

The outcome from the determination and efforts by government interdepartmental sectors in rigorous fights against fraud crimes

The prevention of fraud crimes has long been one of the key policies of Taiwan. Following the liberalization and globalization of telecommunication and internet, fraud cases now become more grouped and organized, which are often integrated with internet, telecommunication, and communication technology to evolve into new types of electronic fraud crimes. To implement the determination of Taiwan in fight against crimes, the Ministry of Justice recently proceeded with the “Sophistication of Crime Investigation and Prevention,” “Integration of Resources from Different Governmental Agencies and Departments,” and “Take Actions in Promoting the Amendment to Improve Relevant Laws and Regulations” through the following proactive actions, as described in the instruction:

I. Sophistication of Crime Investigation and Prevention:

The collection of evidence on Taiwan national engaging in fraud crimes overseas has not been easy since the premise of conducting criminal act is abroad. Nonetheless such type of crime is highly subject to constant probability of recidivism and hence the suspects with related criminal records are established into the database

according to the length of period between arrival and departure, location, the subjects of interaction from the passenger manifest and other features to undergo big data analysis and determine if these suspects engage in fraud crimes overseas. The Taipei Representative Office in that country will coordinate with the local police to spy on and visit in person, which will facilitate the investigation and seizure of the computer rooms for fraud set up by crime groups overseas and the premise for fraud offense. Currently the Ministry of Justice has requested Taiwan High Prosecutors Office to design and establish a cross-border telecommunication fraud crime database in order to investigate and thoroughly disintegrate fraud crime organizations. The ultimate objective of Ministry of Justice ensures that no one can profit from crimes and subsequently appeal in the effective fight against crimes from the root.

II. Integration of Resources from Different Governmental Agencies and Departments

1. Convene Interdepartmental Platform Meeting for Fight Against Cross-Border Fraud Crimes and Integrate the Strengths of Agencies

The Ministry of Justice, Ministry of Foreign Affairs, Mainland Affairs Council of Executive Yuan, Criminal Investigation Police Office, National Police Agency of Ministry of Interior, Taiwan High Prosecutors Office and other agencies established the “Interdepartmental Coordination Platform for

Processing Cross-Strait Telecommunication Fraud Cases in Other Countries” (hereinafter referred to as the Interdepartmental Coordination Platform)” on June 3, 2016 to process Cross-Strait cross-border fraud cases. Mainland Affairs Council Minister and the Minister of Justice served as the co-chairman and conducted the first interdepartmental coordination platform meeting on the same day. The platform has been convened for five meetings since the establishment, inviting the Judicial Yuan and MJIB to attend the meeting and discuss “Strengthen Actions in Fight Against Telecommunication Fraud Case.” The meetings also reached resolution on the matters related to division of labor for each department while each department designs and promotes the execution. The specific outcome of the platform meetings is described below:

- (1) The “Mission-Based Police Liaison Officer” program is launched to promote frequent cooperation between Taiwan and the police in country of station and provide Taiwan’s experience in fight against telecommunication frauds through overseas police cooperation.
- (2) The Ministry of Foreign Affairs has developed the reporting mechanism of “Pre-warning, arrest and detention, and repatriation report on Taiwan national engaged in cross-country (border) telecommunication

frauds overseas” in order to report intelligence in Taiwan and abroad to the competent authorities immediately, while relevant departments and Taipei representative offices are required to comply with the procedures. This interdepartmental pre-warning reporting mechanism allows Taipei representative offices and the polices to cooperate in advance based on the prior exchange of pre-warning information on cross-border crimes, thereby preventing suspects of telecommunication frauds to search for crime premises worldwide.

- (3) Apart from attending organizations, the National Communications Commission (NCC) and Financial Supervisory Commission (FSC) also took part and explained about the control actions for prepaid cards issued by telecommunication industries and the unionpay cards frequently used in fraud, in attempt to jointly analyze the approach of solution. The abuse of such cards by the criminal organizations is expected to reduce without affecting the rights and interests of the public.

