

**THE DEPARTMENT OF SPECIAL INVESTIGATION (DSI):
COUNTERMEASURES IN REGARD TO THE INVESTIGATION OF
ECONOMIC CRIMES AND SPECIAL CRIMES IN THAILAND**

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I. INTRODUCTION

Thailand has experienced and suffered from many kinds of economic crimes for a long time. The economic crisis in 1979 and in 1997 partly erupted from the fraudulent activities and malpractices of the financial institutions and the stock market. The country is also faced with drug trafficking, money laundering, underground banking, cheating and fraud on the public. Yet, typical economic crimes such as corruption, tax evasion, and government procurement fraud are prevalent.

At present, Thailand has successfully enacted new laws and established new agencies to combat the prevailing threats of economic crimes which I elaborate on later in this paper. Although, some favourable signs of achievement have been observed in combating offences like corruption, drug trafficking and money laundering, the success of implementation and enforcement of laws in relation to other economic crimes, is yet to be ascertained. Particularly, after the economic crisis of 1997 until now, the government has failed to punish the malpractice executives and the wrongdoers. So, Thai society has come to realize that some existing agencies and the old system of criminal justice are not capable of fighting economic crimes and other serious crimes.

The failure of the criminal justice system stirred up the awareness of society and caused the government to put its effort and resources into coping with economic crimes. Also, the struggles for political and legal reform of the Thai people over decades have resulted in the Constitution of the Kingdom of Thailand B.E. 2540 (1997) which led to the reform of the whole criminal justice system. The establishment of the Department of Special Investigation (DSI) in October 2002 is also the outcome of the reform and the effort of fighting against economic crimes.

**II. THE SITUATION AND THE PROBLEMS OF INVESTIGATION OF THE ECONOMIC
CRIMES IN THAILAND**

A. The Situation of Economic Crimes

As mentioned above, Thailand is faced with many kinds of economic crimes. However, the recent trends in the economy have created serious problems in the arena of the stock market and financial institutions such as fraud in financial institutions, price manipulation in the stock market, insider trading, crimes relating to securities, etc.

In 1979 Thailand had its first experience of economic crime relating to the stock market in the Raja Finance case. Raja was a big finance and securities company that lent a substantial amount to its associates in order to manipulate its share price on the Securities Exchange of Thailand (SET) which started operations in 1975. As Raja's financial position was weakened by a collapse of the stock index, depositors who had lost confidence in Raja, withdrew their deposits and Raja was eventually closed down. The depositors further withdrew money from other finance companies due to a lack of confidence in the sector. Then, the economic crisis occurred.

In 1983, four years after the collapse of Raja, Thailand encountered another banking crisis. This was caused by loopholes in the supervisory power of the Bank of Thailand to regulate bank executives against malpractice. A number of finance companies could not redeem their deposits and some were closed down and the government had to take direct ownership of several weak financial institutions.

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During the 1980s, Thailand was faced with a scheme of cheating and fraud on the public when “Mae Chamoi,” a Thai woman, set up an investment scheme to lure the public into investing in a “Share Fund” or “Chit Fund.” Mae Chamoi promised to pay high returns to her members at no risk. It was a kind of high yield investment programme or money pyramid scheme. In fact, those returns were actually generated from the principal of members who joined later. The scam expanded until it finally collapsed when Mae Chamoi mismanaged the cash-flow and some members started to withdraw their money. Again, the economy of the country went down.

In 1992, Thailand established the Securities and Exchange Commission (SEC) to supervise and develop the capital market. The SEC launched its first preliminary investigation into a price manipulation case known as “Sia Song” or the “Song Wacharasirote’ case. However, the accused was later acquitted by the Supreme Court.

The economic crisis in 1997 partly erupted from the fraudulent activities and malpractices of financial institutions and the stock market, particularly the Bangkok Bank of Commerce (BBC) and many related cases. The patterns of the case were similar to the Raja case in 1979 and the malpractice of the executives of the banks in 1983. However, until now the related government agencies, or in other words, the criminal justice system failed, to punish the malpractice executives and the wrongdoers.

