

**CU 2023/120/DTA/CEB/TSS: Information regarding good practice,
practical examples and lessons learned from engaging the private sector
and using sanctions and incentives to strengthen business integrity
in the last decade**

Thailand's Focal Point

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Chapter 1

UNCAC and the private sector

Please describe (cite or summarize) good practices and/or examples of measures taken by your country to promote business integrity and/or reporting corruption in the private sector in line with the UNCAC

- Prevent bribery of state officials, foreign public officials, and agents of public international organisations, and bribery in private sector, Promote the development of standards and procedures to safeguard the integrity of the companies, Ensure that companies have sufficient internal auditing and controls to assist in preventing and detects acts of corruption, Introduce or strengthen the liability of legal persons

Ans. Under the Organic Act on Counter Corruption (2018), Section 176 has been incorporated to prescribe an offence of bribery of state officials, foreign public officials, and agents of public international organisations, The Section also enshrines liability for juristic persons involved in such bribery.

In this regard, the National Anti-Corruption Commission (NACC) has issued **the Guidelines on Appropriate Internal Control Measures for Juristic Persons to Prevent Bribery of State Officials, Foreign Public officials, and Agents of Public International Organisations**. The Guidelines set out fundamental principles for the legal entities to monitor and supervise their operation in order to ensure transparency and create bribery-free environment within their entities. These Guidelines aim to direct juristic persons on the design and formation of internal control measures to prevent bribery of officials.

Principles in these Guidelines are applicable to all kinds and sizes of juristic persons as appropriate. They lay out the following 8 fundamental principles of internal control measures to prevent bribery of public officials as a primary model for juristic persons.

1. Strong, visible policy and support from top-level management to fight bribery
2. Risk assessment to effectively identify and evaluate exposure to bribery
3. Enhanced and detailed measures for high-risk and vulnerable areas
4. Application of anti-bribery measures to business partners
5. Accurate books and accounting records
6. Human resource management policies complementary to anti-bribery measures
7. Communication mechanisms that encourage reporting of suspicion of bribery
8. Periodic review and evaluation of anti-bribery prevention measures and their effectiveness

As bribery was a national problem and there were cases in which bribes were offered for business benefits across borders, affecting the country's credibility and efficiency of budgetary spending. The NACC regularly promote the campaign to encourage the private sector not to offer bribes to government officers and advises them to impose internal measures to control bribery risks. Furthermore, Office of the NACC promoted good governance in the public sector to create the "No Gift" culture as bribery should be prevented at both ends – the private sector or the bribe giver and government officers or the bribe taker. The NACC encourages juristic persons susceptible to public bribery to clearly identify their expenses for government agencies and impose measures to inspect these expenses. According to the NACC regulation, the value of the gift given to government officers must not exceed 3,000 baht. In this regard, juristic persons or businesses should not pay commissions to government officers for whatever reason to avoid risking breaking anti-bribery laws. As mentioned above, those who offered bribe to government officers were subject to penalty under Section 176 of the Anti-Corruption Act (2018). Juristic persons who bribed government officers would face large fines.

- **Promoting private sector transparency**

Ans. Office of the NACC ("the Office") has Bureau of Good Governance Development and Promotion (BGG) which has one of its duties to strengthen transparency in the private sector's business. The BGG has implemented project ("the Project") with a view to developing and promoting corporate governance in government agencies contractors ("the Contractors") in the fiscal year of 2566 BE. Such project has background and significance, as follows:

1) Background

It is found from the Office's corruption reporting database that there are considerable number of corruption issues taking place in the local level, especially corruption in the public procurement of such agencies as provincial government agencies; local administrative organisations; and central government agencies, which are located in the local area. Elements of the corruption offence consist of three stakeholders; they are policy maker, public official, and private sector.

The BGG recognises the importance of the issues; thereby developing preventive measures for the private sector continuously. In the fiscal year of 2564 BE, the BGG has published two handbooks on the development and promotion of good governance in the private sector. The first was a handbook on the development and promotion of good governance in the private sector, with an aim to providing the Contractors knowledge relating to requirements of good governance work and examples for organisation management application, corruption issues in the public procurement and relevant legal measures. As for another handbook, it was the handbook on extension of the development and promotion of good governance in the private sector to the implementation in the local area.

Later in the fiscal year of 2565 BE, the BGG has cooperated with nine NACC Regional Offices in engaging with the Project by co-organising and arranging nine regional trainings in the nine regions for the private sector. Content included organisation management with corporate governance, corruption conditions in the public procurement and legal measures relating to the sector.

