

# Thailand

**Douglas Mancill and Wayu Suthisarnsuntorn**

Price Sanond Prabhas & Wynne Ltd

## 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. Apart from the enactment of the Organic Act on Counter Corruption (No. 2), BE 2554 (Anti-Corruption Act No. 2), in April of 2011, Thailand has not yet enacted domestic laws addressing its obligations under UNCAC. The Anti-Corruption Act No. 2 provides, among other things, that the statutory limitation period will not be counted in cases where an alleged offender avoided prosecution and provides the Thai National Anti-Corruption Commission (NACC) with a broader scope of authority, including the authority to act as a central coordinator with regard to Thailand's international obligations concerning anti-corruption matters. However, the Anti-Corruption Act No. 2 does not address bribery of foreign public officials and recovery of assets taken abroad by politicians or public officials as a result of corruption. In order to effectively implement Thailand's obligations under the UNCAC, enactment of additional domestic laws is required. This has been studied and proposals have been submitted to the cabinets of successive Thai governments since 2005 but, at the time of writing (January 2012), such additional laws have not been enacted.

Thailand is not a signatory to the OECD Convention, but 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 apply only 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 Although this decision was based on provisions of Thai criminal law that have been superseded by new provisions enacted since that decision, the result would be the same under current Thai law.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 official 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 had 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.

When the House of Representatives was dissolved on 9 May 2011, however, all pending draft laws automatically lapsed. The current cabinet (which was formed after the general election on 3 July 2011) has not yet considered either of these proposed laws yet.

### 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 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 which were under consideration did 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 that were 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 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 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 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 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 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 Organisation Staff Act, BE 2502 (State Staff Act). 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, a person who works for and receives a salary or other benefits from a majority state-owned enterprise 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 even 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 even 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 'state officials' – a term which also includes individuals who were state officials within the previous two years to 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 (NACC). No particular motive is required to violate this provision of the Anti-Corruption Act. Further, the Anti-Corruption Act No. 2 prescribes that violation of this rule shall be deemed a breach of duty and constitute a dishonest discharge or non-discharge of duties under the Penal Code as well.

#### 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'. However, 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 irregular basis (Decision No. 533/2485),
- regardless of whether he or she is a Thai national (Decision No. 700/2490), and
- regardless of whether he or she receives remuneration from the government (Decision Nos. 1397–1398/2500).

For avoidance of doubt, these Supreme Court decisions are general tests based on specific facts. The Penal Code itself does not provide this level of specificity. Some special laws specifically prescribe that certain positions in certain organisations shall be regarded as public officials under the Penal Code even though persons holding such positions do not possess all the qualifications set out by the aforesaid Supreme Court's rulings.

For example, the law establishing the National Broadcasting and Telecommunications Commission (NBTC) prescribes that the NBTC commissioners and secretary-general of the NBTC Office are public officials under the Penal Code even though the NBTC is not appointed by the Thai government but by the Thai senate and the NBTC Office, an organisation responsible for administrative activities for the NBTC, is not considered a government agency but a state agency because the NBTC Office is not under the cabinet's control. Other examples are personnel of Airports of Thailand plc and PTT

plc, which are majority government-owned state enterprises listed on the Stock Exchange of Thailand. Even though the employees may or may not perform 'government functions', some employees of these two listed companies are considered to be public officials under the Penal Code by virtue of the State Enterprise Capitalisation Act, BE 2542 (also known as the privatisation law), and subordinate legislation issued pursuant to that law.

In 2009, the cabinet agreed with the Council of State's proposal to create a definition of 'public official' in the Penal Code. However, the attempt to insert such a definition into the Penal Code has not materialised so far. The Council of State's proposed definition (which is generally in line with the current interpretation of the Supreme Court) reads:

*'Public official' means a person who is prescribed by the law as a public official or who is legally appointed to perform governmental functions, whether permanently or temporarily and whether or not compensation is paid.*

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).

For those who are not already covered by the Supreme Court's interpretation of the term 'public official' prescribed in the Penal Code or otherwise already covered by a specific law such as employees of state-owned entities who do not at the same time hold any other government positions, they are subject to the State Staff Act, a special law that prohibits bribery in a manner similar to the Penal Code's prohibition on bribery.

