



UNODC

United Nations Office on Drugs and Crime

Country Review Report of Thailand

Review by Bahrain and Nepal of the implementation by Thailand of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2010 - 2015

Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption (hereinafter, UNCAC or the Convention) was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by Thailand of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Thailand, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between Thailand and the governmental experts from Bahrain and Nepal, by means of telephone conferences and e-mail exchanges and involving from Bahrain: Major Husain Salman Matar (Director of Anti Economic Crimes Directorate - Ministry of Interior); Captain Ismaeel Naji Ebrahim (Head of Division - Research and Investigation Directorate - Ministry of Interior); Captain Mohamed Khalid Al Absi (Head of Division - Anti Corruption Crimes Directorate / Focal Point - Ministry of Interior); Captain Mohamed Jasim Al Khedri (Head of Division - Anti Economic Crimes Directorate - Ministry of Interior); Mr. Khalil Ebrahim Sowailem (Head of Investigation - Central Bank of Bahrain); Mr. Ahmed Al Muharraqi (First Secretary - Undersecretary's Office - Ministry of Foreign Affairs), as well as Mr. Ramesh Dhakal from Nepal. The staff members from the Secretariat were Ms. Sophie Meingast and Mr. Badr El Banna.
6. A country visit, agreed to by Thailand, was conducted in Bangkok, Thailand from 19 to 22 May 2015.
7. During the on-site visit, meetings were held with representatives from both public and private sectors of Thailand, namely - the National Anti-Corruption Commission (NACC), the Department of Treaties and Legal Affairs, the Ministry of Foreign Affairs, the Office of Public Sector Anti-Corruption Commission (PACC), the Anti-Money Laundering Office (AMLO), the Department of Special Investigation, Bank of Thailand, the Securities and Exchange Commission, the Office of the Attorney General, the Royal Thai Police, the Thai Institute of Directors, the Federation of Thai Industries, the Thai Chamber of Commerce and Board of Trade of Thailand, the Thai Banker's Association, the Anti-Corruption Organization of Thailand, the Listed Companies Association, the Federation of Accounting Professions, the Association of International Banks, and the Transparency Thailand.

III. Executive summary

Thailand

1. Introduction: Overview of the legal and institutional framework of Thailand in the context of implementation of the United Nations Convention against Corruption

Thailand signed the Convention on 3 December 2003 and deposited its instrument of ratification on 1 March 2011.

Thailand's legal system follows the civil law tradition; its sources of law are the Constitution, codes, acts, royal decrees, ministerial regulations, regulations and notifications. Thailand is a dualist country.

The implementing legislation includes: the Criminal Code (CC), the Organic Act on Counter Corruption (OACC), the Anti-Money Laundering Act (AMLA), the Criminal Procedure Code (CPC), the Extradition Act (EA) and the Act on Mutual Assistance in Criminal Matters (MLA Act).

Relevant institutions in the fight against corruption include the National Anti-Corruption Commission (NACC), the Office of Public Sector Anti-Corruption Commission (PACC) and the Anti-Money Laundering Office (AMLO).

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active bribery of officials is criminalized (sections. 144, 167 CC). The term "official" is defined in section 1(16) CC as: "any person prescribed or appointed by virtue of the law to exercise a public function, whether permanent or temporary, and whether or not salary or compensation is paid". The indirect commission of the offence is covered through the instigation (sect. 84 (2) CC). If the offence is not committed following the instigation, the instigator is liable to one third of the punishment provided for the offence. Benefits for third parties are not covered. Both sections 144 and 167 CC establish the additional element of "wrongfully" discharging, omitting to discharge or delaying the performance of a duty in the office.

Passive bribery is criminalized (sects. 149, 201 CC, and sect. 6 Act on Offences Committed by Officials of State Organizations or Agencies). The authorities confirmed that the provisions were interpreted so as to cover the indirect commission of the offence.

Active and passive bribery of foreign public officials and officials of public international organizations is not criminalized.¹ An amendment to the OACC suggesting to criminalize passive bribery of foreign public officials and officials of public international organizations had been considered by the Legislative Assembly.

Active trading in influence is not criminalized. Passive trading in influence is criminalized (sect 143 CC). The indirect commission of the offence and

¹ Development after the country visit: An amendment to the OACC entered into force on 10 July 2015. Section 123/5 para.1 and 123/2 OACC as amended criminalizes active and passive bribery of foreign public officials. As the amendment had not been assented to by the King at the time of the country visit, its provisions were not analysed in detail.

the element of “supposed” influence are not covered. Section 143 CC establishes additional elements of the offence, such as inducing “by dishonest or unlawful means” or influencing with “power”; requiring the official to “discharge or omit to discharge any duty in his or her office”, and to do so “in a manner to advantage or disadvantage any person”.

No specific offences of bribery in the private sector have been established, though certain limited parts of the conduct are criminalized (sect. 215 of the Public Limited Companies Act, sect. 145 of the Financial Institutions Business Act and sect 5 Act on Offences Relating to the Submission of Bids to State Agencies (AORSBSA)).

Money-laundering, concealment (arts. 23 and 24)

Section 357 CC criminalizes the purchase and receiving of property obtained through the commission of offences listed in the section, which do not include all corruption offences. At the time of the country visit, the possession and use of property proceeds of crime was not criminalized.² All other elements of article 23 (1) of the Convention are covered in section 5 AMLA.

Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of money-laundering offences, are covered (sects. 84, 86 CC and 7-9 AMLA).

The range of predicate offences covers offences irrespective of where they occur, but does not include all corruption offences. Self-laundering is criminalized (sect. 5 AMLA).

Concealment is criminalized (sect. 357 CC) with regard to predicate offences listed. This list does not include all corruption offences.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Sections 147 and 151 to 155 CC criminalize embezzlement and misappropriation of public funds committed by certain officials, while the general provisions of sections 352 to 354 CC apply to all other public officials.

Abuse of functions is criminalized (section 157 CC and 123/1 OACC).

Illicit enrichment is not criminalized. Thailand has established an asset declaration system and can seize and forfeit property connected with unusual wealth (sects. 78, 80 and 119 OACC).

Sections 352 to 354 CC criminalize embezzlement in the private sector.

Obstruction of justice (art. 25)

While there is no specific offence of obstruction of justice, section 84 CC read together with relevant sections of the CC (sects. 174, 177, 179 and 184) can cover parts of the offence.

The use of physical force, threats or intimidation to interfere with the exercise of official duties by officials is criminalized (sect. 139 CC).

Liability of legal persons (art. 26)

² Development after the country visit: Section 5(3) AMLA was amended to include the acquisition, possession or use of property, knowing, at the time of acquisition, possession or use of such property that it is proceeds of crime.

Criminal liability of legal persons is only established for money-laundering offences and specific offences under the AORSBSA. It is without prejudice to the criminal liability of natural persons (sects. 61 and 62 AMLA, sects. 5 and 8 AORSBSA). Fines for legal persons are limited to a maximum of 1 million Baht, less than USD 30.000 (sect. 61 AMLA), or fifty percent of the highest bid price submitted by the joint offenders or of the value of the contract that has been entered into with the State agency, whichever is higher (sects. 5 and 8 AORSBSA)³.

Participation and attempt (art. 27)

Participation (sects. 83, 84 and 86 CC, sect. 7 AMLA) and attempt (sect. 80 CC, 8 AMLA) are criminalized. The mere preparation of an offence is not criminalized.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Thailand has a range of sanctions available for corruption offences. For passive bribery of national public officials, the death penalty can be imposed, even though Thailand clarified that this had never happened.

Members of Parliament are granted immunity during the parliamentary sessions; cases involving them cannot be adjudicated during parliamentary sessions unless approval by parliament is given.

Thailand applies the principle of opportunity. In corruption cases, the NACC can prosecute even if the Attorney-General does not agree.

Thailand can provisionally detain alleged offenders or grant them bail (sects. 108, 108/1 CPC).

Thailand does not take the gravity of the offence into account when considering early release or parole.

Public officials accused of corruption can be suspended at the request of the NACC (sect. 90 OACC) or be provisionally discharged (Section 101 Civil Service Act (CSA)); their reassignment is possible on administrative basis; their removal is possible (sects. 97, 110 (6) CSA). Persons who have been imprisoned by final sentence for a criminal offence are prohibited from entering the civil service (sect. 36 (7)) CSA).

A similar procedure is established for persons holding office in a State-owned enterprise (Standard Qualification for Board Members and Officers of State Enterprise Act, sect. 4 to 11).

The authorities confirmed that Cabinet resolution no. No Wo 41/2497 was interpreted in a way to allow parallel disciplinary action and criminal proceedings.

Thailand does not have a dedicated reintegration programme. Occupational training programmes are organized in prisons and detention facilities.

Sentences of collaborators with justice cannot be mitigated. The possibility of not prosecuting a collaborator exists, but is limited to cases involving state officials who are being prosecuted in another case (sect. 103/6 OACC).

Collaborators with justice can be protected (sects. 103/2 and 103/6 OACC).

³ Development after the country visit: Section 123/5 para. 2 OACC as amended provides for fines against legal persons in the case of active bribery of public officials if the legal person does not have appropriate internal control measures to prevent the commission of such an offence.

Thailand has not concluded agreements on the treatment of collaborators at the international level.

Protection of witnesses and reporting persons (arts. 32 and 33)

The Witness Protection Act provides for protection measures (sect. 10). Most, but not all corruption offences can give rise to protection under the Witness Protection Act (see list in sect. 8). Sections 103/2 and 103/5 OACC establish that the NACC shall notify the relevant agencies to provide protection measures in appropriate cases. Thailand can facilitate domestic relocation, but has not concluded agreements and arrangements for the international relocation of witnesses. The views and concerns of victims acting as witnesses can be presented and considered in criminal proceedings.

The Act on Measures Taken by the Executives in Preventing and Suppression of Corruption foresees criminal protection measures for the physical protection of reporting persons (section 53); they can also benefit from witness protection measures (sects. 103/2 and 103/5 OACC).

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Proceeds of crime and property used or possessed for use in the commission of an offence can be confiscated (sect. 33 CC). Property connected with the commission of a predicate or money-laundering offence, and property used or possessed to be used in the commission of a predicate offence, can be confiscated (sect. 51 AMLA). Civil forfeiture of property connected with unusual wealth is possible (sects. 78 to 83 OACC)⁴.

Temporary seizure (sect. 132 CPC) and freezing of property of an alleged culprit connected with unusual wealth (sect. 78 OACC) and of property believed to be connected with the commission of the offence is possible (sect. 48 AMLA).

Each institution is responsible for the management of property seized and frozen in the course of its investigations.

The value of property representing unusual wealth can be forfeited (sect. 83 OACC). Section 3 AMLA defines “property connected with the commission of an offence”; it is immaterial whether the property was distributed, disposed of, transferred or converted.

The OACC allows for the forfeiture of proceeds of unusual wealth that have been transformed or converted into other property or intermingled with property acquired from legitimate sources (sect. 83). The AMLA allows only for the confiscation of proceeds of crime that have been transformed or converted (sect. 3), while the CC does not contain such provisions.

Section 3 para.4 AMLA allows for the confiscation of income or other benefits derived from the proceeds of predicate offences or money-laundering, even if they have been transformed or converted into other property, including income or benefits derived from property with which proceeds of crime have been intermingled. The CC does not permit the confiscation of income or benefits derived from proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds have been intermingled.

⁴ Development after the country visit: The amended OACC (section 123/6-123/8) allows for value-based confiscation and for the freezing, seizure and confiscation of property or benefits acquired by sale, transfer or other disposal of the property and any other benefits derived from such property or benefits.

Section 81 OACC establishes a rebuttable presumption that property ordered to be devolved to the State results from unusual wealth of the alleged culprit.

Sections 82 OACC, 50 and 53 AMLA, and 34 and 36 CC safeguard the rights of bona fide third parties in seizure and confiscation.

Bank secrecy does not apply to disclosure made for the purposes of investigation or trial (sect. 154 Financial Institution Business Act); the Civil Court can grant an order to access bank accounts in money-laundering cases (art. 46 AMLA).

Statute of limitations; criminal record (arts. 29 and 41)

Section 95 CC establishes the general statute of limitations, determining that corruption offences prescribe within five to 20 years. Sections 74/1, 75 and 84 OACC establish different statutes of limitations for determined offences⁵.

Thailand cannot take foreign criminal convictions into consideration in criminal proceedings.

Jurisdiction (art. 42)

Thailand has established jurisdiction over most circumstances referred to in article 42. Jurisdiction over corruption offences committed by or against nationals and the State has been established for certain offences; in cases other than money-laundering, a request for the punishment of the offender is required (sect. 8 CC, sect 6 AMLA).

Thailand has not established jurisdiction over corruption offences when the alleged offender is present in its territory and it does not extradite him solely because he is one of its nationals, or when it does not extradite the alleged offender for other reasons in cases other than money-laundering (sect. 6(3) AMLA).

While section 31 MLA Act does not clearly establish an obligation to consult with other States if they are acting in respect of an offence over which Thailand is also exercising its jurisdiction, it allows for Thailand's consideration of initiating proceedings in such cases.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

An act is void if its object is expressly prohibited by law, impossible, or contrary to public order or good morals (sect. 150, Civil and Commercial Code (CCC)).

A person who unlawfully injures the life, body, health, liberty, property or any right of another person is bound to make compensation therefore (section 420 CCC). The AORSBSA obliges offenders to indemnify the State agency if it incurs additional costs in connection with fraudulently obtained contracts (sect. 8).

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The NACC and the PACC are the specialized agencies in the fight against corruption. The NACC has prosecutorial power (OACC section 97) and its independence is guaranteed by the Constitution (sect. 251). The PACC was established through executive measures in the OACC. Specialized anti-

⁵ Development after the country visit: Section 74/1 OACC as amended provides that, if an alleged culprit or defendant absconds, the period of absence shall not count towards the prescription period.

corruption prosecutors work in a Special Division on Corruption Cases established at the Office of the Attorney-General (OAG)⁶.

The NACC can order officials to perform all acts necessary for the performance of its duties, and summon persons, documents or evidence from any person (sect. 25 OACC). The Thailand Anti-Corruption Coordination Center (TACC) serves as national focal unit for inter-agency coordination.

Suspicious transactions have to be reported (sects. 13 and 16 AMLA). Thailand provides anti-corruption training to private sector entities and conducts outreach activities. Thailand encourages citizens to report corrupt acts through a variety of measures, including campaigns, training courses, and youth camps.

2.2. Successes and good practices

- Thailand has created a number of specialized institutions tasked with fighting corruption.
- The independence of NACC, which has investigation and prosecution powers, is anchored in the Constitution.
- Thailand has established specialized anti-corruption prosecutors at OAG.
- TACC serves as platform for inter-agency collaboration. It facilitates information exchange in particular on transnational corruption and strengthens the coordination between public agencies in their implementation of the Convention.
- Thailand has developed creative ways of involving youth in the fight against corruption.
- Section 6 AMLA establishes extraterritorial jurisdiction over money-laundering offences if one of the co-offenders is a Thai national or has residence in Thailand.

2.3. Challenges in implementation

It is recommended that Thailand:

- amend its legislation to ensure that the indirect commission of active bribery is subject to the same punishment as the direct commission of the offence; cover the promise, offering or giving of an undue advantage to third parties; as well as to remove the additional element of “wrongfully” discharging, omitting to discharge or delaying the performance of a duty in the office (art. 15 (a));
- Ensure that indirect passive bribery continues to be criminalized. Should the judiciary not interpret the law accordingly in future cases, legislative clarification may be required (art. 15 (b));
- criminalize active transnational bribery (art. 16, para. 1);
- establish a general offence of embezzlement and misappropriation of property by a public official (art. 17);
- consider criminalizing active trading in influence; and amending its passive trading in influence offence by removing the additional elements of the offence, covering the indirect commission of the

⁶ Development after the country visit: The specialized Department of Corruption Litigation has been established.

offence, and the solicitation or acceptance of an undue benefit for the official or other person to abuse his or her supposed influence (art. 18 (a), (b));

- consider criminalizing illicit enrichment and establishing specific offences of active and passive bribery in the private sector (arts. 20, 21);
- criminalize the possession or use of property, knowing, at the time of receipt, that such property is proceeds of crime; continue efforts to amend the legislation in this regard; and criminalize the acquisition of such property for all corruption offences (art. 23, subpara. 1 (b) (i));⁷
- apply its money-laundering offences to all corruption offences; provide copies of its anti-money-laundering laws to the Secretary-General of the United Nations (art. 23, subparas. 2 (a), (b), (d));
- consider extending the list of predicate offences for concealment to include all corruption offences (art. 24);
- establish a specific offence of obstruction of justice (art. 25 (a));
- establish the criminal, civil or administrative liability of legal persons for participation in all corruption offences (beyond money-laundering; art. 26, paras. 1 and 2); assess the sanctions available for legal persons in order to ensure that they are effective, proportionate and dissuasive (art. 26, para. 4);
- Thailand may wish to criminalize the preparation for corruption offences (art. 27, para. 3);
- amend its legislation to suspend the statute of limitations also in cases in which the alleged offender has not yet been prosecuted and brought to court before he escapes (art. 29);
- assess whether amending its legislation would lead to more proportionate sanctions (art. 30, para. 1);
- take into account the gravity of the offences concerned when considering early release or parole (art. 30, para. 5);
- strengthen measures for the reintegration of offenders (art. 30, para. 10);
- strengthen administration of frozen, seized or confiscated property (art. 31, para. 3);
- establish the conviction-based confiscation of proceeds of crime that have been transformed or converted into other property in cases other than confiscation under the AMLA; and the confiscation of proceeds of crime that have been intermingled with property acquired from legitimate sources in cases other than forfeiture under the OACC (art. 31, paras. 4 and 5);
- establish, under the Criminal Code, the confiscation of income or benefits derived from proceeds of crime, even if they have been transformed or converted, or from property with which such proceeds have been intermingled (art. 31, para. 6);

⁷ Development after the country visit: Section 5(3) AMLA was amended to include the acquisition, possession or use of property, knowing, at the time of acquisition, possession or use of such property that it is proceeds of crime.

- Thailand may wish to establish rebuttable presumptions also in proceedings other than forfeiture under the OACC (art. 31, para. 8);
- strengthen witness protection measures, consider concluding agreements for international relocation, and enable the views and concerns of victims to be presented also when a victim does not act as witness (art. 32, paras. 1, 3, 5);
- consider strengthening measures to protect reporting persons (art. 33);
- strengthen measures to address the consequences of corruption (art. 34);
- take further measures to encourage offenders to collaborate with justice; and consider mitigating punishment of collaborators with justice in corruption cases (art. 37, paras. 1 and 2);
- consider granting immunity from prosecution to collaborators with justice also in cases not involving state officials, or when state officials are not being prosecuted (art. 37, para. 3);
- consider concluding agreements concerning collaborators with justice at the international level (art. 37, para. 5);
- further strengthen cooperation between its public authorities and its authorities responsible for investigating and prosecuting criminal offences (art. 38);
- Thailand may wish to take previous convictions in another State into consideration in criminal proceedings (art. 41);
- Thailand may wish to establish its jurisdiction over all corruption offences committed by nationals or stateless persons who have their habitual residence in Thailand; against a national or against the State; without requiring a prior request for punishment (art. 42, paras 2 (a), (b) and (d)); or when the alleged offender is present in its territory and it does not extradite him solely because he is a national (art. 42, para. 3); or over corruption offences other than money-laundering when the alleged offender is present in its territory and it does not extradite him (art. 42, para. 4).
- Thailand is encouraged to continue consulting with other States parties also exercising their jurisdiction with a view to coordinating actions (art. 42, para. 5).

2.4. Technical assistance needs identified to improve implementation of the Convention

Thailand considered that assistance from UNODC would be an added impetus to seriously tackle corruption, and that the assignment of an expert to assist in the implementation of the Convention, as well as capacity-building on witness protection and criminalization and law enforcement measures, especially concerning the exchange of good practices, asset recovery and case management, would be helpful. Assistance in establishing technical expertise and tools on asset recovery, case management and financial investigations would also be considered beneficial.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Extradition is regulated by the EA of 2008 and bilateral and multilateral agreements in force. Thailand has signed several agreements and arrangements relating to extradition (including bilateral treaties with Australia, Belgium, Canada, China, Malaysia, the UK, the US and others). Thailand does not consider the Convention a legal basis for extradition.

Extradition involves both a judicial and an administrative procedure. Extradition requests from States with which Thailand has an extradition treaty should be submitted directly to the OAG (Central Authority), requests from other States should be submitted through diplomatic channels. Such requests are referred to the Criminal Court in Bangkok which decides whether the request for extradition shall be admitted or not. The sought person and the prosecutor representing the requesting State can file an appeal; the decision of the appeal Court is final.

If the request is submitted through diplomatic channels and the Ministry of Foreign Affairs considers that the request may affect international relations or that there is an obstacle to its execution, the request is referred to Cabinet before its referral to the Court (sect. 13 EA). The Cabinet may refuse the request, pursuant to the opinion of the Ministry of Foreign Affairs. If the Court decides not to admit the request, the Cabinet cannot decide otherwise.

Extradition may take place on the basis of reciprocity and irrespective of the existence of an extradition treaty, provided the conditions of the Extradition Act are met. Section 7 EA makes extradition conditional on dual criminality and a minimum term of one year imprisonment. Extradition for an offence which does not satisfy the minimum term of imprisonment may be granted if the offence relates to the offence for which the extradition has been granted. Offences established in accordance with the Convention are punishable by at least one year imprisonment, and are thus extraditable.

Thailand does not consider corruption offences to be political offences and grounds for refusal do not include the rejection of requests because the offence relates to fiscal matters (Section 9 EA).

Except in cases where the person gives consents to being extradited, Thailand has not taken measures to expedite extradition procedures and to simplify evidentiary requirements relating thereto. Thailand may extradite its nationals (section 12 EA). The principle *aut dedere aut judicare* can be applied at the discretion of the OAG (Section 25 EA).

A person sought for extradition can be detained (section 15 EA). Guarantees of fair treatment are provided in the Constitution (art. 40) and the EA (arts. 18 and 19).

Refusal on the grounds of the discriminatory purpose of the request is provided for in bilateral treaties (extradition treaties with Cambodia, China, South Korea, etc.) but not in the EA.

The legislation does not provide for the enforcement of foreign penal judgments.

According to the authorities, consultations before refusing extradition are conducted as a matter of practice (Sect. 14 EA).

Thailand has signed 35 bilateral agreements on the transfer of sentenced persons.

The legislation does not provide for the transfer of criminal proceedings.

Mutual legal assistance (art. 46)

Mutual legal assistance (MLA) is mainly regulated by the MLA Act of 1992 and bilateral and multilateral agreements in force. Thailand has signed several agreements relating to MLA (including bilateral treaties with Australia, Belgium, Canada, China, France, Malaysia, Norway, the UK, the US and others).

MLA procedures are detailed in the Regulation of the Central Authority on Providing and seeking Assistance in Criminal Matters of 1994. Requests from States with which Thailand has an MLA treaty should be submitted directly to the OAG (Central Authority), requests from other States through diplomatic channels.

After verifying that the request is acceptable, the Central Authority transmits the request to the competent authorities for execution. The decision of the Central Authority on the request is final, unless altered by the Prime Minister.

Thailand accepts requests in Thai and English and has designated the OAG as Central Authority for MLA (arts. 5 and 6 MLA Act). The Secretary-General of the United Nations has not been notified in this regard.

Thailand does not accept oral MLA requests nor requests transmitted through INTERPOL. In practice, Thailand provides assistance through informal channels of communication.

MLA may be provided on the basis of reciprocity and without a treaty.

Thailand does not provide MLA in the absence of dual criminality, even when the requested assistance does not involve coercive action, unless a treaty provides otherwise (i.e. the treaties with France and the US). The same range of measures and procedures available in domestic criminal proceedings are also available for MLA.

According to Section 34 MLA Act (referring to the CPC and the CC), forfeited property becomes the property of the State. Thus, even though Thailand can provide MLA in accordance with Article 46, the authorities considered that the return of those assets would be problematic. Thailand is amending its laws to comply with Article 46 Subparagraph 3 (k) of the Convention⁸.

MLA requests regarding natural and legal persons are treated equally.

While there is no legislation in place to this effect, Thailand has spontaneously transmitted information to other States through informal cooperation but not in the context of MLA.

Chapter 6 MLA Act regulates the transfer and receiving of persons in Custody for Testimonial Purposes.

Articles (4) to (13) of the Rules of the Chief Justice on the hearing of witnesses in a criminal case by way of video conference (2013) regulate the use of videoconference; Thailand has previous experience in this area with regard to non-corruption related cases.

⁸ Development after the country visit: An amendment to MLA Act entered into force on 22 April 2016.

The Act addresses the return of assets to the country of origin in section 35/2.

Bank secrecy and the fact that an offence also involves fiscal matters are not recognized as a ground for refusing MLA.

According to the authorities, Thailand would comply with a request for confidentiality from a requesting State, despite the lack of relevant provision. Several bilateral extradition treaties provide for the confidentiality of information. The authorities confirmed that the OAG would inform relevant agencies to ensure confidentiality.

Section 39 MLA Act regulates the use and confidentiality of the information or evidence furnished by the requested State, but does not provide for the disclosure of exculpatory information or evidence. Consultations are held as a matter of practice before assistance is refused or postponed.

The execution of the MLA request might be postponed and reasons should be given in case of refusal (sect. 11 MLA Act).

Thailand bears the ordinary costs of executing MLA requests.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Thai law enforcement authorities cooperate through a number of mechanisms, including INTERPOL, the Global Asset Recovery Initiative supported by INTERPOL and StAR, and the Egmont Group.

Thailand has a range of tools for communication and analysis at the international level. Standard communication channels, INTERPOL's I24/7 database and the Egmont Secure Web are used.

The TACC acts as the coordinating office also internationally. It is the focal point for anti-corruption cases and recovery of assets.

Thailand considers the Convention as the basis for law enforcement cooperation and has signed several agreements on such cooperation. The FIU has also signed 48 memoranda of understanding with its counterparts and the NACC has signed 32 agreements with domestic and international organizations regarding counter corruption.

Thailand has an Act on computer-crimes and established special units for the Fight against Cyber-Crime under the Police, the Department of Special Investigation (DSI) and under the Ministry of science and technology.

Thailand has not been involved in exchanges of personnel, but has participated in joint study visits and training workshops.

Thailand does not have legislation or agreements regulating joint investigations.

The DSI can use special investigative techniques (sects. 23-27 of the Special Investigation Act).

3.2. Successes and good practices

- Thailand can grant extradition in the absence of a treaty (art. 44, para. 5).
- MLA requests and extradition requests from States which have a bilateral agreement with Thailand can be directly addressed to OAG.
- The requirement of dual criminality is interpreted broadly to facilitate cooperation.

- Thai law enforcement authorities are proactively seeking to conclude further agreements on the sharing of intelligence and information, and are actively using a number of international cooperation mechanisms.

3.3. Challenges in implementation

With regard to international cooperation, it is recommended that Thailand:

- Thailand may wish to grant the extradition for offences that are not punishable under its own domestic law (art. 44, para. 2);
- endeavour to expedite extradition procedures and simplify evidentiary requirements relating thereto (art. 44, para. 9);
- review its legislation to make mandatory the principle *aut dedere aut judicare* (art. 44, para. 11);
- include in its legislation the discriminatory purpose of the request, among the grounds for refusing extradition (art. 44, para. 15);
- take the necessary measures to allow for the recovery of assets (art. 46, subpara. 3 (k));
- Thailand may wish to spontaneously transmit information also in the context of MLA (art. 46, para. 4);
- provide, in the absence of dual criminality, MLA that does not involve coercive action; Thailand may wish to also provide a wider scope of assistance (art. 46, para. 9);
- notify the Secretary-General of the United Nations of the central authority and acceptable languages for MLA (art. 46, paras. 13 and 14);
- Thailand may wish to accept oral requests; assess whether allowing for direct communication between central authorities outside of the scope of MLA treaties and INTERPOL would facilitate cooperation (art. 46, paras. 13 and 14);
- provide for the disclosure of exculpatory information or evidence in proceedings other than those stated in the request (art. 46, para. 19);
- for legal certainty, establish a provision ensuring the confidentiality of incoming MLA requests (art. 46, para. 20);
- Although consultations are held as a matter of practice before assistance is refused or postponed, it is recommended that Thailand specify the matter in its domestic law or procedure (art. 46, para. 26);
- consider establishing a procedural framework for the transfer of criminal proceedings (art. 47);
- Thailand is encouraged to strengthen law enforcement cooperation, including through the exchange of personnel (art. 48, para. 1 (e));
- consider concluding agreements or arrangements to allow for the establishment of joint investigative bodies (art. 49);
- for legal certainty, review its legislation to explicitly allow the use of special investigative techniques in corruption cases, and establish the admissibility of evidence derived therefrom. Thailand may wish to include the international use of special investigative techniques in such reforms (art. 50)

3.4. Technical assistance needs identified to improve implementation of the Convention

Thailand indicated that the following forms of technical assistance would assist in the implementation of article 50:

- Summary of good practices/lessons learned;
- Capacity-building programmes for authorities responsible for designing and managing the use of special investigative techniques;
- Model agreements/arrangements;
- Capacity-building programmes for authorities responsible for international cooperation in criminal/investigative matters.

IV. Implementation of the Convention

A. Ratification of the Convention

8. Thailand signed the Convention on 9 December 2003 and ratified it on 1 March 2011.
9. Thailand made the following reservation to the Convention:

Reservation :

“..., in accordance with paragraph 3 of Article 66 of the Convention, the Kingdom of Thailand does not consider itself bound by paragraph 2 of the same Article.”

10. The relationship between national and international law is dualistic. Treaties that require implementing legislation must be approved by parliament in accordance with Section 190 of the 2007 Constitution, the principle which has been carried forth to Section 23 of the Interim Constitution of 2014. The Convention is a treaty that requires implementing legislation for a number of the provisions; therefore, without corresponding Thai laws, such provisions cannot be invoked in Thai Courts.

B. Legal, political and institutional system of Thailand

11. Thailand's legal system follows the civil law tradition; its sources of law are the Constitution, codes, acts, royal decrees, ministerial regulations, regulations and notifications. Thailand is a dualist country. The interim Constitution carries forth the principles of Thailand as a Constitutional Democracy with the King as the Head of State. The rights and liberties that were stipulated in the 2007 Constitution are guaranteed and recognized. All institutions responsible for enforcing the laws, namely the Court of Justice, the Administrative Court and the Constitutional Court continue to function normally, as well as independent agencies such as the Ombudsmen and NACC.
12. The implementing legislation includes, inter alia: the Criminal Code (CC), the Organic Act on Counter Corruption (OACC), the Anti-Money Laundering Act (AMLA), the Criminal Procedure Code (CPC), the Extradition Act and the Act on Mutual Assistance in Criminal Matters.
13. Relevant institutions in the fight against corruption include the National Anti-Corruption Commission (NACC), the Office of Public Sector Anti-Corruption Commission (PACC) and the Anti-Money Laundering Office (AMLO).

C. Implementation of selected articles

Chapter III. Criminalization and law enforcement

Article 15 Bribery of national public officials

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(a) Summary of information relevant to reviewing the implementation of the article

14. Thailand referred to the following texts:

CRIMINAL CODE

Section 1 (16): “Official” means any person prescribed or appointed by virtue of the law to exercise the public function, whether the position is permanent or temporary, and whether salary or compensation is paid therefor.

Section 144: Whoever grants, offers to grant, or promises to grant any property or benefit to any official, member of the National Legislative Assembly, member of the Provincial Assembly or member of the Municipal Assembly with intent to persuade such person to wrongfully discharge, omit to discharge or delay the performing of any duty in his or her office shall be liable to imprisonment for not exceeding five years or a fine of not exceeding ten thousand baht, or both.

Section 167: Whoever gives, offers to give or agrees to give any property or benefit to an official in the position of a judge, a Public Prosecutor, an official instituting a case or an inquiry official with intent to persuade such person to wrongfully discharge, omit to discharge or delay the performing of any duty in his or her office shall be liable to imprisonment for not exceeding seven years and a fine of not exceeding fourteen thousand baht.

ACT ON OFFENCES RELATING TO THE SUBMISSION OF BIDS TO STATE AGENCIES, B.E. 2542 (1999)

Section 5: Any person who gives, offers to give or undertakes to give moneys or properties or other benefits to another person for the purpose of a bid, with the object of inducing others to participate in any activity which confers a benefit to any person in the form of a right to enter into a contract with a State agency, or to induce such person to submit a higher or lower bid that is apparently inconsistent with the properties of the product, service or receivable right, or to induce such person to participate in a bid or withdrawal of a bid, shall be liable to imprisonment for a term from one year to five years and a fine of fifty percent of the highest bid price submitted by the joint offenders or of the value of the contract that has been entered into with the State agency, whichever is the higher.

Any person, who demands, receives or consents to the receipt of moneys or properties or other benefits in connection with the commission of an act under paragraph one shall be deemed as a joint offender.

Section 13: A political position holder or member of a committee or sub-committee in a State agency, not being an official in the State agency, who commits an offence under this Act or commits any act on officials in the State agency having the power or duty to approve, consider or perform any function in relation to a bid in order to induce or compel the acceptance of a bid that involves an offence under this Act, shall be deemed as having committed an offence of misfeasance in office and shall be liable to imprisonment for a term from seven years to twenty years or life imprisonment and a fine from one hundred and forty thousand baht to four hundred thousand baht.

15. Thailand provided the following case examples:

1) Supreme Court Case No. 309/2552 (2009):

Two defendants contacted Pol.Sen.Sgt.Maj.Chor to help P., et al., by changing the allegation charged to them from “having Amphetamine in possession for sell and distribution” to “having Amphetamine in possession without permission.” The defendants offered Baht 7,000 to Pol.Sen.Sgt.Maj.Chor to change the allegation. Such action is deemed as offering to grant property with an intention to persuade Pol.Sen.Sgt.Maj.Chor. to convince his supervisor to wrongfully discharge the performance of his duty. When Pol.Maj.Gen.Tor, the supervisor of Pol.Sen.Sgt.Maj.Chor, had known about the intention of the defendants from Pol.Sen.Sgt.Maj.Chor, they planned to arrest the defendants by accepting the offer and making appointment with them for the delivery of money. The defendants were arrested with the exhibit. As such, it shall be deemed that the defendants offered to grant property to Pol.Sen.Sgt.Maj.Chor and Pol.Maj.Gen.Tor with an intention to persuade them to wrongfully discharge the performance of their duty, which is an offence under the Criminal Code Section 144.

2) Supreme Court Case No. 435/2520 (1977):

A citizen offered bribe to an officer with an intention to persuade the officer to wrongfully discharge the performance of his duty. The officer accepted the bribe. The citizen violated Section 144 of the Criminal Code. The officer also violated Section 144 of the Criminal Code. The citizen shall not be considered as an aider of the officer.

(b) Observations on the implementation of the article

16. Sections 144 and 167 of the Criminal Code cover active bribery of national public officials. The authorities confirmed that the element of “property or benefit” included immaterial benefits. Section 144 of the Criminal Code does not cover the indirect commission of the offence, nor undue advantages promised, offered or given to third parties, including entities. The indirect commission of the offence is covered through the instigation (sec. 84 para. 2 of the CC). If the offence is not committed following the instigation, the instigator is liable to one third of the punishment provided for the offence. In addition, section 144 establishes the additional element of “wrongfully” discharging, omitting to discharge or delaying the performance of a duty in the office of the public official, which is not contained in the Convention.

17. Section 167 of the Criminal Code is a special law for judges, public prosecutors, officials instituting a case or inquiry officials. The authorities confirmed that “agreeing to give” would be interpreted as “promise to give”, as the Thai word for both agreeing and promising was the same. As with section 144, section 167 does not cover the indirect commission of the offence, the promise, offering or giving of an undue advantage to third parties, including entities. Section 167

also establishes the additional element of “wrongfully” discharging, omitting to discharge or delaying the performance of a duty in the office, which is not contained in the Convention.⁹

18. Section 5 of the Act on Offences relating to the Submission of Bids to State Agencies establishes a special offence of active bribery in bidding processes.
19. The Criminal Code Amendment Act (No. 22) included the definition of “official” in the Criminal Code Section 1(16) of the Criminal Code: “Official” means any person prescribed or appointed by virtue of the law to exercise a public function, whether permanent or temporary, and whether or not salary or compensation is paid. That is to say, the provision of CC is broad enough to include state enterprises. The authorities noted that there was still no precedent set by the Supreme Court in this regard as the amendment had only entered into force in February 2015. However, prior to the amendment, the Supreme Court considered all those who had been appointed under the law to exercise the official duties of the state, permanently or temporarily, to be officials, whether compensation was paid or not.
20. It is recommended that Thailand amend its legislation to ensure that the indirect commission of active bribery is subject to the same punishment as the direct commission of the offence. Thailand is further recommended to cover the promise, offering or giving of an undue advantage to third parties, including entities. It is further recommended that Thailand remove the additional element of “wrongfully” discharging, omitting to discharge or delaying the performance of a duty in the office, which is not contained in the Convention.

Article 15 Bribery of national public officials

Subparagraph (b)

⁹ Development after the country visit: An amendment to the OACC entered into force on 10 July 2015. The amendment modifies the implementation of several provisions of the Convention, section 123/5 criminalizes active bribery.

Section 123/5. Whoever grants, offers to grant, or promises to grant any property or benefit to any state official, foreign public official, agent of a public international organization with intent to persuade such person to wrongfully perform, not perform or delay the performance of any duty in his office shall be subject to an imprisonment for a term of not exceeding five years or a fine of not exceeding one hundred thousand Baht, or both.

Section 4. In this Organic Act:

"State official" means a person holding a political position, Government official or local official assuming a position or having permanent salaries, official or person performing duties in a State enterprise or a State agency, local administrator and member of a local assembly who is not a person holding a political position, official under the law on local administration and shall include a member of a Board, Commission, Committee or of a sub-committee, employee of a Government agency, State enterprise or State agency and person or group of persons exercising or entrusted to exercise the State's administrative power 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.

Thai authorities confirmed that under the Thai Criminal law, offenders who commit indirect active bribery under Sections 144 and 167, as the provisions were interpreted to cover the indirect commission of the offenses, whereby the bribe was given to a third party who was not an official, the prosecution would charge the third party as an intermediary to the crime and would be considered as an accomplice or supporter to the crime. If the court finds that third party had no intent or knowledge that the money or benefit was a bribe, he or she would not be guilty due to lack of intent or misinformed of the facts, as the case may be

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

21. Thailand referred to the following texts:

CRIMINAL CODE

Section 149: Whoever is an official, a member of the National Legislative Assembly, a member of the Provincial Assembly or a member of the Municipal Assembly demands, accepts or agrees to accept any property or benefit for himself or herself, or for any other person for discharging or omitting to discharge of any duty in his or her office, whether such act is wrongful according to his or her duty or not, shall be liable to imprisonment from five years to twenty years or imprisonment for life, and a fine of two thousand baht to forty thousand baht; or the death penalty.

Section 150: Any official discharges or omits to discharge of any duty in his or her office in return for any property or benefit that he or she has demanded, accepted or agreed to accept before he or she being appointed to such position shall be liable to imprisonment from five years to twenty years or imprisonment for life, and a fine of two thousand baht to forty thousand baht.

Section 201: Any official in the position of a judge, a Public Prosecutor, an official instituting a case or an inquiry official demands, accepts or agrees to accept any property or benefit for himself or herself, or for any other person for discharging or omitting to discharge of any duty in his or her office, whether such act is wrongful according to his or her duty or not, shall be liable to imprisonment from five years to twenty years or imprisonment for life, and a fine of two thousand baht to forty thousand baht, or the death penalty.

Section 202: Any official in the position of a judge, a Public Prosecutor, an official instituting a case or an inquiry official performs any act or omits to perform any act in his or her office in consideration of any property or any benefit that he or she has demanded, accepted or agreed to accept before he or she being appointed to such position shall be liable to imprisonment from five years to twenty years or imprisonment for life, and a fine of two thousand baht to forty thousand baht, or the death penalty.

ACT ON OFFENCES COMMITTED BY OFFICIALS OF STATES ORGANIZATIONS OR AGENCIES, B.E. 2502 (1959)

Section 3: In this Act: "Official" means a chairperson, vice chairperson or member of a board of, or a person obliged to render any duty in an organ, limited company, partnership with legal personality or agency called otherwise the whole capital or more than fifty percent of the capital of which belongs to the State, who receives monthly salaries or other remuneration provided by such organ, limited company, partnership with legal personality or agency, but not including a person already being a public officer under any law.

Section 6: Any person who is an official and, either for his own sake or for the sake of a third person, unlawfully solicits, accepts or promises to accept any property or benefit in exchange for the performance of or refrain from any act in his official capacity shall,

whether such act is in breach of his official duty, be liable to imprisonment from five years to twenty years or for life and a fine from two thousand baht to forty thousand baht, or to death.

Section 7: Any person who is an official and performs or refrains from any act in his official capacity, in consideration for any property or benefit which he has solicited, accepted or promised to accept prior to assuming his office, shall be liable to imprisonment from five years to twenty years or for life and a fine from two thousand baht to forty thousand baht.

22. Thailand provided the following case examples:

Appeal Court

On 14 March 2012, the Court of Appeal read the decision of Black Case No. Or.1902/2550 (2007) in which the public prosecutor of Special Case Division 2 sued a police officer for the offences of: (i) being an officer who wrongfully demands, accepts or agrees to accept property or other benefit for himself or another person; (ii) being an officer who wrongfully exercises or not exercises any of his functions; and (iii) the malfeasance in judicial office for being an inquiry officer who wrongfully demands property according Sections 149, 157 and 201. According to the complaint, the plaintiff summarized that the defendant demanded money from the injured person who reported an offence under Cheque Act to the defendant. The defendant demanded and accepted the money from the injured person claiming that it is for the following up of the case. The injured person thought that if he had to further contact the defendant on the case, he would have been demanded for this type of payment endlessly. The defendant decided to report to the supervisor of the defendant. The case was finally reported to the National Anti-Corruption Commission ("NACC") to make an inquiry issue an opinion on the offences. The Sub-Committee on Fact Inquiry concluded that the defendant had committed the offence as stated in the complaint. The NACC issued an opinion that the defendant committed the offences and referred the case to public prosecutor. The public prosecutor then issued an opinion to prosecute. The Court of First Instance decided on 7 November 2008 that the defendant had committed malfeasance in judicial post for being an inquiry officer who demanded and accepted property in accordance with section 201 of the Criminal Code. The defendant was sentenced to five-year imprisonment. The defendant appealed. The Court of Appeal ruled that the plaintiff's witnesses did not involve in any argument with the defendant; therefore, they testified truthfully. The court weighted the evidence of the plaintiff and ruled that the defendant demanded and accepted money which was a wrongful demand, acceptance or agreement to accept property or other benefit for himself or another. As such, the Appeal Court upheld the decision of the Court of First Instance.

Supreme Court

1) Supreme Court Case No. 410/2524 (1981):

The defendant confiscated a registered gun of an injured person who carried the gun without permission. The defendant then returned the gun to the injured person by demanding the injured person to pay for the defendant's meal in return. The defendant violated Section 149 of the Criminal Code.

2) Supreme Court Case No. 3155/2531 (1988):

The defendant arrested an offender but did not take the offender to a police station. Instead, the defendant told the offender to call someone to come and negotiate with the defendant. This showed that it was just a plan of the defendant and the defendant had no intention to take the offender to an inquiry official. The conduct of the defendant is deemed as demanding of property from the accused, although the amount of money was not yet determined and the accused had not offered. It is an offence under Section 149 of the Criminal Code.

3) Supreme Court Decision Case No. Or.Mor.1/2546 (2003):

between the Attorney-General as the plaintiff and Mr. Rukkiart Sooktana as the defendant on the malfeasance in office offence (procurement of drugs and medical supplies from other suppliers through the Government Pharmaceutical Organization at the costs which were unusually higher than market prices, i.e. approximately 50 per cent to 300 per cent more expensive than the usual prices.) The Supreme Court's Criminal Division for Persons Holding Political Positions ruled that the defendant violated section 149 of the Criminal Code and sentenced him to an imprisonment of 15 years (the defendant absconded and later arrested.)

NACC

1) Black Complaint No. 5560030696

In 2013, the NACC appointed the Sub-Committee on Fact Inquiry to make an inquiry and gather evidence on three political officers in relation to the accusation on bribery for the importation of foreign liquor. It was reasonably suspected that the accused had committed an offence under Sections 66 and 88 of the Organic Act on Counter Corruption B.E. 2542 (1999) (as amended by B.E. 2550 (2007) and No. 2 B.E. 2554 (2011))

2) Black Complaint No. 47462152

In 2012, the Sub-Committee on Fact Inquiry made an inquiry and gather evidence on two civil servants who were alleged to corruptly accept bribery in the amount of Baht 50 Million from two private companies in order to allow them to construct buildings differently from the permitted plans.

3) Red Complaint Case No. 15544354, 15554353, 15569354

The NACC resolved in the meeting no. 315-62/2554(2011) on 23 August 2011 that there is a ground for prosecution on a former Governor of the Tourism Authority of Thailand who was alleged to commit criminal offences under sections 6 and 11 of the Act on Offence of State Organization or State Agency Official B.E. 2502 (1959) and section 12 of the Act on Offences Relating to Government Agency Bidding B.E. 2542 (1999). In addition, there is a ground for prosecution on the actions of his daughter, who was the beneficiary, as an aider of such wrongful act.

Administrative Court

1) Supreme Administrative Court Case No. Or.190/2553 (2010):

An official of a local administration demanded and accepted money from an applicant to a teacher assistant position. A committee was appointed to investigate this incident and it was concluded that the incident is deemed the official seek for undue benefits which is a wrongful act under section 92 of Sub-District Council and Sub-District Administrative Organization Act B.E. 2537 (1994). It also falls within an ambit of malfeasance in office offence under section 149 and 157 of the Criminal Code. Therefore, the Investigation committee dismissed the appellant from his position. The appellant then brought the case to the Supreme Administrative Court. The Court considered that undercover agents were sent to investigate the facts and there were interviews of informant. The Court ruled that the circumstances showed that the appellant had demanded and accepted money from the applicant which is deemed as a wrongful action in duty. The dismissal of the appellant from office is a legitimate order based on legitimate discretion.

2) Supreme Administrative Court Case No. Or.200/2553 (2010):

A civil servant was dismissed on the ground of committing a gross disciplinary action by demanding money in exchange for facilitation payment. The Supreme Administrative Court ruled that the instance like this could affect confidence and faith of the people in the justice system. There is a reasonable ground to believe that the appellant had demanded for money in exchange for his help and caused serious damage to the public service. The conduct amounts to a person who commits an act which is attributable as a gross misconduct, which is considered as gross disciplinary action, under section 98 of the Civil Service Act B.E. 2535 (1992). The order to dismiss the appellant from his office was, therefore, legitimate.

(b) Observations on the implementation of the article

23. Passive bribery of national public officials is criminalized in the Criminal Code and in the Act on Offences Committed by Officials of State Organizations or Agencies. The reviewers noted that the death penalty can be imposed in accordance with sections 149 and 201 of the Criminal Code.
24. Section 149 of the Criminal Code criminalizes passive bribery of officials, members of the National Legislative Assembly, members of the Provincial Assembly or of the Municipal Assembly. The authorities confirmed that the element of “any other person” included legal persons or entities. Section 149 covers the indirect commission of the offence, as well as section 201 establishing the same offence for judges, public prosecutors, officials instituting a case or inquiry officials.¹⁰
25. For officials in government organizations and agencies, sections 3 and section 6 of the Act of Offences Committed by Officials of State Organizations or Agencies B.E. 2502 (1959) provide a definition of such officials and criminalize passive bribery of officials of government organizations and agencies. As with section 149 of the Criminal Code, section 6 of the Act on Offences Committed by Officials of State Organizations or Agencies cover the indirect commission of the offence.
26. Therefore, it is recommended that Thailand ensure that indirect passive bribery continues to be criminalized. Should the judiciary not interpret the law accordingly in future cases, legislative clarification may be required.

¹⁰ Development after the country visit: An amendment to the OACC entered into force on 10 July 2015. The amendment modifies the implementation of several provisions of the Convention, section 123/2 criminalizes passive bribery

“Section 123/2 Whoever, being a state official, a foreign public official, an agent of a public international organization, wrongfully demands, accepts or agrees to accept any property or other benefit for himself or for any other person for performing or not performing any of his duty in his office, whether such act is wrongful according to his duty or not, shall be subject to an imprisonment for a term of five to twenty years or imprisonment for life, and a fine of one hundred thousand Baht to four hundred thousand Baht, or the death penalty.

Thai authorities confirmed that under the criminal law, offenders who commit indirect active bribery under Section 149, whereby the bribe was given to a third party who was not an official. The prosecution would charge the third party as an intermediary to the crime and would be considered as an accomplice or supporter to the crime. If the court finds that third party had no intent or knowledge that the money or benefit was a bribe, he or she would not be guilty due to lack of intent or misinformed of the facts, as the case may be.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

(a) Summary of information relevant to reviewing the implementation of the article

27. At the time of the country visit, Thailand had not implemented the provision under review

(b) Observations on the implementation of the article

28. It is recommended that Thailand criminalize active bribery of foreign public officials and officials of public international organizations in accordance with section 16, paragraph 1 of the Convention.¹¹

(e) Technical assistance needs

29. Thailand mentioned that it has been provided by UNODC technical assistance. In 2008, the NACC concluded the MoU with the UNODC to provide assistance to various countries in becoming a party to the Convention including the implementation of obligation under the Convention. In addition, UNODC has had a role in assisting countries to develop sustainable capacity building with the aim to strengthening the implementation of the Convention among those countries. The NACC has been provided assistance by the UNODC by the Anti-Corruption

¹¹ Development after the country visit: An amendment to the Organic Act on Counter Corruption entered into force on 10 July 2015. The amendment modifies the implementation of several provisions of the Convention in Thai law, and also includes provisions on active bribery of foreign public officials and officials of public international organizations.

Section 123/5. Whoever grants, offers to grant, or promises to grant any property or benefit to any state official, foreign public official, agent of a public international organization with intent to persuade such person to wrongfully perform, not perform or delay the performance of any duty in his office shall be subject to an imprisonment for a term of not exceeding five years or a fine of not exceeding one hundred thousand Baht, or both.

The definition of the term “foreign public official” and “agent of a public international organization” shall be inserted between the terms “state official” and “person holding a political position” in Section 4 of the Organic Act on Counter Corruption B.E. 2542 (A.D. 1999), as amended by the Organic Act on Counter Corruption (No. 2) B.E. 2554 (A.D. 2011).

“foreign public official” means any person exercising a public function of a foreign government holding a legislative, administrative or judicial office of a foreign country, and any person exercising a public function for a foreign country including performance of functions for a public agency or state enterprise, whether appointed or elected, whether the position is permanent or temporary, and whether salary or compensation is paid therefor. “agent of a public international organization” means any person performing work in a public international organization or any person who is assigned by the public international organization to exercise his function on behalf such public international organization”

Mentor program to strengthen the Commission's capacities, develop related laws, strategies and policies on anti-corruption. The program involves training programs in Thailand with civil society and the media.

30. Thailand considered that assistance from the UNODC would be an added impetus for Thai Government and related agencies involved in anti-corruption to seriously tackle the problem of corruption in Thai society. Thailand also suggested that it might be helpful if UNODC assigned an expert to assist the NACC in the implementation of the obligations under the Convention.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 2

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

31. At the time of the country visit, Thailand had not established passive bribery as a criminal offence.

(b) Observations on the implementation of the article

32. Through the consideration of the criminalization of passive bribery of foreign public officials and officials of public international organizations by Parliament, Thailand complied with its obligation to consider criminalizing such conduct in relation to article 16, paragraph 2, of the Convention.¹²

¹² Development after the country visit: An amendment to the Organic Act on Counter Corruption entered into force on 10 July 2015. The amendment modifies the implementation of several provisions of the Convention in Thai law, and also includes provisions on passive bribery of foreign public officials and officials of public international organizations.

“Section 123/2 Whoever, being a state official, a foreign public official, an agent of a public international organization, wrongfully demands, accepts or agrees to accept any property or other benefit for himself or for any other person for performing or not performing any of his duty in his office, whether such act is wrongful according to his duty or not, shall be subject to an imprisonment for a term of five to twenty years or imprisonment for life, and a fine of one hundred thousand Baht to four hundred thousand Baht, or the death penalty.

The definition of the term “foreign public official” and “agent of a public international organization” shall be inserted between the terms “state official” and “person holding a political position” in Section 4 of the Organic Act on Counter Corruption B.E. 2542 (A.D. 1999), as amended by the Organic Act on Counter Corruption (No. 2) B.E. 2554 (A.D. 2011).

“foreign public official” means any person exercising a public function of a foreign government holding a legislative, administrative or judicial office of a foreign country, and any person exercising a public function for a foreign country including performance of functions for a public agency or state enterprise, whether appointed or elected, whether the position is permanent or temporary, and whether salary or compensation is paid therefor.

Article 17 Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

33. Thailand referred to the following texts:

CRIMINAL CODE

Section 147: Any official in charge of purchasing, producing, managing or safekeeping any property dishonestly converts to his or her own or for a third person, or dishonestly allows any other person to misappropriate such property shall be liable to imprisonment from five years to twenty years or imprisonment for life, and a fine of two thousand baht to forty thousand baht.

Section 151: Any official in charge of purchasing, producing, managing or safekeeping any property dishonestly exercises power in his or her office in a manner to cause danger to the State, the Municipality, the Sub - Municipality or the owner of such property shall be liable to imprisonment from five years to twenty years or imprisonment for life, and a fine of two thousand baht to forty thousand baht.

Section 152: Any official in charge of managing or supervising any affair takes advantage, in the nature of conflict of interests in such affair, for the benefit of himself or herself, or any other person shall be liable to imprisonment from one year to ten years and a fine of two thousand baht to twenty thousand baht.

Section 153: Any official in charge of distributing any property distributes such property in excess of what should be distributed for the benefit of himself or herself, or any other person shall be liable to imprisonment from one year to ten years and a fine of two thousand baht to twenty thousand baht.

Section 154: Any official in charge of, or professing that he or she is in charge of, collecting or auditing taxes, duties, fees or any other sum dishonestly collects or omits to collect such taxes, duties, fees or sum; or does any act or omits to do any act with intent to cause any person who has the duty to pay such taxes, duties or fees to be exempted from the payment or to pay for lesser amount than what such person has to pay, shall be liable to imprisonment from five years to twenty years or imprisonment for life, and a fine of two thousand baht to forty thousand baht.

Section 155: Any official in charge of assessing the price of any property or goods for the purpose of collecting taxes, duties or fees in accordance with the law dishonestly assesses the price of such property or goods with intent to cause any person who has the duty to pay such

“agent of a public international organization” means any person performing work in a public international organization or any person who is assigned by the public international organization to exercise his function on behalf such public international organization”.

taxes, duties or fees to be exempted from the payment or to pay for lesser amount than what such person has to pay shall be liable to imprisonment from five years to twenty years or imprisonment for life, and a fine of two thousand baht to forty thousand baht.

Section 352: Whoever being in possession of any property belonging to another person or of which another person is a co-owner dishonestly converts to his or her own, or for a third person is said to commit the offence of misappropriation, and shall be liable to imprisonment for not exceeding three years or a fine of not exceeding six thousand baht, or both. Where such property becomes in the possession of the offender because any other person delivers to him or her by mistake by any means, or such property is the lost property found by him or her, the offender shall be liable to one half of the punishment only.