B. The Existing Investigative Apparatus

Before the establishment of the DSI, the following were the related agencies dealing with economic crimes in Thailand.

1. The Bank of Thailand (BOT)

Established in 1939 and started operation in June 1940, the BOT served as the central bank of the country. Among other functions, the BOT is responsible for the supervision of commercial banks, finance companies, and other kinds of financial institutions.

In the fraudulent cases committed by the bankers or financial crimes involving financial institutions or financial transactions, the BOT has the power of administrative and preliminary investigation after that the case is referred to the Economic Crime Investigation Division (ECID) of the police.

2. The Stock Exchange of Thailand (SET)

In July 1962, a private group established and organized the stock exchange as a private company named the “Bangkok Stock Exchange Co., Ltd. (BSE).” However, the BSE was inactive and stocks continued to perform poorly. Without government support, the BSE finally ceased operations in the early 1970s.

In May 1974, the Securities Exchange law was enacted and the Securities Exchange of Thailand (SET) officially started trading in April 1975. On January 1, 1991, the SET changed its name to “The Stock Exchange of Thailand (SET)”.

As the SET is the immediate monitor of securities trading information, whenever any suspicious practices in securities trading occur, the SET holds primary responsibility for inspection and gathering all related evidence and facts for further action and coordination with the Securities and Exchange Commission of Thailand (SEC) and the police at the ECID.

3. The Securities and Exchange Commission of Thailand (SEC)

In spite the fact that the Thai capital market has been playing a pivotal role in the country’s economic development, in the past, the supervision and development of the Thai capital market was governed under various laws and regulations. To emanate the new legal framework and mark a new era for the Thai capital market, the Securities and Exchange Act B.E. 2535 (1992) was enacted on March 16, 1992.

The Act was promulgated and came into force in May 1992. This law empowered the office of the Securities and Exchange Commission of Thailand (SEC) to be the independent state agency to reinforce the unity, consistency, and efficiency in supervision and development of the capital market of the country.

The SEC is empowered to examine unfair securities trading practices such as trading securities by using inside information, causing unusual price movement by the continual practice of price manipulation, dissemination of misleading information related to the facts of securities to the public, etc. Such cases are referred to the police at the ECID and the office of the Attorney General respectively.

4. The Fiscal Policy Office (FPO)

The Fiscal Policy Office of the Ministry of Finance has the power of administrative and preliminary investigation according to some particular laws such as the Royal Proclamation Governing Fraudulent Borrowing B.E. 2527 (1984) and offences relating to cheating and fraud of the public or so called "Chit Fund" cases.

5. The Revenue Department, the Excise Department, and the Customs Department

The Revenue Department is mainly responsible for the collection of Individual and Corporate Income tax, and Value Added tax while the Excise department is mainly responsible for the collection of excise taxes and duties, such as liquor, tobacco, specific electrical appliances, specific vehicles, etc. and the Customs department is mainly responsible for the collection of customs taxes and duties.

In tax and duty evasion cases, the above related departments have the authority to carry out an administrative and preliminary investigation.

6. The Anti-Money Laundering Office (AMLO)

Established in 1999, the AMLO has been actively fighting against money laundering in Thailand particularly in narcotic and corruption cases. In 2003, the AMLO played a very important role in the war on drugs; which has been a very successful operation of Thailand.

However, the AMLO has power only on the civil asset forfeiture side. On the criminal provisions of money laundering, the AMLO has to refer the cases to the local police station (but in the future the case will be referred to the DSI.)

7. The Office of the National Counter Corruption Commission (NCCC)

Before 1975 corruption investigations were carried out by the normal government agencies and inspections were carried out by the supervisors within the relevant agencies themselves.

In 1975, the Counter Corruption Act was promulgated and established the Office of the Commission of Counter Corruption (CCC). However, the CCC did not have much power to combat corruption because of its limited jurisdiction.

In 1999, the office of the National Counter Corruption Commission (NCCC) was established according to the provisions of the Constitution 1997.

In 2003, the NCCC and the office of Criminal Litigation against Persons Holding Political Position of the office of the Attorney General were successful in filing law suits against the former Deputy Minister of the Ministry of Public Health and other high ranking politicians and convincing the Supreme Court to convict them.

