

Opening 10 corruption cases: expensive lessons for Thai people

The truth has to be disclosed

Corrupting the country will destroy both state and people

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Editor: Ngarpun Vejjavai

Made by: Office of the National Anti-Corruption Commission

361, Nonthaburi Road, Tha-Sai sub-district, Muang Nonthaburi district, Nonthaburi 11000

www.nacc.go.th

1st printing: October B.E. 2558 (2015)

Volume: 2,000 books

ISBN: 978-974-7644-88-3

Printed at: Amarin Printing and Publishing Public Company Limited

376, Chaiyapreg (Borommaradchachonnanee)

Talingchan, Bangkok 10170

Designed by Amarin Printing and Publishing Public Company Limited

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Introduction

The purpose of making this book: Opening 10 corruption cases: expensive lessons for Thai people are to establish knowledge and understanding to the public in preventing and suppression corruption by publishing corruption cases. This will allow the public to know the corruption processes which have already happened. In the case where the public know of the corruption process and see the corruption, they will help to inform clues which will, in turn, be beneficial to the work of the NACC. Moreover, this will render politicians, state officials or relevant people in government projects know of the punishment or consequences which may, in turn, scare them and render them not to conduct any corrupt act.

Providing knowledge in anti-corruption to the public is highly necessary as the public mechanism is a main mechanism in driving a national strategy on anti-corruption. The public is able to widely look out for corruption problems and is able to do a better job than a government agency with large structural organization which has a slow working process and is easily interfered by politics. This renders the prevention and suppression of corruption unsuccessful as the public does not pay sufficient attention and are not aware of the problem and damages from such conduct and, as a result, leave the corruption continue without any inspection from the society. To make matter worse, corrupt people are respected in the society as such corrupt people have both money and powers. The inspection from one anti-corruption organization without any support from all fronts is difficult. Thus, the driving force of the public is an important force for looking out at the work of public sector. In this regard, an important agency in anti-corruption has an important duty in providing knowledge and establishing awareness in preventing and suppressing the corruption.

When the public has the knowledge and is aware of the corruption problem, this will render corruption more difficult as the public is a strong network. Moreover, it is to establish a non-corruption culture in the society, making offenders feel ashamed in their corrupt

act. If a corrupt conduct is pressured, there will be no place in the society. It is hoped that this book will be useful in preventing and suppressing corruption. It will be able to establish a network of knowledge to state officials, public sector, youths and general public including further participating in the watch for corrupt acts.

Office of the National Anti-Corruption Commission

Foreword

Mr. Parnthep Klanarong

Chairperson of the National Anti-Corruption Commission

The Book “Opening 10 corruption cases: expensive lessons for Thai people” in your hands is a creative book providing knowledge in anti-corruption to the public by taking the context of 10 important corruption cases whereby the final judgments are made including the disciplinary and criminal prosecutions and have been through the consideration of the National Anti-Corruption Commission and Office of the National Anti-Corruption Commission. The transmission of knowledge relating to corruption processes is deemed to be significant as the public mechanism is an important mechanism in driving the national strategy on preventing and suppressing corruption. Thus, the public is an important social driving force which supports the efficient tasks in preventing and suppressing the corruption. However, in the past, this task in preventing and suppressing the corruption is not very successful as the public lacks sufficient knowledge and awareness and leave corrupt acts to continue without any social inspection. To make matter worse, the corrupt persons are respected in the society as they have popularity, money and social power.

Thus, in order to establish knowledge, thought, and awareness in corruption, this book is created. This is to ensure that a corrupt act is difficult to conduct or officials or stakeholders in the corruption process are scared of conducting such act or become more cautious in undertaking a project to be more transparent; people in the society are ashamed of corruption. If a corrupt act is socially pressurized, there will be no place in the society for such act. This is a result of disclosing corruption processes. When a corrupt act is found, the public can help to inform as preventing corruption is a task of Thai people. Lastly, this book will help to ensure that state officials and stakeholders in government projects know of the penalty or

consequences from corruption which may, in turn, scare them and render them not to conduct any corrupt act.

