

CHAPTER 7

COUNTER CORRUPTION REFORM IN THAILAND

I. Background and Introduction

Corruption has been in existence in Thailand for a long time and the incidence has seemingly been felt as a normal phenomenon of the country. We have indeed witnessed many forms of corruption, ranging from a gift of goodwill, dishonesty in the performance of duty, “tea money”, “under-table money” to bribery. The corruption problem is mostly found in the government service. Corrupt behaviours are committed with a view to deriving some benefits from the government such as an opportunity to be a successful bidder, quota allocation or subsidies or with a view to avoiding costs which would otherwise arise from compliance with potentially costly government rules and regulations such as those related to tax, customs, environment and safety. In the context of corruption in the government procurement process, the problem normally involves large sums of money and complicated networks of politicians, bureaucrats as well as private individuals.

A remark has been advanced on corrupt practices in government procurement processes as follows:

“Corruption in government procurement normally involves a network consisting of a politician who supervises the department in question, high-ranking bureaucrats in the department, as well as lower-ranking officials in charge of the project concerned. The network normally includes key government officers in other government agencies that are involved in the approval of the project, particularly those in the Bureau of the Budget. The departmental head is, however, the key player. If he fails to give a green light to the project, there is much likelihood of his being transferred to an inactive post by the politician in charge. The network helps facilitate corruption processes. Through the network, it is possible to inflate the budget allocated for the project. When a new minister is appointed, the minister can easily change the nature of the project with the assistance of his or her network to ensure that the project will benefit his or her cronies.

Most importantly, those involved in corruption practices, particularly the politicians, have built up a strong protective system for members of their groups. They normally carry out the procurements strictly according to specified rules and regulations, leaving no evidence to implicate the strongman of the network.”¹

The problem of corruption has occurred in the military government and the elected government alike. In the past, continuous corruption practices in the Sarit Thanarat government were discovered after his death. At that time, it was estimated that his wealth arising from the corrupt practice was worth up to Baht 2.8 billion.

In 1975, the watchdog body entitled the Commission of Counter Corruption was set up by the then government to combat corruption. There were, however, some weaknesses in the laws and their enforcement as well as in financial and human resources.

The ineffectiveness of the government anti-corruption schemes and of the institutions concerned was very obvious in the Chatichai government which won the general election. In the Chatichai government, the cabinet had the power to grant approval to mega projects that required a large amount of government-guaranteed loans whilst the minister was empowered to approve mega projects and concessions under his or her supervision. It was believed that corruption would be in the form of commission fee in exchange for granting approval or permission. The mega projects in the Chatichai government that fell under public criticisms as to the corruption scandal included the Baht 42,000-million Lavalin railway project and the Baht 150,000-million 3-lines telephone project. The corruption scandal indeed led to a coup d'état conducted by the so-called National Peace Keeping Council (NPKC) headed by Gen. Sunthorn Kongsompong in February 1991. The corruption scandal was claimed by NPKC as one of the five reasons for its decision to make a takeover of the state power.

After the takeover, NPKC formed the Asset Inspection Committee, with the power to inspect politicians and out-going ministers who were alleged to become “unusually wealthy” and the power to seize such persons’ unusually acquired assets.

¹ Nippon Poapongsakorn *et al*, “*Corruption in the Thai Public Sector: Case Study and Anti-Corruption Strategies from an Economic Perspective*”, *Anti-Corruption Strategies in Thailand in the Year 2000*, p. 8.

In February 28, 1991, the committee declared seizure of the property of the first 22 persons who were former ministers and politicians including their children and spouses.² However, after the inquiries and clarifications, the short-list of the unusually wealthy persons shrank only to 10 persons.³

Under the political circumstances in which the corruption scandal justified the military takeover, the society as a whole believed that the Commission of Counter Corruption was faced with numerous limitations and, as a result, the public demanded the political reform and new anti-corruption measures in order to prevent and combat corruption in politics and the public administration. In fact, the Commission was