It is a common practice for high-ranking public officials in Thailand, such as the attorney-general, to be appointed a director of a state enterprise. If he or she is so appointed, however, the attorney-general will not be subject to the State Staff Act because he or she is already covered by the Supreme Court's interpretation of the term 'public official' under the Penal Code.

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?

Unless otherwise appointed by a legitimate order of the government (for example, in cases of state enterprises), 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 Commission 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 question 24). 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 baht. But if an official 'finds it necessary to accept a gift' worth more than 3,000 baht (eg, to maintain a 'good relationship'), 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 baht every day from one person (this would probably 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 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 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 to 20 years' or life imprisonment or the death penalty.

The Thai Supreme Court ruled (Decision Nos. 787-788/2506) that legal entities such as companies can also have criminal intent (*mens rea*) to commit a criminal offence through the conduct of their 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 or her legal duties is not committing a crime (section 144). But an official who requests a benefit in order for him or her to perform his or her 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.

**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. 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 Gerald and Patricia Green were convicted. At the time of writing, the ex-governor of TAT and her daughter have a motion pending in the Central District of California to have this US indictment dismissed. The US Department of Justice has opposed this motion, and, at the time of writing, the US District Court has not ruled on this motion.

In Thailand, on 23 August 2011, the NACC concluded that Juthamas Siriwan, the ex-governor-general of TAT, together with Jittisopha Siriwan, her daughter who acted as a supporter, violated sections 6 and 11 of the State Staff Act and section 12 of the Bid-Rigging Act, BE 2542, by receiving the kickbacks from the Greens. (The minimum penalty for violation of section 6 of the State Staff Act is a five-year term of imprisonment, while the maximum penalty for violation of the same provision is the death penalty.) The NACC passed a resolution to forward the case to the attorney-general for prosecution, but there is no further information on whether there will be a prosecution.

**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 baht. Following these reports, the governor of Bangkok, Apirak Kosayodhin, 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 concluded there were grounds for filing a 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. Without cooperation from the attorney-general, the NACC therefore appointed a private attorney to litigate the case. On 25 July 2011, a private attorney appointed by the NACC filed with the Supreme Court's Criminal Division for Persons Holding Political Positions (SCCD) a charge against six defendants, namely, Apirak Kosayodhin (the former governor of Bangkok), Phokin Polkul (the former minister of the interior), Pracha Maleenont (the former deputy minister of the interior), Watana Mueangsook (the former minister of commerce), Police Major-General Athilak Tanchukiat (the former director of the Disaster Prevention Bureau) and Steyr-Daimler-Puch Spezialfahrzeug AG & Co KG (the vendor). The charge was based on the alleged violation of the Penal Code (dishonest discharge or non-discharge of duties) and the Bid-Rigging Act, BE 2542. On 24 August 2011, the SCCD accepted the charge and the matter is being litigated.

### Update and trends

#### Provincial Anti-Corruption Commissions (PACCs)

One of the biggest problems for NACC has been its heavy workload. Hundreds of complaints are submitted to NACC every year. Further, the original Anti-Corruption Act previously required that each investigation subpanel be chaired by a NACC commissioner. Given that there are only nine commissioners, it was impossible for the NACC to investigate all complaints in a timely manner.

One of the new features recently added to the Anti-Corruption Act by the enactment of the Anti-Corruption Act No. 2 in April 2011 is the establishment of provincial anti-corruption commissions (PACCs). (The Anti-Corruption Act No. 2 became effective from 19 April 2011, except for chapter 9/2 concerning PACCs, which will become effective two years later, ie, on 19 April 2013.)

From 2013 onwards, each province is supposed to have an anti-corruption panel consisting of three to five members appointed for a four-year term by the NACC. A shortlist of six to 10 candidates, depending on the available seats in each province, will be created and submitted to the NACC by another nine-member selection panel consisting of a representative from each of nine sectors (ie, education, legal practitioner, labour organisation, trade association, volunteer group, private sector, farmer organisation,

mass media association and government) in that province.

The PACCs will have the duties, among other things, to investigate matters and gather evidence relating to corruption in their respective provinces and also verify the accuracy and existence of the properties and liabilities reports of politicians and high-ranking officials who are required by the Anti-Corruption Act to prepare and submit such reports to the NACC.

