

GROUP 3

ECONOMIC CRIME AGAINST CONSUMERS AND INVESTORS

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I. INTRODUCTION

The group consisted of nine members from all pillars of the criminal justice system: one police officer (Gambia), three prosecutors (Japan, Korea and Thailand), three from the judicial branch (Bangladesh, Japan and the Philippines), one corrections specialist (Japan) and one rehabilitation official (Japan). This group workshop focused on frauds, cartels, and securities manipulation and insider trading. These crimes principally involve an individual or organization skilled or knowledgeable in business, taking advantage of the ignorance or gullibility of consumers and investors in business transactions through fraud, conspiracy, undue advantage, manipulation, or other deceptions. The complex and sophisticated methods with which these crimes are being committed pose serious problems for the criminal justice system which require more advanced and appropriate countermeasures than the traditional ones.

This study aims to (1) focus on and analyze actual situations, (2) identify the problems confronting the pillars of the criminal justice system, especially in the investigation, prosecution and trial stages,

and (3) propose countermeasures that will address such issues, not only in the countries represented by the group workshop members but likewise in all participating countries in this 110th International Training Course. For this purpose, the group members have conducted this study on crimes against consumers and investors, through surveys, interviews, examination of the individual country reports, experts' lectures and papers, and library and Internet research.

II. NATURE OF CRIMES UNDER STUDY

The group agreed to analyze the nature of the crimes under study as to the:

- (i) **Mode of Commission:** Crimes against consumers and investors are usually committed through non-violent means. No force or intimidation is employed. Generally, these crimes are committed by means of fraud: through deception, concealment, manipulation, and unjust advantage. Sometimes the organization or business enterprise may appear to be legitimate but would nevertheless be exposed eventually as illicit or fake,

only after the damage had become serious and widespread.

(ii) Offender: The offender, which may be a person, persons or organization, usually occupies a high status or is influential or wealthy. They capitalize on their specialized knowledge, skill or high position or influence in society or connection with politicians or businessmen. They generally employ fraud and other deceptions.

(iii) Victim: The victims, usually in large number, belong to the common mass of people like housewives, employees, senior citizens, etc who are gullible or ignorant about business procedures and/or transactions. The victims may also be motivated by greed to make fast money with the least or no effort at all.

(iv) Impact or Damage: These crimes cause damage detrimental to society, directly or indirectly. The individual loss may be small but the total damage to the various victims is great.

For the purpose of discussion, the Group decided to classify the assigned topics to three major categories with corresponding classifications and sub-classifications as follows:

A. Fraud against Consumers and Investors

- (1) Large Scale Fraud
 - (a) High Interest Investment Fraud
 - (b) Venture Capital Fraud
 - (c) Advance Fee Fraud
 - (d) Commodities Future Fraud
 - (e) Membership Fraud
 - (f) Fraud in Insolvent Stock Sale, and
 - (g) Misrepresentation in Advertisement
- (2) Pyramid Fraud

- (a) Pyramid Investment Scheme and
- (b) Pyramid (Multi-Level Sale) Fraud
- (3) Commodity Fraud through Telecommunication / Computer Networks

B. Unjust Enrichment through Unfair Price Fixing of Commodities (Cartel)

C. Illicit Manipulation of Stock Prices and Insider Trading

III. ACTUAL SITUATION OF CRIMES DISCUSSED

The group discussion on the actual situation of the crimes under study was not confined to the members' individual country experiences, but included those of the other participants' countries as well. Under the three categories of fraud, cartel/ monopoly, and stock manipulation, the group discussed specific cases and examples detailing the *modus operandi* used by the offenders. Where data is available, it has been cited for better illustration.

A. Fraud against Consumers and Investors

1. Large Scale Fraud

a) *High Interest Investment Fraud*

In this type of fraud, the criminals deceive the general public of money by false stories. The offender's *modus operandi* is to ask the prospective victims for a loan or money deposit and lure the latter with a promise of a high interest return at some future time. This type of fraud is becoming serious in Japan and Korea. In Japan, this fraudulent scheme is increasing as a result of the low interest rates. In 1996, there were 12 cases of high interest investment fraud in Japan where 6,000 people suffered a loss of around 45.5 billion yen and 48 offenders were arrested. In 1997, around 2,650 people similarly suffered a loss of over 89 billion yen in a scheme called

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“Orange Mutual-Aid Association.”

A variation of high interest investment schemes, commonly found in Thailand, is called a ‘chit fund’. A chit fund, or rotating credit as it is otherwise called, is one of the most common means of fund raising among individuals and small business enterprises. It is, in general, not illegal unless fraud is involved. The operator in this scheme promises a high interest return for loans borrowed from the general public. Such interest rate return is promised despite the fraudster’s knowledge that his/her business cannot yield sufficient profits to make such payment, or otherwise such interest payment is to be made through loans from new members. This chit fund will ultimately fail and the victims will suffer when no more new members can be recruited or there is a tight cash supply in the money market.

Before 1984, there was a scheme in Thailand called ‘oil share’ which promised to give lenders and investors 72% interest per year in return for deposits. It accumulated an aggregate fund of ten billion baht from the general public. In 1984, a tight cash supply in the money market rendered the operator unable to pay such an interest rate. The oil share chit fund scheme collapsed in 1985 and the principal operator was found guilty of the offense of contracting loans tantamount to public cheating and fraud under the Emergency Decree on Loans Amounting to Public Cheating and Fraud. However, the fraudsters had subsequently developed other schemes, such as membership fraud and commodity future fraud, to circumvent the law, thus creating new problems for law enforcers.

b) *Venture Capital Fraud*

Venture capital fraud is very similar to high interest investment fraud. However, venture capital fraud has a special feature

in that the fraudsters concoct a story about venture capital business. Usually the offenders lure their prospective victims with a promise of huge profits upon the success of the business undertaking. However, such a story is totally false because the fraudsters really have no plan to run their promised business at all. This venture capital fraud is increasing in Bangladesh, Japan and Korea. In 1997 in Japan, a loss of around 35 billion yen was sustained by about 12,000 victims in the KKC [Keizai Kakumei Club (Economic Revolutionary Club)] case; a large-scale venture capital fraud, where the head of the KKC made a false story that the new business would certainly succeed and make a lot of profit.

c) *Advance Fee Fraud*

The *modus operandi* of this fraudulent scheme, which originated in Nigeria, is for the fraudsters to inform the prospective victims in another country, through letters or faxes that the former are in possession of, about a huge amount of money which will be made available to the latter upon payment of some advance fees. However, upon collection of such fees from the unsuspecting victims, the fraudsters thereafter vanish into thin air. This type of fraud is becoming serious in Gambia, Japan and South Africa. It is also spreading to Canada and the United States.