The National Anti-Corruption Commission and Office of the National Anti-Corruption Commission are determined to establish a transparent and moral society. The task of preventing and suppressing corruption cannot be successful if there is no strong cooperation and collaboration from every sector in the society. The Book “Opening 10 corruption cases: expensive lessons for Thai people” is an important tool to connect the power to fight corruption and please be aware that “corrupting the country will destroy both state and people”.

Mr. Parnthep Klanarong

Chairperson of the National Anti-Corruption Commission

Mr. Prasart Phongsivapai

member of the National Anti-Corruption Commission

“Let us help to increase the number of cats to catch the rats”

The Book “Opening 10 corruption cases: expensive lessons for Thai people” is the book which distribute examples of important cases where the accused were state officials with the highest power collaborating with cronies, prescribing corruption policy, having accomplice from the public and private sectors and lastly, providing the benefits to themselves and the cronies. If this is considered in detailed from the beginning to the end, it can be seen that this whole film is like a movie and is an abuse (without considering only parts of the book) which led to serious damage.

As we all know that “corrupting the nation will destroy the people and the state” and yet there are more corruption cases. Such cases also more complicated and difficult to inspect and are corruption in the policies. It is unable to find politicians or state officials who are the principal or planner. This is in the sense that: only small fish are caught but a large one always manages to escape.

Thus, when the NACC rules that he or she is found guilty of serious breach of discipline or criminal offence, it is only a low level of state official. It is unable to find a politician with the highest power guilty and the people use the sarcasm against the NACC that “we all know that in this case the Minister is the principal prescribing the policies and plans from the beginning and only 9 members of the NACC that are so stupid that they do not know”.

I understand the disappointment of the people who speak but I would like to explain that in important cases, a big fish has a lot of power and is very difficult to catch, and this means that if the accused is in a very high position with a lot of power and money, he or

she has influence, can threaten, hire and conceal neatly without leaving any trace for the NACC to inspect and connect him or her with such offence.

Nonetheless, as we all know that the inspection of a commission of the offence of a state official in the NACC justice process only rely on witness and evidence, the NACC cannot “dance” or “listen” to the media or “feeling” and then consider.

As a result, in order to ensure that an effective corruption prevention, such as, raising awareness, honesty, looking out, inspection or tackling corruption such as fact inspection and inquiry requires witness and evidence, the NACC asks every sector in the society assists by seriously undertaking their powers and duties from the government, government agency, state official, politician, private entrepreneur, civil society, media, society and the public by integrating and driving together, to establish great power to tackle corruption together.

The problem of corruption is like having rats around the country and this means that multi- partners or every cooperation is like cats catching rats and we will get more cats.

Please be reminded that the NACC is not a superman or a person who has the magic who can solely do the task of preventing corruption.

“gather all the powers to prevent corruption is a task for Thai people”

Mr. Prasart Phongsivapai

member of the National Anti-Corruption Commission

Professor Dr. Pakdee Pothisiri

Member of the National Anti-Corruption Commission

Lessons to be corrected: Thailand has faced with the problem of corruption in the level of crisis for a long period of time until now. This can be illustrated by the corruption index made by Transparency International from B.E. 2538-2557 and, for over the period of 20 years, Thailand has received low scores. Even in B.E. 2557, the year Thailand got the highest scores compared to every other year, the score was as low as 38 points out of 100. Corruption cases appeared in this book is deemed to be a small portion of incident compared to what actually happen in Thailand. This matter shall be tackled expeditiously to ensure that principals are punished; measures shall be made to prevent a repeated offence and; knowledge shall be distributed to the public to establish awareness and correct way of thinking within the legal framework in order to reduce behaviors which may divert from such measures and become offences. This is the situation in Thailand whereby over 10,000 complaints are received each year and there is no prospect that the number of complaints will decrease.

