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to the United Nations
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Note by the Secretariat

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II. 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 9 December 2003 and ratified it on 1 March 2011.

The country'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 Organic Act on Anti-Corruption, the Anti-Money-Laundering Act, the Civil Service Act, the Public Procurement and Supplies Management Act, the Official Information Act, the Criminal Code, the Criminal Procedure Code, the Corruption and Misconduct Procedures Act, the Financial Institution Businesses Act and the Mutual Assistance in Criminal Matters Act.

Relevant institutions in the prevention of and fight against corruption include the National Anti-Corruption Commission (NACC), the Anti-Money-Laundering Office (AMLO), the Auditor General, the Bank of Thailand, the Comptroller General's Department, the Election Commission, the Federation of Accounting Professions, the Office of the Attorney General, the Office of the Civil Service Commission, the Office of the Public Sector Anti-Corruption Commission and the Office of the Official Information Commission.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

The country's legal and policy framework for the prevention of corruption includes provisions in the 2017 Constitution, the Organic Act on Anti-Corruption, the 20-year National Strategy (2018–2037), the twelfth National Economic and Social Development Plan (2017–2021) and the National Anti-Corruption Strategy Phase III (2017–2021). The National Anti-Corruption Strategy comprises six different substrategies, each addressing a priority area in the fight against corruption.

The Strategy is implemented at the national level across the governmental and non-governmental sectors. Accordingly, the NACC has established six subcommittees responsible for mobilizing each substrategy and setting up monitoring and evaluation mechanisms. At the government level, implementation is ensured through a three-tier mechanism at the policy, national and operational levels by the National Anti-Corruption Committee, the National Anti-Corruption Centre and anti-corruption operation centres established in all ministries or their equivalent. The latter coordinate, direct and monitor the implementing agencies' performance in line with government policy and report to the NACC and the National Anti-Corruption Coordination Centre for presentation to the National Anti-Corruption Committee and the Cabinet. The Integrated Anti-Corruption and Malfeasance Plan has been established to act as a framework for integrated actions among government agencies to prevent and suppress corruption in accordance with the aforementioned Strategy. Nonetheless, coordination in the implementation of these policies and mechanisms is relatively weak. In addition, there have been no impact assessments or reports to evaluate relevant measures.

The NACC engages in various preventive practices and measures, including the provision of training courses for public officials and executives and education programmes and initiatives to raise public awareness of corruption risks.

The NACC has the authority to propose amendments to laws or measures that may constitute channels for corruption or misconduct or that may prevent public officials from performing their duties in the public interest (sect. 32 of the Organic Act on Anti-Corruption). The NACC also has the power and duty to issue and amend rules and regulations under the Act (sect. 5). Laws and administrative measures are revised whenever required and in line with international developments.

Thailand actively participates in anti-corruption programmes and initiatives at the international, regional and bilateral levels and has signed cooperation agreements with international organizations and foreign Governments and departments to promote collaboration on anti-corruption activities.

The NACC is the main preventive anti-corruption body in Thailand and has both corruption suppression and prevention functions (part 4, chapter XII of the Constitution). The nine commissioners of the NACC are appointed by the King upon the advice of the Senate for a limited term of seven years (sects. 232 and 233 of the Constitution) and may be removed for alleged wrongdoing or misconduct under certain circumstances (sects. 236 and 237 of the Constitution; sect. 19 of the Organic Act on Anti-Corruption). A budget for the implementation of anti-corruption projects and an annual expenditure budget are allocated to the NACC. NACC personnel are eligible to receive training to enhance their anti-corruption knowledge and capacity.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The administration of human resources as it relates to public officials is regulated under different laws, depending on the category of personnel, and is commonly based upon the merit system. The Civil Service Act serves as the framework for the regulation of personnel administrative matters and applies to ordinary civil servants.

During the recruitment process, a subcommittee is appointed by the relevant ministry or department to determine the criteria and methods of recruitment, with vacancies generally being announced on government websites or through public media. Candidates who successfully pass the selection process are recruited in the order in which they appear on the list of candidates.

Public officials can be promoted on the basis of performance and competency evaluations. Appeals against human resource decisions can be made to the Merit Systems Protection Committee (sects. 114–116 of the Civil Service Act and related rules), to the official(s) issuing the decision (sect. 44 of the Administrative Procedure Act), or to the Administrative Court (sect. 42 of the Administrative Court and Procedure Act), as appropriate.

