

Thailand

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1 International anti-corruption conventions

To which international anti-corruption conventions is your country a signatory?

Thailand became a signatory to the United Nation Convention against Corruption (UNCAC) on 9 December 2003 and ratified the UNCAC on 1 March 2011. Thailand has not yet enacted domestic laws that are in line with the UNCAC.

Thailand is not a signatory to the OECD Convention, but the Thai National Anti-Corruption Commission (NACC) reports that it cooperates with members of the OECD Anti-bribery Convention on international bribery cases.

2 Foreign and domestic bribery laws

Identify and describe your national laws and regulations prohibiting bribery of foreign public officials (foreign bribery laws) and domestic public officials (domestic bribery laws).

Thailand does not have a specific law prohibiting bribery of foreign public officials or international public officials. Current Thai anti-bribery laws only apply to domestic Thai public officials. The Thai Supreme Court, in Decision No. 700/2490, interpreted the term 'official' in the Thai Criminal Code to only mean officials of the Thai government. Although this decision was based on provisions of Thai criminal law that have been superseded by new provisions enacted since that decision, the result would be the same under current Thai law. There is a general agreement among Thai legal academics that current Thai law does not directly criminalise the bribery of officials of either foreign governments or international organisations.

Thai law generally criminalises the offering or paying of bribes to Thai public officials. Thai law also generally prohibits Thai public officials from requesting bribes. This is covered in more detail in the discussion of domestic bribery.

Foreign bribery

3 Legal framework

Describe the elements of the law prohibiting bribery of a foreign public official.

Not applicable. Thailand has not yet enacted any laws that prohibit bribery of a foreign public official, but such laws are under consideration.

A proposed amendment to the Thai Criminal Code, as revised by Thailand's Council of State, will broaden the scope of the current anti-bribery provisions to include bribery and corruption of foreign public officials. If these amendments are enacted, bribery of a foreign public official will be a criminal offence under Thai law.

The Thai Ministry of Justice has suggested however that, instead of amending the existing Thai anti-bribery laws so that they cover bribery of foreign officials, a new law be enacted that not only criminalises bribery of foreign public officials, but also contains

laws covering procedural issues, asset forfeiture and international cooperation. The Ministry of Justice has not yet finished drafting this proposed new legislation.

4 Definition of a foreign public official

How does your law define a foreign public official?

The term 'foreign public official' is not defined under Thai law or by any decision of the Supreme Court. The draft amendment to the Thai Criminal Code, as revised by the Council of State, will, if enacted, define 'a foreign public official' as:

an official working for a foreign government, whether permanently or temporarily and whether or not compensation or other types of reward is paid.

The Council of State's draft amendment also defines an official of international organisation to as "an official in an international organisation or a person assigned by an international organisation to work on behalf of that international organisation".

5 Travel and entertainment restrictions

To what extent do your anti-bribery laws restrict providing foreign officials with gifts, travel expenses, meals or entertainment?

There currently is no law or regulation prohibiting or limiting the provision of gifts, travel expenses, meals or entertainment to foreign officials.

6 Facilitating payments

Do the laws and regulations permit facilitating or 'grease' payments?

Not applicable. Thailand has not yet enacted legislation prohibiting bribery of foreign officials or officials of international public organisations.

7 Payments through intermediaries or third parties

In what circumstances do the laws prohibit payments through intermediaries or third parties to foreign public officials?

Not applicable. Thailand has not yet enacted legislation prohibiting bribery of foreign officials or officials of international public organisations.

8 Individual and corporate liability

Can both individuals and companies be held liable for bribery of a foreign official?

Not applicable. Thailand has not yet enacted legislation prohibiting bribery of foreign officials or officials of international public organisations.

9 Civil and criminal enforcement

Is there civil and criminal enforcement of your country's foreign bribery laws?

Not applicable. Thailand has not yet enacted legislation prohibiting bribery of foreign officials or officials of international public organisations. The draft proposals prohibiting bribery of foreign officials or officials of international public organisations currently under consideration do contain provisions providing for both civil and criminal enforcement.

