

Thailand

I. Brief Introduction to the Legal System of Thailand

Thailand is governed by a constitutional monarchy with the monarch as the Head of State. The Head of State is largely symbolic as the monarch is not involved in politics. The Prime Minister is the Head of Government with the executive power. The legislative power is vested in the Parliament and laws are passed by bicameral approval of the House and the Senate. The judicial power is exercised through courts of law and is independent from the other two branches of government. The system of administration is centralized but divided into regional and provincial administrations. The City of Bangkok has its own administrative bodies and elects its own governor. Provincial administration is the responsibility of the Ministry of Interior, which appoints a governor for each of Thailand's provinces.

The Thai legal system is based on the civil law system. However, lower courts also follow the Supreme Court precedents in interpreting the codified laws. According to the 2007 Constitution, courts are divided into four distinct systems: courts of justice, administrative courts, constitutional court, and the court-martials. Courts of justice constitute the largest court system in Thailand. The majority of the courts fall under this system, including the civil and criminal courts. They are divided into 3 tiers: the courts of first instance, the appeals courts, and the Supreme Court of Justice. The administrative courts consist of the administrative court of first instance and the supreme administrative court. The administrative courts have the subject matter jurisdiction over disputes between the state and private citizens. The constitutional court settles matters pertaining to the constitution. The court-martials hear cases when the parties such as soldiers of various ranks fall under their jurisdiction.

Criminal cases involving persons holding political office, including corruption cases, are adjudicated by a division of the Supreme Court of Justice in the first instance.

Sources of laws in Thailand include the constitutional law, statutory law, administrative regulations, and other government agency rules.

II. Thailand's Anticorruption Law

The current anticorruption legal framework is scattered throughout many different bodies of law. The main laws that address corruption issues are found in the Criminal Code of 1956

(amended in 2008), the Organic Act of Counter Corruption (1999) (Amended in April 2011), the Anti-Money Laundering Act (1999) (amended in 2013), the Act on Offenses Relating to the Submission of Bids to State Agencies (1999), and the Notification of the National Anticorruption Commission (“NACC”) Concerning the Provisions of the Acceptance of Property or Any Other Benefit on an Ethical Basis by State officials issued in 2000.

In addition, Thailand is a signatory to the United Nations Convention, which became in force in Thailand on March 1, 2011. However, Thailand has yet to enact any domestic laws that are in line with the Convention’s mandates. For example, even though the Convention requires prosecution of cases involving bribery of foreign officials, no current domestic law allows for such criminal prosecution.

The bribery law; foreign officials not covered

Thailand has an encompassing anticorruption law embodied in the Penal Code. The Penal Code criminalizes both active and passive bribery, attempted bribery and corruption, extortion, abuse of public office for private gain, and serving as an intermediary between two parties exchanging bribes and services.¹ Mere agreement to offer or accept a bribe may constitute a crime under the Penal Code. However, the text of the statute does not use the word “bribe.” Instead, “property or any other benefit” given to the official may be sufficient for criminal prosecution.

The law applies to bribery of persons holding political office such as members of the Parliament, Provincial Assembly or Municipal Assembly, officials in public administration and the courts, and employees of government, which include those working for government agencies, state enterprises, or other state agencies. Both the offeror and the recipient of the bribe may be prosecuted. However, the Thai Penal Code does not cover the bribery of foreign officials and business-to-business corruption. As such, corruption within the private sector is currently not regulated under the Penal Code, although some private sector bribery may be prosecuted as fraud.

Sanctions

¹ See Penal Code (amended in 2008) §§ 143-44, 148, 149-50, 167, 201.

The severity of the punishment ranges from 5 year to life imprisonment and/or a THB 2,000-40,000 fine, depending on the degree of seriousness of the acts committed. That the recipient of the bribe may be handed a heavier sentence in terms of imprisonment and fine under the law reflects the fact that the law considers the recipient to be the more serious offender. The recipient who is in judicial post also receives a harsher sentence for the same bribery offense. In addition, the act of the recipient that amounts to demand or coercion may justify a death sentence under the Penal Code.

The National Anticorruption Commission

The statute establishes the National Anticorruption Commission (NACC) (previously National Counter Corruption Commission) and empowers it to investigate corruption by state officials based on the Penal Code and review assets of each person taking or vacating a public office for unusual wealth accumulation. If the NACC finds a prima facie case for corruption, the NACC must pass its investigation report to the Prosecutor General for further criminal prosecution. In addition, NACC may forward the report to the Senate for further impeachment of the person holding a public office. Both measures are seen as the weakness in the system because they leave room for political interference through the Prosecutor General and/or the Senate that may decline criminal prosecution and/or impeachment process.

In addition to serving as the enforcement measure of the corruption offenses, the Organic Act on Counter Corruption also prohibits state officials and his or her spouse from having conflict of interest in a contract made with a government agency, regardless of whether there is any corruption involved. The law applies to a state official and his or her spouse who is a partner, shareholder, director, counsel, representative, employee, or holder of any interest in a company that is a contracting party. As with the Penal Code, the Organic Act on Counter Corruption does not apply to the private sector. Violation of the prohibition against conflict of interest may result in up to 3 year imprisonment and/or fine not exceeding THB 60,000.

Anti-Money Laundering Act; relevance to foreign officials

The Anti-Money Laundering Act creates the Anti-Money Laundering Office (AMLO) and empowers it to enforce the Act. The AMLO works in conjunction with the NACC in corruption cases that also fall within the purview of the Anti-Money Laundering Act. The AMLO has the power to investigate and seize the money laundering assets in order to combat corruption. Under the Act, it is a crime to transfer, convert, or receive the transfer of funds or property arising from the predicate criminal offenses for the purpose of hiding or concealing the source of the funds. Abuse of position by a government official is one of the predicate criminal

offenses. As such, cases involving money laundering as a result of corruption may usually be prosecuted under the Anti-Money Laundering Act as well. Persons who commit, attempt to commit, or aid another person in, a money laundering offense may all be prosecuted.

