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FRAUD IN ASIA

PROBLEMS AND COUNTERMEASURES

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FRAUD IN ASIA–PROBLEMS AND COUNTERMEASURES

I. INTRODUCTION1I. INTRODUCTION. INTRODUCTION. INTRODUCTION

More so than perhaps any other region of the world, the continent of Asia is sharply divided in terms of such factors as culture, history and economic development. Such diversity also extends to criminal justice development, and as a result often impairs smooth cooperation at both regional and international levels.

With respect of the definition of fraud, similar difficulty arises. However, after analyzing legal doctrines in several countries, it was observed that deception, concealment and unjust advantage are common elements for fraud in the region.

Taking the above into consideration, this paper aims to offer a brief comparative analysis of the different manifestations of fraud and the current situation concerning the prevention and control of fraud in various Asian countries, both in terms of domestic and international efforts. Discussion topics will include existing legislation; investigation, prosecution and trial practices; and regional efforts to improve cooperation.

II. MANIFESTATIONS OF FRAUD IN THE REGION1II. MANIFESTATIONS OF FRAUD IN THE REGION. MANIFESTATIONS OF FRAUD IN THE REGION. MANIFESTATIONS OF FRAUD IN THE REGION

From the country reports of participants to UNAFEI training programmes, it is observed that the nature and scope of fraud are diverse. The types of reported fraud include the following:

A. FRAUD AGAINST BANKS 2A. FRAUD AGAINST BANKS AND BANKING INSTRUMENT FRAUD. FRAUD AGAINST BANKS AND BANKING INSTRUMENT FRAUD. FRAUD AGAINST BANKS AND BANKING INSTRUMENT FRAUD

Loans are sometimes fraudulently obtained from banks through, for example, the pledge as collateral of spurious goods, value inflated goods, goods pledged to more than one bank, goods belonging to a third party, or the fraudulent removal of goods with the connivance of the bank staffs.

Fraud in deposit accounts is committed by such means as unauthorized withdrawals using cheques carrying the forged signature of account holders; the replacement of a specimen signature card with a forged one; the altering of entries and balances in account ledgers after they are hacked and making subsequent withdrawals.[1]

In Bangladesh, reckless banking has created a huge outstanding loan estimated at US$2,826 million. Classified loans have increased from US$2,161 million in 1995 to US$2,403 million in 1996, a rise of US$242 million in one year. These represent an unbelievably high figure of 32 percent of loan portfolios of all banks against the norm in Bangladesh of about 3 percent. In the 1995 fiscal year, classified loans exceeded the tax revenue of the Government of Bangladesh.

B. BANKING INSTRUMENT FRAUD2B. BANKING INSTRUMENT FRAUDS. BANKING INSTRUMENT FRAUDS. BANKING INSTRUMENT FRAUDS

This type of frauds is reported prevalent in several countries of the region including Fiji, India, Japan, Republic of Korea, Singapore and Thailand. Banking instrument frauds is committed by (a) purchasing bills of exchange with false documents of title of goods; (b) selling stocks hypothecated to banks; (c) procuring fake/forged invoices and obtaining payments against them; (d) pledging the same stock to more than one bank; and (e) stealing bank draft books and transfer-advises and encashing them with forged signatures.

In the Republic of Korea, also perpetrated are the use of faulty bank bills which are dishonored. It is reported that every year thousands of small and medium enterprises

[1] Md. Mahfuzur Rahman, “Effective Countermeasures against Economic Crime and Computer Crime”

receiving faulty bank bills go bankrupt and subsequently dishonor their own bank bills issued to others. Normally false bills are issued in the name of a fake famous company or ghost company.

In Japan, during the so-called bubble economy years, officers of several big bank branches issued forged deposit certificates for billions of yens that were later used as security to get huge loans from financial institutions.

In Thailand, it is reported, a modus operandi used in transnational financial crime is the use of fraudulent traveler's cheques to claim money from a Thai bank.

C. INSURANCE FRAUD2C. INSURANCE FRAUD. INSURANCE FRAUD. INSURANCE FRAUD

Insurance fraud was identified by several countries including Fiji, India, Japan and the Republic of Korea as another prevalent form of fraud.

In India, at the moment, life insurance is in the public sector and is, therefore, subject to strict government regulations and audit requirements. However small-and medium-scale fraud sometimes takes place. Such fraud is mostly relates to the filing of false or exaggerated claims in the areas of property and motor vehicles insurance with the insurance companies. Most of the time, such fraud is perpetrated in collusion with the employees of insurance companies, like the surveyors and the field agents who, for corrupt motives, tailor their reports to the advantage of the claimants.[2]

In Japan, medical insurance fraud is most prevalent though fraud cases with respect to life, property and vehicle insurance is also reported. Doctors claimed unjust medical charges and defrauded insurance companies. Every year the licenses of some four or five doctors are revoked for such fraud.

Arson is another modus operandi found in Fiji, India and the Republic of Korea. Carefully staged and difficult to detect fires are set to collect insurance for property loss. In India, such offenders are mostly owners of failing industries or stockers of goods (e.g., cotton and tobacco) which do not move or become unmarketable/unprofitable. Additionally Fiji, shop owners make false insurance claims showing their goods stolen or inflate claims in the case of actual theft. Vehicle insurance fraud is mainly in the form of inflated damage claims in

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(Bangladesh).

the case of accidents. In many cases the connivance of corrupt insurance surveyors or officials contributes to such fraud.

D. CORPORATE FRAUD2D. CORPORATE FRAUD. CORPORATE FRAUD. CORPORATE FRAUD

Corporate fraud is reported by India, as well as Japan. This consists of formation of limited companies which then obtain large quantities of goods on credit under the guise of a normal business transaction. The goods are then secretly re-routed to other corporate entities or sold at knockdown prices and the sales proceeds are passed back to the controllers of the fraud or distributed to accomplices.[3]

E. INSOLVENT STOCK SALE/FRAUD IN PUBLIC ISSUES OF SHARES2E. INSOLVENT STOCK SALE/FRAUDS IN PUBLIC ISSUES OF SHARES. INSOLVENT STOCK SALE/FRAUDS IN PUBLIC ISSUES OF SHARES. INSOLVENT STOCK SALE/FRAUDS IN PUBLIC ISSUES OF SHARES

Some years ago, in the Republic of Korea companies in connivance with certified public accountants concealed their insolvent financial position and dishonestly offered their stocks to the public, showing a healthy financial picture. Thousands of innocent people lost their hard-earned money in purchasing worthless stocks.

