

# Q&A IN RELATION TO BRIBERY OFFENCES IN THAILAND

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## 1 Q&A In Relation to bribery offences in Thailand

# 1. Legal Framework

## What is the legal framework governing bribery in Thailand?

- The Act Supplementing the Constitution Relating to the Prevention and Suppression of Corruption (2018) (PSC Act) is the key piece of Thai legislation governing bribery.
- The PSC Act repealed the Organic Act on Counter Corruption (1999) (OACC), but any notification or ministerial regulation under the OACC remains in force unless the PSC Act expressly repeals it.

## 2. What Constitutes a Bribe?

### What constitutes a bribe?

- The PSC Act defines a bribe as a giving of gift or benefit, regardless of the value, to an official to solicit a benefit in kind (section 128 PSC Act).
- The PSC Act definition of an official includes officials of foreign countries, officials of intergovernmental organizations, employees of government agencies and state enterprises, and state officials who have retired or resigned from their position less than two years previously (section 128 PSC Act).
- The criteria for an official to accept a gift and benefit under the OACC remains in force. This criteria stipulates that an acceptance of a gift or benefit with a value exceeding THB3,000 requires approval from the official's direct supervisor (section 5 The Notification of the National Anti-Corruption Commission concerning the provisions of the acceptance of property or any other benefit on ethical basis by State officials B.E. 2543 (2000)).
- Section 3 of The Notification of the National Anti-Corruption Commission concerning the provisions of the acceptance of property or any other benefit on ethical basis by state officials B.E. 2543 (2000) defines a gift and benefit as a thing of any value, including discounts, entertainment, services, meals and the like.

### What are the principal offences under this legal framework?

#### Offences for an official

- Requesting, accepting, or being willing to accept a gift or benefit (section 173 PSC Act); and
- acting or omitting to act with the view to receiving a gift or benefit that has been agreed prior to the appointment of the official into office (section 174 PSC Act).

#### Offences for an individual

- Requesting or accepting a gift or benefit as a commission to induce an official to act or omit to perform their duties (section 175 PSC Act); and
- offering, promising, or giving a bribe to an official (section 176 PSC Act).

#### Offences for a legal entity

- Failure of a legal entity to prevent bribery committed by an associated person with the intention to obtain a benefit for the legal entity (section 176 PSC Act);
  - legal entity includes any legal entity incorporated under Thai or foreign law operating in Thailand (regardless of whether the foreign entity has a presence in Thailand) (section 176 PSC Act);
  - associated person includes representatives, employees, agents, affiliated companies or any persons acting

for or on behalf of a Thai or foreign entity, regardless of whether such person has the power or authority to take such action (section 176 PSC Act).

### 3. Jurisdictional Reach

#### What is the jurisdictional reach of the legal framework?

- The PSC Act applies to any individual and any officials in Thailand. That includes any official of a foreign government or an intergovernmental agency (section 173, 174, 175, and 176 PSC Act).
- If an individual committing an offence is a Thai national, or is an official of the Thai government, judiciary or a constitutional body, the PSC Act will also cover such conduct, even if it is committed outside Thailand (section 140 PSC Act).
- The PSC Act applies to any legal entity incorporated under Thai law or foreign law operating in Thailand (regardless of whether the foreign entity has presence in Thailand) (section 176 PSC Act).

### 4. Who may be liable?

#### Who may be liable for bribery? (public officials, private individuals, legal entities etc.)

- Private individuals who offer or give bribes, officials and legal entities may be liable for bribery under the PSC Act.

#### Can a parent company be liable for its subsidiary's involvement in bribery?

- If a parent company has a close relationship with the subsidiary company, the parent company may also be liable for any involvement in bribery.
  - Close relationship includes control in the management, policy or money flow in the subsidiary company.
- However, the parent company can establish a defense against liability:
  - if the parent company has a close relationship but it has demonstrated that it employs appropriate internal control measures to its subsidiary (section 176 PSC Act); or
  - if the parent company is merely a shareholder without direct management control and has shown sufficient care (i.e. stating in an agreement that its subsidiary must employ appropriate measures to prevent bribery).

