

PROBLEMS AND OBSTACLES OF INTERNATIONAL COOPERATION IN CASES INVOLVING NEW FORMS OF CORRUPTION

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I. INTRODUCTION

Currently, the problem of corruption is regarded as a major problem that occurs in countries around the world, whether it is developed countries or underdeveloped countries. Corruption has become one of the most important problems in many countries. By this problem, there is no sign that it will go away. It's also getting more intense and complicated. Even though many countries have stepped into modernization, there is a modern public administration system. There are campaigns from state or independent organizations such as the United Nations, World Bank and the people's sector that all agree that corruption is a problem that leads to poverty and is a real barrier to development. The case becomes more complex because it touches upon the components of international character or involves the matters of a state's jurisdiction. Nowadays, a new form of corruption is a crime that has been committed in one country and the criminal has transferred money from the proceeds of the crime into overseas bank accounts, and there are numerous practical and political factors that can impede cooperation. Also, if the investigation or prosecution is carried out in one country but the essential evidence or witnesses exist in another country, how we can obtain such evidence or statements of such witnesses? There still exist many problems, the difficulties of which are beyond the capacity of a single state to deal with, especially under the current situation. Every state must internationally cooperate with each other in prevention and suppression. Assistance and coordination between states to combat the crime can take many forms and is collectively known as "international cooperation." In this report, I will address the facts of a corruption case based on a true story, mutual legal assistance in criminal matters, problems and obstacles of international cooperation along with solutions.

II. FORMS OF CORRUPTION IN THAILAND

For Thailand, it is widely known that the problem of corruption is one of the top problems that greatly affects the development of the country. Corruption in Thailand can be roughly divided into three eras as follows:

During the first era (before 1980), the form of corruption was an ancient form of budget fraud, which was to approve budgets for personal gain and opening up opportunities for businesses to become more involved in politics.

During the second era (between 1981-1990), the beginning of the era was not as corrupt as other eras. The reason is probably due to the fact that the economy was not doing well. There was not much money injected from the government to invest in large projects. However, after the economic expansion began and political parties became more active, many

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large projects were invested in by the government. There was so much corruption that the government of that era was called the "Buffet Cabinet".

During the third era (between 1991-2022), the form of corruption in this period was highly concentrated on procurement. The abuse of power by politicians has led to the transition from "project corruption" to "systematic corruption" as well as severe "political corruption". The structural problem of this era is strong cooperation between politicians and bureaucrats with businessmen behind them. Although corruption has decreased somewhat, it is ready to rise in the next period owing to the fact that the political structure is heavily dependent on finances. It has given rise to the idea in society that money can buy everything, and money can deal with the crackdown by anti-corruption agencies.¹

Corruption in the aforementioned forms, money or assets mostly obtained from corruption will remain in Thailand. Nowadays, new forms of corruption, especially receiving large bribes, are often transferred to overseas bank accounts or traded in real estate in the names of other people abroad.

III. MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Thailand adopted the Act on Mutual Assistance in Criminal Matters B.E. 2535 in 1992. This Act is the main legislation to be applied to all processes of providing and seeking assistance upon receiving requests from foreign states or Thai agencies; however, if it is inconsistent with the terms or provisions used by the treaties concluded between Thailand and such foreign countries, the treaty shall prevail. Assistance in Thailand may be granted even if no treaty exists between Thailand and the requesting State, provided that such state commits to assist Thailand in a reciprocal manner when requested.

A. Agencies and Organizations Responsible for These Matters

In ordinary dealing, the request for assistance shall be submitted through diplomatic channels. However, if a mutual assistance treaty between Thailand and the requesting State is in force, commitments of reciprocity and submission through diplomatic channels will be waived. The request for assistance in such a case as well as other communications shall be made directly to the Attorney General, who is the Central Authority of mutual legal assistance as prescribed by the law.

B. Conditions and Requirements to Request MLA

1. Forms of Assistance

In Thailand, forms of assistance are basically understood to include certain forms of the processes of criminal case handling, as well as other indefinite conduct under the scope of the stipulated indefinite description. According to section 4 of the Act on Mutual Assistance in Criminal Matters B.E. 2535, "assistance" means assistance regarding investigation, inquiry, prosecution, forfeiture of property, and other proceedings relating to criminal matters. Categorization of the forms of assistance can be further enlightened by the provision of Section 12 of the same Act to cover the following:

- (a) Taking statements of persons, providing documents, articles and evidence out of Court, serving documents, searches, seizure of documents or articles, locating persons;

¹ Pasuk Phongpaichit, Sangsit Piriyanangsan, Nualnoi Treerat, Research on Corruption and Thai Democracy Outlaw Economy and Public Policy in the Thai Bureaucracy, Center for the Study of Political Economy, Faculty of Economics, Chulalongkorn University.

