

Tommy Suharto (also known as Hutomo Mandala Putra)

Case ID:

ARW-186

Jurisdiction of Origin of Public Official or Entity Allegedly Involved:

Indonesia

Position of Public Official(s) (yrs in office):

Son of President (Mohamed Suharto, 1967-1998)

Jurisdiction of Asset Recovery:

Guernsey

Jurisdiction of Asset Recovery ? Description:

Undertaking Recovery Effort, Location of Recovery Effort, Asset Location / Alleged Asset Location

Asset Recovery Start:

2002

Asset Recovery End:

Ongoing

UNCAC Offenses Implicated:

Art.20

Art.23

Money laundering Implicated:

Yes

Legal Basis for Asset Recovery:

Case in Investigatory/Asset Restraint Stage

Intl.Cooperation: MLAT/Letter of Request?:

Unknown

Basis for Intl Cooperation:

Cooperation in investigation but mechanism unknown

Contributing Factors in Asset Recovery:

Ongoing Case, but the Guernsey court wrote that "The defendant [BNP Paribas (Suisse) S.A. bank] considered its duties under the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law 1999 and disclosed its position to the Financial Intelligence Service ("FIS") of the States of Guernsey." (Source: Garnet Investments Investments Limited v. BNP Paribas (Suisse) S.A. and Government of Republic of Indonesia, Guernsey Law Reports 2007?08 GLR 73 (Royal Court), Judgment of May 23rd, 2007.

Status of Asset Recovery :

Ongoing

Stage in Asset Recovery Chain:

Investigation/Asset Tracing/Asset Restraint

Agreement for Returned Assets:

Ongoing

Agreement for Returned Assets - Description:

N/A

Case Summary:

As noted in the August 22, 2011 Media Release by Guernsey's Financial Investigative Unit,

the Guernsey Court of Appeals ruled in favor of the Chief of Customs and Excise, Immigration and Nationality Service which had appealed a lower court ruling in favour of Garnet Investments Ltd (Garnet), who had applied for judicial review of the Financial Intelligence Service's (FIS) decision not to give consent for the bank BNP Paribas (BNP) to make payments, requested by Garnet from its account at the Bank. (Source: Guernsey Financial Investigation Unit Agency Media Release, "Judicial Review / THE CHIEF OFFICER CUSTOMS & EXCISE, IMMIGRATION & NATIONALITY SERVICE ? (Now known as the Guernsey Border Agency - GBA) And GARNET INVESTMENTS, August 22, 2011.) According to a statement by the Government of Guernsey, "On Tuesday 20 November 2012, the Judicial Committee of the Privy Council notified Garnet Investments Limited that it had refused its application to appeal the decision of the Guernsey Court of Appeal which had found in favour of the Chief Officer Customs & Excise, Immigration & Nationality. The Privy Council's written decision advised Garnet Investments Limited that its "application for permission to appeal had been considered by the Board and permission to appeal had been refused because the application does not raise an arguable point of law and the Board is not persuaded that the decision of the Court of Appeal is arguably wrong."" (Source: States of Guernsey, "Judicial Committee of the Privy Council refuses Garnet Investments Ltd application to appeal," January 4, 2013.)

Assets of Garnet Investments Limited, of which Mr. Suharto was identified as the beneficial owner, remain restrained in Guernsey. In 2002, the BNP Paribas (Suisse) Bank - Guernsey branch disclosed to the Guernsey financial intelligence unit that Tommy Suharto was the beneficial owner of the Garnet Investments Limited account and sought the FIS's consent to transfer the funds, as requested by Garnet Investments. The FIU denied consent and the Government of Indonesia was informed and given opportunity to join the proceedings between the Bank and Garnet Investments. The Guernsey court cited the lack of progress by Indonesia to institute proceedings against Suharto in Indonesia as justification for not extending the freeze of the funds but the FIU continued to deny consent to transfer the funds. (Source: Garnet Investments Limited v. BNP Paribas (Suisse) S.A. and Government of Indonesia, Guernsey Law Reports, 2007-08 GLR 73.) In late 2010, Suharto's defunct car company found liable to Ministry of Finance for tax evasion; Indonesia may attempt to recover the Guernsey funds again. (Source: Reuters, "Indonesia to keep assets of ex-president Suharto's son," July 16, 2010.)