Pay scales are established under section 50 of the Civil Service Act. Training, including on integrity, is continuously provided to various categories of public officials.

Thailand does not apply enhanced procedures for the selection, training and rotation of staff in positions considered vulnerable to corruption. The provisions of the Civil Service Act on training and measures to promote honesty and prevent conflicts of interest apply to all government officials (sects. 72–85).

While the Constitution establishes general requirements concerning candidature for election to public office, specific criteria are set out in the Organic Act on the Election of Members of the House of Representatives, B.E. 2561 (2018). Thailand has established measures regarding the transparency of election procedures at different levels of election and imposes sanctions on misconduct in election campaigns.

The funding of political parties and candidatures for elected public office is regulated in the Organic Act on Political Parties, B.E. 2560 (2017). The Act requires the disclosure of financial statements by political parties and imposes sanctions on violations (sects. 68 and 122).

The Constitution contains provisions on the prevention of conflicts of interest by members of the House of Representatives, senators and ministers (sects. 184–186). The Organic Act on Anti-Corruption contains a chapter on the prevention of conflicts of interest, while the Civil Service Act prohibits civil servants from seeking interests that may result in injustice or be detrimental to the honour of the public position (sect. 83). Furthermore, public officials are prohibited from having secondary employment in a private entity which may present a conflict of interest with the performance of their duties as public officials (sect. 126(4) of the Organic Act on Anti-Corruption). The acceptance of gifts is prohibited, with the exception of ethical gifts under prescribed criteria and amounts (sect. 128 of the Organic Act on Anti-Corruption).

However, there is no requirement for public officials to report outside activities, including non-financial interests, from which a conflict of interest may result with respect to their public functions, or to address such conflicts if they arise. A draft bill establishing conflicts of private and public interest as a criminal offence is currently under consideration.

Ethical standards for public officials are established in a code of conduct formulated by the Ombudsman under section 280 of the 2007 Constitution and in the Code of Ethics for Civil Servants (2009). The Office of the Civil Service Commission is drafting core values for public officials, as required by the 2017 Constitution (sect. 76, para. 3). Certain institutions have established additional ethical standards. The Office is responsible for monitoring the implementation of the Code of Ethics at the national level, and the head of each government agency has a duty to oversee compliance of the Code within the agency. Disciplinary measures may be taken in case of violations of the Code (clauses 18 and 19).

Public officials can report corruption to the NACC, the Damrongtham Centre (Ministry of the Interior), the police or other relevant agencies through various channels. Anonymous reporting is acceptable (sect. 60 of the Organic Act on Anti-Corruption), and reporting persons are protected from retaliation where necessary.

The Act on Judicial Service of the Courts of Justice provides that judicial discipline must be obeyed, and judicial investigation may be initiated by the Judicial Commission if a judge is suspected to have committed a breach of discipline. Regulations pertaining to other courts also contain rules on ethical standards and transparency requirements. All courts have their own codes of conduct or regulations to enhance judicial integrity and relevant training is available. Judicial performance evaluations cover ethical performance appraisals.

Title 3 of the Public Prosecution Service Act sets out the standards for the appointment and promotion (chapter 1), recruitment and selection (chapter 2), and removal (chapter 3) of prosecutors. In addition, title 4 contains rules on conflicts of interest (sect. 67). The performance of public prosecutors is governed by the Code of Ethics for Public Prosecutors and Personnel of the Office of the Attorney General as well as the Public Prosecution Service Act. Disciplinary measures may be applied in case of non-compliance with the Code (sect. 34 of the Code; sects. 60 and 84 of the Act). Ethics training is mandatory and conducted by the Public Prosecution Training Institute.

Public procurement and management of public finances (art. 9)

The Comptroller General's Department is responsible for overseeing procurement processes. Public procurement is decentralized and regulated by the Public Procurement and Supplies Management Act and its implementing regulation, which establishes tender criteria and the rules governing procurement. Three procurement methods, namely, open, selective and restricted tendering, may be used depending on the circumstances and the detailed rules in the Act (chapter VI). It is mandatory to publish invitations to tender in open tendering, while solicitation letters are used to notify business operators in other cases (sect. 62 of the Act). Contracts are usually

awarded pursuant to the criteria of the lowest price or the best price-quality ratio (sect. 65 of the Act). New e-market and e-bidding methods have been widely applied to prevent bid rigging. The Auditor General scrutinizes public procurements from a financial perspective. Audits under the Organic Act on State Audit include financial, performance, and compliance audits, in line with the international standards for supreme audit institutions established by the International Organization of Supreme Audit Institutions. Compliance audits are conducted on high-risk projects and projects reported by the public or by financial audit teams.

