

## Efficiency Enhancement of Law Enforcement to Prevent and Resolve a Ponzi Scheme Problem in the Transnational Venture Capital

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### Abstract

The objectives of this research are to study the problems and impact of a fraudulent transnational venture capital firm using Ponzi schemes to defraud investors in Thailand and to study the problems, obstacles, and limitations of law enforcement as well as offer recommendations to empower law enforcement agencies to deal with the problem more effectively. This qualitative study employs documentary research, non-participant observation, in-depth interviews, and a focus group. The results show that a Ponzi scheme was organized by criminals that used social media and a fraudulent transnational venture capital investment company as deception tools. In this case, the Royal Thai Police arrested 32 suspects. There were 50,000 victims, and cash flow in the company bank account was about 10,000 million Baht. The problems, obstacles, and limitations law enforcement faced were divided into the following five categories: offenders, victims, legislation, law enforcement, and informal finance. The following seven recommendations were proposed to empower law enforcement authorities to become more efficient: establishing a Ponzi scheme prevention and suppression agency, establishing a fund to prevent Ponzi schemes, informing the public about Ponzi schemes, applying foreign laws to domestic laws, increasing domestic funding, implementing rotating community savings, and establishing a special jurisdiction for economic crime cases.

**Keywords:** *Efficiency Enhancement, Law Enforcement, Ponzi Schemes, Transnational Organized Crime, Venture Capital, Fraudulent*

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### 1. Background and Significance of the Problem

Since Charles Ponzi, an Italian swindler, first invented the Ponzi scheme in 1920 (Samkoses, 2017). Currently, more complicated forms of this crime are still committed throughout the world. During the past decade, Ponzi schemes have progressed from investments such as gold, oil, and consumer products to direct sales businesses (Sinloyma, 2007). In 2002, the Thai parliament promulgated the Direct Sales and Direct Marketing Act, B.E. 2545 to regulate direct sales. Currently, sellers do not need to approach buyers in person because they can sell directly to customers via websites and applications (Kruthmechai, 1999). Nowadays, Ponzi schemes in the form of direct sales are rare because buyers no longer need to meet face to face with sellers. Online Ponzi schemes have had a significant impact on society because they can operate anonymously to evade detection.

Venture capital is money that investors provide to fledgling businesses that have the potential to expand rapidly. Financing is raised from investors who are attracted to businesses that may offer high returns and rapid growth. (Tantayanon & Phanawon, 2011).

Investing in small businesses with potential is attractive to financiers because they may receive dividends and earnings from shares when the Initial Public Offering (IPO) is launched on the Stock Exchange of Thailand. However, this makes it easier for criminals to convince members of the public to join Ponzi schemes because they are aware that start-up companies are likely to offer high returns. Perpetrators of Ponzi schemes have been known to use fraudulent venture capital companies to convince people they are legitimate. Then they abscond with the money.

Venture capital companies can act as a front for Ponzi schemes because they operate similarly. Both organizations raise money, offer high returns, encourage participants to invest in other businesses, and promise dividends from investments. However, the difference between them is that legitimate venture capital companies are regulated to protect investors. The investments are authentic, and the profits from the

investment are lawful. On the other hand, Ponzi schemes are illegal operations that are unregulated. They are unaccountable, and they pay existing members using the money raised from new participants in the scheme. Eventually, the Ponzi scheme collapses when the money runs out.

Currently, the number of venture capital companies in Thailand and other countries is increasing dramatically. Moreover, the government in Thailand is unable to regulate many transnational venture capital corporations because they are registered overseas. Domestic laws require transnational venture capital firms to register with The Office of the Securities and Exchange Commission before fundraising in Thailand; however, many of these organizations still pursue domestic investment without being registered. In 2018, The Royal Thai Police TACTICS (Thailand's Action Taskforce for Information Technology Crime Suppression) reported that 32 suspects had been arrested for defrauding 50,000 people who had joined a transnational Ponzi scheme. The offenders' bank accounts held about 10,000 million baht. (Thailand's Action Taskforce for Information Technology Crime Suppression [TACTICS], 2018) This case demonstrates that Ponzi schemes in the guise of transnational venture capital businesses can cause many members of the public to lose considerable amounts of money.

Government agencies cannot control transnational venture capital firms because the law relating to the Ponzi scheme prevention and suppression in Thailand, the Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud, B.E. 2527, is outdated. Moreover, none of the Thai government agencies are solely responsible for investigating Ponzi schemes and transnational organized crime. Many law enforcement authorities' duties overlap, resulting in no specific agency being solely responsible for the prevention and suppression of transnational Ponzi schemes. A report from TACTICS stated that the suspects were arrested only after members of the public had been defrauded.

Therefore, this research focuses on recommendations that increase the efficiency of law enforcement agencies to enable them to prevent and resolve the problem of fraudulent transnational venture capital firms using Ponzi schemes to defraud investors in Thailand. White-collar crimes, justice administration, subordinate acts, legislation, work mechanisms, and the authority of related justice agencies were studied to obtain the recommendations.