10 Agency enforcement

What government agencies enforce the foreign bribery laws and regulations?

The NACC is the main regulatory body responsible for investigation of domestic bribery cases. The NACC cooperates with foreign governments and non-government agencies on corruption cases. If foreign bribery laws are enacted, the NACC is expected to play an important role in the enforcement of such laws.

11 Leniency

Is there a mechanism for companies to disclose violations in exchange for lesser penalties?

There is no mechanism for leniency in the draft amendments and laws currently under consideration.

12 Dispute resolution

Can enforcement matters be resolved through plea agreements, settlement agreements, prosecutorial discretion or similar means without a trial?

Not applicable. Thailand has not yet enacted legislation prohibiting bribery of foreign officials or officials of international public organisations.

Under the current law applicable to domestic bribery, inquiry officials (eg, police officers) have the discretion to stop the investigation if, after the investigation they conclude that no one violated Thai law. Public prosecutors also have discretion on whether or not to prosecute.

Nevertheless, under Thai law, private individuals may commence a criminal case if they are injured as a result of a crime, irrespective of whether the public prosecutor files charges. Theoretically, a private individual could prosecute an official for corruption, but that individual would need to show she or he was injured by the corruption, and this would be difficult to establish in practice.

13 Patterns in enforcement

Describe any recent shifts in the patterns of enforcement of the foreign bribery rules.

Not applicable. Thailand has not yet enacted legislation prohibiting bribery of foreign officials or officials of international public organisations.

14 Prosecution of foreign companies

In what circumstances can foreign companies be prosecuted for foreign bribery?

If a foreign company is engaged in bribery of a Thai public official, it is subject to the same sanctions for bribery as a Thai company. Because Thailand has not yet enacted legislation prohibiting bribery of foreign officials or officials of international public organisations, Thai officials cannot prosecute a foreign company for bribery of foreign official or official of a public international organisation.

15 Sanctions

What are the sanctions for individuals and companies violating the foreign bribery rules?

Not applicable. Thailand has not yet enacted legislation prohibiting bribery of foreign officials or officials of international public organisations.

16 Recent decisions and investigations

Identify and summarise recent landmark decisions or investigations involving foreign bribery.

Not applicable. Thailand has not yet enacted legislation prohibiting bribery of foreign officials or officials of international public organisations.

Financial record keeping**17 Laws and regulations**

What legal rules require accurate corporate books and records, effective internal company controls, periodic financial statements or external auditing?

The Thai Civil and Commercial Code (CCC) requires Thai private limited companies to prepare financial statements once a year, have them audited by an auditor, and submit them to the shareholders' meeting for approval within four months from date specified in the financial statements, failure of which will result in a maximum fine of 20,000 Thai baht on the company and a maximum fine of 50,000 Thai baht on each of its directors (Act Prescribing Offences Relating to Registered Partnerships, Limited Partnerships, Limited Companies, Associations and Foundations, BE 2499 (Offences Act)).

Also, the Accounting Act, BE 2543 (Accounting Act), requires Thai private limited companies to file audited financial statements with the Ministry of Commerce within one month after their financial statements are approved at the annual shareholders' meeting. Failure to satisfy this requirement is punishable with a maximum fine of 20,000 Thai baht on both the company and its directors. These financial records are available for public review.

The Accounting Act also requires private limited companies to keep accounts. Accountants must keep accurate accounts in compliance with the accounting standards of the Accounting Act. Any person who makes a false entry in these accounts or financial statements is subject to imprisonment for a term of up to two years, a fine not exceeding 40,000 Thai baht or both. Where the false statement or entry is made by the person obliged to keep such accounts, the penalty is imprisonment of up to three years, a fine of not exceeding 60,000 Thai baht or both.

Further, if a false statement is made in the financial statements to deceitfully deprive the company or its shareholders of a rightful gain, whoever is responsible for such action shall be liable to imprisonment for a term of up to seven years, a fine not exceeding 140,000 Thai baht or both, under the Offences Act.