Section 353: Whoever being entrusted with the management of any property belonging to another person or of which another person is a co-owner dishonestly commits an act in breach of his or her duty by any means and, because of that, causes damage to any benefit in the nature of any property of such other person shall be liable to imprisonment for not exceeding three years or a fine of not exceeding six thousand baht, or both.

Section 354: Where the offences under Section 352 or Section 353 are committed by the offender who is acting in charge of an executor of the property of another person under the Court order or a will, or acting as a person who has an occupation or business that being trusted by the people, the offender shall be liable to imprisonment for not exceeding five years or a fine of not exceeding ten thousand baht, or both.

ORGANIC ACT ON COUNTER CORRUPTION B.E. 2542 (1999)

Section 84: Subject to section 19, an allegation that the following state officials committed an offence of corruption, malfeasance in office or malfeasance in judicial office shall be submitted to the NACC at the time the person against whom the allegation is made is a state official or has ceased to be a state official for not later than five years;

- (1) a person holding a political position or high ranking executive who is not a person under section 66;
- (2) judge;
- (3) public prosecutor;
- (4) state official in agency of the court and constitutional organs;
- (5) local administrator, deputy local administrator, assistant local administrator, and member of a local assembly;
- (6) state official in the Office of the Secretariat of the House of Representatives and the Office of the Secretariat of the Senate;
- (7) state official in an anti-corruption agency under the law governing such matter;
- (8) state official who committed an offence having the characteristics which the NACC finds that proceedings should be taken as prescribed by the NACC;
- (9) state official who jointly commit an offence with a person under (1) (2) (3) (4) (5) (6) (7) or (8). The allegation under paragraph one may be made orally or in writing as prescribed in the regulation prescribed by the NACC.

The provisions of paragraph one shall apply to the case where a state official or other person is a principal, instigator or aider and abettor.

Subject to the provisions of the law on statute of limitations, in the case where the state official under paragraph one has ceased to be a state official for more than five years, the power of the NACC's power to proceed with an inquiry of an allegation having been made or where there is a reasonable cause to suspect that a person holding a political position or state official committed an offence shall not be prejudiced, provided that the proceedings are not taken after the expiration of ten years as from the date a person holding a political position vacate office or the state official ceased to be a State official, as the case may be.

ACT ON OFFENCES COMMITTED BY OFFICIALS OF STATES ORGANIZATIONS OR AGENCIES, B.E. 2502 (1959)

Section 4: Any person who is an official in charge of the purchase, creation, administration or safekeeping of any property and, either for his own sake or for the sake of another, dishonestly appropriates such property or dishonestly allows another to take that property away, shall be liable to imprisonment from five years to twenty years or for life and a fine from two thousand baht to forty thousand baht.

Section 8: Any person who is an official in charge of the purchase, creation, administration or safekeeping of any property and dishonestly exercises his official authority in a manner detrimental to his own organ, limited company, partnership with legal personality or agency called otherwise shall be liable to imprisonment from five years to twenty years or for life and a fine from two thousand baht to forty thousand baht.

Section 9: Any person who is an official in charge of the organization or control of any activity and exerts himself to share any interest with respect to such activity, either for his own sake or for the sake of another person who also partakes in the said activity, shall be liable to imprisonment from one year to ten years and a fine from two thousand baht to twenty thousand baht.

Section 10: Any person who is an official in charge of the disposal of any property and makes such disposal in excess of the authorized portion so as to enrich himself or another shall be liable to imprisonment from one year to ten years and a fine from two thousand baht to twenty thousand baht.

34. Thailand provided the following case examples:

1) Red Complaint Case No. 1-211-55 (031-1-3/2556 (2013))

A postman official committed a criminal offence under section 4 and 11 of the Act on Offence of State Organization or State Agency Official B.E. 2502 (1959), i.e. embezzlement of money of Thai Post Co., Ltd. to spend on his personal account. The current status of this case is the Office of the NACC has submitted the case file of the inquiry to the Attorney General for further criminal proceedings.

2) Red Complaint Case No. 037-2-5/2555 (2012)

A police officer embezzled criminal exhibit having a value of baht 8,430,000. The Office of the NACC has submitted the case file of the inquiry to the supervisor of such police officer for disciplinary action and to the Attorney General for further criminal proceedings.

3) Red Complaint Case No. 05989544

A civil servant of Bangkok Metropolitan embezzled the budget for fundamental educational plan, the project to expand the educational opportunity. The Office of the NACC has submitted the case file of the inquiry to the supervisor for disciplinary action and to the Attorney General for further criminal proceedings in accordance with section 92 and/or 97 the Organic Act B.E. 2542 (2009), as the case may be.

4) Red Complaint Case No. 09549354

Accounting Officer grade 4 of the Provincial Electricity Authority, Borploy District, Kanchanaburi Province, embezzled payment for electricity received from 29 receipts for personal benefit. There is a ground for prosecution for offences under sections 4 and 11 of the Act on Offence of State Organization or State Agency Official B.E. 2502 (1959)

5) Supreme Court Decision No. 1092/2505 (1962)

The defendant was a first level gaoler who was in charge of supervising prisoners and was also a driver of the prison. The warden ordered the defendant to use the prison's car to load husk and the defendant did so. As such, the defendant was responsible for looking out for both the car and gasoline. The defendant corruptly took the gasoline in the car. Therefore, he violated section 147 of the Criminal Code.

6) Supreme Court Decision No. 1146/2537 (1994)

The defendant was appointed as acting District Accountant who was responsible for collecting taxes and submitting the taxes to provincial treasury. A receipt must be issued when taxes are paid. However, the defendant sometimes did not issue receipts to certain persons. In some cases, the amount stated in the receipts is inconsistent with the taxes paid and the defendant took the money. As such, the conduct is deemed as wrongful performance of official duty and dishonest embezzlement of property for personal benefit. It violated sections 147 and 157 of the Criminal Code. It was also an act which violates several provisions of the law. Section 90 requires that if an act violates several provisions, the provision prescribing the most severe punishment is applied to the offender. Therefore, the punishment under section 147 shall be applied to this case.

35. Statistics on the number of the prosecution related to the case are collected by the various agencies that deal with corruption. For example, the NACC, as information with regard to the work of the NACC which is accessible by the official website of the NACC (but in Thai language only). The information, as of 2013, includes, for instance:
- complaints that the NACC has issued a resolution that a public official has committed embezzlement: 53 cases.
 - Allegations in the process of investigation of facts: 22 cases.
- The Department of Special Investigation
- Investigation into embezzlement: 4 cases submitted; 3 cases completed; 1 case pending.
36. As for the Department of Special Investigation (DSI), the Bureau of Litigation, an agency or working group assigned to investigate a case will report the result of its work or actions taken to the Special Investigative Administration Section, which is the body responsible for collecting information and creating a database in order to expedite, follow up on the work of the DSI.

(b) Observations on the implementation of the article

37. Sections 147, 151 to 155 of the Criminal Code criminalize the embezzlement and misappropriation of property by certain categories of officials, such as public officials involved in the procurement process, managing or supervising officials and officials in charge of collecting taxes, fees or other duties. The authorities confirmed that advantages "for a third person" or for "any other person" also include advantages for legal persons.
38. Embezzlement and misappropriation of property by another public official is criminalized through the general provisions applicable to all persons (sects. 352 to 354 CC), which carry a lesser punishment than the specific offences for public officials. Other diversion of property by a public official is not criminalized. The authorities confirmed that in practice officials who did not have the duty to procure, manage or maintain the property but embezzle the property would be charged as the accomplices to the embezzlement by an official in accordance with Section 86 and 147 of the CC or he or she may be prosecuted as an official who wrongfully executes or omits to execute his or her duty with intent to cause damage to any person, or dishonestly executes or omits to execute his or her duty in accordance with Section 157 of CC.

39. It is recommended that Thailand establish a general offence of embezzlement and misappropriation of property by a public official.

Article 18 Trading in influence

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

40. Thailand referred to the following texts:

CRIMINAL CODE

Section 143: Whoever demands, accepts or agrees to accept any property or benefit for himself or herself, or for any other person in return for inducing or having induced any official, member of the National Legislative Assembly, member of the Provincial Assembly or member of the Municipal Assembly by dishonest or unlawful means or by influencing with his or her power to discharge or omit to discharge of any duty in his or her office, in a manner to advantage or disadvantage any person, shall be liable to imprisonment for not exceeding five years or a fine of not exceeding ten thousand baht, or both.

41. Thailand provided the following case examples:

1) Supreme Court Decision No. 2715/2531 (1988):

The defendant demanded for money from the injured person, claiming that the money would be given to an official so that Jor. would be recruited as a civil servant without having to take an exam. The injured person did not believe in such claim and had no intention to give the money to the defendant. The injured person then reported the incident to the police and used the police's money as a part of the entrapment plan. The action of the defendant already satisfied all elements of an offence under section 143 of the Criminal Code.

2) Supreme Court Decision No. 4846/2536(1993):

The facts of this case were Defendant no. 1 demanded and took the money in the amount of Baht 1,000,000 from the injured person, claiming that it would be paid to a Supreme Court Judge (with the purpose to induce the judge to rule in favour of the injured person, i.e. to rule in favour of the injured person to win the case in the Court of First Instance.) It is deemed that that defendant demanded and accepted the property for himself in return for inducing the Supreme Court Judge

be dishonest means to discharge of any duty in his office in a manner to the advantage of the injured person. The act satisfied all elements of the offence under section 143 of the Criminal Code. It is irrelevant as to whether Defendant no. 1 had actually induced the Supreme Court Judge to perform his duty for the benefit of the injured person or not. Therefore, even if the Court of First Instance had read the decision of the Supreme Court before the Defendant demanded and accepted the money from the injured person, in which case Defendant no. 1 would not be able to induce the Supreme Court Judge to act for the benefit of the injured person, the act of Defendant no.1 still violated section 143.

3) Supreme Court Decision No. 1332/2537(1994):

The plaintiff accused the both of the defendants that both of them had demanded and accepted money from the injured person, claiming that the money would be given to an official who had the authority to issue a building construction permit to the injured person. It was considered as inducing the official to wrongfully act in his official duty for the advantage of the injured person, which violated section 143 of the Criminal Code. It is irrelevant whether the official has already acted in his official duty when the offence of was committed. Even though the permit was already issued prior to the commission of offence, Gor. was still an official under the law. The issuance of the permit did not render the act of the defendants under the plaint to lack elements of the offence.

4) Supreme Court Decision No. 7695/2543(2000):

Defendant no. 2 jointly demanded and accepted money from Nor., claiming that it would be paid to a judge to engage in dishonest means to discharge of any duty in his office in a manner to the advantage of the injured person, i.e. to suspend the imprisonment imposed on Nor. in the criminal case that Nor. was sued. As such, the elements of the offence under section 143 of the Criminal Code were satisfied. Although both defendants did not induce the judge to act in favour of Nor., the elements of the offence under Section 143 were still satisfied. In addition, although the testimony of Nor. did not indicate the name of the judge who considered the criminal case that Nor. was sued, it did not render the action of Defendant no. 2 to lack elements of the offence under section 143.

(b) Observations on the implementation of the article

42. Active trading in influence is not criminalized (art. 18, subpara. (a) of the Convention)
43. Section 143 of the Criminal Code criminalizes passive trading in influence. It covers the solicitation or acceptance by a public official or any other person of any property or benefit for himself or herself, or for any other person, in return for inducing or having induced any official, member of the National Legislative Assembly, member of the Provincial Assembly or member of the Municipal Assembly by dishonest or unlawful means or by influencing to discharge or omit to discharge of any duty in his or her office, in a manner to advantage or disadvantage any person.
44. Section 143 of the Criminal Code does not cover the indirect commission of the offence, nor the solicitation or acceptance of an undue benefit for the official or other person to abuse his or her supposed influence. In addition, section 143 of the Criminal Code establishes the requirement of inducing “by dishonest or unlawful means” or influencing, is not included in the Convention. Section 143 also requires the official to “discharge or omit to discharge any duty in his or her office”, and to do so “in a manner to advantage or disadvantage any person”, elements which is not contained in the Convention.
45. Therefore, it is recommended that Thailand consider criminalizing active trading in influence, and consider amending its passive trading in influence offence by removing the additional elements of

the offence which are not contained in the Convention, and by covering the indirect commission of the offence, as well as the solicitation or acceptance of an undue benefit for the official or other person to abuse his or her supposed influence, in order to align it with article 18, subpara. (b) of the Convention.

Article 19 Abuse of Functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of the article

46. Thailand referred to the following texts:

CRIMINAL CODE

Section 1:(1) "Dishonestly" means to acquire any advantages, for himself or herself or for other persons, to which he or she is not entitled to by law;

Section 157: Any official wrongfully executes or omits to execute his or her duty with intent to cause damage to any person, or dishonestly executes or omits to execute his or her duty shall be liable to imprisonment from one year to ten years or a fine of two thousand baht to twenty thousand baht, or both.

ORGANIC ACT ON COUNTER CORRUPTION

Section 4. In this Organic Act:

"State official" means a person holding a political position, Government official or local official assuming a position or having permanent salaries, official or person performing duties in a State enterprise or a State agency, local administrator and member of a local assembly who is not a person holding a political position, official under the law on local administration and shall include a member of a Board, Commission, Committee or of a sub-committee, employee of a Government agency, State enterprise or State agency and person or group of persons exercising or entrusted to exercise the State's administrative power 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;

Section 123/1. Any state official who wrongfully exercises or refrains from exercising any of his functions or duties, or wrongfully exercises his power in the position or duties with intention to cause damages to any person or dishonestly exercises or omits to exercise such powers or duties shall be punished from one year to ten years or fine of twenty thousand to two hundred thousand baht, or both.

47. Thailand provided the following case examples:

1) Supreme Court Decision No. 3135/3535 (1992):

The offence under section 157 of the Criminal Code shall be a wrongful action or omission of action in the official duty of the official with an intent to cause damage to any person; or it shall be a dishonest and wrongful action or omission of action in the official duty of the official. If the action is out of the scope of his duty, it shall not be deemed as a violation of section 157.

2) Supreme Court Decision No. 6564/2542 (1999):

The offence under section 157 of the Criminal Code shall be a wrongful action or omission of action in the official duty of the official with an intent to cause damage to any person; or it shall be a dishonest and wrongful action or omission of action in the official duty of the official. If it is not directly related to the official duty of the official, it is not an offence under this provision.

3) Supreme Court Decision No. 1170/2542 (1999):

The actions of the defendant demonstrated that the defendant had the intention from the start to wrongfully use his official authority by inducing joint plaintiffs to offer money to the defendant. Therefore, the actions of the defendant were an offence under section 148 of the Criminal Code which is a specific provision. The penalty under section 157 which is a general provision shall not be applied.

4) Supreme Court Decision No. 7836-7837/2544 (2001):

The defendant was a police officer who had the authority to arrest the offender but the defendant did not do so. Instead, the defendant joined in the gambling, i.e. rummy cards. This, however, cannot be deemed as a wrongful omission of duty with a special intention to cause damage to gambling players or the Royal Thai Police. As such, the action of the defendant did not violate section 157 of the Criminal Code, i.e. the offence which official wrongfully acts or omits to act in his duty with an intention to cause damage to any person.

5) From the Department of Corrections

In 2014, Mr. Gor. smuggled mobile phones and illegal drugs into the prison and sold them to prisoners. Mr. Gor also demanded money from prisoners whose drug test result were positive in exchange for the conversion of results to negative, as well as, demanded money and guns from relatives of prisoners.

6) From the Department of Corrections

In 2013, Mrs. Gor. embezzled proceeds from sale of products from vocational training of prisoners in the amount of Baht 233,775.50. She, acting in her official duty as the Head of Financial Proceeds, actually deposited Baht 400,000 into bank account while recorded that Baht 600,000 was deposited. Then, she recorded that dividend of prisoner-carpenter of Baht 33,775.50 was withdrawn from the safety box without the permission of her supervisor.

48. Information is collected by the various agencies for the purpose of efficient work, for example, the department of corrections has established a central information centre to collect statistic on cases received.

49. As for the Department of Special Investigation (DSI), the Bureau of Litigation, an agency or working group assigned to investigate a case will report the result of its work or actions taken to the Special Investigative Administration Section, which is the body responsible for collecting information and creating a database in order to expedite, follow up on the work of the DSI.

(b) Observations on the implementation of the article

50. Sections 157 of the Criminal Code and 123/1 of the Organic Act on Counter Corruption criminalize the abuse of functions by state officials. Both offences criminalize abuse of functions through two patterns, either through the wrongful execution or omission to execute the duty of the

official with intent to cause damage to any person, or through the dishonest execution or omission to execute the duty of the official. While the former would establish an additional element that would need to be proven, the latter does not and is in compliance with the Convention. Section 123/1 of the Organic Act on Counter Corruption also contains a third pattern, which criminalizes the wrongful exercising or refraining from exercising any functions or duties of the public official.

51. Section 1 (1) of the Criminal Code provides a definition of “dishonestly”, and the authorities confirmed that advantages for “any other persons” are interpreted to include advantages for legal persons.

Article 20 Illicit Enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

52. Thailand does not have a criminal offence for the crime of illicit enrichment under article 20 of the Convention. However, the NACC has the power to investigate or proceed in cases where there is a significant increase in the asset of a public official that he or she cannot reasonably explain in relation to his or her lawful income.
53. Illicit enrichment presents a challenge to Thailand since it affects the right of the individual who is the owner or possessor of the asset in that that person has to disclose the origins of those assets. This may pose a problem in that disclosure is contrary to the protection of rights provided under the Constitution.
54. Moreover, Thailand has developed procedures against illicit enrichment in that a public official shall submit declarations of assets and liabilities of themselves to the NACC when taking, vacating office and also one year after vacating office. In the case where the person fails to submit the account of assets, he or she will be liable for the offence of giving false information under the organic act on counter corruption B.E. 2542(1999).
55. Thailand referred to the following texts:

CONSTITUTION OF THE KINGDOM OF THAILAND, B.E. 2550 (2007)

Section 249: Members of the House of Representatives, senators or members of both Houses of not less than one-fifth of the total number of the existing members of both Houses have the right to lodge with the Supreme Court of Justice’s Criminal Division for Persons Holding Political Positions an allegation that any member of the National Anti-Corruption Commission has become unusually wealthy or has committed an offence of corruption or malfeasance in office.

The request under paragraph one shall clearly, itemise the circumstance in which such person has allegedly committed the act under paragraph one and shall be submitted to the President of the Senate. When the President of the Senate has received the said request, the President shall refer it to the Supreme Court of Justice’s Criminal Division for Persons Holding Political Positions for trial and adjudication.

The alleged member of the National Anti-Corruption Commission shall not perform his or her duty until the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions has delivered a decision dismissing the said request.

In the case where members of the National Anti-Corruption Commission may not perform duties under paragraph three and there remain members of the National Anti-Corruption Commission in the number of less than one-half of its total number, the President of the Supreme Court of Justice and the President of the Supreme Administrative Court shall jointly appoint persons with the same qualifications and without any of the same prohibitions as those applicable to members of the National Anti-Corruption Commission as members of the National Anti-Corruption Commission for the time being and the appointed persons shall be in office until the original members of the National Anti-Corruption Commission may perform duties or until the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions delivers a decision that such original members have committed the alleged act.

Section 259: Persons holding the following political positions shall submit an account showing particulars of assets and liabilities of themselves, their spouses and children who have not yet become sui juris to the National Anti-Corruption Commission on each occasion of taking or vacating office:

- (1) Prime Minister;
- (2) Ministers;
- (3) members of the House of Representatives;
- (4) senators;
- (5) other political officials;
- (6) local administrators and members of a local assembly as provided by law.

The account under paragraph one shall be submitted together with the supporting documents evidencing the actual existence of such assets and liabilities as well as a copy of the personal income tax return of the previous fiscal year.

The submission of an account showing particulars of assets and liabilities under paragraph one and paragraph two shall also include assets of persons holding political positions placed under possession or care of third persons, whether directly or indirectly.

Section 260: The account showing particulars of assets and liabilities under section 259 shall disclose the particulars of assets and liabilities actually in existence as of the date of taking office or the date of vacation of office, as the case may be, and shall be submitted within such time as follows:

- (1) in the case of the taking of office, within thirty days as from the date of taking office;
- (2) in the case of the vacation of office, within thirty days as from the date of the vacation of office;
- (3) in the case where the person under section 259, who has already submitted the account, is deceased while being in office or before submitting the same after the vacation of office, an heir or an administrator of an estate of such person shall submit an account showing the particulars of assets and liabilities existing on the date of such person's death within ninety days as from the date of the death.

In addition to the submission of the account under (2), the person holding a position of Prime Minister, Minister, local administrator, member of a local assembly or the person holding a political position, who has vacated office, shall also re-submit an account showing particulars of assets and liabilities, actually in existence at the expiration of one year as from the vacation of office, within thirty days as from the date of the expiration of such one-year period.

Section 262: In the case where the submission of the account is made by reason of the vacation of office or death of any person holding a political position, the National Anti-Corruption Commission shall examine the change of assets and liabilities of such person and

prepare a report of the examination. Such report shall be published in the Government Gazette.

In the case where it appears that the assets of the person holding the position under paragraph one have unusually increased, the President of the National Anti-Corruption Commission shall furnish all documents together with the examination report to the Prosecutor-General to institute an action in the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions so that the unusually increasing assets shall vest in the State and the provisions of section 272 paragraph five shall apply mutatis mutandis.

Section 263: In the case where any person holding a political position intentionally fails to submit the account showing assets and liabilities and the supporting documents as provided in this Constitution or intentionally submits the same with false statements or conceals the facts which should be revealed, the National Anti-Corruption Commission shall refer the matter to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions for further decision.

If the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions gives a decision that any person holding a political position has committed an offence under paragraph one, such person shall vacate office on the date of the decision of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions and, for this purpose, the provisions of section 92 shall apply mutatis mutandis and such person shall also be prohibited from holding any political position or holding any position in a political party for five years as from the date of the decision of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions.

Section 270: A person holding a position of Prime Minister, Minister, member of the House of Representatives, senator, the President of the Supreme Court of Justice, the President of the Constitutional Court, the President of the Supreme Administrative Court or Prosecutor General, who is under the circumstance of unusual wealthiness, or purports to commit corruption, malfeasance in office, malfeasance in judicial office or an intentional exercise of power contrary to the provisions of the Constitution or law, or gravely violates or fails to observe ethical standards may be removed from office by the Senate.

The provisions of paragraph one shall also apply to the persons holding the following positions:

- (1) judge of the Constitutional Court, Election Commissioner, Ombudsman and member of the State Audit Commission;
- (2) judge, public prosecutor or high-ranking official in accordance with the Organic Act on Counter Corruption.

Section 275: In the case where the Prime Minister, a minister, member of the House of Representatives, senator or other political official has been accused of becoming unusually wealthy, or of the commission of malfeasance in office under the Penal Code or a dishonest act in the performance of duties or corruption under other laws, the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions shall have the competent jurisdiction to try and adjudicate the case.

The provisions of paragraph one shall also apply to the case where the said person or other person is a principal, an instigator or an aider and abettor or to the person who gives, promises to give or agrees to give property or any other benefit to the person under paragraph one for the purpose of inducing an act, an omission or a procrastination of an act under duty improperly.

The submission to a motion to the National Anti-Corruption Commission for taking action under section 250 (2) shall be in accordance with the Organic Act on Counter Corruption.

In the case where the person against whom an accusation is made under paragraph one holds office of Prime Minister, Minister, President of the House or Representatives or President of the Senate, the person injured by such act may submit a motion to the National Anti-Corruption Commission for taking action under section 250 (2) or may submit a motion to

the general assembly of the Supreme Court of Justice for an appointment of an independent investigator under section 276. But, if the injured person has submitted a motion to the National Anti-Corruption Commission, the injured person may submit a motion to the general assembly of the Supreme Court of Justice only when the National Anti-Corruption Commission has refused to conduct an investigation, taken action with unreasonable delay or conducted an investigation and found no prima facie case for the offence to which the accusation relates.

In the case where the National Anti-Corruption Commission is of the opinion that there is a reasonable ground to suspect that a circumstance under paragraph four has occurred and the Commission passes a resolution, with votes of not less than one-half of the total number of its existing members, for taking action under section 250 (2), the National Anti-Corruption Commission shall take action under section 250 (2) expeditiously. In this case, the injured person may not submit a motion to the general assembly of the Supreme Court of Justice under paragraph four.

The provisions of section 272 paragraph one, paragraph four and paragraph five shall apply mutatis mutandis.

ORGANIC ACT ON COUNTER CORRUPTION, B.E. 2542 (1999)

Section 4:

"unusual increase of assets" means the phenomenon where the assets and liabilities listed in the account showing assets and liabilities submitted by the person holding a political position upon vacation of office differ from the account showing assets and liabilities submitted at the time of taking office, in the manner that the assets unusually increase or liabilities unusually decrease;

"unusual wealth" means having an unusually large quantity of assets, having an unusual increase of assets, having an unusual decrease of liabilities or having illegitimate acquisition of assets in a consequence of the performance of duties or the exercise of power in office or in the course of duty.

Section 56. In the case where the NACC passes a resolution that the allegation has a prima facie case, the President shall furnish a report under section 54 paragraph two, existing documents as well as the opinion to:

- (1) the President of the Senate, if such allegation is a matter under section 43 (1) or (2);
- (2) the Prosecutor-General, if the inquiry reveals a prima facie case for a criminal offence or unusual wealth and the alleged culprit is the person under section 58 except the Prosecutor-General or is a political official other than the persons under section 58 (1) and (2);
- (3) the Prosecutor-General, if the inquiry reveals a prima facie case for a criminal offence or unusual wealth and the alleged culprit is a state official who is not a person holding a political position and a person holding a high-ranking position;
- (4) the superior or the person who has the power to appoint or remove the alleged culprit, if the inquiry reveals a prima facie case for a disciplinary offence or a prima facie case justifying the removal from office, and the alleged culprit is a State official who is not a person holding a political position.

In the case where the N.C.C Commission is of the opinion that any allegation referred to the Commission by the President of the Senate under section 43 (1) is of particular importance, the NACC may prepare a separate report specifically on such allegation and furnish the same to the Senate for consideration in advance.

Section 58: When it appears that any person holding any of the following positions is under the circumstance of unusual wealth or under circumstances indicative of the commission of corruption, malfeasance in office, malfeasance in judicial office, an intentional exercise of power contrary to the Constitution or the law or serious violation or failure to comply with ethical standards, the Senate has the power to initiate the removal of such person from office in accordance with the provisions of this Chapter:

- (1) Prime Minister;

- (2) Minister;
- (3) Member of the House of Representatives;
- (4) Senator;
- (5) President of the Supreme Court of Justice;
- (6) President of the Constitutional Court;
- (7) President of the Supreme Administrative Court;
- (8) Prosecutor-General;
- (9) judge of the Constitutional Court;
- (10) Election Commissioner;
- (11) Ombudsman;
- (12) member of the State Audit Commission;
- (13) State Audit Governor;
- (14) Vice President of the Supreme Court of Justice;
- (15) Vice President of the Supreme Administrative Court;
- (16) Chief of the Military Judicial Office;
- (17) Deputy Prosecutor-General;
- (18) judge or prosecutor as prescribed by a publication of the NACC;
- (19) person holding a high-ranking position or person holding an equivalent position.

Section 75: In the case where an allegation is made that any person holding a political position or any state official has become unusually wealthy, the person making the allegation shall submit the allegation to the NACC at the time the alleged culprit is a state official or has ceased to be a state official for, not more than five years, and the NACC shall conduct a preliminary determination as to whether the circumstances or the matter specified in the allegation falls within the competence of the NACC. If the alleged culprit is a person who has already submitted an account showing particulars of assets and liabilities, the NACC shall also take such account into consideration.

In the case where a person holding a political position or state official has vacated the political office or has ceased to be a state official for more than five years, the allegation under paragraph one against the person holding a political position or state official may not be made, but without prejudice to the powers of the NACC to proceed to with inquiry on the allegation having been made or if there is a reasonable cause to suspect that a person holding a political position or state officials unusual wealthy. However, the NACC shall not proceed after ten years as from the date a person holding a political position or state official vacated the political office or ceased to be a state official, as the case may be.

Section 77: In the case where the allegation meets the requirements in section 75 or the in case where there is a reasonable cause to suspect that a person holding a political position or a state official has become unusually wealthy, the NACC shall proceed in accordance with Chapter 4, Fact Inquiry.

Section 78. In the case where the NACC discovers that any property of the alleged culprit is connected with the unusual wealth and is under the circumstance convincingly indicative of the possibility of its transfer, move, transformation or concealment, the NACC shall have the power to issue an order of temporary seizure or attachment of that property, without prejudice to the right of the alleged culprit to submit an application for taking such property for use with or without bail or security.

When there occurs a temporary seizure or attachment of the property under paragraph one, the NACC shall cause to be conducted proof of the property without delay. In the case where the alleged culprit is unable to present evidence that the property under temporary seizure or attachment is not connected with the unusual wealth, the NACC shall have the power to continue its seizure or attachment until the NACC passes a resolution that the allegation has no prima facie case, which must be within one year as from the date of the seizure or attachment or until the Court passes a final judgment dismissing that case. But, if the proof is successful, the property shall be returned to such person.

Section 80: If the NACC has conducted a fact inquiry and passed a resolution that the alleged culprit has become unusually wealthy, the NACC shall proceed as follows:

(1) in the case where it is the alleged culprit under section 66, the President shall refer the matter to the Prosecutor-General for submission of a motion to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions requesting the Court to order that the property devolve upon the State;

(2) in the case where the alleged culprit is a person holding the position of President of the Supreme Court of Justice, President of the Constitutional Court, President of the Supreme Administrative Court, judge of the Constitutional Court, Election Commissioner, Ombudsman, member of the State Audit Commission, Vice President of the Supreme Court of Justice, Vice President of the Supreme Administrative Court, Chief of the Military Judicial Office, Deputy Prosecutor-General or is a person holding a high-ranking position, the President shall refer the matter to the Prosecutor-General for submission of a motion to the court having competence to try and adjudicate the case requesting the Court to order that the property devolve upon the State;

(3) in the case where the alleged culprit is a person holding the position of Prosecutor-General, the President shall submit a motion to the court having competence to try and adjudicate the case requesting the Court to order that the property devolve upon the State;

(4) in the case where the alleged culprit is a State official who is not a person under (1), (2) and (3), the President shall refer the matter to the Prosecutor-General for submission of a motion to the Court having competence to try and adjudicate the case requesting the Court to order that the property devolve upon the State, and the President shall notify the superior or the person having the power to appoint or remove the alleged culprit for the purpose of issuing a punitive order of expulsion or dismissal on the deemed ground of the commission of corruption, except that in the case where the alleged culprit is a judicial official under the law on judicial service, judge of the Administrative Court under the law on establishment of Administrative Courts and Administrative Court procedures or public prosecutor under the law on public prosecutors service, the President shall notify the President of the Judicial Commission, the President of the Judicial Commission of Administrative Courts or the President of the Public Prosecutors Commission, as the case may be, for considering and proceeding with the matter in accordance with the law on judicial service, the law on establishment of Administrative Courts and Administrative Court procedures or the law on public prosecutors service.

In the case under (1) or (2), when the Prosecutor-General receives the report and documents together with the opinion from the NACC and is of the opinion that the report, documents and opinion referred to by the NACC are not so complete as to justify the institution of legal proceedings, the Prosecutor-General shall notify the NACC for further action. For this purpose, the incomplete items shall fully be specified at the same time. In this case, the NACC and Prosecutor-General shall appoint a working committee consisting of representatives of each side in an equal number for the purpose of collecting full evidence to be referred to the Prosecutor-General for further submission of a motion to the Supreme Court of Justice's Criminal Division of Persons Holding Political Positions or the court having competence to try and adjudicate the case, as the case may be, requesting the Court to give a subsequent order that the property devolve upon the State. In the case where such working committee fails to reach an agreement as to the legal proceedings, the NACC shall have the power to submit a motion to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions or the Court having competence to try and adjudicate the case, as the case may be, requesting the Court to order that the property devolve upon the State.

The proceedings under paragraph one shall be exempt from court fees. As for cases under (2), (3) or (4), the Civil Procedure Code shall apply *mutatis mutandis*.

Section 119. Any state official who intentionally fails to submit an account showing assets and liabilities and supporting documents to the NACC within the time prescribed by this

Organic Act or intentionally submits an account showing assets and liabilities and supporting documents with false statements being included therein or conceals facts which should have been disclosed shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand Baht or to both.

56. Thailand provided the following case examples:

NACC

1) Red Complaint Case No. 03605253

Former Assistant Chiang Mai City Officer, while acting in his capacity as Assistant Chiang Mai City Officer, had an unusually significant property increase in the amount of Baht 7,148,810 and deemed to have become unusually wealthy under section 4 of the Organic Act on Counter Corruption 1999. The case was sent to the Attorney General to file a petition to the Court of jurisdiction requesting the Court to order that such property of the former Assistant Chiang Mai City Officer devolve upon the state in according to section 80(4) of the Organic Act on Counter Corruption 1999. Chiang Mai City has also punished the former Assistant Chiang Mai City Officer by expulsion from the public office. As such, the action under section 80(4) is not applicable but an NACC's letter of notice of the case consideration result shall be sent to the supervisor.

2) Red Complaint Case No. 10575253

Former Governor of Metropolitan Electricity Authority, while acting as the Governor of Metropolitan Electricity Authority, became unusually wealthy by having unusually high amount of property or significant increase in the property in the amount of Baht 22,491,982.61.

3) Former Assistant Sub-district Officer of Tone Sub-district, Kalasin Province was deemed unusually wealthy under section 4 of the Organic Act on Counter Corruption 1999. The case was sent to the Attorney General to file a petition to the Court of jurisdiction requesting the Court to order that such property of the former Sub-district Officer of Tone Sub-district, Kalasin Province devolve upon the state and notify the supervisor to dismiss or expel former Assistant Sub-district Officer of Tone Sub-district, Kalasin Province from the public office due to malfeasance in public office offence under section 80(4) of the Organic Act on Counter Corruption 1999.

(b) Observations on the implementation of the article

57. Thailand did not establish a criminal offence of illicit enrichment. However, public officials are obliged to submit asset declarations on a regular basis (section 259 Constitution, 119 OACC), which are verified by the NACC. If the Commission finds evidence that a public official has become unusually wealthy, it forwards the case to the Prosecutor-General in accordance with section 80 of the Organic Act on Counter Corruption. Should there be sufficient evidence to try the public official for another offence, such as malfeasance in office or bribery, the Prosecutor-General proceeds in this regard. Sections 78 and 80 of the Organic Act on Counter Corruption allow for the seizure and freezing of property connected with unusual wealth.

58. Taking into account the different measures taken by Thailand to combat illicit enrichment, it is recommended that Thailand consider establishing a corresponding criminal offence.

Article 21 Bribery in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

59. Thailand referred to the following texts:

PUBLIC LIMITED COMPANIES ACT, B.E. 2535 (1992)

Section 215: Any person who, being responsible for the operation of affairs of any company, does any act or omits to do any act, with an intent to seek any benefit otherwise unobtainable by a lawful means for himself or for any other person and thereby causes loss to such company shall be liable to a fine not exceeding fifty thousand Baht.

FINANCIAL INSTITUTION BUSINESS ACT, B.E. 2551 (2008)

Section 145: Any director, manager, or person with power of management of a financial institution, who commits or refrains from any commission in order to obtain any unlawful gain for himself or other persons causing damage to the financial institution, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand to one million Baht.

ACT ON OFFENCES RELATING TO THE SUBMISSION OF BIDS TO STATE AGENCIES, B.E. 2542 (1999)

Section 5: Any person who gives, offers to give or undertakes to give moneys or properties or other benefits to another person for the purpose of a bid, with the object of inducing others to participate in any activity which confers a benefit to any person in the form of a right to enter into a contract with a State agency, or to induce such person to submit a higher or lower bid that is apparently inconsistent with the properties of the product, service or receivable right, or to induce such person to participate in a bid or withdrawal of a bid, shall be liable to imprisonment for a term from one year to five years and a fine of fifty percent of the highest bid price submitted by the joint offenders or of the value of the contract that has been entered into with the State agency, whichever is the higher.

Any person, who demands, receives or consents to the receipt of moneys or properties or other benefits in connection with the commission of an act under paragraph one shall be deemed as a joint offender.

60. Thailand noted that there were good governance provisions for various agencies and private companies in order to prevent bribery in the private sector. There is a coalition called Private Sector Collective Action Coalition against Corruption (CAC). Participant companies to the CAC will work internally to assess risks related to corruption, implement anti-corruption policies and compliance programs and provides business conduct guidance to managers and employees in

accordance to the CAC's guidelines. The CAC also provides trainings relating to ethnics and anti-corruption measures.

(b) Observations on the implementation of the article

61. Thailand has not established specific offences of active and passive bribery in the private sector. Section 215 of the Public Limited Companies Act, section 145 of the Financial Institutions Business Act and section 5 of the Act on Offences relating to the Submission of Bids to State Agencies can cover certain limited parts of the conduct.
62. It is recommended that Thailand consider establishing specific offences of active and passive bribery in the private sector.

Article 22 Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position

(a) Summary of information relevant to reviewing the implementation of the article

63. Thailand referred to the following texts:

FINANCIAL INSTITUTION BUSINESS ACT, B.E. 2551 (2008)

Section 142: Any director, manager, or person with power of management of a financial institution, who being in possession of a thing belonging to a financial institution or of which the financial institution is a co-owner, dishonestly converts the thing to himself or a third person, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand to one million Baht.

CRIMINAL CODE

Section 352: Whoever being in possession of any property belonging to another person or of which another person is a co-owner dishonestly converts to his or her own, or for a third person is said to commit the offence of misappropriation, and shall be liable to imprisonment for not exceeding three years or a fine of not exceeding six thousand baht, or both. Where such property becomes in the possession of the offender because any other person delivers to him or her by mistake by any means, or such property is the lost property found by him or her, the offender shall be liable to one half of the punishment only.

Section 353: Whoever being entrusted with the management of any property belonging to another person or of which another person is a co-owner dishonestly commits an act in breach of his or her duty by any means and, because of that, causes damage to any benefit in the nature of any property of such other person shall be liable to imprisonment for not exceeding three years or a fine of not exceeding six thousand baht, or both.

Section 354: Where the offences under Section 352 or Section 353 are committed by the offender who is acting in charge of an executor of the property of another person under the Court order or a will, or acting as a person who has an occupation or business that being

trusted by the people, the offender shall be liable to imprisonment for not exceeding five years or a fine of not exceeding ten thousand baht, or both.

ANTI-MONEY LAUNDERING ACT, B.E. 2542 (1999)

Section 3:

“predicate offence” means any offence

(4) relating to misappropriation or fraud or exertion of an act of violence against property or dishonest conduct under the law on commercial banking, the law on the operation of finance, securities and credit foncier businesses or the law on securities and stock exchange committed by a manager, director or any person responsible for or interested in the operation of such financial institutions;

SECURITIES AND EXCHANGE ACT, B.E. 2535 (1992)

Section 308: Any director, manager, or person responsible for the operation of any juristic person under this Act, who possesses property belonging to such juristic person, or of which such juristic person is a co-owner, and dishonestly converts such property to himself or a third party, shall be liable to imprisonment for a term of five to ten years and a fine from five hundred thousand baht to one million baht.

64. Thailand provided the following case examples:

1) Supreme Court Decision No. 1554 - 1555/2551 (2008):

If it could be concluded that the joint plaintiff was the person who took care of the disputed property and the defendant borrowed such property from the joint plaintiff, when damage was caused due to embezzlement by the defendant, the joint plaintiff, being the person who took care of the property, was also an injured person. When it was found that the defendant borrowed the property and misappropriated such property for his own benefit, he commits a crime, not just a civil case, under Sections 352 and 83 of the Criminal Code. The Supreme Court, therefore, upheld the decision of the Court of Appeal.

2) Supreme Court Decision No. 9392/2539 (1996):

The defendant who was a distributor of the injured person’s typewriter received a compensation of Baht 100 for each typewriter sold by him. The defendant sold the injured person’s typewriter on consignment through other persons’ shop and had the right to repossess the typewriters. When the defendant repossessed the typewriters, the defendant was the rightful possessor of the typewriters and had the right to sell or return them to the injured person. Therefore, when the defendant personally took the returned typewriters for his own benefit, it was a wrongful misappropriation of the typewriters and was embezzlement under Section 352 Paragraph 1 of the Criminal Code.

3) Supreme Court Decision No. 4397/2530 (1987):

The defendant was a Branch Manager of the joint plaintiff (a bank) who was assigned to manage the bank’s property. He corruptly acted in violation of the regulations re: approval of disbursement which caused the debt of the joint plaintiff (the bank)’s client to be approximately Baht 600,000 higher than the security put up. Therefore, this could cause damage to the proprietary benefit of the joint plaintiff (the bank) under Section 353 of the Criminal Code.

(b) Observations on the implementation of the article

65. Sections 352 to 354 of the Criminal Code criminalize the embezzlement of funds by anyone, thus including all individuals working in the private sector.

66. Section 142 of the Financial Institution Business Act establishes higher penalties for persons working in as director, manager, or person with power of management of a financial institution.

Article 23 Laundering of proceeds of crime

Subparagraphs 1 (a) and 1 (b) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

67. Thailand referred to the Criminal Code and to the Anti-Money Laundering Act:

CRIMINAL CODE

Section 357: Whoever, assists in concealing, disposing of, making away with, purchases, receives in pledge or otherwise any property obtained through the commission of an offence, and such offence being theft, snatching, extortion, blackmail, robbery, gang-robbery, cheating and fraud, misappropriation or misappropriation by an official, is said to receive stolen property, and shall be punished with imprisonment not exceeding five years or fined not exceeding then thousand Baht, or both.

If the offence of receiving stolen property be committed for profit or against the property obtained by theft under Section 335(10), robbery or gang-robbery, the offender shall be punished with imprisonment of six months to ten years and fined of one thousand to twenty thousand Baht.

If such offence of receiving stolen property is committed against the property obtained by theft according to Section 335 *bis*, by the robbery according to Section 339 *bis*, or by the gang-robbery according to Section 340 *bis*, the offender shall be punished with imprisonment of five to fifteen years and fined of then thousand to thirty thousand Baht.

ANTI-MONEY LAUNDERING ACT, B.E. 2542 (1999)

Section 3:

Section 5: Any person who:

(1) transfers, accepts a transfer of or converts the property connected with the commission of an offence for the purpose of covering or concealing the origin of that property or, whether before or after the commission thereof, for the purpose of assisting other persons to evade criminal liability or to be liable to lesser penalty in respect of a predicate offence; or

(2) acts in any manner whatsoever for the purpose of concealing or disguising the true nature, acquisition, source, location, distribution or transfer of the property connected with the commission of an offence or the acquisition of rights therein, shall be said to commit an offence of money laundering.

Shall be said to commit an offence of money laundering.

68. Thailand provided the following case examples:

1) Red Case No. ForYor. 3/2552 (2009) of the Criminal Court

The defendant, et al. had earned income from selling illegal drugs. They used the money earned from such a commission of the crime to purchase immovable property (i.e. land and building) and movable property (i.e. automobile); then deposit money into different financial institutions, and established a company to purchase, sell, and exchange used cars. Such actions were taken to conceal the true source of property (i.e. offence in relation to illegal drugs) which was a money-laundering offence. Due to the fact that the actions of the defendant were taken both before and after the effective date of the Anti-money Laundering Act 1999, the defendant's action was a transfer / conversion of the nature of the property by concealing or disguising the source of the property, and it was in breach of Section 5 of the Anti-money Laundering Act 1999.

2) Supreme Court Decision No. 9092/2553 (2010)

When it can be concluded that the defendant had laundered money, the Court may decide to sentence the defendant. The Court is not required to wait for the sentence of the predicate offence prior to the actions against the money-laundering offender who had received money from the predicate offence. Additionally, there was no provision which required a Court to be bound by the facts settled in another case.

3) Supreme Court Decision No. 2770/2550 (2007)

Section 5(2) of the Anti-money Laundering Act 1999 provides that any person who acts in any manner whatsoever for the purpose of concealing or disguising the true nature, acquisition, source, location, distribution or transfer of the asset connected with the commission of an offence or the acquisition of rights therein, shall be said to commit an offence of money laundering. Although it could be concluded that Defendant 1 had earned Baht 710,000 from the sale of Methamphetamine, the plaintiff could only prove that the policeman had arrested Defendant no. 1, found the money packed in a box of liquor bottle held by Defendant no. 1, and Defendant no. 1 accepted that the money which was from the sale of Methamphetamine, it did not appear that Defendant 1 had acted in any manner to disguise or conceal the true nature of the source of such money which shall be considered money laundering (i.e. conversion of illegal income into seemingly legal money). As such, the actions of Defendant no. 1 are not a commission of the money laundering offence as prescribed in the plaint.

4) Srisaket Provincial Court Decision, Red Case No. 3131/2548 (1995)

This case resulted from an offence of malfeasance in office. The Court considered that the discovery of the defendant's special intention to disguise or conceal the true nature of the acquisition of property related to a commission of an offence would be difficult through eyewitness. Consequently, the Court must rely on the circumstances and suspicion of the defendant by considering that the defendant had a salary of less than Baht 10,000 but, during the commission of the offence, opened several saving accounts and each accounts consistently had movements, and several deposits and withdrawals of money was made disproportionately with his salary. Additionally, after the receipt of the money, the money was transferred to other persons' bank accounts while such persons knew that the money was from the commission of an offence. As such, the actions were deemed to have taken to disguise or conceal the source of the money

acquired from a commission of an offence; which is a joint commission of an offence of money laundering.

69. It was explained that the collection and analysis by the AMLO are conducted through the Information Centre. Once the Information Centre is referred a case by relevant agency, the centre will submit the case to the Committee of Transactions which is established under section 32 of the Anti-Money Laundering Act, B.E. 2542(1999). This committee has powers to consider the case and ensure fair proceedings. It also designates an agency responsible for handling the case. The committee upon the results of the investigation will proceed with an order to freeze, seize or confiscate the asset or the money, or proceed with other actions as the case maybe. The case is then submitted to the Office of Attorney General(OAG) for further actions. The centre coordinates closely with the OAG. The Information Centre also collects relevant information from the Bureau of Litigation to include in its statistical database.

(b) Observations on the implementation of the article

70. Thailand's anti-money-laundering framework is set forth in the Anti-Money-Laundering Act B.E. 2542 (1999). Section 5 (1) of the Act criminalizes the conversion or transfer of property connected with the commission of an offence for the purpose of covering or concealing the origin of that property, or to assist other persons to evade criminal liability or be liable to lesser penalty in respect of a predicate offence. As such, section 5(1) of the Act implements article 23, subparagraph 1 (a) (i) of the Convention.

71. The concealment or disguise of the true nature, acquisition, source, location, distribution or transfer of property connected with the commission of an offence or the acquisition of rights therein is criminalized in section 5 (2) of the Anti-Money-Laundering Act. While the concealment or disguise of the movement or ownership of or rights with respect to the property, knowing that such property is proceeds of crime, is not explicitly referred to in section 5(2) of the Act, the element of "transfer" in section 5 (2) is interpreted to include movement, and the element of "acquisition of rights" is interpreted to encompass ownership. Therefore, section 5 (2) implements article 23, subparagraph 1 (a) (ii) of the Convention.

72. Section 357 of the Criminal Code criminalizes the purchase and receiving of property obtained through the commission of offences listed in the section. While some corruption offences are included, not all offences established in accordance with the Convention are listed in section 357 of the Criminal Code.

73. The possession and use of property, knowing at the time of receipt that such property is proceeds of crime, is not criminalized. At the time of the country visit, Thailand indicated that a legislative amendment in order to include these elements was being considered by the Parliament, and that the third reading of the amendment was schedule for the month following the country visit.¹³

74. It is recommended that Thailand criminalize the possession or use of property, knowing, at the time of receipt, that such property is proceeds of crime, and Thailand is encouraged to continue its

¹³ Development after the country visit: section 5(3) AMLA was amended to include the acquisition, possession or use of property, knowing, at the time of acquisition, possession or use of such property, that it is proceeds of crime.

Section 5: Any person who

...

(3) obtain, possess or use asset, knowingly at the time of obtaining, possessing or using of such asset, that it is the asset connected with the commission of predicate offense

efforts to amend the legislation in this regard. In addition, it is recommended that Thailand criminalize the acquisition of property, knowing, at the time of receipt, that such property is proceeds of crime, for all offences established in accordance with the Convention.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

75. Thailand referred to the following texts:

CRIMINAL CODE

Section 84: Whoever, irrespective of whether by employment, compulsion, threat, hire, asking for a favour, or instigation, or by any other means, causes another person to commit an offence is said to be an instigator.

Section 86: Whoever, by any means, does any act to assist or facilitate the commission of an offence of another person, before or at the time of the commission of the offence, even though the offender does not know of such assistance or facilitation, is said to be a supporter of such offence, and shall be liable to two thirds of the punishment for such offence.

ANTI-MONEY LAUNDERING ACT, B.E. 2542 (1999)

Section 7: In an offence of money laundering, any person who commits any of the following acts shall be liable to the same penalty as that to which the principal committing such offence shall be liable:

- (1) aiding and abetting the commission of the offence or assisting the offender before or at the time of the commission of the offence,
- (2) providing or giving money or property, a vehicle, place or any article or committing any act for the purpose of assisting the offender to escape or to evade punishment or for the purpose of obtaining any benefit from the commission of the offence.

In the case where any person provides or gives money or property, a shelter or hiding place in order to enable his or her father, mother, child, husband or wife to escape from being arrested, the Court may inflict on such person no punishment or lesser punishment to any extent than that provided by law for such offence.

Section 8: Any person who attempts to commit an offence of money laundering shall be liable to the same penalty as that provided for the offender who has accomplished such offence.

Section 9: Any person who enters into conspiracy to commit an offence of money laundering shall, when there are at least two persons in the conspiracy, be liable to one-half of the penalty provided for such offence.

If the offence of money laundering has been committed in consequence of the conspiracy under paragraph one, the person so conspiring shall be liable to the penalty provided for such offence.

In the case where the offence has been committed up to the stage of its commencement but, on account of the obstruction by the conspiring person, has not been carried out through its completion or has been carried out through its completion without achieving its end, the conspiring person rendering such obstruction shall only be liable to the penalty provided in paragraph one.

If the offender under paragraph one changes his or her mind and reveals the truth in connection with the conspiracy to the competent official prior to the commission of the offence to which the conspiracy relates, the Court may inflict on such person no punishment or lesser punishment to any extent than that provided by law for such offence.

(b) Observations on the implementation of the article

76. Participation in money-laundering offences and aiding, abetting, facilitating and counselling the commission of money-laundering offences is criminalized by section 7 of the Anti-Money Laundering Act, as well as sections 84 and 86 of the Criminal Code.

77. Section 8 of the Anti-Money Laundering Act criminalizes attempts to commit money-laundering, while section 9 of the Act criminalizes conspiracy to commit such offences.

Article 23 Laundering of proceeds of crime

Subparagraph 2

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(a) Summary of information relevant to reviewing the implementation of the article

78. Thailand referred to the definition of “predicate offence” in section 3 of the Anti-Money Laundering Act:

ANTI-MONEY LAUNDERING ACT, B.E. 2542 (1999)

Section 3:

“predicate offence” means any offence

...

(4) relating to misappropriation or fraud or exertion of an act of violence against property or dishonest conduct under the law on commercial banking, the law on the operation of finance, securities and credit foncier businesses or the law on securities and stock exchange committed by a manager, director or any person responsible for or interested in the operation of such financial institutions;

(5) of malfeasance in office or malfeasance in judicial office under the Penal Code, offence under the law on offences of officials in State organisations or agencies or offence of malfeasance in office or dishonesty in office under other laws;

...

(11) offense relating to receiving stolen property under the Penal Code only as it constitutes assisting in selling, buying, pawning or receiving in any way property obtained from the commission of an offense with a nature of business conduct;

...

(18) offence relating to theft, extortion, blackmailing, robbery, gang-robbery, fraud or misappropriation under the Penal Code with a nature of regular conduct;

...

Predicate offence under paragraph one shall include a penal offence committed outside the Kingdom which would have constituted a predicate offence had it been committed in the Kingdom.

(b) Observations on the implementation of the article

79. Section 3 of the Anti-Money-Laundering Act lists the predicate offences for money-laundering. The list encompasses a wide range of predicate offences, including most, but not all, offences established in accordance with the Convention. Predicate offences include offences committed outside of Thailand, if they would have constituted predicate offences had they been committed in Thailand. It is recommended that Thailand apply its money-laundering offences to all offences established in accordance with the Convention.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (d)

2. For purposes of implementing or applying paragraph 1 of this article:

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(a) Summary of information relevant to reviewing the implementation of the article

80. Thailand has not furnished copies of its laws to the Secretary-General of the United Nations as prescribed above.

(b) Observations on the implementation of the article

81. It is recommended that Thailand provide copies of its anti-money-laundering laws to the Secretary-General of the United Nations.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (e)

2. For purposes of implementing or applying paragraph 1 of this article:

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

82. The fundamental principles of Thai law do not require that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(b) Observations on the implementation of the article

83. Thailand is in compliance with the provision under review.

Article 24 Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

84. Thailand referred to the following texts:

CRIMINAL CODE

Section 357: Whoever, assists in concealing, disposing of, making away with, purchases, receives in pledge or otherwise any property obtained through the commission of an offence, and such offence being theft, snatching, extortion, blackmail, robbery, gang-robbery, cheating and fraud, misappropriation or misappropriation by an official, is said to receive stolen property, and shall be punished with imprisonment not exceeding five years or fined not exceeding then thousand Baht, or both.

If the offence of receiving stolen property be committed for profit or against the property obtained by theft under Section 335(10), robbery or gang-robbery, the offender shall be punished with imprisonment of six months to ten years and fined of one thousand to twenty thousand Baht.

If such offence of receiving stolen property is committed against the property obtained by theft according to Section 335 *bis*, by the robbery according to Section 339 *bis*, or by the gang- robbery according to Section 340 *bis*, the offender shall be punished with imprisonment of five to fifteen years and fined of then thousand to thirty thousand Baht.

ORGANIC ACT ON COUNTER CORRUPTION, B.E. 2542 (1999)

Section 78: In the case where the NACC discovers that any property of the alleged culprit is connected with the unusual wealth and is under the circumstance convincingly indicative of the possibility of its transfer, move, transformation or concealment, the NACC shall have the power to issue an order of temporary seizure or attachment of that property, without prejudice to the right of the alleged culprit to submit an application for taking such property for use with or without bail or security.

When there occurs a temporary seizure or attachment of the property under paragraph one, the NACC shall cause to be conducted proof of the property without delay. In the case where the alleged culprit is unable to present evidence that the property under temporary seizure or attachment is not connected with the unusual wealth, the NACC shall have the power to continue its seizure or attachment until the NACC passes a resolution that the allegation has no prima facie case, which must be within one year as from the date of the seizure or attachment or until the Court passes a final judgment dismissing that case. But, if the proof is successful, the property shall be returned to such person.

