

BEST PRACTICES IN ANTI-CORRUPTION: A DECADE OF INSTITUTIONAL AND PRACTICAL DEVELOPMENT IN THAILAND

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I. INTRODUCTION

From the past to present, corruption in Thailand is a serious crime, with a constantly growing magnitude, affecting political, economic and social security. Corruption in Thailand is not a new phenomenon. It can undeniably occur in any sector in Thailand; such as, political corruption (state politics, local politics), corruption among government officials (high-level *government officials*, public officials, soldiers, and police). Also, corruption can be found even in the private sector, which cooperates with government officials.

The following types of corruption in Thailand can be found:

1. The use of power by a government official for illegitimate private gain for himself or for others.
2. Corruption in government procurement, especially in project bidding between the public sector and private sector.
3. Corruption in a concession project by granting exclusive control and rights to exploit a benefit illegally.
4. Policy corruption is a new type of corruption: illegally making plans or management mechanism for beneficiaries.

In addition, another type of corruption happening in Thailand at this period is negligence or ignorance of duty including noncompliance with laws and regulations.

The problem of corruption has not only been around for a long time in Thailand, but it also has been around in other countries. It affects all countries. These have made efforts to clean up their own nest by implementing new laws and trying to move on to good governance at the same time. The global community therefore must help each other to create efficient mechanisms and share information, knowledge, current situations and problems in order to efficiently prevent and combat corruption.

II. A DECADE OF INSTITUTIONAL AND PRACTICAL DEVELOPMENT IN THAILAND

Over the past decade, there have been high risks of corruption in most sectors in Thailand such as state politics, local politics, private capital groups, and government officials. Even

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though Thailand has the legal framework and a range of institutions to counter corruption, Thailand does not have an efficient monitoring mechanism, and institutions as such are overwhelmed by outside influences.

In 1997, therefore, the Office of the National Anti-Corruption Commission (NACC) was established under the Constitution of the Kingdom of Thailand 1997. NACC is a new independent government agency, having integrity and transparency. NACC has power to inquire and investigate government officials who have become unusually wealthy or have committed an offence of corruption, malfeasance in office or malfeasance in judicial office. In addition, since NACC has a large number of missions, the Office of the Public Sector Anti-Corruption Commission (PACC) was established in 2003. PACC, a governmental organization in the executive branch, was established to have the responsibility to implement the anti-corruption policy and to be a centre to coordinate with all of the relevant state agencies.

Furthermore, the Office of the Attorney General (OAG) is an independent organization. Public prosecutors make independent decisions whether to prosecute cases. At present, OAG has a new department working regarding corruption among government officials called the Department of Corruption Litigation.

In the aspect of the Court of Justice (COJ) in Thailand, COJ now has a new Court called “The Supreme Court’s Criminal Division for Persons Holding Political Positions”. This was set up in the Supreme Court to act as a trial court in a case where the Prime Minister, minister, member of the House of Representatives, senators, or other political officials are accused of becoming unusually wealthy, committing malfeasance in office according to the Criminal Code, performing duties dishonestly, or being corrupted according to other laws. Also, in 2016, “the Central Criminal Court for Corruption and Misconduct Cases” was established and set up in the Supreme Court to act as a trial court in cases regarding corruption in government officials.

In the aspect of law, corruption is a social evil and a severe crime. The criminal proceeding has been separated between inquiry/investigation stage and prosecution stage. The inquiry/investigation stage, which against high-ranking officials, is the authority of office the National Anti-Corruption Commission (NACC) while the prosecution is the power of the Prosecutors. In this regard, OAG has established an internal agency responsible for prosecuting public officials or politicians in particular. The Prosecutor will not get involved in inquiries until they have sent him the investigation report. After that, after the case as such is filed, in court proceedings, inquisitorial procedure is used for corruption cases. The judges have the right to ask the witness questions by themselves. This means, the inquiries of NACC and the Courts in this category have specific characteristics different from other general criminal procedure which is the accusatorial system.