As corruption is a white collar crime whereby an offender is a criminal who conducts complicated acts and changes the forms of such acts depending on the situation, means to tackle this problem shall consist of short, medium and long term basis and a clear policy. It is, therefore, necessary to have a strategy to use as a means in undertaking. The NACC together with every relevant sector conducted the national strategy on anti-corruption. The current national strategy is the national strategy on anti-corruption phrase 2 (B.E. 2556-2560) approved by the Council of Ministers on the 24th of February B.E. 2558 specifying that every agency to put this strategy into practice shall prescribe a 4 year implementation plan and a yearly implementation plan. The vision of the strategy is “Thai society has discipline, transparent, morals, ethics, prevents and suppresses corruption to the internationally

acceptable standard”. The performance index set for the year B.E. 2560 is for Thailand to have the corruption index at 50 points which means that behaviors of Thai people must be different.

The behavioral change can only happen if everyone in the country change their way of thinking to be in line with the international standard. Thus, the strategy to establish conscious mind and awareness in preventing corruption and to focus on changing the thinking of Thai people in every sector to maintain the public interest is the first strategy amongst five strategies. It is a pleasure to know that the current government, General Prayuth Chan-O-Cha, the Prime Minister, prescribed the integration plan to prevent corruption and dishonest conduct in the government sector in accordance with the strategy of budget collation B.E. 2558-2560 which is hopeful to lead to changes as targeted.

Corruption cases in this book will not occur again if everyone changes their behaviors to be in the ethical frame and existing laws especially the persons holding the government powers and high level positions. If their behavior is corrupt, lower level position officials and the general public will follow such behavior.

Professor Dr. Pakdee Pothisiri

Member of the National Anti-Corruption Commission

Professor Vicha Mahakun

Member of the National Anti-Corruption Commission

The current and future means or directions in anti-corruption are increasingly important to the establishment of system in tackling the political, economic and political problems in the country as corruption affects the country development i.e. it creates obstacles in every aspect of public administration and affects the perspective and value in respect of ethic of the people. Thus, providing the correct knowledge to the relevant person in every sector is necessary to be done especially gathering the information on important corruption cases to be used for educational purpose and adjusting the private business to prevent and suppress corruption. This is to promote relevant people in both public and private sector to have knowledge, idea and understanding relating to forms of corruption in the private sector leading to a promotion of cooperation between different sectors in preventing and suppressing corruption which is strengthen and more efficient.

To establish the correct and clear knowledge in preventing and suppressing the corruption will lead to good ethic of the public to cooperate and be the force of the country which is the goal in social, economic and political development as wished for the country development.

Professor Vicha Mahakun

Member of the National Anti-Corruption Commission

Pramon Sutheewong

**Chairperson of the Sub-Committee on Driving the National Strategies on anti-corruption in
the private sector**

The publication of this book “Opening 10 corruption cases” is the success of the NACC and they are all decided by the Court. Each case should be disclosed so that the public knows the truth by which the Court relied upon the witness and evidence in ruling the cases fairly and in accordance with the law. The purpose is for the public to see the truth that:

First, corruption is stealing from the Thai people. The money is not the government’s money, not the money of the state but it is the tax payers’ money. Upon having an income, the tax is deducted. Upon purchasing goods and services, VAT is paid. These taxes still belong to the Thai people and not the government’s money or money of the people in the government.

Second, corruption is to ensure that the readers see that corruption is morally wrong and contradictory to the second commandment by which the Lord Buddha prohibits stealing from others. The persons who act inconsistent to this commandment will go to hell after death or reborn as animals, hungry ghost, all vices, hell, destruction appeared in Tripitaka which the Lord Buddha said that he never saw any suffering which is more painful than the being reborn in hell. Persons holding the political positions will realize the result of their sin when their bodies no longer exist.

Third, corruption is to ensure that every Thai, upon reading this book, will hate the corruption behavior and collectively prevent it from occurring. The public will ask for Thailand without corruption. This is also so have the law preventing corruption and harshly punishing politicians and government officials who corrupt. These are to allow Thailand to develop the country and build a sustainable political, economic and social development.

