

RAJAH & TANN ASIA

LAWYERS  
WHO  
KNOW  
ASIA

REGIONAL GUIDE  
ON FRAUD &  
ASSET TRACING  
LITIGATION



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# INTRODUCTION: FRAUD & ASSET TRACING LITIGATION

The nature of fraud and asset tracing has becoming increasingly complex in light of globalisation and the almost seamless interconnectivity of the world's financial systems. The proceeds of fraud can now be dissipated in an instant across various jurisdictions, potentially frustrating any attempts at recovery whether via civil proceedings or by relying on the relevant government enforcement agencies. To increase the chances of recovery, it is important that fraudster(s) are quickly identified, with steps taken to trace any stolen assets in order to ascertain their location, after which the relevant applications should be filed to have them frozen to prevent further dissipation.

This publication serves as a guide to highlight:

- (a) the similarities and differences in general framework between ASEAN jurisdictions in respect of fraud and asset tracing litigation;
- (b) the options available to a fraud victim to identify the fraudster(s) and/or trace stolen assets;
- (c) upon identification of the fraudster(s) and/or ascertaining the location of stolen assets, the mechanisms available to freeze such assets to prevent further dissipation; and
- (d) the considerations to be taken into account when deciding on the appropriate jurisdiction to pursue recovery of any stolen assets, and the various courses of action that may be taken against the fraudster(s).

This publication is up to date as of November 2021.



# CAMBODIA



## 1. Introduction: what is fraud and asset tracing litigation?

There is no specific definition or mechanism designed for fraud and asset tracing litigation. However, the concept of fraud and asset tracing exists as part of criminal proceedings, including various processes undertaken by police and/or an investigating judge when an offence is committed.

Under Article 377 of the Criminal Code of Cambodia, fraud is an act committed in order to gain benefits by deceiving the victim through the use of fake names, status, or fraudulent schemes.

## 2. What options are available to a fraud victim in order to identify the fraudster and/or trace the stolen asset or fraud proceeds? What are the requirements, advantages and disadvantages of such mechanisms/options, and are there any practical issues associated with such mechanisms/options?

Mechanism	Operation	Requirements	Advantages/ Disadvantages	Practical Issues
<b>Filing a complaint with the police</b>	<p>A police inquiry will take place after a complaint is received from a victim of fraud.</p> <p>A police inquiry includes investigation and identification of the fraudster, and tracing of the stolen</p>	<p>The applicant must be a victim of fraud.</p> <p>Fraud is an act committed in order to gain benefits by deceiving the victim through the use of fake names, status, or fraudulent schemes.</p>	<p><u>Advantage:</u> A police inquiry is confidential; therefore, it avoids alerting the fraudster of any on-going investigation and efforts to trace the stolen asset.</p> <p><u>Disadvantage:</u> There are no regulatory</p>	Resources of the police may be limited, thus restricting the efficiency and timeliness of the conduct of the investigation and tracing efforts.

Mechanism	Operation	Requirements	Advantages/ Disadvantages	Practical Issues
	asset and/or fraud proceeds.		requirements compelling professionals and business institutions to provide full cooperation to the police without a court order, resulting in potential hindrance to the investigation and tracing efforts due to non-cooperation.	
<b>File a request to the court using Non-Suit Civil Proceeding</b>	If the relationship between the fraudster and the victim allows for a complaint in a Non-Suit Civil Proceeding, the victim is entitled to request for a court order to compel a third party to disclose information with regard to funds or assets involved in the fraud.	This mechanism is limited to matters under which the law allows for application in a Non-Suit Civil Proceeding.  Further, there must be an existing Non-suit Civil Proceeding to enable the victim to request the competent court to order a third party to provide information on the assets.	<u>Advantage:</u> A court order will compel a third party who has relevant information to disclose such information, thus aiding the victim in the tracing of assets.  <u>Disadvantage:</u> Such process may be time-consuming.	This mechanism is not available in all circumstances; it is only available in matters prescribed under the Law on Non-Suit Civil Procedure.  Examples of such matters are: execution of a will, management of a company through provisional administrators or directors, dissolution of a legal entity, management of common properties of spouses, management of properties on trust for a minor or mentally disabled person etc.

3. What mechanisms are available to a fraud victim to freeze the fraudster's assets, or the proceeds of fraud, while it pursues its claim against the fraudster? What are the requirements, and are there any practical issues associated with such mechanisms?

Mechanism	Operation	Requirements	Practical Issues
<b>Provisional relief (Injunction)</b>	<p>Restrains a defendant from dissipating assets within jurisdiction pending trial.</p> <p><u>Effect on third parties and banks</u> Third parties such as banks are bound by an injunction order when they receive notice of the same. A third party who aids or abets any breach of the order may be liable for contempt of court.</p>	The plaintiff must establish that it has a good arguable case against the defendant and that there is a real risk of dissipation by the defendant.	A plaintiff seeking a freezing injunction must undertake to the court to pay any damages that may be sustained by the defendants if it later transpires that the injunction was wrongly granted. The plaintiff may also be required to provide security for such an undertaking (fortification).
<b>Investigation proceeding</b>	The police or investigating judge has the power to confiscate stolen assets or fraud proceeds pending trial.	The confiscated assets must have a direct relation to the fraud.	This proceeding is reactive rather than proactive. It is applicable only when the assets are found.

4. What are the considerations that fraud victims should take into account when deciding which jurisdiction to pursue their claims?

Fraud victims have the right to determine whether to pursue their claim through criminal proceedings and/or civil proceedings.

For civil proceedings, Cambodia does not adopt the doctrine of natural forum. The determination of jurisdiction is dependent on the course of action taken by the fraud victim. Where the fraud victim opts to file for breach of contract, the victim should review the clauses in the contract relating to the determination of jurisdiction in the event of dispute and/or whether there is any arbitration clause stipulated in the contract. In the event the contract contains an arbitration clause, jurisdiction over proceedings may lie with the arbitral tribunal. Once the arbitral award is issued, the party wishing to enforce the award may bring such award to Cambodia to be recognised (by the appeal court of Cambodia) and enforced (by a competent court of first instance).

However, if the victim opts to pursue criminal proceedings in the form of a claim for fraud, which is a misdemeanour defined under the Criminal Code of the Kingdom of Cambodia, jurisdiction over the claim shall be determined by the Code of Criminal Procedure, which states that jurisdiction shall lie with the place where the offence occurs and/or of the residency of the defendant.

Practical considerations in deciding which jurisdiction to proceed under include whether the fraudster has assets in the jurisdiction which may be swiftly recovered after a judgment is obtained, and the average time taken for a dispute to be determined from start to finish in that jurisdiction. As a matter of practice, criminal proceedings are disposed of more quickly than civil proceedings in both procedure and recovery of assets.

5. What are the possible causes of action that a fraud victim may pursue against a fraudster? What are the elements of each cause of action, and what are the remedies under each cause of action?

Cause of Action	Elements	Remedies
<b>Civil Claim (Fraud)</b>	The contract shall be void in the event that fraud is committed by: (a) the other party to the contract; or (b) a third party, provided the other party to the contract is aware of such fraud.	Rescission of the contract entered into and/or damages (all losses sustained as a result of the fraudulent act, whether foreseeable or not)
<b>Fraudulent Misrepresentation</b>	(a) a false representation; (b) intended to be relied upon by another person; and (c) the person acts upon the representation by entering into a transaction.	Rescission of the contract entered into and/or damages (all losses sustained as a result of the representation, whether foreseeable or not)
<b>Breach of Contract</b>	Breach of an obligation owed under a contract	Damages (all losses caused subject to the requirement of foreseeability), and/or termination of the contract if the obligation breached is a condition
<b>Criminal Complaint (Fraud)</b>	An act is committed in order to gain benefits by deceiving the victim through the use of fake names, status, or fraudulent schemes.	Imprisonment, recovery of losses, and damages

6. Is a fraud claim subject to any limitation period?

For civil proceedings, the limitation period for fraud (to file for a court declaration that the contract is null and void) is three years after the discovery of the act of fraud or 10 years after the date on which the fraud is committed, whichever is earlier.

For criminal proceedings, the limitation period for fraud is five years from the date the offence is committed.