It is hoped that the results of this research will empower the government to control and investigate fraudulent transnational venture capital firms more rigorously and prevent potential losses to investors in Thailand by upgrading and standardizing the justice process.

## **2. Research Objective**

The objectives of the study are (1) to study the problems and impact of a fraudulent transnational venture capital firms using a Ponzi scheme to defraud investors in Thailand. (2) To study law enforcement problems, obstacles, and limitations that could prevent and suppress fraudulent transnational venture capital firms using Ponzi schemes to defraud investors in Thailand. And (3) To offer recommendations that will empower law enforcement agencies to efficiently prevent and suppress fraudulent transnational venture capital firms using Ponzi schemes to defraud investors in Thailand.

## **3. Literature review**

### **3.1 White – Collar Crime**

"White – Collar Crime" is a term coined from the working environment in the United States by considering the dress code of the working group that has a good job position, such as the company employees or civil servant. This is usually dressed in a white shirt so that it's causing people to define this type of group as "White-collar workers" (Treadwell, 2006). It is different to the group of workers which is a group that has a lower duty. These groups of workers in the United States tend to blue work shirts so that it's causing people defines this type of group as "Blue-collar Workers" (Parietti, 2019)

"White-Collar Crime" originated from the American sociologist named "Edwin H. Sutherland" in the years 1930 - 1940. At that time, most criminologists thought that crimes were caused by poverty or financial disadvantage, but Sutherland disagreed with the above statement. Sutherland sees that people with a high social status which has been respected and admired by the general public able to commit violent crimes by relying on their career opportunities, economic status and business interests (Benson, 2009)

Sutherland's ideas revolutionized the idea of people who believe that "all crimes" are caused by people in a poor or unworthy society, to be the belief that "crime" can also occur by a person of high status. So, it can consider that the definition of "White-Collar Crime" created by Sutherland is to create the new theory in the theoretical view of Criminology in Modern Society (Hagan, 2008).

### **3.2 Ponzi scheme**

"Ponzi scheme" is a fraud to invest or join a business that does not require a lot of investment, but the rate of return or benefit that the promoters will receive is very high. (Boonyopas, 2014) The founders of the Ponzi scheme will ask investors to invest money by promising to invest money in assets that are likely to make high profits and have low or no risk at all. Which the most of the Ponzi scheme aims to bring the money of new investors to pay to the old investors, causing those who intend to invest in legal property to make mistakes in investing in the Ponzi scheme instead of investing in a legitimate business and earning income from a real business. (United States Securities and Exchange Commission, 2018)

The key characteristics of Ponzi scheme that have occurred in the past and present are seven similar things that can divide as follows: (1) High compensation and low risk or no risk at all; (2) There is too much compensation; (3) Is an investment that has not been registered with a government agency that supervises; (4) The investment solicitor does not have a license to sell or recommend investment; (5) Businesses that are classified as confidential and/or complex; (6) There is a problem with requesting to inspect investment documents; (7) Having difficulty getting the money invested back. (U. S. Securities and Exchange Commission, 2018)

### **3.3 Money Laundering**

"Money Laundering" is a term known to more than 70 years in American Criminal Organizations. The person who invented the term was "Meyer Lansky" which has principles regarding the unlawful collection of funds come through the commercial process in order to become legitimate money (Ubride, 2003 as cited in Siripetch, 2011). Nowadays, many individuals or agencies have defined the definition of "Money Laundering", such as the International Criminal Police Organization: INTERPOL has also defined the definition of "Money Laundering" means "Concealing or disguising the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources" (International Criminal Police Organization, 2019) and The Financial Action Task Force (FATF) has defined the definition of "Money Laundering" means "the processing of these criminal proceeds to disguise their illegal origin. This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardising their source" (Financial Action Task Force, 2019).

### **3.4 Transnational Organized Crime**

The United Nations Convention against Transnational Organized Crime 2000 in Palermo, Italy had defined the definition of "Transnational Organized Crime" means "A structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit" (The General Assembly, 2001) and also defined the definition of "An offence is transnational in nature" means "An offence is transnational in nature if: (a) It is committed in more than one State; (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or (d) It is committed in one State but has substantial effects in another State" (The General Assembly, 2001)

### **3.5 The Regulatory Agency and Suppression of Offense in the Venture Capital Business**

The Regulatory Agency and Suppression of Offense in the Venture Capital Business in Thailand, in accordance with the Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud B.E. 2527, the Anti-Money Laundering Act, B.E. 2542, the Prevention and Suppression of Participation in Transnational Organised Crime Act, B.E. 2556 and other related laws, namely (1) The Office of the Securities and Exchange Commission; (2) the Economic Crime Suppression Division, Royal Thai Police; (3) the

Transnational Criminal and Illegal Smuggling Suppression Center, Royal Thai Police; (4) Thailand's Action Taskforce for Information Technology Crime Suppression (TACTICS), Royal Thai Police; (5) the Department of Special Investigation (DSI); (6) the Anti-Money Laundering Office (AMLO); (7) the Informal Finance Notification Center, the Fiscal Policy Office, the Ministry of Finance; (8) the Office of the Attorney General. And there have also a Non-Government Organization (NGOs) that helps to report clues about the current Ponzi scheme problems and helping the victims in litigation and tracking property back is the Stop Money Game Confederation (SMGC).

