

The National Legislative Assembly has deemed it appropriate that the draft Act below be promulgated into law

Draft

Act on Offences regarding Conflict between the Personal and Public Interest
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Considering that it is appropriated to have in place a law on offences regarding conflict between the personal and public interest,

This Act thus contains certain provisions which limit the rights and freedoms of the individual, which is allowed by section 29, 41, and 43 of the Constitution of the Kingdom of Thailand.

Section 1: This Act is called “The Act on Offences regarding Conflict between the Private and Public Interest.”

Section 2: This Act is to be enforced 180 days after its announcement in the Government Gazette.

Section 3: In this Act,
“ State official” means persons holding political positions, civil servants or local officials holding a permanent position or receiving a regular salary, employees or other persons working in state enterprises or State agencies, and administrators acting under the authority provided by the laws on local government. The term also is taken to include committee and sub-committee members; employees of government departments, state enterprises, or state agencies; and individuals or body of persons who have been delegated to use the powers of the state to implement legal measures, whether such delegation is done in the government bureaucracy, state enterprise bureaucracy, or other agencies of the State.

“Agency of the State” means ministries, bureaus, departments, regional government offices, local government offices, state enterprises, public organizations, or other agencies that are performing the functions of the state legally and receive financial support, or financial or real investment from the State.

“Holder of political office” means

- (1) The Prime Minister
- (2) Ministers
- (3) Members of the House of Representatives
- (4) Members of the Senate
- (5) Political government officials other than those in (1) and (2) above who have been appointed in accordance with the regulations on politically appointed civil servants (except as in 1. and 2.)
- (6) Politically appointed parliamentary officials, appointed in accordance with the regulations on politically appointed parliamentary officials.
- (7) Local administrators and members of the council of local administrative bodies.
- (8) State officials holding other positions not mentioned above, as determined by the National Counter Corruption Commission, and whose names have been announced in the Government Gazette.

“ Spouse” means males and females who are living together even though they have not registered their marriage.

“ Relative” means

- (1) The person’s parents
- (2) The person’s descendents
- (3) Spouse of the person’s son (s)
- (4) Brothers and sisters of the person with the same parents or with the same father or the same mother. Also, included in the definition of “relative” are: brothers and sisters of the person’s spouse with the same parents or with the same father or the same mother.
- (5) Uncles, aunts, younger sisters/brothers of mother, younger sisters/brothers of father, of the person or his/her spouse.
- (6) Father, mother, paternal grandfather, paternal grandmother, maternal grandfather, maternal grandmother of the spouse.
- (7) Child of the persons as stated in (4)

(8) Children of the children of the person's brothers and sisters of the same father and mother, or of the same father or the same mother, whether these relationships are legal or de facto.

“Corruption” means seeking advantages by means that are unlawful, for oneself or for others.

“Other benefits in which a monetary value can be calculated” means

- (1) The discharging of debts or decrease in debt obligations free of charge.
- (2) Receiving loans without interest being charged.
- (3) Receiving collateral without being charged fees.
- (4) Receiving brokerage fees or other fees for acting as nominee
- (5) Selling or renting out assets at a price higher than its real value as determined by the market price.
- (6) Use of premises, vehicles or other assets without having to pay rental or service fees, or paying such rental and fees at a lower rate than that normally charged to other persons.
- (7) Use of services without being charged fees or being charged at a rate lower than that normally charged to other persons.
- (8) Receiving discounts in products or assets sold, to a greater extent than discounts received by others in normal commercial transactions.
- (9) Being given transport of persons and objects without expenses charged, or charged less than that charged to others in normal commercial transactions.
- (10) Organizing parties, festivities, or other forms of entertainment without being charged fees or being charged fees less than that normally charged to other persons on a commercial basis.
- (11) Receiving professional services such as medical, dental, nursing, architectural, engineering, legal, or accounting services without being charged fees or being charged lower fees than that charged to others in a normal commercial transaction.
- (12) Other activities that result in the receiving of benefits which could be calculated in monetary values, or activities gaining benefit in which expenses were not charged. Such activities are determined and announced by the NCC Commission.

“The NCC Commission” means The National Counter Corruption Commission, established under the organic law of the Constitution providing for the prevention and suppression of corruption.