# MALAYSIA



## 1. Introduction: what is fraud and asset tracing litigation?

Fraud and asset tracing litigation is a specialist area which focuses on the use of court processes and mechanisms to identify, trace, and recover proceeds of fraud.

This includes the use of pre-action disclosure applications to obtain information, particularly banking information which is usually subject to strict confidential requirements, as well as freezing injunctions to preserve fraud proceeds and assets.

There are often complex multi-jurisdictional issues as the sophistication of fraud has led to the increased use of international banking systems to move fraud proceeds across multiple countries in order to evade recovery.

## 2. What options are available to a fraud victim in order to identify the fraudster and/or trace the stolen asset or fraud proceeds? What are the requirements, advantages and disadvantages of such mechanisms/options, and are there any practical issues associated with such mechanisms/options?

Mechanism	Operation	Requirements	Advantages/ Disadvantages	Practical Issues
<b>Norwich Pharmaceutical Order ("NPO")</b>	Common law form of pre-action discovery order which is used to obtain information from a third party / non-party to disclose the identity of potential wrongdoer(s).	The Applicant must demonstrate: (a) that the third party/non-party had facilitated the wrongdoing, whether innocently or otherwise; (b) a good arguable case against the potential wrongdoer(s) whose	It is usually made against third parties (e.g., internet service providers, cryptocurrency exchanges, e-wallet providers) to disclose the identity of potential wrongdoer(s). An NPO may be issued with a gagging order to prevent alerting	First, the third party concerned must not only know the identity of the wrongdoer(s), but must also have facilitated the wrongdoing.  Second, an NPO (being an order for discovery) is a discretionary matter

Mechanism	Operation	Requirements	Advantages/ Disadvantages	Practical Issues
		identity is being sought; and (c) that disclosure is necessary to enable him to take action, or at least that it is just and convenient in the interest of justice to make the order sought.	the wrongdoer(s) / fraudster(s) of investigation and tracing efforts made.	and not available as of right. An NPO will not be made unless the interest of justice in granting the discovery outweighs the public interest in not allowing the disclosure.
<b>Bankers Trust Order ("BTO")</b>	A BTO is a variation of an NPO and is used to assist in tracing assets. A BTO is an order which requires a third party/non-party to make full disclosure of facts to ascertain the whereabouts of the plaintiff's assets, funds, or monies.	The Applicant must demonstrate a good arguable case of fraud, and that the assets (e.g. monies in the bank account) belong to the Applicant (e.g. when the customer of the bank obtained the monies by fraud).	A BTO is usually made against a bank, and has been held by case authorities to fall within the exception to banking secrecy.	A BTO is a discretionary matter and is not available as of right.
<b>Pre-action discovery under the Rules of Court</b>	In pre-action discovery, the applicant does not know whether he has a viable claim against the intended defendant, and pre-action discovery is to assist him to determine whether he has a viable claim against the intended defendant.	The Applicant must demonstrate: (a) why pre-action discovery and not discovery in the course of action or proceedings is necessary; (b) that the defendant to the application has in its possession, custody, or power the documents sought to be discovered; (c) that the documents sought are relevant to an issue arising or likely to arise in the intended proceedings;	It is usually made against third parties, but the Rules of Court also allows for such pre-action discovery applications to be made against a potential wrongdoer or defendant.	The application would be refused if the applicant already knows its cause of action and is not otherwise constrained from commencing proceedings against the intended defendant.

Mechanism	Operation	Requirements	Advantages/ Disadvantages	Practical Issues
		<p>(d) that the documents sought are necessary to determine whether there is a viable cause of action for the plaintiff (which is the main question determining whether discovery will be granted); and</p> <p>(e) that the discovery is necessary either for disposing fairly of the cause or matter or for saving costs.</p> <p>When exercising discretion on whether to order disclosure, the court will have to balance the competing interests of different parties, third parties, alongside issues of personal and commercial confidentiality. As a result, safeguards and limited or redacted disclosures may be imposed.</p>		
<p><b>Private investigations</b></p>	<p>Evidence procured by private investigators are generally admissible in court proceedings.</p>	<p>-</p>	<p>It is recommended to have solicitors on board to protect privilege attached to investigation reports and results.</p>	<p>One should always be mindful of the risk of civil or criminal proceedings if evidence is procured through potentially unlawful acts.</p>

3. What mechanisms are available to a fraud victim to freeze the fraudster's assets, or the proceeds of fraud, while it pursues its claim against the fraudster? What are the requirements, and are there any practical issues associated with such mechanisms?

Pre-action asset preservation is one the most important aspects of fraud and asset tracing litigation. Generally, a fraud victim may seek either a Mareva injunction or proprietary injunction. Such injunctions are typically sought on an urgent and ex-parte basis.

Mechanism	Operation	Requirements	Practical Issues
<b>Mareva Injunction</b>	<p>It restrains the defendant from dissipating assets within or outside jurisdiction, pending trial.</p> <p>The Applicant may also apply for the discovery of information or documents in aid of the Mareva injunction to ascertain the whereabouts of assets.</p> <p><u>Effect on third parties and banks</u></p> <p>Third parties such as banks are bound by the Mareva injunction when they receive notice of the injunction. A third party who aids or abets any breach of the order may be liable for contempt of court.</p> <p>In the case of a worldwide Mareva injunction (which is granted where the assets are wholly located abroad or where some of the assets are within the jurisdiction and some are abroad), the position of a third party outside jurisdiction is different. The third party is not bound by the injunction unless and until a court in its jurisdiction has declared that the injunction is enforceable against the defendant and the relevant third party. Hence, it is not unusual to have multi-jurisdictional</p>	<p>The Applicant must establish that:</p> <p>(a) it has a good arguable case against the defendant;</p> <p>(b) there is a real risk of dissipation of assets by the defendant; and</p> <p>(c) it is just and convenient to grant the injunction.</p> <p>A real risk of dissipation may be inferred where a defendant acted dishonestly, and in particular where fictitious or illusory transactions, complex machinations or elaborate schemes, and complex webs of companies are involved, or where the defendant made attempts to conceal his identity or mask his connection with the transactions.</p> <p>The same requirements above apply in the case of a worldwide Mareva injunction, except that the plaintiff will also have to show that there are no and/or insufficient assets within jurisdiction to satisfy the claim in order to justify the grant of a worldwide injunction.</p>	<p>The Applicant needs to undertake to the Court to pay any damages that may be sustained by the defendant if it later transpires that the injunction was wrongly granted. The Applicant may also be required to provide security for its undertaking.</p>

Mechanism	Operation	Requirements	Practical Issues
	freezing injunctions in a cross-border fraud case.		
<b>Proprietary injunction</b>	A proprietary injunction is a relief that latches onto a specific asset in which the plaintiff asserts a proprietary interest over. This is unlike a Mareva injunction, which seeks to prevent the defendant from dealing with or disposing assets beyond a certain value. As a result, unlike a Mareva injunction, there is no need to prove risk of dissipation in order to obtain a proprietary injunction.	<p>The Applicant needs to demonstrate that there is a serious question to be tried, which is satisfied if the applicant can show that it has a seriously arguable case that it has a proprietary interest in the assets concerned.</p> <p>The applicant also needs to show that the balance of convenience lies in favour of granting the injunction.</p>	The Applicant can apply for both a Mareva injunction and proprietary injunction at the same time.

#### 4. What are the considerations that fraud victims should take into account when deciding which jurisdiction to pursue their claims?

Forum selection is key in any successful fraud and asset recovery litigation. Various considerations must be taken into account when selecting the forum(s) in which substantive proceedings against the fraudster is to be pursued.

First, most jurisdictions today recognise some variant of the doctrine of natural forum, which provides that actions should only be permitted and heard in the forum(s) that are most well suited to determine the dispute. The standard and the relevant considerations under these tests differ from forum to forum. Generally, relevant considerations in such analyses include the location of the parties, the location and ease of compelling the witnesses to be called, the location and ease of procuring the necessary evidence, the location at which the acts complained of had occurred, and the ease of enforcing a judgment provided by the forum at the jurisdictions at which the award is likely to be enforced.