8. The Economic Crime Investigation Division (ECID)

In 1987, the Police Department set up a special task force to fight against economic crimes, and later in 1991, developed the Economic Crime Investigation Division (ECID). This division is under the Central Investigation Bureau (CIB) of the police.

During the economic crisis, ECID was criticized for its role and performance. Since the establishment of the DSI, the function and future of the ECID is under consideration.

9. Office of the Attorney General (AG)

The AG has occasionally established special offices to handle economic crime cases. For instance, the AG set up the Department of Economic Crimes Litigation, Department of Intellectual Property and

International Trade Litigation, Office of Money Laundering Control Litigation and the Department of Tax Litigation.

Although, the AG set up special offices to handle economic crime cases, the Thai public prosecutors still have no power in the investigation process. They have to wait for the cases from the police before taking further action. This problem will be discussed later.

10. The Specialized Courts

The courts of Justice of Thailand are classified into three levels consisting of the Courts of First Instance, the Court of Appeal and the Supreme Court.

Like the AG, the Courts have occasionally developed efficiency in handling cases by establishing the specialized divisions or specialized courts such as the Tax Court, the Intellectual Property and International Trade Court, and the Bankruptcy Court.

C. The Problems Investigating Economic Crimes

1. The Basic Problems

The justice system in Thailand has been confronted with basic problems: the excessive power of the police and the police's abuse of power, the lack of cooperation and coordination among agencies in the criminal justice system, the delay of criminal process, the unnecessary detention of the accused during trial, the lack of compensation for the accused later acquitted, etc.

The movement for reform of the criminal justice system started a long time ago and many problems have been solved. However, in the area of criminal investigation, particularly for economic crimes, there is still a search for a suitable solution.

2. The Problems of the Criminal Investigation Process

In many countries, criminal investigation is the joint responsibility of the police and the prosecutor, with the former under the supervision and guidance of the latter. But according to the Criminal Procedure Code B.E. 2478 (1935 AD.) of Thailand, there is an almost complete separation between the investigative and prosecutorial functions.

The prosecutor has a passive and limited role in the criminal investigation. The prosecutor's role begins only after the police have finished their investigation and submitted the file of inquiry to him/her. The prosecutor will then review the file, which also includes the police recommendation on whether the case should be prosecuted. If the prosecutor is of the opinion that the file of inquiry is incomplete and more investigation is needed before a decision can be made, he/she can direct the police to conduct additional investigation. However, since the power of investigation belongs exclusively to the police, the prosecutor can only request the police to conduct the investigation on his/her behalf and cannot initiate it himself/herself.

Therefore, the police are the only organization who can initiate a criminal investigation and are in a position to monopolize the state's power to invoke criminal enforcement. Such complete control of the pre-trial criminal process by the police without an adequate opportunity for supervision and control by other organizations has left the police virtually unchecked to freely perform their functions with very minimal review from the other criminal agencies.

However, after the establishment of the National Counter Corruption Commission (NCCC) and Department of Special Investigation (DSI), the powers of criminal investigation in special cases are vested to those new agencies which are the result of legal reform.

3. The Problems of Investigation of Economic Crimes

In Thailand, there are many agencies involved in the process of investigation in economic crimes. These agencies work independently to conduct investigation in their jurisdiction. The other agencies have to wait until the investigation files are submitted to them. For example, in a securities offence, the Stock Exchange

of Thailand will gather and analyze information or conduct the preliminary investigation and then submit the case to the Securities and Exchange Commission (SEC). The SEC will conduct an administrative and preliminary investigation and submit the case to the ECID. The ECID, will conduct the criminal investigation, interview witnesses, review (the same) documents, and give their opinion on whether the case should be prosecuted, then submit the file to the prosecutor at the DECL. Again, the prosecutor will review the whole file before making a decision to prosecute or drop the case. This may take 4-5 years and in many cases end up with the failure to punish the criminal.

