



Newsletter No. 196 (EN)

**Acceptance of Gifts by State Officials
in Thailand**

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1. Introduction

Complying with the national laws and regulations with regards to counter-corruption measures is of major importance for enterprises and individuals doing business with the public sector in any country. Firstly, granting officials with presents may come with criminal and civil consequences. Secondly, affected entities may face corporate liability issues.

In order to prevent these and other legal consequences, special caution should be given to complying with the respective country's legislation on counter-corruption. This newsletter's intention is to give a better understanding of Thailand's legal framework in this regard.

2. Legal Framework

Thailand's legal framework concerning counter-corruption measures is largely based on the following laws:

- The Act Promulgating the Criminal Code, B.E. 2499 (1956) (the “**Criminal Code**”): The Criminal Code lays out the primary offences, such as bribery and corruption:
 - Demanding, accepting or agreeing to accept property or other benefits in return for inducing an official, by dishonest or unlawful means or by using influence, to (not) exercise his functions to the advantage or disadvantage of any person;
 - Giving, offering or agreeing to give property or any other benefit to any official in order to induce him to (not) perform or to delay an act, contrary to his functions;
- Coercion or inducement of any person by an official, in wrongful exercise of his functions, in order to procure a property or any other benefit for himself or any other person;
- Wrongfully demanding, accepting or agreeing to accept any property or any other benefit in return for (not) exercising any functions, whether or not such (non-)exercise is itself wrongful;
- Giving, offering or agreeing to give property or any other benefit to a public prosecutor, an official to conduct cases, an inquiry official or any official holding a judicial post so as to induce such person to wrongfully (not) perform or to delay any act.
- The Act on Offences Relating to the Submission of Bids to State Agencies B.E. 2542 (1999) (the “**Submission of Bids Act**”): The Submission of Bids Act covers and punishes actions of bidders and any intermediaries who influence state officials by granting them advantages.
- The Notification of the Office of the Prime Minister on Giving or Receiving Gifts of Government Officers B.E. 2544 (2001) (the “**Notification**”);
- The Act on Corruption Prevention and Suppression B.E. 2561 (2018) (the “**Act**”): aims for more efficient and transparent measures to prevent and suppress corruption and to enhance to international matters. The Act mainly regulates the prevention and detection of corrupt acts,

and, among other things, covers the following issues:

- Declaration of an account showing particulars of assets and liabilities of persons holding political positions and high-ranking state officials;
- Prohibiting state officials and their spouses from being a party to or having interest in a contract made with a government agency or being a partner or shareholder in a partnership or company which is a party to a contract made with the government agency where such state official performs duties in the capacity as a state official who has the power to conduct supervision, control, inspection or legal proceedings;
- Prohibiting state officials and their spouses from being a party to a contract of a (directly or indirectly) monopolistic nature with or being a concessionaire of the state, a state agency, state enterprise or local administration, or being a partner or shareholder in a partnership or company which is a concessionaire or a contractual party in such manner;
- Prohibiting state officials and their spouses from being interested in the capacity as a director, counsel, representative, official or employee in a private business which is under supervision, control or audit of the state agency to which such state official is attached or where such state official performs duties in the capacity as state official, provided that the nature of the interest of the private business may be contrary to or inconsistent with public interest or the interest of the government service or may affect the autonomy in the performance of duties of such state official; and

- Prohibiting state officials from receiving property or any other benefit from any person other than legitimate property or benefit.

The Act applies with regard to state officials, foreign state officials, international organisation officers, and persons who have resigned or have been removed from a state official position less than two years ago (“**State Official**”), including the following persons:

- Holders of political positions;
- Government officials;
- Local officials;
- Officials or persons performing duties in a state enterprise or a state agency;
- Local administrators and members of a local assembly who are not holders of political positions;
- Officials under the law on local administration;
- Members of a board, commission, committee or of a sub-committee, employees of a government agency, state enterprise or state agency;
- Persons or groups of persons exercising or entrusted to exercise the state’s administrative powers in the performance of a particular act under the law, whether established under the governmental bureaucratic channel or by a state enterprise or other state undertaking;

Legal entities not registered in Thailand but operating in Thailand are also covered under the Act.

The Act has repealed the following:

- The Counter Corruption Act, B.E. 2518 (1975);
- The Counter Corruption Act (No. 2), B.E. 2530 (1987);
- The Act on the Declaration of Assets and Liabilities of Senators and Members of the House of Representatives, B.E. 2539 (1996);
- The Notification of the National Counter-Corruption Commission concerning the Provisions of the Acceptance of Property or any other Benefits on an Ethical Basis by Government Officials B.E. 2543 (2000).

Apart from the aforementioned laws, regulations and notifications, there are numerous other legal measures in force, dealing with the punishment and prevention of corruption in Thailand. This newsletter, however, mainly focuses on the provisions stipulated in the Act.

3. Exceptions

Only the following property or benefits may be accepted by State Officials:

- property or other benefits from relatives as a gift in appropriate circumstances;
- property or other benefits from any person other than relatives not exceeding a value of THB 3,000;
- property or other benefits not connected to the function as State Official.

If State Officials or their family members receive property or other benefits that are not

within the allowed scope, they will be required under Art. 7 of the Notification to report such acceptance to their superior for further consideration. If it is found to be inappropriate, such property or other benefits must be returned to the grantor immediately.

4. Penalty

Individuals or companies bribing a State Official will be subject to imprisonment for up to 5 years and/or a fine of up to THB 100,000.

When violating the Submission of Bids Act, the penalty is imprisonment for a term of up to 15 years and/or a fine amounting to 50 percent of the amount representing the highest bid made between co-offenders or of the value of the contract, whichever amount is higher.

For State Officials who violated anti-corruption laws, the penalties are more severe: a fine of THB 2,000 to THB 400,000 and/or imprisonment of 5-20 years, imprisonment for life, or even the death penalty.

If the grantor is affiliated to a juristic entity (e.g. as employee, agent or authorized representative of the entity or an affiliated entity) and such violation has been committed for the benefit of the juristic entity and the juristic entity does not have proper internal regulations to control such wrongful act¹, the juristic entity is guilty and shall be subject to a fine from one-time up to two-times the damages occurred or benefits received from such wrongful act.

¹ The Office of the National Anti-Corruption Commission has published Guidelines on Appropriate Internal

Control Measures for Juristic Persons, which can be downloaded [here](#).

5. Conclusion

In case of giving property or gifts to State Officials, it is recommended to restrict such action to certain occasions and values in order to comply with the legal situation in Thailand:

- Granting property or other benefits should only be done on traditional, customary, or cultural occasions or in accordance with societal manners, such as New Year's gifts;
- However, since from a non-Thai perspective it may from time to time be difficult

if not impossible to properly define what the societal rules, the ethical basis or the appropriate circumstances require, it is recommended to comply with the maximum value of THB 3,000. Further, in order to avoid later entanglements it is advisable holding on to the respective bills.

- Finally, special caution should be given when making gifts to family members of State Officials.

*We hope that the information provided in this newsletter was helpful for you.
If you have any further questions please do not hesitate to contact us.*

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