NEWSLETTER

Anti-Bribery and Anti-Corruption Compliance in Asia (Part 5)

– Thailand: Legal Framework for Anti-Bribery Law and Recent Key Whistleblower Protections in the Amended Anti-Corruption Law

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1. Introduction

Thailand is the second-largest economy in the ASEAN region and an important hub for trade and investment. Its strategic location and developed infrastructure have made it an attractive destination for many Japanese companies.

However, the 2024 edition of the Corruption Perceptions Index (published annually by Transparency International), a widely recognized indicator of global corruption levels, ranks Thailand 107th out of 180 countries. This suggests that the risk of bribery in Thailand remains a concern.

In this newsletter, we will provide an overview of the Anti-Bribery framework in Thailand, and the recent amendment to the Anti-Corruption Law, which introduced whistleblower protections.

2. Anti-Bribery Framework in Thailand

The primary legislation governing bribery issues in Thailand is the Organic Act on Anti-Corruption B.E. 2561 (2018) ("Organic Act"), which establishes a comprehensive legal framework designed to prevent corruption, regulate the conduct of public officials and the offering of benefits to public officials, and ensure accountability in the exercise of official duties. The Organic Act is supported by subordinate rules issued by the National Anti-Corruption Commission ("NACC"), including the Notification on Ethical Basis for Acceptance of Property or Benefits B.E. 2563 (2020) ("NACC Notification"). Sections 143 and 144 of the Thai Penal Code also prohibit bribery of officials, and the relevant provisions of the Organic Act and the Penal Code are fundamentally consistent. Together, these instruments form the backbone of Thailand's anti-bribery regime.[1]

Public Officials

The prohibitions on corrupt activities set forth in Sections 173 and 174 of the Organic Act apply broadly to public officials, foreign public officials, and officials of international organizations. The Organic Act also expressly covers foreign officials, meaning the anti-bribery rules apply to both domestic and international public actors.

Key Persons: the Organic Act applies to a wide group of persons, including:

- ***Public officials*** such as persons who hold political positions, judges of the Constitutional Court,

[1] Organic Act on Anti-Corruption B.E. 2561 (2018), Preamble.

members of independent agencies, and NACC commissioners; the category also includes state officials;[2]

- ***State officials***, including civil servants, local administrators, employees of state agencies, state enterprise employees, local administrative personnel, and persons authorized by law to exercise administrative powers;[3]
- ***Foreign public officials*****,** including those who hold office under the laws of a foreign country;
- ***Officials of public international organizations****;*[4]

All of these Key Persons may incur liability under Thailand's anti-corruption regime.[5]

Note: The definition of "Public Official" in the Thai Penal Code refers to a person appointed to serve as a public official in accordance with the law, or a person appointed to perform a public duty, whether on a temporary or permanent basis and whether or not remuneration is received. This aligns with the broad definition in the Organic Act.[6]

Prohibited Acts

The Organic Act states that a public or state official commits an offense if he or she requests, accepts, or agrees to accept any asset or benefit for himself or herself, or for another person, in order to perform, fail to perform, or delay an official act, whether or not the act is within the official's lawful authority. These provisions encompass situations in which an official accepts a benefit in exchange for acting improperly in office, as well as those in which the benefit is solicited or agreed to before the official assumes his or her duties. Officials are prohibited from soliciting, receiving, or agreeing to receive any asset or benefit unless expressly permitted by law (e.g., under the ethical basis permitted by NACC regulations).[7] These restrictions are consistent with those in the Thai Penal Code.[8]

Importantly, the Organic Act also establishes liability for persons who give, offer, or promise to give any property or benefit to a public official, state official, foreign public official, or official of a public international organization with the intent to induce wrongful performance, non-performance, or delay of official duties.[9] This liability extends to private persons who provide the relevant benefits in return for, or to induce the unlawful performance of, an official act.[10] In addition, the Thai Penal Code criminalizes both direct and indirect inducement, including situations in which benefits are offered or provided to an official through intermediaries or third parties as a reward for influencing an official's actions unlawfully.[11] A person acting as an intermediary also is subject to

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2 Organic Act, §4 (public officials).