- (b) Taking the testimony of persons and witnesses or adducing documents and evidence in court, and requesting forfeiture or seizure of property;
- (c) Transferring persons in custody for testimonial purposes;
- (d) Initiating criminal proceedings.

It is quite clear from the above provision that the term “other proceeding”, stipulated in Section 4, is capable of accompanying other forms of assistance in the treaties with other countries.

2. Authorities and Officials

In Thailand, according to the Act on Mutual Assistance in Criminal Matters B.E. 2535 as well as treaties concluded with various countries, the “Central Authority” is the “Attorney General or, the person designated by him.” The Central Authority is the official who takes the most predominant role in requesting assistance. Apart from the general function as the coordinator to receive the request for assistance from the requesting State and transmitting it to the Competent Authorities concerned, as well as to receive the request seeking assistance presented by the agency of Thai Government and deliver it to the requested State, another equal or more significant task entrusted to the Central Authority is to determine the legality and eligibility of all requests and processes. In this context the Central Authority is also authorized to interpret the rule or announcement for the implementation of the whole process.

Determination of the Central Authority in all matters regarding the grading and seeking of assistance will be final except in two situations: firstly, if it is overruled by the Prime Minister, and secondly, if a request relates to the issues of national sovereignty or security, crucial public interest, international relations, political offences or military offences, and where the Advisory Board has a dissenting view and the Prime Minister agrees with such dissenting view.²

3. Competent Authority

The Competent Authority includes those officials who actually carry out the function conforming to the request for assistance as notified by the Central Authority. In Thailand, the Competent Authority includes the following:

- (1) The Commissioner General of the Royal Thai Police, the Director General of the Department of Special Investigation, the Secretary General of the Public Sector Anti-Corruption Commission or the Secretary General of the National Anti-Corruption Commission: to deal with the request for taking statements of persons, providing documents or items of evidence which is an out of Court procedure, serving documents, locating persons and freezing or seizure of documents or articles for the purpose of gathering of evidence;
- (2) Public Prosecutor: to deal with the request for questioning of witnesses, documentary evidence or physical evidence which is conducted in court; freezing or seizure of property for the purpose of forfeiture of property or demand for payment in lieu of forfeiture of property against any person; and a request for freezing, seizure or forfeiture of property or demand for payment in lieu of forfeiture of property as per a judgment or an order of courts in a foreign state;

² Poonpol Ngearndee, “MUTUAL LEGAL ASSISTANCE AND EXTRADITION IN THAILAND” 148.

- (3) The Director General of the Correction Department: to deal with the request for transfer or receipt of transfer of a person in custody to assist proceedings at the stage concerning the authorities or at the trial stage;
- (4) Public Prosecutor, the Commissioner General of the Royal Thai Police, the Director General of the Department of Special Investigation: to deal with the request for initiating criminal proceedings.³

4. Double Criminality

The principle of double criminality requires that the conduct underlying the assistance requested must also be a criminal offence punishable under the law of the requested State, otherwise such request must be refused. This position in Thailand seems to be a compromise between the concept of protecting the innocent's rights and liberty by the principle of double criminality on one hand, and the spirit of cooperation between and among states to support and control crime on the other hand.

While the Act on MLA places the principle of "Double Criminality as a prerequisite for granting assistance, there are many treaties concluded with foreign states such as the United States, Canada, the United Kingdom, of which the principle of double criminality is not required." On the contrary, all said treaties impose obligations on each Contracting Party to provide assistance to the other Contracting Party even if the underlying conduct so requested does not constitute a criminal offence in the requested State.

