



Civil recovery without a criminal conviction: Lessons from Hong Kong's equitable remedies for Vietnam's public-interest litigation regime

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DOI: <https://doi.org/10.66856/ijlpsr.2026.8.4.8164>

Abstract

Effective asset recovery cannot always depend on a criminal conviction: suspects may die or abscond, while illicit proceeds may be transferred to estates or third parties. Yet civil claims based on ownership, restitution or compensation must be distinguished from statutory non-conviction-based confiscation. This article argues that Hong Kong's equitable remedies offer Vietnam a useful but limited comparative lesson: civil proceedings can pursue identifiable bribery benefits where a recognised legal entitlement and a sufficient property nexus are established, but they do not themselves create a general power to confiscate assets of suspected illicit origin. Using doctrinal analysis and functional comparison, the article examines Attorney General for Hong Kong v Reid, the civil proceedings concerning Hon Sum's estate, Hong Kong's statutory confiscation framework, and Vietnam's criminal-procedure rules and public-interest litigation pilot under Resolutions No. 164/2024/QH15 and No. 205/2025/QH15, read alongside the United Nations Convention against Corruption. The analysis finds that Reid followed a criminal conviction, while the Hon Sum proceedings ended in an out-of-court settlement, neither establishes a general civil-forfeiture regime. Resolution No. 205/2025/QH15 may facilitate claims to protect defined public interests, but only within its statutory scope and where a substantive cause of action exists. The article therefore recommends a separate civil asset-recovery framework specifying claimant standing, recoverable property and its connection to corruption, evidentiary standards, judicially controlled interim measures, coordination with criminal proceedings, and protection for bona fide third parties.

Keywords: Non-conviction asset recovery, civil recovery, constructive trust, public interest litigation, corruption proceeds, Hong Kong, Vietnam

Introduction

An anti-corruption regime needs to do more than prosecute officials: it must trace, preserve and return illicit gains too. A conviction-centred model can break down when a suspect dies, absconds or cannot be prosecuted; assets are transferred to relatives, companies or estates. The problem is therefore not only criminal procedural but also property law, restitution and public enforcement. UNCAC recognises different recovery routes (Article 53); civil actions to establish title or ownership (and compensation claims) fall under Article 53(1). Article 54(1)(c) asks States Parties "to consider confiscation without conviction where prosecution is impossible because of death, flight or absence or in other cases appropriate". A civil claim to property is not a statutory confiscation proceeding against crime-derived assets. This distinction matters in Vietnam too. Criminal-procedure rules cover property linked with criminal cases while pilot legislation recently permitted public interest civil litigation in specific circumstances. But an independent civil route for corruption proceeds poses separate questions: who has standing; what legal entitlement is asserted; how the asset is linked to corruption; how owners and third parties contest recovery? The article asks what Hong Kong's civil and equitable practice can teach us about recovering bribes through property claims and whether Vietnam's public-interest litigation pilot can support those claims. It is qualified in its argument: Hong Kong shows that civil remedies may recover bribery benefits without making conviction the only route, but Resolution No

205/2025/QH15 is not a general non-conviction-based forfeiture statute; it may provide procedural infrastructure only where a claim falls within the scope of the resolution and has a substantive legal basis. The article uses doctrinal analysis and functional comparison. It compares selected Hong Kong cases and legislation with Vietnam's criminal procedure and public interest litigation rules read against UNCAC. Instead of comparing entire asset recovery systems, it isolates one route (civil claims founded on ownership, restitution or public interest protection) and identifies conditions for use in Vietnam.