In order to continuously enhance the transparency in the public procurement, the BGG then further implements the Project in the fiscal year 2566 BE by means of five following activities:

Activity 1: Development of knowledge on corporate governance of the Contractors;

Activity 2: Elevation of corporate governance of the Contractors;

Activity 3: Evaluation of the said elevation;

Activity 4: Making of the elevation report; and

Activity 5: Conduct survey on the participation of the private sector in the elevation and Report the result

2) Objectives

(1) Enhance the awareness concerning the management with corporate governance;

(2) Improve the mechanism in driving the corporate governance in the private sector thoroughly; and

(3) Increase transparency in the procurement between the public and private sector.

3) Procedures and targets

3.1) Procedures

a. Publish the handbook on the development and promotion of good governance in the private sector and produce video media on knowledge of the corporate governance of the Contractor in order to publicise to targets in the private sector;

b. Arrange a seminar on the elevation of corporate governance of the Contractors to convey and share relevant knowledge in nine regions and Bangkok, 10 times in total;

- Corruption conditions in the public procurement and legal measures relating to the private sector

- Measures that support SMEs in their access to the public procurement

- Guideline to do business under the framework of ESG (Environmental, Social, Governance)

- Guideline to create transparency in the procurement between the public and private sector

- Organisation management with corporate governance

3.2 Targets

The private sector and relevant government agencies of 1,380 people

- **Enhancing anti-corruption cooperation between the Office of the NACC and the private sector**

Ans. The Office consulted with executives from the Joint Foreign Chambers of Commerce in Thailand (JFCCT) on 15th March 2566 BE to exchange their views relating to the anti-corruption cooperation. As the Office has amended and developed anti-corruption laws as well as supporting and strengthening anti-corruption network, it promotes the anti-corruption participation of entrepreneurs in the private sector and foreign investors. The Office also pushes forward and raises the anti-corruption awareness in order to elevate the Corruption Perception Index (CPI) of Thailand. Moreover, the seminar between the Office and the JFCCT shall be continuously implemented.

- **Prevention of conflicts of interests, abuse of functions and embezzlement of property in the private sector**

Ans. The BGG has set up a plan against the conflicts of interests in the fiscal year 2566 – 2568 BE. Such plan involves the private sector as there is an activity of making a handbook or course on the prevention of conflicts of interests for the sector.

- **Prevent conflicts of interest**

Ans. The Organic Act on Counter Corruption (2018) contains provisions to prevent conflict of interest. Public officials as specifically prescribed in the Constitution, members of the Board/Commission/Committee, persons holding positions in an independent agencies and public officials as prescribed by the NACC are prohibited from undertake the followings:

(1) Being a contractual party or being a stakeholder in a contract made with a state agency in which such public official performs duties as the public official having direct or indirect authority in supervision, monitoring, control, inspection or prosecution;

(2) Being a partner or shareholder in a partnership or company which is a contractual party to a state agency which such public official performs duties as the public official having direct or indirect authority in supervision, monitoring, control, inspection or prosecution except being a shareholder in a limited company or public limited company with the amount of shares not exceeding that as prescribed by the NACC

(3) Obtaining concession or possessing the concession rights from the state, government agency, state agency, state enterprise or local administration or being a contractual party with the state, government agency, state agency, state enterprise or local administration in the monopolistic manner, or being a partner or shareholder in a partnership, company receiving the concession or being a contractual party in capacity as the public official having direct or indirect authority in supervision, monitoring control, inspection or prosecution except being a shareholder in a limited company or public limited company with the amount of shares not exceeding that as prescribed by the NACC;

(4) Being a relevant stakeholder as a member of the Board, consultant, agent, staff or employee in private entity under the supervision, monitoring, control, or inspection of a state agency to which such public official is attached or performs duties as the public official which, by nature of such business interest of the private entity, may be in conflict to or against the public interest or government interest, or affect the independence of the performance of duties of such public official.

This provision shall also apply to the spouse of such public official aforementioned. Undertaking of business by the spouse shall be deemed as undertaking of business of the public official except in the case where the spouse has undertaken such business prior to the public official's taking of office.

Furthermore, members of a Board/Commission/Commission, persons holding office in the independent agencies, persons holding high ranking positions and persons holding political positions as prescribed by the NACC are prohibited from Being a relevant stakeholder as a member of the Board, consultant, agent, staff or employee in private entity under the supervision, monitoring, control, or inspection of a state agency to which such person is attached or performs duties which, by nature of such business interest of the private entity, may be in conflict to or against the public interest or government interest, or affect the independence of the performance of duties of such person.