Pramon Sutheewong

Chairperson of the Sub-Committee on Driving the National Strategies
on anti-corruption in the private sector

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Introduction

Corruption damages both the state and people

“... if someone is corrupt, regardless of how powerful they are, you do not need to show your respect for such person, no matter how grateful you are towards them. Do share your disgust when you are aware that such person is corrupted and try to stay away and keep the distance from the corrupted person. The corruptive germs could be transmitted to you...”

General Prem Tinsulanonda, the Head of Privy Council and Statesperson

Special Speech given on the 2nd of February B.E. 2558 (2015)

At the National Defense College

Several misunderstandings on corruption is a main cause which renders corruption rooted deeply in the Thai society. Such misunderstandings are as follows:

1. corruption is abstract and intangible. It does not harm anyone;
2. corruption is far from oneself. Most corruptions are concerned with politicians and the government sector. It is also perceived that whoever corrupts is the matter of such person and one day such person may be arrested and punished. Nonetheless, before that day comes, they can enjoy their benefits from corruption;
3. corruption is a personal issue and it does not relate to any other person or the general society. It is a normal issue and any person is able to corrupt. So long as they are not caught, they can enjoy their social status. Moreover, if they effectively work under their duties, corruption is deemed to be acceptable. Being a corrupt person is acceptable so long as such person is proficient.

These three misunderstandings are mythology which are not, at all, accurate in reality and such perception is greatly dangerous for the society and the nation. It renders the fight towards corruption in the country more difficult. Furthermore, we may be frustrated when believing this fight is hard to succeed.

Office of the National Anti-Corruption (NACC) is an independent organization established with the purposes to combat corruption which is a problem deeply rooted in the society and to establish a transparent society. The strategies are prescribed to combat the problem. Such strategies include a cooperation from every sector and publicizing to the general public to ensure that they know they are the main force in helping the NACC.

One of the strategies is to foster and create conscious so that the society realizes such problem. The making of this book, opening 10 corruption case files: an expensive lesson for Thai people is a part of the strategies. 10 corruption case files the final judgments of which are delivered are selected and presented in an easy- to- understand form to allow a wide dissemination. Each case file illustrates the sources and methodologies of corruption, concerned persons, investigation and judgment.

Corruption is an incident which greatly and continually causes harm to the society and country. If combating and punishing a convicted person is tough, prevention against corruption is even more difficult. Even though the harm from corruption is widely known, no one pays any attention, especially if one benefits from such corruption. In fact, some believe that state money is not their money so they feel that they are not injured after being corrupted.

One clear matter is that the harm occurred to the country caused by each corruption case. For instance, there was a loss of a large amount of money in a corruption case of median price of drugs, the Ministry of Public Health rendered the country to lose 181 million Baht and cause other harms. In such case, the budget which was supposed to be spent on a public health and health insurance plan for a low income group and for those people whom the society should support was instead spent on procurement of goods and medical supplies. Similarly, in a corruption case of sewage system, Klong Dan district, Samutprakarn, in such case,

the country wasted 23,701 million Baht on the wastewater treatment plant causing problems to people in the local area as they were fishermen.

Budget is money of the people. Every time the country is suffered from corruption, every Thai person is also suffered. If we set to see Thai society without corruption, this can be achieved by two means:

Starting from yourself: one shall not accept bribery or be a part of corruption. One shall not pay any bribe to a state official expecting some returns.

Paying close attention to others: in addition to not being corrupted, one should pay close attention to other people and make noises if there is suspiciousness in a government agency or a state official being involved in a procurement project.

Corruption is, thus, not abstract and does matter and is not a usual subject which everybody shall overlook or allow to happen and continue to harm the society.

Several convictions of offenders committing corruption offences occurred from the fact that civil society pays attention, monitors and requests justice. For instance, in the corruption case of median price of drug, Rural Doctor and Pharmacist Foundation including their networks of 30 community development organizations, together, investigated and submitted the matter to the NACC. Similarly, in the Klong Dan case, the public began to pay attention when independent academics conducted an in-depth research study on an inappropriateness of the project. This study was published via the media and rendered a wide understanding that such project was corrupted. Likewise, the case of fire trucks and fire boats began from a journalist investigating and publishing the details of their procurement which consequently led the NACC to inquire and decide that the case shall be proceeded. In addition, several cases of unusual wealth began from anonymous letters or complaints to the NACC.