In India, public issues of shares were floated by private limited companies. However, even on receipt of application money, the shares were not allocated. At times, against the public/rights issue of shares, bridge loans were obtained from the banks. The funds so obtained were diverted to the front companies for various other purposes.[4]

F. FRAUD IN THE SECURITIES MARKET2F. FRAUD IN THE SECURITIES MARKET. FRAUD IN THE SECURITIES MARKET. FRAUD IN THE SECURITIES MARKET

The main areas of fraudulent activity which possess the greatest degree of commercial risk in the trade of securities are market manipulation and insider trading.

In Bangladesh, from October to November 1996, a handful of stock brokers, some

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[2] M.S. Bali, "Effective Countermeasures against Economic Crime and Computer Crime" (India)
[3] Ibid.

international securities swindlers and their accomplices filched millions of dollar by fraudulent manipulation of the securities market resulting in a devastating collapse of the market and the loss to thousands of unsuspecting investors of their life's savings, turning them into paupers.[5]

G. CREDIT CARD FRAUD2G. CREDIT CARD FRAUD. CREDIT CARD FRAUD. CREDIT CARD FRAUD

Credit card fraud is identified as the most common crime by many countries in the region, including Japan, the Philippines, the Republic of Korea and Thailand. Most crimes are committed by the use of counterfeit, stolen or expired cards that are re-embossed and re-encoded. In the Philippines and in the Republic of Korea, international syndicates engaging in credit card fraud were recently detected. Their modus operandi involves such methods as the "skimming" method in which the offender obtains the data of the payment cards surreptitiously by a skimming device and then manufactures cloned payment cards; the "courier-intercepted" method in which the syndicate bribes a courier to lend it a card transiently and then extracts the data; and the "cardholder and syndicate" method in which the cardholder is approached by the syndicate for the cloning of his card in exchange for a certain amount. In the Republic of Korea, genuine card holders also commit frauds by raising excess credit or submitting false vouchers while applying for credit cards.

H. PHANTOM-SHIP FRAUD AND OTHER MARITIME FRAUD2H. PHANTOM-SHIP FRAUD AND OTHER MARITIME FRAUD. PHANTOM-SHIP FRAUD AND OTHER MARITIME FRAUD. PHANTOM-SHIP FRAUD AND OTHER MARITIME FRAUD

Phantom-ship frauds refer to ships with changing identities that load cargoes, usually worth some US$1-2 million per shipment, at one port and illegally divert them to another, instead of the destination port. After this, such ships disappear, only to resurface later with different identities, ready to repeat the same crime.

I. PYRAMID (MULTI-LEVEL) SALES FRAUD2I. PYRAMID (MULTI-

[4] Ibid.
[5] Md. Mahfuzur Rahman, "Effective Countermeasures against Economic Crime and Computer Crime"

LEVEL) SALES FRAUD. PYRAMID (MULTI-LEVEL) SALES FRAUD. PYRAMID (MULTI-LEVEL) SALES FRAUD

Such offences were widely reported in Japan and the Republic of Korea, which caused large-scale damage, both financially and emotionally, to consumers. The common modus operandi is to lure members, particularly naïve youngmen and housewives, on the promise of huge profits with little investment (membership fee and/or cost of one piece of item being sold). Pyramid sales schemes inevitably break down and the chance of success for every member is virtually impossible.

J. CHIT FUND FRAUD2J. CHIT FUND FRAUD. CHIT FUND FRAUD. CHIT FUND FRAUD

Chit fund fraud is very common in India and Thailand. A chit fund operation is disguised as a means of fund-raising among individuals and small businessmen. The operators promise a high rate of interest for each loan borrowed from members. The high interest is paid to the members from the loans of new members. Once the number of new members declines or stops, the interest payment is stopped and the scheme collapses. Millions of dollars are lost every year by low and middle income people in these frauds.

K. FRAUDULENT TRADING IN FUTURES2K. FRAUDULENT TRADING IN FUTURES. FRAUDULENT TRADING IN FUTURES. FRAUDULENT TRADING IN FUTURES

In Japan, a large number of consumers (mainly housewives or retired people) without proper knowledge about futures trading were lured to invest on the promises that they could multiply their money in one or two years, there was little risk, and their money could be withdrawn whenever needed. Some offenders also utilized organized crime group members to intimidate clients who wanted to cancel contracts or demanded repayment.

L. FRAUD BY MISREPRESENTATION IN ADVERTISING2L. FRAUD BY MISREPRESENTATION IN ADVERTISING. FRAUD BY MISREPRESENTATION IN ADVERTISING. FRAUD BY MISREPRESENTATION IN ADVERTISING

Abusing the high concern for health care in the Republic of Korea, fraudulent sales

of health care products (like foods and medicines) to consumers are increasing. Fraudsters mainly use the telephone or mail to advertise and receive orders. In short they misrepresent the effect or virtue of costly health care products with foreign trademarks. It is very difficult for consumers to claim damages or approach law enforcement agencies as offenders' identification is often vague and there is also a low possibility of relief.

III. PREVENTION AND CONTROL OF FRAUD IN ASIA1III. PREVENTION AND CONTROL OF FRAUD IN ASIA. PREVENTION AND CONTROL OF FRAUD IN ASIA. PREVENTION AND CONTROL OF FRAUD IN ASIA

A. LEGISLATION2A. LEGISLATION. LEGISLATION. LEGISLATION

1. Overview31. Overview. Overview. Overview

Fraud is deterred and punished under provisions of the Penal Code in the respective countries in the region. Apart from the Penal Code, there are many administrative laws which regulate economic activities such as banking, insurance and securities transactions. Furthermore, in consideration of the common occurrence of specific fraudulent activities and their harm to the public, several laws such as credit card laws and laws concerning pyramid schemes, chit funds and other types of fraudulent sales, have been enacted to regulate such economic activities and to punish the violations of the regulation.

2. Japan32. Japan. Japan. Japan

In Japan a case involving the fraudulent sale of gold prompted in 1986 the enactment of the Law Regulating the Sale of Gold and Other Precious Metal. Specifically, from 1981 to 1985, a certain company sold gold to its customers, but failed to deliver it. Instead, it provided the customers with a certificate of owenership, which ultimately proved to be worthless. It was difficult for the investigating authority to prove the fraud by the company. Therefore the initiation of prosecution was delayed substantially and the number of victims and increased nationwide. The 1986 aims to law regulate the way of inducing customers to contract to buy precious metals or other valuable goods, the rights and procedures regarding the dissolution of contracts, and the authority by the government to prohibit sales in violation of the law. The punishment for violation of said law is imprisonment for not more than two years.

