,000 and the PRC has participated in the forfeiture action in a particularly significant manner. The Commissioner's restraining order application relied primarily upon affidavits from four Chinese witnesses providing banking information, a reconstruction of the funds' sources in the PRC, and evidence of the PRC's investigation and prosecution of Mr Gong's associates. NZP officers met with local prosecutors for a week in Hunan to develop this evidence, and continued their collaboration over the four years of this complex investigation. A joint New Zealand-Chinese delegation travelled to Canada to obtain relevant evidence from that jurisdiction. As well as obtaining the evidence, Chinese authorities assisted with crafting and translating it for the New Zealand court process. Their cooperation continued leading up to the negotiated settlement. The successful outcome of this case would not have been achieved without the combined expertise and commitment of both the PRC and New Zealand investigators.
18. The Treaty between New Zealand and the PRC on Mutual Assistance in Criminal Matters does not govern this case, because the PRC never made a mutual assistance request for New Zealand to seize Mr Gong's assets. However, the proposed arrangement is within the spirit of the Treaty, which confirms that the countries may agree to return forfeited assets to the country where the criminal activities were committed.
19. I also note, although it cannot bind Cabinet's decision, that the settlement agreement between Mr Gong and the Commissioner s 9(2)(ba)
[REDACTED]
20. MFAT and NZP support the asset sharing proposal. Despite the differences in our respective legal systems, New Zealand and the PRC retain a strong common interest in effective law enforcement cooperation and this is an area where we have worked constructively for many years. This law enforcement cooperation is

undertaken deliberately and carefully in line with New Zealand's approach to justice and law enforcement, and consistent with our wider bilateral relationship. New Zealand has previously repatriated forfeited funds to the PRC. In 2016/17, \$30 million was returned to China in the high-profile money laundering case of William Liu (Yan Yongmin).

21.

s 6(a) and s 6(b)(i) and s 9(2)(g)(i)

Sharing the funds with the PRC would be consistent with the recommendations of international bodies and international rules concerning the proceeds of crime.

s 6(a) and s 9(2)(g)(i)

The 55/45 asset sharing arrangement agreed in principle is appropriate

22. As noted above, the PRC provided substantial assistance to the Commissioner's application under the Criminal Proceeds (Recovery) Act. Without the evidence the PRC provided and translated, the High Court would not have been satisfied of the significant criminal activity from which Mr Gong's assets were derived.
23. All the offending and derivation of the proceeds of crime took place in the PRC. The only connection to New Zealand is that Mr Gong attempted to hide and launder the proceeds of his offending in this jurisdiction.
24. Though the Attorney-General Guidelines establish a presumption of equal sharing, that may be displaced where the nature of the property and offending, enforcement costs to New Zealand, and burden of requests between the two countries mean unequal sharing is appropriate. I consider that the presumption is displaced in this case so that a 55/45 split is appropriate. Past cases where that presumption of equal sharing was also displaced include:
 - 24.1 The 2017 repatriation of NZ\$30 million to the PRC to reflect the significant evidence Chinese investigators provided to the Commissioner and the Chinese victims' interests (out of the almost NZ\$43 million forfeited by William Liu). New Zealand's successful cooperation with the PRC in this case was built upon the working relationship established in the William Liu affair.
 - 24.2 Switzerland's return in 2011 of all NZ\$1.1 million forfeited by a New Zealand forfeiture order there; but Austria's inability to return any of the \$1.4 million in its jurisdiction subject to the New Zealand forfeiture order (because of the absence of a bilateral asset sharing arrangement).
 - 24.3 New Zealand has not sought the return from foreign jurisdictions of forfeited assets under the \$100,000 threshold.

25. If Cabinet agrees that the funds forfeited by Mr Gong are to be shared with the PRC according to the asset sharing agreement reached in principle, it is proposed that:
- 25.1 The appropriation outlined below be established to transfer \$38,712,000 (being 55 percent of the funds received pursuant to the assets forfeiture order against Mr Gong) from the Proceeds of Crime Fund to the bank account nominated by the PRC.
- 25.2 New Zealand's Proceeds of Crime Fund would retain some \$31.7 million from the forfeited assets.