Conceptual Framework: Civil recovery is not confiscation

1. Three legal routes that must be kept separate.

"Non-conviction based asset recovery" is an umbrella term for mechanisms by which property may be recovered without first obtaining a criminal conviction. The mechanisms are nevertheless different in their foundations. Classic non-conviction confiscation can follow criminal proceedings that cannot be completed because the suspect died or absconded. Civil recovery instead is based on a claim that property is tainted or the holder has no legal entitlement to retain it. A direct civil action may vindicate ownership, recover bribe held in breach of duty or obtain compensation for a legally cognisable loss. The difference is substantive. Criminal confiscation is normally linked to criminal proceedings and defined offence proceeds. A proprietary civil claim asks whether the claimant has an

enforceable entitlement to an asset or traceable substitute. Restitution and compensation restore benefit or remedy loss. Cause of action determines facts to be proved, defendant proper and remedies available. This article therefore uses “civil recovery” only in relation to proceedings based on a recognised civil cause of action (ownership, restitution, fiduciary breach or compensation), not as a synonym for every non-conviction-based confiscation procedure. Civil form alone does not authorise confiscation of any asset suspected of criminal origin: without statutory in rem power the claimant must identify legal interest to enforce.

2. International standards: direct recovery and confiscation without conviction

UNCAC supports both direct recovery and non-conviction-based confiscation through different provisions. Article 53 requires measures allowing another State Party to bring civil proceedings to establish ownership; claim compensation or damages; have legitimate ownership recognised in confiscation proceedings. Article 54(1)(c) calls on States Parties to consider confiscation without conviction in certain circumstances. Article 31(9) requires respect for bona fide third-party rights. Together, these provisions support multiple, carefully distinguished recovery tools. Civil recovery is particularly useful where evidence supports a property claim, but prosecution cannot produce a conviction. A bribe may have been used to buy a house which was then transferred to an estate or company. Even if prosecution is impossible, the State can prove breach of duty and trace benefit. If the property link is merely speculative, civil recovery must not defeat the claimant’s duty to establish a legally sufficient case. Three questions frame comparison: what factual/legal nexus connects the asset to corruption; who may sue whom against whom for what remedy; what safeguards govern proof, challenge and third party rights? These tests determine whether a system can recover assets without treating civil proceedings as criminal conviction by another name.

Hong Kong: Property-based recovery through equitable remedies

1. Attorney General for Hong Kong v Reid: bribes and constructive trusts.

The decision in Attorney General for Hong Kong v Reid is a seminal example of the property-based approach. Charles Warwick Reid served in Hong Kong’s prosecution service and accepted bribes in breach of fiduciary duties attaching to his public office; he was criminally convicted in Hong Kong in 1990, sentenced to imprisonment and ordered to pay HK\$12.4 million (the value of assets controlled by him that could only have been derived from bribes), but none was paid. The AG then sought to recover assets held in New Zealand, and the case came before the Judicial Committee of the Privy Council. The Privy Council held that bribes received by a fiduciary are held on constructive trust for the principal and gains derived therefrom cannot be retained beneficially. Equitable analysis recognised a proprietary claim, not just a personal demand for compensation; tracing rules and third-party rights may allow it to follow the bribe into substitute property and capture gains attributable thereto. Reid must be characterised properly. It was not a pure non-conviction-based forfeiture case: Reid had already been convicted, and the civil property claim stood alongside criminal consequences. Its importance is doctrinal: civil and

equitable remedies can be a separate basis for recovering bribery benefits where a criminal confiscation order has not resulted in the property being recovered. It does not say Hong Kong has a general civil-forfeiture regime but it is an example of legal characterisation. If an official receives a bribe (in breach of a duty owed to the State or public employer), then the claimant may argue that the official has no beneficial entitlement to the bribe and identifiable substitute property must be restored; proof of duty, receipt of the bribe and property connection still required and defences apply. Equity is not a power to confiscate wealth just because it looks disproportionate to lawful income.