### 3.6 Related Research

Many researchers have investigated Ponzi schemes in Thailand. Sinloyma (2007) considered the patterns and methods of direct sales Ponzi schemes. Rattanapirom (2010) examined government policies to control direct sales Ponzi schemes. Akkaraviboon (2009) investigated legislation to protect consumers from direct sales Ponzi schemes. Lobyam (2006) explored measures to promote and control venture capital. Sakkosol (2001) studied money laundering by comparing Thai laws to The United Nations Convention against Transnational Organized Crime. Also, Mookjang (2002) reviewed measures to prevent and suppress transnational crimes emphasizing on money laundering.

However, research on improving the efficiency of law enforcement agencies to prevent the problem of fraudulent transnational venture capital firms using Ponzi schemes to defraud investors in Thailand has not been undertaken. Therefore, the relationships between Ponzi schemes, transnational organized crime, fraudulent venture capital firms, and money laundering were investigated to propose recommendations to law enforcement agencies.

## 4. Research Methodology

This qualitative research used the following four research methods.

1) Documentary research was conducted by reviewing the literature and relevant research published in print media or recorded as electronic documents to survey the current state of the problem.

2) Non-Participant observation was applied to gather data. The researcher decided to collect data using this method (Non-Participant Observation) by investing in the venture capital business in order to be able to find information that will be used in the research. The researchers used methods to monitor the operation of the Ponzi scheme outside by not participating in or appearing in the venture capital business. So, the researcher took the time to study and collect data starting from January 2018 and ending in December 2018, including a period of no-one observation for approximately 1 year.

3) In-depth interviews were used to obtain answers to the research questions. The informants were government officers from agencies responsible for law enforcement, private agencies, and experts in economic criminal law. Ten informants from (1) The Office of the Securities and Exchange Commission; (2) the Economic Crime Suppression Division, Royal Thai Police; (3) the Transnational Criminal and Illegal Smuggling Suppression Center, Royal Thai Police; (4) Thailand's Action Taskforce for Information Technology Crime Suppression (TACTICS), Royal Thai Police; (5) the Department of Special Investigation (DSI); (6) the Anti-Money Laundering Office (AMLO); (7) the Informal Finance Call Center, the Fiscal Policy Office, the Ministry of Finance; (8) the Office of the Attorney General; (9) the Stop Money Game Confederation (NGOs); and (10) experts on economic criminal law were interviewed.

4) A focus group was used to gather the opinions of a sample group. The informants were government officers from agencies responsible for law enforcement, private agencies, and experts in economic criminal law. Five informants from (1) the Department of Special Investigation (DSI); (2) the Anti-Money Laundering Office (AMLO); (3) the Experts on Economic Criminal Law; (4) the Professor of Criminology Studies and (5) the Ph.D. Candidate on Criminology and Justice Administration Studies were discussed.

On this research, the researcher has requested approval for research ethics certification from "Rangsit University - Ethical Research Board (RSU - ERB)" on December 7, 2018 and approved by the Rangsit University Human Ethics Committee on February 20, 2019, according to the research certificate (Certificate Approval No. COA. No. RSUERB2019-003).

## 5. Results and Discussions

### 5.1 The current situation and impact of fraudulent transnational venture capital firms using Ponzi schemes operating in Thailand

The qualitative data obtained from documentary research, non-participant observations, in-depth interviews, and the focus group showed that Ponzi schemes were a severe problem that had a significant impact on members of the public. Fraudulent venture capital firms and duplicitous cryptocurrency operations defrauded many people. Moreover, the pattern of crime changed to reflect advances in technology. The offenders used social media such as Facebook and Line to convince victims to become members. Government agencies had to investigate thoroughly to determine whether the businesses were authentic or not. Acquiring evidence was also problematic because most of the data were stored electronically, which made it challenging to identify the arrest the suspects quickly.

Since 2014, the Fiscal Policy Office website ([www.fpo.go.th](http://www.fpo.go.th)) has received many complaints about Ponzi schemes defrauding members. However, the only action government agencies took, was to warn members of the public through their website. In 2018, TACTICS arrested suspects because members of the public had lost significant amounts of money, and other government agencies had not taken any action. This transnational organized crime was committed by offenders based in Malaysia who were Chinese-Malaysian, Chinese, and Thai. A variety of offenses were committed, such as running a Ponzi scheme, transnational organized crime, and money laundering. There is no record of fraudulent transnational venture capital firms using Ponzi schemes to defraud investors in Thailand before 2018.