Second, if the claim is premised directly or indirectly on a contract, one should also take into account if there are any forum selection clauses in the contract. Such clauses are generally given effect to in courts around the world, although they are not absolute and may be disregarded under certain circumstances.

Practical considerations in deciding which forum to proceed under include whether the fraudster has assets in the jurisdiction which may be swiftly recovered after a judgment is obtained, and the average time taken for a dispute to be determined from start to finish in that jurisdiction.

#### 5. What are the possible causes of action that a fraud victim may pursue against a fraudster? What are the elements of each cause of action, and what are the remedies under each cause of action?

A summary of the most common causes of action, the relevant elements to be satisfied, and the remedies thereunder, is provided here:

Cause of Action	Elements	Remedies
<b>Tort of Deceit / Fraudulent Misrepresentation</b>	<ul style="list-style-type: none"> <li>(a) The defendant made a representation of fact by words or conduct;</li> <li>(b) the representation was made with the knowledge that it is false (i.e. it must be willfully false or at least made in the absence of any genuine belief that it is true), or made recklessly (i.e. without caring whether the representation is true or false);</li> <li>(c) the representation was made with the intention that it should be acted upon by the plaintiff, or by a class of persons which will include the plaintiff, in the manner which resulted in damage to him; and</li> <li>(d) the plaintiff acted upon the representation and suffered losses.</li> </ul>	Damages
<b>Breach of Contract</b>	Breach of an obligation owed under a contract	Damages and/or termination of the contract
<b>Proprietary Claim</b>	Property is held on trust by the fraudster in circumstances where a resulting or constructive trust arises by operation of law	Specific performance (return of property), account of profits, tracing (where property has been passed onto other parties), or equitable compensation for value of lost property
<b>Tort of Conspiracy</b>	<ul style="list-style-type: none"> <li>(a) An agreement between two or more persons;</li> <li>(b) Either of the following: <ul style="list-style-type: none"> <li>i. where the means are lawful – an agreement of which the real and predominant purpose is to injure the plaintiff; or</li> <li>ii. where the means are unlawful – an agreement of which the purpose is to injure the plaintiff; and</li> </ul> </li> <li>(c) acts done in execution of that agreement resulted in damage to the plaintiff.</li> </ul>	Damages

## 6. Is a fraud claim subject to any limitation period?

Generally, civil actions in Malaysia are subject to a limitation period of 6 years from the date on which the cause of action accrued. However, where fraud is discovered only after a substantial period has passed after it had been perpetrated, the period of limitation for commencing civil actions would only begin to run from the date the plaintiff discovered or could with reasonable diligence have discovered the fraud. In general, there is no limitation period for criminal prosecution of criminal offences.

# PHILIPPINES



## 1. Introduction: what is fraud and asset tracing litigation?

Fraud and asset tracing litigation in the Philippines involves holding the fraudster liable and recovering the proceeds of the fraud.

Fraud and asset tracing litigation can be civil or criminal in nature. In civil litigation, the purpose of the suit is to hold the fraudster civilly liable for damages and, if applicable, to recover the property. Where fraud was used to procure the consent of a party to enter into a contract, civil litigation can also be an avenue through which an aggrieved party can obtain a court declaration to nullify the contract.

The primary purpose of criminal litigation is to hold the fraudster criminally liable (*i.e.*, imprisonment and/or payment of a fine). The victim of a crime may also recover civil damages in a criminal action unless the victim decides to institute a separate and independent civil action.

## 2. What options are available to a fraud victim in order to identify the fraudster and/or trace the stolen asset or fraud proceeds? What are the requirements, advantages and disadvantages of such mechanisms/options, and are there any practical issues associated with such mechanisms/options?

Prior to filing a suit before the courts (whether civil or criminal), the defendant (*i.e.*, the fraudster) should be identified. In this regard, the following are options available to parties to identify the fraudster and trace the stolen asset or fraud proceeds:

Mechanism	Operation	Requirements	Advantages/ Disadvantages	Practical Issues
<b>Report to Philippine National Police ("PNP"), or National Bureau of Investigation ("NBI")</b>	Law enforcement agencies have the means to identify a fraudster. The PNP and the NBI additionally have cybercrime divisions that are focused in the investigation of cybercrimes.	Law enforcement authorities require the submission of a complaint before acting on a matter. The complaint should provide the details of the fraud and other matters that may help the PNP or NBI to identify the fraudster.	<p>The PNP and NBI may apply for search warrants from the courts to search places and seize items related to the fraud. The items seized by law enforcement authorities may be used in prosecuting the fraudster.</p> <p>We note, however, that the identification of the fraudster does not immediately lead to the fraudster's arrest. Under Philippine law, law enforcement authorities are authorised to arrest a person without a warrant only if the person is caught red-handed or during a hot pursuit.</p>	<p>The PNP and NBI may take time to complete an investigation.</p> <p>The PNP or NBI will assist in the investigation if it determines that a crime was committed. They will not assist in the investigation of civil disputes.</p>

Mechanism	Operation	Requirements	Advantages/ Disadvantages	Practical Issues
<b>File a request to the court using Non-Suit Civil Proceeding</b>	If the relationship between the fraudster and the victim is one which allows for a complaint in a Non-Suit Civil Proceeding, the victim is entitled to request for a court order to compel a third party to disclose information with regard to funds or assets involved in the fraud.	This mechanism is limited to matters under which the law allows for application in a Non-Suit Civil Proceeding. Further, there must be an existing Non-suit Civil Proceeding to enable the victim to request the competent court to order a third party to provide information on the assets.	<u>Advantage:</u> A court order will compel a third party who has relevant information to disclose such information, thus aiding the victim in the tracing of assets.  <u>Disadvantage:</u> Such process may be time-consuming.	This mechanism is not available in all circumstances; it is only available in matters prescribed under the Law on Non-Suit Civil Procedure.  Examples of such matters are: execution of a will, management of a company through provisional administrators/directors, dissolution of a legal entity, management of common properties of spouses, management of properties on trust for a minor or mentally disabled person etc.

After the fraudster is identified, a suit may be filed with the courts or administrative agencies. The following may be used to trace the proceeds of the fraud:

Mechanism	Operation	Requirements	Advantages/ Disadvantages	Practical Issues
<b>Subpoena</b>	This process applies to proceedings before a court, an administrative agency exercising quasi-judicial powers, or a prosecutor.  A subpoena is the process of directing a person to attend and testify at a hearing or the trial	The subpoena should pertain to information that is relevant and not privileged.	A person's refusal to comply with a subpoena is considered contempt of court and may subject the person to imprisonment.	If an administrative agency issues a subpoena, and the person disobeys it, the administrative agency has to file a petition with a court to hold the person liable for disobedience. An administrative agency has no authority to impose any punishment for

Mechanism	Operation	Requirements	Advantages/ Disadvantages	Practical Issues
	<p>of an action, or at any investigation conducted by a competent authority, or for the taking of a deposition.</p> <p>A subpoena may also compel a person to bring any book, document, or things under the person's control.</p> <p>Administrative agencies have the power to issue subpoenas if there is a law authorising them to do so.</p>			<p>disobeying a subpoena.</p> <p>Only courts, acting on their own, can punish a person for contempt of court in disobeying a subpoena.</p>
<p><b>Production of documents</b></p>	<p>This applies to court proceedings.</p> <p>A court may order the opposing party in proceedings to produce and permit the inspection and copying of documents which are in that person's custody.</p>		<p>This remedy allows a party to obtain all documents relevant to the case which are in the possession of the defendant.</p>	<p>If the court orders the opposing party to produce documents, the court will issue guidelines on the time, place, date, and manner of making the inspection.</p> <p>This process applies to a party to court proceedings. A subpoena, on the other hand, may also apply to a non-party in a court case.</p>

3. What mechanisms are available to a fraud victim to freeze the fraudster's assets, or the proceeds of fraud, while it pursues its claim against the fraudster? What are the requirements, and are there any practical issues associated with such mechanisms?