² The list of those persons consisted of the following: General Chatichai Chunnhavan as Prime Minister; Mr. Pitak Intarawityanan as advisor to General Chatichai Chunnhavan; Mr. Dej Bunlong as Deputy Secretary to General Chatichai Chunnhavan; Mr. Korn Dhabbarangsi as Minister to the Prime Minister's Office; Captain Chalerm Yoobamrung as Minister to the Prime Minister's Office; Pol. General Praman Adireksarn as Industry Minister; Mr. Sanoh Tienthong as Deputy Interior Minister; Mr. Santi Chaiwiratna as Deputy Interior Minister; Mr. Wattana Aswahem as Deputy Interior Minister; Mr. Prachuab Chaisarn as Minister of Science and Technology; Mr. Banharn Silpa-acha as Finance Minister; Gen. Sanan Kachornprasart as Deputy Prime Minister; Mr. Samarn Pummakarnjana as Deputy Industry Minister; Mr. Trirong Suwankiri as Deputy Interior Minister; Mr. Suchon Champunut as Deputy Finance Minister; Mr. Pinya Chuayplod as Deputy Commerce Minister; Gen. Tienchai Sirisampan as Education Minister; Mr. Narong Wongwan as Agriculture Minister; Mr. Samak Sundaravej as Communications and Transport Minister; Mr. Chaisiri Rueingkanjanaset as Minister to the Prime Minister's Office; Mr. Udomsak Tangthong as Deputy Agriculture Minister and Mr. Montri Pongpanit as Deputy Communications and Transport Minister.

³ The finally shorted listed persons are General Chatichai Chunnhavan (with unusual wealthiness of about Baht 284.27 million); Mr. Pitak Intarawityanan (Baht 335.88 million); Mr. Pramual Sapawasu (Baht 70.7 million); Pol. General Praman Adireksarn (Baht 139.7 million); Mr. Sanoh Tienthong (Baht 62.68 million); Mr. Subin Pinkayan (Baht 608 million); Captain Chalerm Yoobamrung (Baht 31.72 million); Mr. Pinya Chuayplod (Baht 61.79 million); Mr. Wattana Aswahem (Baht 4 million); and Mr. Montri Pongpanit (Baht 336.5 million).

absolutely dominated by the political power, had limited powers in suppression and enforcement and was inefficient in fighting corruption.⁴

Therefore, the need is felt for legal reform of the body in charge with combating corruption. New legal frameworks with regard to anti-corruption in response to social demand can be seen in the new 1997 Constitution and relevant organic laws. In fact, according to section 76⁵ and section 77⁶ of the new Constitution, combating and preventing corruption is one of fundamental state policies. The new independent organisation – the National Counter Corruption Commission (NCCC) – was set up by the new Constitution and an organic law to replace the inefficient Commission of Counter Corruption. Major legal frameworks for combating corruption have been established in accordance with the constitutional provisions governing the Inspection of the Exercise of the State Power (Chapter X), consisting of (a) the Declaration of Accounts Showing Particulars of Assets and Liabilities, (b) the National Counter Corruption Commission, (c) The Removal from Office, (d) Criminal Proceedings Against Persons Holding Political Positions and (e) State Audit (Chapter XI). These measures will be discussed below.

II. The National Counter Corruption Commission

The NCCC, as an independent agency replacing the Commission of Counter Corruption⁷, is set up under the sections 297 – 302 of the current Constitution as well

⁴ Udom Ratamarit, *The Inspection of the Exercise of State Powers in accordance with the Organic Law Act on Counter Corruption*, B.E. 2542 (1999), Center for Democracy Development Studies, Thammasat University, pp. 1-3.

⁵ **Section 76:** The State shall promote and encourage public participation in laying down policies, making decision on political issues, preparing economic, social and political development plans, and inspecting the exercise of State power at all levels.

⁶ **Section 77:** The State shall prepare a political development plan, moral and ethical standard of holders of political positions, Government officials, officials and other employees of the State in order to prevent corruption and create efficiency of the performance of duties.

⁷ Subject to section 321, as a transitory provision of the new Constitution, the preceding Commission of Counter Corruption and Office of the Commission of Counter Corruption assumed the functions of the National Counter Corruption Commission or those of the Office of the Commission of Counter Corruption *de tempore* until the National Counter Corruption Commission has been appointed and the Office of the National Counter Corruption Commission has been established in accordance with the provisions of the Constitution, which shall be done within two years as from the date of the promulgation of the Constitution (i.e. 11th October 1997)

as under the Organic Act on Counter Corruption, B.E. 2542 (1999). The NCCC, as provided by the section 297⁸ of the new Constitution, consists of the President and eight qualified members appointed by the King with the advice of the Senate.⁹

The National Counter Corruption Commission has an independent secretariat, with the Secretary-General of the National Counter Corruption Commission as the superior directly answerable to the President of the National Counter Corruption Commission. The appointment of the Secretary-General of the National Counter Corruption Commission must be approved by the National Counter Corruption Commission and the Senate. The Office of the National Counter Corruption

Section 321: The Commission of Counter Corruption and the Office of the Commission of Counter Corruption under the law on counter corruption shall be the National Counter Corruption Commission and the Office of the National Counter Corruption Commission under this Constitution, as the case may be, until the National Counter Corruption Commission has been appointed or the Office of the National Counter Corruption Commission has been established in accordance with the provisions of this Constitution, which shall be done within two years as from the date of the promulgation of this Constitution.

For the purpose of implementing this Constitution, the National Counter Corruption Commission under paragraph one shall prescribe necessary regulations for the performance of its duties under this Constitution. Such regulations shall be submitted to the Constitutional Court for consideration of their constitutionality before their publication in the Government Gazette and shall be in force until the organic law on counter corruption comes into force.

etc.

etc.

⁸ **Section 297:** The National Counter Corruption Commission consists of the President and eight qualified members appointed by the King with the advice of the Senate.

Members of the National Counter Corruption Commission shall be persons of apparent integrity, with qualifications and without any of the prohibitions under section 256.

The provisions of section 257 and section 258 shall apply to the selection and election of members of the National Counter Corruption Commission *mutatis mutandis*. For this purpose, the Selection Committee for members of the National Counter Corruption Commission shall consist of fifteen members, viz, the President of the Supreme Court of Justice, the President of the Constitutional Court, the President of the Supreme Administrative Court, Rectors of all State higher education institutions which are juristic person, being elected among themselves to be seven in number, and representatives of all political parties having a member who is a member of the House of Representatives; provided that each party shall have one representative and all such representatives shall elect among themselves to be five in number.

The President of the Senate shall countersign the Royal Command appointing the President and members of the National Counter Corruption Commission.

⁹ The first group of persons appointed as members of the Commission includes Mr. Opas Arunin as President, Mr. Kamol Prachuabmoh, Mr. Kirkkiat Pipatseritham, Mr. Nat Sriwihok, Mr. Prasit Damrongchai, Khunying Priya Kasemsan Na Ayudhya (later resigned), Mrs. Ruedi Jiwaluk, Mr. Wirat Wattanasiritham and Mr. Sawat Orrungroj, as members.

Commission, equivalent in status to a Department, has autonomy in personnel administration, budget and other activities as provided by law.

The NCCC Against Corruption

Subject to the new Constitution and the Organic Act on Counter Corruption, the NCCC has powers and duties in connection with the prevention and suppression of corrupt behaviours and corruption in the government and in connection with the inspection of unusually wealthy holders of political positions. According to the new Constitution and the Organic Act on Counter Corruption, the holders of political posts that fall under the ambit of the Act include Prime Minister, Minister, Member of the House of Representatives, Senator, Governor of Bangkok Metropolitan Administration, Deputy Governor of Bangkok Metropolitan Administration and etc.

For the purposes of counter corruption, section 301 of the new Constitution prescribes the powers and duties of the NCCC as follows:

(1) to inquire into facts, summarise the case and prepare opinions to be submitted to the Senate upon receipt of the request for removing any person from office according to section 305¹⁰ of the Constitution;

¹⁰ **Section 305:** Upon receipt of the request under section 304, the President of the Senate shall refer the matter to the National Counter Corruption Commission for investigation without delay.

When the investigation is complete, the National Counter Corruption Commission shall prepare a report thereon for submission to the Senate. The said report shall clearly state whether, and to what extent, the accusation put in the request has a *prima facie* case and shall state the reasons therefor.

In the case where the National Counter Corruption Commission is of the opinion that the accusation put in the request is an important matter, the National Counter Corruption Commission may make a separate report specifically on the said accusation and refer it to the Senate in advance.

If the National Counter Corruption Commission passes a resolution that the accusation has a *prima facie* case, the holder of the position against whom the accusation has been made shall not, as from the date of such resolution, perform his or her duties until the Senate has passed its resolution. The President of the National Counter Corruption Commission shall submit the report, existing documents and its opinion to the President of the Senate for proceeding in accordance with section 306 and to the Prosecutor General for instituting prosecution in the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions. If the National Counter Corruption Commission is of the opinion that the accusation has *no prima facie* case, such accusation shall lapse.

(2) to inquire into facts, summarise the case and prepare opinions to be submitted to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions in the case where any holder of political office has been accused of becoming unusually wealthy or of committing malfeasance in office according to the Penal Code or a dishonest act in the performance of duties or corruption in accordance with section 308¹¹ of the Constitution;

(3) to inquire and decide whether a State official has become unusually wealthy or has committed an offence of corruption, malfeasance in office or malfeasance in judicial office in order to take further action in accordance with the organic law on counter corruption (the Organic Act on Counter Corruption, B.E. 2542 (1999));

(4) to inspect the accuracy, actual existence as well as change of assets and liabilities of the persons holding positions under section 291¹² and section 296¹³ of the Constitution as stated in the account and supporting documents submitted;

In the case where the Prosecutor General is of the opinion that the report, documents and opinion submitted by the National Counter Corruption Commission under paragraph four are not so complete as to institute prosecution, the Prosecutor General shall notify the National Counter Corruption Commission for further proceedings and, for this purpose, the incomplete items shall be specified on the same occasion. In such case, the National Counter Corruption Commission and the Prosecutor General shall appoint a working committee, consisting of their representatives in an equal number, for collecting complete evidence and submit it to the Prosecutor General for further prosecution. In the case where the working committee is unable to reach a decision as to the prosecution, the National Counter Corruption Commission shall have the power to prosecute by itself or appoint a lawyer to prosecute on its behalf.

¹¹ **Section 308:** In the case where the Prime Minister, a minister, member of the House of Representatives, senator or other political official has been accused of becoming unusually wealthy, or of the commission of malfeasance in office according to the Penal Code or a dishonest act in the performance of duties or corruption according to other laws, the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions shall have the competent jurisdiction to try and adjudicate the case.

The provisions of paragraph one shall also apply to the case where the said person or other person is a principal, an instigator or a supporter.

¹² **Section 291:** Persons holding the following political positions shall submit an account showing particulars of assets and liabilities of themselves, their spouses and children who have not yet become *sui juris* to the National Counter Corruption Commission on each occasion of taking or vacating office:

- (1) Prime Minister;
- (2) ministers;

(5) to submit an inspection report and a report on the performance of duties together with remarks to the Council of Ministers, the House of Representatives and the Senate annually and publish that report for dissemination;

(6) to carry on other acts as provided by law.

For the purpose of the inspection of assets and liabilities, for example, the holders of political positions are required by the new Constitution to submit an account showing particulars of assets and liabilities of themselves, their spouses and children who have not yet become *sui juris* to the NCCC on each occasion of taking or vacating office. In case a holder of a political position intentionally fails to submit the account detailing assets and liabilities as well as supporting documents or intentionally submits the same with false statements or conceals the facts which should be revealed in accordance with sections 291 and 295 of the Constitution¹⁴, the

(3) members of the House of Representatives;

(4) senators;

(5) other political officials;

(6) local administrators and members of a local assembly as provided by law.

The account under paragraph one shall be submitted together with the supporting documents evidencing the actual existence of such assets and liabilities as well as a copy of the personal income tax return of the previous fiscal year. The declarer shall certify the accuracy of the account and copies of the submitted documents by affixing his or her signature on every page thereof.

¹³ **Section 296:** The provisions of section 291, section 292, section 293 paragraph one and paragraph three and section 295 paragraph one shall apply *mutatis mutandis* to other State officials as provided by the organic law on counter corruption.

¹⁴ **Section 295:** Any person holding a political position who intentionally fails to submit the account showing assets and liabilities and the supporting documents as provided in this Constitution or intentionally submits the same with false statements or conceals the facts which should be revealed shall vacate office as from the date of the expiration of the time limit for the submission under section 292 or as from the date such act is discovered, as the case may be, and such person shall be prohibited from holding any political position for five years as from the date of the vacation of office.

When the case under paragraph one occurs, the National Counter Corruption Commission shall refer the matter to the Constitutional Court for further decision, and when the decision of the Constitutional Court is given, the provisions of section 97 shall apply *mutatis mutandis*.

Section 97: The vacation of the office of a member of the House of Representatives or a senator after the day on which his or her membership terminates or the day on which the Constitutional Court decides that the membership of any member terminates does not affect any act done by such member in the capacity as member including the receipt of emolument or other remuneration by such member before he or she vacates office or the President of the

NCCC shall refer the matter to the Constitutional Court for the Court's decision to remove such person from office and prohibit the person from holding any political position for the period of five years.

Recently, Klanarong Chantik, Secretary-General of the NCCC, has, in exercise of the powers and duties under section 301 of the Constitution, lodged a request, on behalf of the NCCC, to the Constitutional Court for decision against former politicians and former high-ranking officials. Among these persons was Prime Minister Thaksin Shinawatra. In this connection, the issue needing determination by the Constitutional Court *vis-à-vis* Prime Minister Thaksin was whether he intentionally failed to submit the account showing assets and liabilities and supporting documents or intentionally submitted the account and the supporting documents with false statements or concealed the facts which should be revealed in accordance with section 295. The Constitutional Court, however, by a very critically small majority, delivered judgment dismissing the accusation against Thaksin, in the face of public opinions.

III. Declaration of Accounts Showing Particulars of Assets and Liabilities as a Legal Framework

Previously, at least two laws required holders of political positions to prepare and declare accounts detailing particulars of their assets and liabilities. Firstly, the Act on Counter Corruption, B.E. 2518 (1975) set forth a requirement that holders of major positions in the government service as well as politicians submit their accounts showing particulars of assets and liabilities to the Commission of Counter Corruption on each occasion of taking or vacating office. The parallel requisite was also found in the Act on Declaration of Accounts Showing Particulars of Assets and Liabilities of Members of the House of Representatives and Senators, B.E. 2539 (1996), according to which Members of the House of Representatives and senators were under the

House of which such person is a member has been notified of the decision of the Constitutional Court, as the case may be, except that in the case of vacation of office on the ground of his or her being elected in violation of the organic law on the election of members of the House of Representatives and senators, emolument and other remuneration received from being in office shall be returned.

obligation to submit their accounts demonstrating details of their assets and liabilities to the President of the House of Representatives.

However, the legal measures enshrined by those laws were vastly inefficient because there was no statutory provision empowering the Commission of Counter Corruption to inspect the accuracy of the accounts showing particulars of assets and liabilities. As a result, there was no prosecution against any politician. The statutory requirement as to the declaration of accounts appeared to be no more than dead black-letters.

Under the circumstance, the new Constitution lays down the provisions requiring holders of political positions to submit the declaration of accounts showing particulars of assets and liabilities in Chapter X, Part I, sections 291-296 and provides that an organic law on counter corruption must be enacted to prescribe forms and means of a declaration and to found the National Counter Corruption Commission in the implementation of the Constitution with the function of inspecting accounts submitted.

The organic law on counter corruption has eventually emerged under the name the “Organic Act on Counter Corruption, B.E. 2542 (1999)”. Unlike the two previous laws, the Organic Act on Counter Corruption, B.E. 2542 (1999) provides that holders of certain political positions, as specified by the Act itself, must submit a declaration of their accounts showing particulars of assets and liabilities to the National Counter Corruption Commission and that the NCCC is empowered to inspect the accuracy, actual existence and change of assets and liabilities of the holders of those positions. The Act expressly introduces an effective sanction for non-compliance with the declaration requirements. Under the Act, any holder of a political position who intentionally fails to submit the account showing assets and liabilities and the supporting documents or intentionally submit it with false statements or conceals the facts which should be revealed must be ousted from office and, as an additional penalty, is prohibited from holding any political position for five years.

Under section 291 of the new Constitutions, persons holding the following political positions are required to submit an account showing particulars of their assets and liabilities and those of their spouses and children who have not yet become *sui*

juris to the National Counter Corruption Commission on each occasion of taking or vacating office: (1) Prime Minister, (2) Ministers, (3) members of the House of Representatives, (4) senators, (5) other political officials (such as Secretary-General to Prime Minister and secretary to minister) and (6) local administrators and members of a local assembly as provided by law.

The account revealing assets and liabilities that is required to be submitted to the NCCC must be accompanied by supporting documents evidencing the actual existence of such assets and liabilities as well as a copy of the personal income tax return of the previous fiscal year. In effect, the declarer must certify the accuracy of the account and copies of the submitted documents by affixing his or her signature on every page of the account and documents. The submission of the copy of the personal income tax return is apparently required for the purpose of inspecting payment of the personal income tax, which can, in turn, lead to discoveries of asset.¹⁵

As for holders of executive positions such as Prime Minister, Ministers, local administrators and members of a local assembly, the new Constitution also makes it compulsory for them to resubmit an account showing particulars of assets and liabilities within thirty days as from the date of the expiration of one year after the vacation of office. This requirement reassures that the likelihood of corruption by position holders will not easily evade the statutory inspection net.

The account and supporting documents submitted by the Prime Minister and Ministers must be disclosed to public. The public can thus be informed about the

¹⁵ The time within which an account showing particulars of assets and liabilities must be submitted is fixed as follows:

(1) in the case of the taking of office, within thirty days as from the date of taking office;

(2) in the case of the vacation of office, within thirty days as from the date of the vacation;

(3) in the case where the position holder who has already submitted the account dies while being in office or before submitting the account after the vacation of office, an heir or an administrator of an estate of such person shall submit an account showing the particulars of assets and liabilities existing on date of such person's death within ninety days as from the date of the death.

amount of assets and liabilities of the persons holding political positions. This will facilitate public scrutiny of corruption within the cabinet and, in effect, promote public participation. In the case of position holders other than Prime Minister and Ministers, their accounts of assets and liabilities will not be publicly disclosed unless the disclosure will be useful for the trial and adjudication of cases or for the making of a decision and is requested by the courts or the State Audit Commission.

After receiving the accounts, the President of the NCCC shall convene a meeting of the Commission to inspect the accuracy and the actual existence of assets and liabilities without delay. The new Constitution prevents the problematic state of affairs that occurred in the past, that is, holders of political positions declared the account showing the assets and liabilities exceeding the actual existence so as to avoid an accusation of having unusually increased asset after vacating office. In the case where the submission of the account is made by reason of the vacation of office or death of a position holder, the NCCC will also inspect the change of assets and liabilities of such person and prepare a report of the inspection. Such report is to be published in the Government Gazette as well.

If it appears that the assets of the person holding the position have unusually increased, the President of the NCCC will subsequently send all documents together with the inspection report to the Prosecutor General to institute an action in the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions so that the Court will order that the unusually increasing assets become the property of the State.

Also, where the person holding the position intentionally fails to submit the account showing the assets and liabilities and the supporting documents or intentionally submits the account with false statements or conceals the facts which should be revealed, the NCCC must refer the matter to the Constitutional Court for its decision. Notably, only the Constitutional Court, not the NCCC, can give a decision on this issue.