This is a major development for the NACC, because of the additional manpower it provides. More than 200 local commissioners should be appointed by the NACC and hundreds or even thousands of supporting staff should be recruited nationwide for local offices of PACCs in each province. In addition, the Anti-Corruption Act No. 2 also creates the new position of 'inquiry officer' to perform some duties previously vested exclusively with the NACC. It is expected that many inquiry officers will be appointed for both NACC's headquarters and in each province's PACC office.

Nevertheless, there are still many steps for the NACC to take in order to effectively implement this new tool provided by Anti-Corruption Act No. 2. It is also too early to evaluate whether this new tool will help the NACC to effectively combat corruption in Thailand.

#### Suspicious cash in a senior official's house

On 11 November 2011 a group of burglars broke into a house of Supoth Sablom, the then permanent secretary of the Ministry of Transport. Two of the burglars were arrested on 17 November 2011, and claimed that they, together with four other burglars, including a son of a former personal secretary of Supoth Sablom, had kept watch on the house for around one year before they broke into the house, because they were told that the permanent secretary kept a substantial amount of cash derived from corruption in his house. The burglars further claimed that they had found 1 billion baht of cash hidden in the house, but they could take only 200 million baht before they escaped. (A newspaper report said that banknotes worth 1 billion baht would weight more than 1 tonne.) The permanent secretary denied the burglars' claims, saying that he had only 5 million baht in his house and that the cash was a dowry from his daughter's recent wedding. On 18 November 2011 the minister of transport removed Supoth Sablom from office and transferred him to another inactive post, but the minister denied any connection between the incident and this sudden transfer. It was also reported that the NACC, the AMLO and the senate will separately investigate how the permanent secretary could have accumulated such a large amount of cash and why he kept this cash in his house. On 21 November 2011 a NACC commissioner said that the NACC might put the burglars in a witness protection programme, a measure which was recently provided to the NACC by the Anti-Corruption Act No. 2. It was later reported that the NACC had frozen more than 18 million baht

of Supoth Sablom's cash that had been recovered from the burglars, and the NACC later revealed that it had found (from currency straps of the recovered cash) some connection between the cash and some project contractors of the Ministry of Transport. Even if the NACC cannot find enough evidence to charge Supoth Sablom with 'unusual wealth' or malfeasance, Supoth Sablom – who has submitted at least 16 compulsory assets and liabilities reports to the NACC during the past several years (which duty is required under the Anti-Corruption Act for some senior officials) – might still face a charge based on submission of false reports to the NACC.

#### Fake seminar of the ex-auditor-general

On 6 September 2011 the NACC accused Jaruvan Maintaka – who was the auditor-general between 2001 and 2006 and was the acting auditor-general for a certain period thereafter – together with another senior official of the Office of the Auditor-General (OAG) of holding a fake seminar, purportedly in 2002. According to the NACC, Jaruvan Maintaka and the others spent almost half a million baht of the OAG's budget on an elegant dinner which was disguised as a seminar. Therefore, the NACC decided to forward this matter to the attorney-general for prosecution.

#### Flood relief package scandals

The Department of Special Investigation (DSI) announced on 8 January 2012 that it had finished its investigation into the alleged corruption in connection with the procurement of aid packages

## PriceSanond

**Douglas Mancill**  
**Wayu Suthisarnsunton**

**dmancill@pricesanond.com**  
**wayu@pricesanond.com**

16th Floor, Q House Sathorn  
11 South Sathorn Road, Khet Sathorn  
Bangkok 10120  
Thailand

Tel: +66 2 679 1844  
Fax: +66 2 679 1864  
www.pricesanond.com

worth hundreds of millions of baht that were distributed during Thailand's flood crisis in 2011. There are many questions from the press and the public concerning the transparency of the procurement and the difference between the total value of material contained in the packages (as speculated by the public) and the official stated acquisition cost of each package. According to the DSI, 10 officials of the Department of Disaster Prevention and Mitigation were involved

in a series of suspicious procurements of the aid packages from two private limited companies that may have constituted violations of the Thai Penal Code and Bid-Rigging Act, BE 2542. However, the DSI claimed that it did not have the authority to pursue cases in connection with violations of the Penal Code and therefore it had to forward the matter to the NACC for further investigation.