Mechanism	Operation	Requirements	Practical Issues
<b>Writ of Preliminary Attachment</b>	<p>This applies to court proceedings.</p> <p>A writ of preliminary attachment allows a court to attach the property of a defendant to serve as security for the satisfaction of any judgment. If the property sought to be attached is a bank account, the bank account will be garnished and the account owner cannot withdraw funds from the account, to the extent of the specified amount, until the writ is lifted.</p> <p>A writ of preliminary attachment may be issued against a party guilty of fraud in contracting a debt or incurring an obligation, or in the performance of the obligation.</p>	<p>An application for the issuance of a writ of preliminary attachment must be filed at the commencement of the action or at any time before the court renders judgment.</p> <p>One of the requirements in obtaining a writ of preliminary attachment is to establish that the other party is guilty of fraud in contracting a debt or incurring an obligation, or in the performance of the obligation.</p> <p>The applicant must establish the factual circumstances supporting the claim of fraud. Fraud is not presumed, and fraudulent intent cannot be inferred from the debtor's non-payment of the debt or failure to comply with the obligation.</p> <p>If the court issues a writ of preliminary attachment, the applicant may be required to post a bond in an amount to be fixed by the court. The purpose of the bond is to answer for any damage that may be suffered by the opposing party if it is later proven that the applicant is not entitled to the writ of preliminary attachment.</p>	
<b>Replevin</b>	<p>This applies to court proceedings. The purpose of a writ of replevin is to recover possession of personal property.</p>	<p>The application must be made at the commencement of the action or any time before the filing of the defendant's answer to the complaint.</p> <p>The applicant should establish the following:</p>	

Mechanism	Operation	Requirements	Practical Issues
		<p>(a) The applicant is the owner of the property or entitled to its possession;</p> <p>(b) The property is wrongfully detained by the other party; and</p> <p>(c) The property is not distrained or taken for a tax assessment or a fine pursuant to law, or seized pursuant to a court process.</p> <p>The applicant is required to post a bond equivalent to double the value of the property.</p>	
<b>Freeze orders under the Anti-Money Laundering Act ("AMLA")</b>	The Anti-Money Laundering Council ("AMLC") may file a petition with the Court of Appeals to freeze monetary instruments or properties related to unlawful activity. Under the AMLA, " <i>estafa</i> " (as defined below) is one of the unlawful activities which may subject a monetary instrument to a freeze order. <i>Estafa</i> is a crime involving fraud.	The AMLC must establish that there is probable cause that a deposit or other account is related to an unlawful activity.	<p>A freeze order may be issued by the Court of Appeals upon a verified <i>ex parte</i> petition by the AMLC and after a determination that probable cause exists that the impugned monetary instrument or property is related to an unlawful activity.</p> <p>The Court of Appeals' freeze order shall not exceed six months. If no case is filed against the person whose account was frozen, the freeze order shall be lifted.</p>

4. What are the considerations that fraud victims should take into account when deciding which jurisdiction to pursue their claims?

In civil actions, the Rules of Court provide that the plaintiff has the option of filing the action with the court having jurisdiction over the place where the plaintiff or the defendant resides. For contractual disputes, if the contract provides for an exclusive venue for litigating disputes, the exclusive venue provision in the contract should be followed.

In criminal actions, Philippine law follows the principle of territoriality. Philippine courts will assume jurisdiction over a criminal action if any one of the elements of the crime occurred in the Philippines. The court that has jurisdiction over a criminal action is the court having jurisdiction over the place where any of the elements of the crime has been committed.

If the stolen property or the fraud proceeds are located in the Philippines, a party may consider filing a suit before the Philippine courts. This is to allow a party to avail itself of court processes that would prevent the fraudster from moving or further concealing the property or fraud proceeds.

The Philippines will enforce foreign judgments so long as a Philippine court allows the recognition and enforcement of the judgment. To enforce a foreign judgment, a civil complaint should be filed before a Philippine court.

5. What are the possible causes of action that a fraud victim may pursue against a fraudster? What are the elements of each cause of action, and what are the remedies under each cause of action?

Cause of Action	Elements	Remedies
<b>Criminal case for <i>estafa</i></b>	<p>Elements applicable to all types of <i>estafa</i>:</p> <p>(a) An accused has defrauded another party by abuse of confidence or by means of deceit; and</p> <p>(b) Damage and prejudice capable of pecuniary estimation is caused to the victim.</p> <p><i>Estafa</i> by means of deceit:</p> <p>(a) There is a false pretense, fraudulent act or fraudulent means;</p> <p>(b) The false pretense, fraudulent act or fraudulent means is made or executed prior to or simultaneously with the commission of the fraud;</p> <p>(c) The victim relied on the false pretense, fraudulent act or fraudulent means; that is, the victim was induced to part with money or property because of the false pretense, fraudulent act or fraudulent means; and</p> <p>(d) The victim suffered damage.</p> <p><i>Estafa</i> by abuse of confidence:</p> <p>(a) Money, goods, or other personal property are received by the accused in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the property;</p> <p>(b) The accused misappropriates or converts the money or property, or the accused denies receipt of the property entrusted to the accused's custody;</p> <p>(c) The misappropriation or conversion or denial prejudices the victim; and</p> <p>(d) The victim demands the return of the property from the accused.</p>	<p>The following is the procedure for instituting criminal actions (such as <i>estafa</i>):</p> <p>(a) A complaint is filed with the prosecutor.</p> <p>(b) The prosecutor will determine if there is probable cause to believe that the accused committed the crime.</p> <p>If the prosecutor determines that probable cause exists, a criminal action will be instituted before the appropriate court. Otherwise, the prosecutor will dismiss the complaint.</p>

Cause of Action	Elements	Remedies
<p><b>Criminal case for money laundering</b></p>	<p>A person, knowing that any monetary instrument or property represents, involves or relates to the proceeds of any unlawful activity:</p> <ul style="list-style-type: none"> <li>(a) Transacts the monetary instrument or property;</li> <li>(b) Converts, transfers, disposes, moves, acquires, possesses or uses the monetary instrument or property;</li> <li>(c) Conceals or disguises the true nature, source, location, disposition, movement or ownership of or rights of the monetary instrument or property;</li> <li>(d) Attempts or conspires to commit the acts mentioned in items (a) to (c);</li> <li>(e) Aids, abets, assists or counsels the commission of the acts mentioned in items (a) to (c); and</li> <li>(f) Performs or fails to perform an act resulting in the facilitation of the acts mentioned in items (a) to (c).</li> </ul>	<p>The procedure for filing criminal cases (as mentioned above) is applicable to criminal complaints for money laundering.</p> <p>In addition to filing a criminal complaint, the person having information regarding the commission of money laundering may request the AMLC's assistance. If the AMLC determines that money laundering is involved, the AMLC may file a complaint with the prosecutor and cause the freezing of the accounts by filing an application for a freeze order with the Court of Appeals.</p>
<p><b>Declaration of nullity of contract</b></p>	<ul style="list-style-type: none"> <li>(a) There must be misrepresentation or concealment by a party prior to or simultaneous to the consent or creation of the contract;</li> <li>(b) The fraud must be serious;</li> <li>(c) The fraud was employed by one of the contracting parties;</li> <li>(d) The fraud was made in bad faith or with intent to deceive and the other party had no knowledge of the fraud;</li> <li>(e) The fraud induced the consent of the other party; and</li> <li>(f) The fraud is alleged and proved by clear and convincing evidence.</li> </ul>	<p>A party may file a civil complaint for the declaration of nullity of a contract with the appropriate court. The civil complaint may also include a claim for damages.</p>
<p><b>Civil claim for damages</b></p>	<p>The fraud was committed in the performance of an obligation. The fraud, however, was not used to procure the consent of the other party.</p>	<p>A party may file a civil complaint seeking the enforcement of the contract and a claim for damages.</p>

## 6. Is a fraud claim subject to any limitation period?

The Civil Code provides prescriptive periods for the following civil actions:

- (a) Actions to recover movable property – eight years from the time possession was lost;
- (b) Actions over immovable property – 10 years from the time possession was lost; and
- (c) Actions based on a written contract, legal obligation or judgment – 10 years from the time the right of action accrues.

The period to file a criminal action for *estafa* will depend on the amount defrauded. The respective limitation periods for instituting a criminal action for *estafa*, according to the amount defrauded, are as follows:

- (a) Not exceeding Php40,000 – five years from the discovery of the crime;
- (b) More than Php40,000.00 but not exceeding Php1.2 million – 10 years from the discovery of the crime; and
- (c) More than Php1.2 million – 15 years from the discovery of the crime.

