

# THAILAND

## **VICTIMS OF CORRUPTION: DAMAGE REPARATION AND LEGAL STANDING**

### **INTERNATIONAL DATABASE 2022**

**SOURCE: CRAIG R. ARNDT,  
LAWYER**

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VICTIMS OF CORRUPTION WORKING GROUP



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**SOURCE: Craig R. Arndt, Lawyer**

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# 1. Legal Standing

## 1.1 Legal standing for civil society organisations and/or citizens in corruption-related cases

Civil society organisations and individual citizens do not have legal standing in corruption-related cases.

## 1.2 Type of Cases

N/A

## 1.3 Legal basis under which citizens have legal standing

In theory, under § 420 of the Thai Civil and Commercial Code, any person injured by another person may seek damages for wrongful acts in civil courts subject to jurisdiction requirements and the court's determination that it has competency. The normal prescription period is 1 year from the date the act occurred but may be extended where criminal conduct is involved.

There is no law giving civil society or citizens standing as such.

Civil Procedure Code Article 55

Any person whose rights and duties under civil law are involved in a dispute or must be exercised through the medium of a court, is entitled to submit his case to a Civil court having territorial jurisdiction and competency over it in accordance with civil law and this Code.

The civil court will then decide whether to accept the case.

## 1.4 Citizens and/or civil society's intervention in corruption cases in other capacities (e.g. third party contributors, expert input, etc)

Citizens and/or civil society can not intervene in corruption cases in other capacities. Civil society organizations can only urge the Thai NACC to investigate cases that come to their attention

## 1.5 State’s entitlement to represent the citizens collectively in corruption cases and whether its intervention excludes direct intervention by citizens

The state is not entitled to represent the citizens collectively in corruption cases.

## 1.6 Legal standing of any foreign government or foreign-based non-governmental institution to bring corruption cases on behalf of this country’s citizens

No foreign State or non-state institution of a foreign country is invested with legal standing to intervene on behalf of its citizens.

## 2. Cases

### 2.1 Existence of corruption-related cases brought to Court by civil society organisations, journalists, or citizens.

There are no cases of corruption-related cases brought to Court by civil society organisations, journalists, or citizens.

Please find here a table with past and current transnational corruption cases involving Thailand:

| US/UK/France                 | DOJ/SEC/FRA violations   | Results                      | NACC Investigation | Actions/ Results   |
|------------------------------|--|------------------------------|--------------------|--|
| 1.RollsRoyce Aero-Engines UK | UK SFO Bribery-sales in multiple countries including sales of spare engines for TG B777 and Airbus A340 aircraft | January 2017 DPA and penalty | Yes-2017           | 10 persons earlier charged and NACC findings of wrongdoing by former Finance Minister Thanong Bidaya and TG VP Finance Kaweepan Ruengpaka-July 2022 report |

|  |  |  |                                 |                         |
|--|--|--|---------------------------------|-------------------------|
| 2. Rolls Royce Energy Systems US                                 | DOJ FCPA Bribery- sales in multiple countries including sale of oil and gas equipment to PTT and PTTE  | December 2016 DPA and penalty  | Yes-2017 Combined with TG case? | pending                 |
| 3. Microsoft (Microsoft Thailand)                                | SEC FCPA Books & records violations-Kickbacks-Software sales to multiple government customers including Thailand                             | July 2019 SEC order and penalty  | ?                               | ?                       |
| 4-5 General Cable (Phelps Dodge Thailand)                        | DOJ FCPA Bribery-Sales in multiple countries including sales to PEA, MEA, TOT<br><br>SEC FCPA Books & Records violations                     | December 2016 NPA and penalty SEC order and penalty  | ?                               | ?                       |
| 6-7 Bio-Rad Labs   | DOJ FCPA Bribery-sales of medical equipment to multiple government customers including Thailand<br><br>SEC-FCPA books and records violations | May 2018 NPA and penalty November 2014 SEC order and penalty   | Yes-2017                        | ?                       |
| 8-9 Invision and GE Invision                                     | DOJ FCPA - bribery sale of baggage scanners for NBIA<br>SEC FCPA books and records violations  | December 2004 NPA and penalty<br>Feb 2005 SEC settlements and penalties  | Yes-2016?                       | Cases dropped in 2012   |
| 10 Tyco International  | DOJ FCPA-bribery for sales to multiple countries including NBIA and CCTV for Thailand Parliament   | September 2012 NPA   | ?                               | ?                       |
| 11. Gerald and Patricia Green co-defendants and Juthamas Siriwan | DOJ FCPA criminal prosecutions-co-conspirator bribery-Thailand Annual Film festival etc.   | January 2009 Charged in US court- Green co-defendants convicted 2009-ordered to pay \$250,000 restitution<br>Case against Juthamas dismissed | Yes- 2010                       | Juthamas convicted 2017 |

