



Tilleke & Gibbins

ANTI-CORRUPTION in Thailand: JFCCT – NACC

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Topics

- ▶ Overview of Thai anti-corruption law
- ▶ Highlighted compliance risks
- ▶ Measures to prevent corruption

Thai Anti-Corruption Law: Anti-Corruption Act

- ▶ Key law: The Organic Act on Anti-Corruption B.E. 2561 (2018) ("**Anti-Corruption Act**")
- ▶ The Anti-Corruption Act largely reflects the United Nations Convention Against Corruption
- ▶ Punishes bribe-giving to Thai officials, foreign officials, and officials from public international organizations

Thai Anti-Corruption Law: Anti-Corruption Act

Section 176:

Any person who gives, offers to give, or promises to give any property or benefit to a public official, foreign public official, official of a public international organization with an intent to induce such person to wrongfully perform, not perform or delay the performance of any duty in his or her office shall be liable to an imprisonment for a term of not exceeding five years or a fine of not exceeding one hundred thousand Baht or to both.

In case the offender under paragraph one is a person associated with any juristic person and the action was taken for the benefit of such juristic person, provided that such juristic person does not have in place appropriate internal control measures to prevent the commission of such offence, the juristic person shall be deemed to have committed the offence under this Section and shall be liable to a fine of one to two times of the damages caused or benefits received.

Thai Anti-Corruption Law: Anti-Corruption Act

- ▶ A juristic person (such as a corporate entity) is criminally liable when the bribe-giver is associated with the company, and the bribe is given for the company's benefit
- ▶ Applies to Thai-registered entities and foreign-registered entities doing business in Thailand (even if no presence in Thailand)
- ▶ Company can be liable even if the offender acted without authorization
- ▶ Associated persons include employees, agents, subsidiaries, or any person acting for or on behalf of such legal entity
- ▶ Company directors can also be criminally liable if they approved the bribe

Thai Anti-Corruption Law: Anti-Corruption Act

- ▶ Penalty: Fine of an amount equal to the amount of the actual damages or the benefits so obtained, or more, but not exceeding two times of the actual damages or the benefits received.
- ▶ Having “proper internal measures” to prevent bribery can reduce or eliminate liability



Thai Anti-Corruption Law: Submission of Bids Act

- ▶ Act on Offenses Relating to the Submission of Bids to State Agencies B.E.2542 (1999)
- ▶ Covers corrupt acts when bidding for a contract with a State agency
- ▶ Companies can be liable for the actions of their employees, agents, etc., with respect to an offense
- ▶ Penalty: Fine of 50% of the highest bid price submitted by the joint offenders, or of the value of the contract that has been entered into with the state agency, whichever is greater

Thai Anti-Corruption Law: Gift Notification

Notification of the N.C.C. Commission concerning the provisions of the acceptance of property or any other benefit on ethical basis by State officials B.E. 2543 (2000)

Government officials can accept gifts if:

- The value of the gift does not exceed THB 3,000;
- The gift is given on a “customary occasion”; and
- The gift does not improperly influence the recipient’s execution of his or her duties.

Anti-Corruption Compliance Risks

- ▶ Gift-giving culture
- ▶ Prominent state-owned sector
- ▶ Significant government bureaucracy requiring extensive interaction
- ▶ Widespread use of facilitation payments



Anti-Corruption Compliance Risks

- ▶ Reliance on agents, consultants, joint venture partners, etc.
- ▶ Importance of “connections”
- ▶ Charitable giving
- ▶ Successor liability
- ▶ Prominent risk of commercial bribery

Corruption Prevention Measures

- ▶ Effective compliance program
- ▶ Active management
- ▶ Risk Assessment
- ▶ Clear anti-corruption policies
- ▶ Clear communication of those policies
- ▶ Understanding of the risks for non-compliance



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