- **Promote the development of standards and procedures to safeguard the integrity of companies**

Ans. As mentioned earlier that Office of the NACC places importance in fostering ethics, good governance, corporate governance, code of conduct and corporate social responsibility (CSR) in terms of transparency building, information disclosure, accountability and integrity promotion among all entities in private sector, the Office has launched its campaign on the "NACC Integrity Awards" project in which public agencies, state enterprises, private companies, or other business entities is invited to participate. The organizations must have been established and operated its business for not less than 5 years. In this campaign, they are invited to present its undertakings which comply with all laws, regulations, as well as relevant measures to Office of the NACC with the certification of the Regulator in the course of their business. Provided that the operations of those business entities, as the campaign participants,

meet with the criteria set up by Office of the NACC, they will be eligible for the such “NACC Integrity Awards” which can be one of the certifications on their willingness and cooperation in the prevention of corruption in business sector.

- **Promoting public-private communication, cooperation and partnership**

Ans. Office of the NACC, by Bureau of Good Governance Development and Promotion, is organizing a seminar on exchange of opinion and information between the Office of the NACC and the Joint Foreign Chamber of Commerce of Thailand (JFCCT) in the coming fiscal year of 2024.

What is the challenges (if any) in developing and/or enforcing such measure?

Ans. The existence of measures in preventing bribery in line with the NACC Guidelines is not an absolute guarantee of non-liability of a juristic person in case of bribery. Juristic persons must earnestly implement the measures in conformity with its nature of business and level of risks to ensure that they are truly adequate.

Furthermore, the private companies still do not fully cooperate as the promotion of the business integrity is still the academic and cooperative campaign with no legal binding effects.

Please describe the steps you took to overcome such challenges (if any)

Ans. To mobilise the NACC’s measures toward concrete outcome and target group efficiently in a timely manner, the NACC has set up the Anti-Bribery Advisory Service (ABAS), under the Bureau of International Affairs, to serve as the center for sharing knowledge and best practices from both Thailand and other countries. Also, ABAS aims to give academic advice/recommendation to the juristic persons to encourage them to design and implement appropriate and effective anti-bribery measures in line with international standards. This would increase transparency, promote good governance and further contribute to sustainable growth of businesses.

Chapter 2 Engaging the private sector

Please describe (cite or summarize) good practices and/or examples of measures taken by your country to promote integrity through anti-corruption programmes in the private sector

- **Raise awareness of business integrity**

Ans. Office of the NACC, by Bureau of Development and Promotion of Governance, organize the awareness-raising campaign among private sector by launching the curriculum “Environmental, Social, Governance: ESG” and the “Corporate Governance Administration” which have been participated by representatives from private companies that are contractual parties of the state agencies in the Bangkok.

- **Provide appropriate reporting channels, Encourage public reporting of efforts to prevent and counter corruption in the private sector**

Ans. Complaints and reports regarding suspected corruption conduct and unusual wealth of public officials can be submitted to Office of the NACC via the written complaints made in person or via the post or by email, on the official Facebook page. The verbal complaint could be made as well to the competent officials at the NACC headquarters or NACC regional offices 1-9 or NACC provincial offices. From this, the Office has developed such channels as website and other electronic means for receiving corruption allegation.

There is a particular channel called whistle blowing system via the NACC website and it is primarily supervised by our Bureau of Investigation and Special Operations (investigation unit). Any person who wishes to do so is able to choose whether to go anonymous or not. Also such person can follow up his/her case as well as requesting for witness protection program in case of suffering impact from whistle blowing himself or herself. Once there is a case, either whistle blowing or witness protection, the system will categorize clues received in order to forward it to responsible Director of the Provincial Office where the clue mentioned. Such Director may assign relevant competent officer via the system, respectively. When the case status has been updated, it will be displayed automatically for the whistleblower upon his or her login. Moreover, any NACC officer is allowed to report or give clue via the sub menu called Whistleblower Management System (WMS).

In this regard, once the allegation is received by the Office, it will be kept in a system as confidential record of the name and address of the person making allegation. Therefore, management of corruption reporting system by the NACC or the Office is in accordance with the law.

Moreover, the Corruption Deterrence Center (CDC) of the NACC was established to tackle and deter corruption within the country with one of the aims of gathering whistleblowing information and corruption situations in which there is a reasonable doubt that corruption has been committed from various channels including the NACC, public sector, private sectors, citizens ‘networking, public participation, and social media platforms, as well as mass media in both national and international levels.

- **Promote training and education on anti-corruption in the private sector**

Ans. Office of the NACC, by Bureau of Development and Promotion of Governance, has also issued the guidebook on the development and promotion of governance in private sector and publications on the corporate governance for the companies which are contractual parties with the state agencies.

