



**Conference of the States Parties  
to the United Nations  
Convention against Corruption**

Distr.: General  
4 October 2016

Original: English

---

**Implementation Review Group**

**Resumed seventh session**

Vienna, 14-16 November 2016

Agenda item 2

**Review of implementation of the**

**United Nations Convention against Corruption**

**Executive summary**

**Note by the Secretariat**

**Addendum**

**Contents**

	<i>Page</i>
II. Executive summary.....	2
Thailand.....	2



## II. Executive summary

### Thailand

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

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

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

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

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

#### 2. Chapter III: Criminalization and law enforcement

##### 2.1. Observations on the implementation of the articles under review

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

*Obstruction of justice (art. 25)*

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

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

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

*Liability of legal persons (art. 26)*

Criminal liability of legal persons is only established for money-laundering offences and specific offences under the AORSBSA. It is without prejudice to the criminal liability of natural persons (sects. 61 and 62 AMLA, sects. 5 and 8 AORSBSA). Fines for legal persons are limited to a maximum of 1 million Baht, less than USD 30,000 (sect. 61 AMLA), or fifty per cent of the highest bid price submitted by the joint offenders or of the value of the contract that has been entered into with the State agency, whichever is higher (sects. 5 and 8 AORSBSA).<sup>3</sup>

*Participation and attempt (art. 27)*

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

Section 95 CC establishes the general statute of limitations, determining that corruption offences prescribe within five to 20 years. Sections 74/1, 75 and 84 OACC establish different statutes of limitations for determined offences.<sup>5</sup>

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

*Jurisdiction (art. 42)*

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

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

While section 31 MLA Act does not clearly establish an obligation to consult with other States if they are acting in respect of an offence over which Thailand is also

---

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

exercising its jurisdiction, it allows for Thailand's consideration of initiating proceedings in such cases.

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

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

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

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

The NACC and the PACC are the specialized agencies in the fight against corruption. The NACC has prosecutorial power (OACC sect. 97) and its independence is guaranteed by the Constitution (sect. 251). The PACC was established through executive measures in the OACC. Specialized anti-corruption prosecutors work in a Special Division on Corruption Cases established at the Office of the Attorney-General (OAG).<sup>6</sup>

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

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

## **2.2. Successes and good practices**

- Thailand has created a number of specialized institutions tasked with fighting corruption.
- The independence of NACC, which has investigation and prosecution powers, is anchored in the Constitution.
- Thailand has established specialized anti-corruption prosecutors at OAG.
- TACC serves as platform for inter-agency collaboration. It facilitates information exchange in particular on transnational corruption and strengthens the coordination between public agencies in their implementation of the Convention.
- Thailand has developed creative ways of involving youth in the fight against corruption.

---

<sup>6</sup> Development after the country visit: the specialized Department of Corruption Litigation has been established.

- Section 6 AMLA establishes extraterritorial jurisdiction over money-laundering offences if one of the co-offenders is a Thai national or has residence in Thailand.

### 2.3. Challenges in implementation

It is recommended that Thailand:

- Amend its legislation to ensure that the indirect commission of active bribery is subject to the same punishment as the direct commission of the offence; cover the promise, offering or giving of an undue advantage to third parties; as well as to remove the additional element of “wrongfully” discharging, omitting to discharge or delaying the performance of a duty in the office (art. 15 (a));
- Ensure that indirect passive bribery continues to be criminalized. Should the judiciary not interpret the law accordingly in future cases, legislative clarification may be required (art. 15 (b));
- Criminalize active transnational bribery (art. 16, para. 1);
- Establish a general offence of embezzlement and misappropriation of property by a public official (art. 17);
- Consider criminalizing active trading in influence; and amending its passive trading in influence offence by removing the additional elements of the offence, covering the indirect commission of the offence, and the solicitation or acceptance of an undue benefit for the official or other person to abuse his or her supposed influence (art. 18 (a), (b));
- Consider criminalizing illicit enrichment and establishing specific offences of active and passive bribery in the private sector (arts. 20, 21);
- Criminalize the possession or use of property, knowing, at the time of receipt, that such property is proceeds of crime; continue efforts to amend the legislation in this regard; and criminalize the acquisition of such property for all corruption offences (art. 23, subpara. 1 (b) (i));<sup>7</sup>
- Apply its money-laundering offences to all corruption offences; provide copies of its anti-money-laundering laws to the Secretary-General of the United Nations (art. 23, subparas. 2 (a), (b), (d));
- Consider extending the list of predicate offences for concealment to include all corruption offences (art. 24);
- Establish a specific offence of obstruction of justice (art. 25 (a));
- Establish the criminal, civil or administrative liability of legal persons for participation in all corruption offences (beyond money-laundering; art. 26, paras. 1 and 2); assess the sanctions available for legal persons in order to ensure that they are effective, proportionate and dissuasive (art. 26, para. 4);