First, a fraudulent venture capital company set up the Ponzi scheme. Later, it announced a joint venture with another company that had registered as a Pink Sheet Stock on the New York Stock Exchange. Then, the company manipulated the market by inflating the stock price from one dollar to four dollars. Next, it told members they would earn considerable profits after the company was registered on stock exchanges such as the NASDAQ and the NYSE. This caused many members of the public to become attracted to the Ponzi scheme. Eventually, it was longer viable because an investigation by the U.S. Securities and Exchange Commission detected abnormalities.

After that, the venture capital company reinvented the Ponzi scheme by convincing the public that it invested in forex brokerages, gold, jewelry, real estate, hotels, sports clubs, car racing, computer manufacturing, and twenty other businesses located in Malaysia, China, and Thailand. These were fake business that did not make any profit. The fraudulent company used a loophole in, Section 4 of the Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud, B.E. 2527, which states "...with the knowledge of the person or the knowledge that the person should know that the person is unable to perform any legal business that provides sufficient benefits to repay at that rate."

The fraudulent company conned the public by claiming that it owned and invested in genuine businesses that were profitable and accountable. Potential members were invited to visit the businesses which were based mostly in Malaysia, where they were conned into thinking that the fake businesses were profitable. This gave them the confidence to join and persuade other people to do so. Besides, government officers who investigated the criminal activity hesitated to act because they were unsure whether the transnational venture capital company was genuine or not.

The fraudulent company persuaded members of the public to part with their money using social media such as Facebook, Twitter, and Line. Only members were able to access the investment strategies, and interested investors were invited to contact a "venture capitalist" (VC). Most of these so-called venture capitalists were members who got commission by inviting people to join using their sign-up codes. When new members signed-up, they increased the size of the Ponzi scheme by inviting others to join them using social media. They were trained to become venture capitalists who were incentivized by assurances of a luxurious lifestyle that included traveling abroad, and expensive cars. Effective marketing that promised financial independence attracted people to put their money into the scheme.

Some of these so-called venture capitalists targeted hospitals and schools in rural regions, where they promoted the Ponzi scheme to teachers, doctors, nurses, and government officers who had assets.

The victims were members of the public and many government officers who were targeted because they had access to loans from commercial banks or savings and credit cooperatives. There was also abuse of

power by superior officers; the superior officers became members of the Ponzi scheme then insisted that their subordinates join using their sign-up codes. Salary evaluations were used to threaten subordinates into joining. If they did not join, their salaries would stay the same. They were afraid and had little choice but to join the Ponzi scheme.

It was challenging to gather evidence because the Ponzi scheme was a transnational organized crime, which required coordination with foreign agencies. Finally, TACTICS arrested 32 suspects; however, the alleged founder of the Ponzi scheme was not captured because he escaped to Malaysia. The Thai government attempted to coordinate with Malaysia via the Royal Thai Embassy to get the suspect extradited to Thailand. However, the extradition request was not granted because it was related to transnational organized crime. Nevertheless, the Thai government is continuing to cooperate with the Malaysian government on this case in the hope that it can be resolved soon.

The result of the study is conforming to the study of theory and literature related to the Ponzi scheme. This Ponzi scheme in the venture capital business is a new type of Ponzi scheme that has never happened before in Thailand. There is only research related to Ponzi scheme in direct selling business or other businesses such as oil, currency exchange or other products etc. The transnational venture capital business is a new business used by criminal as a tool for Ponzi scheme. The characteristics of the Ponzi scheme in the transnational venture capital business correspond to the seven key characteristics of business, which are (1) High compensation and low risk or no risk at all; (2) There is too much compensation; (3) Is an investment that has not been registered with a government agency that supervises; (4) The investment solicitor does not have a license to sell or recommend investment; (5) Businesses that are classified as confidential and/or complex; (6) There is a problem with requesting to inspect investment documents; (7) Having difficulty getting the money invested back. (United States Securities and Exchange Commission, 2018)

## **5.2 The problems, obstacles, and limitations that law enforcement face when attempting to prevent and resolve the problem of a fraudulent transnational venture capital firm**

Qualitative documentary research, non-participant observations, in-depth interviews, and a focus group revealed the following aspects.

### **1) Problems, obstacles, and limitations regarding the offenders**

The criminals were not afraid of Thai laws and regulations. They exploited a loophole in Section 4 of the Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud, B.E. 2527 act, which allowed them to avoid investigation. They had identified loopholes in the law before committing the crime. The law states that "...the propagation or the presentation to people or an action for a group of ten people at the minimum..." The offenders often posted photographs of money, expensive cars, and holidays abroad to entice investors. However, they did not post the returns of the Ponzi scheme in the media, which allowed them to avoid the law on advertising.

The crime was orchestrated by intelligent criminals who were well versed in the law. Arresting the suspects was complicated because they were abroad and not under the jurisdiction of Thai law enforcement. The suspects carefully evaded arrest by escaping abroad. They only returned to Thailand when interest in their activities had waned. Then, they changed their names to avoid detection by law enforcement agencies and used their expertise to reinvent the Ponzi scheme.