In Gambia, the advance fee fraud scheme is structured to look as believable as possible. The fraudsters usually target a company or a person (the victim) outside Gambia, either by fax or mail, made to look official with appropriate government seals, stamps and signatures. They propose to transfer a huge amount of money or over budget money, usually in American dollars, to the account of the victim. They promise the victim a sizable percentage as a commission, sometimes between 30% and

35% of the money to be transferred, for using that person's bank account. To effect the transfer of the money, the fraudsters will ask the victim to forward a variety of data and blank forms like telephone and fax numbers, duly signed blank company letter heads, blank invoices and especially bank account details. Upon receipt of such information, the offenders will ask the victim to deposit money into a specified bank account to cover the expenses of the transfer including money to some government officials because of the large amount of money. Once the fee is paid, they will come up with another problem that requires immediate payment by the victim. Each problem is supported by official documentation. This fraudulent scheme may last as long as the victim stays gullible or the victim desperately desires to recoup losses. At some point during the fraud, the fraudsters will invite the victim to visit them and if the victim does, they will take the documents and force the victim to pay more money by threatening him with physical harm or even death.

As this type of fraud has a transnational character, considering that in most cases the offenders and the victims are situated in different countries, law enforcers face not only local investigation difficulties, but issues of jurisdiction and mutual cooperation as well. Variations of the Nigerian advance fee fraud have evolved.

d) *Commodities Futures Fraud*

Generally, in commodities futures fraud the offenders collect money from the victims by promising the individual investors huge profits through commodities futures transactions they pretend to be engaged in. Commodities futures transactions, being a business innovation, has provided new opportunity for fraudsters to victimize gullible customers. In Japan, thousands of people who are not well aware of commodities futures

transactions were victimized by this fraudulent scheme. In 1994, about 3,600 people suffered a loss of over 9.1 billion yen, while 16 offenders were arrested in this commodities futures fraud. In some countries, the lack of government regulation also contributes to the occurrence of commodities futures fraud. This type of fraud has started to take root in Bangladesh and Thailand.

e) *Membership Fraud*

The felons in membership fraud usually lure the general public into joining a club or association requiring a membership fee, with the promise of entitlement to the privilege of using club or association facilities on a limited basis, or otherwise obtain some discount on the cost of services. However, as it will eventually turn out, the members will not be able to take advantage of the promised privilege or service since the fraudsters rarely provide such facilities and services. This type of fraud exists in India, Japan, Kenya, Korea, the Philippines and Thailand.

In Japan, membership fraud cases were often reported during the economic boom. However, there has been a decreasing trend in recent years as a result of the Japanese economic downturn. In the Philippines, variations of membership schemes had been detected, such as membership in clubs for time sharing of apartments or condominiums or resort facilities, which do not exist in reality, and fraudulent raffles wherein facilities or services are offered as prizes to unsuspecting individuals who eventually end up paying membership fees but do not get the promised prizes.

In Thailand, one membership fraud case is on trial in the criminal court. The operator, Blissher International Co., advertised to the general public that it operated a time-share business whereby, through payment of a membership fee, the

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members would be able to use accommodation facilities without cost, and that any member able to bring in new members would receive a commission therefrom. At the end of the day, the company received a sum of 826, 266,000 baht from a large number of people who never got any benefit from the promised accommodation facilities.

f) *Fraud in Insolvent Stock Sale*

In Korea, several nearly bankrupt companies conspired with certified public accountants to make it appear on official documents that the former were in good financial condition. These companies, therefore, were able to sell their worthless stocks to the general public who, in the end, suffered the loss. This scheme involved fraud in insolvent stock sale. In 1992, the managing directors of 15 companies and five certified public accountants were prosecuted and convicted for such type of fraud.

In Bangladesh, one decaying company offered 135,000 shares in 1994. Out of those shares, only 31,590 were subscribed by the shareholders and the sponsors of that company accepted the rest. Investing nothing, that company again offered 540,000 shares in the money market but the shareholders subscribed only 79,570 shares in the same year. In 1996, with the help of stockbrokers, that company was able to transact all of their shares without remittance to the shareholders. The Security and Exchange Commission (SEC) initiated a case against that company in April 1997, which is now under trial.

g) *Misrepresentation in Advertisement*

False or exaggerated advertising (misrepresentation in advertising) is defined as an act which defrauds consumers by means of indicating the contents of goods and services, price, amount of supplier or competitor against

the real fact. It is difficult for consumers to file a complaint against the fraudster because of the low possibility of compensation and the vagueness of the misrepresentation. In Korea, false or exaggerated advertising is increasing. The fraud patterns of misrepresentation frequently occurring in Korea are as follows:

- (i) **Misrepresentation of Price:** This type of fraud is often committed in the course of special sale periods. Some department stores deceived consumers by attaching a false price tag to merchandise in order to make the consumers believe that the stores were selling the goods at a special price. For example, the department stores attached 400,000 won price tag to the goods which they offered to sell at a special price of 300,000 won, as if they really offered a discount of 100,000 won on the original. In 1989, the sales managers of six department stores were prosecuted and found guilty of fraudulent sale through misrepresentation of price.
- (ii) **Misrepresentation of Materials:** Falsely indicating synthetic fabric as natural fabric, belongs to the category of the misrepresentation of materials of goods.
- (iii) **Exaggerated Advertisement:** This type is in some sense acceptable in commercial transactions. However, according to the precedent established by the Supreme Court of Korea, false information on concrete facts related to important components of goods in transaction, against good faith, constitutes fraud.