### 5. High Risk Areas

#### Are facilitation payments (i.e. small payments to speed up routine governmental action) considered bribes?

- The PSC Act provides that giving a gift or benefit, regardless of the value, to solicit a benefit in kind is considered bribery (section 128 PSC Act).

#### Does the legal framework restrict political and charitable contributions?

- The Thai National Anti-Corruption Commission (NACC) considers charitable or political contributions to be a high-risk form of gift or benefit (section 128 PSC Act). In determining whether such contributions are bribery, the NACC will consider the following:
  - the reason for the gift or benefit;
  - the value of the gift or benefit; and

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- whether there is any intention to solicit a favor or benefit in return.

#### Does the legal framework place restrictions on corporate hospitality?

- The NACC considers that hospitality (e.g. hosting a fully funded seminar with invitation extended to officials) to be a high-risk form of gift or benefit (section 176 PSC Act). In determining whether such hospitality is Bribery, the NACC will consider the following:
  - the reason for the gift or benefit;
  - the value of the gift or benefit; and
  - whether there is any intention to solicit a favor or benefit in return

## 6. Legal Defences

#### Are there any defenses for bribery offences?

- A legal entity may have a defense under the PSC Act, if the legal entity can prove that it had implemented “appropriate internal control measures” to prevent the commission of bribery (section 176 PSC Act).
- The appropriate internal control measures include the following:
  - strong, visible policy and support from top-level management;
  - risk assessment to effectively identify and evaluate exposure to bribery;
  - enhanced and detailed measures for high-risk and vulnerable areas;
  - application of anti-bribery measures to business partners;
  - accurate books and accounting records;
  - human resource management policies complementary to anti-bribery measures;
  - communication mechanisms that encourage reporting suspicion of bribery (e.g. whistle blowing hotlines); and
  - periodic review and evaluation of anti-bribery prevention measures and their effectiveness.

## 7. Regulatory and Enforcement Bodies

#### What are the key regulatory or enforcement bodies with regard to bribery?

- The NACC has investigatory and enforcement powers. The NACC may seek cooperation from foreign counterparts to assist with an investigation.
- The PSC Act also established the NACC Fund. The NACC Fund is intended to cover investigation costs and to fund rewards for whistleblowers.

## 8. Legal Consequences

#### What are the legal consequences of being found guilty of bribery offences?

- Officials can face up to life imprisonment and/or a THB400,000 fine on conviction (section 173 PSC Act).

- Individuals can face up to five years' imprisonment and/or a THB100,000 fine on conviction (section 175 and 176 PSC Act).
- Legal entities can receive a fine ranging from the value of the benefits received or the damage occurred to double the value of benefits received or the damage caused (section 176 PSC Act).
- If an individual is unusually rich or unusually wealthy, they may be subject to a request to explain the origin or source of their funds or property. If the individual is not able to provide evidence of the source of funds or property, the funds or property may be confiscated. If such property cannot be confiscated, other properties belonging to the individual may be confiscated as a substitute, provided that the value of the substituted properties does not exceed the value of the suspicious property (section 125 PSC Act).
  - The PSC Act defines unusually rich or unusually wealthy as a significant increase of assets, or a significant decrease of debt. It also includes an acquisition of assets that does not have any legal basis to support such acquisition (section 4 PSC Act).

## 9. Deferred Prosecution Agreements

### Are deferred prosecution agreements (DPAs) or other similar settlement mechanisms available?

- If an official committed an offence under the PSC Act as ordered by the official's supervisor, but the official either submits a written objection, makes a written request to confirm the order or notifies the NACC of the offence within 30 days of the commission of the offence, the official will not be held liable for the offence (section 134 PSC Act).
- If an individual notifies the NACC of an offence committed by any official or other persons and the NACC requires the testimony of the individual, the individual will not be prosecuted for their role or involvement in the offence (section 135 PSC Act).

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