The limitation periods for instituting a crime will not run when the accused is outside of the Philippines.

# SINGAPORE



## 1. Introduction: what is fraud and asset tracing litigation?

Fraud and asset tracing litigation is a specialist area which focuses on the use of court processes and mechanisms to identify, trace and recover proceeds of fraud.

This includes the use of pre-action disclosure applications to obtain information, particularly banking information which is usually subject to strict confidential requirements, as well as freezing injunctions to preserve fraud proceeds and assets.

There are often complex multi-jurisdictional issues as the sophistication of fraud has seen the increased use of international banking systems to move fraud proceeds across multiple countries in order to evade recovery.

## 2. What options are available to a fraud victim in order to identify the fraudster and/or trace the stolen asset or fraud proceeds? What are the requirements, advantages and disadvantages of such mechanisms/options, and are there any practical issues associated with such mechanisms/options?

Mechanism	Operation	Requirements	Advantages/ Disadvantages	Practical Issues
<b>Norwich Pharmacal order ("NPO")</b>	Common law form of discovery order used to obtain information to disclose the identity of potential wrongdoers.	Applicant must demonstrate: (a) that the third party had facilitated the wrongdoing, whether innocently or otherwise; (b) a good arguable case against the person whose	Usually made against innocent third parties (e.g., internet service providers, cryptocurrency exchanges, e-wallet providers) for information. This prevents alerting the	Speed and confidentiality are essential in tracing of proceeds of fraud.  To consider making such disclosure applications on an <i>ex-parte</i> basis (i.e.

Mechanism	Operation	Requirements	Advantages/ Disadvantages	Practical Issues
		information / identity is being sought; and (c) that disclosure is necessary to enable him to take action, or at least that it is just and convenient in the interest of justice to make the order sought.	fraudsters of investigation and tracing efforts made.	without notice to other side) with appropriate safeguards against tipping off.
<b>Bankers' Trust Order ("BTO")</b>	Similar to and overlapping with NPO, it is a common law form of disclosure order that is used to allow a party to seek disclosure of banking information to trace monies belonging to him.	Applicant must demonstrate a good arguable case of fraud, and that the monies in the bank account belongs to him (e.g. when the customer got the money by fraud).	Usually made against a bank, and has been held by case authorities to fall within the exception to banking secrecy.	
<b>Pre-action disclosures or interrogatories under the Rules of Court</b>	Statutory form of pre-action disclosure order. Commonly understood as a codification of the NPO/BTO.	Applicant must demonstrate that the information or documents sought are relevant to an issue arising or likely to arise out in potential claim, and are necessary at that stage of the matter.  The underlying requirements and principles are generally similar to those for NPO/BTO.	Usually made against third parties, but the statutory provisions also allow for such pre-action disclosure applications to be made against a potential wrongdoer/defendant.	

Mechanism	Operation	Requirements	Advantages/ Disadvantages	Practical Issues
<b>Private investigations</b>	Evidence procured by private investigators are generally admissible in civil proceedings in Singapore.	-	Recommended to have solicitors on board to protect privilege attached to investigation reports and results.	One should always be mindful that of risk of civil or criminal proceedings if evidence is sought to be procured through potentially unlawful acts.

3. What mechanisms are available to a fraud victim to freeze the fraudster's assets, or the proceeds of fraud, while it pursues its claim against the fraudster? What are the requirements, and are there any practical issues associated with such mechanisms?

Mechanism	Operation	Requirements	Practical Issues
<b>Mareva injunction in aid of domestic proceedings</b>	<p>Restrains defendant from dissipating assets within or outside jurisdiction, pending trial.</p> <p><u>Effect on third parties and banks</u></p> <p>Third parties such as banks are bound by the Mareva injunction when they receive notice of it. A third party who aids or abets any breach of the order may be liable for contempt of court.</p> <p>In the case of a worldwide Mareva injunction, the position of a third party outside the jurisdiction is different. The third party is not bound by the injunction unless and until a court in its jurisdiction has declared that the injunction is enforceable against the defendant and the relevant third party. Hence, it is not unusual to have multi-jurisdictional freezing injunctions in a cross-border fraud case.</p>	<p>For a domestic Mareva injunction, the claimant must establish that:</p> <p>(a) it has a good arguable case against the defendant; and</p> <p>(b) there is a real risk of dissipation by the defendant.</p> <p>The same requirements above apply in the case of a worldwide Mareva injunction, except that the plaintiff will also have to show that there are no and/or insufficient assets within jurisdiction to satisfy the claim in order to justify the grant of a worldwide injunction.</p>	<p>A plaintiff seeking a freezing injunction must undertake to the Court to pay any damages that may be sustained by the defendants if it later transpires that the injunction was wrongly granted. The plaintiff may also be required to provide security for its undertaking (fortification).</p>

Mechanism	Operation	Requirements	Practical Issues
<b>Mareva injunction in aid of foreign proceedings</b>	A domestic injunction that seeks to mirror the effect of a foreign Mareva injunction.	In addition to the usual requirements for a Mareva injunction, the plaintiff also needs to establish that: (a) the Singapore court has <i>in personam</i> jurisdiction over the defendant; and (b) the plaintiff has a reasonable accrued cause of action against the defendant that is justiciable in a Singapore court.	Potential difficulty to secure such injunction against foreign defendant due to potential lack of jurisdiction.
<b>Proprietary injunction</b>	A proprietary injunction is a relief that latches onto a specific asset in which the plaintiff asserts a proprietary interest over. This is unlike a Mareva injunction, which seeks to prevent the defendant from dealing with or disposing assets beyond a certain value. As a result, unlike a Mareva injunction, there is no need to prove risk of dissipation in order to obtain a proprietary injunction.	The applicant needs to demonstrate that there is a serious question to be tried, which is satisfied if the applicant can show that it has a seriously arguable case that it has a proprietary interest in the assets concerned.  The applicant also needs to show that the balance of convenience lies in favour of granting the injunction.	Note that an applicant can apply for both Mareva injunction and proprietary injunction at the same time.

#### 4. What are the considerations that fraud victims should take into account when deciding which jurisdiction to pursue their claims?

Forum selection is key in any successful fraud and asset recovery litigation. Various considerations must be taken to mind in selecting the forum(s) at which substantive proceedings against the fraudster is to be pursued.

First, most jurisdictions today recognise some variant of the doctrine of natural forum, which provides that actions should only be permitted and heard in the forum(s) that are the most well suited to determine the dispute. The standard, and the relevant considerations under these tests differ from forum to forum. Generally, relevant considerations to such analyses include the location of the parties, the location and ease of compelling the witnesses to be called, the location and ease of procuring the necessary evidence, the location at which the acts complained of had occurred, and the ease of enforcing a judgment provided by the forum at the jurisdictions at which the award is likely to be enforced.

Second, if the claim is premised directly or indirectly on a contract, one should also take into account if there are any forum selection clauses in the contract. Such clauses are generally given effect to in courts around the world, although they are not absolute and may be disregarded in precise circumstances. For instance, in Singapore, an action may be heard before the local courts in spite of an exclusive jurisdiction clause in favour of another jurisdiction, if there is strong cause to show that the dispute should be heard in Singapore instead.

Practical considerations in deciding which forum to proceed under include whether the fraudster has assets in the jurisdiction which may be swiftly recovered after a judgment is obtained, and the average time taken for a dispute to be determined from start to end in that jurisdiction.

5. What are the possible causes of action that a fraud victim may pursue against a fraudster? What are the elements of each cause of action, and what are the remedies under each cause of action?

In considering the various causes of actions which may be exerted against the fraudster, it is helpful not only to consider the prospect of succeeding under each cause of action, but also, in particular, whether a proprietary remedy is available. Claimants who assert a proprietary remedy are armed with many more options where pre-action remedies are concerned.