Aggrieved tendering parties can file complaints to the head of the procuring agency in the case of possible violations of rules and procedures, within seven days of the date of announcement of the bidding result (chapter XIV of the Public Procurement and Supplies Management Act). The result of the complaint is subject to further appeal to the Appeal Committee, whose decision is final and cannot be challenged except in relation to damages (sect. 119 of the Act). In addition to restrictions on procurement personnel being stakeholders of any business operator in the procurement (sect. 13 of the Act), the Comptroller General's Department provides mandatory training, including modules on ethics, to procurement officers in accordance with professional standards (sect. 49 of the Act).

The procedures for the preparation and adoption of the national budget are set out in the Constitution and the Budget Procedure Act. Government agencies and State enterprises must submit performance and budget expenditure reports to the Budget Bureau. The report on income and expenses covering the annual budget is audited by the State Audit Commission and published in the Gazette (sect. 49 of the Act). The Government's accounting framework and standards are established in the Act on the basis of the International Public Sector Accounting Standards. Risk management and internal control is mainly conducted through internal audits within each government agency.

The forgery of official documents is an offence (sect. 265 of the Criminal Code). In addition, under clause 57.6 of the Rules of the Office of the Prime Minister on Documentary Work, B.E. 2526, as amended, financial documents must be stored for not less than five years from the date of verification by the Office of the Auditor General.

Public reporting; participation of society (arts. 10 and 13)

Access to information is governed by the Official Information Act. Information is usually published in the Government Gazette or made available for public inspection by State agencies (sects. 7 and 9). Furthermore, information can be disclosed upon request, except as specified in the Act (sects. 11, 14 and 15). If information is not provided or public access to information is not facilitated, a complaint may be filed with the Official Information Commission (sect. 13). If a request is denied, an appeal may be lodged through the Commission to the information disclosure tribunal within 15 days (sect. 18). A person who disagrees with the decision may file a case with the administrative court. Sanctions are prescribed for violations of the Act (sects. 40 and 41).

Information service centres have been established to facilitate access to information, together with the use of government websites. Thailand has adopted the Licensing Facilitation Act to simplify administrative procedures in acquiring licences. The NACC issues periodic reports on corruption risks and specific anti-corruption topics.

The participation of society in public decision-making processes, including public consultation in legislative drafting, is ensured by the Constitution (sect. 77). Various activities contributing to the non-tolerance of corruption have involved civil society. However, the authorities reported that concrete support to promote civil society participation needed to be strengthened. The NACC has set up a subcommittee to design a curriculum on the prevention of corruption to be delivered at various levels of education.

As indicated above, the NACC provides a variety of channels to facilitate reporting by the public of corrupt conduct.

Private sector (art. 12)

Various laws are aimed at preventing corruption in the private sector, such as the Civil and Commercial Code and the Public Limited Company Act. Whistle-blower protections are available to persons reporting corruption in the private sector. The NACC has published guidelines on appropriate internal control measures for legal persons in order to prevent bribery. The registration of companies is provided for in the Code (sect. 1111) and the Act (sect. 39), with the same register being open to the public. Thailand has not reported any measures taken to prevent the misuse of procedures regulating private entities.

Section 127 of the Organic Act on Anti-Corruption establishes a post-employment restriction period of two years to restrict certain categories of public officials from undertaking key functions in any private business under the supervision, control or inspection of a State agency to which such public official was previously attached or for which such public official performed duties.

The Federation of Accounting Professions has powers and duties to formulate accounting, auditing and other standards related to accounting professions (sect. 7(3) of the Accounting Professions Act, B.E. 2547 (2004)).

Persons entrusted with accounting duties must retain accounts and supporting documents used for making entries in accounts for a period of not less than five years from the date of the account closure or until the accounts and documents are furnished (sect. 14 of the Accounting Act, B.E. 2543 (2000)), and are subject to penalties under chapter V of the Act.

There is no specific provision in the country's legislation prohibiting the tax deductibility of expenses constituting bribes.