|   |   |   |   |  |
|---|---|---|---|--|
|   |   | afer Thai conviction-2019   |   |  |
| 12. Airbus SE- (Airbus corruption cases were coordinated among US, UK, France-Thailand case handled by French prosecutors) US DOJ International Traffic in Arms (ITAR) violations re helicopter sales to Thai Army, Navy, Airforce & govt | French Financial Prosecution -bribery- sale of Airbus aircraft in multiple countries including sale of A 340 aircraft to TG in 2003 (?), helicopters to Thai government agencies, C-295 aircraft for military and police? | January 2020 CJIP (like DPA) January 2020 US ITAR DPA with global penalty for UK, UK, FRA cases | Yes-2020 and 2021 against Thaksin deputy transport minister Pichet Sathiravan, Thanong Bidaya, then chairman of the board of THAI and Kanok Apiradee, then THAI president | pending  |
| 13. Steyr Daimler Puch-Austria- subsidiary of General Dynamics US   | ASC and NACC investigations on conspiracy in Officials' malfeasance in sale of Fire trucks to BMA   | DOJ/SC FCPA pre-investigation closed-no result  | 2006-Completed 2008   | Convictions of 2 Thai defendants- case against Steyr suspended by Supreme Court 2013 |
| 14. Diageo  | SEC FCPA Books and records violations on payments on sale of alcohol beverages in multiple countries and payments in Thailand relating to beverage import -tax and customs disputes                                       | July 2011 SEC order and penalties   | Yes 2017?   | Pending?   |
| 15-16 Alliance One, Universal Leaf  | SEC FCPA books and records violations relating to tobacco sales in multiple countries including tobacco sales to TTM  | December 2010 SEC settlement orders and penalties   | ?   | ?  |
| 17 Daimler AG   | DOJ FCPA bribery- sale of Mercedes cars to multiple govts including Thailand  | DPA March 2010 with penalties   | ?   | ?  |
| 18 Con-way Inc.   | SEC FCPA books & records violations- bribes by Philippine subsidiary to multiple airline  | SEC Order and penalties August 2008   | ?   | ?  |



|                                     |  |  |   |   |
|-------------------------------------|--|--|---|---|
|                                     | officials including TG officials   |  |   |   |
| 19 United Technologies Corporation  | SEC FCPA books & records violations-involving multiple countries including improperly funded leisure stays for RTAF officers visiting Pratt & Whitney facilities in Belgium                    | SEC Order and penalties September 2018         | ? | ? |
| 20 UTSTARCOM Inc                    | SEC FCPA books & records violations-in China and improper gifts, trips and expenses for govt officials in Thailand   | SEC Order and penalties December 2009          | ? | ? |
| 21 Siemens AG? <sup>1</sup>         | SEC FCPA books & records and bribery in multiple countries-including Thailand Skytrain? Airport Rail Link?   | Guilty plea and fines December 2008            | ? | ? |
| 22 Ericsson ? <sup>2</sup>          | DOJ FCPA bribery in multiple countries-including Thailand? Use of Thai agent to pay bribes in China<br><br>DOJ investigation into failure to honor terms of DPA full disclosure (October 2021) | Guilty plea and \$1 billion fine December 2019 | ? | ? |
| 23 Grab Holdings Ltd ? <sup>3</sup> | Possible FCPA violation disclosed April 13, 2021-  | ?  | ? | ? |

<sup>1</sup>Thailand is not mentioned but in 2010 the Munich Public Prosecutor searched Siemens office in response to allegations that there were questionable payments to Thailand- most likely the Airport Rail Link built for the State Railways of Thailand in connection with Suvarnabhumi airport construction which resulted in multiple NACC corruption investigations and the FCPA Invision cases 8-9.