Section 83: If the Court gives an order that the alleged culprit's property in respect of which the NACC has passed a resolution confirming its representing the unusual wealth or that the unusual increase shall devolve upon the State but execution cannot be conducted of the whole or part of such property, the execution may be conducted of other property of the alleged culprit within the limitation period of ten years, provided that it shall not be conducted in excess of the value of the property ordered by the court to devolve upon the State.

85. Thailand provided the following case example:

1) Supreme Court Decision No. 2770/2550 (2007)

Section 5(2) of the Anti-money Laundering Act 1999 provides that any person who acts in any manner whatsoever for the purpose of concealing or disguising the true nature, acquisition, source, location, distribution or transfer of the asset connected with the commission of an offense or the acquisition of rights therein, shall be said to commit an offence of money laundering. Although it could be concluded that Defendant 1 had earned Baht 710,000 from the sale of Methamphetamine, the plaintiff could only prove that the policeman had arrested Defendant no. 1, found the money packed in a box of liquor bottle held by Defendant no. 1, and Defendant no. 1 accepted that the money which was from the sale of Methamphetamine, it did not appear that Defendant 1 had acted in any manner to disguise or conceal the true nature of the source of such money which shall be considered money laundering (i.e. conversion of illegal income into seemingly legal money). As such, the actions of Defendant no. 1 are not a commission of the money laundering offence as prescribed in the plaint.

(b) Observations on the implementation of the article

86. Section 357 of the Criminal Code criminalizes the concealment of property obtained through the commission of determined offences. Most, but not all, offences established in accordance with the Convention are included. Therefore, it is recommended that Thailand consider extending the list of predicate offences for concealment to include all offences established in accordance with the Convention.

Article 25 Obstruction of Justice

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

87. Thailand has not established a specific offence of obstruction of justice due to specificities in its legal system. However, the authorities indicated that other criminal offences can be applied to the actions stated in article 25 of the Convention, such as 'interfering with the witness' and 'contempt of court'.

88. Thailand referred to the following texts:

CRIMINAL CODE

Section 84: Whoever, irrespective of whether by employment, compulsion, threat, hire, asking for a favour, or instigation, or by any other means, causes another person to commit an offence is said to be an instigator.

Section 177: Whoever gives false testimony which is the essential issue of the case to the Court in any judicial proceeding shall be liable to imprisonment for not exceeding seven years and a fine of not exceeding fourteen thousand baht.

Section 179: Whoever fabricates false evidence to cause an inquiry official or an official who has the power to investigate criminal cases to believe that any criminal offence has been committed or to believe that the more serious criminal offence than the reality has been committed shall be liable to imprisonment for not exceeding two years or a fine of not exceeding four thousand baht, or both. **Section 180** Whoever adduces or presents any false evidence which is the essential issue of the case in a judicial proceeding shall be liable to imprisonment for not exceeding three years or a fine of not exceeding six thousand baht, or both. Where the offence under the first paragraph is committed in a criminal judicial proceeding, the offender shall be liable to imprisonment for not exceeding seven years and a fine of not exceeding fourteen thousand baht.

Section 184: Whoever, for the purpose of assisting any person to free from the punishment or to be inflicted with less punishment, causes damage, destroys, conceals, takes away, loses or makes the uselessness of evidence of the offence committed shall be liable to imprisonment for not exceeding five years or a fine of not exceeding ten thousand baht, or both.

Section 185: Whoever causes damage, destroys, conceals takes away, loses or makes the uselessness of any property or document submitted to the Court or kept by the Court in a judicial proceeding shall be liable to imprisonment for not exceeding five years or a fine of not exceeding ten thousand baht, or both.

Section 309: Whoever extorts another person to do any act not to do any act or to submit to anything by threatening that any harm may be done to the life, body, freedom, reputation or property of the extorted person or of any other person, or by doing harm so that the extorted person submits to do, not to do or submit to such thing shall be liable to imprisonment for not exceeding three years or a fine of not exceeding six thousand baht, or both.

Where the offence under the first paragraph is committed by carrying weapons, by five persons upwards in joint action, or by having intention to cause the extorted person to execute, revoke,

damage or destroy any document of right, the offender shall be liable to imprisonment for not exceeding five years or a fine of not exceeding ten thousand baht, or both.

Where the offence under the first paragraph is committed by referring to the power of a secret society or an unlawful assembly, irrespective of its existence, the offender shall be liable to imprisonment from one year to seven years and a fine of two thousand baht to fourteen thousand baht.

(b) Observations on the implementation of the article

89. Section 84 of the Criminal Code, read together with the relevant provisions on the giving of false testimony and destruction and fabrication of false evidence (see sections 174, 177, 179 and 184 of the Criminal Code), can cover certain parts of the offence established in article 25, subparagraph (a) of the Convention. It is recommended that Thailand establish a specific offence of obstruction of justice in accordance with article 25, subparagraph (a) of the Convention.

Article 25 Obstruction of Justice

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

90. Thailand considered that it has adopted and implemented the measures described above and referred to the following texts:

CRIMINAL CODE

Section 139: Whoever extorts any official to wrongfully discharge or omit to discharge the performing of any duty in his or her office by means of doing harm or threatening that any harm will be done shall be liable to imprisonment for not exceeding four years or a fine of not exceeding four years or a fine of not exceeding eight thousand baht, or both.

Section 167: Whoever gives, offers to give or agrees to give any property or benefit to an official in the position of a judge, a Public Prosecutor, an official institution a case or an inquiry official with intent to persuade such person to wrongfully discharge, omit to discharge or delay the performing of any duty in his or her office shall be liable to imprisonment for not exceeding seven years and a fine of not exceeding fourteen thousand baht.

Section 309: Whoever extorts another person to do any act not to do any act or to submit to anything by threatening that any harm may be done to the life, body, freedom, reputation or property of the extorted person or of any other person, or by doing harm so that the extorted person submits to do, not to do or submit to such thing shall be liable to imprisonment for not exceeding three years or a fine of not exceeding six thousand baht, or both.

Where the offence under the first paragraph is committed by carrying weapons, by five persons upwards in joint action, or by having intention to cause the extorted person to execute, revoke,

damage or destroy any document of right, the offender shall be liable to imprisonment for not exceeding five years or a fine of not exceeding ten thousand baht, or both.

Where the offence under the first paragraph is committed by referring to the power of a secret society or an unlawful assembly, irrespective of its existence, the offender shall be liable to imprisonment from one year to seven years and a fine of two thousand baht to fourteen thousand baht.

(b) Observations on the implementation of the article

91. Section 139 of the Criminal Code criminalizes the extortion of an official to wrongfully discharge or omit to discharge the performing of any duty in his office by means of doing harm or threatening that harm will be done. The authorities confirmed that intimidation of officials to interfere with the exercise of their official duties would also fall under section 139 of the Criminal Code.

Article 26 Liability of legal persons

Paragraphs 1 and 2

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

(a) Summary of information relevant to reviewing the implementation of the article

92. Thailand referred to the Act on Offences Relating to the Submission of Bids to State Agencies, B.E. 2542 (1999) and the Anti-Money Laundering Act, B.E. 2542(1999).

93. Thailand referred to the following texts:

ANTI-MONEY LAUNDERING ACT, B.E.2542 (1999)

Section 61: Any juristic person who commits offences under section 5, section 7, section 8 or section 9 shall be liable to a fine of two hundred thousand Baht to one million Baht.

Any director, manager or person responsible for the conduct of business of the juristic person under paragraph one who commits the offence shall be liable to imprisonment for a term of one year to ten years or to a fine of twenty thousand Baht to two hundred thousand Baht or to both unless that person can prove that he or she takes no part in the commission of the offence of such juristic person.

Section 62: Any person who violates or does not comply with section 13, section 14, section 16, section 20, section 20/1, section 21, section 22, section 22/1, section 35 or section 36 shall be liable to a fine of not exceeding five hundred thousand Baht and a daily fine of not exceeding five thousand Baht a day through the period of violation or until acting correctly.

ACT ON OFFENCES RELATING TO THE SUBMISSION OF BIDS TO STATE AGENCIES, B.E. 2542 (1999)

Section 5: Any person who gives, offers to give or undertakes to give moneys or properties or other benefits to another person for the purpose of a bid, with the object of inducing others

to participate in any activity which confers a benefit to any person in the form of a right to enter into a contract with a State agency, or to induce such person to submit a higher or lower bid that is apparently inconsistent with the properties of the product, service or receivable right, or to induce such person to participate in a bid or withdrawal of a bid, shall be liable to imprisonment for a term from one year to five years and a fine of fifty percent of the highest bid price submitted by the joint offenders or of the value of the contract that has been entered into with the State agency, whichever is the higher.

Any person, who demands, receives or consents to the receipt of moneys or properties or other benefits in connection with the commission of an act under paragraph one shall be deemed as a joint offender.

Section 8: Any person who fraudulently submits a bid to a State agency knowing that the bid price submitted is unusually low such that it is apparently inconsistent with the properties of the product or service, or offers beneficial consideration to the State agency that is much higher than entitled, with the objective of creating a barrier to fair competition, and such act constitutes a cause for an inability to perform properly under a contract, shall be liable to imprisonment for a term from one year to three years and a fine of fifty percent of the bid price or the value of the contract that has been entered into with the State agency, whichever is the higher.

In the case where an inability to perform properly under a contract under paragraph one causes the State agency to incur additional costs in connection with the completion of the objectives of such contract, the offender shall also indemnify the State agency for such expenses.

In the trial and adjudication of cases relating to the submission of bid to State agencies, if requested, the Court shall also determine the additional costs borne by the State for the State agency under paragraph two.

Section 9: In the case where the commission of an offence under this act is made for the benefit of any juristic person, the managing partner, managing director, executives or authorised personnel in the operation of such juristic person's business or a person responsible for the operations of the juristic person on such matter shall also be deemed as joint principal offenders, unless it can be proven that he/she had no awareness of the commission of such offence.

SECURITIES AND EXCHANGE ACT, B.E. 2535

Section 282: Any securities company which violates or fails to comply with Section 92, Section 94, Section 96, Section 97, Section 98, Section 100, Section 101, Section 102, Section 103, Section 104, Section 105, Section 106, Section 108, Section 109, Section 110, Section 112, Section 113, Section 114, Section 115, Section 116, Section 117, Section 122, Section 123, Section 124, Section 125, Section 126, Section 129, Section 130, the first paragraph of Section 134, Section 135, Section 136, Section 139 (1), (2), (3) or (4), the first paragraph, second paragraph or third paragraph of Section 140, Section 151 or the first paragraph of Section 195 or violates or fails to comply with the rules, conditions or procedures or orders issued in accordance with the fourth paragraph of Section 90, Section 91, Section 92, Section 98(7) or (10), the second paragraph of Section 100, Section 117, Section 135, Section 139(4), the second paragraph of Section 140, Section 141, Section 142, Section 143, Section 144, or Section 150 shall be liable to a fine not exceeding three hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the violation continues.

Section 285 bis: Any securities company which violates or fails to comply with the second paragraph of Section 133 shall be liable to a fine not exceeding three hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the violation continues.

If the commission of offence under the first paragraph is also a violation of the first paragraph of Section 133, the wrongdoer shall be liable for a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the violation or failure continues.

In case of commission of an offence by a securities company under the second paragraph of Section 133, the director, manager or any person responsible for the operation of such securities company shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding three hundred thousand baht, or both, unless it can be proven that such person has no involvement with the commission of offence by such securities company.

If the commission of offence under the third paragraph is also a violation of the first paragraph of Section 133, the wrongdoer shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand baht, or both.

Section 296: Any person who contravenes Section 238, Section 239, Section 240, Section 241 or Section 243 shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding two times the benefit received or which should have been received by such person as a result of such contravention but such fine shall be not less than five hundred thousand baht, or both.

(b) Observations on the implementation of the article

94. Sections 61 and 62 of the Anti-Money Laundering Act establish criminal liability of liability of legal persons for money-laundering offences, while sections 5 and 8 of the Act on Offences Relating to the Submission of Bids to State Agencies also establishes such liability with regard to specific bidding offences.

Criminal liability of legal persons for other offences is not established.¹⁴

95. It is recommended that Thailand establish the criminal, civil or administrative liability of legal persons for participation in all corruption offences established in accordance with the Convention (beyond money-laundering offences).

Article 26 Liability of legal persons

¹⁴Development after the country visit: An amendment to the Organic Act on Counter Corruption entered into force on 10 July 2015, and contains provisions on criminal liability of legal persons in active bribery offences. In particular, section 123/5 of the Act provides for fines against legal persons in the case of active bribery of public officials if the legal person does not have appropriate internal control measures to prevent the commission of such an offence.

Section 123/5:

Whoever grants, offers to grant, or promises to grant any property or benefit to any state official, foreign public official, agent of a public international organization with intent to persuade such person to wrongfully perform, not perform or delay the performance of any duty in his office shall be subject to an imprisonment for a term of not exceeding five years or a fine of not exceeding one hundred thousand Baht, or both.

If the offence under paragraph one is committed by any person related to any juristic person and the action is taken for the benefit of such juristic person, and the juristic person does not have appropriate internal control measures to prevent the commission of such offence, the juristic person shall be deemed to have committed the offence under this Section and shall be subject to a fine of one to two times of the damages caused or benefits received.

Any person related to the juristic person under paragraph two shall mean an employee, representative, affiliated company, or any person acting for or on behalf of such juristic person, regardless of whether having the power or authority to take such actions.

Paragraph 3

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

(a) Summary of information relevant to reviewing the implementation of the article

96. Thailand referred to the following texts:

ANTI-MONEY LAUNDERING ACT, B.E.2542 (1999)

Section 61: Any juristic person who commits offences under section 5, section 7, section 8 or section 9 shall be liable to a fine of two hundred thousand Baht to one million Baht.

Any director, manager or person responsible for the conduct of business of the juristic person under paragraph one who commits the offence shall be liable to imprisonment for a term of one year to ten years or to a fine of twenty thousand Baht to two hundred thousand Baht or to both unless that person can prove that he or she takes no part in the commission of the offence of such juristic person.

ACT ON OFFENCES RELATING TO THE SUBMISSION OF BIDS TO STATE AGENCIES, B.E. 2542 (1999)

Section 9: In the case where the commission of an offence under this act is made for the benefit of any juristic person, the managing partner, managing director, executives or authorised personnel in the operation of such juristic person's business or a person responsible for the operations of the juristic person on such matter shall also be deemed as joint principal offenders, unless it can be proven that he/she had no awareness of the commission of such offence.

(b) Observations on the implementation of the article

97. Section 61 of the Anti-Money Laundering Act establishes the criminal liability of legal persons in paragraph one, while paragraph two establishes the criminal liability of any director, manager or person responsible for the conduct of business of the legal person under paragraph one who commits the offence.

98. Section 9 of the Act on Offences relating to the Submission of Bids to State Agencies sets forth that, in the case where the commission of an offence under the act is made for the benefit of a legal person, the managing partner, managing director, executives or authorised personnel in the operation of such legal person's business or a person responsible for the operations of the legal persons on such matter shall "also" be deemed as joint principal offenders, unless it can be proven that the person had no awareness of the commission of such offence.

99. Thus, both the Anti-Money Laundering Act as well as the Act on Offences relating to the Submission of Bids to State Agencies establish the criminal liability of legal persons without prejudice to the criminal liability of the natural persons who have committed the offence.

Article 26 Liability of legal persons

Paragraph 4

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

(a) Summary of information relevant to reviewing the implementation of the article

100. Thailand referred to the following text:

ANTI-MONEY LAUNDERING ACT, B.E.2542 (1999)

Section 61: Any juristic person who commits offences under section 5, section 7, section 8 or section 9 shall be liable to a fine of two hundred thousand Baht to one million Baht.

Any director, manager or person responsible for the conduct of business of the juristic person under paragraph one who commits the offence shall be liable to imprisonment for a term of one year to ten years or to a fine of twenty thousand Baht to two hundred thousand Baht or to both unless that person can prove that he or she takes no part in the commission of the offence of such juristic person.

Section 62: Any person who violates or does not comply with section 13, section 14, section 16, section 20, section 20/1, section 21, section 22, section 22/1, section 35 or section 36 shall be liable to a fine of not exceeding five hundred thousand Baht and a daily fine of not exceeding five thousand Baht a day through the period of violation or until acting correctly.

ACT ON OFFENCES RELATING TO THE SUBMISSION OF BIDS TO STATE AGENCIES, B.E. 2542 (1999)

Section 5: Any person who gives, offers to give or undertakes to give moneys or properties or other benefits to another person for the purpose of a bid, with the object of inducing others to participate in any activity which confers a benefit to any person in the form of a right to enter into a contract with a State agency, or to induce such person to submit a higher or lower bid that is apparently inconsistent with the properties of the product, service or receivable right, or to induce such person to participate in a bid or withdrawal of a bid, shall be liable to imprisonment for a term from one year to five years and a fine of fifty percent of the highest bid price submitted by the joint offenders or of the value of the contract that has been entered into with the State agency, whichever is the higher.

Any person, who demands, receives or consents to the receipt of moneys or properties or other benefits in connection with the commission of an act under paragraph one shall be deemed as a joint offender.

Section 8: Any person who fraudulently submits a bid to a State agency knowing that the bid price submitted is unusually low such that it is apparently inconsistent with the properties of the product or service, or offers beneficial consideration to the State agency that is much higher than entitled, with the objective of creating a barrier to fair competition, and such act constitutes a cause for an inability to perform properly under a contract, shall be liable to imprisonment for a term from one year to three years and a fine of fifty percent of the bid price or the value of the contract that has been entered into with the State agency, whichever is the higher.

In the case where an inability to perform properly under a contract under paragraph one causes the State agency to incur additional costs in connection with the completion of the objectives of such contract, the offender shall also indemnify the State agency for such expenses.

In the trial and adjudication of cases relating to the submission of bid to State agencies, if requested, the Court shall also determine the additional costs borne by the State for the State agency under paragraph two.

(b) Observations on the implementation of the article

101. Section 61 of the Anti-Money Laundering Act establishes a maximum sanction of 1 million Baht for legal persons committing offences of money-laundering. Sections 5 and 8 of the Act on Offences relating to the Submission of Bids to State Agencies take a different approach to defining the maximum fine, and set forth that the punishment for legal persons committing offences set forth in these sections is a fine of fifty percent of the highest bid price submitted by the joint offenders or of the value of the contract that has been entered into with the State agency, whichever is the higher.¹⁵

102. It is recommended that Thailand assess the sanctions available for legal persons in order to ensure that they are effective, proportionate and dissuasive.

Article 27 Participation and attempt

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

103. Thailand referred to the following texts:

CRIMINAL CODE

Section 83: Any offence is committed by two persons upwards, those who taking part in the commission of the offence are said to be principals, and shall be liable to the punishment provided by the law for such offence.

¹⁵ Development after the country visit: An amendment to the Organic Act on Counter Corruption entered into force on 10 July 2015, and contains provisions on criminal liability of legal persons in active bribery offences. In particular, section 123/5 of the Act provides for fines against legal persons in the case of active bribery of public officials if the legal person does not have appropriate internal control measures to prevent the commission of such an offence.

Section 123/5:

Whoever grants, offers to grant, or promises to grant any property or benefit to any state official, foreign public official, agent of a public international organization with intent to persuade such person to wrongfully perform, not perform or delay the performance of any duty in his office shall be subject to an imprisonment for a term of not exceeding five years or a fine of not exceeding one hundred thousand Baht, or both.

If the offence under paragraph one is committed by any person related to any juristic person and the action is taken for the benefit of such juristic person, and the juristic person does not have appropriate internal control measures to prevent the commission of such offence, the juristic person shall be deemed to have committed the offence under this Section and shall be subject to a fine of one to two times of the damages caused or benefits received.

Any person related to the juristic person under paragraph two shall mean an employee, representative, affiliated company, or any person acting for or on behalf of such juristic person, regardless of whether having the power or authority to take such actions.

Section 84: Whoever, irrespective of whether by employment, compulsion, threat, hire, asking for a favour, or instigation, or by any other means, causes another person to commit an offence is said to be an instigator.

Section 86: Whoever, by any means, does any act to assist or facilitate the commission of an offence of another person, before or at the time of the commission of the offence, even though the offender does not know of such assistance or facilitation, is said to be a supporter of such offence, and shall be liable to two thirds of the punishment for such offence.

ANTI-MONEY LAUNDERING ACT, B.E.2542 (1999)

Section 7: In an offence of money laundering, any person who commits any of the following acts shall be liable to the same penalty as that to which the principal committing such offence shall be liable:

- (1) aiding and abetting the commission of the offence or assisting the offender before or at the time of the commission of the offence,
- (2) providing or giving money or property, a vehicle, place or any article or committing any act for the purpose of assisting the offender to escape or to evade punishment or for the purpose of obtaining any benefit from the commission of the offence.

In the case where any person provides or gives money or property, a shelter or hiding place in order to enable his or her father, mother, child, husband or wife to escape from being arrested, the Court may inflict on such person no punishment or lesser punishment to any extent than that provided by law for such offence.

Section 9: Any person who enters into conspiracy to commit an offence of money laundering shall, when there are at least two persons in the conspiracy, be liable to one-half of the penalty provided for such offence.

If the offence of money laundering has been committed in consequence of the conspiracy under paragraph one, the person so conspiring shall be liable to the penalty provided for such offence.

In the case where the offence has been committed up to the stage of its commencement but, on account of the obstruction by the conspiring person, has not been carried out through its completion or has been carried out through its completion without achieving its end, the conspiring person rendering such obstruction shall only be liable to the penalty provided in paragraph one.

If the offender under paragraph one changes his or her mind and reveals the truth in connection with the conspiracy to the competent official prior to the commission of the offence to which the conspiracy relates, the Court may inflict on such person no punishment or lesser punishment to any extent than that provided by law for such offence.

ORGANIC ACT ON COUNTER CORRUPTION, B.E. 2542 (1999)

Section 66: In the case where the NACC finds reasonable cause to suspect or there is an allegation that a person holding the position of Prime Minister, Minister, Member of the House of Representatives, Senator or any other political official has become unusually wealthy, or committed an offence of malfeasance in office under the Penal Code or malfeasance in office or corruption under other law, the NACC shall promptly initiate a fact inquiry, except where the alleged is not an injured person and the allegation does not specify adequate evidence for a fact inquiry to proceed, in which case the NACC may not initiate a fact inquiry.

The NACC has the power to prescribe regulations pertaining to the allegation under paragraph one.

The provisions under paragraph one shall also apply to the case where the said person or other person is the principal, instigator or aider and abettor, including the donor, requested donor or pledged donor of property or other benefits to the person under paragraph one in order to induce an act or omission or delay of an act which constitute a malfeasance in office.

In the case where the NACC has reasonable cause to suspect that an injured person will enter a petition to the general meeting of the Supreme Court of Justice to allege the Prime Minister, Minister, President of the House of Representatives, or President of the Senate that an offence

under paragraph one has been committed, if the NACC passes a resolution with the votes of not less than one-half of the existing members to accept such allegation, the injured person, in this case, cannot enter a petition to the general meeting of the Supreme Court of Justice. In the case of paragraph four, the NACC shall conduct a fact inquiry without delay and the provisions of Chapter, Fact inquiry, and Chapter, Removal from Office, shall apply mutatis mutandis.

Section 84: Subject to section 19, an allegation that the following state officials committed an offence of corruption, malfeasance in office or malfeasance in judicial office shall be submitted to the NACC at the time the person against whom the allegation is made is a state official or has ceased to be a state official for not later than five years;

- (1) a person holding a political position or high ranking executive who is not a person under section 66;
 - (2) judge;
 - (3) public prosecutor;
 - (4) state official in agency of the court and constitutional organs;
 - (5) local administrator, deputy local administrator, assistant local administrator, and member of a local assembly;
 - (6) state official in the Office of the Secretariat of the House of Representatives and the Office of the Secretariat of the Senate;
 - (7) state official in an anti-corruption agency under the law governing such matter;
 - (8) state official who committed an offence having the characteristics which the NACC finds that proceedings should be taken as prescribed by the NACC;
 - (9) state official who jointly commit an offence with a person under (1) (2) (3) (4) (5) (6) (7) or (8).
- The allegation under paragraph one may be made orally or in writing as prescribed in the regulation prescribed by the NACC.

The provisions of paragraph one shall apply to the case where a state official or other person is a principal, instigator or aider and abettor.

Subject to the provisions of the law on statute of limitations, in the case where the state official under paragraph one has ceased to be a state official for more than five years, the power of the NACC's power to proceed with an inquiry of an allegation having been made or where there is a reasonable cause to suspect that a person holding a political position or state official committed an offence shall not be prejudiced, provided that the proceedings are not taken after the expiration of ten years as from the date a person holding a political position vacate office or the state official ceased to be a State official, as the case may be.

(b) Observations on the implementation of the article

104. Thailand has criminalized participation in offences in sections 83, 84 and 86 of the Criminal Code in various forms, including as an accomplice, instigator or supporter. Section 7 of the Anti-Money Laundering Act criminalizes aiding and abetting with regard to money-laundering, while section 9 of the Act criminalizes conspiracy to commit money-laundering offences.

Article 27 Participation and attempt

Paragraph 2

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

105. Thailand referred to the following texts:

CRIMINAL CODE

Section 80: Whoever commences to commit an offence, but does not carry it through, or carries it through but does not achieve its end, is said to attempt to commit an offence.

Whoever attempts to commit an offence shall be liable to two thirds of punishment provided by the law for such offence.

ANTI-MONEY LAUNDERING ACT, B.E.2542 (1999)

Section 8: Any person who attempts to commit an offence of money laundering shall be liable to the same penalty as that provided for the offender who has accomplished such offence.

(b) Observations on the implementation of the article

106. Thailand has criminalized the attempt to commit an offence established in accordance with the Convention in sections 80 of the Criminal Code and 8 of the Anti-Money Laundering Act.

Article 27 Participation and attempt

Paragraph 3

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

107. Thailand has not criminalized the preparation for an offence established in accordance with the Convention due to specificities in its legal system.

(b) Observations on the implementation of the article

108. Thailand may wish to criminalize the preparation for corruption offences established in accordance with the Convention.

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

109. Thailand referred to the Criminal Code and to the Organic Act on Counter Corruption and indicated that the NACC had submitted to parliament draft amendments of laws aiming at increasing efficiency in law enforcement in many areas. Among the suggested changes was the

interruption of the statute of limitations in cases where the alleged offender escaped, and a prolonged statute of limitations for the execution of punishment..

110. Thailand indicated that specificities in its legal system and competing priorities are the challenges it is facing in adopting the provision under review.

CRIMINAL CODE

Section 95. In criminal cases, if the offender is not prosecuted and brought to the Court within the following specified periods of time as from the date of the commission of the offence, the periods of prescription are terminated:

- (1) Twenty years, in the case of the offence punishable with death, imprisonment for life, or imprisonment of twenty years;
- (2) Fifteen years, in the case of the offence punishable with imprisonment of exceeding seven years but not up to twenty years;
- (3) Ten years, in the case of the offence punishable with imprisonment of exceeding one year up to seven years;
- (4) Five years, in the case of the offence punishable with imprisonment of exceeding one month up to one year;
- (5) One year, in the case of the offence punishable with imprisonment of one month downwards or any other type of punishment.

If the offender is prosecuted and brought to the Court, but the offender escapes or is insane, and the Court orders a suspension of trial until a specified period of time is expired as from the date of escape, or the date that the Court ordering a suspension of trial, it shall be deemed that the period of prescription is likewise terminated.

ORGANIC ACT ON COUNTER CORRUPTION, B.E.2542 (1999)

Section 74/1: In criminal proceedings against a person holding the position of Prime Minister, Minister, Member of the House of Representatives, Senator or any other political official for illicit enrichment or malfeasance in office, if an alleged culprit escapes during the prosecution, the time an alleged culprit escapes shall not be reckoned in the limitation period.

Section 75: In the case where an allegation is made that any person holding a political position or any state official has become unusually wealthy, the person making the allegation shall submit the allegation to the NACC at the time the alleged culprit is a state official or has ceased to be a state official for, not more than five years, and the NACC shall conduct a preliminary determination as to whether the circumstances or the matter specified in the allegation falls within the competence of the NACC. If the alleged culprit is a person who has already submitted an account showing particulars of assets and liabilities, the NACC shall also take such account into consideration.

In the case where a person holding a political position or state official has vacated the political office or has ceased to be a state official for more than five years, the allegation under paragraph one against the person holding a political position or state official may not be made, but without prejudice to the powers of the NACC to proceed to with inquiry on the allegation having been made or if there is a reasonable cause to suspect that a person holding a political position or state official is unusual wealthy. However, the NACC shall not proceed after ten years as from the date a person holding a political position or state official vacated the political office or ceased to be a state official, as the case may be.

Section 84: Subject to section 19, an allegation that the following state officials committed an offence of corruption, malfeasance in office or malfeasance in judicial office shall be submitted to the NACC at the time the person against whom the allegation is made is a state official or has ceased to be a state official for not later than five years;

- (1) a person holding a political position or high ranking executive who is not a person under section 66;
- (2) judge;
- (3) public prosecutor;
- (4) state official in agency of the court and constitutional organs;
- (5) local administrator, deputy local administrator, assistant local administrator, and member of a local assembly;
- (6) state official in the Office of the Secretariat of the House of Representatives and the Office of the Secretariat of the Senate;
- (7) state official in an anti-corruption agency under the law governing such matter;
- (8) state official who committed an offence having the characteristics which the NACC finds that proceedings should be taken as prescribed by the NACC;
- (9) state official who jointly commit an offence with a person under (1) (2) (3) (4) (5) (6) (7) or (8). The allegation under paragraph one may be made orally or in writing as prescribed in the regulation prescribed by the NACC.

The provisions of paragraph one shall apply to the case where a state official or other person is a principal, instigator or aider and abettor.

Subject to the provisions of the law on statute of limitations, in the case where the state official under paragraph one has ceased to be a state official for more than five years, the power of the NACC's power to proceed with an inquiry of an allegation having been made or where there is a reasonable cause to suspect that a person holding a political position or state official committed an offence shall not be prejudiced, provided that the proceedings are not taken after the expiration of ten years as from the date a person holding a political position vacate office or the state official ceased to be a State official, as the case may be.

(b) Observations on the implementation of the article

111. Section 95 of the Criminal Code contains the general statute of limitations. In accordance with that section, criminal offences prescribe in twenty, fifteen, ten, five or one year, depending on the applicable sanctions.
112. If the alleged offender has been prosecuted and brought to court, but escapes, the court can suspend the trial for a specified period, after which it prosecution is considered to be precluded by prescription.
113. Section 74/1 of the Organic Act on Counter Corruption establishes that, should an alleged culprit escape during the prosecution, the time of such an escape shall not be included in the calculation of the statute of limitations. Sections 75 and 84 of the Organic Act on Counter Corruption contain specific statutes of limitation periods for illicit enrichment and determined corruption offences committed by certain state officials.¹⁶
114. It is recommended that Thailand amend its legislation to suspend the statute of limitations also in cases in which the alleged offender has not yet been prosecuted and brought to court before he escapes.

¹⁶ Development after the country visit: Section 74/1 of OACC was amended and reads as follows:

Section 74/1: In the criminal prosecution under this Chapter, if the alleged culprit or defendant has absconded during the prosecution or consideration of the court, the period in which such alleged culprit or defendant absconds shall not be counted towards the prescription period, and when the final decision has been made to penalize the defendant, if the defendant absconds during the final sentence to penalize, the provisions of Section 98 of the Criminal Code shall not apply.

Article 30 Prosecution, adjudication and sanctions

Paragraph 1

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

(a) Summary of information relevant to reviewing the implementation of the article

115. Thailand referred to the following texts:

CRIMINAL CODE

Section 18: Punishments for inflicting upon the offenders are as follows:

- 1. Death;
- 2. Imprisonment;
- 3. Confinement;
- 4. Fine;
- 5. Forfeiture of property.

The capital punishment and life imprisonment shall be not enforced to offender less than eighteen years of age.

In case of offender less than eighteen years of age has committed the offence to be punished with death or imprisoned for life, the punishment, as aforesaid. shall be deemed as commuted as imprisoned for fifty years.

116. Thailand clarified that with regard to the sanction imposed for corruption offenses, and even though the Criminal Code and specific acts related to corruption contain life imprisonment or the death penalty, the Thai courts have never imposed such punishments.

117. The table below contains an overview of punishments applicable to offences established in accordance with the Convention:

Art. UNCAC	Section CC	Minimum punishment	Maximum punishment	Fine
15 (a)	144	n/a	5 years	Maximum 10.000 Baht
	167	n/a	7 years	Maximum 14.000 Baht
	5, Act on Offences relating to the Submission of Bids to State Agencies	1 year	5 years	50% of the highest bid price submitted by the joint offenders, or of the value of the contract that had been entered into with the State agency, whichever is the higher
15 (b)	149	5 years	Death penalty, life imprisonment or 20 years	2.000 to 40.000 Baht

Art. UNCAC	Section CC	Minimum punishment	Maximum punishment	Fine
			imprisonment	
	201	5 years	Death penalty, life imprisonment or 20 years imprisonment	2.000 to 40.000 Baht
	6, Act on Offences relating to the Submission of Bids to State Agencies	5 years	Death penalty, life imprisonment or 20 years imprisonment	2.000 to 40.000 Baht
16 (1)	-	-	-	-
16 (2)	-	-	-	-
17	147	5 years	life imprisonment or 20 years imprisonment	2.000 to 40.000 Baht
	151	5 years	life imprisonment or 20 years imprisonment	2.000 to 40.000 Baht
	152	1 year	10 years	2.000 to 20.000 Baht
	153	1 year	10 years	2.000 to 20.000 Baht
	154	5 years	life imprisonment or 20 years imprisonment	2.000 to 40.000 Baht
	155	5 years	life imprisonment or 20 years imprisonment	2.000 to 40.000 Baht
	352	n/a	3 years	Maximum 6.000 Baht
	353	n/a	3 years	Maximum 6.000 Baht
	354	n/a	5 years	Maximum 10.000 Baht
18 (a)	-	-	-	-
18 (b)	143	n/a	5 years	Maximum 10.000 Baht
19	157	1 year	10 years	2.000 to 20.000 Baht
	123/1 OACC	1 year	10 years	20.000 to 200.000 Baht
20	-	-	-	-

Art. UNCAC	Section CC	Minimum punishment	Maximum punishment	Fine
21	-	-	-	-
22	142 Financial Institution Business Act, B.E. 2551 (2008)	5 years	10 years	500.000 to 1.000.000 Baht
	352	n/a	3 years	Maximum 6.000 Baht
	353	n/a	3 years	Maximum 6.000 Baht
	354	n/a	5 years	Maximum 10.000 Baht
23	357	n/a	15 years	Maximum 30.000 Baht
	Sects. 5, 7 AMLA	1 year	10 years	20.000 to 200.000 Baht
24	357	n/a	5 years	Maximum 10.000 Baht
25 (a)	-	-	-	-
25 (b)	139	n/a	4 years	8.000 Baht

(b) Observations on the implementation of the article

118. Thailand has a range of sanctions available for corruption offences, which include fines and imprisonment. For passive bribery of national public officials, the death penalty can be imposed in accordance with sections 149 and 201 of the Criminal Code, as well as with section 6 of the Act on Offences Committed by Officials of State Organizations or Agencies, even though Thailand clarified that the death penalty had never been imposed for corruption offences.¹⁷ Thailand is recommended to assess whether amending its legislation would lead to more proportionate sanctions.

Article 30 Prosecution, adjudication and sanctions

Paragraph 2

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary,

¹⁷ Development after the country visit: An amendment to the Organic Act on Counter Corruption entered into force on 10 July 2015. The amendment modifies the implementation of several provisions of the Convention in Thai law, including the applicable punishments. As the amendment was not yet in force at the time of the country visit, its provisions are not analysed in detail in this report. However, the reviewers noted that section 123/2 of the amendment contains provisions on the imposition of the death penalty for passive bribery of state officials, foreign public officials, and agents of public international organizations.

The reviewers believed that this sanction was not proportionate to the gravity of corruption offences, and, urged Thailand to assess whether amending its legislation would lead to more proportionate sanctions, also with a view to art. 6 (2) of the International Covenant on Civil and Political Rights).

of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

119. Thailand referred to the following texts:

THE INTERIM CONSTITUTION OF THAILAND 2014

Section 18 para.3: In the case a member of the National Legislative Assembly is detained or arrested, an order to release him or her shall be made when the Chairman of the National Legislative Assembly requests or in the case a member of the National Legislative Assembly is charged in a criminal case, the court can proceed with the adjudication of the case except where the Chairman of the National Legislative Assembly requests to suspend the consideration of the case.

120. Thailand clarified that considered that even though the constitution of 2007 has been terminated, the constitutional principle in that Constitution can be applied to the immunities or jurisdictional privileges of the member of the National Legislative Assembly.

THE CONSTITUTION OF THAILAND 2007

Section 131 para.1: While the parliament is in session, it is prohibited to detain, arrest or summon a member of state house of representatives, or senate for interrogation as an accused person in a criminal case, unless the parliament which that person is a member approves, or in the case the arrest was made while committing an offense. In this case, a report shall be submitted to the chairman of the parliament immediately, and the Chairman may order the release of the arrested person. In the case where the member of the house of representatives or the senates are charged with a criminal case, regardless of whether the charge was made during or in between parliamentary sessions, the court shall not adjudicate the case during parliamentary session, unless approval has been given from the parliament which the person is a member. Any court decision made before a claim that the defendant was a member of parliament is valid.

121. Thailand noted that there have been no concrete instances where the issue of immunities and/or jurisdictional or other privileges accorded to public officials has arisen and been addressed in official documents.

122. The authorities indicated investigations can be carried out even during the sessions without the approval of the Chairman. If the National Legislative Assembly is not in session, or once its session ends, its members can be prosecuted and the Chairman cannot ask for proceedings to be suspended.

(b) Observations on the implementation of the article

123. The Interim Constitution of Thailand sets forth that, while the National Legislative Assembly is in session, the Chairman of the Assembly can request that the consideration of a case concerning a member of the Assembly be suspended. The authorities indicated that in practice, the principles contained in the 2007 Constitution with regard to immunities continued to be applied, and that members of Parliament were granted immunity while Parliament was in session. The authorities also noted that, in accordance with section 131 of the 2007 Constitution, cases involving members of parliament could not be adjudicated during parliamentary sessions, unless the parliament of which the person was a member of had given its approval.

Article 30 Prosecution, adjudication and sanctions

Paragraph 3

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

124. Thailand referred to the following text:

CRIMINAL PROCEDURE CODE

Section 145: Unless the non-prosecution order has been issued by the Attorney General, if it is in Bangkok and Thonburi, the inquiry file together with such order shall be forwarded without delay to the Commissioner General, the Deputy Commissioner General, or the Assistant Commissioner General; or if it is in any other provinces, the inquiry file together with such order shall be forwarded without delay to the Provincial Governor, in this regard the public prosecutor shall not be barred from exercising his authority to deal with the alleged offender as prescribed in Section 143.

In the case that the Commissioner General, the Deputy Commissioner General or the Assistant Commissioner General in Bangkok and Thonburi, or the Provincial Governor in any other provinces has a dissenting opinion with the order issued by the public prosecutor, the inquiry file together with such order shall be submitted to the Attorney General for making his final decision. However, if the statute of limitation of the case is being expired or there is any other necessary grounds for a prompt prosecution, the public prosecutor shall bring such case against the alleged offender to the Court pursuant to an opinion of the Commissioner General, the Deputy Commissioner General, the Assistant Commissioner General or the Provincial Governor.

The provisions of this Section shall be applied mutatis mutandis to the case in which the public prosecutor is to appeal to the Court of Appeal or the Supreme Court, or revoke the indictment or the appeal to the Court of Appeal or the Supreme Court.

Had the order of the public prosecutor been opposed, in NakhonLuang Krung Thep Thon Buri, by the Police Department's Director-General, Deputy Director-General or Assistant Director-General or, in other Changwat, by the Governor of such Changwat, the file, together with the opposing opinion, shall be submitted to the Director-General of the Public Prosecution Department for decision. If the prescription of such case is about to lapse or if there is any other necessity whereby a prosecution must take place straightway, the prosecution shall, in the meantime, be instituted pursuant to the opinion of the Police Department's Director-General, Deputy Director-General or Assistant Director-General or the Governor of Changwat.

The provisions of this section shall mutatis mutandis apply to the public prosecutor's filing an appeal to the court of second instance or court of last resort or entering a nolleprosequi in the court of first instance, court of second instance or court of last resort.

Section 145/1: For the inquiry under the responsibility of police officers, if there is an issuance of a non-prosecution order and such order is not of the Attorney-General, and if it is within Bangkok Metropolitan, the inquiry case file together with the order shall be sent to the Commissioner of the Royal Thai Police, the Deputy Commissioner of the Royal Thai Police or the Assistant Commissioner of the Royal Thai Police, or if it is within other provinces, the inquiry case file together with the order shall be sent to the Commanding Officer or the Deputy Commanding Officer who is the superior of the responsible inquiry

officer. In neither case shall the Public Prosecutor be barred from dealing with the alleged offender as provided in Section 143.

In the case that the Commissioner of the Royal Thai Police, the Deputy Commissioner of the Royal Thai Police, the Assistant Commissioner of the Royal Thai Police, the Commanding Officer or the Deputy Commanding Officer who is the superior of the responsible inquiry officer in other provinces disagrees with the order of the Public Prosecutor, the case file together with an opinion shall be sent to the Attorney-General for final decision. If, however, the period prescription for such case is about to be expired or there is any other reason by which it is necessary to expedite prosecution, the prosecution shall, in the meantime, be instituted in accordance with the opinion of the Commissioner of the Royal Thai Police, the Deputy Commissioner of the Royal Thai Police, or the Assistant Commissioner of the Royal Thai Police, as the case may be.

The provision of this Section shall be applied *mutatis mutandis* to appeal, *dika* appeal, or the withdrawal of a charge or of the appeal or *dika* appeal by the Public Prosecutor.”

ORGANIC ACT ON COUNTER CORRUPTION

Section 28/1: In case where a working group is constituted between the NACC and the Prosecutor-General under this Organic Act, the Office of the NACC shall act as the secretariat. The working group shall have the powers and duties to consider the incomplete evidence and collate additional evidence for completeness before submitting the matter to the Prosecutor-General for the filing of a petition or complaint in court.

125. Section 145/1 of the CPC allows the Commissioner General, the Deputy Commissioner General, the Assistant Commissioner General, the Commanding Officer, or the Deputy Commanding Officer to submit his/her dissenting opinion with the non-prosecution order for the inquiry under the responsibility of police officers. On the other hand, where the inquiry falls under the responsibility of administration, the Commissioner General, the Deputy Commissioner General, the Assistant Commissioner General, or the Provincial Governor is allowed to do so under section 145 of the CPC.
126. The authorities indicated that, once NACC has completed its inquiry and decided that the evidence points towards the commission of an offence, it will forward the case to the Office of the Attorney-General. If the Public Prosecutor finds that the case is not complete, the corresponding observation will be made and NACC will be required to carry out further inquiries in a joint investigation with the NACC.
127. This joint team would then decide on whether or not the case was ready to go to court. If the joint agreement was that the case was not ready, a non-prosecution order would be issued. If there was no agreement among the joint team, the case would be returned to NACC and NACC would be authorized to prosecute.
128. In order to decide on whether a decision not to prosecute would be taken, the Public Prosecutor's Act provides guidelines on such cases. The authorities further indicated that the discretion in deciding not to prosecute by the Office of the Attorney-General was in accordance with the Prosecutors Regulation 2547 and the Criminal Procedure Code.
129. The authorities stated that the principle of opportunity was applied restrictively in corruption cases, and such cases were always prosecuted unless there was a lack of evidence.

(b) Observations on the implementation of the article

130. Thailand applies the principle of opportunity. However, in corruption cases, the decision not to prosecute does not lie solely with the Attorney-General, instead, the NACC can prosecute cases even if the Attorney-General does not agree with such prosecution.

Article 30 Prosecution, adjudication and sanctions

Paragraph 4

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

131. Thailand referred to the following texts:

CRIMINAL PROCEDURE CODE

Section 107: Upon receipt of an application for provisional release, the official or court shall instantly deliver any order. A provisional release must be granted to every accused or defendant on the basis of the criteria set forth in sections 108, 108/1, 109, 110, 111, 112, 113 and 113/1.

Every person concerned shall, without hesitation, comply with an order granting a provisional release pursuant to paragraph 1.

Section 108: In deciding an application for provisional release, the followings must be taken into account:

- (1) The gravity of the charge.
- (2) The existence of the evidence.
- (3) The circumstances of the case.
- (4) The reliability of the applicant or of his bail or security.
- (5) The likelihood of the accused or defendant absconding.
- (6) The danger or injury which might ensue from the provisional release.
- (7) Any objection by the inquirer, public prosecutor, prosecutor or victim, as the case may be, in the event that the accused or defendant is detained by virtue of a judicial warrant.

For the purpose of complying with paragraph 1, the official empowered to grant a provisional release or the court may, in conjunction with his or its consideration, hear the fact, report or opinion submitted by any official invested by law with the power and duty concerned.

In granting a provisional release, the official empowered to so grant or the court may stipulate any condition governing the residence of the person provisionally released or any other condition to be observed by such person, in order to prevent his abscondence or any possible danger or injury which might ensue from the provisional release.

An application for provisional release may be dismissed only by virtue of any of the following reasonable beliefs:

- (1) The accused or defendant may abscond.
- (2) The accused or defendant may tamper with evidence.
- (3) The accused or defendant may cause another danger.
- (4) The applicant or his bail or security is unreliable.
- (5) The provisional release would impede or imperil an official inquiry or judicial trial.

An order dismissing an application for provisional release must contain the grounds therefor. Moreover, the accused or defendant and the applicant shall be informed of the dismissal in writing without delay.

Section 109: Where an accused is accused of, or a defendant is charged with, an offence liable to the maximum imprisonment for a term exceeding ten years, if an application for his provisional release is made during an inquiry or during the court of first instance's trial, the court shall ask the inquirer, public prosecutor or prosecutor whether he would raise any objection. If such asking cannot be made on justifiable grounds, it may be cancelled but the said grounds must be noted down.

Section 110: In a case of an offence liable to the maximum imprisonment for a term exceeding five years, a person to be provisionally released must provide bail and may also be demanded to provide security.

In other case, a provisional release may be granted whether on own recognizance, with bail or with bail and security.

The bail or security under paragraph 1 or 2 ought not to be demanded in excess of the necessity, subject to the criteria, procedure and condition prescribed in the ministerial regulation or regulation of the President of the Supreme Court of Justice, whichever applies.

Section 111: Where a provisional release is to be granted on own recognizance, the accused or defendant shall be required, prior to being released, to administer an oath or make an affirmation that he shall make a personal appearance as designated or summonsed.

132. Thailand provided the following case example:

1) Supreme Court Decision No. 8484/2549 (2006)

In the consideration of the request for provisional release, Section 108 (effective as at the event) of the Criminal Procedure Code prescribes that the Court shall take into account (1) gravity of the charge; (2) the existence of the evidence; (3) circumstances of the case; (4) reliability of the appellant or security to the bail; (5) the likelihood that the accused or defendant will abscond; (6) the danger or damage expected to be caused from the provisional lease (if any); (7) in the case that the accused or defendant is detained by virtue of a judicial warrant, if there is any objection by the inquiry official, public prosecutor, or the plaintiff, as the case may be. Therefore, when the defendant dismissed the plaint for provisional release dated 4 November 1993 which Tor., the appellant of the provisional release, had requested during the investigation, after having considered that the plaintiff did not retain permanent residence, the appellant was not a relative of the plaintiff, and the inquiry officer who was gathering evidence for other cases had objected the provisional release; the defendant had, therefore, considered the objection by the inquiry officer together with gravity of the charge and circumstances of the case before ruling on the request for provisional release according to Section 108 of the Criminal Procedure Code. The defendant had exercised his discretion based on the evidence thereof, not defamation against the plaintiff. Although the proposed security for provisional release was as high as Baht 542,640, it was merely a factor that the Court may take into the consideration on the provisional release request. The Court was not required to grant a provisional release when the proposed security was high.

(b) Observations on the implementation of the article

133. Thailand can provisionally detain alleged offenders. Section 108 of the Criminal Procedure Code sets forth the criteria for deciding on applications for provisional release, and stipulates inter alia that the gravity of the charge, the reliability of the applicant or of his bail or security, the likelihood of the accused or defendant absconding and the danger or injury which might ensue from the provisional release need to be taken into account in the decision.

134. An application for provisional release may be dismissed if there is reasonable belief that the accused or defendant may abscond, or that the applicant or his bail or security is unreliable (sect. 108 Criminal Code).

Article 30 Prosecution, adjudication and sanctions

Paragraph 5

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

135. Thailand noted that, due to specificities in its legal system, the early release of convicted person under Thai laws does not take into account the gravity of the offenses concerned, but is based on criteria on granting a royal pardon which is enacted in the form of a royal decree. The criteria include inter alia the remaining sentence of the convicted person or the disabilities or health issues of the convicted person.

(b) Observations on the implementation of the article

136. It is recommended that Thailand take into account the gravity of the offences concerned when considering early release or parole of persons convicted of offences established in accordance with the Convention.

Article 30 Prosecution, adjudication and sanctions

Paragraph 6

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

137. Thailand referred to the following text:

ORGANIC ACT ON COUNTER CORRUPTION, B.E. 2542 (1999)

Section 90: In conducting a fact inquiry, if the NACC is of the opinion that the continued performance of the alleged culprit shall cause injury to the government service or cause an impediment to the inquiry, the NACC shall refer the matter to the superior of the alleged culprit for an order of suspension from the government service or from work pending the decision of the NACC. If the superior of the alleged culprit has ordered a suspension from government service or from work and a subsequent outcome of the inquiry reveals that the allegation has no prima facie case, the NACC shall inform the superior of the alleged culprit thereof for the purpose of issuing an order allowing the alleged culprit to resume the government service or work in the original position.

Section 92. In the case where a prima facie case for a disciplinary offence is found, when the NACC, after having considered the circumstances of the commission of the offence, passes a resolution that a particular alleged culprit has committed a disciplinary offence, the President

shall send the report and existing documents together with an opinion to the superior or the person who has the power to appoint or remove such alleged culprit for the purpose of considering the disciplinary penalty for the offence in respect of which the NACC has passed the resolution, without the appointment of a disciplinary inquiry committee. In considering the disciplinary penalty to be inflicted upon the alleged culprit, it shall be deemed that the report, documents and opinion of the NACC is the disciplinary inquiry file of the disciplinary inquiry committee under the law, rules or regulations on personnel administration applicable to such alleged culprit, as the case may be.

In the case where the alleged culprit is a judicial official under the law on judicial service, judge of the Administrative Court under the law on establishment of Administrative Courts and Administrative Court procedures or public prosecutor under the law on public prosecutor service, the President shall send the report and existing documents together with an opinion to the President of the Judicial Commission, the President of the Judicial Commission of the Administrative Courts or the President of the Public Prosecutors Commission, as the case may be, for considering and proceeding with the matter in accordance with the law on judicial service, the law on establishment of Administrative Courts and Administrative Court procedures or the law on public prosecutors service without delay. In this connection, the report and documents of the NACC shall also be regarded as part of the inquiry file. The outcome shall be furnished to the NACC for information within fifteen days as from the date the order of the disciplinary penalty is issued or the date a decision is given that no disciplinary offence is found.

In the case of the alleged culprit to whom no laws, rules or regulations on disciplines are found applicable, the President shall, upon the NACC's resolution that such alleged culprit has committed an offence as alleged, send the report and existing documents together with the opinion of the NACC to the superior or the person who has the power to appoint or remove such alleged culprit for the purpose of proceedings in accordance with his or her powers and duties.

Section 93. Upon receipt of a report under section 92 paragraph one and paragraph three, the superior or the person having the power to order the appointment and removal shall consider the penalty within thirty days as from the date of receipt thereof, and the superior or the person having the power to order the appointment and removal shall furnish a copy of the penalty order to the NACC for information within fifteen days as from the date the order is issued.

Section 94. Any superior or the person having the power to order the appointment and removal who fails to take action under section 93 is deemed to commit a disciplinary offence or a legal offence under the law, rule or regulation on personnel administration applicable to the alleged culprit in question.

CIVIL SERVICE ACT B.E. 2551 (2008)

Section 101: “Where a civil servant is subject to an allegation of having committed a gross disciplinary breach thereby resulting in the appointment of a commission of inquiry or a criminal prosecution or becoming a suspect for the commission of a criminal offence, except for offences committed through negligence or a minor offence, the supervising official authorized to make an instatement order under section 57 shall have the power to order a suspension from government service or a provisional discharge from government service pending the result of the inquiry or consideration or case outcome.

If subsequently the inquiry or consideration finds that such person did not commit a breach or the breach did not call for punishment by dismissal or expulsion, and there are no other causes for discharge from government service, such authorized person shall order such person to resume performance of official functions or resume government service in the original position or other position in the same category and level, or in a position category and level prescribed by the Civil Service Commission, provided that such person meets the qualification requirements for such position.

...

In case where a person provisionally discharged from government service is ordered to resume government service, or is ordered to discharged from government service for reasons other than a punishment for commission of a gross disciplinary breach, such person shall retain the status of civil servant throughout the period of provisional discharge from government service as if such person was suspended from government service.

...

A suspension from government service shall remain effective throughout the period of inquiry or consideration, except where the person suspended from government service files a petition under section 122 and the authorized person to consider the petition finds that it is appropriate to order such person to resume official duties prior to the completion of the inquiry or consideration because the conduct of the person suspended from government service does not pose an obstacle to the inquiry or consideration, and does not cause further disorder, or because the disciplinary proceedings have lasted for one year from the date of suspension from the government service and not yet completed and the person suspended from government service no longer exhibits such conducts, in which case the person authorized to order the suspension from government service shall order such person to resume official duties prior to the completion of the inquiry or consideration.

The provisions of paragraph six shall also apply to the case of an order of provisional discharge from government service.

The rules and procedures relating to suspension from government service, provision discharge from government service, period of suspension from government service and provisional discharge from government service, resumption of official duties, or resumption of government service and proceedings consequential of results of inquiries and considerations shall be as prescribed by Civil Service Commission Regulation.

(b) Observations on the implementation of the article

138. Section 90 of the Organic Act on Counter Corruption allows for the suspension of a public official at the request with the opinion that the continued performance of the alleged shall cause injury to the government service or cause an impediment to the inquiry of the NACC even before the public official is accused. The authorities confirmed that reassignment of accused public officials was possible on an administrative basis. The removal of accused public officials was also possible given that the superior official or the person authorised to appoint or remove the official could hand down a penalty based on the findings of the NACC without requiring the appointment and consideration of a disciplinary inquiry committee. (Section 92)

Article 30 Prosecution, adjudication and sanctions

Paragraph 7

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(b) Holding office in an enterprise owned in whole or in part by the State.

(a) Summary of information relevant to reviewing the implementation of the article

139. Thailand referred to the following text:

Civil Service Act. B.E. 2551 (2008)

Section 36: A person entering the civil service must have general qualifications and not be under a prohibition, as follows:

...

B. Prohibitions:

(3) being a person suspended from government service or temporarily discharged from government service under this Act or other laws;

...