2. Establish “Cross-Border Telecom Fraud and Asset Recovery Platform”

The local court prosecutors’ office (hereinafter referred to as Prosecutors Office) under the supervision of Taiwan High Prosecutors Office (hereinafter referred to as Taiwan High

Prosecutors) is charge of the investigation on cross-border telecommunication fraud cases. The prosecutors' office commands the Ministry of Justice Investigation Bureau or the Criminal Investigation Police Office of Ministry of the Interior to lead the investigation. To effectively black cross-border telecommunication fraud acts and recover the assets, Taiwan High Prosecutors established the "Cross-Border Telecommunication Fraud and Asset Recovery Platform" on April 28, 2016 with responsibility in the supervision of local prosecutors' offices and integration of the investigation powers from the prosecutors, police and investigation bureau. The platform coordinates public and private sectors in the assistance of investigation and asset recovery in order to thoroughly fight against such type of crimes. The platform was established under the supervision of Taiwan High Prosecutors for the criminal investigation department to thoroughly combat against the fraud and recover assets.

III. Take Actions in Promoting Amendment and Improvement of Relevant Laws and Regulations

1. Add Aggravated fraud offense to Criminal Code

Taking into consideration of the independent punishment regulation governing the fraud crime of specific patterns under foreign legislation, Taiwan has promulgated the addition of aggravated fraud offense under Article 339-4 on June 18, 2014,

where the three patterns of “fraud offense committed in the name of a government agency or public official without authorization,” “carried out by three or more people” and “carried out by dissemination of false information to the general public through television, electronic communication, the Internet or other media” were added to the aggravating conditions. The legal sentencing of this crime will receive at least one year and up to seven years imprisonment, taking consideration of the maliciousness of such special fraud behavior, its social impact and the crime equity in Criminal Code. The sentencing is may be fined up to NTD1 million and unaccomplished offense will be punished.

2. Take Actions in Promoting Amendments to the Money Laundering Control Act:

To improve the laws and regulations governing the investigation and trial on telecommunication fraud and thoroughly and effectively deprive the illegal proceeds from the fraud organizations, Ministry of Justice takes actions in promoting the amendments to the Money Laundering Control Act and has promulgated on December 28, 2016 for implementation on June 28, 2017. Prior to the amendment to Money Laundering Control Act, the indictment for the driver shall be applied with the provisions of fraud crime in Article 339 of Criminal Code. Nonetheless the victims are often

unidentified or the lack of relevant evidence could add difficulty in the indictment. Hence, the drive clause was added to Article 15 of Money Laundering Control Act, which is expected to curb the criminal acts of frequent withdrawing of money by the drivers of fraud organizations in practice. As for the confiscation, the clause regarding confiscation under paragraph 2 of Article 18 of the Act is expanded so that frequent or organized money laundering crime shall be confiscated in the presence of sufficient facts that support the suspect has obtained disposable property or proceeds on property from other illegal acts. Additionally the threshold for specific crime prescribed in Article 3 with the least sentencing of 5 years imprisonment to least sentencing of 6 months imprisonment, with the listing of relevant titles of crimes to expand the scope of predicate offences for money laundering with inclusion of Article 339, 339-3 and 339-4 of Criminal Code.

3. Amend Organized Crime Prevention Act and Restructure and Re-define the Structure of Organized Crime:

To effectively fight against organized crime, particularly the cubing of cross-border telecommunication fraud crimes in the protection of national life, property and security, thereby specifically implement judicial justice, the Ministry of Justice takes action in the promotion of amendment to the draft of

Organized Crime Prevention Act, which passed the three readings by the Legislative Yuan on March 31, 2016 and was promulgated by the President on April 19 of the same year for implementation. The draft opened up a new page of Taiwan's history in the prevention of organized crime. The structured of crime organization, which is not only limited to violent crime but the crime committed by fraud organizations not only will face with the previous aggravated fraud crime in Article 339-4 of Criminal Code but also the regulations governing the severe punishment of participation in crime organizations after the amendment to the Organized Crime Prevention Act.

