

BEST PRACTICES AND CHALLENGES FOR INTERNATIONAL COOPERATION: FOCUSING ON THE CASE OF CORRUPTION IN THAILAND

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I. INTRODUCTION

Corruption and transnational crime pose a significant threat across all countries around the world. Corruption exists in Thailand in many forms despite Thailand's efforts to strengthen its anti-corruption laws, policies and enforcement for many decades. Recently, Thailand amended its anti-corruption laws in order to make them correspond to the 2003 UN Convention Against Corruption. The latest amendments introduced the new offences of bribery involving foreign government officials and international organizations; it also prescribed specific liabilities for companies that benefit from bribes made by employees, affiliates and agents, irrespective of whether or not they had the authority to act on the company's behalf, as well as new powers for the National Anti-Corruption Commission (NACC) and the Thai courts.

The legislation regarding anti-corruption includes: the Criminal Code (CC), the Organic Act on Counter Corruption (OACC), the Anti-Money-Laundering Act (AMLA), the Criminal Procedure Code (CPC), the Extradition Act (EA) and the Act on Mutual Assistance in Criminal Matters (MLA Act). The relevant government agencies involved in fighting against corruption include the Royal Thai Police (RTP), the Department of Special Investigation (DSI), the National Anti-Corruption Commission (NACC), the Office of Public Sector Anti-Corruption Commission (PACC), the Anti-Money-Laundering Office (AMLO) and the Office of the Attorney General (OAG).

The OAG of Thailand is an independent agency, having authority and functions in combating corruption both in conducting the investigation in special cases such as organized crime according to the Special Case Investigation Act B.E. 2547, extraterritorial investigation according to the Criminal Code, and juvenile cases according to the Act Instituting Juvenile Courts, B.E.2494 (1951) and the Juvenile Procedure Act, B.E.2494 (1951). Besides being the principal prosecuting authority in Thailand, in the dimension of mutual cooperation, the Attorney General (AG) of the OAG or the person designated by him/her also plays a substantial role as the Central Authority of Thailand.¹

Thailand provides mutual legal assistance to countries even if no mutual assistance treaty exists between Thailand and the requesting State, provided that such State commits to assist Thailand in a similar manner when requested.² The request must be submitted through the diplomatic channel³ unless the State has a mutual assistance treaty with

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¹ The Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992), section 6.

² Ibid., section 9.

³ Ibid., section 10.

Thailand, in which case the request for assistance may be submitted directly to the Central Authority.⁴ The said request shall be made in conformity with the forms, regulations, means and conditions set by the Central Authority.⁵

Nowadays, Thailand has signed several agreements relating to MLA; there are about 14 countries with which Thailand has treaties on Mutual Legal Assistance in Criminal Matters, including: the United States of America, the United Kingdom, Canada, France, Norway, China, South Korea, India, Poland, Sri Lanka, Peru, Belgium, Australia and Ukraine. Also, there are 12 countries with which Thailand has treaties on Extradition, including: the United States of America, the United Kingdom, Belgium, Indonesia, Philippines, China, Cambodia, Bangladesh, Laos, South Korea, Hungary and India.

II. THE ROLES OF THE CENTRAL AUTHORITY OF THAILAND IN COMBATING CORRUPTION

The roles of the Central Authority (CA) in combating corruption are quite similar to its roles in combating other criminal offences. When the AG receives a mutual legal assistance request from the requesting State – either by the diplomatic channel or directly from the CA of the requesting State – assistance may be provided even if no mutual assistance treaty exists between Thailand and the requesting State, provided that such State commits to assist Thailand in a similar manner when requested on the basis of reciprocity. The CA will consider dual criminality, i.e. whether the act which is the cause of the request is an offence punishable under Thai laws, unless Thailand and the requesting State have a mutual assistance treaty between them and the treaty waives dual criminality. However, the said assistance must be conformed to the provisions of MLA Act. In case of an outgoing request from a Thai government agency seeking assistance from the requested State, the CA will consider and determine whether the said request complies with the MLA Act. Then the CA will transmit the request to the requested State either directly to the CA of the requested State or through the diplomatic channel in order to seek assistance from the requested State.

An incoming request from a requesting State may be refused if the CA determines that it will affect the national sovereignty, security or other crucial public interests of Thailand, or if the request relates to a political offence. Also, the providing of assistance shall not be related to a military offence⁶ according to the Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992), which governs international cooperation in this area. If assistance is provided, the CA shall transmit the request for assistance from the requesting State to the Competent Authority for execution.

Mutual legal assistance which can be provided to the requesting State includes⁷:

- (i) Taking out-of-court statements of persons or providing documents or items of evidence; a request for production of documents; a request to conduct a search; a request for locating a person; and a request for freezing or seizure of

⁴ Ibid.

⁵ The Regulation of the Central Authority on Providing and seeking Assistance in Criminal Matters B.E. 2537 (1994).

⁶ The Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992), section 9.

⁷ Ibid., section 12.