Measures to prevent money-laundering (art. 14)

Financial institutions (including money or value service providers) and designated non-financial businesses and professions covered under the Anti-Money-Laundering Act are required to have a written policy and procedure for the assessment and management of risks related to money-laundering and the financing of terrorism and to conduct such assessments on a regular basis. They are also subject to requirements relating to customer due diligence, record-keeping and the reporting of suspicious transactions (see information provided in discussion of article 52 below). Thailand completed a national risk assessment in 2016.

Lawyers, notaries, certified accountants, auditors, leasing companies, pawn shops and small cooperatives are not covered by the anti-money-laundering regime or reporting requirements.

Ministerial Regulation No. 5 (2000) grants an exemption from suspicious transaction reporting requirements for transactions between certain government entities.

Thailand is taking steps to strengthen the implementation of anti-money-laundering controls, including the reporting of suspicious transactions, in the designated non-financial business and professional sectors, as there are reported weaknesses in this area.

The country's law enforcement authorities are authorized to engage in the international exchange of information both formally and informally. The AMLO is the central agency responsible for the exchange of information on money-laundering and the financing of terrorism. It has signed 52 memorandums of understanding with other countries and makes use of the channels for information exchange of the Egmont Group of Financial Intelligence Units. Domestic cooperation and information exchange also take place (sect. 38 of the Organic Act on Anti-Corruption). The AMLO

has signed 36 memorandums of understanding with domestic agencies to promote coordination pursuant to the Anti-Money-Laundering Act.

Thailand has a legal framework for the declaration and identification of cross-border movements of funds. The country recently amended its cross-border requirements to lower the reporting thresholds in line with the Financial Action Task Force standards and include bearer negotiable instruments among the funds that must be reported. The Customs Department monitors cross-border transfers and refers cases to the police for further action.

Article 33 of the Ministerial Regulation on Customer Due Diligence (2013) requires financial institutions to ensure that cross-border wire transfers of 50,000 baht or more contain the required originator and beneficiary information. However, the verification requirements apply only to originators who are customers of the financial institutions (art. 34 of the Ministerial Regulation) and to intermediary institutions. Requirements to maintain originator and beneficiary information only apply to customers of the ordering or beneficiary financial institution, respectively. Financial institutions are not required to conduct enhanced scrutiny of transfers containing incomplete originator information or to refrain from executing a transaction if money-laundering is suspected.

Thailand exchanges information through direct engagement with, inter alia, foreign law enforcement authorities, the International Criminal Police Organization (INTERPOL), the Association of Heads of Police of the Association of Southeast Asian Nations, the Egmont Group and the Asset Recovery Inter-Agency Network for Asia and the Pacific. The NACC has signed 32 memorandums of understanding with foreign counterparts and one memorandum of understanding between nine anti-corruption agencies in the South-East Asia region, and it also provides cooperation through the Stolen Asset Recovery Initiative.

2.2. Successes and good practices

- The AMLO has undertaken significant outreach activities and conducted seminars for financial institutions and some designated non-financial businesses and professions (art. 14, para. 1 (a)).

2.3. Challenges in implementation

It is recommended that Thailand:

- Continue monitoring the effectiveness and impact of the implementation of the National Anti-Corruption Strategy; and adopt further measures to enhance coordination and reduce overlap and complexity in the implementation of the Strategy at the different government levels (art. 5, para. 1).
- Endeavour to identify public positions considered especially vulnerable to corruption and to establish procedures for the selection, training and rotation of individuals in those positions, as appropriate (art. 7, para. 1 (b)).
- Consider adopting measures requiring public officials to report or disclose outside activities, including non-financial interests, from which a conflict of interest may result with respect to their public functions, and adopting measures to address or manage such conflicts when they arise (art. 8, para. 5).
- Consider extending the seven-day period for filing procurement-related complaints or appeals; and strengthen measures to regulate matters regarding procurement personnel, such as declarations of interest in particular public procurements, screening procedures and integrity training (art. 9, para. 1).
- Continue to strengthen measures to prevent corruption involving the private sector, including through the enforcement of existing laws, regulations and accounting and auditing standards, by promoting rules on business integrity and good commercial practices, enhancing transparency among private entities and

preventing the misuse of procedures regulating commercial activities (art. 12, para. 2).