Similarly, the Door to Door Sales Law was enacted to regulate pyramid scheme sales after such fraud became prevalent. Pyramid scheme sales are punishable under the Penal Code as fraud with the enhancement of punishment for violation of the Door to Door Sales Law.

3. Republic of Korea33. Republic of Korea. Republic of Korea. Republic of Korea

The Republic of Korea has various special laws related to economic crime including the Illegal Checks Regulation Law, the Credit Card Law, the Securities Transaction Law, and the Insurance Law. For example, the fraudulent use of credit cards is punishable under the Credit Card Law. In order to give extra disadvantages in addition to criminal punishment, the supervisory government authorities in charge of licensing or approval of business practices often impose administrative regulations such as suspension or cancellation of license onto a law-breaking corporation. On the other hand, there is an extremely exceptional disadvantage to economic crimes. Pursuant to Article 14 of the Act on Additional Punishment for Specified Economic Crimes, any offender who is convicted under that provision is forbidden from seeking employment with banks, organs of government, and enterprises related to the crime for two years. Article 14 extends to include those offenders gained illegal profits by fraud, embezzlement, or breach of trust exceeding 500, 000, 000 won.

4. Thailand34. Thailand. Thailand. Thailand

In Thailand, the main legislation to cope with chit fund operations is the Emergency Decree on Loans Amounting to Public Cheating and Fraud, B.E. 2527 (1984). Under the Decree, it is a criminal offence for any person to borrow money from ten or more persons with the promise to repay the loan at a higher interest rate than that payable by financial institutions under the law when said person knows or ought to know that he cannot carry on any lawful business that will yield profits sufficient for payment at such a rate.

5. People's Republic of China35. People's Republic of China. People's Republic of China. People's Republic of China

In 1997, the National People's Congress of China adopted amendments to the Criminal Law enacted in 1979. Chapter Three of the new Criminal Law—Offences against Socialist Market Economic Order consists of eight sections and seventy-one articles that are directed against various economic crimes including the production and sale of false and bad quality commodities; counterfeit letters of credit, credit cards, securities, etc.; financial fraud, including the illicit possession of loans from banks or other financial institutions; fraud with financial vouchers, checks and certificates; securities fraud; false advertising; illicit possession of an other's money or goods while entering into and carrying out a contract; and counterfeiting of or fraudulent transaction in airline, ship and train tickets.

6. India 36. India . India . India

In India, a number of special laws have been enacted that, for example, customs, excise, taxes, foreign exchange, narcotic drugs, banking, insurance, and trade and commerce relating to export and import. The respective laws directly empower enforcement of the laws by their respective departmental enforcement agencies created under statutory provisions. These laws provide the necessary legal powers of investigation, adjudication, imposion of fines, penalties and, under special circumstances, arrest and detention of offenders. The officers of these enforcement agencies are also vested with powers similar to those of the police in regards to the summons of witnesses, the search and seizure of goods, the documents, and the confiscation proceeds.[6]

B. INVESTIGATION, PROSECUTION AND TRIAL2B. INVESTIGATION,

PROSECUTION AND TRIAL. INVESTIGATION, PROSECUTION AND TRIAL. INVESTIGATION, PROSECUTION AND TRIAL

In the Republic of Korea, economic crime is handled successfully by public prosecutors who belong to the economic division or the special investigation division of the public prosecutor's offices. According to the pattern of economic offenses, Korean prosecutor frequently carry out the investigation of a given case with the cooperation of the related expert organizations. For instance, in the event of tax crimes, bank loan-related crimes, stock crimes, etc., the working-level expert personnel of the Tax Office, the Bank Supevision Board, or the Securities Supervisory Board are assigned temporarily to the prosecution investigation team in order to help the prosecutors' investigation.

It is pointed out that, in India, a limited period of 90 days between the date of arrest and the filing of a charge sheet often results in half-baked investigations. Furthermore, difficulties in investigation are common due to such factors as quite liberal bail provisions, an archaic evidentiary law provision under which a confession made before a police officer or evidence gathered by the interception of a telephonic conversation or undercover operation is not admissible; the lack of a law which legally binds an accused to give handwriting specimen photo, etc. to the police, and the lack of a witness protection program.[7]

C. MONEY LAUNDERING2C. MONEY LAUNDERING. MONEY LAUNDERING. MONEY LAUNDERING

Money laundering is most apparent in the developed countries where transnational crime groups are operating actively. Hong Kong rates high in this category due to the high profile activity of the Hong Kong Groups. India, Pakistan, the Philippines and Thailand are close behind due also to organized crime group activities in highly lucrative illicit businesses such as drug trafficking, illegal gambling, trafficking in firearms and stolen vehicles, and other economic crimes like credit card fraud, bank fraud and money counterfeiting.

In Hong Kong, following the Drug Trafficking (Recovery of Proceeds) Ordinance of 1995, which deals with the proceeds from drug trafficking, a new ordinance, namely, the Organized and Serious Crime Ordinance was enacted. The Ordinance strengthens law enforcement agencies' power to effectively investigate organized crime and the proceeds of

[6] Purushottam Sharma, "Crime Report on India" (India)

organized crime. The Ordinance makes it an offence for a person to launder another person's proceeds of organized crime.

Countries like Japan, Malaysia and Pakistan have anti-money laundering laws (for proceeds derived from drug offences only), while many others are still drafting or deliberating on their respective laws to govern money laundering.

In India, tainted money is being accumulated by organized racketeers, smugglers, economic offenders and antisocial elements and is adversely affecting the internal security of the country. In order to curb the menace of money laundering, the Government of India is in the process of enacting the Money Laundering Prevention Act 1998. In the proposed act, money laundering has been defined as: "(a) Engaging directly or indirectly in a transaction which involves property, i.e., the proceeds of crime; or (b) Receiving, possessing, concealing, disguising, transferring, converting, disposing of within the territory of India, or removing from or bringing into the territory of India the property, i.e. the proceeds of crime." "Crime" as defined in the Act covers, several penal code offences including cheating, criminal breach of trust, forgery and counterfeiting currency. Of note is that in some other countries, the provisions have been incorporated into the final draft proposed legislation to regulate the laundering of illicit proceeds derived from organized crime including economic crimes and specifically frauds, although they are yet to be enacted. Examples include the Anti-Organized Crime Law of Japan. The Money Laundering Control Act of Thailand is also yet to be enacted, which targets three categories of criminals: narcotics peddlers arm, smugglers and human traffickers.