A summary of the most common causes of action, the relevant elements to be proven, and the remedies thereunder, is provided here:

Cause of Action	Elements	Remedies
<b>Tort of Deceit</b>	(a) A false representation; (b) made knowingly; (c) intended to be relied upon by another person; (d) the person acts upon the representation and suffers loss.	Damages (all losses sustained caused by the false representation, whether foreseeable or not)
<b>Fraudulent Misrepresentation</b>	(a) A false representation; (b) made knowingly; (c) intended to be relied upon by another person; (d) the person acts upon the representation by entering into a transaction and suffers loss.	Rescission of the contract entered into, and/or damages (all losses sustained as a result of the representation, whether foreseeable or not)
<b>Breach of Contract</b>	Breach of an obligation owed under a contract	Damages (all losses caused subject to the requirement of foreseeability), and/or termination of the contract if the obligation breached is a condition
<b>Proprietary Claim</b>	Property is held on trust by the fraudster in circumstances where a resulting or constructive trust arises by operation of law	Specific performance (return of property), account of profits, tracing (where property has been passed onto other parties), or equitable compensation for value of lost property
<b>Unlawful means conspiracy</b>	(a) Combination of two or more persons to do certain acts; (b) with the intention to injure a person; (c) the acts were performed in furthered of an agreement (d) the acts were unlawful; (e) loss is suffered as a result.	Damages (unsettled: requirement of foreseeability)

## 6. Is a fraud claim subject to any limitation period?

Limitation periods are rarely relevant in situations of fraud, given the need for actions to be initiated swiftly, in order to prevent dissipation of the proceeds of fraud.

Generally speaking, most actions in Singapore are subject to a limitation period of six years under section 6 of the Limitation Act. In situations of fraud, section 29 of the Limitation Act postpones the limitation period such that the period of limitation would only begin to run from the moment on which the plaintiff has discovered the fraud, or could with reasonable diligence have discovered it.

# THAILAND



## 1. Introduction: what is fraud and asset tracing litigation?

The primary purpose of fraud and asset tracing litigation is to facilitate the identification, tracing, and recovery of the proceeds of fraud.

Pre-litigation mechanisms for obtaining information, identifying the fraudster, and tracing stolen assets in Thailand are quite limited and largely rely on the police or other relevant investigative authorities. Information disclosure orders from the courts are only available once formal legal action has been initiated.

Pre-litigation injunctions and other asset preservation orders are only available through the police and are granted at their discretion. Court injunctions and other orders to preserve stolen assets and fraud proceeds may only be applied for under a formal legal action.

Thai Courts do not directly enforce foreign court judgments or orders. In most cases, foreign court judgments or orders only serve as evidence in proceedings filed in Thailand.

2. What options are available to a fraud victim in order to identify the fraudster and/or trace the stolen asset or fraud proceeds? What are the requirements, advantages and disadvantages of such mechanisms/options, and are there any practical issues associated with such mechanisms/options?

Mechanism	Operation	Requirements	Advantages/ Disadvantages	Practical Issues
<b>Information request arising from a police investigation</b>	Part of the process of investigation by the police, whereby the victim and/or interested parties may request information procured in a police investigation arising from a police report which has been filed by such victim and/or interested party	The applicant must: (a) file a formal police report for a criminal offence involving the applicant as a victim; and (b) present reasonable evidence of the alleged criminal offence for an investigation to be initiated or for action to be taken.	<u>Advantage:</u> Allows the applicant to obtain information which the police have acquired in an investigation from government databases, third parties (e.g. banks, service providers) or from physical searches in order to identify the fraudster and/or trace the stolen assets.  <u>Disadvantage:</u> The process can be lengthy and the authorities have the absolute discretion to provide or withhold information.	Process can be lengthy and dependent on the discretion of authorities.  Authorities will determine the information to be provided.  The authorities also decide on the method of obtaining information. As such, the potential lack of confidentiality may be a concern.

Mechanism	Operation	Requirements	Advantages/ Disadvantages	Practical Issues
<b>Court subpoena</b>	Under civil proceedings, the plaintiff may seek the subpoena of evidence or the summons of a witness to provide information necessary for the case.	The petitioner must: (a) be a party to a civil case; and (b) petition the Court for a subpoena of documents, evidence, and/or witnesses relevant to the examination of evidence in the case.	<p><u>Advantage:</u> Allows the plaintiff to obtain documents, information or evidence regarding the fraudster or the stolen assets which the plaintiff may not originally have access to.</p> <p><u>Disadvantage:</u> A court subpoena may only be requested as part of civil proceedings, and a case can only be filed once the alleged perpetrator has been identified.</p>	<p>A civil case must first be filed against the fraudster or a person participating in the commission of the fraud.</p> <p>The person possessing the documents or information subpoena must be identified by the petitioner.</p>
<b>Private investigations</b>	Evidence procured through a private investigation is generally admissible in civil and criminal proceedings, except in certain cases where such evidence was obtained illegitimately.	-	<p><u>Advantage:</u> Private investigators may be employed as an initial step to gather preliminary information before initiating police investigations or formal legal proceedings.</p> <p>Private processes are likely to be conducted in a more timely manner. Further, the process and the information sought can be controlled.</p> <p><u>Disadvantage:</u> Information and evidence obtained in private investigations may hold less weight, as</p>	There are risks associated with evidence procured illegitimately or procured through unlawful acts.

Mechanism	Operation	Requirements	Advantages/ Disadvantages	Practical Issues
			the information may lack tangible evidence or the source of information may not be verifiable.	

3. What mechanisms are available to a fraud victim to freeze the fraudster's assets, or the proceeds of fraud, while it pursues its claim against the fraudster? What are the requirements, and are there any practical issues associated with such mechanisms?

Mechanism	Operation	Requirements	Practical Issues
<b>Seizure or attachment of assets</b>	<p>In the process of investigating a criminal case and/or collecting evidence in a criminal case, an inquiry officer has the power to seize or freeze assets received from, used in, suspected of having been used in and/or which is evidence of the commission of fraud.</p> <p>An order for the seizure or freezing of assets may be issued to banks or other third parties who have possession of the assets. However, the authorities only have the power to enforce such order against assets located within their jurisdiction.</p>	<p>Most offences relating to fraud constitute compoundable offences (i.e. personal offences) for which the victim must file a police report to initiate a formal investigation and criminal proceedings.</p> <p>The applicant must be a victim of a criminal offence and must have filed a police report with the authorities. Reasonable grounds and evidence must also be presented to the police to demonstrate the commission of the offence and that the assets requested to be seized or frozen were involved in or constitute evidence of the offence.</p>	<p>The police is not bound to grant the victim's request and has full discretion as to whether to seize or freeze assets as requested by the victim.</p> <p>There is no specific standard for proving that the assets were received from, were used in, or constituted evidence of the offence. Such consideration is made by the police on a case-by-case basis.</p> <p>The assets to be seized or frozen must be within the jurisdiction of inquiry officers pursuant to the Thai Criminal Code.</p>
<b>Interim measures</b>	<p>In a civil action, a plaintiff may file an <i>ex-parte</i> petition to the Court to grant interim measures in connection with the case to mitigate or relieve the plaintiff of damages that have been and/or continue to be and/or will be incurred during the civil proceedings.</p> <p>Interim measures which may be granted by the Court include (a) seizure or</p>	<p>In the petition for a seizure or attachment of property, the plaintiff must establish a ground of action and demonstrate considerable risk of dissipation and/or disposal of the assets by the defendant in any way which would delay or impede potential enforcement against such assets.</p>	<p>A petition for interim measures may only be filed together with a civil case or after a civil case has been filed.</p> <p>The plaintiff may be ordered by the Court to compensate the defendant in respect of any damages arising from any interim measures requested by the plaintiff</p>

Mechanism	Operation	Requirements	Practical Issues
	attachment of property; (b) temporary injunctions; (c) authorisation of the relevant registrar, competent official or any other person vested with the legal power and duty to alter registration of the property in dispute; and (d) in extreme cases, arrest and detention of the defendant.	The Court may also require advertisement of the order prohibiting the disposal of assets or prescribe other conditions as the Court deems appropriate.	which are later found to have been wrongly granted.