(7) having been imprisoned by final sentence of imprisonment for a criminal offence, with the exception of sentences for offences committed negligently or minor offences;

(8) having been punished by discharge, dismissal or expulsion from a State enterprise or other State agencies;

(9) having been punished by discharge or dismissal for breach of discipline under this Act or other laws;

(10) having been punished by expulsion for a breach of discipline under this Act or other laws;

The CSC may consider a waiver and allow entry into the government service for persons entering the civil service who are under the prohibitions in B. (4), (6), (7), (8), (9), (10) or (11), provided that in the case of the prohibition under (8) or (9), such person must have already retired from work or retired from government service for more than two years, and in the case of the prohibition under (10), such person must have already retired from work or retired from government service for more than three years, and in no event shall the retirement from work or retirement from government service be on account of malfeasance in office. A resolution of the CSC on such waiver shall receive the votes of not less than four-fifths of the number of commissioners present at the meeting. Votes shall be cast by secret ballot. An application for waiver under paragraph two shall be as prescribed by CSC Regulation.

In the case of paragraph two, the CSC may grant an individual waiver or may issue a notification granting a general waiver.

Standard Qualification for Board Members and Officers of State Enterprise Act

Section 4. In this Act:

“state enterprise” means

- (1) Governmental organisation under the law on the establishment of Governmental organisation or an enterprise of the State under the law establishing such enterprise, and shall include business agency which the State owns, but shall not include organisation or enterprise having a sole objective to assist or promote any undertaking which is not business;
- (2) company limited or juristic partnership in which a ministry, sub-ministry, department, or political *Tabuang* having the equivalent status and/or state enterprise under (1) has capital of exceeding fifty percent; or,
- (3) company limited or juristic partnership in which a ministry, sub-ministry, department, or public body having the equivalent status and/or state enterprise under (1) and/or (2) has capital of two third;

“board member” means member of the board of the state enterprise, and shall include the president and vice-president as well;

“executive-officer” means Governor, director, managing director, manager, or person holding the position of chief executive officer having the similar powers and duties in such state enterprise;

“officer” means officer and employer of a state enterprise, and shall include the board’s advisor, state enterprise’s advisor, secretary, deputy-secretary of the board or person holding the position having similar powers and duties but is otherwise called in a state enterprise as

well, provided that it shall only be used for the prescription of standard qualification and vacation from the position.

Section 5. A board member shall, in addition to having the qualification and not being under the prohibitions imposed for such state enterprise, must have the following qualifications and not be under any of the following prohibitions:

- (1) being of Thai nationality;
 - (2) being not exceeding sixty years of age;
 - (3) having qualifications and experiences appropriate for the undertakings of such state enterprise;
 - (4) not being bankrupt, or not having been dishonestly bankrupt;
 - (5) not having been sentence by a final judgement to imprisonment, except penalty for offence committed through negligence or petty offence;
 - (5/1) not being of unsound mind or of mental infirmity;
 - (5/2) not having been ordered by a judgement or an order of the Court that his or her assets shall vest in the State on the ground of unusual wealth or an unusual increase of assets;
 - (5/3) not being a member of the House of Representatives, Senator, member of local assembly, or local administrator;
 - (6) not being a political official, except being a member of a committee as per the provisions of the law;
 - (7) not being a person holding a position in a political party or an officer of a political party;
 - (7/1) not having been expelled, dismissed, or removed from the office on the ground of dishonest performance of duties;
 - (8) not being a stockholder of such state enterprise or of a juristic person of which such state enterprise is a stockholder;
 - (9) not holding a position in a juristic person of which such state enterprise is a stockholder, unless the board of such state enterprise entrust him or her to a position of board member or other position in the juristic person of which such state enterprise is a stockholder;
 - (10) not being a board member, or executive officer, or person having the power to administrate, or having an interest in a juristic person which is a concessionaire, joint venture, or which has an interest related to the undertaking of such state enterprise, except being a managing director, board member, or executive as entrusted by such state enterprise.
- ...

Section 8. In addition to vacation from office as imposed for such state enterprise, a board member vacates office upon:

- ...
- (3) being disqualified or being under prohibition under section 5;
- ...

Section 8 ter. An executive, in addition to having qualifications and not being under prohibitions as prescribed for such state enterprise, must have the following qualifications and not being under any of the following prohibitions:

- (1) being of Thai nationality;
- (1/1) being not exceeding sixty years of age;
- (2) being able to work full time for such state enterprise;
- (3) not being of unsound mind or of mental infirmity;
- (4) not being bankrupt, or not having been dishonest bankrupt;
- (5) not having been sentence by a final judgement to imprisonment, except for offence committed through negligence or petty offence;
- (6) not having been ordered by a judgement or an order of the Court that his/her assets shall vest in the State on the ground of unusual wealth or an unusual increase of assets;

- (7) not being an executive or officer of other state enterprise or other profit seeking enterprise;
- (8) not being a government official, officer, or employee holding a permanent position or receiving salary from the central administration, regional administration, local administration, or other state agency;
- (9) not being a political official, member of the House of Representatives, senator, member of a local assembly, or local administrator;
- (10) not being a person holding any position in a political party, or officer of a political party;
- (11) not having been expelled, dismissed, or removed from the office on the ground of dishonest performance of duties;
- (12) not being or not having been, within three years prior to the date of the appointment, a member, executive, or person having the power to administrate, or have an interest in the juristic person who is a concessionaire, joint venture, or which has an interest related to the undertaking of such state enterprise, except being a managing director or board member of such juristic person as entrusted by such state enterprise.

Section 8 quinquies. In addition to vacation from office as imposed for such state enterprise, an executive vacates office upon:

- ...
- (3) being disqualified or being under prohibition under section 8 ter;
- ...

Section 9. An officer of a state enterprise, in addition to having qualifications and not being under prohibitions prescribed for such state enterprise, shall have the following qualifications and not being under any of the following prohibitions:

- (1) being of Thai nationality;
- (2) being not exceeding sixty years of age;
- (3) being able to work full time for such state enterprise;
- (4) not being bankrupt, or not having been dishonestly bankrupt
- (5) not having been sentence by a final judgement to imprisonment, except for offence committed through negligence, or petty offence, or having been exonerated for more than five years;
- (5/1) not being of unsound mind or of mental infirmity;
- (5/2) not having been ordered by a judgement or an order of the Court that his/her assets shall vest in the State on the ground of unusual wealth or an unusual increase of assets;
- (6) not being a Government official holding a permanent position or receiving salary, including political official, employee of a Ministry, *Tabuang*, Department, or political *Tabuang* having equivalent status to local officer, and member of local assembly or Bangkok Metropolitan Council, and local administrator;
- (7) not being a person holding any position in a political party, or officer of a political party;
- (8) not having been expelled, dismissed, or removed from the office on the ground of dishonest performance of duty.

Section 11. In addition to vacation from office as imposed for such state enterprise, an officer vacates office upon:

- ...
- (3) being disqualified or being under prohibition under section 9 or section 10;
- ...

(b) Observations on the implementation of the article

140. Section 36 (7) of the Civil Service Act prohibits persons who have been imprisoned by final sentence for a criminal offence, with the exception of sentences for offences committed negligently or minor offences, from entering the civil service. As all offences established in accordance with the Convention are committed intentionally, this would apply to all persons imprisoned for the commission of such offences.

141. In addition, section 36 (3) stipulates such a prohibition for persons suspended from government service or temporarily discharged from government service, while subsections (8) and (9) prohibit the entering into the civil service of persons having been punished by discharge, dismissal or expulsion from a State enterprise or other State agency, or those having been punished by discharge or dismissal for breach of discipline.

142. The authorities confirmed that a similar procedure was established for persons holding office in an enterprise owned in whole or in part by the State.

Article 30 Prosecution, adjudication and sanctions

Paragraph 8

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

(a) Summary of information relevant to reviewing the implementation of the article

143. Thailand referred to the following texts:

ORGANIC ACT ON COUNTER CORRUPTION, B.E. 2542 (1999)

Section 91: When the NACC has conducted a fact inquiry and passed a resolution that a particular allegation has no prima facie case, such allegation shall lapse. Any allegation which, according to the NACC's resolution, has a prima facie case shall be pursued as follows:

- (1) if a prima facie case for a disciplinary offence is found, it shall be proceeded with in accordance with section 92;
- (2) if a prima facie case for a criminal offence is found, it shall be proceeded with in accordance with section 97.

Section 92: In the case where a prima facie case for a disciplinary offence is found, when the NACC, after having considered the circumstances of the commission of the offence, passes a resolution that a particular alleged culprit has committed a disciplinary offence, the President shall send the report and existing documents together with an opinion to the superior or the person who has the power to appoint or remove such alleged culprit for the purpose of considering the disciplinary penalty for the offence in respect of which the NACC has passed the resolution, without the appointment of a disciplinary inquiry committee. In considering the disciplinary penalty to be inflicted upon the alleged culprit, it shall be deemed that the report, documents and opinion of the NACC is the disciplinary inquiry file of the disciplinary inquiry committee under the law, rules or regulations on personnel administration applicable to such alleged culprit, as the case may be.

In the case where the alleged culprit is a judicial official under the law on judicial service, judge of the Administrative Court under the law on establishment of Administrative Courts and Administrative Court procedures or public prosecutor under the law on public prosecutor service, the President shall send the report and existing documents together with an opinion to the President of the Judicial Commission, the President of the Judicial Commission of the Administrative Courts or the President of the Public Prosecutors Commission, as the case

may be, for considering and proceeding with the matter in accordance with the law on judicial service, the law on establishment of Administrative Courts and Administrative Court procedures or the law on public prosecutors service without delay. In this connection, the report and documents of the NACC shall also be regarded as part of the inquiry file. The outcome shall be furnished to the NACC for information within fifteen days as from the date the order of the disciplinary penalty is issued or the date a decision is given that no disciplinary offence is found.

In the case of the alleged culprit to whom no laws, rules or regulations on disciplines are found applicable, the President shall, upon the NACC's resolution that such alleged culprit has committed an offence as alleged, send the report and existing documents together with the opinion of the NACC to the superior or the person who has the power to appoint or remove such alleged culprit for the purpose of proceedings in accordance with his or her powers and duties.

144. Thailand also referred to Cabinet resolution no. No Wo 41/2497 as follows:

The Council of Minister has a resolution that Government sectors shall speed up the process in the case where there is a consideration of penalty for a Government official so as to be swift. Every case shall be followed up and expedited by the Office of the Civil Service Commission to be in accordance with the policy of the Government [there is no need to wait for the judgment of the criminal proceeding to continue the disciplinary inquisition]

(b) Observations on the implementation of the article

145. The authorities confirmed that Cabinet resolution no. No Wo 41/2497 was interpreted in a way to allow disciplinary action and criminal proceedings to run in parallel.

Article 30 Prosecution, adjudication and sanctions

Paragraph 10

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

146. Thailand indicated that the Department of Corrections was committed to rehabilitating and developing the behaviour of convicted persons by encouraging prisons and detention facilities in Thailand to organize occupational training programmes in various sectors for convicted persons.

(b) Observations on the implementation of the article

147. Thailand does not have a dedicated reintegration programme. However, occupational training programmes are organized in prisons and detention facilities in Thailand in order to reintegrate offenders into society.

148. Thailand is encouraged to strengthen its measures for the reintegration of offenders into society.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (a)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(a) Summary of information relevant to reviewing the implementation of the article

149. Thailand referred to the following texts:

CRIMINAL CODE

Section 18: Punishments for inflicting upon the offenders are as follows:

1. Death;
2. Imprisonment;
3. Confinement;
4. Fine;
5. Forfeiture of property

Section 33: For the forfeiture of a property, the Court shall, besides having the power to forfeit under the law as specially provided for that purpose, have the power to forfeit the following properties also, namely:

1. A property used or possessed for use in the commission of an offence by a person; or
2. A property acquired by a person through the commission of an offence.

Unless such property belongs to the other person who does not connive at the commission of the offence.

Section 34: All properties:

- (1) Which have been given under Section 143, Section 144, Section 149, Section 150, Section 167, Section 201 or Section 202; or
- (2) Which have been given in order to induce a person to commit an offence, or as a reward to a person for committing an offence, shall be forfeited wholly, unless those properties belong to the other person who does not connive at the commission of the offence.

Section 35: The properties forfeited by the Court's judgment shall be vested in the State, the Court may give judgment such properties to be rendered useless, or to be destroyed.

Section 36: In case of the Court has already given order for the forfeiture of the properties according to Section 33 or Section 34, if it appears afterwards by the submission of the real owner that he has not connived at the commission of such offence, the Court shall give order for the return of the properties if such properties are still in the possession of the official. But the submission of the real owner shall be made to the Court within one year reckoning from the day of the final judgment.

Section 37: If the person who is ordered by the Court to deliver the forfeited property does not deliver it within the time determined by the Court, the Court shall have the power to give order as follows:

1. To seize such property;
2. To pay its value, or to seize other property of such person to compensate for its value in full; or
3. In case of the Court is of opinion that such person can deliver the property ordered to be delivered, but does not deliver it, or such person can pay its value, but does not pay, the

Court shall have the power to confine such person until such person complies with the order, but the period of confinement shall not exceed one year. But, if, afterwards, it appears to the Court itself or by the submission of such person that such person cannot deliver the property or pay its value, the Court may give order to release such person before the expiration of such period.

Civil and Commercial Code

Section 138. Property includes things as well as incorporeal objects, susceptible of having a value and of being appropriated.

ORGANIC ACT ON COUNTER CORRUPTION, B.E. 2542 (1999)

Section 78: In the case where the NACC discovers that any property of the alleged culprit is connected with the unusual wealth and is under the circumstance convincingly indicative of the possibility of its transfer, move, transformation or concealment, the NACC shall have the power to issue an order of temporary seizure or attachment of that property, without prejudice to the right of the alleged culprit to submit an application for taking such property for use with or without bail or security.

When there occurs a temporary seizure or attachment of the property under paragraph one, the NACC shall cause to be conducted proof of the property without delay. In the case where the alleged culprit is unable to present evidence that the property under temporary seizure or attachment is not connected with the unusual wealth, the NACC shall have the power to continue its seizure or attachment until the NACC passes a resolution that the allegation has no prima facie case, which must be within one year as from the date of the seizure or attachment or until the Court passes a final judgment dismissing that case. But, if the proof is successful, the property shall be returned to such person.

Section 80. If the NACC has conducted a fact inquiry and passed a resolution that the alleged culprit has become unusually wealthy, the NACC shall proceed as follows:

(1) in the case where it is the alleged culprit under section 66, the President shall refer the matter to the Prosecutor-General for submission of a motion to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions requesting the Court to order that the property devolve upon the State;

(2) in the case where the alleged culprit is a person holding the position of President of the Supreme Court of Justice, President of the Constitutional Court, President of the Supreme Administrative Court, judge of the Constitutional Court, Election Commissioner, Ombudsman, member of the State Audit Commission, Vice President of the Supreme Court of Justice, Vice President of the Supreme Administrative Court, Chief of the Military Judicial Office, Deputy Prosecutor-General or is a person holding a high-ranking position, the President shall refer the matter to the Prosecutor-General for submission of a motion to the court having competence to try and adjudicate the case requesting the Court to order that the property devolve upon the State;

(3) in the case where the alleged culprit is a person holding the position of Prosecutor-General, the President shall submit a motion to the court having competence to try and adjudicate the case requesting the Court to order that the property devolve upon the State;

(4) in the case where the alleged culprit is a State official who is not a person under (1), (2) and (3), the President shall refer the matter to the Prosecutor-General for submission of a motion to the Court having competence to try and adjudicate the case requesting the Court to order that the property devolve upon the State, and the President shall notify the superior or the person having the power to appoint or remove the alleged culprit for the purpose of issuing a punitive order of expulsion or dismissal on the deemed ground of the commission of corruption, except that in the case where the alleged culprit is a judicial official under the law on judicial service, judge of the Administrative Court under the law on establishment of Administrative Courts and Administrative Court procedures or public prosecutor under the law on public prosecutors service, the President shall notify the President of the Judicial Commission, the President of the Judicial Commission of Administrative Courts or the

President of the Public Prosecutors Commission, as the case may be, for considering and proceeding with the matter in accordance with the law on judicial service, the law on establishment of Administrative Courts and Administrative Court procedures or the law on public prosecutors service. In the case under (1) or (2), when the Prosecutor-General receives the report and documents together with the opinion from the NACC and is of the opinion that the report, documents and opinion referred to by the NACC are not so complete as to justify the institution of legal proceedings, the Prosecutor-General shall notify the NACC for further action. For this purpose, the incomplete items shall fully be specified at the same time. In this case, the NACC and Prosecutor-General shall appoint a working committee consisting of representatives of each side in an equal number for the purpose of collecting full evidence to be referred to the Prosecutor-General for further submission of a motion to the Supreme Court of Justice's Criminal Division of Persons Holding Political Positions or the court having competence to try and adjudicate the case, as the case may be, requesting the Court to give a subsequent order that the property devolve upon the State. In the case where such working committee fails to reach an agreement as to the legal proceedings, the NACC shall have the power to submit a motion to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions or the Court having competence to try and adjudicate the case, as the case may be, requesting the Court to order that the property devolve upon the State.

The proceedings under paragraph one shall be exempt from court fees. As for cases under (2), (3) or (4), the Civil Procedure Code shall apply *mutatis mutandis*.

Section 81. The Prosecutor-General or the President, as the case may be, shall submit a motion requesting the Court to order that the property devolve upon the State under section 80 within ninety days as from the date the matter is received from the NACC.

In the case in which a request is made that the property be ordered to devolve upon the State, onus of proof to the Court that the said property does not result from the unusual wealth is upon the alleged culprit.

Section 83: If the Court gives an order that the alleged culprit's property in respect of which the NACC has passed a resolution confirming its representing the unusual wealth or that the unusual increase shall devolve upon the State but execution cannot be conducted of the whole or part of such property, the execution may be conducted of other property of the alleged culprit within the limitation period of ten years, provided that it shall not be conducted in excess of the value of the property ordered by the court to devolve upon the State.

ANTI-MONEY LAUNDERING ACT, B.E. 2542 (1999)

Section 3: "property connected with the commission of an offence" means:

(1) money or property obtained from the commission of an act constituting a predicate offence or offence of money laundering or from aiding and abetting or rendering assistance in the commission of an act constituting a predicate offence or offence of money laundering, and shall also include money or property used or possessed to be used in, or for aiding and abetting the commission of an act constituting a predicate offence under (8) of the definition of "predicate offence";

(2) money or property obtained from the distribution, disposal or transfer in any manner of the money or property under (1); or

(3) fruits of the money or property under (1) or (2).

Provided that it is immaterial whether the property under (1), (2) or (3) is distributed, disposed of, transferred or converted on how many occasions and whether the same is in possession of any person or transferred to any person or evidently registered as belonging to any person;

Section 48: In conducting an examination of the report and information on transaction-making, if there is a reasonable ground to believe that any property connected with the

commission of an offence may be transferred, distributed, moved, concealed or hidden, the Transaction Committee shall have the power to order a provisional seizure or attachment of such property for the period of not more than ninety days.

In case of compelling necessity or urgency, the Secretary-General shall order a seizure or an attachment of the property under paragraph one for the time being and then report it to the Transaction Committee accordingly.

The examination of the report and information on transaction-making under paragraph one shall be in accordance with the rules and procedures as prescribed in the Ministerial Regulation.

The person having made the transaction in respect of which the property has been seized or attached or any interested person in the property may produce evidence that the money or property in such transaction is not the property connected with the commission of the offence in order that the seizure or attachment order may be revoked, in accordance with the rules and procedures as prescribed in the Ministerial Regulation.

When the Transaction Committee or the Secretary-General, as the case may be, has ordered a seizure or an attachment of the property or ordered revocation thereof, the Transaction Committee shall report it to the Board.

Section 50 The person claiming ownership in the asset in respect of which the public prosecutor has filed a petition for it to be vested in the State under Section 49 may, before the Court gives an order under Section 51, file an application satisfying that:

(1) the applicant is the real owner and the asset is not the asset connected with the commission of the offence, or

(2) the applicant is a transferee in good faith and for value or has secured its acquisition in good faith and appropriately in the course of good morals or public charity.

The person claiming to be a beneficiary of the asset in respect of which the public prosecutor has filed a petition for it to be vested in the State under Section 49 may file an application for the protection of his or her rights before the Court gives an order. For this purpose, the person shall satisfy that he or she is a beneficiary in good faith and for value or has obtained the benefit in good faith and appropriately in the course of good morals or public charity.

Section 51: When the Court has conducted an inquiry into an application filed by the public prosecutor under section 49, if the Court is satisfied that the property to which the petition relates is the property connected with the commission of the offence and that the application of the person claiming to be the owner or transferee thereof under section 50 paragraph one is not tenable, the Court shall give an order that the property be vested in the State.

If the property under paragraph one is money, the Office shall transfer one half to the Fund and another half to the Ministry of Finance. In the case of property other than money, there shall comply with the rules prescribed by the Council of Ministers.

For the purpose of this section, if the person claiming to be the owner or transferee of the property under section 50 paragraph one is the person who is or was associated with an offender of a predicate offence or an offence of money laundering, it shall be presumed that all such property is the property connected with the commission of the offence or transferred in bad faith, as the case may be.

150. Thailand provided the following case example:

1) Supreme Court Decision No. 9090/2553 (2010)

The Supreme Court had considered and viewed that Section 50 Paragraph 1 of the Anti-Money Laundering Act 1999 prescribed that “The person claiming ownership in the asset in respect of which the public prosecutor has filed a petition for it to be vested in the State under Section 49 may, before the Court gives an order under Section 51, file an application satisfying that:

(1) the applicant is the real owner and the asset is not the asset connected with the commission of the offence; or

(2) the applicant is a transferee in good faith and for value or has secured its acquisition in good faith and appropriately in the course of good moral or public charity.”

Section 51 prescribes that “When the Court has conducted an inquiry into the petition filed by the public prosecutor under Section 49, if the Court is satisfied that the underlying asset of the petition is the asset connected with the commission of the offence and that the application of the person claiming to be the owner or transferee thereof under Section 50 Paragraph one is not tenable, the Court shall give an order that the asset be vested in the State.”

The two provisions mean that there are two cases in relation to the person who claims ownership in the asset in respect of which the public prosecutor has filed a petition for it to be vested in the State as follows:

Firstly, an unrelated person or a person who does not have a relationship with the person who commits predicate offence or offence of money laundering must prove to the court 2 things as follows:

- 1) the applicant is the real owner; and
- 2) the asset is not the asset connected with the commission of the offence, the applicant is a transferee in good faith and paid compensation therefore, or has secured its acquisition in good faith and appropriately in the course of good morals or public charity (as prescribed in Section 50).

Secondly, a related person or a person who has had a relationship with the person who commits the predicate offence or offence of money laundering which the law presumed that the assets connected to the commission of the offence or were acquired in bad faith. Section 3 defines assets connected to the commission of the offence as follows:

- (1) money or asset obtained from the commission of a predicate offence or from aiding and supporting or rendering assistance in the commission of an act constituting a predicate offence;
- (2) money or asset obtained from the distribution, disposal or transfer in any manner of the money or asset under (1); or
- (3) fruits of the money or asset under (1) or (2).

As such, asset connected to the commission of the offence is not limited to the cases where the court has decided that the owner of the assets is the person who commits the offence and sentenced to the penalty. If there is a commission of the predicate offence, whether such offender is arrested or sentenced to the penalty or not, and the asset is obtained from the commission of the offence, or obtained from the distribution, disposal or transfer in any manner of the asset, or there is fruits of such asset, the asset shall be deemed as assets connected to the commission of the offence.

(b) Observations on the implementation of the article

151. The Criminal Code, in its section 18, establishes forfeiture of property as one of the forms of punishments of offenders. The authorities indicated that the definition of property used in the Criminal Code was that of section 138 of the Civil and Commercial Code, which defines property as things as well as incorporeal objects, susceptible of having a value and of being appropriated.

152. Section 33 (2) of the Criminal Code enables the Court to confiscate property acquired by a person through the commission of an offence, unless such property belongs to bona fide third parties. If a person ordered by the Court to deliver forfeited property does not comply with such order within the given time-frame, the Court can seize the property or give order to pay its value, or seize other property of such persons in order to compensate for the value of such property in full (section 37).

153. In cases of unusual wealth, civil forfeiture of property connected with unusual wealth is possible (sections 78 to 83 OACC).¹⁸

¹⁸ Development after the country visit: The amended OACC (section 123/6-123/8) allows for value-based confiscation and for the freezing, seizure and confiscation of property or benefits acquired by sale, transfer or other disposal of the property and any other benefits derived from such property or benefits.

Section 123/6. In the forfeiture of property as a result of the commission of the offence under the Organic Act, in addition to the power to forfeit property under the laws specially provide for that purpose, the court shall have the power to forfeit the following property as well, unless such property belongs to another person who does not connive at the commission of the offence:

- (1) the property used or possessed for use in the commission of an offence by any person;
- (2) the property or benefit which may be computed in value of money having been acquired by any person through a commission of an offence, or from being an instigator, an aider, or an advertiser or an announcer for the commission of an offence;
- (3) the property or benefit which may be computed in value of money value having been acquired by a sale, transfer or otherwise disposal of the property or benefit under (1) or (2);
- (4) any other benefits derived from property or benefits under (1), (2) or (3).

For the court to order a forfeiture of property under (1) of paragraph one, the court shall consider the circumstance, severity of the offence and the opportunity to use such property to repeat the offence.

In the case where the court considers that there are other measures to prohibit the person to make use of the property under (1) of paragraph one in the commission of an offence the court shall have the power to order the implementation of such measures in lieu of forfeiture.

Section 123/7. The following property shall be entirely forfeited unless such property belongs to another person who does not connive at the commission of the offence:

- (1) the property or benefit which may be computed in value of money that any person has granted, offered to grant, or promised to grant any to any state official, foreign public official, agent of a public international organization with intent to persuade such person to wrongfully perform, not perform or delay the performance of any duty in his office;
- (2) the property or benefit which may be computed in value of money that a state official acquires in the offence of malfeasance in duty, malfeasance in office, or malfeasance in judicial office;
- (3) the property or benefit which may be computed in value of money that a foreign public official or an agent of a public international organization acquired from the commission of the offence under Section 123/2 or Section 123/3 or any other similar offences under other laws;
- (4) the property or benefit which may be computed in value of money that was granted, offered to grant or agreed to grant so as to induce a person to commit an offence or to reward any person for having committed an offence;
- (5) the property or benefit which may be computed in value of money that a person acquired from the sale, transfer or otherwise disposal of the property or benefit under (1), (2), (3) or (4);
- (6) any other benefits derived from the property or benefit under (1), (2), (3), (4), or (5).

Section 123/8. When it appears to the court or appears in the motion of the plaintiff that the things under the order of forfeiture by the court under Section 123/6 (2), (3) or (4), or Section 123/7 are of the nature that cannot be delivered, lost, cannot be recovered by any reasons; or such things were consolidated with another property; were sold, transferred, or disposed; or are unreasonably difficult to be recovered; or any other reasonable causes, the court may prescribe the value of such things by taking into account the market price of such things as at the court's issuance of the decision, and order the person being required to deliver the forfeited things to make such payment or seize other property of the offender according to such value within the period specified by the court.

In the prescription of the forfeited property's value under paragraph one where it was consolidated with another property, or the prescription of the value for such things where the value of the substituted acquired property is lower than a consolidation with another property as at the date of the sale, transfer or disposal, the court shall prescribe the value by taking into account the proportion of the property so consolidated, or the proportion of the value of the property acquired in lieu of such things, as the case may be.

In the order for the person being required to deliver the forfeited things to make payment under paragraph two, the court may require the person to pay for the entire amount at once, or instalments, by taking into account appropriateness and fairness of the case.

Where the person being required to deliver the forfeited things does not make any payment or make an incomplete payment according to the amount and period prescribed by court, the interest the rate specified by law shall be required during the default period.

154. In money-laundering cases, section 51 of the Anti-Money Laundering Act allows for the Court to order property connected with the commission of an offence to be vested in the State. “Property connected with the commission of an offence” includes, in accordance with section 3 (1) of the Act, money or property obtained from the commission of an act constituting a predicate offence or offence of money-laundering or from aiding and abetting or rendering assistance in the commission of an act constituting a predicate offence or offence of money laundering.¹⁹ AMLO confirmed that Section 3 para.4 AMLA allows for the confiscation of income or other benefits derived from the proceeds of predicate offences or money-laundering, even if they have been transformed or converted into other property, including income or benefits derived from property with which proceeds of crime have been intermingled, it is the burden of proof of the owner to prove otherwise (section 50 AMLA).

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (b)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

155. Thailand referred to the following texts:

CRIMINAL CODE

Section 32: Any property is prescribed by the law that any person makes or processes to be an offence, such property shall be forfeited wholly irrespective of whether it belongs to the offender and there is the person inflicted with the punishment according to judgment or not.

In the case where the court orders forfeiture of property due to the offence committed under the Organic Act but the decision is not yet final, the Secretary-General shall have the power to maintain and manage the property until the decision is final or the court orders otherwise, subject to the regulations on rules and methods for the maintenance and management of the property prescribed by the NACC

¹⁹ Development after the country visit: The amended AMLA Section 3 definition of “asset connected with the commission of an offense” (1) amended in accordance with the Anti-Money Laundering Act (No.5) B.E. 2558 (2015)

“Asset connected with the commission of an offense” means:

(1)[1] money or asset obtained from the commission of a predicate offense or money laundering offense or from aiding and abetting or rendering assistance in the commission of an act constituting a predicate offense or money laundering offense and shall include money or asset that was used or possessed to be used in, or for aiding and abetting the commission of a predicate offense or money laundering offense;

(2) money or asset obtained from the distribution, disposal or transfer in any manner of the money or asset under (1); or

(3) fruits of the money or asset under (1) or (2).

Notwithstanding the number of times the asset under (1), (2) or (3) is distributed, disposed of, transferred or converted and notwithstanding the fact that the same is in possession of any person or transferred to any person or evidently registered as belonging to any person.

Section 33: For the forfeiture of a property, the Court shall, besides having the power to forfeit under the law as specially provided for that purpose, have the power to forfeit the following properties also, namely:

1. A property used or possessed for use in the commission of an offence by a person; or
2. A property acquired by a person through the commission of an offence.

Unless such property belongs to the other person who does not connive at the commission of the offence.

Civil and Commercial Code

Section 138. Property includes things as well as incorporeal objects, susceptible of having a value and of being appropriated.

ANTI-MONEY LAUNDERING ACT, B.E. 2542 (1999)

Section 3: “property connected with the commission of an offence” means:

(1) money or property obtained from the commission of an act constituting a predicate offence or offence of money laundering or from aiding and abetting or rendering assistance in the commission of an act constituting a predicate offence or offence of money laundering, and shall also include money or property used or possessed to be used in, or for aiding and abetting the commission of an act constituting a predicate offence under (8) of the definition of “predicate offence”;

(2) money or property obtained from the distribution, disposal or transfer in any manner of the money or property under (1); or

(3) fruits of the money or property under (1) or (2).

Provided that it is immaterial whether the property under (1), (2) or (3) is distributed, disposed of, transferred or converted on how many occasions and whether the same is in possession of any person or transferred to any person or evidently registered as belonging to any person;

Section 48: In conducting an examination of the report and information on transaction-making, if there is a reasonable ground to believe that any property connected with the commission of an offence may be transferred, distributed, moved, concealed or hidden, the Transaction Committee shall have the power to order a provisional seizure or attachment of such property for the period of not more than ninety days.

In case of compelling necessity or urgency, the Secretary-General shall order a seizure or an attachment of the property under paragraph one for the time being and then report it to the Transaction Committee accordingly.

The examination of the report and information on transaction-making under paragraph one shall be in accordance with the rules and procedures as prescribed in the Ministerial Regulation.

The person having made the transaction in respect of which the property has been seized or attached or any interested person in the property may produce evidence that the money or property in such transaction is not the property connected with the commission of the offence in order that the seizure or attachment order may be revoked, in accordance with the rules and procedures as prescribed in the Ministerial Regulation.

When the Transaction Committee or the Secretary-General, as the case may be, has ordered a seizure or an attachment of the property or ordered revocation thereof, the Transaction Committee shall report it to the Board.

Section 51: When the Court has conducted an inquiry into an application filed by the public prosecutor under section 49, if the Court is satisfied that the property to which the petition relates is the property connected with the commission of the offence and that the application of the person claiming to be the owner or transferee thereof under section 50 paragraph one is not tenable, the Court shall give an order that the property be vested in the State.

If the property under paragraph one is money, the Office shall transfer one half to the Fund and another half to the Ministry of Finance. In the case of property other than money, there shall comply with the rules prescribed by the Council of Ministers.

For the purpose of this section, if the person claiming to be the owner or transferee of the property under section 50 paragraph one is the person who is or was associated with an offender of a predicate offence or an offence of money laundering, it shall be presumed that all such property is the property connected with the commission of the offence or transferred in bad faith, as the case may be.

SECURITY AND EXCHANGE ACT, B.E. 2535 (1993)

Section 264/4: In executing his duties, a competent officer shall have the power to:

(4) seize or attach documents, or evidence related to the commission of offences under the provisions of this Act for the purpose of inspection or taking legal action;

156. Thailand provided the following case example:

1) Supreme Court Decision No. 7562/2540 (1997):

The two defendants were arrested with exhibit property by a police officer 3 days prior to the scheduled election date for Buriram Province's member of the House of Representative which was very close to the election date. Additionally, the banknotes prepared by both defendants were prepared in sets ready to be distributed to voters selected by the defendants. This demonstrated that the two defendants had intended to give property in order to induce voters to elect the candidate and the two defendants had procured the property and exhibit property and proceeded with their intention by binding up the banknotes into 100 sets, packed into a paper box and sea bags ready to be given to persons. The actions of the two defendants were advanced to the final step for the distribution of the exhibit banknotes to voters in order to induce the voters to elect the candidates that the defendants supported, which was close to the substantive offence. It shall be deemed that the actions of both defendants had passed from preparation phase to the actual commission of the offence. Nonetheless, they did not succeed because the police officer had arrested both defendants. Otherwise, both defendants would have succeeded in the commission of the offence. Since the two defendants were arrested prior to the commission of the offence, they committed the offence of attempted vote-buying in order to induce voters to elect a candidate. Therefore, the exhibit banknotes and other exhibit property were property possessed for the use in the commission of an offence, in which case, the court may order the forfeiture under Section 33 (1) of the Criminal Code.

(b) Observations on the implementation of the article

157. Section 33 of the Criminal Code allows for the forfeiture of property used or possessed for use in the commission of an offence. The authorities indicated that the definition of property used in the Criminal Procedure Code was that of section 138 of the Civil and Commercial Code, which defines property as things as well as incorporeal objects, susceptible of having a value and of being appropriated.

158. The element of "possessed for use" in section 33 of the Criminal Code is interpreted to encompass property "destined for use" in the commission of offences.²⁰

²⁰ Development after the country visit: The amended AMLA Section 3 definition of "asset connected with the commission of an offense" (1) amended in accordance with the Anti-Money Laundering Act (No.5) B.E. 2558 (2015)

"Asset connected with the commission of an offense" means:

(1)[1] money or asset obtained from the commission of a predicate offense or money laundering offense or from aiding and abetting or rendering assistance in the commission of an act constituting a predicate offense or

159. Section 3 “Property connected with the commission of an offence”(1) of the Anti-Money Laundering Act includes money or property used or possessed to be used in, or for aiding and abetting the commission of an act constituting a predicate offence under (8) of the definition of “predicate offence”, in the definition of “property connected with the commission of an offence”, thus enabling its confiscation. AMLO has clarified that it can confiscate proceeds including income and benefits deriving from such proceeds and it is the burden of proof is shifted to the owner to prove otherwise in accordance with Section 50.

Article 31 Freezing, seizure and confiscation

Paragraph 2

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

160. Thailand referred to the following text:

ORGANIC ACT ON COUNTER CORRUPTION, B.E. 2542 (1999)

Section 78: In the case where the NACC discovers that any property of the alleged culprit is connected with the unusual wealth and is under the circumstance convincingly indicative of the possibility of its transfer, move, transformation or concealment, the NACC shall have the power to issue an order of temporary seizure or attachment of that property, without prejudice to the right of the alleged culprit to submit an application for taking such property for use with or without bail or security.

When there occurs a temporary seizure or attachment of the property under paragraph one, the NACC shall cause to be conducted proof of the property without delay. In the case where the alleged culprit is unable to present evidence that the property under temporary seizure or attachment is not connected with the unusual wealth, the NACC shall have the power to continue its seizure or attachment until the NACC passes a resolution that the allegation has no prima facie case, which must be within one year as from the date of the seizure or attachment or until the Court passes a final judgment dismissing that case. But, if the proof is successful, the property shall be returned to such person.

ANTI-MONEY LAUNDERING ACT, B.E. 2542 (1999)

Section 3: “property connected with the commission of an offence” means:

(1) money or property obtained from the commission of an act constituting a predicate offence or offence of money laundering or from aiding and abetting or rendering assistance in the commission of an act constituting a predicate offence or offence of money laundering, and shall also include money or property used or possessed to be used in, or for aiding and

money laundering offense and shall include money or asset that was used or possessed to be used in, or for aiding and abetting the commission of a predicate offense or money laundering offence;

(2) money or asset obtained from the distribution, disposal or transfer in any manner of the money or asset under (1); or

(3) fruits of the money or asset under (1) or (2).

Notwithstanding the number of times the asset under (1), (2) or (3) is distributed, disposed of, transferred or converted and notwithstanding the fact that the same is in possession of any person or transferred to any person or evidently registered as belonging to any person.

abetting the commission of an act constituting a predicate offence under (8) of the definition of “predicate offence”;

(2) money or property obtained from the distribution, disposal or transfer in any manner of the money or property under (1); or

(3) fruits of the money or property under (1) or (2).

Provided that it is immaterial whether the property under (1), (2) or (3) is distributed, disposed of, transferred or converted on how many occasions and whether the same is in possession of any person or transferred to any person or evidently registered as belonging to any person;

Section 48: In conducting an examination of the report and information on transaction-making, if there is a reasonable ground to believe that any property connected with the commission of an offence may be transferred, distributed, moved, concealed or hidden, the Transaction Committee shall have the power to order a provisional seizure or attachment of such property for the period of not more than ninety days.

In case of compelling necessity or urgency, the Secretary-General shall order a seizure or an attachment of the property under paragraph one for the time being and then report it to the Transaction Committee accordingly.

The examination of the report and information on transaction-making under paragraph one shall be in accordance with the rules and procedures as prescribed in the Ministerial Regulation.

The person having made the transaction in respect of which the property has been seized or attached or any interested person in the property may produce evidence that the money or property in such transaction is not the property connected with the commission of the offence in order that the seizure or attachment order may be revoked, in accordance with the rules and procedures as prescribed in the Ministerial Regulation.

When the Transaction Committee or the Secretary-General, as the case may be, has ordered a seizure or an attachment of the property or ordered revocation thereof, the Transaction Committee shall report it to the Board.

(b) Observations on the implementation of the article

161. Section 78 of the Organic Act on Counter Corruption enables the temporary seizure and freezing of property of an alleged culprit connected with unusual wealth for a maximum of one year, or until the Court passes a final judgement on the case. No court order is required for such temporary seizure or freezing by the NACC.

162. Section 48 of the Anti-Money Laundering Act enables the Transaction Committee to order a provisional seizure or freezing of property believed to be connected with the commission of the offence if there are reasonable grounds for believing that it may be transferred, distributed, moved, concealed or hidden. Such provisional seizure or freezing shall last for no more than ninety days.²¹

²¹ Development after the country visit: the amended AMLA Section 3 definition of “asset connected with the commission of an offense” (1) was amended in accordance with the Anti-Money Laundering Act (No.5) B.E. 2558 (2015)

“Asset connected with the commission of an offense” means:

(1)[1] money or asset obtained from the commission of a predicate offense or money laundering offense or from aiding and abetting or rendering assistance in the commission of an act constituting a predicate offense or money laundering offense and shall include money or asset that was used or possessed to be used in, or for aiding and abetting the commission of a predicate offense or money laundering offense;

(2) money or asset obtained from the distribution, disposal or transfer in any manner of the money or asset under (1); or

(3) fruits of the money or asset under (1) or (2).

163. Law enforcement agencies require a search warrant from the Court to seize or freeze assets that are located within a dwelling.

Article 31 Freezing, seizure and confiscation

Paragraph 3

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

164. Thailand referred to the following texts:

ANTI-MONEY LAUNDERING ACT, B.E. 2542 (1999)

Section 51: When the Court has conducted an inquiry into an application filed by the public prosecutor under section 49, if the Court is satisfied that the property to which the petition relates is the property connected with the commission of the offence and that the application of the person claiming to be the owner or transferee thereof under section 50 paragraph one is not tenable, the Court shall give an order that the property be vested in the State.

If the property under paragraph one is money, the Office shall transfer one half to the Fund and another half to the Ministry of Finance. In the case of property other than money, there shall comply with the rules prescribed by the Council of Ministers.

For the purpose of this section, if the person claiming to be the owner or transferee of the property under section 50 paragraph one is the person who is or was associated with an offender of a predicate offence or an offence of money laundering, it shall be presumed that all such property is the property connected with the commission of the offence or transferred in bad faith, as the case may be.

Section 59/1 There shall be an Anti-Money Laundering Fund within the Office for the purpose of anti-money laundering as follows;

- (1) Facilitate the execution of investigation, prosecution, search, seizure or restrain, asset management, information sharing, witness protection, or other matters related to anti-money laundering, including assisting other related agencies and the public in the said actions;
- (2) Enhance cooperation with other related agencies or persons and the public in awareness raising and information sharing, meetings or trainings, domestic and international cooperation, and operation to support anti- money laundering policy.
- (3) Carry out other acts as necessary to achieve the objectives of this Act. Under Section 59/6 the Board shall have power to set rules in using money in the Fund to achieve objectives in paragraph one.

Section 59/2 The Fund in Section 59/1 consists of assets as follows;

- (1) Asset forwarded to the Fund under Section 51
- (2) Asset that was not claimed under Section 49 and Section 51/1
- (3) Asset that was given
- (4) Asset received from Thai or foreign government agencies
- (5) Interest derived from asset under (1) (2) (3) and (4)

Notwithstanding the number of times the asset under (1), (2) or (3) is distributed, disposed of, transferred or converted and notwithstanding the fact that the same is in possession of any person or transferred to any person or evidently registered as belonging to any person.

165. The authorities indicated that each agency was responsible for managing the assets it had frozen or seized.

(b) Observations on the implementation of the article

166. Each institution that conducts asset seizure and freezing is responsible for the management of property seized and frozen in the course of investigations.

167. Section 59/1 of the Anti-Money Laundering Act establishes an Anti-Money Laundering Fund within the Anti-Money Laundering Office, which is tasked with, inter alia, asset management.

168. In accordance with section 51 of the Anti-Money Laundering Act, if the property ordered to be vested in the State is money, one half shall be transferred to the Fund and another half to the Ministry of Finance. In the case of property other than money, the rules prescribed by the Council of Ministers govern the management of such assets.

169. It is recommended that Thailand strengthen its administration of frozen, seized or confiscated property, if necessary through the establishment of a central Asset Management Office.

Article 31 Freezing, seizure and confiscation

Paragraph 4

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

170. Thailand referred to the following texts:

ORGANIC ACT ON COUNTER CORRUPTION, B.E. 2542 (1999)

Section 83: If the Court gives an order that the alleged culprit's property in respect of which the NACC has passed a resolution confirming its representing the unusual wealth or that the unusual increase shall devolve upon the State but execution cannot be conducted of the whole or part of such property, the execution may be conducted of other property of the alleged culprit within the limitation period of ten years, provided that it shall not be conducted in excess of the value of the property ordered by the court to devolve upon the State.

ANTI-MONEY LAUNDERING ACT, B.E. 2542 (1999)

Section 3: "property connected with the commission of an offence" means:

(1) money or property obtained from the commission of an act constituting a predicate offence or offence of money laundering or from aiding and abetting or rendering assistance in the commission of an act constituting a predicate offence or offence of money laundering, and shall also include money or property used or possessed to be used in, or for aiding and abetting the commission of an act constituting a predicate offence under (8) of the definition of "predicate offence";

(2) money or property obtained from the distribution, disposal or transfer in any manner of the money or property under (1); or

(3) fruits of the money or property under (1) or (2).

Provided that it is immaterial whether the property under (1), (2) or (3) is distributed, disposed of, transferred or converted on how many occasions and whether the same is in possession of any person or transferred to any person or evidently registered as belonging to any person;

CRIMINAL CODE

Section 37: If the person who is ordered by the Court to deliver the forfeited property does not deliver it within the time determined by the Court, the Court shall have the power to give order as follows:

1. To seize such property;
2. To pay its value, or to seize other property of such person to compensate for its value in full; or
3. In case of the Court is of opinion that such person can deliver the property ordered to be delivered, but does not deliver it, or such person can pay its value, but does not pay, the Court shall have the power to confine such person until such person complies with the order, but the period of confinement shall not exceed one year. But, if, afterwards, it appears to the Court itself or by the submission of such person that such person cannot deliver the property or pay its value, the Court may give order to release such person before the expiration of such period.

(b) Observations on the implementation of the article

171. The value of property representing unusual wealth, thus including such property that has been transformed or converted, in part or in full, into other property, can be forfeited under section 83 of the Organic Act on Counter Corruption within a limitation period of ten years from the resolution confirming that it constitutes unusual wealth, or that the unusual increase shall be devolved to the State.
172. Section 3 of the Anti-Money Laundering Act defines “property connected with the commission of an offence”. The last paragraph of section 3 indicates that it is immaterial whether the property was distributed, disposed of, transferred or converted.
173. The Criminal Code does not contain a similar provision allowing for the confiscation of proceeds of crime that have been transformed or converted, in part or in full, into other property.
174. It is recommended that Thailand establish the conviction-based confiscation of proceeds of crime that have been transformed or converted, in part or in full, into other property, in cases other than confiscation under the AMLA.

Article 31 Freezing, seizure and confiscation

Paragraph 5

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

175. Thailand referred to the following texts:

ORGANIC ACT ON COUNTER CORRUPTION, B.E. 2542 (1999)

Section 83: If the Court gives an order that the alleged culprit's property in respect of which the NACC has passed a resolution confirming its representing the unusual wealth or that the unusual increase shall devolve upon the State but execution cannot be conducted of the whole or part of such property, the execution may be conducted of other property of the alleged culprit within the limitation period of ten years, provided that it shall not be conducted in excess of the value of the property ordered by the court to devolve upon the State.

(b) Observations on the implementation of the article

176. The value of property representing unusual wealth, thus including property that has been intermingled with property acquired from legitimate sources, can be forfeited under section 83 of the Organic Act on Counter Corruption within a limitation period of ten years from the resolution confirming that it constitutes unusual wealth, or that the unusual increase shall be devolved to the State, provided that the forfeiture is not in excess of the value of the property ordered by the court to be forfeited.
177. The Anti-Money Laundering Act and the Criminal Code do not contain a similar provision allowing for the confiscation of proceeds of crime that have been intermingled with property acquired from legitimate sources.
178. It is recommended that Thailand establish the confiscation of proceeds of crime that have been intermingled with property acquired from legitimate sources in cases other than forfeiture under the Organic Act on Counter Corruption.

Article 31 Freezing, seizure and confiscation

Paragraph 6

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Summary of information relevant to reviewing the implementation of the article

179. Thailand referred to the following text:

ANTI-MONEY LAUNDERING ACT, B.E. 2542 (1999)

Section 3: “property connected with the commission of an offence” means:

- (1) money or property obtained from the commission of an act constituting a predicate offence or offence of money laundering or from aiding and abetting or rendering assistance in the commission of an act constituting a predicate offence or offence of money laundering, and shall also include money or property used or possessed to be used in, or for aiding and abetting the commission of an act constituting a predicate offence under (8) of the definition of “predicate offence”;
- (2) money or property obtained from the distribution, disposal or transfer in any manner of the money or property under (1); or
- (3) fruits of the money or property under (1) or (2).

Provided that it is immaterial whether the property under (1), (2) or (3) is distributed, disposed of, transferred or converted on how many occasions and whether the same is in possession of any person or transferred to any person or evidently registered as belonging to any person;

(b) Observations on the implementation of the article

180. Section 3 (3) of the Anti-Money Laundering Act includes fruits of property connected with the commission of an offence in the definition of “property connected with the commission of an offence”, and thus allows for the confiscation of income or other benefits derived from the proceeds of predicate offences or money-laundering and from proceeds of predicate offences or money-laundering that have been transformed or converted into other property. It does not allow for the forfeiture of income or benefits derived from property with which proceeds of crime have been intermingled.²²

181. The Criminal Code does not contain a similar provision allowing for the confiscation of income or benefits derived from proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds have been intermingled.

182. Although section 33 (1) CC, “property acquired through the commission of an offence”, might be used to cover income or other benefits derived from such proceeds, for greater legal certainty, it is recommended that Thailand explicitly establish the confiscation of income or benefits derived from proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds have been intermingled in cases other than confiscation under the Anti-Money Laundering Act.

Article 31 Freezing, seizure and confiscation

Paragraph 7

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

²² Development after the country visit: the amended AMLA Section 3 definition of “asset connected with the commission of an offense” (1) was amended in accordance with the Anti-Money Laundering Act (No.5) B.E. 2558 (2015)

“Asset connected with the commission of an offense” means:

- (1)[1] money or asset obtained from the commission of a predicate offense or money laundering offense or from aiding and abetting or rendering assistance in the commission of an act constituting a predicate offense or money laundering offense and shall include money or asset that was used or possessed to be used in, or for aiding and abetting the commission of a predicate offense or money laundering offence;
- (2) money or asset obtained from the distribution, disposal or transfer in any manner of the money or asset under (1); or
- (3) fruits of the money or asset under (1) or (2).

Notwithstanding the number of times the asset under (1), (2) or (3) is distributed, disposed of, transferred or converted and notwithstanding the fact that the same is in possession of any person or transferred to any person or evidently registered as belonging to any person

183. Thailand referred to the following texts:

ORGANIC ACT ON COUNTER CORRUPTION, B.E. 2542 (1999)

Section 25/1: In the interest of countering corruption, the NACC may notify any agencies or financial institution to allow a member or member of an inquiry sub-committee to gain access to data relating to the alleged culprit or any person against whom there is enough evidence to show that he or she was involved in the alleged matter for the benefit of the Fact Inquiry or for the benefit of deliberations carried out by the NACC or inquiry sub-committee.

Rules, procedures, and conditions for a request by a member or member of an inquiry sub-committee to access data held by an agency or financial institution under paragraph one shall be in accordance with the regulation prescribed by the NACC and shall be subject to the law, rule, or by law governing the protection of information of such agencies.

With regard to data held by an agency or financial institution which cannot be accessed by a member or member of an inquiry sub-committee, the NACC shall file a petition in the court having competent jurisdiction for an order to allow the access.

ANTI-MONEY LAUNDERING ACT, B.E. 2542 (1999),

Section 46: In the case where there is appropriate evidence that any account of a financial institution's customer, communication device or equipment or computer is used or may be used in the commission of an offence of money laundering, the competent official entrusted in writing by the Secretary-General may file an ex parte application with the Civil Court for an order permitting the competent official to have access to the account, communicated data or computer data, for the acquisition thereof.

In the case of paragraph one, the Court may give an order permitting the competent official who has filed the application to take action with the aid of any device or equipment as deemed appropriate, provided that the permission on each occasion shall not be for the period of more than ninety days.

Upon the Court's order granting permission under paragraph one or paragraph two, the person concerned with such account, communicated data or computer data to which the order relates shall render cooperation for the implementation in accordance with the provision of this Section.

SECURITIES AND EXCHANGE ACT

Section 264: In executing his duties, a competent officer shall have the power to:

(1) enter into the place of business or premises of a securities company, mutual fund supervisor, custodian, the Securities Exchange, over-the-counter center, clearing house, securities depository center, securities registrar or the place where the data of such securities company or institution is collected or processed by computers or any other equipment, during the hours between sunrise and sunset, or during the business hours of such places, in order to examine the operations, assets and liabilities of such securities company or institution, including documents, evidence or information concerning such securities company or institution;

(2) enter into the place of business of a promoter of a public limited company, a company which issues securities or an owner of securities who offers for sale securities to the public or any person, or the place where the data of such person is collected or processed by computers or any other equipment, during the hours between sunrise and sunset, or during the business hours of such places, to inspect accounts or other related documents and evidence;

(3) enter into a commercial bank, financial institution or any place during the hours between sunrise and sunset, or during the business hours of such places, to inspect accounts, documents or evidence which may be related to the commission of offences under the provisions of this Act;

(4) seize or attach documents, or evidence related to the commission of offences under the provisions of this Act for the purpose of inspection or taking legal action;

- (5) order a director, officer, employee or auditor of a securities company, mutual fund, mutual fund supervisor, custodian, the Securities Exchange, over-the-counter center, clearing house, securities depository center, securities registrar and persons who collect or process the data of such securities company or institution by computers or any other equipment, to testify or to deliver copies of or present accounts, documents, seals or other evidence related to the businesses, operations, assets and liabilities of such securities company or institution;
- (6) order any person who purchases or sells securities with or through a securities company or member of the Securities Exchange or over-the-counter center to testify or deliver copies of or present accounts, documents and other evidence related to the purchase or sale of securities;
- (7) order any person who may be of use in executing duties of the competent officer to testify or deliver copies of or present accounts, documents, evidence or any objects related to or necessary for the execution of the duties of the competent officer;
- (8) enter into a place of business to inspect the condition or the operations of any debtor of any securities company during the hours between sunrise and sunset or during the business hours of such place.

In executing duties of the competent officer under the first paragraph, the persons concerned shall give reasonable assistance.

After having entered and inspected in accordance with (1), (2), (3) or (8), if the inspection has not been completed, the competent officer may continue the inspection into the night or beyond the business hours of such places.

The exercise of powers of the competent officer in accordance with (6), (7) and (8) shall be carried out against the person who is directly involved in the matter under inspection and shall require prior approval from the SEC Office and in the case of (6) and (7), the competent officer shall specify a reasonable period for such person to comply with the order.

FINANCIAL INSTITUTION BUSINESS ACT

Section 85: The Bank of Thailand shall have power to appoint its officers or external persons as financial institution examiners to examine business, assets and liabilities of financial institutions, parent company, subsidiary or affiliate, and company within financial business group as well as debtor and related person of such financial institution, whether on a general or specific basis.

The financial institution examiner shall have powers and duties to:

- (5) examine the condition or operation at the business premise of the parent company, subsidiary, affiliate and company within the financial business group of such financial institution, including to order relevant person to testify, submit copies of or present information, account, document, seal or other evidences pertaining to the business, assets and liabilities;
- (6) examine the condition or operation at the business premise of the debtor or related person of a financial institution including to order relevant person to testify or present information, account, document, seal or other evidence pertaining to the business, assets and liabilities in the event that there is a reasonable ground to suspect that the financial institution has violated Section 48, Section 49, Section 50 Section 66 or there is reasonable ground to believe that a fraudulent offence is committed in the course of business of the financial institution.

(b) Observations on the implementation of the article

184. Section 25/1 of the Organic Act on Counter Corruption enables the NACC to notify agencies or financial institutions to allow a member of an inquiry sub-committee to gain access to data relating to the alleged culprit or any person against whom there is enough evidence to show that he or she was involved in the alleged matter for the benefit of the Fact Inquiry or for the benefit of deliberations carried out by the NACC or inquiry sub-committee.

185. Section 46 of the Anti-Money Laundering Act enables a competent official to file an application with the Civil Court for an order permitting the official to have access to accounts, communication data or computer data in cases in which there is appropriate evidence that an account of a financial institution's customer, communication device or equipment is used or may be used in the commission of a money-laundering offence.

Article 31 Freezing, seizure and confiscation

Paragraph 8

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

186. Thailand referred to the following texts:

ORGANIC ACT ON COUNTER CORRUPTION, B.E. 2542 (1999)

Section 78: In the case where the NACC discovers that any property of the alleged culprit is connected with the unusual wealth and is under the circumstance convincingly indicative of the possibility of its transfer, move, transformation or concealment, the NACC shall have the power to issue an order of temporary seizure or attachment of that property, without prejudice to the right of the alleged culprit to submit an application for taking such property for use with or without bail or security.

When there occurs a temporary seizure or attachment of the property under paragraph one, the NACC shall cause to be conducted proof of the property without delay. In the case where the alleged culprit is unable to present evidence that the property under temporary seizure or attachment is not connected with the unusual wealth, the NACC shall have the power to continue its seizure or attachment until the NACC passes a resolution that the allegation has no prima facie case, which must be within one year as from the date of the seizure or attachment or until the Court passes a final judgment dismissing that case. But, if the proof is successful, the property shall be returned to such person.

Section 81. The Prosecutor-General or the President, as the case may be, shall submit a motion requesting the Court to order that the property devolve upon the State under section 80 within ninety days as from the date the matter is received from the NACC.

In the case in which a request is made that the property be ordered to devolve upon the State, onus of proof to the Court that the said property does not result from the unusual wealth is upon the alleged culprit.

Section 82: A transfer or any act in connection with the property of the state official which is done after the NACC has ordered such state official to declare particulars of assets and liabilities under section 79 may, if the NACC or the Prosecutor-General, as the case may be, files an application by way of motion, be cancelled or suspended by an order of the Court, unless the transferee or the beneficiary satisfies the Court that the property or benefit has been acquired in good faith and in return for remuneration.

(b) Observations on the implementation of the article

187. Section 81 of the Organic Act on Counter Corruption establishes a rebuttable presumption that property ordered to be devolved to the State results from unusual wealth of the alleged culprit.
188. Thailand may wish to establish such rebuttable presumptions also in proceedings other than forfeiture under the Organic Act on Counter Corruption.

Article 31 Freezing, seizure and confiscation

Paragraph 9

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

189. Thailand referred to the following texts:

CRIMINAL CODE

Section 34: All properties:

- (1) Which have been given under Section 143, Section 144, Section 149, Section 150, Section 167, Section 201 or Section 202; or
- (2) Which have been given in order to induce a person to commit an offence, or as a reward to a person for committing an offence, shall be forfeited wholly, unless those properties belong to the other person who does not connive at the commission of the offence.

Section 36: In case of the Court has already given order for the forfeiture of the properties according to Section 33 or Section 34, if it appears afterwards by the submission of the real owner that he has not connived at the commission of such offence, the Court shall give order for the return of the properties if such properties are still in the possession of the official. But the submission of the real owner shall be made to the Court within one year reckoning from the day of the final judgment.

ORGANIC ACT ON COUNTER CORRUPTION, B.E. 2542 (1999)

Section 82: A transfer or any act in connection with the property of the state official which is done after the NACC has ordered such state official to declare particulars of assets and liabilities under section 79 may, if the NACC or the Prosecutor-General, as the case may be, files an application by way of motion, be cancelled or suspended by an order of the Court, unless the transferee or the beneficiary satisfies the Court that the property or benefit has been acquired in good faith and in return for remuneration.

ANTI-MONEY LAUNDERING ACT, B.E. 2542 (1999)

Section 50: The person claiming ownership in the property in respect of which the public prosecutor has filed a petition for it to be vested in the State under Section 49 may, before the Court gives an order under section 51, file an application satisfying that:

- (1) the applicant is the real owner and the property is not the property connected with the commission of the offence, or
- (2) the applicant is a transferee in good faith and for value or has secured its acquisition in good faith and appropriately in the course of good morals or public charity. The person claiming to be a beneficiary of the property in respect of which the public prosecutor has filed a petition for it to be vested in the State under Section 49 may file an application for the protection of his or her rights before the Court gives an order. For this purpose, the person shall satisfy that he or she is a beneficiary in good faith and for value or has obtained the benefit in good faith and appropriately in the course of good morals or public charity.

Section 53: In the case where the Court has ordered that the property be vested in the State under Section 51, if it subsequently appears from an application by the owner, transferee or beneficiary thereof and from the Court's inquiry that it is the case under the provisions of section 50, the Court shall order the return of such property or determine conditions for the protection of the rights of the beneficiary.

If the return of the property or the protection of the right thereto is not possible, payment of its price or compensation thereof shall be made, as the case may be.

The application under paragraph one shall be filed within one year as from the Court's order that the property be vested in the State becoming final and the applicant must prove that the application under section 50 was unable to be filed due to the lack of knowledge of the publication or written notice by the Secretary-General or other reasonable intervening cause. Before the Court gives an order under paragraph one, the Court shall notify the Secretary-General of such application and give the public prosecutor an opportunity to enter an appearance and file an objection to the application.

(b) Observations on the implementation of the article

190. Sections 82 of the Organic Act on Counter Corruption, and 50 and 53 of the Anti-Money Laundering Act protect the rights of bona fide third parties by establishing the possibility for such parties to file an application claiming the return of the property.

191. Section 34 of the Criminal Code exempts properties given under certain conditions, which would be liable to confiscation, from such confiscation if they belong to bona fide third parties. Section 36 of the Code regulates the return of property subject to a forfeiture order if it appears afterwards by the submission of the real owner that he has not connived at the commission of the offence.

Article 32 Protection of witnesses, experts and victims

Paragraphs 1 and 2 (a)

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(a) Summary of information relevant to reviewing the implementation of the article

192. Thailand referred to the following texts:

WITNESS PROTECTION ACT, B.E. 2546 (2003)

Section 3. In this Act:

"Witness" means a person who commits himself/herself to be present at, or testify, or give evidence to a competent official for investigation, a criminal interrogation, a court for criminal proceedings, and includes an expert but not a defendant who himself/herself is a witness.

"Security" means security in life, body, health, liberty, honour, property or any lawful rights of the witness before or at the time of or upon becoming a witness.

Section 6: In a case where a witness loses his/her security, a competent official from criminal investigation, interrogation, prosecution or the Witness Protection Bureau as the case may be shall design for the witness protection measures as deemed appropriate or as requested by the witness or other concerned party. Where necessary the said person may request a police officer or other official for protection and this must be subject to the witness's consent.

The notification, procedures, and their termination to be adopted by the police officer or relevant official in first paragraph of this section must comply with the regulations of the Commissioner-General of Police or heads of relevant government agencies as the case may be.

Protection measures may include arrangements for a safe place for the witness; change of name/family name, domicile, identification, and information that would reveal the identity of the witness as appropriate, and the personal status of the witness and nature of the criminal case.

Section 7: In a case where a witness's husband, wife, progenitor, descendant, or person with a close relationship to the witness is affected by the person becoming a witness and would lose security, [he or she] may request the competent official to design or arrange for measures as deemed appropriate, taking into account the consent of the said person.

Section 8: A witness in the following [types of] cases may be eligible to the privilege of special protection measures:

- (1) A case under the law on narcotic drugs, money laundering law, anti-corruption law, or customs law;
- (2) A case related to national security under the Penal Code;
- (3) A sexual offence under the Penal Code relating to the luring of a person for the sexual gratification of another;
- (4) A criminal offence in the nature of organised crime under the Penal Code, including any crime committed by a criminal group with a well-established and complicated network;
- (5) A case punishable with at least ten years of imprisonment;
- (6) A case that the Witness Protection Bureau deems appropriate to arrange for protection.

Section 9: Whenever there are explicit circumstances or suspicion that a witness has lost his/her security, the witness or other concerned party, a competent investigation official, competent interrogation official or competent criminal case prosecution official shall apply to the Minister of Justice or his appointed official to arrange for special protection measures, subject to the witness's consent.

In considering an application under the previous paragraph, the Minister of Justice and his appointed officials shall act in a speedy manner. Where circumstances affect the witness's security, the arrangement of special protection measures must be completed.

The submission of an application under paragraph 1 and action under paragraph 2 must be in line with the principles, procedures, and conditions stipulated in the Ministerial Regulations.

Section 10: The Witness Protection Bureau shall arrange for one or more of the following special protection measures:

- (1) A new place of accommodation;
- (2) Daily living expenses for the witness or his/her dependants not exceeding 1 year, with extensions as necessary for 3 months each time, not exceeding 2 years;

- (3) Coordination with the relevant agencies in order to change the first name, family name and information that may contribute to knowledge of the personal identity of the witness, including arrangements for a return to original status;
- (4) Action to help the witness have his/her own career, and training, education and other means of proper living for his/her life;
- (5) Assistance or action on behalf of a witness for his/her lawful rights;
- (6) Arrangements for a bodyguard service for a necessary period of time;
- (7) Other actions to assist and support a witness with his/her security as appropriate.

In acting under the prior paragraph, the officials of the relevant agencies must keep confidentiality; it is not lawful to disclose [this information] except with the authorization of the Minister of Justice.

Section 11: In a case where the witness's husband, wife, progenitor, descendant or a person with a close relationship to the witness loses their security, with the witness's request, special protection measures may be arranged for him or her.

Section 21: A person who discloses information on the housing, place, name, family name, domicile, photograph, or other kinds of information to identify a witness [or his/her] husband, wife, progenitor, descendant, or a person with a close relationship to the witness where protection measures were arranged under sections 6, 7, 10 or 11 with the likelihood of losing security shall be punished with a term of imprisonment not exceeding 1 year or fine not exceeding 20,000 Baht or both. Whoever acts under paragraph 1 thereby causing bodily or mental injury shall be punished with a term of imprisonment not exceeding 2 years or a fine not exceeding 40,000 Baht or both.

Whoever acts under paragraph 1 thereby causing death shall be punished with a term of imprisonment not exceeding 7 years or fine not exceeding 140,000 Baht or both.

Section 22: Whoever acts under section 21 with intent to cause the person under the said section to lose his or her security shall be punished 1/2 heavier than the punishment under that section.

Section 23: Whoever acts to harm a person because the said injured person has become a witness in a case and himself/herself, his/her husband, wife, progenitor, descendant, or a related person under the relevant section loses his or her security shall be punished 1/2 heavier than the punishment to under that section.

The Act on Measures Taken by the Executives in Preventing and Suppression of Corruption, B.E.2551 (2008)

Section 53: For the benefit of implementing this Act, the Office of Public Sector Anti-Corruption Commission (PACC) may provide measures for initial protection of the accused, victims, petitioners, complainants, persons who provide statement or whistle-blowers or any information related to corruption in the public sector or other information that is beneficial to the implementation of this Act.

(b) Observations on the implementation of the article

193. Thailand can provide protection to witnesses on the basis of the Witness Protection Act, the Regulation of the NACC on the Protection and Assistance to Witnesses, and the Act on Measures Taken by the Executives in Preventing and Suppression of Corruption. Thailand does not have a dedicated witness protection programme, instead, measures are taken on a case-by-case basis by either the Witness Protection Bureau, the NACC or the PACC.

194. In accordance with section 3 of the Witness Protection Act, experts can also be protected, and section 7 of the Act allows for the protection of relatives of witnesses or other persons close to them.
195. Section 8 of the Witness Protection Act sets forth the offences in relation to which witnesses can be protected. Most, but not all, corruption offences are included in section 8 (e.g., offences established in accordance with the Convention that are criminalized in the Criminal Code, such as obstruction of justice). Therefore, it is recommended that Thailand allow for the protection of witnesses in relation to all offences established in accordance with the Convention.
196. Section 10 of the Witness Protection Act establishes the measures that can be taken to protect witnesses, including providing them with the services of a police officer for protection, relocation them and changing their identities, while section 21 protects against the disclosure of information on witnesses.
197. It is recommended that Thailand streamline and strengthen its witness protection measures, if necessary, through the establishment of a single witness protection programme.

Article 32 Protection of witnesses, experts and victims

Subparagraph 2 (b)

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

(a) Summary of information relevant to reviewing the implementation of the article

198. Thailand referred to the Witness Protection Act:

WITNESS PROTECTION ACT, B.E. 2546 (2003)

Section 10: The Witness Protection Bureau shall arrange for one or more of the following special protection measures:

- (1) A new place of accommodation;
- (2) Daily living expenses for the witness or his/her dependants not exceeding 1 year, with extensions as necessary for 3 months each time, not exceeding 2 years;
- (3) Coordination with the relevant agencies in order to change the first name, family name and information that may contribute to knowledge of the personal identity of the witness, including arrangements for a return to original status;
- (4) Action to help the witness have his/her own career, and training, education and other means of proper living for his/her life;
- (5) Assistance or action on behalf of a witness for his/her lawful rights;
- (6) Arrangements for a bodyguard service for a necessary period of time;
- (7) Other actions to assist and support a witness with his/her security as appropriate.

In acting under the prior paragraph, the officials of the relevant agencies must keep confidentiality; it is not lawful to disclose [this information] except with the authorization of the Minister of Justice.

199. In addition, the authorities confirmed that all courts had videoconferencing systems, and that such systems could be used for witness protection at domestic level.

(b) Observations on the implementation of the article

200. Through the application of section 10, subsection 7 of the Witness Protection Act, videoconferences can be used for the giving of testimony to ensure the safety of witnesses.

Article 32 Protection of witnesses, experts and victims

Paragraph 3

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

201. Thailand has not entered into relevant agreements or arrangements, but the authorities confirmed that international relocation could be possible on a case-by-case basis.

ASEAN MUTUAL LEGAL ASSISTANCE TREATY 2004

Article 1

...

2. Mutual assistance to be rendered in accordance with this Treaty may include:

(k) the provision of such other assistance as may be agreed and which is consistent with the objects of this Treaty and the Laws of the Requested Party

(b) Observations on the implementation of the article

202. It is recommended that Thailand consider entering into agreements or arrangements on the international relocation of witnesses, experts, their relatives and other persons close to them.

Article 32 Protection of witnesses, experts and victims

Paragraph 4

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

(a) Summary of information relevant to reviewing the implementation of the article

203. Thailand referred to the following texts:

THE ACT ON MEASURES TAKEN BY THE EXECUTIVES IN PREVENTING AND SUPPRESSION OF CORRUPTION, B.E.2551 (2008)

Section 53: For the benefit of implementing this Act, the Office of Public Sector Anti-Corruption Commission (PACC) may provide measures for initial protection of the accused, victims, petitioners, complainants, persons who provide statement or whistle-blowers or any information related to corruption in the public sector or other information that is beneficial to the implementation of this Act.

ORGANIC ACT ON COUNTER CORRUPTION, B.E. 2542 (1999)

Section 103/2: In the case where the N.C.C Commission finds it appropriate in a case to provide protection measures for the alleged culprit, injured person, petitioner, alleged, person giving testimony or person providing a clue or trace pertaining to the corruption, unusual wealth or other information that is beneficial to proceedings under this Organic Act, the N.C.C Commission shall notify the relevant agencies to provide protection measures for such person. Such person shall be deemed as a witness entitled to protection under the law on witness protection. In this event, the NACC shall also submit an opinion on whether to apply general measures or special measures for such person under such law.

In the case of a loss of life, body, health, reputation, property or other rights of a person under paragraph one, or the husband, wife, ascendant, descendant or other persons having a close relationship with such person due to an intentionally committed criminal offence as a consequence of proceedings or testimony or the provision of clues or information to the NACC, such person shall have the right to file an application to the responsible agency to request for compensation as necessary and appropriate under the law on witness protection.

Regulations of Office of Public Sector Anti-Corruption Committee on Protection's Initiative Measures in according with the Administrative Measures on Anti-corruption B.E. 2554

Rule 3 "Witnesses" means Person Making the Allegation (the injured person, motion filer, the complainant and accuser, the statement maker, or the giver of clue or any information in association with the Corruption in Public Sector or other information beneficial to the execution hereof under the rules as set forth by PACC, including any person or the alleged culprit whom serving as a witness.

204. Thailand noted that the NACC has concluded MoUs with the Department of Protection of Rights and Liberties, and the Royal Thai Police to establish details with regard to the protection and assistance to witnesses.

(b) Observations on the implementation of the article

205. While the definition of "witness" in section 3 of the Witness Protection Act (see above article 32, paragraph 1) does not encompass victims, the authorities confirmed that victims could also be protected. The Act on Measures Taken by the Executives in Preventing and Suppression of Corruption enables PACC to provide measures for the initial protection of, inter alia, victims.

Article 32 Protection of witnesses, experts and victims

Paragraph 5

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

206. Thailand referred to the following texts:

CRIMINAL PROCEDURE CODE

Section 174: Before adducing evidence, the prosecutor is entitled to open the case for the purpose of stating to the Court the case for the prosecution, that is to say, by setting forth the nature of the charge and the evidence which he proposes to bring in order to prove the guilt of the accused. The prosecutor shall then adduce the evidence for the prosecution.

207. The Office of the Attorney-General noted that in criminal proceedings, at the opening of a case, the prosecutor and the accused can not only bring forth information regarding the case but can also make known the views and concerns of the victims of the crime. The views and concerns can also be made at the closing of the case.

(b) Observations on the implementation of the article

208. The views and concerns of victims as witnesses can be presented and considered in criminal proceedings. It is recommended that Thailand enable the views and concerns of the victims to be presented also when a victim does not act as a witness.

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

209. Thailand referred to the following texts:

THE ACT ON MEASURES TAKEN BY THE EXECUTIVES IN PREVENTING AND SUPPRESSION OF CORRUPTION, B.E.2551 (2008)

Section 53: For the benefit of implementing this Act, the Office of Public Sector Anti-Corruption Commission (PACC) may provide measures for initial protection of the accused, victims, petitioners, complainants, persons who provide statement or whistle-blowers or any information related to corruption in the public sector or other information that is beneficial to the implementation of this Act.

Section 54: In the case where the PACC commission finds that it is appropriate to provide the person in Section 53 measures of protection and assistance. The Commission shall notify the related agency to carry out the measure to protect the witness. Such person shall be considered a witness who has rights to receive protection in accordance with the law on witness protection in criminal cases. The commission shall determine whether the measures to the said person shall be general or special measures in accordance with the law on witness protection in criminal cases.

In the case where there is injury to life, body, health, reputation, assets, or any rights of the person in para.1 or to spouse, parents, heirs or other persons who are of close relations with such person due to the actions or statement or facts concerning the offence or information provided to the PACC, those persons shall have the right to submit a petition to the responsible agency to receive compensation as necessary and appropriate in accordance with laws related witness protection in criminal cases.

ORGANIC ACT ON COUNTER CORRUPTION

Section 103/2. In the case where the NACC finds it appropriate in a case to provide protection measures for the alleged culprit, injured person, petitioner, alleged, person giving testimony or person providing a clue or trace pertaining to the corruption, unusual wealth or other information that is beneficial to proceedings under this Organic Act, the NACC shall notify the relevant agencies to provide protection measures for such person. Such person shall be deemed as a witness entitled to protection under the law on witness protection. In

this event, the NACC shall also submit an opinion on whether to apply general measures or special measures for such person under such law. In the case of a loss of life, body, health, reputation, property or other rights of a person under paragraph one, or the husband, wife, ascendant, descendant or other persons having a close relationship with such person due to an intentionally committed criminal offence as a consequence of proceedings or testimony or the provision of clues or information to the NACC, such person shall have the right to file an application to the responsible agency to request for compensation as necessary and appropriate under the law on witness protection.

Section 103/5.In the case where a person under section 103/2 paragraph one is a state official, upon such person filing a petition to the NACC that his/her continued performance of duties in the current assignment may result in abuses or unfair treatment due to the allegation or testimony or provision of clue of information, and the NACC finds that there is prima facie evidence to suggest that such a cause does exist, a proposal shall be made to the Prime Minister to consider the issue of protection or other measures as deemed appropriate.

ANTI-MONEY LAUNDERING ACT, B.E. 2542 (1999)

Section 37/1: In the Case where the Transaction Committee deems it appropriate to provide protection measures for a testifying person or informant of clue or any information beneficial for the conduct of the duty of the Transaction Committee, the Transaction Committee shall notify the relevant agency to provide protection for such person. Such person shall be regarded as a witness entitled to receive protection under the law on witness protection in criminal cases. The Transaction Committee shall submit an opinion on whether general measures or special measures under such law should be applied to such person.

210. Thailand noted that currently, the NACC has concluded MoUs with the Department of Protection of Rights and Liberties, and the Royal Thai Police to establish details with regard to the protection and assistance to witnesses.

(b) Observations on the implementation of the article

211. The Act on Measures Taken by the Executives in Preventing and Suppression of Corruption foresees initial protection measures for reporting persons (section 53). If the Office of Public Sector Anti-Corruption Commission (PACC) finds it appropriate, such persons can be considered witnesses and benefit from the measures set forth for the protection of witnesses.

212. In addition, in accordance with section 103/2 of the Organic Act on Counter Corruption, the Commission notifies the relevant agencies to provide protection to a person providing a clue or trace pertaining to corruption, unusual wealth or other information that is beneficial to proceedings under this Act. Section 103/5 regulates the protection against abuses or unfair treatment of public officials who are reporting corruption, unusual wealth or other information beneficial to proceedings under the Organic Act on Counter Corruption.

213. In accordance with section 37/1 of Anti-Money Laundering Act, the Transaction Committee shall notify the relevant agency to provide protection for such person. Such person shall be regarded as a witness entitled to receive protection under the law on witness protection in criminal cases.

214. The measures available for the protection of reporting persons are similar to the protection measures available for witnesses. There is no specific protection foreseen against unfair dismissals or other reprisals at the workplace.

215. It is recommended that Thailand consider strengthening its measures to protect persons reporting in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with the Convention against unjustified treatment.

Article 34 Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) Summary of information relevant to reviewing the implementation of the article

216. Thailand referred to the Civil and Commercial Code:

CIVIL AND COMMERCIAL CODE

Section 150. An act is void if its object is expressly prohibited by law or is impossible, or is contrary to public order or good morals.

BUDGETING PROCEDURE ACT, B.E.2502 (1959)

Section 23

Except otherwise state in Section 23 ter, government agency or state enterprise may make payment of money or make financial commitment a specified in Annual Budget Expenditures Act, or Supplementary Budget Expenditures Act or as per power given by law and it is prohibited to make payment or financial commitment under Annual Budget Expenditures Act, Supplementary Budget Expenditures Act until after receipt of approval for the period.

Any amount of expenditure having amount of money and time frame with certainty, the Director with consent of the Cabinet shall give permission to the government agency or state enterprise to make payment by not seeking approval for the period.

When Annual Budget Expenditure Act or Supplementary Budget Expenditure Act, whatever the case, is enforced, the Budget Bureau shall collect expense items regarding financial commitments and estimated amounts for the year in succession, along with monetary reservations shall be submitted to Cabinet for approval. Thereafter, government agency or state enterprise shall proceed as per regulations prescribed by Director, by consent of Cabinet.

When dictated by necessity, and it being not the case stated in the second paragraph or third paragraph, Cabinet has power to allow government agency or state enterprise to make financial commitment under Annual Budget Expenditure Act or Supplementary Budget Expenditure Act or the Cabinet may give permission to a government agency or state enterprise to make financial commitment more than the amount or over and above the scope prescribed in Annual Budget Expenditure Act.

(This Section was repealed by Budget Procedures Act (No. 3). B.E. 2511, Section 4 and by (No. 5) B.E. 2534, Section 3, and replaced by the following)

Section 23 bis

Any government agency, save for Finance Ministry shall be prohibited from committing debt in form of a loan or providing Guarantee except in case of having provisions permitting such action under Section 23 ter.

217. Thailand provided the following case example:

Supreme Court Decision No. 7910/2553 (2010)

The Director of Dairy Farming Promotion Organization of Thailand (D.P.O) which is a state organization ordered OPP film labels from the claimant in an amount apparently larger than needed. Such act implied corruption intention and certainly affected public interest. The State might have had to spend this budget to purchase such goods at a price with a lack of competition and appropriateness of the goods' condition. This act also breaches the Budgeting Procedure Act B.E.2502 (1959) article 23 paragraph 1 which is considered a law relating to public order.

As article 150 of Civil and Commercial Code stipulates that an act is void if its object is expressly prohibited by law, or is contrary to public order or good morals, it could be concluded that the contract made between the claimant and D.P.O is void under this article because it breaches article 23 para.1 of the Budgeting Procedure Act and the contract is made from a mutual agreement to take undue advantage from state and interfere the public organization administration which is contrary to public order and good morals.

(b) Observations on the implementation of the article

218. In Thailand, an act is void if its object is expressly prohibited by law, impossible, or contrary to public order or good morals (section 150 of the Civil and Commercial Code).

219. It is recommended that Thailand strengthen its measures to address the consequences of corruption, such as considering corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

220. Thailand referred to the provisions of the Civil and Criminal Code obliging offenders to compensate for damages caused, as well as to the Act on Offences relating to the Submission of Bids to State Agencies:

CIVIL AND COMMERCIAL CODE

Section 420. A person who, willfully or negligently, unlawfully injures the life, body, health, liberty, property or any right of another person, is said to commit a wrongful act and is bound to make compensation therefore.

Section 424. The Court, when given judgment as to the liability for wrongful act and the amount of compensation, shall not be bound by the provisions of the criminal law concerning liability to punishment or by the conviction or non-conviction of the wrongdoer for a criminal offence.

Section 438. The Court shall determine the manner and the extent of the compensation according to the circumstances and the gravity of the wrongful act.

Compensation may include restitution of the property of which the injured person has been wrongfully deprived or its value as well as damages for any injury caused.

ACT ON OFFENCES RELATING TO THE SUBMISSION OF BIDS TO STATE AGENCIES, B.E. 2542 (1999)

Section 8: Any person who fraudulently submits a bid to a State agency knowing that the bid price submitted is unusually low such that it is apparently inconsistent with the properties of the product or service, or offers beneficial consideration to the State agency that is much higher than entitled, with the objective of creating a barrier to fair competition, and such act constitutes a cause for an inability to perform properly under a contract, shall be liable to imprisonment for a term from one year to three years and a fine of fifty percent of the bid price or the value of the contract that has been entered into with the State agency, whichever is the higher.

In the case where an inability to perform properly under a contract under paragraph one causes the State agency to incur additional costs in connection with the completion of the objectives of such contract, the offender shall also indemnify the State agency for such expenses.

In the trial and adjudication of cases relating to the submission of bid to State agencies, if requested, the Court shall also determine the additional costs borne by the State for the State agency under paragraph two.

(b) Observations on the implementation of the article

221. The Civil and Commercial Code of Thailand sets forth the general rules with regard to compensation for damages. In accordance with section 420, a person who unlawfully injures the life, body, health, liberty, property or any right of another person is bound to make compensation therefore. The Court is not bound by the provisions of the criminal law concerning liability to punishment, or by the conviction or non-conviction of the wrongdoer for a criminal offence (sect. 424 Civil and Commercial Code).

222. In addition, the Act on Offences relating to the Submission of Bids to State Agencies, in its section 8, obliges offenders to indemnify the State agency if the agency incurs additional costs in connection with the completion of the objectives of contracts awarded under paragraph 1 of the section.

Article 36 Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

223. Thailand referred to the following texts:

CONSTITUTION OF THE KINGDOM OF THAILAND, B.E. 2550 (2007)

Section 209 In addition to the vacation of office upon the expiration of term, the President and Justices of the Constitutional Court vacate office upon:

1. death;
2. being of seventy years of age;
3. resignation;
4. being disqualified or being under any of the prohibitions under Section 205;
5. having done an act in violation of Section 207;
6. the Senate passing a resolution under Section 274;
7. being sentenced by a judgment to imprisonment even if the judgment is not final or the sentence is suspended except for negligence, minor offences, or defamation.

When a case under paragraph one occurs, the remaining judges shall continue to perform their duties subject to Section 216.

Section 246 The National Anti-Corruption Commission consists of the president and eight qualified members appointed by the King with the advice of the Senate. Members of the National Anti-Corruption Commission shall be persons of apparent integrity, with qualifications and free of the prohibitions under section 205, having been, in the past, a minister, an election commissioner, an ombudsman, a member of the National Human Rights Commission, a member of the National Anti-Corruption Commission, a member of the State Audit Commission, or having served, in the past, in a position not lower than that of a deputy director general or civilian officer at level 9, or a professor, representative of a private organization or a practicing lawyer of a lawyers association for a period of not less than 30 years with confirmation of his or her years of service from such an organization or association.

The selection and nomination of members of the National Anti-Corruption Commission shall be made in accordance with the provisions of Section 204 paragraph three and paragraph four, Section 206 and Section 207 mutatis and mutandis. The selection committee consists of 5 members, namely the President of the Supreme Court of Justice, the President of Constitutional Court, the President of the Supreme Administrative, the President of the House of Representatives and the Opposition leader in the House of Representatives.

The president of the Senate shall countersign the Royal Command appointing the president and members of the National Anti-Corruption Commission. The provincial counter corruption commission shall be formed with qualifications, selection process, and roles and responsibilities of members of the commission in accordance with the Organic Law on the National Anti-Corruption Commission.

Section 247 Members of the National Anti-Corruption Commission shall hold office for a term of nine years as from the date of their appointment by the King and shall serve for only one term.

Members of the National Anti-Corruption Commission who vacate office at the expiration of their term shall remain in office and continue to perform their duties until the newly appointed members take office.

Section 209 and Section 210 shall apply to the vacation, selection, and election of members of the National Anti-Corruption Commission mutatis mutandis.

Section 248 Members of the House of Representatives numbering not less than one-fourth of the total number of existing members of the House have a right to lodge with the president of the Senate a complaint that any member of the National Anti-Corruption Commission has acted unjustly, intentionally violated the Constitution or laws, or has been involved in anything that is seriously detrimental to the dignity of holding the office, in order to request the Senate to pass a resolution removing him from office.

A resolution of the Senate removing a member of the National Anti-Corruption Commission from office under paragraph one shall be passed by votes numbering not less than three-fourths of the total number of existing members of the Senate.

Section 249 Members of the House of Representatives, senators, or members of both Houses numbering not less than one-fifth of the total number of existing members of both Houses have a right to lodge with the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions an allegation that any member of the National Anti-Corruption Commission has become unusually wealthy or has committed an offence involving corruption or malfeasance while in office.

The request under paragraph one shall clearly itemize the circumstance in which such a person has allegedly committed the act under paragraph one and shall be submitted to the president of the Senate. When the president of the Senate has received the said request, the president shall refer it to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions for trial and adjudication.

The alleged member of the National Anti-Corruption Commission shall not perform his duties until the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions has dismissed the said request.

In case the accused member of the National Anti-Corruption Commission shall not perform his or her duties according to paragraph three and the remaining number of National Anti-Corruption Commission is less than half the total number of the National Anti-Corruption Commission, the President of the Supreme Court of Justice and the President of the Supreme Administrative Court shall jointly appoint a person who shall meet the qualifications and shall not be under the same prohibitions as the accused member to temporarily act as a replacement member of the National Anti-Corruption Commission. The interim member shall perform the duty until the replaced member may resume his or her duty or until the Supreme Court of Justice Criminal Division for Persons Holding Political Positions shall hand down a verdict that the accused member has committed wrongful act.

Section 250: The National Anti-Corruption Commission shall have the following powers and duties:

1. to inquire into the facts, summarize the case, and prepare a verdict to be submitted to the Senate according to Section 272 and Section 279 para three;
2. to inquire into the facts, summarize the case, and prepare a verdict to be submitted to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions in accordance with Section 275;
3. to investigate and decide whether a state official who holds an executive post or a Government official who holds a position from the Director level upwards or the equivalent has become unusually wealthy or has committed an offence of corruption, malfeasance in office or malfeasance in judicial office, including any state official or Government official at lower level who has colluded with the said state official or Government official to commit a wrongful offence or other offences that the National Anti-Corruption Commission deems appropriate to investigate and decide the case in accordance with the Organic Act pertaining to the National Anti-Corruption Commission.
4. to inspect the accuracy, actual existence, as well as change of assets and liabilities of persons holding positions under Section 259 and Section 264 as stated in the account and supporting documents submitted;
5. to supervise and observe the ethics of persons holding political positions;
6. to submit an inspection report and a report on the performance of duties together with remarks to the Council of Ministers, the House of Representatives, and the Senate annually and to publish that report in the Government Gazette and disseminate it to the public; and
7. to carry out other actions as provided by the law. Section 213 shall apply to the performance of duties of the National Anti-Corruption Commission *mutatis mutandis*.

The President and members of the National Anti-Corruption Commission are the judicial officials by law.

Section 251: The National Anti-Corruption Commission shall have an independent secretariat, with the secretary-general of the National Anti-Corruption Commission as the superior directly responsible to the president of the National Anti-Corruption Commission.

The appointment of the secretary-general of the National Anti-Corruption Commission shall be approved by the National Anti-Corruption Commission and the Senate.

The Office of the National Anti-Corruption Commission shall have autonomy in its personnel administration, budget, and other activities as provided by the law.

ORGANIC ACT ON COUNTER CORRUPTION, B.E. 2542 (1999)

Section 6: There shall be a National Anti-Corruption Commission having the abbreviated name of "NACC" comprising a President and eight other members appointed by the King with the advice of the Senate. The President of the Senate shall countersign the Royal Command appointing the President and members of the National Anti-Corruption Commission.

Section 8: A person nominated to become a member shall be a person who possesses apparent integrity, have the qualifications under section 9, and does not have a disqualification under section 10.

Section 9: A person nominated to become a member shall have the following qualifications:

- (1) having Thai nationality by birth;
- (2) being not less than forty-five years of age;
- (3) having been a Minister, judge of the Constitutional Court, Election Commissioner, Ombudsman, member of the National Human Rights Commission, member of the State Audit Commission, or member of the National Human Rights Commission, or having served in a position not lower than Deputy Prosecutor-General, Director-General or a person holding an Administrative position in a government agency having administrative powers equivalent to a Director-General, or a person holding an academic position of not lower than Professor, or having been an attorney, or a representative of a private development organisation or a practitioner of a profession regulated by a professional organisation established by law who has practiced such profession for not less than thirty years up to the date of nomination and having been certified and nominated for selection by the Law Society, private development organisation or professional organisation.

Section 10: A person nominated to become a member must not have any of the following disqualifications:

- (1) being a Member of the House of Representatives, Senator, political official, member of a local assembly or local administrator;
- (2) being or having been a member or a person holding other positions of a political party in the three-year period prior to taking office;
- (3) being a judge of the Constitutional Court, Election Commissioner, Ombudsman, member of the National Human Rights Commission, judge of the Administrative Court or member of the State Audit Commission;
- (4) being a Buddhist priest, novice, monk or clergy;
- (5) being under suspension of election rights;
- (6) being detained by a warrant of the Court or by a lawful order;
- (7) being of unsound mind or mental infirmity;
- (8) being addicted to narcotic drugs;
- (9) being a bankrupt or having been a dishonest bankrupt;
- (10) having been sentenced by a judgment to imprisonment and being detained by a warrant of the Court;
- (11) having been sentenced to imprisonment and been discharged for a period of less than five years on the nomination day, except for an offence committed through negligence or a petty offence;
- (12) having been sentenced for a corruption offence;
- (13) having been expelled, dismissed or removed from the official service, a State agency or a State enterprise on the grounds of corruption or deemed corruption and improper conduct in the official service;

- (14) having been sentenced by a judgment or an order of the Court to devolve assets to the State on the grounds of unusual wealth or an unusual increase of assets;
- (15) being under a prohibition from holding a political position under section 34 and section 41;
- (16) having been removed from office by a resolution of the Senate.

Section 19: The NACC shall have the following powers and duties:

- (1) to inquire into facts and summarise cases along with an opinion in a submission to the Senate under Chapter 5, Removal from Office;
- (2) to inquire into facts and summarise cases along with an opinion to be referred to the Prosecutor-General for the purpose of prosecution before the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions under Chapter 6, Criminal Proceedings Against Persons Holding Political Positions under Section 275 of the Constitution;
- (3) to inquire and determine whether other Persons Holding Political Positions who are not a person under (2) and state official have become unusually wealthy and his or her asset shall devolve upon the State in accordance with the rules and procedure specified under this Organic Law;
- (4) to inquire and decide whether a person holding a political position other than a person under (2) or a State official holding a position starting from a high level executive or government official holding a position starting from a division director has become unusually wealthy or has committed an offence of corruption, malfeasance in office or malfeasance in judicial office, or a related offence, including to take action against a State official or government official holding a lower level position who has jointly committed an offence with the person holding such position or with a person holding a political position, or who has committed an offence in such a manner that the NACC considers an action appropriate as provided by the NACC by publication in the Government Gazette;
- (5) to determine positions of State officials obliged to submit an account showing particulars of assets and liabilities under section 264 of the constitution;
- (6) to verify the accuracy and actual existence of, as well as changes in, assets and liabilities of Persons Holding a Political Position and State officials who submit the account showing particulars of assets and liabilities under Chapter 3, Inspection of Assets and Liabilities, in accordance with the rules and procedures prescribed by the NACC;
- (7) to monitor and administer the morality and ethics of persons holding political positions;
- (8) to prescribe rules and procedures for the disclosure of accounts showing particulars of assets and liabilities and supplemental document of persons holding the position of Prime Minister, Minister, Member of the House of Representatives and Senator, and state officials;
- (9) to prescribe rules and procedures for the submission of accounts showing particulars of assets and liabilities of persons holding political positions, local administrators and members of the local assemblies, and state officials who are under a duty to submit an account showing particulars of assets and liabilities under Chapter 3, Inspection of Assets and Liabilities;
- (10) to submit an audit report and performance report along with observations to the Council of Ministers, the House of Representatives and the Senate annually and to publish such report in the Government Gazette as well as make a disclosure to the public;
- (11) to propose measures, opinions or recommendations to the Council of Ministers, National Assembly, Courts or State Audit Commission for the purpose of improving the performance of government service or formulating action plans or projects of government agencies, state enterprises or other state agencies in an endeavour to combat corruption and the commission of an offence of malfeasance in office or malfeasance in judicial office;
- (12) to refer matters to the agency concerned for the purpose of making a request to the Court for an order or judgment cancelling or revoking a right or document of title in respect of which the State official has given approval or granted permission conferring the rights or benefits or issued the document of title to a particular person in contravention of the law or official regulations to the detriment of the government service;

(13) to take action with a view to preventing corruption and to foster attitudes and values of integrity and honesty, as well as to facilitate the participation of the public or groups of persons in countering corruption;

(14) to take action relating to foreign affairs and become a center for international cooperation for the benefit of counter corruption so as to be in conformity with the international legal obligations and agreements pertaining to counter corruption;

(15) to give approval for the appointment of the Secretary-General;

(16) to appoint persons or a group of persons to perform duties as entrusted;

(17) to carry out other acts provided by this Organic Act or other laws as the powers and duties of the NACC; in any case, a law providing a power and duty to the NACC does not deprive the NACC of the power to take legal proceedings as it thinks fit or to refer a matter to the responsible agencies for further proceedings.

A Fact Inquiry or examination under (1), (2), (3), (4) and (6) may be entrusted by the NACC to an inquiry official who shall be responsible for the case file and report to the NCC Commission for determination. The performance of duties by such inquiry official shall be in accordance with the rules, procedures and duration prescribed by the NACC.

EXECUTIVE MEASURES IN THE ANTI-CORRUPTION ACT B.E. 2551(2008)

Section 5: There shall be a Public Sector Anti-Corruption Commission having the abbreviated name of "P.A.C.C." comprising of a President and five other members appointed by the Cabinet with the advices of the House of Representatives and the Senate respectively. In this respect, the Secretariat of the National Anti-Corruption Commission shall also act as an ex officio member.

Section 6: A member must:

(A) have the following qualifications:

(1) be a person who possesses apparent integrity;

(2) having competence in performing duties concerning countering corruption;

(3) having Thai nationality by birth;

(4) being not less than forty-five years of age;

(5) being or having been a judge of the Constitutional Court, judge of Administration Court, a judge serving in a position not lower than Justice of the Supreme Court, or being or having been a government official serving in a position not less than Deputy Attorney General, Director-General or a person holding an Administrative position in government agencies having administrative powers equivalent to a Director-General or holding an academic position of not lower than Professor.

(B) not have any of the following disqualifications:

(1) being a person holding other positions of political party;

(2) being of unsound mind or mental infirmity;

(3) being a Buddhist priest, novice, monk or clergy;

(4) being detained by a warrant of the Court or by a lawful order;

(5) being addicted to narcotic drugs;

(6) being a bankrupt;

(7) having been sentenced by a judgment to imprisonment or having been imprisoned by a judgment, except for an offence committed through negligence or a petty offence;

(8) having been expelled, dismissed or removed from official service by a State agency or a State enterprise;

(9) having been sentenced by a judgment or an order of the court to devolve assets to the State on the grounds of unusual wealth or unusual increase of assets;

(10) having been removed from office by a resolution of the Senate.

Section 7: A person appointed to become a member must: 3

(1) not be a director and advisor of a State enterprise or State agency;

- (2) not hold any position in a partnership, a company or an organization carrying out a business which seek to generate and share profits or incomes, or be an employee of any persons;
- (3) not engage in any independent profession;
- (4) not be a Member of the House of Representatives, Senator, political official, member of a local assembly or local administrator;
- (5) not be government official under Organic Act on Counter Corruption, B.E. 2542 (1999), except serving as member of P.A.C. Commission.

Section 17: the P.A.C.C. Commission shall have the following powers and duties:

- (1) to propose policies, measures and countering corruption in public sector development plans to the Cabinet;
- (2) to provide recommendations and advises to the Cabinet concerning the amendment of laws, regulations or measures for the propose of countering corruption in public sector;
- (3) to provide recommendations to the National Anti Corruption Commission in determining positions of State officials obligated to submit an account clarifying particulars of assets and liabilities to the National Anti Corruption Commission in accordance with the Organic Act on Counter Corruption, B.E. 2542 (1999);
- (4) to inquire info facts and determine whether State official has committee an offence of corruption;
- (5) to inquire info facts and summarize cases along with an opinion in a submission to public prosecutor so as to pursue criminal proceedings against State official;
- (6) to submit an performance report to the Cabinet, the House of Representatives and the Senate annually;
- (7) to appoint a sub-committee so as to perform duties assigned by the P.A.C.C. Commission;
- (8) to carry out other acts provided by this Act or other acts concerning countering corruption assigned by the Cabinet or the National Anti Corruption Commission.

- 224. With regard to the relationship between the NACC and the PACC, Thailand indicated that the NACC was in charge of investigating higher level public officials, while PACC was investigating lower level public officials.
- 225. At the time of the country visit, the NACC had over 2000 staff, and had recently received an additional 800 staff in order to deal with its growing caseload.
- 226. Specialized anti-corruption prosecutors work in a Special Division on Corruption Cases established at the Office of the Attorney-General.²³

(b) Observations on the implementation of the article

- 227. Depending on the public official suspected of having committed corruption offences, either NACC or PACC investigate the case and forward the case to the Office of the Attorney-General for prosecution, where it is dealt with by the Special Division on Corruption Cases.
- 228. The NACC is established through the Constitution, which also provides for safeguards of its members during their tenure, and establishes that the secretariat of the NACC shall be independent

²³ Development after the country visit: The specialized Department of Corruption Litigation has been established, specialized anti-corruption prosecutors work in the Department. Moreover, the specialized anti-corruption court has been established. The court will try government officials and suspects from the private sector, while the Supreme Court's Criminal division for people holding political positions will to continue to handle politicians charged with corruption.

(section 251 Constitution). NACC's prosecutorial power is established in the Organic Act on Counter Corruption (section 97 and 19(17)).

Article 37 Cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

229. Thailand referred to the following texts:

CRIMINAL CODE

Section 78: Whenever it appears that there exists an extenuating circumstance, whether or not here be an increase or reduction of the punishment according to the provisions of this Code or the other law, the Court may, if it is suitable, reduce the punishment to be inflicted on the offender by not more than one-half.

Extenuating circumstances may include lack of intelligence, serious distress, previous good conduct, the repentance and the efforts made by the offender to minimize the injurious consequence of the offence, voluntary surrender to an official, the information given or the Court for the benefit of the trial, or the other circumstance which the Court considers to be of similar nature.

ORGANIC ACT ON COUNTER CORRUPTION

Section 103/6: Where a person or alleged culprit involved in the commission of an offence by a state official that is an alleged culprit in another case gives testimony or provides a clue or information which constitutes an essential substance in the evidence relied upon in the decision on the prima facie case against such other state official, and the NACC finds it appropriate, such person may be protected as a witness and not be subject to legal proceedings. The aforesaid shall be in accordance with the rules, procedures and conditions prescribed by publication of the NACC.

230. The authorities provided that the court may consider a reduction of the punishment due to the information given for the benefit of the trial which may include cooperation in investigation or prosecution of the offence.

231. The authorities indicated that in corruption offences, providing factual information and information on e.g. the location of assets would not be seen as extenuating circumstance.

232. Thailand provided the following case example:

1) Supreme Court Decision No. 108/2540 (1997):

The defendant had confessed in the arrest, investigation and court consideration. This demonstrated that the defendant regretted and the confession was beneficial to the consideration of the case. As such, the penalty of the defendant can be reduced.

(b) Observations on the implementation of the article

233. As the provision of factual information and information e.g. on the location of assets would not be seen as extenuating circumstance in corruption cases, section 78 of the Criminal Code cannot be applied and the punishment for collaborators with justice cannot be mitigated. The Organic Act on Counter Corruption foresees the possibility not to prosecute collaborators with justice in certain cases (see below para. 3 of art. 37 of the Convention).

234. It is recommended that Thailand take further measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

235. It is also recommended that Thailand consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

Article 37 Cooperation with law enforcement authorities

Paragraph 3

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

236. Thailand referred to the following texts:

ORGANIC ACT ON COUNTER CORRUPTION

Section 103/6. Where a person or alleged culprit involved in the commission of an offence by a state official that is an alleged culprit in another case gives testimony or provides a clue or information which constitutes an essential substance in the evidence relied upon in the decision on the prima facie case against such other state official, and the NACC finds it appropriate, such person may be protected as a witness and not be subject to legal proceedings. The aforesaid shall be in accordance with the rules, procedures and conditions prescribed by publication of the NACC.

(b) Observations on the implementation of the article

237. Section 103/6 of the Organic Act on Counter Corruption sets forth that, where a person or alleged culprit involved in the commission of an offence by a state official that is an alleged culprit in another case gives testimony or provides a clue or information constituting essential substance in the evidence relied upon in the decision on the prima facie case against such other state official, and the NACC finds it appropriate, such person may be protected as a witness and not be subject to legal proceedings.

238. Section 103/6 limits the possibility of not prosecuting a person who provides substantial cooperation in the investigation or prosecution of a corruption offence to cases involving state officials who are being prosecuted in another case. Therefore, it is recommended that Thailand consider granting immunity from prosecution to collaborators with justice also in cases not involving state officials, or when state officials are not being prosecuted.

Article 37 Cooperation with law enforcement authorities

Paragraph 4

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

239. Thailand referred to the following texts:

WITNESS PROTECTION ACT, B.E. 2546 (2003)

Section 3. In this Act:

"Witness" means a person who commits himself/herself to be present at, or testify, or give evidence to a competent official for investigation, a criminal interrogation, a court for criminal proceedings, and includes an expert but not a defendant who himself/herself is a witness.

ORGANIC ACT ON COUNTER CORRUPTION

Section 103/2. In the case where the NACC finds it appropriate in a case to provide protection measures for the alleged culprit, injured person, petitioner, alleged, person giving testimony or person providing a clue or trace pertaining to the corruption, unusual wealth or other information that is beneficial to proceedings under this Organic Act, the NACC shall notify the relevant agencies to provide protection measures for such person. Such person shall be deemed as a witness entitled to protection under the law on witness protection. In this event, the NACC shall also submit an opinion on whether to apply general measures or special measures for such person under such law.

In the case of a loss of life, body, health, reputation, property or other rights of a person under paragraph one, or the husband, wife, ascendant, descendant or other persons having a close relationship with such person due to an intentionally committed criminal offence as a consequence of proceedings or testimony or the provision of clues or information to the NACC, such person shall have the right to file an application to the responsible agency to request for compensation as necessary and appropriate under the law on witness protection.

Section 103/6. Where a person or alleged culprit involved in the commission of an offence by a state official that is an alleged culprit in another case gives testimony or provides a clue or information which constitutes an essential substance in the evidence relied upon in the decision on the prima facie case against such other state official, and the NACC finds it appropriate, such person may be protected as a witness and not be subject to legal proceedings. The aforesaid shall be in accordance with the rules, procedures and conditions prescribed by publication of the NACC.

(b) Observations on the implementation of the article

240. While the definition of "witness" in section 3 of the Witness Protection Act explicitly excludes defendants who are witnesses, section 103/2 of the Organic Act on Counter Corruption

as special law sets forth that, in cases whether the NACC finds it appropriate to provide protection measures for the alleged culprit, it shall notify the relevant agencies to provide protection measures for that person. Section 103/2 also clarifies that such persons should be deemed a witness entitled to protection under the law on witness protection.

Article 37 Cooperation with law enforcement authorities

Paragraph 5

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

241. Thailand indicated that it had not concluded such agreements or arrangements. However, it referred to the existing MLA treaties and the Act on Mutual Assistance in Criminal Matters as relevant.

(b) Observations on the implementation of the article

242. Thailand did not conclude any agreements or arrangements on the provision of the treatment set forth in paragraphs 2 and 3 of article 37 of the Convention at the international level.

243. It is recommended that Thailand consider entering into agreements or arrangements, in accordance with its domestic law, concerning the potential provision of the treatment set forth in paragraphs 2 and 3 of article 37 of the Convention where a person referred to in paragraph 1 of article 37 of the Convention located in one State party can provide substantial cooperation to the competent authorities of another State party.

Article 38 Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

244. Thailand referred to the following texts:

CONSTITUTION OF THE KINGDOM OF THAILAND, B.E. 2550 (2007)

Section 74: A Government official, official or employee of a Government agency, a State agency, a State enterprise or other State official shall have a duty to act in compliance with the law in order to protect public interests, and provide convenience and services to the public in accordance with the good governance principle.

In performing the duty and other acts relating to the public, the persons under paragraph one shall be politically impartial.

In the case where the persons under paragraph one neglect or fail to perform the duties under paragraph one or paragraph two, the interested person shall have the right to request the persons under paragraph one or their superiors to give explanations and reasons and request them to act in compliance with the provisions of paragraph one or paragraph two.

Section 78: The State shall pursue directive principles of State policies in relation to the Administration of the State Affairs, as follows:

...

(4) to develop the working system in the public sector with particular emphasis on the development of the quality, conscience and ethics of State officials in tandem with the improvement of patterns and methods of

work in order to achieve efficiency of the administration of the State affairs, and to promote the application of the good governance principle amongst State agencies;

(5) to organise the bureaucracy and other affairs of the State to the effect that the provision and delivery of public services can be undertaken with rapidity, efficiency, transparency and accountability, having regard to public participation;

THE SPECIAL CASE INVESTIGATION ACT B.E. 2547

Section 22: For the benefit of coordination to prevent and suppress crime in relation to Special Cases, the BSC shall have the power to issue regulations on special case duty performance between government agencies as follows.

(1) Practices between agencies concerning acceptance of complaint or accusation, proceedings in relation to summons and criminal warrant, arrest, restraint, detention, search, or temporary release, investigation, inquiry, fining, transferring of special cases and other proceedings in relation to criminal cases between government agencies which have the authority to prevent and suppress criminal cases;

(2) Scope of responsibilities of Administrative Officials or Police Officials, other government officials, Special Case Inquiry Officials and Special Case Officers to inquire and investigate Special Cases in order to suit the duties of each agency. Regarding the specialization, impact of the commission of crime and efficiency of crime prevention and suppression of criminal offences, related agencies may be required to form joint operations.

(3) Exchange of information relating to the prevention and suppression of Special Cases; and

(4) Support from government agencies and government officials to perform duties relating to the investigation and inquiry of Special Cases.

After regulations under paragraph one are in force, government agencies shall have a duty to comply with such regulations. Such regulations determine the duty of state officials who are Administrative Officials, or Police Officials, or Inquiry Officials, and how that they shall perform their duties according to the Criminal Procedure Code. It shall be considered that an action by such officials in related matters shall be an action of a person having the power and duty to investigate and inquire according to the Criminal Procedure Code.

While there is no regulation under paragraph one, for any Special Case, an action conducted by any government official to comply with the Criminal Procedure Code relating to an investigation and inquiry of a Special Case in that matter shall be according to agreement between the Department of Special Investigation and other agencies, unless a BSC resolution is passed otherwise.

ORGANIC ACT ON COUNTER CORRUPTION

Section 19: The National Anti-Corruption Commission shall have the following powers and

duties:

- (1) to inquire into facts and summarise cases along with an opinion in a submission to the Senate under Chapter 5, Removal from Office;
- (2) to inquire into facts and summarise cases along with an opinion to be referred to the Prosecutor-General for the purpose of prosecution before the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions under Chapter 6, Criminal Proceedings Against Persons Holding Political Positions under Section 275 of the Constitution;
- (3) to inquire and determine whether other Persons Holding Political Positions who are not a person under (2) and state official have become unusually wealthy and his or her asset shall devolve upon the State in accordance with the rules and procedure specified under this Organic Law;
- (4) to inquire and decide whether a person holding a political position other than a person under (2) or a State official holding a position starting from a high level executive or government official holding a position starting from a division director has become unusually wealthy or has committed an offence of corruption, malfeasance in office or malfeasance in judicial office, or a related offence, including to take action against a State official or government official holding a lower level position who has jointly committed an offence with the person holding such position or with a person holding a political position, or who has committed an offence in such a manner that the NACC considers an action appropriate as provided by the NACC by publication in the Government Gazette;

Section 25. In the performance of duties under this Organic Act, the NACC shall have the powers as follows:

- (1) to give an order instructing a Government official, official or employee of a Government agency, State agency, State enterprise or local administration to perform all such acts as are necessary for the performance of duties of the NACC or to summon relevant documents or evidence from any person or to summon any person to give statements or testimonies, for the purpose of a fact inquiry;
- (2) to file an application with the competent Court for an issuance of a warrant permitting an entry into a dwelling-place, place of business or any other place including a vehicle of any person from sunrise to sunset or during the working hours for the purposes of inspecting, searching, seizing or attaching documents, property or other evidence related to the matter under inquiry. If action is not completed within such time, such action may be further taken until its completion;
- (3) to address a written request to a Government agency, State agency, State enterprise, local administration or private agency to carry out a particular act for the purpose of the performance of duties of, or the conduct of a fact inquiry or the making of a determination by, the NACC;
- (4) to prescribe regulations with respect to the rules and procedures for the payment of per diem, travelling fees and remuneration of a witness and in connection with the performance of duties of competent officials or other matters, for the execution of this Organic Act;
- (5) to prescribe the regulation with respect to the payment of a reward under section 30.