<sup>2</sup>Ericsson was a major contractor for the Suvarnabhumi airport project

<sup>3</sup>GRAB Holdings had been operating an illegal taxi service in Thailand since acquiring UBER in 2018, only authorized by law in 2021.

|   |  |  |  |   |
|---|--|--|--|---|
|   | countries not named  |  |  |   |
| 24 Toyota Motor Corporation   | Ongoing FCPA investigation into bribery of Thai Supreme Court judges by Thai subsidiary-2020 |  | ? Parliamentary committee requested NACC to investigate-2021 |   |
| 25 Mitsubishi Hitachi Power Systems (Japan convictions)   | Bribery of Thailand port officials-2013  | Plea bargain and guilty pleas by Japan company officials-2018-2020 | Yes- 2018  |   |
| 26 BAE/Saab FCPA conviction 2010 UK SFO investigation 2010/Swedish Investigation 2015? <sup>4</sup> | Sales of Gripen aircraft to the RTAF?  | ?  | ?  | ? |

### 3. Collective Damage

#### 3.1 Legal instruments that enable claiming reparation, compensation, or restoration of collective damages in any field ( environmental damages, human rights, corruption, among others)

Not as such- the Civil and Commercial Code, particularly the wrongful act's section 420 and for environmental damage Section 1337 on causing nuisances are the bases for civil litigation.

Suits have been brought by both affected citizens and civil society organizations.

The only known cases are environmental damages related, for example:

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<sup>4</sup> Sales by BAE Systems/SAAB guilty plea 2010-ITAR violations re sales to Czech Republic and Hungary. A 2015 Swedish Blankspot report on corrupt Gripen sales to Thailand triggered a complaint to the Swedish police by the Swedish NGO the Peace and Arbitration Society. BAE Systems/SAAB Gripen sales have been the subjects of a 2007 SFO corruption investigation into sales in Hungary, the Czech Republic, South Africa, Tanzania, Chile, Qatar and Romania. Brazil opened its own investigation in 2015.

There have been both successful and unsuccessful civil suits against government agencies and others on other grounds such as failing to obtain environmental impact statements f

Unsuccessful case against EGAT (the Electrical Generating Authority of Thailand ) by villagers seeking to cancel a contract in connection with a dam on the Mekong River

<https://www.business-humanrights.org/en/latest/news-and-analysis/2022/08/17/thai-court-throws-out-decade-long-legal-fight-over-laos-dam-2022-08-17/>

<https://www.reuters.com/world/asia-pacific/thai-court-throws-out-decade-long-legal-fight-over-laos-dam-2022-08-17/>

In one unsuccessful case brought by villagers based on violations of environmental laws in relation to an airport expansion, the Supreme Court noted that the plaintiffs had the option of suing under § 420.

<https://www.hg.org/legal-articles/thai-environmental-law-36861>

In another civil suit, villages recovered damages from EGAT in a pollution related civil suit .

<https://www.bangkokpost.com/thailand/general/483785/egat-loses-mae-moh-pollution-appeal>

Villagers recovered damages from the Pollution Control Department in connection with lead mining pollution

<https://www.bangkokpost.com/thailand/politics/330200/final-ruling-out-in-klity-cr-eeek-case>

In March 2022 civil society organizations sued government agencies for negligence (most likely under §420 )for failing to deal with air pollution

<https://greennetwork.asia/news/the-lawsuit-for-clean-air-against-the-thailand-government/>

<https://www.eco-business.com/news/ngos-sue-thailand-government-for-failing-to-protect-thais-from-air-pollution/>

The NGO Enlaw an environmental law related NGO is active in this field and has apparently brought several cases but all documents are in Thai. [shorturl.at/ejqU8](http://shorturl.at/ejqU8)

<https://www.facebook.com/Enlawthai2001/>

In Klity creek case, the Supreme Administrative Court ordered the PCD to pay Bt177,199 to each of 22 villagers. There is no English version of the judgment but you can read the summary from these news:

<https://www.nationthailand.com/perspective/30197801>

<https://www.bangkokpost.com/opinion/opinion/330353/editing-veera>

There are other 2 judgments of the Supreme Court that ordered the company, as a polluter, to pay the compensation and rehabilitate the polluted Klity Creek.