The study is conforming to the theoretical and literary study of the white-collar crime. The Ponzi scheme has considered one type of the white collar crime. The offenders are most often knowledgeable, respected and have high social status, reliable or have a high position by concealing or deceiving in order to obtain money or property. The White-collar criminals usually have three special characteristics: Firstly, the method of access that is not illegal; The form of Ponzi scheme offenses is often accessed by greeting, persuasion among friends or even the voluntary access of victims in which the victim did not know that he was deceived. Allowing the offender to use illegal channels to approach the victim and deceive into investing in a Ponzi scheme. Secondly, the offender separates the victim and does not directly collide with the victim; In the case of Ponzi scheme, High-level offenders or founders of the Ponzi scheme will have a plan about the Ponzi scheme system including finding members to join the team to persuade various people to invest in Ponzi scheme. The high level offenders do not have to clash or get close to the victim. They just come out

and present at some meetings or seminars. Even investment contacts may use social media channels to contact investors, which does not need to have meetings with investors in any way. And thirdly, when considering the superficial actions of the offender, it seems a legal action; the form of Ponzi scheme is consistent with white-collar crime, there are persuading investors to invest in various businesses which is a business invented, such as venture capital business, by staging the establishment of various companies to persuade and build investor confidence. When investors see that there is a real business and registered legally by foreign laws, therefore invest their money to the business. When they considered superficial, it is a lawful act. But actually, it is an act to conceal the offense of Ponzi scheme. So, it is not a legal act in any way.

## **2) Problems, obstacles, and limitations regarding the victims**

The results showed that the victims of the Ponzi scheme could be classified into the following three types: 1) victims who did not realize that they had joined a Ponzi scheme, 2) victims who realized that they had joined a Ponzi scheme and 3) victims who were offenders.

### **(a) Victims who did not realize that they had joined the Ponzi scheme**

Most victims were the members of the public who had minimal knowledge of investment strategies and did not realize that they had become participants in the Ponzi scheme. They were poor, living hand to mouth, and did not have much capital. When they were told about the Ponzi scheme by others who claimed that they would make a substantial profit from investing, they thought it was a worthwhile investment in comparison to their regular income. In most cases, they used money that was borrowed from loan sharks. Some victims mortgaged land, and others pawned their valuables in the hope of a better life. Economic problems meant they had little choice but to invest in the Ponzi scheme. These victims' lack of knowledge of Ponzi schemes and investment strategies were a significant problem and obstacle for law enforcement agencies.

### **(b) Victims who realized that they had invested in the Ponzi scheme**

Some of the victims knew that they were members of the Ponzi scheme. However, they were willing to join because they thought they would receive profits before the scheme collapsed. They were financially literate investors who assumed that they could earn 10-20% or more in profits because they got involved at the initial stage of the Ponzi scheme. They planned to withdraw before the collapse; some were successful while others eventually became victims.

### **(c) Victims who were offenders**

These victims were aware of the Ponzi scheme. They persuaded others to become members to earn commissions. However, they were not convicted because they were able to deny that they knew about the Ponzi scheme. This was a problem and obstacle for law enforcement agencies because it was difficult to prove the victims had criminal intent.

Other types of offenders joined the Ponzi scheme because they were misled into believing that it was a legitimate business. Even though they did not know their uplink, they transferred money to them as they foresaw benefits rather than the risks. They were only interested in profits and returns. Most of these victims neglected to do any research on the business they were investing in.

The result of the study is conforming to the study of theory and literature of Victimology. The victims or investors are often people who do not understand financial knowledge and do not have good knowledge or immunity regarding the Ponzi scheme problems, Therefore they led to misleading and ultimately investing money in Ponzi scheme. In the case of victims who know that they have invested in a Ponzi scheme; it is a newly discovered study result because there is no information from any research sources to explain the characteristics of the victims who know they have invested in a Ponzi scheme but still invested money and believed that they will be able to withdraw investment funds in time. The victim is considered that the voluntary victims; it may require further research into the causes and factors behind the victims' decision to participate in investments, in order to be able to analyze the patterns of such victims and find ways to prevent those crimes. Including, the third type is the Victims who were offenders which is conforming to the concept of white collar crime; when the victims become criminals, the victims will commit white-collar

crimes by relying on one's own trust in deception, concealing, concealing of internal intent and deceiving others to lose property or money, so that they may benefit from the deception. It is the duty of government officials to continue to distinguish the true victims from the victims of criminals.

### **3) Problems, obstacles, and limitations regarding the law**

The informants knew the law pertaining to fraudulent transnational venture capital firms using Ponzi schemes to defraud investors in Thailand. In particular, the core legislation, the Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud, B.E. 2527 and the Emergency Decree on Loans Amounting to Public Cheating and Fraud, B.E. 2527 Amendment Act, (Issue 2) B.E. 2545, were inclusive and could be used to arrest suspects in Thailand. However, some informants stated that the core legislation required a review and could be retitled as the “Ponzi Scheme Protection and Suppression Act” and that prevention and suppression officers should be authorized to investigate all aspects relating to Ponzi schemes in Thailand, with powers similar to Anti-Money Laundering Office. Moreover, they stated that any revisions of the law should include cryptocurrency crime, be up-to-date, and empower the state to tackle the problem of Ponzi schemes in Thailand in its entirety.