III. DEPARTMENT OF SPECIAL INVESTIGATION (DSI) : THE COUNTERMEASURES IN REGARD TO THE INVESTIGATION OF ECONOMIC CRIMES AND SPECIAL CRIMES

A. The Pressure from Society and Development of the Concept

In 1997, two important events occurred by coincidence in Thailand - the economic crisis and the promulgation of the new Constitution - which led to the radical reform of the legal system and socio-economic structure and also the reform of the government administrative system, including the establishment of the Department of Special Investigation (DSI) .

1. Economic Crisis in 1997 : Turn Crisis into Opportunity

The economic crisis known as "Tom Yum Kung Disease" caused more than fifty financial institutions in Thailand to collapse. The crisis stemmed from the rapid expansion in real estate, construction and financial sectors that generated over-investment and a high level of external short-term loans. Also, the crisis partly erupted from the fraudulent activities and malpractices in the financial institutions and stock market, particularly in the Bangkok Bank of Commerce (BBC) and related cases. The crisis erupted when export slowed and the country lacked cash-flow. To resolve the problems, the Thai government sought help from the International Monetary Fund (IMF) and the international community, particularly from Southeast Asian nations and Japan.

As a debtor, Thailand had to follow the guidance of the IMF in many ways, including the amendment of business laws. During the three years under the IMF programmes from 1997 - June 2000, Thailand amended eleven statutes that obstructed a solution to the economic crisis.

However, after the crisis, scholars and activists criticized those laws for being in favour of creditors. They suggested that the laws should respect both the creditors and the debtors' rights. The debates, led to a proposal to reform the whole system of business laws. Now the process of reform is still going on.

Furthermore, after the crisis, the public demanded that the government investigate the cause of the crisis and declare who should be blamed. In particular, the public demanded that the government punish the wrongdoers who were involved in the financial fraud and caused the crisis.

However, under the old system of investigation in which the investigation power belongs exclusively to the police, the police and the whole criminal justice system failed to do so. This later led to the acceleration of the establishment of the Department of Special Investigation (DSI) in order to cope up with the problems of investigation of economic crimes and other special crimes.

2. The Constitution B.E. 2540 (1997) : The Outcome of Public Awareness

On June 24, 1932, a group of young intellectuals, educated abroad staged a bloodless coup demanding a change in the Thai government system from absolute monarchy to a democracy with a constitutional monarchy. King Prajadhipok (Rama VII) agreed and thus ended 700 years of Thailand's absolute monarchy.

However, over six decades of democracy has undergone a long process of refinement and struggle. In the early period of democracy, the armed forces took control of the country then the people demonstrated and demanded democracy. Many pupils, students, and others sacrificed their lives for democracy during the demonstrations demanding real democracy in October 1973, October 1976, and May 1992.

The bloodshed demonstrating for democracy in May 1992 and the struggles of the Thai people over the decades, led to political and legal reform. The Constitution of the Kingdom of Thailand B.E. 2540 (1997) is the significant outcome of the event.

The Constitution has reformed the whole structure of the country. It created a new kind of check and balance system, not only of the three branches of traditional powers - the Judiciary (Court), Legislature (Parliament) and Executive (Government), - but also the powers of the people, community, and new independent agencies such as the Election Commission, an Ombudsman, Human Rights Commission, Administrative Court, Constitutional Court, State Audit Commission and the National Counter Corruption Commission (NCCC).

The Constitution also set up a new era of the Court and the Ministry of Justice. The Ministry of Justice had been the secretariat of the Court responsible for the administrative work of the Judges. But under the new Constitution, the Court is totally separate from the government. The Court has its own budget and administrative office. It is the duty of the government and the parliament to provide a sufficient budget for the Court.

Before the promulgation of the Constitution, the justice affairs agencies were scattered under many Ministries. The result of that caused problems of cooperation and coordination. By the provisions of the Constitution, the Ministry of Justice is the centre for the administration of justice affairs of the country. By this, all government agencies relating to the administration of justice affairs - such as the Office of the Attorney General, Office of Anti-Money Laundering, Office of Narcotics Control and Correction Department, - have been transferred to the Ministry of Justice. It is also necessary to set up the new agencies under the Ministry of Justice such as the Central Forensic Science Office, Office of Justice Affairs, Department of Rights and Liberty Protection, and importantly, Department of Special Investigation, (DSI); the new law enforcement agency entrusted with the detective and investigative powers.

