TMI-SIMMONS LEGAL EXPERT INSIGHTS SERIES

Asset Tracing and Recovery in Singapore and Thailand for Digital Fraud Scams

15 March 2024

In today's world, advances in fintech have completely changed how people handle their money and do business. As more traditional financial services increasingly migrate online, managing money remotely has become more accessible than ever before. This transition has simplified cross-border money transfers and financial transactions. With increasing adoption of digital banking by consumers, sophisticated cybercriminals exploit the internet's global reach to perpetrate scams and fraud. These scammers frequently pose as reputable authorities such as government officials, banks, or tech support, employing various communication channels like phone calls, emails, or text messages to deceive individuals into disclosing sensitive information or making payments.

To combat cybercrime, collaboration among government agencies, banks, and telecommunication companies emphasizes the importance of taking a comprehensive approach to cybersecurity. By sharing information and working together, all involved parties can strengthen their ability to protect against cyber threats and maintain the security of financial systems.

Tools in Thailand to trace and recover stolen funds

After the money is transferred, scammers typically withdraw funds from the transferred account, often utilizing mule accounts, before disappearing. Previously, in Thailand, there were no specific laws regarding bank account seizure for such cases. Victims would report the incident to the police and seek an official order to seize the bank account. This process could take more than half a day. Sometimes, there were delays if victims didn’t realize they were scammed quickly enough. Also, even when the bank got the order, they didn’t always freeze the account right away. It depended on the bank’s own policies, complicating the return of funds to the victim.

To address the need for more efficient handling of suspected account seizures, Thailand enacted a new law in 2023: the Emergency Decree on Measures for the Prevention and Suppression of Technological Crimes, B.E. 2566 (2023). This law is considered one of the significant tools, giving injured corporate parties and individuals the ability to directly request online payment platforms or commercial banks to freeze suspicious transactions or accounts. This enhancement significantly boosts the chances of victims recovering funds lost through deception. Furthermore, it also mandates Thai banks, payment service providers, and telecommunication companies to disclose information on suspected bank accounts or transactions to authorities, whether reported by individuals or discovered by the organizations themselves.

Thai authorities, under the management of the Financial Action Task Force (FATF), also monitor significant transactions reaching the value specified by law, by requesting information from certain business operators such as banks, securities companies, and electronic payment service providers to cease the suspicious transaction or bank accounts. After the seizure, injured corporate parties and individuals can request the return of properties through the public prosecutor to seek court orders. These legislative measures represent a significant step forward in combating cybercrime and protecting the interests of both corporate entities and individuals in Thailand. By streamlining the process of freezing suspicious transactions and accounts and facilitating cooperation between financial institutions and law enforcement agencies.

Tools in Singapore to trace and recover stolen funds

Corporate parties may seek the Singapore courts' assistance in tracing and recovering the stolen funds. This typically involves an application for injunction orders backed by a concurrent application for search orders to prevent destruction of evidence. Sometimes, an application for an injunction may be made without notice to the other party although the court's practice directions usually require a notice of two hours to be given. Sometimes, disclosure orders may be made against third parties. Sometimes, pre-action discovery orders or bankers trust orders may be helpful. There are also other times where such applications are made in aid of foreign court proceedings. It is important to know which tools are available when coming up with a strategy to trace and recover the stolen funds.

There are also legal obligations imposed on financial institutions in Singapore by the Monetary Authority of Singapore ("MAS"). Financial institutions are required to implement measures and safeguards to prevent scams and digital fraud. The obligation to prevent digital fraud is likely to be expanded to telecommunication companies. In October 2023, MAS and the Infocomm Media Development Authority issued a consultation paper on a shared responsibility framework with financial institutions and telecommunication companies. If the framework is implemented, consumers may recover their losses from digital fraud if the financial institution or telecommunication company is found to be negligent.

Conclusion

Overall, both Singapore and Thailand are taking commendable steps to prevent cybercrime and enhance cybersecurity. Each country's approach reflects its unique challenges and priorities in addressing cyber threats. Prevention is better than cure. Corporate parties need to be aware of their legal obligations in the relevant jurisdictions when coming up with their defenses to thwart cybercrime. If a cure is necessary, awareness of the differences in the laws of the relevant jurisdictions will enable corporate parties to devise and execute an

effective cross-border strategy to trace and recover assets stolen by cybercriminals.

Tags: Singapore, Thailand, Asset tracing, Recovery, Digital fraud, Cybersecurity, Cyber scams, Financial digitalization, Financial scams, Account seizure, Litigation

==========

If you have any questions, please reach out to:

TMI Associates (Thailand) Co., Ltd and TMI Associates (Singapore) LLP

Daiki Koso
Partner, Bangkok
Daiki_Koso@tmi.gr.jp

Monchai Varatthan
Partner, Bangkok
Monchai_Varatthan@tmi.gr.jp

Shunsuke Takahashi
Counsel, Singapore
Shunsuke_Takahashi@tmi.gr.jp

Chanamas Aura-Ek (Bow)
Foreign Attorney, Bangkok
Chanamas_Aura-Ek@tmi.gr.jp

Simmons & Simmons JWS Pte Ltd / JWS Asia Law Corporation

Benson Lim
Partner, Singapore
International Arbitration & Litigation
Qualified in Singapore, England & Wales, and New York
Benson.Lim@simmons-simmons.com

Andrea Seet
Associate, Singapore
International Arbitration & Litigation
Qualified in Singapore
Andrea.Seet@simmons-simmons.com