5. Refusal of Requests

In Thailand the grounds for refusal are stipulated both in the Act on MLA as well as various treaties concluded with foreign states. Article 9 of the Act on MLA stipulates that assistance to a foreign state shall be subject to the following conditions:

- (1) Assistance may be provided even if no mutual assistance treaty exists between Thailand and the requesting State, provided that such State commits to assist Thailand in a similar manner when requested;
- (2) The act on which the request is based must be an offence punishable under Thai laws unless Thailand and the requesting State have a mutual assistance treaty between them, and the treaty specifies otherwise, provided, however, that assistance must be conformed to the provisions of the Act;
- (3) A request may be refused if it affects national sovereignty or security, or other crucial public interest of Thailand, or is related to a political offence;
- (4) Assistance shall not be related to a military offence. As regards mutual legal assistance treaties, the clause related to the refusal of a request is usually prescribed similarly, for example, the requested State may refuse to execute a request to the extent that
 - (a) the request would prejudice the sovereignty, security, or other essential public interest to the requested State: or
 - (b) the request is related to a political offence.

³ The Act on Mutual Assistance in Criminal Matters B.E. 2535 section12.

IV. CASE STUDY

At the Federal Court in Los Angeles, on 11 September 2009, Mr. A and Mrs. B, American entrepreneurs, were unanimously found guilty of violation of the Foreign Corrupt Practices Act, money-laundering laws and taxation law of the United States in relation to bribe payments to the Governor of Tourism Authority of Thailand (TAT).

The National Anti-Corruption Commission of Thailand (NACC) investigated an allegation against Mrs. C, former Governor of TAT, for receiving bribes in exchange for the TAT contracts awarded to Mr. A and Mrs. B to run the Bangkok International Film Festival (BKKIFF) and other projects from 2003 to 2007. The investigation found that Mrs. C committed the acts of corruption in the course of her duties and abused her position as she helped Mr. A and Mrs. B to enter into several contracts with TAT including the organizing of the Bangkok International Film Festival (BKKIFF) during the period from 2003 to 2007. In return for TAT contracts and sub-contracts, Mr. A had paid bribes, both directly and indirectly, to Ms. D, the daughter of Mrs. C, and accomplices. There is evidence that 59 payments were made in total of USD 1,822,494.

Mr. A and Mrs. B operated eight companies – all of which had the same office address – and entered into contracts with the Tourism Authority of Thailand (TAT) and gave assets to Mrs. C for the performance of duties or exercise of powers in the performance of such duties, in connection with 11 projects in total. Ms. D, daughter of Mrs. C and Mr. E, who had been acquainted with Mrs. C before becoming the holder of assets improperly acquired in lieu of Mrs. C. Regarding such payment of remuneration from companies owned by Mr. A and Mrs. B to Mrs. C, there were three patterns thereof, i.e. 1) wire transfer; 2) cheques payable to cash; and 3) cashier's cheques. Money had been transferred into the overseas bank accounts of Ms. D and Mr. E. According to the evidence, it appeared that Ms. D, daughter of Mrs. C, was the recipient and occupier of such assets improperly acquired in lieu of Mrs. C. Details thereof were as per the bank accounts, as follows:

- (1) money in a deposit account opened with HSBC Bank PLC, Coventry Branch, United Kingdom; Account Name: Ms. D; Amount: USD 463,084;
- (2) money in a deposit account opened with HSBC International Limited, Isle of Jersey Branch; Account Name: Ms. D; Amount: USD 366,434;
- (3) money in a deposit account opened with Standard Chartered Bank in Singapore; Account Name: Ms. D; Amount: USD 327,300;
- (4) money in a deposit account opened with Citibank, Singapore; Account Name: Ms. D; Amount: USD 572,456.79

The NACC concluded that such acts of Mrs. C constitute criminal offences, namely:

1. An official unlawfully soliciting, accepting or promising to accept any property or benefit in exchange for the performance of, or refraining from, any official duty under

section 6 of the Act on offence Committed by Officials of State Organizations or Agencies, B.E. 2502 (1959)⁴;

2. An official unlawfully performing or refraining to perform the official duty so as to impair another, or dishonestly performing or refraining from performing the official duty under section 11 of the Act on Offences Committed by Officials of State Organizations or Agencies, B.E. 2502 (1959)⁵;
3. An official committing any act with aims to create unfair competition for pricing, to encourage any specific proposer or bidder with privilege or advantage for establishment of a contract with relevant government agencies under section 12 of the Act on Offences on Bidding towards the Government Agencies, B.E. 2542.⁶

In addition, it reached the conclusion that Ms. D's conduct is considered as supporting the first two offences.

On 25 August 2015, having considered the inquiry report submitted by the NACC, the Attorney General consequently prosecuted Mrs. C and Ms. D, the first and second defendants, respectively, for the above-mentioned offences to the Central Criminal Court for Corruption and Misconduct Cases in a criminal corruption case.