The result of the study is conforming to the study of theory and literature of the legal issues related to preventing and resolving Ponzi scheme problems in the transnational venture capital business. The Emergency Decree on Loan Fraudulent People, 2527 B.E. has been enforced since 2527 B.E due to the case of “Mae Cha-Moi’s Ponzi scheme” which is a trick to invest in an oil truck business. But nowadays there is development of technology. There are social media channels for communication and adopting new business models such as venture capital businesses or trading cryptocurrencies into the country. The current law may not be able to catch up with changes in technology and the development of such businesses. Including past laws, it cannot prevent and solve problems in a timely manner. It usually only enforced when a Ponzi scheme problem occurs. It is difficult to arrest, including tracking the property of the offender. In addition, the current law does not have any measures. That is used to facilitate the investigation, arrest or follow-up of criminals. And there are no criminal procedure measures that will benefit officials in the proceedings; such as Conspiracy Measures, Increasing Penalties and Collecting Daily Fines Measure or Warning the Public Measure etc. After reviewing the relevant theories and literature, it is evident that the current law is still ineffective and cannot prevent and resolve the Ponzi scheme problems that occur in Thailand including no new legal measures especially legal measures for economic crime to help effectively enforce the law.

### **4) Problems, obstacles, and limitations regarding law enforcement**

The Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud, B.E. 2527 states that the Minister of Finance and the Minister of the Interior are responsible for enforcing the Act. The Fiscal Policy Office and the Ministry of Finance are both responsible for law enforcement. However, there were problems with those agencies. The Fiscal Policy Office, which had overall responsibility for the act, was inefficient. It was responsible for delegating aspects of the crime to other agencies such as the Royal Thai Police, the Department of Special Investigation, and the Anti-Money Laundering Office. However, a lack of cooperation between the agencies, and an inability to advise the agencies were significant problems. Furthermore, some informants stated that the victims did not know whom to contact about the Ponzi scheme because many agencies shared responsibilities. The Fiscal Policy Office was understaffed, so other agencies were needed to arrest the suspects, resulting in justice being delayed.

Apart from the law enforcement authorities, the officers from the authorized agencies were also a problem and obstacle. The Ponzi scheme was complicated, which required the officers to know economic law. This was in addition to their other duties such as investigating and arresting the suspects. The officers lack of knowledge and skills in dealing with economic crimes, especially transnational Ponzi schemes, was a significant problem.

Besides, there were no databases or crime patterns for the officers to consult, which also delayed the investigation.

Another problem that the informants mentioned was the corruption and misconduct of the government officers who were responsible for administering justice. Some offenders used profits from the Ponzi scheme to bribe these unethical officers during the course of justice to avoid being named as defendants.

The study is conforming to the theoretical and literary study of the white-collar crime. The proving of white-collar crime is a difficult because the offender often has a strong legal team. The legal team will use the effort to control and access the information of the prosecutor. The strategy will enable the offender to win the case in court. Causing the seizure and fighting the crime of a white collar crime to waste a lot of budget. Government officials have to spend a lot of time dealing with the problem, so the justice system is very important in dealing with the white collar crime. The three factors related to the justice process are: Firstly, having special experts in white-collar crimes. Secondly, having strong law enforcement powers and thirdly, greater discretion and flexibility in operations. At present, the judicial process on preventing and solving Ponzi scheme problems still lacks these factors. There is no agency that is directly responsible for preventing and resolving Ponzi scheme problems. As well as the lack of special experts in dealing with the Ponzi scheme problem, therefore the Ponzi scheme problem is still a major problem in Thailand nowadays.

### **5) Problems, obstacles, and limitations regarding informal finance**

Some researchers have considered Ponzi schemes as an informal type of financing, which is neither under the governance of the Bank of Thailand (BOT) or the Ministry of Finance. The offenders used this information to con the victims into parting with their money. When the victims' assets were diverted to the Ponzi scheme, they were no longer part of the legitimate economy. This impacted on the entire economic system because savings that were deposited in commercial banks that financed illegitimate businesses did not benefit the country's economy. Informal finance and Ponzi schemes should be investigated concurrently to solve this problem.

The study result is a new study which has not yet been researched. But in the operation of preventing and solving Ponzi scheme problems in the transnational venture capital business, it is consistent with the mission of the Informal Financial Notification Center, Fiscal Policy Office which saw the problem of informal money especially the Ponzi scheme problem. The Informal Financial Notification Center, Fiscal Policy Office considers that the Ponzi scheme problem is a problem with informal finance by raising money from the public and offering high benefits. And the entrepreneurs are unable to explain which funds to invest in which business. The fundraising is risky to be a Ponzi scheme and cannot be restored causing damage to the economy. The Fiscal Policy Office is aware of the Ponzi scheme problems. Therefore the government has established an Informal Financial Notification Center and the Fiscal Policy Office also has the duty to act in accordance with the Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud, B. E. 2527

### **5.3 Recommendations for improving the efficiency of law enforcement to prevent the problem of fraudulent transnational venture capital firms using Ponzi schemes to defraud investors**

Qualitative documentary research, non-participant observations, in-depth interviews, and a focus group revealed the following aspects.