2. Pyramid Fraud

a) *Pyramid Investment Scheme*

Under this scheme, the general public is induced to invest a fixed amount of money with a prospect of high return by recruiting new members through whom

that can earn percentage commissions. The process is repeated as the pyramid expands its base, as new members are recruited. No product is involved in this type of fraud. People invest their money in such a scheme with the prospect of earning enormous profits because each member is expected to recruit additional members and earn a commission in the process. The more additional members one recruits, the greater the profit a member makes. However, this fraudulent pyramid investment scheme is, of course, not sustainable indefinitely because of the limited number of the population. The people, particularly the bottom level investors, eventually suffer a loss where recruitment of new members has become impossible. In Japan, the pyramid investment scheme, itself, is prohibited by the Law on Prevention of Unlimited Chain Mutual Association (1978). Prior to this law, pyramid investment schemes were detected in Japan. After the above law was enacted, such a scheme has rarely occurred. Recently, however, the so-called Pentagono pyramid investment scheme, which is of transnational character, has been detected in Japan. Pentagono has also made its presence felt in Bangladesh and the Philippines where the scheme is not *per se* illegal, without a showing of fraud. This scheme originated in Italy where the supposed principals or masterminds are located; circumstances which create jurisdictional problems for investigators and prosecutors.

b) *Pyramid (Multi-Level) Sale Schemes*

Pyramid (multi level) sale schemes are a little bit different from pyramid investment schemes. The operator makes such a scheme similar to an ordinary sales transaction where a commodity or service is offered and purchased. In most cases, the product or service is of inferior quality. Nevertheless, the general public is still induced to buy the product at a high price

mainly because the fraudsters provide a sort of guarantee that they will make a lot of profit (or commission) if they can recruit more members or subscribers. In Japan, the pyramid sale scheme is not, in itself, illegal and does not correspond to fraud. However, if the intention to defraud on the part of the offender is demonstrated, the prosecution will be based on the Penal Code. Otherwise, the applicable law is the Door-to-Door Sales Law (of 1976), as amended, which prohibits concealment of material facts in a transaction coupled with inducement and receipt of payment of membership fees and the price of commodities or services. Like the pyramid investment scheme, the chance of success for every member is impossible because of the limited number of the population.

In Japan, about 0.6 million people suffered a loss of over 126.4 billion yen, and 131 offenders were arrested in 1994. In 1995, as a result of continuous efforts to crack down on this fraudulent practice, the number of pyramid sale frauds has been decreasing and only 4 cases where 27 people were arrested for the violation of the Door-to-Door Sales Law have been recorded.

3. Fraud through Computer Networks/ Telecommunications

Advances in computer and telecommunication technology brought forth many advantages, but the same time spawned disadvantages. From the late 1980's, inexpensive personal computers were distributed for sale to the public and became widely popular. Likewise, communication technology developments enabled personal computers to be connected to each other through networks. As a result, average people, as well as experts, had the opportunity to take advantage of computer technology which afforded easy access to information.

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As a result of this information technology development, fraud through computer networks has increased. In Korea the number of computer fraud cases increased to 123 in March 1997. The criminals often disguise themselves as a famous company by using an Internet address and defraud the general public through Internet or local Internet service companies such as "Hitel" and "Naunurii". Since computer networks allow the fraudsters to reach a large number of unspecified customers, they need less money from each individual customer than they do in cases where no computer network is involved. This in turn makes the individual victim more reluctant to report or cooperate with law enforcement officials, as the loss suffered is small.

In Japan, this type of computer network fraud is increasing. The fraudsters advertise on the home page of the Internet that they sell certain commodities. The customers make purchase orders of these commodities via e-mail. In 1996, 1,200 people were victimized; they suffered a loss of 11 million yen where the offender made false advertisements for the sale of audio equipment on a bulletin board through a computer network. In another case, one junior high school student committed fraud through the computer network. He opened his home page on the Internet and advertised that he was selling medicine, a tranquilizer, but he in fact had no such medicine. He was able to defraud his customers to send their payments to his fictitious account through the Internet. The student victimized 60 people who sustained a total loss of 1,200,000 yen.

**B. Unjust Enrichment through
Unfair Price Fixing of
Commodities (Cartels)**

Cartels are agreements among competitors that may result in the setting of higher prices, less efficient productions,

fewer innovations and less benefit to the ultimate consumers. Anti-monopoly or anti-trust legislation seeks to prohibit cartels, which are agreements among competitors, such as price fixing or limitations on production designed to eliminate or restrict competition among themselves, as these inflict damage on consumers and the national economy. Anti-trust laws exist in Algeria, Brazil, Japan, Korea, Pakistan, the Philippines, South Africa and Thailand. In Japan, cartels are classified by object, such as restriction via price cartels, volume cartels, market allocation cartels, and bid riggings. Likewise, the Japanese Anti-monopoly Act has special provisions to prohibit unreasonable restraint of trade formed by trade associations and cartels between domestic and foreign firms (international cartels)¹. Monopoly is not by itself illegal, but "monopolizing" is. In some countries, administrative bodies play an active part in regulating cartels or monopolies, through sanctions like cancellation of business license, suspension, and imposition of fines and surcharges. In Japan, for instance, the Fair Trade Commission investigates about 200 cases per year under the Anti-Monopoly Law. Of these cases, only one or two are indicted. In 1997, in a case involving a cartel of 26 companies concerning an order from the Tokyo Metropolitan Government for water service meters, the defendants were imposing a surcharge, the total amounting to 385 million yen.

In Korea, collaborative acts like cartels are subject to the most severe punishments, among all the different types of unfair business practices. Even in the absence of clear agreements among corporations, when they engage in acts that substantially restrain competition, they are deemed to be engaging in undue collaborative acts, the most common of which is predetermination of price. In the

Philippines, it has been reported that the oil cartel of the three big oil companies had been overpricing products by 14 billion pesos per year.²

C. Illegal Manipulation of Stock Prices and Insider Trading

The essence of illegal manipulation of stock prices is fraudulent conspiracy to affect either the upward or downward movements of the price of shares or other securities, or commodities sold on the exchange. On the other hand, insider trading consists of engaging in purchasing and selling securities by using information not available to the general public. Securities fraud undermines the public trust in the stock market, where the investing public is supposed to have an equal opportunity of profiting from securities transactions. Such erosion of confidence in the stock market reduces capital investment necessary to finance business needs and thereby affects the economic stability of the country. Moreover, the international standing and reputation of such countries will also suffer. There is, therefore, an imperative need to prevent or minimize the occurrence of anomalous transactions in the securities and exchange market.