2. The Hon Sum proceedings: civil action after death

Hon Sum was a former police sergeant who had been sought by Hong Kong’s Independent Commission Against Corruption since 1976 over suspected assets disproportionate to his official emoluments. He died reportedly in 1999. In March 2000, the Department of Justice started civil proceedings against Hon and his estate over frozen assets. In May 2006, the Government announced an out-of-court settlement whereby his family agreed to give up HK\$140 million worth of assets (the proceedings continued against the estate after Hon was reportedly dead). It shows why civil claims matter when criminal accountability is gone: it was a settlement, not a contested judgment that all assets were corrupt proceeds; it showed how far civil proceedings and settlement leverage can go (not that disproportionate wealth ought to be recoverable in general). Reid shows an equitable basis for treating bribes and gains as property held for a claimant; Hon Sum proceedings against an estate and negotiated return of assets after the suspected holder’s death. For Vietnam, this requires substantive rules on entitlement; this one procedure for estate representation, notice to successors, asset preservation, authority to settle, and judicial oversight.

3. Statutory confiscation and the limits of the Hong Kong model

Hong Kong’s statutory regime must be distinguished from equitable civil actions. The Organized and Serious Crimes Ordinance (OSCO), Cap. 455, governs the confiscation of proceeds and the restraint, charging, and realization of property. Its classic non-conviction procedure is limited to defined circumstances in which criminal proceedings cannot be concluded because a suspect has died or absconded, subject to statutory conditions and judicial scrutiny. This is narrower than a general civil-forfeiture regime for unexplained or suspected crime-tainted assets.

Hong Kong’s equitable remedies cannot be transplanted wholesale. The constructive trust doctrine draws on common law and equity preserved by Article 8 of Hong Kong’s Basic Law. Vietnam’s civil-law system does not automatically attach the same proprietary consequence to a bribe. A Vietnamese framework would need a statutory basis for the State’s or public body’s claim, rules for tracing converted assets, and protections for relatives, companies, heirs and bona fide purchasers. Merely invoking “constructive trust” does not answer who is legally entitled to the property.

Hong Kong scholarship has also debated whether a dedicated civil-forfeiture regime should supplement criminal confiscation and existing civil actions. The debate highlights both the potential of property-focused recovery

and the risk of depriving people of property under lower civil standards. The transferable lesson is not that civil forfeiture is inherently superior, but that each remedy requires a clear scope, evidentiary threshold, and safeguards.

Vietnam: Existing Mechanisms and the New Public-Interest Litigation Pilot

1. Criminal-procedure asset handling is not a complete civil-recovery regime

Vietnam's Criminal Procedure Code 2015 and Criminal Code regulate property related to offences. Article 106 of the Criminal Procedure Code governs the handling of evidence and property during and at the conclusion of criminal proceedings. These mechanisms are essential but remain structurally linked to the criminal case. The issue here is whether a separate civil claim may remain viable when criminal proceedings cannot yield a conviction or effective property remedy.

Resolution No. 164/2024/QH15, effective from 1 January 2025 for a three-year pilot, introduced procedures for handling certain seized, temporarily seized, attached or frozen evidential property during investigation, prosecution and trial in selected cases within the remit of the Central Steering Committee for Anti-Corruption, Wastefulness and Negative Phenomena. It aims to address practical difficulties in preserving and dealing with assets, but it does not by itself establish a general civil action to recover any asset derived from corruption independently of criminal proceedings.

Preserving, returning, transferring or selling property already secured in a criminal case can improve recovery. It does not necessarily permit a separate claim to establish that an asset derives from corruption when prosecution has failed or cannot be completed. An independent civil regime needs its own trigger, claimant, cause of action, proof standard, remedies and third-party rules.

2. Resolution No. 205/2025/QH15: a procedural opening, not automatic forfeiture

Resolution No. 205/2025/QH15, adopted on 24 June 2025 and effective from 1 January 2026, pilots the People's Procuracy's power to bring public-interest civil proceedings to protect vulnerable groups or legally defined public interests when no other person or entity brings the claim as required by law. The pilot runs for three years in six localities: Hanoi, Ho Chi Minh City, Da Nang, Can Tho, Quang Ninh and Dak Lak.

Article 3 defines covered public-interest areas, including public investment, land and other public assets, natural resources, the environment, cultural heritage, food and pharmaceutical safety, and consumer protection. The Resolution also empowers the Procuracy to gather information and seek urgent provisional measures. These tools may help preserve evidence and assets while a public-interest claim is prepared.

