

## Strengthening Anti-Corruption Measures and the Public Procurement Process in Thailand

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Thailand's ratification of the United Nations Convention Against Corruption (UNCAC) is further evidence the Kingdom intends to ramp up its anti-corruption measures in a bid to facilitate the prosecution of offenders and increase transparency in its public procurement process.

The ratification of the UNCAC on March 31, 2011, seven years after Thailand's signing made it the 149th State Party of the UNCAC, has significantly led to the first amendment of the Organic Act on Counter-Corruption (OACC), which is the core anti-corruption legislation, in 10 years.

The UNCAC requires that national legislation be amended to comply with its principles, and the Thai government has moved towards implementing the required changes.

One significant amendment has been to allow the National Anti-Corruption Commission (NACC), one of the country's anti-corruption agencies, to set up conditions under which contractors of large public projects must provide detailed income and expenditure accounts, and submit such information to the Department of Revenue for checking, thereby raising the transparency levels of what had previously been opaque procurement contracts.

Thailand is renowned for its lack of transparency with respect to procurement contracts with government agencies, and numerous cases have been exposed over the past decade highlighting such fallibilities in its public procurement system. For example, the scandal surrounding the Suvarnabhumi Airport scanners is just one notable case. In most instances, these scandals involved foreign companies or individuals, who were required to face charges in their home countries.

However, due to the involvement of numerous agencies, and the lack of enforcement in general, most alleged corrupt public servants in Thailand are still under investigation, and the foreign companies or individuals responsible for handing out the bribes have yet to face any legal action in Thailand.

An NACC study revealed that only 15 cases of allegedly corrupt activities were brought to court in Thailand between 2000 and 2011.

The most recent scandals, which were widely disclosed by Thai news organizations, involved a burglary at the house of the former Permanent Secretary of the Ministry of Transport, and the flood aid package scandal.

The first case involved the former Permanent Secretary of the Ministry of Transport, Supoth Sablom, who claimed on November 11, 2011, that his home had been burgled. Two of the burglars who were arrested claimed to have found THB 1 billion (around USD 34 million) in his house, although they had only been able to make off with THB 200 million (around USD 6.8 million).

Sablom denied these claims, and the case remains under investigation. The NACC has frozen THB 18 million recovered from the burglars, and stated that connections had been found linking the money and some project contractors from the Ministry of Transport.

As of today, however, the names of the foreign companies involved have still not been disclosed to the press.

With regard to the flood package scandal in November 2011, the Department of Special Investigation (equivalent to the FBI) claimed several officials from the Department of Disaster Prevention and Mitigation were involved in a number of suspicious procurements of aid packages from two private limited companies. This case has been forwarded to the NACC, and it joins the list of cases still pending further investigation.

The two above cases do not fall under the transparency requirements laid out by two recently adopted notifications that apply only to government contracts executed from January 1, 2012:

- The Notification re: Rules and Procedures Concerning the Preparation and Disclosure of Revenue and Expense Accounts of Projects in which Individuals or Juristic Entities Are Contractual Parties with Government Agencies.
- The Notification re: Filing of Revenue and Expenditure Statements of Projects Owned by Individuals or Juristic Entities who are State Agencies' Contractual Parties.

Under these notifications, private sector entities (including individuals, Thai companies, and foreign companies with a local presence) that enter into procurement contracts with government agencies (including state enterprises) are required to prepare, and electronically submit, annual revenue and expense accounts to the Revenue Department, as well as their Corporate Income Tax Returns for juristic entities.

The introduction of a relatively low threshold for reporting means that all government procurement contracts with a minimum value of THB 500,000 (around USD 17,050) will be subject to the disclosure requirement. Businesses will also be required to submit one revenue and expense account for each contract, and must retain supporting documents for at least five years.

The notifications also state that government agencies should set a condition requiring businesses that enter into procurement contracts to receive and make payment via a current account, with the exception of payments below THB 30,000 (around USD 1,020), which can be made in cash.

However, it remains questionable whether these new transparency requirements are sufficient to reduce corrupt procurement contract-related activities in Thailand, as the proliferation of laws to consider, and numerous enforcement agencies, render it difficult for forceful actions to be taken.

This summary is designed to provide general information only and is not offered as specific advice on any particular matter.

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