[7] M.S.Bali, "Effective Counter Measures Against Economic Crime and Computer Crime" (India)

D. CONFISCATION OF ILLEGAL PROCEEDS1IV. CONFISCATION OF ILLEGAL PROCEEDS. CONFISCATION OF ILLEGAL PROCEEDS. CONFISCATION OF ILLEGAL PROCEEDS

Forfeiture of properties is a means to cut off the incentive to commit crime because the offender has to weigh the expected benefit against the likely penalty before committing such offence. Under a new ordinance in Hong Kong, when a person has been convicted of a specified offence or an organized crime, a confiscation order in relation to that person's proceeds from the specified offence or the value of all the person's proceeds from organized crime, will be made.

Bangladesh, Nepal and Pakistan have provisions for the confiscation of illicit proceeds derived from crimes other than drug trafficking.

The Korean Criminal Code stipulates that it is possible to confiscate all original articles resulting from or acquired by crime, unless in the possession of persons other than the offender. However, a substantial amount of illegal economic profits or gains (whether tangible or in tangible) have not been confiscated because they are not in their original form. Thus, notwithstanding the necessity, it is very difficult to confiscate these illegal profits and gains completely because they are quickly transformed.

In this connection, restitution of the property to the victims is an important issue worthy of consideration. There is an opinion that restitution from the confiscated property is one option and the government can utilize sufficiently its power in the confiscation and distribution of compensation to victims. The draft bill of the Anti Organized Crime Law of Japan provides for assistance in the confiscation of illicit proceeds derived from crime including fraud. However, in case the proceeds are property defrauded from the victim, the proceeds are not the target of confiscation. In such instances, the property should be restored to the victim and not confiscated as national revenue.

IV. PROBLEMS IN CONTROLLING FRAUD 1VI. PROBLEMS IN CONTROLLING FRAUDS . PROBLEMS IN CONTROLLING FRAUDS . PROBLEMS IN CONTROLLING FRAUDS

A. PROBLEMS IN THE CRIMINAL JUSTICE SYSTEM

The very nature of fraud often frustrates the early detection of such crime as well as prevents the adequate protection of consumers in most countries of the region. Moreover, other external factors limit the effectiveness of criminal justice officials in tackling existing, as well as newly emerging, fraud such an inadequate or outdated legislation, and the lack of cooperation from victims and the general public.

Common internal p2A. Difficulties caused by the nature of fraud.

Difficulties caused by the nature of fraud. Difficulties caused by the nature of fraudroblems that afflict criminal justice systems in the region include, poor coordination between regulating, investigating and prosecuting agencies; difficulties in obtaining and analyzing evidence; difficulties in proving “mens rea” and conspiracy; slow trials, the scattering of evidence; and, the lack of specialized training and technical assistance for criminal justice officials. Additionally, inefficient pre-trial procedure regarding the freezing of assets to be forfeited is also pointed out. Moreover, inadequate personnel and financial resources for investigation have always been problems in Asia.

B. LACK OF COOPERATION AMONG COUNTRIES2B. LACK OF COOPERATION AMONG COUNTRIES. LACK OF COOPERATION AMONG COUNTRIES. LACK OF COOPERATION AMONG COUNTRIES

In transnational fraud, investigators have encountered various difficulties in obtaining information or evidence. Even though law enforcement agencies sometimes can obtain evidence from abroad informally, the admissibility of such evidence can often be challenged if acquired through improper channels. Difficulty is experienced also in the extradition of fraudsters if there is no common understanding about the seriousness of the crime or extradition treaties between countries.

V. COUNTERMEASURES TO COMBAT FRAUD1VII.

CONTERMEASURES TO COMBAT FRAUDS.
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CONTERMEASURES TO COMBAT FRAUDS

A. SYSTEMATIC COLLECTION OF INFORMATION ABOUT FRAUDULENT BUSINESS2A. SYSTEMATIC COLLECTION OF INFORMATION ABOUT FRAUDULENT BUSINESS. SYSTEMATIC COLLECTION OF INFORMATION ABOUT FRAUDULENT BUSINESS. SYSTEMATIC COLLECTION OF INFORMATION ABOUT FRAUDULENT BUSINESS

To prevent and deter a fraud scheme, it is imperative that a system for collecting information about fraudulent businesses be established in order to have early detection of signals of such crime. The information should be centrally processed and analyzed for use for the more efficient tracking of fraud.

B. INTERNAL SELF-REGULATION AND STRICTER METHODS FOR VERIFYING ASSETS AND SECURITIES2B. INTERNAL SELF-REGULATION AND STRICTER METHODS FOR VERIFYING ASSETS AND SECURITIES. INTERNAL SELF-REGULATION AND STRICTER METHODS FOR VERIFYING ASSETS AND SECURITIES. INTERNAL SELF-REGULATION AND STRICTER METHODS FOR VERIFYING ASSETS AND SECURITIES

An of the important issue for the prevention and deterrence of fraud is the establishment of an internal self-regulation system and the strengthening of management. Much banking and insurance fraud occurs due to the inadequate or collusive verification of assets and documents which form the basis for granting loans or insuring property. To avoid this, it is suggested that financial institutions have a stricter method of verification and inspection of assets and documents. This could be either in the form of inspections by a committee or a system of double inspection to reduce abuses of discretion and collusion.

C. CONSUMER EDUCATION2C. CONSUMER EDUCATION. CONSUMER EDUCATION. CONSUMER EDUCATION

Most fraud preys on the ignorance of consumers. A regular system of educating the public about the details of various fraud schemes would reduce the risk of victimization at the hands of smooth-talking fraudsters. As for banking institutions, police should alert them to the operational risks involved in electronic money transfers and encourage a constant review of their internal systems to identify crucial weak points and install effective control mechanisms.

D. ENHANCEMENT OF THE ROLE AND FUNCTION OF CONSUMER PROTECTION AGENCIES2D. ENHANCEMENT OF THE ROLE AND FUNCTION OF CONSUMER PROTECTION AGENCIES. ENHANCEMENT OF THE ROLE AND FUNCTION OF CONSUMER PROTECTION AGENCIES. ENHANCEMENT OF THE ROLE AND FUNCTION OF CONSUMER PROTECTION AGENCIES

In most countries, consumer protection agencies have only an advisory role and do not have any legal or penal powers. There is need for giving them greater legal powers and adequate resources to make them really effective and efficient.

E. MORE EFFECTIVE AND COHERENT METHODS OF INVESTIGATION 2E. MORE EFFECTIVE AND COHERENT METHODS OF INVESTIGATION . MORE EFFECTIVE AND COHERENT METHODS OF INVESTIGATION . MORE EFFECTIVE AND COHERENT METHODS OF INVESTIGATION

The investigation of major fraud is extremely resource intensive in terms of both time and cost. For the investigation of fraud cases, it is necessary to ensure that a coherent approach is taken; resources on the essential issues involved in complex fraud are concentrated; the speed of investigations and the institution of proceedings is increased; and, expertise is developed in specialized areas of fraud such as computer information management, technological developments, company law and related matters.