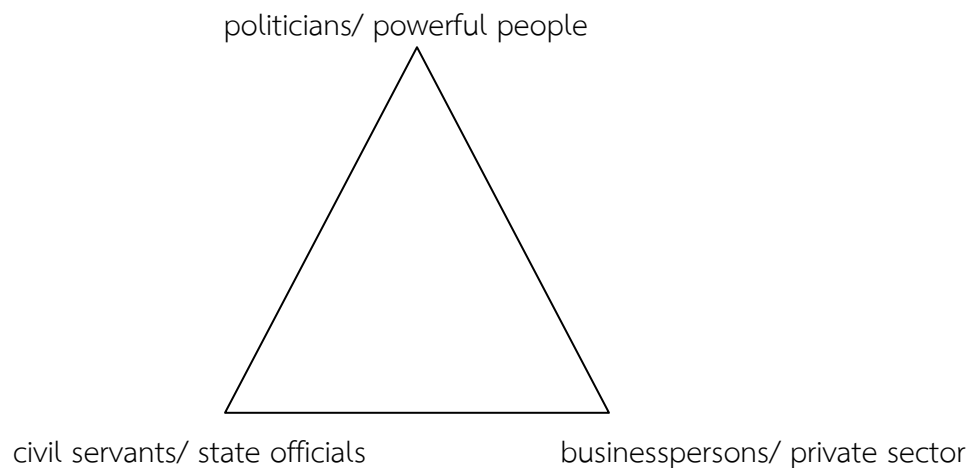
Combating corruption is not impossible. Offenders are not always at large. If every agency in the society seriously monitors and does not support the myth that corruption usual is or is not an offence, the fight towards corruption is half way through the finishing line.

By considering that corruption is an in-depth disgusting cycle, this is not far from the reality. Nonetheless, by looking closely, we will see that, often, there are three parties aiding and involving in the corruption:

politicians/ powerful people

civil servants/ state officials

businesspersons/ private sector



Combating corruption thus means destroying this support. Civil servants must perform their duties honestly; businesspersons must not only consider benefits obtained over the harm occurred to the society and other people whilst politician must be transparent and accountable. The latter, for instance, must not be in power to gain or must not expect to have their cost of election campaign reimbursed.

Lastly, an illegitimate gain from the use of state power is disgusting and is an immoral behavior. It is stealing and the conduct of a robber. No one shall accept and give in to the corruption as the damage from corruption is clear. We shall consciously monitor, prevent, and disclose corruption, and submit a corruption complaint. This is to ensure that the NACC perform efficiently and to ensure that the future Thai society is without any corruption.

Corruption case of median price of drug

Ministry of Public Health

(Mr. Rakkiat Sukthana)

Pending case number Aor Mor 1/2546

Decided case number Aor Mor 2/2546

The corruption case of the procurement of medicines and medical supplies of the Ministry of Public Health in B.E. 2541 (1998) was a headline news attracting attention from the general public and leading to the movement from the civil society. The latter, the movement from the civil society by the Rural Physician Club and Rural Pharmacist Club, consequently exposed the corruption cycle which resulted in the resignation of the Minister of Public Health, Mr. Rakkiat Sukthana, and resulted in the continuous investigation from several agencies.

According to the investigation, the facts illustrated that the corruption was a policy corruption which was procedurally planned. The loss occurred was tremendous. The budget from taxes of the public which was supposed to be spent on aiding and assisting the low income earners in the society was spent on the procurement of medicines and medical supplies. It was the corrupted procurement for the price higher than the median price; the purchase higher than the demand; the purchase was made to the new pharmaceutical company which was established for this corruption. It was also followed by a bribery, threatening, and embezzlement, forgery, distorting facts and giving of false statement when being investigated.

The injured person is no one but Thai people who were ill and needed to purchase medicines.

