

to be corrupt," says Assistant Professor Anucha Chintakanond, a former chartered director of the National Institute of Development Administration who serves on the Committee for the Evaluation and Audit of the NACC.

"We have graduates working in the bureaucracy on 9,000 baht a month. They have families to raise on that so the temptations to take a bribe are immense."

Ajam Anucha also blames the patronage system.

"When you are corrupt, you need protection and so you look for a patron," he says. "If the patron is strong enough, ordinary police and politicians don't dare to challenge you. It becomes entrenched and so it becomes difficult for people to get justice in the system."

People often start out with good ideas and intentions, he says, but are drawn into corrupt practices as they struggle to survive.

"I am an economist so I understand very well that we need a better distribution of income," Ajam Anucha says.

"I don't see how corruption can be significantly reduced unless the civil service salary structure is improved."

Ajam Anucha says that the NACC is working on how the agency can act more efficiently and is even considering the use of technology such as lie detectors in the fight against corruption.

"That is all very well and good," he says. "But when there is a phenomenon you want to correct, you must study why the phenomenon exists so you know how to apply both the stick and the carrot."

"We must understand why people behave as they do and remove the incentives to behave that way."

"Punishment alone will never work." ■

**Additional reporting by
Samantha Page**

SMALLER FISH TO FRY

US prosecutors may target SMEs over corruption, Samantha Page is told



Lawyers warn that the long arm of United States anti-corruption laws could start reaching out for smaller businesses than it has in the past, thanks to a big increase in funding available to prosecutors.

"I think you're going to start to see smaller players get targeted and that's largely a product of the resources available to the Department of Justice and the Securities and Exchange Commission (SEC)," says Michael Ramirez, a consultant with law firm Tilleke and Gibbons.

American companies are regulated wherever they operate in the world by the Foreign Corrupt Practices Act. The law hasn't changed since 1998, but the number of prosecutions has increased sharply in recent years.

The SEC, the agency responsible for enforcing the FCPA, filed a record 735 enforcement actions in the 2011 financial year to 30 September.

And the agency's coffers are full. The SEC's budget for FY2012 is set for US\$1.19 billion, triple 2001's budget.

The massive increase in funding gives teeth to recent Department of Justice statements that it will

demand prison time. It also means the smaller fish, which may until now have escaped investigation are more likely to be caught. Most large companies have developed robust compliance departments, but small and medium-sized businesses may not be so well-prepared.

"A small business isn't going to be that knowledgeable about the FCPA and can't afford an FCPA lawyer," says Doug Mancill, a lawyer with Price Sanond Prabhas and Wynne in Bangkok.

The American Chamber of Commerce is currently looking into running seminars for small businesses to help explain FCPA regulations, Mancill says.

He connects the rise in FCPA cases, from just four in 1998 to 34 in 2010, to American concerns over terrorism. There is a correlation between states with high corruption levels and suspected levels of terrorism activity, he says.

Since the US toughened up its laws in 1998, seven FCPA cases have been filed with the Department of Justice involving American and US-traded companies in Thailand. Most notable was a 2009 case in which a California couple allegedly paid US\$1.8 million over a five-year period to the then-governor of the

Tourism Authority of Thailand.

Gerald and Patricia Green were sentenced to six months each in prison and ordered to pay US\$250,000 in restitution. Juthamas Siriwan, the former TAT governor, and her daughter Jittisopa are challenging the FCPA's reach to non-US citizens.

Privately many American executives complain about their country's leading role in the fight against graft. They say it creates an uneven playing field, with other comparable companies either having no similar legislation or laws that are half-heartedly enforced.

Others disagree.

"While it certainly provides justifiable restraints on American companies that might not exist for other nations, it also frees US companies from any concern they will be approached to be part of any corruption," American lawyer John Fotiadis says.

In any case the "uneven playing field" argument maybe changing with a tougher stance from many competitor countries to the US.

The UK Bribery Act hit the books in July 2010 and both Germany and Japan have tightened their laws.

But a generally "law-abiding" firm can still be caught in the net if it does not have a robust enough anti-bribery policy, particularly in the field of mergers and acquisitions.

The UK warns in particular of the risk to a firm that acquires new staff following a merger or acquisition and that joint venture partners are also likely to fall within the meaning of "associated persons".

This means that due diligence programmes have never been more important. ■

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