On 23 March 2017, in addition to the above-mentioned criminal corruption case, the NACC reached a resolution, that Mrs. C, the Alleged Person, while assuming the office of TAT Governor, had unusual wealth⁷ and received assets which were unreasonably acquired resulting from the performance of duties or exercise of powers in the performance of duties relating to the purchasing and procurement of the private enterprises to become a party to contracts with the Tourism Authority of Thailand (TAT) and Thailand Privilege Card Co., Ltd., in connection with the Bangkok International Film Festival (BKKIFF) and other projects during 2003-2007, In total, the 11 projects amounted to 1,822,494 USD (approximately 65,609,784 Baht), which was the amount of money that Mrs. C, the Alleged Person, had received from Mr. A and Mrs. B directly or indirectly, a total of 59 times. According to the evidence, it appeared that Ms. D, the daughter of Mrs. C, received and occupied assets improperly acquired in lieu of Mrs. C. The matter was subsequently submitted to the Attorney-General.

⁴ Section 6: "Any person who is an official and, either for his own sake or for the sake of a third person, unlawfully, solicits, accepts or promises to accept in any property or benefit in exchange for the performance of or refrain from any act in his official capacity shall, whether such act is in breach of his official duty, be liable to imprisonment from five years to twenty years or for life and a fine from two thousand to forty thousand baht, or to death."

⁵ Section 11: "Any person who is an official and unlawfully performs or refrains from his official duty so as to impair another, or dishonestly performs or refrains from his official duty, shall be liable to imprisonment from one year to ten years, or a fine from two thousand baht to twenty thousand baht or to both."

⁶ Section 12: "Any official of a State agency who commits an offence under this Act, or commits any act with the purpose of preventing fair competition by favoring any bidder as the entitled to enter into a contract with a State agency, shall have committed the offence misfeasance in office and shall be liable to imprisonment for a term from five years to twenty years or Life imprisonment and a fine from one hundred thousand baht to four hundred thousand baht."

⁷ The Organic Act on Counter Corruption B.E. 2542 (1999), Section 4: "Unusual wealth" means having an unusually large quantity of assets, having an unusual increase of assets, having an unusual decrease of liabilities or having illegitimate acquisition of assets in a consequence of the performance of duties or the exercise of power in office or in the course of duty."

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On 29 March 2017, the Central Criminal Court for Corruption and Misconduct cases ruled that Mrs. C contravened section 6 and 11 of the Act on Offences Committed by Official of State Organizations or Agencies, B.E. 2502 (1959), and section 12 of the Act on the Offences Relating to the Submission of Bids to Government Agencies, B.E. 2542 (1999), whereas, Ms. D, as a supporter, contravened sections 6 and 11 of the Act on Offences Committed by Officials of State Organizations or Agencies, B.E. 2502 (1959) and section 86 of the Criminal Code. Hence, the Court sentenced Mrs. C to 66 years' imprisonment and Ms. D to 44 years' imprisonment, respectively, as well as ordered the forfeiture of USD 1,822,494 in ill-gotten gains.

On 19 July 2017, the Attorney-General filed a petition to the Central Criminal Court for Corruption and Misconduct Cases to forfeit the amount of USD 1,822,494 in unusual wealth to the Thai State involving a civil claim in connection with an offence.

In the criminal corruption case, the defendants submitted their appeals on 17 October 2017. On 8 February 2018, in the criminal corruption case, the Thai Central Authority submitted a request for mutual legal assistance in criminal matters, requesting the Central Authorities of Singapore, the United Kingdom, Ireland, Jersey and Switzerland to assist in the restraint of assets kept in banks in Singapore, the United Kingdom, Ireland, Jersey and Switzerland.

The NACC, the Office of the Attorney-General of Thailand, and the United States Department of Justice, specifically the Office of International Affairs, Fraud Section, and the Money Laundering and Asset Recovery Section of the Criminal Division, have been coordinating closely on related proceedings in the United States and Thailand since 2009, resulting in successful criminal convictions of the individuals involved in both countries. Thailand is of the understanding that the funds that we are requesting the authorities in Singapore, the United Kingdom, Ireland, Jersey and Switzerland to restrain are the same funds currently being restrained based on a prior US MLA request.

It should also be noted that the above-mentioned funds are among other direct proceeds of crime and must be restrained for further confiscation. Moreover, apart from these proceeds of crime, there are insufficient property and assets of the defendants elsewhere to satisfy the Court's forfeiture order.