3 Organic Act, §4 (state officials).

4 Organic Act, §4 (foreign public officials, officials of international organizations).

5 Organic Act, §4.

6 Penal Code, §1(16)

7 Organic Act, §175 and §176.

8 Penal Code, §148 and §149.

9 Organic Act, §175 and §176, paragraph 1.

10 Organic Act, §§175, 176.

11 Penal Code, §144.

penalties.[12]

Criminal responsibility also extends beyond the principal offenders, and includes instigators, aiders, and abettors who participate in or facilitate the commission of a corruption offense.[13] This reinforces that improper advantages, whether provided to an official directly, or indirectly through intermediaries, fall within the scope of bribery offenses under Thai law.

The Supreme Court affirmed this principle in Supreme Court Ruling No. 3096/2552 (2009). In the case at issue, two defendants offered a police officer THB 70,000 to induce him to reduce narcotics charges against detainees. Even though the offer was made through an intermediary, and ultimately as part of a controlled arrest operation, the Court held that the defendants committed the offense of offering a bribe to induce unlawful official action under Section 144 of the Penal Code. Improper advantages—whether provided directly or indirectly—fall squarely within the scope of bribery offenses under Thai law.

No Monetary Threshold for Liability

Thailand's anti-corruption laws do not establish a monetary threshold for bribery. The acceptance of any asset or benefit of monetary value, regardless of amount, may constitute a prohibited act if linked to official duties.[14]

Thai law, particularly Section 128 of the Organic Act and the NACC Notification, provides detailed guidance on what constitutes an acceptable "ethical basis" for a public official to receive benefits. Benefits not exceeding THB 3,000 per giver per occasion may be permissible where culturally appropriate.[15] However, acceptance of benefits in excess of this amount must be reported and approved by the recipient's superior within 30 days.[16] Importantly, the THB 3,000 guideline does not operate as a legal safe harbor; any benefit may constitute bribery if connected to corrupt intent.

Corporate Liability and Preventive Measures

Where unlawful conduct is committed by a person associated with a juristic person for the benefit of that juristic person—and the juristic person lacks appropriate internal control measures—the company itself is deemed to have committed the offense as well.[17]

The law establishes a functional corporate liability regime under which a juristic person may be investigated and prosecuted if it participates, directly or indirectly, in providing improper benefits to public officials. To mitigate this risk, as part of good governance and in line with the NACC's Guidelines, companies operating in Thailand are expected to maintain internal preventive measures based on the eight principles in the guidelines.[18] The

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12 Penal Code, §143 and Organic Act, §175.

13 Organic Act, §30 and Penal Code, §83, §84, and §86.

14 Organic Act, §128.

15 NACC Notification on Ethical Basis B.E. 2563 (2020), cl. 5–6.

16 NACC Notification B.E. 2563, cl. 7.

17 Organic Act, §176, paragraphs 2-4.

18 NACC's Guidelines on Appropriate Internal Control Measures for Juristic Persons (Third Edition):

1. Strong, visible policy and support from top-level management to fight bribery;

existence of appropriate internal measures may result in reduced penalties or even prevent corporate liability, since the measures demonstrate that the juristic person has and has implemented internal bribery and anticorruption controls.

However, the absence of these internal controls may be viewed as negligence and form the basis for prosecution under Section 176, paragraph 2 of the Organic Act, under which a company may be held criminally liable.[19]

Penalties

If the NACC determines that there are sufficient grounds to believe that an individual or juristic person has engaged in bribery or related misconduct, it may disclose its findings publicly and refer the matter to the Office of the Attorney General for prosecution. The applicable penalties are imposed under relevant criminal laws.

Under the Thai Penal Code, active bribery committed by private persons is punishable by imprisonment for up to five years and/or a fine of THB 100,000,[20] while passive bribery (receipt of a bribe by an official) carries penalties of imprisonment for five to twenty years, or life imprisonment, a fine of THB 100,000 to 400,000, and, in the most serious cases, the death penalty.[21]

The Organic Act punishes active bribery by up to five years' imprisonment and a fine of up to THB 100,000, and punishes passive bribery with imprisonment for up to twenty years, or life imprisonment, as well as a fine of THB 100,000 to 400,000. The Organic Act imposes corporate liability for bribery by juristic persons, and a company may be held criminally liable and subject to a fine equal to one to two times the value of the damages or benefits gained from the offense.[22]

3. Recent Key Whistleblower Protections in the Amended Anti-Corruption Law

The Organic Act on Anti-Corruption (No. 2) B.E. 2568 (2025), which became effective on 6 June 2025, introduces important new, clear protections for individuals who report corruption or provide information to the NACC or competent officials (as designated by the NACC).