- Adopt provisions prohibiting the tax deductibility of expenses that constitute bribes (art. 12, para. 4).
- Continue to promote the participation of civil society in the prevention of and fight against corruption (art. 13, para. 1).
- To strengthen the prevention of money-laundering: (i) ensure that all relevant entities are subject to the anti-money-laundering requirements and covered as reporting entities, including lawyers, notaries, certified accountants, auditors, leasing companies, pawn shops and small cooperatives; (ii) continue taking steps to strengthen the implementation of anti-money-laundering controls, including suspicious transaction reporting, in all designated non-financial business and professional sectors; (iii) abolish the exemption from suspicious transaction reporting requirements for transactions between government entities; (iv) evaluate whether the fines for money-laundering offences for natural and legal persons are sufficiently dissuasive; and (v) continue to invest in capacity-building for relevant supervisory and law enforcement agencies (art. 14, para. 1).
- Continue to strengthen the effective detection and monitoring of the movement of cash and appropriate negotiable instruments across borders (art. 14, para. 2).
- Adopt measures that are in line with article 14, paragraph 3, that apply to all originators, not only customers of financial institutions, irrespective of the value of the transfer, and that prohibit the execution of transactions where money-laundering is suspected (art. 14, para. 3).

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; agreements and arrangements (arts. 51, 56 and 59)

The Mutual Assistance in Criminal Matters Act provides a legal basis for mutual legal assistance in Thailand. The provision of assistance extends to requesting countries that have no international treaties with Thailand on the principle of reciprocity.

Dual criminality is required to execute a request for assistance, except in cases where an international treaty specifies otherwise, and assistance must be provided in accordance with the Mutual Assistance in Criminal Matters Act in all cases (sect. 9).

The Attorney General is the central authority (sect. 6 of the Mutual Assistance in Criminal Matters Act) and the focal point for assistance in relation to asset recovery in criminal matters. However, the central authority's decisions regarding mutual legal assistance may be overturned by the Prime Minister (sect. 38 of the Act).

In practice, the spontaneous sharing of information with foreign countries (as permitted under sect. 40 (3) of the Anti-Money-Laundering Act in respect of the AMLO) is usually done on the basis of a memorandum of understanding or agreement with a foreign State by the AMLO and the NACC.

Thailand has signed mutual legal assistance treaties containing asset recovery provisions with 14 countries, as well as the Treaty on Mutual Legal Assistance in Criminal Matters among Like-Minded ASEAN Member Countries.

Thailand does not consider the Convention as a legal basis for international cooperation.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

The Ministerial Regulation on Customer Due Diligence (2013) prescribes the requirements for customer risk assessment, customer due diligence (including identification of the beneficial owner and the taking of appropriate measures to verify their identity), wire transfers, cross-border correspondent banking, internal controls and record-keeping. However, the Ministerial Regulation applies only to financial institutions and certain professions (sect. 16 (1) and (9) of the Anti-Money-Laundering Act). Moreover, the Ministerial Regulation on Customer Due Diligence for Professions (2016) does not cover all designated non-financial businesses and professions, in particular, those in the non-financial sector, leading to significant gaps in terms of the customer due diligence and beneficial owner identification requirements and guidance. The full range of customer due diligence requirements is anticipated to be covered in an amended ministerial regulation on customer due diligence. In addition, there are reported challenges in beneficial ownership verification by financial institutions and supervisors, especially for more complex legal structures, owing to a lack of detailed procedures and guidance.

The identification of domestic and foreign politically exposed persons, including their family members or close associates (art. 3 of the Ministerial Regulation on Customer Due Diligence (2013)), is a challenge. The AMLO is currently amending the relevant regulations.

The AMLO has issued notifications specifying the types of natural and legal persons subject to enhanced due diligence pursuant to article 15 of the Ministerial Regulation on Customer Due Diligence (2013).

Section 22 of the Anti-Money-Laundering Act requires reporting entities to keep transaction records and information relating to customer identification for five years and due diligence records for 10 years from the date the account is closed or the relationship terminated.

The Financial Institution Businesses Act, B.E. 2551 (2008) sets out criteria for the establishment of financial institutions in Thailand, including a prohibition on the establishment or operation of shell banks. Furthermore, financial institutions must comply with the Ministerial Regulation on Customer Due Diligence (2013), which prohibits financial institutions from entering into or having business relationships with “shell banks” (as defined in art. 42 of the Regulation). However, there is no requirement to collect sufficient information from the respondent bank to enable a risk assessment to be conducted of the adequacy of the correspondent bank’s money-laundering controls.