The evidence obtained by the investigation of the NACC illustrated that the corruption was made by an organized movement related to politicians and civil servants. The Criminal Division for Political Office Holder of the Supreme Court sentenced Mr. Rakkiat Sukthana to an imprisonment of 15 years without suspension of a sentence including seizing the

property of 233.98 million Baht, the asset which shall vest on the state in the corruption case of medicines and medical supplies.

Sources of corruption and complexity in hiding the evidence render the NACC 4 years to conduct the investigation which resulted to waste of government budget. Commission of an offence with no receipt makes the investigation difficult and the investigators need to use their wit and legal knowledge to ensure the accomplishment and this was the case of Mr. Rakkiat Sukthana.

The Primary Chapter of the Drug Corruption

The economic crisis or the bubble burst in B.E. 2540 (1997) resulted in a deduction of budget of several government agencies under the Prime Minister, General Chavalit Yongchaiyudh, including the budget of the Ministry of Public Health especially the part for budget assisting low income earners. The budget of B.E. 2541 (1998) was reduced by 7,028.60 million Baht.

Subsequently, when the previous government by Mr. Chuan Leekpai took office in late B.E. 2540 (1997), its policy was to speed up the use of expenditure to allow the economic liquidity. Thus, the Council of Ministers had a resolution to approve the plan to return the annual budget allocation of B.E. 2541 (1998) to all ministries by which the Ministry of Public Health received the additional budget of 1,400 million Baht. The Ministry allocated such budget to the provincial public health services for the amount of 560 million Baht and district public health services for the amount of 840 million Baht. In this regard, it was allocated in the category of material and operational costs which was a source of corruption in the procurement of medicines and medical supplies.

1,400 million Baht was allocated in the category of material and operational costs even though this money was in the public health welfare and health insurance plan, providing healthcare for low income earners and people for whom the society should provide assistance.

Dr. Yongyos Thammawut

Former President of the Rural Doctor Association

The case of drug corruption in the Ministry of Public Health led to the fact inquiry by the National Anti-Corruption Commission (NACC) whereby the Attorney –General prosecuted Mr. Rakkiat Sukthana, the Minister of Public Health (in office from the 14th of November B.E. 2540 (1997) until the 15th of September B.E. 2541 (1998)) to the Criminal Division for Political Office Holder of the Supreme Court in two cases: cases of an offence of misconduct and unusual wealth.

The category for budget was changed

In addition to the budget being changed from aiding money returned to the public health services for low income earners and people for whom the society are supposed to provide assistance to the category of material and operational costs, the statement “and medical supplies” was added to the Council of Ministers resolution in the letter sent from the Ministry of Public Health to the Budgetary Bureau.¹

¹ Report of the investigation of serious disciplinary breach of Dr. Yingkiat Pisarnchatchapong and Dr. Yongyuth Jearsathanwong which Mr. Arlai Inkhavanich reported to the Prime Minister, Mr. Chuan Leekpai, on the 23rd of April B.E. 2542.

“For example, in Ayuttaya, the Provincial public health office purchased 20,000 sets of saline water even though it was not necessary to buy those sets in the same amount of the sets of saline water and the price purchased was 100 per cent higher than the price normally paid”

Ms. Rosana Tositrakul

Network of 20 community development organizations

Abstract from the document: lesson learnt from the movement of the civil society

The corruption case of medicines and medical supplies, Ministry of Public Health

Abolishment of median price of drug

Mr. Rakkiat Sukthana, the then Minister of Public Health, announced the abolishment of median price of drug on the 15th of December B.E. 2540 (1997) claiming that the floating exchange rate of Baht on the 2nd of July B.E. 2540 (1997) and an increase of VAT from 7 per cent to 10 per cent from the 16th of August B.E. 2540 (1997) affected the cost structure and resulted in an increase in price of medicines and medical supplies. It was; therefore, appropriate to abolish the median price of drug under the National List of Essential Drug to allow hospitals and agencies to procure medicines in the National List of Essential Drug without any obstacle.