B. The Process of Establishment of the Department of Special Investigation (DSI)

After the political turmoil in May 1992, there was an increase in the public's demand for political and legal reform, particularly reform of the Constitution and the criminal justice system as mentioned above. This process took many years of development and struggle.

In 1995, the Committee on Administration and Judicial Affairs of the Senate, after thorough study, proposed to restructure the Ministry of Justice. In their paper the Committee of the Senate also stated the problems of investigation carried out by the police; therefore, they recommended establishing the DSI to be entrusted with investigative power in complicated and serious criminal cases.

In 1997, as mentioned above, Thailand had a new Constitution which entrusted the Ministry of Justice to be the centre of the administration of justice affairs.

In 1998, the Prime Minister set up a special committee to study and design the model and structure of the Minister of Justice. The committee reported to the Prime Minister and recommended establishing the DSI to be the independent agency under the direct supervision of the Minister of Justice.

In conclusion, from the year 1995 - 2002, the legal scholars and practitioners, particularly the Committee of the Parliament, from time to time, held academic seminars and research and finally suggested establishing the DSI.

Finally, after taking a long time to gain public support and political will, in the year 2002, by the proposal of the Government, the Parliament passed the Bill for Reformation of the Government Agencies. This law came into effect in October 2002, establishing many new government agencies, including the DSI.

However, according to the Act for Reformation of the Government Agencies and the Ministerial Regulation of the Ministry of Justice, the DSI has only administrative power. It is necessary to have a special law to authorize the detective and investigative power and other authorities of the DSI - that is the Special Investigation Bill which came into effect in early January 2004, when the King signed the Bill.

C. The Role of the DSI in Fighting Economic Crimes

1. The Central Unit for Fighting Economic Crimes

The Special Investigation Act B.E. 2547 (2004) which came into force after the King signed the Bill in

January 2004, authorizes the DSI to be the central unit of the investigation of economic crimes and special crimes at the very beginning.

The concept of working in an interdisciplinary manner will be applied. The DSI can appoint or invite any related persons or experts to join the investigation team, including from the international community. The DSI will work closely with the prosecutors and other agencies as a team. The Government and the Parliament allow the DSI to pool the resources of the country to fight economic crimes. For instance, the DSI can request officers from other agencies to work at the DSI for a certain period.

2. Seeking Cooperation and Bringing in Experts

The Special Investigation Act aims to solve the problems of lack of cooperation and coordination among agencies in the criminal justice system. The Act authorizes the Special Investigation Board (the Board) to pass a resolution or adopt a Memorandum of Cooperation and Coordination among agencies. The Board headed by the Prime Minister, comprises of the heads of the criminal justice agencies and scholars. If there are conflicts among agencies, then the problems will be solved by the Board.

According to the Special Investigation Act, the DSI will consult and work closely with the prosecutors. In particular cases, such as transnational crimes and crimes committed by influential persons or politicians, the DSI and the prosecutors are jointly responsible for investigation.

The Act also allows the DSI to appoint experts from various fields and organizations, including from international communities to join the investigation team.

3. The Special Power of the DSI

The DSI can request a Court to issue a warrant to access the accounts, computer, communication instruments or equipment, electric mail, data, or any electronic telecommunications of the suspects for no longer than a ninety day period. The DSI can also operate a sting operation or set up a mobile unit or commando unit if necessary.

4. The Jurisdiction of the DSI

According to the Act, the DSI is responsible for crime prevention and suppression and for investigating specific crimes, such as Financial and Banking crimes, Intellectual Property Rights crimes, Taxation crimes, Consumer Protection and Environmental crimes, Technology and Cyber or Computer Crimes, Corruption in Government Procurement, and other serious crimes that have a seriously negative effect on public peace and order, morale of the people, national security, international relations, and the economic or financial system. The DSI will also have responsibility for investigations involving Transnational and Organized Crimes and also other white collar crimes.