- An accusatorial system is a system where, after accusing the defendant, the plaintiff must prove its allegations by presenting its most persuasive arguments to the judge before sentencing the defendant.

- An inquisitorial system (which is used in corruption cases) is a system where the court is actively involved in investigating the facts as to whether the defendant is guilty as alleged or not, so it is different from general criminal cases.

In addition, persons holding political positions or high-ranking officials are required to declare their assets to the Office of the National Anti-Corruption (NACC) and must announce their declarations to the public. The assets may be confiscated in two cases, if:

1. The assets acquired from malfeasance in office or corruption (which is not uncommon);
2. The assets acquired by any politician or official in excessive amounts without clarification or reasonable/reliable explanation. These unusually increased assets will be asked to be seized and belong to the State.

Last but not least, there is an exception of limitation period. In other words, a statute of limitations period does not apply to corruption cases in Thailand. The periods of prescription shall not run if the accused fled during the prosecution or court hearings, including when the defendant fled after the conviction of final judgment.

Section 74/1 of the Organic Act on Counter Corruption B.E. 2558 (2015) stipulates that in criminal proceedings under this Chapter, if an alleged culprit escapes during the prosecution, the time an alleged culprit escapes shall not be reckoned in the limitation period.

This means, during the process of criminal investigation of the political office holders, if he or she escapes during this investigation (and prosecution) process, the time period during this escape will not be counted as part of the statute of limitations period. This is to counter the practice of politicians who escape the legal process until time limit passes.

In conclusion, Thailand at present has the legal framework and a range of institutions to counter corruption, trying to prevent and combat corruption. We will illustrate this by providing actual cases that happened in Thailand which are somewhat successful because of the legal framework and a range of institutions to counter corruption.

III. CASE STUDIES

A. Case Study A

There is one case involving high-ranking officials who were responsible for many construction projects. Villains raided an official's house on the day the official was not home, including family members as well. They all went to a wedding party. There were only servants who watched the house, but the villains bound the servant in the house and then ransacked the house, taking away the property.

A servant ran away and went to report the crime to the police. First, the police did not know what property was taken until the officer came to the police station for interrogation. He reportedly lost about four million baht (about US \$ 110,000). After that, the police investigated the arrest of some villains with stolen money in the amount of about 16 million baht. They

confessed that they taken about 50 million baht (about US \$ 1.4 million) and divided it with many other villains. The facts from the official and villains were totally different because the amount of money confiscated was more than the amount that the official reported.

As a result, NACC had made an inquiry, saying that the government official was unusually wealthy. This is an example that does not appear to use his position to do anything or to get some benefit but the law makes it possible to sue under the police evidence.

The Act on Counter Corruption B.E. 2542 (1999) Section 78. In the case where the N.C.C. Commission discovers that any property of the alleged culprit is connected with unusual wealth and is under the circumstance convincingly indicative of the possibility of its transfer, move, transformation or concealment, the N.C.C. Commission shall have the power to issue an order of temporary seizure or attachment of that property, without prejudice to the right of the alleged culprit to submit an application for taking such property for use with or without bail or security.

When a temporary seizure or attachment of the property occurs under paragraph one, the N.C.C. Commission shall seek proof of the property's origin without delay. In the case where the alleged culprit is unable to present evidence that the property under temporary seizure or attachment is not connected with the unusual wealth, the N.C.C. Commission shall have the power to continue its seizure or attachment until the N.C.C. Commission passes a resolution that the allegation has no prima facie case, which must be within one year as from the date of the seizure or attachment or until the Court passes a final judgment dismissing that case. But, if the proof is successful, the property shall be returned to such person.

B. Case Study B

This case involves local top executives in conjunction with land brokers and landlords planning to sell the land to local authorities. Local top executives approved land acquisition for a junkyard. The executives knew the land broker and let the land broker deposit multiple plots of land. For some plots of land the realtor purchased them from wives and children of local administrators who had authority to approve the project, which is illegal because the local executives must not be involved in the project in any other way.