# Anti-Corruption Regulation

in 54 jurisdictions worldwide

Contributing editor: Homer E Moyer Jr

# 2012



**Published by**  
**Getting the Deal Through**  
**in association with:**

Advokatfirman Delphi  
Afridi & Angell  
Amir & Amir Law Associates  
Anagnostopoulos Criminal Law & Litigation  
Anderson Mōri & Tomotsune  
Andreas Neocleous & Co LLC  
Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW)  
Ashurst  
Astigarraga Davis  
AZB & Partners  
Badri & Salim El Meouchi Law Firm  
Barbosa Abogados  
BDO Advokater AS  
Bennett Jones LLP  
Carey y Cía Ltda  
CR & F Rojas – Abogados  
Dr Kai Hart-Hönig Rechtsanwälte  
ELIG Attorneys-at-Law  
FSV Abogados  
Greenberg Traurig, SC  
Grinberg, Cordovil e Barros Advogados  
Hoet Peláez Castillo & Duque  
Horn & Co, Law Offices  
Ivanyan & Partners  
Jiménez Cruz Peña  
K&L Gates LLP  
Kensington Swan  
Kim & Chang  
Kleyr Grasso Associés  
Koep & Partners  
Lampert & Schächle Attorneys at Law Ltd  
Law Offices of Sheikh Tariq Abdullah  
Lebray & Associés  
Makarim & Taira S  
Mamić Perić Reberski Rimac  
Matheson Ormsby Prentice  
Mboya Wangong'u & Waiyaki Advocates  
Miller & Chevalier Chartered  
Nchito and Nchito Advocates  
Nicolette M Doherty Attorney-at-Law  
Norton Rose LLP  
OECD  
Paz Horowitz Robalino Garces  
Peters & Peters  
Price Sanond Prabhas & Wynne Ltd  
PRK Partners  
Russin & Vecchi  
Saxinger, Chalupsky & Partner Rechtsanwälte GmbH  
Schellenberg Wittmer  
Sjöcrona Van Stigt Advocaten  
Sofunde, Osakwe, Ogundipe & Belgore  
Stevenson, Wong & Co  
Studio Legale Pisano  
The Law Firm of Salah Al-Hejailan  
Transparency International  
Vicheka Lay



## Anti-Corruption Regulation 2012

### Contributing editor

Homer E Moyer Jr  
Miller & Chevalier Chartered

### Business development managers

Alan Lee  
George Ingledew  
Robyn Hetherington  
Dan White

### Marketing managers

Ellie Notley  
Alice Hazard

### Marketing assistants

William Bentley  
Zosia Demkowicz

### Subscriptions manager

Rachel Nurse  
Subscriptions@  
GettingTheDealThrough.com

### Assistant editor

Adam Myers

### Editorial assistant

Lydia Gerges

### Senior production editor

Jonathan Cowie

### Chief subeditor

Jonathan Allen

### Production editor

John Harris

### Subeditors

Davet Hyland  
Caroline Rawson

### Editor-in-chief

Callum Campbell

### Publisher

Richard Davey

### Anti-Corruption Regulation 2012

Published by  
Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 7908 1188  
Fax: +44 20 7229 6910

© Law Business Research Ltd  
2012

No photocopying: copyright  
licences do not apply.

First published 2007  
Sixth edition 2012  
ISSN 1754-4874

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of February 2012, be advised that this is a developing area.