Section 4: Officials of the State must perform their duties or act in ways in which put the interests of the state and people foremost. They must use the powers of their office honestly and fairly and must not do anything that will engender a lack of confidence or lack of trust in the performance of their official duties.

Section 5: Officials of the State are not to involve themselves directly or indirectly in acts aimed at gaining benefit for themselves personally or for others, which conflict with that of the public interest. However, acts which are part of their performing official functions for the benefit of their agency are not deemed to be acts forbidden in this paragraph.

Any of the actions listed below are deemed to constitute a conflict between the personal and the public interest, in stated in paragraph one, section 5 above.

(1) Acts which are deemed to constitute a conflict between the personal and public interest as stated in the organic law on the prevention and suppression of corruption.

(2) The use of any State information still classified as secret that the official has received or has known of from the corrupt performance of his (or her) official duties and functions.

(3) The corrupt use of State assets or that of an agency of the State for personal benefit or for the benefit of others not entitled to such use.

(4) The initiating, proposing, arranging, or approving a project of the State by corrupt means in order to facilitate benefit, whether direct or indirect, to oneself or any other person.

(5) The use of one's position in order to influence independent decisions of other state officials in a corrupt manner, whether it be directly or indirectly.

Acts as stated in (5) that are deemed to be in the nature of a conflict between private and public interest must be acts that cause state officials holding other positions to do or not do the following things:

(1) Approve, allow, accept registration, or give benefits in which a monetary value can be set.

(2) Give out a concession, enter into contracts or engage in a juristic act which benefits a particular person.

(3) Fill a position, appoint a person, promote a person into a higher rate of remuneration, move, transfer a person, or cause a State official working under his/her supervision to be removed from his position or function in a manner described in (5) above.

(4) Does not report or file a complaint in accordance with the code on criminal court proceedings.

(5) Does not take the matter to court, does not institute judicial proceedings, or does not withdraw a legal accusation, whether it is a civil or criminal case.

(6) Does not enforce administrative provisions or does not enforce court decisions

(7) Does not take action as determined and announced by the NCC Commission.

As to acts stated in paragraph two (1), (2), (3), (4) of section 5 which are deemed to be in the nature of conflict between the personal and public interest, the decision to enforce the law with regard to which State official, shall follow the principles and conditions set by the NCC Commission.

Acts described in paragraph one, two, three, and four shall be used to enforce the law with respect to acts done by the spouse and children of the State official, who have used the State official's powers of office. It is deemed that actions by the said spouse and children are equivalent to actions of the State official; except if the State official in question can prove that he/she did not have any knowledge or had not consented to the corrupt actions of the spouse and children.

The provisions in paragraph one, two, three, and four shall be used to enforce the law with respect to actions taken by relatives who are not the spouse and children of the State official, and who have used the powers of the State official's office, with the connivance and consent of the State official. It is deemed that actions of the relatives are equivalent to actions of the State official.

Section 6: In the case where any person receives benefits from actions of the state official, his/her spouse, children, and relatives as determined in section 5, it is deemed that those persons are also participatory in the wrongdoing and shall receive the same penalties received by the state official, his/her spouse, children, and relatives, depending on the particulars of the case. An exception is when that person can prove that he/she did not have any knowledge or did not consent to the corrupt acts of the state official, his/her spouse, children, or relatives.

Section 7: The offence committed under section 5 and 6 by a State official shall be regarded as an offence committed against the position of the State official, or against the position of the judiciary, in accordance with the criminal code. Or it could be considered a corrupt performance of duty. In all these cases, the offences could be grounds for removal of the official from his/her position.

Section 8: All gifts, souvenirs, money, assets, or other benefits calculable in monetary values which have been given to State officials whilst performing their official functions or whatever work they have been assigned, even though the giver said it was given personally to the official, are to become the property of the state, as determined by the NCC Commission. The exception is when such objects are received as normal practice in the performance of specific duties, or when it is received in accordance with Buddhist ethical principles, or when it is received in accordance with what is normally given and received by ordinary individuals.

State officials who have received gifts, souvenirs, money, assets, or other benefits calculable into monetary values which they are not entitled to receive, as stated in paragraph one above, must report and handover such objects to the agency which they work with and have that agency prepare an account, file it, and arrange such objects for safe-keeping, in accordance with the rules and regulations of the NCC Commission.

The provision in paragraph one and two above shall be enforced *mutatis mutandis* with respect to the spouse and relatives who have received the gifts, souvenirs, money, assets, or other benefits calculable into monetary values on account of the state official performing his/her duties.

In the case where the state official, or his/her spouse, or the relatives of the state official do not act in compliance with what is stated in paragraph two above, the NCC Commission shall examine the facts and if a cause for action is found, shall send the case file to the officer of the Public Prosecutor's Office in order to file charges in a criminal court and to request a court order to confiscate or impound the gifts, souvenirs, money, assets, or other benefits calculable into monetary values as stated in paragraph one. If such gifts, souvenirs, money, assets have become lost or damaged, or used in such a way that can be assessed in monetary terms, then the office of the Public Prosecutor shall claim damages equal to that monetary value.

In the examination of the facts of the case by the NCC Commission as stated in paragraph four, the provisions specifying the power and functions of the NCC Commission as contained in the organic law of the Constitution on the prevention and suppression of corruption shall be applied *mutatis mutandis*.

Section 9: The NCC Commission shall have the power to make an inquiry on the facts of the matter and take action concerning the offences specified in Sections 5 and 6. It is also charged with the task of enforcing *mutatis mutandis* the provisions contained in the organic law on prevention and suppression of corruption of the Constitution.

Section 10: In the case where an act is apparent to the NCC Commission or when there has been an accusation that an offence has been committed by a particular person under Section 5 or 6, or when there has been information submitted that such an offence has occurred even without stating the identity of the accused, the NCC Commission shall without delay make a preliminary inquiry ascertaining the facts. If a *prima facie* case is found, the NCC Commission shall proceed with a full inquiry to ascertain the facts of the matter and subsequently make a judgment.

Accusations or provision of information as stated in paragraph one above, must be backed up by sufficient evidence and clear enough to understand the essence of the act(s) committed so that it is possible to proceed with an inquiry.

The NCC Commission is tasked with examination of the facts and making a ruling within 180 days, from the time in which the NCC Commission found that there are sufficient grounds to consider the case legally. In the case where necessity dictates that it is unable to complete such task within such time period, the time period for completion of examination and judgement can be extended at the most three times, and not more than 60 days for each extension. The reasons and necessities for every extension requested must be given and recorded in the case file.

The content of this section shall be enforced with respect to the principle, the instigator, the supporter, or whoever participated in the offence as stated in Section 6.

Section 11: In the case where the NCC Commission has made an inquiry and a judgement on who has committed an offence under Section 5 or 6, the following shall be done:

(1) In the case where the offender holds the position of Prime Minister, minister, member of the House of Representatives, member of the Senate, politically appointed civil servant, or is the principle, the instigator, the supporter of the offence, the provisions on criminal proceedings of political office holders contained in the organic law on prevention and suppression of corruption of the Constitution shall be enforced.

(2) In the case where the offender is a State official or any other person who is not under the category as stated in paragraph (1) above, the provisions on criminal proceedings of political office holders contained in the organic law on prevention and suppression of corruption of the Constitution shall be applied.

In the case where the NCC Commission rules that the accusation lacks sufficient ground for pursuing the case, the accusation shall be dismissed.

Section 12: Any state contract, whether it is civil or administrative in nature, entered into by a State official with the authority to do so, if such contract in its nature represents a conflict of personal and public interest, then that contract is deemed to be void.

In the case where a contract as described in paragraph one above contains a conflict between personal and public interest, the NCC Commission shall consider it and propose the matter to the Supreme Court or Supreme Administrative Court which has jurisdiction over the type of contracts in question. Either court, depending on the particulars of the case, will examine the case and judge on the matter, and the ensuing judgement to be binding on both contractual parties.

The consideration and judgement of the Supreme Court or Supreme Administrative Court as stated in paragraph two above shall be prompt and without delay, and done in accordance with regulations set by the General Meeting of the Supreme Court or the General Meeting of the Judiciary of the Supreme Administrative Court. Which regulations to use will depend on the particulars of the case in question.

Section 13: In the case of a project of the State, a contractual concession by the State, a contract whereby the State arranges to provide public utilities, or make use of natural resources either in the total sense or in part, if there are actions which lead one to believe that a conflict between the personal and public interest exists either directly or indirectly, the following persons have the right to submit a request to the NCC Commission to examine the facts in order to stop the project or contract.

(1) Members of the House of Representatives, of the Senate, or member of both Houses, at least 18 in number, who have put their names down supporting such a motion.

(2) Those who have the right to vote and numbering a minimum of 5,000 people.

(3) At least 2 ombudsmen acting together.

The nature and type of state project or contract as stated in paragraph one of this section, as well as the principle and procedure of putting together the names of those eligible to put forward a request as in (2) above shall be determined by the NCC Commission and announced in the Government Gazette.

The complaint as stated in paragraph one, Section 13 must be backed up with clear and sufficient evidence to warrant an inquiry into the facts.

Once the NCC Commission receives a complaint as relates to paragraph one of this section, the NCC Commission shall make an inquiry to ascertain the facts and finish within 90 days. If necessary, an extension is allowed to the maximum of two times, each extension period to be not more than 30 days. For each extension requested, reasons and necessities must be recorded and filed in the case folder. In the case where the inquiry leads to a judgement that there are grounds for pursuing the case legally, the case must be submitted to the Supreme Court and the Supreme Administrative Court that has jurisdiction over the project or the contract, depending on the particulars of the case, to ask that an order to desist from pursuing the project or contract, as stated in paragraph one, be issued.

For the inquiry for facts done by the NCC Commission in accordance with paragraph four, the provisions specifying the authority of the Commission to act in legal terms as contained in the organic law on the prevention and suppression of corruption of the Constitution shall be applied *mutatis mutandis*. As regards, the deliberation and judgment of the Supreme Court and the Supreme Administrative Court, it must be done speedily without delay, in accordance with the regulations laid down by the General Meeting of the Supreme Court or the General Meeting of the Judiciary of the Supreme Administrative Court. Which regulations to be used will depend on the particulars of the case in question.

During the inquiry for facts by the NCC Commission or during the deliberation by the Supreme Court or the Supreme Administrative Court acting in accordance with paragraph four, if it is found that there is a need to prevent damages generated by the continuance of the project or state contract in question, then the NCC Commission can file a motion requesting the Supreme Court or the Supreme Administrative Court to issue a temporary injunction.

Section 14: The NCC Commission shall arrange for a special agency to be established within the Office of NCC Commission, with the status of importance not less than an office. The office shall have enough personnel to perform the tasks of supervising and enforcing this Act, of providing advice and recommendations to State officials and the people as regards conduct in accordance with this Act, and campaigning to enhance moral and ethical standards with the aim of preventing offences on conflict of interest between the private and public interest.

For the benefit of preventing offences made with regards to conflict between the private and public interest, the NCC Commission shall prepare specific guidelines and manual for State officials to guide their conduct in accordance with this Act.

Section 15: State officials who commit an offence according to Section 5 shall receive penalties consisting of a jail sentence from one to ten years and a fine of between 40,000 Baht to 400,000 Baht.

If the State official committing an offence according to paragraph one is a holder of a political position, he/she shall be sentenced to jail for a term of between 2 to 4 years, and a fine of 80,000 Baht to 600,000 Baht.

Section 16: If a State official with corrupt aims does not act according to what is prescribed in section 8, he/she shall be given a jail sentence of between 6 months to 3 years, or a fine from 20,000 Baht to 120,000 Baht, or both a jail sentence and a fine.

Section 17: In the case where the spouse or relative of the State official commits an offence according to section 5 and section 6, they are to receive the same penalty as the State official.

Section 18: In the case where the entity which commits an offence under section 6 and is subject to penalties contained in this Act is a juristic person, then the managing partner, the managing director, executives, or those with authority to operate the juristic person, or those with authority to work for the juristic person on the matter in question, shall also be subject to penalties specified for the offence. The exception is when it can be proven that the offence of the juristic person was made without the knowledge or connivance of the above mentioned persons, or such persons had acted reasonably to prevent the offence from happening.

Section 19: The Chairperson of the National Counter Corruption Commission shall act on behalf of this Act and has the power to issue notifications or regulations for the enforcement of this Act, subject to the approval of the NCC Commission.

The notifications and regulations as stated in paragraph one of this section are effective once announced in the Government Gazette, after which it becomes enforceable.

Certified correct in accordance with the resolution of the National
Legislative Assembly.

(Miss Siripongse Assanasen)

Director of the Meetings Bureau,
Office of the Secretariat to the Senate,
Acting as Secretariat to the National

Legislative Assembly

