

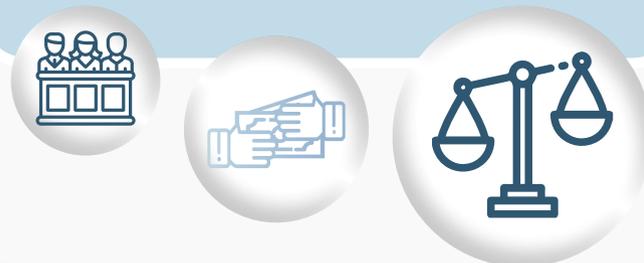
In an increasing integrated and borderless world, businesses are under pressure to meet market expectations and thrive under intense competition. Bribery is not a mere domestic problem but spreads into international business transaction undermining fair competition and socio-economic conditions of those involved. Recognising such challenge, the Organic Act on Counter Corruption, B.E. 2542 (1999) (as amended by (No. 3), B.E. 2558 (2015)) was amended to include section 123/5, which prescribes an offence of bribery of public officials, foreign public officials and officials of public international organisations, and enshrines liability for legal entities involving in such bribery including a fine of high value.

According to the Organic Act on Anti-Corruption, B.E. 2561 (2018) enacted and entered into force in 2018, such provision relating to bribe-giving offences previously provided in Section 123/5 is currently under Section “176”. While maintaining the same fundamentals, such provision is adopted in compliance with international standards under the United Nations Convention against Corruption (UNCAC) and OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.



Section 176 does not provide that the juristic person shall be strictly liable in all circumstances of bribery of public officials when its associated person involves in bribery of public officials. If the juristic person has in place “an appropriate internal control measures to prevent bribery”, such entity will not be liable under this provision. The NACC, therefore, has published the Guidelines to provide a framework for juristic persons to develop appropriate internal control measures in conformity with the laws of the NACC and international standards. The 8 principles provided in these Guidelines are based on both domestic and international best practices, and they are designed to be applicable to all kinds and sizes of businesses. Also, the NACC issued the Notification on this matter to inform juristic persons and encourage effective and concrete implementation of the Guidelines.

In addition, The NACC has established the Anti-Bribery Advisory Service (ABAS) under the Bureau of International Affairs and Corruption Investigation to provide academic information and advice on anti-bribery measures and good international practices for juristic persons.



Reduce unnecessary costs for business operations



Create fair competition and level playing field



Mitigate impacts of penalties including reputational risk and financial loss



Achieve sustainable growth for business



Increase credibility with business partners and customers



Create positive impact on a country's economy over the long term and attract foreign investors

- Section 176 concerns with offences of bribery of public officials, foreign public officials or officials of public international organisations, and liability of juristic persons involving in such bribery.
- Both “individual” and “juristic person” may be held criminally liable under this section.
- A juristic person may be held liable if its personnel (e.g. employees) or business partners (e.g. subsidiaries or consulting firms) involve in bribery of public officials for the benefit of such juristic person such as winning a government contract, increasing sales, or securing a favourable decision toward a case.
- A juristic person under Section 176 shall include juristic person established under Thai laws and juristic person established under the foreign laws which operate business in Thailand.
- A juristic person shall not be liable if it has in place appropriate internal control measures against bribery.
- Appropriateness of measures depends on various factors, e.g. nature and structure of business, level or exposure of risk of bribery of public officials, feasibility of actual implementation, etc. Appropriateness of measures, therefore, will be considered on a case by case basis. Therefore, a juristic person must implement earnestly the measures in conformity with its nature of business and level of risks to ensure that the measures are truly adequate internal control measures.
- Penalty of “the bribe-giver” or “briber” is imprisonment of up to 5 years or a fine of up to Baht 100,000, or both, and penalty of the “juristic person engaging in bribery” is a fine of 1 time to no more than 2 times of the damages caused or benefits received.



8 Principles to Prevent Bribery

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



Top-level management, such as owners, Chief Executive Officers, the Board of Directors or an equivalent body, has major influence in shaping anti-bribery culture within their organisations, also known as “Tone from the Top”. Therefore, they must express strong and clear intention to fight bribery through policies and support the implementation of anti-bribery programme.

2. Risk Assessment to effectively identify and evaluate exposure to bribery

Exposure for each juristic person to engage with public officials is unique in different degrees. Therefore, risk assessment on bribery will help each juristic person in determining appropriate internal control measures that suit each of their nature of business.



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



Circumstances such as hospitality expenditures, gifts and donations etc. bear high risks of bribery. Therefore, juristic persons should prescribe detailed policies for approval and monitor of these particular actions and communicate them to personnel.

4. Application of anti-bribery measures to business partners

Juristic persons may be held liable for bribery by actions of persons whom juristic persons having business relation with such as affiliated companies, joint ventures or consultants etc. Thus, juristic persons should implement its anti-bribery programme on business partners. These may include conducting due diligence, requiring anti-bribery commitment and periodic monitoring of operations.



5. Accurate books and accounting records

Juristic persons should develop accurate and transparent accounting systems and prohibit off-the-book records. In addition, audit systems must be independent to prevent the concealment of bribery.



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



Juristic persons should cultivate personnel’s value of integrity and cooperation to prevent bribery. Commitment to combat bribery can be reflected through all stages of human resource management, from recruitment, promotions, compensations, as well as training.

7. Communication mechanisms that encourage reporting of suspicion of bribery

Reporting of violations, suspicious cases and weakness of internal control measures on bribery can help juristic persons preventing the commission of offence in a timely manner. Juristic persons should provide reporting channels and implement protective measures to foster zero-tolerance against bribery culture within the organisations.



8. Periodic review and evaluation of anti-bribery measures and their effectiveness



Juristic persons face constant changes of factors resulting in changes in risks of bribery. Therefore, periodic review and evaluation of the implementation of anti-bribery measures should be conducted to determine whether the existing measures need to be modified and how to make such modification.

Guidelines on Appropriate Internal Control Measures for Juristic Persons to Prevent Bribery of Public Officials, Foreign Public Officials and Officials of Public International Organisations



(available in 4 languages; Thai, English, Chinese and Japanese)

Infographic Video on Law and measures for juristic persons to prevent bribery of public officials



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Guidelines for Businesses and Juristic Persons to Prevent Bribery of Public Officials



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