The successful detection, investigation and prosecution of fraud cannot be achieved

by investigators without proper coordination and cooperation between concerned agencies. According to the pattern of fraud, investigation team personnel must have specialized knowledge to review and analyze evidentiary material.

F. SPECIALIZED TRAINING FOR LOW ENFORCEMENT OFFICIALS 2F. SPECIALIZED TRAINING FOR LOW ENFORCEMENT OFFICIALS . SPECIALIZED TRAINING FOR LOW ENFORCEMENT OFFICIALS . SPECIALIZED TRAINING FOR LOW ENFORCEMENT OFFICIALS

Law enforcement officials dealing with fraud should have in-depth knowledge of law and related subjects. With this in mind, it is necessary that investigators, prosecutors and judges who have to deal with fraud cases have training course to understand banking, insurance, brokering, commodities markets, and computers and related subjects, including short attachments to such institutions as banks and stock exchanges.

G. RULES OF EVIDENCE AND SPEEDY TRIAL2G. RULES OF EVIDENCE AND SPEEDY TRIAL. RULES OF EVIDENCE AND SPEEDY TRIAL. RULES OF EVIDENCE AND SPEEDY TRIAL

In fraud cases where the fraudulent scheme is often mixed up with normal business, it is very difficult to prove mens rea and conspiracy, which are common elements in most large-scale fraud cases. In some countries, like Japan and the Republic of Korea, there is provision for the admissibility of documents and hearsay evidence under certain exceptional circumstances. Similarly, in fraud cases it is worthy to consider having flexible rules of evidence with respect to mens rea and conspiracy, once essential facts of fraudulent activity are proved by the prosecution.

For fair and speedy trial to be ensured, it is suggested that judges make an intensive trial date schedule and an adequate number of courts be allocated so as to prevent huge backlogs of cases current found in some countries of the region. The establishment of a special court division for economic offences, particularly large-scale fraud should be considered.

H. ANTI-MONEY LAUNDERING LAWS 2H. ANTI-MONEY LAUNDERING LAWS . ANTI-MONEY LAUNDERING LAWS . ANTI-MONEY

LAUNDERING LAWS

Money laundering laws should be aimed at prohibiting and punishing the transfer or concealment of ill-gotten assets and depriving criminals of ill-gotten wealth.

Since criminals like to deal in cash for fear of creating a record, the placement of cash needs to be tightly regulated. Similarly, requirements to report certain transactions to the government have to be an important feature of anti-money laundering efforts. There have to be regulations to force the banks to keep records of their transactions. These records create a paper trail which can be followed years later. The framing of clear rules that serve as a barrier to dirty money, like requiring banks to identify their clients and report suspicious transactions, are necessary.

I. REVISION OF OUTDATED LAWS AND ENACTMENT OF NEW LEGISLATION 2I. REVISION OF OUTDATED LAWS AND ENACTMENT OF NEW LEGISLATION . REVISION OF OUTDATED LAWS AND ENACTMENT OF NEW LEGISLATION . REVISION OF OUTDATED LAWS AND ENACTMENT OF NEW LEGISLATION

The movement of sophisticated fraudulent businesses is much more flexible and advanced than the development of legislation. The complexity of fraud occasionally makes it difficult for criminal justice officials to exercise their powers of investigation and prosecution, and results in a gray area. It is, thus, of the utmost importance to enact appropriate legislation for the newly emerging dishonest behavior such as new types of pyramid sales schemes, fraudulent trading in futures, fraudulent sale of precious metal, and chit funds.

J. MORE SEVERE PENALTY AND SUPPLEMENTAL NON-CONVENTIONAL PUNISHMENTS2J. MORE SEVERE PENALTY AND SUPPLEMENTAL NON-CONVENTIONAL PUNISHMENTS.

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The lenient penalties which frequently are suspended when applied to non-violent fraudsters need to be increased to be of deterrent value, with the sentence above the

suspension level in large-scale frauds.

Apart from normal penalties, non-conventional sanctions or administrative orders, for instance prohibition to engage in certain activities similar to previous fraudulent activities, can be supplemented. In case the offender is found engaging in similar business, there should be a provision for punishment for violation of the order.

VI. INTERNATIONAL COOPERATION

Fraud is no longer a matter confined within national boundaries. Criminals who see legitimate businesses as profiting in international trade, countries becoming more dependent upon one another and technology making the world smaller, realize that their enterprises too can expand by entering international markets. They thrive on new technology and closer ties between countries. At the same time, criminals see large cracks in international law enforcement and take advantage of them. Thus, there is a greater need to broaden the net of law enforcement, particularly by improving the efforts to prevent and control fraud.

Firstly I would like to point out that there is a mixture of different legal systems and policies in Asia. The divergence between civil law and common law jurisdictions has a significant impact with regard to mutual assistance and also in extradition matters. The foremost issue is to understand, recognize and respect each other's differences, without any attempt to interfere or change. Secondly, although several multilateral arrangements exist for regional cooperation in the areas of security and economics, for example, ASEAN (Association of Southeast Asian Nations) and SAARC (South Asian Association for Regional Cooperation), they only focus on a part of Asia and not cover the whole region.

In this chapter, first, I will briefly introduce some regional efforts to improve cooperation in combating transnational crime. Secondly I will touch upon the practice and diversity in the region with regard to international cooperation which shows the necessity of bridging the gap between different systems and practice. Thirdly I will discuss the necessity of information and experience sharing, and I will conclude with a mention of the issue of assistance in forfeiture proceedings.

A. REGIONAL EFFORTS TO IMPROVE COOPERATOIN1V. REGIONAL EFFORT TO IMPROVE COOPERATION. REGIONAL EFFORT TO IMPROVE COOPERATION. REGIONAL EFFORT TO IMPROVE COOPERATION

1. ASEAN Countries2A. ASEAN Countries. ASEAN Countries. ASEAN Countries

Supranational efforts are obviously required to combat cross-border fraud. The building up of mutual trust and a close rapport is necessary. Regional police co-operation has always been viewed as a practical means for local enforcement authorities to pursue criminal matters outside their jurisdiction. As such, to continue this cooperation, the Association of National Police Forces of the ASEAN region or ASEANAPOL was formed in 1980. Conferences are held annually at alternate venues amongst member countries to discuss crime-related matters.

Bilaterally also, the authorities of Indonesia, Malaysia, Singapore, and Thailand have been fostering actively close ties with each other. The focus of regional and bilateral co-operation is centered on sharing criminal intelligence and improving communication networks for the speedy and effective transmission of information from one country to another.

Such efforts at close cooperation have seen many successes. For examples, joint investigations between the (i) Singapore and Hong Kong authorities and (ii) Singapore and Malaysian authorities have crippled syndicates behind a S$38 million credit-card fraud and a US$25 million banking-instrument fraud respectively. Singapore and Malaysian authorities are also working closely on some phantom-ship cases.

Additionally, for years, Cambodian, Vietnamese, Thai and Lao authorities have fostered a close working relationship. They meet regularly to exchange information and experiences; and to discuss, develop and expand on areas of mutual cooperation and assistance in order to better coordinate and enhance in crime prevention efforts in the region.

2. Other countries

Within the SAARC member countries (Bangladesh, Bhutan India, Maldives, Nepal, Pakistan, Srilanka), crime-related information is exchanged and shared.

The Hong Kong Police Force, being a sub-bureau of the People's Republic of China in Interpol, maintains close working relations with most overseas destination countries of Hong Kong migrants, while bureaux handling organized crime at the headquarters level maintain direct dialogue with several overseas agencies, many of which have officers stationed in Hong Kong. Information on triads and criminals is shared on a case-by-case basis in pursuit of the neutralization of such criminal activity. This serves to enhance the good and frequent flow of information, knowledge and intelligence on which ongoing operations can better combat the activities of organized transnational crime groups.

B. PRACTICE AND DIVERSITY IN INTERNATIONAL COOPERATION

1. Extradition and Reciprocity

Transnational crime syndicates and their expanded scope of fraudulent activities has led to the extradition of fraudsters. It is sometimes reported that great difficulty is experienced in the extradition of fraudsters if no extradition treaties exist between countries. Thus, the following question is considered to be one of high importance and seriousness: How to bridge the gap between the treaty prerequisite countries and the treaty prerequisite countries and the treaty non-prerequisite countries?

Some countries, such as the Philippines, Singapore and the United States, require an extradition treaty to grant an extradition request; while others, such as Japan, the Republic of Korea and Thailand do not. Therefore, request by a non-prerequisite country, which does not have an extradition treaty with a requested country, may not be honored by the requested country if the latter is a prerequisite country, and vice versa; because, if the prerequisite country submitted a request of extradition to the requesting non-prerequisite country thereafter, the latter would decline a request from the former on the ground that the prerequisite country cannot meet the requirement of reciprocity.

Such differing policies regarding extradition may produce a loophole in international cooperation and bring about a haven for criminals. A case in point involves Japan and New Zealand. Several decades ago, when the Japanese Government inquired with the Government of New Zealand about the possibility of extradition in a certain case, it was declined due to the lack of an extradition treaty. Thereafter, the Japanese

Government had no option but to decline an extradition request from New Zealand when requested, because the Japanese extradition law requires the assurance of reciprocity.

This is nothing but an intolerable situation from an international criminal justice standpoint. Different nations have different perceptions of the issue. Some may say that it would be desirable to have more extradition treaties between countries. However, in view of the globalization of the economy and the international dimensions of many crimes, particularly fraud, there is need for a minimum consensus at the international level about the types of crimes for which each signatory nation must cooperate for the extradition of offenders.

In this connection, due consideration should be paid to Australian extradition law. Australia was classified as a prerequisite country. However, its law was revised more than a decade ago so as to grant extradition requests from non-parties to its extradition treaties. The revised law allows the government to surrender a fugitive to a non-party country if the requesting country's law grants it an extradition request. This is based on the idea that it would be very cumbersome if the nation tried to conclude treaties with all the other countries. Therefore, treaty prerequisite countries should be flexible if the treaty non-prerequisite countries have a domestic law for extradition, and extradition should be granted even without treaty.

2. Situation of Mutual Assistance

There are primarily two forms of mutual assistance, namely, a formal channel which includes treaty-based agreements, executive arrangements amongst countries and court-to-court assistance based on comity. The other form of mutual assistance is through an informal channel such as the ICPO or direct police-to-police contact based on international cooperation and comity amongst law enforcement agencies.

Although for extradition, some countries are treaty pre-requisite while others are not, in matters of mutual assistance, most of countries are not treaty pre-requisite. There is an awareness that transnational crime can not be treated in isolation and it is essential for all countries to co-operate and assist each other in criminal matters.

Formal mutual assistance in criminal matters was brought about only in response to limited *ad hoc* problems. Informal assistance is often provided by friendly

countries, particularly those with common borders where local legislation does not prevent co-operation, and through organizations such as Interpol. However, such assistance can not extend to areas such as transferring witnesses in custody to give evidence or forfeiting the proceeds of crime without changes in domestic legislation. In addition there is the ever present problem of obtaining evidence in a form that is admissible in the prosecuting country. A major step towards the rectification of these problems is the enactment of domestic legislation on mutual assistance.

Mutual assistance breaks down unless each party is aware of exactly where to direct its request. As time may well be of the essence, it is therefore vital that each country appoint a central authority for the purpose of receiving requests, ensuring that they fall within a category that can be entertained co-ordinating action pursuant thereto and remitting information in the appropriate form. In Japan, Singapore and Sri Lanka, for example, the Ministry of Justice or Home Affairs and the Office of the Attorney General are the official agencies to fulfil these functions.

It is reported from Singapore that, in the absence of a treaty, requests for mutual assistance are made to and received from most Interpol members, particularly from the Hong Kong Special Administrative Region, Indonesia, Japan, Malaysia and Thailand. The majority of the requests are for assistance in tracing the whereabouts of witnesses and to record statements in connection with investigations, tracing records on the movement of suspects in and out of the requested country, and ascertaining if witnesses are willing to testify in a court in Singapore.

The mutual assistance in the context of the Hong Kong Special Administrative Region, mainly encompasses the obtaining of statements from overseas witnesses and the tracing of suspect. Informal requests are mainly conducted by the police (Interpol) or through the requested country's police liason officer attached to an embassy or consulate. On the other hand, formal request, either by Letters of Request or by MLAT, is initiated by the Attorney General. Owing to the international nature of Hong Kong Special Administrative Region, requests for mutual assistance are often made to countries like, Australia, Canada, China, Japan, Singapore, Thailand and the U.S.A.. The offences involved are mainly drug trafficking and fraud.

3. Channels for Mutual Assistance

a) ICPO

The advantage of utilizing the ICPO is that it offers a simplified and speedy process in transmitting a request between two countries. This is important particularly in criminal investigation where time can be a crucial factor in the detection and the prevention of crime, e.g., in the locating of a suspect.