Prescribed persons, including high-ranking officials, persons holding political positions and persons holding positions prescribed under sections 102 and 103 of the Organic Act on Anti-Corruption and NACC Notice, B.E. 2561 (2018), are supposed to report their assets and liabilities, including those of their spouses, unmarried partners and minor children to the NACC upon taking and vacating office (sect. 105 of the Act). A similar reporting requirement is established for NACC officials (sect. 158). Officials holding certain positions, such as judges, prosecutors and high-ranking officials, may also be obliged to report every three years while in office (sect. 105 of the Act). State officials who do not report to the NACC must declare assets and liabilities to the head of their government agency, State enterprise or State agency (sect. 130). Declarations may be filed to the NACC electronically, and can be verified using various approaches. The NACC may share the disclosed information on assets and liabilities with other countries at their request (sect. 138 of the Act).

With due consideration for privacy protections, the NACC must publish the financial disclosure information of the Prime Minister, ministers, members of the House of Representatives and the Senate, justices of the Constitutional Court, persons holding positions in independent agencies, high-ranking officials, local administrators and their deputies and assistants, and local assembly members (sect. 106 of the Organic

Act on Anti-Corruption). Such disclosure must be published within 30 days of the deadline for submission of the account (sect. 106 of the Act). For other officials, including officers of the NACC, only the results of account inspections are made available to the public (sects. 106 and 111 of the Act). Sanctions, including criminal penalties, can be imposed in case of violation of the financial disclosure obligations pursuant to the Act (sects. 114, 116, 167, 178 and 179).

The reporting requirement includes assets and liabilities both in Thailand and abroad, and all assets in direct and indirect possession or management of other persons (sect. 105 of the Organic Act on Anti-Corruption). Foreign financial accounts in which the official has an interest or over which the official has a signature or other authority are not covered.

The AMLO serves as the country's financial intelligence unit and is empowered under section 40 (3) of the Anti-Money-Laundering Act to receive or disseminate reports or information for the execution of the Act or other laws, or under an agreement made with domestic or foreign agencies. The AMLO is a member of the Egmont Group and the Asset Recovery Inter-Agency Network for Asia and the Pacific.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

The Civil and Commercial Code requires the court to make determinations on compensation, which may include the restitution of property or its value and damages for injuries caused (sect. 438). In a criminal case, the public prosecutor may apply to the court for restitution of the property or its value on behalf of injured persons (sect. 43 et seq. of the Criminal Procedure Code).

Injured persons or their representatives have the right to lodge complaints, institute criminal prosecutions or join public prosecutions, and enter civil claims in connection with an offence (sect. 3 of the Criminal Procedure Code). Any legal or natural person may file a claim in the domestic courts to establish ownership rights to property, in accordance with the Civil and Commercial Code (sect. 1336). Legal persons have the same rights and duties as natural persons (sect. 67).

In addition, the Mutual Assistance in Criminal Matters Act contains a provision requiring forfeiture or payment in lieu of forfeiture, where it is allowed under Thai law.

The Mutual Assistance in Criminal Matters Act gives a domestic court the power to adjudicate confiscation if a foreign court has issued a final forfeiture order and the properties are forfeitable under Thai law (sect. 34). However, there is no process for the recognition and direct enforcement of foreign confiscation orders in the absence of adjudication by a domestic court (sects. 32–34).

Thailand requires a final judgment by a foreign court for confiscation (sects. 34–35 of the Mutual Assistance in Criminal Matters Act). In cases involving money-laundering offences, civil forfeiture may be applied under section 58 of the Anti-Money-Laundering Act.

Thailand may provide assistance in the freezing and seizure of assets on the basis of a foreign freezing or seizure order, where permitted under Thai law or pursuant to a foreign court judgment, or to prevent dissipation (sects. 32–33 of the Mutual Assistance in Criminal Matters Act). A range of provisional measures are available in money-laundering cases under the Anti-Money-Laundering Act. The same range of provisional measures as under domestic law may also be taken by the NACC in responding to requests (sect. 140 of the Organic Act on Anti-Corruption).

The Thai court may order the freezing and seizure of property, even in the absence of a final judgment by the foreign State, on the basis of a freezing or seizure order by a foreign competent authority (sect. 32 of the Mutual Assistance in Criminal Matters Act).

