THE EFFECTIVENESS ENHANCEMENT IN ENFORCING FINANCIAL CRIME: A CASE STUDY OF WITNESS AND EVIDENCE MEASURE

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THE EFFECTIVENESS ENHANCEMENT IN ENFORCING FINANCIAL CRIME: A CASE STUDY OF WITNESS AND EVIDENCE MEASURE

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ABSTRACT

A study of the Effectiveness of Enforcing Financial Criminal Laws : a case study of witness and evidence measures aims to analyze the meaning, models and nature of the economic crime, (its criminals, and its factors), to study problems and limitations in evidence search and collection regarding financial Crimes; to study measures taken against assets and the financial crime under the anti-money laundering law of Thailand, and to study and analyze approaches to enhance effectiveness in the enforcement of evidence measures against the financial crimes in Thailand.

Findings Show that Thailand faces problems and limitations with search and collections of financial crimes evidences, particularly in the cases of cheating, security offence, stock market, public fraud under the criminal code or under ordinance and ill-mobilized network because they are sophisticate and complicate economic crimes. Technologies were used for offending and concealing evidences while performing organized and transnational crimes which in turned makes it difficult for investigations and interrogations of evidence collections and the prosecutions of criminals. Also, taking action against assets from money laundering at the moment are likely ineffective.

Recommendations were:

1) The evidence measure: the conspiracy and confession negotiations for the benefit of evidence collections are necessary. The court should better amend the principles and concepts of the current regulations and laws to admit e – testimony. The Criminal Witness Protection Act BE 2546 (2003), Article 8 could be adopted as special measure for witness protection.

2) The asset measure under the money-laundering law: Anti-Money Laundering Act BE 2542 (1999) Article 3 of the 3rd and the 4th predicate offences should be amended and international cooperation and assistance on criminal cases should be enhanced, and

3) The social measure: “good governance” in the financial institutions should be promoted and well supervised while social control should be applied to prevent financial crimes.

Approaches as mentioned above can appropriately be adjusted to meet the Thai Contexts. These measure would be more effective in the enhancement of enforcing financial crime deterrents.

KEY WORDS: EFFECTVIENESS/FINANCIAL CRIME/ EVIDENCE

230 pages

การเสริมสร้างประสิทธิภาพในการบังคับใช้กฎหมายกับอาชญากรรมการเงิน : กรณีศึกษามาตรการด้านพยานหลักฐาน
THE EFFECTIVENESS ENHANCEMENT IN ENFORCING FINANCIAL CRIME: A CASE STUDY OF WITNESS AND EVIDENCE MEASURE

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บทคัดย่อ

การศึกษาวิจัยครั้งนี้ มีวัตถุประสงค์เพื่อศึกษาถึงความหมาย รูปแบบและลักษณะของอาชญากรรมทางเศรษฐกิจ ลักษณะของอาชญากรทางเศรษฐกิจ และปัจจัยที่ก่อให้เกิดการประกอบอาชญากรรมทางเศรษฐกิจ ศึกษาปัญหาและอุปสรรคในการแสวงหาและรวบรวมพยานหลักฐานในคดีอาชญากรรมการเงิน และศึกษาถึงมาตรการดำเนินการกับทรัพย์สินกับคดีอาชญากรรมการเงินตามกฎหมายป้องกันและปราบปรามการฟอกเงิน เพื่อนำผลจากการศึกษามาวิเคราะห์และเสนอแนะแนวทางการเพิ่มประสิทธิภาพในการบังคับใช้มาตรการด้านพยานหลักฐานกับคดีอาชญากรรมการเงินของประเทศไทย

ผลจากการศึกษาวิจัยพบว่า ประเทศไทยประสบปัญหาและอุปสรรคในการแสวงหาและรวบรวมพยานหลักฐานในคดีอาชญากรรมการเงิน โดยเฉพาะอย่างยิ่งในประเภทคดีความผิดเกี่ยวกับการทุจริตในสถาบันการเงินคดีความผิดเกี่ยวกับหลักทรัพย์ตามพระราชบัญญัติหลักทรัพย์และตลาดหลักทรัพย์ คดีความผิดเกี่ยวกับการฉ้อโกงประชาชนตามประมวลกฎหมายอาญาและพระราชกำหนดการกู้ยืมเงินที่เป็นการฉ้อโกงประชาชน และความผิดเกี่ยวกับการระดมเครือข่ายโดยมิชอบ เนื่องจากความผิดประเภทนี้เป็นอาชญากรรมทางเศรษฐกิจที่กระทำโดยผู้มีความรู้ความชำนาญ ความผิดมีลักษณะที่ซับซ้อน มีการใช้เทคโนโลยีช่วยในการกระทำความผิดและปกปิดพยานหลักฐานและกระทำเป็นขบวนการในรูปแบบขององค์กรอาชญากรรมและองค์กรอาชญากรรมข้ามชาติ ทำให้มีความยากในการสืบสวนสอบสวน รวบรวมพยานหลักฐานและดำเนินคดีเพื่อนำตัวผู้กระทำความผิดมาลงโทษ อีกทั้งมาตรการดำเนินการกับทรัพย์สินที่เกี่ยวกับการกระทำความผิดตามกฎหมายฟอกเงินในปัจจุบันยังไม่มีประสิทธิภาพเท่าที่ควร

ผลจากการศึกษาวิจัย ได้เสนอแนะ 3 มาตรการสำคัญเพิ่มประสิทธิภาพในการดำเนินคดีอาชญากรรมการเงิน กล่าวคือ

1) มาตรการด้านพยานหลักฐาน โดยเสนอให้นำมาตรการสมคบ และการต่อรองการรับสารภาพ มาใช้เพื่อประโยชน์ในการแสวงหาพยานหลักฐาน การเสนอให้ศาลปรับหลักการและแนวคิดเพื่อรับฟังพยานอิเล็กทรอนิกส์ให้มากขึ้น การแก้ไขเพิ่มเติมพระราชบัญญัติคุ้มครองพยานในคดีอาญา พ.ศ. 2546 ในมาตรา 8 กำหนดให้คดีความผิดเกี่ยวกับอาชญากรรมการเงินให้เป็นประเภทคดีที่สามารถเข้าสู่การคุ้มครองพยานตามมาตรการพิเศษ และ 2) มาตรการด้านทรัพย์สินตามกฎหมายฟอกเงิน โดยเสนอให้แก้ไขเพิ่มเติมตามมาตรา 3 แห่งพระราชบัญญัติป้องกันและปราบปรามการฟอกเงิน พ.ศ. 2542 ในความผิดมูลฐานที่ 3 และ 4 รวมถึงมุ่งเน้นเรื่องการส่งเสริมความร่วมมือและการให้ความช่วยเหลือระหว่างประเทศในเรื่องทางอาญา และ 3) มาตรการทางด้านสังคม โดยส่งเสริมให้สถาบันการเงินดำเนินงานภายใต้หลักธรรมาภิบาลและการกำกับดูแลกิจการที่ดี และการนำแนวคิดของมาตรการควบคุมทางสังคม (Social Control) มาปรับใช้ เพื่อป้องกันปัญหาอาชญากรรมการเงิน โดยแนวทางดังกล่าว หากสามารถนำมาปรับใช้ ให้เหมาะสมกับบริบทของประเทศไทย จะเป็นการเสริมสร้างประสิทธิภาพในการบังคับใช้กฎหมายกับอาชญากรรมการเงินของประเทศไทยได้อย่างมีประสิทธิภาพยิ่งขึ้น

คำสำคัญ: ประสิทธิภาพ/ อาชญากรรมการเงิน/พยานหลักฐาน

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CHAPTER I
INTRODUCTION

1.1 Background and Significance of the Problem

Riddles of economic crime are crucial to Thailand particularly the financial crimes which are the offenses of finance seriously affecting social, economy and security of a country. It has been witnessed that financial crimes never failed to lead most economic crises. Besides their catastrophizing economies and people directly involved, they also holistically impact and accelerate the state to pivotally set the policy of prevention and suppression.

Natures of the financial crime have been developed into more sophisticated styles and hard to impose lawsuit. By the evolution of the current globe with communication technology to speedily hook information network with borderlessness, business affairs have been widely expanded and maximized gains whereas criminal rings have been developed into the “organized crime”. Organizations formed networks with ultimate influential individual in crimes as big boss and mandated illegal businesses. Business gains or profits were consecutively laundered and legalized to feed the organization and to stretch out its networks. In addition, some parts of the money were spent in graft with some state authorities and backing both local and national politicians to finance and to flow the facilitation of illegal business affairs including defending lawsuits. It turns impossibility to trace the big boss who is the backdrop and enables the organized crime to expand its network influences to create calamities to countless countries in every region (Komkris Dullayaphitak, 2012) and reset to be the transnational organized crime networking from two countries unto international level, which escalates criticality of the criminal problems (the United Nations Convention against Transnational Organized Crime, 2000).

The financial crimes are the offenses of finance and the financial institutions such as offenses of the financial institutions, of the stock exchanges, of public fraud, of direct sales, of illegal business affairs, of bankruptcy by fraud, of

customs laws, of taxation, of counterfeit goods, of computer, and of credit card. Economic criminals are experts in applying advanced technology to commit crime and become hard for investigation, interrogation and arrestment. They have ways to cover their offenses and ways to eliminate evidences which bring difficulties to them. Such types of crime ease coverage, elimination, and cleverly cover evidences. And with monetary power gained from crimes, it brings dark influence to gag witnesses, bribes police and state agents, includes hiring others to admit crimes as a replacement. It is likely impossible to bring offenders to punishment because of their acts are masked, hidden and difficult to notice or to be found. Sometimes victims felt unvictimized, without the image of horrifying public, without threat or terror, without vengeance made to the onlookers, and not only make victims felt non-victimization but just feel common business disadvantages only. However, but when realizing the victimization, it is too detrimental for the state to ameliorate and to solve. Natures of the economic crime endanger public peace and welfare due to damages of large amount of money with great number of victims.

Searches and collections of criminal financial evidences are very critical and indispensable to prove guilt or innocence of the alleged (Thawee Sordsong, 2010) but the identical financial crime is significantly on indicia or circumstantial evidences rather than witnesses demanded by the court in order to weigh punishment. Admissibility of the indicia for punishment, the indicia must be concrete, evidently identifiable on real offense and closest to the offense. Such quality of collecting evidences requires special methods and measures on their searches, necessity of deliberation and prioritizing e-evidences and assistance from the public prosecutors who have experience on lawsuits and know well the procedures of the court which evidences eligibly serve to prove guilt, which ones do not and which ones might be doubtful-led and favorable to the defendant. In addition, most cases of the financial crime, the state is unable to charge criminal lawsuit with the principal or the mastermind of the organization with the incompleteness of evidences and eligible to enter the justice administration. The major root is most evidences to prove guilt of the defendants are under their possession, well concealed and well secured, particularly offenses of the unfair deal of trading securities, where most evidences are with the defendants. Moreover, such deeds are performed by the erudite and specialists and

brighter than common criminals. This includes accomplice and well concealment of the offense. So, it is tough to identify guilt of the defendants without doubts for the sentence.

To leverage the efficiency of law enforcement against the financial crimes needs to find modern approaches and advanced investigation methods and enables to efficiently collect evidences. In this study, the researcher focuses on the model of the financial crime affecting the national economic system, concentrating the intricate laws, cases, problems and limitations to find and to collect evidence in each case, i.e. the financial institution fraud under the Financial Institution Business Act BE2551 (2008), the security offence under the Securities and Exchange Act BE2535 (1992), the public fraud under the Criminal Code, and Decree on Fraudulent Loan BE2527 (1984), and the Direct Sales and Direct Market Act BE 2545 (2002). Also, the study is focused on applying measures of efficient evidence and should be enforced on financial crimes in Thailand though investigations and analyses the measures of evidence in abroad, and measures of taking action on assets under the anti-money laundering law. Findings would have been guidelines to upgrade efficiency of law enforcement and the achievement of evidence measures, to upgrade efficiency of law enforcement in taking action with assets by imposing the anti-money laundering in Thailand where it will lead to the very solution of the financial crimes.

1.2 Research Questions

1) Currently, facing problems and limitations, how can Thailand search and collect the following evidences?

1.1) The financial institution fraud under the Financial Institution Business Act BE2551 (2008),

1.2) The security offence under the Securities and Exchange Act BE2535 (1992), and

1.3) The public fraud under the Criminal Code and Decree on Fraudulent Loan BE2527 (1984), and the Direct Sales and Direct Market Act BE 2545 (2002)

2) Are the evidence measure proceedings sufficiently efficient against the financial crimes? How?

3) How can evidence measures in the financial crime be improved for their efficiency and achievement?

4) Are measures of taking action sufficiently efficient with assets in the financial crimes through the anti-money laundering? And how can it be improved?

1.3 Research Objectives

1) To study the meaning, models and nature of the economic crimes, the nature of economic criminals, and factors creating economic crimes,

2) To study problems and limitations in searching and collecting evidences in the cases of financial crimes, type of offense on financial institution fraud, security fraud, public cheating and fraud, public cheating an fraud on loan and offence of direct sales,

3) To study measures of taking action against assets and the financial crime under the anti-money laundering law of Thailand, and

4) To study and analyze approaches to upgrade efficiency in the enforcement of evidence measures against the financial crimes in Thailand.

1.4 Scope of the Study

This investigation is scoped under laws and types of offence intricate to the three following bills, i.e.

1) The financial institution fraud under the Financial Institution Business Act BE2551 (2008),

2) The security offence under the Securities and Exchange Act BE2535 (1992), and

3) The public fraud under the Criminal Code and Decree on Fraudulent Loan BE2527 (1984), and the Direct Sales and Direct Market Act BE 2545 (2002)

These are the leads to analyses and syntheses of problems and limitations of the law enforcement, particularly, the evidence measures, and measures of taking action against assets under the anti-money laundering law.

1.5 Definition of the Terms

Economic Crime is referred to a law breaking affecting the national economy and security unrestricted to the criminal laws only. The offenders likely have social status, high work position and knowledge-edged (Prof. Veeraphong Boonyopas, 2008:46).

Financial Crime is referred to the lawbreaking of monetary system and banking which affect the national economy and security. In this study, they are referred to law breaking against the financial institution fraud under the Financial Institution Business Act BE2551 (2008), the security offence under the Securities and Exchange Act BE2535 (1992), and the public fraud under the Criminal Code and Decree on Fraudulent Loan BE2527 (1984), and the Direct Sales and Direct Market Act BE 2545 (2002).

The Financial Institutions are referred to
(1) Commercial banks
(2) Finance companies
(3) Credit Foncier companies
(The Financial Institution Business Act BE2551 (2008), Article 4)

Security Company is referred to a financial company or institution licensed to run the security affairs (The Securities and Exchange Act BE2535 (1992), Article 4).

Evidence Measures is referred to the legal measure related to investigation, interrogation, evidence collection and fact finding such as the Criminal

Procedural Code, the Anti-Money Laundering Act BE2542 (1999), and the Special Investigation Act BE2547 (2004), and so on.

Evidence Collection is referred to gather testimonies aiming to ensure that those testimonies are accountable and eligible. It might include investing backgrounds and evidences from persons such as witnesses, petitioners, debtors, creditors, documents such as documental forgery, or tangible evidence such as destroyed objects, fingerprints and so on.

Investigation is referred to the fact finding and evidence which the authority or police act by authorization and duty to keep peace and order of people and to know details of wrongdoing (the Criminal Procedural Code, Article 2 (10)).

Interrogation is referred to the collections of evidences and other procedures under the pro visions of the Criminal Procedural Code where the interrogation officers resume according to the accusation to find facts or to prove guilt and to sue the wrongdoers to lawsuit (the Criminal Procedural Code, Article 2 (11)).

Financial Interrogation is referred to trace the financial business gained from fraud and includes reproduced assets from those moneys. It is to check the financial business and the financial institutions, banks, security markets, cash trails, and monitoring assets gained from frauds and reproduction through laundering (Thawee Sordsong, 2010).

Organized Crime is referred to a group of more than three persons cooperate to a certain period of time and to act any deeds aiming to evilly violate and to gain money, assets and other material benefits either directly or indirectly (the Anti-transnational Criminal Organization Act BE2556 (2013), Article 3, promulgated in June 18, 2013 and completely enforced in September 14, 2013).

1.6 Research Methodology

The research methodology of this study has been select by the researcher as below:-

This is a qualitative research exploring Thai and foreign documents in areas of law provisions, law texts, books, journals, articles and other documents including IT to search what involve the financial crimes on frauds in the financial institutions, frauds on securities, public cheating and fraud, and offences of direct sales through in-depth interview from 10 key-informants who are experts with experiences in imposing lawsuit of financial crimes.

This is the lead to analyses and syntheses of problems and limitations regarding evidences of the financial case and the action taken against assets under the anti- money laundering law. In addition, this study has been focused on the evidence measures with the cases of foreign financial crimes to be analyzed and adapted to meet the situation in Thailand.

1.7 Expected Benefits

1) To know the meaning, models and nature of the economic crimes, the nature of economic criminals, and factors creating economic crimes,

2) To know problems and limitations in searching and collecting evidences in the cases of financial crimes, type of offense on financial institution fraud, security fraud, public cheating and fraud, public cheating an fraud on loan and offence of direct sales,

3) To know measures of taking action against assets and the financial crime under the anti-money laundering law of Thailand, and

4) To enable to propose approaches to upgrade efficiency in the enforcement of evidence measures against the financial crimes in Thailand.

CHAPTER II
LITERATURE REVIEWS

2.1 Basic Knowledge of Economic Crime

The concept of the economic crime studies began in the 19th century by criminologists, social scientists and lawyers. They shifted from the belief of crime began from the poor since they had different grounds of their social conditions and their economic conditions. This rise was the continuity from 1927 during the world regression especially in USA where business and trade crimes surged, for example, offence relating to cheques, counterfeiting and alteration of monetary documents, offence of cheating and fraud in trade and so on. They seriously harmed US economy in associated with laws in those days had not many regulators. During this Great Depression in USA, Edwin H. Sutherland studied white collar crimes who exploit their work positions to offend and called it “Whit-Collar Crime” (Sutherland, E.H., 1961).

Sutherland was the first criminologist who termed “the White-collar Crime” since during the conference of social scientists in USA in 1939; Sutherland attacked criminologist forbearers who believed crime came from poverty and social conditions. His critiques emphasized social failures to handle the white-collar criminals and pointed that this kind of criminals were empowered in their position and study and it was tough to enforce laws.

2.1.1 Social Transitions and Criminal Models

The current societies restlessly develop world changes. Crimes variously emerge, are more complicated, business venture and variety of technologies integrated to offend which makes law enforcement difficult. Sometime they run as multilevel of networks AKA transnational crimes. Such crimes are called the white-collar crime, business crimes or economic crimes. Before adding the economic crimes, it is necessary to clear types of crimes in societies. They are attributed by the criminal

behaviors and through their continuity of behaviors as below (Phajongjit Athikhomnanta, 1983).

1. Occasional Crimes: they are unintentionally violate social orders but by negligence, and imprudence and offend. This type occasionally commits crimes but normally they respect laws and they are unaware of committing crimes such drive and kill, and unreasonable self-protection. With the criminal law-based analysis, the occasional criminals are not deserved called criminal since there is the absence of intention to offend.

2. Habitual Crimes: generally tier physical deforms are not found but found with persons who are unable to adjust themselves to the social norms. When they are more oppressed by societies; they commit crimes. Even if being punishment, they commit recidivism after dismissal without fear. This is counted habitual crimes.

3. Street Crimes or fundamental Crimes such as theft, robbery total and gang robbery, they are crimes found in every society since ages. They are committed to meet the needs of property for the criminals themselves.

4. Violent Crimes: they are offences aimed to use force assaulting persons or properties, such as intentional murder, rape and assault.

5. *Professional Crimes:* they are crimes committed by trained professionals especially safe broker, snatching, hired gunmen, and professional gamblers and so on. They live on professional crime or being hired for their income and disguise themselves in urban societies living in luxury and seek simple chances to commit crimes. This type hates violence or assaults but rather than focus on money and excited adventures. Some societies unlikely react to this type of crime and the laws thus moderately impose punishment.

6. Political Crimes: they are offences administrated by criminal groups. There are plots prompt to arrestment with assignments to commit crimes. This type is influenced by money with subsidies to recruit voters for reciprocal gains or to gain some privileges. Such offences are treason, offence against national security, and sabotage and so on. Within political ring, there are many associated

economic offences. These criminals have double statuses of being elected from voters and as suite bandits.

7. White Collar Crime: they are cheating and fraud, corruption by position, smuggling, and state tax fraud. This type of criminals is likely famous persons, public figures, and high class people. It is also called the occupational crime such as offences of the government officials, businessmen, and merchants and so on who exploit their influence in many affairs to seek illegal gains. It is counted an offence against trust such as deception which matches variety of frauds (Prof. Veeraphong Bunyopas, 2006).

8. Organized Crimes: it is a group of individuals corporate into an organization to run their affairs with plans, and divisions with chief and operate the illegal affairs to gain income from every corruption though it is malicious and attempt to avoid legal grid. Their dishonest jobs are such as trafficking, casinos, whorehouses, brewed bootleg liquor, smuggling, national and international corruptions, and extortions for protection and so on. This type is violent crime and reacted against their behaviors by societies but unreached by laws. They are unable wiped away from societies because of their monetary influence. In addition, they are backed by political influences which enable them to spend on modern devices and buy the state agencies to help them commit crime. At present, the domestic organized crimes have been mutated to transnational organized crimes.

With the eight models classifying the types of crime through behaviors of offenders; it is found that they are detrimental to the national economy, businesses, financial institutional confidence, while being hard to enforce law, which is the white-collar crime or the occupational crime. Thailand is familiar with this type of crime known as economic crime or business crime. They will further be discussed.

2.1.2 Meaning of "Economic Crime"

It is differently called such as white-collar crime, or business crime, or commercial crime, or corporate crime, or organized crime or occupational crime, which have similar meaning. Offences for economic gains are lawbreaking against economy and commerce which affect the national economy and security. It should be

called “economic crime” where it is relevant to the objectives of committing crime and covers the entire economy (Prof. Veeraphong Bunyopas, 2009).

Economic criminals are in the group of professional criminals using high-techniques to commit crimes. They are not only bright, with experience, experts or specialists but also more gifted than common professional criminals (Prof. Veeraphong Bunyopas, 1993:1-2). So,

1) Given better backgrounds than common professional criminals with brightness, good personality and popularity,

2) Applying high effective techniques to commit crime; so when crimes have been committed, they are hard for investigation, interrogation and arrestment.

3) Crimes have been committed without terrorizing public, and at first free from vengeance from victims;

4) Having techniques to eliminate evidences and leaving least tide from them; and

5) They are crimes with high returns and their lifestyles are socialized with good citizens.

The meaning of “Economic Crime has been defined by many theorists, operationists, justice personnel and persons of interested. It is differently called such as white-collar crime, business crime, commercial crime, corporate crime, organized crime, and occupational crime. “Economic Crime” has been differently defined, e.g.

In the “White-collar Crime”, Sutherland defines that it is a crime committed by high-class people, high work position and plays leading role in career; however, he emphasizes the social roles of the criminals (Ellen S. Podgor, E.S. 1993).

The American Bar Association Committee defines “economic crime’ that it is a lawbreaking behavior without showing violence and mostly involves frauds, counterfeit and alteration, concealment, misappropriation, duty misconduct and deception of laws (Committee on Economic Offenses, Section of Criminal Justice, 1976).

Dr. Kamol Supriyasunthorn defines “economic crime” or “white-collar crime” that it is a lawbreaking, an act of distrust, disconfidence, dishonesty and imprudence in a career by the person of high position, who is accepted, esteemed or by individual with high-class status, wealthy status or political status in order to gain money, rights or properties by avoiding pays or rights or property losses without any returns or to gain advantages or benefits for oneself or for others. It is also found that there are 14 roots of economic crimes in SET (Stock Exchange of Thailand), i.e. 1) competitive culture, 2) opportunity structure, 3) motivation, 4) belief in capitalism, 5) business concept, 6) trading traditions, 7) social structure, 8) law enforcement, 9) life and business goals, 10) impact from offence, 11) punishment, 12) social justice, 13) worth and risk in investment and 14) corrupted government officials (Kamol Supriyasunthorn, 2008).

It is possibly concluded that “economic crime” is a lawbreaking of finance, banking, trades and commerce to gain properties or business or personal advantages and impacts the national economy and social. This new definition could completely call the “white-collar crime” the very “economic crime”.

Deliberating the meaning of “economic crime” through legal criteria is insufficient. Lawyers have to use prudence more that legal justice and prioritize fair economy and social as the complement (Prof. Veeraphong Bunyopas, 2009).

2.1.3 Natures of Economic Crime

Economic Crime is the social mayhem and deep-rooted which can all the time happen everywhere with everyone. In general, it cannot be seen or appears no victims. Some do not even know they are victimized though being cheated and lose wealth (Khemchai Chutiwong, 1987: 37-38).

The nature of economic crime is not only violating laws, requirements, official regulations, or civil violations but also criminal offence which evidently endangers societies. Economic criminals has motive and expect unlimited monetary gains. Economic criminals are sometimes the famous persons and trusted by societies. Economic crimes are detrimental to financial security of individual, public and private

enterprises. They are widespread and a social threat and they involve money laundering which will further lead to baking illegal affairs.

Natures of economic crime are classified as below (Siddhi Jiraroj, 1987)

First: a lawbreaking or latent offence within licensed affairs with divisions of models on either closed operation or opened operation but illegal such as deforestation, running black markets, illegal monetary affairs, financing, banking, trust companies, share affairs and share business chain (pyramid) and so on under the Act provisioned that it is guilty.

Second: there is technique to conceal offence and attempts of eliminating evidences to free oneself. Economic crime is complex but gradually acting and taking long time to realize damages. It toughens evidence searches and is behind situation which allows this crime to well cover, destroy and hide their evidences. With wealth power gained from economic crimes, it forms dark influences to shut witnesses' mouths, bribing police and government authorities, and hires scapegoats which disables to cut its real root.

Third: being the behavior of concealment, parasite, unlikely to notice and to find fault; sometimes, victims are unaware of being under victimization since then they have been offended. In association with threats, terrorization and intimidation are unfound directly over the victims and they not only think being victimized but also thinking it is only a common business disadvantages. Victims' attitude and values of retaliation is not as violent as with common crime. Economic crime never creates vengeance to any onlookers.

Fourth: there is expertise and advanced technology either with management and staged plots and devices with such as computers and trade documents in corporate with well plotted; the offence is systematically run. There are information searches, plots and designs all other affairs which toughens investigation, interrogation arrest and court judgment.

Fifth: economic crime is likely committed by individuals or groups with social status or prestige especially the influential people or the political power with legal power at hand. On this case, common people dare not do. There is an

indisputable fact that there are not less economic crimes within political rings. Political individuals enjoy double statuses public trust through election and the suite bandits (Prof. Veeraphong Bunyopas, 1994).

Sixth: economic crime is tough to undertake by a person but in groups and includes public knowingly or unknowingly until it can link into the local level and the national level. It is also liable to be formed into organized crime and further enlarged into transnational organized crime.

Seventh: it endangers public happiness and welfares and its destruction has greater price than common crime. Victims of each crime are countless. Not only it hurts the mass but also the state because it destroys economy, investment, interferes social development and growth and security. Some of it tarnishes morals, traditions and national cultures.

Since the natures of economic crime is non-violent, non-assaulting, non-weaponry, non-threats, non-encountering like robbery and murder; most of them rise from violating trust directly and automatically regardless distorting the price of property as an act of theft, cheating and fraud, counterfeiting and alteration, concealment, hide, and illegal deception or dishonesty to run the assignments. It is the nature of mutual treason to misappropriate wealth of other persons including the employers, shops, state enterprises and government offices or negligence of duty which accomplice in groups undergoing pre-studies and pre-plots.

Aims of economic crime are to harm property or to necessarily gain property. If there were assaults or life, it were not their aims bit a way to gain property or it might be the necessity to accidentally act or a matter of face-to-face situation or *vis mojor* (*force majeure*-act of God) even though there is other acts accompanied, during economic crime is committed such as offence of being Mafiosi, bandit eerie, passion or carry weapon and ammunition without permit, assault or homicide and so on. All these offences are not counted as the economic crime's targets; it could have been a preparation or necessary act to ease offence or to ease escape.

Such offences could have aimed for the security of their business, trades and earning. Doing affairs as such insecure public and involve individual authority

while the government loses so much to counter and to track their movements for arrest in each year (Banyad Visuddhimak, 1990).

2.1.4 Type of Offence under the Scope of Economic Crime

Classifying economic crime with the tasks of the law enforcement units is as follows:- (Prof. Veeraphong Bunyopas, 2009).

Office of the Attorney General

By necessity, the state must suppress to reduce damages with immeasurable amount of money. The state has to establish a specific unit to directly counter the crime, e.g. instituting the Office of Economy and Resources under the Office of the Attorney General empowered to take responsibility to impose all lawsuits involving economy and resources. Offences of economy and resource cases are:-

1) Offence of Finance and Banking, i.e.

1.1. Offences of finance and banking which BOT (Bank of Thailand) , commercial banks, trust companies, and Credit Foncier companies are victims or are the alleged.

1.2. Offence of money exchange laws

1.3. Loans of public cheating and fraud

1.4. Fraud document through banks for exports

1.5. L/C fraud or transaction document or fraud international bill of exchange

1.6. Cheating and fraud through bond, patent, faked or illegal share certificate

1.7. Cheating and fraud of in future product markets

1.8. Cheating and fraud of trade in share certificate in SET

1.9. Cheating and fraud of credit card, fraud international bill of exchange

1.10. Cheating and fraud or theft from ATM

1.11. Offence of counterfeit and conversion on currency

2) Offences of trade and commerce, i.e.

2.1. Cheating and fraud of big lots on goods buy and sell

2.2. Bankruptcy by cheating and fraud

2.3. Illegal offer or transact jurist body properties of trades

2.4. Counterfeit P/O or trade contract

2.5. Illegally instituting jurist body

2.6. Cheating and fraud through modern technology such as counterfeiting through computers or telex

2.7. Counterfeiting stamps and revenue stamps

2.8. Trade cheating and fraud through tricks

2.9. Cheating and fraud against insurance companies

2.10. Cheating and fraud and counterfeit transport coupons for travel or travel documents

2.11. Disclosure of trade secrets and intellectual property

2.12. Offence of intellectual property, i.e. copyrights, patents, trade-marks and others

Notes: previously, guilt against 2.11 and 2.12 are under the discretion of Office of Economic and Resource Cases subject to the Act of Establishing Intellectual Property and International Trade Court and their Proceedings BE 2539 (1996) and inaugurated in December 1, 1997. Such cases are under the jurisdiction of the Intellectual Property and International Trade Court under the responsibility of the Office of Intellectual Property and International Trade (Oder of the attorney General No 442/2540 (1997 Subject: Regulating Bureaucratic Administration and its Divisions (Copy No.3) dated November 17, 1997).

3) Guilt of commodity and consumers' protection, guilt of industrial manufacturing standards and export good standards and act endangering environments especially guilt of food and medicine, toxin materials and other cases as stated.

4) Guilt of pricing and anti-monopoly

5) Guilt of taxation, customs, revenue and excise, and

6) Guilt of forest, mineral, petroleum and others of similarity

Laws under the office's supervisions are

1). Financial Institution Business Act BE2551 (2008)

2). Royal Ordinance of Fraudulent Loans BE2527 (1983)

3). Exchange Control Act BE2485 (1942).

4). Currency Act BE2501 (1958)

5). Bank of Thailand Act Be2485 (1942)

6). Securities and Exchange Act BE2535 (1992)

7). Agricultural Futures Trading Act BE 2542 (1999)

8). The Act on Registered Partnership, Limited Partnership, Company Limited, Association and Foundation BE 2499 (1956)

9). Electronic Transactions Act BE 2544 (2001)

10). The Consumer Protection Act BE 2522 (1979)

11). Drug Act BE2510 (1967)

12). Food Act BE2522 (1979)

13). Cosmetic Act BE2535 (1992)

14). Weights and Measures Act Be 2466 (1923)

15). Industrial Standards Act BE2511 (1968)

16). Hazardous Substances Act BE2535 (1992)

17). Prices of Goods and Services Act Be2542 (1997)

18). Protection and Fixing Fuel Shortage Act 2516 (1973)

19). Trade Competition Act BE2542 (1997)

20). Custom Act BE2469 (1926)

21). Export and Import of Products to the Kingdom Act BE2522 (1979)

22). Fiscal Code

23). Compensation of Taxation on Exports Produced in the Kingdom Act BE2524 (1981)

24). Excise Tax Act BE2527 (1984)

25). Tobacco Act BE2509 (1966)

26). Liquor Act BE2493 (1950)

27). Forestry Act BE2484 (1941)

28). National Forest Conservation Act BE 2507(1964)

29). Wildlife Preservation and Protection Act BE2535 (1992)

30). National Parks Act BE2504 (191)

31). Energy Conservation Promotion Act BE2535 (1992)

32). Fuel Trade Act BE2543 (2000)

33). Mineral Act BE 2534 (1991)

Office of the Royal Thai Police

Instituting the Division of Economic Investigation by the Oder of the Police Department No924/2535 (1992) under the Central Investigation Police Command, Department of Police (currently: Suppression Division of Economic Crime (SDEC): Office of the Royal Thai Police) has been structured as follows:

1. ***Subdivision 1*** is empowered and taking responsibility of securing peace and order and crime suppression related to all types of taxation, investigation under the Criminal Procedure Code and other laws intricate with all types of taxation jobs and related offences within Bangkok premises including cooperation or supporting operations of other units related or by assignments.

2. ***Subdivision 2*** is empowered and taking responsibility of securing peace and order and crime suppression related to all types of taxation, investigation under the Criminal Procedure Code and other laws intricate with all types of taxation jobs and related offences Kingdom-wide excluded Bangkok premises including cooperation or supporting operations of other units related or by assignments.

3. ***Subdivision 3*** is empowered and taking responsibility of securing peace and order and crime suppression related to the violation of intellectual property, investigation under the Criminal Procedure Code and other laws intricate with all types of taxation jobs and related offences within Bangkok premises including cooperation or supporting operations of other units related or by assignments.

4. ***Subdivision 4*** is empowered and taking responsibility of securing peace and order and crime suppression related to the violation of intellectual property, investigation under the Criminal Procedure Code and other laws intricate with all types of taxation jobs and related offences Kingdom-wide excluded Bangkok

premises including cooperation or supporting operations of other units related or by assignments.

5. ***Subdivision 5*** is empowered and taking responsibility of securing peace and order and crime suppression related to finance and banking, investigation under the Criminal Procedure Code and other laws intricate with all types of taxation jobs and related offences Kingdom-wide excluded Bangkok premises including cooperation or supporting operations of other units related or by assignments.

6. ***Interrogation Job*** is empowered and taking responsibility under the Criminal Procedure Code, investigating economic crimes or criminal offences against other laws related Kingdom-wide including cooperation or supporting operations of other units related or by assignments.

7. ***Directorate Department*** is responsible for direction and office affairs including cooperation or supports the operations of other units related or by assignments.

Department of Special Investigation (DSI)

Instituted by Ministry of Justice, DSI is a unit empowered to enforce laws related to special cases under Article 21 and attached in the Special Investigation Act BE2527 (1984) as below

The attachments are:

1) Offence of Public Cheating and Fraud Loans
2) Offence of Trade Competition
3) Offence of Commercial Banks
4) Offence of Funds, Securities and Credit Foncier
5) Offence of Shares Business
6) Offence of Exchange Controls
7) Offence of State Biding
8) Offence of Master Circuit Protection
9) Offence of Consumers' Protection
10) Offence of Trademarks

11) Offence of Currency

12) Offence of Compensation of Taxation on Exports Produced in the Kingdom

13) Offence of Loan Interest in Financial Institutions

14) Offence of Bank of Thailand

15) Offence Public Company Limited

16) Offence of Prevention and Suppression on Money Laundering

17) Offence of Industrial Standards

18) Offence of Copyrights

19) Offence of Investment Promotion

20) Offence of Environment Promotion and Conservation

21) Offence of Patent

22) Offence of Securities and Stock Market

Later the ministerial rules have legally added special cases on special Investigation BE 2547 (2004) announced in November 5, 2004 given criminal offences subject to the following laws which are attributed to any Acts coded in Article 21 Paragraph (1) to be the additional cases as in the attachment in the special Investigation Act Be 2547 (2004).

1) Cases subject to Revenue Code

2) Cases subject to Customs Law

3) Cases subject to Excise Tax Law

4) Cases subject to Liquor Law

5) Case subject to Tobacco Law

Today, there is the ministerial rule to add to the special case (No.3) BE 2555 (2012) given to nine (9) criminal offences to be the additional case under the special investigation law, i.e.

1) The case of an offense under the Computer Crime Law.

2) The case of an offense under the Business Transaction of Foreigners Law

3) The case of an offense under Counter Human Trafficking Law

4) The case of an offense under the Mineral Law

5) The case of an offense under Financial Institution Business Law

6) The case of an offense under Cosmetic Law

7) The case of an offense under Hazardous Substance law

8) The case of an offense under Drug Law

9) The case of an offense under Food Law

With the laws enforced by the units involved above; the economic crimes could then be divided into five (5) types, i.e.

1) Finance-related economic crimes, they are such as offenses of financial institution business (commercial banks, securities companies, Credit Foncier companies), offense of unfair in trading securities under Security Law and Stock Market, offense of FOREX, offense of public cheating and fraud loans, offense of MLM network under Direct Sales Law and direct market and offense of shares business and so on.

2) Trade and commercial - related economic crimes, they are such as offense under Goods Price and Service Act, offense under Trade Competition Act, offense under Electronics Business Act, offense under Consumer Protection Law, offense under Investment Promotion Law, offense under Business Transaction of Foreigners Law.

3) Intellectual Property violation-related economic crime, they are such as offense under Trademark Law, offense under copyrights Law, and offense under Patent Law.

4) Economic crimes related to taxation, customs, and excise, they are such as offense against customs, offense under Revenue Code, offense under Excise Tax Law, offense under Tobacco Act and offense under Liquor Act and so on.

5) Natural Resource -related economic crimes, they are such as offense under Forestry Act, offense under National Forest Conservation Act, offense under Wildlife Preservation and Protection Act, offense under National Park Act, offense

under Energy Conservation Promotion Act, offense under Fuel Trade Act and offense under Mineral Act and so on.

2.1.5. Economic Criminals

Anyone who unfairly competes interests by having power, brightness, wealth, force, legal influence, military, and politics more than the others; they are counted economic criminals (Abhichai Jansen, 1987). Crimes committed are economic crimes.

Interest rivalry, however, by the constitution is counted innocent until final verdict of guilty. So, even an individual commits crime, he/she cannot be call the criminal until being proved and under proceedings with final verdict of being that offender, then he/she will be called a criminal.

Due to laws discard offenders as criminals until final verdict of being offenders; then we cannot accuse anyone or any organizations as criminals but we can separate economic criminals from common people through their attributes. They are not only having some different offenses from common crimes but totally different. So, we cannot adopt attributes of common criminals to be the criteria pinpointing the economic criminals.

Most economic criminals are attributed as follows:

1) They have better background than common criminals with more brightness, more polite and gentler as gentlemen, rational persuasiveness, sound psychology, and creates trust among all people. With such impressive image, they can reap interests beyond doubt being criminals. With high returns, they are affordable to live amid high class people with wealth, status, social esteem. Poverty is out of place in this type of crime. On the contrary, with the secure economy, social and politics or having backed by influential people, they are the supports to ease committing their economic crimes.

2) They are potential to offend and are specialists in what they do or have experiences with it. They use high advanced technology to offend. They regulate and plan to offend with process and are able to well cover information related to their offenses. So, it is hard to investigate and arrest.

3) Motive to choke offending is unlikely from vengeance and retribution or moral mindedness. Offenders never feel guilty for their offenses or conflict with morality. On the contrary, the offenders might think as skill practices, and challenges to their specialization with high returns as rewards.

4) It is not necessary to be mentally cruel and savage. Sometimes, the offenders might not be aware or neglect how malicious consequences could be detrimental. They totally run short of social responsibility at large.

5) Crimes are not committed alone because economic crimes are committed in organizations or jurist bodies where operation orders are multi-complex which is hard to be successful alone. Generally, they have backers or accomplice as team. The more the large amount of wealth, the more team members they have. If it were the crime in an organization, there are likely individuals within the organization as the accomplice or collaborate as the organized crime. It is hard to trace back the root because offenders link in multi-levels (Prof. Veeraphong Bunyopas, 2009).

2.1.6. Factors Leading to Committing Economic Crimes

Economic criminal is explicitly in general like common people but to explain why some criminal commit economic crimes while others do not, should be retraced to the roots of committing economic crimes by beginning to primarily search their factors leading to commit them.

Economic criminals have strong motivation to gain large amount of property returns (Bromberg, W., 1977) based on the psychological concept that human passion is the critical cause leading humans to greed and is never enough. It gives human long vision to gain only disregarding common damages in corporate with many factors easing offence and committing crimes. Factors leading to commit economic crimes are:

1) Opportunity to offend

Most organizations or workplaces breed crimes. The more the individual has higher position and high responsibility; chance to commit economic crimes is more. This is to exchange job advancement, wealth and fame. That is why

executive will not be reluctant to violate laws since state offices controlling business transactions run short of personnel to monitor the affairs. Also, it is too hard to prove there are economic crimes committed in corporate with the criminal justice administration is not only weak but also avails economic crimes.

2) Decision to offend

Seeking gains is the main objective in business affairs but the workplace has to run the business under the volatile environments which might fail the business or does not profit. So, to survive one's workplace, shops employ various methods and senseless to rectitude such as avoidance of law abiding and taxes, and directly violating laws and so on (Supoj Suroj, 1989).

3) Expertise in offending

Economic criminals are specialists on what they are doing. Bank cheaters must know well about the banking system. The forwarding fraudulent must know both banking system and logistics which are complicated and try to find weakness in order to attack the strength of banking system and logistic system in order to be successful. These are not common to ordinary people who are not involved who will understand and take action. When criminals take action, it eases them to destroy evidences which will back-fire them.

4) Economic system and structure

Economic system and problems prominently direct and surge problems of economic crime. Proper economic system satisfactorily alleviates the problems. Also scope and controls are intricate with the systems of economy, tax, finance and banking.

Monopoly System

Countries with liberal and monopoly economy differently encounter numbers of cases and violence in economic crimes. The monopoly channels workplaces to commit crimes such as organizations, shops, jurist body companies. Expertise and advancement in technology are restricted to some groups of individual. Cash flows of the business and the state organization have fewer number compared to the liberal economic system.

Therefore, regardless being the mattress of individuals; capital, expertise and technology are mutated to commit economic crimes. The closed economic system is mechanized to closely control the business but wealth is also less. the state owns most capital, and cash flow driving to offend allows less chance to encroach each other with capital. Besides the state agents, common people are unlikely to commit economic crimes. The violence of economic crimes in the closed economic system is less that in the countries with either opened or liberal economic system. This is the strength of the closed economic system.

Liberal Economic System

Countries with liberal economic system encounter more violent economic crimes since it is the opened system. Both government and private sectors can fully transact their businesses in almost every sector, where they focus on production. So, products from the opened economic system gain better wealth and stronger motivate committing economic crimes.

Countries with similar liberal economic system encounter similar problems. If they have different level of economic wealth; their problems of economic crime situations would have been also differed. Countries with insecure economic system will always be volatile. During the period of stagnation or speedy growth, higher statistics of their economic crimes become. In the liberal economic system with instability and stressed on production while adhering to competition; chances of the production owners would easily encroach others with their prosperity. If close monitoring economy and business by the state fails, destruction would weaken the liberal economic system which it is hard to solve.

It could be concluded that the liberal economic system is worth but under the conditions that there must be channel or system for private sectors to invest and not to be too strict since the system emphasizes competition, and risk-based: no risk no liberal growth. A monopolized growth and opportunity is not meant to open route for economic crime but paving ways and providing climate for human to think and to create innovation on courses of trade and business growth, such as check-pay system,

credit cards, stock market, insurance, allocation and leasing system, and new model of business and so on.

2.1.7 Economic crime impact to Thailand

It is accepted that economic crimes are more detrimental than common crimes leading to wide and deep impact either economy or investment or fame of the country or business affairs (Prof. Veeraphong Bunyopas, 2009).

1) Impact on economy of the country

No other crimes are more destructive than economic crimes either being the money which is the tangible damage and intangible damage with countless value, large amount of victims and shake the entire economic system such as the cases of Mae-cha-moi, Bangkok Bank of Commerce (BBC), speculations and so on. They will be later discussed.

2) Impact on investment

Economic crimes could balk capital giants or banking system creating non-confidence among clients or contact-persons with the institutions or the organizations. For example, banks much need trust from their clients. Had corruption risen in a bank though be it money which might not affect the monetary stability but clients distrust the institution or the executive. Then mishaps would finally appear to the bank and certainly brings domino effects to the national monetary security and investment.

3) Impact on national credibility and fame

Economic crimes eradicate business trust, social morality, stagnating organizational performances and the national economic image will be negative. They insecure businessmen and markets in the eyes of foreigners since none will be happy to deal with the corrupted countries. It also affects all goods and in-flow of money to the country. Fame of much corrupted country tolls underdeveloped citizen and thus so dishonors and tarnishes the national dignity.

4) Impact on business transactions

Economic impact is called the opportunity cost. It means that the nation could reap so many but fails because of the losses of image and creditability

brought by economic crimes such as crimes of credit cards and offence of travel checks. Had tourists been eased and secure from holding credit cards and travel checks; tourist would have more money to spend in Thailand. If Thailand had worse image on credit cards; large amount of money from tourism inflow to Thailand would also lose and it affect the entire system of the national businesses.