**4. What are the considerations that fraud victims should take into account when deciding which jurisdiction to pursue their claims?**

Thailand utilises a civil law legal system and does not recognise the natural forum doctrine. Action in Thai Courts is permitted in all cases where Thai Courts have jurisdiction. Thai Courts are not barred from accepting a case which has already been filed in another jurisdiction, and Thai Courts are not bound by foreign court orders or judgments in connection with forum selection.

Thai Courts are not bound by forum selection clauses; as such, a Thai Court may elect to observe a forum selection clause or, conversely, may elect to accept a case which it has jurisdiction over even if the parties have agreed on or selected a court in another jurisdiction as their forum of choice.

Generally, awards from other jurisdictions are not recognised by Thai courts, as Thai law does not specifically provide for direct recognition or enforcement of foreign court judgments or orders, and Thailand is not party to any treaty or convention which requires Thailand to recognise or enforce foreign court judgments or orders.

Thus, in order to enforce judgments and orders of a foreign court, a new case must be filed with a Thai court, pursuant to which foreign court judgments or orders only serve as evidence in the case before the Thai court.

In Thailand, pre-litigation legal mechanisms are lacking in most cases and most formal legal mechanisms require either a criminal or a civil case to be filed with a Thai Court. Where legal grounds exist, both civil and criminal proceedings may be pursued simultaneously.

**5. What are the possible causes of action that a fraud victim may pursue against a fraudster? What are the elements of each cause of action, and what are the remedies under each cause of action?**

Cause of Action	Elements	Remedies
<b>Criminal fraud</b>	(a) Dishonest deception of another person; (b) with the assertion of a falsehood or the concealment of facts which should be disclosed; and (c) by such deception, the alleged offender obtains a property from the person deceived or a third party, or causes the person deceived or a third party to execute, revoke or destroy a legal document.	<ul style="list-style-type: none"> <li>• Criminal penalty of imprisonment of up to three years and/or a fine of up to THB 60,000.</li> <li>• Harsher criminal penalty in case of certain aggravating factors.</li> </ul>

Cause of Action	Elements	Remedies
<b>Criminal misappropriation</b>	Dishonest transfer of property belonging to another person, or property of which another person is a co-owner, to himself, herself, or a third party.	<ul style="list-style-type: none"> <li>• Criminal penalty of an imprisonment of up to three years and/or a fine of up to THB 60,000.</li> <li>• Harsher criminal penalty in case of certain aggravating factors.</li> </ul>
<b>Tortious claim</b>	Wilfully or negligently causing loss or injury to property or right of another.	Compensation for actual damages incurred.
<b>Procurement of declaration of intention by fraud</b>	Procurement of a declaration of intention (in this case, a declaration to enter into a contract), which would otherwise not have been made, by fraud.	<ul style="list-style-type: none"> <li>• Right to rescind the contract.</li> <li>• Return of proceeds and property received during the course of the contract by both parties.</li> <li>• Damages incurred in the execution of the contract.</li> </ul>
<b>Breach of contract</b>	Breach of contractual obligations regardless of misrepresentation or fraud (as the plaintiff would not need to prove deceitful or fraudulent intent)	<ul style="list-style-type: none"> <li>• Compensation of actual damages incurred directly as a result of the breach of contract (including value of property lost or transferred to third parties) as well as damages which could have been reasonably foreseen.</li> <li>• Specific performance such as the return of property.</li> <li>• Agreed damages or penalties.</li> </ul>

## 6. Is a fraud claim subject to any limitation period?

The limitation period in each case varies depending on the cause of action and whether it relates to a criminal offence or a civil claim. Fraud and misappropriation are criminal offences subject to limitation periods under the Criminal Code. Grounds for civil claims such as tortious claims, claims for rescission of contract made by fraud, and breach of contract are subject to limitation periods under the Civil and Commercial Code.

The offences of fraud and misappropriation are compoundable offences, for which the victim must file a police complaint within three months from the date on which the victim becomes aware of the commission of the offence and identity of the offender; otherwise, criminal prosecution of the offence is precluded. Additionally, such offences are subject to a limitation period of 10 years.

Generally, tortious claims are subject to a limitation period of one year from the date on which the injured person becomes aware of the commission of the tortious act and the person bound to make compensation or 10 years from the date on which the tortious act is committed. However, if the damages are claimed on account of a criminal offence (for example, fraud or misappropriation) for which a longer limitation period is provided, the longer limitation period will apply.

# VIETNAM



## 1. Introduction: what is fraud and asset tracing litigation?

The laws of Vietnam have no separate regime regarding "fraud and asset tracing litigation". For the purpose of identifying, tracing and recovering proceeds of fraud, the victims must initiate the relevant proceeding to activate the respective procedures and mechanisms to protect and recover their interest, which, in general, may include the following:

- (a) requesting relevant agencies, organisations, and individuals to give access to and provide materials, information, and evidence to facilitate the identification and tracing of fraud proceeds;
- (b) freezing injunctions in support of domestic and foreign civil and criminal proceedings to preserve fraud proceeds and assets; and
- (c) multi-jurisdictional enforcement of judgment and asset recovery.

## 2. What options are available to a fraud victim in order to identify the fraudster and/or trace the stolen asset or fraud proceeds? What are the requirements, advantages and disadvantages of such mechanisms/options, and are there any practical issues associated with such mechanisms/options?

Mechanism	Operation	Requirements	Advantages/ Disadvantages	Practical Issues
<b>Request to Court (data and evidence)</b>	The concerned party may request the Court to issue a decision requiring the entities controlling or holding data and evidence relating to the fraud to provide such data and evidence; or request	The concerned party has taken necessary measures to gather data and evidence but has failed to gather the data and evidence by itself.	<u>Disadvantage:</u> The civil case must already have been accepted by the Court.	There is no specific guidance on the factors to be taken into account when determining if the parties have taken the necessary measures or not.

Mechanism	Operation	Requirements	Advantages/ Disadvantages	Practical Issues
	the Court to adduce data and evidence.			
<b>Request to Court (verification of address)</b>	<p>The claimant or petitioner may:</p> <p>(a) petition a Vietnamese Court to request a foreign competent agency to identify the addresses of the parties concerned;</p> <p>(b) petition a competent agency to search for a person missing from his/her residence; or</p> <p>(c) petition a Vietnamese court or a foreign competent agency to declare that a person concerned is missing or dead in accordance with Vietnamese law, the foreign law, or an international treaty to which Vietnam is a member.</p>	The request shall be made if the claimant or petitioner is not able to identify the address of the parties concerned in a foreign country.	This mechanism only applies to cases where the victim is not able to identify the addresses of the concerned parties in a foreign country.	

3. What mechanisms are available to a fraud victim to freeze the fraudster's assets, or the proceeds of fraud, while it pursues its claim against the fraudster? What are the requirements, and are there any practical issues associated with such mechanisms?

Mechanism	Operation	Requirements	Practical Issues
<b>Attaching property in dispute</b>	The attached property may be kept and preserved at the agency for civil judgement enforcement or delivered on the basis of the prepared record to a concerned party or third party for management up until the time when a decision of the Court is issued. The prepared record recognises the delivery of the attached property to a concerned party or a third party for management.	The attachment of property in dispute shall be applied if, during resolution of the case, there are grounds demonstrating that the holder of the property in dispute is acting to hide or destroy the property.	These preliminary injunctive relief measures may be applied for concurrently with the filing of the petition if one of the following conditions is met:  (a) The application is due to an emergency (which means that the situation needs to be resolved immediately without delay);  (b) Evidence must be protected immediately in case the source of evidence is being destroyed, is in danger of being destroyed or shall be difficult to collect later;
<b>Prohibiting transfers of property rights with respect to property in dispute</b>	Any transfer of property rights with respect to property in dispute shall be prohibited.	During resolution of the case, there must be grounds demonstrating that the possessor or holder of the property in dispute is acting to transfer the rights towards the property in dispute to another person.	(c) The measure is to prevent possible serious consequences (including physical or mental consequences).
<b>Prohibiting changes in the status quo of property in dispute</b>	Any change in the status quo of the property in dispute shall be prohibited.	During resolution of the case, there must be grounds demonstrating that the possessor or holder of the property in dispute is dismantling, installing, constructing additional items or carrying out other acts for the purpose of changing the status quo of such property.	A plaintiff seeking for such preliminary injunctive relief measures must submit to the Court a letter of guarantee which is supported by assets of a bank or other credit institution or other entities; or deposit a sum of money, precious metals, gemstones or valuable papers which are fixed by the Court. Such deposit must be equivalent to the loss and damage which may arise as a consequence
<b>Freezing accounts at banks, other credit institutions and the State Treasury</b>	Accounts at banks, credit institutions and the State Treasury shall be frozen.	During resolution of the case, there must be grounds demonstrating that the obligor has accounts at banks, credit institutions or the State Treasury, and the application of this measure is necessary to secure	

Mechanism	Operation	Requirements	Practical Issues
		resolution of the case or legal enforcement.	of improper preliminary injunctive relief.
<b>Freezing property at places of bailment</b>	Property shall be frozen at the place of bailment.	During resolution of the case, there must be grounds demonstrating that the obligor has the bailed property and the application of this measure is necessary to secure resolution of the case or legal enforcement.	
<b>Freezing property of obligors</b>	Property of an obligor shall be frozen.	During resolution of the case, there must be grounds demonstrating that the obligor has the property and the application of this measure is necessary to secure resolution of the case or legal enforcement.	

#### 4. What are the considerations that fraud victims should take into account when deciding which jurisdiction to pursue their claims?

Selection of forum is important to the result of the relevant litigation which may be initiated regarding fraud and asset tracing, as well as the enforcement of such result. Serious consideration must be taken when selecting the forum(s) at which substantive proceedings against the fraudster is to be pursued.

First, the laws of Vietnam recognise that litigation proceedings should be heard in the forum(s) that is the most well suited and relevant in determining the dispute. In particular, Vietnamese laws prescribe a number of scenarios involving foreign elements in which the Vietnamese courts shall have general jurisdiction, including the following:

- (a) The respondent is an individual who resides, works or lives on a long-term basis in Vietnam;
- (b) The respondent is an agency or organisation with its head office in Vietnam, or an agency or organisation with a branch or representative office in Vietnam with respect to cases relating to the operation of such branch or representative office;
- (c) The respondent has property in the territory of Vietnam;
- (d) In a civil relationship case, such relationship was established, changed or terminated in Vietnam, and/or the subject of such relationship is (i) property in the territory of Vietnam, or (ii) work performed in the territory of Vietnam; or
- (e) In a civil relationship case, such relationship was established, changed or terminated outside the territory of Vietnam but is related to rights and obligations of Vietnamese agencies, organisations or individuals, or the parties concerned have their offices or residences in Vietnam.

Second, where civil proceedings are subject to the general jurisdiction of Vietnamese courts, the courts will recognise a choice of forum/jurisdiction agreement entered into by the parties. However, Vietnamese courts shall

have specific jurisdiction over civil cases which involve rights over property (being real property in the territory of Vietnam).

Third, a civil decision or judgment of a foreign court ("**foreign judgment**") may be enforced in Vietnam only after the decision of the Vietnamese court regarding the recognition and enforcement of the foreign judgment in Vietnam has taken legal effect. The following foreign judgments may be considered for recognition and enforcement in Vietnam:

- (a) Civil, business, commercial decisions and judgments, decisions on property in criminal or administrative decisions, and judgments of a foreign court prescribed in an international treaty to which such country and Vietnam are members;
- (b) On the basis of the principle of reciprocity: civil, business, commercial decisions and judgments, decisions on property in criminal or administrative decisions, and judgments of courts of a foreign country where such foreign country and Vietnam are concurrently members of an international treaty containing provisions on recognition and permission for enforcement of judgments and decisions of foreign courts; or
- (c) Other foreign judgments for which recognition and permission for enforcement are prescribed by Vietnamese law.

5. What are the possible causes of action that a fraud victim may pursue against a fraudster? What are the elements of each cause of action, and what are the remedies under each cause of action?

Cause of Action	Elements	Remedies
<b>Invalidity of civil transactions due to falsification</b>	Where a civil transaction is falsely entered into for the purpose of evading responsibilities to a third party, such civil transaction shall be invalid.	An invalid civil transaction shall not give rise to civil rights and obligations with respect to the parties and shall not change and/or terminate of such rights and obligations as from the time the transaction is entered into.
<b>Invalidity of civil transactions due to deception</b>	Any party deceived into entering a civil transaction has the right to request that a court declare such civil transaction invalid.  Deception in a civil transaction means an intentional act of a party or of a third party for the purpose of misleading the other party as to the subject, nature of the entity, or contents of the civil transaction, which caused the other party to enter into the transaction.	Where a civil transaction is invalid, the parties shall restore their respective positions to their original state and shall return to each other what they have received through the transaction.  The party at fault which caused loss and damage to the other party must compensate the other party.
<b>Breach of obligations (contract)</b>	An obligor fails to perform the obligation on time, does not perform the obligation fully, or incorrectly performs the obligation.	(a) Penalty for breach <ul style="list-style-type: none"> <li>• There must be an agreement between the parties that a penalty will apply for breach of contract.</li> <li>• The amount/level of penalty shall be subject to the agreement between parties, unless otherwise required by</li> </ul>

Cause of Action	Elements	Remedies
		<p>applicable law. Generally, the penalty applicable in a commercial contract shall not exceed 8%, and in a construction contract shall not exceed 12%, of the relevant value of the contract which has been breached.</p> <p>(b) Compensation for loss and damage caused by breach of contract</p> <ul style="list-style-type: none"> <li>• Loss and damage caused by a breach of an obligation comprises physical and spiritual damage: <ul style="list-style-type: none"> <li>○ Physical damage is actual physical losses which can be determined, comprising loss of property, reasonable expenses to prevent, mitigate or restore damage, and actual loss or reduction of income.</li> <li>○ Spiritual damage is spiritual losses caused by harming life, health, honour, dignity, reputation and other personal interests of a subject.</li> </ul> </li> </ul> <p>(c) Concurrent application of both (a) penalty for breach and (b) compensation for loss and damage: The parties may also agree on the concurrent application of a penalty for breach of contract and compensation for loss and damage. In the absence of such agreement, and where the parties have only agreed on the penalty for breach, the compensation for loss and damage shall not be applicable.</p>

Cause of Action	Elements	Remedies
<b>Liability for Compensation for Non-Contractual Damages</b>	A person harming the life, health, honour, dignity, reputation, property, or other legal rights or interests of another person thereby causing loss and damage.	Compensation for loss and damage: Actual loss and damage must be compensated in full and promptly.
<b>Infringement of ownership rights</b>	Unlawful possession or use of property or deriving of benefits from property	<p>(a) Return of property</p> <ul style="list-style-type: none"> <li>A person possessing or using property of another unlawfully must return the whole of such property to its owner or a subject with other rights with respect to such property. Where the property is lost or damaged, an object of the same type must be returned or monetary compensation must be paid.</li> </ul> <p>(b) Compensation for loss and damage</p> <ul style="list-style-type: none"> <li>A person deriving benefits from property unlawfully, thereby causing loss and damage to another person, must give such benefits to such other person.</li> </ul> <p>(c) Cessation of acts which unlawfully hinder exercise of lawful ownership rights and other rights with respect to property</p>

## 6. Is a fraud claim subject to any limitation period?

There is no specific or single limitation period applicable to a fraud claim under Vietnamese law. Instead, different limitation periods apply for legal actions depending on the specific types of cases.

Regarding the time limit for requesting the declaration of an invalid civil transaction, if such request is on the basis of deception, the request shall be made within two years of the date the deceived person knew or should have known that the transaction was established due to deception. Meanwhile, there is no restriction on the time-limit within which a request may be made to a court to declare a civil transaction invalid due to falsification.

The limitation period for initiating legal action to request a court to resolve a dispute relating to a contract or to claim compensation for non-contractual damages shall be three years from the date on which the person with the right to make the request knew or should have known that his/her lawful rights and interests were infringed.

Additionally, a limitation period for initiating legal action shall not apply in requesting for the protection of ownership rights. However, a person who unlawfully but in good faith possesses, or derives benefits from property continuously and in an overt manner for 10 years with respect to moveable property, and for 30 years with respect to immoveable property, shall become the owner of such property from the moment of commencement of possession.

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