- documents or articles for the purpose of gathering of evidence shall be transmitted to the Commissioner General of the Royal Thai Police, the Director General of the Department of Special Investigation, the Secretary General of the Public Sector Anti-Corruption Commission or the Secretary General of the National Anti-Corruption Commission;
- (ii) Questioning of witnesses, documentary evidence or physical evidence conducted in court; a request for freezing or seizure of property for the purpose of forfeiture of property or demand for payment in lieu of forfeiture of property against any person; and a request for freezing, seizure or forfeiture of property or demand for payment in lieu of forfeiture of property as per a judgment or an order of the courts of a foreign state shall be transmitted to the Public Prosecutor;
 - (iii) Transferring or receiving a transfer of a person in custody to assist proceedings at the stage concerning the authorities or at the trial stage shall be transmitted to the Director General of the Department of Corrections;
 - (iv) Initiating criminal proceedings shall be transmitted to the Commissioner General of the Royal Thai Police, the Director General of the Department of Special Investigation or the Public Prosecutor.

Where it is deemed appropriate, the CA may transmit the request for assistance from a foreign State to the officials or the authorities in accordance with other laws for further execution in relation to the request according to the abovementioned paragraph.

The movement of illicit funds across international borders has grown and continues to be a significant challenge to law enforcement in every State. Many States want to obtain the financial information or interrogate the witness in order to investigate the case relating to corruption. Some States may want to trace the pursuit of the proceeds and instrumentalities of crime where they may have been transferred across international borders in an attempt to conceal them from confiscation proceedings by a State. International cooperation continues to be a growth area in asset confiscation cases including the proceeds of crime obtained from corruption activities. Therefore, if a requesting State wants to obtain information for investigation or prosecution of a corruption case, or to investigate legal persons in order to seek further information relating to the transfer of assets or bank accounts in Thailand, a Request for Mutual Legal Assistance in Criminal Matters may take place. Also, if the requesting State wants to prosecute and punish a corruption criminal, then an extradition request may take place on the basis of reciprocity, irrespective of the existence of an extradition treaty, provided the conditions of the Thai Extradition Act are complied with.⁸ Thailand also provides assistance through informal channels of communication. The legal measures and procedures available in domestic criminal proceedings are also available for MLA. The domestic criminal proceedings relating to asset confiscation, provided under the Thai Criminal Code Sections 32-37, deal with the confiscation of assets and property used in or obtained from the commission of crimes. However, the freezing, seizure or forfeiture based on an MLA request are provided for under Section 32-35/2 of the Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992). The property which is to be forfeited shall devolve to the State, except when it is otherwise prescribed by a bilateral treaty between Thailand and the requesting State.⁹

⁸ The Thai Extradition Act, Section 7.

⁹ The Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992), section 35/2.

III. INTERNATIONAL COOPERATION: BEST PRACTICES, OBSTACLES AND CHALLENGES

Normally, the OAG receives around 100 requests for mutual legal assistance per year for the incoming requests and about 100 cases of outgoing request. Details of the cases are confidential. Effective international cooperation for combating corruption can be concluded from the experience of the dealing with the MLA request and can be divided as follows.

A. Best Practices for International Cooperation

- Assistance may be provided even if no mutual assistance treaty exists between Thailand and the requesting State, provided that such state commits to assist Thailand in a similar manner when requested on the basis of reciprocity.
- The legal measures and procedures available in domestic criminal proceedings are also available for MLA.
- In general, the CA of Thailand responds to and executes requests in a timely manner.
- In practice, the CA will not refuse to execute an incomplete request, but the CA will ask the requesting State to provide more information, to send it through the right channel or fix the problem first.
- Thailand has established specialized anti-corruption prosecutors at the OAG.

B. Obstacles to International Cooperation

- The CA of Thailand neither accepts oral MLA requests nor requests transmitted through INTERPOL.
- The CA of Thailand may refuse or delay execution of requests on various grounds, for example: the requesting State sent the request through the wrong channel; or the requesting State sent a request that relates to a civil matter which the CA cannot accommodate; or the information that the CA received is not sufficient; or the request was not sent from the CA of the Requesting State; or no Thai/English translation was provided in cases where it is needed.
- The CA of Thailand still does not use the Convention as a legal basis to grant assistance for mutual legal assistance requests. Thailand needs bilateral or multilateral treaties to provide mutual assistance in criminal matters to requesting States. Therefore, in case of the absence of treaties, reciprocity is required.
- If no MLA treaty exists, the request shall be sent through the diplomatic channel, and there may be a delay of execution that may affect to the case.

C. Challenges for International Cooperation

- In practice, the competent agency of Thailand may provide assistance through informal channels of communication.
- Normally, the CA of Thailand will only engage in international cooperation in criminal matters. However, the CA broadly considers requests with aim of approving them. Therefore, the CA always attempts to approve the request subject to national law.

- Thailand may provide a wider scope of assistance based on the CA's discretion but subject to national law.

IV. RECOMMENDATIONS AND CONCLUSION

A. Recommendations

- The authority from the requesting State should consult with the CA of Thailand, if possible, before submitting the request through the proper channel.
- The requesting State may consider submitting the draft request to the CA of Thailand.
- The requesting State may consider contacting the relevant authority in Thailand through informal channels to speed up the process of execution of the request.

B. Conclusion

Corruption weakens the development of the State in many ways; it also undermines social, political and economic development. Therefore, international cooperation continues to be a significant measure in combating corruption. Every state should work together closely, increase understanding of corruption and current global trends, and improve cooperation between the states through the establishment or development of channels of communication.