2.2. Theories of Economic Crime

Theories adopted to explain roots of offending among businessmen are:

2.2.1. Differential Association Theory

Edwin H. Sutherland is first who has theorized the Differential Association Theory assuming that guilty behaviors are not by birth or inherited but offenders begin not with the thought to commit economic crimes but as a common people who have to work with stable job, high pay, opportunity for job advancement and warm family amid good environment. Entering the business cycle with high competition and all aim to seek gains from career for the highest gains; there will be directly and indirectly associate with some with criminal behaviors. Then they learn and adopt how to commit crime then finally, they are devoured into such behavioral system (Prof. Veeraphong Bunyopas, 2009).

Theoretical Synopsis: it is seen that crimes are the consequences of frequent and regular association with criminals and imitation of their behaviors. The more frequent association is the more chances to commit crimes. Sutherland's theory can be briefed that humans offend by learning from criminal behaviors, and from the intimate persons until find that illegal things are legitimate which will lead the persons to learn techniques, motivation, passion, neutralization and other attitude in wrongdoings.

The Principles of Differential Association Theory

(1) Behaviors characterized as criminals are borne from learning and not from inheritance but from learning and training. With such reasons, individuals without training to commit crime will not inherit criminal behaviors.

(2) Behaviors characterized as criminals can be learnt from others through associations and this association can be both instructions or exposures or perception from relayed narration and imitation of different techniques.

(3) The pivotal principle of learning the behavior characterized as criminal can be well emerged when having associated with the primary sources. With this issue, Sutherland comments that surface or temporary association and transitorily exposed to newspapers or movies are not critical elements to disseminate criminal behaviors.

(4) Upon learning behaviors characterized as criminal, the learning contains techniques, inspiration, intrinsic drives, determinations and attitudes.

(5) Learning from defining that laws of the land must be respected and follow or violate because in some societies, members are instructed to respect them but among the outlaw societies or those thinking that they float over laws will count that not following laws are recognized values.

(6) Becoming offenders when ones define laws are attractive to be better violated than laws are to be respected and adhered to.

(7) Differential association might be different in frequency, either before or after occurring period and density. Meaning, if anyone learns to associate with bad behavior since young frequently, for long time and seriously; they will without doubt become the criminals.

(8) Learning the criminal behaviors is not restricted with the imitation process only but the enticed persons might learn the criminal behaviors through relationship with such behavior and it is not the imitation.

The theory could back the concept of economic crimes as follows:

- Economic criminals are not inherited but from social learning and commit through drive of property interests and income to meet one's wants.

- Economic criminals are likely the offenders who have high job [position regardless in the government sector, politics, and business sector. They exploit their positions to seek illegal monetary gains and characterized their offence with techniques and expertise. It concludes complicated offences which need occupational relationship. It is cohesive with the theory that offences are from association and learning concepts, tactics and channel to offend.

- Economic crimes are detrimental to the national economic system and security. They are usually found in organized crime grouped into firmly established organization. They aim at common interests and are occupational crime while attempting to expand their business in their territory as well as involving transnational businesses. There is effective administration within their organization and organizes divisions for serious responsibility. Generally, the organization recruits government agents and politicians to be its members or leverage for gains and to nurture the government agents and politicians to ease their works. Economic crimes as organized crimes or transnational crimes are the most evident model in the Differential Association Theory.

2.2.2. Techniques of Neutralization

Sykes and Matza (1957) believe that offenders have techniques to explain their deeds by casting away responsibility to other people and legitimize their deeds with rationalizing that such thoughts appear in the methods of others and makes their offence right and rational. Such thoughts are found much in societies and these neutralizations are:

1) Negate responsibility that it is not mine

2) Negate damages happened to victims though evidences are apparent.

3) Negate that none is victimized upon seeing incident

4) Negate ones' offences and denounce their denouncers, and

5) Crime is necessarily done for the group, gang, and friends and not for oneself.

This theory observes that offences are not from learning but mandating bias behavior by rationalizing to protect bias behavior from social sanction and to reduce shame of guilt, and the offenders feel at ease. So, offenders commit wrongdoing without feeling guilty and reject responsibility (Sudsanguan Suthisorn, 2004).

The techniques of neutralization could explain and back the concept of economic crimes because the economic criminals on finance such as executives of the financial institutions cheats in their institutions, the executive in the securities companies cheat or speculate and neutralize and rationalize what have been violated laws so that they or others feel that they do not violate any laws such excusing that harming none, doing no wrongs, or lawbreaking but not criminals. Sometime, they neutralize to be accepted such as by necessity for the survival of the affairs. Some neutralize by referring to societies that to secure the financial condition of the company or of the business. Some neutralize on necessity of the business and if other encounter such situation, they would do or neutralizing that to help workers not to be jobless, and so on. Exploiting techniques of neutralization is not meant that offenders reject their deeds are not illegal but rationalizing to make themselves not to feel violating any laws or to feel that one is not evil. Mostly offenders will not take action until they can find reasons for their neutralization.

2.2.3. Choice Theory

Glasser (1987) is the author. He is an US psychiatrist believing that humans can choose what they want to do including the action making them misery. All can choose to make themselves wither happy or unhappy.

The Choice Theory views that lawbreaking or wrongdoing of a human comes from many personal reasons such as starvation, want, retribution, wrath, jealousy and so on. Upon weighing the gains and the punishment as the consequence from committing crime; this leads to decision-making. Criminals can control or

restrain themselves if fearing punishment. But choosing to offend is a decision to take risk when criminals reason to estimate the risk while predicting the punishment by weighing the action and the consequence and they can decide to immediately stop if the feedback is too detrimental.

The critical structure of the Choice Theory is learning and experience. The professional criminals recognize their own limitations. They know when to do and when to stop while they are able to control their personalities well. Major structure to help decision-making in the Choice theory is:

1. Choosing the place of crime – criminals choose the crime scenes because they know that the locations provide ways to escape arrestment.

2. Choosing targets – criminals want achievement and that is to choose what they want.

3. Learning criminal techniques – it saves them from arrestment.

The Choice Theory can support the concept of economic crimes because they require experts with modern technologies to offend, ability of coverage, elimination, hiding evidences well, and nature of professional crime. Meaning, criminals raised by committing crimes have techniques and expertise how to do them. They do not need criminal records, recognition and decision-making based on the Choice Theory but they are proud to lead their lives their own ways, e.g. swindler, counterfeiters, hired gunman, procurer and procuress. In addition, professional criminals learn and experience to choose crime scenes, targets, and learning criminal techniques to save them from arrestment which meet the structure of the Choice Theory (Sudsanguan Suthisorn, 2004).

2.2.4. Theory of Imitation

Jean Gabriel Tarde (1843-1904) theorizes the Theory of Imitation. He believes that none is born criminal. Criminal behavior or wrongdoing is the consequence of social issues, behavioral duplication and social values from learning. Offenders have ever known and seen before. Imitations flow from the high class to the lower classes. It comes from relation, meeting and learning. This theory advocates that

criminal behaviors come from social factors through social learning. The professional criminals have been trained and learned like other professions.

Tarde notes that there are three rules of imitation which turns human criminal, i.e.

1. Persons with intimacy and imitating each other,

2. Imitation is likely copying persons of higher level such as children imitate adults. The lower class people imitate the middle class and the middle class people imitate the high class people and so on.

3. Tarde proposes “Law of Insertion” pointing that new behaviors replace the old ones, for example, using drug among the youth group. Previously, Mr. A drank pure liquor but later upon grouping with addicted friends, Mr. A drank and used drug. This is the behavior of insertion and intensifies his behavior. Or, previously he stole but after arrest and imprisonment and when being dismissed he robbed which was more critical than before.

Tarde belies that interpersonal relation among individuals and behavioral observation lead to imitation. Models from movies, TV and newspapers all influence criminal behaviors (Sudsanguan Suthisorn, 2004).

Theory of Imitation can explain economic crimes when social see that economic crime is an offense that the state meets difficulties to find evidences and punish offenders especially the financial crimes, e.g. the case of Bangkok Bank of Commerce Limited (Public) (BBC), the case of First Bangkok City Bank, cases of speculations, cases of chain shares. They make criminals see that consequences of crime create large amount of gain and returns for them and for the companies. Also, current laws cannot effectively punish any criminals. All these gains and returns are the catalysts and supports to commit crime which the executives of banks and securities companies imitate the behavior. It aligns with the concept of Theory of Imitation coming from learning the criminal behaviors with the closed persons (here, it might be referred to companies running the similar type of business) through communication and learning. Criminals have ever known and seen before and agreed with the lawbreaking behavior because it brings profits which are the target of doing business rather than seeing it as violating laws.

2.3 Theories of Law Enforcement

Theoretically, the popular model is based on Herbert Packer, (1952) pointing that theories to achieve criminal justice are contradictory at all time and that is theory of Due Process and the theory of Crime Control.

2.3.1 Due Process Theory

This theory stresses protections of some individual rights or taking action with the alleged with due process must be significantly adhered to laws and focused on rule of law related to the protection of individual rights and liberty. Anyone is wrong when the one is convicted by court. The proceedings must be right, fair and just without prejudice or unjustified exercises of power. Innocent individual must be protected but the guilty must be punished. The pivot of this theory is in ruling guilt of any individual, he/she is always assumed innocent until verified guilty. Methods or pattern of checking must be right and fair.

Trials by this theory are the alleged will not be ease through procedures of justice administration since more interference is likely. On account of due process relying on rule of law rather than criminal controls because distrusting criminal controls is effective to counter crimes especially when recalling fact-searches of police, interrogation officers, and prosecutors. The theory of Due Process finds that the procedures of fact searches by the state authorities might be unjustified such as baiting and mock-up when those unjustified evidences cannot be presented to court. So, it is evident that this theory aims to strongly protect the individual rights and liberty and the court is the only place where justice is best due. As for trials, they must be resumed with justification, due process and this theory rejects unjustified methods such as baiting and so on.

It could therefore be concluded that the theory of Due Process adheres to attain fairness with objectives of criminal controls. A pivotal duty of the court is to raise most the justice adhered to methods and model of evidence –searches, investigations, and interrogations of the police and the prosecutors and so on. By principle, individual will not be ruled or punished just merely being alleged or just with evidences but it must be through proceedings in details of both justification and

individual rights protection. The court must be the central organization to deliberate facts and will not accept any evidences illegally collected which might end in dismissing the alleged.

2.3.2 Crime Control Theory

Another main duty of the justice administration is crime control and counter aiming at peace and order of humans in societies. So, it is necessary to have measures of principles, strong policy, and effectiveness focusing on control, counter and punish criminals austerely. Due to crimes break security, national peace and order, harm rights and liberty of the innocent people and are threatening and endangering. If laws is therefore ineffective and inefficient enough to counter crimes; laws are then discredited, common people fear no laws and law-abiding people will meet disadvantages, right discrimination, benefit infringement and abuse which lead to chaos and disorder of life and property.

The criminal justice administration of the state ensures societies and to achieve such objective, we have to improve and enhance the effectiveness of justice administration such as investigation, proceedings, proof of guilt, and effectively treating the wrongdoers convicted by court. Effective justice administration requires effective statistics of arrestment and verdict statements and higher rate with spending upon restricted resources. The proceedings must be speedy and certain. Proceedings must be hindered by bureaucracy. Fact-finding must as best end at the primary level of the justice administration. This theory believes that the procedures of justice administration should be mostly under the authority of the interrogation officers and prosecutors. The aims of the model is the procedures must be short, regular, non-interference, effectiveness and justified that fact-findings at the level of the interrogation officers and the prosecutors must be credible.

It could be thus noted that the Crime Control Theory importantly focuses on restraint and countering crimes emphasizing ongoing and serious counter crimes. This theory takes the protection of individual rights and liberty as the second thought. It might ease understanding that if crimes are under control and prevention; societies would be at peace and order, then individual rights and liberty would be automatically

protected. The nature, model and procedures of this theory in each step of justice administration will be speedy and without interference. It sharply reacts against criminal problems. It prevails opportunity for deliberation or discretion while screening information and evidence at the operation level aiming at effectiveness of enforcement. Meaning, discretion and verdict either dismissal or penalty will be speedy and no processes can interfere.

2.4 Economic Crimes and Financial Crimes

Acts counted economic crimes are relied on how one views the scope of the meaning of economic crimes. Conventionally, laws stress guilt of property such as deforestation, mineral violation, and smuggling. Such crimes are organized and backed by influential tycoons. But today, economic crimes so much widen their rings. The most popular economic crimes witnessed are distortion of company accounts, manipulation of goods exchange, bribery, and monetary bribery to enact laws for oneself or for group of interest, deceptive information in advertisement, cheating of balance machine, tax avoidance, and bankruptcy by cheating and fraud. It is necessary to widen the scope of laws to cover current economic crimes beginning from consumers' protection to secure them from exploitation, and safety in food consumption, drug and other utilities, price control, capital business affairs, security business, Credit Foncier and banking (Prof. Veeraphong Bunyopas, 2009).

Economic crimes and financial crimes link particularly their targets and objectives which focus on property, income or interest in from of property. They are related in particular with financial crimes which mostly violating law of financial and banking system that affect the national economy and security. Either they are subject to Financial Institution Act BE2551 (2008) or Ordinance of Public Cheating and Fraud on Loans BE2527 (1984) or Direct Sales and Direct Marketing Act BE2545 (2002).

Economic crimes by the type of financial crime is one of the critical crimes since it creates impacts against financial system, banking system, economic system and affects the national image and investment. From the past experiences, Thailand has faced many economic crises which came from financial crimes such as

absence of good governance, transparency and corruption among the executive of the financial institution. They led to the financial crisis in 1997 or called “Tom Yum Koong” Crisis. In the crisis, BOT (Bank of Thailand) found that executives of many financial banks granted poorly administrate their institutions, grated loans for NPL (non-performing loan), granted loans as cronyism which led to lack of liquidity and finally inevitably to close down those financial institutions. Or, in the case of speculation and unfair deeds in the stock market, it was where number of victims was found. This included the mobility of shark money such as public cheating and fraud; loans provided from public cheating and fraud, chain shares disguised in direct sales which deeply damaged people with hundred billions of value.

In addition, from the Seminar on “10 Years of Lawsuits against Financial and Fund Markets: Success or Failure” (Institute of Criminal Law: Office of General Attorney, 2002), information collected from the Project of Justice Administration Development and the Problems of Economic Crime collaborated between Office of General Attorney, BOT, SEC (Office of Securities and Exchange Commission), SET (the Stock Exchange of Thailand, and Office of Securities and Exchange Board of Thailand, there are problem briefing and lawsuit proposals as follows:

Issue 1: Knowing and understanding laws and regulation related to personnel in the economic justice administration: interpretation of provisions and facts which in past proceedings the word “corruption/dishonesty” was met with interpretation and led to dilemmas in practice. That is each office differently interpret it and the benefit is the alleged has been granted protection.

Issue 2: Domestic and international collaboration and cooperation among personnel and offices involved should be in team and should involve Ministry of Finance, BOT, interrogation officers, and prosecutors to speed lawsuit and to gain complete evidences.

Issue 3: presentation, collection, and testimony should adopt regulations of presenting testimony of intellectual property and international trade for lawsuit against financial institutions containing e-admissibility of evidence, petition for protection of evidence before lawsuit, submission of testimonial record to replace

testimony presence at court and the case from the Court of First Instance can reach Supreme Court without through Appeal Court.

Issue 4: Interference and factors affecting the economic justice administration should be solved by good governance and conscious mind should be cultivated in offices that lawsuits against financial institutions are for the benefits of the country. Moreover, interference offense of justice administration should be enacted because criminal laws at the moment are insufficient to punish interferers in some cases.

Issue 5: Roles, Tasks and structure of economic justice administration should be evidently scoped on the authorities of each office especially the matters of securing evidences in critical cases.

Issue 6: Recommendations and solutions

- Establish special court to try the cases of financial crimes
- Adopt civil lawsuit to be applied with the cases of financial crimes
- Provide gratuity leading to arrest
- Enact law to protect authorities on malicious prosecutions
- Develop workability of personnel
- Allow involvement of offices in drafting bills
- Permit the first-action office to confiscate properties for lawsuit
- Adopt security methods to be applied in offenses of financial institutions

The seminar concludes that enforcement of business law with financial institutions only will fail. There is a second thought that there should be collaboration to prevent corruptions in the financial institutions by seriously cooperating with personnel in the justice administration. This is to be successful to take lawsuit of corruption in the financial institution and enabling wrongdoers to face punishment.

BY necessity above, it ascertains and backs this research in order to seek solutions to enhance law enforcement and achievement of measures of evidences and

approaches to enhance effectiveness in law enforcement leading to solving financial crime in Thailand.

2.5 Nature of Offence, Law Involved and the Case of Financial Crime

2.5.1 Offenses of Corruption in financial institutions

2.5.1.1 Nature and Model of Corruption in financial institutions

Types of offenses by financial institution laws are divisible into 2 types, i.e.

1) Responsibility for supervision such as violation of receive and pay, internal audit, fund reserve, not announcing balance and profit-loss account, fail to submit report on due date, liquidity reserve as in the following nature,

1. BOT is empower to announce provisions of credit,
2. The financial institution has duty to regulate provision of credit a sin BOT announcement or
3. BOT prohibits providing some kinds of credit by referring laws related,
4. Offenses charged, if any executive of the institution violates.

Generally, upon violation by the financial institutions or their executives or fail to abide by laws, announcements, provisions, principles, conditions, orders of Ministry of Finance and orders of BOT, then BOT takes action against them in 2 ways, i.e. either to fine or to file the charge.

<u>Punishment by Fine</u>

The committee of settling the case is empowered to charge by Financial Business Act BE 2551 (2008) Article 156 whereas one of the three committee members must be an interrogation officer under the Criminal Procedure Code.

Examples of the committee settle the cases through fine e.g. the financial institution for fund reserve fails to abide by the BOT principles as in the announcements or buys or owns real property without permission from BOT or fails to follow BOT announcement.

Filing the Charge

BOT shall file the charge with the following cases

1. Offense fineable but the alleged reject the charge or fail to pay fine on due date,

2. Offense affecting the financial institution system or offense by corruption; then the committee is not empowered to fine but to file charge.

In the past, BOT has filed charges with institutions violating orders such as the cases of Chiangmai Capital Trust Company, Midland Capital Company, Bank of Laemthong, Thai Capital Company, and Srinakhon Bank, which the court convicted guilty to every case. So, any violations of order, the court would judge in the same direction or convicted to every case. At the meantime, the court differently judged the cases of corruption by fact (Veerachart Sribunma, 2012:19-20).

2) Responsibility for Financial Institution corruption

Due to corruption as examples among executives of the financial institutions is the financial crime affecting the national and public economic image at large, destructive risk, and ruinous to the country committed by persons of high erudite and efficacy, high social status, with more sophisticated pattern, large amount of damaged money and the modules are as examples below.

1. Approval of loans by non-compliance to regulation, by procedural order, common practice, strong absence of prudence, absence of reviews between banks especially with the loans of large amount.

2. Approval of loan by violating BOT orders or Ministry of Finance related to loans.

3. The establishment of pseudo-juristic person or semi-juristic person under the state agency with autonomy, and uncertainty of any law for possible problematic transactions, conventional practices, and self-protection

which must step to the aftermath responsibility in the financial institution or by collaboration of problematic financial institution and challenging all kinds of auditors and monitor from the state.

4. Manipulation, relocation, transferring of property or rights and interests, which should own by the financial institution or the state agency to trade partners or private agencies.

5. Unusual loan approval with just few registered capital compared to the loan while the state financial institution accept the potential risk which should not and it is not the loan by the government policy.

6. Loan granted to foreign policy with law protection especially companies running affairs in Cayman Islands or finally there is later transfer to the country where it is the “bank secrecy haven countries”.

2.5.1.2 Related laws

2.5.1.2.1 Financial Institution Business Act BE2551 (2008)

The Act was promulgated in the Government Gazette Vol.125 Section 27 A with rationale of currently the supervision of commercial banking business, capital business and Credit Foncier business under the law enforcement of the commercial bank and the law capital business, securities business and Credit Foncier by case but the supervision is different. However, running the financial business must adhere to the same standards. In corporate with, recently, Thailand has met critical economic crisis and directly affected financial institutions quaking of public confidence and depositors on the financial institution at large. So, the standards of supervision should be improved for their greater effectiveness and to amend laws of commercial banks and laws of capital business, securities business, Credit Foncier business and enacting into *corpus juris.* This is for the same standards of supervision and amendments on the proper punishment provisions for offense related.

Therefore, the word “financial institution business” under the Act will cover the commercial banking business, capital business, Credit Foncier business and financial institution business for special affairs.

Essence of Financial Institution Business Act BE2551 (2008) is concluded as below:

- Widen the definition of financial institution not only inclusion of capital and credit Foncier in depositing public money but the word “commercial bank” also covers all commercial banks, commercial banks for SME, foreign commercial banks and branches of foreign commercial banks.

- BOT is empowered to supervise non-banks business more since the business is related to loans or financial affairs and so, they are subject to this Act like leverage from public.

- Supervision will emphasize on financial business groups, their natures, their type of license, scope of their transaction with headquarter, affiliated companies or joint-ventures. Also, it includes their audit, their capital proportion with their assets, liability, charges or variables and other risks whereas establishment of the affiliated companies must be permitted by BOT. The amendment meets the current financial institution business more and with the same direction of the supervision principles imposed on the groupings under BOT which has submitted the draft to the financial institutions for opinion since 2005 before gradual improvements and experiment in the aftermath.

- Determine measures of consumers’ protection in Article 39-40, BOT can determine conditions to the financial institutions to follow for their transactions with public such as deposit, borrow, investment, loan, doing jurist act with people, personal guarantee, and disclosure of information about the financial institutions. In addition, the financial institutions must provide detail of calculation on annual service rate for people. At the meantime, BOT is empowered to define how to calculate the annual service rate to the financial institutions to follow. It is the additional measure of supervision on the financial institution business to be fair and transparent for their clients.

- Loan grants must be more restrict as in Article 48, not only charging the board but also covering the deputy executives such as Deputy Managing Director, Assistant Managing director and others involved.

- BOT plays the role to handle more affairs. In general, the ministry of Finance will be left with major tasks of issuance and dismissal of business license while the power of handling issues of transactions, orders, audit and close-down institutions will be transferred to BOT.

- BOT can supervise the financial institution for special affairs where this law authorizes BOT in Section 7 Articles 119-120 to supervise them; if the ministers of the Ministries supervise them, have partly or fully assigned BOT for the benefits of effective supervisions.

- More severe punishment is imposed which mostly imprisonment and severe fine regardless is being the fault of the financial institutions, individual fault, faults of the managing director, authorize personnel for handling and auditing who fail to compel with this law specified. This is to persuade the financial institutions and the persons involved to be more cautious in running their affairs.

<u>For what has been related in preventions of corruption in financial institution</u>

Definition related in Article 4

“Authority to Manage” is referred to

(1) Manger, deputy manager, assistant manager, board of directors of the financial institution or the company as to case or equivalent position with otherwise named.

(2) Individuals whom the financial institution or the company has signed contract empowered to mage the entire or partial affairs.

(3) Individuals with empowerment to control or manipulate the manager or the committee members or to manage the financial institution or the company to follow their orders in setting policy or to run the financial institution or the company.

“Executive Director” is referred to the director of management in the financial institution or the company under the criterion specification of BOT.

“Person involved” is referred to an individual with relationship with other individual by the following attributes, i.e.

(1) The spouse,

(2) The immature child or the adopted child,

(3) The company wherewith the individual or individuals by (1) or (2) authorized for management,

(4) The company wherewith the individual or individuals by (1) or (2) authorized to control majority votes in the shareholder meeting,

(5) The company wherewith the individual or individuals by (1) or (2) authorized to appoint or dismiss directors,

(6) Being the affiliate as of the company as of (3) or (4) or (5),

(7) Being the joint-venture of the company as of (3) or (4) or (5),

(8) Being the principal or the agent or

(9) Other persons attributed by BOT announcement

In case of individual shareholders in any company for more than 20% of all the share sold either directly or indirectly, it is presumed that the company involves with the individual except being proved of non-involvement.

Prohibitions to grant loan

Article 48 subject to Article 59 directly or indirectly prohibits the financial institution on:-

(1) Grant loan for transactions similar to grant loan or secure debts for director, manager, deputy manager, assistant manager, or equivalent position with otherwise named, the authorized person to manage the financial institution or the person involved except loan granted in credit card with high rate specified by BOT announcement or loan granted for the individual welfare subject to the criteria specified by BOT announcement.

(2) Endorsement, receiving aval or intervention to save face in the bill the directors, manger, deputy manager, assistant manager, or equivalent position with otherwise named, the authorized person to manage the

financial institution or the person involved acting as the payer, the issuer or the endorser.

(3) paying in cash or other property to the directors, manger, deputy manager, assistant manager, or equivalent position with otherwise named, the authorized person to manage the financial institution or the person involved as compensation or act or transaction of the financial institution not as pension, salary, reward and other additional money otherwise normally paid.

(4) sell, offer or lease any property for the directors, manger, deputy manager, assistant manager, or equivalent position with otherwise named, the authorized person to manage the financial institution or the person involved or buy or lease any property from the state persons with value higher than being specified by BOT announcement except being approved by BOT announcement.

(5) paying any interests to the directors, manger, deputy manager, assistant manager, or equivalent position with otherwise named, the authorized person to manage the financial institution or the person involved subject to the BOT specification.

Article 49 subject to Article 59 prohibits the financial institution to grant loan, invest, doing contingent liabilities or any similar affairs, similar loan for the major shareholders or affairs with any interests involved or all involved upon ended each day in each item not more than 5% of any funds of the financial institution or more than 25% of the entire liabilities of the major shareholders or of the affairs involved with interests except with lower number. By reason, it needs to count loan grants, investment, contingent liabilities or any similar affairs, similar loan for persons involved with the major shareholders to be also as of the major shareholders.

In case of reasonable grounds, BOT is authorized to specify high rate of loan grant, investment, contingent liabilities or transaction similar to loan grant for the major shareholders or the enterprise having interests involved with higher rate as specified in Paragraph 1, but subject to the criteria specified by BOT announcement.

Loan grant, investment, contingent liabilities or transaction similar to loan grant as specified in Paragraph 1, are subject to the criteria specified by BOT announcement.

Enterprise involved in Paragraph I and 2 is referred to the companies where the financial institution, directors of the financial institution, authorized persons of the financial institution or persons involved holding shares more than 10% of the sold shares of the company.

Article 50 prohibits the financial institution to grant loan, invest, doing contingent liabilities or any similar affairs, similar loan for the major shareholders or affairs with any interests involved or all involved in any projects or for the similar objective ended each day more than 25% of any fund but subject to the criteria specified by BOT announcement.

Specification as in Paragraph 1, BOT may specify amount of money or rate lower than the specified rate.

In the case of any financial institutions merger, restructuring liability or dispose assets to the asset management company or by other reasonable grounds; BOT may ease the financial institutions to temporarily waive Paragraph 1.

In case an individual in Paragraph 1 is a company; the amount of money granted in loan, investment, contingent liabilities or transaction similar to loan grant must not exceed the proportion of the capital or the company fund specified by BOT announcement except being ease by BOT announcement.

In case of loan granted, investment, contingent liabilities or transaction similar to loan to any juristic person, it needs to involve loan granted, investment, contingent liabilities or transaction similar to loan to the mother company, affiliate company and joint-venture company as also being the juristic persons.

In case of loan granted, investment, contingent liabilities or transaction similar to loan to any person, it needs to involve loan granted, investment, contingent liabilities or transaction similar to loan to the individual involved as also being owned by the person.

Loan granted from buying, discount buy or get the discount of bill as in Paragraph 1, it is assumed as loan granted for bill seller and responsible

person as bill transacted except it is the bill as criteria specified by BOT announcement.

Any financial institution receive risk guaranteed in loan grant, investment, contingent liabilities or transaction similar to loan from the financial institution or company specified by BOT criteria; they are counted the financial institution offers loan grant, investment, contingent liabilities or transaction similar to loan to the financial institution or company guarantee risks as stated in Paragraph 1.

Article 51 prohibits the financial institution to grant loan, invest, doing contingent liabilities or any similar affairs, similar loan for each type of business by exceeding rate to the fund or the assets specified by BOT announcement.

Article 52 prohibits adopting Articles 50 and 51 to be enforced with the financial institutions in the following cases, i.e.

(1) Loan granted or creating contingent liabilities capital and interest mortgage securities by the Ministry of Finance but not exceeding the amount of guarantee.

(2) Loan granted or creating contingent liabilities to the FIDF (Financial Institutions and Development Fund) or BOT

(3) Investment through buying securities of the Thai government, securities of BOT, securities of FIDF or securities of Deposit Protection Institution issued by state enterprise with special laws enacted, or capital and interest mortgage securities by Misinitry of Finance or BOT or FIDF or Deposit Protection Institution but not exceeded the amount enacted

(4) Loan granted upon having deposit in the financial institution, securities of the Thai government, securities of BOT, securities of FIDF or securities of Deposit Protection Institution issued by state enterprise with special laws enacted, or capital and interest mortgage securities by Ministry of Finance or BOT or FIDF or Deposit Protection Institution but not exceeded the amount enacted.

(5) Collateral subject to the criteria specified by BOT

(6) Inter-loan of financial institutions subject to the criteria specified by BOT

(7) Loan granted, investment, contingent liabilities or transaction similar to loan of least risk or risk equivalent to the government securities, subject to the criteria specified by BOT announcement.

(8) Issue letter of credit for trade.

Offenses of the financial institution or directors or responsible person for the financial institution

Offenses of the financial institution or negligence of duty, corruption or seeking gains of the executives and employees in the financial institutions have been specified in Punishment Section 8 from Article 121-126 as below.

Article 121: anyone enterprises commercial bank, capital business, Credit Foncier business without license is subjected to 2-10 years imprisonment and fined at 200,000 Baht - 1,000,000 Baht

Article 122: Any financial institutions violate or fail to comply with Article 11 are subject to fine of not more than 100,000 Baht and fine not more than 1,000 Baht a day during fail to comply with the right practice.

Article 123: any one violates or fails to comply with Article 12 is subjected to not more than 1 year imprisonment or fined not more than 100,000 Baht or both and fined for 1,000 Baht a day during the violating period.

Article 124: any financial institution violates or fails to meet Articles 13, Article 15 Paragraph 1, Article 37, Article 81 or Article 82 or violates or fail to meet the announcements and requirements or criteria specified in Article 15 Paragraph 2, Article 26 Paragraph 1, article 37 or Article 82 is subject to fine of not more than 300,000 Baht and fine of not more than 3,000 Bath a day through the period of violation or until rightly practice.

Article 125: any financial institution violates or fails to meet Articles 20 and 21 Paragraph 1, Article 22, 38, 40 Paragraph 1, Articles 41, 44, 47, or 84 or violates or fails to meet the announcements, requirements or criteria specified in Articles 38, 39, 40 Paragraph 2, 41, 46, 47 or 84 is subject to fine of not more than

500,000 Baht and fine of not more than 5,000 Bath a day through the period of violation or until rightly practice.

Article 126: Anyone violates or fails to meet Articles 14, 54 or 56 or the mother company which violates Article 55 is subject to 6 months to three year imprisonment or fined from 60,000 Baht to 300,000 Baht or both and and fine of not more than 3,000 Bath a day during the period of violation by case.

Article 127: Anyone violates or fails to meet Article 26 Paragraph 2 is subject to fine from 60,000 Baht to 300,000 Baht and fine of not more than 3,000 Bath a day until rightly practice.

Article 128: any financial institution violates or fails to meet Articles 16, 24, 25 Paragraph 1, Articles 29, 30, 31, 32, 34, 35, 36, 43, 48, 49, 50, 51, 58, 59, 60, 61, 62, 63, 64, 66, 67, 68, 71, 73 Paragraph 1, Articles 74, 78, 80,93, 94, or 95 or violation or non-compliance to the announcements, requirements, criteria, conditions or orders specified in Articles 6, 10 Paragraph 1, Articles 16, 29, 30, 31, 32 Paragraph 1, Articles 33, 34, 35, 36, 42, 43, 48, 49, 50, 51, 58, 59, 60, 61, 62, 63, 64, 66, 67, 71, 73,Paragraph 1, 74 Paragraph 2, Articles 78, 80, 89, 90 (1) (3) and (4) , 95, or 96, is subject to fine not more than 1,000,000 Baht and fine of not more than 10,000 Bath a day during period of violation until rightly practice.

Article 129: in the case of violating Articles 20, 21, 22, 34, 48, 49, 50, or 59, as to case subject to the proof that being cautious and prudent in having checked persons involved but unable to know and to prevent the violation; it is assumed that the financial institution does not violate the above mentioned articles.

Article 130: anyone violates or does not comply with the criteria specified in Articles 56 or 57 is subject to fine not more than 1,000,000 Baht and fine of not more than 10,000 Bath a day during period of violation until rightly practice.

Article 131: anyone violates or does not comply with Articles 104 or non-compliance with the Financial Control Board or the Authority of Financial Institution Control under Article 114 is subject to not more than three year imprisonment or to fine not more than 300,000 Baht or both and fine of not more than 3,000 Bath a day during the period of violation.

Article 132: In case of the offenders of Articles 121 or 123 are the juristic person, director, manager or the authorized person to run the jurist person are subject to punishment enacted for the wrongdoing except proving that they have not involved with the offense.

Subject to Article 139, in the case of the financial institution offend against Articles 122, 124, 125 or 128; director, manager or the authorized person to run the financial institution is subject to punishment enacted for the wrongdoing except proving that they have not involved with the offense.

Article 133: offense under Articles 122, 124, 125, 128, and 132 Paragraph 2 if not being tried or not compared with Article 156 within two years counted from BOT has found guilty or within five years counted on offending day; it is precluded or barred by prescription.

Article 134: anyone produces false testimony to the Inspector of the Financial Institutions or the Financial Control Board upon the matter possible to bring damage to others or public; he/ she is subject to not more than six month imprisonment or fine of not more than 60,000 Baht or both.

Article 135: anyone intervenes or does not comply with the order of the Inspector of the Financial Institutions or the Financial Control Board or the authority of the Financial Control Board on duty by this Act is subject to not more than one year imprisonment or fine of not more than 100,000 Baht or both.

Article 136: anyone does not facilitate Inspector of the Financial Institutions, individuals by article 85 Paragraph 3, or the Financial Control Board or the authority of the Financial Control Board is subject to not more than one year imprisonment or fine of not more than 100,000 Baht or both.

Article 137: anyone removes, damages, destroys or causes futility the seal or the sign which the Inspector of the Financial Institutions or the Financial Control Board or the authority of the Financial Control Board has sealed is subject to not more than three year imprisonment or fine of not more than 300,000 Baht or both.

Article 138: Anyone damages, destroys, conceals, takes away or loses or causes futility any properties or any documents which the Inspector of the

Financial Institutions or the Financial Control Board or the authority of the Financial Control Board has confiscated or sequestered, kept or ordered to submit as evidence or as enforcement by law; regardless the authority will keep the properties or the documents themselves, or ordered the person or others to submit or to keep; is subject to three months to three year imprisonment or fine of 60,000 Baht to 300,000 Baht or both.

Article 139: in case of any financial institution violates or does not comply with Articles 36, 50, 66, 80, 93, 94 or 95 or violates or does not comply with the announcements, requirements , criteria or orders specified in Articles 9 Paragraph 1, 10 Paragraph 1, Articles 33, 36, 50, 66, 71, 80, 90, or 95, director, manager or the authorized person to run the financial institution is subject to not more than one year imprisonment or fine not more than 500,000 Baht to 1,000,000 Baht or both except proving that it has not involved with the offense.

With the case study which contributes critical lessons for Thailand, the researcher will further discuss are corruption of the executive in Bangkok Bank of Commerce (BBC) which leads Thailand to economic crisis in 1997 and impacts gravely on the monetary system and the nation economic system, and a case study of the First Bangkok City Bank Limited (Public). They are the case with perspectives on economic crimes applicable for distinct studies.

2.5.1.3 The case study of Bangkok Bank of Commerce (Public) (BBC)

Facts: the case of BBC

Investigation reveals that aims of lagans granted in BB by Mr. Krirkkiat Jalichan, chairman are for “takeover” (takeover means individuals or juristic person buy shares of a company to gain more proportion of shareholding to have power to control the management of a business) and bring securities, i.e. share certificates to pledge as collateral of the loan by planning steps and assign duties as follows.

Step 1: Mr. Kirkkiat Jalichan or Mr. Rakesh Saxena and associates founded a company to file loan petition from BBC claiming to seek money to buy shares in different companies which wanted to takeover the business. The loan

petition companies was the registered company but did not transact any affairs or called “Paper Company” else it bought large amount of shares from other companies for themselves and associates to enable them to be executives in those companies.

Loans Granted for Takeover

⇩

Loans from BBC; BBC = gains consultant fees and loan volumes

⇩

Takeover by pledging shares

⇩

Wait for share price rise and sell for profit

⇩

No repayment to BBC by coloring accounts to cover loss

Figures 2.1 Procedures of frauds

Step 2: Mr. Rakesk Saxena and associates bought companies as in STEP1 to file loan petition in BBC and Mr. Kirkkiat Jalichan chairman authorize oneself to approve the loan without passing procedures and practices regulated in BBC but just approve “pass-card of loan approval” it is attributed as a credit card and upon loan approved one could transfer money from ATM to the account of the borrower. The authorized persons for loan approval were just Mr. Kirkkiat Jalichan and Mr. Rakesh Saxena.

Step 3: After the loan has been approved by BBC, Mr. Rakes and associates misappropriated the money to theirs through disguise buying share with companies they claimed to take over with the amount loaned from BBC thought those shares were owned by Mr. Rakesh and associates who had bought in lower price than

the mock-purchase shares. Later, Mr. Rakesh and associates pledge them with BBC as collateral to file for loan in BBC. Then, if the share values were higher by their speculation; Mr. Rakesh and associates pleaded BBC to sell their shares in order to pay the loans. But after shares sold, they never repaid BBC.

Mr. Rakesh exploited the “City Trading” to transact in disguise for loan from BBC at the amount of 1,633 million Baht guaranteed by land from Pichit Province and Prachin Province as collateral (collateral worth 27 million but loan approval worth billion). Such transaction violated the order of BOT that loan approval for new client must be company truly running business not “Paper Company” In case of client file for loan-petition of 30 million; it had to be submitted to the loan board. But Mr. Kirkkiat approved by ignoring the BOT order, at that time such transaction violated the Commercial Bank Act BE 2505 (1962) Article 3, enacted that:

“Commercial banks are prohibited to grant loan in other affairs or causing contingent liabilities for any individuals, either or all upon a day ends exceeded proportion of the entire capital or different capital by specified criteria, methods and conditions of the national bank under the approval of the Minister except being permitted by Bank of Thailand.”

It is found that the punishment was just the fine of not more than 300,000 Baht only without imprisonment. So, violation had been made without fear on offense.

Report of BOT revealed that number of corruption cases in BBC charged by BOT reached 23 cases and claimed for damages for 31,000 million Baht. 14 cases were in the Court of First Instance and 9 cases were sentenced while 9 cases were in the Appeal Court. 6 cases were file for complaints charging for damages of 14,000 million Baht and 5 cases were in the Court of first Instance. 4 cases were sentenced, a case was dismissed and all 5 cases were in the Appeal Court. The total damages were 45,000 million Baht and Mr. Rakesh involved in 20 cases and all 29 cases were expired in the middle of 2011.

BOT had confiscates assets in Thailand containing lands, establishments, deposit accounts in financial institutions, vehicles and shares around 100 items with estimated values during 1996 around 10,000 million Baht. Current

values are hard to estimate since the cases had happened more than 10 years. Assets abroad had been confiscated and imported by values of 1,500 million Baht from Switzerland, England and from Guernsey was around 25 million US dollars. Foreign assets were under coordination with USA, France, Russia, China, Republic of Czechoslovakia and suing another 300 million US dollars.

The four cases sentenced by the court of First Instance, were the cases charged by the prosecutor against Mr. Kirkkiat Jalichan BBC ex-chairman and associates in details as below.

CASE 1

The prosecutor as plaintiff preferred a charge before the court against Mr. Kirkkiat Jalichan BBC ex-chairman, the first defendant and Mr. Ekkachai Athikhamanantha assistant chairman responsible for loan, the second defendant who violated the Commercial Bank Act BE2505 (1962) being a juristic person authorized to be responsible for administration and violated and failed to abide in the order of BOT. the case found evidence before BOT that BBC held the status and operated possible to cause pubic damages; BOT thus issued order to BBC dated April 18, 1995 on interpolating status and operations. But BBC violated and failed to follow the order of BOT by granting loan to individuals and juristic persons being the same debtors BBC granted loans before and granted extra loan worth more than 9,000 million Baht.

The court considered evidences of plaintiff and with cross examination of defendants and found that the charge was expired on not file the case within a year under the Commercial Bank Act BE2505 (1962) and adducing the plaintiff, there was no evidence that the first defendant violated the order of BOT on loan approval in No. 4 and it was the signing to invest in stock market abroad No. 18. The court dismissed the case.

CASE 2

The prosecutor of economic case and resource and BBC as plaintiffs co-charged Mr. Phiset Panichsombat, Mr. Kirkkiat Jalichan, BBC ex-chairman, the City Trading Corporation Limited, Ms. Sunantha Harnvorakiat board of the City Trading Corporation Limited, Mr. Ekkachai Athikhamanantha and Mr. Terry Easter board of the City Trading Corporation Limited to be defendants 1-6 in the black

case No. 4714/2539 , 5443/2539 , 1604/2540 on embezzlement accomplice worth 1,657,500,000 Baht and being the board committed negligence to duty or receiving stolen goods. On course of defendant 1 over estimated land values as securities mortgage for defendants 3-5 and defendant 2 took opportunity to exercise authority of loan approval to approve loan for defendant 3 worth 1,657,500,000 Baht which violated the order of BOT which permitted to approve only 30 million Baht only.

The court considered evidences of plaintiffs – defendants and found that the facts were admissible and without doubt that defendant 2 approved loan worth 1,657,500,000 Baht to defendant 3 running business registered in Cayman Island. And there were defendant 4 and 6 knowing Mr. Rakesh Saxena the consultant of defendant 2 being board authorized in the operations and signed check which the defendant 2 approved the loan without inspecting the company's operations how it worked, whether there was real business? Later the defendant 5 took 75 million Baht paid by BBC to be divided into 3 parts and offered MR. Rakesh the consultant. It was found that defendants 2-6 plotted to acquire non-beneficial interest wrongfully. It was an offense subject to the Criminal Code and the Securities and Stock Market Act BE2535 (1992) which the offense of defendants was one but against many Articles. It was inflicted the gravest punishment by imprisonment of defendant 2 for 10 year term and fine worth 2,264 million Baht; the company of defendant 3 was fined worth one million Baht; defendant 4 and 6 were imprisoned for 7 year term each and fine worth one million Baht; defendant 2,4 and 6 co-repaid the capital worth 1,132 million Baht with 17.25 % interest rate per year; the defendant 5 was subject to imprisonment for 8 years and fine worth one million Baht with repayment of capital worth 75 million Baht with 17.25 % interest rate per year. The defendant 1 had not found clarity of accomplice in the plaintiffs' evidence because of not signing signature to approve the loan; the court thus dismissed the case.

CASE 3

The black case No. 5173/2540 and 7304 whereas the prosecutor and BBC co-charged Mr. Kirkkiat Jalichan, defendant 1 and Ms. Sunantha Harnvorakiat authorized board of Somprasong Intercommunication Company Limited , defendant 2, the American Standards Appraisal Company, defendant 3, Mr. Pairoj

Puengsilp, defendant 4 authorized board of the American Standards Appraisal Company, Mr. Veerachai Kongkaew, estimator of the American Standards Appraisal Company, defendant 5, Somprasong Intercommunication Company Limited, defendant 6 on violation and embezzlement and defendants had to repay the damages worth 353,363,966 million Baht. Occurrence was during September 12, 1994 until July 1996. Defendants 1 and 6 committed accomplice with Mr. Jaran Phoruengrong board of Somprasong Intercommunication Company Limited and Mr. Rakesh Saxena consultant of defendant 1 co-embezzled 647,953,425 million from BBC by plotting assignments. Defendant 6 had no any businesses operated where defendant 2. Mr. Rakes and Mr. Jaran held stake by filing for loan grant to BBC worth 660 million Baht claiming to buy 6,670,000 shares and 75 Baht a share worth 500,250,000 Baht for takeover the business of the International Consolidation Engineering Company Limited. Claimants submitted lands from Srakaew Province where defendants 1-2 and 6 asked defendants 3 and 5 to estimated securities to from evidence that the land was worth 826,000,000 Baht by their estimation. In fact the land was worth just 55,000,000 million only and submitted for securities mortgage allowing Mr. Rakesh and defendant 1to handle the matter and ordered staffs of the Financial Administration Department and BIBF (Bangkok International Banking Facilities) in BB to prepare documents which defendant 1 exploit position and duty to approve the loan which violated the order of BOT.

The court considered evidences and found though defendant 1 had been authorized by BBC board to approve loan worth three billion Baht to five billion Baht but defendant 1 had no authority to approve worth 30 million by the order of BOT. Therefore, the act of defendant 2 and 6 filed for loan grant and defendant 1 approved without checking securities real worth, it was an offense subject to Criminal Code and the Securities and Stock Market Act BE2535 (1992) wherewith the offense of defendants was one but against many Articles. It was inflicted the gravest punishment by imprisonment of defendant 1 for 10 year term and fine worth 706,729,000 Baht; defendant 2 was imprisonment for 7 year term and fine worth one million Baht; the company, defendant 6 was fined one million Baht and all defendants co-repaid the capital worth 353,300,000 Baht while the case was dismissed for defendants 3-5.

CASE 4

The prosecutor of economic case as plaintiff preferred a charge before the court against Mr. Kirkkiat Jalichan BBC ex-chairman, defendant 1; Mr. Wanchai Thammathitiwat ex-director of the Financial Administration Department and BIBF (Bangkok International Banking Facilities) BBC, defendant 2, the Ad-pack Company Limited, defendant 3 and Mr. Thawornsawat Chawanothai, board of the Ad-pack Company Limited, defendant 4 on embezzlement and demanded defendants to repay worth 362,000,000 Baht.

The court considered evidences and found the defendant 1 approved short-term loan and repayment within 15 days worth 100 million Baht to defendant 3 and 4 on January 31, 1994 on the same day that defendants 3 and 4 submitted securities shares of the Chollapratan Cement of two hundred thousand shares estimated values of 100 Baht per share. The defendant 2 holding duty of inspecting the qualification of the applicant on ability of repayment had not followed the criteria for approval with prudence. Defendant 2 recommended approval for loan and submitted to defendant 1to sign approval. Fact was found that the approval was haste and speedy before BOT issuing order dated February 1994 on disallowing to approve overdraft loan worth 30 million Baht.

Defendant 2 demanded withdrawal of pledged shares as collateral for defendants 3 and 4 claiming a violation and damaged BBC on debt payment because BBC lose collateral for arrears payment of defendant 3 worth 400 million Baht. such action taken was the intended violation against BOT regulations and easing defendant 3 it was an offense subject to Criminal Code and the Securities and Stock Market Act BE2535 (1992) wherewith the offense of defendants was one but against many Articles. It was inflicted the gravest punishment by imprisonment of defendants 1 and 2 for 10 year term and fine worth 238,331,600 Baht each; the Company as defendant 3 was fined worth 238,331,600 Baht; defendant 4 was imprisonment 10 year term and fined worth 238,331,600 Baht and all defendants co-repaid the capital worth 119,185,600 Baht and their assets were subject to auction if the defendants did not repay.

In order that, the total imprisonment of Mr. Kirkkiat Jalichan was 30 years and total fine worth 3,208,331,600 Baht.

2.5.1.4 Case study of the First Bangkok City Bank Limited Plc. (FBCB)

It was the case the executives of FBCB who were the members of Executive Credit Committee at that time comprising Mr. Manoj Kanjanachaya, chairman; Mr. Uthai Akkarapattanakul, MD; and Mrs. Pakkinee Suwannaphakdi, Asst. MD, Loan Manager of FBCB were wrongfully approve loan worth 4,100 million Baht for Mr. Suthep Charoenpornpanichkul the major shareholder of Saengsanguanpanich Limited Partnership a debtor owning car-paint shop without collateral. After the charge by prosecutor, three alleged consigned themselves, i.e. Mr. Suthep Charoenpornpanichkul, Mr. Manoj Kanjanachaya, and Mr. Uthai Akkarapattanakul, MD while Mrs. Pakkinee Suwannaphakdi has been under warrant No. Jor.24/3/2549(2006). Dated December 25, 2006 claimed by Pol. Lt. Col. Sumet Sodsong acting for the Commander of Counter Economic and Technological Crime. The arrest warrant stated that upon Mrs. Pakkinee Suwannaphakdi was charged of being an accomplice of embezzlement and authorized to handle other owned properties and offended on negligence of duty causing damages to the interests in terms of the individual properties and fulfilled the offense as a professional or business wherewith being trusted by public. At the end, the case of Mrs. Pakkinee Suwannaphakdi was precluded by prescription in October 30, 2012 with disable to arrest the alleged for lawsuit.

Details of the case and the offense could be considered from the Order of Business Transactions Committee No. Yor.86/2555 (2012) on Temporal Property Confiscation of Offense stating that Anti-Money Laundering Office (AMLO) has been reported by BOT that under Letter No. BOT-SorKorDor 230/2547(2003) dated February 10, 2003; whereas corruption subject to the Commercial Bank Law committed by director, manager or any person responsible or benefit involved in running the financial institution. That was during December 19, 1995 until October 30, 1997, the Executive Credit Committee comprising Mr. Manoj Kanjanachaya, Mr. Uthai Akkarapattanakul, and Mrs. Pakkinee Suwannaphakdi, co-approved loan to a

debtor, Mr. Suthep Charoenpornpanichkul for eight(8) accounts which violated the regulations and orders of FBCB and BOT which was an improper circumstance leading to damage the FBCB properties or depositors. Upon December 31, 1997 and March 31, 1998; Mr. Suthep Charoenpornpanichkul, debtor group had debt arrears worth 4,278 million Bath (excluded interest) and was classified immediate suspicion which affected FBCB on owning high rated impaired assets and its transactions. The bank had to raise capital and change executives while seeking loans from the Financial Institutions Development Fund (FIDF), losing public trust and facing mass withdrawal. The Office of Special Prosecutor of Special Case 3 had later taken action to protect rights of the victims on crime under Article 49 Lat Paragraph of Anti-Money Laundering Act Be2542(1999). BOT later issued a Letter BOT. ForKorDor. (02)1117/2555(2012) dated July 4, 2012 on Action Taken on Properties of the Corruption Fugitive of FBCB and Case of Corruption Against The Mega-Capital Trust Company Limited; wherewith FBCB had been charged by the prosecutor but the alleged Mrs. Pakkinee Suwannaphakdi, corrupted ex-executive of FBCB was on flee according to the warrant No. Jor.2413/2549 (2006) dated December 25, 2006 of Bangkok Criminal Court and yet not being arrested for lawsuit. The case was precluded by prescription since December 19, 2010 until then and last case would be precluded by prescription on October 30, 2012. Had the fugitive not been arrested for lawsuit within the prescription; the confiscation order of BOT would be dismissed or ended. This was the action taken against properties possibly involved with crimes of BOT but failed. Action taken under the Anti-Money Laundering Act BE 2542(1999) would be more beneficial to the government services under Article 58. The case of Mrs. Pakkinee Suwannaphakdi and associates was subject to Order of Business Transactions Committee No. Uor.48/2547(2004) dated March 19, 2007 incorporate with its resolution in the Meeting No. 11/2547(2004) dated March 18, 2004 on Temporal Confiscation/Sequestration and claim rights of interests and properties, and yields of properties of Mrs. Pakkinee Suwannaphakdi, Mr. Attawich Suwannaphakdi and Mr. Nattaphong Suwannaphakdi on types of lands and establishments for 21 items worth 131,164,000 Baht and not exceeded 90 days counted on March 18, 2004 until June 15, 2004. The Business Transactions Committee issued order No.

Yor.51/2547(2004) dated April 7, 2004 incorporate with its resolution in the Meeting No. 13/2547(2004) dated April 1, 2004 on temporal confiscation of lands and establishments of Mrs. Pakkinee Suwannaphakdi, in 6 items worth 101,000,000 Baht and not exceeded 90 days counted on April 1, 2004 until June 29, 2004 which served crimes under Article 3 (4) of the Anti-Money Laundering Act BE 2542(1999). Also in the case of reasonable grounds, it was believed that Mrs. Pakkinee Suwannaphakdi and associates gained properties related to this crime.

In the meeting of The Business Transactions Committee, Round 6/2547(2004) dated February 11, 2007, its resolution was to assign the authorities to take action under the Anti-Money Laundering Act BE 2542(1999) incorporate with the order of Secretariat of the Anti-Money Laundering Committee No. Mor. 19/2547(2004) on Assignment of Authorities on Property Inspection dated February 18, 2004 No. Mor.20/2547(2004) on Assignment of Authorities on Property Inspection (Additional) dated February 19, 2004 and No. Mor.194/2555(2012) on Assignment of Authorities on Transaction or Property Inspection Involving Crimes (Additional) dated July 30, 2012; the authorities took actions on transactions reports or information of the stated individuals and found that during December 19, 1995 until October 30, 1997 or before and continual, Executive Credit Committee comprising Mr. Manoj Kanjanachaya, Mr. Uthai Akkarapattanakul, and Mrs. Pakkinee Suwannaphakdi, had co-approve loan which violated regulations and order of FBCB and BOT whereas (1) approval beyond authority and allowing debtor withdraw in advance which violated the order 2/2534 (1991) of the bank board clearly verified that authorized approval not exceeding 120 million Baht (P/N not exceeding 60 million) but if exceeded, it must be forwarded to the executive board for consideration; (2) No specification of authority to handle credit and account, screen and analyze credit, and follow-up credits which was assumed violating the order of the board; (3) Non-adherence to regulations, and protocol of FBCB specifying directions to consider credit by analyzing markets, organization, finance and economy; (4)absence of control, supervision, screen, and analyzing credit through professional principles such as the commercial bank must transact with prudence. It was the transaction with reasonable grounds that Mrs. Pakkinee Suwannaphakdi, and associates behaved and

committed crime against the Commercial Bank Law. It was committed by director, manager or either individuals responsible or hold benefits related to running the financial institution or the involvers or ever being involvers with criminals or money-laundering crime. And , there were evidence with reasonable grounds that Mrs. Pakkinee Suwannaphakdi, and associates exploited the money gained from crime to pay their properties linked to the properties The Business Transactions Committee issued order to confiscate, though ownership had afore transferred. With the last crime would be precluded by prescription in October 30, 2012 and Mrs. Pakkinee Suwannaphakdi has not yet consigned herself and still under flee but if beyond October 30, 2012; she and her associates might transfer, distribute, misappropriate, conceal or hide properties which were under inspections. Also, properties under inspection, had ownership been transferred, they would be hard to pursue, incorporate the liquidated properties were easily transferable. So, it was reasonably believed that the stated persons gained properties from committing crimes and might transfer, distribute, misappropriate, conceal or hide those properties.

By virtue of section 34(3) and Article 48 Paragraph 1 of the Anti-Money Laundering Act BE 2542(1999), and Amendments incorporated with the resolution of the Business Transactions Committee Round 13/2555(2012) dated October 9, 2012; the committee ordered for temporal confiscation of the properties but not exceeding 90 days in the property list attached. Items 1-5 of the property were counted on dated October 9, 2012 until January 6, 2013 while items 6-8 were counted since the authorities had admitted the properties from BOT. Meaning, it was the day when BOT dismissed the property confiscation including properties gained from selling, distribution, and transfer or any instance which were the properties or rights claim or benefits or yields of money or yields of the properties.

2.5.2 Property Crimes

2.5.2.1 Natures and styles of property crimes

Capital market is the important source for business sectors among investors. Stock market is a channel of investment for retail investors and institutional investors besides money market. For example, depositing money at

present with financial institutions gains less returns. On the other hand, capital market is another important mechanism for the Thai economy, which is significant for the growth of the national economy and wealth of the Thais in terms of funding to the business sectors. Gaining "Capital" regardless being the capital itself or assets of the business sectors provides multichannel but mostly gaining from funding of the company shareholders and loans from financial institutions. However, it is known that loans from financial institutions or banks is a headache especially during the current economic situation when banks consider more strictly on the capacity of repayment and potentials of debtors than in the past. This is because banks become the creditors of the businesses. Therefore, owners with capacity to make profit, attraction, bright future and possessing minimum capital reaching the criteria of the stock market; would be possible to choose public funding through being listed in the stock market (Office of the Commission of National Counter Corruption – OCNCC, 2011:31-32)

Good stock market requires three (3) elements, i.e.

1) Liquidity – expedition of trading and in large volumes and trading must be simple rather than difficulties to find traders.

2) Orderly – rise and fall of the stock price must not be brisk but procedural and rational.

3) Fairness – all traders are promised to have all information equally and there is no discrimination.

All these three elements are not easy because investors aim to seek gains with countless tactics disregarding taking others' advantages which is called "unfairness of trading'" or commonly called "speculation" (Phongphan Kanjanawattanan, 2011).

Unfairness of trading stocks is divisible into three attributes whereas the Securities and Exchange Act BE2535 (1992) enacts counter unfairness of trading in Section 8 as follows:

2.5.2.1.1 News and Fact Disseminations

There are three cases in dissemination of news or facts, which violate the Securities and Exchange Act BE2535 (1992).

1. Providing false or misleading information

Article 238 enacts, "it is prohibited the securities companies or responsible persons enterprising the securities companies or companies issuing securities, or stakeholders of securities provide false information or and statements to distort facts of the financial status, performances, or trade prices of the companies or the juristic persons listed in the stock market or securities traded in the securities trading centers".

Elements of the offense in Article 28 are:

(1) There are four (4) kinds of criminals, i.e. the securities company, persons responsible for enterprising securities, the companies issuing securities and the stakeholders of the securities.

(2) There are two (2) actions, i.e.

a) Telling false information is informing untrue fact to other. Legally, false information must be fact happened in the past and it is counted mendacity while fact not happened or will be happened in future cannot be counted mendacity.

b) Telling any statement with intention to make other misunderstand the fact of financial position, performance and securities trading price or a company or juristic person listed in the stock market or securities traded in the securities trading centers. Such information might be telling truth, ambiguous or half true but significantly needed to mislead others as the above three elements either verbally or in written.

(3) It must cover all external elements, which is the incident or fact happened and externally seen comprising the offender, offense, and its consequence. Therefore, it must be considered that such offender has been prohibited by law or not, the offense being prohibited by law or not, and the consequence needs protection by law or not.

(4) Intent or internal element which is the doer intends the consequence of the action and aims at its consequence; nevertheless, it must be found that the doer knows the fact which is the external element of the offense. Therefore, Article 238, the doer must realize that it is the mendacity or untruth. Another thing is special intention which is informing any statement with **the intention to mislead others**. It is the action that the doer realizes his/her action and intends to mislead other. So, in the case Article 238, the doer must have special intention to mislead other on 3 elements, i.e. financial position, performance and securities trading price or a company or juristic person listed in the stock market or securities traded in the securities trading centers, which will be deemed wrongdoing without focusing the consequence the doer will gain from his/her dissemination.

2) Dissemination of securities price change

Article 239 enacts, "it is prohibited the securities companies or responsible persons enterprising the securities companies or companies issuing securities, or stakeholders of securities disseminate any facts misleading others on securities price rise or fall except disseminating fact reported to the stock market".

Elements of the offense in Article 239 are:

(1) There are four (4) kinds of criminals as in Article 238, i.e. the securities company, persons responsible for enterprising securities, the companies issuing securities and the stakeholders of the securities.

(2) Dissemination, which is wide-spreading among individuals but differed from Article 238 such as dissemination in Medias or publication and so on. The nature of the news disseminated involving any fact which misleads others on securities price rise or fall. Such news might be the fact of company information, i.e. mostly the financial position, and the performance of the company. Such information is counted important to the securities price and the message could be fact or false.

(3) The external and internal elements are similar with Article 238.

3) Dissemination of Rumors

Article 240 enacts, “it is forbidden for anyone to release rumors which might mislead others the rise or fall of the securities price.”

Elements of the offense in Article 240 are:

(1) The doer or anyone is any individuals not necessarily be the persons involve in any securities.

(2) An action being an offense is the dissemination as in Article 239 which is wide-spreading. However, Article 240 promulgates that it must be rumored the false information to mislead others that securities price rise or fall. So, dissemination in this Article must be untrue and rumored among common investors. The false news could be any news and not necessarily be about securities, and not necessarily be the companies issuing securities or any mendacity affecting securities price.

(3) The external and internal elements are similar with Article 238 and Article 239.

2.5.2.1.2 Trading by using insider’s information

Article 241 enacts, “Trading securities listed in the stock markets or securities traded in the securities trading centers forbids any individuals to trade or to propose or persuade others to trade listed securities in stock markets or securities traded in the securities trading centers either directly or indirectly by reasonable doubt of taking advantages over outsiders in relying on facts which is the essence to the securities price change and not disclosed to public but one knows it through the position or the status, regardless such deed is for oneself or for others or disclosing fact for other to act while one gains the returns.”

For the benefits of this Article, individuals by Paragraph 1 include:

(1) Directors, mangers, responsible person for operation or the auditor of the company listed in the stock markets or securities traded in the securities trading centers.

(2) Securities holders of the company listed in the stock markets or securities traded in the securities trading centers worth more than 105

shares of the registered capital. To this case, the calculation of the securities values of the securities holders must include securities of the spouse and immature children.

(3) Authority of the government offices or director, manager, staff of the stock market or securities trading center who are in the position or the status to know fact which is the essence to the securities price change and gained from doing duty.

(4) Anyone who involves with securities or trading in stock markets or securities trading centers.

The concept of this law comes from the principles of "trading securities must be based on fairness." All investor must receive factual information and equally receive the information. Exploiting position or opportunity to faster receive information before other and seek gains is counted unfair deed against others (Piset Settasatien, 1994).

The word, "insider's information" by this Article is the fact significant to the securities price change undisclosed to public.

The provisions of this Article specify prohibition for the insiders attributed as follows:

(a) Any individuals who are common people or juristic persons

(b) Individuals assumed that they may access internal information of the company issuing securities easier that common people, i.e. the board, major shareholder group, employee and staff group and persons involved securities and/or trading securities in the stock market or securities traded in the securities trading centers.

Individuals by (a) and (b) were forbidden to act as follows;

(1) To trade,

(2) To bide or to offer, and

(3) To persuade to bid or to offer or to propose for bidding or offering.

Following (1)-(3) must adhere to the facts significant to the securities price change undisclosed to public but one has known because of the position and the status regardless doing for oneself or for others (Chutima Lilajindamai, 2005).

2.5.2.1.3 Speculation

The meaning of "speculation" is generally an action of individual or individual group interfering securities trading in the stock market by multi-approaches leading to the trading volumes changed from normal direction without any fundament element to cushion. This distorts volumes or price reflecting the real concept of investors toward the stock market where the doer aims to seek self-gains from the changed value. Nature called mark-up is differed in each market.

However, considering what kinds of trading are assumed the speculation? Besides considering the irregularity of the market, it needs to consider whom does the irregularity come from, too. The markup-price is generally a washed sales for investors to see that the securities are densely trading or the securities price are volatile. However, in some cases there might be transferring of shareholders through nominee to accept the offer or there is real share payment through the securities company to cover for more difficult checking only. In fact, money for trading is still owned by the same person or a group or ordering the trading knowing that oneself or accomplice demands improper matched orders. It is an illusion with the stock market that there is unmatched volumes and price to normalcy. Or, it is to trade any securities periodically ongoing which are the real trading to push the price higher by painting the tape. But such an act provides a picture of the securities price tends to ongoing higher in order to persuade investors to trade. Then there are sell out to have profits or to seek benefits from the other way round of the price rise and so on.

Article 243 enacts, "trading securities listed in the stock market or securities traded in the securities trading centers;

(1) forbid anyone biding or offering with connivance or with agreement with others as a disguise to mislead common people

that at a period of time or at a moment ; the securities have been much traded or their price has changed or not changed which unmatched with normalcy of the stock market;

(2) forbid anyone by oneself or by companying with others to bid or to offer securities in series of transaction which distorts the normalcy of the stock market and such act done to persuade common people to bid or to offer the securities otherwise act by honesty to protect one's legitimate gains."

Pricing bid and offer securities or speculation which distorts the market from normalcy enacted in Article 243 is divided into two (2) attributes, i.e.

1) Concealment

It is covering agreements or connivance of trading securities in the stock market as much distorting the volume of trades from the normalcy. Pricing the securities might not be the nature of values for speculation but just for the sake of pricing. Concealment acted is generally organized with many individuals involved either trading accounts securities or individual account in conspired. They connive and pre-plot then cover their connivance to be seen as independent or non- met or non-involvement. For example, opening account for securities trading in different institution or opening bank accounts for the benefit of stock exchanges in different banks; and then they trade as being agreed upon or plotted until the securities price rise and mislead others that they are attractive for investment because there are large number of stock traders. Upon price rise to a satisfactory level; they gradually offer for sometimes. Had trading waned; the price returns to normalcy since it does not rise because the fundamental is firm such as good performance of the company issuing securities. However, price rise comes from trading disguising as real bid and offer (Chutima Lilajindamai, 2005).

Herewith, there is an assumption of law by **Article 244** attributing the nature of an act counted as concealment to mislead common people under Article 253 (1) enacted that:

"By following case, it also deems concealment to mislead common people under Article 243 (1):

1. Bid or offer therewith finally individuals gaining from the act are the same persons.

2. Order trading therewith realizing that oneself or conspirators order bid and offer of the same juristic persons or the project on management of the same mutual fund, the same type and the same kind, with which given relative volume, price and time.

3. Order offer realign that oneself and conspirators have demand bid or will bid the securities of juristic persons.

So, the following acts are also counted concealed trading

(1) Trading on different items but benefits are in the accounts of the same person such as trading through many nominees to conduct series of transaction back and forth and such trading is backed by the money owned by the same person and finally the in and out money returns to the same person.

(2) offering securities of any companies and bid them back at the same time with objectives of raising false demands and supplies of securities in order to rise the volume of trading and pricing for misleading others.

(3) Trading by plotting that one orders bid while the other offers in the relative volume, price and time.

(4) Trading by plotting that one orders offer while the other bid in the relative volume, price and time.

2) Series of transaction

They might have done by oneself or acted with others and such acts distort volumes or price of trading in the stock market from normalcy or from its mechanism misleading others to believe that there are great number of trading and access for bid and offer. For example, it is to conduct a security in series of transaction with growing high price and turning the volume of trading the securities to extra high which misleads other investors that the securities is lucrative and pursue the biding. It is called price escalation attracting other to follow when price rises high. The price escalator later offer his/her stocks which sharply higher than first trading. Or in some cases, they are to gradually lower the price until reaching the

satisfactory point and trade with the lowest price. Then securities are offered at the high price in the aftermath (Chutima Lilajindamai, 2005).

Cheating and Fraud Model in Stock Exchange Market

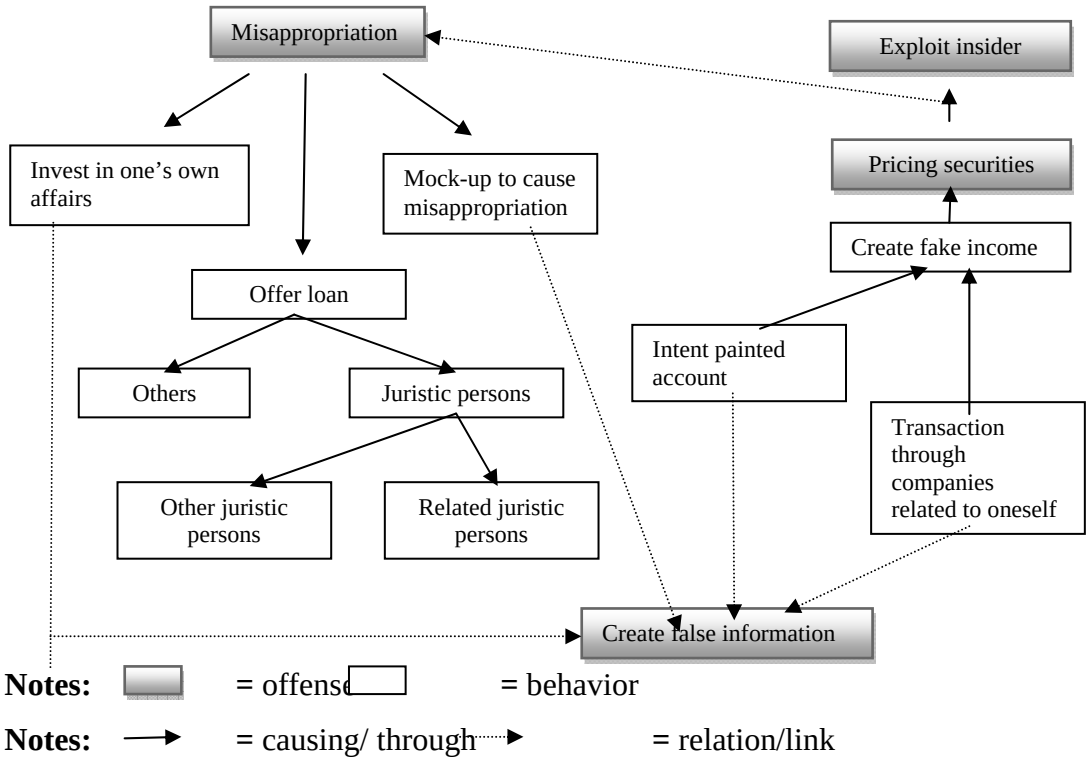

Figure 2.2 Cheating and fraud model in stock exchange market

Source: Office of national Counter Corruption commission, 2011:95

2.5.2.2 Related Law

2.5.2.2.1 Securities and Exchange Act BE2535 (1992)

Securities and Exchange Act BE2535 (1992) in enacted with rationales of the past development of the national capital market has been mainly focused on the secondary markets but failed to develop the primary ones which are the new stock markets at side by side. It failed the important role of the secondary market which supported the primary market unborn its full effectiveness. Based on this, opportunity to develop the primary markets is provided broader with more kinds

of instruments as tools to raise funds. In addition, supervising the capital markets meets many related laws and under supervision of many government offices which their monitoring and developing are absence of unity and measures to effectively protect interests of the investors. It is reasonable to enact laws and office to centralize monitoring and developing capital markets to enable effective operations more.

Herewith, the financial crimes related are found in Section 8 Part 1 on the protection of unfair trading securities from Articles 238 -244 and could be classified in to three (3) unfair deals, i.e.

1. Dissemination of false information
2. Insider trading
3. Speculate stock

2.5.2.3 Case study

2.5.2.3.1 The case of Mr. Song Watcharasriroj and associates

This was a historical and the first case that the Office of Securities and Exchange Commission (SEC) charged as speculation.

Regarding speculation, its fact by charge noted stated that Mr. Song Watcharasriroj and 12 associates were charged as defendants and conspired to sue cash and loan from the stocks of Bangkok Bank of Commerce (aka BBC) listed in the stock market through bidding from finance companies and six securities companies which were brokers of the stock market and brokers for the defendants for 119,599,700 shares or 43% of co-bidding of the market and worth 2,771,597,075 Baht or 40.42% of the market gross and series of co-interactions at high volumes and at every level within consecutive days to rise the price. Sometimes, there were offers when the tended to lower to maintain the level and distorted the market normalcy. It was a connivance to conceal in order to misleading common people that shares co-bid by the 12 associates had large volume of trading and price rise. This was to attract common people to trade the shares. 7,000 people were misled to bid BBC shares and it was 57% of the bid gross in total.

The Supreme Court pre-adjudicated before Verdict No. 1766/2539(1996) to confirm the dismissal of the case by the Appeal Court for 12 defendants within 2 issues, i.e.

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Article 243(1) forbids anyone to trade securities by connivance drawing disguise and misleading other people that at any period or any time there is large volume of trading or price change or without change which distorts market normalcy.

The Supreme Court deemed expedient that the statements enacted in Article 243(1) meant that it was forbidden for bidders or offerors connive to conceal fact and mislead common people that stocks had large volume of trading which was false. And or misleading common people that stock prices rose or fell which by fact they were not. And or misleading common people that stock prices unchanged which by fact they rose or fell. And or trading stocks in mask was meant bidders or offerors had no intention for real trading but faked the orders for bid or order for offer to the stock market to deceive others.

"**This case must be adduced to find evidence that ……masked trading** means bidders or offerors had no intention for real trading but faked the orders for bid or order for offer to the stock market to deceive others."

"…..but in this case, by adducing plaintiffs, it is evident that twelve defendants truly bid the BBC shares and by real price in each workday of the stock market and by each defendant. It is then a normal trading the stock market and not masked bidding to mislead any common people. What the plaintiff referred and adduced that all twelve defendants have connived and masked common people by concealment of connivance through the expressions of each defendant differently bid the BBC shares without connivance. It was deemed though hearing twelve defendants have truly acted as such and it is not concealment for misleading common people regarding volumes and price of the BBC shares as adjudicated above and not guilty under Article 243 (1). Therefore, it is unnecessary to adjudicate whether the twelve defendants have truly acted….."

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Article 243(1) prohibits anyone by oneself or in partnership with others to trade stocks as series of interaction which distort trading from normalcy of the market. And the act is to persuade common people to bid or offer the stocks except it is an act *bona fide* to protect legitimate interest of oneself.

"….As of the statement in Article 243 (2), it must be the intent persuasion for common people to trade the stocks…"

"In adducing, it is evident that trading stocks by estimation and decided by the witnesses that share price would rise and offer for profit but not bidding by persuasion or instruction…….biding BBC shares of the plaintiff's witnesses, it is self-decision or mutual discussions amount bidders' friends. Upon, estimating shares of any securities being bided and tended to rise in price and bided for profit; then they decided to bid which is normal for common people trading in the stock market and not biding BBC shares from persuasion from the twelve defendants to bid the BBC shares. While the other plaintiff's witnesses do not testify biding the BBC shares with motive from the twelve defendants to bid the BBC shares or to confirm that the twelve defendants bid the BBC shares with motive to attract common people to bid the BBC shares. Evidences of the plaintiff are indefensible that the twelve defendants bid the BBC shares with the emotive to attract common people to bid the BBC shares which are subject to Article 243(2). The Supreme Court deems that bidding the BBC shares by twelve defendants is not guilty under Article 243; the appeal of plaintiff is indefensible …"

2.5.2.3.2 The case of Picnic Corporation Ltd Co. (Plc)

Picnic Corporation Limited Company (Plc) was established in 2003 mainly running the business of Liquid Petroleum Gas (LPG) by trading from refinery or gas separation plant (GSP) to be distributed as retails and wholesales under the brand of "Picnic Gas". The company instituted its businesses in full cycle counted on Gas Store Business, Gas Plants, Gas Tankers and Containers, Gas Shops, Gas Stations and different sizes of gas container. The public company limited had the Wisuddhisin Family as the major shareholders.

The performance of Picnic Plc after 2004 (Report Form 56-1presented to SEC) revealed that the company had net profit worth 735.38 million Baht which rose from the previous year for 470 million Baht or 177% rise while 2003 it had net profit for 265.39 million Baht. Its major income from year account in 2004 was 7,023.26 million Baht or triple adjustment compare to 2003 having income of 2,363.74 million. Reasons were:

- the company expanded the clients' bases with continuous promotion and in 2004, LPG business recognized its income for the entire 12 months drawing the rise of gas business significantly from 2,095 million Baht to 3,541 million Baht.

- Expansion of real estate during the economic recovery drawing income of engineering expanded from 239 million Baht to 1,466 million Baht.

- Recognition of investments in the affiliated companies which ran businesses in Vietnam and recognized business from February 2004 worth 810 million Baht.

- Recognition of investment in the World Gas Thailand Co. Ltd. since November 2004 worth 809 million Baht.

- In December 2004, the company had increased income from petroleum trade worth 397 million Baht.

- Other income had risen to 241.37 million Baht derived from rent of gas container worth 178.44 million Baht.

The performance of Picnic Plc during 2003-2004 as above was the sources of lawsuit. On March 29, 2005; SEC ordered the Picnic Plc 5to amend annual budget 2004 on Total Budgeting and Vale Records of the Affiliated Companies Bought. Flaws were as below:

(1) The Picnic Plc did not report its gas transactions with the10 Gas Plants attributed the Picnic Plc had authority to monitor them because all shareholders or most shareholders of the GAs Plants were the employees of the Union Gas which owned by the Wisuddhisin Family and some companies had their directors and all or most the authorized to sign persons were also

the employees of the Union Gas. Those Gas Plants deserved by factual sense in acquisition by the Picnic Plc. It reached the criteria of taking those company performances to common budgeting.

(2) In 2004, the Picnic Plc bought two affiliated companies, i.e. World Gas (Thailand) Co. Ltd and its affiliates at the cost of 1,481 million baht. But it was found that most asset bought was goodwill rather tangible assets by estimating the goodwill as high as 1,049 million Baht or 70% of the payment while their latest profit of 2004 was just 8 million Baht. It was deemed that the goodwill values might be devalued because they could not create benefits for the Picnic Plc as in its account.

Through these causes , SEC demand the Picnic Plc to prepare common budgeting for the 10 Gas Plants to reflect their real financial status and their real performances and report information of their performances and their future business plans among the two affiliate companies to compare the goodwill values found in the account. If it had been found that the performance of the affiliate companies was not worth the fixed goodwill values worth more than a billion Baht; the company had to cut the goodwill values as expenses to meet the performance and to also amend Budget 2004. The company had to submit the amended budget and approved by external auditor within May 13, 2005.

With the series of interaction between the Picnic Plc and Gas Plants affiliated, there was link among the10 companies disclosed by SEC demanded the company to amend its Budget 2004 and found that the Picnic Plc bore behavioral evidence of intent mock-up figure of profit greater than reality to the company aiming to rise the company share price as follows:

(1) The Picnic Plc changed the gas containers at the affiliated Gas Plants with closed connection with executives of 10 plants and distorted from dealing with other Gas Plants. Formerly, deposits for containers were necessary and utilized the containers with time unlimited. It was the rental contract for the containers for 3 years. In total, it was the rental fees relative to the previous deposit. To this case, the company recorded its income from renting gas containers in Budget 2004 immediately worth 178.4 million Baht or 2.43% of gross income and

24.26% of net profit though by contract those Gas Plants must have rental fees in returns upon the containers were returned. The container rental fees were false income of the company.

To this case, SEC charged Mr. Theeratchanont Lapwisuddhisin and Ms. Suphaporn Lapwisuddhisin on June 30, 2005 because both as executive of the Picnic Plc behaviorally intended to paint account and turned Budget 2004 to reveal the surreal financial position and performance. It was the company recognizing income the rent of gas containers for the affiliated Gas Plants which was against the Securities and Exchange Act BE2535 (1992) Article 312 In addition, directors and executives of the 10 Gas Plant singed in the gas container rent had also been charged by SEC because they were possibly as assistants and / facilitators for the act of the executive which was against the Securities and Exchange Act BE2535 (1992) Article 315

It was observed that SEC did not charge the executives of Picnic Plc or paint its stock price which was their attempt to create artificial income for the company with multi-approaches such as changing the technique to fill gas in the Gas Plants from paying the deposit to the annual rent.

(2) An executive of Picnic Plc ordered to pay in account of the Gas Plant during 2004 with large amount. Some payments were for rent fees for the Picnic Plc which was the artificial income for the company attributed like the wool still comes from the sheep's back which turned the Picnic Plc's performances surreal but this case was not charged.

(3) The Picnic Plc sold gas to the affiliate Gas Plant with close tie in price/unit higher than other Gas Plants. It sold to the group at 17 Baht a kilogram while selling to other plants at 14 Baht /kilogram or around 20% cheaper. The latter bought gas at 1,700 million Baht or 48% of the total volume of the company and it also deserved the charge of creating artificial income. However, this issue was not charged. With detailed inspections, it was later found that besides painting account for artificial income for the company, the executives of the Picnic Plc also transferred profits from the Picnic Plc to its affiliated companies they owned.

SEC charged the executives of the Picnic Plc to the DSI as follows:

(1) In June 30, 2005, SEC charged Mr. Theeratchanont Lapwisuddhisin and Ms. Suphaporn Lapwisuddhisin who signed the loan contract worth 466 million Baht for 2 juristic persons, i.e. Orn-uma construction Limited Partnership and P-price Supply and Construction Co. Ltd. but return 85 million deposited to Mr. Theeratchanont's account. It deserved fraud charge by misappropriating the company's assets and seeking self-gains or others' gains. This was subject to Article 307, 308 and 311 which led to the Picnic Plc prepare wrongful documents and account or mismatching facts which was subject to offense against Article 312 of the Securities and Exchange Act BE2535 (1992).

(2) In October 13, 2006, SEC charged Mr. Theeratchanont Lapwisuddhisin and Ms. Suphaporn Lapwisuddhisin and three backers in case of connivance of artificially purchasing gas containers to misappropriate cash from the company in Budget 2004 of the Picnic Plc. There was record of payment for deposit in signing contract of purchasing large gas containers worth 852 million Baht with a juristic person. Later, the budge of the first quarter of 2006, it was disclosed that the company had terminated the contract and regained some part of deposit only. It demanded the company to raise liabilities reserve for the reasonable doubt of loss worth 454 million Baht. Similarly, there were records values of the small gas containers which were the company assets increased from 2003 worth 1,903 million Baht. Part came from P/O of Saengthongthai Container Production Co. Ltd. which was in the same group of the 10 Gas Plants linking the executives. It was likely noticed that the budget of the third quarter of 2005, the company raised values for depreciation of the small gas containers worth 1,000 million Baht. Such action was a misappropriation the company's asset because reasonable evidence had been found with the transactions in the Picnic Plc on purchasing large and small gas containers in Budget 2004, which was the artificial items to claim payment from the company, and there were documents and accounts related to them were fraud. It damaged the Picnic Plc. Mr. Theeratchanont Lapwisuddhisin and Ms. Suphaporn Lapwisuddhisin and three backers committed offenses subject to Articles 307, 308, 311, 312 and 313 of

Securities and Exchange Act BE2535 (1992) and Complementary Article 83 of the Criminal Code.

(3) With the report the Picnic Plc submitted to SEC for SP (suspense purchase) in January 14, 2008 before pleading rehabilitation program to the Central Bankruptcy Court; it was found that the Picnic Plc transferred the shares of World Gas (Thailand) Co. Ltd. to Asset Million Co. Ltd. which the creditor without any compensations. With this cause, SEC took inspection and found that Mr. Suriya Lapwisuddhisin as the co- manipulators and three directors authorized for signing for the Picnic Plc and other eight involved individuals who had misappropriated and shares of World Gas with the following procedures.

- Permit the Picnic Plc to establish the Asset Million Co. Ltd and the middleman to bid for debt discounted from a financial institution worth 169 million Baht with due interest worth 63 million Baht and the Asset Million Co. Ltd accepted the debt transferred and rights subrogation of the debt.

- Permit the Picnic Plc to sign contract with the Asset Million Co. Ltd to repay the bought liabilities worth 63 million Baht topped 150 million bath with four (4) installments but there was acceleration of repayment before due so to demand the Asset Million Co. Ltd pay liabilities of the financial institution and the rest was absorbed by the Picnic Plc for over liability responsibility. Herewith, it was the disguise of misappropriation on overpaid deduction from the company.

- Demand the Picnic Plc failing due of liabilities worth 75 million Baht, which led to another contract singed to amend period of repayment stated that the company would pay the Asset Million Co. Ltd and demanded Picnic Plc to transfer shares of World Gas (Thailand) Co. Ltd without endorsement of 7.99 shares bided in 2004 worth 1,011 million Baht and in the account value by the latest budget worth 744 million at the point of time to guarantee repayment of the liabilities due.

- Demand the Picnic Plc failing due worth 10 million Baht to be the disguised cause that the Asset Million Co. Ltd confiscates all the shares of World Gas (Thailand) Co. Ltd transferred without endorsement and demand its directors change the names of shareholders from the Picnic Plc to the Asset

Million Co. Ltd and all above transactions had not be submitted for approval from the board of the Picnic Plc.

Though the board of the Picnic Plc imposed criminal charges the corrupted executives and claimed civil petition for the Asset Million Co. Ltd to retransfer back the shares of World Gas (Thailand) Co. Ltd and finally it was achieved; but during the period there was misappropriation of money and assets from World Gas (Thailand) Co. Ltd in multilevel approaches. It very depreciated its share values. At this point SEC had primarily charged 12 offenders with DSI in March 13, 2009 violating Articles 307, 308, 311, 313, 314 and 315 of Securities and Exchange Act BE2535 (1992) complementary Articles 83, 84 and 86 of the Criminal Code. In addition, there was an order to confiscate assets of the individuals under charges for 180 days and demanded the Criminal Court to order prohibition for such individuals to leave the land. Later, the Criminal Court ordered to extend duration of asset confiscation of the individuals being charged many times since the case is under adjudication of DSI.

In conclusion, SEC charged the executives of the Picnic Plc and other individuals involved for three times. The charges were in 2005, 2006 and 2009 with 2 natures of offense, i.e., (1) misappropriation of the company's asset for oneself and for others, and (2) preparing fake documents and accounts of the company aimed to cover or conceal the misappropriation which was the behavioral offense of many cases.

From the three charges during four years since 2005, there was only one case charged in 2005 had undergone trail the prosecutor demand lawsuit at the Criminal Court. Though the Criminal Court dismissed the case, and at the moment, the case was in the Appeal court while another two cases charged in 2006 and in 2009 were in with the interrogation officers in DSI. Herewith, the interrogation on the offense was late because the charge was capital and hard to collect evidences and witnesses. Also, the alleged had escaped to abroad (the Appeal Court warranted imprisonment to Mr. Theeratchanont Lapwisuddhisin, ex MD and Ms. Suphaporn Lapwisuddhisin, ex Deputy MD of the Picnic Plc for 12 year term on

painting accounts and both were the younger brother and the younger sister of Mr. Suriya and Mr. Suriya Lapwisuddhisin, had escape to broad before this).

2.5.2.3.3 The Case of Roynet Co. Ltd (Plc)

The Case of Roynet Co. Ltd (Plc) was established in 1997 enterprising high speed internet service and distributed devices and internet cards for management with Mr. Kittiphat Yowwapreuek as CEO while the deputy president, MD, and directors were all his Yowwapreuek family members.

Roynet co. has been listed in the Market for Alternative Investment or MAI in 2001 when MAI was just a kick start. MAI promote SME companies to be listed for fund raising with easing criteria enforced in the stock market for example, reduction of paid capital minimized from 200 million Baht to 40 million Baht and terminated conditions that company had to perform net profit for the last two or three consecutive years before filing petition for listed. It allowed Roynet with minimum capital worth 40 million Baht with net loss for consecutive four years (1998-2001) was enabled to be listed in MAI.

After Roynet Plc listed in the MAI, its performance distinctly recovered. It performances of 3/2002 reported to MAI in November 14, 2002 with net profit of 11.87 million Baht compared to 3/2001 with net loss of 7.29 million Baht. For its 9-month performance, its profits worth 22.08 million Baht increased from the same period of the previous year with net loss of 18.48 million Baht. Mr. Kittiphat Yowwapreuek, CEO clarified the improvements with more dramatic sales volume from 3.95 million Baht of the previous year to 34 million Baht in the same period. 95% of the sales volume was from the internet services but it was noticed that expenses did not increased with any growing income.

The turn of figures in its performance increase the share price immediately after the announcement of the net profit. The Price moved from 0.92 to 1.04 Baht and rise for many days until ceiling at 2.26 Baht around a week after the net profit had been announced.

But SEC ordered in December 6, 2002 that the Roynet had to re-budgeting 3/2002 (Budget 3/2002 Roynet submitted to the stock market in November 14, 2002 but the external auditor just revealed the conditions of

reorganization of income which failed by the accounting standards that the company had journals recognizing income from internet services which had no real sales or real cash income). It was found that there was recognition of income from internet cards consigned by shop agents such as bookstores, convenient stores, and department stores around the country. Though by practice there was no income yet until shops could distribute those cards; the stock market marked NP (Notice Pending) for Roynet Plc to announce for common investors that the stock market was waiting for the disclosure of fiscal budget of the company during its improvements. Until there was an announcement, it took three weeks after the day of disclosing false operation; it allowed many investors to seek profit from trading the company shares. In March 9, 2003, Roynet reported its 3/2002 performance (amendment) to the stock market. The report dramatically changed from the previous reports. That was by the amended budget 3/2002, the company revealed net loss 13.22 million Baht while the previous budget 3/2002 before improvements announced net profit worth 11.87 million Baht. It showed that the company had increased 25.09 million Baht loss. The 9-month performance of the improved budget; the company had more than 36.7 million Baht loss or more loss to 58.77 million Baht compared to the net profit worth 22.08 million Baht in the previous fiscal budget before improvements.

The performance of 3/2002 after improvement of the fiscal budget had much changed and the small investors dump bidding immediately after the stock market took out NP in January 10, 2003. The share price fell from 1.09 to 0.79 Baht. In January 13, 2003the stock market indicated that executives of Roynet had “intention” to paint the fiscal budget of 3/2002 and ordered SP of Roynet the following day since it was found that the company met bankruptcy because the proportion of the shareholders was negatively worth 9.2 million Baht.

In February 2003, SEC charged Mr. Kittiphat Yowwapreuek and Roynet Plc with Division of Economic Investigation; Office of the Royal Thai Police on intention to paint accounts to deceive other individuals, concealment of security trading reports and insider trading while adding measures to help investors to use information for decision-making. Also, case was filed to the Coordination Commission for Lawsuit upon Offense under the Financial Law for

incorporate lawsuit. By reason, it was found that Mr. Kittiphat intended to paint account to deceive shareholders and other individuals to bid the company shares that they would profit even though the company lost. In addition, the company had offered some shares before dissemination of the fiscal budget 3/2002 which Mr. Kittiphat knew that the external auditor would notice and indicate impact of wrong journal. In corporate with Mr. Kittiphat never reported stock trading as director and the major shareholder because there was needs to conceal other to know the company movements about his own shareholding. Such act damaged shareholders, Roynet Plc and the company was charged under Article 56; Mr. Kittiphat on Article 56 complementary Article 300, 59, 238, 241, 246, and 312 of Securities and Exchange Act BE2535 (1992).

Besides lawsuit against persons involved, SEC found that it was necessary to support measures for investors to use information for decision-making by adding obligations to the SME to have financial consultants to prepare information disseminated to public. In offering stocks for the third person helped investors to revise correctness; it was necessary to plead for disclosed information and coordinated with SET to have measures to alarm investors to exploit fiscal budget commented by external auditors or notice of misconduct against the accounting standards.