On 8 May 2019, the Appeal Court adjudicated that Mrs. C contravened section 6 of the Act on Offences Committed by Officials of State Organizations or Agencies, B.E. 2502 (1959), and section 12 of the Act on Offences Relating to the Submission of Bids to Government Agencies, B.E. 2542 (1999). Whereas, Ms. D, as a supporter, contravened section 6 of the Act on the Offences Committed by Officials of State Organizations or Agencies, B.E. 2502 (1959) and section 86 of the Criminal Code. The Court sentenced Mrs. C to 66 years' imprisonment but decided to lower Ms. D's jail term from 44 years to 40 years. The Court of Appeal, however, decided to overturn the lower court's order to forfeit USD 1,822,494 on procedural grounds.

On 20 August 2020, the Supreme Court rendered a final judgment in line with the decision of the Appeal Court by affirming the jail sentences and dismissing the Court of First Instance's order to forfeit USD 1,822,494 of ill-gotten gains on procedural grounds. The case is final.⁸

⁸ Judgment of the Central Criminal Court for Corruption and Misconduct Cases (Black Case No.Or.Tor.46/2559, Red Case No.Or.Tor.17/2560).

On 8 January 2021, the Thai Central Authority submitted a Request for Mutual Assistance in Criminal Matters based on the unusual wealth proceeding, requesting the Singapore to restrain the relevant accounts in Singapore pending the outcome of such proceeding in a Thai court.

On 29 January 2021, Singapore's Central Authority informed the Thai Central Authority that pursuant to the request for Mutual Assistance in Criminal Matter restraint of assets (dated 8 January 2021) requesting the Central Authority of the Republic of Singapore to freeze assets in the unusual wealth case, the Singapore Central Authority could not render assistance on the basis of the unusual wealth proceeding as the dual criminality requirement is not met.

Therefore, on 18 June 2021, the Thai Central Authority submitted a Request for Mutual Assistance in Criminal Matters based on money-laundering proceeding, requesting the Singapore authority to restrain dealing in property or freezing of property derived from the commission of an offence and providing information and documents in the money-laundering case of Mrs. C and Miss D.

On 31 August 2021, a Public Prosecutor filed a complaint requesting the Civil Court to order that the assets connected with the commission of the offence of Mrs. C and associates, i.e. a deposit in a bank account in an amount of USD 500,000, plus accrued interest, be devolved on the state under Section 51 of the Anti-Money Laundering Act B.E. 2542 (1999).

On 29 October 2021, officers from the United States Department of Justice, the Office of the Attorney General of Thailand, the Anti-Money Laundering Office of Thailand and the National Anti-Corruption Commission of Thailand attended an online meeting and came to the following conclusions:

1. The United States Central Authority explained that an offence committed by the defendant before 2006 may be partially terminated, not all money can be forfeited, but only a small part of the money can be forfeited which the law of the United States allows for negotiations by allowing the accused to transfer the money back to avoid prosecution, but Thai law has no law to do so.
2. Requesting the distribution of money obtained from the forfeiture of Mrs. C and Miss D in various countries, the United States Central Authority explained that the proceedings in Thailand and the United States are separate, and separate proceedings may result in the inability to divide the confiscated property.
3. Global settlement means agreement to settle all cases involving Mrs. C and Miss D's assets located both in Thailand and abroad. In terms of the United States, that means a civil forfeiture case and in terms of Thailand, it means an unusual wealth case and civil confiscation cases for money-laundering.
4. The global settlement agreement will have three parties: 1. The United States Department of Justice. 2. An authorized agency of Thailand. 3. Mrs. C and Miss D.
5. In the event that the parties agree to enter into a global settlement agreement, Mrs. C and Miss D can inform the bank to transfer the money back to Thailand directly without the United States forfeiture judgment as agreed in the global settlement agreement. But

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if there is no global settlement agreement, the United States may continue civil forfeiture proceedings. Once the verdict has been given to forfeit the property and assets, the money will be returned to the United States, and then other competent officials will consider returning the money to or sharing it with Thailand.

The United States Department of Justice has asked Thai authorities to provide information on which agency has the power to withdraw lawsuits against unusual wealth cases and civil confiscation cases for money-laundering. In addition, the United States has asked Thai authorities to estimate the value of the money they want to receive back from Mrs. C and Miss D, which may be a value range, so that the United States can compare it with the proposal of Mrs. C and Miss D.