Please see:

<https://www.bangkokpost.com/thailand/general/1322371>

EnLAW did not handle the EGAT's Mae moh power plant case and Bang Boh (Klong Dan) wastewater treatment case but you can find information about compensation from these cases in the news link below:

Mae Moh

<https://www.bangkokpost.com/thailand/general/483656/victory-for-mae-moh-victims>

<https://www.business-humanrights.org/en/latest-news/lawsuit-against-electricity-generating-authority-of-thailand-re-mae-moh-power-plant/>

Klong Dan

<https://www.thaipbsworld.com/government-agencies-ordered-to-pay-9-6bn-compensation-over-klong-dan-project/>

<https://www.bangkokpost.com/thailand/general/2275307/court-rejects-klong-dan-retrial-bid>

There is a recent environmental compensation judgment of the Civil Court on the class-action lawsuit against Wax Garbage Recyclecompany in Ratchaburi province that the court ordered company to pay the compensation, provide medical treatment and rehabilitate contaminated farmland

Finally, a win for villagers

<https://www.bangkokpost.com/opinion/opinion/2041499/finally-a-win-for-villagers>

<https://www.facebook.com/EarthEcoAlertEn/posts/pfbid028Sm1Pocxr6WoLPqcVKj6TBD7pdewmks2mydDkAifPOjIwnhD8qLfoimqEnV4mq6ul>

### **3.2 Procedures for advancing class-actions**

Class actions are permitted for wrongful acts under Section 420 of the Civil and commercial code since 2015. It is unclear from the English language reports if any of the above suits were brought as class actions or by individual plaintiffs.

## **4. The Role of the victims of corruption**

### **4.1 Definition of victims of corruption or common definition used by the courts in this country**

There is no definition of victims of corruption.

Thailand is a signatory to the UNCAC; in its 2019 response to the UNCAC Country Review Report on Article 35 (compensation for damages), it referred to its implementation by means of Civil and Commercial Code § 150 (acts against public order or good morals are void) and § 420 on wrongful acts but gave no examples.

Until the adoption of the 2015 version of the Organic Act on Counter Corruption, criminal cases were brought by the NACC only against public officials as bribe perpetration was not criminalized under the Act but under the Penal Code. Cases brought against governmental officials were based on provisions of the Criminal Code relating to malfeasance and similar offenses rather than for “receiving benefits” under the Act itself.

The 2015 version of the Act was amended to include bribe-giving. Section 123/5 provided that both companies and their employees offering bribes were subject to prosecution in the implementation of UNCAC Article 15.

Under § 173 and 176 of the Organic Act On Counter Corruption 2018, both offering to and receiving by public officials, foreign public officials or public international organizations are crimes, implementing UNCAC Article 16 as well as Article 15

Under § 82 of the Organic Act On Counter Corruption 2018, when the National Anti-Corruption Commission (NACC) or the Office of Attorney General (AGO) files a criminal case against the alleged culprit they may request an order annulling the affected contract or finding of a wrongful act and notify the affected state agency to seek damages.

<https://pronto-core-cdn.prontomarketing.com/2/wp-content/uploads/sites/1871/2019/08/Organic-Act-on-Counter-Corruption-English-2018.pdf>

## **4. 2 Cases that recognize the role of victims**

Under an earlier version of the Counter Corruption Act in effect in 2008, the NACC, having made findings that a prima facie criminal case for malfeasance offenses against the Thai officials who arranged for a procurement existed, ordered the affected government agency to seek cancellation of the contract involved as it was deemed to have been greatly overpriced. The government agency then sought to do so through international commercial arbitration as mandated by the contract. In 2014 the parties agreed to an ICC consent award where the seller did not admit wrongdoing, and the affected agency received approximately €22 million in compensation. The award is unpublished and confidential.