---

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



- Thailand may wish to criminalize the preparation for corruption offences (art. 27, para. 3);
- Amend its legislation to suspend the statute of limitations also in cases in which the alleged offender has not yet been prosecuted and brought to court before he escapes (art. 29);
- Assess whether amending its legislation would lead to more proportionate sanctions (art. 30, para. 1);
- Take into account the gravity of the offences concerned when considering early release or parole (art. 30, para. 5);
- Strengthen measures for the reintegration of offenders (art. 30, para. 10);
- Strengthen administration of frozen, seized or confiscated property (art. 31, para. 3);
- Establish the conviction-based confiscation of proceeds of crime that have been transformed or converted into other property in cases other than confiscation under the AMLA; and the confiscation of proceeds of crime that have been intermingled with property acquired from legitimate sources in cases other than forfeiture under the OACC (art. 31, paras. 4 and 5);
- Establish, under the Criminal Code, the confiscation of income or benefits derived from proceeds of crime, even if they have been transformed or converted, or from property with which such proceeds have been intermingled (art. 31, para. 6);
- Thailand may wish to establish rebuttable presumptions also in proceedings other than forfeiture under the OACC (art. 31, para. 8);
- Strengthen witness protection measures, consider concluding agreements for international relocation, and enable the views and concerns of victims to be presented also when a victim does not act as witness (art. 32, paras. 1, 3, 5);
- Consider strengthening measures to protect reporting persons (art. 33);
- Strengthen measures to address the consequences of corruption (art. 34);
- Take further measures to encourage offenders to collaborate with justice; and consider mitigating punishment of collaborators with justice in corruption cases (art. 37, paras. 1 and 2);
- Consider granting immunity from prosecution to collaborators with justice also in cases not involving state officials, or when state officials are not being prosecuted (art. 37, para. 3);
- Consider concluding agreements concerning collaborators with justice at the international level (art. 37, para. 5);
- Further strengthen cooperation between its public authorities and its authorities responsible for investigating and prosecuting criminal offences (art. 38);
- Thailand may wish to take previous convictions in another State into consideration in criminal proceedings (art. 41);

- Thailand may wish to establish its jurisdiction over all corruption offences committed by nationals or stateless persons who have their habitual residence in Thailand; against a national or against the State; without requiring a prior request for punishment (art. 42, paras 2 (a), (b) and (d)); or when the alleged offender is present in its territory and it does not extradite him solely because he is a national (art. 42, para. 3); or over corruption offences other than money-laundering when the alleged offender is present in its territory and it does not extradite him (art. 42, para. 4);
- Thailand is encouraged to continue consulting with other States parties also exercising their jurisdiction with a view to coordinating actions (art. 42, para. 5).

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

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

### **Chapter IV: International cooperation**

#### **3.1. Observations on the implementation of the articles under review**

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

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

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

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

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

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

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

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

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

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

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

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

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

#### *Mutual legal assistance (art. 46)*

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

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

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

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

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

Mutual legal assistance may be provided on the basis of reciprocity and without a treaty.

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

According to Section 34 MLA Act (referring to the CPC and the CC), forfeited property becomes the property of the State. Thus, even though Thailand can provide mutual legal assistance in accordance with Article 46, the authorities considered that the return of those assets would be problematic. Thailand is amending its laws to comply with Article 46, subparagraph 3 (k) of the Convention.<sup>8</sup>

Requests for mutual legal assistance regarding natural and legal persons are treated equally.

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

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

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

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

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

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

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

Thailand bears the ordinary costs of executing requests for mutual legal assistance.

---

<sup>8</sup> Development after the country visit: an amendment to MLA Act entered into force on 22 April 2016. The Act addresses the return of assets to the country of origin in section 35/2.

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

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

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

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

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

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

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

Thailand does not have legislation or agreements regulating joint investigations.

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

### **3.2. Successes and good practices**

- Thailand can grant extradition in the absence of a treaty (art. 44, para. 5).
- Requests for mutual legal assistance and extradition requests from States which have a bilateral agreement with Thailand can be directly addressed to OAG.
- The requirement of dual criminality is interpreted broadly to facilitate cooperation.
- Thai law enforcement authorities are proactively seeking to conclude further agreements on the sharing of intelligence and information, and are actively using a number of international cooperation mechanisms.

### **3.3. Challenges in implementation**

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

- Thailand may wish to grant the extradition for offences that are not punishable under its own domestic law (art. 44, para. 2);
- Endeavour to expedite extradition procedures and simplify evidentiary requirements relating thereto (art. 44, para. 9);

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

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

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

- Summary of good practices/lessons learned;
- Capacity-building programmes for authorities responsible for designing and managing the use of special investigative techniques;

- Model agreements/arrangements;
  - Capacity-building programmes for authorities responsible for international cooperation in criminal/investigative matters.
-