Finally, the Thai Central Authority informed the United States Department of Justice that the domestic laws of Thailand do not allow Thai authorities to enter into a global settlement agreement.

On 17 January 2022, the Civil Court ordered that the money in an amount of USD 500,000 in UOB Bullion & Futures Ltd. account, account No....., account name (previously known as account No....., account name Miss D and account No....., account name.....) in the Republic of Singapore of Miss D, plus accrued interest, listed in document No... of the assets listed submitted to the public prosecutor to file a complaint to the court requesting that the assets be devolved on the state in accordance with Section 51 Paragraph One of the Anti-Money Laundering Act B.E. 2542 (1999).⁹

On 16 March 2022, the Thai Central Authority submitted a Request for Mutual Assistance in a Criminal Matter Informing of Supreme Court's Judgement and restraint of assets based on the unusual wealth proceeding, requesting the authorities of the United Kingdom, Ireland and Jersey to restrain the assets kept in banks in their respective jurisdictions, pending the outcome of such proceeding in Thai court.

On 25 April 2022, the Central Criminal Court for Corruption and Misconduct Cases adjudicated that (1) the money in a deposit account opened with HSBC Bank PLC, Coventry Branch, United Kingdom; Account Name: Ms. D; Amount: USD 463,084; (2) Money in a deposit account opened with HSBC International Limited, Isle of Jersey Branch; Account Name: Ms. D; Amount: USD 366,434; (3) Money in a deposit account opened with Standard Chartered Bank in Singapore; Account Name: Ms. D; Amount: USD 327,300; and (4) Money in a deposit account opened with Citibank, Singapore; Account Name: Ms. D; Amount: USD 572,456.79 and other assets of the alleged Person – in total, USD 1,822,494 (equivalent to approximately 65,609,784 Baht) – together with accrued interest, shall be vested in the State. If no legal execution could be made against the whole or part of such assets of the Alleged Person, then, it shall be made against other assets of the Alleged Person but not exceeding the value of such assets. In case the Alleged Person shall settle payment thereof in Thai Baht or Thai Baht shall be applicable to other assets of the Alleged Person, it shall be calculated with the average rate thereof of a commercial bank at the place and time of spending of money. If there was no exchange rate thereof on such date, the last date that such exchange rate was applied before the date of spending of money shall be considered. Other applicants shall be dismissed.¹⁰

⁹ Judgment of the Civil Court (Black Case No.For.120/2564, Red Case No.For.92/2564)

¹⁰ Judgment of the Central Criminal Court for Corruption and Misconduct Cases (Black Case No.Or.Ror.3/2560, Red Case No.Or.Ror.1/2560)

Although the account in Ireland was not specifically mentioned in the Unusual Wealth Judgment dated 25 April 2022 (because it did not directly receive the bribe payments from Mr. A and Mrs. B), it appears from the investigation, as explained above, that, after the bribe money was transferred from the Mr. A and Mrs. B to Ms. D in the HSBC Coventry UK Account, Ms. D subsequently transferred an amount of GBP 200,000 from the HSBC Coventry UK account to HSBC Life (Europe) in Ireland held in the name of Ms. D. (Currently, the funds, in the approximate sum of €250,000 are held in a bank account under the control of the Criminal Assets Bureau Receiver).

Since Ms. D was convicted by the Thai Supreme Court in the criminal corruption case as a supporter of the crimes committed by Mrs. C and the Central Criminal Court for Corruption and Misconduct Cases in the unusual wealth case has also adjudicated that the assets in the amount of USD 1,822,494 were improperly acquired and received and controlled by Ms. D in lieu of the Alleged Person (Mrs. C), it is, therefore, believed that the funds in the above-mentioned account in Ireland are also illegitimately acquired and held by Ms. D on behalf of Mrs. C.

In this connection, the funds in Ireland are deemed to be the illegal assets involved with the bribery scheme committed by Mr. A and Mrs. B and Mrs. C and Ms. D and are also considered to be "other assets" of the Alleged Person (Mrs. C) in the unusual wealth case, which could be executed according to the judgment in the unusual wealth case dated 25 April 2022. Therefore, such assets shall be vested in the Thai State.

On 12 July 2022, the Thai Central Authority submitted an MLA request to the authorities of the United Kingdom, Ireland and Jersey, informing them of the judgment and confiscation order in the unusual wealth case against Mrs. C, requesting those authorities to confiscate assets and return them to Thailand in order to fulfil the judgment.

The unusual wealth case is not yet final because the attorney general has appealed the judgment of the Court of First Instance on the grounds that the court has not ordered the forfeiture of interest according to the prosecutor's request.

V. PROBLEMS OF AND OBSTACLES TO INTERNATIONAL COOPERATION

After the Attorney General, the Central Authority of Thailand, submitted the request to the Central Authorities of Singapore, the United Kingdom, Ireland, Jersey and Switzerland to assist in restraining of dealings in property or the freezing of property derived from the commission of an offence that may be recovered, forfeited or confiscated, there have been problems and obstacles related to international cooperation. For easy understanding, in this report, I would like to address these problems and obstacles separately by country, as follows:

A. Singapore

On 29 January 2021, Singapore's Central Authority informed the Thai Central Authority of its decision, as follows:

1. Pursuant to the request for Mutual Assistance in Criminal Matters (dated 8 January 2021) requesting the Central Authority of the Republic of Singapore to freeze assets in the unusual wealth case, the Singapore Central Authority cannot render assistance on the basis of unusual wealth proceedings as the dual criminality requirement is not met.

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2. In the event that the Central Authority of Thailand will submit a new request for mutual assistance in criminal matters in the cases of Mrs. C and Ms. D, they must be prosecuted for money-laundering offences in both criminal and civil cases relating to money-laundering offences at the same time, if the Thai authority prosecuted for money-laundering and the Singapore court orders the UOB account was frozen for that reason. The order to freeze the account will be for a period of three months from the date of the court's decision order. The Singapore Central Authority requires a confirmation letter from the Kingdom of Thailand that the proceedings have commenced in the Thai courts within a period of three months.

B. The United Kingdom

The Central Authority of the United Kingdom informed the Central Authority of Thailand that assets are kept in HSBC Bank PLC, Coventry Branch, United Kingdom; Account Name: Ms. D; Account No.....; Amount: USD 463,084 are already subject to a freezing order made on behalf of the US authorities. Therefore, the Crown Prosecution Service are unable to take any further action on the request to freeze given that the assets are already subject to an existing court order. It is noted that under the United Kingdom system, cases for asset recovery founded completely on an offence of unexplained wealth are very difficult to execute. This is because the United Kingdom has no equivalent criminal offence to an unexplained wealth offence.

C. Ireland

On 8 April 2012, the Central Authority of Ireland informed the Central Authority of Thailand that:

1. Request For Mutual Assistance in Criminal Matter Informing of Supreme Court's Judgement and restraint of assets based on the unusual wealth case dated 16 March 2022 must be considered under the United Nations Convention Against Corruption (UNCAC), which both Ireland and the Kingdom of Thailand have ratified, with the request of the Kingdom of Thailand not referring to the Convention and when the request for assistance made under the UNCAC can be sent directly to the requesting country. It was transferred under the Proceeds of Crime Act 2006 in 2015 from an HSBC bank account to an account controlled by the Criminal Assets Bureau, International Affairs Department.
2. For a request to share the forfeited money in the case between the Republic of Ireland, the United States of America and the Kingdom of Thailand. The Central Authority of Ireland informed that in accordance with the relevant laws of the Republic of Ireland, the sharing of property forfeited in lawsuits can only be made in the member states of the European Union, other countries which are not a member of the European Union such as the Kingdom of Thailand or the United States cannot ask for sharing the forfeited money.

D. Jersey

The Central Authority of the Bailiwick of Jersey informed the Central Authority of Thailand that

1. The amount of around £249,000 of Miss D's assets were requested to be restrained by the US authorities in April 2008, but the said money is no longer in HSBC International

Limited bank, account number..... The funds have been moved to preserve them on behalf of the Jersey authorities.