Lawsuit

Due to SET demanded Roynet Plc to improve its fiscal budget to be adhered to the accounting principles commonly endorsed upon finding that comments of the external audit on fiscal budget 3/2002 that policy of income recognition, estimation of returned goods, and estimation of doubtful liabilities loss used by Roynet Plc was improper and did not meet the accounting principles commonly endorsed. Later, Roynet Plc had improved its fiscal budget and revealed 36 million Baht loss from 22 million Baht gain. In corporate with such duration there were changes of securities holders of the executives in Roynet Plc without reporting SEC. SEC inspected evidences from searches in the 3 offices of Roynet Plc, investigating testimony from such as external auditors, executives, staffs, SET

authorities, around 50 shops around and inspecting SEYT and commercial banks involved.

Conclusion of the inspection and adjudications were:

1. Incorrect journal, fact unmet, recording fraud in documents and disseminate false statements about its financial position or performance which was against Article 56, complementary Articles 300, 238 and 312

Inspections revealed that since 2002, Roynet Plc had expanded distribution channels by displayed sales its internet cards through shops and practiced with them that if unsold, the company would not bill. By accounting standards, Roynet Plc would not recognized income from the displayed sales of the goods. However, Mr. Kittiphat, CEO authorized for control and manipulate every job of the company especially marketing, computer system, accounting and knowing the correct journal managed Roynet Plc to immediately recognize the display sales as income affecting the fiscal budget of Roynet Plc revealed its performance from ever loss to ever profit . Upon questioned by the external auditor and raising suspicions of journal; Mr. Kittiphat did not report facts. SEC found that Mr. Kittiphat manipulated or agreed Roynet Plc to prepare incorrect journal, fact unmet, false statements in documents and disseminated false statements of its fiscal position or performance. It made Roynet Plc violated Article 56 and Mr. Kittiphat was against Article 56, complementary Articles 300, 238 and 312 of Securities and Exchange Act BE2535 (1992).

2. Fail to report trading stock of the executive by Article 59 and fail to report bid or offer stocks which holding them passed every 5% under Article 246

Inspection revealed that Mr. Kittiphat trade stocks of Roynet Plc through his own account and accounts of others with trading stocks outside stock markets without report by negligence of duty for 83 items and did not report change of shareholders in every 5% for 9 items. Trading was mostly happened during the fiscal budget of Roynet Plc disclosed incorrect performance. SEC found that Mr. Kittiphat intended to conceal or avoid reporting stock trading of the executives and it was against Article 59 and report the bid and the offer of the stock when holding stocks

passed every 5% under Article 246 in order not to allow investors to know his movement of shareholding and it violated Securities and Exchange Act BE2535 (1992).

3. Insider trading to offer stock which took advantages on common investors and it was against Article 241

SEC found that Mr. Kittiphat traded some parts of Roynet Plc shares during the external auditor notified him on the observations about the fiscal budget 3/2002 on recognition of income for sales which unmet accounting standards and indicated impacts of incorrect fiscal budget preparation, facts and essence of the share price change of Roynet Plc yet to be disclosed to public. Such practice was insider trading yet to be disclosed to public for one's benefits and for others which took advantages of the investors and against Article 241 of Securities and Exchange Act BE2535 (1992).

4. Offenses of other executive rather than Mr. Kittiphat

Besides, SEC found that 7 executives and ex-executives of Roynet Plc did not report trading by negligence of duty, which was against Article 59. One in seven executives did not report the bid and the offer of the stock when holding stocks passed every 5% and against Article 246. SEC submitted the case to the Commission of Comparing Offense for further action. SEC did not charge those executive as with Mr. Kittiphat because evidences were unfound either they share false journal of Roynet Plc or exploited insider trading.

With the case studies on fraud of the listed company in SET done against Securities and Exchange Act BE2535 (1992); it was found that most frauds came from the act of executives at the level of CEO or company board to seek gains for oneself or for others involved through two procedures, i.e.

(1) Direct misappropriation of the company and it arises in many ways, e.g.

- invest the company money the affairs involved with oneself such as executives trade stocks in other company which they are owners or sign contract to buy lands with the company related to oneself which ease benefits for one's business.

- allow loans to others or to juristic persons or jurist persons related to one self and later the loan becomes bad debt and damages the company which sometime it has to enter rehabilitation program.

- Counterfeit documents to enable payment order for individual or unreal identify organization having the executive or the director being the receiver of the money paid by the company.

- Other misappropriations such as misappropriating the company cash in bank, cash from account of bidding stocks for raising fund or partnership with other to misappropriate the company assets.

(2) Pricing stock for gains from trading them – objectives of pricing g stock of the company ; executives find approaches to rise the stock price speedily for gains from cheap bid but expensive offer through artificial income and reveal surreal company performance in order to attract retail investors who do not know the deep backgrounds. Herewith, they usually use accounting strategies such as recognizing income unmet accounting standards or fraud through insider trading because upon painting accounts with surreal income of their performance; the executives offer their own stocks to reap gains before SEC finds the irregularity of the accounts and demands improvement for real performance. Being taking advantage of such practice against other shareholders of the company; they do not know the fraud price of the shares. Offense of creating fraud information is incorporate with other offenses such as incorrect preparation of document and accounts surrealism for concealing the misappropriation of the executives or to paint fiscal budget of the company to generate artificial income for the company expecting to pricing in the SET.

2.5.3 Offense of Public Cheating and Fraud

2.5.3.1 Nature and model of public cheating and fraud

"Chain share" or "money yield money" is a form of transaction mainly aimed to raise income and fund through agreement to participate in business and to return benefits in various forms higher than the interest rates of the financial institutions. Entrepreneur claim to invest in other unrest forms for dividends

distributed to all investing members. In fact, benefits distributed by entrepreneurs are the investment of new members and when fail to find new members the benefit distribution runs short as commitment in the agreement and finally collapses. The benefits of the primary joint-investors are to arouse for joint-investment only. Such nature is to queuing cash or a cash movement method but never invests or provides loans since all every Baht is the same. So, when the time to pay interest for people who bid shares, it is necessary to take others' money or capital of the depositors to pay. Such queuing is another kind of fraud in the financial ring (Lecturer group, Faculty of Economy: Thammasart University, 1984:69).

Problems of public fraud as the illegal financial system found in Thailand in the past and became mega impact to the national economic system, were the Mae Chamoi Share. Such damages led to the government to enact the Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud B.E.2527 (1984) enforced until today. Later, there were many chain shares with new models such as the investment model of issuance of shares share of Sema Fakram Co. Ltd leading to an Amendment in BE 2534 (1991) or the model of the leisure day allocation business or Time Sharing of the Blister Intergroup Co. Ltd. through deception the victims by offer commission to recruit new member at high rate. The case of Blister critically damaged or the case of Nak Ya Shares which was another kind of chain share focusing on farmers with sophisticated approaches by father mother species cultivars of Nak Ya (Gecko) to breed and sell to the local people and buy back with high price. This included the case of adopting chain shares masking in the businesses such as direct sales business, agricultural product future business, speculations of FOREX rate and speculation of rise and fall on stock index and so on. Another Amendment has been enacted again in BE2545 (2002) to cover public cheating and fraud on speculations of FOREX rate. However, models and methods of public cheating and fraud have the tendency to growing expansion. With the simple and easy to understand model and being a disguised transaction in some kind of businesses, it victimizes people and brings large amount of damages (Office of the Permanent Secretary to Ministry of Finance, 2006:3.1-2).

2.5.3.2 Related Laws

2.5.3.2.1 Criminal Code

The Criminal Code on public cheating and fraud are Articles 341 and 343:-

Article 341: "Anyone commits cheating and fraud others by expressing false statements or covering truth deserved to be notified and by such deception to gain property for the deceived or the third person or manipulates the deceived or the third person to act, withdraw or destroy rights document; the person offends as cheating and fraud and subject to not more than three year imprisonment or fined not more than six thousand Baht or both."

Article 341, is key linked to cheating and fraud and generally comprising offense elements as follows:

(1) Anyone by fraud,

(2) Deceiving other by expressing false statement or covering truth deserved to be notified,

(3) Gaining property from the deceived or the third person or

(4) Manipulating the deceived or the third person to act, withdraw or destroy rights document

"Deception" means mislead from truth but not taking advantages from the misleading others (Khanit Na Nakhon, 1994: 159).

Deception deemed cheating and fraud is through two methods, i.e.

1. Express false statement

"False Statement" means fact unmatched truth. A statement becomes "false" is when it is the past statement and present which is the happen in the past or is happening in present which is evidently true or untrue while expressing the statement. Whereas the future statement is just a prediction or opinion in future and it is disabled to claim fraud. However, the future statement in some cases is assumed to find the current statement, for example, persuasion to invest in stock to buy land. Though buy land is future but such expression could be assumed that during

persuasion there is a piece of land affixed with the name of owner and the owner is ready to sell for the persuader who being money to invest in stock to buy the land (Yud Saeng-uthai, 1995:306-607).

2. Covering truth deserved to be notified

It means the person with duty to inform for preventing result, i.e. not allowing any one to be misled but reserves not to prevent the result under Article 59 the Last Paragraph. This duty might be legal duty, duty by contract, or duty from previous actions and excluded moral duty.

Article 343 is the offense of public cheating and fraud and the vigorous provision of Article 341 imposing the offender to accept more vigorous punishment.

Article 343 enacts, " if the offense by Article 341 by expressing false statement before public or covering truth deserved to be notified public; the offender is subject to imprisonment of not more than 5 years or fined not more than 10,000 Baht or both…"

2.5.3.2.2 The Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud B.E.2527 (1984)

Rationale of this Emergency Decree BE 2527 (1984) is due to loans and deposit from common people by paying interest or other benefits higher returns than loan or deposit from common transactions. The actor deceives people who expect to gain higher rate of interest to deposit their money with him/her through paying high rate of interest as allurement. Then bringing the money from loan or deposit of other cases to pay interest or benefit for the previous loaner or the depositor as series of transaction. Such action is the public cheating and fraud because it is certain that finally there will be large amount of people disable to have their capital in return. The loaner or the depositor cannot coerce or pursue repayment. However, such affair tends to speedily expand and if it is allowed to continue, it is destructive to common people and vigorously endangering to the national economy. It is deserved to have counter law to the action and set measures to protect the public

interest which might be damaged from the deception. With being an emergency, it is necessarily urgent to secure the stability of public economy. So, this emergency decree must be enacted.

The Emergency Decree for Loan as public cheating and fraud is the provision with special character from fraud in Criminal Code. It is then found the provisions in Article 4, 5, 7 and 8 enact methods and attribute of loan which is the public cheating and fraud and setting measures to protect public interest from being destructive by deception. It specifies various measures and only the state holds authority to take lawsuit. Later, there has been twice amended in 1991 and in 2002 to cover the models of offending. The causes of amendment in 1991 are this decree was enforced in 1984; the share enterprise have been vigorous suppressed until 1987 there was another kind of offense by raising fund of the Sema Fakram Co. Ltd claiming that the fund is the capital for real estate and lands trading while providing returns at 31.46% per month by average or 377.56% a year. The raising fund of the Sema Fakram Co. Ltd applied many approaches such as evidence of loan in from of agreement to sell lands with establishment, stock transferred of company limited and in for of company bill. Some part of the loan was circulated as returns for the loaners at the highest interest rate specified in the law on loan interest in the financial institution possibly pays at the time. The Sema Fakram Co. Ltd operated for two years and sued for lawsuit at the Provincial Court of Thanyaburi in April 7, 1987 and convicted for imprisonment in April 28, 1989 for directors for two years (Judgment No. 1210/2532 (1989) and the Dika No. 6442/2534(1991) convicted defendant bankruptcy and absolute receivership (Supattra Phanwichit, 2001:64-65).

Such incident led to an Amendment of the Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud B.E.2527 (1984) in 1991. There was defining Article 3 on “loan” and “benefits” to cover more in order to counter public cheating and fraud on new model of chain shares. Rationale and necessity of enactment was it found person enterprising by alluring others to send money or benefits for oneself and demanding the sender to persuade others being instructed to make the persuaded understand that if following the instruction until having many people to participate until covering the cycle, the

persuaded would gain more money or benefit more than the amount sent. Some called a chain shares. Finally, such practice would not be as being persuaded but damages to the misled believers. To counter this act; it deserved to amend the Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud B.E.2527 (1984) to cover such action.

However, forms of public cheating and fraud had improved and changed by societies with disguising in new businesses. The following problems were disguising business of speculation of FOREX which led to an amendment in 2002. Rationale of amending the Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud B.E.2527 (1984) (Copy 2) BE 2545 (2002) was public deception on FOREX or speculation. It was not only damage the deceived people but also damaged the broader national economy. But the provisions of the Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud B.E.2527 (1984) did not cover such offense. It deserved amendments to add loan offense of public cheating and fraud and specifying advertisement or announcement or any actions attracting public for co-investment as such is an offense on loan of public cheating and fraud. In corporation that it was necessary to add the calculation of returns, responsibility of staff or employees in the culprit companies. Culprits must be subject to more vigorous punishment upon recidivism and exile foreign culprits including paying commission and reward for more effectiveness in countering these offenders.

Principles of enactment on the Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud B.E.2527 (1984) (Copy 2) were as follows:

(1) Amend elements of loan offense as public cheating and fraud and specify advertisement or any action intended to persuade people for co-investment of FOREX as speculation (Article 3 and Amendment of Article 4).

(2) Specify estimated returns of loan in case of disable to calculate return at exact amount of money (Article 4 and Amendment of Article 6 Paragraph 2).

(3) Specify the authority, the administrative authority and police who arrests offender legible to be rewarded from fine paid at court upon finalization of the case (Article 5 and Amendment of Article 1/11).

(4) Specify confession of staffs or employees of juristic persons responsible for operating the juristic person affairs to admit punishment on loan of public cheating and fraud similar to director and its manger except proved they have no participation in offending (Article 6 and Amendment of Article 15).

(5) Add punishment for recidivism (Article 7 and Amendment of Article 15/1).

(6) Enforce exile law for foreign culprits (Article 8 and Amendment of Article 15/2).

Article 4: anyone advertises or announces before public or any action before more than 10 people for loaning oneself or others and will pay or pay returns by circumstances of loan with the highest interest rate where the legal financial institutions afford to pay realizing that or should realize oneself or others will provide loan for loaner, the money of the case or the other case to pay in circulation for loaners or knowing oneself or should know one or the individual cannot transact any business and by legitimated to pay enough returns affordable to pay in the rate. And in such incident, it causes oneself or others to loan; the person commits public cheating and fraud.

Anyone without license for business related to paying foreign currency by law of FOREX control, operation or allowing staffs, employees or anyone to advertise, announces or persuades people to invest, through:

(1) Trade any currency or many currencies, or

(2) Speculate or might receive benefits from FOREX is counted loan offense in public cheating and fraud.

Article 5: anyone act as follows

(1) Loaning or possible loaning

(a) Advertise or announce for common people or dissemination by other methods or

(b) Provide loan as routine business, or

(c) Assign receiver of money in loan among many sources, or

(d) Assign more than 5 individuals to persuade individuals for loaning, or

(e) Loaning from more than 10 loaners and more than five million Baht by amount and not from the legal financial institution stating the interests of loan of the financial institution, and

(2) The person,

(a) Pays or advertises or announces or disseminates or agrees to pay returns for loaners by the interest rate higher than the legal financial institutions stating the interests of loan of the financial institution, and

(b) Retaliate orders of the authority by Article 7 (1) (2) or (3) or the affairs of the person as he/she provides fact to the authority subject to Article and without evidence to prove that an enterprise gains enough returns in order to pay loaners.

The person is subject to punishment as of loaning offense on public cheating and fraud under Article 4 except provable of his/her enterprise or the claimant is the enterprise with enough returns to pay what one claims or if the enterprise cannot have enough returns; it needs to prove that such the case has happened because of the irregular economic situation where it is beyond expectation or other reasonable causes.

2.5.3.2.3 Direct Sales and Direct Market Act BE 2545(2002)

Direct sales otherwise are called Direct sale, Door-to-Door sale, Home solicitation Sale (Earl W. Kinter, 1987: p.257) , In-home retailing (Iain Ramsay,1989 : p.337). Direct sale is kind of sales since Egypt and ancient Greece. Sales during ancient Greece was a door-to-door sale such as hawkers and innovation from farmers to sell for urban people and took goods produced in city to sell farmers again (Kamol Choosap and Mongkol Chairat, 1971:8). With the expansion of industry during the Industrial Revolution, number of products was

growing and needed to build retail shops afar factories. There were improvements of goods transport but the proportion of most population was living in rural areas and small villages, goods could not reach them. There were then hawkers to bring goods for sale in various places and they entered many communities once a month and exploit churches, meadows or homes of people in communities as sale points with many sale techniques, many models of persuasion for clients to buy their goods (Kitiphong Phattanaphong, 1996:18).

Direct sale in Thailand with current model had begun since 50 years ago and applied with life insurance business (Somphong Wongniyom, 1989:5). Looking back to the direct sale in the traditional west, the nature of door-to-door sale and hawker along communities, it could be said that Thailand ventured direct sale for many hundred years because hawkers carried goods to sell along homes of the local people rather than selling in the markets was the a kind of traditional direct sale.

In conclusion, direct sale is a technique the producers or entrepreneurs use to bring their goods or their services to meet consumers without passing through shops in general but relying on persons to carry goods or service to offer consumers at their residences or any other places which are not normal transaction. Because, such offer needs verbal offer significantly at the presence of the consumers. But chain shares disguised in direct sale relying on multi-level marketing. (MLM) has adopted direct sale as mask or creating scene as a tool to pullout money from a system only rather than interested in selling goods. But it empathizes to recruit members and persuading others to be members for the lucrative returns from members one has persuaded.

This type of business has been developed from chain share but changed techniques and model of new transaction by masking with foods and services. This business will have advertisement by referring to key persons to create reliability and boasting surreal qualities of goods for attraction and rise the goods price. Chain share covert in direct sale emphasizes recruiting member to join network rather than selling goods and does not emphasize goods quality. Most good

for sale are dietary supplement products, herbs, jewelry and training courses and so on.

The targeted group victimized by chain share covert in direct sale is usually the moderate income people or new graduates look for job placement. Offenders advertise in newspapers to recruit variety of job positions but in fact upon stepping in, they will be coerced to apply and follow the specified conditions.

Behavioral observations of chain share covert in direct sale businesses are:

1. a chain share covert in MLM runs the model of persuading people to apply as member with goods as mask and member joining the business will gain returns at high rate of specified in the conditions.

2. a chain share covert in MLM is differed from direct sale because it collects application fees for members and coerces to buy poor quality products, expensive price, not emphasizing selling goods but new members for returns on recruiting additional members. But direct sale emphasizes selling goods and establish organization for more sales and income comes from sale volume.

3. a chain share covert in MLM is organized process with chief and line for recruiting additional new members. If more members were recruited there is high rate of returns and the returns come from the money of new members not from selling goods.

Laws promulgated of r direct sale and direct market at present is the Direct Sales and Direct Market Act BE 2545(2002). Its rationale and necessity are distribution of goods and service at present employ marketing to access consumers offering goods and service for them directly at their residences or their offices or other people or other place not being normal offices. Explanation or demonstration of goods is through freelance or direct sale gents. Such goods or service offered cannot help decide to buy or to accept service with freedom and prudence. In addition, there is good or service distribution through communicate information for direct offer to the consumers through printed matters and e-media expecting the distant consumers extend their intent by response to buy the goods or the

services. At this point, the goods and the services might not meet their advertisement incorporate with direct sale and direct market at present employ persuasive technique and provides common people to access their business network agreeing to provide returns if being able to recruit new members to join the network. Calculating the increased number of members join the network depicts public cheating and fraud. Aggressive direct sale and service discriminate consumers into the disadvantageous condition, unfairness and unrest in societies incorporate with the provisions enforced at present cannot sufficiently protect consumers.

The Direct Sales and Direct Market Act BE 2545(2002) was scoped to be enforced with 2 types, i.e. direct sale and direct market. Article 3 define both businesses as follows:

Direct Sale is generating goods and service in terms of direct sale proposals to consumers at their residences or their offices or other people or other place not being normal offices and explanation or demonstration of goods is through freelance in mono or multi level of market excluding legal acts specified in the ministerial rules.

Direct Market is marketing goods or services in term of communicating information to offer selling goods or service directly with the distant consumers and expect to each consumer respond to buy goods or service from agent conducting the direct market.

It is specified that it is forbidden for anyone to conduct direct sale except registered for it as in Article 20 to monitor the entrepreneur. The violator is subject to imprisonment of not more than one year and fined not more than 10,000 Baht or both and fine 10,000 Baht a day if still violating under Article 47. It is also forbidden for just charging fees upon member application, training fees, material fees for sale promotion or other fees related to join the network of direct sale from the free lance or its agent who is not its employee at the higher rate than being specified in Article 22. The violator is subject to imprisonment of not more than six month and fined not more than 50,000 Baht or both under Article 49. To prevent MLM, distortion, or deception plot which violate the Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud B.E.2527 (1984); it was adopted to

be enforce in direct sale. The Direct Sale and Direct Market BE2545 (2002) forbids person conducting direct sale and direct market to persuade individual to join as network in direct sale affairs and direct market affairs by agreeing that returns is given for recruiting new members the network by specifying the increased number of members as subject to Article 19 enacts,

"….it is forbidden for the person conducting direct sale and persons conducting direct market to persuade individual to join as network in direct sale affairs and direct market affairs by agreeing that returns is given for recruiting new members the network by specifying the increased number of members…"

Any violator is subject to imprisonment for not more than five years and fined not more than 500,000 Baht as in article 46.

Herewith, offenses about mobilizing illegal network as in Article 19 will be applied with the person conducting direct sale and persons conducting direct market who have registered direct sale and direct market only. If person who persuades people to offend as above is not the one conducting direct sale and persons conducting direct market does not fall in line with the enforcement of this Act.

2.5.3.3 Case studies of public cheating and fraud

2.5.3.3.1 The call center gang

Nature of offense model

Collecting the information about the call center gang; Anti-Money Laundering Office (AMLO) interrogated some victims deceived by the gang for cash in large amount withdrawn from their account finding that there were 100 victims with the loss around 50, 869, 052.39 Baht.

Circumstances of the criminals deceiving victims are similar techniques with allocation of duty as process concluded as below:

1) A criminal called to a victim's hand phone claiming that being the teller of Thai Farmers' Bank. In some cases, the criminals knew the name and last name of the victim to inform the victim that there are credit card liabilities due left around 3,000 Baht or 30,000 Baht while some

victims are not the clients to the referred bank and refused by at call. Claiming the victim was indebted with the credit card was untrue and primarily each victim likely to believe the words of the criminal at this stage. Some victim disconnected the phone. However, later the criminal again called the victim to make the victim believe and comply. The criminal create uncertainty with the victim first claiming there might be some other person to use personal information for opening bank account. Most victims complied with the criminal at this point.

2) A criminal used the name of government office of law enforcement authorized to investigate, arrest, taking lawsuit and inspector of taking action on this case by subrogating the call No. appeared on the HP screen of the victim which was the No. of government office such as AMLO No. 02-913-600 and further build reliability and confidence with the victim that if being uncertain, the victim could check with 1133. Then the criminal disconnected the call and wait for the victim to check as instructed. A moment passed, the criminal called back to leave no time for checking counseling. At this point the victim believe 100% that the caller was an authority as claimed.

3) From here onward, the criminal used psychological communication with the victim to get convulsiveness that during communication there was recording as evidence, too and artificially pacified the victim that understanding the victim unrealizing a criminal opened bank account for the victim and under arrest warrant of money-laundering since the account referred had cash flow many hundred thousand a day and related to narcotics. The money of the victim was separated from the criminal account for not being confiscated and bringing troubles. At this time, the call-center gang member would question personal data claiming to confirm identity to create more reliability as if tellers check clients, i.e. date of birth, and ID No. After, information told, the criminal gained personal data for expanding their transaction with financial institutions where the victim had account No. Then the criminal questioned the victim how much deposit and at this point the criminal knew how much the criminal could deceive for deposit or for transferring.

4) During talking, the criminal always emphasized anyone around the victim to frame the victim to be alone claiming for the

victim's benefit and ended matter urgently and never allowed the talk to be leaked because the signal was connected to BOT who had direct authority for inspection and victim could be hindered or damaged. The criminal needed the victim to focus with the criminal only.

5) Deception went on. The inspection procedure and separation of the cash unrelated to narcotics as first claimed; the victim must transfer cash to BOT for inspection. It may take an hour later and the amount would be transferred back. The criminal would inform the account No. to change password in the victim's account to prevent misusing of the bank account again. In fact, it was the account the criminal open to receive the victim's transferring by instructing the victim to deposit or transfer at ATM or cash deposit at CDM only. The criminal will not allow undertake formalities at the bank counter excusing that for convenience and expedition. The criminal always emphasized that during changing password, which is the important procedure; there should not be any disconnection with the criminal otherwise the victim had to begin again. If password was not changed in time the victim's account would be damaged and the victim needed to find spare battery or another HP.

6) Arriving and ATM, the criminal instructed the victim that if there were queue for transaction left them finish because the procedure rather took long time. The criminal claimed that the criminal saw the victim through ATM-CCTV. Some case instructed the victim to change into English for more confusion in the victim. Processing would be under the criminal instruction such as press 2 on right or press button No.3 and never told what the button processed and asked the victim to repeat each button to make victim focus on right or left buttons. Then the criminal instructed the first set of No. claiming that it was the BOT No. In fact, it was the No. opened to receive the victim's deposit or transferring. The fact showed that most victims confirmed their account No. from Thai Farmers' Bank or Bangkok Bank. Then, the criminal instructed the 2nd set with many figure and not zeros but with two digits claiming that it was the new password set for the victim for further uses. In fact, it was the amount of the money instructed for transferring. Reason of not using zeros or having digits, it was for distraction that the victim would

not notice or struck before ending deposit or transferring. Then the criminal instructed the victim to press confirm button which ended the process and the criminal gained the money from the victim.

7) In addition, the criminal asked the victim to tear the slip from the ATM or CDM immediately in order to eliminate evidence. The criminal further instructed that around an hour, the victim had to return to check the account again and the money would be transferred back to end the inspection on separating the cash of the victim and disconnected. Until the victim realized being deceived; the victim's cash had been transferred to the account of the criminal already.

Herewith, there was minor modification to meet the current situation as found in news so as not to allow the victim to realize being deceived. However, situations found each day in newspaper and each period could be changed such as election, flood, and other criminal news and so on. When news are not offered on cheating and fraud continuously, it is a channel of the criminals to exploit this gap for deceiving other victims.

2.5.3.3.2 Blister Intergroup Co. Ltd

It had been registered with the Ministry of Commerce with the objectives of providing services of leisure days or "Time Sharing" for the company's members holding rights for leisure days in resorts or hotels prepared by the company for free for 4 days and 4 nights a year. Members held these rights for 20 years. In addition, members were provided with other services such as fitness center, shopping, food and goods or healthcare in hospitals furnished by the company or they signed contract or agreement with the company with special discount. In fact the company had no real objectives or real intent to provide services for its members as claim but deceived with the aim to conceal its real objectives to loan and fundraising without limit amount from people in general. That people offered their money for the company to loan and for joint venture with the company or offer money to apply for membership. The company advertised in various media that in accepting money from people to join membership, the company would pay returns at the rate of 20-45% of the membership fees agreeing that it would pay for members as

freelance salespersons who were able to encourage or persuade other individuals to be the new members of the company. Meaning, each freelance salesperson held rights to persuade outsiders with the similar technique to attend training and lecturing from speakers of the company in order to have rights to persuade others applying for membership as series like chain. The company paid the returns for each freelance salesperson worth 5,000 Bath per each new member or at 14.70% a month or 176.47% a year upon 34, 000 Baht principal. Two new members gained returns of 10,000 Baht or 29.71% a month or 352.44 % a year. Three members gained 15,000 Baht or 44.11% a month or 529.32 % a year which was the higher interest rate than the interest rate granted by the legal financial institution regarding its loan affordable at the moment.

The fundraising of the company had speedily spread into rural areas in many provinces and intruded amid teachers and other officials, university students, low income people groups and the less educated easily deceived or persuaded. 24,189 people had been deceived by this type of business worth 826, 266, 000 Bath.

In March 4, 2010 the judgment on chain shares Black No. Dor. 4756/2537 (1994) between the prosecutor in the Office of General Attorney, Division of Economy and Resource Job 2 were the plaintiffs vs Blister Intergroup Co. Ltd with 5 associates on the charge of accomplice of public cheating and fraud under the Criminal Code Articles 343, and 83 and the Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud B.E.2527 (1984) Articles 4, 5, 12 and 15 and details were concluded below.

Defendants were sued in August 118, 1994 charged on loan deemed public cheating and fraud and the damages worth 826,266,000 Baht. Adducing evidence was made until November 28, 2007 and the court had convicted in March 4, 2008 summarized that during 1992-1993, Blister Intergroup Co. Ltd provided Leisure Days or Time Sharing and advertised to promote membership application with two types. That is the silver card paid 30,000 Bath a year for membership fees with 2,500 baht for dues while the golden card paid 60,000 Bath a year for membership fees with 4,500 baht for dues. Members could have free visit in various places for 4 days and 4 nights a year for 20 years. And if a member was

applied to be a freelance salesperson to recruit new member, he/she would be paid commission worth 5,000 Baht a member whereas its application of a freelance salesperson required 1,500 Baht a year. The company specified conditions and obligations to pay returns agreeing that payment due were on the 10th, 20th and 25th of each month. Condition for paying returns was the higher interest rate than the interest rate enacted in Loan Interest Rate of Financial Institution Act Be 2533 (1990). The Central Bankruptcy Court issued warrant of absolute receivership of Blister Intergroup Co. Ltd and of the executives in February 19, 2002 and convicted being the bankrupt person in February 25, 2003.

The court verdict was imposing imprisonment to the 2nd, 4th and 5th defendants who were directors authorized in the company and always designed market plans for the company the 1st defendant while being the trainers for soliciting memberships. Guilt was against many provisions and demanded the most vigorous punishment as public cheating and fraud by imprisonment to each defendant for 24,189 cases with 5 years term to each case. The total term for each defendant was 120,945 years but subject to the Criminal Code Article 91, imprisonment for defendants in the case of gravest punishment must not exceed 10 years and only just 20 years only.

The 3rd defendant being the founder and the shareholder but by evidence adducing; there was no evidence that the 3rd defendant had involved in managerial plan, setting policy, designing market plans and no any plaintiff witnesses indentified the 3rd defendant participated as training speaker. The court dismissed the case of the 1st and the 3rd defendants. Plaintiffs pleaded the court to order all the five defendants to repay all debt for the members. It was seen that the Central Bankruptcy Court issued warrant of absolute receivership of all the 5th defendants in February 19, 2002 and convicted being the bankrupt person in February 25, 2003; it was impossible to issue another warrant.

2.5.3.3.3 Case study of Green Planet 108 Corporation

Due to complaints filed in the Office of Consumer Protection Commission (OCPC) to find fact on the case of Green Planet 108 Corporation Ltd. on conducting direct sale but identified as raising network like chain

shares; conditioned joint ventures to find just members for investment and would be paying returns in motorcycles or cars; it misled 50,000 local people offering money for investment with the corporation worth almost 1,000 million Baht.

Inspections revealed that Green Planet 108 Corporation Ltd. ran its business since 2003 registered in OCPC with objectives of conducting direct sales but fail to follow its objectives since there is no marketing to really distribute goods for consumers. Its sales promotion matched chain shares. That was conditioning people to apply membership with 200 Baht fees for each. If a member wished to have a car; he/she had to buy goods worth18, 000 Baht and recruited new members to buy goods worth 18,000 Baht each within a year. A 125 CC motorcycle was for recruiting 17 new members while a Honda City or Toyota Vios was for recruiting 88 new members. A Honda CRV or Toyota Camry was for recruiting 190 new members and a Benz C 180 was for recruiting 240 new members.

With such sales promotion, large amount people joined investment prioritizing membership rather than goods for sales from the company. More than 100 items of goods for members' distribution was to mask that it was the direct sales business beginning from nutrient supplementary, aroma mixed products, oral health products and hand clean, beauty products and heir treatment, evaporated perfume products, and electricity appliances such as multipurpose cooker cost 7,000 Baht, infrared gas oven cost 11,500 Baht, microwave oven cost 22,500 Baht; bedroom products such as 6 foot bed size cost 6,700 Baht, memory pillow for adult cost 1,850 Baht. All these goods were 4-5 times higher than their cost.

The corporation performances with sales volume reported in internal company meeting was:

- January 2004 with income of 7 million Baht
- February 2004 with income of 16 million Baht
- March 2004 with income of 16 million Baht
- April 2004 with income of 30 million Baht
- May 2004 with income of 48 million Baht
- June 2004 with income of 51 million Baht
- July 2004 with income of 89 million Baht

- August 2004 with income of 50 million Baht
- September 2004 just September 27 with income of 192 million Baht before warrant to finally close down

Action of Green Planet 108 Corporation Ltd. as above attracted the Direct Sales and Direct Market Commission ordered to terminate license and charged the company of violation against Article 19 of the Direct Sales and Direct Market Act BE 2545 (2002) and subject to imprisonment of not more than 5 years and fined of not more than 500,000 Baht (Article 46).

Later, the prosecutor of Special Case 1 as plaintiff had filed the charge against Mr. Thanakrit or Mr. Supoj Borvornchatthannites aged 50 years director of joint venture Ruamruay Okane International Co. Ltd; Mr. Kittiphong Methatham aged 55 years and Mrs. Amporn Wasuwat aged 63 years both were the directors of Green Planet 108 Corporation Ltd. the co-defendants on charges of public cheating and fraud and loan as public cheating and fraud in May 6, 2005. Guilt of defendants were summarized that during September 30, 2003 – February 10, 2005 all the 5 defendants and associated not yet sued for trail committed offenses against many laws and deeds through advertisement , disseminating documents and news and advertisement in internet with intent of public cheating and fraud in Bangkok and in provinces to apply for membership of direct sales and products of nutrient supplementary, ancient medicine, skin treatment cream, and clean kit products with Green Planet 108 Corporation Ltd., the 5th defendant given Ruamruay Okane International Co. Ltd as the 4th defendant which ran the interest until having 734 people were misled and lost 200 Baht fees for membership application while they have to guy goods worth 18,000 Baht each.

It was indicted that upon covering membership for a year, they would have kickback in cash worth 1.1 million Baht or a car. And if they could recruit a new membership they kickback was 1,000 Baht per head. 4-6 month membership would have 4,000 Baht transferred. But when the defendants had received money from members and deposit in banks instead, they cheated for themselves by fraud. The interrogation officers from DSI, later arrested defendants and charged them under the Criminal Code Articles 341, 343, 83, 91, 32, 33; and subject to the

Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud B.E.2527 (1984) Articles 4, 5, 9, 12 and others the enclosed charge; the prosecutor demanded defendants to repay capital they co-cheated and by fraud for victims worth 42, 103, 826 Baht with interest rate of 15% a year as well as return the exhibit money worth 15, 968,497 Baht.

The Criminal Court passed verdict in January 29, 2010 in Red Case No. Or. 131/2553 (2010) after examining and found that defendants violated Criminal Code Article 343 Paragraph 1 complementary Article 83 and against the Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud B.E.2527 (1984) Articles 4 paragraph 1, Article 5, and 12 which are guilt with many violations. All violation must be punished which subject to the Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud B.E.2527 (1984) Articles 12 the gravest . Mr. Thanakrit or Mr. Supoj Borvornchatthannites director of Ruamruay Okane International Co. Ltd, the 1st defendant ; Ruamruay Okane International Co. Ltd. the 4th defendant were guilty in total of 539 cases. The 1st defendant was subject to imprisonment for 5 years in each case and the 4th defendant was subject to fine worth 500,000 Baht.

Mr. Kittiphong Methatham and Mrs. Amporn Wasuwat, directors of Green Planet 108 Corporation Ltd., the 2nd -3rd defendants and Green Planet 108 Corporation Ltd., the 5th defendant were guilty for 587 cases. Imprisonment was imposed on the 2nd -3rd defendants for 5 years in each case and fined the company as the 5th defendant for 500,000 Baht. Adducing evidence was beneficial to examination; they deserved reeducation of punishment of two in five and just imprisonment imposed on the 1nd -3rd defendants for 3 years in each case and fined the company as the 4th -5th defendant for 300,000 Baht. Imprisonment imposed on Mr. Thanakrit or Mr. Supoj Borvornchatthannites director of Ruamruay Okane International Co. Ltd, the 1st defendant for 1,617 years and fined Ruamruay Okane International Co. Ltd, the 4st defendant for 161,700,000 Baht while Imprisonment imposed on Mr. Kittiphong Methatham and Mrs. Amporn Wasuwat, directors of Green Planet 108 Corporation Ltd., the 2nd -3rd defendants for 1,761 years and fined Green Planet 108 Corporation Ltd., the 5th defendant for 176,100,000 Baht. But

imprisonment for defendants in the case of gravest punishment must not exceed 20 years. So, the 1st-3rd defendants were imprisoned for 20 years subject to the Criminal Code Article 91 (2). In addition, defendants had to repay exhibit money worth 15, 968,497 Bath with interest rate of 7.5% including repay victims worth 42,108,826 Baht.

Relative of Mrs. Amporn Wasuwat, the 3rd defendant had submit petition and asset with 7 land titles from Bangpli District , Samutprakarn Province worth 5,400,000 for bail request, on examination , the court approved the bail worth 5 million Baht. None requested bails for Mr. Thanakrit or Mr. Supoj Borvornchatthannites, director of Ruamruay Okane International Co. Ltd, the 1st defendant and Mr. Kittiphong Methatham, director of Green Planet 108 Corporation Ltd., the 2rd defendant. There were further escorted to detention in jail.

CHAPTER III
RESEARCH METHODOLOGY

3.1 Methodology

Approaches in the methodology of studying "The Effectiveness Enhancement in Enforcing Financial Crime: a case study of witness and evidence measure" were as follows:

3.1.1 Qualitative Research

Documentary information involved had been collected on:

1) Meaning, models and natures of economic crimes, criminals and factors leading to commit economic crimes,

2) Theories of economic crimes,

3) Theories of law enforcement,

4) Relationships between economic crimes and financial crimes and impacts to Thailand,

5) Laws related to financial crimes were the Financial Institution Business Act BE2551 (2008); the Securities and Exchange Act BE2535 (1992); the Criminal Code; the Ordinance of Public Cheating and Fraud on Loans BE2527 (1984) or Direct Sales and Direct Marketing Act BE2545 (2002),

6) Case studies of financial crimes, offenses of cheating and fraud in the financial institutions, offense of securities and offenses of public cheating and fraud and direct sales,

7) Measures of evidences in the financial crimes in Thailand,

8) Effective measures of evidence in the financial crimes in abroad, and

9) Measures to handle properties under laws of Anti-money Laundering of Thailand

3.1.2 In-depth Interview

Ten (10) Key- informants were experts with experiences in trails of financial crimes. Criteria of selecting experts to be key-informants were through purposive sampling reflecting gaining data covering key issues of problems and limitations on evidences for trying financial crimes and handling properties under laws of Anti-money Laundering of Thailand. It was dividing into 2 parts as below:

Part 1: Expert groups taking lawsuits on financial crimes were

1. Ex-governor of BOT and Ex deputy Prime Minister and Minister of Finance
2. Director-General of DSI
3. Deputy Director-General of DSI
4. Advisor of Deputy Governor of BOT
5. Deputy Commander of Technology Crime Suppression Division
6. Senior Prosecutor: Office of General Attorney
7. Deputy Commander of Economic Crime Division
8. Lecturers in Faculty of Law: Thammasart University
9. Chief Judge of the Southern Bangkok Civil Court

Part 2: Experts of Anti-money Laundering Law

1. Secretary of Anti-money Laundering Commission

3.2 Conceptual Framework

Due to counter financial crimes met problems of searching and collecting evidences to prove guilt and penalize defendants; it made the state helpless to sue the culprit for punishment. All financial crimes extremely damaged to the financial system, banking system, economic and social system of the country. They were radical problems since the past until this day. The most evident picture began with the economic crisis on 1997 ever since, particularly the financial crime of cheating and fraud in the financial institution like the Bangkok Bank of Commerce Limited Plc.

(BBC), the case of the First Bangkok City Bank Limited Plc., the case of Mr. Song Watcharasriroj, the Picnic Corporation Limited Plc., the Roynet Limited Plc., the financial crimes of public cheating and fraud from Call Center Gang, the Blister Intergroup Company Limited and the Green Planet 108 Corporation.

The researcher found the indispensability of the study and conceptualize his research on the study of each type of financial crimes focusing on cases happened to find problems and limitations of evidence enforcement including problems of handling property under the Ant-money Laundering Law in the case of financial crimes. Also, this was to study evidence measures in the financial crime in abroad through analyzing and synthesizing data for proper adaptation in their applications in the Thai context which would enable to propose effective approaches of enforcing evidence measures to counter financial crimes in Thailand.

3.3 Research Procedure

This study had scoped the procedures into 3 steps as follows:

Step 1: Analysis of Primary Documents

The researcher began with exploring related document on meaning, models and natures of economic crimes, criminals and factors leading to commit economic crimes, theories of economic crimes, theories of law enforcement, relationships between economic crimes and financial crimes and impacts to Thailand, laws related to financial crimes were the Financial Institution Business Act BE2551 (2008); the Securities and Exchange Act BE2535 (1992); the Criminal Code; the Ordinance of Public Cheating and Fraud on Loans BE2527 (1984) or Direct Sales and Direct Marketing Act BE2545 (2002), Special Investigation Act BE2547 (2004) and Anti-money Laundering Act BE 2542 (1999).

Step 2: Determine Issues for Analysis

After collecting data of law enforcement in the financial crimes; the researcher then analyzed the data and determine issues for in-depth interview so as to

find problems leading to propose guidelines as in the conceptual framework based on the cases of financial crimes found in Thailand , i.e.

1. The case study of financial crimes related to cheating and fraud subject to the Financial Institution Business Act BE2551 (2008); which was the cases of the Bangkok Bank of Commerce Limited Plc. (BBC), the case of the First Bangkok City Bank Limited Plc.

2. The case study of financial crimes related to the Securities and Exchange Act BE2535 (1992); which were the cases of Mr. Song Watcharasriroj, the Picnic Corporation Limited Plc., the Roynet Limited Plc.

3. The case study of financial crimes related to the Ordinance of Public Cheating and Fraud on Loans BE2527 (1984) or Direct Sales and Direct Marketing Act BE2545 (2002), which were the financial crimes of public cheating and fraud from Call Center Gang, the Blister Intergroup Company Limited and the Green Planet 108 Corporation.

Step 3: Data Synthesis

The researcher would analyze and synthesize the qualitative data and in-depth interview on problems of searching and collecting evidence in the financial crimes. This was to find problems and limitations of laws enforcement in the financial crimes regarding evidences and handling property under the Anti-money Laundering Law through analyzing data of evidence measures in the cases of financial crimes in Thailand and study approaches of effective evidence enforcement in abroad.

3.4 Data Collections

1) Regarding literature reviews in Chapter 2, the researcher studied and collected the qualitative data from textbooks, research works, provisions of law, texts, journals, related articles in the country and in abroad and data from internet. This was through exploring data from variety of document from various sources whether coming from websites or from the official reports or supervisory offices. They could be counted that data were reliable and enable for references. Some data were taken

from court verdict and official orders with checking validity from primary sources for descriptions and taken as the foundation data for further analyses.

2) Regarding in-depth interview, the researcher conducted it with 10 experts who had experiences of lawsuit against financial crimes. Issues in interview were involved with problems and limitations of evidence to sue financial crimes and handling property and handling properties under laws of Anti-money Laundering of Thailand. Conclusions from in-depth interview were guidelines of data analyses.

3) Regarding analysis, the researcher took results of documental exploration and in-depth interview to be as guide in determining issues for analysis and they had to be consistent with the research objectives.

4) Preparation of recommendations, the researcher took results of analysis and synthesis to process recommendation and they had to be consistent to the expectation of this research.

3.5 Data Analyses

Regarding the analysis of documental data, the researcher would synthesize and analyze the qualitative data through content analysis and presented in order of content to be processed for conclusion and to be further proposed in the complete research.

CHAPER IV
RESULTS

This Chapter presents results of analyzing data collected from in-depth interviews with 10 experts who had experiences in trying financial crimes and anti-money laundering law. Part 1, the researcher presents the personal data of experts while Part 2 is the data collected from their in-depth interview by determined issues and Part 3 is the presentation of the conclusion on in-depth interview. Details are:

4.1.General Background of the In-depth Interviewees

In this study, the researcher has conducted in-depth interview with 10 key-informants who have experiences in trying financial crimes and anti-money laundering law. Criteria to select them were through purposive sampling reflecting data to cover critical problems and limitations of evidences to sue financial crime and measures to handle property under the Anti-money Laundering Law. Their opinion will be guidelines for further analyses. They are divided into 2 groups.

Part 1: <u>Expert groups taking lawsuits on financial crimes</u> were

1. Ex-governor of BOT and Ex-deputy Prime Minister and Minister of Finance, Director-General of DSI, Deputy Director-General of DSI and Advisor of Deputy Governor of BOT

2. Deputy Commander of Technology Crime Suppression Division and Senior Prosecutor: Office of General Attorney

3. Deputy Commander of Economic Crime Division, Lecturers in Faculty of Law: Thammasart University, and Chief Judge of the Southern Bangkok Civil Court.

Part 2: <u>Experts of Anti-money Laundering Law</u>

1. Secretary of Anti-money Laundering Commission

4.2. Data collected from In-depth Interviews with Experts

By issues of interview, they were:

- Problems and limitations of seeking and collecting evidences in financial crimes

- Whether evidence measures in financial crimes are effective enough,

- Recommendation to leverage effectiveness in law enforcement and suing financial crimes (concentration of evidence measures)

- Whether measures to handle property in financial crimes under the Anti-money Laundering Law effective enough? How could they be improved?

4.2.1. In-depth interview with experts on trail of financial crimes

(1) Ex-governor of BOT and Ex-deputy Prime Minister and Minister of Finance: May 19, 2013

"…evidences of financial crimes are unlikely difficult for collection because they involve transacted money through banks. Cash crimes are not big groups while large amount is always transacted through banks where the anti-money laundering law can investigate about it. What I see is, the suppression and suing of financial crimes do not fully work as in dome developed countries. And that is the understanding of the authorities on steps of financial cheating and fraud. This understanding is sometime not deep enough as those in financial business. When it is shallow, it is incomplete with setting flag and to frame for finding data. Financial crimes requires the arrest officers or to take trail to study with people working in financial business how they cheat and fraud. When, the cycle of cheating and fraud has been fully informed; legal personnel would be well-rounded. Talking with those handling these cases; they take laws as key. If that is to begin with whether this can be charged or not only, would it not understand in deep or its sophistication of the plotters. Because, financial plotters for crimes they also understand laws and they plot and escape laws. Common view of law cannot arrest them. But in fact, if we begin

from fact and apply the right laws and then evidence searches; if it is so, arrestment is coverage. Financial criminals have super law advisors and they plot the walk where law and not reach them. In fact, it is cheating and fraud but we can walk deeper into its sophistication before them and take which part could they be arrested. Then we can arrest them more as well as searching and collecting evidence better and they are not as so difficult. Regarding effectiveness of evidence measures on financial crimes; I think that Thai laws are enough. Thai laws are compared to world standards and we have of Anti-money Laundering Office which can exercise authority more than BOT o access financial data. Laws are equal to foreigners but needed understand them in deep what they trap and it needs to understand financial business first…."

(2) Director-General of DSI: August 15, 2012

"…searching and collecting evidences of financial crimes, the DSI officers will employ measure of the Criminal Procedural Code and measures of Special Investigation Act, such as

- Interpenetration as Article 27 of the Special Investigation Act specifies the Director General or the authorized person to prepare documents or evidences or interpenetrating in an organization or in person group.

- Appoint individual with specialization to advise special case by Article 30 of the Special Investigation Act.

- Tapping by Article 25 of the Special Investigation Act empowering the investigation officers approved in written by the Director General to file a one-side pledge to the judge of Criminal Court in order to access documents or other information by mailed, fax, telephone, computer, tools and equipment of communication, e-media or IT which are utilized to commit crime in the special case.

- Empowering the investigation officers to enter residence or any places to check when there is reasonable doubts that there is person by doubt have offended in the special case and hide there or owning illegal property or having illegally gained or used or will use in crime in the special case or being as evidence without searching warrant including searching at night time after sunset under the condition with the reasonable cause to believe that delaying until the arrival of the search warrant, the

person would escape or the property would be transit for hideout, destroyed or deformed under Article 24(1) of the Special Investigation Act.

- Empowering the investigation officer to search individual or vehicle with reasonable doubt owning illegal property or gained unlawfully or use or will use to commit crime of special case or to be evidence under Article 24(2).

- Permitting the investigation officer to question in letter or call any individuals, any financial institutions, any government sector, any organization, or any government offices, or any state enterprises, to allocate officer for making statement, submit written clarification or document lists or any evidences for inspection or to attach for examination under Article 24 (3) (4).

All measures above when being applied with the financial crimes; they effectively help effectiveness of evidence collection to a certain level. However, technology has been evolved to more modern, in associate with criminals are experts, so, it also needs to improve different measures to keep pace with new technology.

Though the special investigation specifies measures to be effectively applied with trails of the financial crimes at a certain level but performances must be improved to meet crimes. So, there must be the following measures

(1) Aggressive investigation measures: financial crimes are committed by expert and find ways to do and offend by concealing the deed which is difficult to appear apparent evidences even the victims might not realize but wait for notifier to file petition; then it may create critical damages to the national economy, fiancé and banking. Considering the Criminal Procedural Code, it does not specify how investigation should be done but just pre-investigate and post investigate the crime. So, the organization monitoring financial institutions and banks should be developed for better effectiveness through catalyzing or systematizing the aggressive trial. Surveillance of irregular movements is necessary because they may signal financial crime and intervention could be sought against the crime before critical damages would follow.

DSI has established “Counter Financial and Capital Market Crime Center” under the structure of Office of Finance and Bank Cases: DSI. It comes from the work experiences in handling such cases rather than waiting for the damages happen and notifier to claim the charge. But we will investigate and check since the beginning

when there is irregularity and end the crime in the first place in order to protect the innocent before being victimized. The Center is ad hoc for aggressive operation with officers equipped with database and analyzes sources which are cooperated by the SET and Office of Securities and Exchange Commission collaborating in preventive jobs like Watch Dogs or Surveillance, investigation and pursuance criminals.

(2) Adopting Conspiracy evidence to be applied with financial crime in order to reduce difficulties to prove conspiracy. That is, conspiracy is subject to charges since agreeing which provide opportunity to access for solving problems with expedition and enable to ease bringing manipulators or backers for punishment…."

(3) Deputy Director-General of DSI: January 28, 2013

"….with law-based technology and global growth-based, searching for evidences is more difficult. It is witnessed that cases of recent financial crimes have been sued but the new ones overcome the weakness of the previous ones and change tactics. For example, in the Ministry of Transport and Communication, would criminal know where they keep cash or how do they transfer money to abroad? There are two types of criminal, 1) for retribution and no other thing and 2) to achieve one's ideology for example terrorizing separatists. But more than 90% do for money either robberies or cheating and fraud. Investigation is growing harder for financial crimes. Sometime entrapping through deceptive buying and selling narcotics just a small stick or a kilogram; though at the level of investigation for arrest was so simple but unexpectedly the trafficker was the manager of a giant store partnership in Chiangrai owning stone craft factory and he was sued to court. Sometimes, we have to break in for confiscation and these criminals committed for cash; had we countered or intercepted such as money laundering and we have measures to investigative traces or freeze money or any actions which criminals cannot have any opportunity to get money; chances for their cheating, robbery or corruption would be unlikely resumed but more difficult . Reasons are they know why they should do since doing for nothing and no money for spending or useless but imprisonment only. So, measures of counter money-laundering, money freezing, source check and taxation would be the very good ways.

The AMLO should improve measures of confiscation covering the temple budgets. It is the largest hole and Thailand is a Buddhist country. The Abbot ordered to open bank account but it was in the name of as person. Cash flows in everyday and regularly but the routine withdrawal s are for paying electricity, water supplies but it is wrong and irregular to withdraw worth 3 or 5 million.

The temple law should be enacted on monkhood misconduct or crimes. At present we have 3G and speedier internet system, good banking system where one and transact with large amount of money. Today the internet crimes can open many bank accounts. Then there are accounts for gambling and to receive gambling fees. By 2-3 month, the DSI begin investigative for confiscation, they move to the new accounts. Simple to having new bank accounts, it eases criminals' entry such as call-center gangs, and cheating and fraud gangs. The recent gambling, they withdrew at the bank branch in Rongklia area, packed cash in the sack and carried across the border. It was forbidden to withdraw more than two million Baht; they withdrew around 1.8 or 1.9 million Baht. Later, we suspected how could they open their bank account? Then what? Finally, we checked and knew they are the foreigners' bank account but do foreigner open bank account? Approaching the bank and the responses were it was possible if they were workers with work-permit while tourist could not. When they opened bank account, they delivered their passports and later they notified police that they have lost their passport and got new ones. These people hold evidences and they signed for more than 20 withdrawal endorsements; the other side just transferred money into the accounts.

Today, obligation is used that one cannot withdraw more than two million Baht a day. There should further be an obligation to limit in a moth too. If they are innocent, they must report but criminal must then find new account. So, we can check and imposed with tax measures. However, a problem is the Revenue law enacts that anyone to be victim by trail must be prior approved by the Revenue Department. It is unlike the gamble laws which if met; the police are authorized for arrest. If tax cheaters and fraudulent met and if trail must be taken; it is necessary to plead the Revenue Department first of the Department to take action and later cheaters and fraudulent could be under arrest. There should be just an Article that the Revenue department is the victim, only. It is good that this is to avoid being extorted. Or, it is

possible that during arrest, the criminals agree to be fined or the next day is the tax-pay and case is closed. So thus the Revenue Department freezes to take action. These are holes to commit crimes. Had the Provincial or District Revenue Offices do not file the case for action; then, who would?

As much as lawsuits against the financial or economic criminals, there should be as much focused on enforcement. For example, banks must inquire transactions but just how-does-one -earn response opens highways for escape. Common people cannot do but bank insiders can. Even in bidding which needs collateral; if one needs ten million Baht there must be fees and collateral to guarantee. But many types of collateral are fakes and how are they counterfeited. And if it is fake, the bank must know. We would like to propose BOT and the Comptroller-General Department or The Bureau of the Budget should have link system for co-inspection on fraudulence in the case of petition to use bills of exchange as collateral with regards to the affairs involving with the government and the state agencies. Reasons are, today I (*Deputy Director-General of DSI*) am the committee member to examine companies performances. They propose me a piece of paper and closed the envelop for passing on to the bank. No long, there is another envelop delivered to our office. Upon opening it, the document is endorsed “authentic and correct”. Believe it or not, every ministry and departments do it like this until handling cases, they are found fraud. Sometime, mishap occurred but lawsuit for confiscation cannot be taken. Sometime, cheating uses counterfeited document first because the cost is to save money but after contract signed, then they change into the new authentic documents. Here, it is simple to solve the problem and unlikely met any issues and that is the bank sends information to BOT or the Comptroller-General Department, then all can check them. Such the case study is the damage to the security and the accountability of the financial system.

I have handle ATM cases and cannot organize a press release fearing that people would get bored which it made the absence of confidence and faith. It is good to rise an measures in order to back personnel or law or suppression could access data of the money routes; then it is a measure to make criminals suspect to commit crimes…”

(4) Advisor of Deputy Governor of BOT: November 14, 2012

"…. Since 1979 during the Capital Tycoon Crisis, at that time, people attempted to amend law which was the Commercial Bank Act BE 2505 (1962) and the Capital Enterprise Act BE 2522 (1979). Four years later, it surged Trust Crisis again. It seemed that the national job is not done and also discarded and loosed. Until 1997, the Tomyum Koong Crisis broke bringing Thailand was colonized or subject to the IMF anarchy. All reserved fund were flushed dried and found that crimes surged in fraud of commercial banks and trust companies, which ended in closing down 56 financial institutions, enterprise controls and closing done many commercial banks. At that time, it is pictured that the Thais were unemployed, hanged themselves, chaos of crimes, abandoned homes and building, Baht price rolled from 25 to 5o Baht a dollar and it was a mega-impact.

In 1997, I have been transferred from the Office of General Attorney to the BOT and from trails; I found that there was poor enforcement and many shortcoming. For example, in trails, police and prosecutors issued prosecution order just 50%. For example, we submit 100%, the prosecutor declined 50% and another 50%, and the First Court Instance dismissed 25% of the cases while the rest 25% slowly enter procedures. By luck, the BBC episode achieved almost 100%.

After 2008, the US Hamburger Crisis stroke; the question is, "Was it similar with Thailand?" It seems analogous such as loan approvals were congested in real estate and 64% in USA approved loans for housing. USA met bubbles too. Global political crises are cognate with three main dilemmas, i.e. …..

1) The financial policy is too easing or overspending or compared with the present government of over populism. This likely help rise financial crimes…

2) Poor system of loan approval and they are congested only in real estate for loan approval from the financial institutions …..

3) There are limitations in monitoring the financial institutions, i.e. employees of BOT have limitations to inspect and there are many shortcoming areas to be improved as well as we ourselves though there are many factors for inspections.

Solutions should be as follows:

1). Re-amend Laws: before 1997, we had two Acts, i.e. the Commercial Bank Act BE 2505 (1962) and the Capital Enterprise Act BE 2522 (1979). Both had many weaknesses such as the Commercial Bank Act BE 2505 (1962) enacted many lax Articles on case inspections, and law enforcement. So, we solved to prevent crises through promulgating new law called The Financial Institution Act BE 2551 (2008).

2). We established an office called the FIDF (Financial Institutions and Development Fund). At first, we wanted to close it down but later the government sensed its benefit and decided to continue the affairs. Today, there are letters to extend and continue its affairs.

3). DPA (Deposit Protection Agency) has been established for fundraising. If new crisis would come, we could use this fund to ease the financial institutions. When we closed it, people paraded to withdraw then the country would meet chaos….

4). Demand the financial institutions establish their own asset management companies. Upon large amount of loan approved and NPL rises and all of them would be transferred to this new company for repair themselves. This is the way, if we do not want new crisis round.

Opinion on enforcement against financial crimes, it is compared to the house is going to be on fire but the dwellers do not check or monitor it well. The house might be too large, for example, we have too many rooms. Some rooms keep waste foam which is fuel materials but never throw it away. Similarly, banks with many NPLs never discard them. The banks weaken themselves. So, monitoring has many limitations especially experts.

There are many financial institutions, rightful monitoring all institutions, companies and all banks are not easy. It reflects if fraud crisis rise in them; then it weakens evidence collection because inspections are poor. Evidence searches are short of promptness where damages will rise. Then when police entered the scene where the fire broke out and did not know what were kept in the rooms since all were burnt down. Therefore, evidence searches are very difficult. We find that law in the past did not evidently specify that who are the nominees of the house owner and sometimes the

financial institutions sneak to appoint their own nominees and siphon their own money. These evidences are likely unfound if mishaps break out.

The interpretation of law leads to the counter crimes likely ineffective. The punishment provisions in the Financial Institution Business Act BE 251(2008) are all wheeled from the Criminal Code Article 1(1). Fraud means seeking illegitimate gains by oneself or by others. If asking whether Dika verdict about the definitions of Article 1(1) are many? Yes, they are. But if asking whether definitions of “fraud” in the Financial Institution Business Act BE 251(2008) Articles 141-142 are there some? None, there aren’t. There is just one case of a politician who questioned “what is the fraud of the financial institution?” this is the dilemma of interpreting “fraud” which lawyers either police or prosecutor or court or BOT differently interprets, which fail the case of fraud.

Laws share interpretation effectiveness problematic. I have tried to convey these things to be the element of offense in the Financial Institution Business Act BE 251(2008). If we have to impose law enforcement effective, we must break down elements of offense and convey this knowledge to the enforcers, to police, to prosecutor and to court to see those four elements and how they could convict punishment. For example, Irregular loan approval is significant and it means that the authentic case is the case of cheating and fraud in (First Bangkok City Bank: FBCB). One of the board directors had connection with politicians and escaped until the case was precluded by description. It approved loan for a company partnership limited with registered capital worth 500,000 Baht running car paint shop. Was it true that this business needed four billion Baht? This is the irregular loan approval with significance. That is the first element but it is not meant that one was guilty in this Article and deemed guilty but still the offender deserves fair treatment as being the alleged.

The act must be wrong as of negligence to duty; and duty means BOT and FBCB must enforce law promulgated the bankers to announce what the loan approver should do and there must have analyses; It was found that bankers declined to do it which means the bankers were negligent to duty as in the Element No.. 2.

Element No. 3 is whether there is damages or not in loan approved and the bank is not repaid, no credit , no debt paid and damages since the first day.

Element No. 4: evidences were found on seeking gains for oneself or for others. – It is not necessary to search evidences where the money has flown into the pockets of the executives because it will not be found. Therefore, the dika judgment indicated that if three elements are complete, it deems guilty. But in the Element No. 1, the prosecutor cannot evidently investigate on the affairs, so punishment was reduced for one fourth and still under imprisonment. It was if you cannot find where the money went but still under imprisonment. In the case of FBCB, we have enforced the anti-money laundering and we found the money was in the house of an executive of the financial institution. We smashed the wall and he money few out and we had four billion Baht. So, the existing Acts are supplementary as the directors have said they linked. This is the first problem.

The following problem is the first ones who collect evidences for interrogation are short of expertise and they are police or the interrogation officers who are ineffective to enforce law which allows evidence collections are unlikely proper. It was witnessed that in the past, we had to notify police and the police who handled the case had been transferred which lacked continuity. At that time, though the Economic Crime Division had been established but naïve to the cases of finance and banking. At present, the interrogation officers of special case have been trained and developed while the financial crimes are under scope of the special case in Article 21 of Special Case Investigation Act BE2547 (2004) and enacted to train experts but it is uncertain whether personnel would acquire the expertise and meet the qualifications.

To recommend for enhancing effectiveness to enforce law and taking lawsuit against financial crimes are;

1. It needs to amend or modernize laws and perfectly collect evidences. The cases of fraud on financial institution are divided into two (2 types, i.e. violating orders of BOT and the cases of true cheating and fraud handled by BOT. In the case of interrogating Order Violation, it is found that 100% we win. It is seen that the Financial Institution Business Act BE2551 (2008) Article 41 clearly specifies what the inspector must do. In general, the regulators must be developed and trained on effectiveness all the time while strictly impose law enforcement on the Amendment such as laws of nominee, law interpretation, evidence collection, and order issuance to rapidly stop dilemmas. Today, we have already done some part. We find that loan

approvals for condominium are increasing. There are people speculate more. BOT has announced control such as this assets could be approved just 80% and BOT should strictly enforce Article 28 of the Financial Institution Business Act BE2551 (2008). If irregularity is found, Orders must be announced all the time to enhance effectiveness in monitoring and that is prevention and rapidly gaining evidences.

2. The law enforcers must interpret laws in the same direction regardless being the DSI officers, prosecutors, courts, CCCO, AMLO and BOT. the same direction interpretation is such as the case of Krungthai Bank's cheating and fraud which approved loan to a private company.

3. Perfect mechanism in each government office.

4. Create governance with law enforcers and that is rejecting cheating and bribery. In the past the CAMEL-based monitoring was randomized and with 500 personnel. But randomizing nationwide is not easy. It is seen as the weakness to lead to crisis. At the moment, it has been changed to Risk Approach which is to check the risk format and criteria to monitor risk and AMLO implements it.

5. Effectiveness of evidence collection is another problem which Trade and Recovery must be expediter, prudent and effective. In a case of a bank when we sneakily found that an executive of a financial institution is withdrawing 1.9 million a day and delivered through motorcycle; we pursued through our motorcyclist where he kept the money. During our handling this case, reporters fully flocked. Trading here was useful and pursuing property and effectively claiming cheating and fraud property which needed Element No.4 and AMLO was ineffective….."

(5) Deputy Commander of Technology Crime Suppression Division: January 9, 2013

"…. Problems of evidence searches and collections of financial crimes and mainly are divided into 2 parts, i.e. 1) crimes committed by staffs or executives, and 2) crimes committed by outsiders against the financial institutions. Evidence collections of both are within the scope but just emphasizing evidences from different crime scenes. Crimes against assets and fraud of financial institutions are the structural problems. Meaning, the offense of the executives is about discretion but superficially, how do they employ their discretion? What are criteria for the charge or truly offend?

But there is. There are the analyses of the possibility to approve and to disprove credit but on fact-based analysis. If it is incomplete fact, it is false if producing positive. If it is truly fraud, analysis must adhere to fact. It is difficult to analyze the offense of the executives and staffs. The cheaters themselves prepare documents; most evidences related to the financial fraud are kept by them and it makes evidence searches difficult. Whether proof and evidence collections begin from preparation, analysis and signing and follow the structure? If it is the action of staff, it is easier to prove guilt. However, if the staffs and executives collaborate; evidence searches would be more difficult. If it were from outsiders; it is easier because victims keep evidence or the financial institutions keep them. At the meantime, the fraud executives collaborate with outsiders using staffs as mechanism; then proofs need to consider 1) interests and kickbacks and 2) social relation, kinship and account.

Problems of evidence collection are it they are the evidences; they will be in the hands of the offenders. They can change or eliminate them. Evidence collectors must know and understand such as bringing out evidence not through the correct channel, not submission with signatures in and out, which does not help verify original source. We handled a case of financial institution and found drafts directed to cheating and fraud and unmatched with the staff level. The state inspectors found this evidence and it was a landmark then brought it. None dared to sign. It was prepared for common route and when time came the fraud office denied it did not own it. It could not be proved and how could the officer get it. Rather mail be the culprit or endorsed by officers or taking photo but took it out. This is the experienced problem of knowing and understanding.

Offenses of securities at present, their evidence collections are so difficult. For example, the case of trading through phone or internet; to prove the real doer is difficult. We must connect the physical link because internet does not see the face of each other while phone just shows the number of the caller and the receiver. There might be voice records and marking the position but we cannot identify the real buyer because at present bipolar trading stocks could mark-up price naturally. Regarding cheating and fraud in the stock market, if it is the insider trading; there will be no trace for evidences. It is difficult for the authority to find them. Today, there is no law to control stock analysts found in media as indication. Regulators fail clear this point.

The crimes of public cheating and fraud and public fraud loan do not meet difficulty to find evidences. Evidence for loan might be difficult and meeting limitations of some victims are both victims and conspirators. So, they have to save themselves first. To find facts with victim cum conspirator might be hard, less cooperation and until the evidence collection authority fins them; evidences have been destroyed already. Evidence collection with direct sales is relative to cheating and fraud but it can be proved through the intent of interests and it is not necessary to prove its original source of goods. However, to prove the goods origin just indicates whether what is advertising, there are real goods. Where can one order? How are they ordered for such income? Sometime checking taxation needs to ask cooperation from the state agencies. Taxation has been announced by the Coup d'état that police are prohibited to intervene in taxation lawsuit which are requested from the authority. This is the structural obstacle. In tax inspection, one of the very problem is the victims themselves are not certain when they speak the truth they will be the victims or the backers. It needs to make clear with the authority particularly with financial institution offense regarding the physical involvement. But to prove whether victims are intentionally involved, sometimes, we cannot immediately respond and witnesses fear with accusation system.

Evidence collection must be in team. No steps or no any authorities are absolutely authorized. There must be check and balance of authority and enabling evaluation in each step. This is for the financial institution crimes because there are steps beginning with receiving the petition, receiving documents, fact-finding, analysis, preparation, and examination for approval. Each step must be checkable and not with a person. Obstacles or difficulties of evidence collection in the financial crime are interests returned to the cheaters which are hard to prove. Therefore, the useful measures are such offenses should be pushed to the burden of defendants in proving innocence and the authorities just collect to meet the assumption of guilt only…."

(6) Senior Prosecutor: Office of General Attorney: May 19, 2013

"….Evidence collection of financial crimes is difficult because previous, they used documents but now technology such as transferring money of the call center gang. Sometimes, they do not meet and cannot indentify anyone but contact through

electronics. So, those who search and collect must contact the office which control e-communication for blockage else it is difficult to arrest the criminals since there are no documents except arrest on point of receiving money. Previously, we do not know how many are the conspiracy. Normally, financial criminals will not be alone and in some cases they are transnational crimes. Sometime, they appoint agents. This case they do it themselves another case by others but under the same network. Most are foreigners. For example, the Malaysians cheat Malaysians and mostly they do not do in their countries. Few do it in their own cities, and mostly are transnational and the nation of the criminals but committed crimes here such as the Chinese-Malay but commit crimes in Thailand.

Crimes need expert authorities to collect evidence step by step. If find committing, we cannot immediately arrest but we must collect the full cycle. They allocate duties to do and evidence collection requires surveillance on their movements all the time either the contact persons or e-communication, particularly for the interrogation officers who collect evidences. For the prosecutor, it is to see that those evidences are sufficient for lawsuit or whether at court level, would it be able to prove who the criminals are. Evidence collection is not just only in the country of crime scene but abroad where victims have domicile. Witnesses are both the Thais and the foreigners. Evidence collection is gradually difficult…."

(7) Deputy Commander of Economic Crime Division: March 7, 2013

"…. The problems of financial institution crimes in Thailand are usually found with their executives and they affect overall national economy at large. The damages are broader than other crimes because they create mega-domino effects and most criminals are erudite with high social status where crimes are more complicated with larger amount of money in damages.

Such crimes found in the Economic Crime Division are banking services through online, and through internet which are public network. We know that technology in internet has always been developed and the commercial banks provide technology and measures for pursuance and prevent hacking clients. But today, there is cheating and fraud on email counterfeit or counterfeit screens for users to believe that they are the screen of the financial institutions or banks. Fore examples, there are

patterns, signs, and icons as if true aiming to deceive users to fill-up their personal data such as User ID, Password, ATM PIN, Credit Card Code, Bank Account, Credit Card No., and ATM No. or other data which criminals can use the disclosed data for fraud. In fact, today, there is no ways to absolutely prevent such crimes just the commercial banks request clients' cooperation to prevent fraud through internet only. In practice, if the Economic Crime Division provides data or news to public, there will be chaos. So, authorities involved must rapidly solve the problems and to find effective preventive measures on crimes through e-network.

Opinion on controlling financial institution crimes is the authority should mainly employ Crime Control to counter them. The jobs of the Economic Crime Division must be short and effective though it might affect personal rights of people but for the societal benefit, it must do. Solutions to financial crimes through laws should emphasize the empowerment and provisions of punishment…."

(8) A Lecturer of Faculty of Law, Thammasart University: April 9, 2013

"….Evidence searches and collection in the financial crimes meet obstacles because they are unlike common crime. The interrogation officers likely wait for authorities of specific laws to notify the petition first. Until the notification, damages have burst which considerably delay lawsuit. For example, either BOT or SEC find the crime and collect evidences to notify the interrogation officers without the knowing they are the evidence involved or able to identify the guilt of the alleged. This step may need time. Some cases have been notified almost at the period of prescription expires, which speed the evidence collection of the interrogation and this is one of the hindrance.

In addition, it is so complicated in evidence collection regarding financial crimes because there are number of witnesses and documents and needed time both to collect and examine the affairs and any evidences can be presented to the court. Inspections are like difficult on their relevancy which delays the evidence preparation. The financial crimes are usually committed by experts and use technology. Therefore, evidence searches and collection need expert specialists with ability to analyze causes of crime to trace them and the government sectors runs short of these personnel.

Taking action with properties in financial crimes with anti-money laundering law is effective but financial crimes have growing developed which demands the government sectors to progress more in order to counter them. Today, there is a proposal to amend anti-money laundering law and it is in the parliament. …"

(9) Chief Judge of Chief Judge of the Southern Bangkok Civil Court: April 9, 2013

"…. Opinion on evidence collection is the financial crimes have special characteristics containing many problems and limitations to find and to collect evidences. Though the Anti-money Laundering Act BE 2542(1999) enacted special measures to find evidences either the power to summon the financial institutions, offices or persons for information, search without warrant, telephone and computer access, business reports and so on; they are insufficient for enforcement. They make evidence search and collection to sue culprits for punishment likely ineffective and most lawsuit against such cases is unable to sue culprit for punishment. Most financial crimes are dismissed by court because no evidences for suspicion cross-examination against defendants. Court grants benefits of suspicion to defendants. To this point, it needs to identify offense assumption of the defendants to reduce proof burdens of the prosecutors could be very useful to file lawsuit against such type of crimes.

Measures of evidence search and collection will be effective when adapting the measures of conspiracy, and plea bargaining, which are the lawsuit in the causational system in USA and UK which are similar with Thailand. In addition, there is a cooperation promotion on international property which will be effective measure for evidence collection. Special measures of evidence collection are useful if paired because just any measures applied might not effectively counter financial crimes and reach target. But integrating all measures properly could eliminate limitations of evidence collection which will enable to sue culprit for punishment and effectively handle their properties gained from their crimes…."

4.2.2 In-depth Interview with an Expert of Anti-money Laundering Law

(1) Secretary of AMLO: November 26, 2012

"…. There are number of the past financial institution crimes because financial information are with their institutions while institutional status changes during the past decades such as the close-down of 49 finances or the collapses of FBCB (First Bangkok City Bank) or the status change of banks such as merger between Siam city Bank Pcl. with Thanachart Bank or Thai Danu Bank Pcl. in the past to be TMB and so on.

Status changes of financial institutions are information accounts changes and there is no storing of information or might change or resetting new account and cannot be traced of the money, in particular, the stock market. Reasons are the anti-money laundering allows keeping evidence for 5 years except under the petition of authorities for additional collection but with indication of what will be additional collection.

Properties by fraud of the executives or public cheating and frauds, and property account of some financial institutions are not kept while some are difficult to trace and some are with foreign transaction. They are depended upon evidence collections of each foreign financial institution or some might not keep, they are hardened to be traced. Critically, when there is a case of financial institution or specified to collect evidence without any delay. In the past, AMLO involved after the major official agencies on offenses have taken action and when we collected them, we could not cover all evidences. Reasons are the AML Act Article 58 enacted to take action by other laws first; if failed then AMLO would take action.

In addition, tracing money or property involving crime is so much sometimes under reproduction and tracing become hard. Some cases have been transferred to many agents. Major elopement is there are many variables, e.g. conditions of the financial institution, storage of financial data, and storage of property data which are limitations. If the key office prioritizes the financial data leading to confiscation; it is few because the official agencies taking action only for criminal lawsuit rather than data for confiscation. Amendment here is allowing AMLO to join investigation at first phase.

The current measures of evidence in the financial crime are sufficiently effective or not are AML laws for property proof allow it to be with the property owners or persons involved which is believed that it is effective. But it is doubtful for its efficiency which is depended on during the incident or enforcing financial measures, is evidence sufficient to confirm the ownership or relationship. We need clear proof whether the property involves crime and the owner must prove the property has been *bona fide* gained. On the same time, the stakeholder or beneficiary if involve must prove the property are honestly and duly gained. The AMLO tasks are to prove relationship between the owners and the culprits, which is believed effective but we have to prove the links on property owned by others. Over the past, there were many verdicts evidently under adjudications.

Enhancing effectiveness in enforcing lawsuit should adopt and adapt more international standards on AML and counter terrorism. For example, it is necessary to specify businesspersons involved with finance to complete the duty of additional reports on business by adding business groups which are the important evidence. They must be specified to conduct Customer Due Diligence (CDD) more. It helps enhancing effectiveness of law enforcement because if they have customers 'data, they will give if we request. In the past, people claimed that they have money from selling religious images for thirty million Baht; we need to check whether they have cash more than two million Baht. If it was more than two million Baht, we had to question, whom did they sell to and did they have business report? This is the effectiveness in law enforcement. All these will be evidences because if they sell the religious image to the buyers and the buyers confirm the trading but without business report; they will be fined since the date of trading. It begins a review. This is the effectiveness of law enforcement. But now we have nine career groups and with AML Act BE2546 (2003) Article 16 which is under amendment process to broaden career groups to prepare business report. This is another way to have evidence of financial business. At the meantime, we will add some careers related money to issue CDD more to have more data of customers' careers notified to the enterprise during their transactions. Reasons are if they do not provide CDD; the financial institutions or the enterprise might cancel or end monetary relations.

Measures against property under AMLL are effective or not is certainly effective to a certain level. Problems that AMLL enforcement meets are about nationwide enforcement and by each personnel in AMLO. At the moment, though more personnel are hired, still they are not enough while these measures are difficult for other state agencies to apply. They will be effective only when coordination of enforcement is rightful and the authorities are confident to enforce them. At moment, we are having an amendment with the AML Act BE2546 (2003) No. 4 BE2556 (2013), which will be promulgated soon. Not long we shall Propose an amendment with the AML Act BE2546 (2003) No. 5 with the first main principle of adding the group of preparing business reports, adding more duties on checking for fact-finding about customers, specifying measures of business reports, cash outbound across border, and inbound cash transport. This is an additional new law and prioritizes about inspection to find fact about customers in order to specify the legal principles…..”

4.3. Summary of the Interviews with Experts

Summary of the in-depth interviews with experts revealed that most interviewees asserted that problems and limitations in taking action against financial crimes came from their conditions with the institutions or trusts, public cheating and fraud, public cheating and fraud on loans and illegal network mobilization under direct sales laws. Most have no evident impact and not violent crimes like common crimes. Culprits are likely expert with using modern technology, with complexity, network crimes and possible transnational organized crimes. Their lawsuits would have number of witnesses, heaps of documents, evidence search and collection with equal expertise, ability of analysis the roots to trace crimes where the government sector run short of expertise personnel. It makes action delayed and sometimes, evidences in hand cannot prove guilt of defendants and trace the masterminds.

Summary to enhance effectiveness of law enforcement and taking action against financial crimes are as below:

Measures of evidences on financial crimes should adopt conspiracy measures and plea bargaining to eliminate limitations in evidence collection while able to sue culprits for punishment and effectively handling properties gained from crimes.

It also needs to stress social measures at the same time. For examples, it needs to create good governance for their executives and employees from law enforcers. In addition, it is necessary to adopt for more effective enforcement of property measures under ANLL and tax measures. Reasons are, money and property are keys to back economic crime which enable high cost crimes with high returns which can affect the national economic system. It is suggested that international standards of AML measures and counter terrorism must be adapted for more applications. For examples, there must be specification for financial enterprisers to prepare additional transaction reports by adding the group responsible for business reports. There must be specification for measures of business reports, of cash carry across border, of CDD, and enforcement of not-for profit organization or juristic persons such as the churches/wats and foundations.

The organization enforcing laws must be developed to be responsible for effectively monitoring financial institutions, and banks. In law enforcement, all offices must interpret law in the same direction regardless being the interrogation officers of DSI, prosecutors, courts, OCCC, AMLO and BOT.

The operations of the state agencies must develop their personnel potential of knowledge, capacity, and morale and spiritual supports to meet situations and disposition of crimes which develop their techniques all the time incorporate with trainings on virtue ethics in working and morale and spiritual supports of work. Reasons are, to collect evidences needs teamwork of experts, coordination and cooperation among the agencies of the government sectors and private sectors in the country and in abroad. In particular, it needs coordination of information, pursuance for arrest, transferring prisoners and extradition.

Analytical results of the qualitative data synopsized above are from in-depth interviews with experts on enhancing effectiveness of law enforcement and suing financial crimes will be discussed through knowledge integration in the following Chapter.

CHAPTER V
DISCUSSION

This chapter is the discussion of the results through integrating knowledge from the qualitative data explored from related documents, and in-depth interviews with experts on lawsuits against financial crimes presented in Chapter 4 who have contributed models, nature of economic crimes, nature of economic criminals, and factors leading to economic crimes, problems and limitations of evidence search and collection for economic crimes, financial institution crimes, securities crimes, public cheating and fraud and public cheating and fraud loans, direct sale crimes, opinion on measures taking action against property and financial crimes under AMLL of Thailand, recommendations of enhancing effectiveness in law enforcement on evidence measures and financial crimes of Thailand. The researcher distributes discussion based on the research objectives as follows:

5.1. Discussion by the First Objectives: to study the meaning, models and nature of the economic crimes, the nature of economic criminals, and factors creating economic crimes

With the data collection from documental explorations and in-depth interviews, they resulted as below:

Exploring documents the meaning, models, nature of economic crimes, nature of economic criminals and factors leading to economic crimes are concluded as:

Meaning of economic crime is found that though economic crimes are differently called such as white collar crime, business crime, commercial crime, corporate crime, organized crime and occupation crime. All are analogous, which are crimes intended for economic gains or interests by violating laws related to economy

and commerce which affect the national economic system and the national security. Calling “economic crime” is coherent with objectives of committing this type of crime and covers the entire economic offenses.

Models and natures of economic crimes are found that they are not only violating laws, obligation, government regulation or civil violations but also crimes which evidently endanger societies. Culprits have motive and expect unlimited monetary gains. Sometimes culprits have high social status, fame, and been trusted by societies. Economic crimes destroy the national monetary security of individuals, public and private enterprises. They are popular crimes which can threaten societies and link to money laundering that let to backing other lawbreaking affairs. Their distinct natures are as below:

1. It is lawbreaking or hiding lawbreaking within the licensed legal affairs. There is model distribution in different patterns either closed businesses and disclosed businesses but illegal such as deforestation, smuggling, illegal businesses on money, finance, banking, trust, share business and chain shares which the Act promulgated wrongness.

2. There are techniques of concealment and attempts to destroy evidence unable to trace back to oneself. Herewith, economic crimes are complicated and gradual with sometime until damages are sensed. It makes evidence searches difficult and outdated. It offers opportunities for these types of crime to well hide, destroy and conceal evidences. With the money power gained from economic crimes and rise of dark influence to dumb witnesses, bribing authorities and state agencies including hiring other to confess for them. It is difficult to reach the root.

3. Due to being hidden and covert behavior, it is difficult to observe or find. Sometimes, victims do not sense they are victimized until mishaps appear. In corporate without directly haunting image amid people, no threat and fear or terror against the victims; they make victims unrealized their victimization but just think that it is disadvantage for common business only. Attitudes and values of the victims have very mild retaliation compared to common crimes and it does not create vengeance to the onlookers or spectators.

4. Criminals are experts with modern technology either management or set-ups. Devices are improvised such as computers, trade documents and with well-plan. Crimes are systematically committed. There are studies about data, plans and readily manage other things which is difficult to investigate, interrogate, arrest and judge.

5. Crimes are committed by individuals or groups with status and dignity in societies especially the influential persons or political power man, laws at hand wherewith common people dare not commit. A fact undisputed is inside the political ring itself there are number of economic criminals. They are equipped with two statuses, i.e. popular voted entrusted by people and tuxedo criminals.

6. Economic crime is difficult to commit alone but by many and in group included people with and without knowledge until linked into the local movement and the national movement while there is tendency to assemble into an organized crime and broadened into the transnational crime.

7. It endangers peace and order of public. Its damage is worth more than common crime. Number of victims is in large number. Besides harming societies and public, the state is also victimized because economic crime devastates economy, and investment, blocking social growth and security. Some natures devastate morals, traditions and cultures of national societies.

Nature of economic criminals is found that most of them have better background than common criminals, stable economic, social and political status, backed by influential person aiming to commit crimes for one's benefits and returns in property and income. Economic criminals are highly potential to commit crime, expert, experienced, using high techniques, relating plans in steps, and ability to well cover data or evidence related. It is hard to investigate and arrest. Crimes are unlikely commit alone because economic crimes happen with juristic persons with complicated regulations and in many steps. It is hard to achieve alone. Usually, there are backers or accomplice as team. The more it is large amount; number of team members are increasing. If it is a crime in an organization, there are personnel of the organization

may consent or cooperate. It is hard to probe the mastermind because criminals cooperate with multi level of networks.

Factors leading to economic crime are found that economic crimes likely have motive of returns with large amount of property. In corporate with many factors ease committing crimes and they are (1) opportunity to commit crime such as most organizations or most offices breed crimes. The higher the position the person has responsibility; there is the higher opportunity to commit economic crimes to exchange job advancement, affluence and fame. Crimes committed are (1) with opportunity, say, the higher the position the person has responsibility; there is the higher opportunity to commit economic crimes to exchange job advancement, affluence and fame, which executives will not be reluctant to violate laws. (2) Decision to commit crime is because to seek gains which is the major objective to run business and for the survival of the workplace which demands companies to use variety of techniques senseless to rightfulness such as avoidance to follow laws, tax avoidance and direct violation of laws and so on. (3) Expertise to commit crime is because an economic criminal is likely the person with special knowledge which is the specialization to well take action. A person to cheat bank must know well about the banking system. If needed to cheat on goods distribution, it is necessary to understand the banking system, and transport system which is complicates and seeks first weakness to destroy the strength of the banking system and the transport system. Then cheating and fraud is successful. It is not for the common outsiders to understand and take action. When the doer is qualified, it is easy to destroy evidence which will later harm oneself. And (4) the economic system and structure under free trade system, there is the picture of more violent economic crime because it is the opened system when private and government can fully run the business in every sector which is mainly empathizing production. So, products from the opened economic system will be more affluent and it is the motivation to commit crime higher than the monopoly system.

From interviews with experts on suing financial crime, it was found that interviewees contributed data of meaning, models, nature of economic crimes, nature of economic criminals and factors leading to commit economic crimes that:

"…Financial crimes are likely committed by experts and found channels to commit them and offended by covering their crimes which was hard to have apparent evidences of such crimes…" (Interview with Director General of DSI on August 15, 2012).

"….The problems of financial institution crimes in Thailand are usually found with their executives and they affect overall national economy at large. The damages are broader than other crimes because they create mega-domino effects and most criminals are erudite with high social status where crimes are more complicated with larger amount of money in damages…." (Interviews with Deputy Commander of Economic Crime Division: March 7, 2013).

From the study of meaning, models, nature of economic crimes, nature of economic criminals and factors leading to commit economic crimes above; they can be analyzed in supplement with theories of economic crimes as following issues.

Models and nature of economic crime are coherent with the Differential Association Theory advocated that economic criminals are not inherited but from social learning and commit through drive of property interests and income to meet one's wants. Economic criminals are likely the offenders who have high job position regardless in the government sector, politics, and business sector. They exploit their positions to seek illegal monetary gains and characterized their offence with techniques and expertise. It concludes complicated offences which need occupational relationship. It is cohesive with the theory that offences are from association and learning concepts, tactics and channel to offend. Economic crimes are usually found in organized crime grouped into firmly established organization. They aim at common interests and are occupational crime while attempting to expand their business in their territory as well as involving transnational businesses. There is effective administration within their organization and organizes divisions for serious responsibility. Generally, the organization recruits government agents and politicians to be its members or leverage for gains and to nurture the government agents and politicians to ease their works. Economic crimes as organized crimes or transnational crimes are the most evident model in the Differential Association Theory.

Issue on causes of economic crime is coherent with the Techniques of Neutralization because the economic criminals on finance are executives of the financial institutions cheats in their institutions, the executive in the securities companies cheat or speculate and neutralize and rationalize what have been violated laws so that they or others feel that they do not violate any laws such excusing that harming none, doing no wrongs, or lawbreaking but not criminals. Sometime, they neutralize to be accepted such as by necessity for the survival of the affairs. Some neutralize by referring to societies that to secure the financial condition of the company or of the business. Some neutralize on necessity of the business and if other encounter such situation, they would do or neutralizing that to help workers not to be jobless, and so on. Exploiting techniques of neutralization is not meant that offenders reject their deeds are not illegal but rationalizing to make themselves not to feel violating any laws or to feel that one is not evil. Mostly offenders will not take action until they can find reasons for their neutralization.

In addition, it is coherent with the Choice Theory because economic criminals are experts with modern technologies to offend, ability of coverage, elimination, hiding evidences well, and nature of professional crime. Meaning, criminals raised by committing crimes have techniques and expertise how to do them. They do not need criminal records, recognition and decision-making based on the Choice Theory but they are proud to lead their lives their own ways, e.g. swindler, counterfeiters, hired gunman, procurer and procuress. In addition, professional criminals learn and experience to choose crime scenes, targets, and learning criminal techniques to save them from arrestment which meet the structure of the Choice Theory (Sudsanguan Suthisorn, 2004).

Issue of factors leading to economic crime is coherent with Theory of Imitation because when social see that economic crime is an offense that the state meets difficulties to find evidences and punish offenders especially the financial crimes, e.g. the case of Bangkok Bank of Commerce Limited (Public) (BBC), the case of First Bangkok City Bank, cases of speculations, cases of chain shares. They make criminals see that consequences of crime create large amount of gain and returns for

them and for the companies. Also, current laws cannot effectively punish any criminals. All these gains and returns are the catalysts and supports to commit crime which the executives of banks and securities companies imitate the behavior. It aligns with the concept of Theory of Imitation coming from learning the criminal behaviors with the closed persons (here, it might be referred to companies running the similar type of business) through communication and learning. Criminals have ever known and seen before and agreed with the lawbreaking behavior because it brings profits which are the target of doing business rather than seeing it as violating laws.

5.2 Discussion by the Second Objectives: to study problems and limitations in searching and collecting evidences in the cases of financial crimes, type of offense on financial institution fraud, security fraud, public cheating and fraud, public cheating an fraud on loan and offence of direct sales

With the data collection from documental explorations and in-depth interviews, they can explain problems and limitations in evidence search and collection about financial crimes of cheating and fraud in the financial institution, securities crimes, public cheating and fraud and public cheating and fraud on loan and crimes of direct dale as follows:

5.2.1 The case of cheating and fraud in the financial institution

Adjudications of crimes under financial Institution Act BE 2551(2008) will be examined by criminal structure as in other crimes. With such reason, lawsuit against the executives is difficult because to punish someone in a criminal case requires evidences to prove in the presence of court without doubt that the defendant is wrong or not. The evidences of the financial institution crime are difficult and complicated different from common crimes. And, to find any evidences to prove the executive gain benefits for his/her purse are very difficult at present situation.

The structure of criminal responsibility related to lawsuit against the financial institution could be concluded as follows:

1. Action completes the element enacted by law as offense and that is it needs to examine whether such action competes both external and internal elements and there must be relationship between deed and result.

1.1. External elements are:

- The doer is the executive of the financial institution, manipulator, backer or conspirator

- The act needs witnesses or evidences to confirm what, where and when the executive commit in order to prove his/her act.

1.2. Internal elements are:

The intention is the wrongdoer must know fact which is the external element of the wrongdoing and the doer wishes for result or sees result of the act, motive or special intention, therewith. Due to some offense, the doer must have motive or special intention and does not consider that such act is guilty due to short of internal elements.

1.3. Relationship between act and result is result happens is the result of the act of the wrongdoer.

2. Act with the exception of guilt is though the doer completes all structure in No. 1 but given law with the exception of guilt, it deems the act of the doer is not guilty.

3. The act with no exception of punishment or the doer is evil. That is though the doer completes both Structures 1 and 2 but such act has the exception of punishment by law for the doer because the doer is without evil; it deems that the doer is guilty but without punishment.

Regarding “Sense of Responsibility” – normally the executive is the recognized person by career entrusted by people to deposit their money expecting to gain interest. So, the executive should have sense of responsibility what to do with the deposit money for yield and safest rather than approves large amount of credit for greater gains or approving credit for one’s gang will be save and so on. All

these are “sense of responsibility” which the executive should heed because considering all three structures of crime; the executive is subject to punishment.

Problems to adjudicate the act of executive deserving guilty in bad faith or not likely have difficult and complicated facts involved. In corporate with the adjudication should also be conscious of the dika judgment and absolute adjudication of case dismissal from the prosecutor. The BOT practices in most lawsuits taken against cheating executives are distinctly involved with credit approval and any credit approvals deserve wrongdoing by bad faith or not contain four (4) following elements.

1. Irregular significant credit approval

Normally, BOT announces or orders the financial institution to regulate about credit grant, credit approval, approval authority or procedures such as provision of collateral or any conditions. When they issue internal regulation and the executive does not follow the limit of authority for credit approval or fail to follow the collateral; it deems irregular significant credit approval.

By practice BOT considers that any credit grant with irregularity; BOT enforce authority by law such as demanding the financial institution to issue regulation related to credit under Article 22 of Securities Business Act or demands the financial institution approving credit to act or to omit or to amend under Article 22 Paragraph 2 of the Commercial Bank Act. If they fail to comply, BOT shall take lawsuit. Most cases of disobeying BOT orders are charged and judgments are executives are certainly guilty as charge.

2. Negligence to duty as being an executive

Normally, executives are individual entrusted and having confidence by depositors that they can handle other money and properties of the depositors. Besides, the financial institution status is very important affecting the national economy and social. Also, results of laws in the Criminal Code Article 354 deem that the executive has career or business trusted by people. If the executive commit negligence to duty; he/she must have graver punishment than common people. Moreover, Besides the Public Company Limited Act BE2535 (1992) with Amendment

of Article 85 also specifies that directors of the financial institutions must adhere to laws, objectives, obligation and shareholder meeting resolution (only public company limited) with good faith and prudence to secure benefits of the financial institution. If act or omit and cause damage to the financial institution; the law enacts the institution can claim damages for the director, too.

So, in practice, BOT if announces or sets criteria for the financial institution to clearly provide the executive's scope of authority with clarification with the executive and he/she completely sign to acknowledge his/her duty. Any negligence to duty ease lawsuit and it is to create good governance at the beginning.

3. Evidence found indentifying illegal gain-seeking characterizing property or any direction for oneself or gang

In previous practice of BOT on petition for charge, there was no checking about route of money that the executive gained or not because, it was examined by principle of law on dishonest that upon illegally approves credit, it deems that credit granted is the other person who gains benefit. Later, tendencies of order the case by the prosecutor were mostly found that executives received benefits too. Then, it deems guilty. Petition for charge must inspect the route of money and even by fact, it is difficult to find evidences because the executive is very expert and know how to avoid until evidences could not be found with clarity. But some cases, their evidence could be found such as account document for wife and children or the intimate persons.

However, the interpretation of lawyers is confusing in the matter of credit approval to debtor by the corrupted executives and debtors gain benefits from the credit. Most lawyers believe that it is cronyism under the meaning of "by bad faith" enacted in the Criminal Code Article 1(1). But some groups of lawyers believe that it needs prove so much so the executive gain for such credit loan.

So, these issues are still under dispute among lawyers. But fundamentally, by the verdicts of Supreme Courts, for example, Dika Verdict No. 293/2530 (1987) judged that upon the credit approval of the executive for debtor by disobeying the financial institution; the Supreme Court judges that both executive and debtor are guilty by conspiracy against the financial institutions and so on.

4. Damages of property belonged to the financial institution

Property damages have broad meaning which are all types of the damage happened to the property or benefits of the institutional property and they are not the only the lost money from credit approved by misconduct such as cut as bad debt or incomplete claim but also making the institution lost or reduce potential collateral. It is the called property damages. The Civil and Commercial Code Articles 137 and 138 defines “property” as the formed and formless material and both are attributed valuable and held (Veerachart Sriboonma, 2012).

From the Seminar on “10 Years of Lawsuits against Financial and Fund Markets: Success or Failure” on the cooperation with Institute of Criminal Law: Office of General Attorney, BOT, SEC (Office of Securities and Exchange Commission), SET (the Stock Exchange of Thailand, and Office of Securities and Exchange Board of Thailand; there are problem briefing and lawsuit proposals against financial crimes as follows:(Institute of Criminal Law: Office of General Attorney, 2002),

Issue 1: Knowing and understanding laws and regulation related to personnel in the economic justice administration: interpretation of provisions and facts which in past proceedings the word “corruption/dishonesty” was met with interpretation and led to dilemmas in practice. That is each office differently interpret it and the benefit is the alleged has been granted protection.

Issue 2: Domestic and international collaboration and cooperation among personnel and offices involved should be in team and should involve Ministry of Finance, BOT, interrogation officers, and prosecutors to speed lawsuit and to gain complete evidences.

Issue 3: presentation, collection, and testimony should adopt regulations of presenting testimony of intellectual property and international trade for lawsuit against financial institutions containing e-admissibility of evidence, petition for protection of evidence before lawsuit, submission of testimonial record to replace testimony presence at court and the case from the Court of First Instance can reach Supreme Court without through Appeal Court.

Issue 4: Interference and factors affecting the economic justice administration should be solved by good governance and conscious mind should be cultivated in offices that lawsuits against financial institutions are for the benefits of the country. Moreover, interference offense of justice administration should be enacted because criminal laws at the moment are insufficient to punish interferers in some cases.

Issue 5: Roles, Tasks and structure of economic justice administration should be evidently scoped on the authorities of each office especially the matters of securing evidences in critical cases.

Issue 6: Recommendations and solutions

Establish special court to try the cases of financial crimes

- Adopt civil lawsuit to be applied with the cases of financial crimes
- Provide gratuity leading to arrest
- Enact law to protect authorities on malicious prosecutions
- Develop workability of personnel
- Allow involvement of offices in drafting bills
- Permit the first-action office to confiscate properties for lawsuit
- Adopt security methods to be applied in offenses of financial institutions

The seminar concludes that enforcement of business law with financial institutions only will fail. There is a second thought that there should be collaboration to prevent corruptions in the financial institutions by seriously cooperating with personnel in the justice administration. This is to be successful to take lawsuit of corruption in the financial institution and enabling wrongdoers to face punishment.

From interviews with experts on suing financial crime, it was found that interviewees informed about problems and limitations in evidence collection of financial institutional frauds that:

"…with many financial institutions, rightful monitoring all institutions, companies and all banks are not easy. It reflects if fraud crisis rise in them; then it weakens evidence collection because inspections are poor. Evidence searches are short of promptness where damages will rise…"(Advisor of Deputy Governor of BOT: November 14, 2012)

"The following problem is the first ones who collect evidences for interrogation are short of expertise and they are police or the interrogation officers who are ineffective to enforce law which allows evidence collections are unlikely proper…." (Advisor of Deputy Governor of BOT: November 14, 2012)

"…. Problems of evidence searches and collections of financial crimes and mainly are divided into 2 parts, i.e. 1) crimes committed by staffs or executives, and 2) crimes committed by outsiders against the financial institutions…" (Deputy Commander of Technology Crime Suppression Division: January 9, 2013)

"….. Most evidences related to the financial fraud are kept by them and it makes evidence searches difficult. Whether proof and evidence collections begin from preparation, analysis and signing and follow the structure? If it is the action of staff, it is easier to prove guilt. However, if the staffs and executives collaborate; evidence searches would be more difficult…."(Deputy Commander of Technology Crime Suppression Division: January 9, 2013)

"…..Most financial crimes are dismissed by court because no evidences for suspicion cross-examination against defendants. Court grants benefits of suspicion to defendants…."(Chief Judge of Chief Judge of the Southern Bangkok Civil Court: April 9, 2013)

"…Properties by fraud of the executives or public cheating and frauds, and property account of some financial institutions are not kept while some are difficult to trace and some are with foreign transaction. They are depended upon evidence collections of each foreign financial institution or some might not keep, they

are hardened to be traced. In addition, tracing money or property involving crime is so much sometimes under reproduction and tracing become hard. Some cases have been transferred to many agents….." *(*Secretary of AMLO: November 26, 2012*)*

5.2.2 Securities Crimes

The Securities and n Exchange Act BE2535 (1992) has been enforced since May 16, 1992; there were cases of unfair securities trades. But statistical data revealed that enforcement against unfair securities trades could be taken action with some specific cases of admission of guilt and be fined. Nevertheless, accusation filed to take lawsuit at the interrogation officer is unlikely met the objectives of the enforcement because regulator office unlikely enforce with effectiveness (Chutima Lilajindamai, 2005).

Leaflets prepared by Inspection and Case Department, SEC estimated volume of damages from unfair scurrilities trading almost reached ten billion Baht but lawsuits are unlikely successful. Since SEC has been active, the court punished few cases whereas there were numbers of the suspected (SEC, 1996). Many cases filed to sue culprits for punishment such as accomplice to buy BBC shares and the court dismissed the charges of 12 conspirators (Dika Verdict 1766/Be2539(1996) dated April 11, 1996: Office of General Attorney VS Mr. Song Wacharasriroj and associated defendants), the case of trading shares of FCI (First City Investment Co. Ltd.) in 1993 disguising to mislead common people and accomplice in trading with continuous manner, the case of trading shares of RR (Rattana Real Estate Pcl) in 1993 disguising to mislead common people and accomplice in trading with continuous manner. The interrogation officers suggested liable for trial to the prosecutor. Late the Office of General Attorney had appointed committees to consider trial of both cases. It was found that prosecutor had absolute order to decline trial (Institute of Criminal Law: Office of General Attorney, 2006).

In addition, it was found that few trials or enforcement of unfair trading securities especially speculation through informing or dissemination had enter proceedings while crimes against Article 240 had never been under interrogation. But it could not be rejected that acts of unfair trading securities or speculation through

informing or dissemination or rumors exists since the birth of stock market and are periodically witnessed in news. The enforcement units and SEC met doubtful conduct but to find evidences for their trials is likely difficult and the actions were faded away. Causes were from problems and limitations of evidences, i.e.

(1) Problems of Criminal Proof

Admit guilty in the case of unfair trading securities under the Securities and Exchange Act BE2535 (1992) enacted criminal punishment with strictness of evidence proof. Meaning, plaintiff undertakes responsibility to prove to court that the defendant is truly wrong by collecting evidences and the plaintiff must provide proofs beyond reasonable doubt. Then the court will sentence the defendant. If the proofs are doubtful, the court grants good faith for the defendant which is subject to the Criminal Procedural code Article 227 enacted that the court adjudicated and weighted all evidences and never passed judgment until the court was certain there was wrongdoing and the defendant commit it. And when there was reasonable doubt of wrongdoing or not; merit is granted to the defendant because of the reasonable doubt.

Wrongdoers of unfair trading securities are mostly experts with experiences in trading shares in SEC including they are the mastermind all owning almost every evidence. Proof of this wrongdoing is to prove mainly their intention since most evidences are circumstantial rather than direct witnesses. The process of proving their intention requires proof of deeds, which is very difficult.

In addition, the process of shares trading has sophisticated and difficult techniques. It needs erudite staff with considerable experience. It is so difficult to prove their wrongdoing without reasonable doubt. Their trails were mostly appeared at inspection and evidence collection of SEC or if the files reached the Office of General Attorney, they were mostly declined trails. There were detention of defendants in some cases as witnessed in news but later , it was impossible to punish them because impossibility to prove doubts. Wrongdoers of unfair trading securities were still own most evidence, so when news spread to charge them; they destroyed all those evidences. It needed time to collect complete and sufficient evidences for their trails.

(2) Problems of collecting and analyzing evidences

Wrongdoing of unfair trading securities is not an evident offense with arms and weapons or witnesses and witnesses are not found since it is the matter of expertise related to documents in corporate with the trades or movements of stock price which are evidences are not evidently proved which affected the admissibility of court in trying a case.

In addition, collecting and analyzing evidences of unfair trading securities requires data of order or movement of the stock prices and circumstantial evidences of the time for analyzing the act in order to prove the culprits' intentions. Such matters need much expertise and experience to collect and analyze those evidences. In addition, most wrongdoers of unfair trading securities own most evidence which ease their elimination before being summoned their guilt in court. Presenting the circumstantial evidences for proving wrongdoing is unlikely accepted and less weighed, which is unavailable for penalizing defendants.

Data for the above studies are corresponded with data collected from expert interviewees of trying financial crimes. They provided problems and limitations in searching and collecting its evidences of securities crimes that:

"….Offenses of securities at present, their evidence collections are so difficult. For example, the case of trading through phone or internet; to prove the real doer is difficult. We must connect the physical link because internet does not see the face of each other while phone just shows the number of the caller and the receiver. There might be voice records and marking the position but we cannot identify the real buyer because at present bipolar trading stocks could mark-up price naturally. Regarding cheating and fraud in the stock market, if it is the insider trading; there will be no trace for evidences. It is difficult for the authority to find them. Today, there is no law to control stock analysts found in media as indication. Regulators fail clear this point…."(Deputy Commander of Technology Crime Suppression Division: January 9, 2013)

"….Evidence searches and collection in the financial crimes meet obstacles because they are unlike common crime. The interrogation officers likely wait for authorities of specific laws to notify the petition first. Until the notification,

damages have burst which considerably delay lawsuit. For example, either BOT or SEC find the crime and collect evidences to notify the interrogation officers without the knowing they are the evidence involved or able to identify the guilt of the alleged. This step may need time. Some cases have been notified almost at the period of prescription expires, which speed the evidence collection of the interrogation and this is one of the hindrance.

In addition, it is so complicated in evidence collection regarding financial crimes because there are number of witnesses and documents and needed time both to collect and examine the affairs and any evidences can be presented to the court. Inspections are like difficult on their relevancy which delays the evidence preparation. The financial crimes are usually committed by experts and use technology. Therefore, evidence searches and collection need expert specialists with ability to analyze causes of crime to trace them and the government sectors runs short of these personnel. ….” (A Lecturer of Faculty of Law, Thammasart University: April 9, 2013)

5.2.3 Cases of public cheating and fraud.

Criminal model against Ordinance of Public Cheating and Fraud on Loans BE2527 (1984) found in Thailand is complicated and difficult to find evidences because operators plot alone and they own evidences which ease them to eliminate most evidences to prove their guilt. In addition, victims unlikely appear to charge the operators because they expect to receive money and returns for the loan granted. If charges are preceded, it is certain that chance to collect money back is dim. With these reasons, most victims decline to file complaints with the police until damages are hard to solve.

The study revealed that problems of collecting evidence were mostly found. This type of case demanded collection of all evidences, witnesses, documents and materials. That is, victims feared not to gain back their capital and benefit from joint investment in the chain shares business. So, they unlikely cooperate with data for police. Also, victims might be wrongdoers too because the type of business emphasizes membership. So they fear to notify police because they fear to be conspirators in the wrongdoing. This type of crime involved much with document

especially accounts which needed time to prove and delay trails. Important evidences of this crime were owned by victims. So, movements and elimination were simple and speedy. Besides, there was more e-communication such as advertisement, persuasion or finding members through internet, membership application thorough e-mail or fax.

In the principles of the Criminal Procedural Code, interrogating crime is the process to find culprit to justice administration after happening, referring or believing that there was crime. This includes collecting evidences and taking actions under the criminal provisions where the interrogation officer takes action on accusation in order to find fact or to prove guilt and to sue culprit for trial (the Criminal Procedural Code, Article 2 (11)).

Crimes of public cheating and fraud is impersonal and the interrogation officer can proceed without delay upon knowing the causes or conduct with reasonable doubt and needs not waiting for victims to complaint first. Evidence collection is divided into two (2) levels, i.e.

(1) Authority Level who is empowered by the Ordinance of Public Cheating and Fraud on Loans BE2527 (1984) under Article 7 – with reasonable doubt any one act against Article 4 or act as in Article 5(1) or (2) ; the authority is empowered as below:

(1) Issue summons to the persons or the individuals the authority view viable for benefits of inspections on loan for testimony.

(2) Order the persons as in (1) to report all their business conditions, properties and liabilities.

(3) Order the persons as in (1) to submit account, document or other evidence related to loan for inspections.

(4) Enter any places during sun rises until sun sets on office hours t check or search accounts, documents or other evidences of individual as in (1) with this act the authority is empowered t order persons in that place to necessary act for the benefit of inspection or searches by reasonable cause and is empowered to confiscate accounts, documents or all evidence for inspections.

Summons or Orders by (1) (2) or (3) must afore notify not less than seven days counted on Summons or Orders received except in urgent case.

Upon entry and inspection or searches as in (4) and unfinished; it can be resumed during night time

(2) Interrogation Officer Level - after complaint and charge with supplemented evidences of the authority:

The empowerment of the interrogation officer in collecting evidences is not only common power such as interrogation and record testimony of victims and witnesses and preparing documental evidences such as daily records but also other power enacted in the Criminal Procedural Code such as Article 132 stated that for the benefit of evidence collection; the interrogation officer is empowered as follows:

(1) Physical check if the person agrees or objects or liable objects to be evidences and collect photos, charts or drawings or finger printing, finger prints or foot prints with records on details which might better clarity the case.

Physical check of the victims or the alleged being women as in the Criminal Procedural Code such as Article 132 Paragraph 1; the female authority must be provided by reasonable cause and the victim or the alleged is allowed to bring any individual for to witness checking.

(2) Searches for finding things for ding wrong or gained from wrongdoing or used or doubtful to use in wrongdoing or might be evidence but it must be adhered to the provision of the Code above.

(3) Summon individual who might possess thing which is liable to be evidence but the person might not appear upon submit things as in the summons.

(4) Confiscate things found or submitted as in sub-Articles (2) and (3).

But, herewith, to conduct criminal interrogation as authorized above require crime committed such as in crime against person; the victim must file complaint as regulated else interrogation cannot be started.

Problems of trail against crime enacted in Ordinance of Public Cheating and Fraud on Loans BE2527 (1984) begin from enforcing the Article 7 on cause of reasonable doubt that anyone acts against Articles 4 or %; the authority is empowered to summon for testimony or order to report business conditions, or submit accounts,

documents or other evidences for inspection but afore informed of not less than 7 days except in urgent case. Such the case allows amendment of documents or siphoning properties and widening channels for culprits to safeguard or find ways to react or to cover evidences to save oneself. Since such a case is involving many documents, either membership application, joint-investment application, journals. Membership evidence and other related documents which their collection consumes time to screen them on wrongdoing and irrelevancy. And sometimes, it relates to signatures which time consumes for proving and delay trial and countering it. Another reason is IT has been rapidly improved and elimination of evidence can be rapid too.

It was further found that such as case is unlikely cooperated by victims since they expected to regain their money and declined to cooperate with the authority knowing that if arresting the company committed fraud; chance to regain was dim and must be raked to other victims too. At the same time, the victim could be accused of conspiracy because the victim might persuade to join the venture such as being the team chieftain or head which creates money bring money and subject to the condition of dilemma. If speaking the truth, one will become an alleged; if lying, it is covering wrongdoing. Some victims avoid and dismiss meeting or testimony and this makes evidence collection difficult.

The problems in court trial and with number of victims and documents; presenting evidences for testimony consumes time and delay examinations leading to delayed cases in court and might lose evidence documents which affects the nature of the case and intervention against the justice administration. Reasons are criminals are the influential person, the organized criminals and might threaten or bargain for the victims not to be the witnesses in court or retract their testimonies.

In addition, lawsuits against public cheating and fraud on loan are sometimes need specialization of operation authority such as accounting for expedition and justification to inspect evidence involved because such the case contains large amount of documental evidences. Moreover, the authority must know English because in some search or confiscation of English documents. If the authority can understand English well will immediately know documents involved in wrongdoing or not. It they do, the authority can immediately confiscate them and pursue other documents

involved without delay and with continuity. If they have to be translated by experts first, it discontinues in pursuing evidenced involved and might affect amending documents.

Problems of lawsuits against public cheating and fraud on call-center gang are:

- Approaches of interrogation to collect evidences begin interrogating accuser (victims deception) and it is difficult if victims are foreigners or living is distant to each other (nationwide and many provinces) which troubles the interrogation of the victim and liable for incompletion.

- Problems of evidence collection in relation to accounts for money transaction in order to know the wrongdoers such as the victims; accounts transferring money to the any banks, its withdrawals by someone and so on and auditing banks' accounts is difficult with time consuming to know the route of the money.

- Problems of evidence collection in relation to communication of the wrongdoers with the victims such as telephone through internet, deceptive phoning statements which the wrongdoers use in deceiving victims and so on.

- Problems of evidence collection by supplement for money laundering such as hiding the money gained from wrongdoing, covering the sources in order to apply money laundering for taking action with property of the criminal organizations.

- Lawsuits against culprits are likely troublesome because internet communication technology is used having worldwide network and Thai laws do not facilitate for interrogation and evidence collections in foreign countries. It is too difficult. At the meantime, prevention of such wrongdoing is easier to take lawsuit against the culprit such as PR in the government agencies or PR in the financial institutions which issue ATM cards such as remind message in the cards or regulations for the ATM users to acknowledge by mailing letters or given formats before petition for ATM cards or credit cards.

Interviewing expert interviewees who tried the financial crimes revealed that interviewees provided problems and limitations in searching and collecting its evidences of public cheating and fraud which are relative to the study, which are:

"……The crimes of public cheating and fraud and public fraud loan do not meet difficulty to find evidences. Evidence for loan might be difficult and meeting limitations of some victims are both victims and conspirators. So, they have to save themselves first. To find facts with victim cum conspirator might be hard, less cooperation and until the evidence collection authority fins them; evidences have been destroyed already. …." (Deputy Commander of Technology Crime Suppression Division: January 9, 2013)

"….Evidence collection of financial crimes is difficult because previous, they used documents but now technology such as transferring money of the call center gang. Sometimes, they do not meet and cannot indentify anyone but contact through electronics. So, those who search and collect must contact the office which control e-communication for blockage else it is difficult to arrest the criminals since there are no documents except arrest on point of receiving money……

Crimes need expert authorities to collect evidence step by step. If find committing, we cannot immediately arrest but we must collect the full cycle. They allocate duties to do and evidence collection requires surveillance on their movements all the time either the contact persons or e-communication, particularly for the interrogation officers who collect evidences. For the prosecutor, it is to see that those evidences are sufficient for lawsuit or whether at court level, would it be able to prove who the criminals are. Evidence collection is not just only in the country of crime scene but abroad where victims have domicile. Witnesses are both the Thais and the foreigners. Evidence collection is gradually difficult…." (Senior Prosecutor: Office of General Attorney: May 19, 2013)

5.2.4 Crimes of Illegal Network Mobilization

Problems of evidence collection under Direct Sales and Direct Marketing Act BE2545 (2002) in the crimes of illegal network mobilization as in Article 19 prohibiting the direct sales enterprise and the direct market enterprise to persuade individuals to join networks of direct sales enterprise and the direct market enterprise by agreeing to pay back from recruit members as stated in order to increase number of networkers. This might deserve the pubic cheating and fraud under the Criminal Code

article 343 and criminal act under the Ordinance of Public Cheating and Fraud on Loans BE2527 (1984) Articles 4 and 5 or called “chain shares”. It is found that If being complained or having clues on the direct sales enterprise of many companies running themselves as chain shares and by investigation and evidence collect, the basic evidence revealed that the companies ran such business and against Article 19 of the Direct Sales and Direct Marketing Act BE2545 (2002). This Act enacted that prohibiting the direct sales enterprise and the direct market enterprise to persuade individuals to join networks of direct sales enterprise by agreeing to pay back from recruit members as stated in order to increase number of networkers. Also, they did not adhere to the market plans and returns programs registered with Office of the Consumer Protection (OCP).

Through enforcement and when fact and evidences found, they were liable the companies ran such business and against Article 4 or Article 5 (1), (2) or (3) under the Ordinance of Public Cheating and Fraud on Loans BE2527 (1984). DSI, OCP, Counter Unorganized Financial Market (UFM) Group, and Ministry of Finance (MOF) as the authority under the Ordinance summoned the authorized countersign director and the company staffs who will be useful for inspection to appear as testimony at DSI with evidence for inspection. The summon was issued 7 days in advance. Declining to the summon, refusing to report business condition, declining to submit document evidence for inspection and so on; the law enacted as wrongdoing under Article 5(2) and (B) and is subject to punishment as wrongdoers of Public cheating and Fraud article 4 (imprisonment 5-10 year term and fined from 500, 000 - 1,000,000 Baht). There is exception, the person can prove his/her enterprise gain enough returned benefit sufficient for pay as ever referred to. However, there are problems of counter crimes of illegal network mobilization in many ways as below:

(1) Probing Criminal Case

Guilt of mobilizing network is a criminal offense with complexity and needs special investigation and evidence collection because taking action against chain shares disguised in direct sales is likely involved with so many documents either membership application forms or joint capital investment, or accounts or membership

document and other involved. It takes time to collect and screen evidences for proof while they are easily eliminated.

Besides, it was found that seeking cooperation for evidence collection was facing problems. Whereas, the authority needed fact and documents from victims to supplement evidences to charge the wrongdoers since most victims knew well and were closest to the deceptive acts; however, most victims declined to cooperate with authority since they are victimized from the deception and lose properties, they still expected to regain money. So they decline to provide fact for the authority. They knew that if arrest was imposed on the chain shares companies; chance was dim to regain money. Another cause of declining cooperation might come from the victims being victimized and was liable to be the wrongdoer because of persuading others to invest in the chain shares business disguised in direct sales such as being the team chieftain or head which exploited victims baited victims, accusation was likely directed to the nearest victim and they feared to be the alleged. The authority operations revealed some victims avoided and dismissed meeting or testimony and this made evidence collection more difficult.

(2) Action against property involved with offense

On account of crime of illegal network mobilization under direct sales and direct market is not under the anti-money laundering law of Thailand; the law cannot be enforced with its wrongdoers since it is not the offense specified by law, which is the predicate offense to gain money or property. The criminals later lauder them and viably disable to punish them though realizing crime of illegal network mobilization under direct sales and direct market and exploit the gains for laundering. Besides, disabling to punish money-launderers; their fraud properties cannot be confiscated, too. Since they are not the property related to predicate offense leading the wrongdoers saved from punishment and properties are not under confiscation; the government is helpless to incapacitate and eliminate crimes committing as intended in the anti-money laundering laws.

Interviewing expert interviewees who tried the financial crimes revealed that interviewees provided problems and limitations in searching and collecting its evidences of crime of illegal network mobilization, which are:

".....Evidence collection with direct sales is relative to cheating and fraud but it can be proved through the intent of interests and it is not necessary to prove its original source of goods. However, to prove the goods origin just indicates whether what is advertising, there are real goods. Where can one order? How are they ordered for such income? Sometime checking taxation needs to ask cooperation from the state agencies. Taxation has been announced by the Coup d'état that police are prohibited to intervene in taxation lawsuit which are requested from the authority. This is the structural obstacle. In tax inspection, one of the very problem is the victims themselves are not certain when they speak the truth they will be the victims or the backers. It needs to make clear with the authority particularly with financial institution offense regarding the physical involvement. But to prove whether victims are intentionally involved, sometimes, we cannot immediately respond and witnesses fear with accusation system...." (Deputy Commander of Technology Crime Suppression Division: January 9, 2013)

5.3 Discussion by the Third Objectives: To study measures of taking action against assets and the financial crime under the anti-money laundering law of Thailand

The qualitative data on documents revealed that due to the current crimes are sophistically committed and linked into network; it is hard to arrest and find evidences to bind the wrongdoers. In addition, kickback from the wrongdoing is another key to the criminal models. Money or property gained from organized crime is large amount and the criminals turn them to capital to support their endless crimes. Measures to plead the fraud properties devolved on the State under the Anti-money Laundering Act BE 2542(1999). It is a special measure employed to counter capital hub of the organized crime. This measure contains 2 main objectives. First, it is to confiscate property the wrongdoers do not deserve under law because it is the property

gained from wrongdoing and is counted as punishment. Second, it is focused on inhibition and elimination of the financial hub of the organized crime since their property is likely turned to be capital for further committing crimes. So, if their fraud treasury is annihilated, it also affects their ability to less commit crimes.

This Act broadens its criteria of property measures more than the previous criteria of the criminal laws by taking action against property related to the offenses enacted in all laws regardless the property has been sold, distributed, transferred or reproduced in either times or under other possessions. The property measure under the Anti-money Laundering Act BE 2542(1999) are specially attributed from confiscation under the Criminal Law by adopting civil confiscation specially enacted in this Act to support the punishment and subject to action on confiscation by the other criminal laws. This is enhancing effectiveness to enforce property related to wrongdoing though none is punished in the criminal case.

Therefore, it can be said that applying pleads devolvement of the anti-money laundering law coupling with criminal confiscation could enhance effective action against property. Because, the civil confiscation is the trial directly against property and its consequence must affect the ownership of the culprits or others since the law is aimed to take action against the fraud properties and counted they always deserve impoundment. Trial can be charging the property directly regardless to offense of the owners (John Brew, 1988). However, verdicts by this trial affect ownership but disable to punish culprits or anyone. It is differed from the criminal confiscation which is directed to individuals aimed to punish culprits as key. The proceedings require the alleged is guilty as charges. When the prosecutor proves without reasonable doubt to court that the defendant is wrong as charge; the court can warrant property confiscation of the culprit.

The fraud property impoundable by the Anti-money Laundering Act BE 2542(1999) is the money or property gained from basic offense or from the supports or aid which serve 23 predicate offenses. It is enacted in Article 3 of the Anti-money Laundering Act BE 2542(1999) and the Amendment of the Anti-money Laundering Act BE 2542(1999) (Copy No. 2) BE 2551 (2008) enacts the “predicate offense” that:

(1) Offense of narcotics under the counter narcotic law or measures to counter narcoticist

(2) Offense of sex under the criminal code especially about business, recruitment, baiting, and abduction to harass girls and boys to meet other passions and offense of child and youth abduction. Guilt by law on measures to counter girl and boy trafficking or by law on measures to counter prostitution especially about business, recruitment, baiting, abduction to prostitution or by being the prostitution ownership, stewardship, business manager of prostitution business or the whorehouses or the supervisor of the prostitution or whorehouse.

(3) Offense of public cheating and fraud under the Criminal Code or guilty by the public cheating and fraud on loan.

(4) Offense of misappropriation or fraud or assault property or corrupted act under the commercial bank law, securities business law, stock business laws and Credit Foncier law or securities and exchange law committed by the director, manger or anyone responsible for or gaining related benefits and who runs the financial institution.

(5) Negligence to position and duty in the government or justice administration under the Criminal Code, under offense of organization employee law or of organization or of the state agencies or position and duty or corruptions under other laws.

(6) Offense of embezzlement or blackmail appealed to extortionists (Angyee) or robber dens under the Criminal Code.

(7) Offense of smuggling under the customs laws.

(8) Offense of terrorism under the Criminal Code

(9) Offense of gambling particularly of the gambling organizers without license and more than hundred gamblers in each time or gambling money worth more than ten million Baht.

In addition, the Counter Human Trafficking Act BE 2551 (2008) article 14 enacts that an act against this Act is deemed predicate offense under the Anti-money Laundering Act BE 2542(1999).

The Act Supplementary to the Constitution on Election of Parliamentary Members and Senators BE 2550 (2007) Article 53 specifies the following offenses are

the predicate offenses under anti-money laundering law and the Election Committee is authorized to submit to AMLO to take action by authority and duty. That is it is forbidden to any candidate or anyone to either act in order to attract voters cast ballots for themselves or other candidates or any political parties or vote-no to any candidates or any political parties with the techniques of:

(1) Arrangement, contribution, offer, promise or preparation to give property or any other benefits liable to be calculated into money for anyone.

(2) Contribution, offer, and promise to give money, property or any other benefits either directly or indirectly to community, association, foundation, wat,/temple, education institution, welfare home or any institutions.

At present, the Anti-money Laundering Act (Copy No. 4) BE2556 (2013) demands adding the definition of “Predicate offense” in Article 3 of the Anti-money Laundering Act BE2542 (1999) which has been amended by the Anti-money Laundering Act (copy No.2) BE2551 (2008) as below:

(1) Offense of extortion members (Angyee member) under the Criminal Code or associating in the organized crime subject by law to be an offense.

(2) Offense of receiving stolen goods under the Criminal Code specifically about assisting for distribution, buying, pawning, or any receiving property collected with offense as in trading.

(3) Offense of forgery or counterfeit currency, seal, stamp and bill under the Criminal Code as in trading.

(4) Offense of trading under the Criminal Code specifically about counterfeit or against intellectual property or against the law of intellectual property protection as in trading.

(5) Offense of counterfeiting patent document, e-card and passport under the Criminal Code characterized as normal business or for trading.

(6) Offense of natural resources or environment by holding or possessing them or by processing of interest from them illegally as in trading.

(7) Offense of aggravated assault against life or body causing deadly endangering under the Criminal Code to gain property interest.

(8) Offense of restrain or detain others under the Criminal Code specifically to claim benefits or bargaining or by either one.

(9) Offense of theft, exhortation, blackmail, robbery total, gang robbery, fraud and impropriation under the Criminal Code as in common trading.

(10) Offense of piracy under the Counter Piracy Act.

(11) Offense of unfair deal of stocks under the Securities and Exchange law.

(12) Offense about weapons or arms devices which are used or possible for use in battle under the armament control law.

This includes property gained from 23 predicate offenses which are subject to the anti-money laundering law.

However, in the case of property involving any offenses is the property under charges as enacted by special law but no action has been made or action taken but without results, or had it been charged by the Anti-money Laundering Act BE2542 (1999); provides more benefit than taking action against those properties as being specified by the Act; it is possible to plead devolvement to the State even though none is punished as in the criminal verdict if the court believes that any properties are the properties connected with offense. The court shall order those property devolved to the State without examining the offenders whether they were sentence for criminal punishment as their predicate offenses or not.

The measure of plead for devolvement to the State under the Anti-money Laundering Act BE2542 (1999) is a special measure enacted for counter the organized crimes which devastate their economy and prevent laundering money to be their capital for further committing crimes.

5.3.1 The process of pleading devolvement to the State/Land

It is processed under the Anti-money Laundering Act BE2542 (1999) and its Amendment (Copy No.2) BE 2551 (2008) as in details below:

In the case of evidence appears believable that which property involved offense; the Secretary will submit the case to the prosecutor to examine and plead the court to issue warrant of devolvement to the State without delay.

If the prosecutor finds that the case is incomplete to plead devolvement either part or all; the prosecutor without delay inform the Secretary for further action and indicate the incomplete items once and for all.

The Secretary has without delay to take action and returns the additional to the prosecutor for examination. If the prosecutor finds insufficient reasons to pled devolvement in all or in part, the prosecutor must speedily inform the Secretary for acknowledgement for forwarding to the committee' discretion within thirty days counted on the date of receiving the case from the Secretary. Upon discretion, both the Secretary and the prosecutor must adhere to. But if the committee disable to complete within deadline, it is imperative to adhere to the opinion of the prosecutor.

When the committee passes discretion to end pleading or not passes discretion within deadline and adherence to the opinion of the prosecutor as in Paragraph 3; the case is then finalized and it is forbidden to take action against the person or the property again except gaining new important evidence reliable to win the court's warrant for development to the State. To this case, if none plead redemption within two years since discretion and no pledge pr no discretion within deadline; the office must transact the property to the reserve fund. In case of redemption, as in law, it is possible even if it is beyond two years. And the Office returns property for the claimants. It the property is unreturnable, it can be in money from the fund. If no claimants for over twenty years; the property is subject to the reserve fund but the criteria, methods, storage and management during no claimants and is subject to the specified regulations of committee.

Upon admission of plea submitted by the prosecutor; the court order announcement for at least two consecutive days in local newspapers to allow the ownership claimants or the stakeholders to file petition before the court order and before the announcement arrive at the local offices and police stations where the [property is located. If any evidence of ownership or the stakeholder; the Secretary must inform the persons to apply their rights. Notification is through registered mail to the latest address found in the evidence.

In the case of evidence found and reliable that any property involved with the offense but by reasonable grounds to plead rights protection for the victims as in

the predicate offense; the Secretary must submit the case to the authorized person to identify the offense and adhere to the law in order to protect the victim's rights.

Claimants as owner of the property devolved to the State may submit the case before the court order devolvement by verifying that:

1. One is the real owner and the property is uninvolved with any offense, or,

2. One is the honest transferee with compensation or honestly gains and with reasonable ground of morality or in public charity.

The claimant as beneficiary of the property devolved to State by the prosecutor might file petition for rights protection before the court orders through identifying the court that one is the honest beneficiary and with compensation or gained the benefit by honesty and with reasonable ground of morality or in public charity.

When the court enquires the prosecutor's petition and if the court believes that the property involves offense and if the petition of the ownership or transferee sounds unreasonable; the court order then devolvement to the State.

In part of property as money, the office transacts half to the reserve fund and another half to the Ministry of Finance. If it is other properties, they are subject to the ministerial regulation and if claimant by ownership or the beneficiary related or ever related with predicate offender or ever offended on money laundering, it is assumed that all those properties related to the offense or transferred is fraud case by case.

In the case the court find that the property as claimed is not related to offense; the court orders return and in such case, if none pleads reception within two years as ordered; then the office transfer it to the reserve fund.

In case there is a claimant for legal return and it is possible even if it exceeds two years. The Office must return the property to the claimant. If it is impossible, the claimant will be paid in cash from the fund. If no claimants show up and exceeds twenty years; the property is devolved to the reserve fund. Herewith, criteria, techniques, storage and arrangement of the property or money during no claimants but it must adhere to the specification of the committee.

In the case of devolvement by the court, enquiring by court and finds that the beneficiary sounds reasonable; the court shall order rights protection but conditions. Any claimants as beneficiaries are related or involved with the predicate offenders or money launderers before; it is assumed that the benefits as stated are the benefits exist or acquired with dishonesty or *mala fides*.

In the case of devolvement by court and later found that the petition of the transferee or the beneficiary upon enquiries and meet the provisions of Article 50; the court is demanded to return the properties or the conditioning of the beneficiary's rights protection. If it is impossible, the claimants will be paid in cash from the fund, by case. The petition must be submitted within a year since the court order of devolvement. The claimant must prove that, he/she cannot file objection petition under Article 50 because of not realizing or the notification of the Secretary or reasonable restraints. Before order, the court must notify the secretary about the petition and allow the prosecutor to object the petition.

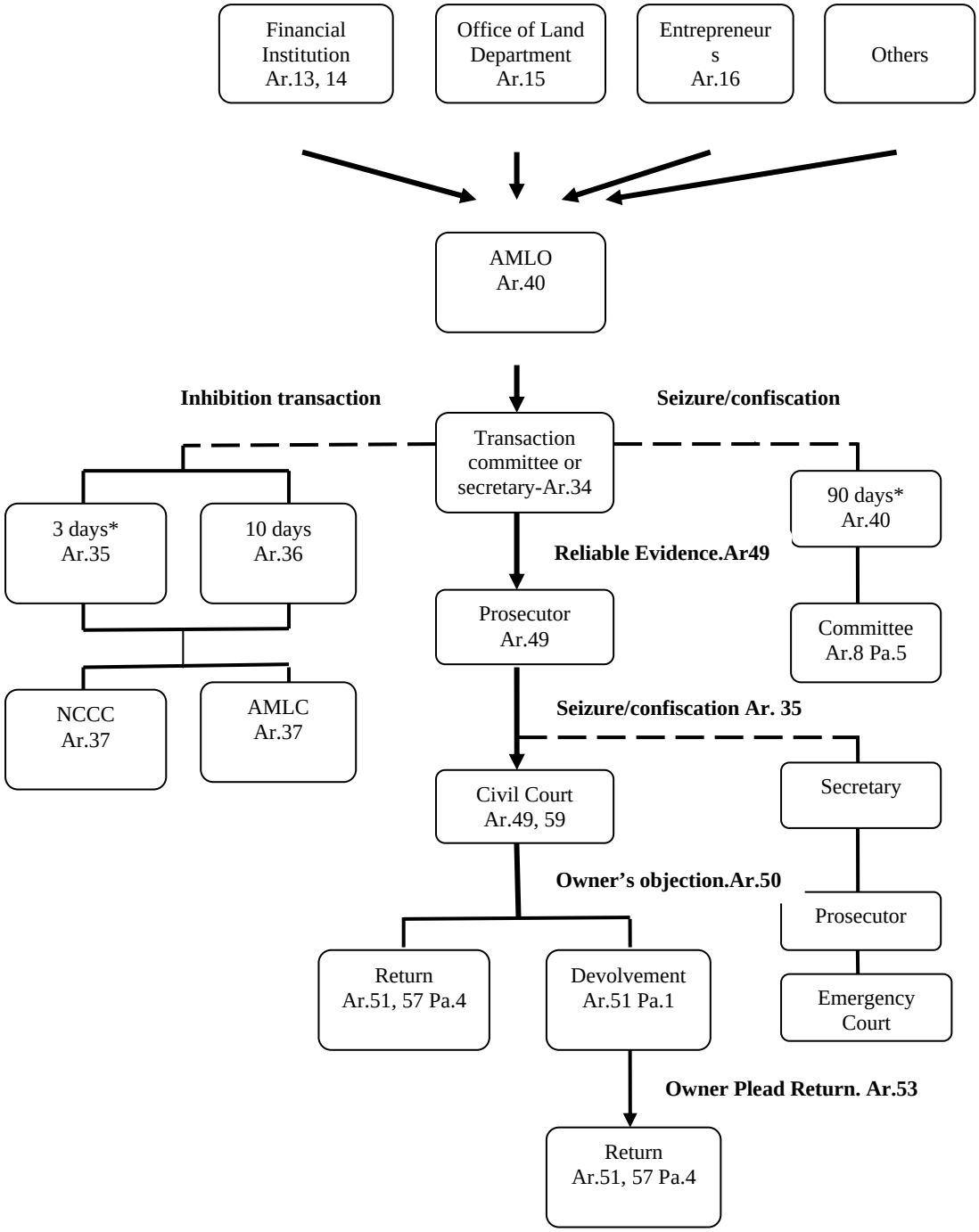
In case the court orders devolvement and if it is found that there are more fraud property; the prosecutor has to file petition to court to order them devolvement.

After the prosecutor files petition by Article 49 and it there is reasonable ground of transferring, distribution, and misappropriation of the fraud property; the Secretary will submit the matter to the prosecutor pleading the court to order temporal confiscation before warrant by Article 51. Upon such petition, the court has to examine it without delay. If there is any reasonable evidence that the petition meets reasonable grounds; the court will issue order without delay.

When the committee or Secretary, by case, order seizure or confiscation any property; the authorized staff take action of seizure or confiscation by order and report with value estimation without delay.

Chart Illustrating Money Laundering Inspection

(Case of Inhibition/Seizure/confiscation)



Source: Mr. Annop Likitjitta- Deputy Secretary of AMLC

Figure 5.1: Exhibit Inspection of Money Laundering

Problems of measure against property under AML law and financial crime law, it has been found that characters of financial crime related to financial institution corruption are characterized as below:

1. Credit approval against regulation, hierarchical order, common code of practice, absence of imprudence, and precautions and reviews of items between the financial institutions on large amount of money, in particular.

2. Credit approval against announcements or order of BOT or Ministry of Finance related to credit approvals.

3. Establishment of liberal juristic persons or liberal semi-juristic persons under disguise or under the state agencies with uncertainty to any law to create activities possible against laws, code of practices and self-protection which must step to take responsibility later in the financial institutions or with the cooperation with financial institutions which create problems and challenge the ability of all kind of the auditors and the state regulators.

4. Misappropriation, transferring, property or rights transaction and benefit the financial institutions or state agencies deserve to the trade partners or private agencies.

5. Irregular credit approval with capital of just little compared to the credit loan characterized with the state financial institutions accept potentially endangering risks and not the credit by the government policy.

6. Credit grant to companies in abroad where there is specific protection only for company running business in Cayman Islands or finally there is later transferring of money to the “bank secrecy haven countries.”

With the criminal models above, the important limitation in applying the plead of enforcing devolvement of State against properties gained from crimes is the case of the wrongdoers are not the directors, managers or any individuals responsible or related interests in running the financial institutions. They may commit as the mastermind, the users or the backers and are not subject to the AMLL because the predicate offense 4 under Article 3 of AMLA BE 2542 (1999) enacts just “offense of

misappropriation, or fraud or crime against property or misconducts under the commercial bank law, the capital business law, the stock business law and Credit Foncier law or SEC law committed by the directors, managers or any individuals responsible or related interests in running the financial instructions" and excludes cheating and fraud committed by others.

The predicate offense is basically important to examine whether there is wrongdoing by predicate offense and gain money or property or gaining money or property from selling, distribution, transferring or property gained from predicate offending and met money-laundering law; will deserve guilty of money laundering. So, specifying predicate offense is to make it evident to apply measure of forfeiting property to fraud money or fraud property required to take action with money or property earned from crime and as being specified by law only. In addition, there is specification of measures on criminal punishment with the money launderers or property earned from predicate offense or from backing and assistance deemed predicate offense. Actions taken against property by this law specify forfeiting property earned from predicate offense or also from backing and assistance deemed predicate offense (Sihanart Prayoonrat, 1999:71). Opinion is, if there is amendments of Predicate Offense 4 under Article 3 of the AMKA BE 2542 (1999) to cover any individual acts including the acts of the directors, managers or any individuals responsible or related interests in running the financial institutions. This also includes other individuals who conspire in offending on misappropriation or cheating and fraud or crime against property or misconduct under the Criminal Code. Effectiveness to take action against the property crime by laws will be strongly enhanced with anti-money laundering.