Disposition of Criminal Case(s):

According to the January 29, 2007 "Trade and Investment News" by The Coordinating Ministry for Economic Affairs of the Republic of Indonesia, "Tommy [Suharto], 44, was released from prison last October after serving five years of a 15-year sentence for ordering the murder of an Indonesian judge who had convicted him of corruption in connection with a land-scam case." (Source: The Coordinating Ministry for Economic Affairs, Republic of Indonesia, "Trade and Investment News," January 29, 2007, accessed on the website of The Indonesian Consulate General Chicago," at <http://www.indonesiachicago.org/economic-N012907.html>)

Jurisdiction of Origin: Investigative Agency:

Ministry of Justice and Human Rights

Jurisdiction of Asset Recovery: Investigative Agency:

Financial Investigative Unit, Guernsey Border Agency

Jurisdiction of Asset Recovery: Courts Involved:

Royal Court; Court of Appeals

Documents:

Tommy_Suharto_Conviction_Indonesian_Consulate_Jan_29_2007.pdf

Tommy_Suharto_Guernsey_Garnet_Investments_2009-10_GLR_1.pdf
 Tommy_Suharto_Guernsey_Garnet_Investments_Freeze_2007.08_GLR_73.pdf
 Tommy_Suharto_Guernsey_Garnet_Investments_Freeze_2007.08_GLR_442.pdf
 Suharto_Guernsey_Media_Release_Guernsey_Court_of_Appeal_Garnet_Aug_22_2011

Documents:

Attachment	Size
 Tommy_Suharto_Guernsey_Garnet_Investments_Freeze_2007.08_GLR_73.pdf	294.82 KB
 Tommy_Suharto_Guernsey_Garnet_Investments_Freeze_2007.08_GLR_442.pdf	202.03 KB
 Suharto_Guernsey_Media_Release_Guernsey_Court_of_Appeal_Garnet_Aug_22_2011.pdf	457.35 KB
 Suharto_Guernsey_Chief_Officer_v_Garnet_Application_for_Leave_to_appeal_to_the_PC_Judgement_19_12_11.pdf	205.69 KB
 Suharto_Guernsey_Customs_v_Garnet_Appeals_Ct_Jul_5_6_2011.pdf	431.01 KB
 Suharto_Guernsey_Privy_Council_Deny_Appeal_Jan_4_2013.pdf	213.96 KB

Documents Links:

Other Sources:

Garnet Invs. Ltd. v. BNP Paribas (Suisse) S.A. and the Government of the Republic of Indonesia (Royal Court) 2007-08 GLR 73; Garnet Invs. Ltd. v. BNP Paribas (Suisse) S.A. and the Government of the Republic of Indonesia (Royal Court) 2007-08 GLR 442; Garnet Invs. Ltd. v. BNP Paribas (Suisse) S.A. and the Government of the Republic of Indonesia (C.A.) 2009-10 GLR 1, all available at Guernsey Legal Resources: <http://www.guernseylegalresources.gg/ccm/portal/>; States of Guernsey, "Judicial Committee of the Privy Council refuses Garnet Investments Ltd application to appeal," January 4, 2013, at <http://www.gov.gg/article/105231/Judicial-Committee-of-the-Privy-Council...>

The Coordinating Ministry for Economic Affairs, Republic of Indonesia, "Trade and Investment News," January 29, 2007, accessed on the website of The Indonesian Consulate General Chicago, at <http://www.indonesiachicago.org/economic-N012907.html>. See also Reuters, "Indonesia to keep assets of ex-president Suharto's son," July 16, 2010 and The Jakarta Post, "'Tommy' Soeharto loses appeal in Guernsey," August 24, 2011, accessed at <http://www.thejakartapost.com/news/2011/08/24/tommy-soeharto-loses-appea...>). Guernsey Financial Investigation Unit Agency Media Release, "Judicial Review / THE CHIEF OFFICER CUSTOMS & EXCISE, IMMIGRATION & NATIONALITY SERVICE ? (Now known as the Guernsey Border Agency - GBA) And GARNET INVESTMENTS, August 22, 2011, accessed at <http://www.guernseyfiu.gov.gg/ccm/portal/>) and Court of Appeal decisions (5 and 6 July 2011 and 19 December 2011) in the case; Frederic Raffray, "The rule of law and 'Tommy Suharto' - son of (former) President Suharto," at 29-50, in *Emerging Trends in Asset Recovery* (Bern: Peter Lang, 2013)