The amendments, particularly the revisions to Section 132 and the introduction of Sections 132/1, 132/2, and 132/3, aim to prevent retaliation and enhance confidence in Thailand's whistleblowing system.

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2. Bribery risk assessment to identify and evaluate exposure;

3. Enhanced and detailed measures for high-risk and vulnerable areas;

4. Application of anti-bribery measures to business partners;

5. Accurate books and accounting records;

6. Human resource management policies complementary to anti-bribery measures;

7. Communication mechanisms that encourage reporting of suspicion of bribery; and

8. Periodic review and evaluation of the effectiveness of anti-bribery controls.

19 Organic Act, §176, paragraph 2.

20 Penal Code, §143-144.

21 Penal Code, §149.

22 Organic Act, §176, paragraph 2.

Amended Section 132 now ensures that persons who give statements, information, evidence, or opinions to the NACC or competent officials (as designated by the NACC) in good faith are protected against malicious lawsuits (including both civil and criminal liability), disciplinary action, and other forms of harassment in investigations.[23] It is noteworthy that the law is intentionally broad, as it protects all types of individuals who interact with the NACC, including without limitation persons within an organization, such as an employee who reports suspected bribery or bid-rigging, or a compliance officer who submits internal findings to the NACC. The law also protects outside persons who become witnesses, individuals who did not initiate the complaint but are required to cooperate with the NACC, and individuals involved in an investigation through official referral channels, among others.

In addition, under Section 132/2, whistleblowers acting in good faith receive immunity from civil, criminal, and disciplinary liability arising from their disclosure of statements, information, evidence, or opinions to the NACC. Section 132/2 further provides that the criteria, procedures, and conditions for receiving assistance cover a broad range of support measures, including the NACC's ability to assign its officials or arrange legal counsel to defend the individual in civil or criminal proceedings, support court fees and litigation expenses, and provide information, as well as the NACC's resolutions to make inquiries to officials or public prosecutors (to be treated as part of a case file), to request that public prosecutors assume the defense of private-complaint criminal cases, to notify courts of the individual's protected status, to assist with temporary release (bail), and to require disciplinary authorities to cease any disciplinary action once protection is confirmed. Officials assigned by the NACC may act with the same authority as legal counsel, and any required financial support will be funded through the National Anti-Corruption Protection and Suppression Fund.

What Companies Can Do in Response to the New Whistleblower Protections

Given the strengthened whistleblower protections in the amended Organic Act, companies and individuals are encouraged to report information about bribery directly to the NACC. Companies should be aware that if bribery occurs, and the company does not have sound compliance frameworks (including a robust company whistleblowing system), persons with information about the bribery now are more likely to report it directly to the authorities.

Therefore, companies should ensure that they have appropriate internal compliance frameworks and corporate preventive measures (under Section 176 Paragraph 2), which enable them to detect internal wrongdoings such as bribery. For instance, companies should provide safe, reliable avenues for employees to report concerns as a way to support corporate whistleblowing. This includes maintaining clear whistleblowing policies, ensuring employees are aware of those policies through training, organizing confidential reporting channels, and ensuring the existence of robust non-retaliation measures.

Although Sections 132 and 132/1 of the amended the Organic Act do not apply to whistleblowing reports within companies, companies can provide enhanced protection of whistleblowers to encourage internal whistleblowing reports. Companies also may consider training managers to handle disclosures appropriately and establishing a streamlined process for receiving and assessing reports. Integrating these protections into broader anti-corruption controls, such as risk assessments, internal audits, and record-keeping, helps demonstrate good-faith compliance and reduces exposure to enforcement actions.

Taking these practical steps to ensure the corporate compliance framework complies with the NACC's Guidelines on Appropriate Internal Control Measures will help companies mitigate potential liability risks in the event bribery is committed by persons within the Company.

[23] Organic Act (No. 2) B.E. 2568, §132/1.

4. Conclusion

Thailand recently strengthened its anti-bribery framework, through comprehensive legislation and the introduction of whistleblower protections in the recent amendment to the Anti-Corruption Law. Companies operating in Thailand must be aware of the increased possibility that bribery will be reported to the authorities, and should implement robust compliance measures to mitigate bribery risks and ensure compliance with evolving legal requirements.

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