4. Develop the Act on International Legal Assistance on Criminal Matters and Provide reference for Recovery of Assets:

Although Taiwan has signed the “Agreement on Mutual Legal Assistance in Criminal Matters between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States” with the United States on March 26, 2002 and signed the “Agreement on Mutual Legal Assistance in Criminal Matters Between the Taipei Economic and Cultural Office in the Philippines and the Manila Economic and Cultural Office in Taiwan” on April 19, 2013, followed by signing the “Arrangement Between the Taipei Liaison Office in the Republic of South Africa and the

South African Liaison Office in Taipei on Mutual Legal Assistance in Criminal Matters” on July 24, 2013, nevertheless most countries have not signed mutual legal assistance agreement with Taiwan. In the absence of agreement assistance, the investigation of cross-border telecommunication crimes particularly requires complete national regulations that will facilitate the criminal and judicial assistance with explicit and specific reference for compliance. The Ministry of Justice takes consideration of International Covenant foreign legislations in the formulation of “Act on International Legal Assistance on Criminal Matters” drafts with 39 clauses. Such special act shall be applied to regulate the criminal and judicial assistance and as the basic legal source for Taiwan to execute relevant matters and facilitate the request and execution of criminal and judicial assistance between Taiwan and other countries. The “Act on International Legal Assistance on Criminal Matters” draft was ratified by the Minister of Justice and submitted to the Executive Yuan via official letter on April 18, 2017 for review.

Moreover, it is stipulated in the draft that the confiscation of asset, with the assistance provided by foreign governments that facilitate the confiscation or chase of property related to crime, shall be applied with the means of crime asset sharing after the cross-border cooperation in executing confiscation.

Those ruled by other countries for confiscation shall require the addition to the “Act on International Legal Assistance on Criminal Matters” with the assistance in executing the ruling on the confiscation related to crimes by the counts in other countries and the request for other countries in assisting the confiscation with requirement for petition to Taiwan’s court of ruling and permission for execution procedures. The Act also stipulates the standards of criminal and judicial mutual assistance between Taiwan and China and between China, Hong Kong and Macao. For this reason, the freezing, detention, confiscation, and transfer of subjects in cross-border crimes will more effectively cooperate in the asset investigation, recovery and return with other countries and regions through judicial mutual assistance, in order to make up for the loss of victims.

IV. Efforts in Cross-National Cooperation and Exchange

The Ministry of Justice officially joined the Asset Recovery Inter-Agency Network of Asia/ Pacific (abbreviated as ARIN-AP) on January 28, 2014 and became a member state. Such organization was founded under the assistance of “United Nations Office on Drugs and Crime (UNODC)” by Korean, which mission of establishment aims to advocate for the network to become the judicial mutual assistance of intelligence for countries in Asia/Pacific, enhance the performance of

judicial mutual assistance, remove the platforms in obstructing crime asset return. Taiwan is a ARIN-AP based platform that strengthens its interaction, exchange and experience sharing with competent authorities worldwide. Taiwan also takes actions in the participation of international community and we believe that it will assist the performance of indictment for cross-border crimes. Moreover, the Ministry of Justice, the prosecutors and police also participate in international meetings and activities with enthusiasm to strengthen the tie with the central authority of other countries. Consequently the detention of proceeds from crimes shall be swiftly conducted when needed, in order to thoroughly derive the incentives for committing crimes.

V. Current Actions and Performance of Improvement

In sum of the aforementioned, the Judicial Yuan analyzed the ruling results of statistics from foregoing improvement actions and revealed that the major interval for sentencing of telecommunication fraud cases ruled by local courts between November 2016 and February 2017 has increased to one year to two years. The statistics of Ministry of Justice also reveal that at least 70% of cases with ruling have been sentenced to more than one year since 2015. As for execution, Taiwan High Court Taichung Branch Court ruled cases 2013 Shan-Yi-Zi No. 551 and 2016 Shan-Su-Zi No. 788 regarding the

telecommunication fraud organizations setting up computer rooms in Taiwan and Turkey with announcement of consolidated execution for sentencing to nine years imprisonment. The ruling for Taiwan High Court Case 2011 Shan-Yi No. 62, 2013 Shan-Su-Zi No. 1800 and 2016 Jing-Shan-Su No. 22 also announced the consolidated execution for sentencing to ten years imprisonment for defendants in cross-telecommunication frauds. It is evident that judicial practice now shows trends of felony sentencing for crimes of telecommunication frauds.