

## Lex Mundi Global Anti-Corruption Compliance Guide

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### Thailand

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Submitted by [Tilleke & Gibbins, the Lex Mundi member firm for Thailand](#) / 27 Nov 2018

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This overview is provided by [Tilleke & Gibbins](#), the Lex Mundi member firm for Thailand.

Contributors: [John Frangos](#), [Chitchai Punsan](#)

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<p>What is the key anti-bribery and corruption legislation in your jurisdiction?</p>	<p>Thailand’s primary anti-bribery and corruption laws include the following:</p> <ul style="list-style-type: none"> <li>• The <i>Act Supplementing the Constitution Relating to the Prevention and Suppression of Corruption B.E. 2561 (2018)</i> (the “<b>Anti-Corruption Law</b>”);</li> <li>• The <i>Penal Code</i>;</li> <li>• The <i>Act on Offenses Relating to the Submission of Bids to State Agencies B.E. 2542 (1999)</i> (the “<b>Submission of Bids Act</b>”);</li> <li>• The <i>Notification of the NCC Commission Concerning the Provision of the Acceptance of Property or any other Benefit on an Ethical Basis by State Officials B.E. 2543 (2000)</i> (the “<b>Gift Notification</b>”);</li> <li>• The <i>Act on Offenses Relating to Employees in State Organizations or State Agencies B.E. 2502 (1959)</i>;</li> <li>• The <i>Executive Measures in Anti-Corruption Act B.E. 2551 (2008)</i>;</li> <li>• The <i>Licensing Facilitation Act B.E. 2558 (2015)</i>; and</li> <li>• The <i>Establishment of Anti-Corruption Court B.E. 2559 (2016)</i>.</li> </ul>
<p>Has there been a specific anti-bribery and corruption law enacted in your jurisdiction in the last ten years?</p>	<p>Yes. The <b>Anti-Corruption Law</b> was enacted in 2018. The <b>Anti-Corruption Law</b> repealed and replaced the <i>1999 Organic Act on Counter Corruption</i> and its various amendments.</p>
<p>Is a bribe payment to domestic government officials prohibited by the legislation?</p>	<p>Yes. The <b>Anti-Corruption Law</b> criminalizes the giving, offering, or agreement to give bribe payments to a domestic government official. “Bribe-payment” is not expressly defined, but the <b>Anti-Corruption Law</b> describes such wrongful payments as “property or any other benefit to a state official...in order to induce such person to do or not to do any act, or to delay any act, which is contrary to his/her functions.”</p> <p>Thai law also broadly defines government officials (called “State Officials”) as individuals holding a political position, government employees, or employees working for a state enterprise or agency, and members of a board or commission of these state agencies or enterprises.</p>
<p>Is a bribe payment to foreign government officials prohibited by the legislation?</p>	<p>Yes. In addition to domestic government officials, the <b>Anti-Corruption Law</b> criminalizes the giving, offering, or agreement to give bribe payments to foreign government officials, as well as officials of workers of international organizations.</p>
<p>Is requesting or accepting a bribe prohibited by the legislation?</p>	

Yes. Government officials (as well as foreign government officials and international organization officials) who request, accept, or agrees to accept a bribe is prohibited under Thai law. Liability is limited to government officials, not “private sector” parties.

Who is subject to the legislation?

The **Anti-Corruption Law** covers private individuals; domestic legal entities; foreign legal entities operating in Thailand; domestic government officials; foreign government officials; and international organization officials.

Is there criminal liability for corporate entities who have either paid or accepted a bribe payment?

The **Anti-Corruption Law** prescribes criminal liability for corporate entities who make bribe payments. But there is no corporate criminal liability for accepting bribe payments.

Furthermore, a legal entity is criminally liable for the corrupt acts of people associated with that entity. This includes employees, agents, subsidiaries, joint venture partners, etc. “Legal entities” also include foreign organizations that are registered abroad but operate in Thailand.

What is the penalty for individuals violating the law?

Bribe receivers or solicitors defined under the law, including foreign state officials and international organization officials, can be punished with imprisonment of five to 20 years, or life imprisonment for more aggregated offenses. They can also be fined up to THB 400,000 in addition to imprisonment.

Furthermore, corruption brokers that accept property to induce a state official, foreign state official, or international organization official to commit an act, or refrain from committing an act, can be given a maximum prison term of five years, fined up to THB 100,000, or both.

Individual bribe-givers can be punished with imprisonment of up to five years, a fine of THB 100,000, or both.

Assuming corporate entities are liable for violating the legislation, what is the penalty for corporate entities violating the law?

Corporate entities that are criminally liable can be punished with a maximum fine of twice the actual damage or amount of benefits obtained. This specific penalty or corporate entities does not include the individual charges a prosecutor may levy against a director, manager, or employee for engaging in bribery or other corrupt activities.

Assuming corporate entities are liable for violating the legislation, does having a compliance program designed to prevent bribery constitute a defense?

Yes. The **Anti-Corruption Law** states that a corporate entity that “fails to implement proper internal measures” to prevent the corrupt act will be punished for violating the law. As such, having “proper internal measures” can be used as a defense to mitigate liability.

The **Anti-Corruption Law** does not state what internal measures would be acceptable to limit or exclude liability. However, the National Anti-Corruption Commission, Thailand’s anti-corruption enforcement agency, has issued a set of guidelines that it deems to be acceptable internal measures.

Assuming corporate entities are liable for violating the anticorruption law, is it possible for a corporate entity to reach a deferred prosecution agreement or leniency agreement with the enforcement authorities?

Thailand does not have any mechanism for deferred prosecution agreements. Corporate entities can request leniency from the court, but this is not subject to any type of leniency agreement. Under Thai criminal law, the corporate entity may plead guilty and cooperate to seek leniency from the court. Ultimately, however, whether to grant any such leniency is at the court’s discretion.

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