18 Disclosure of violations or irregularities

To what extent must companies disclose violations of anti-bribery laws or associated accounting irregularities?

There is no law obliging a company to disclose violations of anti-bribery laws or associated accounting irregularities.

19 Prosecution under financial record keeping legislation

Are such laws used to prosecute domestic or foreign bribery?

Thai laws on financial record keeping are not used in the prosecution of foreign bribery cases.

20 Sanctions for accounting violations

What are the sanctions for violations of the accounting rules associated with the payment of bribes?

Not applicable.

21 Tax-deductibility of domestic or foreign bribes

Do your country's tax laws prohibit the deductibility of domestic or foreign bribes?

Because only legitimate business expenses can be deducted for tax purposes, bribes cannot be used as deductible expenses under the Thai Revenue Code.

Domestic bribery**22 Legal framework**

Describe the individual elements of the law prohibiting bribery of a domestic public official.

Prohibitions on bribery and bribery related activity are contained in various provisions of the Thai Penal Code and in the Offence of State Organization Staff Act, BE 2502 (State Staff Act). (This article was written as of 29 March 2011, and does not cover changes introduced by the Anti-Corruption Act No. 2.) These laws impose criminal penalties on parties paying or offering to pay a bribe to public officials, intermediaries involved in the payment of a bribe and public officials who require, solicit or receive bribes. The core elements are as follows:

- A recipient of the bribe must be a Thai public official or a member of either a Thai national or local legislative assembly.
- The offence of bribery occurs when the parties reach an agreement to offer and accept a "benefit"; or a benefit is solicited or a benefit offered (an official is guilty if he is paid to perform his or her legal duty). In other words, the actual payment or provision of a benefit to an official is not required.
- The term "benefit" is defined very broadly. It is not limited to tangible assets and a benefit does not have to be calculable in monetary terms. If assets are sold or offered for sale at a price that varies from the price that would be obtained in arm's length negotiations, a benefit has been conferred. This could therefore cover a private party selling an asset at less than its arm's length value to an official or an official receiving more than the arm's length value when that official sells an asset. The asset does not need to be "tangible", meaning it could be, for example, a job offer or service of some kind.
- The benefit must be provided or offered with the motive to cause an official to discharge or fail to discharge an official duty. A public official is guilty if a bribe is paid to have that official discharge duties that official is already required to perform. For example, if a customs official requires a bribe to perform an obligation that the customs official is required to perform, the customs official has violated Thai anti-bribery laws. On the other hand, a party paying or offering a benefit will be guilty only if she or he pays the bribe to motivate a public official to illegally discharge or illegally fail to discharge that public official's duties.

The Organic Act on Counter Corruption BE 2542 (Anti-Corruption Act) also prohibits a "state official" – a term which also includes individuals who were state officials within the last two years of the relevant act – from accepting property or benefits (other than property or benefits permitted by law), unless such property or benefits fall within exemptions prescribed by the National Anti-Corruption Commission (the NACC). No particular motive is required to violate this provision of the Anti-Corruption Act.

23 Prohibitions

Does the law prohibit both the paying and receiving of a bribe?

Both paying and receiving bribes is prohibited. But the punishment and elements of the offences for paying and receiving a bribe are different. In general, Thai law imposes harsher penalties on public officials that solicit, agree to receive or receive bribes than on individuals who offer, agree to pay or pay bribes.

24 Public officials

How does your law define a public official and does that definition include employees of state-owned or state-controlled companies?

The Penal Code does not provide a definition of public official. But the Supreme Court, through a series of rulings, has held that a person will be regarded as a public official if he or she is: appointed by the Thai government (Decision No. 700/2490); to perform governmental functions (Decision No. 82-86/2506); whether on a regular or non-regular basis (Decision No. 533/2485); regardless of whether or not he or she is a Thai national (Decision No. 700/2490); and regardless of whether or not he or she receives remuneration from the government (Decision Nos. 1397-1398/2500).