Printed and distributed by  
Encompass Print Solutions  
Tel: 0844 2480 112

**Law**  
**Business**  
**Research**

<b>Global Overview</b> Homer E Moyer Jr <i>Miller &amp; Chevalier Chartered</i>	<b>3</b>
<b>When anti-bribery measures came of age</b> Monty Raphael QC <i>Transparency International UK</i>	<b>8</b>
<b>G20 Anti-Corruption Action Plan</b> Nicola Bonucci and Patrick Moulette <i>OECD</i>	<b>9</b>
<b>Antigua &amp; Barbuda</b> Edward H Davis Jr, Arnolde B Lacayo and Nicolette M Doherty <i>Astigarraga Davis and Nicolette M Doherty Attorney-at-Law</i>	<b>10</b>
<b>Argentina</b> Adalberto Ramiro Barbosa and Patricio O'Reilly <i>Barbosa Abogados</i>	<b>14</b>
<b>Australia</b> Jane Ellis and Simon Rudd <i>Ashurst</i>	<b>19</b>
<b>Austria</b> Christina Hummer and Irene Meingast <i>Saxinger, Chalupsky &amp; Partner Rechtsanwälte GmbH</i>	<b>26</b>
<b>Bangladesh</b> M Amir-Ul Islam <i>Amir &amp; Amir Law Associates</i>	<b>31</b>
<b>Bolivia</b> Pablo Rojas <i>CR &amp; F Rojas – Abogados</i>	<b>37</b>
<b>Brazil</b> Carlos Amadeu Bueno Pereira de Barros <i>Grinberg, Cordovil e Barros Advogados</i>	<b>42</b>
<b>Cambodia</b> Vicheka Lay	<b>47</b>
<b>Canada</b> Milos Barutciski <i>Bennett Jones LLP</i>	<b>50</b>
<b>Chile</b> Marcos Ríos and Solange González <i>Carey y Cía Ltda</i>	<b>56</b>
<b>China</b> Amy L Sommers and David Zhang <i>K&amp;L Gates LLP</i>	<b>62</b>
<b>Costa Rica</b> Robert C van der Putten and Paola Montealegre <i>FSV Abogados</i>	<b>68</b>
<b>Croatia</b> Natalija Perić <i>Mamić Perić Reberski Rimac</i>	<b>73</b>
<b>Cyprus</b> Panayiotis Neocleous, Costas Stamatou and Alexia Solomou <i>Andreas Neocleous &amp; Co LLC</i>	<b>77</b>
<b>Czech Republic</b> Daniela Musilová <i>PRK Partners</i>	<b>82</b>
<b>Dominican Republic</b> Marcos Peña Rodríguez <i>Jiménez Cruz Peña</i>	<b>89</b>
<b>Ecuador</b> Bruce Horowitz <i>Paz Horowitz Robalino Garces</i>	<b>93</b>
<b>France</b> Stéphane Bonifassi <i>Lebray &amp; Associés</i>	<b>97</b>
<b>Germany</b> Kai Hart-Hönig <i>Dr Kai Hart-Hönig Rechtsanwälte</i>	<b>102</b>
<b>Greece</b> Ilias G Anagnostopoulos and Jerina (Gerasimoula) Zapanti <i>Anagnostopoulos Criminal Law &amp; Litigation</i>	<b>107</b>
<b>Hong Kong</b> Angus Hamish Forsyth <i>Stevenson, Wong &amp; Co</i>	<b>112</b>
<b>India</b> Vineetha MG and Aditya Vikram Bhat <i>AZB &amp; Partners</i>	<b>116</b>
<b>Indonesia</b> Richard Cornwallis and Farida Yuliasari <i>Makarim &amp; Taira S</i>	<b>125</b>
<b>Ireland</b> Carina Lawlor and Bríd Munnely <i>Matheson Ormsby Prentice</i>	<b>130</b>
<b>Israel</b> Yuval Horn, Ohad Mamann and Adi Sharabi <i>Horn &amp; Co, Law Offices</i>	<b>137</b>
<b>Italy</b> Roberto Pisano <i>Studio Legale Pisano</i>	<b>143</b>
<b>Japan</b> Kenichi Sadaka and Kei Akagawa <i>Anderson Mōri &amp; Tomotsune</i>	<b>149</b>
<b>Kenya</b> Godwin Wangong'u and CG Mbugua <i>Mboya Wangong'u &amp; Waiyaki Advocates</i>	<b>154</b>
<b>Korea</b> Kyungsun Kyle Choi and Kyo-Hwa Liz Chung <i>Kim &amp; Chang</i>	<b>160</b>
<b>Lebanon</b> Jihad Rizkallah, Marie-Anne Jabbour and Rita Moukarzel <i>Badri &amp; Salim El Meouchi Law Firm</i>	<b>165</b>
<b>Liechtenstein</b> Siegbert Lampert and Rudolf Schächle <i>Lampert &amp; Schächle Attorneys at Law Ltd</i>	<b>172</b>
<b>Luxembourg</b> Rosario Grasso <i>Kleyr Grasso Associés</i>	<b>177</b>
<b>Mexico</b> Luis Rubio-Barnette, Bertha A Ordaz-Avilés and Carlos A Camargo-Tovar <i>Greenberg Traurig, SC</i>	<b>183</b>
<b>Namibia</b> Peter Frank Koep and Hugo Meyer van den Berg <i>Koep &amp; Partners</i>	<b>188</b>
<b>Netherlands</b> Enide Z Perez and Max JN Vermeij <i>Sjöcrona Van Stigt Advocaten</i>	<b>192</b>
<b>New Zealand</b> Hayden Wilson <i>Kensington Swan</i>	<b>197</b>
<b>Nigeria</b> Babajide O Ogundipe and Chukwuma Ezediaro <i>Sofunde, Osakwe, Ogundipe &amp; Belgore</i>	<b>203</b>
<b>Norway</b> Erling Grimstad <i>BDO Advokater AS</i>	<b>207</b>
<b>Philippines</b> Francisco Ed Lim and Chryssilla Carissa P Bautista <i>Angara Abello Concepcion Regala &amp; Cruz Law Offices (ACCRALAW)</i>	<b>212</b>
<b>Russia</b> Vasily Torkanovskiy <i>Ivanyan &amp; Partners</i>	<b>218</b>
<b>Saudi Arabia</b> Robert Thoms and Sultan Al-Hejailan <i>The Law Firm of Salah Al-Hejailan</i>	<b>225</b>
<b>Singapore</b> Wilson Ang <i>Norton Rose LLP</i>	<b>229</b>
<b>Sweden</b> Peter Utterström and Amanda Wassén <i>Advokatfirman Delphi</i>	<b>236</b>
<b>Switzerland</b> Peter Burckhardt, Paul Gully-Hart and Roland Ryser <i>Schellenberg Wittmer</i>	<b>242</b>
<b>Thailand</b> Douglas Mancill and Wayu Suthisarnsuntorn <i>Price Sanond Prabhas &amp; Wynne Ltd</i>	<b>249</b>
<b>Trinidad &amp; Tobago</b> Edward H Davis Jr, Ava J Borrasso and Sunita Harrikissoon <i>Astigarraga Davis</i>	<b>256</b>
<b>Turkey</b> Gönenç Gürkaynak and Ç Olgü Kama <i>ELIG Attorneys-at-Law</i>	<b>261</b>
<b>United Arab Emirates</b> Charles S Laubach <i>Afridi &amp; Angell</i>	<b>267</b>
<b>United Kingdom</b> Monty Raphael QC <i>Peters &amp; Peters</i>	<b>274</b>
<b>United States</b> Homer E Moyer Jr, James G Tillen, Jeffrey M Hahn and Marc Alain Bohn <i>Miller &amp; Chevalier Chartered</i>	<b>287</b>
<b>Venezuela</b> Fernando Peláez-Pier and Carlos Dominguez <i>Hoet Peláez Castillo &amp; Duque</i>	<b>295</b>
<b>Vietnam</b> Ngo Viet Hoa <i>Russin &amp; Vecchi</i>	<b>300</b>
<b>Yemen</b> Sheikh Tariq Abdullah <i>Law Offices of Sheikh Tariq Abdullah</i>	<b>306</b>
<b>Zambia</b> Mutembo Nchito <i>Nchito and Nchito Advocates</i>	<b>311</b>
<b>Appendix</b> <i>Transparency International</i>	<b>316</b>