245. In response to Section 19(14), the Thailand Anti-Corruption Coordination Center (TACC) was established following the ratification of the Convention to serve as a national focal unit for inter-agency coordination of anti-corruption efforts, particularly those pertaining to corruption investigation, international asset recovery and ensuring Thailand's fulfilment its international obligations such as the UN Convention against Corruption.

246. Since its establishment in 2009, the Center has provided assistance (mainly in the form of informal assistance) to domestic and foreign counterparts in three key areas:

1. Supporting international investigation

- Obtaining/verifying information or intelligence to support corruption investigation;
- Locating persons of interest (i.e. suspects, witnesses, fugitives)
- Conducting non-intrusive surveillance of persons and properties of interest;
- Obtaining information from cooperating witnesses/persons

2. Providing Legal Advice

- Provide legal advice and interpretation of relevant Thai laws to foreign counterparts (i.e. Thai criminal code, Criminal Procedural code, corruption-related law);
- Recommend the most appropriate and efficient legal strategies and procedures when requesting for law enforcement assistance in Thailand

3. Facilitating/Coordinating International Requests for Assistance Relating to Corruption Cases

- Play a facilitating/coordinating role in ensuring international requests for assistance relating to corruption cases are being delivered to and acted upon by domestic agencies.

247. Thailand also established a database through which information can be shared among national institutions.

(b) Observations on the implementation of the article

248. In accordance with section 25 of the Organic Act on Counter Corruption, the National Anti-Corruption NACC can order government officials, officials or employees of a government agency, State agency, State enterprise or local administration to perform all acts necessary for the performance of duties of the Commission. In addition, it can summon documents or evidence from any person, or summon any person to give statements or testimonies, including government officials and employees of government agencies. Thailand also established the Thailand Anti-Corruption Coordination Center, which serves as a national focal unit for inter-agency coordination of anti-corruption efforts.²⁴

249. It is recommended that Thailand further strengthen cooperation between its public authorities and its authorities responsible for investigating and prosecuting criminal offences.

Article 39 Cooperation between national authorities and the private sector

Paragraph 1

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

250. Thailand referred to the following texts:

²⁴ Development after the country visit: Section 25 of the Organic Act on Counter Corruption was amended as follows:

Section 25 (3/1): to collaborate with related organizations for the benefit of performance of duties under the Organic Act by executing an agreement with heads of related organizations in order to assign officials to provide assistance, support, or jointly perform duties as necessary, subject to the regulations, rules, and methods prescribed by the NACC.

ANTI-MONEY LAUNDERING ACT, B.E. 2542 (1999)

Section 3: “Financial institution” means:

- (1) the Bank of Thailand under the law on Bank of Thailand, a commercial bank under the law on commercial banking and such banks as specifically established by law;
- (2) a finance company and credit foncier company under the law on the operation of finance, securities and credit foncier businesses, and a securities company under the law on securities and stock exchange;
- (3) the Industrial Finance Corporation of Thailand under the law on Industrial Finance Corporation of Thailand and a small industrial finance corporation under the law on small industrial finance corporations;
- (4) a life insurance company under the law on life insurance and an insurance company under the law on insurance;
- (5) cooperatives under the law on cooperatives, limited to a cooperative with operating capital exceeding two million Baht of total share value and having objectives of its operation relating to acceptance of deposits, lending of loans, mortgage, pawning or acquiring of money or asset by any means;
- (6) a juristic person carrying on such other businesses related to finance as prescribed in the Ministerial Regulation.

Section 13: When a transaction is made with a financial institution, the financial institution shall have the duty to report that transaction to the Office when it appears that such transaction is:

- (1) a transaction funded by a larger amount of cash than that prescribed in the Ministerial Regulation;
- (2) a transaction connected with the property worth more than that value prescribed in the Ministerial Regulation; or
- (3) a suspicious transaction, whether it is the transaction under (1) or (2) or not.

In the case where there appears any fact which is relevant or probably beneficial to the confirmation or cancellation of the fact concerning the transaction already reported by the financial institution, that financial institution shall report such fact to the Office without delay.

Section 16 Professions stated below shall have the duty to report to the Office any transaction when it is carried out in cash of a value exceeding the amount prescribed in the Ministerial Regulation or is a suspicious transaction. However, profession under (2), (3), (4) and (5) must be a juristic person, unless there is probable cause to suspect under reasonable evidence that such transaction is related or may be related to the commission of a predicate offense or money laundering offense with profession under (2), (3), (4) and (5) that is not a juristic person, the Office shall have the power to give a written order to such profession to report the transaction to the Office:

- (1) Professions that undertake provision of advice or being an advisor in transactions relating to the investment or movement of funds, under the law governing securities and stock exchange, and that are not a financial institution under Section 13.
- (2) Professions relating to trading of precious stones, diamonds, gems, gold, or ornaments decorated with precious stones, diamonds, gems, or gold.
- (3) Professions relating to trading or hire-purchase of cars.
- (4) Professions acting as a broker or an agent in buying or selling immovable property.
- (5) Professions relating to trading of antiques under the law governing selling by auction and trading of antiques.

(6) Professions relating to personal loan under supervision for businesses that are not a financial institution under the Ministry of Finance Notification relating to Personal Loan Businesses under Supervision or under the law governing financial institution business.

(7) Professions relating to electronic money card that are not a financial institution under the Ministry of Finance Notification relating to electronic money card or under the law governing financial institution business.

(8) Professions relating to credit card that are not a financial institution under the Ministry of Finance Notification relating to credit card or under the law governing financial institution business.

(9) Professions relating to electronic payment under the law governing the supervision of electronic payment service business.

In the case where there appears any fact which is relevant or probably beneficial to the confirmation or cancellation of the fact concerning the transaction already reported under paragraph one, that person shall report such fact to the Office without delay.

ORGANIC ACT ON COUNTER CORRUPTION, B.E. 2542 (1999)

Section 19: The NACC shall have the following powers and duties:

...

(6) to verify the accuracy and actual existence of, as well as changes in, assets and liabilities of Persons Holding a Political Position and State officials who submit the account showing particulars of assets and liabilities under Chapter 3, Inspection of Assets and Liabilities, in accordance with the rules and procedures prescribed by the NACC;

...

(8) to prescribe rules and procedures for the disclosure of accounts showing particulars of assets and liabilities and supplemental document of persons holding the position of Prime Minister, Minister, Member of the House of Representatives and Senator, and state officials;

(9) to prescribe rules and procedures for the submission of accounts showing particulars of assets and liabilities of persons holding political positions, local administrators and members of the local assemblies, and state officials who are under a duty to submit an account showing particulars of assets and liabilities under Chapter 3, Inspection of Assets and Liabilities;

...

A Fact Inquiry or examination under (1), (2), (3), (4) and (6) may be entrusted by the NACC to an inquiry official who shall be responsible for the case file and report to the NCC Commission for determination. The performance of duties by such inquiry official shall be in accordance with the rules, procedures and duration prescribed by the NACC.

251. Thailand mentioned that the NACC, together with the Organization for Economic Co-operation and Development (OECD), organized an international seminar on Counter Bribery of Foreign Public Officials and OECD Convention on Counter Bribery in International Business Transaction during 19 -20 January 2012 in Bangkok. The aim was to disseminate knowledge and encourage awareness in the Convention. Expert guest speakers from OECD and member countries to the Convention, such as Switzerland, Germany, Israel, Korea, and Norway, participated in the discussion and exchanged experiences in the enforcement of the law and measures under the Convention. On this occasion, Mr. Kittirat Na Ranong, who was then the Deputy Prime Minister and Minister of Finance, made a keynote address on benefits of Thailand under the Convention on Counter Bribery of Foreign Public Official.

252. The NACC also offers trainings, and has established a specialized training institute against corruption at the Commission for NACC staff. Many of the courses offered at the training institute are open to the private sector, and high-ranking private sector officials participate in them. In addition, the NACC also provides training to the private sector through its provincial offices, as

well as at schools and universities. Such training courses focus on a variety of issues, including preventive measures.

(b) Observations on the implementation of the article

253. Financial institutions and designated non-financial businesses and professions are obliged to report suspicious transactions to the Anti-Money Laundering Office. In addition, the NACC provides training to private sector entities on various topics related to combating corruption, inter alia, preventive measures.

Article 39 Cooperation between national authorities and the private sector

Paragraph 2

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

254. Thailand referred to the following texts:

ORGANIC ACT ON COUNTER CORRUPTION, B.E. 2542 (1999)

Section 30. In conducting a Fact Inquiry in the case of an allegation that a state official has become unusually wealthy or in the inspection of the change of assets and liabilities of a person holding a political position, if any person gives the NACC a trace or clue, information or facts in connection with assets or liabilities of the alleged culprit or the person under inquiry, including the principal, instigator or the aider and abettor and the giving of such trace or clue, information or facts results in the assets which constitute the unusual wealth or the unusually increased assets devolving to the State by a final order of the Court, such person shall be entitled to the reward in accordance with the regulation prescribed by the NACC.

Section 103/2: In the case where the NACC finds it appropriate in a case to provide protection measures for the alleged culprit, injured person, petitioner, alleged, person giving testimony or person providing a clue or trace pertaining to the corruption, unusual wealth or other information that is beneficial to proceedings under this Organic Act, the NACC shall notify the relevant agencies to provide protection measures for such person. Such person shall be deemed as a witness entitled to protection under the law on witness protection. In this event, the NACC shall also submit an opinion on whether to apply general measures or special measures for such person under such law.

In the case of a loss of life, body, health, reputation, property or other rights of a person under paragraph one, or the husband, wife, ascendant, descendant or other persons having a close relationship with such person due to an intentionally committed criminal offence as a consequence of proceedings or testimony or the provision of clues or information to the NACC, such person shall have the right to file an application to the responsible agency to request for compensation as necessary and appropriate under the law on witness protection.

Section 103/3: The NACC shall provide monetary incentives for persons under section 30 or may provide a reward or other benefits to persons under section 103/2 paragraph one as the case may be from budgetary appropriations in accordance with regulations prescribed by the NACC.

255. Thailand also mentioned the following examples of related activities:

Example Activities of NACC

1) The Office of the NACC organized a youth relation camp to encourage youth to be aware of and realize the importance of anti-corruption campaigns, be the backbone in the attitude and good value building, build network, encourage participation on counter corruption. Currently, the activity has been organized for 7 times and will be continuously organized. These youths will be looking out for and report commission of offence to the Office of the NACC.

2) Public Asset Protection Youth Camp Activity 2 was organized with the aim to support and disseminate knowledge on natural resource and environment protection and preservation, and roles and responsibilities of the NACC. The Youth Participation Network and Youth Public Asset Protection Network were created among youths who study in the higher educational institutions nationwide through activities of such institutions' clubs on natural resource and environment.

3) ChorSaArd Award (an award for media with outstanding work on encouragement and promotion of anti-corruption) The aim of this award is to praise persons, group of persons, or organization that support and promote anti-corruption through the creation of media which would help enhance morality and counter corruption. This award is given to encourage the producer of TV series, advertisement, or other media related to anti-corruption broadcasted throughout Thailand through TV channels and/or cable TV which would help foster consciousness in honesty and trustworthiness.

4) The activity to counter corruption that the NACC organized together with the Anti-Corruption Organization of Thailand is the "Watch Dog Project" in which volunteers from nationwide would help look out and monitor for all kinds of corruption.

Example Activity 2

The activity to counter corruption that the NACC organized together with the Anti-Corruption Organization of Thailand is the "Watch Dog Project" in which volunteers from nationwide would help look out and monitor for all kinds of corruption. The "Watch Dog Project" allows for anonymous reporting of corruption through a dedicated website.

Example Activity of the Office of Public Sector Anti-Corruption Commission (PACC)

Seminar to disseminate knowledge to the people in Srakaew Province on "Participation in Counter Corruption in Public Sector": Corruption cannot be solved purely by law enforcement. Cooperation of all sectors, including the people, is very important. Public officials must be faithful and trustworthy, self-conscious in benefaction, sacrifice and strictly devote oneself in the performance of duty in accordance with the sufficient economy principle, take part in the monitoring and verification of corruption and wrongful act. As such, the public sector seminar was organized.

Example Activity 2

Bangkok Metropolitan together with Transparency Thailand, and the Center for Philanthropy and Civil Society of National Institute of Development Administration (NIDA), organized the "White School Project, Association with Kids and Build the Nation Program" for kindergarten to third grade students. The Project was organized for the second time in 2011 and the program was extended to cover students in fourth – sixth grades. In 2012, the course description was again extended to cover seventh - ninth Grades. Additionally, in 2013, the courses for tenth - twelfth Grades were being designed. The training courses under the "No Corruption when You Are Grown-Ups Program" was centred around students; the learning process implemented did not focus on memorizing, but rather emphasized on the analytical skills of the students which would lead to a better understanding and awareness in the differentiation between right or wrong / good

or bad. The activities in the program are fun and creative in order to enable children to think rationally, naturally absorb the value of goodness, be proud of doing good things, and detest corrupted persons or talented but corrupted persons.

(b) Observations on the implementation of the article

256. Thailand has taken several different measures to encourage citizens to report the commission of corruption offences to its national investigating and prosecuting authorities, among them the possibility to protect reporting persons. In addition, Thailand has undertaken several awareness-raising measures in order to encourage the reporting of corruption offences.

(c) Successes and good practices

257. Thailand has developed creative ways of involving youth in the fight against corruption, through camps, training courses, and campaigns, such as the “No Corruption when You Are Grown-Ups Program”, organized by the Bangkok Metropolitan together with Transparency Thailand in the framework of the “White School Project, Association with Kids and Build the Nation Program”.

Article 40 Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

258. Thailand referred to section 154 of the Financial Institution Business Act:

FINANCIAL INSTITUTION BUSINESS ACT, B.E. 2551 (2008)

Section 154: Whoever, in the performance of his duty upon the power and duty prescribed under the law or in the performance of assisting those performing their duties upon the power and duty prescribed under the law, having acquired knowledge of the business of a financial institution which, in a normal business, is to be held in confidence, discloses such knowledge to other persons shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding one hundred thousand Baht or both.

The provision under the first paragraph shall not apply to disclosure under the following circumstances:

- (1) disclosure in the performance of his duty or for the purpose of investigation or trial;
- (2) disclosure of the commission of an offense under this Act;
- (3) disclosure to the auditor of such financial institution or to the domestic and foreign authorities having powers and duties to supervise such financial institution;
- (4) disclosure of information to facilitate the performance of duty of the domestic and foreign authorities having powers and duties to supervise financial institution or financial business in accordance with the agreements signed by them.
- (5) disclosure for the purpose of rectifying the condition and operation of such financial institution;
- (6) disclosure for the purpose of granting credits of the financial institution;
- (7) disclosure of confidential information of a customer of the financial institution that had already been disclosed to the public;
- (8) disclosure of confidential information of a customer of the financial institution with the consent of the customer;

- (9) disclosure to companies within the financial business group of such financial institution;
- (10) disclosure for the purposes of compliance with the laws.

ANTI-MONEY LAUNDERING ACT B.E. 2542 (1999)

Section 46 In the case where there is sufficient evidence to believe that any account of a financial institution's customer, communication device or equipment or computer is used or may be used in the commission of an offense of money laundering, the competent official entrusted in writing by the Secretary-General may file an ex parte application with the Civil Court for an order permitting the competent official to have access to the account, communicated data or computer data, for the acquisition thereof.

In the case under paragraph one, the Court may give an order permitting the competent official who has filed the application to take action with the aid of any device or equipment as deemed appropriate, provided that the permission on each occasion shall not be for the duration of more than ninety days.

Upon the Court's order granting permission under paragraph one or paragraph two, the person concerned with such account, communicated data or computer data to which the order relates shall render cooperation for the implementation in accordance with the provision of this Section.

259. Thailand also provided the following example of implementation:

1) In the gathering of evidence to inquire about the facts for the case of Dr. Warong Dejkijwikrom, House of Representative of the Democrat Party, requested the investigation of the Government's Rice Pledging Scheme and the G to G Sale of Rice to determine whether these constituted acts of corruption. The NACC Office followed the trail of money of 1744 cashier's checks by requesting information from 6 banks, through which vital information was received for the inquiry into the facts.

(b) Observations on the implementation of the article

260. Section 154 of the Financial Institution Business Act establishes sanctions for the divulgence of information protected by bank secrecy. However, it also establishes that these sanctions do not apply to disclosures made for the purpose of investigation or trial, or to disclosures of the commission of an offence under the Financial Institution Business Act.

261. Section 46 of the Anti-Money Laundering Act permits the filing of an ex parte application with the Civil Court for an order permitting the competent official to access the account of a financial institution's customer if there is sufficient evidence to believe that the account is or may be used in the commission of money-laundering offences.

Article 41 Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

262. Thailand reported that it had not adopted and implemented the measures described above due to specificities in its legal system.

(b) Observations on the implementation of the article

263. Thailand may wish to take previous convictions in another State into consideration in criminal proceedings.

Article 42 Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(d) The offence is committed against the State Party.

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

264. Thailand referred to the following texts:

CRIMINAL CODE

Section 4: Whoever, committing an offence within the Kingdom, shall be punished according to law.

The offence committed in any Thai vessel or airplane irrespective of a place of Thai vessel or airplane shall be deemed as being committed within the Kingdom.

Section 5: Whenever any offence is even partially committed within the Kingdom, or the consequence of the commission of which, as intended by the offender, occurs within the Kingdom, or by the nature of the commission of which, the consequence resulting there from should occur within the Kingdom, or it could be foreseen that the consequence would occur within the Kingdom, it shall be deemed that such offence is committed within the Kingdom. In case of Preparation or attempt to commit any act provided by the law to be an offence even though it is done outside the Kingdom, if the consequence of the doing of such act, when carried through to the stage of accomplishment of the offence, will occur within the Kingdom, it shall be deemed that the preparation or attempt to commit such offence is done within the Kingdom.

Section 6: Any offence has been committed within the Kingdom, or has been deemed by this Code as being committed within the Kingdom, even though the act of a co-principal, a supporter or an instigator in the offence has been committed outside the Kingdom it shall be deemed that the principal, supporter or instigator has committed the offence within the Kingdom.

Section 7: Whoever commits the following offences outside the Kingdom shall be punished in the Kingdom:

- (1) Offences relating to the security of the Kingdom as provided in Sections 107 to 129;
- (1/1)* Offences relating to terrorism as provided in Section 135/1, Section 135/2, Section 135/3, and Section 135/4;
- (2) Offences relating to counterfeit and alteration as provided in Sections 240 to 249, Section 254, Section 256, Section 257 and Section 266(3) and (4);
- (2 bis)** Offences relating to sexuality as provided in Section 282 and Section 283;
- (3) Offences relating to robbery as provided in Section 339 and offences relating to gang-robbery as provided in Section 340 which are committed in the high seas.

Section 8: Whoever commits an offence outside the Kingdom shall be punished in the Kingdom, if:

- (a) The offender is a Thai national and the Government where the offence has taken place or the injured person makes a request for punishment; or
- (b) The offender is a foreigner and the Thai Government or a Thai national being the injured person and makes a request for punishment.

If the offence is any of the following, the offender shall be punished in the Kingdom:

- (1) Offences relating to causing public dangers as provided in Section 217, Section 218, Section 221 to Section 223, except in case of offences relating to the first paragraph of Section 220, Section 224, Section 226, Section 228 to Section 232, Section 237 and Section 233 to Section 236, only if in the case of being liable to the punishment according to Section 238;
- (2) Offences against documents as provided in Section 264, Section 265, Section 266 (1) and (2), Section 268 except in the case of offences relating to Section 267 and Section 269;
- (2/1)* Offences against electromagnetic records as provided in Section 269/1 to Section 269/7;

- (2/2)* Offences against passports as provided in Section 269/8 to Section 269/15;
- (3) Offences relating to sexuality as provided in Section 276, Section 280 and Section 285, only if in the case of Offences relating to Section 276;
- (4) Offences against life as provided in Section 288 to Section 290;
- (5) Offences against body as provided in Section 295 to Section 298;
- (6) Offences of abandonment of children, sick persons, or elders as provided in Section 306 to Section 308;
- (7) Offences against freedom as provided in Section 309, Section 310, Section 312 to Section 315, and Section 317 to Section 320;
- (8) Offences of theft and snatch as provided in Section 334 to Section 336;
- (9) Offences of extortion, blackmail, robbery and gang-robbery as provided in Section 337 to Section 340;
- (10) Offences of fraud as provided in Section 341 to Section 344, Section 346 and Section 347;
- (11) Offences of misappropriation as provided in Section 352 to Section 354;
- (12) Offences of receiving stolen property, as, provided in Section 357;
- (13) Offences of mischief as provided in Section 358 to Section 360.

Section 9: Any official of the Thai Government commits the offences as provided in Section 147 to Section 166, and Section 200 to Section 205 outside the Kingdom shall be punished in the Kingdom.

Section 357: Whoever, assists in concealing, disposing of, making away with, purchases, receives in pledge or otherwise any property obtained through the commission of an offence, and such offence being theft, snatching, extortion, blackmail, robbery, gang-robbery, cheating and fraud, misappropriation or misappropriation by an official, is said to receive stolen property, and shall be punished with imprisonment not exceeding five years or fined not exceeding ten thousand Baht, or both.

If the offence of receiving stolen property be committed for profit or against the property obtained by theft under Section 335(10), robbery or gang-robbery, the offender shall be punished with imprisonment of six months to ten years and fined of one thousand to twenty thousand Baht.

If such offence of receiving stolen property is committed against the property obtained by theft according to Section 335 *bis*, by the robbery according to Section 339 *bis*, or by the gang- robbery according to Section 340 *bis*, the offender shall be punished with imprisonment of five to fifteen years and fined of ten thousand to thirty thousand Baht.

ANTI-MONEY LAUNDERING ACT, B.E. 2542

Section 6: Any person who commits an offence of money laundering shall, even if the offence is committed outside the Kingdom, be punished under this Act in the Kingdom if it appears that:

- (1) the offender or any of the co-offenders is a Thai national or has a residence in Thailand;
- (2) the offender is an alien and commits the offence with the intent that the consequence thereof shall have occurred in the Kingdom, or the Thai Government is the injured person; or
- (3) the offender is an alien and the act so committed is an offence under the law of the State in whose jurisdiction the act occurs, provided that such person remains his or her appearance in the Kingdom without being extradited in accordance with the law on extradition.

For this purpose, section 10 of the Penal Code shall apply *mutatis mutandis*.

Section 7: In an offence of money laundering, any person who commits any of the following acts shall be liable to the same penalty as that to which the principal committing such offence shall be liable:

- (1) aiding and abetting the commission of the offence or assisting the offender before or at the time of the commission of the offence,

(2) providing or giving money or property, a vehicle, place or any article or committing any act for the purpose of assisting the offender to escape or to evade punishment or for the purpose of obtaining any benefit from the commission of the offence.

In the case where any person provides or gives money or property, a shelter or hiding place in order to enable his or her father, mother, child, husband or wife to escape from being arrested, the Court may inflict on such person no punishment or lesser punishment to any extent than that provided by law for such offence.

Section 8: Any person who attempts to commit an offence of money laundering shall be liable to the same penalty as that provided for the offender who has accomplished such offence.

Section 9: Any person who enters into conspiracy to commit an offence of money laundering shall, when there are at least two persons in the conspiracy, be liable to one-half of the penalty provided for such offence.

If the offence of money laundering has been committed in consequence of the conspiracy under paragraph one, the person so conspiring shall be liable to the penalty provided for such offence.

In the case where the offence has been committed up to the stage of its commencement but, on account of the obstruction by the conspiring person, has not been carried out through its completion or has been carried out through its completion without achieving its end, the conspiring person rendering such obstruction shall only be liable to the penalty provided in paragraph one.

If the offender under paragraph one changes his or her mind and reveals the truth in connection with the conspiracy to the competent official prior to the commission of the offence to which the conspiracy relates, the Court may inflict on such person no punishment or lesser punishment to any extent than that provided by law for such offence.

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS, B.E. 2535 (1992)

Section 4:

“Assistance” means assistance regarding investigation, inquiry, prosecution, forfeiture of property

and other proceedings relating to criminal matters;

“Requesting State” means the state seeking assistance from the Requested State;

“Requested State” means the state from whom an assistance for the Requesting State is sought;

“Central Authority” means the person having authority and function to be the coordinator in providing

assistance to a foreign state or in seeking assistance from a foreign state under this Act;

“Competent Authorities” means the official having authority and function to execute the request for assistance from a foreign state as notified by the Central Authority under this Act.

Section 31: Upon receipt the request for assistance from a foreign state which is competent to initiate criminal proceeding but wishes the proceeding which is subject to the Jurisdiction of Thai Court to be initiated in Thailand, the Central Authority shall consider whether it is appropriate to initiate the proceeding requested, if so shall notify the Competent Authorities under the Criminal Procedure Code to carry out the said proceeding and shall have such Competent Authorities to report the result thereof.

265. Thailand also provided the following example of implementation:

Supreme Court Decision Number 2670/2535 (1992):

The crime committed on board a Thai vessel shall be considered as having been committed in the Kingdom. Since the inquiry officer of the Crime Suppression Division had the authority to investigate

crime committed throughout the Kingdom, the inquiry officer had the authority to investigate this case.

(b) Observations on the implementation of the article

266. Thai jurisdiction is regulated in the Criminal Code and, for money-laundering offences, in the Anti-Money Laundering Act. Section 4 of the Criminal Code establishes Thai jurisdiction over offences committed within the Kingdom, as well as over offences committed in Thai vessels or airplanes irrespective of their location at the time of the commission of the offence, thus implementing paragraphs 1 (a) and (b) of article 42 of the Convention.
267. With regard to offences committed against a national or against the State party (art. 42, paras. 2 (a) and (d) of the Convention, respectively), section 8 (b) of the Criminal Code establishes Thai jurisdiction over such offences if they are part of the offences listed in section 8 of the Criminal Code. However, while the list covers some corruption offences, not all offences established in accordance with the Convention are listed (e.g., obstruction of justice). In addition, section 8 (b) of the Criminal Code requires a request from the Government or the injured person for the punishment of the offender. Section 6 (2) of the Anti-Money Laundering Act establishes Thai jurisdiction over money-laundering offences committed anywhere if the offender is an alien and the Thai Government is the injured person.
268. Jurisdiction over offences committed by a national (art. 42, para. 2 (b) of the Convention) is regulated in section 8 (a) of the Criminal Code. Similar to the above, such jurisdiction is only established for the limited offences listed in section 8 of the Criminal Code, and a request from the Government where the offence took place for the punishment of the offender is required. Section 8 (a) of the Criminal Code does not cover offences committed by stateless persons who have their habitual residence in Thailand. In addition, section 6 of the Anti-Money Laundering Act establishes extraterritorial jurisdiction over money-laundering offences committed by a Thai national or by an offender who has a residence in Thailand.
269. Section 6 of the Criminal Code, read together with sections 7, 8 and 9 of the Anti-Money Laundering Act, implement article 42, subparagraph 2 (c) of the Convention.
270. While Thailand can extradite its nationals on the basis of a treaty or reciprocity or if they consent (see below article 44, paragraph 11 of the Convention), it can also refuse their extradition if no such basis exists. There is no general provision establishing Thailand's jurisdiction over offences established in accordance with the Convention when the alleged offender is present in its territory and it does not extradite him or her solely on the ground that he or she is one of its nationals.
271. In light of the above, Thailand may wish to establish its jurisdiction over all corruption offences committed by nationals or stateless persons who have their habitual residence in Thailand; against a national or against the State; without requiring a prior request for punishment (art. 42, paras 2 (a), (b) and (d) of the Convention); or when the alleged offender is present in its territory and it does not extradite him solely because he or she is a national (art. 42, para. 3 of the Convention).
272. Section 6 (3) of the Anti-Money Laundering Act establishes Thai extraterritorial jurisdiction over money-laundering offences committed by an alien, if the act is an offence under the law of the State in which it occurred and the person sought remains in Thailand without being extradited in accordance with the legislation governing extradition. No such provisions exist with regard to offences other than money-laundering. Therefore, Thailand may wish to establish its jurisdiction

also over offences established in accordance with the Convention other than money-laundering when the alleged offender is present in its territory and it does not extradite him or her.

273. While section 31 of the Act on Mutual Assistance in Criminal Matters does not clearly establish an obligation to consult with other States if they are conducting an investigation, prosecution or judicial proceeding in respect of an offence over which Thailand is also exercising its jurisdiction with a view to coordinating actions, it allows for Thailand's consideration of initiating proceedings in such cases. In this regard, Thailand is encouraged to continue consulting with other States parties also exercising their jurisdiction with a view to coordinating actions.

(c) Successes and good practices:

274. Section 6 of the Anti-Money Laundering Act establishes extraterritorial jurisdiction over money-laundering offences if one of the co-offenders is a Thai national or has a residence in Thailand.

Article 44. Extradition

Paragraph 1 of Article 44

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

275. Thailand indicated that extradition was based on the Extradition Act of 2008, which replaced the previous Extradition Act of 1929. The Act allows for extradition procedures to be carried out with countries with which Thailand does not have an extradition treaty with Thailand on the basis of reciprocity, provided the conditions of the Extradition Act are met.

276. Thailand stated that it had extradition treaties with 14 countries: the United Kingdom, Belgium, Indonesia, the Philippines, the United States, China, Cambodia, Republic of Korea, Bangladesh and the Lao P.D.R, while Fiji, Malaysia, Canada and Australia have succeeded to the extradition treaty between Thailand and the UK.

277. Thailand cited the following measures:

278. Thailand makes extradition conditional on dual criminality; this requirement is contained in the Extradition Act of 2008 and was adhered to ever since the Extradition Act of 1929. Extraditable offences must be a criminal offence in both requesting and requested States and carry a term of imprisonment of one year and upwards. Regardless of the denomination of the crime, the requirement for dual criminality is satisfied if the acts correspond to a crime in Thai law.

EXTRADITION ACT B.E. 2551 (2008)

Section 7 An offence to be extraditable must be a criminal one that both the law of the Requesting State and Thailand establish it to be a criminal offence having punishment by death or imprisonment or deprivation of liberty in other forms from one year upward, accordingly, whether it be the offence of the same chapter or designation under the law of both States.

The commission of other offences with punishment by imprisonment or deprivation of liberty in other forms less than one year may be the basis for requesting extradition if it relates to the offence for which the extradition has been granted whether the request has been made at the same time with the initial request or afterward.

Section 9 The Thai government may consider surrendering a person for prosecution or serving punishment according to the Court's judgment in a criminal case under the Requesting State's jurisdiction to such State pursuant to the request as follows:

...

(2) Where there is no extradition treaty between them, when the Requesting State expresses definitely that the extradition will be granted in the same manner upon requested.

279. To summarize, Section 7 of the Extradition Act of 2008 makes extradition conditional on the rule of dual or double criminality. The offence for which extradition is sought must be a criminal offence under the laws of both the requesting state and of Thailand. Also, the offence must carry a

term of imprisonment of at least one year or more. The dual criminality is satisfied even if the offence is categorized in a different chapter of the respective laws or the offence has a different connotation under the laws of the requesting and requested states. In other words, dual criminality is met if the act committed is comparable to an offence under Thai law, and if such an act were to be committed in Thailand, it would constitute an offence under Thai law.

280. Thailand provided the following examples of cases:

Example Case 1

281. There was a case where an Indian national who had a connection with Bangkok Commercial Bank Public Company Limited during 1992 - 1996 before he absconded from the embezzlement and fraudulent allegations against Bangkok Commercial Bank to stay in Canada in mid-1996. He was later extradited back to Thailand on 31 October 2009. This was an important case where an Indian national was extradited from Canada for the litigation on embezzlement against BBC after he had absconded to a foreign country for more than 20 years.

282. Black Case No. Dor.3054/2552 (2009): The Special Public Prosecutor of Economic and Resources Litigation Division 3 filed a suit against an Indian national for the offences under Sections 3, 4, 307, 308, 311, 315 and 334 of the Securities and Exchange Act B.E. 2535 (1992) and Section 83 of the Criminal Code whereby, during 10 February - 20 July 1995, the Indian and Thai nationals, et al., misappropriated the property of BBC, the injured person, having a total value of Baht 1,657,000,000. The Court decided that the defendants had committed the offences under Sections 307, 308, 311 and 315 of the Securities and Exchange Act B.E. 2535 (1992) which was an action in violation of several provisions. The action of the defendants caused damages to the nation's financial and banking systems and they shall be sentenced to imprisonment for a term of 10 years and a fine of Baht 1,000,000. If the defendants did not pay for the fine, they shall be sentenced to confinement in lieu of the fine for a term of 2 years. With regards to Baht 1,657,000,000 which the plaintiff had requested the defendant to return to the injured person, the Court considered that the defendants had already paid Baht 525,000,000; therefore, the defendant shall be return an additional Baht 1,132,000,000 to the plaintiff.

283. Thus far, Thailand has not been requested to extradite a fugitive for corruption cases nor have there been cases where dual criminality was an issue that barred extradition. However, Thailand has not been successful in requesting the extradition of prominent politicians for corruption related offences from the country of refuge. One requested State that shares an extradition treaty with Thailand denied the extradition request due to the crime being a political offence.

Example Case 2

284. The Embassy of Switzerland in Thailand had requested the Bureau of International Affairs and International Crime of the Department of Special Investigation to investigate the case where a group of Russian and Moroccan tourists had forged a webpage of a financial institution in order to get the information on financial transactions of injured persons and used such information to book hotels, flight tickets and pay for services in Thailand, causing damages having a value of Baht 600,000,000.

285. The Center for Law Enforcement on International Crime and the committee, together with the National Police of Switzerland, had conducted an investigation in Thailand for more than 2 years and discovered that the gang (i.e. Russian and Moroccan nationals) had movements in Thailand. The evidence was sent to the National Police of Switzerland in order to obtain an arrest warrant for the accused.

286. Later, the Court of Switzerland issued an arrest warrant for the Moroccan national, et. al.,

totalling 3 persons and the Embassy of Switzerland in Thailand contacted the Thai government requesting for an extradition. The Criminal Court had issued an arrest warrant for the Moroccan national, et. al., totalling 3 persons for being an international criminal.

287. After the hearing of the Criminal Court, the Court ordered an extradition of the Moroccan national for the trial in Switzerland and the police of Switzerland had taken such a Moroccan national for his trial on 20 May 2014. Prior to that, on 2 May 2014, officers of the Immigration Office had arrested the Moroccan national at a hotel on Samsen Road, Ban Panpanom Sub-district, Pranakorn District, and Bangkok. Later on 8 May 2014, the Criminal Court made an inquiry and ordered extradition of the Moroccan national for his trial in Switzerland. Currently, the Embassy of Switzerland in Thailand is being coordinated for the arrangement for the transfer of the Moroccan national.

288. The Bureau of International Affairs has dealt with the other persons under the arrest warrant and other accomplices separately.

289. Source: The Department of Special Investigation
<http://www.dsi.go.th/view.aspx?tid=T0000305>

Example Case 3

290. Extradition case Black Case No. OrPor. 3/2551 (2008): a public prosecutor of the International Affairs Bureau was a plaintiff who made a request for extradition of a Russian national, the defendant, to his criminal trial in the US for having been 1. an accomplice to a murder; 2. an accomplice to a murder of an official and an official of the government of the US; 3. an accomplice to the procurement and use of anti-aircraft weapons; and 4. an accomplice to the support of a foreign terrorist organization which was in violation of the US laws.

291. On 11 August 2008, the Court of First Instance dismissed the petition of the public prosecutor/plaintiff after having considered that the allegation was that the Russian national was cooperating with the FARC, an anti-government group in Columbia, which the Court viewed that the objective and purpose of the petition was politically related as prohibited by the Extradition Act. The prosecutor/plaintiff had appealed for the detention of the Russian national for extradition to the US.

292. The Court of Appeal viewed that in the Court of First Instance's hearing, the plaintiff had an official from the narcotics suppression agency of the US, who led the investigation of the case against the Russian national, testify that the Court of New York had issued an arrest warrant for the Russian national and the arrest warrant was presented to the court. From the investigation, the evidence had shown that the Russian national was one of the biggest world weapon traders. The Court viewed that Thailand and the US had an extradition treaty and the allegations against the Russian national as indicated in the public prosecutor-plaintiff's plaint were similar to the offences under Section 135/1-3 which are punishable by imprisonment for a term of more than 1 year according to the Extradition Act between Thailand and the US B.E. 2533 (1990) and Thai-US Extradition Treaty B.E. 2526 (1983).

293. The allegation for being an accomplice to a murder of an official and official of the government of USA was a general criminal offence punishable in both countries. Whether or not the allegation is a crime, the Court of New York, USA, shall consider. The Court of Appeal disagreed with the order of the Court of First Instance and ordered the detention of the Russian national before extradition within a period of 3 months. If this deadline passed without the extradition, he shall be released.

294. Source: Bangkok Biz News Online, 20 August 2010

(b) Observations on the implementation of the article

295. Extradition is regulated by the Extradition Act of 2008 and bilateral and multilateral agreements in force. Section 7 of the Extradition Act of 2008 makes extradition conditional on dual criminality and a minimum term of one year imprisonment. Offences established in accordance with the Convention are punishable by at least year imprisonment, and are thus extraditable.
296. The extradition procedure involves both a judicial and an administrative procedure. Requests for extradition from States with which Thailand has an extradition treaty should be submitted directly to the Office of the Attorney-General (Central Authority); requests from other States should be submitted through diplomatic channels. Such requests are referred to the Criminal Court in Bangkok which will decide whether the request for extradition shall be admitted or not.
297. The person sought for extradition and the prosecutor representing the requesting State can file an appeal and the decision of the appeal Court is final.
298. If the request is submitted through diplomatic channels and the Ministry of Foreign Affairs considers that the request may affect international relations or that there is an obstacle to its execution, the request is referred to Cabinet before its referral to the Court (sect. 13 EA). The Cabinet may refuse the request, pursuant to the opinion of the Ministry of Foreign Affairs. If the Court decided not to admit the request, the Cabinet cannot decide otherwise.
299. Extradition may take place on the basis of reciprocity and irrespective of the existence of an extradition treaty, provided the conditions of the Extradition Act are met.

Article 44 Extradition

Paragraph 2

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

300. Thailand indicated that, as a general rule, extraditable offences must be offences under Thai law also.
301. However, Thailand stated that there had been some cases where the offence requested for extradition did not correspond to the offences contained in Thai law but if the Court of the requesting State had sentenced the accused to a term of imprisonment for more than one year and there were elements of the crime that had a correlation with a criminal offence under Thai law, Thailand may consider extraditing the person on a discretionary basis, which would be subject to reciprocal assurance that the requesting State would consider the same for Thailand.
302. Thailand indicated that there was no corresponding legislation or cases and referred to section 7 of the Extradition Act; no steps had been taken with regard to the provision.

(b) Observations on the implementation of the article

303. Section 7 of the Extradition Act of 2008 makes extradition conditional on dual criminality and a minimum term of one year imprisonment. Authorities met during the country visit, confirmed that there was no exception to the dual criminality rule or to the minimum imprisonment period in bilateral treaties to which Thailand is party.

304. Thailand may wish to grant the extradition for offences that are not punishable under its own domestic law (art. 44, paras. 2);

Article 44 Extradition

Paragraph 3

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

305. Thailand cited the following measures:

EXTRADITION ACT B.E. 2551 (2008)

Section 7: An offence to be extraditable must be a criminal one that both the law of the Requesting State and Thailand establish it to be a criminal offence having punishment by death or imprisonment or deprivation of liberty in other forms from one year upward, accordingly, whether it be the offence of the same chapter or designation under the law of both States.

The commission of other offences with punishment by imprisonment or deprivation of liberty in other forms less than one year may be the basis for requesting extradition if it relates to the offence for which the extradition has been granted whether the request has been made at the same time with the initial request or afterward.

306. Thailand indicated that there were no case examples available.

(b) Observations on the implementation of the article

307. Extradition for an offence which does not satisfy the minimum term of imprisonment may be granted if the offence relates to the offence for which the extradition has been granted.

Article 44 Extradition

Paragraph 4

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of the article

308. Thailand indicated that it considered to be in compliance with the provision under review and provided the following information:

309. For countries with which Thailand has an extradition treaty, extradition shall be in accordance with such treaties. For older treaties, the crimes or offences for which extradition can be granted are contained in the form of a list of offences or are in an Appendix or Annex attached to the treaty. There are provisions that state that extradition may be granted for any other crime that both countries consider as extraditable in accordance with its laws. For newer treaties, crimes or offences for which extradition can be granted are no longer listed, they are instead defined as those that are punishable with a term of one year upwards. Therefore, if the offences under the Convention have a term of imprisonment of one year upwards, the offence is already accounted for within that treaty, and then extradition can be granted.

310. Thailand cannot use the Convention as a basis of extradition. For countries that do not have a treaty with Thailand, extradition can be granted on the basis of reciprocity. Thailand has experience in extradition as a requested State and requesting State and has extradited fugitives through its treaties and on the basis of reciprocity. Regarding the issue of the death penalty, Section 29 of the Extradition Act of 2008 provides for the Government to provide assurances that the death penalty will not be carried out and if a sentence of death is handed down, the sentence will be changed to a sentence of life.

311. Regarding the issue of political offence, Thailand has encountered difficulties as a Requesting State in that prominent politicians accused of corruption charges are viewed by the Requested State that the motives for the request are political ones and have denied the request for extradition. We look forward to discussing this matter further with other States Parties.

312. Thailand cited the following measures:

EXTRADITION ACT B.E. 2551 (2008)

Section 4 This Act shall be enforced upon the extradition that is not contradictory to or consistent with provisions of the treaty respecting extradition between the Government of Thailand and Foreign Country or international organization.

Section 9 The Thai government may consider surrendering a person for prosecution or serving punishment according to the Court's judgment in a criminal case under the Requesting State's jurisdiction to such State pursuant to the request as follows:

(1) Where it is an extraditable offence and not prohibited by the Thai law or not the offence of political character or military offence;

(2) Where there is no extradition treaty between them, when the Requesting State expresses definitely that the extradition will be granted in the same manner upon requested.

The offence of political character in sub-paragraph (1) does not include the following: (1) Murdering, inflicting bodily injury or depriving liberty of the King, Queen or Heir Apparent;

(2) Murdering, inflicting bodily injury or depriving liberty of Head of the State, government leader or immediate family members of such persons;

(3) Committing of offence not regarded as political offence for the purpose of extradition according to the treaty to which Thailand is a party.

Military offence means specific military criminal offence and not ordinary criminal offence.

Section 29 Where Thailand requests extradition on the offence punishable with death according to the Thai law but not up to the punishment of death according to the law of the Requested State and it is of necessity for the Government to give assurances of non-execution, negotiation for the settlement on giving such assurances shall consequently be carried out. In this respect, the Government, if the Court gives a death sentence, shall proceed in accordance with the provision of

law for the requirement of execution according to the judgement by means of life imprisonment in lieu of death. The reduction of such person's punishment shall not be granted in whatever grounds except for the pardon.

313. Thailand provided the following case example:

314. Black Case No. OrSor.4/2555 (2012): Public prosecutor of the International Division filed a plaint to the Court requesting for a detention of an Italian national, the defendant, before extraditing the defendant back to Palermo, Italy for his trial. The plaint of the public prosecutor dated 20 April 2012 indicated that the Government of Italy had sent a most urgent letter No. 824, dated 19 March 2012 requesting for an extradition of the defendant according to Sections 8, 14 and 15 of the Extradition Act B.E. 2551 (2008) in order for him to be sentenced by the Court of Palermo after its Supreme Court's Criminal Division had sentenced the defendant to a nine-year imprisonment for having conspired in the crime commission as mafia gangster by laundering money, selling illegal drugs (i.e. purchased Morphine from Turkey, made heroine and sold it in its US pizzeria network), and smuggling illegal drugs into Switzerland for sale having the total value of ten thousands of millions US Dollars. The defendant was later granted a provisional release by the Court of Switzerland and travelled to South Africa by a counterfeited passport. Thereafter, the defendant entered into Thailand by using a passport of South Africa and stayed in Chonburi Province until the defendant got arrested.

315. The Court has considered the evidence of the plaint and considered that the underlying offence on which the extradition was requested was similar to an offence of a secret society or criminal association under Sections 209 and 210 of the Criminal Code. The Extradition Act prescribed that extradition can be granted when the offence is punishable by imprisonment for a term of at least 1 year or above, and it is not an political or military in nature. Additionally, the Italian Republican had pledged to extradition on a reciprocal basis and the circumstances of the defendant had a reasonable ground and fulfilled the element of the offence under the Extradition Act B.E. 2551 (2008). Consequently, the Court ordered detention of the defendant for the extradition to Italy for his sentence, provided that the he shall not be extradited before 30 days had lapsed. When the Court's decision has become a final order and the extradition was not executed within 90 days, the defendant shall be released.

316. Source: Daily News Online, Thursday 20 December 2012

317. Thailand provided the following examples of treaty provisions:

318. UK-Siam Extradition Treaty of 1911 Article 2 (1) provides for a list of crimes or offences for which extradition is to be granted. Article 2(3) states that "Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the law of both the contracting Parties for the time being in force, the grant can be made."

319. Thai-USA Extradition Treaty of 1983 Article 2 provides that " An offence shall be an extraditable offence for prosecution or for the imposition of a penalty or detention order only if it is punishable under the laws of both Contracting Parties by imprisonment or other form of detention for a period of more than one year or by greater punishment."

320. Thai-Indonesia Extradition Treaty of 1976 Annex of list of extraditable crimes include" ...14. Embezzlement or misappropriation; 15. Cheating and Fraud; 16. Bribery and Corruption; ..."

(b) Observations on the implementation of the article

321. Authorities met during the country visit confirmed that Thailand does not consider corruption offences to be political offences.

Article 44 Extradition

Paragraph 5

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

322. Thailand indicated that it did not make extradition conditional on the existence of a treaty and can provide assistance on the basis of reciprocity.

EXTRADITION ACT B.E. 2551 (2008)

Section 9: The Thai government may consider surrendering a person for prosecution or serving punishment according to the Court's judgment in a criminal case under the Requesting State's jurisdiction to such State pursuant to the request as follows:

(1) Where it is an extraditable offence and not prohibited by the Thai law or not the offence of political character or military offence;

(2) Where there is no extradition treaty between them, when the Requesting State expresses definitely that the extradition will be granted in the same manner upon requested.

The offence of political character in sub-paragraph (1) does not include the followings:

(1) Murdering, inflicting bodily injury or depriving liberty of the King, Queen or Heir Apparent;

(2) Murdering, inflicting bodily injury or depriving liberty of Head of the State, government leader or immediate family members of such person;

(3) Committing of offence not regarded as political offence for the purpose of extradition according to the treaty to which Thailand is a party. Military offence means specific military criminal offence and not ordinary criminal offence.

(b) Observations on the implementation of the article and good practice

323. Thailand does not make extradition conditional on the existence of a treaty and does not consider the Convention a legal basis for extradition.

324. The reviewers identified as a good practice the fact that Thailand can grant extradition in the absence of a treaty.

Article 44 Extradition

Paragraph 6

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

(a) Summary of information relevant to reviewing the implementation of the article

325. Please see above.

(b) Observations on the implementation of the article

326. Thailand does not make extradition conditional on the existence of a treaty and does not consider the Convention a legal basis for extradition.

Article 44 Extradition

Paragraph 7

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article

327. Thailand stated that it considered to be in compliance with the provision under review and referred to the answers provided under article 44, para. 4.

328. Thailand cited the following measures:

EXTRADITION ACT B.E.2551 (2008)

Section 8 The extradition shall commence with the extradition request from the Requesting State. The extradition request from the Requesting State having an extradition treaty with Thailand shall be transmitted to the Central Authority. Where the Requesting State has no extradition treaty with Thailand, it shall be transmitted through the diplomatic channels. The extradition request together with documents and evidence shall be in accordance with rules, means and conditions prescribed in the Ministerial Regulation. The extradition request together with documents and evidence under paragraph 3 to be referred to the Court shall be translated into Thai and also certified to be true. The Court may, without necessity for the supplement of witness testimony, admit the extradition request together with documents and evidence under this Section.

Section 9: The Thai government may consider surrendering a person for prosecution or serving punishment according to the Court's judgment in a criminal case under the Requesting State's jurisdiction to such State pursuant to the request as follows:

- (1) Where it is an extraditable offence and not prohibited by the Thai law or not the offence of political character or military offence;
 - (2) Where there is no extradition treaty between them, when the Requesting State expresses definitely that the extradition will be granted in the same manner upon requested.
- The offence of political character in sub-paragraph (1) does not include the followings:
- (1) Murdering, inflicting bodily injury or depriving liberty of the King, Queen or Heir Apparent;
 - (2) Murdering, inflicting bodily injury or depriving liberty of Head of the State, government leader or immediate family members of such person;

(3) Committing of offence not regarded as political offence for the purpose of extradition according to the treaty to which Thailand is a party. Military offence means specific military criminal offence and not ordinary criminal offence.

329. Thailand cited the following examples of bilateral cooperation on extradition:

330. The Criminal Court has ordered the extradition of Mr. Michael Bryan Smith, a British national, for his trial on forgery of documents and fraudulence in United Arab Emirates.

331. The cooperation between Thailand - United Arab Emirates is not new considering that United Arab Emirates has made 6 requests before and Thailand had extradited the requested persons who were accused of fraudulent acts in 2006. Although Thailand and United Arab Emirates have not concluded an extradition treaty, the Extradition Act of 2008 allows Thailand to cooperate with United Arab Emirates on extradition on a reciprocal basis. This means cooperation on similar offences if the other party makes a request in the future.

332. With regards to the request for a provisional arrest of Pol.Lt.Gen. ThaksinShinnawatra for extradition to Thailand, the offences were under the Organic Act on Counter Corruption 1999 and malfeasance in office offences under the Criminal Code. United Arab Emirates is considering the request of the Thai Embassy in Abu Dhabi which was submitted to the government of United Arab Emirates in December 2009.

333. Source: Important international affairs related tasks, Department of South Asian, Middle East and African Affairs.
<http://sameaf.mfa.go.th/th/news/detail.php?ID=264&SECTION=CALENDAR>

334. There are numerous other cases of extradition cooperation between Thailand and other countries but the majority do not apply to offences under the Convention,

Example case 1

335. Order on the Black Case No. Or Por. 7/2553 (2010): The public prosecutor of the Foreign Affairs Division as the plaintiff sued Mr.Sarat or Surat or SarootSeweracha, 28 years, a former Thai student in Australia, and Mr. Tatiya or Golf Terdpoutham, 26 years, as Defendant no. 1 and 2 respectively, regarding the extradition of the defendants. The defendant had stabbed Mr. Luke Mitchel, an Australian national, using knives as weapons, to death. The incident took place on Sydney Road, Brunswick, Victoria State, Australia. Such offence was a criminal offence in which the penalty is the imprisonment of more than one year in accordance with the law Australian. Subsequently, the Court of Australia issued an arrest warrant for the two defendants and contacted the Office of the Attorney General of Thailand to issue an arrest warrant for both defendants. Both of them were eventually arrested. The Ministry of Foreign Affairs then sent a letter to the Australian Embassy in Thailand to extradite the two defendants. Although there was no Extradition treaty between the government of Australia and the government of Thailand, the Court considered and ruled that the Treaty between Britain and Thailand shall be applied to this case. The court reasoned that although Australia had been under the British protection and later became an independent state from the Britain Australia had voluntarily complied with the Treaty between Britain and Thailand. Therefore, such treaty was also applicable to Australia.

336. Additionally, if Thailand requests the government of Australia to extradite an Australian, the government of Australia will do so on a reciprocal basis. Reciprocity has the nature of promise, therefore, it requires no precedent nor conditions on the extradition. The defendants were also reaffirmed that they would be receiving equal treatment as other offenders in Australia. The Court, therefore, viewed that the justice would be ensured for the defendants. A murder is a crime with

life sentence in Thailand while Australia does not have a sentence to life. The case must be tried and decided in the right court. The right to judicial process of defendants was not deprived and the defendants were not at disadvantage as a result of the extradition.

Example Case 2

337. Extradition case Black Case No. OrPor. 3/2551 (2008): a public prosecutor of the International Affairs Bureau was a plaintiff who made a request for extradition of a Russian national, the defendant, to his criminal trial in the US for having been 1. an accomplice to a murder; 2. an accomplice to a murder of an official and an official of the government of the US; 3. an accomplice to the procurement and use of anti-aircraft weapons; and 4. an accomplice to the support of a foreign terrorist organization which was in violation of the US laws.
338. On 11 August 2008, the Court of First Instance dismissed the plaint of the public prosecutor-plaintiff after having considered that the allegation was that the Russian national was cooperating with the FARC, an anti-government group in Columbia, which the Court viewed that the objective and purpose of the plaint was politically related as prohibited by the Extradition Act. The prosecutor-plaintiff had appealed for the detention of the Russian national for extradition to the US.
339. The Court of Appeal viewed that in the Court of First Instance's hearing, the plaintiff had an official from the narcotics suppression agency of the US, who led the investigation of the case against the Russian national, testify that the Court of New York had issued an arrest warrant for the Russian national and the arrest warrant was presented to the court. From the investigation, the evidence had shown that the Russian national was one of the biggest world weapon traders. The Court viewed that Thailand and the US had an extradition treaty and the allegations against the Russian national as indicated in the public prosecutor-plaintiff's plaint were similar to the offences under Section 135/1-3 which are punishable by imprisonment for a term of more than 1 year according to the Extradition Act between Thailand and the US B.E. 2533 (1990) and Thai-US Extradition Treaty B.E. 2526 (1983).
340. The allegation for being an accomplice to a murder of an official and official of the government of USA was a general criminal offence punishable in both countries. Whether or not the allegation is a crime, the Court of New York, USA, shall consider. The Court of Appeal disagreed with the order of the Court of First Instance and ordered the detention of the Russian national before extradition within a period of 3 months. If this deadline passed without the extradition, he shall be released.
341. Source: Bangkok Biz News Online, 20 August 2010

(b) Observations on the implementation of the article

342. Extraditable offences are those that can be punished by imprisonment of at least one year.
343. Offences established in accordance with the Convention can be the basis for extradition if the conditions related to dual criminality and the minimum period of one year imprisonment are satisfied. Such offences, as have been criminalized in Thailand, are punishable by at least one year imprisonment, and are thus extraditable. Fiscal offences are not included among the grounds for refusal.

Article 44 Extradition

Paragraph 8

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

344. Thailand considered to be in compliance with the provision under review and cited the following measures:

EXTRADITION ACT B.E. 2551(2008)

Section 7: An offence to be extraditable must be a criminal one that both the law of the Requesting State and Thailand establish it to be a criminal offence having punishment by death or imprisonment or deprivation of liberty in other forms from one year upward, accordingly, whether it be the offence of the same chapter or designation under the law of both States.

The commission of other offences with punishment by imprisonment or deprivation of liberty in other forms less than one year may be the basis for requesting extradition if it relates to the offence for which the extradition has been granted whether the request has been made at the same time with the initial request or afterward.

Section 8: The extradition shall commence with the extradition request from the Requesting State.

The extradition request from the Requesting State having an extradition treaty with Thailand shall be transmitted to the Central Authority. Where the Requesting State has no extradition treaty with Thailand, it shall be transmitted through the diplomatic channels.

The extradition request together with documents and evidence shall be in accordance with rules, means and conditions prescribed in the Ministerial Regulation.

The extradition request together with documents and evidence under paragraph 3 to be referred to the Court shall be translated into Thai and also certified to be true.