The pilot may be relevant when alleged corruption causes loss to public investment, public land or other legally defined public assets, particularly where the responsible claimant fails to act. It provides a potential procedural setting for information-gathering, interim protection and court proceedings, but only within the Resolution's own subject-matter and standing requirements.

Resolution No. 205 should not be overstated. It is a public-interest litigation pilot, not an express general power to confiscate all property suspected of a corrupt origin. A case must fall within the defined public-interest scope and rest on a substantive legal basis, such as ownership, restitution or compensation. The fact that an asset is suspicious does not automatically make it State property.

The problem becomes sharper where proceeds have been transferred to a spouse, relative, company or heir. Public-interest litigation may protect a defined public interest, but the law must still establish the asset's connection to unlawful gain, the legal basis for recovery from its current holder and the effect of bona fide acquisition. Without express rules, the pilot risks inconsistent practice or expansion beyond its enacted purpose.

3. The gap is one of substantive entitlement as well as procedure

Vietnam's challenge is not merely procedural. The Civil Code's rules on reclaiming property and compensating loss may be relevant where their elements are satisfied, but they do not establish a general forfeiture mechanism. The law must distinguish a claim to State-owned property, restitution of a benefit obtained through breach of duty, compensation for loss, and statutory confiscation based on unlawful origin. Each has different elements and should not be collapsed into a general allegation that property is suspicious.

Resolution No. 205 may help identify and litigate cases concerning public assets; Resolution No. 164 addresses assets within specified criminal proceedings. They are complementary but distinct. Neither should be interpreted as silently creating all the powers contemplated by UNCAC Article 54(1)(c), which calls on States Parties to consider confiscation without conviction in specified circumstances. A general recovery regime requires express legislation defining whether the claim is proprietary, restitutionary or statutory civil forfeiture.

A Legislative Model for Vietnam: From a Pilot Litigation Mechanism to Civil Asset Recovery

1. Define the object and legal basis of the claim

Legislation should distinguish civil recovery from criminal punishment. A civil order should determine ownership or require restitution of a benefit, not declare criminal guilt. The statute should identify recoverable property, including direct proceeds, traceable indirect proceeds and substitutes, with value-based recovery where original assets have been dissipated. Each category should be linked to a defined unlawful benefit.

The statute should identify available causes of action: (i) proprietary claims where a public entity establishes ownership or an equivalent interest; (ii) restitution or disgorgement of bribes received in breach of public or fiduciary duty; (iii) compensation for demonstrable loss; and (iv) a separate statutory civil-forfeiture claim if Vietnam chooses to recover crime-derived property independently of conviction. The fourth route is the most intrusive and needs the clearest triggers and safeguards.

Standing must be clear. The harmed State agency or public body should sue where it can do so effectively. The Procuracy could act as a backstop when a defined public interest is involved and the responsible entity fails to act, subject to statutory conditions and judicial supervision. The

claimant should state its standing, the public interest or property right at stake, and the remedy sought.

2. Establish a proportionate evidentiary framework

A civil standard of proof can allow recovery where the evidence establishes unlawful origin or ownership but does not support criminal conviction. It must not excuse the claimant from proving a sufficient case. Legislation should require a specific connection between the property and corruption or another defined unlawful benefit. Disproportionate wealth alone should not automatically result in forfeiture.

For unexplained-wealth cases, a calibrated evidentiary burden could be considered only after the State proves foundational facts: the person's relevant public position or link to the alleged corruption; the existence, value and control of identified assets; a material disparity with lawful resources; and reasonable grounds connecting the assets to an unlawful benefit. Any duty to explain should be statutory, reviewable by a court and distinct from a presumption of criminal guilt.

The statute should distinguish recovery of a traceable bribe from unexplained-wealth recovery. The former requires a transaction, duty, benefit and tracing chain; the latter presents greater risks of overreach. If introduced, unexplained-wealth recovery needs separate triggers, exclusions and rules for lawful income, gifts, inheritance, marital property and beneficial ownership.