In addition, problems of action taken against chain shares disguised in direct sales business and offenders are direct sales or direct market entrepreneurs registered with the Office of Consumer Protection (OCP). It is found that the criminal charges with offenders in the cases of Green Planet 108 Corporation Limited, Rice Grain shares of Ruamtonkhapleek Co. Ltd, and Easy Network Marketing Co. Ltd; it is found that offices involved either DSI, AMLO, OCP, RTPB, Counter Shark-loan Job, and Office of Permanent Secretary of Ministry of Finance all charge and take action

under the Ordinance of Public Cheating and Fraud on Loans BE2527 (1984), Though such action might be the offense against illegal network mobilization under Article 19 of Direct sales and Direct Market Act BE 2545 (2002). Reasons are the Ordinance of Public Cheating and Fraud on Loans BE2527 (1984) is both the Predicate Offense 3 under AMLA BE 2542 (1999) Article 3 and special case attached to the Special Investigation Act BE 2547(2004). It allows the AMLO and DSI specially empowered to take trial and to coordinate with other offices involved to speedily suppress these chain shares. It is thus necessary to specify offense of illegal network mobilization under the direct sales and direct market law as the predicted offense, by the AML law. This is to apply effective legal measure which specifying AML is the criminal offense/ crime. It helps in punishing the culprits and pleading devolvement to State and to take action against money earned from crimes. This disheartens and end opportunities for criminal to continuously commit crimes. Reasons are, if they run short of cash flows to commit crimes or short of capital to run their organization or networks; crimes will be reduced too. In addition, the trail against such crime is convenient and expedite ever than before because the AML law enacts measure to take action against property using the proof of earning money or property to the owners, stakeholders or beneficiaries. It is different from proving guilt in crime which specifying the burden to prove is for the plaintiff only. And the plaintiff has to lead investigation until without reasonable doubt. It delays trail and ineffective. AML measures secure life and property more for people because the criminals run short of capital to circulate for their crime committed and to run their organizations which reduce networks of committing crimes.

Interviewing expert interviewees who tried the financial crimes and expert on AML laws, they provided attractive data of measures against property and crime by AML laws of Thailand that:

“….Taking action with properties in financial crimes with anti-money laundering law is effective but financial crimes have growing developed which demands the government sectors to progress more in order to counter them. Today, there is a proposal to amend anti-money laundering law and it is in the parliament. …” (A Lecturer of Faculty of Law, Thammasart University: April 9, 2013).

"…. The current measures of evidence in the financial crime are sufficiently effective or not are AML laws for property proof allow it to be with the property owners or persons involved which is believed that it is effective. But it is doubtful for its efficiency which is depended on during the incident or enforcing financial measures, is evidence sufficient to confirm the ownership or relationship. …." (Secretary of AMLO: November 26, 2012).

"….. Enhancing effectiveness in enforcing lawsuit should adopt and adapt more international standards on AML and counter terrorism. For example, it is necessary to specify businesspersons involved with finance to complete the duty of additional reports on business by adding business groups which are the important evidence. They must be specified to conduct Customer Due Diligence (CDD) more. It helps enhancing effectiveness of law enforcement…." (Secretary of AMLO: November 26, 2012).

5.4. Discussion by the Fourth Objectives: To study and analyze approaches to enhance effectiveness in the enforcement of evidence measures against the financial crimes in Thailand.

To respond to this objective the researcher has analyzed data from interviewing experts who tried the cases of financial crimes and experts of AML laws. Interviewees provided data to meet techniques to enhance effectiveness in enforcing evidence measures against financial crimes in Thailand, that:

"…. controlling financial institution crimes is the authority should mainly employ Crime Control to counter them. The jobs of the Economic Crime Division must be short and effective though it might affect personal rights of people but for the societal benefit, it must do. Solutions to financial crimes through laws should emphasize the empowerment and provisions of punishment…." (Deputy Commander of Economic Crime Division: March 7, 2013).

"…. Measures of evidence search and collection will be effective when adapting the measures of conspiracy, and plea bargaining, which are the lawsuit in the

causational system in USA and UK which are similar with Thailand. In addition, there is a cooperation promotion on international property which will be effective measure for evidence collection. Special measures of evidence collection are useful if paired because just any measures applied might not effectively counter financial crimes and reach target. But integrating all measures properly could eliminate limitations of evidence collection which will enable to sue culprit for punishment and effectively handle their properties gained from their crimes…." (Chief Judge of Chief Judge of the Southern Bangkok Civil Court: April 9, 2013).

"….It needs to amend or modernize laws and perfectly collect evidences. The cases of fraud on financial institution are divided into two (2) types, i.e. violating orders of BOT and the cases of true cheating and fraud handled by BOT. In general, the regulators must be developed and trained on effectiveness all the time while strictly impose law enforcement on the Amendment laws and to create good governance for the enforcers, i.e. no cheating and fraud and bribery…" (Advisor of Deputy Governor of BOT: November 14, 2012).

Data from in-depth interviews have been analyzed coupled with problems and limitations in evidence collection in the financial crimes. It was found that measures possibly adapted for enhancing effectiveness in the enforcement of evidence measures against the financial crimes are measures of conspiracy, measures of plea bargaining and social measures as details below.

5.4.1 Conspiracy Measures

5.4.1.1. Concept of Conspiracy Measures

The Conspiracy theory was enacted in England for its first enforcement aimed to prevent false charge against individuals or provoking children of the underage subject to admit criminal offense to bring false charge for oneself and danged others (Fletcher, George P, 1978). At that time England imposed the Common Law; so there was no enactment on admitting of this offense in written. However, the English court set principles and judged by the precedent judgments. After two systems had been divided, i.e. the Common Law System and the Civil Law system, it was found that the former (Common Law) specified mainly on conspiracy

to admit criminal guilt for people in general where as the latter (Civil Law) specified admission of conspiracy as exemption to enforce any predicate offense. Basically, conspiracy was depended upon all the conspirators must take responsibility as the mastermind for the deeds acted by conspirators had agreed upon.

Conspiracy is a model of offense of inchoate crime founded in the countries in the group of Common Law with three principal model of offense, i.e.

1. Attempted offense
2. Employing others to offend
3. Conspiracy

These ideas were formed to prevent damages from crime and allowed the authority to interfere the inchoate crime of an individual, which showed that there would be offense committed in future. This was to prevent complete offense occurred. With such reason and though offense yet to be complete or damages was not yet happened or attempts failed or not offense after conspiracy or the employed person ignoring to offend; the inchoate criminal was subject to criminal offense being inchoate (Ronnakorn Boonmee, 2008).

The origin of conspiracy came from Latin – “Conspirare” which meant to breathe together (Sirimek Phongpaijit, 1996) and later was developed into the conspiracy to offend as follows:

1) Conspiracy to offend – Lord Denman explained, “Conspiracy must contain common agreement of two persons and more to illegally or illegitimately act with illegal techniques” (Miller, Justin, 1934:109).

2) Conspiracy to offend means” two individuals or more associate to act against the US laws or any agents by any characters or for any objective and either one or more of the number acted to achieve the objective of the conspiracy. The person must be fined of not more than 10,000 US dollars or imprisonment for not more than 5 year term or both.”

If the objective of the conspiracy is to carry out against civil offense; the person is subject to imprisonment for not exceeding the highest rate enacted by law for the offense (18 U.C.C.S. 17).

3) Conspiracy to offend means “Any individual deserves guilt on conspiracy with another one or more by associating to offend and if they have had common intention to encourage or to support the act of the persons.”

3.1.) common agreement with a person or more who prepare to offend or attempt to offend or co-offend; and

3.2) common agreement with a person or more to plan to offend or attempt to offend or co-offend (The Model Penal Code S5.03)

It is thus to say that the principles of conspiracy are individual of two or more agree to do any act is deemed guilty because the law needs to intercept the agreement stage which is the inchoate offense to incapacitate it which has been agreed to actually happen. It is based on bad intention of the conspirators without examining that the agreement is the act close to the consequence of preparation stage or to offend or any. It is regarded that conspiracy is the principle of common criminal admission of individuals covering all predicate offenses. Because the complement of admitting guilt contains the external element, which is “agreement” while the internal element, which is “the intention to offend as agreed upon”. Therefore, to prove guilty element is simple with just prove that individuals just agree. The agreement might be normal expressions such as gestures, manners or any signs. It allows admitting guilt of this predicate offense is popular and applied to offense covering techniques and structure of and organization such as the organized crime, in order to charge all those behind the scene.

However, conspiracy is different from attempt though both offenses are like to prevent the real offense to happen the supplement of the offense is differed because the attempt is trying to do wrong and based on the Proximity Rule but no any complete offense is committed. If otherwise, there is no admitting guilty in part of the attempt. On the contrary, conspiracy becomes offense when there is “Agreement” which is different from “Attempt”. Agreement is admitting guilty as conspiracy and might be distant to completion and there is no need to do as the Proximity Rule as in attempt. Reason is the intent in the conspiracy law requires inhibition not to allow offense done. It is the “prohibition for individuals to agree in offending” which is sufficient to allow conspiracy becomes criminal offense because

the objective of the criminal law is aimed to have societal members been protected on their lives and properties.

At present, conspiracy is legitimate to be enacted in the rule of law to identify criminal admission of individuals under the following reasons (Yutthana Sawaisuwnanawong, 2000:25-26).

1. Conspiracy punishes individuals agree to offend. Agreement expresses intention of the conspirators. This case is deemed conspiracy with “act” by principle of admitting guilty under criminal law. The case is not only punishing individuals with intent only, but conspiracy has an evidence of intending to commit crime in an individual expressed in agreement.

2. Conspiracy has an objective to prevent offenses happen. In the system of the Common Law, it is seen that agreement to offend is enough to the stage of preparing to offend where law has to intervene. By this implication, agreement to offend is an act by rule of law on conspiracy is compared to the Proximate Act and counted the act of offense by rules of law on attempt. Prohibition of agreement to prevent complete offense to happen is to reduce risk to offend which endangers society yet to be really happened.

3. Enforcing conspiracy against organized crime with objectives to commit crime where there is an arrangement of structure and duty having its members to assembly. It can divide its members into the leader group and the operation group by its structure and duty. Organizing an organization with conventions can largely endanger society. Adopting rules of law on conspiracy with organized crime ease to sue culprits the members of an organization to justice administration and enables to effectively punish them. Because, with the proof of agreement on offending is easier than proving there is an offense which is the objective of the organization since the organization members who are the accomplice cover and conceal their acts and it is difficult to prove their sustentative offences really happened.

4. Conspiracy set the principles that conspiracy among large amount of individuals is increasing danger to society. If the accomplice is better structured; chance for success is more. Having the principles of conspiracy to charge against the accomplice is the enforce law by preventive measure against offenses to be

committed. It is the better reason than allowing offense committed and fixes remedies for victims or for damaged society.

5.4.1.2. Analysis of conspiracy measures enforced in Thailand

At present, the financial crime is ingenious and covering its methods with hierarchical line of command and more organized groups with cooperation and back-ups with many parties involved. It fails common legal measures against crime to punish all of them in their organization such as the mastermind, the employed persons, and backers and so on. It makes key men in the organization such as chief of the group, and backers escape from trail almost every time. For example, the case of the mastermind under Article 83 of the Criminal Code specifies that any offenses from more than two people. To this, accomplice as the mastermind also involve with the offense. Under Article 48, it shows that the laws prioritize the matter of crime which if there are more than two agree to offend such as allocating duty, either collaborate or watch at the entrance could admit guilt as the mastermind to the offense. But it cannot be used with organized crime which is hard to find evidences and their collections.

Whereas conspiracy measures derived from the Common Law system are counted the principle of admitting guilt for common people covering the predicate offense of conspiracy. Reasons are its external component is the agreement while its internal component is the intention to offend as being agreed upon. Therefore, to prove the offense elements is simple and just to verify that those individuals agree and it is sufficient. The agreement might be habitually expressed such as gestures, manners or any signs. It allows admitting guilt of this predicate offense is popular and applied to offense covering techniques and structure and of organization such as the organized crime, in order to charge all those behind the scene. Applying conspiracy measures for suing criminals who are normally difficult to serve punishment, eases to sue them for penalty. It is deemed complete offense if here is an agreement of the two individual or more for wrongdoing. It is unnecessary to have any offenses as previously agreed upon.

At present, conspiracy is enacted in the “United Nations Convention against Transnational Organized Crime 2000”. This convention is derived from transnational organized crime because, if they are crimes committed by the organized crime, they are harder to counter than common crimes. Their effective solutions are not just imposed in any countries because laws enacted in each country and evidence search to sue them to trials cannot be achieved by any countries. They are the international problems requiring cooperation to solve them. The convention has been endorsed in Palermo, Italy since December 12-15, 2000. The convention comes from the “Naples Political Declaration and Global Action Plan against Organized Transnational Crime, 1994”, through the Vienna-based Office of Drug Control and Crime Prevention (Prathan Watthanawanich and Veerasak Saengaraphan, 2003:23).

Thailand is one among them to endorse the Convention in December 13, 2000 with its international allies to counter transnational organized crime (TOC). Besides the Convention, there are another three protocols attached, i.e.

1) Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children;

2) Protocol against the Smuggling of Migrants by Land, Sea and Air, and

3) Protocol against the illicit manufacturing of and trafficking in firearms, their parts, component and ammunition.

Each protocol prioritizes crimes committed by the organized crime in each issue beside specification in the above Convention.

The “United Nations Convention against Transnational Organized Crime 2000”, No. 5 Para.1 (A)(1) enacts the principles of conspiracy as the important condition for the treatise countries to specify such acts are crimes in their countries so as to be the norms to counter organized crime and enable to analyze offenses into 3 attributes, i.e.

(1) Offense on agreement between two individual to commit violent crime directly and indirectly targeted for benefits on money or other materials. Individuals who thus co-agree are involved with the agreed acts or with organized

crime by criminal components enacted in the country as stated in No. 5 Para.1 (A)(1). Offenses by No. 5 Para.1 (A) (1) compose of the c\following components:

EXTRNAL COMPONENT: agreement between more than two individuals to commit violent crimes,

INTERNAL COMPONENT: intention to agree and special intention targeting benefits of money or other materials directly or indirectly.

(2) Offense of involvement with organized crime as in No. 5 Para.1 (A) (1)

(3) Offense of management, manipulation, backing, provoking, facilitation, and consultation of committing violent crimes and related to organized crime as No. 5 Para.1 (A)(1).

Offenses by No. 5 Para.1 (A) (1) and offenses by No. 5 Para.1 (A) (2) in the Convention are deem the predicate crime 1 separated from Attempt or Complete Crime. It shows that the Convention Intent is involvement and it is complete crime without dissolving with other offenses. Also, in the Convention No. 5 Para.1 (A) enacts that the treatise countries adopt attributes defined in Para.1 (A)(1) and Para.1 (A)(2) to be enacted as criminal offenses in their countries on both attributes or either one among Para.1 (A)(1) and Para.1 (A)(2).

The Offense 3 by No. 5 Para.1 (B) involves management, manipulation, backing, provoking, facilitation, and consultation of committing violent crimes which are not deemed principal offense but the secondary participation. Such acts must be meant to commit violent crimes related to organized crime and the treatise countries must adopt the principle of offense in No. 5 Para.1 (B) to be enacted as offense in their countries as conditioned in the Convention.

The word “Agreement” by the Convention No. 5 Para.1 (A) (1) is to be the case of consent and between two or more individuals to make agreement. Reason is an individual alone cannot make agreement. So, the agreement between two or more to illegally act by the Convention has thus similar meaning with conspiracy.

The conspiracy enforcement in Thailand, currently has been developed to be an effective tool to counter new kinds of crimes especially with the

organized crime (consistent with the United Nations Convention against Transnational Organized Crime,2000: No. 5 Para.1 (A)(1)). Thailand provides conspiracy in some laws, i.e. the Counter Offenders of Narcotics Act BE 2534 (1991), Article 8; AMLA BE 2542 (1999) Article 9; the State Bidding Act BE 2542 (1999) Article 4; and Counter Human Trafficking Act BE 2551 (2008), Article 9 with details below:

(1) The Counter Narcotics Act B.E. 2534 (1991)

This Act enacts admitting guilt of conspiracy in Article 8, i.e.

Article 8 states, "Anyone conspires with agreement between two or more individual to commit narcotic crime; they conspire to commit narcotic crime and subject to punishment……

If narcotic crime has been committed under conspiracy as in Paragraph 1; conspirators are subject to punishment as specified for the offense…"

The offense components in narcotic crime are the external component through conspiracy of agreement between two or more individuals. They express agreement among two or more while the internal components are the intention and motive to solicit committing narcotic crimes.

The word "motive to solicit committing narcotic crimes" is the offense enacted in Article 3 of The Counter Narcotics Act BE 2534 (1991) which are production, import, export, distribution, possession for distribution and also includes conspiracy, backing, assistance and attempt to commit narcotic crimes.

Paragraph 2, Article 8 codes that if offending narcotic crimes caused by conspiracy a sin Paragraph 1; the conspirators are subject to punishment deserved the offense. So any conspirators commit narcotic crimes as conspiracy and the co-conspirators must co-take responsibility on a conspirator has committed which is coded responsibility of Vicarious Liability.

The Article 8 shows that the case of narcotic crimes enables to difficultly sue criminals for punishment because of complexity in operation model, connected organization and the backers are renowned, influential, and powerful persons. Tracing cannot be led to investigation for clarifying their serious connection

or may run short of evidence and so on. Conspiracy is initiated for enforcement to fully enhance effectiveness in working, seeking evidences and trailing other key men.

2) The Anti Money Laundering Act (AMLA) BE2542 (1999)

This Act enacts admitting guilt of conspiracy in Article 9, i.e.

"Conspirators agree between two or more to launder money are subject to punishment as deemed offense…

Anyone launders money because of conspiracy as in Paragraph 1 is subject to punishment as deemed offense….

In the case the crime is actually committed but being interferer by the conspirator which disables to complete or with completion but the act is unachieved; the interfering conspirator is subject to punishment as deemed in Paragraph 1 only.

If the offender as in Paragraph 1 converts and inform truth of the conspiracy to the authority before conspiracy rime committed; the court will not punish the person or viably less punish the person than the law enacts…"

Considering conspiracy measures and comparing between AMLA and the Counter Woman and Child Trafficking, it is found that the external component and the internal component are similar. But differences are the motive in AMLA is to launder money and its offense id the main offense enacted in Article 5.

Conspiracy oaf laundering money adopts the principles of vicarious liability and withdrawal principles as in the Counter Woman and Child Trafficking Act BE 2540 (1997). Its distinct is the AMLO BE 2542 (1999) enacts tools to seek evidence as the main objective to impose civil case enacted in the Act. Evidences collected can be as proofs in the criminal case too, particularly, the conspiracy of money laundering. This provision by legal is to seek evidence to prove guilt and it is indispensable especially with conspiracy which enacts in Article 46, that of:

"… in case of reasonable grounds that the client accounts of the financial institution, communication devices or tools, the used or possibly used computers in money laundering; the authority wherewith the Secretary assigns in written to file petition one party to the Civil Court for the warrant permitting the

authority to access account, communication data and computer data to giant the information.

By Paragraph 1; the Court permit the petitioner to utilize devices or tools as maybe reasonable but each permit is not exceeded 90 days.

Upon court permission as in Paragraph 1 or 2; the persons involved accounts, communication data or computer data as in the warrant must cooperate adherence to this Article…"

3) The State Bidding Act B.E. 2542 (1999)

This act adopt the conspiracy offense to be enacted in Article 4, "…anyone agree to co-bid with the objective for the benefits of anyone and hold the rights to enter contract with the state agencies by avoiding fair price competition or depriving to propose goods or other services to the state agencies or to the state agencies with irregularity of enterprise are subject to imprisonment from 1-3 years and fined for 50% of the highest bidding value among the conspirators or of the amount of money entering the contract with the state agencies or by either higher amount.

Anyone provoking agreement to commit offense enacted in Paragraph 1 is subject to punishment as in Paragraph 1…"

Conspiracy bidding as enacted in Article 4 is the co-act of bidders and creates unfair biding price which bars other bidders and imposes disadvantages for the state agencies. Guilt by Article 4 does not specify minimum number of individuals to enter agreement but agreement must be done by two or more individuals and by the circumstance of agreement there must be two or more individuals for entering an agreement. So, an individual alone cannot enter agreement.

In the last Paragraph, it specifies that anyone engages in soliciting others for accomplice or soliciting other conspiracy; the solicitors are subject to punishment as the conspirator.

4) The Counter Human Trafficking Act B.E. 2551(2008)

The Article 9 states,

"… Anyone conspire for two or more to offend as in Article 6 are subject to punishment not more than half of the penalty specified by law for the offense.

If any conspirator offends as agreement; all are subject to punishment specified in law and another punishment for each case.

In the case of offending but interfered by one of the conspirators and fails or completes but unachieved; the conspirator who interferes is subject to punishment specified in Paragraph 1.

If the offender as in Paragraph 1 converts and inform truth of the conspiracy to the authority before conspiracy rime committed; the court will not punish the person or viably less punish the person than the law enacts…"

From above, it is seen that conspiracy measure found in the Thai Acts is specific and insufficient to completely counter each model of the financial crimes. On account of the laws directly involved with the financial crimes, i.e. Financial Business Act BE 25551 (2008), the Securities and Exchange Act BE 2535 (1992), the Public Cheating and Fraud Loan BE 2527 (1984), and the Direct sales and Direct Market BE 25455 (2002) do not adopt conspiracy measures. The researcher views that one way to enhance effectiveness enforcing law in the Thai financial crime is to adopt the conspiracy measure as a tool for the law enforcers and enable them to incapacitate conspiracy as well as it is a preventive measure for committing crimes more. It also helps solve problems in the case the state cannot find witnesses and evidences enough to punish the criminals on the major offenses. The court may adjudicate defendants only conspiracy because the major offenses have not evidence to support the criminal trial. The plaintiff has to bring evidence to prove guilt of the defendants without reasonable doubts else the court may grant benefits of reasonable doubt to the defendants. Moreover, conspiracy measure worth the complex, ingenious, concealing offenses and many parties collaborated such as crimes of the organized crime difficult to reach the mastermind, employed persons and backers as Criminal Code Articles 83, 84 and 86 and difficult for adaptation since it is difficult to find evidences. Or sometimes, the law specifies specific qualities of offenders and accomplice have met less punishment or disproportion with the offense such negligence of duty as in the Criminal Code. In the case of common person, the accomplice with the authority will not be punished as the mastermind with the

authority but the backer only. So, other measures to help prevent offending to a certain level which is conspiracy measure.

Applying the Conspiracy Theory to enforce counter financial crimes could be achieved as follows:

1) The Conspiracy Theory can prove guilt and charge the big boss of the organized crime more effectively than other predicate offenses in the criminal laws. That is, crimes by criminal laws normally adhere to the theoretical principles of attempt which action will be taken else arrestment and trial are impossible. However, the Conspiracy Theory adheres to agreement of conspirators to offend as criteria. Therefore, even though conspirators just agree to offend even not yet taking action; it is counted the offense has already been completed as soon as conspiring. The theory is highly worth to enforce with crimes of the organized crime which have many members with structure o hierarchical line of command, expedition, erudite planning and avoidable from normal law enforcement and punishment from the authority.

2) The Conspiracy Theory has special character from the Attempt Theory which will be absorbed by complete offense whereas conspiracy is deemed a predicate offense separated from intent offense.

3) The Conspiracy Theory has criteria of evidence and hearing different from proceedings of other offenses. That is it has codification of hearsay witnesses and circumstantial evidences to prove guilt and trial against offenders though without direct witness to verify offense incorporate with techniques of proceeding against conspirators, plaintiff (prosecutor) and can be sued at any jurisdiction where conspiracy is committed while enabling to escort conspirators and persons involved into the trial. It is the best appropriate to adopt the conspiracy theory to be enforced with organized crime because its members will not leave any clues. So, accepting hearsay witnesses and circumstantial witnesses are deemed weight and credible. They effectively charge and try against the mastermind in crime and their members (Pannisa Theerakulphisuth, 2010).

5.4.2 Measures of Plea Bargaining

5.4.2.1. Concepts of measures on plea bargaining

Plea bargaining is a concept based on the Common Law system and rise for justice administration. It meets dilemma of workloads more than personnel to expedite works and leave heap of cases in court. With the statement of Justice Marshall, “Justice delayed may be Justice denied”. Therefore, USA is a country facing this problem and adopts Plea Bargaining. The Supreme Court deems that plea bargaining in USA is important for justice administration and meets expedition which is endorsed in the US Constitution enacted, “In all criminal prosecution, the accused shall enjoy the right to speedy and public trial….” Rights are deserved endorsement from every State since it is part of due process under the US Constitution.

The proceedings are depended on witness and evidences and the weighing standards of evidence in criminal cases. Plaintiffs must have proof beyond reasonable doubt that there is real offense and the defendant is guilty. It is then the burden of the plaintiff (prosecutor) to seek evidences to reach the standards. Sometimes, seeking evidence by police might employ techniques without legal endorsement or divert from criteria specified by laws by any reasons. They are the cause the court to repudiate those witnesses deeming witnesses found are illegal obtained evidence (Kiatkajorn Watjanasawat, 1978: 120-136). The court’s exclusionary rule much troubles investigators and makes the proceedings uncertain because prosecutors are not certain whether their existing evidences can ensure the court to punish defendants or not. In particular, the proceedings in USA there are jury who are common people to admit facts; uncertainty is rising. Therefore, prosecutor adopt plea bargaining seeing that evidences are insufficient to convince defendants truly offend beyond reasonable doubt (Institute of Criminal Law: Office of General attorney, 2005).

A plea bargaining is a way USA used in solving proceedings for example cases overwhelming court, proceeding delay, and prosecutors are uncertain with evidence at hand to convince the court to punish defendants. Plea bargaining can be applied to solve the problems of collecting evidences to charge

criminals of the organized crime. It is a change on seeking or collecting evidences as crime has changed from its normal way.

The prosecutors are responsible to file the case in court with discretion to charge or not to including interrogation and collecting evidence to prove defendant guilty. Besides, discretion for plea bargaining to reduce number of cases entering the court as above, bargaining of the defendant's lawyer and the prosecutor would do so that the prosecutor may reduce charges and enter trails with softer punishment. If defendant confesses, the prosecutor would certify before court to sentence in a softer punishment than being specified in laws. It is found that plea bargaining brings other benefits for the State. It is the bargaining to ask defendant to be witness in other case or asking the defendant to provide fact for suing offenders to punishment or facts to sue other backers of the same case to court (Ornsuda Saengkham, 2007).

The measures of plea bargaining are based on the concept of seeking and collecting evidences for the offender. Reasons are, today, the advancement of science and technology make offense more complicated and difficult to arrest to criminal justice administration. Proving guilt, in particular, in t he proceedings must be found on evidences but the justice administration personnel cannot seek them because current crimes of the organize crime are complex, covering evidence and mechanizing inhibition. The only way to seek evidences to prove their guilt is to seek from the criminals themselves.

Plea bargaining in USA began first in 1958 in the case of Shelton v. United States, 1958. The US Supreme Court set the principles that the prosecutor failing the promises with defendants upon their exchanges of their confession; the guilty plea testimony as such became voided. In 1964, the US Supreme Court set principles in the case of Nagelberg v. United States, 1964 that the judge was empowered to permit defendant to withdraw plea of rejecting guilt and submit guilty plea to accept softer punishment by charges if the prosecutor agreed and consented because it was the rights of the defendant to cooperate in the trial.

In 1967, the US Supreme Court prioritized the defendant's lawyer in their advice or consultation during the guilty plea of the defendant. The

Court analyzed the advices with the guilty plea of the defendant (Dorrought v. United States, 1967).

In 1969, the US Supreme Court by Justice Douglas set principles in the case of Boykin v. Alabama, 1969 that the judgment on the guilty plea is deem non-existing, if the proceeding reports was not clearly recorded that the defendant declined rights by Constitution, which there were three manners, i.e. 1) by voluntariness and with reasons, and that was rights to be considered by jury; 2) rights to face the opposite witnesses and 3) rights of prejudicial to not incriminate oneself.

In 1970, the US Supreme Court set principles in the cases of Brady v. United States, 1970; MeMann v. Richardson, 1970; Parker v. North Carolina, 1970 that the guilty plea with willingness was not reasonable to favor reduction of punishment because it was impossible for defendant to give guilty plea more than real offense. Though the defendant was sentenced as guilty pleas or claiming it as being coerced would not exceed the real offense. Moreover, the defendant claimed having guilty plea because having “illegal advice” was insufficient to allow guilty plea non-admittance. In addition, the defendant had no rights by Constitution to coerce the court to admit his/her guilty plea. On the contrary, the court might admit his/her guilty plea for sentence though later the defendant testified that he/she was innocent (North Carolina v. Alford, 1970). However, the US Supreme Court never scoped any adjudication to admit guilty plea.

In 1971, the US Supreme Court set principles in the cases of Santabello which was renowned in plea bargaining that it was necessary and created satisfaction in the justice administration. Meaning, plea bargaining was to avoid a charge graver than reality for the alleged detained before proceedings which speedily finalized the case (Santabello v. New York, 1971).

In 1973, the court admitted guilty plea of the defendant from the lawyer’s advice which could be counted the guilty plea by volunteering.

In 1978, plea bargaining was still accepted and deemed importance in justice administration because of necessity on economy (Heumann, 1978). The US Supreme Court admitted guilty plea between the prosecutor and

defendant and judged und ether agreement Bordenkircher v. Hayes, 1978) (Office of Prosecutor Region 5: Office of General Attorney, 2004).

In England, guilty plea was least attractive and unlike USA. It could be that in UKLK there were few cases left in courts and it prosecutors had no power for discretion to identify penalty and its penalty system was so flexible. Plea bargaining in UK might be divided into 2 types, i.e. (1) evident or disclosed plea bargaining and (2) plea bargaining de facto or impliedly.

Popularity of plea bargaining was totally prohibited by Lord Parker who said in the case of R. v. Turner, "…the judge should not determine punishment as intended. Meaning, when the defendant confessed, he/she would be sentenced in one way but rejection and later found guilty; there is another determination of punishment which was graver. Such thing should pretty much not do…" Reasons of objection were there was no wish for the justice administration offices rapidly tried but there should be more effectiveness rather than independent office to seek evidences and to keep truth.

However, the judge might involve in the evident plea bargaining in 2 ways, i.e.

1. The judge directly bargained with the defendant in case of seeing that the defendant had no point to win the case and further defense was a waste of time and useless; it was advised that the defendant could choose its own status (R. v. Barnee; R. v. Nelson)

2. The judge of the case could have guilty plea with the defendant through the lawyer conveying message to the defendant (R. v. Brook). But the Supreme Court saw that involvement in guilty plea of the judge in this case was improper and if the judge involved; the Supreme Court would dismiss the judgment of the Court of First Instance and returned the file to the Court of First Instance for retrial. The Supreme Court further commented, "...it is the unexpected event and the court is surprise on such event but hopefully, the guilty plea between the judge and the lawyer will never happen again…"

The plea bargaining de facto or impliedly might rise by 3 causes, i.e.

1. Relationship between the defendant's lawyer and the defendant (R. v. Turner; R. v. Peace)

2. The Defendant's lawyer met the judge (R. v. Cain)

3. By knowledge and experience of the defendant's lawyer and career realizing that the defendant would be granted less punishment from the judge if he/she confessed.

For the supports of plea bargaining de facto or indirectly; it was the relationship between the defendant's lawyer and the defendant. Lord Parker said, "the case of R v. Turner; the lawyer must comply his/her duty with real independence. That is providing best advice as possible. If necessary, it is to advise useful track for one's client as the most potentially as one could, though defendant will officially decides and with disclosure…." Reasons were the traditional practices that defendant's benefits must be best responded with control and monitor since the beginning by a person of law professional and solutions as well as decision with effectiveness. And that was one of the responsibilities of the professional lawyer.

Another reason to support plea bargaining de facto or impliedly is reduction of punishment by the judge the judge as owner of the case could exercise full power of discretion. Reason to reduce penalty as such is to inhibit defendant who has no defense to waste time in court which troubles witnesses and inconvenience of wasting time and budget without cause. So, the judge could reduce punishment for the defendant as exchange with guilty plea like Judge Ackner the supports this matter that when punishment is imposed to two defendants on charge of rape and harassment, if defendants seek guilty plea, they are subject to 2 year imprisonment. But both reject, they are sentenced for 3 year imprisonment. Herewith, there is no deep peruses on the trial condition; it is explained that the court reduces punishment only for defendants who express regret and have good conscience for their actions only.

It is seen that plea bargaining in UK is rejected or directly set its criteria but it is also popularly applied in practice though unlike USA. Methods of plea bargaining in UK are not started by the prosecutor like in USA but from the defendant's lawyer and mostly by the discretion of the judge. It is different from the

plea bargaining in USA. In addition, the model of plea bargaining in UK is pleading mercy from the court for softer punishment only. This is another difference with the USA (Nattaphol Ruangnoom, 2000).

5.4.2.2. Analysis the measures of plea bargaining enforce in Thailand

The plea bargaining is a process in a trial based on negotiation and the involvement of partied involve determining the result among the prosecutors, defendants' lawyers, victims, and the court. It is a revising technique in foreign countries whether it is possible in their countries and would it conflict with the foundation of the trial? Considering the trend today, it is found that the concept of justice administration by plea-bargaining based justice administration and involvement are internationally accepted. It is also a way to collect evidences to try the organized crime as being enacted by the United Nations Convention against Transnational Organized Crime 2000 to be the tool to counter transnational organized crime instituted as an organization. Another important measure for collecting evidence is to encourage individuals to help or to provide data to the unit enforcing laws enacted in No. 26 of the Convention, i.e.

1. The State Parties must impose proper measures to encourage individuals involved or ever involved with the organized crime:

(a) To provide useful information for office responsible for investigation and to be witnesses in the affairs such as

(I) Identifiers, description, structural components, address or activities of the organized crime,

(II) Connection, and linkage at the national level with other organized crime,

(III) Offenses the organized crime has committed

(b) Provide tangible assistance by fact to the responsible office which might be useful to incapacitate resources or property gained from crimes of the organized crime.

2. In case of appropriateness, each State Party considers possibility to reduce punishment of the alleged who collaborate significantly for the investigation or trial under the coverage of the Convention.

3. Each state Party considers the possibility to exclude trial against individual who collaborate significantly for investigation or trial under the coverage of the Convention and the basic principle of the domestic laws.

4. Protection of individual is subject to No.24 of this Convention.

5. If an individual referred to in Paragraph 1 and found in the State Parties is able to collaborate significantly to the responsible office of the other State Parties and the State Parties involved might consider agreement or to settle agreement of allowing other State Parties to take possible action specified in Paragraph 2 and 3 of this Convention and the basic principle of their domestic laws.

It is seen that by the Sub No. 2 of the Convention No. 26 specifying, “In case of appropriateness of the State Parties; each one consider possibility to reduce punishment to the alleged who collaborates significantly of reinvestigation or trial under the coverage of the Convention….” Reduction of punishment is possible through three organizations exercising powers, i.e.

1. Punishment reduction by judiciary- being enacted that the judiciary is empowered to reduce punishment found in the Criminal Code of Thailand Article 78 on Causes of Penalty Relief,

2. Punishment reduction by Legislative Assembly – through enact laws for reducing punishment or amnesty

3. Punishment reduction by the administration – possible in 2 ways, i.e.

1. By the prosecutor who charge the alleged in petty punishment or proposes the court for punishment reduction in the countries of the Common Law system such as USA where plea bargaining is used.

2. By the Head of the State – upon the final judgment and sentence, there might be amnesty by the offender itself, its relative or

others to file amnesty petition. In Thailand, such amnesty is filed to His Majesty the King (Annop Likitjitta, Narong Rattanakul and Komkris Harnchai, 2003).

In the criminal justice administration, plea bargaining or a process of negotiation between the prosecutor and defendant or its lawyer in the criminal case is to exchange some interests. It is a way of justice administration acceptable and popular in the foreign law system. Expedite proceedings, and effectiveness under plea bargaining becomes the important remedial measure in justice administration especially when cases are left for discretion and more complicated either economic crimes or environment or narcotics. Most are organized crime and by its nature it troubles investigation and trials meet many limitations.

Results of plea bargaining adapted in the Thai justice administrations (Pravuth Tthawornsitri, 2011), i.e.

Positive to Justice Administration

1) Plea bargaining leads to speedily finalize trial and it reduce burden of justice administration.

2) Plea bargaining brings good results to both victims and witnesses when the alleged or the defendant admit guilty plea and speedily finalize the case. The victims and the witnesses will not be worry to appear for testimony in court or suspicious danger from the alleged or the defendant and it shortens the period of misery for both victims and witnesses.

3) Plea bargaining offers some benefits to the alleged or the defendant in case of collaborating with the state agents.

4) Plea bargaining enables to find evidences from the alleged or the defendant for the benefit of the trial against counter crime and for social.

5) Plea bargaining ensures certainty for the trial because the alleged or the defendant faces punishment rather than defense although the punishment is softened.

6) Plea bargaining create effectiveness in managing resources of the state.

7) Plea bargaining eases stresses in the trial in Thailand and is flexible and meets the current situation.

8) Plea bargaining build new attitudes by emphasizing compromise based on negotiation for the social benefits at large.

Negative to Justice Administration

1) Plea bargaining may coerce the alleged or the defendant to admit guilty plea though offended and offering guilty plea in the acceptable charge and it is better than going on defending.

2) Plea bargaining may subject the alleged or the defendant to graver charges or more charges for bargaining to reduce charge in the next chance.

Plea bargaining is deemed a way to seek evidences from the offenders. It is to se4ttle with defendants that if data are given to the justice administration which enables to sue the accomplice for charge and punishment; the defendant deserves softer punishment or punishment reduction. It is not a process of any illegal evidence searches. So, plea bargaining is a process to ensure certainty to trials on reasons that at all cost the defendant will be punished though less than what the prosecutor first intended. Plea bargaining secures the plaintiff's case from risk to lose because the court will pass verdict. Nevertheless, there must be the process of rights protection for the defendant during the period of plea bargaining. The process of rights protection contains 2 things, i.e. the defendant's lawyer must involve in the role of negotiation and the court must inspect in the final stage whether agreements from bargaining are accepted (Phakkaphol Yutithamdamrong, 2014).

Ways to apply plea bargaining in Thailand in order to enhance effectiveness of evidence measures especially in the financial crime; the researcher finds that measures of plea bargaining should be leveraged into specific law which might enact I the DSI Act BE 2547 (2004). Reasons are, laws collect techniques and investigation methods to specially find evidence and witnesses for special trials which includes the financial crimes, the financial institution crimes, public cheating and fraud, public cheating and fraud on loans, and crimes of direct sales and direct market. Measures of plea bargaining could be determined by using the same way as in the Narcotics Act BE 2522 (1979) Amendment No. 5 BE 2545 (2003) Article 100/2 coded, "If the court finds that any culprit provide important information and best useful to counter narcotics to the administrative officers or police or the interrogation

officer; the court will reduce punishment less than the minimum rate of punishment deserving the offense…" It is the Article opened for the tangible measures of plea bargaining.

Herewith, to evidently enact the measures of plea bargaining in law; the guilty plea gained from the plea bargaining should be the confession deemed voluntary after providing right protection to defend and know complete and sufficient data necessary for decision-making. Information and necessary rights are given notification of the accusation and explain what are the misconducts behaved and against the provision of laws, being informed on under verdict to maximum and minimum punishment and having been inform not to provide any testimony and any testimony given might be used as evidence in court. If the alleged or the defendant does not make a statement, it is rejection and it the duty of the state to find evidence to confirm him/her as the offender. Being informed to meet or to counsel with a trust lawyer and if there is plea bargaining, the alleged must have a lawyer to attend with. Being informed the proceedings of the authority and tendency of the result will happen by verdict, if the alleged or the defendants admit guilty plea including results of rejection and results of plea bargaining. Being informed judgment and punishment is under the total right of the court having the independent discretion and free from any obligations, agreement or contracts between the authority and the alleged or the defendant. Herewith, data given is the opportunity offered for the alleged or the defendant to gain information to use judgment to decide making statement or not having the authority to give fact which the state is authorized and ability to do. And the alleged or the defendant is offered with rights protection by counseling with a trustful lawyer to decide defense or to admit guilty plea. When the alleged or the defendant admit guilty plea and cooperates with the authority to pursue the plea bargaining; it is deemed that the alleged or the defendant has sound judgment by oneself. It is a deed by voluntary of the alleged or the defendant (Nattaphol Ruangnoom, 2000).

5.4.3 Measures of witness protection

Another important measure in seeking evidence is the measure of witness protection since the tendency of crime at present is complicated and with more modern technology. In particular, it is with the conspiracy or the cooperation among the organized crimes and t influential persons. It demands the state to be responsible the state which control peace and order looking for measures and legal criteria to counter these criminals (Office of Witness Protection: Department of rights and Liberty Protection: Ministry of Justice, 2010:1). An important standard the state adopts to enhance effectiveness countering crimes and influential persons is witness protection because witnesses in criminal case play the important role in justice administration. They see the wrongdoing and this includes victims who must be witnesses so that their testimony will be the evidences to identify the alleged. Statements made at the interrogation level and testimonies in the trial are the important evidences to prove guilt and to sue culprit for punishment. However, roles of the witness expressed might distort facts if the witnesses' feeling, thoughts, needs and emotion have been affected which lead to stress or made no chance to disclose truth, or they have been interfered in the proceedings. Particularly, in the violent cases, witnesses are at risk and endangered from intimidations, threats, and assault in various ways from criminals rather than other criminal cases. It fears witnesses and they finally attempt their avoidance to appear in court. So, to secure values of the witnesses and to acquire them requires prioritization by the state through identify legal measures to support personal rights as witnesses in the criminal cases.

The witness protection came from the objectives to exist witnesses and their testimonies are worth to prove truth in legal actions. Reason is witnesses are closest to the incidents which are the fact in wrongdoing. Therefore, their testimonies in court are likely with high reliability and other weight of other witnesses such as material evidence or document evidences might have been easily destroyed or distorted. So, if the witnesses are not reasonably protected, it damages the justice administration. An important cause is de-cooperating of an individual to testify fact or evidence and role play as a witness is fear of death, property and closed persons.

Others' action such as intimidation, threat and attempt to create fear until the witness is scared to appear for testimony or distorting the truth.

Originally, protecting witnesses in the criminal cases in Thailand, the authority likely followed laws and traditions of each office such as witness protection by the Criminal Code, temporal release, arrest warrant, transferring the case for safety, preempt evidence taking, special enquiries for child witness, and witness protection by the police rules on cases of witness protection and safety in the criminal case, and so on. Until claims for witness rights in the criminal cases has been developed more; the Thai societies demand the state to properly and fairly handle witnesses more than previous practices. Enactment of the witness rights in the criminal case has been drafted in the Constitution of the Kingdom BE2540 (1997). It is the first Constitution of the Kingdom which states the witness rights in the criminal case in Article 244, "Individual being a witness in a criminal case holds rights of proper protection with necessary and reasonable compensation from the state, herewith as being code in the law…" Meaning, witness must be protected and properly handled with necessary and reasonable compensation and human dignity.

By the stated Constitution, the Witness Protection in Criminal Case BE 2546 (2003) was coded to support individual rights who is the witness in the criminal case with proper treatment and necessary and reasonable compensation from the state. It is the endorsement from the Constitution and this law identifies clear measures targeting witness safety with compensation as a witness and other expenses during the witness term. Safety is focused which includes spouses, parents, siblings, close relatives, and friends. Key is to find the important evidence to perfectly prove guilt more. Expectations are the witness protection enables to certainly sue culprits to punishment more. It is the overture of setting full criteria of witness protection in full range by law in Thailand. The principle is continuously endorsed until the current Constitution of the Kingdom BE 2550 (2007) enacts it as the rights in the justice administration under Article 40(5), stating "… the victim, the alleged, the defendant and the witness in the criminal case hold rights for protection and necessary and appropriate assistance from the state, whereas the necessary compensation, substitutions and expenses are subject to the enactment…" In addition, the responsible

unit has been established to protect witnesses, i.e. Office of Witness Protection: Department of rights and Liberty Protection: Ministry of Justice to protect witnesses with general and special measures, proper treatment, coordination of operation and data with offices involved from the government and the private sectors in order to provide safety.

The Witness Protection in Criminal Case BE 2546 (2003) Article 3 defines "witness" as an individual who give or has given fact before the authorized criminal investigators, the authorized criminal interrogators, the authorized criminal prosecutor, the criminal court and the specialists but excluded the defendant claimed to be a witness. So, if such people are insecure for their lives, persons, health, liberty, fame, property and any rights first, during and after being the witness; they are empowered to demand protection by this Act. Measures and protection techniques are divided into general ones and special ones, i.e.

- General Protection by Article 6: it is the case when witnesses are insecure and could arrange them under protection and in case of necessity; police or other authorities could be assigned to protect them. To safeguard witnesses by general measures must include the provision of safe-house except the witnesses reject and the coverage of name, last-name, address, picture, and other data to identify the witnesses by appropriation to their status, conditions and attributes of the criminal case related.

- Special Protection: it is for the important witnesses in critical case, i.e. narcotics, national security, woman and child trafficking, organized crime, cases of minimum ten year or more imprisonment, the case the Office of Witness Protection (OWP) finds reasonable for protection as enacted in Article 10. Measures are such as move residence, providing fit residence, paying living allowance for witnesses or dependents, coordinating with office involved to change name, last-name, demographic evidences, career change, training for their living, assisting claims for reasonable living status, assigning the authorities for protection in necessary period and other reasonable actions for assistance or for protection.