Foreign officials are not regarded as public officials under current law. Also, a person whose assistance was requested by a Thai public official, but not officially appointed by the Thai government, is not considered a public official even though she or he assists a public official in performing governmental functions (Decision No.3057/2523).

Under the State Staff Act, the definition of the term "staff" – that is, persons who are prohibited from engaging in bribery related activities – includes chairmen, vice chairmen, directors and anyone who works in an organisation, limited company, registered partnership or any other agency where more than 50 per cent of its capital is held by the Thai government.

The Anti-Corruption Act provides an expansive definition of "state official" as follows:

"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;

25 Public official participation in commercial activities

Can a public official participate in commercial activities while serving as a public official?

The Civil Service Act BE 2551 (Civil Service Act) generally prohibits public officials from acting as a managing director, manager, or equivalent position in a company or partnership. Some government agencies also have their own internal rules about participation in commercial activities. For example, article 8 of the Regulations of the Ministry of Finance re Ethics of Executives of the Ministry of Finance for Elimination of Conflict between Personal and Public Interests BE 2553, prohibits executives of the Ministry of Finance (and related persons, such as spouses and juvenile children) from obtaining rights (eg, options) to shares in state enterprises that are not available to the general public.

There are also other kinds of restriction imposed on public officials by other specific laws such as the Regulation of the IEAT Com-

mission re Prevention of Conflict of Interests BE 2551, which was issued pursuant to the Industrial Estate Authority of Thailand Act BE 2522. Under this law, commissioners, the governor and officers of the Industrial Estate Authority of Thailand are prohibited from dishonestly designing or specifying the price, conditions or standards or minimum consideration with an intention to prevent a fair bidding or to prevent a bidder from entering into a fair competition.

Further, the Anti-Corruption Act empowers the NACC to issue notifications prohibiting certain state officials and their spouses from participating in commercial activities with the government. Such notifications can apply to a person for two years after that person has left office as a state official. However, the NACC so far has issued only one such notification. That notification prohibits the prime minister and ministers from participating in commercial activities with the government.

The 2007 (current) version of the Thai Constitution also prohibits a person holding a “political position” from owning or holding shares in telecommunications businesses. The term “political position” is not defined in the Constitution, but it is defined in the Anti-Corruption Act and the Political Service Act BE 2551, to include, among others, the prime minister, ministers, members of the House of Representatives, senators, other political officials, and local administrators and members of any local assembly.

The Penal Code and the State Staff Act prohibit any official in charge of or managing or overseeing a particular business from taking interests from that business.

26 Travel and entertainment

Describe any restrictions on providing domestic officials with gifts, travel expenses, meals or entertainment. Do the restrictions apply to both the providing and receiving of such benefits?

In 2000, the NACC issued a notification concerning the acceptance of property or benefits by state officials (please see the definition of a “state officials” in article 24 above). This notification is generally referred to as the “3,000 Thai baht rule”. This rule prohibits state officials from receiving property or any other benefit from any person other than a relative if the price or value of the thing or benefit received from each person and on each occasion exceeds 3,000 Thai baht. But if an official “finds it necessary to accept a gift” worth more than 3,000 Thai baht (eg, to maintain good relationship between persons), the official must report the gift to his or her superior. The superior might allow the official to keep that gift, or order the official to return the gift to the party who gave the gift, or order the official to surrender the gift to his or her organisation.

There is confusion about how to apply the 3,000 Thai baht rule because the NACC has not provided general guidelines on its application. For example, there is no guideline on what is considered “one occasion”. Therefore, strictly speaking, it is not clear if the 3,000 Thai baht rule is breached if a public official receives 3,000 Thai baht every day from one person (this would likely be viewed as a violation, but there are no guidelines that require it to be treated as a violation). Another example relates to how this rule is applied is when several persons take several public officials to a restaurant. It is unclear how to interpret the language about “receiving of the benefits from each person” when this occurs.

