

Newsletter No. 196 (EN)

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

August 2015

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I. Introduction

When business is done with the public sector, special caution should be given to the provisions that govern the acceptance of gifts and other benefits by officials.

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.

II. Legal Framework

Thailand's legal framework concerning counter-corruption measures is largely based on

➤ 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 exercise or to not exercise his functions to the

advantage or disadvantage of any person (Sec. 143 Criminal Code);

- 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 (Sec. 144 Criminal Code);
- 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 (Sec. 148 Criminal Code);
- Wrongfully demanding, accepting or agreeing to accept any property or any other benefit in return for exercising or not exercising any functions, whether or not such exercise or non-exercise is itself wrongful (Sec. 149 Criminal Code);
- 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 (Sec. 167 Criminal Code).

➤ 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 Act Supplementing the Constitution relating to Prevention and Suppression of Corruption B.E. 2542 (1999) (the “**Counter-Corruption Act**”): The Counter-Corruption Act mainly regulates the prevention and detection of corrupt acts. Among other things, the provisions under the Counter-Corruption Act cover 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 Counter-Corruption Act has been specified by:

- The Regulation of the Office of the Prime Minister on Giving or Accepting of Gifts by Government Officials B.E. 2544 (2001) (the “**Regulation**”); and
- 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) (the “**Notification**”).

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 consequences with regards to the Counter-Corruption Act.

1. The Counter-Corruption Act

The Counter-Corruption Act applies with regards 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 2 years ago (“**State Official**”), including the following persons:

- (i) Holders of political positions;
- (ii) Government officials;
- (iii) Local officials;

- (iv) Officials or persons performing duties in a state enterprise or a state agency;
- (v) Local administrators and members of a local assembly who are not holders of political positions;
- (vi) Officials under the law on local administration;
- (vii) Members of a board, commission, committee or of a sub-committee, employees of a government agency, state enterprise or state agency; and
- (viii) 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.

2. The Regulation

Apart from the persons prescribed in the Counter-Corruption Act, the Regulation also applies to “*family members*” of State Officials. Under the Regulation

a “*family member*” is a spouse, child, father, mother, brother or sister of full or half blood of the State Official.

3. The Notification

The Notification was introduced on the basis of Sec. 103 of the Counter-Corruption Act. The Notification shall also apply to every State Official under the Counter-Corruption Act.

III. Restrictions and Exceptions

The Counter-Corruption Act lays out the following restrictions and exceptions:

1. Restrictions

According to Sec. 103 of the Counter-Corruption Act, State Officials are prohibited from accepting property or any other

benefits from any person, unless such property or other benefit is given on a *legitimate and ethical basis* as prescribed by the National Anti-Corruption Commission (“**NACC**”).

Moreover, according to Art. 7 of the Regulation, State Officials are also prohibited to allow or connive their family members accepting gifts from persons who have a business relationship with government officials, or benefits for the performance of the State Official's duty unless such gift or benefit complies with societal conventions and does not exceed the amount as prescribed by the NACC (*see below*). Under the Regulation,

- a “*family member*” is a spouse, child, father, mother, brother or sister of full or half blood of the State Official; and
- “*gifts*” include money, property, or other benefits that have been given, including any prize, gratuity, subvention, reward, discount, service or entertainment, as well as any advance payment or reimbursement for transportation, travelling, accommodation, or food expenses, which is not granted to the general public.

2. Exceptions

However, the Counter-Corruption Act and the Regulation have both prescribed exceptions for State Officials to accept gifts, property, or other benefits if they are in compliance with the NACC's prescription.

According to Art. 5 of the Notification, State Officials are allowed to receive property or other benefits *on an ethical basis* and only in a limited amount. According to Art. 5 of the Notification,

- “*other benefits*” means anything that has value such as discount, acceptance of entertainment, service, training, or other similar things; and

- “*on an ethical basis*” means receiving on a traditional, customary, or cultural occasion or on an occasion where the societal manners require such giving.

The property or benefits allowed to be accepted by State Officials include the following:

- ***Acceptance of property or other benefits from relatives as a gift in appropriate circumstances.***

“*Relatives*” under the Notification includes ancestors, descendants, brothers or sisters of full or half blood, uncles, aunts, spouses, ancestors or descendants of spouses, adopted children, or adoptive parents.

The term “*appropriate circumstances*” is not clearly defined. However, in our opinion, it shall be considered with regards to the respective official’s professional or social position.

- ***Acceptance of property or other benefits from any person other than relatives not exceeding a value of THB 3,000***
- ***Acceptance of 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 is 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.

IV. Penalty

In case of a violation of Sec. 103 of the Counter-Corruption Act, the State Official shall be subjected to imprisonment for up to

3 years or to a fine of up to THB 60,000, or both.

According to Sec. 123/5 of the Counter-Corruption Act, the grantor shall be imprisoned for up to 5 years or fined for up to THB 100,000, or both if it is found that the grantor’s intention to induce the State Official is to perform, not perform or to delay the execution of any act contrary to the State Official’s duty.

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 act, the juristic entity is guilty under Sec. 123/5 of the Counter-Corruption Act and shall be subjected to a fine from one-time up to two-times the damages occurred or benefits received from such wrongful act (*corporate liability*).

Finally, it is worth mentioning that the new amendment to the Counter-Corruption Act (Sec. 123/2), which became effective on 10 July 2015, State Officials (domestic or international) who violate the law by demanding, accepting or agreeing to accept property or other benefits for themselves or others in return for (not) exercising their functions, whether or not such exercise or non-exercise is itself wrongful, may face the death penalty - depending on the severity of the offence. This is an attempt by the current military government to eliminate corruption.

V. 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, cus-

tomary, 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 NACC's 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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