The special measures of protecting witnesses are applied with deadly or critical cases. At present, criteria are set for petition and legal code, criteria for cases to file petition, and criteria to examine the petition under the Witness Protection in

Criminal Case BE 2546 (2003) in association with the ministerial rules setting criteria, methods, and conditions for filing petition and examination of the petition for the Special Protection Measures on Witness BE 2548(2005) and the regulations of the Ministry of Justice on Protecting Witness by Special Measures BE 2548 (2005) as details below.

Considerations to Apply the Measures of Witness Special Protection

In some types of criminal case, particularly the national security where influential people involved or the culprit links with critical criminal groups; the witness is subject to high risk o not granted protection as in the Witness Protection in Criminal Case BE 2546 (2003); the enactment is drafted for special measure counted significant to a certain level to focus on witness's safety.

The Measures of Witness Special Protection which is leveraged its importance to secure witness. So, considering any individual to be the witness with special protection is not only to examine the case coded by laws but it deadliness of the case, nature of offense linking organized crime, the influential persons, devastating impact in societies, anti-peace and order and security of the state.

Moreover, before applying the special measures of protection, it is necessary to ever consider that witnesses could be subject to general measures of the provision of safe-house, the coverage of name, last-name, address, picture, and other data to identify the witnesses. If the general measures are sufficient, there is no need to claim for any special measures.

Case Enabled to Claim for Special Protection Measures

The Witness Protection in Criminal Case BE 2546 (2003) enacts types of witness in the cases possible to claim for special protection measures as in Article 8, i.e.

(1) Narcotics cases subject to AML law, counter corruption law and customs laws

(2) The Kingdom security under the Criminal code

(3) Sexual abuses under the Criminal Code specifically for engagement for supply, allurement and escort for abuses, for lust of other and abduction of child and the underage, against counter woman and child trafficking law, against counter prostitution law, being the owner, administrator, manger, and supervisor of prostitution affairs or whorehouse.

(4) Organized crime i.e. secret society and robbery hub under the Criminal Code and any other crimes of conspiracy by the criminal groups with systematic plans and networking with complexity and well proportioned.

(5) Cases of minimum imprisonment of ten or more years or more serious penalty

(6) Cases which the Office of Witness Protection find deserving protection.

Steps of Considering Special Protection

Step 1: Petition

1) Petitioner

Petitioners deserve claim for special protection measures under The Witness Protection in Criminal Case BE 2546 (2003) are:

(1) The witness or the person assigned by the witness

(2) The stakeholder with the witness

(3) The authorized criminal investigators,

(4) The authorized criminal interrogators,

(5) The authorized criminal prosecutors

2) Cases claiming special measures (type of Article 8)

3) Causes to claim special measures

Circumstantial phenomena of insecurity to witness in the criminal cases regardless they are evident or reasonable doubt that the witness is insecure. The petition is eligible to claim special measure protection.

The petition must follow OWP2 Form identifying name, lat-name, address, petitioner and unsafe circumstantial events. In case the petitioner is not the witness to be protected, it must be that the witness to be protected agrees the petitioner must be

subject to special protection too with the consent of the witness in writing and signature as significant evidence.

4) Office to file petition

The petitioner for special protection can file protection before , during or after being the witness at the Office of Witness Protection, Department of Right and Liberty Protection : Ministry of Justice: Chalermphrakiat Government Complex. Building A, 6th Floor, Chaengwatana Road, Toong song Hong subdistrict, Laksi district , Bangkok or other offices announced by the Ministry of Justice on Offices Responsible for Petition of Special Protection Measures, i.e.

1. DSI: Special case Center

2. Corrections Department

- Prisons, Corrections Institutions, Detention Homes and Detention Homes around the country

- Special Correction Job: Office of Penology

3. Department of Probation and Protection for Youth

- Homes of Probation and Protection for Youth in every province

- Every Training Center for Youth

- Youth rehabilitation of Ayutthaya

- Office of Justice Administration Development for Youth

<u>Step 2: Consideration / Petition Check</u>

1) When OWP (Office of Witness Protection) or other specified offices responsible for petition receives it; the first engagement is:

- Check accuracy

- Inquire additional details to know data that witnesses might be insecure if additional details are critical; it is necessary to prepare as attachment to the petition with the signature of the petitioner.

- Notify the petitioner on rights, impacts and responsibility from special measure protection

- Issue a receipt of the petition as evidence

2) In case the OWP finds that the fact is insufficient, OWP will meet witness on site for fact-finding and prepare summary to report to the General Director or if insufficient to evidence, OWP may request more. Within 15 days counted on date of receiving the petition. If the petitioner fails the deadline without informing restraints; OWP prepare report to forward to the Minister for further consideration.

3) When OWP finds all evidences are perfect; the petition with opinion will be submitted to the General Director for consideration and forwards it to the Minister of Justice or the authorized persons to issue order without delay.

In case of presenting the petition from non- witness protection offices, it must be through OWP for consideration.

4) Upon receiving the petition, OWP takes action without delay and comment to the General Director. Later, it will be submitted to the Minister of Justice for further action. At the meantime, OWP notifies the witness or the petitioner on date the Minister or the authorized person has received the petition.

Step 3: Witness Protection Operation

1) When the Minister of Justice or the authorized person receives the petition, it will be examined for order without delay and must not exceed 30 days since receiving the petition from the OWP as follows:

(1) In case the Minister of Justice or the authorized person examines the petition, the OWP take any action under Article 10 of the Witness Protection in Criminal Case BE 2546 (2003).

(2) In case the Minister of Justice or the authorized person declines to examine the petition, within 30 days since receiving the petition from the OWP; it is deemed declining the petition and the petitioner can appeal within 30 days since receiving the notification.

(3) In case the Minister of Justice or the authorized person orders the special protection measures before protecting witness; OWP must demand the witness to sign consent for protection once again.

Besides, receiving-delivering the petition, checking, considering, and special protecting witness must be in secret and significantly recognizing safety of

witness, data and details about the witness or other individuals closed to the witness, circumstantial case, insecurity of witness and other facts related.

2) In case the Minister of Justice or the authorized person dismisses the petition; OWP notifies the dismissal and rights of appeal to the petitioner and end the engagement under special measures/ and applying general measures to protect the witness.

Step 4: Appeal

Exercising rights to appeal for special protection measure is the case that the order recipient of special protection measure which is not the court order such as the order of the Minister of Justice not to admit witness into special protection measure and so on; and the recipient displeasing and reacting to the order can file appeal petition. The form, criteria and methods of the appeal petition are enforced with general measures by *muntatis muntandis,* i.e.

- persons with rights to appeal for special protection measure are the consignees of special protection measure such as order to decline receiving witness for special protection measure which are not the court order and displeases can file appeal petition.

- Format of appeal allows the petitioner to file appeal in letter.

- Place of submission

1) The Court of First Instance and not the district court and is authorized to try criminal case with jurisdiction over the case or the constituency of petitioners.

2) The Military Court of First Instance with jurisdiction over the case or the constituency of petitioners within the jurisdiction of the military court.

- Appeal duration allows the petitioner to file it within 30 days since receiving the petition dismissal notification.

- The Appeal Expenses

Petition to appeal for special protection measure is exempted for all fees because appeal, recurrence, and compensation of expenses on protecting witness are to ease coercion by the order of OWP

- Considering Appeal

(1) Request the court to make confidential consideration and for specific persons related to the case they deserve to hearing.

(2) Allowing the court to call for evidence, information or officer related to appear before court for inquiries without delay and reasonably inquires for additional evidences.

(3) Allowing the court to consider and order within 30 days since receiving the appeal petition except it is reasonable to extend by necessity in each case but records must be made.

(4) The order of the court as in this Article deems finalization.

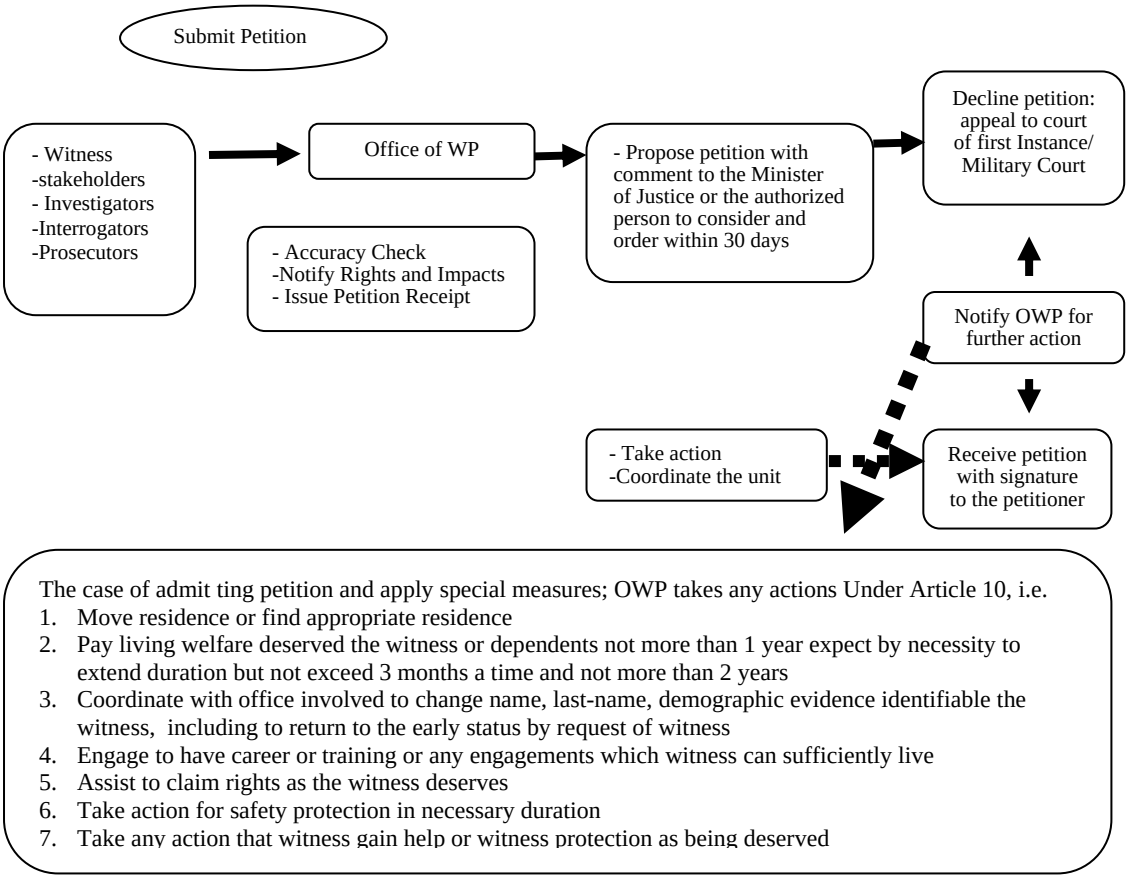


Figure 5.2 Steps of considering special measures

Techniques of special measures to protect witness

The special measures to protect witness are the top legal measures to secure witnesses and their intimates from intimidations and threats from being witnesses in the criminal cases. Techniques of protection firstly considered by OWP are:

1. Nature of the criminal case
2. Lethalness of the case
3. Status and condition of the witness

Such consideration will lead to specification of special safety for witness with effectiveness and appropriateness.

Mission to protect witness with special measures is the critical ones and the model is differed from common measures. It leverages intensive action, module of protection, assignment of team with larger number than common measures. For example, the common measure may employ just 2 agents but the special measure must deploy 4-6 agents. And the consignees must have skills, expertise and discipline in the mission.

Secrecy is the core in this mission and command must have “top secret” level while specified personnel only can access the secret. This is to prevent disclosure of the information which will limit the mission and to this is to enhance the effectiveness of the mission and achieve the intent of the law.

The Article 10 of the Witness Protection in Criminal Case BE 2546 (2003) enact the special measure allowing OWP to take either action below:

(1) Move residence or find appropriate residence

(2) Pay living welfare deserved the witness or dependents not more than 1 year expect by necessity to extend duration but not exceed 3 months a time and not more than 2 years

(3) Coordinate with office involved to change name, last-name, demographic evidence identifiable the witness, including to return to the early status by request of witness

(4) Engage to have career or training or any engagements which witness can sufficiently live

(5) Assist to claim rights as the witness deserves

(6) Take action for safety protection in necessary duration

(7) Take any action that witness gain help or witness protection as being deserved.

In case of taking action as in Paragraph 1; the office involved must follow the petition and counted the data confidential by forbidding the office involved to disclose them except with permits of Minister of Justice.

Protecting witness with special measured enacted in Article 10 stating in the first line, "… Office of Witness Protection takes action to protect witness by special measures either way as follows:…" the word either way creates problems in interpretation. Either party finds that the law allows choosing only one ways or many ways to protect witness with special measures. Such interpretation, the Decree Commission has ever commented that OWP can choose one technique or many in protecting witness by special measures. So, it is concluded that OWP specifies ways to protect witness with special measures according to Article 10 with one way or many ways enacted in law to safeguard witnesses (Office of Witness Protection: Department of rights and Liberty Protection: Ministry of Justice, 2010).

End of special measures to protect witness

The Witness Protection in Criminal Case BE 2546 (2003) specifies the end of the protection is under the authority of the Minster of Justice or the authorized persons. The criteria are subject to Article 12 coded as below.

1) The empowered person order its end

Power to end the special measures to protect witness is for Minister of Justice or the authorized persons when there is any incidents enacted in Article 12(1)-(5)

2) Causes of ending

Witness under special measure protection with any causes under Article 12(1)-(5) as follows which might lead to end the protection.

(1) Request by witness

(2) The witness declines to follow the ministerial rules or regulations of Ministry of Justice on special measures to protect witness

(3) The circumstantial safety of the witness changes and unnecessary to provide special measures to protect witness any longer.

(4) Witness declines to give testimony without reasonable cause

(5) The court has final verdict to sentence witness upon false notification and testimony before court or guilty of fraud evidence on being the witness in the case of having witness protection

3) Technique to end protection

3.1. Incident leading to end the protection; OWP prepares report and reasons of ending the protection to Minister of Justice or the authorized persons to order end of special measure protection.

3.2. Upon Minister of Justice or the authorized persons orders end of special measure protection; OWP orders its end and reports the witness and the office responsible for protecting witness without delay.

3.3.Order to end protection issued by OWP must be in written with following details.

(1) Name, and last-name of the petitioner and the protected

(2) Date-month-year of order issuance

(3) Reasons of order issuance

4) Rights and condition of appeal against order

5.4.4. Measures of e-evidences

Financial crimes today exploit IT such as telephones, computers, internet, and e-devices as tools to commit crimes more. E-data have it natures different from common evidence. That is no shape, cannot be seen by bare eyes or physical touches. They are so easily deleted, limited, destroyed, modified and changed in short time. They trouble searches, investigation, and collection to be evidences to submit to court. So, evidences appeared or stored in e-data are important for trial and prove defendant guilty.

Admittance of e-data as evidence is found in the Electronics Business Act BE 2544 (2001), enacted with rationale and necessity. Business today has tendency to change ways of communication into electronic technology development which is convenient, speedy and effective. But the e-business today is very different from businesses endorsed by law. It needs to endorse the legal status of e-data as in writing or evidence as letter, endorsement of sending and receiving, e-signature, and admittance of e-evidences in order to promote e-business' credibility and its legitimization as in common businesses ever practiced. E-business Commission should be appointed to set policy and criteria to promote e-business, pursuance of the affairs and to promote and to develop technology to pursue its advancement which changes and develop all the time for its standardization and accreditation. Also, it needs to propose routes to solve problems and limitations related which promotes e-businesses domestically and internationally with legal endorsement with uniformity and meets standards with international acceptance.

Article 4 defines KEYWORDS as follows:

"Statement" is story or fact regardless of alphabetical forms, figure, sound, picture and other forms conveyable by itself or through any routes.

"E-data" is the statement created, sent, received, stored, or processed by e-techniques such as exchanges of e-data, e-mail telegraph, tele-typing or fax.

Definition of e-data in the law is not restricted only with e-data use in communication only but aimed to cover data or created records through computer. Even though they are not used as communicative devices with other people but e-techniques includes technological development by other similar ways in future (Chaiwat Wongwattanasarn, Thaweesak Kor-anantakul and Surang Kaewjamnong, 2002).

Principles of law related to admissibility as e-evidences are found in Article 11, stating,

"… It is forbidden to reject admission of e-data as evidence in trails of civil cases, criminal cases and any other cases just for the reasons that they are e-data.

Weighing evidences that e-data is credible or not to a certain extent, it needs to analyze justification of nature or ways of creating, storing, or conveying e-

data, nature or ways of maintenance, completeness and without statement changed, way of identification, or verification of the sender and other circumstances related.

Adopt Paragraph 1 to be enforced with e-print-out, too…"

Specification of forbidding rejection to admit e-data as evidences as above because originally, it is the court discretion to admit or not to admit but this specification is to confirm the court must always admit. However, the law specifies admittance; it does not mean all evidences in e-data are always credible. Law thus specifies criteria to weigh e-data evidence in Article 11 Paragraph 2.

Specification to admit e-data as evidence under Article 11 of the Electronics Business Act BE 2544 (2001), is to classify one more evidences from 4 types, i.e. witness, evidence, material evidence, and expert witness. And when there is no specification what to admit the type of evidences and with what techniques and when considering from the nature of e-data, it is found that they are both documental and material evidences but not distinct from documental and material evidences. This Act specifies to admit booking, signing signature, presentation, and storing can be done in electronic form. This is the enactment to equalize status document and common signature only. But it does not mean e-data is the documental evidence which its nature and condition ARA are differed from documental and material evidences. Though Article 11 does not specify evidently that e-data is another type of evidence; but it infers that to endorse separately from the Civil Procedural Code needs to endorse another type of document otherwise it can be classified as document and material evidences by case under the Civil Procedural Code which is unnecessarily coded separately.

Admittance of e-data as evidence under Article 11 of the Electronics Business Act BE 2544 (2001) is the classification of another type of evidence, i.e. witness, document evidence, material evidence and expert evidence. Herewith, accepting e-data s another type of evidence is not just started when there is an enactment of the Electronics Business Act BE 2544 (2001). In the court for specialization, i.e. court of intellectual property and international trade, and court to f bankruptcy have accepted e- evidence for quite sometimes and specify ways of investigation and specially admit e-evidence (Kowit, Nooyom, 2008).

5.4.5. Social Measures

5.4.5.1.Adherence of Good Governance of the Financial Involutions.

Most financial crimes come from executives' wrongdoing, either the corruption of commercial bank executives or offense of securities. So, the financial institution system is the important business affecting the national economic and social system to grow with stability and sustainability. Social measures help stabilize the financial institutions their security and stability with develop-ability and competitiveness by engaging monitoring system, well supervision, good governance. Their stability is relied on credibility and trust of people involved such as depositors, and investors and so on. Besides, their engagement must be effective transparent and credible which will lead them to enhance their competitiveness, credibility and long-term security with stable growth and sustainability of the national economic system.

Good Governance is good management and at present its concept widely attracts organizations in both government sectors and private sectors. They prioritize and apply this concept in their management because adopting good governance for administration turns their organization creditable and accepted by social. It is like a tool to develop the organizational competency which enhances roles to work without corruption. For example, applying due process to work or to frame working is to engaging consistently with due process, deregulations red-tape which delay working, evidently prioritizing of targets to accurately and appropriately address resources. There is transparent decision-making process, with rules and regulation, administrative rules and checkable. So, if the financial institutions work under the principles of good governance such as executives and employees work honestly and diligently; the organizational performances would expand and continuously developed, being the transparent organization, reliable for investors and people which brings stability to the government and national advancement and reduces corruption in the financial institutions.

In this analysis, the researcher compared the good governance with the Organization for Economic Co-operation and Development (OECD) in 2005

certified by the OECD Ministers in 1999 and became the international standards for the policy makers of every country, investors, large companies and the global stakeholders.

Good governance of OECD advances the frame of monitoring the affair better and guides for initiatives in terms of law and government monitoring among both the OECD members and non-OECD members. Financial Stability Forum (FSF) identifies the principles of good governance in OECD into 12 key standards for sound financial system. Its principles are also adopted as foundation in international cooperation projects among OECD member countries and many none-OCECD member countries. It also deployed to determine issues for consideration in the Reports on the Observance of Standards and Codes (ROSC) organized by World Bank and IMF (Association of Thai Company Directors Institute Promotion, 2006).

So, good governance of OECD is aimed to be as reference to set policy of the government sector in various countries which enable to deploy it at hand. It is the principles used for consideration and to frame law and regulation related to their own countries recognizing the environments of economy, social, law and culture.

Good Governance of OECD contains

(1) ***The Basis for an Effective Corporate Governance Framework –*** the corporate governance framework must be designed to focus on enhancing the transparent and effective capital markets. Such framework has to be cohesive with rule of law and evidently allocate duty and responsibility in each unit empowered to guiding roles or to supervisory role, regulatory role and enforcement.

(2) The Rights of Shareholders and Key Ownership Functions – the corporate governance framework should focus on protection and promotion of rights of the shareholders.

(3) The Equitable treatment of Shareholders - the corporate governance framework should ensure confidence that treating every shareholder equally regardless being the small ones of foreigners and all shareholders should have opportunity to appropriately compensated in case their rights of shareholder are violated.

(4) The Role of Stakeholders in Corporate Governance – the corporate governance framework should prioritize the right of the stakeholders as enacted in the regulations of law or common agreement. God governance should encourage cooperation for both parties: corporate and stakeholder to create wealth, jobs and sustainability of the corporate on monetary wealth.

(5) Disclosure and Transparency - the corporate governance framework should ensure confidence that the corporate significant information will be accurately disclosed, complete and punctual. The significant information includes financial status, performance, ownership and the corporate governance process.

(6) The Responsibilities of the Board - the corporate governance framework should ensure confidence that the corporate sets route for strategies in working and effective system, pursuable and able to evaluate the board management by the corporate committee and board of directors who are accountable for both corporate and the stakeholders.

Good governance for the Thai financial institutions is important and necessary to enhance it where the financial institution should adhere to. Currently, it is the announcement of BOT No. 13/2552 (2009) on Good Governance of the Financial Institution by the empowerment of Article 24(4), Article 24 (6), Article 24 (7) (B), Article 24 (10), Article 25, Article 26, Article 27 (2), Article 71, and Article 84 of the Financial Institution Business Act BE 2551 (2008) with some provisions related to restriction of personal rights. Article 29 is compliment with Articles 331, 33, 36, 39, 41, and 43 in the Constitution of the Kingdom permits to do but subject to BOT which issues about the good governance of the financial institutions and demand them to adhere to his announcement. The objectives are to demand the financial institution to have good administrative system and good governance. This announcement revises 2 issues, i.e. (1) criteria of considering approval for the appointment directors, managers, the authorized supervisors or the consultant and 2) authority of the directors prioritized by BOT because it is based on the concept of leaders with virtue ethics, administrative prudence, and ability to govern and administrate the corporate organization which are important to promote good governance in an organization. It is the foundation to upgrade standards of

effective working, transparence and accountability which will enhance competitiveness, value-added, and long-term security with stable growth and sustainability in overall the economic system. The announcement defines many criteria of management and good governance, i.e. qualities of the directors, managers, authorized supervisors and counselors under Article 24 of the Financial Institution Business Act BE 2551 (2008); board members of the other company's board, manager, the authorized supervisor of the financial institution; seeking approval of appointing director, manager, the authorized supervisor and counselor of the financial institution under Article 25; and notification of changing director, manager, the authorized supervisor in the financial institution under Article 81 (2) of the Financial Institution Business Act BE 2551 (2008); responsibility of the directors in managing the financial institution, qualities of independent director, board structure, and subcommittee and discourse of information.

The responsibility of the director in managing financial institution specifies the directors to follow:

- Strict adherence to the Public Company Limited Act Be 2535 (1992) and other laws related,

- Strictly fulfill the duty with responsibility, precaution, honesty, abiding in laws, objectives, company obligations, the board resolution, resolution of shareholders, and abiding in the command of the BOT Inspector.

- Supervise preparation and secure account and related documents to identify real monetary status and performance of the company by disclosure for the shareholders, depositors, and people to know and able to check. The director must have knowledge and understanding the monitor of accurate journal.

- supervise the financial institution to call for shareholder meeting within four months after the accounting round ends in every six month under Article 67 and reduce debt to lower than 50% paid and call stakeholders for meeting again when the ratio of the shareholder falls under 25% of the paid capital. It needs to inform the shareholders about monetary status and the institutional predominance de facto.

The study revealed that the economic crisis attacked Thailand in 1997; parts came from the financial institution system which was short of good governance and effective internal governance. This is the consequences of corrupted executives, dishonesty, and irresponsibility because the executive plays the key role in governance for maximum interests for the shareholder, stakeholders and common people. So, corrupted actions of the executives violently affect the national monetary system, social and economic system of the country. The financial institutions are believed to be the organizations with important bases for developing the national economy. If they have effective administration system and performance, measures of good governance through the work of the board which designs the corporate direction and administrates the institutions. They strengthen the national economic and monetary systems with sustainable development. It is seen that they should engage in good governance and regulate the corporate as in the announcement of BOT No.13/2552 (2009) on Strict Good Governance.

Besides encouraging the board of the company to prioritize their duties, encouraging investors or stakeholders knows how to protect their won rights is very important to drive the executives to pay attention to their duties. Approaches to promote roles of investors or the stakeholders require offices involved to begin disseminate knowledge or them, particularly their rights and legal duties. This includes supporting them to see the importance of shareholding meeting because rights of meeting are an important tool to directly protect the benefits of the shareholders. Well and rightful use of shareholders meeting rights help, by another way, create good governance for the listed companies because having good governance affects long-term engagement and trusted by investors or shareholders. Using meeting rights well and rightfully help encourage creating good governance in the financial and funding markets and promote the national sustainable economic and social development.

5.4.5.2 Applying social control

In social control, Clarke states that the modern state seeks criminal prevention focusing on operation through justice administration and law enforcement. On these bases, it demands to rely on other social institutions such as family; religion and school for crime prevention are overlooked. These social

institutions are informally responsible for controlling human behaviors in communities (Informal social Control) while the justice administration is the formal social control. So, if without informal social control, the formal social control will meet number of crimes and ineffectively functions (Clarke, 2001).

Based on the concept, crime control and securing peace and order of societies are the main missions of the justice administration. Reasons are the peaceful society with security of life and property for its members is the first condition in peaceful social development and opportunity for each member to develop their quality of life which is the lasting long-term development. Sudsanguan Suthisorn (2004:95) defines crime prevention is forecast of channels or chances of crimes committed or happened as well as attempt to take any acts to intercept an y crimes to happen. C. Ray Jeffrey notes that crime control is different from the way to reduce crime. That is crime prevention is the direct crime control containing deployment of measure to reduce channels and chances to wrongdoing whereas reducing crime is the indirect crime control and deploying career training, educating, imprisonment, probation and parole and so on.

Today, the model of crime control is popularly using indirect control. That is, direct crime control will be immediately imposed if crime committed which happens after wrongdoing. It is just face-to-face solving problem only and we cannot know when crimes and culprits will not be recidivism. At the meantime, indirect control is the pre-control before crime will be committed. It is the control for not allowing individual to think of committing crimes. It builds confidence that this method will not allow committing crimes in societies since it is the measure of promptness for routine living for people in societies. When people are prompt in various aspects, they will not think of doing anything against the social norms and will fear punishment they will receive. The indirect approach is another way to eliminate or intercept people to enter criminal ring (Nattaphol Choomvorathayee, 2012).

Sudsanguan Suthisorn (2004:107) proposes a model of crime prevention whereas there are many models but to choose any models, one should understand what are details of committing crime in each type by considering the following factors.

1. Rate of crime committed by chance

2. Ways of attack popularly used by criminals

3. Day, time and month the criminals commit crimes

4. Suspicious personalities

5. Forms of police notification

6. Nature of damages and loss

Knowing all these details we can assume model of crime, prospect victimization and interest of victims about crimes. These help planning strategies to alert prospect victims to take caution and selfcare in the risk-to-crime scene.

Nevertheless, social control model is divided into 2 parts, i.e. formal social control and informal social control. These controls concentrate common people in societies to behave in the direction of their social norms, regarding custom, tradition, culture, values, laws, rules and regulations of social. In the formal social control, if one decline to follow one will be punished by law while the informal social control emphasizes social bond and social members learn their social norms. When they know they can behave themselves accurately, knowing good behavior, bad behavior, proper behavior and improper behavior. If all people follow social norms as being socialized; crime will not be committed and it is the social prevention in its self.

Analyzing social control with the problems of financial crimes, it was found that applying social control to solve the financial crimes might be effective with the public cheating and fraud, for example, public cheating and fraud on illegal fundraising, chin shares and direct sales. Reasons are, illegal fundraising victimized peoples and these victims will not notify the police for claims fearing they are potential wrongdoers because they drive others for joint-investing or they fear to lose benefits for the investment, if the government sector takes action. It delays the government sector to take lawsuit with these crimes. Applying social control by people to prevent and control crimes in order to minimize channels and chances of wrongdoing through public relation and educating people on tactics and model of deceptions. People are encouraged to surveillance misconducts and clue-reporters or news reporters to police. If the measures of social control are driven with tangible compensation for clue-reporters; it promotes social measures to efficiently prevent a type of financial crimes.

CHAPTER VI
CONCLUSIONS AND RECOMMENDATIONS

6.1 Conclusions

Economic Crime is a wrongdoing with the objectives to profit or to gain benefit in economy. It violates the economic and commercial laws drawing impacts to the national economy and security. In particular, the economic crimes in the financial markets either being cheating and fraud or corruption or violence against property or frauds under the financial institution business law committed by directors, managers or any individuals responsible or with interest to the financial institution engagement. Crimes of public cheating and fraud on loan or by criminal code, crime of illegal fundraising through direct sales or direct market and unfair trading stocks under Securities and Exchange Act are all economic crimes which have mega-impacts over the national economy and the national financial system.

Collisions from the financial crimes harm much the economic policy of the government. In some cases, numbers of people are victimized such as crimes of cheating and fraud in the financial institutions, public cheating and fraud and so on, and trouble people at large creating domino effects such as well-being, social conditions, and mental health and so on of the victims. These bring percussion to the economic and social system by overall. Also, there are crimes of unfair trading in the stock markets either about disseminating news for insider trading or speculation; they all directly affect investors and shareholders. If large number of investors is deceive to invest in securities and loss from speculation; it affect images of the national investment and might aggravate to economic crisis.

This study is focused on natures and model of financial crimes, related laws, case study, problems and limitation to seek and collect evidences in each case or financial crimes against the Financial Institution Business Act BE 2551 (2008), the cases of BBC (Bangkok bank of Commerce), First Bangkok City Bank (Pcl) against the Securities and Exchange Act BE 2535 (1992), the case of Song Watcharasriroj,

Picnic Corporation (Pcl), and Roynet (Pcl) and offense of public cheating and fraud against Ordinance of Public Cheating and Fraud on Loans BE2527 (1984), Direct Sales and Direct Marketing Act BE2545 (2002). This includes the case of call centre gangs, Blisher Intergroup co. Ltd., Green Planet 108 Corporation Ltd., in order to analyze approaches to enhance effectiveness in law enforcement and achievements of evidence measures and the enhancement of law enforcement against property under the anti-money laundering law.

The studies and analysis of documents and information of in-depth interviews conducted with 10 experts in trying financial crimes and experts of anti-money laundering laws revealed that problems and limitations in seeking and collecting evidences against financial crimes in Thailand to each case are:

- Cheating and fraud in the financial institutions are met with the problems of discretion on the acts of the executive whether they deserved the charge of cheating and fraud or not since there is the problem of interpreting “fraud” which each office holds different opinion. It leads to practical problems, cooperation and coordination among personnel and offices involved both in the country and in abroad. It delays lawsuits and evidence collection with completion and concise. Moreover, the enforcement of anti-money laundering law is unlikely effective.

- Securities offenses meet problems of proving their guilt of unfair trading under the Securities and Exchange Act BE 2535 (1992), which is strict in proving the evidences. The plaintiff is responsible to prove beyond responsible doubt that the defendant is guilty; then the court will sanction the defendant. At the same time, such offense has complicated and sophisticated techniques and most wrongdoers are experts with experiences of securities trading as well as being the mastermind and possess almost all evidences. To prove guilty in such a case requires proving mainly on intention but most evidences are circumstantial and cannot find witnesses which affect the admissibility and production of evidences during the trial because presenting the circumstantial evidences to testify wrongdoing is likely unacceptable and less weight of admissibility to punish the defendant.

- Te case of public cheating and fraud revealed that most victims fear to regain their principal and kickbacks from joint-investment in chain shares business. They decline to cooperate on data to the police. Besides, they might be charge as

offenders themselves. In the case of business to recruit members, they fear to notify the police fearing that they will be subject to be the alleged of conspiracy while such the case involves countless documents particularly accounting documents which consume time to prove. It delays lawsuit and is late to counter such a crime which remodel all the time. Lawsuits in court with large amount of victims and documents involved; presenting all documents for inquiries consumes time which delay the lawsuit and leave the cases remain in court and might allow evidence losses. Also, there might be interception with justice administration if culprits are the influential persons or personnel from organized crime. There might be intimidations or bargaining the victims to decline to decline to appear as witnesses in court or reverse their statements. Moreover, communication technology today has been so advanced for its development which can speed destroying evidences.

- Offenses of illegal network mobilization revealed that they are complicated crimes and involve heaps of document either the application for membership forms or applications for joint-venture or accounts or membership evidence or other documents related. The evidence collections consume time to classify and to prove them. Moreover, destroying documents is rapid and problematic to handle their property because offenses of illegal network mobilization by direct sales and direct market laws are not the offense against anti-money laundering law in Thailand, which is impossible to enforce this law.

6.2 Recommendations

Results and analyses of data on the financial crimes, law enforcement and problems with laminations to take lawsuit against the offenders incorporation with analyzing data from in-depth interviews; the researcher recommend approaches and measures to enhance effectiveness in enforcing the financial crimes focusing on evidence searches and collections regarding both legal measures and social measures as follows:

1. The Conspiracy Theory measures should be adopted for the enforcement against the financial crimes adhering to the principles of conspiracy. That is two individuals agreeing upon any actions deserve guilty in order to intercept committing

offense as being agreed upon to actually happen. It is to consider their ill-intention of the conspirators only without considering their agreement will be the action close to the result of preparation stage or attempt to commit crime or any. Reason is the intent of the law on conspiracy is to intercept any crimes committed. It is “to prohibit individuals agree to offend” which is enough to charge conspiracy as crime. The main objective of the criminal law aims to provide social members the protection of life and property particularly crimes committed by the organized crime and it is consistent with the United Nations Convention against Transnational Organized Crime, 2000, No. 5 Paragraph 1(A) (1) which at present Thailand has adopted the principles of conspiracy enacted in many laws. They are the Counter Offenders of Narcotics Act BE 2534 (1991), Article 8; the State Bidding Act BE 2542 (1999), Article 4; Anti-Money Laundering Act BE 2542 (1999) Article 9, and Counter Human Trafficking Act BE 2551 (2008), Article 9.

The researcher finds that the conspiracy theory measures is appropriate to be applied against the economic crimes which is complex, ingenious, concealed techniques and many individual parties involved which are troublesome to trace to the mastermind. To apply the principles of the criminal law on the mastermind, the employed persons, and the backers in the case of economic crime is hard because of the evidence searches. In some cases, the law enacts the specific qualifications of the offenders which grants accomplice serving softer punishment or disproportionate to their crimes. For example, the negligence to duty by the criminal code, the accomplice as a common people and the state authority cannot be punished as the mastermind as the state authority but just as backers. The conspiracy measure can help solve the problem of enforcement against the financial crimes on this point.

However, the conspiracy measures found in many Acts in Thailand as above are the enactment for specific issues which are insufficient to completely counter the financial crimes in every form of offenses. Due to the laws involve directly with financial crimes such as the Financial Institution Business Act BE 2551 (2008); the Securities and Exchange Act BE 2535 (1992); the Ordinance of Public Cheating and Fraud on Loans BE2527 (1984); and the Direct Sales and Direct Marketing Act BE2545 (2002); there are no enactments connected with the conspiracy measures to be applied with the crimes in these Acts. It is commented that the way to enhance

effectiveness of enforcement against the financial crimes in Thailand is to adopt the concept of the conspiracy measures to be enforced against these types of crime. They will be the tools for the enforcers enabling to intercept conspiracy and it is the preventive measure not to think to commit more crimes. It also helps alleviate problems in case the government sector disables to find evidences enough to punish offenders in guilty of major offenses. The court might consider punishment defendants on guilty of conspiracy as enacted in laws on an offense base because the major offense fail to provide sufficient evidences. By proceedings, the plaintiff must present evidences to prove guilty beyond doubt against the defendants else benefits of doubt are granted in favorable to defendants.

Moreover, the conspiracy measures are worth against crimes with complexity, indigenousness, technical concealment and many individual parties involved. For example, crimes committed by the organized crimes are troublesome to trace to the mastermind. To adapt the the mastermind, the employed persons, and the backers under Articles 83, 84, and 86 is hard because of the evidence searches are unlikely. Or in the case of the law enacts the specific qualifications of the offenders which grants accomplice serving softer punishment or disproportionate to their crimes. For example, the negligence to duty by the criminal code, the accomplice as a common people and the state authority cannot be punished as the mastermind as the state authority but just as backers. The conspiracy measure can then help prevent the financial crimes to a certain level.

2. With the advancement of sciences and technology, the financial crimes are more complex and hard to pursue arrestment in the justice administration, particularly to prove guilt in the proceedings. They must be based on evidences but the authority in justice administration cannot find them because current crimes are organized crime with complex organization, concealing evidences and mechanism to intercept connection thoroughly. Traces to find evidences to prove their guilt is to find evidences from the guilty. The researcher finds that measures internationally accepted should be adopted and adjusted to find evidences from the defendants. That is the plea bargaining where the government agents or the prosecutors negotiate and agree with the defendants if the latter agree to provide data to the justice administration which

will enable to sue the conspirators and the defendant will meet a softer charge or less punishment.

The principles of plea bargaining is generally accepted but the countries would enact the due process to endorse it. In Thailand, no laws have been evidently enacted to endorse it for the financial crimes. It there is an evident one, it will include the endorsement of the evidence gained from the guilty pleas. The researcher finds that in the financial crimes regardless being the cheating and fraud in the financial institutions, unfair stock trading, public cheating and fraud or loan being public cheating and fraud; they are all the special cases under the authority of DSI subject to the Special Investigation Act BE 2547(2004). So, if there is enactment of plea bargaining under the DSI, which is empowering the DSI personnel to conduct plea bargaining with the arrested under law; it would enable to adopt the plea bargaining measures be so effectively enforced against the financial crimes. It results fuller counter the financial crimes. Had amendment been evident, it allowed evidences collected from plea bargaining between the DSI personnel and the arrested with legal endorsement and by the voluntary willingness of the arrested. They are then the legitimate evidences admissible to prove guilt or to punish defendant counted that the collected evidences are not illegitimate.

Adopting the plea bargaining thus to be enforced against the financial crimes would be positive to the lawsuit in many ways. For examples, the plea bargaining can speedily finalize adjudication of the criminal cases. It reduces burdens of justice administration and beneficial to victims and witnesses who gain some benefits from the state. It enables the state to find evidences from the alleged or the defendant for the benefit of the lawsuit and creates certainty to the proceedings, the justice administration and social.

3. With the measures to enhance effectiveness against handling property under the anti-money laundering law, it is proposed to amend the offense base under Article 3 of the Anti-Money Laundering Act BE2542 (AMLA, 1999), i.e.

(1). In the offense of cheating and fraud in the financial institutions, there should be amendment on the Offense Base 4 to cover any acts of individual which includes the acts of the directors, the managers and any responsible individuals or the stakeholders in running the financial institutions and other acts of

other individuals involved conspire in misappropriation or fraud or violent act against property or cheating and fraud under the Criminal Code. This will enhance effectiveness to address the property of cheating and fraud in the financial institutions.

(2). In the offense of illegal network mobilization under the direct sales and direct market; there should be amendment of Offense Base 3 to cover the offense of illegal network mobilization under direct sales and direct market, too because such offense has circumstantial connection with the Ordinance of Public Cheating and Fraud on Loans BE2527 (1984), and deserves as the perfect element offense of public cheating and fraud under the Criminal Code, Article 341 supplement with Article 343.

On account of the current financial crimes are more transnational, there are plots of organized crimes committed in more than one state and there is illegal property transferred or moved to foreign countries which troubles lawsuit and property pursuance. Since there are limitations in law enforcement on territory, it is very necessary to have more international cooperation and assistance of criminal affairs through amendments. For examples, the International Cooperation on Criminal Act BE2535 (1992), there is at present the issue of property which might be confiscated or forfeited under the Thai laws and does not cover the confiscation or forfeit of their yields of the reproduced or deformed property. This includes the amendments of the principles of admittance or enforcement or judgment in foreign countries regarding seizure, confiscation and forfeit of properties. This is to end major limitations disabling Thailand to cooperate with foreign countries. If not, Thailand cannot request cooperation from foreign countries on the ground of reciprocity which is the international principles to engage in mutual assistance among countries on criminal matters.

4. The witness protection measures in the criminal case should be adopted under the Witness Protection in Criminal Case BE 2546 (2003) to enhance effectiveness in conducting evidence measures against the financial crimes especially the special measure in protecting witnesses. It counts to the measures of the absolute law on protecting witnesses and their intimate to be safeguarded from intimidation and threats upon being the witnesses in the criminal case where facts could be appeared. Individual witness is the most important evidence to weigh testimony in the criminal

case and is important to prove guilty. Some types of evidence have limitations to prove and justification such as material evidences or documental evidences but witnesses particularly the eye-witnesses who see the crime scene and facts are deemed closest to the offense. So, they are much weighed to provide facts to prove guilty of the case. However, if adopting witness protection measures to be applied with the financial crimes, it needs amendment in the Witness Protection in Criminal Case BE 2546 (2003), Article 8 by adding types of financial crime to be the case accessible to enter witness protection to meet the conditions of special measure.

5. In the financial crimes, the e-evidences are important to prove guilty of the defendant particularly the offense of the financial institutions and the offense of securities which the law does not identify its offense base. It must thus adhere to evidence proof beyond doubt. Therefore, the court should adjust the admissibility of the e-evidences by weighing the admissibility as the origin to have weight enough and enable the admissibility to punish offenders. Though Thailand has enacted law to endorse prohibiting the court rejects admit e-data as evidence in the lawsuit in both civil cases and criminal cases or any other cases just being the e-data under the Electronics Business Act BE 2544 (2001), Article 11. But the proposal and the inquiries are yet to determine clearer methods and by practice, the court pays no attention and unlikely weighs such type of evidences.

6. The study of the financial crime reveals that a critical cause of the offense is the executives lack good governance. It is seen if the financial institutions acquire effective administration system and engagements with good monitoring measures through the function of their board which set direction and manage them. It would invigorate the national economic and financial systems with sustainable development. The financial institutions should engage by adhering to good governance and well monitoring themselves as in the announcement of BOT No. 13/2552 (2009) on Strict Good Governance in Financial Institution and emphasize encouraging investors or stakeholders know how to protect their own rights by educating investors or stakeholders while supporting shareholders to see the importance of shareholders meeting. Applying rights of shareholder meeting will not only be the indispensable tool to directly protect their benefits, but also, in other way, monitoring the listed companies in the stock markets.

7. The concept of social control should be adopted and adapted to be applied in preventing financial crimes particularly with the case of public cheating and fraud, e.g. public cheating and fraud though illegal fundraising or chain shares, and public cheating and fraud through direct sales and so on. Due to offense of illegal fund, most victims will decline to notify police fearing to fall into the offenders because they persuade others to joint investment or fearing their benefits will not be regained if the government sector takes action. This delays the government to take lawsuit. Applying social control given people to protect and control crimes is to minimize channels or chances of offend. It needs public relation and educating people on tactics and patterns of deception and encourages people to monitor offense behaviors while notifying clues or causes to the state authorities. It is seen if the measures could be driven along with tangible compensation for informants; it would further promote social measure to effectively prevent this type of crime.

This study reveals the meaning and models of economic crimes, economic criminals and factors leading to commit economic crimes, problems and limitations to find and to collect evidence of the financial crimes of cheating and fraud in the financial institutions, securities, public cheating and fraud and public and fraud on loan, crimes of direct sales and action taken against property in criminal cases under the Anti-money Laundering Act. Recommendations to enhance effectiveness in enforcing evidence measures against the financial crimes in Thailand are evidence measures, measures of property by anti-money laundering law, and social measures. If they were adapted appropriately and relevantly with domestic laws; they would enhance effectiveness in enforcing laws against the financial crimes in Thailand.

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APPENDIX

COA.No.2012/185.2505

Documentary Proof of The Committee for Research Ethics (Social Sciences)

Title of Project: The Enhancement in Enforcing Financial Crime: A Case Study of Witness and Evidence Measure
(Thesis for Ph.D.)

Principal Investigator: Mr.Suppakorn Poonyarith

Name of Institution: Faculty of Social Sciences and Humanities, Mahidol University

Approval includes:
1) MU-SSIRB Submission form version received date 23 May 2012
2) Participant Information sheet version date 23 May 2012
3) Informed Consent form version date 23 May 2012
4) In-depth Interview Guideline version received date 30 March 2012

The Committee for Research Ethics (Social Sciences) is in full compliance with International Guidelines of Human Research Protection such as Declaration of Helsinki, The Belmont Report, CIOMS Guidelines and the International Conference on Harmonization in Good Clinical Practice (ICH-GCP)

Date of Approval: 25 May 2012

Date of Expiration: 24 May 2013

Signature of Chairman:.....
(Emeritus Professor Santhat Sermsri)

Signature of Head of the Institute:.....
(Assoc. Prof. Dr.Wariya Chinwanno)
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