The Office of the Attorney General is currently drafting a regulation for the preservation of assets.

The Regulation of the Central Authority, B.E. 2537 (1994) establishes the mandatory content of requests for mutual legal assistance, but does not require requesting States to specify the measures taken to provide adequate notification to bona fide third parties (art. 55 (3) (b)).

Thailand does not refuse assistance on the ground that property is of a de minimis value and would consult, whenever possible, with a requesting State before lifting provisional measures.

The rights of bona fide third parties are protected (sects. 32–34 of the Mutual Assistance in Criminal Matters Act; sect. 50 of the Anti-Money-Laundering Act).

Return and disposal of assets (art. 57)

Confiscated assets may be returned to another State following the deduction of expenses where there is a bilateral treaty between Thailand and the requesting State that provides for such return (sect. 35/2 of the Mutual Assistance in Criminal Matters Act). In all other cases, property confiscated by court judgment and money paid by court judgment in lieu of confiscation shall vest in the State of Thailand (sect. 35/2 of the Act).

Under section 140 of the Organic Act on Anti-Corruption, property may be returned to a requesting State in accordance with an agreement made with that State. The Attorney General may enter into such agreements or arrangements in accordance with section 35/2 of the Mutual Assistance in Criminal Matters Act. At present there are no such treaties or agreements in place, and there have been no cases of asset sharing with foreign States.

There is no provision requiring the mandatory return of assets confiscated by Thailand to the requesting State in the cases described under paragraph 3 of article 57.

The Office of the Attorney General is currently drafting a regulation on the disposal and return of assets pursuant to the Mutual Assistance in Criminal Matters Act, which would spell out the procedure to be followed and the criteria for obtaining or returning property.

3.2. Successes and good practices

- Section 105 of the Organic Act on Anti-Corruption requires financial declarations to be submitted to the NACC with supporting evidence that can prove the actual existence of assets and liabilities, including evidence of the income tax of a natural person in the previous tax year (art. 52, para. 5).

3.3. Challenges in implementation

It is recommended that Thailand:

- Ensure there are no impediments to the scope of the mutual legal assistance that Thailand may provide owing to the strict application of dual criminality requirements, including for non-coercive measures; furthermore, ensure that the broad powers given to the Prime Minister in relation to decisions on mutual legal assistance do not impede the effective operation of the central authority in the determination of such matters (art. 51).
- (i) Ensure that all financial institutions and designated non-financial businesses and professions are subject to customer due diligence and beneficial owner identification requirements; (ii) ensure that controls related to beneficial ownership are adequate and effectively understood and implemented by all sectors and supervisors; (iii) make efforts to assist financial institutions and sectors in identifying politically exposed persons, implementing adequate controls and conducting enhanced scrutiny of accounts sought or maintained on

behalf of politically exposed persons with a view to detecting suspicious transactions; and (iv) remove the existing exemption of a number of politically exposed persons from suspicious transaction reporting requirements (art. 52, para. 1).

- Require financial institutions to collect sufficient information from respondent banks to enable a risk assessment to be conducted of the adequacy of the correspondent bank's money-laundering controls (art. 52, para. 4).
- Consider adopting a requirement for public officials to report any interest in or signature or other authority over a foreign financial account (art. 52, para. 6).
- Adopt measures for the direct enforcement of foreign confiscation orders (art. 54, para. 1 (a)).
- Consider expanding the legislation to allow for non-conviction-based confiscation in cases where the accused cannot be prosecuted (art. 54, para. 1 (c)).
- Take measures to permit the competent authorities to freeze or seize property on the basis of a foreign request providing sufficient grounds for taking provisional measures, in the absence of an order by a foreign competent authority (art. 54, para. 2 (b)).
- Consider taking additional measures to permit the competent authorities to preserve property for confiscation in order to provide mutual legal assistance (art. 54, para. 2 (c)).
- Include the element of notification to bona fide third parties in the proposed amendment to Regulation B.E. 2537 (1994) (art. 55, para. 3 (b)).
- Adopt measures providing for the return of proceeds to requesting States in the cases described under paragraph 3 of article 57.

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

- Experiences and lessons learned regarding the identification and risk management of politically exposed persons (arts. 14 and 52).
- Capacity-building for the central authority concerning successful procedures and best practices in the enforcement of asset recovery laws (arts. 54 and 55).
