

# THE LATEST ANTI-CORRUPTION LAW IN THAILAND

*Tharanee Konchanat Davison* \*

## I. THE NEW ORGANIC ACT ON COUNTER CORRUPTION, B.E.2561 (2018)

The new Organic Act on Counter Corruption, B.E.2561 (2018) came to force on 22 July 2018. It replaces the past Organic Act on Counter Corruption which had been in place for 19 years. There are some interesting changes to the new Organic Act on Counter Corruption that will be addressed as follows:

### A. The Definition of “State Official” in Section 4

In the 1999 Organic Act, “State Official” is probably the most important term, as these officials are the main target group who this organic act originally aimed to apply to. In the 1999 Organic Act, "State Official" means a person holding a political position, Government officials or local officials assuming a position or having permanent salaries, officials or persons performing duties in a State enterprise or a State agency, local administrators and members of local assemblies who are not persons holding a political position, officials 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 any 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.

In the latest act, the word “Public Officer”<sup>1</sup> is added to separate them from State Officials; also, the definition of State Official has been slightly, but importantly, changed. The new definition of State Official<sup>2</sup> excludes a person holding a political position; however, a person holding a political position falls under the definition of Public Officer instead. The definition of Public Officer in the 2018 Act is wider than the definition of State Official in the 1992 Act, as it covers those who fall under the definition of State Official in the 1992 act and also adds the phrase “other official prescribed by laws” to its definition. This means people who hold some

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\* Divisional Public Prosecutor, Department of Corruption Litigation 4, Office of the Attorney General, Thailand.

<sup>1</sup> Public Officer means state officials, a person holding a political position, judges of the constitutional court, a person holding a position in an independent organization, and the National Anti-Corruption Committee.

<sup>2</sup> State official means government officials or local officials assuming a position or having permanent salaries, officials or persons performing duties in a State enterprise or a State agency, local administrators and members of a local assembly, other officials prescribed by laws, officials 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, but it does not include a person holding a political position, judges of the constitutional court, a person holding a position in an independent organization, or the National Anti-Corruption Committee.

positions, such as abbots (chief monks) that have never been considered as State Officials,<sup>3</sup> will be included in the latest act as Public Officers, and this act will be applied to them as well.

## **B. Extensive Power of the National Anti-Corruption Commission**

In Thailand, there are several organizations that are eligible to proceed with investigations regarding corruption cases. The main investigation units are the Office of the National Anti-Corruption Commission (NACC), the Office of the Public Sector Anti-Corruption Commission (PACC) and the Royal Thai Police. Each organization has its own investigators, and they are independent from each other. Under the Organic Act on Counter Corruption, B.E.2542 (1999), the investigation power of the Office of the National Anti-Corruption Commission (NACC) and the Office of the Public Sector Anti-Corruption Commission (PACC) was clearly separated under section 19 (4) as the NACC is liable to conduct investigation where the alleged are people holding political status, state officials holding at least chief executive positions or civil servants holding at least division director positions. For those who hold lower positions than stated in section 19(4), the case would be investigated by the PACC or inquiry official (Thai Royal Police) where the injured person has lodged a complaint to the inquiry official.

Nevertheless, according to section 62 of the Organic Act on Counter Corruption, B.E.2561 (2018), even though the accused are people holding lower positions than that of a chief executive, the PACC is no longer empowered to automatically proceed with investigation. Instead, the case shall be passed to the National Anti-Corruption Commission for consideration. Where the National Anti-Corruption Commission considers that the case does not involve serious offences, it will be referred to the PACC for further investigation.

Furthermore, according to section 89 of the Organic Act on Counter Corruption, B.E.2542 (1999)<sup>4</sup>, where the injured person has lodged a complaint to the inquiry official (the police) against a State Official who committed an offence of corruption, the inquiry official shall refer the matter to the NACC within thirty days from the date of the complaint. In the case that the accused is not holding an important position under section 84, such as chief executive, judge, prosecutor, or the National Anti-Corruption Commission, the case shall be referred back to the inquiry official for proceedings in accordance with the Criminal Procedure Code. The Organic Act on Counter Corruption, B.E.2561 (2018) applies a similar method under section 61, but there is one very interesting change that is added to the latest organic law.

Section 89 of the Organic Act on Counter Corruption, B.E.2542 (1999) does not apply to cases where the accused is not considered a State Official. But, under section 61 of The Organic Act on Counter Corruption, B.E.2561 (2018), even if the accused is not considered a government officer or State Official under section 4—but if he is the principal, instigator or aider and abettor

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<sup>3</sup> Thai Supreme court decision no.7540/2554.

<sup>4</sup> In a case where an injured person has lodged a complaint, or a denunciation is made, to the inquiry official requesting an action against a State Official who is not a person described under section 66 in consequence of the commission of the act under section 88, the inquiry official shall refer the matter to the N.C.C. Commission within thirty days from the date of the complaint or the denunciation, for the purpose of proceeding with it in accordance with relevant provisions of law. In this connection, if the N.C.C. Commission, having considered the matter, is of the opinion that it is not a case under section 88, the N.C.C. Commission shall refer it back to the inquiry official for proceeding with it in accordance with the Criminal Procedure Code.

or is giving, offering or agreeing to give the property or any other benefit to a State Official—the case shall first be referred to the NACC for consideration. Then, the NACC will return the case to the inquiry official where considered appropriate. Therefore, if the inquiry official receives a complaint accusing a person of bribing a State Official, in the past the case would not fall under section 89 of the Organic Act on Counter Corruption, B.E.2542 (1999). The inquiry official was not required to refer the matter to the NACC within thirty days from the date of the complaint; instead the inquiry official was able to proceed with the investigation process immediately. However, section 30 of the new organic act extends the NACC’s power to cover those who are giving, offering or agreeing to give the property or any other benefit to a State Official. According to section 61, for all corruption complaints received by an inquiry official, the inquiry official is only allowed to proceed with a preliminary investigation and then must refer the matter to the NACC within thirty days from the date of the complaint. If the NACC considers the matter to be a non-crucial matter, the NACC shall refer it back to the inquiry official to complete the investigation process.

In the aforementioned case, when an inquiry official receives a complaint accusing a person of bribing a State Official, under the new organic act, the inquiry official shall refer the matter to the NACC first, and the inquiry official will be able to proceed with further investigation only after the NACC refers it back to him. This new rule may result in delay of the investigation process, as under the new organic law almost all corruption cases must be referred to the NACC to review before the next process can be done.

### **C. Arrest and Detention Process**

Before the new Organic Act on Counter Corruption, B.E.2561 (2018) came into force, the general arrest and detention process in Thailand’s Criminal Code was also applied to corruption cases. It is prescribed in section 87 that the official or private citizen conducting the arrest shall without hesitation bring the arrestee to the local office of inquiry immediately and the inquiry official is allowed to detain the arrestee for only 48 hours where it is necessary to have an inquiry after that the arrestee shall be brought before the court. However, it is prescribed in section 61 of the new Organic Act that the official or private citizen conducting the arrest shall bring the arrestee along with an arrest note to the office of inquiry or to the NACC office within 48 hours after the arrestee is delivered to the inquiry official’s office. This provision provides arrest and detention power to the NACC, as in the past this power belonged solely to the inquiry official. This provision may cause some difficulty if the arrestee is arrested outside of Bangkok because the official or private citizen conducting the arrest is required to deliver the arrestee to the NACC office in Bangkok within 48 hours. After the arrestee is delivered to the NACC, the NACC is empowered to grant provisional release with or without bail. During the provisional release application consideration period, the NACC is required to provide an arrestee detention area; however, there is no promising plan for the construction of an NACC detention centre. The current temporary solution is that the NACC will approve most provisional release applications, but this does not ease the transportation difficulty faced by inquiry officials.

### **D. Corruption Case Proceeding Period**

The Organic Act on Counter Corruption, B.E.2542 (1999) does not contain provisions requiring investigators or public prosecutors to proceed with the case in a certain period of time, but a proceeding-period provision is included in the new organic act.

It is stated in section 93 of the Organic Act on Counter Corruption, B.E.2561 (2018) that where the public prosecutor receives the report and documents from the NACC and is of the opinion that the report, documents and opinion are complete to prosecute, the prosecutor shall submit the matter to the court having competent jurisdiction to try the case within 180 days. However, where the prosecutor considers that the report and documents are not complete as to justify the institution of legal proceedings, the public prosecutor shall notify the NACC to conduct further investigation within 90 days. In case of further investigation, the NACC and Prosecutor-General shall appoint a working committee consisting of representatives not exceeding five people of each side, and the NACC shall complete its investigation within 90 days from the committee appointment date. Failing to comply with the specified period will result in administrative sanction. The specific proceeding period provision in the new act may expedite the investigation and prosecution process in simple cases. However, most corruption cases are extremely complicated and require extensive periods to gather witness statements and evidence by investigators, and the public prosecutor also requires more time to review all evidence. This provision may put huge pressure on investigators and public prosecutors to submit the case before the deadline without thorough revision which may affect the quality of the case and may result in the increase of case dismissal.

## **II. CASE STUDY: TEMPLE CORRUPTION SCHEME**

### **A. Facts**

The National Office of Buddhism, also known as the Office of National Buddhism (ONaB), is an agency of the central government of Thailand. It is responsible for state administration of Buddhism. The government will grant annual funding to ONaB every year in order that ONaB will allocate those funds to support temples and Buddhist activities. There are several types of funding budgets depending on the purpose of allocating funds to temples all over Thailand, such as the temple development budget, the temple restoration budget, and the Buddhism propagation budget. Each budget has its own criteria applied to temples to be eligible to receive those funds, and each temple is required to submit a project plan along with evidence showing the temple is entitled to the budget request. In 2017, it emerged that many ONaB officers are alleged to have worked with abbots and senior monks of more than 100 temples around Thailand to embezzle more than 270 million baht of the aforementioned funding. The following is an example of a case that occurred at a temple in Lumpang province, in northern Thailand.

The abbot of temple X was contacted by Mr. A., an ONaB officer who has good relationships with many abbots in Thailand. Mr. A informed the abbot that ONaB has Buddhism propagation budget funding which could be allocated to temple X with the condition that, after the funds are transferred, the abbot must return half of the funds back to Mr. A. The abbot agreed to do so, so he submitted a minimal project plan requesting funding for the construction of a meditation centre. In order to be eligible to receive grants from the meditation centre construction fund, the temple must be registered as a provincial meditation centre; however, temple X had never registered as a provincial meditation centre. In a couple of days after the funding application submission date, temple X's funding application was approved by the director of ONaB, who has been working at ONaB since 1987. The director of ONaB was supposed to know the criteria for the meditation centre construction fund, but he wrongfully

approved funding to temple X. The 2,000,000 baht (60,000 USD) fund was transferred to temple X's bank account the next day. The abbot had withdrawn all funds within 2 days and gave 1,000,000 baht (30,000 USD) in cash back to another senior monk at one of the Buddhist events in Lumpoon in northern Thailand so that he could fly back with the cash and return it to Mr. A.

#### **B. How to Proceed with the Case under the Organic Act on Counter Corruption, B.E.2561 (2018)**

Mr. Pongporn Pramsaneh, the latest ONaB director, made a denunciation to the Thai Royal Police, Crime Suppression Division in connection with the temple funds embezzlement scandal. As the accused are State Officials, including the abbot, the investigation procedure shall follow the provisions in the Organic Act on Counter Corruption, B.E.2561 (2018). Once the inquiry official received the denunciation, he was to gather reasonable evidence showing wrongdoing by the accused and then submit the cases to the NACC. As there are a series of cases, some of the cases are returned to the inquiry official, but some are investigated by NACC officers. Where the investigation process is complete, the case report shall be submitted to a public prosecutor. The public prosecutor has 180 days from the submission date to review each case before filing the case in court or 90 days if the report is incomplete and requires a working committee of the NACC to be appointed to make further investigation. In case of further investigation, NACC officers have 90 days to gather all evidence required by the public prosecutor and to submit it to the working committee to make a final decision.

#### **C. Problems and the Way Forward**

According to the fact that the aforementioned temple funds embezzlement cases happened across Thailand, the investigation units expect more than 100 cases need to be opened and investigated thoroughly. The main problem is the lack of manpower of investigators in each anti-corruption organization, from investigators to public prosecutors. Also, where the case is investigated by the NACC, public prosecutors, and even the investigators themselves, have a very tight deadline under the new organic law as mentioned above. The complexity and difficulty of the extradition process is another problem that delays the judicial process, as several accused, most are senior monks and an ex-ONaB executive level officer, fled Thailand. Although Thailand has extradition treaties with many countries, the extradition period may take a very long time as it needs to go through several administrative processes.

The above-mentioned problems may not be solved in a short period of time. However, we can see attempts of the government to address corruption in Thailand, as several new anti-corruption laws are being drafted, more than 600 new NACC investigators are being appointed and criminal courts specialized in corruption and misconduct cases have recently opened in nine regions throughout Thailand. These are part of the promising measures aiming to decrease the corruption rate in Thailand, and Thailand has very high hopes to eliminate corruption and bring those who are corrupt to justice.