#### **1) Establishment of a Ponzi scheme prevention and suppression agency**

The government should form a new agency to prevent and investigate Ponzi schemes in Thailand. It should have an office, officers, a budget, and the legal authority to act independently. The new agency would eliminate the need for members of the public to report to the Royal Thai Police and other agencies because it will be solely responsible for answering enquires and investigating complaints relating to Ponzi schemes.

The agency should also educate the public about Ponzi schemes, and encourage them to become more financially literate. Moreover, Ponzi schemes should be suppressed systematically. Skilled and capable officers should investigate, arrest, and prosecute suspects. The agency should also research preventive measures to suppress Ponzi schemes and impart their expertise to other government officers through training. This is in contrast to the Anti-Money Laundering Office, which has had a more passive role. Moreover, the new agency should report directly to the Prime Minister's office to allow it to be independent and reduce bureaucracy.

## **2) Establishment of a Ponzi scheme prevention fund**

The government should establish a Ponzi scheme prevention fund to provide financial support to agencies that will explain the crime to members of the public so that they will not be defrauded. The fund should also support the training of government officers and research on preventive measures.

Initially, the funding should come from annual government expenditure. Then, assets confiscated from the offenders such as revenue from selling seized properties should be used to support the fund.

After the Ponzi scheme prevention fund is successfully established, the government could expand the fund to include remedies for victims of the crime. Using seized assets, the Ponzi Scheme Prevention and Remedy Fund could compensate victims who had lost money. Victims would be able to borrow from the fund at low-interest rates, similarly to how the Student Loan Fund operates, by repaying in monthly or yearly installments. The loans could be used as capital to rebuild their lives without the need to use informal financing.

## **3) Public relations and promoting financial literacy**

The government should improve financial literacy in the country and educate the public about Ponzi schemes by explaining how they work. Firstly, the government could increase awareness by explaining the various types of Ponzi scheme, how to prevent Ponzi schemes, how to contact the relevant government agency using a hotline, the legal process, and the procedure to reclaim property that is seized after judgment.

Secondly, improving financial literacy is vital because it will help investors to differentiate Ponzi schemes from genuine investment opportunities. Members of the public need to have enough knowledge to assess risks before they make investments. This will help to minimize damage from Ponzi schemes.

## **4) International cooperation to prevent transnational organized crime**

The government should promote international cooperation by signing memorandums and making agreements with other countries to prevent and resolve the Ponzi scheme problem. International laws should be applied because these crimes are often committed abroad. The government should promote international cooperation at the highest level. The Prime Minister, the cabinet, and representatives from domestic and foreign agencies should work together to investigate transnational organized crime. Furthermore, the government should review laws on international cooperation to ensure they are up-to-date and appropriate to deal with crime in the modern world.

## **5) Applying international law**

The following foreign laws should be enacted.

### **(a) Increasing penalties and collecting daily fines**

Offenders should be fined from the day the crime was committed until they are convicted. However, an increase in prison terms and fines should be enacted by the “prohibition of penalty mitigation or suspension of the prisoner in Ponzi scheme cases” so that criminals will be penalized according to the judgment of the court. Increasing the penalties may deter others from committing this crime.

### **(b) Auditing company accounts**

The government agency should have the authority to audit the accounts of businesses under suspicion. A company’s financial statement shows the income, expenses, profit, and loss. In the case of Ponzi schemes, fraudulent companies promise high rates of return to participants. An audit of the companies’ accounts will help officers to determine whether the company is genuine or not. Further legislation is required to ensure that those who submit fake financial statements will be treated in the same way as other offenders who have committed this crime.

### **(c) Warning the public**

Offenders must reveal how the Ponzi scheme works. Methods of persuasion and deception, such as the benefit calculation chart should be explained to the public so that they can avoid investments in similar businesses.

**(d) Measures to prevent reoffending**

Offenders should be prohibited from working in finance, investment, and fundraising for ten years to prevent them from re-offending.

**(e) Civil forfeiture**

The government should have the authority to seize assets that are considered to be proceeds of crime. This should also apply to assets that were not obtained directly from the Ponzi scheme. These seized assets should be used to compensate the victims.

**(f) Conspiracy measure**

Accomplices who conspire to commit the offense should be prosecuted to prevent the Ponzi scheme from claiming more victims.

**(g) Intending to offend**

Similar to the conspiracy measure, the penalties for offenders who intend to commit this crime should be the same as the penalties for those that have already offended due to the serious nature of this crime.

**(h) Plea bargaining**

Defendants should be able to plea bargain if the information they can provide leads to the conviction of other offenders. Prosecutors should be able to offer the defendant a plea deal in exchange for leniency from the court.

