

COOPERATION BETWEEN THE NACC AND THE CENTRAL AUTHORITY (THE ATTORNEY GENERAL) IN A CROSS-BORDER CORRUPTION CASE

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I. THE NATIONAL ANTI-CORRUPTION COMMISSION

The National Anti-Corruption Commission (NACC) is the Constitutional Independent Organization that responds to prevent and suppress corruption that involves State officials.¹ The NACC has the following powers and duties:

1. To investigate facts, summarize cases and to submit opinions to the Senate for removal from office.
2. To investigate facts, summarize cases, and refer cases to the Attorney General for the purpose of prosecution before the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions.
3. To investigate and determine whether Persons Holding Political Positions and state officials have become unusually wealthy, in which case his or her assets shall be forfeited (devolve to the State).
4. To investigate and decide whether a person holding a political position or a State official holding a position starting from a high-level executive or government official holding a position starting from a division director has become unusually wealthy or has committed an offence of corruption, malfeasance in office or malfeasance in judicial office, or a related offence, including to take action against a State official or government official holding a lower-level position who has jointly committed an offence with the person holding such position or with a person holding a political position, or who has committed an offence in such a manner that the NACC considers an action appropriate as provided by the NACC.
5. To verify the accuracy and actual existence of, as well as changes in, assets and liabilities of Persons Holding a Political Position and State officials who submit accounts showing particulars of assets and liabilities under Chapter 3, Inspection of Assets and Liabilities.

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¹ State official means a person holding a political position, Government official or local official assuming a position or having permanent salaries, official or person performing duties in a State enterprise or a State agency, local administrator and member of a local assembly who is not a person holding a political position, official under the law on local administration and shall include a member of a Board, Commission, Committee or of a sub-committee, employee of a Government agency, State enterprise or State agency and person or group of persons exercising or entrusted to exercise the State's administrative power in the performance of a particular act under the law, whether established under the governmental bureaucratic channel or by a State enterprise or other State undertaking.

6. To monitor and administer the morality and ethics of persons holding political positions.
7. To take action relating to foreign affairs and become a center for international cooperation for the benefit of counter corruption so as to be in conformity with the international legal obligations and agreements pertaining to counter corruption.

II. COOPERATION BETWEEN THE NACC AND THE CENTRAL AUTHORITY

In cases of international cooperation,² the NACC is the national authority for exchange of information about corruption and to work together with other agencies or entities in both Thailand and other countries. The cooperation between the NACC and other countries is through informal channels, which parallel the formal channels of Mutual Legal Assistance by the Central Authority.³

III. A REAL CROSS-BORDER CORRUPTION CASE

The NACC and the Central Authority work together to fight international corruption. An example of a real case that shows this cooperation is the case of “The Greens” (the bribery on the annual Bangkok International Film Festival (BIFF)). In this case, the FBI⁴ requested the DSI⁵ to investigate the matter. The DSI, not being authorized to handle the case under Thai law, handed it over to the NACC (through informal channels) which consequently established a dedicated sub-commission. On the other side, the US Government’s requests for investigative assistance from Thailand under the Treaty between the Government of the Kingdom of Thailand⁶ and the Government of the United States of America on Mutual Assistance in Criminal Matters. The purpose of the US Government’s request was to confirm the creditability of fact-finding (through formal channels)

To fulfill this role, the NACC informed the Department of Justice that it would send a delegation to observe the trial, which represented a unique opportunity to discuss the potential for further cooperation with the US side. In addition to cooperation through informal channels, the NACC also submitted a formal Mutual Legal Assistance Request through the Office of the Attorney-General, Thailand’s central authority, asking for assistance in providing the NACC with all documentary evidence referred to and used in the trial, which had been processed by the US Department of Justice. After indictment, the prosecution of the case led to the conviction of the offenders by the U.S. court.

This success is also significant to Thailand too, because the undercover corruption of a high-ranking official was revealed, which led eventually to the resignation of the former Governor of TAT and the initiative of investigation of the scandal by the NACC. Now this case is still in process in the working committee between the representatives of the NACC and the Attorney General under section 97 of The Organic Act on Counter Corruption B.E. 2542 (1999).

² The Organic Act on Counter Corruption B.E. 2542 (1999) amended by (No. 2) B.E. 2554 (2011) Section 19 (14).

³ The Attorney General or the person designated by him.

⁴ The Federal Bureau of Investigation.

⁵ The Department of Special Investigation.

⁶ Actually this means the Central Authority (the Attorney General or the person designated by him).