So, the land broker bought land and sold it to government agencies. The land can be sold at a price higher than fair market value because the partnership of the bankers issued inflated quotes as evidence. In addition, the land is still a deep hole with high-power pylon crosses which makes the land unprofitable and unprofitable to sell to other people.

The Attorney General has a prosecution order, and the Court of First Instance and the Court of Appeal have ruled that the senior executives are guilty

Criminal Code section 157 states: "Whoever, being an official, wrongfully excises any of his functions to the injury of any person, or dishonestly exercises or omits to exercise any of his functions, shall be punished. . ."

C. Case Study C

In this case, the NACC sent the prosecutor to consider seizure. A former government official was accused of possessing unusual wealth while he was serving as Deputy Director General. With a total value of about 7-8 million baht (about \$220,000 US), the property sent for confiscation is as follows:

1. Condominium for his daughter
2. Mercedes Benz
3. Cars for his son
4. The house in the province.

Prosecutors filed for seizure in court. The defence argued that:

1. Extra income from part-time work for a private relative's company amounted to \$2,000 US per month.
2. The defendant has a good financial status since before being the general director and his parents are rich.
3. Many properties use installments, not cash.

The prosecutor must analyse whether the value of assets and status of the defendant, who has a high position and work in government service for long time, is appropriate or not. Even the property is not an abnormal amount, I have to set the issue to argue the defense defendant.

1. Must argue to the court that earnings that claim to have increased from part-time work is not true. I have questioned the defendants claiming that this additional income has evidence of tax withholding or not including the annual tax return in order to prove to the court that the defendant has never reported this income before.
2. On the issue that the defendant claims to have a good financial position before taking the position, I have taken the documents that the defendant filed his property and wife account with the NACC before taking the position, which appeared in the bank account of the defendant total only 1.4 million (about \$40,000 US) to the court.
3. Some properties, such as condominiums, cars undergoing installments, are not purchased with cash. I found this information that the amount of installments for each month are \$3,500 US, of course, is more than the monthly salary of the defendant (who has a salary of about \$2,500 US).

Finally, the Court of Appeal, as prosecuted by all prosecutors, found that this case, despite the presence of fraud and property forfeiture, was not an unusually high amount of money than the position and position of the defendant. But the correct handling of the issue and the supportive arguments were successful in the case.

D. Case Study D

The accusation of the case is corruption selling rice that government buys from farmers. Those involved in the offences include:

1. Ministers
2. Senior Official, Ministry of Commerce
3. Private companies

The government has been buying rice from farmers at high prices to help farmers' income. Ministers with high officials involved in rice selling G to G rice proposed additional criteria guidelines for cabinet approval.

The prosecutor confirmed that former G to G sales had to be sold to the government by the government or only government delegates. But in this case it has been added to be able to sell to state-owned enterprises.

Enterprises as defined in the law are companies with more than 50% government ownership, which in Thailand are few and often large.

The issuance of additional guidelines is part of the plan to commit fraud. They had two companies, G and H from China, which were 100% government owned and signed a contract to buy G to G rice with the Thai Ministry of Commerce.

This may not look wrong, because it is selling according to the guidelines approved by the Cabinet to sell the rice quickly. But in this case, both Chinese companies are truly just nominees to purchase rice in compliance with the modified guidelines.

Prosecutors have confirmed that to the court. Payments to pay for rice were payments by check from the bank account in the country. The source of the money came from Company S, but the rice that was checked with the customs did not appear. The rice was shipped to Thailand, but there will be employees of Company S to take the rice from the warehouse. We have checked the information from the Chinese commercial ambassador and noted that company G is listed as a company selling sports equipment. Company H is a trading company of agricultural products. Both companies had insufficient registered capital appropriate for trading millions of tons of rice, and even identify the Chinese government as having a 100% stake.