The Court may, without necessity for the supplement of witness' testimony, admit the extradition request together with documents and evidence under this Section.

Section 9: The Thai government may consider surrendering a person for prosecution or serving punishment according to the Court's judgment in a criminal case under the Requesting State's jurisdiction to such State pursuant to the request as follows:

(1) Where it is an extraditable offence and not prohibited by the Thai law or not the offence of political character or military offence;

(2) Where there is no extradition treaty between them, when the Requesting State expresses definitely that the extradition will be granted in the same manner upon requested.

The offence of political character in sub-paragraph (1) does not include the followings:

(1) Murdering, inflicting bodily injury or depriving liberty of the King, Queen or Heir Apparent;

(2) Murdering, inflicting bodily injury or depriving liberty of Head of the State, government leader or immediate family members of such person;

(3) Committing of offence not regarded as political offence for the purpose of extradition according to the treaty to which Thailand is a party. Military offence means specific military criminal offence and not ordinary criminal offence.

Section 10 Where any person sought for extradition was used to be tried by the Thai Court or the Requesting State's Court for the same conduct as that sought for extradition and the Thai Court or the Requesting State's Court has passed a final decision acquitting such person or convicting such person whose punishment has been served or pardon or amnesty is granted or the statute of limitations is lapsed or there arises any other causes barring the proceedings against such person under the law of the Requesting State, such person shall not be re-extradited in respect of such conduct.

Section 11 Confinement for proceedings or punishment of the extradited person from the Requested State to Thailand in other offence committed prior to executing extradition and surrender of the extradited person from the Requested State to Thailand further to the third State cannot be carried out except for the following matters:

- (1) Such person has travelled out of the Kingdom of Thailand after completion of the extradition process and voluntarily returned to it;
- (2) Such person has not travelled out of the Kingdom of Thailand within 45 days after completion of the extradition process; or
- (3) The Requested State consents.

Section 12 Execution of extradition request of a Thai national may be carried out in the following matters:

- (1) When it is provided for in the extradition treaty between Thailand and the Requesting State;
- (2) That person consents to the extradition; or
- (3) It is the extradition under the condition of reciprocity that Thailand concludes with the Requesting State.

Section 13 Where the extradition request is submitted through the diplomatic channels, the Ministry of Foreign Affairs shall consider doing the followings:

- (1) if it is of the opinion that the request will not affect the international relation and there is no other reason not to execute it, the request shall be submitted to the Central Authority for further action;
- (2) if it is of the opinion that the request may affect the international relation or there is other reason that the request may not be executed, the Ministry of Foreign Affairs shall speedily propose such opinion together with the request for consideration of the Cabinet. Where the Cabinet concurs with such opinion, it shall consider making direction as deemed appropriate. If the Cabinet concurs with execution of the extradition request, the Ministry of Foreign Affairs shall accordingly submit the matter to the Central Authority for further action under this Act.

Section 14 The Central Authority, upon receiving the extradition request from the Ministry of Foreign Affairs or the Requesting State, shall consider doing as follows:

- (1) Where the Central Authority is of the opinion that the request is eligible for execution as stipulated under this Act, the Public Prosecutor shall be notified to petition the Court for issuing the arrest warrant then arrange for delivering the same to the Commissioner-General of the Royal Thai Police or other concerned authorities for further action;
- (2) Where the request is not processed in accordance with the procedure or accompanied with improper documents and evidence or executable under certain necessary conditions, the Central Authority shall notify the Requesting State the problem or necessary condition. However, if the execution of the extradition request will affect the prosecution of any other cases or criminal proceedings against such person in Thailand, the Central Authority may defer carrying out or carry out the extradition request by imposing necessary conditions. The Requesting State shall accordingly be notified without delay.
- (3) Where the request is not transmitted through the diplomatic channels, the Central Authority shall notify the same to the Ministry of Foreign Affairs for giving opinion before taking further action. The provision of Section 13 (2) shall accordingly be applied *mutatis mutandis*.
- (4) Where the Central Authority is of the opinion that the request may affect the international relation or there exists any other reasons that it should not be executed or is not eligible for execution under this Act, the Requesting State or the Ministry of Foreign Affairs shall be so notified for further action as the case may be.

Section 15 Where there is an urgent necessity, the Requesting State may make a request for provisional arrest and detention of the person sought. Such a request of the Requesting State having an extradition treaty with Thailand shall be transmitted to the Central Authority. Where the Requesting

State has no extradition treaty with Thailand, it shall be transmitted through the diplomatic channels. The request in paragraph 1 shall be in accordance with the regulation stipulated by the Central Authority. The provision of Section 14 shall be applied mutatis mutandis to consideration for the above execution.

Section 16 Upon arresting the person sought for extradition under the provision of Section 15, they shall, without delay, be brought to the Public Prosecutor for filing a petition with the Court to order detaining the person sought while awaiting a formal extradition request together with accompanying documents and evidence from the Requesting State.

Where the Court does not receive the accusation for the extradition proceedings within 60 days as from the day the person sought was arrested or within the time fixed by the Court but not exceeding 90 days as from the day such person was arrested, they shall be released.

Where the person sought is released under paragraph 2 due to the Requesting State not transmitting the formal extradition request together with necessary documents and evidence under Section 8 or any other reasons, the request for provisional arrest under Section 15 shall be repealed and the Requesting State cannot make a request to rearrest the person sought on the same grounds. However, the refusal or repeal of such request for provisional arrest does not result in forbidding the Requesting State from normally requesting extradition of the person sought.

Section 17 Where it is deemed appropriate, the Ministry of Foreign Affairs may propose facts and opinion respecting international cooperation or relation to the Central Authority for supplementing consideration. The same, accordingly, shall also include consideration at the appellate stage.

Section 29 Where Thailand requests extradition on the offence punishable with death according to the Thai law but not up to the punishment of death according to the law of the Requested State and it is of necessity for the Government to give assurances of non-execution, negotiation for the settlement on giving such assurances shall consequently be carried out. In this respect, the Government, if the Court gives a death sentence, shall proceed in accordance with the provision of law for the requirement of execution according to the judgement by means of life imprisonment in lieu of death. The reduction of such person's punishment shall not be granted in whatever grounds except for the pardon.

Section 30 The Public Prosecutor or the agency requiring extradition shall submit to the Central Authority the request for extradition from the Requested State to Thailand.

Where the Central Authority determines that it is appropriate for the extradition request be made to the Requested State, the matter shall be submitted to the Public Prosecutor for further making the extradition request and accompanying documents.

The extradition request according to paragraph 1 and accompanying documents shall be in accordance with the regulation as stipulated by the Central Authority.

The determination of the Central Authority in relation to the extradition request shall be held final except the Cabinet passes resolution otherwise.

The Central Authority shall request the extradition from the Requested State having no extradition treaty with Thailand through the diplomatic channels.

The Central Authority shall request the extradition from the Requested State having extradition treaty with Thailand in accordance with the treaty.

Section 31 The Public Prosecutor, in carrying out the duty according to Section 30, shall have power to search for facts and collect evidence, take statement of persons, make an order summoning any person to give statement to them and carry out other matters as deemed appropriate. Notification may also be made to competent authorities or other State official to carry out any matters for the benefit of extradition.

The order according to paragraph 1 shall be deemed a lawful requisition of the Public Prosecutor under the Penal Code.

345. Examples of Grounds of Refusal contained in Extradition Treaties Thai-China Extradition Treaty of 1993:

Article 3 Grounds for Mandatory Refusal

Extradition shall not be granted under this Treaty in any of the following circumstances:

- (1) the Requested Party considers the offence for which the request for extradition is made by the Requesting Party as a political offence. Reference to a political offence shall not include the taking or attempted taking of the life or an attack on the person of a Head of State or a Head of Government or a member of his or her family;
- (2) the Requested Party has well-founded reasons to suppose that the request for extradition made by the Requesting Party aims to institute criminal proceedings against or execute punishment upon the person sought on account of race, religion, nationality or political opinion of that person, or that the position of the person sought in judicial proceedings will be prejudiced for any of the reasons mentioned above;
- (3) the offence for which the request for extradition is made is exclusively an offence under military law of the Requesting Party and does not constitute an offence under criminal law of the Contracting Party;
- (4) the prosecution or execution of punishment for the offence for which extradition has been sought has become barred by reason prescribed under the law of either Contracting Party including a law relating to lapse of time;
- (5) the Requested Party has passed judgement upon the person sought in respect of the same offence, before the request for extradition is made.

Article 4 Ground for Discretionary Refusal

Extradition may be refused under this Treaty in any of the following circumstances:

- (1) the Requested Party in accordance with its law has jurisdiction over the offence for which the request for extradition is made and shall institute proceedings against the person sought. (2) in exceptional cases, the Requested Party while also taking into account the seriousness of the offence and the interests of the Requesting Party deems that, because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian consideration;
- (3) the Requested Party is in the process of proceeding against the person sought in respect of the same offence.

Article 5 Extradition of Nationals

1. Each Contracting Party shall have the right to refuse extradition of its own nationals.
2. If extradition is not granted pursuant to paragraph 1 of this Article, the Requested Party shall, at the request of the Requesting Party, submit the case to its competent authority for prosecution. For this purpose, the Requesting Party shall submit documents and evidence relating to the case to the Requested Party.
3. Notwithstanding paragraph 2 of this Article, the Requested Party shall not be required to submit the case to its competent authority for prosecution of the Requested Party has no jurisdiction over the offence.

346. Thailand indicated that it did not yet have any cases for corruption cases, but had been successful in extraditing fugitives as both Requested State and Requesting State. On average, there are about 20 cases of extradition that Thailand handles per year.

Example Case 1

347. Black Case No. OrSor.4/2555 (2012): Public prosecutor of the International Division filed a complaint to the Court requesting for a detention of an Italian national, the defendant, before extraditing the defendant back to Palermo, Italy for his trial. The complaint of the public prosecutor dated 20 April 2012 indicated that the Government of Italy had sent a most urgent letter No. 824, dated 19 March 2012 requesting for an extradition of the defendant according to Sections 8, 14 and 15 of the Extradition Act B.E. 2551 (2008) in order for him to be sentenced by the Court of Palermo after its Supreme Court's Criminal Division had sentenced the defendant to a nine-year imprisonment for having conspired in the crime commission as mafia gangster by laundering money, selling illegal drugs (i.e. purchased Morphine from Turkey, made heroine and sold it in its US pizzeria network), and smuggling illegal drugs into Switzerland for sale having the total value of ten thousands of millions US Dollars. The defendant was later granted a provisional release by the Court of Switzerland and travelled to South Africa by a counterfeited passport. Thereafter, the defendant entered into Thailand by using a passport of South Africa and stayed in Chonburi Province until the defendant got arrested.

348. The Court has considered the evidence of the complaint and considered that the underlying offence on which the extradition was requested was similar to an offence of a secret society or criminal association under Sections 209 and 210 of the Criminal Code. The Extradition Act prescribed that extradition can be granted when the offence is punishable by imprisonment for a term of at least 1 year or above, and it is not an political or military in nature. Additionally, the Italian Republican had pledged to extradition on a reciprocal basis and the circumstances of the defendant had a reasonable ground and fulfilled the element of the offence under the Extradition Act B.E. 2551 (2008). Consequently, the Court ordered detention of the defendant for the extradition to Italy for his sentence, provided that the he shall not be extradited before 30 days had lapsed. When the Court's decision has become a final order and the extradition was not executed within 90 days, the defendant shall be released.

349. Source: Daily News Online, Thursday 20 December 2012

350. In practice, Thailand has always endeavoured to provide assistance to States that request extradition of a fugitive that is believed to be present in Thai territory. The Attorney General's Office as the Central Authority and the Ministry of Foreign Affairs as the diplomatic channel will consult with the Requesting State closely throughout the process to ensure a successful extradition case.

351. See Sections 7, 8, 9 and 12 of the Extradition Act of 2008 which contain conditions and grounds for which extradition may be refused.

(b) Observations on the implementation of the article

352. Extradition requests submitted to Thailand are subject to the conditions established in the extradition treaties in force, including the grounds for refusal (such as arts. 3 and 4 of the Extradition Treaty with China).

Article 44 Extradition

Paragraph 9

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

353. Thailand considered to be in compliance with the provision under review and cited the following measures:

EXTRADITION ACT B.E.2551 (2008)

Section 27 After the person sought for extradition has been arrested, whether there be a request under this Act, the arresting competent authority shall inquire such person whether to consent to the extradition. Where the person sought according to paragraph 1 expresses such consent, it shall be prepared in writing according to the form stipulated by the Central Authority. The Public Prosecutor shall then arrange for such person to be brought to the Court by filing a petition for examining such consent promptly. Where the Court is of the opinion that such person has given consent voluntarily, it shall make an order detaining such person for extradition according to Section 22.

Consent given before the Court may not be revoked.

In the examination of the Court, if the person sought revokes his word expressed before the competent authority, it shall make an order detaining such person for carrying out the extradition proceedings further as provided in Chapter 2, Section 2.

Section 28 Where the extradition proceedings are pending hearing in any Court whatever if the person sought for extradition expresses to the Court the consent to surrender, it shall suspend the hearing and make the order detaining such person for surrender according to Section 22. Consent given before the Court may not be revoked.

354. Thailand indicated that Sections 27 and 28 of the Extradition Act of 2008 had been very useful in expediting the extradition process in Thailand. Once the identity of the fugitive is confirmed and not disputed, the fugitive can express his/her consent to surrender at any time in the process by filling out a form and arrangements can be made for his /her immediate surrender to the Requesting State. This process can reduce the extradition process from many months to mere days.

(b) Observations on the implementation of the article

355. Except in cases where the person gives his or her consent to be extradited, Thailand has not taken measures to expedite extradition procedures and to simplify evidentiary requirements relating thereto.

356. To implement the provision under review, Thailand should endeavour to expedite extradition procedures and simplify evidentiary requirements relating thereto.

Article 44 Extradition

Paragraph 10

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and

are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

357. Thailand indicated that it considered to be in compliance with the provision under review and cited the following measures and examples:

EXTRADITION ACT B.E.2551 (2008)

Section 15 Where there is an urgent necessity, the Requesting State may make a request for provisional arrest and detention of the person sought. Such a request of the Requesting State having an extradition treaty with Thailand shall be transmitted to the Central Authority. Where the Requesting State has no extradition treaty with Thailand, it shall be transmitted through the diplomatic channels.

The request in paragraph 1 shall be in accordance with the regulation stipulated by the Central Authority.

The provision of Section 14 shall be applied mutatis mutandis to consideration for the above execution.

Section 16 Upon arresting the person sought for extradition under the provision of Section 15, they shall, without delay, be brought to the Public Prosecutor for filing a petition with the Court to order detaining the person sought while awaiting a formal extradition request together with accompanying documents and evidence from the Requesting State.

Where the Court does not receive the accusation for the extradition proceedings within 60 days as from the day the person sought was arrested or within the time fixed by the Court but not exceeding 90 days as from the day such person was arrested, they shall be released.

Where the person sought is released under paragraph 2 due to the Requesting State not transmitting the formal extradition request together with necessary documents and evidence under Section 8 or any other reasons, the request for provisional arrest under Section 15 shall be repealed and the Requesting State cannot make a request to rearrest the person sought on the same grounds. However, the refusal or repeal of such request for provisional arrest does not result in forbidding the Requesting State from normally requesting extradition of the person sought.

Article 10 (Provisional Arrest) of the Act of Extradition between the Kingdom of Thailand and the United States of America of 1990

“(1) In case of urgency, either Contracting Party may request the provisional arrest of any accused or convicted person. Application for provisional arrest shall be made through the diplomatic channel or directly between the Department of Justice of the United States of America and the Ministry of Interior of Thailand, in which case the communication facilities of Interpol may be used.

(2) The application shall contain: a description of the person sought; the location of that person, if known; a brief statement of the facts of the case including, if possible, the time and location of the offense; a statement of the existence of a warrant of arrest or a judgment of conviction against that person, as referred to in Article 9; and a statement that a request for extradition of the person sought will follow.

(3) The Requesting State shall be notified without delay of the result of its application.

(4) Provisional arrest shall be terminated if, within a period of 60 days after the arrest of the person sought, the competent authority of the requested state has not received the formal request for extradition and the supporting documents required by Article 9.

(5) The termination of provisional arrest pursuant to paragraph (4) of this Article shall not prejudice the extradition of the person sought if the extradition request and the supporting documents mentioned in Article 9 are delivered at a later date.”

358. Thailand indicated that provisional arrest had been used frequently to detain an accused person wanted for a crime in the Requesting State. For example, Thailand has arrested fugitives that have transited at the Bangkok airport on route to another country. Thailand has provided assistance in detaining fugitives under provisional arrest to the USA.

(b) Observations on the implementation of the article

359. Thailand is compliant with the provision under review. A person sought for extradition can be detained, according to section 15 of the Extradition Act.

Article 44 Extradition

Paragraph 11

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

360. Thailand indicated that it considered to be in compliance with the provision under review and cited the following measure:

EXTRADITION ACT B.E.2551 (2008)

Section 25 Where there is no extradition to the Requesting State, the Central Authority shall consider notifying the competent authority for further taking criminal action against the person sought for extradition according to the Thai law.

361. Thailand provided the following case example:

A Thai national murdered a Japanese national in Japan and fled back to Thailand. The Government of Japan sent a request for extradition so that the case will be tried in Japan. The Government of Thailand refused to hand over the suspect because the suspect was a Thai national. The Court of Thailand tried the case and sentenced the defendant to 18-year imprisonment.

(b) Observations on the implementation of the article

362. Section 25 of the Extradition Act foresees that the Central Authority shall consider notifying the competent authority for the further taking of actions, but does not oblige the Central Authority to do so.

363. Thailand may extradite its nationals (section 12 of the Extradition Act). The principle *aut dedere aut judicare* is applied but only at the discretion of the Central Authority (Section 25 of the Extradition Act.).

364. It is recommended that Thailand review its legislation to make mandatory the principle *aut dedere aut judicare*.

Article 44 Extradition

Paragraph 12

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

365. There are no provisions in Thai law that provide for the conditional surrender of nationals to be returned to serve the sentence imposed. Thailand does not bar the extradition of nationals if reciprocity assurance can be provided that the Requesting State will do the same. If extradition is denied and Thailand has jurisdiction to try the accused person, Thailand will prosecute such person under Thai law.

(b) Observations on the implementation of the article

366. Thailand can extradite its nationals in accordance with Section 12 of the Extradition Act.

Article 44 Extradition

Paragraph 13

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

367. There is no Thai law that permits the enforcement of a sentence imposed under the domestic law of a Requesting State for a person sought for extradition whose extradition was refused because he was a Thai national.

(b) Observations on the implementation of the article

368. The legislation does not provide for the enforcement of foreign penal judgments.

Article 44 Extradition

Paragraph 14

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

369. Thailand cited the following measures:

CONSTITUTION OF THE KINGDOM OF THAILAND, B.E. 2550 (2007)

Section 4 The human dignity, rights and liberties and equality of the people shall be protected.

Section 40 A person shall have the following rights in the administration of justice:

- (1) the right to have easy, expeditious, speedy and comprehensive access to justice;
- (2) the fundamental rights in legal proceedings, in respect of which fundamental assurances must be accorded as to the openness of trial, adequate opportunities to receive information and examine documents, the submission of facts, arguments and evidence, the challenge of judges, trial by judges of a duly constituted quorum and reasoned decisions, judgments or orders;
- (3) a person has the right to have his or her case tried in a correct, speedy and fair manner;
- (4) the injured person, the suspect, the plaintiff, the defendant, the party, the interested person or the witness has the right to proper treatment in the administration of justice, including the right to correct, speedy, fair inquiries and the right not to make statements incriminating himself or herself;
- (5) the injured person, the suspect, the accused and the witness in a criminal case has the right to receive necessary and appropriate protection and aids from the State, provided that necessary remuneration, compensation and expenses shall be as provided by law;
- (6) the children, the youth, women the elderly or the disabled or persons of infirmity have the right to be accorded protection with regard to appropriate trials and have the right to receive proper treatment in cases related to sexual violence;
- (7) in a criminal case, the suspect or the accused has the right to correct, speedy and fair inquiries or trials, adequate opportunities to defend himself or herself and to examine or be informed of evidence as necessary, legal assistance from an attorney and a provisional release;
- (8) in a civil case, a person has the right to receive appropriate legal aids from the State.

EXTRADITION ACT B.E. 2551 (2008)

Section 18 Subject to Section 27, the Public Prosecutor, upon arresting the person sought for extradition, shall bring an action to the Court without delay.

The Court shall conduct the hearing continuously except it deems appropriate to defer the same as requested by the Public Prosecutor or the person sought for extradition. The Court shall accordingly order detaining such person pending the hearing.

The Criminal Procedure Code shall, mutatis mutandis, be applied to confinement of the person sought and conduct of the extradition proceedings not otherwise provided by this Act. Where there is a petition for a provisional release, the Court shall inquire whether the Public Prosecutor has any objection whatever. The Court, in case of having objection from the Public Prosecutor, should admit it for supplementing consideration.

The Court, prior to commence the hearing, shall inquire whether the person sought has a lawyer. Where such person has none and requires one, the Court shall appoint one for them and the Criminal Procedure Code shall be applied mutatis mutandis.

Section 19: The Court, on considering the evidence, is of the view that there exist the following matters, it shall order detaining such person for further surrender:

- (1) The arrested person is the one whose extradition is sought and not a Thai national or a Thai national but extraditable under the rule in Section 12;
- (2) The case is prima facie for accepting the accusation for consideration if such offense is committed inside the Kingdom or regarded by the law to be committed inside the Kingdom; and
- (3) The offence sought for extradition is extraditable under this Act and not the one of political character or specifically military offence.

Where the Court considers that the evidence in paragraph 1 is not sufficient, it shall make an order of release and proceed with the release of such person at the end of 72 - hour time period from the reading of such order except that within such time period the Public Prosecutor notifies the intention to appeal, such person shall be detained pending the appeal, which shall be lodged within 30 - day period from the day the Court reading the order of release. If the provisional release petition is lodged at the stage of appeal, the provision of Section 18 paragraph 3 shall be applied mutatis mutandis.

370. Thailand provided the following case examples:

Example Case 1

371. Order on the Black Case No. Or Por. 7/2553 (2010): The public prosecutor of the Foreign Affairs Division as the plaintiff sued Mr. Sarat or Surat or SarootSeweracha, 28 years, a former Thai student in Australia, and Mr. Tatiya or Golf Terdpoutham, 26 years, as Defendant no. 1 and 2 respectively, regarding the extradition of the defendants. The defendant had stabbed Mr. Luke Mitchel, an Australian national, using knives as weapons, to death. The incident took place on Sydney Road, Brunswick, Victoria State, Australia. Such offence was a criminal offence in which the penalty is the imprisonment of more than one year in accordance with the law Australian. Subsequently, the Court of Australia issued an arrest warrant for the two defendants and contacted the Office of the Attorney General of Thailand to issue an arrest warrant for both defendants. Both of them were eventually arrested. The Ministry of Foreign Affairs then sent a letter to the Australian Embassy in Thailand to extradite the two defendants. Although there was no Extradition treaty between the government of Australia and the government of Thailand, the Court considered and ruled that the Treaty between Britain and Thailand shall be applied to this case. The court reasoned that although Australia had been under the British protection and later became an independent state from the Britain Australia had voluntarily complied with the Treaty between Britain and Thailand. Therefore, such treaty was also applicable to Australia.

372. Additionally, if Thailand requests the government of Australia to extradite an Australian, the government of Australia will do so on a reciprocal basis. Reciprocity has the nature of promise, therefore, it requires no precedent nor conditions on the extradition. The defendants were also reaffirmed that they would be receiving equal treatment as other offenders in Australia. The Court, therefore, viewed that the justice would be ensured for the defendants. A murder is a crime with life sentence in Thailand while Australia does not have a sentence to life. The case must be tried and decided in the right court. The right to judicial process of defendants was not deprived and the defendants were not at a disadvantage as a result of the extradition.

Example Case 2

373. The Court of Appeal ordered in an extradition case No. OrPor.6/2553 (2011) that the prosecutor of the International Division had requested for extradition of a British national to be sentenced in Cambodia in pursuant to the request of the Cambodian government through the Thai Ministry of Foreign Affairs and Royal Thai Police.

374. The British national had committed a crime of statutory rape (i.e. raping a child 15 years or below) and taking of a child for obscenity and profit in Phnom Penh and absconded to lie low in Bangkok. The offender was later arrested and taken into custody of the Court. The Court of First Instance viewed that Mr. David's crime was similar to the offence under Thai laws punishable by imprisonment for more than one year and the crime was not political or military in nature, and granted an extradition by detaining him prior to the extradition. Later, the defendant appealed and objected the extradition by claiming that judicial administration of the case in Cambodia was against the human rights principle which was in breach of Article 3 (6) of the Thailand-Cambodia Extradition Treaty.

375. After due consideration, the Court of Appeal viewed that in the consideration of the case by the Court of Cambodia, which the defendant had claimed to have done without the presence of the defendant, the defendant had appointed an attorney. The Court of First Instance of Cambodia had also given the defendant the opportunity to appeal within 15 days. Additionally, the UK, the country of the defendant's citizenship, did not have an objection against the procedure. If the judicial administration was in breach of the human rights principle as claimed by the defendant, the UK would have helped the defendant. After having viewed that the judicial administration of the Court of Cambodia was not in breach of the human rights principle since the Court of Cambodia had given the right to trial to the defendant, the conditions for the objection to the extradition under Article 3 (6) of the Extradition Treaty were not fulfilled. Therefore, the Court of Appeal upheld the order of the Court of First Instance to extradite the defendant for the sentence in Cambodia. If the 90-day period lapsed without the extradition, he shall be released.

(b) Observations on the implementation of the article

376. Guarantees of fair treatment are provided in the Constitution (art. 40) and the Extradition Act (arts. 18 and 19).

Article 44 Extradition

Paragraph 15

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

377. Thailand considered to be in compliance with the provision under review and cited the following measures:

EXTRADITION ACT B.E. 2551 (2008)

Section 9: The Thai government may consider surrendering a person for prosecution or serving punishment according to the Court's judgment in a criminal case under the Requesting State's jurisdiction to such State pursuant to the request as follows:

- (1) Where it is an extraditable offence and not prohibited by the Thai law or not the offence of political character or military offence;
- (2) Where there is no extradition treaty between them, when the Requesting State expresses definitely that the extradition will be granted in the same manner upon requested.

The offence of political character in sub-paragraph (1) does not include the followings:

- (1) Murdering, inflicting bodily injury or depriving liberty of the King, Queen or Heir Apparent;
- (2) Murdering, inflicting bodily injury or depriving liberty of Head of the State, government leader or immediate family members of such person;
- (3) Committing of offence not regarded as political offence for the purpose of extradition according to the treaty to which Thailand is a party. Military offence means specific military criminal offence and not ordinary criminal offence.

THAI-CAMBODIA EXTRADITION TREATY OF 1998

Article 3 Grounds for Mandatory Refusal

Extradition shall not be granted under this Treaty in any of the following circumstances:

- (1) The Requested Party considers the offense for which the request for extradition is made by the Requesting Party as a political offense. Reference to a political offense shall not include the taking or attempted taking of the life or attack on the person of a Head of State or a Head of Government or a member of his or her family.
- (2) The Requested Party has well-founded reasons to suppose that the request for extradition made by the Requesting Party aims to institute criminal proceedings against or execute punishment upon the person sought on account of race, religion, nationality or political opinion of that person, or that the position of the person sought in judicial proceedings will be prejudiced for any reasons mentioned above.

378. Thailand indicated that similar provisions were also contained in bilateral treaties such as Thai-China Extradition Treaty of 1993, Thai-Lao P.D.R. Extradition Treaty of 1999 and Thai-Korea Extradition Treaty of 1999

(b) Observations on the implementation of the article

379. Refusal on the grounds of the discriminatory purpose of the request is provided for in bilateral treaties (extradition treaties with Cambodia, China, South Korea, etc.) but not in the Extradition Act.

380. It is recommended that Thailand include in its legislation the discriminatory purpose of the request, among the grounds for refusing extradition.

Article 44 Extradition

Paragraph 16

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

381. Thailand considered to be in compliance with the provision under review and cited the following measure:

EXTRADITION ACT B.E. 2551 (2008)

Section 9: The Thai government may consider surrendering a person for prosecution or serving punishment according to the Court's judgment in a criminal case under the Requesting State's jurisdiction to such State pursuant to the request as follows:

- (1) Where it is an extraditable offence and not prohibited by the Thai law or not the offence of political character or military offence;
- (2) Where there is no extradition treaty between them, when the Requesting State expresses

definitely that the extradition will be granted in the same manner upon requested.

The offence of political character in sub-paragraph (1) does not include the followings:

- (1) Murdering, inflicting bodily injury or depriving liberty of the King, Queen or Heir Apparent;
- (2) Murdering, inflicting bodily injury or depriving liberty of Head of the State, government leader or immediate family members of such person;
- (3) Committing of offence not regarded as political offence for the purpose of extradition according to the treaty to which Thailand is a party. Military offence means specific military criminal offence and not ordinary criminal offence.

382. Thailand stated that fiscal matters were not considered political offences and may not be grounds for refusal for extradition.

Example Case 1

383. Black Case No. OrSor.4/2555 (2012): Public prosecutor of the International Division filed a petition to the Court requesting for a detention of an Italian national, the defendant, before extraditing the defendant back to Palermo, Italy for his trial. The petition of the public prosecutor dated 20 April 2012 indicated that the Government of Italy had sent a most urgent letter No. 824, dated 19 March 2012 requesting for an extradition of the defendant according to Sections 8, 14 and 15 of the Extradition Act B.E. 2551 (2008) in order for him to be sentenced by the Court of Palermo after its Supreme Court's Criminal Division had sentenced the defendant to a nine-year imprisonment for having conspired in the crime commission as mafia gangster by laundering money, selling illegal drugs (i.e. purchased Morphine from Turkey, made heroine and sold it in its US pizzeria network), and smuggling illegal drugs into Switzerland for sale having the total value of ten thousands of millions US Dollars. The defendant was later granted a provisional release by the Court of Switzerland and travelled to South Africa by a counterfeited passport. Thereafter, the defendant entered into Thailand by using a passport of South Africa and stayed in Chonburi Province until the defendant was arrested.

384. The Court has considered the evidence of the petition and considered that the underlying offence on which the extradition was requested was similar to an offence of a secret society or criminal association under Sections 209 and 210 of the Criminal Code. The Extradition Act prescribed that extradition can be granted when the offence is punishable by imprisonment for a term of at least 1 year or above, and it is not of a political or military in nature. Additionally, the Italian Republican had pledged to extradition on a reciprocal basis and the circumstances of the defendant had a reasonable ground and fulfilled the element of the offence under the Extradition Act B.E. 2551 (2008). Consequently, the Court ordered detention of the defendant for the extradition to Italy for his sentence, provided that the he shall not be extradited before 30 days had lapsed. When the Court's decision has become a final order and the extradition was not executed within 90 days, the defendant shall be released.

385. Source: Daily News Online, Thursday 20 December 2012

Example Case 2

386. The Embassy of Switzerland in Thailand had requested the Bureau of International Affairs and International Crime of the Department of Special Investigation to investigate the case where a group of Russian and Moroccan tourists had forged a webpage of a financial institution in order to get the information on financial transactions of injured persons and used such information to book hotels, flight tickets and pay for services in Thailand, causing damages having a value of Baht 600,000,000.

387. The Center for Law Enforcement on International Crime and the committee, together with the National Police of Switzerland, had conducted an investigation in Thailand for more than 2 years

and discovered that the gang (i.e. Russian and Moroccan nationals) had movements in Thailand. The evidence was sent to the National Police of Switzerland in order to obtain an arrest warrant for the accused.

388. Later, the Court of Switzerland issued an arrest warrant for the Moroccan national, et. al., totalling 3 persons and the Embassy of Switzerland in Thailand contacted the Thai government requesting for an extradition. The Criminal Court had issued an arrest warrant for the Moroccan national, et. al., totalling 3 persons for being an international criminal.

389. After the hearing of the Criminal Court, the Court ordered an extradition of the Moroccan national for the trial in Switzerland and the police of Switzerland had taken such a Moroccan national for his trial on 20 May 2014. Prior to that, on 2 May 2014, officers of the Immigration Office had arrested the Moroccan national at a hotel on Samsen Road, Ban Panpanom Sub-district, Pranakorn District, Bangkok. Later on 8 May 2014, the Criminal Court made an inquiry and ordered extradition of the Moroccan national for his trial in Switzerland. Currently, the Embassy of Switzerland in Thailand is being coordinated for the arrangement for the transfer of the Moroccan national.

390. The Bureau of International Affairs has dealt with the other persons under the arrest warrant and other accomplices separately.

391. Source: The Department of Special Investigation (<<http://www.dsi.go.th/view.aspx?tid=T0000305>>)

(b) Observations on the implementation of the article

392. Grounds for refusal do not include the rejection of requests on the grounds that the offence relates to fiscal matters (Section 9 of the Extradition Act).

Article 44 Extradition

Paragraph 17

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

393. Thailand considered to be in compliance with the provision under review and cited the following measure:

EXTRADITION ACT B.E. 2551 (2008)

Section 14 The Central Authority, upon receiving the extradition request from the Ministry of Foreign Affairs or the Requesting State, shall consider doing as follows:

- (1) Where the Central Authority is of the opinion that the request is eligible for execution as stipulated under this Act, the Public Prosecutor shall be notified to petition the Court for issuing the arrest warrant then arrange for delivering the same to the Commissioner-General of the Royal Thai Police or other concerned authorities for further action;
- (2) Where the request is not processed in accordance with the procedure or accompanied with improper documents and evidence or executable under certain necessary conditions, the Central Authority shall notify the Requesting State the problem or necessary condition. However, if the

execution of the extradition request will affect the prosecution of any other cases or criminal proceedings against such person in Thailand, the Central Authority may defer carrying out or carry out the extradition request by imposing necessary conditions. The Requesting State shall accordingly be notified without delay.

(3) Where the request is not transmitted through the diplomatic channels, the Central Authority shall notify the same to the Ministry of Foreign Affairs for giving opinion before taking further action. The provision of Section 13 (2) shall accordingly be applied *mutatis mutandis*.

(4) Where the Central Authority is of the opinion that the request may affect the international relation or there exist any other reasons that it should not be executed or is not eligible for execution under this Act, the Requesting State or the Ministry of Foreign Affairs shall be so notified for further action as the case may be.

394. In practice, both the Attorney-General's Office as the Central Authority and the Ministry of Foreign Affairs, specifically the Department of Treaties and Legal Affairs will provide ample opportunity for the Requesting States to seek clarification and provide further information to support the case. A checklist of required documents is also provided by the Ministry of Foreign Affairs to Requesting States i.e. the Embassies and Consulates to facilitate Requesting States in preparing the necessary documents and Thai translation to be submitted to the Court.

(b) Observations on the implementation of the article

395. Authorities met during the country visit confirmed that consultations before refusing extradition are conducted as a matter of practice, pursuant to Section 14 of the Extradition Act.

Article 44 Extradition

Paragraph 18

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

396. Thailand shares Extradition Treaties with the following countries (by date of entry into force): United Kingdom (1912); Belgium (1937); Indonesia (1980); the Philippines (1984); USA (1991); China (1999); Cambodia (2001); Bangladesh (2001); Lao P.D.R. (2001) and South Korea (2001). Australia, Canada, Fiji and Malaysia succeeded under the Thai-UK Extradition Treaty.

397. The following countries are at varying stages of negotiation to conclude an extradition treaty with Thailand: Hungary, France, Romania, Belgium (Amendment), Iran, Belarus, Russia, Australia, Iceland, Kazakhstan, Malaysia, Hong Kong, India and United Arab Emirates. (Source: Ministry of Foreign Affairs as of July 2014)

Example Case of extradition under Thai-UK extradition treaty:

398. A British national, charged in a murder case of an American national that occurred in Phuket, was issued a warrant for his arrest by the Thai authorities in Phuket but he escaped to Cambodia, then to Singapore and on to the United Kingdom. As the plane landed on the runway, the accused person was apprehended by British agents to undergo extradition proceedings as per Thailand's request. The extradition case took 2 years but it was the first case the UK extradited a fugitive to Thailand under the Thai-UK Extradition Treaty.

(b) Observations on the implementation of the article

399. Thailand has signed several agreements and arrangements relating to extradition (including bilateral treaties with Australia, Belgium, Canada, China, Malaysia, the UK, the US and other countries).

Article 45 Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

400. Thailand has 35 bilateral prisoner transfer treaties in force with the following countries: France, Spain, Canada, the Republic of Italy, United States of America, Sweden, the United Kingdom of Great Britain and Northern Ireland, the Republic of Finland, the Federal Republic of Germany, the Republic of Portugal, the Republic of Austria, Israel, the Republic of Poland, Denmark, Hong Kong S.A.R., Switzerland, Norway, the Republic of the Philippines, The Republic of Estonia, Czech Republic, Australia, the Federal Republic of Nigeria, the Netherlands, the Republic of Mali, the Lao P.D.R., Swaziland, Cambodia, Pakistan, the Socialist Republic of Vietnam, Belgium, Japan, Iran, South Korea, China and India.
401. A Prisoner transfer treaty has been signed with Turkey but is not yet in force. A Prisoner transfer treaty with Peru has been successfully negotiated and is waiting signature/ratification.
402. Treaties are at varying stages of negotiation with the following countries: South Africa, Kazakhstan, Iceland, Brazil, Ukraine, Romania and Oman. (Source: Ministry of Foreign Affairs as of July 2014)
403. As of 2012, Thailand has transferred a total of 883 prisoners to countries that we share a treaty with and has received 8 Thai prisoners to serve their remaining sentence in Thailand.

(b) Observations on the implementation of the article

404. Thailand is compliant with the provision under review. Thailand has signed 35 bilateral agreements on the transfer of sentenced persons.

Article 46 Mutual legal assistance

Paragraph 1

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

405. Thailand indicated that it cooperated with other countries to provide mutual legal assistance to countries that shared an MLAT with Thailand and for those that do not, assistance could be provided on the basis of reciprocity. The Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992) is the main piece of legislation that governs international cooperation in this area. Other relevant laws and regulations include the Regulation of the Central Authority on Providing and seeking Assistance in Criminal Matters B.E. 2537 (1994) and the Penal Code Sections 32-37, which deal with confiscation of assets and property used in or obtained from the commission of crimes.
406. Relevant agencies/authorities are the Ministry of Foreign Affairs (Consular Department), the Office of the Attorney-General (as the Central Authority), the Royal Thai Police and the Corrections Department of the Ministry of Justice.
407. Thailand has concluded MLATs with the following countries: USA (1993), UK (1997); Canada (1994); France (2000); Norway (2000); China (2005); South Korea (2005); India (2003); Poland (signed 2004); Sri Lanka (signed 2004); Peru (2005); Belgium (signed 2005); and Australia (signed 2006).
408. At the regional level, Thailand is a party to the Treaty on Mutual Assistance in Criminal Matters Among Like-Minded ASEAN Member Countries, which entered into force for among all the ten Member States in 2013.
409. In providing assistance to a Requesting State, in the case where a treaty exists with Thailand, the request can be sent directly to the Attorney-General's Office as the Central Authority; and in the case where no treaty exists with Thailand, the request shall be sent through diplomatic channels. See Sections 9 and 10 of the Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992). For countries without a MLAT with Thailand, there must be reciprocity assurance and must be an offence punishable under Thai law or the requirement of dual criminality must be met.
410. The Attorney-General's Office on average receives and requests around 60 cases of mutual assistance per year.
411. Thailand cited the following measures:

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS B.E.2535 (1992)

Section 9 The providing of assistance to a foreign state shall be subject to the following conditions:

- (1) Assistance may be provided even there exists no mutual assistance treaty between Thailand and the Requesting State provides that such state commits to assist Thailand under the similar manner when requested;
- (2) The act which is the cause of a request must be an offence punishable under Thai laws unless when Thailand and the Requesting state have a mutual assistance treaty between them and the treaty otherwise specifies provides, however, that the assistance must be conformed to the provisions of this Act;
- (3) A request may be refused if it shall affect national sovereignty or security, or other crucial public interests of Thailand, or relate to a political offence;
- (4) The providing of assistance shall not be related to a military offence.

Section 10 The state having a mutual assistance treaty with Thailand shall submit its request for assistance directly to the Central Authority. The state which has no such treaty shall submit its request through diplomatic channel.

A request for assistance shall conform to the forms, regulations, means and conditions defined by the Central Authority.

(b) Observations on the implementation of the article

412. Mutual legal assistance (MLA) is mainly regulated by the Act on Mutual Assistance in Criminal Matters of 1992 and bilateral and multilateral agreements in force.
413. MLA procedures are detailed in the Regulation of the Central Authority on Providing and seeking Assistance in Criminal Matters of 1994. Requests from States with which Thailand has an MLA treaty should be submitted directly to the Office of the Attorney-General (Central Authority), requests from other States should be submitted through diplomatic channels.
414. After verifying that the MLA request is acceptable, the Central Authority transmit the said request to the Competent Authorities for execution. The decision of the Central Authority on the request is final, unless otherwise alternated by the Prime Minister.
415. MLA may be provided on the basis of reciprocity and irrespective of the existence of a treaty.
416. Authorities met during the country visit confirmed that the same range of measures and procedures that are available in domestic criminal proceedings are also available for MLA.

Article 46 Mutual legal assistance

Paragraph 2

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

417. Thailand referred to the summary of mutual legal assistance provided by Thailand in Article 46 paragraph 1, which also extends to the investigation, prosecution and judicial proceedings relating to offences for which legal persons are liable.
418. **Furthermore, the Act Concerning Offences Relating to the Submission of Bids to State Agencies 1999** prohibits the following acts by and between private persons or juristic persons in bidding for Government contracts: bid collusion aimed at restricting price competition or otherwise taking advantage of state agencies contrary to normal business practice (Section 4); giving or requesting property or any other benefit in order to induce the award of a contract or the submission of an inflated or under-priced bid or a withdrawal from bidding (Section 5); threat or use of force in connection with submission or withdrawal of bids (Section 6); deceitful or other acts which deprive another of an opportunity for fair submission of bids (Section 7); submission of under-priced bids or bids offering artificially high returns, in order to prevent fair competition (Section 8).
419. **Section 9 of the Act Concerning Offences Relating to the Submission of Bids to State Agencies 1999** states that "If the offence committed under this Act is in the interest of any juristic person, it shall be deemed that the managing partner, president, management or the person empowered to run the business of such juristic person or the person responsible for the operation of the juristic person on such matter are also co-principals in the commission of the offence unless

it can be proven that they take no part in the commission of such offence."

420. Thailand has received requests for mutual assistance from the USA, Australia and the United Kingdom to investigate legal persons in order to seek further information relating to the transfer of assets or bank accounts in Thailand. The request also involves asset recovery by freezing, seizing and confiscation of assets. Details of the cases are confidential.

(b) Observations on the implementation of the article

421. Authorities met during the country visit confirmed that MLA requests regarding physical and legal persons are treated equally.

Article 46 Mutual legal assistance

Subparagraphs 3 (a) to (k)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*
- (j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*
- (k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

(a) Summary of information relevant to reviewing the implementation of the article

422. Thailand cited the following measures:

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS B.E.2535 (1992)
CHAPTER 2 Providing of and Seeking for Assistance. PART 1 General Provisions
Section 9 The providing of assistance to a foreign state shall be subject to the following conditions:

- (1) Assistance may be provided even there exists no mutual assistance treaty between Thailand and the Requesting State provides that such state commits to assist Thailand under the similar manner when requested;
- (2) The act which is the cause of a request must be an offence punishable under Thai laws unless when Thailand and the Requesting state have a mutual assistance treaty between them and the treaty otherwise specifies provides, however, that the assistance must be conformed to the provisions of this Act;
- (3) A request may be refused if it shall affect national sovereignty or security, or other crucial public interests of Thailand, or relate to a political offence;
- (4) The providing of assistance shall not be related to a military offence.

Section 10 The state having a mutual assistance treaty with Thailand shall submit its request for assistance directly to the Central Authority. The state which has no such treaty shall submit its request through diplomatic channel.

A request for assistance shall conform to the forms, regulations, means and conditions defined by the Central Authority.

Section 11 Upon receipt a request for assistance from a foreign state, the Central Authority shall consider and determine whether such request is eligible for the providing of assistance under this Act and has followed the process correctly as well as accompanied by all appropriate supporting documents.

If such request is eligible for the providing of assistance, and in line with the process, as well as accompanied by all appropriate supporting documents, the Central Authority shall transmit the said request to the Competent Authorities for further execution.

If such request is not eligible for the providing of assistance, or must be subject to some essential conditions before the assistance is provided, if it is not in line with the process or has not been accompanied by all appropriate supporting documents required, the Central Authority shall refuse to provide assistance and notify the Requesting State the reasons thereof, or indicate the required conditions, or the causes of impossibility to execute the request.

If the Central Authority is of the view that the execution of a request may interfere with the investigation, inquiry, prosecution, or other criminal proceeding pending its handling in Thailand, he may postpone the execution of the said request or may execute it under certain conditions set by him and notify the Requesting State thereabout.

A determination of the Central Authority with regard to the providing of assistance shall be final, unless otherwise alternated by the Prime Minister.

Section 12 The Central Authority shall transmit the request for assistance from a foreign state to the following Competent Authorities for execution:

- (1) The request for taking statement of persons, or providing documents, articles, and evidence out of Court, the request for serving documents, the request for searches, the request for seizures documents or articles, and the request for locating persons shall be transmitted to the Director General of the Police Department;
- (2) The request for taking the testimony of persons and witnesses or adducing document and evidence in the Court, as well as the request for forfeiture or seizure of properties shall be transmitted to the Chief Public Prosecutor for Litigation;
- (3) The request for transferring persons in custody for testimonial purposes shall be transmitted to the Director General of the Correctional Department.
- (4) The request for initiating criminal proceedings shall be transmitted to the Director General of the Police Department and the Chief Public Prosecutor for Litigation.

Section 13 Upon receipt a request for assistance from the Central Authority, the Competent Authorities shall execute such request and, after completion, submit a report together with all documents and articles concerned to the Central Authority.

In case of impediment or impossibility to execute the request, the Competent Authorities shall report to the Central Authority the causes thereof.

Section 14 When the Competent Authorities finished the execution of a request and have already reported to the Central Authority, the Central Authority shall notify the result thereof as well as deliver all documents and articles concerned to the Requesting State.

PART 2 Inquiry and Producing Evidence

Section 15 Upon receipt the request for assistance from a foreign state to take statement of persons or gathering evidence located in Thailand at the stage of inquiry, the Competent Authorities shall direct an inquiry official to execute such request.

The Inquiry Official shall have authority to take statement of persons or gathering evidence as requested under paragraph one and, if necessary, to search and seize any document or article in accordance with rules, means, and conditions set forth in the Criminal Procedure Code.

When the taking statement of persons or gathering evidence has been finished, the Inquiry Official shall report and deliver all evidence derived therefrom to the Competent Authorities.

Section 16 If the mutual assistance treaty between Thailand and the Requesting State requires a document to be authenticated, the Competent Authorities shall have the power to instruct the person in charge of keeping the said document to attest it in accordance with the forms and means specified in the treaty or as defined by the Central Authority.

Section 17 Upon receipt the request for assistance from a foreign state to take the testimony of witness in Thai Court, the Central Authority shall direct the public prosecutor to execute such request.

The Public Prosecutor shall have the power to apply to the Court having jurisdiction over the domicile or residence of the person who will be the witness or who has in possession or keep the documents or other evidence, and request for the testimony or adducing of the evidence, and the Court shall have the power to try the case conforming to the provisions enshrined in the Criminal Procedure Code.

After the completion of testimony, the Public Prosecutor shall apply to the court requesting for the record of testimony as well as other evidence and deliver all to the Central Authority for further operation.

PART 3 Providing of Documents and Information in the Possession of Government Agencies

Section 18: Upon receipt the request for assistance from a foreign state to provide documents or information in the possession of the agencies of the Royal Thai Government, the Central Authority shall transmit the request to the agency having such documents or information in its possession, and the said agency shall submit the said documents or information to the Central Authority.

Section 19: If the documents or information sought under Section 18 are those should not be published and the agency maintaining such documents or information considers it impossible to disclose or should not disclose the said documents or information, or possible to disclose them under certain conditions, the said agency shall acknowledge the Central Authority the causes of impossibility or the conditions required for the disclosure of such documents or information.

Section 20: In providing of documents according to the request for assistance from a foreign state under this part, the official in charge of keeping such documents shall attest them, in accordance with the forms and means defined by the Central Authority unless otherwise specified by the treaty, then the provisions of the treaty shall be prevailed.

PART 4 Serving Documents

Section 21: Upon receipt the request for assistance from a foreign state to serve legal documents, the Competent Authorities shall execute such request and report to the Central Authority.

If the legal document to be served under the request is such that requiring the appearance of a person before an authority or the court in the Requesting State, the Competent Authorities shall serve the said document for a reasonable time prior to the scheduled appearance.

The result of service of documents shall be reported in accordance with the forms and means defined by the Central Authority unless otherwise specified in the treaty, then the provisions of the treaty shall be prevailed.

Section 22: The provisions regarding penalty in case of non-compliance with the lawful instruction of the authority or of the Court shall not be applied to the person served with a document calling for his appearance before an authority or the court in the Requesting State, if he is not a national of such state.

PART 5 Search and Seizure

Section 23: Upon receipt the request for assistance from a foreign state to search or seize and deliver any article, the Competent Authorities shall have the power to search or issue a warrant of search and seize in accordance with the law, if there shall be a reasonable ground to do so.

Section 24: As regards the search and seizure under Section 23, the provisions relating to Search under the Criminal Procedure Code shall be applied, mutatis mutandis.

Section 25: The Competent Authorities conducting search or seizure of article in compliance with the request for assistance shall certify the continuity of custody, identity of the article, as well as integrity of its condition, and shall deliver the said article together with the certificate thereof to the Central Authority.

The certificate thereof shall be in the form and in line with the means defined by the Central Authority.

ANTI-MONEY LAUNDERING ACT B.E. 2542 (1999)

Section 3 (5): Section 3 In this Act:

“predicate offence” means any offence

...
(5) of malfeasance in office or malfeasance in judicial office under the Penal Code, offence under the law on offences of officials in State organisations or agencies or offence of malfeasance in office or dishonesty in office under other laws;

...

“property connected with the commission of an offence” means:

(1) money or property obtained from the commission of an act constituting a predicate offence or offence of money laundering or from aiding and abetting or rendering assistance in the commission of an act constituting a predicate offence or offence of money laundering, and shall also include money or property used or possessed to be used in, or for aiding and abetting the commission of an act constituting a predicate offence under (8) of the definition of “predicate offence”;

(2) money or property obtained from the distribution, disposal or transfer in any manner of the money or property under (1); or

(3) fruits of the money or property under (1) or (2).

Provided that it is immaterial whether the property under (1), (2) or (3) is distributed, disposed of, transferred or converted on how many occasions and whether the same is in possession of any person or transferred to any person or evidently registered as belonging to any person;

Section 34 The Transaction Committee shall have the powers and duties as follows:

- (1) to examine a transaction or property connected with the commission of an offence;
- (2) to give an order withholding the transaction under section 35 or section 36;
- (3) to carry out the acts under section 48;
- (4) to submit to the Board and the National Anti-Corruption Commission a report on the result of the execution of this Act;
- (5) to supervise the independence and impartiality of the Office and the Secretary-General;
- (6) to perform any other acts as entrusted by the Board.

Section 38 For the purpose of performing duties under this Act, a member of the Transaction Committee, the Secretary-General and the competent official entrusted in writing by the Secretary-General shall have the powers as follows:

(1) to address a written inquiry towards or summon a financial institution, Government agency, State organisation or agency or State enterprise, as the case may be, to send officials concerned for giving statements or furnish written explanations or any account, document or evidence for examination or consideration;

(2) to address a written inquiry towards or summon any person to give statements or furnish written explanations or any account, document or evidence for examination or consideration;

(3) to enter any dwelling place, place or vehicle reasonably suspected to have the property connected with the commission of an offence or evidence connected with the commission of an offence of money laundering hidden or kept therein, for the purposes of searching for, pursuing, examining, seizing or attaching the property or evidence, when there is a reasonable ground to believe that the delay occurring in the obtaining of a warrant of search will cause such property or evidence to be moved, hidden, destroyed or converted from its original state.

In performing the duty under (3), the competent official entrusted under paragraph one shall produce to the persons concerned the document evidencing the authorisation and the identification.

The identity card under paragraph two shall be in accordance with the form prescribed by the Minister and published in the Government Gazette.

All information obtained from the statements, written explanations, any account, document or any evidence having the characteristic of specific information of an individual person, financial institution, Government agency, State organisation or agency or State enterprise shall be under the Secretary-General's responsibility with respect to its retention and utilisation.

Section 39/1 For the purpose of execution of this Act, the Transaction Committee and the Secretary-General shall prepare a summary report of the performance of duties under this Chapter for submission to the National Anti-Corruption Commission every four months.

The report under paragraph one shall at least specify the details as follows:

- (1) a person whose transaction or property was examined or whose transaction was restrained or whose property was seized or attached;
- (2) evidence used against the person under (1);
- (3) a person who asked, gave direction or ordered someone to perform such act;
- (4) result of the execution.

Details under this section shall be treated as official secrets.

Section 39/2 The National Anti-Corruption Commission may appoint an expert to examine aforementioned report that whether the execution specified in the report is comply with this Act for submission to the National Anti-Corruption Commission.

The provision under section 38 shall be applied to the examination under paragraph one.

In the case where the examination under paragraph one discovers that there is an act does not comply with this Act and the National Anti-Corruption Commission agrees with the examination, the result of examination and the opinion of the National Anti-Corruption Commission shall be submitted to the Transaction Committee for further proceeding.

Section 40 There shall establish the Anti-Money Laundering Office, called as “AMLO” in brief, to be a Government agency which is not under the Prime Minister Office, Ministry, or Sub-Ministry, to perform the duties independently and impartially, which shall have the powers and duties as follows:

- (5) to gather evidence for the purpose of taking legal proceedings against offenders under this Act;

Section 46/1 In the case where it is necessary for the benefit of evidence gathering under this Act, when the Office requests the Department of Special Investigation to exercise its powers to investigate, inquire and gather evidence under the law on special case investigation for the prosecution of offenders under this Act or to take proceedings on assets connected with the commission of offenses, the Department of Special Investigation shall have the powers to act within its authority in support of the Office.

Section 48 In conducting an examination of the report and information on transaction-making, if there is a reasonable ground to believe that any property connected with the commission of an offence may be transferred, distributed, moved, concealed or hidden, the Transaction Committee shall have the power to order a provisional seizure or attachment of such property for the period of not more than ninety days.

In case of compelling necessity or urgency, the Secretary-General shall order a seizure or an attachment of the property under paragraph one for the time being and then report it to the Transaction Committee accordingly.

The examination of the report and information on transaction-making under paragraph one shall be in accordance with the rules and procedures as prescribed in the Ministerial Regulation.

The person having made the transaction in respect of which the property has been seized or attached or any interested person in the property may produce evidence that the money or property in such transaction is not the property connected with the commission of the offence in order that the seizure

or attachment order may be revoked, in accordance with the rules and procedures as prescribed in the Ministerial Regulation.