3. Protect assets early, but preserve due process

A new statute should permit urgent freezing or preservation where there is a reasonable basis to believe property is recoverable and a real risk of dissipation. Without-notice orders should be exceptional and time-limited, followed by a prompt inter partes hearing. Courts should be able to vary or discharge orders, permit reasonable living or business expenses, and award compensation for unjustified restraint. Safeguards should include timely notice, a meaningful opportunity to contest the claim, a reasoned decision, appeal rights and clear costs rules. The law should protect bona fide purchasers for value without relevant notice and address jointly owned property, marital assets, succession and insolvency. A person should not lose an independently acquired interest merely because another person used the asset in an unlawful transaction.

Judicial supervision is essential when a public authority is claimant. It should disclose the basis of its case, identify the value claimed and avoid treating a civil judgment as proof of criminal guilt in a connected prosecution. Courts should be able to coordinate civil and criminal proceedings where needed, without automatically barring a separate property claim where legislation permits it.

4. Integrate public-interest litigation with a distinct recovery framework

Resolution No. 205 should be evaluated as a pilot rather than stretched to fill every gap in recovery law. Authorities should record cases involving alleged corruption or misuse of public assets, failures by responsible entities to sue, interim measures sought and granted, settlements, asset value recovered and treatment of third-party rights. Such data can inform whether the Procuracy's backstop role should be retained or expanded by legislation.

A civil recovery statute should coordinate expressly with Resolution No. 164/2024/QH15 and the Criminal Procedure Code. It should prevent inconsistent orders, preserve evidence, and regulate the transfer or termination of interim measures when one process ends. Where proceedings stop because a suspect dies or absconds, a defined civil route should remain available without a criminal conviction. If an acquittal occurs on the merits, any continuing property claim must rest on an independent and clearly stated legal basis.

The law should define how recovered assets are allocated. State-owned property should be returned or accounted for under public-finance rules; compensation should identify the claimant and loss; and statutory forfeiture should specify priority among victims and secured creditors, asset management, reporting and audit. Transparency reduces the risk that recovery creates a new source of discretion or corruption.

5. Build cross-border capacity around civil claims

Because corruption proceeds cross borders, civil recovery should align with UNCAC Articles 53-55 and mutual legal assistance. Legislation should address recognition of foreign orders, tracing and freezing assistance, service abroad, foreign records and return of recovered property. Foreign enforcement is not automatic; the requested jurisdiction may require a recognised order, due-process safeguards and proof of the claimant's entitlement.

Hong Kong's cases also highlight the importance of tracing assets through estates, companies and substitute property. Vietnam needs lawful, auditable access to beneficial-ownership, land, company, tax, banking and procurement records, subject to purpose limitation, data security and safeguards against misuse. Recovery depends on proving the link between the asset and the underlying transaction.

Conclusion

Civil recovery should have a distinct place in non-conviction-based asset recovery. Hong Kong is instructive not because it offers a ready-made forfeiture code, but because its equitable claims and estate proceedings illustrate different civil routes to pursue suspected corruption benefits. The limits are equally important: Reid followed a conviction, while Hon Sum ended in settlement. Neither case proves a general power to confiscate unexplained assets.

Vietnam's Resolutions No. 164/2024/QH15 and No. 205/2025/QH15 address different problems: handling property in specified criminal cases and bringing public-interest civil claims in defined areas. The latter may support claims concerning public investment or public assets when its statutory conditions are met, but it does not create a general power to confiscate all suspected corruption proceeds without conviction.

Vietnam should enact a clear civil asset-recovery framework defining standing, recoverable property, the property nexus, proof, interim measures, third-party protection, coordination with criminal proceedings and asset allocation. It should distinguish restorative remedies from punishment and permit recovery when conviction is genuinely unavailable, without treating suspicion as ownership or civil process as a substitute for criminal proof.

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