Financial Implications

26. If Cabinet elects to share the forfeited assets with the PRC, then the amount of money available in the Proceeds of Crime Fund will be reduced. This will reduce the funds available for initiatives to address crime-related harm.
27. The impact on the Proceeds of Crime Fund (the Fund) balance is outlined below:
- 27.1 The Fund has a current balance of \$72.882 million.
- 27.2 Apart from this proposed asset sharing agreement, there are **s 9(2)** further proposed commitments against the Fund (still subject to authorisations from Ministers) totalling **s 9(2)(i)(j)**.
- 27.3 Once those commitments are approved, and if this asset sharing agreement is approved by Cabinet, the available balance of the Fund will reduce to **s 9(2)(i)(j)**.
28. In 2017 an appropriation in Vote Justice was created to give effect to the transfer of assets to the PRC in the William Liu case. I recommend agreeing an appropriation with the same title and scope as this previous appropriation and approving an increase in funding to give effect to the proposed transfer.
29. The appropriation and the financial implications to reflect the decision are outlined below:

Vote	Appropriation Minister	Title	Type	Scope
Justice	Minister of Justice	Transfer to Other Governments of Relevant Seized Assets	Non-departmental Other Expense	This appropriation is limited to the transfer to other governments of relevant assets seized under the Criminal Proceeds (Recovery) Act 2009.

Vote Justice Minister of Justice	\$m – increase/(decrease)				
	2022/23	2023/24	2024/25	2025/26	2026/27 & Outyears
Non-departmental Other Expense: Transfer to Other Governments of Relevant Seized Assets	38.712	-	-	-	-

Human Rights

30. The proposal is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Regulatory Impact Analysis

31. The proposal does not involve the potential introduction of new legislation or changes to/the repeal of existing legislation and no Regulatory Impact Statement is required.

Publicity

32. On 16 June 2021 the NZP issued a press release in relation to the settlement with Mr Gong noting that the High Court had approved a settlement enabling the forfeiture of over \$70 million. No further press releases are planned, but an asset-sharing arrangement with the PRC may attract significant media interest (as it did in the William Liu case).
33. It is likely that the PRC will publicise the asset sharing arrangement including to note the successful law enforcement cooperation between New Zealand and the PRC. This may be picked up by the New Zealand media.

Proactive Release

34. I propose to release this paper proactively, subject to redaction as appropriate under the Official Information Act 1982.

Consultation

35. The NZP, MFAT, the Treasury, and the Ministry of Justice were consulted on this paper and their views are reflected in it. The Department of Prime Minister and Cabinet was informed of the paper.

Recommendations

The Attorney-General recommends that the Committee:

1. **Note** that the High Court has made asset forfeiture orders against Xiaohua Gong in respect of property to the total value of \$70.3 million;
2. **Note** that it is alleged Mr Gong benefited from a pyramid scheme fraud perpetrated in the PRC;

3. **Note** the agreement in principle reached with the PRC to split the forfeited assets 55/45 in the PRC's favour;
4. **Note** that sharing the funds with the PRC would be consistent with the recommendations of international bodies, international rules concerning the proceeds of crime, and domestic guidance on asset sharing;
5. **Note** that asset sharing encourages and rewards collaboration between foreign and domestic law enforcement. New Zealand Police seeks recognition as an effective international law enforcement partner and will continually leverage that reputation to deliver safety and security outcomes for New Zealand;
6. **Note** that if Cabinet does not decide to share the funds with the PRC, the money would remain in the Proceeds of Crime Fund;
7. **Agree** that the Crown transfer \$38,712,000 from the Proceeds of Crime Fund to the PRC;
8. **Agree** to establish the following appropriation:

Vote	Appropriation Minister	Title	Type	Scope
Justice	Minister of Justice	Transfer to Other Governments of Relevant Seized Assets	Non-departmental Other Expense	This appropriation is limited to the transfer to other governments of relevant assets seized under the Criminal Proceeds (Recovery) Act 2009.

9. **Note** the non-departmental other expense: Transfer to Other Governments of Relevant Seized Assets appropriation was previously established in 2017 to give effect to a similar asset sharing arrangement;
10. **Agree** the following changes to appropriations to give effect to the policy decision 7 above, with a corresponding impact on the operating balance and net debt:

Vote Justice Minister of Justice	\$m – increase/(decrease)				
	2022/23	2023/24	2024/25	2025/26	2026/27 & Outyears
Non-departmental Other Expense: Transfer to Other Governments of Relevant Seized Assets	38.712	-	-	-	-

11. **Agree** that although there is a corresponding impact on operating balance and net debt, the cost is covered by revenue recovered and therefore fiscally neutral and not counted against any allowances;
12. **Agree** that the proposed change to appropriation for 2022/23 be included in the 2022/23 Supplementary Estimates and that the increase be met from Imprest Supply;

13. **Direct** MFAT and NZP to formally approach the PRC:
- (i) To confirm Cabinet's approval of the asset sharing arrangement reached in principle to split the assets 55/45 in the PRC's favour; and
 - (ii) To confirm with the PRC the process for transferring the funds to the PRC.

Hon David Parker
Attorney-General

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