**GETTING THE DEAL THROUGH®**

**Annual volumes published on:**

Air Transport	Licensing
Anti-Corruption Regulation	Life Sciences
Arbitration	Merger Control
Banking Regulation	Mergers & Acquisitions
Cartel Regulation	Mining
Climate Regulation	Oil Regulation
Construction	Patents
Copyright	Pharmaceutical Antitrust
Corporate Governance	Private Antitrust Litigation
Corporate Immigration	Private Equity
Dispute Resolution	Product Liability
Dominance	Product Recall
e-Commerce	Project Finance
Electricity Regulation	Public Procurement
Enforcement of Foreign Judgments	Real Estate
Environment	Restructuring & Insolvency
Foreign Investment Review	Right of Publicity
Franchise	Securities Finance
Gas Regulation	Shipbuilding
Insurance & Reinsurance	Shipping
Intellectual Property & Antitrust	Tax on Inbound Investment
Labour & Employment	Telecoms and Media
	Trademarks
	Vertical Agreements

**For more information or to purchase books, please visit:**  
[www.GettingTheDealThrough.com](http://www.GettingTheDealThrough.com)



The Official Research Partner of  
the International Bar Association



Strategic research partners of  
the ABA International section

Published by **Getting the Deal Through**  
in association with **Transparency International**