But neither company has any relevant relationship with the Chinese government at all, and we find that there are many other registered companies stating that the government holds 100% stake like these two companies in China, thousands of thousands across the country.

And it is also true that if a state-owned enterprise that the Chinese government commissioned the contract to buy agricultural produce instead of G to G will have only one company. This is the truth that the ministers and government officials should know what the company is. Certainly not the two companies mentioned.

We have also confirmed that accommodation and food expenses of the agent that Company G and Company H sent to make the contract with the Ministry of Commerce were paid by Company S, which is a trading company in Thailand.

The next important issue that we have to prove is the motivation and benefits. We have obtained information from a large local rice and retailer that at that time if they need to purchase rice they have to make a payment to Company S, and Company S staff will prepare documentation to pick up the rice from the warehouse. This is why the G to G trading was paid to the Ministry of Commerce many times. It is found that the order is paid by check up to 900 copies. The price of rice is sold at market price, but Company S bought it below the market price. That made Company S get a profit in that section. This case has been selling rice from the warehouse of 4 million tons when calculating the difference between the purchase price and the market price, the profit margin is about 10,000 million baht (about 300 million U \$).

Finally, in this case, the Supreme Court ruled that the relevant ministers, including the owners of Company S, were sentenced to several years in prison. This case has been complicated by government policy and the prosecutor must prove the link between the additional rules and the way the corruption occurred. And it is important to prove the motives and interests of the wrongdoing in court.

The prosecutor is required to seek a witness's testimony, other than in the case filed by the NACC, to prove the motives and interests of the wrongdoing by pointing out the financial benefits. The court believes that the planning and execution process is feasible. So, all the defendants are guilty.

Act on Offences Relating to the Submission of Bids to State Agencies, B.E. 2542 (1999)

Section 9. In the case where the commission of an offence under this act is made for the benefit of any juristic person, the managing partner, managing director, executives or authorised personnel in the operation of such juristic person's business or a person responsible for the operations of the juristic person on such matter shall also be deemed as joint principal offenders, unless it can be proven that he/she had no awareness of the commission of such offence.

Section 10. Any official of a State agency having the power or duty to approve, consider or perform any function in relation to a bid on any occasion, and who knows or should have known from the apparent circumstances that an offence under this Act was committed in the bid on such occasion, having failed to act in such manner as to abort proceedings relating to the bid on such occasion, shall have committed an offence of misfeasance in office and shall be liable to imprisonment for a term from one year to ten years and a fine from twenty thousand baht to two hundred thousand baht.

Section 12. Any official of a State agency who commits an offence under this Act, or commits any act with the purpose of preventing fair competition by favouring any bidder as the person entitled to enter into a contract with a State agency, shall have committed the offence of misfeasance in office and shall be liable to imprisonment for a term from five years to twenty years or life imprisonment and a fine from one hundred thousand baht to four hundred thousand baht.

The Criminal Code, Section 157, states: “Whoever, being an official, wrongfully excises any of his functions to the injury of any person, or dishonestly exercises or omits to exercise any of his functions, shall be punished. . .”

IV. CONCLUSION

From the sample cases mentioned above, in particular, case D is a major case in Thailand of fraud against the state and also an abuse of power by state officials. In addition, it can be seen that corruption cases now can involve individuals or organizations in foreign countries, for example, government procurement with overseas organizations.

Hence, this points out that Corruption is not just about domestic matters anymore. Collaboration in providing information between states is important to prevent this kind of corruption. I believe that in the future the establishment of a centre for corruption suppression, regardless of whether it is regional or global, will help us to suppress corruption and raise the standards and effectiveness of the crackdown in all countries.

The Thai government attaches great importance to this issue by including the suppression of corruption as a part of the national agenda. Recently, Thailand has planned to expand the scope of anti-corruption laws and has drafted a bill concerning the prevention of “conflict of interest” among state officials in order to ensure an effective procedure.