When the Transaction Committee or the Secretary-General, as the case may be, has ordered a seizure or an attachment of the property or ordered revocation thereof, the Transaction Committee shall report it to the Board.

Section 55 After the public prosecutor has filed the petition under section 49, if there is a reasonable ground to believe that the property connected with the commission of the offence may be transferred, distributed or taken away, the Secretary-General may refer the case to the public prosecutor for filing an ex parte petition with the Court for its provisional order seizing or attaching such property prior to an order under section 51. Upon receipt of such petition, the Court shall consider it as a matter of urgency. If there is convincing evidence that the application is justifiable, the Court shall give an order as requested without delay.

THE SPECIAL CASE INVESTIGATION ACT B.E. 2547 (2004)

Section 24: To perform his/her duty hereunder, the Special Case Inquiry Official shall have the following powers:

- (1) to enter any dwelling place or premises to search when there is a reasonable ground for suspecting that a person suspected of committing a Special Case offence is hiding there or possessing properties which is considered an offence or acquired by committing an offence, or which has been used or will be used in committing an offence of a Special Case, or which may be used as evidence, while there is also a reasonable ground to believe that by reason of the delay in obtaining a warrant of search, the person shall escape or the property may be relocated, hidden, destroyed or transformed from its original condition;
- (2) to search any person or conveyance with a reasonable ground for suspecting that it contains property, the possession of which is considered an offence, or which is acquired by committing an offence, or which is used or will be used in committing a Special Case offence or may be used as evidence;
- (3) to issue a letter of inquiry or summon any financial institution, government agency, organization or state agency or state enterprise to dispatch competent officials to provide a statement, submit clarification in writing or send relevant accounts, documents or evidence for examination or clarification;
- (4) to issue a letter of inquiry or summons any person to provide a statement, submit clarification in writing or a list of documents or any evidence for examination or supplement for the consideration; and
- (5) to seize or attach properties found or submitted in (1), (2), (3) and (4).

When exercising the power under paragraph one, the Special Case Inquiry Official shall comply with the rules provided by the BSC.

Only information acquired under paragraph one which is related to a Special Case offence as permitted under paragraph one shall be kept and used as evidence in the proceedings of such special cases only. Other information shall be destroyed according to rules provided by BSC.

423. For Article 46 paragraph 3 (k), Thailand considered to be partly in compliance. Section 34 of the Mutual Assistance in Criminal Matters of 1992 states that the forfeiture or seizure of property shall be governed by the provisions set forth in the Criminal Procedural Code and the Penal Code, which states that forfeited property become the property of the State. Thus, even though Thailand can provide mutual legal assistance in accordance with Article 46, the return of those assets to the requesting state will be problematic. Thailand is in the process of amending its laws to comply with this provision.

424. Thailand referred to the following measures:

PENAL CODE

Section 34 The inquiry, the filing of motion, the trial, the adjudication, and the making of an order in relation to the forfeiture or seizure of the said property shall be, mutatis mutandis, governed by the provisions related to forfeiture of property set forth in the Criminal Procedure Code and the Penal Code.

Section 35 The properties forfeited by the judgment of the Court shall become the properties of the State, but the Court may otherwise decide such properties to be invalid or to be destroyed.

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS B.E. 2535 (1992)

Section 35 The properties forfeited by the judgment of the Court under this part shall become the properties of the State, but the Court may pass judgment for such properties to be rendered useless, or to be destroyed.

425. Thailand indicated that it was in the process of amending relevant sections of its Criminal Code to be fully compliant with the obligations under the Convention. The NACC had submitted the proposed amendment to the National Peace and Order Maintaining Council for its consideration before it is submitted to the National Legislative Assembly. Thailand indicated that it was difficult to estimate a timeframe for when the legislation would be enacted into law.

(b) Observations on the implementation of the article

426. According to Section 34 of the Act on Mutual Assistance in Criminal Matters which refers to the Criminal Procedural Code and the Penal Code, forfeited property become the property of the State. Thus, even though Thailand can provide mutual legal assistance in accordance with Article 46, the authorities considered that the return of those assets would be problematic. Thailand is in the process of amending its laws to comply with Article 46 Subparagraph 3 (k) of the Convention.

427. To fully implement the provision under review, Thailand should take the necessary measures to allow for the recovery of assets.

Article 46 Mutual legal assistance

Paragraphs 4 and 5

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

428. Thailand considered to be in compliance with the provisions under review and cited the following measures:

THE ORGANIC ACT ON COUNTER CORRUPTION B.E. 2542 (1999)

Section 120 Any person who discloses statements, facts or information obtained in consequence of the performance of duties under this Organic Act without authorisation by the NACC and without such act being committed in discharge of official duties or for the purpose of verifying or inquiring into facts or for official or public interest shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand Baht or to both.

429. Thailand indicated that it had been continuously providing information on criminal matters to other States Parties through official and unofficial channels. Thailand, by the Office of NACC, had become a member of and a party to cooperation groups, including executing various agreements with domestic and international agencies responsible for anti-corruption. Apart from being a party to the Convention, examples include Thailand's becoming a member of the StAR/INTERPOL Global Focal Point Initiative and the conclusion of a memorandum of understanding between the Office of the NACC and Federal Ministry of the Interior of the Republic of Austria. Thus, there are informal channels for assistance in this regard.

430. The Office of NACC had been requested for useful information which could help with the conclusion of the investigation or execution of criminal cases from other member states such as Singapore, Malaysia, Mongolia, and Bhutan.

Example case of informal Assistance in international cooperation against corruption:

431. Thailand and USA (Greens' case):

432. The case involves a Hollywood couple who bribed a Thai Senior level tourism official to unfairly obtain concession rights to organize an international film festival in Bangkok. Through the information provided to the NACC by the United States FBI and the Department of Justice, the NACC was able to initiate its own formal inquiry of the Thai public official. In Thailand's subsequent MLA request to the US Department of Justice, the constant communication we had maintained with our counterpart before, during and after the submission of our request, helped to expedite the process.

(b) Observations on the implementation of the article

433. While there is no legislation in place to this effect, authorities met during the country visit indicated that Thailand has spontaneously transmitted information to other States through informal cooperation but not in the context of MLA.

434. Thailand may wish to spontaneously transmit information relating to criminal matters to another State party also in the context of mutual legal assistance.

Article 46 Mutual legal assistance

Paragraph 8

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

435. Thailand stated that bank secrecy was not a ground for refusal to render mutual legal assistance and cited the following measures:

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS B.E.2535 (1992)

Section 9 The providing of assistance to a foreign state shall be subject to the following conditions:

- (1) Assistance may be provided even there exists no mutual assistance treaty between Thailand and the Requesting State provides that such state commits to assist Thailand under the similar manner when requested;
- (2) The act which is the cause of a request must be an offence punishable under Thai laws unless when Thailand and the Requesting state have a mutual assistance treaty between them and the treaty otherwise specifies provides, however, that the assistance must be conformed to the provisions of this Act;
- (3) A request may be refused if it shall affect national sovereignty or security, or other crucial public interests of Thailand, or relate to a political offence;
- (4) The providing of assistance shall not be related to a military offence.

(b) Observations on the implementation of the article

436. Bank secrecy is not recognized as a ground for refusal of the MLA.

Article 46 Mutual legal assistance

Paragraph 9

(a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of the article

437. Thailand cited the following measures:

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS B.E.2535 (1992)

Section 9 The providing of assistance to a foreign state shall be subject to the following conditions:

- (1) Assistance may be provided even there exists no mutual assistance treaty between Thailand and the Requesting State provides that such state commits to assist Thailand under the similar manner when requested;
- (2) The act which is the cause of a request must be an offence punishable under Thai laws unless

when Thailand and the Requesting state have a mutual assistance treaty between them and the treaty otherwise specifies provides, however, that the assistance must be conformed to the provisions of this Act;

(3) A request may be refused if it shall affect national sovereignty or security, or other crucial public interests of Thailand, or relate to a political offence;

(4) The providing of assistance shall not be related to a military offence.

Section 10 The state having a mutual assistance treaty with Thailand shall submit its request for assistance directly to the Central Authority. The state which has no such treaty shall submit its request through diplomatic channel.

A request for assistance shall conform to the forms, regulations, means and conditions defined by the Central Authority.

Section 11 Upon receipt a request for assistance from a foreign state, the Central Authority shall consider and determine whether such request is eligible for the providing of assistance under this Act and has followed the process correctly as well as accompanied by all appropriate supporting documents.

If such request is eligible for the providing of assistance, and in line with the process, as well as accompanied by all appropriate supporting documents, the Central Authority shall transmit the said request to the Competent Authorities for further execution.

If such request is not eligible for the providing of assistance, or must be subject to some essential conditions before the assistance is provided, if it is not in line with the process or has not been accompanied by all appropriate supporting documents required, the Central Authority shall refuse to provide assistance and notify the Requesting State the reasons thereof, or indicate the required conditions, or the causes of impossibility to execute the request.

If the Central Authority is of the view that the execution of a request may interfere with the investigation, inquiry, prosecution, or other criminal proceeding pending its handling in Thailand, he may postpone the execution of the said request or may execute it under certain conditions set by him and notify the Requesting State thereabout.

A determination of the Central Authority with regard to the providing of assistance shall be final, unless otherwise altered by the Prime Minister.

438. Thailand stated that no provisions existed with regard to coercive measures.

(b) Observations on the implementation of the article

439. Thailand does not provide MLA in the absence of dual criminality, even when the requested assistance does not involve coercive action, unless a treaty provides otherwise (i.e. the treaties with France and the US, according to the authorities met during the country visit).

440. To implement the provision under review, Thailand should provide, in the absence of dual criminality, mutual legal assistance that does not involve coercive action. Thailand may wish to also provide a wider scope of assistance.

Article 46 Mutual legal assistance

Paragraph 10

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for

investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

(a) Summary of information relevant to reviewing the implementation of the article

441. Thailand cited the following measures:

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS B.E.2535 (1992)

PART 6 Transferring Persons in Custody for Testimonial Purposes

Section 26 Upon receipt the request for assistance from a foreign state to transfer a person in custody in Thailand to testify in the Requesting State or to transfer a person in custody in the Requesting state to testify in Thailand, the Central Authority, upon determining it necessary and the person to be transferred consents thereto, shall notify the Competent Authorities to transport or admit the said person.

The transportation and admission of the person under paragraph one shall be in line with the rules, means and conditions set forth in the Ministerial Regulations.

Section 27 The period during which a person is transferred to testify in a foreign state under the custody of the Requesting State shall be deemed as the period he is in custody in Thailand.

Section 28 The Competent Authorities shall have the power to keep the person transported from a foreign state in custody for the purpose of testimony during his presence in Thailand, and shall report to the Central Authority when such testimony has been finished.

Section 29 Upon receipt the report from the Competent Authorities under Section 28, the Central Authority shall promptly return the transferred person to the Requesting State.

442. See also Ministerial Regulations B.E. 2537 (1994) issued under the Act on Mutual Assistance in Criminal Matters of 1992

(b) Observations on the implementation of the article

443. Chapter 6 of the Act on Mutual Assistance in Criminal Matters regulates the transfer and receiving of persons in Custody for Testimonial Purposes.

Article 46 Mutual legal assistance

Paragraph 11

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

444. Thailand cited the following measures:

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS B.E.2535 (1992)

PART 6 Transferring Persons in Custody for Testimonial Purposes

Section 26 Upon receipt the request for assistance from a foreign state to transfer a person in custody in Thailand to testify in the Requesting State or to transfer a person in custody in the Requesting state to testify in Thailand, the Central Authority, upon determining it necessary and the person to be transferred consents thereto, shall notify the Competent Authorities to transport or admit the said person.

The transportation and admission of the person under paragraph one shall be in line with the rules, means and conditions set forth in the Ministerial Regulations.

Section 27 The period during which a person is transferred to testify in a foreign state under the custody of the Requesting State shall be deemed as the period he is in custody in Thailand.

Section 28 The Competent Authorities shall have the power to keep the person transported from a foreign state in custody for the purpose of testimony during his presence in Thailand, and shall report to the Central Authority when such testimony has been finished.

Section 29 Upon receipt the report from the Competent Authorities under Section 28, the Central Authority shall promptly return the transferred person to the Requesting State.

445. See also Ministerial Regulations B.E. 2537 (1994) issued under the Act on Mutual Assistance in Criminal Matters of 1992

(b) Observations on the implementation of the article

446. Thailand is compliant with the provision under review.

Article 46 Mutual legal assistance

Paragraph 12

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person

is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

447. Thailand cited the following measure.

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS B.E.2535 (1992)

Section 40 No person entering to testify or give statement in Thailand in accordance with this Act shall be subject to service of process or be detained or subject to any other restriction of personal liberty by reason of any acts which preceded his departure from the Requested State.

The safeguard in paragraph one shall cease when the person, having had the opportunity to leave Thailand within fifteen consecutive days after notification that his presence was no longer required by the appropriate authorities, shall have nonetheless stayed in or voluntarily returned after having left Thailand.

448. See also Ministerial Regulations B.E. 2537 (1994) issued under the Act on Mutual Assistance in Criminal Matters of 1992

(b) Observations on the implementation of the article

449. Thailand is compliant with the provision under review.

Article 46 Mutual legal assistance

Paragraph 13

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of the article

450. Thailand cited the following measures:

**THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS B.E.2535 (1992)
CHAPTER 1 Central Authority**

Section 6 The Central Authority shall be the Attorney General or the person designated by him.

Section 7 The Central Authority shall have the following authority and functions:

- (1) To receive the request for assistance from the Requesting State and transmit it to the Competent Authorities;
- (2) To receive the request seeking assistance presented by the agency of the Royal Thai Government and deliver to the Requested State;
- (3) To consider and determine whether to provide or seek assistance;
- (4) To follow and expedite the performance of the Competent Authorities in providing assistance to a foreign state for the purpose of expeditious conclusion;
- (5) To issue regulations or announcement for the implementation of this Act;
- (6) To carry out other acts necessary for the success of providing or seeking assistance under this Act.

Section 8 There shall exist a board comprising representatives from the Ministry of Defence, the Ministry of Foreign Affairs, the Ministry of Interior, the Ministry of Justice, the Office of the Attorney General, as well as other distinguished people not more than four persons as its members and one public prosecutor designated by the Board as its Secretary. The Board shall provide opinion to assist the Central Authority in consideration and determination of the providing for or seeking assistance from foreign states where such matter may affect national sovereignty or security, crucial public interests, international relation, or relate to a political or military offence.

When an assistance is sought under Section 10 or Section 36 and the process under Section 11 has already been completed, the Central Authority shall promptly refer the matter to the Board for its opinion unless the process has been otherwise established by the Board.

If there shall be a dissent between the opinion of the Board and the determination of the Central Authority, then the latter shall refer the case to the Prime Minister for his ruling in accordance with Section 11 paragraph five or Section 38 paragraph two as the case may be.

Section 10 The state having a mutual assistance treaty with Thailand shall submit its request for assistance directly to the Central Authority. The state which has no such treaty shall submit its request through diplomatic channel.

A request for assistance shall conform to the forms, regulations, means and conditions defined by the Central Authority.

Section 11 Upon receipt a request for assistance from a foreign state, the Central Authority shall consider and determine whether such request is eligible for the providing of assistance under this Act and has followed the process correctly as well as accompanied by all appropriate supporting documents.

If such request is eligible for the providing of assistance, and in line with the process, as well as accompanied by all appropriate supporting documents, the Central Authority shall transmit the said request to the Competent Authorities for further execution.

If such request is not eligible for the providing of assistance, or must be subject to some essential conditions before the assistance is provided, if it is not in line with the process or has not been accompanied by all appropriate supporting documents required, the Central Authority shall refuse to provide assistance and notify the Requesting State the reasons thereof, or indicate the required conditions, or the causes of impossibility to execute the request.

If the Central Authority is of the view that the execution of a request may interfere with the investigation, inquiry, prosecution, or other criminal proceeding pending its handling in Thailand, he may postpone the execution of the said request or may execute it under certain conditions set by him and notify the Requesting State thereabout.

A determination of the Central Authority with regard to the providing of assistance shall be final, unless otherwise alternated by the Prime Minister.

Section 12 The Central Authority shall transmit the request for assistance from a foreign state to the following Competent Authorities for execution:

- (1) The request for taking statement of persons, or providing documents, articles, and evidence out of Court, the request for serving documents, the request for searches, the request for seizures documents or articles, and the request for locating persons shall be transmitted to the Director General of the Police Department;
- (2) The request for taking the testimony of persons and witnesses or adducing document and evidence in the Court, as well as the request for forfeiture or seizure of properties shall be transmitted to the Chief Public Prosecutor for Litigation;
- (3) The request for transferring persons in custody for testimonial purposes shall be transmitted to the Director General of the Correctional Department.
- (4) The request for initiating criminal proceedings shall be transmitted to the Director General of the Police Department and the Chief Public Prosecutor for Litigation.

Section 13 Upon receipt a request for assistance from the Central Authority, the Competent Authorities shall execute such request and, after completion, submit a report together with all documents and articles concerned to the Central Authority.

In case of impediment or impossibility to execute the request, the Competent Authorities shall report to the Central Authority the causes thereof.

451. Thailand indicated that, on average, the Attorney-General's Office provides mutual legal assistance for 60 cases per year.

(b) Observations on the implementation of the article

452. Thailand has designated the Office of the Attorney-General as central Authority for MLA (art. 6 of the MLA Act). The Secretary-General of the United Nations has not been notified in this regard.

453. Authorities met during the country visit indicated that Thailand does not accept MLA requests transmitted through INTERPOL.

454. Thailand should notify the Secretary-General of the United Nations of the central authority for MLA requests.

455. Thailand is encouraged to send the aforementioned information to Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

456. It is recommended that Thailand assess whether allowing for direct communication between central authorities outside of the scope of MLA treaties and accepting requests made through INTERPOL would facilitate cooperation.

Article 46 Mutual legal assistance

Paragraph 14

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of

the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

457. Thailand cited the following measures:

Regulation of the Central Authority on Providing and Seeking Assistance under the Act on Mutual Assistance in Criminal Matters B.E. 2537 (1994)

Article 5 A request from a foreign state for assistance of Thailand under the law on Mutual Assistance in Criminal Matters shall contain at a minimum, the following details:

- (1) the name of the authorities of the Requesting State which seeks assistance;
- (2) the matter of the request, including details and other information which may be useful for the execution of the request;
- (3) the purpose of and necessity for seeking assistance;
- (4) such other details as required for each category of the requests as specified in Article 6 to Article 13 of this Regulation, as the case may be.

If there is no mutual assistance treaty between Thailand and the Requesting State, the Requesting State shall commit to provide assistance to Thailand in similar manner when so requested.

The request together with supporting documents, if made in a language other than Thai or English, shall be accompanied by the authenticated Thai or English translation.

(b) Observations on the implementation of the article

458. Thailand accepts requests in Thai and English (art. 5 of the MLA Act). The Secretary-General of the United Nations has not been notified in this regard.

459. Authorities met during the country visit indicated that Thailand does not accept MLA requests made orally.

460. Thailand should notify the Secretary-General of the acceptable languages for MLA requests.

461. Thailand is encouraged to send the aforementioned information to the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

462. Thailand may wish to accept oral requests made in urgent circumstances if they are confirmed in writing afterwards.

Article 46 Mutual legal assistance

Paragraphs 15 and 16

15. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;*
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

463. Thailand cited the following measures:

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS B.E.2535 (1992)

Section 10: The state having a mutual assistance treaty with Thailand shall submit its request for assistance directly to the Central Authority. The state which has no such treaty shall submit its request through diplomatic channel.

A request for assistance shall conform to the forms, regulations, means and conditions defined by the Central Authority.

Section 11 Upon receipt a request for assistance from a foreign state, the Central Authority shall consider and determine whether such request is eligible for the providing of assistance under this Act and has followed the process correctly as well as accompanied by all appropriate supporting documents.

If such request is eligible for the providing of assistance, and in line with the process, as well as accompanied by all appropriate supporting documents, the Central Authority shall transmit the said request to the Competent Authorities for further execution.

If such request is not eligible for the providing of assistance, or must be subject to some essential conditions before the assistance is provided, if it is not in line with the process or has not been accompanied by all appropriate supporting documents required, the Central Authority shall refuse to provide assistance and notify the Requesting State the reasons thereof, or indicate the required conditions, or the causes of impossibility to execute the request.

If the Central Authority is of the view that the execution of a request may interfere with the investigation, inquiry, prosecution, or other criminal proceeding pending its handling in Thailand, he may postpone the execution of the said request or may execute it under certain conditions set by him and notify the Requesting State thereabout.

A determination of the Central Authority with regard to the providing of assistance shall be final, unless otherwise altered by the Prime Minister.

464. See also Regulation of the Central Authority on Providing and Seeking Assistance under the Act on Mutual Assistance in Criminal Matters B.E. 2537 (1994) Sections 5-13

(b) Observations on the implementation of the article

465. Thailand is compliant with the provision under review.

Article 46 Mutual legal assistance

Paragraph 17

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

466. Thailand cited the following measures:

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS B.E.2535 (1992)

Section 9 The providing of assistance to a foreign state shall be subject to the following conditions:

- (1) Assistance may be provided even there exists no mutual assistance treaty between Thailand and the Requesting State provides that such state commits to assist Thailand under the similar manner when requested;
- (2) The act which is the cause of a request must be an offence punishable under Thai laws unless when Thailand and the Requesting state have a mutual assistance treaty between them and the treaty otherwise specifies provides, however, that the assistance must be conformed to the provisions of this Act;
- (3) A request may be refused if it shall affect national sovereignty or security, or other crucial public interests of Thailand, or relate to a political offence;
- (4) The providing of assistance shall not be related to a military offence.

Section 10 The state having a mutual assistance treaty with Thailand shall submit its request for assistance directly to the Central Authority. The state which has no such treaty shall submit its request through diplomatic channel.

A request for assistance shall conform to the forms, regulations, means and conditions defined by the Central Authority.

Section 11 Upon receipt a request for assistance from a foreign state, the Central Authority shall consider and determine whether such request is eligible for the providing of assistance under this Act and has followed the process correctly as well as accompanied by all appropriate supporting documents.

If such request is eligible for the providing of assistance, and in line with the process, as well as accompanied by all appropriate supporting documents, the Central Authority shall transmit the said request to the Competent Authorities for further execution.

If such request is not eligible for the providing of assistance, or must be subject to some essential conditions before the assistance is provided, if it is not in line with the process or has not been accompanied by all appropriate supporting documents required, the Central Authority shall refuse to provide assistance and notify the Requesting State the reasons thereof, or indicate the required conditions, or the causes of impossibility to execute the request.

If the Central Authority is of the view that the execution of a request may interfere with the investigation, inquiry, prosecution, or other criminal proceeding pending its handling in Thailand, he may postpone the execution of the said request or may execute it under certain conditions set by him and notify the Requesting State thereabout.

A determination of the Central Authority with regard to the providing of assistance shall be final, unless otherwise alternated by the Prime Minister.

(b) Observations on the implementation of the article

467. Thailand is compliant with the provision under review.

468. Authorities met during the country visit confirmed that Thailand can execute a request in accordance with procedures specified in the request to the extent that such execution would not be contrary to Thai law.

Article 46 Mutual legal assistance

Paragraph 18

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

469. Thailand cited the following measures:

Rules of the Chief Justice on the hearing of witnesses in a criminal case by way of video conference B.E. 2556 (2013)

Article 13 In the case of a witness who resides in a foreign country, the Court adjudicating the case may allow the witness to testify at a suitable place and has the facilities that allow for the witness testimony to be conducted by video conferencing. In this regard, the Court shall designate a person who the Court views as appropriate to be the witness, and the Articles 4 to 12 of the Rules shall apply mutatis mutandis.

If the place in paragraph 1 is a Court in a foreign country, it shall be in accordance with agreements between them or the prevailing international practice, as the case may be.

470. Thailand indicated that articles 4 to 12 provided for the procedure for witness testimony within the country but outside of the Courts.

(b) Observations on the implementation of the article

471. Articles (4) to (13) of the Rules of the Chief Justice on the hearing of witnesses in a criminal case by way of video conference (2013) regulate the use of videoconference.

472. Authorities met during the country visit indicated that Thailand has had previous experience in this area with regard to MLA requests in non-corruption related cases.

Article 46 Mutual legal assistance

Paragraph 19

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State

Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

473. Thailand cited the following measures:

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS B.E.2535 (1992)

Section 39 The requesting agency shall comply with the commitment of Thailand towards the Requested State regarding the use of information or evidence for the purposes specified in the request.

The requesting agency shall also comply with the commitment of Thailand towards the Requested State regarding the confidentiality of the requested information or evidence unless such information or evidence is necessary for the public trial which is the consequence of the investigation, inquiry, prosecution or other criminal proceeding referred to in the request.

(b) Observations on the implementation of the article

474. Section 39 of the MLA Act regulates the use and confidentiality of the information or evidence furnished by the requested State. Thailand does not provide for the disclosure of exculpatory information or evidence.

475. Thailand should provide for the disclosure of exculpatory information or evidence in proceedings other than those stated in the request.

Article 46 Mutual legal assistance

Paragraph 20

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

476. Thailand indicated that there were no corresponding provisions in Thai law but in practice, Thailand can comply with a request to keep confidential the fact and substance of the request.

(b) Observations on the implementation of the article

477. According to the authorities, Thailand would comply with a request for confidentiality from a requesting State, despite the lack of relevant provision.

478. For legal certainty, Thailand should include in its legislation a provision ensuring the confidentiality of the fact and substance of incoming MLA requests.

Article 46 Mutual legal assistance

Paragraph 21

21. *Mutual legal assistance may be refused:*

(a) *If the request is not made in conformity with the provisions of this article;*

(b) *If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*

(c) *If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*

(d) *If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

(a) Summary of information relevant to reviewing the implementation of the article

479. Thailand cited the following measures:

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS B.E.2535 (1992)

Section 9 The providing of assistance to a foreign state shall be subject to the following conditions:

- (1) Assistance may be provided even there exists no mutual assistance treaty between Thailand and the Requesting State provides that such state commits to assist Thailand under the similar manner when requested;
- (2) The act which is the cause of a request must be an offence punishable under Thai laws unless when Thailand and the Requesting state have a mutual assistance treaty between them and the treaty otherwise specifies provides, however, that the assistance must be conformed to the provisions of this Act;
- (3) A request may be refused if it shall affect national sovereignty or security, or other crucial public interests of Thailand, or relate to a political offence;
- (4) The providing of assistance shall not be related to a military offence.

(b) Observations on the implementation of the article

480. Thailand is compliant with the provision under review.

Article 46 Mutual legal assistance

Paragraph 22

22. *States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.*

(a) Summary of information relevant to reviewing the implementation of the article

481. Thailand stated that there were no corresponding provisions since offences that involve fiscal matters were not grounds for refusal.

(b) Observations on the implementation of the article

482. The fact that an offence also involves fiscal matters are not recognized as a ground for refusal of the MLA.

Article 46 Mutual legal assistance

Paragraph 23

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

483. Thailand cited the following measures:

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS B.E.2535 (1992)

Section 8 There shall exist a board comprising representatives from the Ministry of Defence, the Ministry of Foreign Affairs, the Ministry of Interior, the Ministry of Justice, the Office of the Attorney General, as well as other distinguished people not more than four persons as its members and one public prosecutor designated by the Board as its Secretary. The Board shall provide opinion to assist the Central Authority in consideration and determination of the providing for or seeking assistance from foreign states where such matter may affect national sovereignty or security, crucial public interests, international relation, or relate to a political or military offence.

When an assistance is sought under Section 10 or Section 36 and the process under Section 11 has already been completed, the Central Authority shall promptly refer the matter to the Board for its opinion unless the process has been otherwise established by the Board.

If there shall be a dissent between the opinion of the Board and the determination of the Central Authority, then the latter shall refer the case to the Prime Minister for his ruling in accordance with Section 11 paragraph five or Section 38 paragraph two as the case may be.

Section 9 The providing of assistance to a foreign state shall be subject to the following conditions:

- (1) Assistance may be provided even there exists no mutual assistance treaty between Thailand and the Requesting State provides that such state commits to assist Thailand under the similar manner when requested;
- (2) The act which is the cause of a request must be an offence punishable under Thai laws unless when Thailand and the Requesting state have a mutual assistance treaty between them and the treaty otherwise specifies provides, however, that the assistance must be conformed to the provisions of this Act;
- (3) A request may be refused if it shall affect national sovereignty or security, or other crucial public interests of Thailand, or relate to a political offence;
- (4) The providing of assistance shall not be related to a military offence.

Section 11 Upon receipt a request for assistance from a foreign state, the Central Authority shall consider and determine whether such request is eligible for the providing of assistance under this Act and has followed the process correctly as well as accompanied by all appropriate supporting documents.

If such request is eligible for the providing of assistance, and in line with the process, as well as accompanied by all appropriate supporting documents, the Central Authority shall transmit the said request to the Competent Authorities for further execution.

If such request is not eligible for the providing of assistance, or must be subject to some essential conditions before the assistance is provided, if it is not in line with the process or has not been accompanied by all appropriate supporting documents required, the Central Authority shall refuse to provide assistance and notify the Requesting State the reasons thereof, or indicate the required conditions, or the causes of impossibility to execute the request.

If the Central Authority is of the view that the execution of a request may interfere with the investigation, inquiry, prosecution, or other criminal proceeding pending its handling in Thailand, he

may postpone the execution of the said request or may execute it under certain conditions set by him and notify the Requesting State thereabout.

A determination of the Central Authority with regard to the providing of assistance shall be final, unless otherwise altered by the Prime Minister.

(b) Observations on the implementation of the article

484. Pursuant to section 11 of the MLA Act, reasons should be given in case of refusal of the MLA request.

Article 46 Mutual legal assistance

Paragraph 24

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

485. Thailand cited the following measures:

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS B.E.2535 (1992)

Section 7 The Central Authority shall have the following authority and functions:

- (1) To receive the request for assistance from the Requesting State and transmit it to the Competent Authorities;
- (2) To receive the request seeking assistance presented by the agency of the Royal Thai Government and deliver to the Requested State;
- (3) To consider and determine whether to provide or seek assistance;
- (4) To follow and expedite the performance of the Competent Authorities in providing assistance to a foreign state for the purpose of expeditious conclusion;
- (5) To issue regulations or announcement for the implementation of this Act;
- (6) To carry out other acts necessary for the success of providing or seeking assistance under this Act.

486. Thailand stated that in practice, the Central Authority and Competent Authorities will execute the request promptly and liaise with the Requesting State with regard to the request and provide regular progress updates. Requests from countries with an MLAT with Thailand can be directly transmitted to the Central Authority and do not require the additional 2-5 days that it takes for the Ministry of Foreign Affairs to notify the CA.

(b) Observations on the implementation of the article

487. Thailand has legislatively implemented the provision under review.

Article 46 Mutual legal assistance

Paragraph 25

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

488. Thailand cited the following measures:

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS B.E.2535 (1992)

Section 11 Upon receipt a request for assistance from a foreign state, the Central Authority shall consider and determine whether such request is eligible for the providing of assistance under this Act and has followed the process correctly as well as accompanied by all appropriate supporting documents.

If such request is eligible for the providing of assistance, and in line with the process, as well as accompanied by all appropriate supporting documents, the Central Authority shall transmit the said request to the Competent Authorities for further execution.

If such request is not eligible for the providing of assistance, or must be subject to some essential conditions before the assistance is provided, if it is not in line with the process or has not been accompanied by all appropriate supporting documents required, the Central Authority shall refuse to provide assistance and notify the Requesting State the reasons thereof, or indicate the required conditions, or the causes of impossibility to execute the request.

If the Central Authority is of the view that the execution of a request may interfere with the investigation, inquiry, prosecution, or other criminal proceeding pending its handling in Thailand, he may postpone the execution of the said request or may execute it under certain conditions set by him and notify the Requesting State thereabout.

A determination of the Central Authority with regard to the providing of assistance shall be final, unless otherwise altered by the Prime Minister.

(b) Observations on the implementation of the article

489. Pursuant to section 11 of the MLA Act, the execution of the MLA request might be postponed.

Article 46 Mutual legal assistance

Paragraph 26

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

490. Thailand cited the following measures:

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS B.E.2535 (1992)

Section 11 Upon receipt a request for assistance from a foreign state, the Central Authority shall

consider and determine whether such request is eligible for the providing of assistance under this Act and has followed the process correctly as well as accompanied by all appropriate supporting documents.

If such request is eligible for the providing of assistance, and in line with the process, as well as accompanied by all appropriate supporting documents, the Central Authority shall transmit the said request to the Competent Authorities for further execution.

If such request is not eligible for the providing of assistance, or must be subject to some essential conditions before the assistance is provided, if it is not in line with the process or has not been accompanied by all appropriate supporting documents required, the Central Authority shall refuse to provide assistance and notify the Requesting State the reasons thereof, or indicate the required conditions, or the causes of impossibility to execute the request.

If the Central Authority is of the view that the execution of a request may interfere with the investigation, inquiry, prosecution, or other criminal proceeding pending its handling in Thailand, he may postpone the execution of the said request or may execute it under certain conditions set by him and notify the Requesting State thereabout.

A determination of the Central Authority with regard to the providing of assistance shall be final, unless otherwise altered by the Prime Minister.

(b) Observations on the implementation of the article

491. Despite the lack of a legal obligation to consult before refusing or postponing the execution of the MLA request, authorities met during the country visit indicated that such consultation is done as a matter of a standard practice unless it was clear that the request does not fulfil the requirements.

492. Although consultations are held as a matter of practice before assistance is refused or postponed, it is recommended that Thailand specify the matter in its domestic law or procedure.

Article 46 Mutual legal assistance

Paragraph 27

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

493. Thailand cited the following measures:

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS B.E.2535 (1992)

Section 40: No person entering to testify or give statement in Thailand in accordance with this Act shall be subject to service of process or be detained or subject to any other restriction of personal

liberty by reason of any acts which preceded his departure from the Requested State.

The safeguard in paragraph one shall cease when the person, having had the opportunity to leave Thailand within fifteen consecutive days after notification that his presence was no longer required by the appropriate authorities, shall have nonetheless stayed in or voluntarily returned after having left Thailand.

(b) Observations on the implementation of the article

494. Thailand is compliant with the provision under review.

Article 46 Mutual legal assistance

Paragraph 28

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

495. Thailand cited the following measures:

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS B.E.2535 (1992)

Section 12 The Central Authority shall transmit the request for assistance from a foreign state to the following Competent Authorities for execution:

- (1) The request for taking statement of persons, or providing documents, articles, and evidence out of Court, the request for serving documents, the request for searches, the request for seizures documents or articles, and the request for locating persons shall be transmitted to the Director General of the Police Department;
- (2) The request for taking the testimony of persons and witnesses or adducing document and evidence in the Court, as well as the request for forfeiture or seizure of properties shall be transmitted to the Chief Public Prosecutor for Litigation;
- (3) The request for transferring persons in custody for testimonial purposes shall be transmitted to the Director General of the Correctional Department.
- (4) The request for initiating criminal proceedings shall be transmitted to the Director General of the Police Department and the Chief Public Prosecutor for Litigation.

Section 42: All costs related to the providing of assistance to a foreign state and in requesting assistance from a foreign state shall be in line with rules, means, and conditions set forth in the Ministerial Regulations.

496. Ministerial Regulation No.2 B.E. 2537 (1994) issued under the Act on Mutual Assistance in Criminal Matters of 1992 provides that the costs shall be borne by the Competent Authority in Section 12, unless a treaty between Thailand and another country states otherwise or the Requesting State agrees to bear the cost.

497. Thailand provided an example of its MLAT with China:

Article 18 Expenses

- a. The Requested Party shall meet the cost for executing the request, but the Requesting Party shall bear the following:
 - i. Expenses for persons to travel to, stay in and leave from the Requested Party under Article 8 (4);
 - ii. Allowances or expenses for persons to travel to, stay in and leave from the Requesting Party under Article 10 or 11 in accordance with the standards or regulations of the place where such allowances or expenses have been incurred;
 - iii. Expenses and fees of experts; and
 - iv. Expenses and fees of translation and interpretation.
- b. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Parties shall consult to determine the terms and conditions under which the request can be executed.

(b) Observations on the implementation of the article

498. Thailand is compliant with the provision under review.

Article 46 Mutual legal assistance

Paragraph 29

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

499. Thailand cited the following measures:

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS B.E.2535 (1992)

Section 11 Upon receipt a request for assistance from a foreign state, the Central Authority shall consider and determine whether such request is eligible for the providing of assistance under this Act and has followed the process correctly as well as accompanied by all appropriate supporting documents.

If such request is eligible for the providing of assistance, and in line with the process, as well as accompanied by all appropriate supporting documents, the Central Authority shall transmit the said request to the Competent Authorities for further execution.

If such request is not eligible for the providing of assistance, or must be subject to some essential conditions before the assistance is provided, if it is not in line with the process or has not been accompanied by all appropriate supporting documents required, the Central Authority shall refuse to provide assistance and notify the Requesting State the reasons thereof, or indicate the required conditions, or the causes of impossibility to execute the request.

If the Central Authority is of the view that the execution of a request may interfere with the investigation, inquiry, prosecution, or other criminal proceeding pending its handling in Thailand, he may postpone the execution of the said request or may execute it under certain conditions set by him and notify the Requesting State thereabout.

A determination of the Central Authority with regard to the providing of assistance shall be final, unless otherwise alternated by the Prime Minister.

Section 18: Upon receipt the request for assistance from a foreign state to provide documents or information in the possession of the agencies of the Royal Thai Government, the Central Authority shall transmit the request to the agency having such documents or information in its possession, and the said agency shall submit the said documents or information to the Central Authority.

Section 19: If the documents or information sought under Section 18 are those should not be published and the agency maintaining such documents or information considers it impossible to disclose or should not disclose the said documents or information, or possible to disclose them under certain conditions, the said agency shall acknowledge the Central Authority the causes of impossibility or the conditions required for the disclosure of such documents or information.

Section 20: In providing of documents according to the request for assistance from a foreign state under this part, the official in charge of keeping such documents shall attest them, in accordance with the forms and means defined by the Central Authority unless otherwise specified by the treaty, then the provisions of the treaty shall be prevailed.

(b) Observations on the implementation of the article

500. Thailand is compliant with the provision under review.

Article 46 Mutual legal assistance

Paragraph 30

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

501. Thailand indicated that it had concluded MLATs with the following countries:

USA (1993); UK (1997); Canada (1994); France (2000); Norway (2000); China (2005); South Korea (2005); India (2003); Poland (signed 2004); Sri Lanka (signed 2004); Peru (2005); Belgium (signed 2005) and Australia (signed 2006).

502. At the regional level, Thailand is a party to the Treaty on Mutual Legal Assistance in Criminal Matters Among Like-Minded ASEAN Member Countries which entered into force for among all the ten Member States in 2013.

503. Thailand indicated that the Attorney-General's Office on average received and requested around 60 cases of mutual assistance per year.

(b) Observations on the implementation of the article

504. Thailand has signed several agreements and arrangements relating to MLA (including bilateral treaties with Australia, Belgium, Canada, China, France, Malaysia, Norway, the UK, the US and other countries).

Article 47 Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

505. Thailand cited the following measures:

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS B.E.2535 (1992) PART 8 Initiating Proceedings upon Request

Section 31 Upon receipt of the request for assistance from a foreign state which is competent to initiate criminal proceeding but wishes the proceeding which is subject to the Jurisdiction of Thai Court to be initiated in Thailand, the Central Authority shall consider whether it is appropriate to initiate the proceeding requested, if so shall notify the Competent Authorities under the Criminal Procedure Code to carry out the said proceeding and shall have such Competent Authorities to report the result thereof.

506. The above provisions concern the request for initiation of proceedings in Thailand but there are no provisions that relate directly to the transfer of proceedings for the prosecution of an offence.

(b) Observations on the implementation of the article

507. The legislation does not provide for the transfer of criminal proceedings.

508. It was recommended that Thailand consider establishing a procedural framework for the transfer of criminal proceedings.

Article 48 Law enforcement cooperation

Paragraph 1

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) *The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;*

(ii) *The movement of proceeds of crime or property derived from the commission of such offences;*

(iii) *The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*

(c) *To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;*

(d) *To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;*

(e) *To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;*

(f) *To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.*

(a) Summary of information relevant to reviewing the implementation of the article

509. Thailand cited the following measures:

THE ORGANIC ACT ON COUNTER CORRUPTION B.E. 2542 (1999)

Section 19: The National Anti-Corruption Commission shall have the following powers and duties:

(1) to inquire into facts and summarise cases along with an opinion in a submission to the Senate under Chapter 5, Removal from Office;

(2) to inquire into facts and summarise cases along with an opinion to be referred to the Prosecutor-General for the purpose of prosecution before the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions under Chapter 6, Criminal Proceedings Against Persons Holding Political Positions under Section 275 of the Constitution;

(3) to inquire and determine whether other Persons Holding Political Positions who are not a person under (2) and state official have become unusually wealthy and his or her asset shall devolve upon the State in accordance with the rules and procedure specified under this Organic Law;

(4) to inquire and decide whether a person holding a political position other than a person under (2) or a State official holding a position starting from a high level executive or government official holding a position starting from a division director has become unusually wealthy or has committed an offence of corruption, malfeasance in office or malfeasance in judicial office, or a related offence, including to take action against a State official or government official holding a lower level position who has jointly committed an offence with the person holding such position or with a person holding a political position, or who has committed an offence in such a manner that the NACC considers an action appropriate as provided by the NACC by publication in the Government Gazette;

....

(14) to take action relating to foreign affairs and become a center for international cooperation for the benefit of counter corruption so as to be in conformity with the international legal obligations and

agreements pertaining to counter corruption;

Section 25. In the performance of duties under this Organic Act, the National Anti-Corruption Commission shall have the following powers:

- (1) to issue an order instructing a government official, official or employee of a government agency, state agency, state enterprise or local administration to perform all such acts as are necessary for the performance of duties of the NACC or to require the presentation of relevant documents or evidence from any person or to summon any person to give statements or testimonies for the benefit of a Fact Inquiry;
- (2) to file an application with the competent Court for an issuance of a warrant permitting an entry into a dwelling-place, place of business or any other place including a vehicle of any person from sunrise to sunset or during working hours for the purposes of inspecting, searching, seizing or attaching documents, property or other evidence related to the matter under inquiry; and if such action is not completed within such time, it may be continued further until completion;
- (3) to address a written request to a government agency, state agency, state enterprise, local administration or private agency to carry out a particular act for the purpose of the performance of duties of, or the conduct of a Fact Inquiry or the making of a determination by, the NACC;
- (4) to prescribe regulations with respect to the rules and procedures for the payment of per diem, travelling fees and remuneration of a witness and in connection with the performance of duties of competent officials or other matters, for the execution of this Organic Act;
- (5) to prescribe the regulation with respect to the payment of a reward under Section 30.

Section 25/1. In the interest of countering corruption, the NACC may notify any agencies or financial institution to allow a member or member of an inquiry sub-committee to gain access to data relating to the alleged culprit or any person against whom there is enough evidence to show that he or she was involved in the alleged matter for the benefit of the Fact Inquiry or for the benefit of deliberations carried out by the NACC or inquiry subcommittee.

Rules, procedures, and conditions for a request by a member or member of an inquiry sub-committee to access data held by an agency or financial institution under paragraph one shall be in accordance with the regulation prescribed by the NACC and shall be subject to the law, rule, or by law governing the protection of information of such agencies.

With regard to data held by an agency or financial institution which cannot be accessed by a member or member of an inquiry sub-committee, the NACC shall file a petition in the court having competent jurisdiction for an order to allow the access.

Section 26. In criminal proceedings against a state official under this Organic Act, the National Anti-Corruption Commission shall have the following powers:

- (1) to inquire into facts and gather evidence in order to uncover facts or prove the commission of an offence, and in order to obtain custody of the offender for prosecution;
- (2) to file an application with the competent court for the issuance of a warrant of arrest and custody of the alleged culprit who, from the Fact Inquiry, appears to be an offender or against whom the NACC has passed a resolution that the allegation has a prima facie case, for the purpose of referring such person to the Prosecutor-General for further proceeding.

The NACC may entrust an inquiry officer to conduct a Fact Inquiry and evidence gathering under subsection (1) on its behalf.

The conduct of the inquiry officer under paragraph two shall be in accordance with the rules, procedures, and conditions prescribed by the NACC.

ANTI-MONEY LAUNDERING ACT B.E. 2542 (1999)

Section 46 In the case where there is appropriate evidence that any account of a financial institution's customer, communication device or equipment or computer is used or may be used in the commission of an offence of money laundering, the competent official entrusted in writing by the Secretary-General may file an ex parte application with the Civil Court for an order permitting the competent official to have access to the account, communicated data or computer data, for the acquisition thereof. In the case of paragraph one, the Court may give an order permitting the competent official who has

filed the application to take action with the aid of any device or equipment as deemed appropriate, provided that the permission on each occasion shall not be for the period of more than ninety days. Upon the Court's order granting permission under paragraph one or paragraph two, the person concerned with such account, communicated data or computer data to which the order relates shall render cooperation for the implementation in accordance with the provision of this Section.

SECURITIES AND EXCHANGE ACT B.E. 2535 (1992)

Section 264: In executing his duties, a competent officer shall have the power to:

- (1) enter into the place of business or premises of a securities company, mutual fund supervisor, custodian, the Securities Exchange, over-the-counter center, clearing house, securities depository center, securities registrar or the place where the data of such securities company or institution is collected or processed by computers or any other equipment, during the hours between sunrise and sunset, or during the business hours of such places, in order to examine the operations, assets and liabilities of such securities company or institution, including documents, evidence or information concerning such securities company or institution;
- (2) enter into the place of business of a promoter of a public limited company, a company which issues securities or an owner of securities who offers for sale securities to the public or any person, or the place where the data of such person is collected or processed by computers or any other equipment, during the hours between sunrise and sunset, or during the business hours of such places, to inspect accounts or other related documents and evidence;
- (3) enter into a commercial bank, financial institution or any place during the hours between sunrise and sunset, or during the business hours of such places, to inspect accounts, documents or evidence which may be related to the commission of offences under the provisions of this Act;
- (4) seize or attach documents, or evidence related to the commission of offences under the provisions of this Act for the purpose of inspection or taking legal action;
- (5) order a director, officer, employee or auditor of a securities company, mutual fund, mutual fund supervisor, custodian, the Securities Exchange, over-the-counter center, clearing house, securities depository center, securities registrar and persons who collect or process the data of such securities company or institution by computers or any other equipment, to testify or to deliver copies of or present accounts, documents, seals or other evidence related to the businesses, operations, assets and liabilities of such securities company or institution;
- (6) order any person who purchases or sells securities with or through a securities company or member of the Securities Exchange or over-the-counter center to testify or deliver copies of or present accounts, documents and other evidence related to the purchase or sale of securities;
- (7) order any person who may be of use in executing duties of the competent officer to testify or deliver copies of or present accounts, documents, evidence or any objects related to or necessary for the execution of the duties of the competent officer;
- (8) enter into a place of business to inspect the condition or the operations of any debtor of any securities company during the hours between sunrise and sunset or during the business hours of such place.

In executing duties of the competent officer under the first paragraph, the persons concerned shall give reasonable assistance.

After having entered and inspected in accordance with (1), (2), (3) or (8), if the inspection has not been completed, the competent officer may continue the inspection into the night or beyond the business hours of such places.

The exercise of powers of the competent officer in accordance with (6), (7) and (8) shall be carried out against the person who is directly involved in the matter under inspection and shall require prior approval from the SEC Office and in the case of (6) and (7), the competent officer shall specify a reasonable period for such person to comply with the order.

Section 264/1: Upon request of a foreign authority with the power under respective foreign law on securities and exchange or other laws of similar nature, the SEC Office shall have the power to provide assistance by gathering necessary information or evidence for the purpose of determining whether there has been any violations of the law on securities and exchange or other laws of similar

nature of the requesting country; provided that the assistance shall be subject to the following conditions:

- (1) the assistance shall not prejudice the public interest of Thailand or the preservation of national confidentiality;
- (2) the matter which is the ground for such assistance must be categorized as the same type of offence under this Act;
- (3) the requesting foreign authority agrees or consents to provide reciprocal assistance to the SEC Office upon request.

For purposes of this Section, the provision of Section 264 shall apply mutatis mutandis.

510. In response to Section 19(14), the Thailand Anti-Corruption Coordination Center (TACC) was established following the ratification of the UNCAC to serve as a national focal unit for inter-agency coordination of anti-corruption efforts, particularly those pertaining to corruption investigation, international asset recovery and ensuring Thailand's fulfilment its international obligations such as the UN Convention against Corruption.

511. Since its establishment in 2009, the center has provided assistance (mainly in the form of informal assistance) to domestic and foreign counterparts in three key areas:

1. Supporting international investigation

- Obtaining/verifying information or intelligence to support corruption investigation; - Locating persons of interest (i.e. suspects, witnesses, fugitives)
- Conducting non-intrusive surveillance of persons and properties of interest; - Obtaining information from cooperating witnesses/persons

2. Providing Legal Advice

- Provide legal advice and interpretation of relevant Thai laws to foreign counterparts (i.e. Thai criminal code, Criminal Procedural code, corruption-related law);
- Recommend the most appropriate and efficient legal strategies and procedures when requesting for law enforcement assistance in Thailand

3. Facilitating/Coordinating International Requests for Assistance Relating to Corruption Cases

- Play a facilitating/coordinating role in ensuring international requests for assistance relating to corruption cases are being delivered to and acted upon by domestic agencies.

512. The TACC is, therefore, acting as the coordinating office, in collaboration with relevant counter corruption agencies, both domestically and internationally. It is the focal point for anti-corruption cases and recovery of assets. Bilateral and multilateral agreements with domestic and international organizations regarding counter corruption have been executed in accordance with this Article, such as Vietnam, Malaysia, Indonesia, Brunei, Laos, Czech, Austria, SEA-PAC, APEC, ADB/OECD.

513. The NACC recognizes the importance of international cooperation in the fight against corruption, which is has evolved to become a complex and transnational phenomenon. As such, it strives to be an active player at the international, regional and bilateral levels:

- International Level: UN Convention against Corruption (UNCAC), OECD Working Group on Bribery, International Anti-Corruption Academy (ICAC), International Association of Anti-Corruption Authorities (IAACA), StAR/INTERPOL Asset Recovery Platform
- Regional Level: APEC-ACT Experts Working Group, ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, South-East Asian Parties Against Corruption (SEA-PAC)
- Bilateral Level: NACC has concluded over 25 MoUs with its foreign counterparts across the various regions, including seven out of nine of its ASEAN counterparts

514. As mentioned above, the Technical Assistance and Cooperation Committee (TACC) is a cooperation center for competent authorities and service agencies of member states. It is established by the NACC's authority according to section 19(14) of the Organic Act on Counter Corruption B.E. 2542 (1999) which prescribes that the NACC "shall have the authority to proceed with the management of foreign affairs by being a center of the international cooperation for the benefit of counter corruption in accordance with the international commitment and agreements on counter corruption ..."

515. Although there is cooperation between competent authorities and member states' service agencies and academic knowledge sharing (e.g., seminar to exchange related experiences and knowledge, sending NACC's personnel to trainings organized by other organizations, such as International Anti - Corruption Academy: IACA and the Basel Institute on Governance), the NACC has not considered a posting of liaison officers under the bilateral agreements.

516. Example provisions of international cooperative arrangements may be provided later.

(b) Observations on the implementation of the article

517. Thai law enforcement authorities cooperate through a number of mechanisms and networks, including INTERPOL, StAR/INTERPOL Asset Recovery Platform and the Egmont Group.

518. Thailand has a range of tools for communication and analysis at the international level. Standard communication channels are used, in addition to secure covert channels like INTERPOL's I24/7 database and the Egmont Secure Web (ESW).

519. The Thailand Anti-Corruption Coordination Center (TACC), under the NACC, acts as the coordinating office, in collaboration with relevant counter corruption agencies, both domestically and internationally. It is the focal point for anti-corruption cases and recovery of assets.

520. Thailand has not been involved in exchanges of personnel, but has participated in joint study visits and training workshops.

521. Thailand is encouraged to strengthen its cooperation in the area of law enforcement, including through the exchange of personnel.

Article 48 Law enforcement cooperation

Paragraph 2

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

(a) Summary of information relevant to reviewing the implementation of the article

522. Thailand indicated that the NACC had concluded bilateral and multilateral arrangements with partner agencies on a domestic and international level in an effort to strengthen international cooperation in combatting corruption. Currently, the NACC has concluded 19 arrangements with various countries such as Vietnam, Malaysia, Indonesia, Brunei, Lao P.D.R., Mongolia, China, South Korea, Bhutan, Morocco, Egypt, Brazil, UNODC World Bank (Integrity Vice Presidency), International Anti-Corruption Academy Basel Institute on Governance and the World Bank (Thailand).

523. Cooperation had recently been provided under the bilateral framework of cooperation to Bhutan and Mongolia.

524. Thailand indicated that it considered the Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by the Convention.

(b) Observations on the implementation of the article

525. Thailand considers the Convention as the basis for mutual law enforcement cooperation. Thailand has also signed several agreements on such cooperation. The FIU has also signed several memoranda of understanding with its counterparts and the TACC has signed bilateral and multilateral agreements with domestic and international organizations regarding counter corruption.

Article 48 Law enforcement cooperation

Paragraph 3

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

526. Thailand indicated that it had exchanged information regarding the offences covered by the Convention with other States Parties via domestic channels of communication and several international channels as well, such as through the Global Focal Point Initiative of the Stolen Asset Recovery (StAR) and INTERPOL.

(b) Observations on the implementation of the article

527. Thailand has an Act on computer-crimes and has also established special units for the Fight against Cyber-Crimes under the Police and under the Department of Special Investigation (DSI) and under the Ministry of science and technology.

Article 49 Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case

basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

528. Thailand indicated that it had not adopted measures to establish joint investigative bodies.

(b) Observations on the implementation of the article

529. Thailand does not have legislation or agreements or arrangements regulating joint investigations and it did not consider concluding such agreements.

530. To implement the provision under review, Thailand should consider concluding bilateral or multilateral agreements or arrangements to allow for the establishment of joint investigative bodies.

Article 50 Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of the article

531. Thailand indicated that it had not implemented the article under review and that, while no efforts had been taken so far with regard to corruption. However, controlled delivery was used for other serious crimes such as in drug trafficking cases.

(b) Observations on the implementation of the article

532. It was explained during the country visit that the Department of Special Investigation (DSI) of the Ministry of Justice can use electronic surveillance and undercover operations when dealing with special cases, pursuant to Sections 23-27 of the Special Investigation Act. Although the NACC may request the assistance from any governmental agency according to section 25 (3) of the Organic Act on Counter Corruption, it is uncertain that the DSI can use special investigative techniques in corruption cases which are not classified as special cases according to Section 21 of the Special Investigation Act.

533. For legal certainty, Thailand should review its legislation to explicitly allow the use of special investigative techniques in corruption cases, and establish the admissibility of evidence derived therefrom. Thailand may wish to include the international use of special investigative techniques in such reforms.

(c) Technical assistance needs

534. Thailand indicated that the following forms of technical assistance would assist in the implementation of article 50:

- Summary of good practices/lessons learned;
- Capacity-building programmes for authorities responsible for designing and managing the use of special investigative techniques;
- Model agreements/arrangements;
- Capacity-building programmes for authorities responsible for international cooperation in criminal/investigative matters.