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## CRACKING DOWN ON CORRUPTION IN THAILAND



*On 9 July 2015, the Thai government issued Amendment No.3 to the Anti-Corruption Act BE 2542 (1999) (Amendment No.3) to comply with international standards for the prevention and suppression of corruption. Thailand had previously also ratified the United Nations Convention against Corruption (2003) on 1 March 2011. Even though the legal framework for combating corruption has been in place since the late 1990's, enforcement of anti-corruption laws in Thailand has been inconsistent since their inception.*

Clear evidence of ongoing corrupt practices in Thailand has been well documented under the Corruption Perceptions Index (CPI). The CPI is conducted by Transparency International, a non-governmental organization that monitors and publicizes corporate and political corruption in the international development sector. The results of the latest index show Thailand has risen 17 places from 102nd in 2012 to 85th in 2014. According to the index, within the ASEAN region, Thailand remains as the 3rd least corrupt nation,

out doing Indonesia, Vietnam, the Lao PDR, Cambodia and Myanmar among others. A report published by the Global Financial Integrity Group at the close of 2014 entitled "Illicit Flows from Developing Countries" revealed that over USD35 billion (THB 1.1 trillion) had been drained from Thailand through money-laundering, tax evasion, crime and false trade documentation practices.

Despite the improvements seen under the CPI, corruption is still a prevalent practice in Thailand.

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Corrupt practices can largely be explained by the patronage system, which is dominant in Thai social culture. Under this system, it is common for those in positions of authority to extend "favors" to their associates or relatives. These "favors" result in corrupt practices becoming ingrained at all levels of political, bureaucratic and corporate hierarchies, both domestic and international.

To provide an example of a recent well-documented corruption case, we refer to the dismissal of a high ranking public servant who has allegedly assisted individuals to falsely claim refunds of value-added tax in an amount excess of THB 3.2 billion. These sorts of corrupt practices have remained prevalent in Thailand despite the enactment of several anti-corruption related legislative instruments, including: the Civil Service Act of 1992, the Act on Criminal Procedures for Persons Holding Political Positions BE

2542 (1999), the Management of Partnership Stakes and Shares of Ministers Act BE 2543 (2000) and the Act Governing Liability for Wrongful Acts of Competent Officers BE 2539 (1996).

There is no universal definition of the term "corruption" as corrupt practices span a wide range of illicit or illegal activities. However, almost all definitions share the common theme of abuse of public power and abuse of a public position for personal benefit. A clear trend has been that anti-corruption policies generally focus on public sector corruption rather than that in the private sector. From 1932, the Thai Criminal Code criminalized active and passive bribery, attempted bribery and corruption, extortion, abuse of public office for private gain, as well as for serving as an intermediary between two parties exchanging bribes and services. Under the Criminal Code, a bribe is interpreted as the property or benefit given, or offered to



a person in power, especially a public official, in order to induce him to do, not to do or delay a particular action. However, a gift offered to a public officer is not considered a bribe if it is given in certain circumstances and is valued under a certain amount (THB 3,000).

The Criminal Code applied to instances of bribery of persons holding political office such as members of the parliament, provincial assembly or municipal assembly, officials in public administration and the court, and employees of the government which include those working for government agencies, state enterprises, or other state agencies. It is important to note that

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foreigners in the Act. Firstly, a “State official in a foreign country” effectively covers persons performing any function within a foreign administration, whether it be legislative, administrative or judicial. Secondly, an “Agent of international Organization” includes persons performing in any function of or on behalf of the international organization.

in the past, anti-corruption regulations did not cover the bribery of foreign officials or activities in the private sector.

Prior to the amendment, punitive penalties for corruption ranged from five years to life imprisonment and/or a THB 2,000 – 40,000 fine, depending on the degree of seriousness of the act committed. Following the Coup d’Etat on 22 May 2014, the National Council for Peace and Order has committed to reform the country in various areas which

include the implementation of new anti-corruption measures. Prior to Amendment No. 3, the death penalty for corruption related crimes was limited to Thai officials convicted of taking bribes. One of the most significant reforms of Amendment No. 3 is that the penalty is now extended to also cover non-Thai nationals working for foreign governments and international organizations.

Some terms have been added in order to adequately encompass

Thailand’s National Legislative Assembly (NLA) exercised its broad powers under Section 44 of the Constitution of the Kingdom of Thailand (interim) BE 2557 (2014) to tighten anti-corruption measures through an aggressive amendment of the existing Anti-corruption Act BE 2542 (1999). Significant changes to the old Anti-Corruption Act BE 2542 (1999) are seen in Article 13 of Amendment No. 3, which increases penalties for state officials who commit offences stipulated under Articles

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123/2 to 123/8. The penalties for a state official convicted of corruption range from THB 100,000 to 400,000 fines, 5 to 20 years or life imprisonment, through to capital punishment, depending on the severity of the offence. In contrast, only monetary fines will apply to corporations that participate in corrupt practices. The fact that the recipient of a bribe may be handed a heavier sentence in terms of imprisonment and fines under the Criminal Code reflects the idea that Thai law considers the recipient to be the more serious offender than the person offering the bribe. Should it be established that the act of the recipient amounts to a demand or coercion, the death sentence could apply under the Criminal Code. Article 11 of Amendment No. 3 changes the procedure relating to the statute of limitations and penalties under 74/1. Also, it now stipulates that if a defendant escapes abroad while being prosecuted or on trial, the period that he or she escapes is

not counted as part of the statute of limitations. If a defendant escapes after a court issues a final verdict the article 98 of the Criminal Code would not be enforced.

The National Anti-Corruption Commission (NACC) is also granted a new power to pursue corruption cases under Amendment No. 3. The NACC's duty is to carry out inspections and investigations of cases of "unusual wealth". However, historically investigations have proceeded at a very slow pace and only a handful of officials have been punished. On its face, it would seem that Amendment No. 3 may not increase enforcement of anti-corruption laws in Thailand, however, it is likely to pave the way for stricter enforcement practices to be implemented in the near future.

Given recent changes, the landscape of systemic corruption is slowly altering and it is important for both medium and

large companies to ensure that they are aware of the legal limits when providing facilitation fees. Amendment No. 3 ensures international standards and its enforcements will provide more transparency in relations between foreign investors and the Thai administration. The enactment of Amendment No. 3 will ensure that fair practices are applied across the board when dealing with public officials with regard to access to information, conflicts of interest, public procurements, and the protection of whistleblowers.

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