27 Gifts and gratuities

Are certain types of gifts and gratuities permissible under your domestic bribery laws and, if so, what types?

No specific type of gifts and gratuities is permissible. The 3,000 Thai baht rule applies generally to anything of value.

28 Private commercial bribery

Does your country also prohibit private commercial bribery?

Private commercial bribery is not generally prohibited unless it constitutes a bid rigging in connection with price proposal with governmental agencies according to the Bid-rigging Act BE 2542. In addition, private commercial bribery might be regarded as an unfair trade practice under the Trade Competition Act BE 2542, but this is a matter of trade competition (antitrust) law.

29 Penalties and enforcement

What are the sanctions for individuals and companies violating the domestic bribery rules?

Individuals convicted of violating Thai bribery laws are punishable with either a fine or imprisonment or both. An individual who pays a bribe and an intermediary who arranges the payment of a bribe payment are subject to maximum imprisonment of five years. If a public official or member of a national or local legislative body is convicted of taking a bribe, she or he can be sentenced from five years to twenty years or life term imprisonment or the death penalty.

The Thai Supreme Court ruled (Decision Nos. 787-788/2506) that legal entities such as companies can also have required criminal intent, *mens rea*, to commit a criminal offenses through the conduct of its representative provided such representative was: acting within the scope of his or her authority; in accordance with the objectives of the juristic entity; and for the benefit of the juristic entity. Nevertheless, if a company is convicted, only a fine can be imposed against the company, meaning that individuals involved in the management cannot be sentenced to imprisonment or death if charges are only filed against the company and the company alone is convicted. In practice, because of these features of Thai criminal law, Thai authorities tend to also prosecute representatives of a legal entity (such as the authorised director of a limited company) as a joint defendant when a juristic entity is alleged to have committed a crime.

Where a person holding a political position is alleged to have been involved in bribery, the case will be tried in the Supreme Court instead of the Court of First Instance.

30 Facilitating payments

Have the domestic bribery laws been enforced with respect to facilitating or ‘grease’ payments?

The Thai Penal Code provides that a non-official who offers a bribe to an official to perform his legal duties is not committing a crime (section 144). But an official who requests a benefit in order for him to perform his legal duty has engaged in a crime (section 149).

Section 144: Whoever gives, offers or agrees to give a property or any benefit to any official, member of the National Legislative Assembly, member of the Provincial Assembly or member of Municipal Assembly in order to induce such person to wrongfully discharge, omit to discharge or delay a discharge of any of their duties, shall be punished with imprisonment not exceeding five years or a fine not exceeding ten thousand Thai baht, or both.

Section 149: Whoever, being an official, a member of the National Legislative Assembly, a member of the Provincial Assembly or a member of Municipal Assembly, wrongfully demands, accepts or agrees to accept a property or any benefit for themselves another person in order to discharge or omit to discharge of any duty in their office, whether such act is wrongful according to their duties or not, shall be punished with imprisonment from five years to twenty years or life imprisonment and a fine from two thousand Thai baht to forty thousand Thai baht, or the death penalty.

31 Recent decisions and investigations

Identify and summarise recent landmark decisions and investigations involving domestic bribery laws, including any investigations or decisions involving foreign companies.

Thaksin case

Thaksin Shinawatra, a former prime minister who was removed from office by a coup in 2006, was charged by the NACC with an “unusual increase in wealth” which, it was claimed, resulted from him implementing policies that were advantageous to a telecommunications company in which his family and associates had substantial holdings. He failed to defend against such charges, and around 46 billion Thai baht of his assets were seized by a court order on 26 February 2010. Mr Shinawatra is also wanted on other charges in Thailand and the Thai authorities have announced they are seeking or intend to seek his extradition.