The major disadvantage of this mode of mutual assistance is that information obtained may not be used as admissible evidence in court particularly under the rules of evidence in common law jurisdictions, owing to its informal nature of request and communication.

In spite of this, a trend of regionalisation of similar kinds of police-to-police cooperation is noted. Particularly, countries sharing common borders are keen at cooperating with each other in the fight against transnational crimes. ASEANAPOL is one example of such cooperation. From a police perspective, this is an encouraging phenomenon in which a close relationship is ensured amongst friendly neighboring countries.

b) Diplomatic Channel

Countries using the diplomatic channel do not have an MLAT, as in the case of Japan and Sri Lanka. Evidence can only be collected by the prescribed procedure as stipulated in the requested country. It is noted that evidence obtained through the diplomatic channel is also subject to the rules of admissibility in the requesting country. In this regard, some countries have domestic laws stipulating the authority, legal procedure or admissibility of evidence obtained from overseas.

In Japan, there are the Law for International Assistance in Investigation and the Law for Judicial Assistance to Foreign Courts which specify procedures with regard to a request for assistance from an overseas country. Some countries have relevant provisions on mutual assistance incorporated in their domestic laws of evidence or criminal procedure, e.g., the Hong Kong Special Administrative Region (Evidence Ordinance). Since all requests have to be routed through the diplomatic channel, which is regarded as the most formal communication between two countries, it is argued that

the use of this channel is always time-consuming and involves complicated procedures.

c) Mutual Legal Assistance Treaty (MLAT)

An MLAT is regarded as a modern approach to mutual assistance. The Model Treaty on Mutual Assistance in Criminal Matters by the United Nations General Assembly in 1990, stands as a reference for bilateral or multilateral negoriations in areas of international co-operation. At present, many countries have already concluded treaties on mutual assistance. For example, Thailand has three MLATs with the U.S.A., Canada and the United Kingdom and Northern Ireland. The Republic of Korea has concluded MLATs with Australia, Canada, the U.S.A. and France. An MLAT with Russia was also signed in 1996.

Central authorities are designated in each country under an MLAT to facilitate the making and receiving of a request. This enables a reduction of time required to transmit a request and eliminates unnecessary procedures involved in the execution of a request through the diplomatic channel.

Since an MLAT is the result of negotiations, it provides a convenient mechanism for the contracting countries to address specific evidentiary and policy issues, e.g., admissibility of evidence, confidentiality, bank secrecy, specific grounds for refusal, transfer of witnesses, etc. It is considered that in the absence of a treaty, the request for assistance may encounter certain difficulties such as uncertainty, lack of legal obligation, and inadmissibility of evidence. In order to circumvent these difficulties, it is suggested that an MLAT may assist to streamline the procedure and any divergence in legal issues between the signatories.

4. Admissibility of Evidence and Extent of Mutual Assistance

As for the request for questioning of a witness through diplomatic channels to a foreign investigating authority, the statement is obtained abroad by the investigating authority of the requested country. In common law countries like Singapore and Sri Lanka where the hearsay rule of evidence is strictly applied, such a statement is considered inadmissible at trial. This is because in common law countries, the witness may be required to appear in court, testify and be cross-examined. In Japan, the hearsay rule is also strictly applicable to the admissibility of evidence. However, the hearsay

evidence can become admissible subject to the fulfillment of certain requirements pursuant to the Code of Criminal Procedure. The same law applies to evidence obtained from overseas through the diplomatic or other channels.

As for the request for examination of a witness by a foreign court, a good example is the Lockheed scandal of 1976 in Japan. Japan was able to obtain vital evidence from the U.S.A. to successfully prosecute the persons who were involved in the case. It is also noted that Hong Kong enacted statutory exceptions to the hearsay rule in 1984 to enable statements and evidence obtained from overseas courts as requested under Letters of Request.

As for the request for a witness from abroad to appear before a court of a requesting State to make a statement or provide evidence, the practice of common law countries, like Singapore, is that such a witness must appear before the requesting court for cross-examination, otherwise his evidence is inadmissible under the hearsay rule. However the trend is that a person whose statement or evidence is required may appear with his consent before the appropriate authority of the requesting country, i.e., transfer of witness. Such a person cannot be compelled to go abroad to testify. Should he agree to go abroad and testify, there will be no problem of admissibility of such evidence

The domestic laws of some countries, especially civil law countries, do not allow criminal investigations to be conducted by a foreign investigator on the ground of sovereignty.

Requests for a judicial authority to convene a temporary court in the requested country for the purpose of questioning a witness would solve the problem of admissibility of evidence obtained through this method. However, this method raises the delicate issue of a country's sovereign right. In spite of this, Italy and the U.S.A. have entered into bilateral treaty which permits an authority of the requesting country, an accused person and his counsel to be present and question a witness through a local judge, at the trial in the requested country.

In a Hong Kong fraud case, the key witness emigrated to Canada and refused to return to Hong Kong to give evidence. A Letter of Request was thus made to the Supreme Court of Canada requesting evidence to be taken from the witness thereat.

Since the defense counsel had insisted on examining the witness, the defense counsel, a prosecutor and a police officer from Hong Kong attended the court in Canada.

In Thailand, the court only allows foreign judicial officers, defense counsels and police officers to visit a Thai court for the purpose of witness examination. Nonetheless, the actual examination has to be conducted through the Thai court judicial or police officers.

5. Reciprocity and Double Criminality in Mutual Assistance

a) Reciprocity

Reciprocity is an important issue and forms the basis of international cooperation. However, a considerable degree of flexibility is necessitated in matters of mutual assistance in order to facilitate the truth-finding process in which the ultimate objective is to bring criminals to justice. It is noted that the international community has recognized the importance of mutual assistance, and more and more countries have extended assistance without explicit requirement of a reciprocity assurance. In fact, Hong Kong extends mutual assistance without an assurance of reciprocity.

b) Double Criminality

A well-recognized issue in this field is whether or not to require double criminality when granting a request from other countries. While some countries, such as Japan and the Republic of Korea, still require it, the number of countries which do not insist on it has increased in recent years. By and large, this reflects the attitude taken by most countries with regard to the requirement that the subject offence should also be punishable in the requested country. However for flexibility, it is not necessary that the criminal offence be precisely the same under the national laws of both parties. Flexibility is all the more necessary as far as economic crime is concerned, since the laws regulating the economic activities may considerably vary from country to country. The basic idea is that the essential constituent elements of the offence should be comparable under the law of both states. The recent trend for some countries is to relax this principle in the area of mutual assistance.