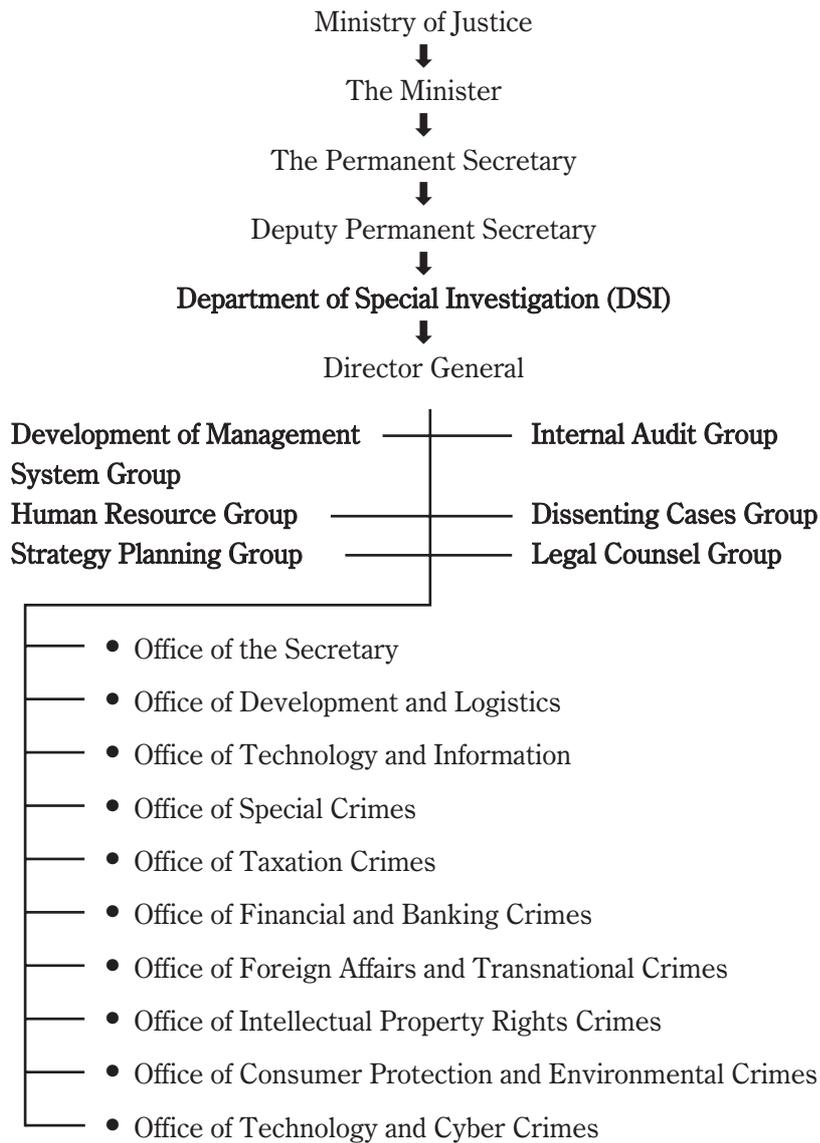
The Act aims to promote the DSI to be the experts in the investigation of those kinds of special crimes.

D. The Difference Between the Roles of the Police and the DSI

The Government and Parliament intend to entrust the DSI with the power to investigate serious, complicated and sophisticated crimes and particularly economic crimes or white collar crimes, transnational and organized crimes; while the police have the power to maintain peace and social order and have the power to investigate street crimes.

The DSI will operate on the basis of a data collection and technology base; therefore, it is like an Intelligence Unit rather than an Army. While the Police still need a foot patrol operation, the DSI will not, but it may be necessary to have a sting operation or sleeper unit to spy on a specific organization or area.

E. The Organizational Structure of the DSI



IV. CONCLUSION

Since special crimes under the jurisdiction of the DSI have modus operandi that differ from other crimes in various aspects, the DSI will train its officers to be well equipped with specific knowledge along with superior skills, tactics and teamwork that will be necessary to conduct successful investigations.

The DSI expects itself to be an interdisciplinary organization aiming at proactive operations to deliver justice to society and to reduce financial loss. Also it aims to work towards ensuring the safety, security and wealth of the nation and the world community possessing accountability and integrity in order to be well respected by the public and the world community.