The latest amendment in 2013 also confirms that the law applies to laundering of money derived from predicate offenses committed outside Thailand. Therefore, the reach of the Anti-Money Laundering Act extends to money laundering activities predicate upon bribery of foreign officials that could not otherwise be prosecuted under the Penal Code or the Organic Act on Counter Corruption. It is worth noting that the predicate offense of bribery of foreign officials itself cannot be prosecuted under Thai law.

Sanctions

Those committing money laundering activities may be punished by 1-10 year imprisonment and/or THB 20,000-200,000 fine. Failure to comply with the reporting requirements is punishable by a THB 500,000 fine plus additional THB 5,000 per day for every day that the non-compliance continues. Filing a false report is also punishable by up to 2 year imprisonment and/or a THB 50,000-500,000 fine. Fines and maximum prison sentences are doubled for government officials and may be tripled if certain categories of government officials are involved in a conspiracy to commit a money laundering offense.

The Act on offenses relating to the submission of bids to state agencies

This Act creates criminal offenses for various acts by bidders that may unfairly influence the bidding result. These offenses include offenses relating to bid collusion aimed at restricting price competition or otherwise taking advantage of state agencies contrary to normal business practice; giving or requesting property or any other benefit in order to induce the award of a contract or the submission of an inflated or underpriced bid or a withdrawal from bidding; threat or use of force in connection with submission or withdrawal of bids; deceitful or other acts which deprive another of an opportunity for fair submission of bids; and submission of underpriced bids or bids offering artificially high returns, in order to prevent fair competition. As the name of the Act suggests, it only applies to bids in public projects.

The state officials do not have to be involved in the offenses in order for the offending bidders to be prosecuted. If a juristic person is the entity involved in the abovementioned criminal offense, the person empowered to run the business such as the managing partner or the director may also be prosecuted under the law, unless it can be proven that he/she plays no part in committing the offense. The state officials who are involved or ignores the inconsistency in the bidding process may also be likewise prosecuted.

Violation of the Act may result in 1 to 10 year imprisonment and/or a fine of 50% of the highest bid between the offenders or the amount of the selected bid, whichever is higher. The officials involved are subject to heavier range of punishment – 1 year to life imprisonment and/or a THB 20,000-400,000 fine.

Facilitation payments

The law provides guidelines on what is deemed acceptable conduct and permissible incentives, which can be described as facilitating payments. Generally, “grease payments” below THB 3,000 are permitted, but only if the intent in making the same is not to influence the state official’s decision. All other gifts exceeding THB 3,000 must be notified to and approved by a superior officer. If the superior officer determines that there is no reasonable ground to allow the State official to keep the property for personal use, the property must be turned over to the State agency that employs the official. The law does not elaborate on what may constitute a reasonable ground.

III. Assessment

Although the Thai government is viewed as relatively less bureaucratic when compared to other Southeast Asian countries, paying bribes to expedite licenses, permits, provision of facilities and public utilities, and to receive government contracts are common. For example, in 2009, Gerald and Patricia Green, two producers based on Hollywood were found guilty under the Foreign Corrupt Practices Act for payments made to the former Governor of the Tourism Authority of Thailand to obtain government contracts to manage and operate the Bangkok Film Festival. Police corruption in Thailand is also rampant and goes largely unpunished. Judicial corruption may appear in the form of decisions influenced by personal relationships.

As evaluated by the Global Integrity Report in 2007, the anticorruption laws in Thailand are in fact fairly strong, given that certain corrupt practices by officials are punishable by death. However, actual enforcement by the anticorruption agency remains weak. The weak level of enforcement is also evident in the number of prosecution of corruption cases. Only 15 corruption cases were brought to court in Thailand between

2000 and 2011. In addition, the prosecution process often takes so long that it fails to discourage offenders, and the Prosecutor General may decline criminal prosecution.

The combat against corrupt practices is also subject to political meddling. For example, the AMLO is not a politically independent agency, because the board is selected directly by the Prime Minister and his or her cabinet members. As such, AMLO may be used to harass political opponents.

Thailand is a member of IACA but it is not a signatory to GRECO. Transparency International ranks Thailand 88 on its 2012 Corruption Perceptions Index.

IV. Texts

The official texts are available in Thai language only. There is no official English translation. Any translation provided is for information only.

A. Criminal Code of 1956 (amended 2008), available at

<http://www.thailandlawonline.com/table-of-contents/thailand-criminal-law-translation>

B. Organic Act on Counter Corruption of 1999 (amended in April 2011), available at

<http://www.oecd.org/site/adboecdanti-corruptioninitiative/46817329.pdf>

C. The Anti-Money Laundering Act (1999) (amended in 2013), available at

http://www.lawreform.go.th/lawreform/images/th/content/th/500/c500_2.pdf

D. The Act on Offenses Relating to the Submission of Bids to State Agencies (1999), available at

http://thailaws.com/law/t_laws/tlaw0002_3.pdf



E. Notification of the National Anticorruption Commission (“NACC”) concerning the provisions of the acceptance of property or any other benefit on an ethical basis by State officials issued in _____ 2000, _____ available _____ at http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Thailand_Notification%20on%20Acceptance%20of%20Benefits%20by%20State%20Officials_2000_en.pdf