In fact, the counter corruption legal framework in the form of the declaration of accounts showing particulars of assets and liabilities is not sufficient in and by itself. It is also necessary to rely on other constitutional provisions governing the

Removal from Office, Criminal Proceedings Against Persons Holding Political Positions and State Audit, as will be expounded below.

IV: Removal of Corrupt Position Holders from Office

According to the current Constitution, a measure so-called “The Removal from Office” is laid down primarily to control and supervise the exercise of state powers by persons holding political positions and key positions. The positions brought under the ambit of the Constitution include Prime Minister, Minister, member of the House of Representatives, senator, President of the Supreme Court of Justice, President of the Constitutional Court, President of the Supreme Administrative Court, Prosecutor General, Election Commissioner, Ombudsman, Judge of the Constitutional Court, member of the State Audit Commission, judge, public prosecutor or high ranking official in accordance with the organic law on counter corruption. Any person holding any of these positions will be removed from office when found under the circumstance of unusual wealthiness or under circumstances indicative of the commission of corruption, malfeasance in office, malfeasance in judicial office or an intentional exercise of power contrary to the provisions of the Constitution or law.

Pursuant to section 303¹⁶ of the Constitution, the Senate is the institution which has the power to remove the accused person from office. Under section 304¹⁷ of the Constitution, the persons who have the right to lodge with President of the

¹⁶ **Section 303:** A person holding a position of Prime Minister, Minister, member of the House of Representatives, senator, President of the Supreme Court of Justice, President of the Constitutional Court, President of the Supreme Administrative Court or Prosecutor General, who is under the circumstance of unusual wealthiness or under circumstances indicative of the commission of corruption, malfeasance in office, malfeasance in judicial office or an intentional exercise of power contrary to the provisions of the Constitution or law, may be removed from office by the Senate.

¹⁷ **Sections 304:** Members of the House of Representatives of not less than one-fourth of the total number of the existing members of the House or voters of not less than fifty-thousand in number have the right to lodge with the President of the Senate a complaint in order to request the Senate to pass a resolution under section 307 removing the persons under section 303 from office. The said request shall clearly itemise circumstances in which such persons have allegedly committed the act.

Senators of not less than one-fourth of the total number of the existing members of the Senate have the right to lodge with the President of the Senate a complaint in order to request the Senate to pass a resolution under section 307 removing a senator from office.

Senate a complaint in order to request the Senate to pass a resolution removing any person from office are (a) members of the House of Representatives of not less than one-fourth of the total number of the existing members of the House, (b) voters of not less than fifty-thousand in number and (c) senators of not less than one-fourth of the total number of the existing members of the Senate.

Upon receipt of such a request, the President of the Senate shall refer the matter to the National Counter Corruption Commission for investigation. When the investigation is complete, the National Counter Corruption Commission is required to prepare a report for submission to the Senate. The said report must clearly state whether, and to what extent, the accusation put in the request has *prima facie* case. To ensure transparency, the Constitution makes it compulsory that the report state the reasons in support of the findings as well. In addition, where the National Counter Corruption Commission is of the opinion that the accusation put in the request is an important matter, the NCCC may make a separate report specifically on the said accusation and refer it to the Senate in advance.

If the National Counter Corruption Commission passes a resolution that the accusation has a *prima facie* case, the holder of the position against whom the accusation has been made is, as from the date of such conclusion, not allowed to perform his or her duties until the Senate has passed its resolution.

Upon receipt of the report, the President of the Senate shall convoke a sitting of the Senate for considering the said matter. A senator shall have autonomy in casting a vote, which must be by secret ballot. A resolution for the removal of a particular person from office shall be passed by votes of not less than three quarters of the total number of the existing members of the Senate. The person who is removed from office is regarded as vacating office or released from government service as from the date of the resolution of the Senate. Further, such person is also deprived of the right to hold any political position or to serve in the government service for five years.

The rules, procedure and conditions for the lodging of the complaint by the voters under paragraph one shall be in accordance with the organic law on counter corruption.

V. Criminal Proceedings Against Corrupt Position Holders

In addition to being removed from office and prohibited from holding a political position or serving the government service for a reasonable length of time, the person who is found corrupt is subject to criminal proceedings, too. For this purpose, the Constitution establishes a special procedure called “Criminal Proceedings Against Persons Holding Political Positions”, as contained in sections 308 – 311. In effect, the Constitution mandates the establishment in the Supreme Court of Justice of a special division – the “Criminal Division for Persons Holding Political Positions” for trial and adjudication of a case brought against the corrupt position holder.

Where the Prime Minister, a minister, member of the House of Representatives, senator or other political official has been accused of becoming unusually wealthy, or of the commission of malfeasance in office according to the Penal Code or a dishonest act in the performance of duties or corruption according to other laws, the Supreme Court of Justice’s Criminal Division for Persons Holding Political Positions shall have the competent jurisdiction to try and adjudicate the case. In a trial, although the Supreme Court of Justice’s Criminal Division for Persons Holding Political Positions must rely on the file prepared by the National Counter Corruption Commission, the Court may conduct an investigation in order to obtain additional facts or evidence as it thinks fit. An adjudication of a case is by a majority of votes but each judge constituting the quorum is required to prepare his or her written opinion and make oral statements to the meeting prior to the passing of a resolution.

VI: The State Audit

Thailand has had the state audit since the reign of King Rama IV and at that time the Auditors Office was set up to inspect the state audit. Later, in 1979, the Office of State Audit was established as a government agency and ascribed a status equivalent to Department, with direct answerability to the Prime Minister.

Due to the problems with regard to autonomy and impartiality, the Office of the State Audit was unable to perform its functions with efficiency. Therefore, the current Constitution gives a new paragon to the Office of the State Audit. Under the new model, the Office is an independent and autonomous agency answerable directly

not to any ministerial post but to a specially set up commission called the “State Audit Commission”. This special body is equipped with principal powers and duties to formulate state audit policies and prescribing criteria and standards of the state audit.

The Constitution requires enactment of an organic law in the implementation of the legal framework generally erected by the Constitution. This organic law – the Organic Act on State Audit, B.E. 2542 (1999) has now been promulgated and entered into force. Under the Constitution and the said Organic Act, the State Audit Commission consists of the Chairman and nine other members appointed by the King with the advice of the Senate, from persons with expertise and experience in state audit, accounting, internal audit, finance and other fields. Members of the State Audit Commission serve for a definite term of six years from the date of their appointment by the King and may not be re-appointed. This is an endeavour to guarantee the member’s freedom from interference by any persons. The Auditor-General, who is the superior of the Office of the State Audit (that serves as a secretariat of the State Audit Commission) is appointed by the King with the advice of the Senate.

The Organic Act on State Audit also sets out qualifications and selection procedures of members of the State Audit Commission as well as of the Auditor-General. The determination of these qualifications and procedures is, in fact, in a manner which can secure persons of appropriate qualifications an integrity and which can provide for guarantee of the independence in the performance of duties of such persons.

VII: Conclusion:

We have seen significant reform in the context of anti-corruption. The Constitution strives to lay down many mechanisms to prevent and combat the incidence of corrupt practices. Of particular note are the requirements as to the declaration of property, through the submission of accounts listing assets and liabilities of persons holding political positions as well as key positions in the government service. Those found corrupt or in violation of the constitutional requirements are not only subject to removal from office but also to criminal proceedings. It is hoped that all this novelty will help build up clean and good governance. However, a real effectiveness in this matter will be dependent upon the

performance of functions of each member of the National Counter Corruption Commission and each judge of the Constitutional Court, too. If members of these organs are, for example, led by personal connections or otherwise inappropriately motivated in their conclusion or judgment as regards corrupt or violating conduct of holders of political positions, these culprits will unfortunately evade the constitutional and statutory teeth. In fact, in Thailand, the scandal concerning Thaksin Chinawatra's declaration of assets and liabilities does not seem to have survived public criticisms surrounding impartiality and integrity of the majority judges of the Constitutional Court. It is, again, hoped that this kind of incidence will not frequently occur.