**(i) Additional evidence-gathering methods**

Defendants should be encouraged to impart evidence that reveals information that is unknown by investigators. For example, the courts should give evidence relating to assets acquired special consideration. This will facilitate the prosecution because there will be more supporting evidence. Currently, a significant problem is that there is insufficient evidence to indict the ring leaders.

**(j) Travel and financial bans for foreigners**

Persons under suspicion or who have previously been convicted of Ponzi scheme offenses should be banned from Thailand to prevent them from committing the crime. Moreover, they should be banned from performing financial transactions in Thailand, such as opening bank accounts. This will result in a reduction in transnational organized crime.

**(k) Bail prohibition for defendants**

Currently, most defendants are released on bail using assets obtained from the Ponzi scheme. They have the right to bail, and often they use their ill-gotten gains as collateral. Moreover, sometimes, they abscond while on bail and live abroad on wealth acquired from the crime. This allows them to re-offend. The government should prohibit bail for the defendants to prevent them from escaping and re-offending. This may act as a deterrent to potential criminals as they realize that the only way of avoiding jail time is to prove their innocence.

**(l) Increasing penalties for government officials who aid and abet defendants**

This measure should be based on existing legislation regarding the prevention and suppression of corruption and misconduct. The penalty for corrupt government officers who assist defendants by breaking the law should be increased. This will emphasize the importance of the crime and deter corruption.

**6) Increasing domestic sources of funding and the development of rotating community savings**

The government should provide more sources of funding for people to access through the legitimate financial system. This will reduce borrowing from informal finance sources, such as loan sharks and limit the damages of Ponzi schemes.

In addition, the government should support fundraising under the supervision of agencies, such as the BOT, the Ministry of Finance, and the SEC. Rotating Community Savings could offer an alternative to these options. The government could allow smaller amounts of money to be raised by the private sector, such as fundraising to support OTOP (One Tambon One Product) projects or other enterprising community ventures. If members of the public know that the government supports rotating savings and alternative fundraising, they may invest in legitimate businesses rather than Ponzi schemes.

### **7) Forming a special jurisdiction for economic crime cases**

A special jurisdiction for economic crime cases should be established to deal with economic crimes because they are more sophisticated than other types of crime which do not require knowledge of economics, finance, and investing. Criminals who are familiar with equities, bonds, gold, currency exchanges, cryptocurrency, and block-chain technology can use their knowledge to escape prosecution. The establishment of the special jurisdiction for economic crime cases should aim to increase the number of judges who know how technology is used in financial practices. The government should also consider appointing associate judges with applicable skills to assist judges while they deliberate on these cases. These associated judges could be appointed in the same way they are in the Juvenile and Family Court, the Labor court, and the Central Intellectual Property and International Trade Court.

## **6. Conclusion**

The problems and impact of a fraudulent transnational venture capital firm using a Ponzi scheme to defraud investors in Thailand were classified into six main aspects. First, a fraudulent venture capital firm was found to be operating a Ponzi scheme in Thailand. Second, the fraudulent firm using a Ponzi scheme to defraud investors had a significant impact on society because the offenders used technology to commit the crime, especially, social media such as Facebook, Twitter, Line, and Instagram, which enabled them to target victims easily. Third, the firm conned victims into investing in fake joint ventures. Then, the firm convinced the victims to invest in fake businesses located in countries such as Malaysia and China. Fourth, the firm convinced the victims to invest by only allowing investors to access critical information. The victims had to contact a “venture capitalist” before making any investments. Fifth, the impact on victims was revealed by statistics from the Thai Royal Police, Thailand's Action Taskforce for Information Technology Crime Suppression (TACTICS). The Royal Thai Police arrested 32 suspects. There were 50,000 victims, and cash flow in the account was about 10,000 million Baht. Finally, it was difficult to gather evidence because this was a transnational organized crime that required coordination with foreign agencies. The offenders' countries of origin refused to process extradition requests. They protected their citizens which also made the case more difficult to solve. Justice was delayed or not served because the case required international cooperation.

The problems, obstacles, and limitations law enforcement faced were divided into the following five categories: offenders, victims, legislation, law enforcement, and informal finance. The following seven recommendations are proposed to empower law enforcement authorities: establishing a Ponzi scheme prevention and suppression agency, establishing a fund to prevent Ponzi schemes, informing the public about Ponzi schemes, applying foreign laws to domestic laws, increasing domestic funding and developing rotating community savings, and forming a special jurisdiction for economic crime cases.

## **7. Recommendations for further research**

Further research on preventing fraudulent transnational venture capital firms using Ponzi schemes to defraud the public should be carried out. The following recommendations are for researchers who would like to explore this topic in more detail: (1) A study on establishing a Ponzi scheme prevention and suppression office should be undertaken. (2) A study comparing legitimate alternatives to Ponzi schemes should be undertaken to find out whether they are suitable for investors. (3) A study on how to disseminate information about Ponzi schemes to the public should be considered.

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