C. INFORMATION AND EXPERIENCE SHARING

New types of frauds are coming to light in various countries, and resultantly new difficulties arise relating to the laws and procedures of each country to successfully prosecute fraudsters. Sharing information and experiences in this regard could help plug the loopholes in laws and procedures. The International Criminal Police Organization (INTERPOL) has been the main international agency for coordinating exchange of information between ASIAN nations in this regard. Some ASEAN and SAARC fora have touched upon this issue. However, there is a greater need to further strengthen information and experiences sharing relating to fraud as transnational criminal organizations continue to expand their illicit activities including fraud over a broader area, thereby becoming even more internationalized and complicated.

1. Information sharing

As fraud is increasingly being committed in a more sophisticated manner and extending across national borders, traditional forms of international co-operation such as international mutual assistance after detecting a specific fraud and its subsequent investigation are not enough. Information sharing at an earlier stage is also becoming important.

Awareness of the necessity of this type of co-operation has grown as, for example, the ability for a particular nation's police to detect fraud schemes is becoming more and more difficult in light of the fact that fraudsters are moving more rapidly and internationally, and resultantly evidence can be destroyed or concealed quickly. To this end, law enforcement authorities that obtain information on the commission or possible commission of a fraud in foreign countries should provide said foreign countries with such information.

On the other hand, as law enforcement agencies are performing their duty within the framework of domestic law, there may be some limitations as to the usage of information gathered by such agencies. Taking into account the balance between the necessity for international cooperation regarding transnational crime and the protection of domestic privacy interests, each nation should continue to study to what extent information can be provided to foreign law enforcement agencies.

Information sharing could be expedited if the law enforcement agencies contacted each other directly. In such a case, it is desirable to designate central contact points in order to facilitate smooth information sharing. It would be appropriate for the central contact point to be designated in such a way for it to co-ordinate its role and the role of the National Central Bureau of ICPO which has long performed this important role of information sharing and has served a function similar to a central contact point.

2. Project based approach in international co-operation

The Project-based approach in international co-operation is another useful measures against transnational crime, including fraudulent activities. Specifically, it entails law enforcement authorities of different nations (with a common purpose to fight against transnational organized crime) to establish a project and combine their power and capability mainly by information sharing in pursuit of a mutually beneficial fruitful outcome.

In the context of fraud, obtaining detailed information of specific fraud syndicates and their activity; tracing the international flow of laundered money derived from fraud; and detecting the criminality of a particular criminal, can be considered examples of such a project.

In promoting the project, important factors to be considered are the selection of the target of the project, allocation of role or work, and the proration of expenses. With this approach, the law enforcement agencies recognize the necessity of information sharing as one type of co-operation even without the request from the other country.

3. Seminar and Training

The training of criminal justice personnel is another component of information and experience sharing. Seminars and training courses are steps for disseminating information and experiences regarding the current situation of fraud in regards to legislative developments, investigation and prosecution, and newly highlighted countermeasures such as confiscation of proceeds.

UNAFEI is now conducting the 110th International Training Course with the main theme of "Effective Countermeasures against Economic Crime and Computer Network Crime", which includes discussions on financial fraud. UNAFEI takes up this

same issue, from time to time, to disseminate information on newly emerging issues concerning fraud in the Asia and the Pacific region and to deliberate on contemporary countermeasures.

D. ASSISTING IN FORFEITURE PROCEEDINGS

Assistance in forfeiting or confiscating the proceeds of crime has now emerged as a new instrument in international cooperation. This includes international tracing, freezing and forfeiting or confiscating of assets derived, directly or indirectly, from criminal activity. Although this form of cooperation emerged very recently, it has since then been incorporated into subsequent treaties because in the past, even if the offender was punished by imprisonment, he was still capable of enjoying his illicit proceeds after serving his penalty.

Forfeiture of properties is deemed an effective deterrent against certain forms of criminality such as economic crime including fraud, narcotic offenses, and transnational organized crime since it can prevent the evasion of legal sanctions arising from loopholes which enable the illicit proceeds to be transferred from the state where the crime is committed to another state.[8]

However, like that relating to the execution of foreign judgements, this category of cooperation is another area which affects the sovereignty of the requested state. Similarly, the attitude of various states in regards to this issue varies greatly. However more and more authorities are becoming aware of the speed with which money is being moved between jurisdictions by both traditional and underground banking systems[9] and responding accordingly. For example, the draft bill of Anti Organized Crime Law of Japan provides for assistance in confiscation of illicit proceeds derived from certain crimes including fraud. According to the draft bill, international cooperation is applicable to a request for the execution of judgement of confiscation or collection of equivalent value, or the freezing of property, made by a foreign country regarding certain crimes including fraud in criminal cases.

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[8] Suchart Traiprasit, "International Cooperation in Criminal Matters" (Thailand)

[9] United Nations, "Manual on the Model Treaty on Extradition and Manual on the Model Treaty on Mutual Assistance in Criminal Matters", International Review of Criminal Policy Nos.45 and 46

Some nations feel that the idea of assistance in forfeiture is still too novel. In some countries, cooperation through forfeiture proceedings as it appears in the mutual assistance treaties is realized by sending information to the state where the property is located and requesting that state to carry out the proceedings as may be possible under its laws. Many countries in Asia are still drafting legislation on the proceeds of crime, but it is confined mainly to illicit trafficking in drugs so as to give effect to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

The achievement of cooperation by this means depends substantially on the domestic laws of the requested state regarding the forfeiture of property. Thus, adequate legislation should be provided so as to enable sufficient assistance in forfeiture proceedings.

In this connection, the ability to gain information about a person's financial affairs from banking and other financial institutions is central to international cooperation for the control of the proceeds of crime. Banking secrecy and privacy law should not inhibit proper inquiries, whether domestically or internationally.[10]

VII. CONCLUSION

In purely financial terms, fraud is the most damaging of all crimes, but traditionally society has adopted an ambivalent attitude toward fraud. The general public is often little concerned when large enterprises such as banks and insurance companies are successfully targeted by professional fraudsters. Fraud is a complex crime and investigating and prosecuting agencies face numerous difficulties in preventing, detecting and successfully prosecuting fraud cases. However criminals face no such problems. They have discovered that fraud, particularly those with international dimensions, can pay handsomely, with minimal risk of a lengthy prison sentence. Therefore law enforcement agencies in every country have to apply the full sanction of the law and all the means to curb it. For purposes of international cooperation, investigations need to be made more effective to ensure that investigators give the same high priority to

[10] ibid.

international investigations of fraud as that given to domestic cases. Finally, it has to be realized that fraud not only causes damage to specific individuals but also to the society as a whole. All organs of society, therefore, have to cooperate in combating fraud.