2. As a result of the Supreme Court's final judgment in line with the decision of the Appeal Court by affirming the jail sentences and dismissing the Court of First Instance's order to forfeit USD 1,822,494 of ill-gotten gains in the criminal corruption case, the assets cannot be seized by the Jersey authorities. Therefore, the Kingdom of Thailand must confirm that the Request for Mutual Assistance in Criminal Matters in the case of Mrs. C and Miss D has been withdrawn because the request for restraint of assets is related to criminal proceedings which are not related to a request for restraint of assets in an unusual wealth case.
3. Jersey laws contain provisions relating to civil forfeiture. When considering Jersey Laws relating to a request for freezing assets according to the Civil Asset Recovery (International Co-operation) (Jersey) Law 2007 Article 6(5), it is their opinion that in the case of unusual wealth cases which are currently in the process of Court proceedings in Thailand, another request for restraining of assets must be submitted to allow the Jersey authorities to freeze the money of Mrs. C and Miss D.
4. In the event that the Central Authority of Thailand has submitted a request for Mutual Assistance in restraining of assets and if the Thai court enters a judgment in the unusual wealth case, the Thai Central Authority can submit another Request for Mutual Assistance to the Jersey authorities asking for asset sharing. The money will be transferred to the Jersey Government funds and the attached funds will be shared with the Jersey Government.

E. Switzerland

The Central Authority of Switzerland informed the Central Authority of Thailand that the Request for Mutual Assistance in Criminal Matters based on the criminal corruption case dated 8 February 2018 must be made in French, German or Italian.

Currently, the Thai Central Authority has not been notified by the five above-mentioned Central Authorities whether the requested assets have been restrained because the unusual wealth cases of Mrs. C and Miss D in Thailand are not yet final.

VI. CONCLUSION AND SOLUTIONS

Although the Thai Central Authority has sent the Request for Mutual Legal Assistance in Criminal Matters (international cooperation) to the five above-mentioned central authorities, we have encountered problems and obstacles. These problems and obstacles are summarized below, and solutions are offered.

A. Dual Criminality

Singapore's Central Authority informed the Thai Central Authority that Singapore cannot render assistance on the basis of unusual wealth proceedings as the dual criminality requirement is not met.

The United Kingdom Central Authority informed the Thai Central Authority that, under the system of the United Kingdom, cases for asset recovery founded completely on an offence

of unexplained wealth are very difficult to execute. This is because the United Kingdom has no equivalent criminal offence to an unexplained wealth offence.

1. Solution

According to the United Nations Convention against Corruption:

Article 1

Statement of purpose

The purposes of this Convention are:

(a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;

(b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;

(c) To promote integrity, accountability and proper management of public affairs and public property.

Article 46

Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

2.....

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention.

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

2. Suggestion

Therefore, a requested State shall take into account the purposes of this Convention by complying with article 1 and 46.

B. Language to Be Used in Requests for Mutual Legal Assistance

Swiss Central Authority informed Thai Central Authority that the Request for Mutual Legal Assistance in Criminal Matters must be made in the French language, German language or Italian language (English language is not applicable).

1. Solution

According to the United Nations Convention against Corruption:

Article 46
Mutual legal assistance

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity.....

2. Suggestion

The English language is the main language for communicating all over the world. Therefore, this convention should provide that English language can be applied to a request for mutual legal assistance.

C. Priority of Filing a Request for Mutual Legal Assistance

The United Kingdom's Central Authority informed the Thai Central Authority that the United Kingdom Central Authority are unable to take any further action on the request to freeze given that the assets are already subject to an existing court order because the US has filed an MLA request before Thailand

1. Solution

According to the United Nations Convention against Corruption:

Article 59. (Bilateral and multilateral agreements and arrangements)

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

In this case, Mrs. C and Miss D's actions were against the law of the United States and Thailand, but the United States filed a request for mutual legal assistance first. As a result, Thailand is unable to file a request. The laws of both countries stipulate that each country has the right to file a request for returning of property acquired through an offence.

2. Suggestion

Both parties should agree to a contract to share the property by conducting bilateral or multilateral agreements, or the United Nations Convention against Corruption should prescribe rules for asset sharing.

D. Global Settlement

The US Central Authority proposed the Thai Central Authority enter into a global settlement, which was allowed by US Law, but the domestic laws of Thailand do not allow the Thai authority to enter into a global settlement agreement.

1. Solution

Thai domestic law should prescribe rules to permit the Thai Central Authority to enter into a global settlement.

E. Asset Sharing

If the Thai court has a judgment in the unusual wealth case, the Thai Central Authority can submit another Request for Mutual Assistance to the Jersey authorities asking for asset sharing.

THAILAND

In accordance with the relevant laws of the Republic of Ireland, the sharing of property forfeited in lawsuits can only be made in the member states of the European Union, and other countries which are not members of the European Union, such as the Kingdom of Thailand or the United States, cannot ask to share the forfeited money.

1. Solution

In the United Nations Convention against Corruption should prescribe rules for asset sharing.