The related Supreme Court criminal case is in Thai only but is described in this article. The alleged bribe perpetrator was included in the cases against the government officials as a co-conspirator only.

See

<https://www.nytimes.com/2013/10/24/world/asia/left-to-languish-costly-fire-trucks-present-a-reminder-of-thai-dysfunction.html?searchResultPosition=1>

In a related case, the victim also recovered damages from two of the officials who had been convicted.

<https://apnews.com/article/f3342181b4c142f0b6688ed0f0f70f42>

In a Thailand-related FCPA case, in a verdict against Gerald and Patricia Green, convicted on having bribed the Minister of Tourism, and upheld on appeal in *U.S. v. Greene*, 964 F.2d 911 (9th Cir. 1992), the court awarded \$250,000 in compensation to Thailand, finding that it was an identifiable victim.

The DOJ dropped its pending case against the bribe recipients Juthamas Sirawan and her daughter when the NACC brought a case against them in Thailand.

The DOJ also sought but failed to seize overseas bank account assets belonging to the bribe recipients held in countries including Singapore in civil forfeiture proceedings

The bribe recipients were convicted, but the NACC failed to seize their Thai assets. The Thai AGO, acting on behalf of the Thai AMLO is currently seeking to recover the Singapore assets of approximately US 500,000

These are the only known cases of civil recovery by a corruption victim in Thailand.

There have been no reports of NACC prosecutions of bribe offerors.

#### **4. 3 Corruption-related court cases (criminal, civil, administrative) that awarded compensation to individuals or to identifiable or non-identifiable groups of victims to repair the damage caused by the corruption offense**

There are no corruption-related court cases (criminal, civil, administrative) that awarded compensation to individuals.

#### **4.4 Innovative or effective mechanisms that can be considered good practice regarding the recognition and compensation of victims in corruption-related cases**

It is unclear but likely that the NACC has the power to order government agency corruption victims to seek compensation without indictment of those deemed to have violated the Organic Act (typically the bribe recipients). According to reports, the NACC declined to instruct Thai Airways to seek compensation from Rolls Royce following the UK DPA. Investigation of the Thai officials involved is reportedly ongoing. There are no known cases brought directly against bribe offerors under the 2018 version.

## **5. Available Information**

### **5.1 Information published by enforcement authorities (including control agencies) about corruption enforcement actions**

Information is occasionally published by enforcement authorities, not systematically. Type of information:

- The conclusion of investigations, whether the investigated person has been acquitted or not, is sometimes shared by elect press reports and occasional public statements
- The enactment of sanctions
- The grounds for sanctioning or acquitting (the case). The decisions of the Thai courts are matters of public record.

### **5.2 Feasible access to information on ongoing or concluded cases**

Generally, no due to:

- Lack of transparency by the NACC and other related authorities such as the Anti-Money Laundering Office of the AGO.
- Efforts at reform have been unavailing.
- 

### **5.3 Ways for citizens or civil society organisations to gather information on whether corruption cases are being investigated or trialed.**



Civil Society organizations and media urge NACC investigations of high profile cases brought in the US/UK/France as reported in Thai media, for example, Rolls Royce sales to Thai Airways and the Petroleum Authority of Thailand.

<https://www.nationthailand.com/business/30306515>

Professor Torplus Hand Social Enterprise seeks to maintain a database of corruption related cases gathered from a variety of sources in Thailand and encourages investigations and transparency

<http://www.hand.co.th/en/>

<https://www.chula.ac.th/en/news/59706/>

## **6. Supplementary information**

### **6.1 Main identified barriers that prevent CSOs, citizens, and journalists from standing as victims of corruption cases.**

Failure to fully implement UNCAC Article 35 and to encourage civil litigation by private parties generally.

Lack of transparency.

Civil enforcement is effective in the control of the NACC and only in the context of criminal cases, it brings court under the 2018 Organic Act on Counter Corruption.

Unclear scope of the Civil and Commercial Code wrongful act damages remedy as applicable to other than state agency victims

No effective system for monitoring transnational corruption cases brought in other jurisdictions

### **6.2 Other aspects, issues, provisions, or practices linked to the role, recognition, and compensation of victims of corruption.**

N/A