Bangkok International Film Festival

On 16 December 2007 Gerald and Patricia Green were charged with, among other things, violations of the US Foreign Corrupt Practices Act (FCPA) for alleged kickbacks paid to the ex-governor general (during the period 2002–2006) of the Tourism Authority of Thailand (TAT) in connection with the Bangkok International Film Festival. They were convicted in a jury trial on 12 August 2009, and sentenced by the US District Court for the Central District of California to six months imprisonment, and six months of home detention. Gerald and Patricia Green have appealed their convictions, and the US has appealed their sentences (as being too lenient). The US also indicted the ex-governor general of TAT and her daughter on conspiracy to money launder, transporting funds to promote an unlawful activity and other charges in connection with the events for which the Gerald and Patricia Green were convicted.

On 4 January 2011, Medhi Krongkaew, an NACC commissioner and chairman of an investigation sub-committee, told the press that the last witness in this case had been summoned to appear before his subcommittee in connection with the NACC’s investigation of the ex-governor general of the TAT. He expected that the sub-committee should be able to summarise and submit its investigation report to the NACC within January. If the NACC believes charges are warranted, the NACC will request the attorney general to file charges.

GT-200

In October of 2009, a story about GT-200 bomb detectors appeared in the Thai press. The GT-200 is an imported hand-held bomb detector that was used extensively in the three most southern provinces

Update and trends**The Supreme Court’s Criminal Division for Persons Holding Political Positions (SCCD)**

The Thai judicial system employs a three-level structure, which means that, subject to certain exceptions, a party that is not satisfied with the court of first instance’s decision may appeal the decision to the Appeal Court and later appeal the Appeal Court’s decision to the Supreme Court. The system is notorious for being time consuming. Some complicated matters take more than 20 years to reach final judgment.

In an attempt to increase the general public’s confidence in the judicial system, particularly high-profile corruption cases, the 1997 Constitution of Thailand created a shortcut for the lengthy judicial process by establishing the SCCD. Cases where politicians are accused by the NACC of corruption, unexplainable wealth, or abuse of power will be tried by the SCCD and the SCCD’s decisions are final. Non-politicians who are alleged to be involved in these matters, such as persons who are alleged to have paid a bribe to a politician, are also subject to the SCCD’s jurisdiction.

Although the 1997 Constitution was abrogated by the coup in 2006, the current Constitution of Thailand maintains a similar mechanism with only a few changes. As of December 2010, all cases submitted to the SCCD (including seven cases submitted in 2010) have been decided and not a single case is currently pending with the SCCD.

Though the SCCD was initially designed to be a single-level court for persons holding political positions in Thailand, the 2007 Constitution allows an appeal to be made if there is new evidence. Practically speaking, however, parties have not been able to establish the existence of “new evidence”. Despite several attempts to do so, the plenary session of the Supreme Court has never accepted an appeal.

where there have been significant unrest and violence. Several soldiers died while using the GT-200 in effort to detect bombs. The Royal Thai Army, the Ministry of Interior and other agencies spent more than 600 million Thai baht in purchasing these devices at the price of around 1 million Thai baht each. It was later established that the GT-200 bomb detectors were essentially “dowsing sticks”. On 20 February 2010, the Prime Minister announced an investigating into the procurement of GT-200. No progress has been reported in that investigation.

Bangkok fire-fighting trucks

In 2008 Thai newspapers reported a scandal in connection with the purchase of 315 fire trucks and 30 fire-fighting boats from an Austrian company for approximately 6 billion Thai baht. Follow-



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ing these reports, the governor of Bangkok, Apirak Kosoyodhin, resigned. The permanent secretary and the director of the Disaster Prevention Bureau, Bangkok Metropolitan Administration, were fired on 17 September 2009. Almost one year later, on 17 August 2010, the NACC ruled there were grounds for the case, and asked the attorney general to charge three politicians including Mr Apirak, the

former governor. But the attorney general refused to do so, claiming that the evidence gathered by the NACC was insufficient. Although the NACC is entitled to appoint a private attorney to file the charge against the three politicians on its own, the NACC has not done so yet. The NACC states on its website that further investigation is required.