Please describe (cite or summarize) good practice and/or examples of measures to encourage transparency, public reporting and/or public participation through your anti-corruption programmes (both for the public and private sectors)

Ans. With regard to the public reporting, citizens can file corruption complaint or whistle blowing through the Office's official website at www.nacc.go.th/allcomplaint or mobile application named "NACC Mobile Digital Platform." Office of the NACC has developed this NACC Mobile Digital Platform in order to communicate with and provide service for citizens. It allows convenience, reduces processes and service time spending. During the first phase, it was launched on Android operating system on 11 November 2022. The platform provides service and access to information, such as whistle blowing and the follow-up, corruption cases data (the NACC passed a resolution on having a prima facie case or resolution that the allegation has no prima facie case), asset and liability inspection work, and satisfaction survey result toward the performance of the Office.

As corruption prevention was an important mechanism for the development of the country and required cooperation from all sectors including government agencies, the private sector as well as the general public. Unfortunately, many witnesses were afraid to come out to alert the NACC to corruption activities due to possible harm that might befall them, the Office of the NACC has encouraged witnesses in corruption cases to request for witness protection while promising that their personal information will be kept secret.

Innocent people involved in corruption cases such as the accuser, petitioner, injured person, complainant, and whistle-blower as well as members of their family could apply for witness protection and assistance. They can file an application in person at the NACC headquarters, regional offices, or provincial offices. They can also apply for protection and assistance with other relevant government agencies or send their request to the NACC by mail, facsimile, or email in urgent cases.

The witness protection and assistance program provides protection by officers, compensation for the incapability to earn a living, cost of accommodation when staying in a safe house, meals allowance, and compensation from damage resulted from giving statements in a corruption case.

What was the impact of the measures described above?

Ans. During the fiscal year of B.E. 2563 – 2565 (2020-2022), the Office has received 9,210 complaints (three-year average) as follows:

- (1) Wrongfully perform or omit to perform duty (41.25%)
- (2) Public procurement (19.47%)
- (3) Misappropriation of the official money and property (14.30)

These have been accepted to conduct inspection (received by the Office itself) of 3,597 cases (three-year average), have referred to external agencies for 2,940 cases under sections 61 and 64 (three-year average), and have received from external agencies 6,537 cases (three-year average).

What challenges (if any) did you encounter in implementing the measures above?

Ans. Challenges from the person seeking protection such as

- The person seeking protection is fearful or suspicious without any unsafe circumstance or the person seeking protection deliberately deceives the officials in order to receive the provision of assistance and facilitation.

- The person seeking protection does not comply with the protection measures such as not accommodating in the specified area or continue to stay in the unsafe area.

Challenges on the protection process the process may take a long time and cause a delay in the provision of the whistleblower protection.

Chapter 3 Using sanctions and incentives

Please describe (cite or summarize) good practices and/or examples of sanctions used to strengthen business integrity and/or reduce corruption in the private sector in your country

- **Monetary sanctions for legal persons (companies) liable for the participation in an offence of corruption, Incarceration or other criminal sanction of natural persons (individuals) who have committed an offence of corruption acting on behalf of the company**

Ans. Section 176 of the Organic Act on Anti-Corruption (2018) provides that any person who gives, offers to give, or promises to give any property or benefit to a public official, foreign public official, official of a public international organisation with an intent to induce such person to wrongfully perform, not perform or delay the performance of any duty in his or her office shall be liable to an imprisonment for a term of not exceeding five years or a fine of not exceeding one hundred thousand Baht or to both.

In case the offender aforementioned is a person associated with any juristic person and the action was taken for the benefit of such juristic person, provided that such juristic person does not have in place 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 liable to a fine of one to two times of the damages caused or benefits received.

In this regard, the juristic person means juristic person established under Thai laws and juristic person established under the foreign laws which operates business in Thailand. A person associated with a juristic person means a representative, employee, agent, 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 action.

With regard to the sanction against the conflict of interest, Section 129 of the Organic Act on Anti-Corruption (2018) provides that any act which contravenes the provisions governing the prohibitions on the undertakings as the contractual party, stakeholder, partner, shareholder, concession holder, etc. as specified in Section 126 and Section 127 aforementioned shall be deemed commission of malfeasance in office or malfeasance in judicial office.

Please describe (cite or summarize) good practices and/or examples of incentives used to strengthen business integrity and/or reduce corruption in the private sector in your country

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Please describe (cite or summarize) good practices and/or examples of any other additional measures used to strengthen business integrity and/or reduce corruption in the private sector in your country

Ans. The Public Procurement and Supplies Administration Act (2017) governs the proposal in procurement by a state agency which also concerns integrity of business integrity of the private entities. Section 64 of the Act provides that a person who intends to tender a proposal in procurement by a state agency must not be a person whose name is in a circulated list of persons abandoning work of state agencies. Section 109 provides that where it appears that the tenderer of a proposal or the party to a contract with the state agency has committed an act essentially obstructing fair competition or committed an act in bad faith; such tenderer or contractual party shall be deemed to commit an act amounting to abandonment of the work:
