

PRIVATE GAIN FROM PUBLIC LOSS: HOW THAILAND COPES WITH CORRUPTION FROM CONFLICT OF INTEREST *

By Medhi Krongkaew **

1. Introduction

Thailand is not doing very well with regards to various indices of corruption and its anti-corruption efforts in comparison with other countries around the world. For example, in 2006, the Transparency International (TI) (Transparency International 2006) ranked Thailand 63rd among 163 countries around the world according to its Corruption Perception Index (CPI). This has worsened from the 59th rank among 159 countries in 2005. In the World Bank Governance Indicator on control of corruption (World Bank 2006), Thailand scored the percentile rank of 51.2 in 2005, worsened from 48.0 in 2004. In 2006, the Political and Economic risk Consultancy, LTD-PERC gave Thailand the score of 7.64 in the 0 to 10 scale of increasing incidence of corruption among 13 countries and economies in East Asia compared with the score of 1.3 for Singapore and 3.01 for Japan. Only Philippines, Vietnam and Indonesia were ranked slightly behind Thailand (See PERC 2006). It is possible to argue that corruption is associated with the level of development, that is less developed countries are more prone to corruption than more developed countries, and one of the most important causes of this phenomenon can be found in the prevalence of conflict of interest among public officials in those less developed countries while they carry out their official duties. Thailand is no exception in this case.

The main purpose of this paper is to demonstrate the seriousness of concern and attempts by various organizations in Thailand to address the issues of conflict of interest in the performance and functioning of state officials in Thailand. Before discussing the current laws and regulations against conflict of interest and their effective enforcement, and the new movements and initiatives on how to cope with conflict of interest which are the main focus of this paper, we will spend some time talking about various concepts and definitions of conflict of interest so as to understand the nature and characteristics of conflict of interest better. The paper ends with some policy implications on how Thailand will cope with corruption from conflict of interest at present and in the future.

2. Conflict of Interest as a Form of Corruption

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The Transparency International defines corruption as an act involving behaviour on the part of public officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them.¹ In short, corruption can be understood as the misuse of public power for private benefit. In Singapore where the lack of corruption in the public sector is well known, the word “gratification” is used to stand for corruption in its Prevention of Corruption Act 1960. Gratification includes (a) money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether moveable or immovable; (b) any office, employment, or contract; (c) any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part; (d) any other service, favour or advantage of any description whatsoever, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary or penal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power and duty; and (e) any offer, undertaking or promise of any gratification within the meanings of paragraphs (a), (b), (c), and (d).

It may be seen that corruption or corrupt practice has close relation with conflict of interest. If conflict of interest is defined as a situation whereby the public official who has discretionary granting power on behalf of the state acts on his or her own interest rather than the state interest or the interest of the public, then this decision will generate or bring forth private gain or benefit at the expense of the public. Conflict of interest, therefore, can be looked upon as a *sui generis* case of corruption. As a matter of definitional concept, corruption cannot take place if a public official performs his or her duty without a *quid pro quo* condition (measured in terms of exchanged benefit to that official) attached to his or her decision. If that public official simply performs his or her designated duty in return for their public wages and salaries, then no private gain beside these wages and salaries can take place.² But if conflict of interest exists within the purview of this official’s decision, he or she expects to receive or get some benefits from his or her action or decision. This obviously is a case of corruption from conflict of interest.³

There are many more ways in which conflict of interest can be defined. For example, the OECD defines conflict of interest as a situation involving a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.⁴ It can be further elaborated that private-capacity gain or benefit may not be the only outcome of conflict of interest, but the interference with professional or official position which may require neutrality or objectivity may also

¹ Quoted in Briscoe and Hermans (2001), p. 5.

² We can call this duty ‘fiduciary duty’ or duty that is formally expected from this official position.

³ If a customs officer seizes smuggled goods as part of his official duty and get some reward from the government, this reward is not an outcome of a corruption or does not involve corrupt practice. But if this customs officer does not seize a certain smuggled good because it is not the type that will generate rewards but only tries to seize smuggled goods with rewards, then this customs officer has committed corruption through conflict of interest.

⁴ Quoted by Raile (2004), p. 2.

another outcome. Michael McDonald (2007) of the W. Maurice Young Centre for Applied Ethics, the University of British Columbia defines conflict of interest as a situation in which a person, such as a public official, an employee, or a professional, has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties. The three key elements in this definition are the meaning of private or personal interest, the scope of official duty, and the nature of interference with professional responsibilities. The Harvard School of Public Health distinguishes between 'conflict of commitment' and 'conflict of interest', saying that conflicts of commitment are situations in which public officials' (or members in case of university personnel) external activities interfere with the main obligations of those public officials in question, whereas conflicts of interest are situations in which public officials may have the opportunity to influence his or his agency's decision in ways that could lead to personal gain. In this definition, conflict of commitment can be construed as a kind of conflict of interest because the outcome of conflict of commitment does not necessarily bring about strict personal benefits. This distinction between conflicts of commitment and conflicts of interest is useful in our further understanding of the importance of the issue.

What can or cannot be done by public officials to avoid conflict of interest can be quite varied. And this can be different from one professional activity to another. For example, what a policeman can or cannot do to avoid conflict of interest may be (and indeed will be) different from what a university researcher can or cannot do. In addressing the issues of managing conflicts of interest of public officials in many governments in Latin America, Eric Raile (2004), sums up the activities that public servants should not do as follows:

- Misuse of information gained through one's position'
- Influence peddling or trafficking;
- Representing or advising private parties in relation to matters pending before certain governmental entities;
- Employment with entities regulated by the state;
- Exercising one's profession in certain ways outside one's official position;
- Simultaneously serving in certain government positions;
- Appointing relatives to government positions;
- Participating in government processes in which the official, a relative, or a business partner or associate has an interest;
- Engaging in business, employment, or other financial relationships with non-governmental entities, the regulation of whose activities falls within the official's public function;
- Misusing public functions to benefit a political organization or partisan political campaign; and
- Illicit enrichment (wrongdoing presumed when increases in wealth do not seem to commensurate with lawful sources of income).

If the criteria of personal gain or interference with professional objectivity are used, then there is little difficulty in judging whether an action by a public official has conflict of interest or not. A safe policy is to ask public officials to follow a strict code of conduct,

to declare or disclose their personal areas of interest, or at least to ask higher authority for advice or judgment on any activity or situation that a hint of conflict of interest may be suspected. This is relatively easy if the benefit from conflict of interest exists in the form of financial gain. But if conflict of interest exists beyond financial or economic form, we can get into a great deal of difficulties on how to handle each type of conflict of interest.⁵ An ideal situation would be to have a law or series of laws that deal with all these types of conflict of interest adequately. But whether Thailand possesses adequate laws that deal with various conflicts of interest is the subject of our main investigation.

3. Current Laws Against Conflict of Interest and Their Effective Enforcement

At present there are three groups of laws that deal with the issues of conflict of interest in Thailand. The first group is the fundamental Penal Code of Thailand where, in its appropriate part, offences conducted by state officials are defined and ranges of penalties or punishments are specified. On the part that may involve conflict of interest, this can be found in Part 2, Category 2, Sections 147 to 166. This part in the Penal Code deals with offences committed by public officials in their designated lines of duties. The sections which may have elements of conflict of interest could be found in Section 148, 149, 150, 154, and 157. Let us look at these sections.

Section 148 stipulates that if state officials use their power corruptly by coercive or accommodative actions so as to receiving properties or other forms of benefits will face a jail term of 5 to 20 years, a fine of 2,000 to 40,000 baht, or death. This section has a conflict of interest component in that the competent official makes decision exchange for some personal gains or benefits.

Section 149 deals with the offence by state officials who have received, asked to received, or agreed to receive properties or other forms of benefits for themselves or others by corrupt means in exchange for a certain action, or non-action, whether within the confine of their official duties or outside them. The penalty for this offence is equally severe with death as the top penalty. This is the most typical form of corruption via bribery.

Section 154 is concerned specifically with tax officials. If these tax officials corruptly collect or neglect to collect appropriate taxes from taxpayers, or collect lower amount of tax than it should be, they can face penalty of 5 years up to life imprisonment, and a fine of 2,000 to 40,000 baht.⁶

Section 157. This is the famous section on the proper behaviour of public officials. It says that any person who is a competent official who conducts or refrains from conducting his duty improperly so as to cause damage to any person, or conducts or

⁵ Apart from financial/economic conflict of interest, there may exist other types of conflict of interest such as political conflict of interest, cultural/religious conflict of interest, social/sociological/family conflict of interest, legal conflict of interest, and emotional/ideological conflict of interest. Each of these types of conflict of interest will bring about different implications on how the deciding officers or officials may be affected.

⁶ Recently a senior tax official in Thailand was actually indicted on this charge because he purposely refrained from collecting correct amount of taxes from property transactions of a given politician family.

refrains from conducting his duty corruptly, will be subject to imprisonment from one to ten years, or fine from 2,000 to 20,000 baht, or both imprisonment and fine. Obviously an action by a corrupt official based on or conditioned by conflict of interest would fall under this offence.

The second group of laws are specific laws that aim at specific groups of public officials. For example, there is a specific Act on the Offences of Officials in State Organisations or Agencies B.E. 2502 which in fact lifts most of sections 147 to 166 from the Penal Code and give them a new section number. Most civil servants in Thailand have to follow the Civil Servant Act B.E. 2535 which spells out the rules and regulations on disciplines and employment procedures of most civil servants. Relevant provisions on conflict of interest may be found in Section 84 which requires a civil servant to protect the interest of the state or public, with a severe disciplinary penalty if violated, and in Section 96 which says that civil servant must not serve as manager or in a post with similar duty in a private company. Various laws on local government in Thailand also contain relevant sections on conflict of interest. For example, Section 18 of the Municipality Act B.E. 2496 says that members of the board of municipalities must not be those who have cross interests in the contracts that those municipalities are involved. Both the Tambon Council and Tambon Administrative Organisations Act B.E. 2537 and the Provincial Administrative Organisations Act B.E. 2540 have the same provisions that will invalidate the qualifications of any members of the above organisations if they are found to have cross interest in any contracts that such local organisations have entered into.⁷ In other specific laws governing other government agencies appropriate references on conflict of interest may also be found.

The third group of laws on conflict of interest are those that come under the jurisdiction of the National Counter Corruption Commission (NCCC). Three laws can be classified under this group. The first is the Organic Law on Counter Corruption B.E. 2542 which is the main pillar of legal power of the NCCC. The relevant part on conflict of interest is found in Chapter 9 of this Act with the sub-title: Conflicts between Personal Interest and Public Interest. This Chapter contains 4 Sections, with Section 100 specifying the following four acts that state officials shall not carry out. These four acts are as follows:

- (1) being a party to or having interest in, a contract made with a government agency where such State Official performs duties in the capacity as State Official who has the power to conduct supervision, control, inspection or legal proceedings;
- (2) being a partner or shareholder in a partnership or company which is a party to a contract made with a government agency where such State Official performs duties in the capacity as a State Official who has the power to conduct supervision, control, inspection or legal proceedings;
- (3) being a concessionaire or continuing to hold a concession from the State, State agency, State enterprise or local administration or being a party to a contract of a directly or indirectly monopolistic nature made with the State, a government agency, State agency, State enterprise or local administration, or being a partner or shareholder in a partnership or company which is a concessionaire or

⁷ I would like to thank Commission Klanarong Chanthick for information on this point.

- shareholder in a partnership or company which is a concessionaire or a contractual party in such manner;
- (4) being interested in the capacity as a director, counsel, representative, official or employee in a private business which is under supervision, control or audit of the State agency to which such State Official is attached or where such State Official performs duties in the capacity as State Official, provided that the nature of the interest of the private business may be contrary to or inconsistent with public interest or the interest of the government service or may affect the autonomy in the performance of duties of such State Official

The second law that deals with conflict of interest is the Act on Offences Relating to the Submission of Bids to State Agencies B.E. 2542. The part which targets public officials in collusion with private contractors in their bids to the state or public sector is found in Sections 11, 12, and 13 (For detail, see the Act in full in Annex A). For example, Section 11 states that any official of a state agency or any person entrusted by a state agency who fraudulently designs, fixes the prices, prescribes conditions or determines benefits that would form the standard in the bid process with the object of preventing fair bid competition, or in order to assist any bidder in unfairly obtaining the right to enter into a contract with a state agency, or in order to prevent other bidders from fairly competing in the bid process, shall be liable to imprisonment for a term from five years to twenty years, or life imprisonment and a fine from 100,000 baht to 400,000 baht.

The third law under enforcement of the NCCC is the Act on Management of Partnership Stakes and Shares of Ministers B.E. 2543. The main thrust of this act is to see to it that government ministers do not have conflict of interest on the management of any company whose stocks or shares these ministers own in large size. For example, Section 4 of this Act stipulates that a minister shall not be a partner or a shareholder in a partnership or company or remain as a partner or shareholder in a partnership or company, except when the size of ownership of the stocks and shares is not exceeding 5 per cent. In case this minister would like to receive benefits as a partner or a shareholder over 5 per cent, he or she must inform the President of the NCCC and transfer his or her stocks and shares to a juristic person. In this way this minister will be out of direct control over his share of the partnership and company and thus avoid apparent conflict of interest.

It should be mentioned in closing that while the above laws seem to take into account appropriate consideration on preventing conflict of interest on the functioning of public officials, the frequency of use of these laws by the NCCC is still very sparse. It seems the NCCC is being encumbered by a large backlog of corruption and malfeasance cases to have any more time for specific attention on conflict of interest issues. This, however, is changing with regards to the workplan of the current Commission, as the next section will show.

4. New Movements and Initiatives

As the primary anti-corruption agency in Thailand, the NCCC is currently in the process of changing its work programs to accommodate new and heightened interest in the

importance of conflict of interest as a cause or form of corruption. The following new movements and initiatives may be considered:

- (a) the new nine Commissioners have agreed to give greater emphasis on the prevention aspects of anti-corruption efforts in relation to the previous emphasis on the suppression and punishment of corruption. Roughly overall efforts on the two sides of anti-corruption activities should be equal (50:50). Increase in prevention efforts of course dictates that conflict of interest be removed as much as possible from the activities of officials of the public sector;
- (b) Overall Codes of Conduct for public officials and politicians are being planned in conjunction with the State Services Commission of Thailand and the Office of the Ombudsmen. While the business of setting appropriate Code of Conduct for the public officials and politicians is shared among the above mentioned bodies, the NCCC has taken keen interest in its own brand of Code of Conduct which incorporates not just necessary level of official duties but also a relatively high level of ethical standards as well;
- (c) A recent Supreme Court judgment on a large transportation project whereby the contract between the state and private contractors was declared null and void because the competent officers acting on behalf of the state received personal benefits from the private contractors in contravention of conflict of interest sets a precedent for similar consideration and judgment on impending cases being investigated by the NCCC;
- (d) The frequency of the use of so-called Collusion Law and Stock Management Law mentioned above will be stepped up by the NCCC. It is hoped that by being resolute and forthright in some sample cases, the NCCC can send a message to all concerned that it means business in trying to curb the prevalence of conflict of interest in the work of the public sector;
- (e) The NCCC has joined force with the government to declare anti-corruption a national agenda, and work together on new ideas to combat corruption rooted in conflict of interest. As can be seen in Box 1, new initiatives on tackling conflict of interest in the public sector promise to drastically change the ways public officials will handle their business with the private sector businessmen and entrepreneurs;
- (f) The NCCC is trying to develop a new way to monitor the change in financial positions of politicians and high-ranking officials. Instead of emphasis being placed on checking the existence and accuracy of property and assets of these important state officials, it will design a way to monitor the change of properties and assets through constant report and tracking on both financial and non-financial transactions. This is expected to be an effective deterrent on the wish and inclination to corrupt of those politicians and high-ranking officials in the public sector.

5. Concluding Remark

In this paper, I have tried to delineate the relevance and importance of conflict of interest in the affairs of the state. It is strongly argued that conflict of interest exists when a

deciding public official imparts his or her official duty in exchange, either directly or indirectly, for certain personal gains or benefits at the expense of the public. Hence the title of this paper: Private Gain from Public Loss. In Thailand, there are many organisations and agencies, both public and private, that try to stamp out conflict of interest in the public-private activities so that the benefits accrue rightfully to the population at large rather than to some private persons. It must be stated, however, that the success on these efforts are still very small. The NCCC itself is doing its best to come up with many initiatives and policy efforts to help improve integrity conditions of Thailand. It has done this through greater use of existing laws as well as introduction of new laws. While the work at present has just started, the determination of all the commissioners is there to see to it that many positive changes happen in the field of anti-corruption in this country in the near future.

References

- Briscoe, Andrew and H. C. L. Hermans (2001), *Combating Corruption in Botswana*, Friedrich Ebert Stiftung, Gaborone, Botswana.
- Harvard School of Public Health (2007), Policies on Outside Professional Activities and Commitments, from <http://www.hsph.harvard.edu/academicaffairs/Conflict.html>
- McDonald, Michael (2007), Ethics and Conflict of Interest, the W. Maurice Young Centre for Applied Ethics, the University of British Columbia.
- Political and Economic Risk Consultancy, Ltd.—PERC (2006), Corruption in Asia in 2006, Hong Kong.
- Raile, Eric (2004), “Managing Conflicts of Interest in the Americas: A Comparative Review”, Conflict of Interest Regulation in Latin America. From the website: <http://www.usoge.gov/pages/international/int_files/conflicts_america...>
- Resnik, David B. (2007), “Conflicts of Interest in Scientific Research Related to Regulation or Litigation”, in the *Journal of Philosophy, Science and Law*’ vol. 7, April 16, 2007.
- The National Counter Corruption Commission (1999), Anti-Corruption Laws and Regulations, Bangkok.
- Transparency International (2006), Corruption Perceptions Index.
- World Bank (2006), World Governance Indicators, Washington DC.

Box 1: The Essence of the Draft Bill on Conflict of Interest proposed by the Present Thai Government

The present Thailand government led by General Surayud Chulanont which was installed in the aftermath of a military coup in September 2006 was given a specific task of fighting corruption which was rampant in the previous government and an important reason for its downfall. In cooperation with the present National Counter Corruption Commission which was installed also right after the coup, they have agreed to set fighting corruption a national agenda and will do all they can to reduce or eradicate corruption from the public sector of Thailand. As mentioned elsewhere, while the offences stemming from conflict of interest from official duties are already stipulated in the Organic Law on the Prevention and Suppression of Corruption B.E. 2542, the government under General Surayud would like to do something drastic, to give an added impetus and stimulus to the anti-corruption efforts of his government. Therefore, a new draft bill on conflict of interest is proposed with an aim to enacting it into law before the term of this government ends at the end of 2007 when the new election will be held and a new government forms.

As it stands at the end of July 2007, this bill is being scrutinized by a select committee in the National Assembly. It contains only 18 sections. The essence of important sections in this bill is as follows:

Section 3: This section defines state officials in the usual ways to include anyone who has received regular payments or compensation from government budget, but it has added a new definition of spouse to mean de factor husband or wife, and relatives to mean the three generations of relatives the official in question and those of his spouse as well.

Section 5: This is the main section that defines the nature of criminal offences or corrupt practices under this prospective act. There are 5 categories of offences as follows:

- (1) The usual offences under Section 100, 101, and 103 of the Organic Law on Anti-Corruption which include state official being a party or having interest in a contract in which he or she has supervision, control, or inspection power, or has received property or other benefits within two years after being out of his or her job;
- (2) Corrupt use of information that that state official has while performing his or her official duty;
- (3) Corrupt use of state properties for his or her personal gains or the gains of others who have no rights;
- (4) Initiate, propose, or prepare state project with malintention to profit from such project either directly or indirectly to himself or herself or anyone;
- (5) Corrupt use the power that this state official has to interfere with independent decision of other state officials in charge either directly or indirectly.

Section 6: Anyone who is found to benefit from the offences committed by state officials under Section 5 is deemed to be the accomplice of that state official, and will receive the same penalty unless this accomplice can prove that he or she has no knowledge of action of that state official. This section tries to make sure that any knowing 'nominee' to the offending state official will not avoid punishment.

Section 11: Any state contract be it civil or administrative contract by state official which is found to violate conflict of interest provisions will be declared null and void. This is to be used as a deterrent to a collusion between corrupt officials and contractors that if this conflict of interest is found out, the contract will not hold.

Section 12: The public will be given easier means to terminate projects in violation of conflict of interest provisions and abrogate their contracts. For example, only 50 members of parliament, or 5,000 electorates, or 2 ombudsmen can file petition to the NCCC to stop projects or contracts in question.

Section 13: The NCCC will be empowered to implement this prospective act once it comes into force. A special division will be set up with the NCCC organisation to monitor, advise, and give consultation to the public and other state officials on the compliance of this act, including the campaign to build proper ethical and integrity standards for public officials to avoid getting into the offences from conflict of interest.

Annex A. Act on Offences Relating to the Submission of Bids to State Agencies

Below is the full text of the Act on Offences Relating the Submission of Bids to State Agencies B.E. 2542. (Published in the Government Gazette Vol. 116, Part 120a, dated 29th November B.E. 2542 (1999)).

Act on Offences Relating to the Submission of Bids to State Agencies, B.E. 2542 (1999)

BHUMIBOL ADULYADEJ, REX.

Given on the 19th Day of November B.E. 2542;

Being the 54th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:
Whereas it is expedient to have a law on offences relating to the submission of bids to State agencies;

Be it therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1. This Act is called the “Act on Offences Relating to the Submission of Bids to State Agencies, B.E. 2542 (1999)”.

Section 2. This Act shall come into force as from the day following the date of its publication in the Government Gazette.

Section 3. In this Act:

“bid” means the submission of a proposal with the object of acquiring the right to enter into a contract with a State agency pertaining to a purchase, hire, exchange, lease, asset disposal, concession or receipt of other rights;

“State agency” means a Ministry, Sub-Ministry, Department, provincial administration, local administration, State enterprise or other State agencies or agencies exercising functions of the State under the law and receiving contributions or investment properties from the State;

“political position holder” means:

- (1) Prime Minister;
- (2) Minister;
- (3) member of the House of Representatives;
- (4) Senator;
- (5) other political officials other than (1) and (2) under the law on rules of political officials;
- (6) National Assembly officials of the political division under the law on rules of National Assembly officials;
- (7) local administrators and members of the local assembly.

“NCCC” means the National Counter Corruption Commission.

Section 4. Any person who bids in collusion with others with the object of conferring a benefit to any such persons in the form of a right to enter into a contract with a State agency, by avoiding fair competition or by creating barriers to the offer of other products or services to a State agency or by acquiring an advantage over a State agency in a manner which is not congruous with normal business practice, shall be liable to imprisonment for a term not exceeding three 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 assumes the role of persuading others to participate in the commission of an offence prescribed in paragraph one shall be liable to the penalties under paragraph one.

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 6. Any person who coerces another person to participate in a bid or not participate in a bid or withdraw a bid or bid as directed, by use of force or any form of threat to incite fear of endangerment to life, body, liberty, reputation or properties of the threatened person or a third party, and as a result thereof the threatened person submits to such coercion, shall be liable to imprisonment for a term from five years to ten 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.

Section 7. Any person who by deceit or other means constitutes a cause for another person's inability to bid fairly or for such person to bid under a misunderstanding 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.

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 a 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.

Section 10. Any official of a State agency having the power or duty to approve, consider or perform any function in relation to a bid on any occasion, and who knows or should have known from the apparent circumstances that an offence under this Act was committed in the bid on such occasion, having failed to act in such manner as to abort proceedings relating to the bid on such occasion, shall have committed an offence of misfeasance in office and shall be liable to imprisonment for a term from one year to ten years and a fine from twenty thousand baht to two hundred thousand baht.

Section 11. Any official of a State agency or any person entrusted by a State agency who fraudulently designs, fixes the price, prescribes conditions or determines benefits that would form the standard in the bid process with the object of preventing fair bid competition, or in order to assist any bidder in unfairly obtaining the right to enter into a contract with a State agency, or in order to prevent other bidders from fairly competing in the bid process, shall be liable to imprisonment for a term from five years to twenty years or life imprisonment and a fine from one hundred thousand baht to four hundred thousand baht.

Section 12. Any official of a State agency who commits an offence under this Act, or commits any act with the purpose of preventing fair competition by favouring any bidder as the person entitled to enter into a contract with a State agency, shall have committed the offence of misfeasance in office and shall be liable to imprisonment for a term from five years to twenty years or life imprisonment and a fine from one hundred thousand baht to four hundred thousand baht.

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.

Section 14. The NCCC shall have the power to investigate facts relating to acts which are offences relating to the submission of bids to State agencies under this Act.

In the case where circumstances appear to the NCCC or a petition has been filed that a purchase, hire, exchange, lease, asset disposal, concession or grant of any rights of a State agency on any occasion involves an act which constitutes an offence under this Act, the NCCC shall expediently conduct an investigation, and if the NCCC considers that there is substance in the case, the following proceedings shall be taken:

(1) in the case where the offender is a State official or political position holder under the organic law on counter corruption, the NCCC shall instigate proceedings on such person pursuant to the organic law on counter corruption;

(2) in the case of persons other than (1), the NCCC shall file a complaint against such person to the investigation officer in order to take further proceedings; the fact-finding investigation report of the NCCC shall form the basis of proceedings taken by the investigation officer;

(3) in the case where the commission of an offence under this Act is an act of a State official or political position holder under (1) or other persons in connected cases of identical offences, whether as a principal, agent provocateur or aid and abettor, if the NCCC considers it appropriate to conduct an investigation for further proceedings on all such related persons at one time, the NCCC shall have the power to conduct an investigation of the persons related to the commission of the offence, and upon completion, a documentary report and opinion shall be submitted to the Office of the Attorney-General in order for a case to be filed at the court which has competent jurisdiction over such offenders; in this regard, the report of the NCCC shall be deemed as an investigation file under the law on criminal procedure; however, if the NCCC considers it appropriate for the investigation of such offence to be taken by an investigation officer under the law on criminal procedure, the NCCC shall submit the result of fact-finding investigation to the investigation officer who will take further proceedings.

Proceedings of the NCCC shall not abrogate the rights of persons or State agencies that have suffered losses as a result of an offence in the bid to file petitions or complaints under the law on criminal procedure.

Section 15. In an investigation for criminal proceedings against an offender under this Act, the NCCC shall have the following powers:

(1) to search for facts and compile evidence in order to acquire facts or prove an offence as well as to instigate legal proceedings to implicate the offender;

(2) to issue an order for government officials, officers or employees of State agencies to perform as necessary for the compilation of evidence by the NCCC, or summon documents or evidence relating to any person, or summon any person to give a testimony for the purpose of the investigation;

(3) to file motions at the court of competent jurisdiction for a warrant to enter a place of residence, place of business or other places, including vehicles belonging to any person, between sunrise and sunset or during business hours in order to examine, search, seize or attach documents, properties or other evidence relating to the matter which is subject to the factual inquiry, and if not completed within such time period, those acts may be continued until completion; 6

(4) to file motions at the court of competent jurisdiction for an arrest warrant and detention of an alleged offender who appears to be an offender during the factual inquiry or in relation to whom the NCCC resolves that there is substance in the allegations in order that he/she be sent to the Office of the Attorney-General for further proceedings;

(5) to request a police officer or investigation officer to comply with court warrants issued under (3) or (4);

(6) to prescribe rules by publication in the Government Gazette on matters relating to the investigation and inquiry of commission of offences under this Act and coordinate legal proceedings taken by the NCCC, investigation officer and State attorney.

In the exercise of functions under this Act, the President and members of the NCCC shall be administrative officials or senior police officers and shall have identical powers and duties to the investigation officer under the Criminal Procedure Code, and for the benefit of investigations, the NCCC shall have the power to appoint a sub-committee or competent official to exercise the functions of the NCCC. The appointed sub-committee or competent official shall be an investigation officer under the Criminal Procedure Code.

In the case where the NCCC submits an investigation report to the Office of the Attorney-General for further legal proceedings, in relation to proceedings leading to the issue of an order of prosecution or non-prosecution vested in the State attorney under the Criminal Procedure Code, the provisions prescribing powers and duties of the investigation official, National Police Commander or provincial governor shall be deemed as powers and duties of the NCCC.

Section 16. The Prime Minister shall have charge and control of the execution of this Act.

Countersigned by:

Chuan Leekpai

Prime Minister

NB:— The reasons for promulgating this Act are as follows. Whereas the procurement of products and services, whether by means of purchase or hire or other methods, of all State agencies are processes which expend budgetary appropriations, loans, financial assistance or revenues of the State agency, which are State funds, and the fact that the grant of rights to operate certain activities through concessions or other similar cases by the State are activities undertaken in the interest of the public, which are functions of the State; therefore, the procurement of such products and services as well as grant of rights must be conducted in a fair and just manner and by means of free competition for the greatest benefit to the State. However, operations in the past have experienced bid collusions and various circumstances, which were not true competitions to present the greatest benefit to the State agency and have incurred loss to the nation. Moreover, in some cases, political position holders or State officials were involved in or promotes the commission of an offence or fails to exercise their powers and duties, which worsened this problem. It is therefore appropriate that such acts are prescribed as offences in order to suppress such acts as well as prescribe offences and procedures for implicating political position holders and State officials so as to enhance the efficiency of such suppression measures. It is thus expedient to enact this Act.

Annex B: Act on Management of Partnership Stakes and Shares of Ministers B.E. 2543. (Published in the Government Gazette Vol. 117, Part 66a, dated 12th July B.E. 2543 (2000)).

**Management of Partnership Stakes and Shares of Ministers Act,
B.E. 2543 (2000)**

BHUMIBOL ADULYADEJ, REX.

Given on the 1st Day of July B.E. 2543;

Being the 55th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:
Whereas it is expedient to have a law on management of partnership stakes and shares of Ministers;

Whereas it is aware that this Act contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which section 29, in conjunction with section 48 and section 50 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

Be it therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1. This Act is called the “Management of Partnership Stakes and Shares of Ministers Act, B.E. 2543 (2000)”.

Section 2. This Act shall come into force as from the day following the date of its publication in the Government Gazette.

Section 3. In this Act:

“Minister” means the Prime Minister or an individual Minister in the Council of Ministers;

“juristic person” means a juristic person entrusted by the Minister to manage partnership stakes or shares of Ministers under this Act;

“NCCC” means the National Counter Corruption Commission.

Section 4. A Minister shall not be a partner or a shareholder in a partnership or company or remain as a partner or shareholder in a partnership or company, except in the following cases:
(1) in a limited partnership, a Minister may be a limited liability partner in an amount not exceeding five percent of the total capital in such partnership;
(2) in a limited company or public limited company, a Minister may be a shareholder in an amount not exceeding five percent of the total amount of issued shares in such company;

Section 5. In the case where a Minister wishes to receive benefits as a partner or shareholder in a partnership or company in an amount, which exceeds the prescription in section 4, the Minister shall proceed as follows:

- (1) notify the President of the National Counter Corruption Commission in writing within thirty days as from the date of appointment as a Minister; and
- (2) transfer the partnership stakes or shares in such partnership or company to a juristic person within ninety days as from the date of notification to the President of the National Counter Corruption Commission, and upon completion of such transfer of partnership stakes or shares to the juristic person, the Minister shall notify the President of the National Counter Corruption Commission in writing within ten days as from the date of such transfer of partnership stakes or shares.

Section 6. A juristic person to whom a Minister may transfer partnership stakes or shares for management under this Act shall be a juristic person having the powers to manage personal funds under the law on securities and securities exchange or a juristic person which manages assets for the benefit of others as provided by law upon the approval of the NCCC.

Section 7. A juristic person to whom a Minister may transfer partnership stakes or shares for management shall be a juristic person which does not have directors or officers entrusted by such juristic person to act as managers in the administration and management of partnership stakes or shares of Ministers while having benefits or interests with the Minister, spouse of the Minister or a creditor or debtor of the Minister.

Section 8. In the transfer of partnership stakes or shares of Ministers to a juristic person under this Act, the Minister shall transfer the ownership of partnership stakes or shares to the juristic person absolutely, but the management or procurement of benefits relating to the partnership stakes or shares of Ministers, shall be in accordance with the conditions of contract for management of the Minister's partnership stakes or shares.

In a transfer of partnership stakes or shares, which are subject to a charge existing on the date of transfer, such transfer shall not prejudice the rights of creditors of such obligation, and the creditor of the obligation may not object to such transfer.

Section 9. A contract for management of partnership stakes or shares of a Minister shall be drawn up in accordance with the form prescribed by a Notification of the NCCC which shall at least include details on the following matters:

- (1) details relating to the partnership stakes or shares of Ministers that are transferred to the juristic person;
- (2) details on the method of transfer or disposal of partnership stakes or shares, methods of management of partnership stakes or shares and procurement of benefits in the transferred partnership stakes or shares, the characteristics of which shall not prescribe a framework for the management or procurement of benefits in such manner as to enable the Minister to exercise control of the management or procurement of benefits;
- (3) remuneration and method for payment of remuneration, if any;
- (4) liabilities and limitations to liabilities arising from the management of partnership stakes or shares;
- (5) payment of benefits arising from the management of partnership stakes or shares;
- (6) method for return of transferred partnership stakes or shares and benefits arising from the management of partnership stakes or shares.

In the prescription of a contractual form for the management of partnership stakes and shares of Ministers, the NCCC may prescribe conditions or limits on the scope of oral agreements, which a Minister and juristic person may rightfully enter into.

Entry into an agreement otherwise than under the contractual terms of management of partnership stakes and shares of Ministers pursuant to the form prescribed by the NCCC shall be prohibited.

Section 10. Upon the completion of a transfer of partnership stakes or shares to the juristic person by the Minister, the juristic person shall report the receipt of transferred partnership stakes or shares as well as forward a copy of the contract for management of partnership stakes or shares of Ministers to the NCCC within ten days as from the date of contractual execution. In this event, the NCCC shall proceed with the disclosure of such copy of contract to the public in such manner as it considers appropriate without delay.

Section 11. A Minister is prohibited from committing any act, which has the characteristics of exercising control, or issuing an order relating to the management of partnership stakes or shares or procurement of benefits from the partnership stakes or shares.

Section 12. A juristic person is prohibited from giving consent or proceeding by any means for the purpose conferring the Minister with an opportunity to administer, control or issue orders relating to the management of partnership stakes or shares or procurement of benefits from the partnership stakes or shares, or disclose to any person in such manner as to inform the Minister of the administration or management of partnership stakes or shares received from such Minister, except where the disclosure is in accordance with the law or a report of operations in accordance with the conditions prescribed by the NCCC.

Section 13. A juristic person shall prepare a separate account from the operational accounts of the juristic person, which shows the management of partnership stakes or shares received from a Minister and benefits received from the management of such partnership stakes or shares.

Partnership stakes or shares received by the juristic person from a Minister and benefits received from the management of such partnership stakes or shares are not properties of the juristic person which creditors of the juristic person can seize or attach for the enforcement of debts in both civil and insolvency proceedings, except where the creditors of the juristic person have the right to enforce an obligation attached to the partnership stakes or shares or benefits directly arising from such partnership stakes or shares.

The provisions in paragraph two shall apply mutatis mutandis to the dissolution of the juristic person.

Section 14. In the receipt and management of partnership stakes or shares of Ministers under this Act, the juristic person receiving such partnership stakes or shares shall be exempt from the provisions of any law which prohibit the juristic person from becoming a partner or shareholder in other partnerships or companies or where there is a limit on the amount of funds for the management of properties belonging to others.

In the case where there is a law limiting the amount of partnership stakes or shares of juristic persons in other partnerships or companies, the amount of partnership stakes or shares received from the Minister including the benefits arising from the partnership or shares shall not be accounted with the amount of partnership stakes or shares which the juristic person is entitled in other partnerships or companies.

Section 15. In the case where a juristic person who received partnership stakes or shares from a Minister dissolves or becomes insolvent, once the Minister receives the return of partnership stakes or shares and benefits arising from the management of partnership stakes or shares, if the Minister still wishes to continue receiving benefits from such partnership stakes or shares, the Minister shall notify such intention to the President of the National Counter Corruption Commission within thirty days as from the date of receipt of such returned partnership stakes or shares and proceed to transfer such partnership stakes or shares to another juristic person in accordance with the provisions of this Act.

In the case where the Minister receives additional partnership stakes or shares during the term of office as a Minister, and such partnership stakes or shares exceed the amount prescribed in section 4, if the Minister still wishes to continue receiving benefits from such partnership stakes or shares, the provisions in paragraph one shall apply mutatis mutandis.

Section 16. Any juristic person not complying with section 10 or section 13 paragraphs one shall be liable to a fine not exceeding three hundred thousand baht.

Section 17. Any Minister who violates section 11 or any juristic person who violates section 12 shall be liable to imprisonment for a term from one year to ten years or a fine from one hundred thousand baht to one million baht, or both.

Section 18. In the case where a juristic person commits an offence under this Act, the directors, managers or persons responsible for the operations of such juristic person shall be deemed as joint offenders with the juristic person unless it can be proven that such act of the juristic person was committed without his knowledge or consent.

Section 19. A Minister holding office on the date at which this Act comes into force shall proceed to secure compliance with this Act within one hundred and twenty days as from the date at which this Act comes into force.

Section 20. The Prime Minister shall have charge and control of the execution of this Act.
Countersigned by:

Chuan Leekpai
Prime Minister

NB:- The reasons for promulgating this Act are as follows. Whereas section 209 of the Constitution of the Kingdom of Thailand states that a Minister shall not be a partner or shareholder of a partnership or a company or retain his or her being a partner or shareholder of a partnership or a company up to the limit as provided by law; in the case where any Minister intends to continue to receive benefits in such cases, such Minister shall inform the President of the National Counter Corruption Commission within thirty days as from the date of the appointment and shall transfer his or her shares in the partnership or company to a juristic person which manages assets for the benefits of other persons as provided by law; in this connection, such Minister is prohibited from committing any act which has the characteristics of exercising any administration or management relating to the shares or business of such partnership or company. It is therefore necessary to enact this Act.