In Bangladesh, during the period from October to November 1996, a handful of stockbrokers and some international securities swindlers and their accomplices filched millions of dollars by fraudulent manipulation of the share market. Regarding the scam, the Security and Exchange Commission conducted investigation into the matter and subsequently filed several cases against many securities companies, their directors and brokers, for the alleged commission of offenses under the Security and Exchange Commission Ordinance 1963. Since then, 17 cases have been pending in the courts because of delaying tactics by the

defendants, and use of political influence.

In Korea, the Security Transaction Law (1962) prohibits the manipulation of stock prices. In 1977, the Security Supervisory Board (SSB) was established to perform comprehensive surveillance of the security market. The problem of stock manipulation had become very serious in recent years especially with regard to the stock of small but promising companies. From January to July 1998, the prosecution has indicted more than five cases of stock manipulation and these cases are currently on trial in the Criminal Court. For example, in the Daehan Fabric Company case where the defendants were found guilty of stock manipulation in the district court, it was established that the following methods were used to effect manipulation: (i) increasing the stock price by purchase order at the highest price possible; (ii) placing purchase and sale orders intentionally at the same time to show that the transactions of Daehan stock were in a prosperous condition; and (iii) disseminating false information such as merger, acquisition and new development to increase the price of Daehan stock. Other co-conspirators, the so-called fund managers, purchased certain amounts of the floating supply of Daehan stock to maintain the inflated price for a considerable period of time during which the defendants would sell their holdings of Daehan stock in the market to reap the benefit of manipulation. The fund manager in turn received a high commission.

The number of insider trading cases has been rapidly increasing. In 1997, the Security Supervisory Board (SSB) detected 12 cases, 11 of which were settled administratively. The SSB filed only one accusation on insider trading with the prosecutor's office. Currently this case is on trial in the criminal court.

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In Japan, the securities business is regulated under the Securities Exchange Law. In 1992, the Securities and Exchange Surveillance Commission (SESC) was established as an independent agency charged with supervising the securities dealings. From 1981 to 1994, there were five stock manipulation cases, four of which occurred before the establishment of the SESC. Because of effective administrative supervision after the establishment of the SESC, only the case of "Nihon Unisys Stock" was prosecuted. In this case, two offenders were found guilty of stock manipulation. One of them was sentenced to two and a half years imprisonment with labor (with suspension for 4 years) and the other was sentenced to 2 years imprisonment with labor (with suspension for 3 years).

Six cases of insider trading were investigated from 1994 to 1998. Five cases were prosecuted and one was to be prosecuted later. In fact, the offenders in these cases were found guilty: one offender was penalized with 6 month imprisonment with labor (with suspension for 3 years) and 38 others (including juridical persons) were fined. However, the defendants in two of the five prosecuted cases have appealed the judgment of the District Court.

In Thailand, securities trading is regulated under the Securities Exchange Act (1992). Since 1992, there have been seven stock manipulation cases. Two of them were administratively settled and a fine totaling one million baht was imposed. Apart from these two relatively small-scale manipulation cases, the other five were large in terms of the number of offenders, the amount of money used to manipulate the stock price, and the number of adversely affected investors. Each of these cases involved the stock of the Bangkok Bank of Commerce, Krisada Mahanakorn Public Co. Ltd., First City Investment

Public Co. Ltd., Rattana Real Estate Public Co. Ltd, and Siam City Bank. The culprits in these cases manipulated the stock prices of these companies by the so-called "Pool Operation" scheme whereby they colluded with others to conceal their collective purchase or sale of the stock. For instance, from January to October, 1992 (before manipulation), the total volume of trading was 1.7 million shares a day. In October of the same year, during which the defendants manipulated the market for BBC stock through their concerted purchases, the total volume of trading was 14.15 million shares a day and the price was 40.75 baht on October 29, 1992.

The investigation revealed the existence of several connections among defendants such as "personal connection", "financial connection", and other connections like the use of same mailing address in securities trading, some trading accounts opened by the suggestions of others in the group, and trading orders effected by others in the group. Convinced that defendants collectively manipulated the stock of the Bangkok Bank of Commerce, the Office of Attorney General thus instituted criminal prosecution. However, the court dismissed the case for insufficiency of proof of complicity among the defendants.

Relying on the BBC decision, the Office of the Attorney General subsequently ordered no prosecution in the cases of First City Investment and Rattana Real Estate. However, criminal prosecutions have been filed with regard to the case of Krisada Mahanakorn and Siam City Bank, and these cases are presently on trial in the criminal court. The SEC had so far successfully dealt with insider trading problems. Seven cases were investigated and later settled in administrative proceedings where the offenders paid a fine to the Commission. In these cases, the Commission imposed a fine totaling

66,436,584.56 baht. No case has ever been criminally investigated, prosecuted or tried.

IV. PROBLEMS RELATING TO CRIMES UNDER STUDY

After deliberating on the actual situation of the crimes in the countries of all the Training Course participants, the Group Workshop members agreed to identify and discuss the problems that confronted these countries. First, the group focused the discussion on the common problems in the investigation, prosecution, and trial stages. Thereafter, the group deliberated on the problems commonly found at every stage of the criminal proceedings.

A. Common Problems

1. Investigation

a) *Reluctance of the Victims to Report, Resulting in Difficulty in Detection and Delay of Investigation*

With regard particularly to fraud cases, the victims are generally reluctant to cooperate with the law enforcement agencies. This problem arises on account of disadvantages that the victims face in the prosecution of these frauds. In most cases, the victims are numerous and, while the total amount of the damage may be large, the individual damage is small. The time, effort and expense (official and incidental) involved in filing suit and pursuing the case in court far exceeds the damage suffered by individual victims. Therefore, there is very little incentive for the victims to report, or participate in, the investigation of fraud. This lack of interest and/or cooperation of the victims results in difficulty in detection and delay of investigation.

In the case of cartels, illegal stock manipulation and insider trading, the victim's report of the crime is helpful in the detection and investigation stages, but is

dispensable in the prosecution thereof. In some countries like Bangladesh, Japan, Korea, the Philippines and Thailand, the administrative agencies supervising such business activities, like the Fair Trade Commission and Securities Exchange Commission, play a far greater role in the prevention, detection and investigation of these crimes.

b) *Difficulty in Identification of the Offence/ Offender (Mastermind)*

There exists the general problem of identifying the offence and/or the offender, especially the mastermind, due to the complex and sophisticated nature of the economic crimes under study. Unless the specific statute makes the scheme itself illegal, such as pyramid investment schemes in Japan, it is not easy to identify whether the intent to defraud, necessary for an offence of fraud, exists. Many fraud cases appear to be merely civil in nature. Nevertheless, the fraudulent scheme in many cases is a combination of various kinds of fraudulent techniques, thereby making it difficult for law enforcers to detect whether a crime has been committed. In a pyramid scheme, the fraud is usually discovered only at the bottom of the pyramid where the immediate contracting parties are involved, as in the case of a buyer and seller. The real mastermind is too far up the ladder or pyramid to be identified. The difficulty is more marked where the transaction is initiated and consummated not on a face to face basis, but merely through an electronic medium such as a computer network or telecommunication system.

As for cartels, it is clearly difficult to establish that the offenders have agreed to fix the price of commodities. Even if the consumers have filed the complaint, the law enforcers still have to determine whether an agreement to such effect exists. Likewise, the case of stock manipulation,

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where generally several people are involved, presents similar difficulty. In these cases, it is not exaggerated to say that direct evidence of agreement is next to impossible to obtain. Circumstantial evidence, therefore, has to be carefully analyzed. This analysis of circumstantial evidence in most cases is very difficult and there is a high possibility of disagreement among law enforcement agencies.

c) *Difficulty in Evidence Collection*

Evidence collection poses a problem to investigating authorities as regards crimes against consumers and investors. Considering the nature and complexities of the crimes under consideration, the investigating officers, who are usually not familiar with and not specially trained for economic crimes, face great difficulty in collecting evidence to be used in the prosecution of the offender. In fraud cases, especially where a syndicate is involved, the lack of cooperation of the victims and witnesses (because of threat of reprisal) makes it even more difficult for investigators to gather evidence. In case of stock manipulation and insider trading, there may be a need for monitoring and/or surveillance for several days or weeks, aside from the great probability that evidence may be in possession of third persons, such as bankers or stockbrokers, who may not be willing to cooperate with law enforcement officials in gathering or providing all available evidence.

d) *Statute of Limitations*

The existence of statutes of limitations in many jurisdictions is also a common problem encountered in the investigation stage. Crimes against consumers and investors are generally complicated due to the fraudulent schemes employed by the felons, and usually involve large numbers of victims. Given these facts, it is to be expected that investigation would take more time and effort. Because of the

resulting delay in the detection of the crime and in collecting evidence, as well as the reluctance or lack of interest and cooperation of victims and witnesses, the investigation of criminal complaints drag on for many years without reaching resolution. Thus, the periods prescribed under the Statute of Limitations may expire even before the termination of the investigation stage. Both the time spent and efforts made by the investigating authorities may go to waste.

2. Prosecution and Trial

a) *Ineffective Coordination among the Administrative, Investigating and Prosecuting Agencies*

The group agreed that successful prosecution of large-scale fraudulent schemes, cartels, and securities fraud requires effective coordinated effort among the administrative, investigating and prosecuting agencies, particularly in the investigation stage, because of the complex and subtle nature, and *modus operandi* of such illegal activities. Poor coordination in the investigation stage frequently jeopardizes the collection of evidence that is of utmost importance in the cases. This problem may be more severe in countries where there is a complete separation between investigation and prosecution stages. Unless effective cooperation, such as sharing of information and technical know-how among administrative, investigating and prosecuting agencies in the early stage of investigation, is strictly observed, the prosecuting agencies in these countries hardly know about the case until receiving the investigation report. Such a lack of effective cooperation in the investigation process will adversely affect the prosecution.

b) *Failure of Witnesses to Testify or Change of Testimonies*

At the trial stage, the witnesses may either fail to testify or change their

testimonies. This negative attitude creates serious problems since the successful prosecution of the offender in a criminal case depends principally upon the testimony of the victims and other witnesses. It is not uncommon that various pressures and influences are made on complainants and/or witnesses to discourage them from giving testimonies in court. If the victims and/or the witnesses fail to testify or change their testimony, the case of the prosecution naturally crumbles or fails.

c) *Excessive Use of Delaying Tactics by the Defense*

The defendants in the types of crimes under study generally employs excessively dilatory tactics, for they know that it is to their great advantage if they can buy more time in the investigation, prosecution and trial of the cases against them. If the case is delayed, the victim and witnesses usually lose interest due to the increased time, effort and money expended. Where the complainant and the witnesses do not cooperate, the inevitable outcome is the dismissal of the case. Time is of utmost importance since justice delayed is justice denied.

d) *Difficulty in Proving Guilt beyond Reasonable Doubt*

The perpetrators of the economic crimes under scrutiny, being more intelligent and/or technically skilled, are able to cover their illicit tracks through elaborate and complex schemes. This makes it even more difficult for law enforcement and prosecution agencies, already burdened with the required proof beyond reasonable doubt in criminal cases. This high standard of evidence imposed on law enforcers and prosecutors works to the great advantage of the criminal offenders; who are already several steps ahead of their adversaries in skill and techniques in the commission of their nefarious activities. In general, it is

difficult to prove the intent to defraud as, in most large-scale fraud cases, the offenders have the tendency to make excuses arguing that their business could not otherwise be profitable to investors and that the failure of their business results from normal business risks. Likewise, the structure of the fraudulent scheme, like pyramid investments, makes it hard for law enforcers to determine the intent to defraud on the part of the lower recruits. The burden of proof being in the hands of the prosecutors, they are duty-bound to prove otherwise.

With regard to cartels, illegal stock manipulation, and insider trading, such a difficulty stems from the clandestine nature of the offences. No one but the offenders themselves know what is going on in the cases. Both direct and circumstantial witnesses are rare in such cases. The prosecution thus has to rely much on documentary evidence such as daily securities trading, financial statements, bank accounts and expert opinions. Such documentary evidence by itself, without further analysis, does not show the illegal nature of the transactions, thus making it even more difficult for the prosecution to prove the case.

4. Sentencing

a) *Too Lenient Punishment*

Some of the participants observed that the imprisonment provided by law is too lenient. It is usually within the range of sentence suspension as, for example, the two-year imprisonment for stock manipulation and insider trading in Thailand. Similarly, a maximum of three years for both cartel and insider trading in Japan is also within the range of sentence suspension. Furthermore in some cases, the criminals receive only a suspended sentence. For instance in Japan, six insider trading cases from 1994 to 1998 were prosecuted and one offender drew only 6

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months imprisonment with labor (with suspension for three years) and 38 others were only fined. In one stock manipulation case, two offenders were prosecuted and convicted; one of them was sentenced to two and a half years imprisonment with labor (with suspension for 4 years) while the other was sentenced to two years imprisonment with labor (with suspension for 3 years). In terms of fine, the maximum amount is fixed without regard to the loss suffered by the public and the benefit the offender derives. Under these circumstances, the offender will be motivated to take the risk in the commission of the offense, if the expected benefit is greater than the expected loss.

B. Problems Commonly Found in Every Stage of Criminal Proceeding

1. Shortage of Competent Personnel

The economic crimes involved in this study are just a few of the many crimes being dealt with by the entire criminal justice system. More controversial and serious cases get more attention and resources than economic crimes against investors and consumers. There are not enough personnel to tackle the fast growing crimes under study. The large number of victims and witnesses involved, as well as the complex nature of the crimes, requires a great deal of manpower to deal with the crimes in terms of monitoring, surveillance or investigation, prosecution, and trial. Therefore, adequate manpower needed for the successful investigation, prosecution and trial of the offenders should be provided, maintained and augmented to address the problem of the fast growing crimes of fraud monopolies and securities trading.

2. Lack of Expertise Among Criminal Justice Officials

Economic crimes have become more elaborate and complex with advances in

science and technology. The criminal justice officials' capability to deal with these types of crime against consumers and investors has lagged behind those of the criminal offenders, who are more skilled and knowledgeable in their nefarious trade. Fraudulent schemes, cartels and stock manipulations have grown more elaborate, complex and sophisticated. Therefore, there is an urgent need to train and equip criminal justice officials with the requisite expertise to effectively combat these new types of crime.

3. Political Influence

Because of the high status and well-placed political connections of the economic crime offenders under study, political influence makes significant impact on the investigation, prosecution and even sentencing of those criminals. Felons who have high learning/skills or influential status in society usually commit crimes against consumers and investors. In many developing countries, politicians interfere with the investigation, prosecution and even judicial stages of a the proceedings in cases involving cartels, stock manipulation and fraudulent schemes of a transnational character, wherein connections exist between politicians and the offenders. Fraudsters usually come from the ranks of people who are close to high government officials; big business cartels are in many cases benefactors of high-ranking politicians who rely on them for financial contributions during election campaigns; while crimes involving fraud or securities manipulation are committed by influential corporations or stockbrokers who derive protection from powerful politicians in exchange for bribes. In third world countries, politicians usually wield so much power and influence that subordinate bureaucrats, like law enforcers, prosecutors and even judges, who depend on political patronage for their career advancement or destruction, in several

cases yield to their mischievous wishes. Because of this situation, the offenders often escape punishment and continue with the commission of these types of offences.

V. COUNTERMEASURES

The modern and sophisticated methods and means with which economic crimes against consumers and investors are being committed has outpaced the pillars of the criminal justice system, which have been lagging behind in terms of competence, manpower, logistics and skill, and technical knowledge. Therefore, it is the obligation of every country in the international community to find appropriate ways and means to respond to the challenge of combating the emergence of these new economic scourges. The group, after exhaustive deliberations, reached a consensus that the following countermeasures must be adopted, installed and enforced to appropriately address the corresponding issues or problems arising from the actual situation in the participating countries.

A. Educating Consumers and Investors

In many instances, the general public becomes the victim of fraudulent schemes, including illegal stock manipulation and insider trading, because of ignorance of the existence and *modus operandi* of these types of crimes. Promoting public awareness is therefore geared toward the goal of prevention. To achieve this end, an effective channel of communication between law enforcement agencies and the general public must be established. For example, in Japan, there is a program called "Dial 110 for Fraudulent Commercial Practices" which entertains complaints and provides counseling to consumers through telephone calls. Mass media should also play an active role in exposing the nature, operation and the impact of these crimes. However, mass media must not directly or

indirectly induce the general public to have interest in such fraudulent schemes. Faced with this dilemma, ethical standards or regulations of association must be established, emphasized, and strictly observed. These countermeasures seeks to prevent the general public from being defrauded and to encourage victims to report cases to law enforcement agencies.

B. Enactment of Adequate Laws

The advent of modern technology has created new benefits, but at the same time has ushered in corresponding problems that must be addressed accordingly. Economic crimes are being committed with more sophistication and complexity. The law however, has not been updated in many countries to keep up with the criminal mind, which has always been a step ahead of the law and law enforcers. The group recognized the need for adequate laws that would address the issues brought about by the new methods or schemes employed by fraudsters that victimize a large number of consumers and investors. For example, laws may be enacted to criminalize certain fraudulent schemes under specified conditions, to provide for extraterritorial jurisdiction and to provide for increased penalties sufficient to deter or discourage the commission of the crimes. Furthermore, the conspiracy offense (where criminal liability can be imposed upon only an agreement to commit, not the actual commission of, the crime) should be available in order to immobilize the criminals quickly, thereby effectively preventing the general public from being defrauded, injured or victimized. These laws may also provide for modification of the law on evidence, allowing the shifting of certain burdens of proof to the accused. Finally, to encourage the victims to testify in court, they should be entitled to increased allowances to cover official and incidental expenses for their appearance in court proceedings.

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1. Criminalizing New Offenses/Crafting Long-Arm Statutes

New technology always opens up new opportunities for criminals to victimize consumers and investors. Where certain frauds are exposed, the offenders think and employ new ways or schemes to swindle unsuspecting victims. Therefore, there is necessity for enactment of new laws that would criminalize such fraudulent schemes or activities of certain business establishments. For instance, in the Philippines, infringement of intellectual property rights are now punishable with imprisonment and/or fine under certain conditions. The pyramid schemes like the Pentagono, which is *per se* not criminal, has been criminalized in Japan. Moreover, so-called “long-arm statutes” like the Computer Misuse Act of Singapore, that would have extraterritorial reach, may be enacted to compliment bilateral or multilateral agreements to effectively deal with the growing transnational nature of these crimes.

2. Upgrading of Criminal Penalties

The gravity of the damage inflicted by economic crimes requires a corresponding increase in the penalties in order to deter or minimize the commission of such offenses. In many countries, at present the laws do not adequately address the problem of appropriate punishment to be imposed. The laws are outmoded and impose penalties not commensurate to the seriousness of the offense. It is therefore timely and proper to update these laws by increasing the penalties imposed for economic crime, which includes those under study.

3. Increased Use of Measures to Deprive Ill-gotten Benefits

Since the common motive of the economic crime under study is to gain profit, one of the effective countermeasures is to maximize the way in which such profit

deprivation can be effected. Private civil enforcement is one such process. Its purpose is to recover compensation for damage done, whether by way of the restitution of the property deprived of through illegal acts, or the value thereof. However, if the damage done to a particular plaintiff is less than the benefit derived from the illegal act, private civil enforcement does not rid the offender of all such benefit. To forfeit such benefit from the offender, it is necessary that the class action concept, under which a particular plaintiff stands for all injured by the same illegal act, must be recognized. Where the law requires the public prosecutor in a criminal suit to ask for restitution or compensation for the victim, such a civil enforcement will provide incentive to the victim to cooperate more with law enforcement as s/he is entitled to such restitution or compensation. A view was expressed that civil asset forfeiture is another effective method to deprive ill-gotten benefit. Civil asset forfeiture is different from its criminal counterpart in that it is an “*in rem*” instead of “*in personam*” proceeding. This means that asset forfeiture can be effected on the preponderance basis of evidence, and without regard to the conviction of the offender. It was opined that this system of forfeiture, would allow law enforcement to proceed against white-collar criminals more efficiently.

C. Augmentation and Training of Criminal Justice Officials

Except in highly developed countries, economic crimes do not get the same attention and resources as being focused on crimes against persons. In most countries this is due to the lack of awareness about the serious impact of such offences on society. The group members agreed that the time is ripe to give serious thought and attention to addressing the need for more resources and adequate

training in accounting, auditing, and computer techniques for criminal justice officials involved in the investigation, prosecution and trial of perpetrators of crimes against consumers and investors. Specialized training of all criminal justice officials involved in consumer and investors' crimes would address the problems of difficulty in identification of the offence/offender, evidence collection, shortage of competent personnel, and lack of expertise.

D. Effective Coordination among the Administrative, Investigating and Prosecuting Agencies

As collaborative investigation among the administrative, investigating and prosecuting agencies is required to successfully prosecute large-scale fraudulent schemes, cartels and securities fraud; it is necessary that a system to facilitate such cooperation be established. Such collaboration will guarantee that the expertise of all law enforcement agencies will be optimally utilized in the investigation, that promising avenues of investigation are not overlooked, that strategies for prosecution are fully exploited and that legal pitfalls are avoided.³

E. Creation of Specialized Investigating Body

The successful prosecution of economic crime depends largely on the investigation stage of the proceedings. Political interference in this early stage of investigation, during which evidence gathering is conducted, plays a crucial role in the outcome of the case. Some of the participants expressed the view that a specialized independent investigating body must be set up to deal with the political interference problem in economic crimes, including those involving consumers and investors. This specialized investigating body must be truly independent, meaning

free from the clutches of politicians or other types of influence or pressure. The investigators must have fixed and secure tenure in accordance with the laws of individual countries.

F. Use of Special Investigative Techniques

Recognizing the growing sophistication of the schemes and technology employed by individuals or crime syndicates in the commission of the economic crimes under study, the group fully agreed that law enforcement and investigating agencies must have the minimum capability and skills to “outfox the foxes”, so to speak. Regular and sustained training must be implemented to attain personnel preparedness, proficiency and efficiency in the fight against these crimes. Special investigative techniques may be employed to solve the problem of beating the prescriptive periods under the statutes of limitation. For example, law enforcement should be authorized to use wire-tapping and electronic eavesdropping as a means to detect and investigate economic crimes, and the evidence discovered therefrom should also be made admissible in court. However, because of its intrusive nature, such practices in some countries are in violation of the privacy rights of the individual. With that in mind, the group agreed that such electronic surveillance should be available only with judicial approval and in limited circumstances where the economic crime under study is committed by an organization. Moreover, undercover operations, traditionally used to infiltrate traditional organized crime groups, is now being used to fight economic fraudsters who operate under the veil of secrecy. For instance, in securities agencies, brokers are sometimes bribed by other competing companies, especially in initial public offerings, to engage in insider trading or stock manipulation activities. Undercover operations have a deterrent

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effect by keeping the criminal elements off balance, since they can never be sure that the apparent collaborator may not actually be an undercover agent who may expose their criminal operations.⁴ These innovative techniques, together with the offence of conspiracy, and immunity from prosecution given to a co-conspirator hereinafter suggested, will be a powerful arsenal for law enforcement agencies in the fight against organizational economic crime.

These countermeasures are designed to solve the issues regarding difficulties in identification of offence/offender (mastermind), evidence gathering, and restrictions of the statute of limitations, and also to detect the scope and *modus operandi* of the crimes.

G. Setting-up of Witness Protection Programs

A case is only as good as the evidence presented before the court. The successful prosecution of a crime depends largely on the availability of a credible witness. It is the natural tendency of a witness to be reluctant, or in extreme cases to refuse, to testify in a case where their life or safety would be placed in danger. Fear of reprisal, inconvenience and expense are among the factors that prevent or discourage a possible witness. Such a tendency is very likely in a case where an organization, syndicate or a high ranking public official is involved in the commission of an offence.

It is not uncommon that such a criminal syndicate is behind many large-scale fraudulent schemes, cartels and securities frauds. In some cases of cartels and securities fraud, the only probable witness is himself a participant or a co-conspirator in the crime. The covert nature of these crimes, together with the involvement of a criminal syndicate, makes it imperative to secure the availability of witnesses during

investigation and trial of the case. It is thus necessary to set up a witness protection program, the mechanics of which would be dependent on the system that may be adopted by each particular country, consistent with its laws. This program basically gives assurance of safety and security to the witness and/or their family through police protection, housing and financial assistance, in order to encourage them to come forward and testify against the principal offender or mastermind (so that the latter may finally be accordingly penalized for the offence). Many countries have adopted this program and many others, who have felt and recognized the seriousness of these types of economic crimes in their jurisdictions, are poised to make the same move. Bangladesh, Gambia and the Philippines have witness protection programs.

H. Grant Indispensable Witnesses Immunity from Prosecution

Some countries have adopted a system whereby key witnesses, mostly co-participants or co-conspirators or accomplices, are offered and granted immunity from prosecution so as to be able to strengthen the evidence against, and successfully prosecute, the principal offenders or masterminds. In some countries like Bangladesh, Gambia, and the Philippines, such immunity of material witnesses from prosecution is included in the Witness Protection Program, as a necessary benefit for the co-conspirator who turned state witness against the mastermind or principal offender, to secure the full cooperation of the witness.

I. Admission of Hearsay Evidence

In most participating countries, as a general rule, a statement of an eyewitness made before investigating officials pointing to the culpability/guilt of the accused is not admissible unless testified to by such a witness in open court. However, some of

the participants expressed the view that such a written statement should be made admissible under certain circumstances when proper foundation exists, even if such a witness reneges on the previous statement and does not appear in court. Nevertheless, the court should be careful in giving weight to such a written statement.

J. Creation/Designation of a Specialized Court

To complement the establishing of specialized investigating bodies, specialized courts should be established/designated with specific powers to deal exclusively with economic crimes against consumers and investors. In the Philippines and Thailand, some trial courts have been established as specialized courts to try and decide economic crimes, particularly intellectual property crimes, exclusively. This will promote and enhance the expertise of the judges and court personnel handling this type of crime. This system will likewise expedite the disposition of cases. In some countries the creation of special courts is not allowed, but some court divisions or branches have been designated to handle only specific types of serious economic crimes against consumers and investors.

K. Shifting the Burden of Proof

In order to ease the burden of prosecutors in proving intent to defraud and conspiracy in complex and sophisticated large-scale fraud, cartels and securities fraud, the group members fully agreed that the system of shifting the burden of proof upon the accused should be implemented. India, the Philippines and Thailand have adopted shifting the burden of proof of certain elements of the crime to the accused in some cases, like corruption, embezzlement, cheating and fraud. For example in Thailand, section 5 of the Emergency Decree on Loans

Amounting to Public Cheating and Fraud shifts to the defendant the burden of proving that s/he has no intention to defraud, after the prosecution has demonstrated the existence of certain facts constituting the elements of the crime. It provides in brief that “Whoever, in borrowing, propagates or publishes to the general public or circulates news by whatever means and pays or promises to pay to the lender a benefit at a rate higher than that payable by financial institutions under the law, shall be guilty of the offence of loan amounting to public cheating and fraud unless he can prove that his business will yield sufficient profits to make such a payment”.

To achieve this end, certain modifications in the procedural laws of some countries may be undertaken in order to keep pace with the technical skill and ingenuity of the criminal offenders in covering their tracks or hiding incriminatory evidence.

L. Private Prosecution

Some participants expressed the view that countermeasures against economic crime offenders should not be limited to public criminal prosecution, but may likewise include private prosecution through which alternative relief is given to the victims. Moreover, this kind of remedy supplements public prosecution and thus creates a greater deterrent effect upon the offenders. Under this system, a victim, who may have been dissatisfied with a non-prosecution order, may bring a criminal suit against the offender/s. This system exists in Thailand and in Commonwealth countries. In other countries like Japan and the Philippines, such private prosecution is not sanctioned by law; in these countries, a dissatisfied victim has the opportunity of review by the Prosecution Review Commission in the case of Japan, or by the Secretary of the

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Department of Justice in the case of the Philippines.

M. International Cooperation and Coordination

The fight against economic crimes, including those against consumers and investors, cannot be confined to individual countries. Considering the transnational and sophisticated nature of some of these crimes, every nation in the international community should play an active part in preventing, minimizing or controlling the problems spawned by such crimes. For instance, in large-scale fraud cases like the pyramid investment scheme and advance fee fraud, there must be effective international cooperation and coordination in order to combat these crimes successfully. The Pentagono pyramid investment scheme, which has its origin in Italy, is a case in point. In this scheme, the mastermind or principal, who occupies the top of the pyramid, is apparently in Italy and hence beyond the reach of other jurisdictions. Therefore countries which experience transnational fraud of this type should forge bilateral agreements and other forms of mutual cooperation and coordination to control this illicit activity, and bring the principal offenders to justice.

VI. CONCLUSION

To successfully combat formidable economic crimes, projected to reach serious proportions in the near future as information technology progresses, every country, whether developed or developing, must as a first measure of defense, strengthen all the pillars of its criminal justice system. This will ensure that necessary, adequate and efficient manpower and mechanisms are in place to detect, investigate, prosecute, try and penalize ingenious offenders or syndicates. Aside from the requisite expertise, full cooperation and close coordination among all the pillars of the criminal justice system

is imperative to prevent, minimize, or control the commission of economic crimes against consumers and investors. As a matter of policy, every government must see to it that its law enforcement and judicial system are a step ahead of the criminal mind, and not the other way around.

The transnational and complex nature of some economic crimes against consumers and investors, however, requires international cooperative action to effectively prevent, minimize, or control the commission of offences. One nation cannot be a successful crusader against economic crime offenders while others seek or allow themselves to harbor the criminals who spread this serious, global, economic menace. It is the responsibility of every country in the community of nations to play a crucial role in the global cooperative and coordinated effort to adopt and enforce countermeasures to effectively deal with these economic crimes.

END NOTES

1. Antimonopoly Act Guidebook, Fair Trade Commission, Lecture by Mamoru Izumisawa, Director, Management and Planning Division, Investigation Bureau, Oct. 7, 1998.
2. Philippine Daily Inquirer, August 3, 1998, p. 9.
3. Economic Crime and The Global Economy, *Understanding The Threat and Identifying Effective Enforcement Strategies and Countermeasures*, Paper presented at UNAFEI by Mr. John D. Arterberry, Deputy Chief, Fraud Section, Criminal Division, United States Department of Justice, on November 2, 1998, p. 11.
4. *Ibid*
5. USD \$ 1= 116.35 yen; 37.8 pesos; 36.02 baht; 1,057.62 won; as of November 4, 1998.