The National List of Essential Drug is an important mechanism to support the use of drug of the country to be in accordance with the philosophy of sufficient economy. The list

provides necessary medicines to prevent and maintain the health of Thai people through the transparent selection procedure of medicines and participation of relevant parties².

What was supposed to occur after the abolishment of the median price of drug was establishing a new median price of drug as usually conducted. Nonetheless, after the order to appoint the committee to prescribe the median price of drug on the 9th of March B.E. 2541 (1998), the Committee had done nothing and the list for median price of drug, which was used for controlling the procurement of medicines, did not exist, for 2 years. To make matter worse, even though the list was considered on the 1st of September B.E. 2542 (1999) and completed in 1 month and 6 days, the time gap when there was no median price of drug in the country resulted in a large scale corruption and loss.

“... the investigation committee led by the Chairperson, Dr. Vichai Chokvivat, concluded that the abolishment of median price of drug allowed the taking of advantage: the purchase of drugs at higher price without any price ceiling. The most expensive drug purchased was 602.87 per cent higher than the median price of drug. The Committee concluded that the damage was 181 million Baht.

Dr. Suphat Hasuwankij

An abstract from drug corruption- a large clear up which looks unsuccessful

Community Hospital Magazine, November – December B.E. 2546 (2003)

² Pharmacist Kornchai Chanthajiratham, www.haamor.com

Opening the corruption channel

The corruption in the procurement of drugs resulted from the abolishment of the median price of drug was made a headline and several agencies conducted their investigation. The Ministry of Public Health appointed several fact inquiry committees while the Parliamentary committee on Public Health appointed and assigned a sub-committee to conduct a research study on the higher price of procurement of drugs and medical supplies compared to the reality of the Ministry of Public Health. Office of the Auditor General of Thailand investigated the data and facts concerning the procurement procedure of drugs and medical supplies of the Ministry of Public Health while the Anti-Corruption and Misconduct in the Public Sector (later changed to NACC) also conducted the investigation.

The civil society paid attention and jointly conducted the investigation. The Rural Doctor Association and the Rural Pharmacist Association conducted a research and found that the corruption of drug procurement covered 56 provinces while 4 politicians and at least 8 executives of the Ministry of Public Health and 36 pharmaceutical companies were involved.

The corruption began from the central administration to the regional administration by which the orders were made to pharmacists in the hospital whose duties were to order the purchase of drugs. This created embarrassment to numerous pharmacists and some of them exposed the corruption of drug procurement.

“At the time, I wrote the written report stating that the procurement would not be made as this was not right. My misconduct in office was forced. The director of the hospital asked me to proceed with the purchase otherwise the doctor at Provincial Public Health Office may be moved or removed. The pressure was put upon us all.”

“I was sad and stressed as I had to do what was not right. As I could not resist such pressure, I purchased the order through the Government Pharmaceutical Organisation. One of my friends were tremendously sad and stated that the signature used to proceed with the order would no longer be used again. Similarly, I felt that somebody threw me a rope and asked me to commit a suicide. They forced me to betray my honesty. Once this incident passed and no order was made, I was proud to stand up against this matter. My hands are still clean.

Pharmacist Siriporn Jitprasitsiri

Awarded Pharmacist for the society B.E. 2556 (2013)

Abstract from ASTV online, the 2nd of February B.E. 2557 (2014)

The movement for a corruption investigation began from the Rural Doctor Association and the Rural Pharmacist Association and continued by the network of 30 community development organizations. As drug is one of the essentials and this corruption rendered the budget, which was supposed to assist the low income earners and the people whom the society were supposed to aid, a personal benefit, the movement continued.

Tracing

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) and the Organic Act on Anti-Corruption B.E. 2542 (1999) and as amended (No. 2) B.E. 2554 (2011) prescribe that persons holding political positions and executive level of state officials shall have the duties to submit accounts illustrating properties and liabilities of themselves, their spouses and children who have not reached the legal age as being held on the date of taking an office or on the date of leaving an office. Such submission shall be made to the National Anti-Corruption Commission

(NACC) and this is to know if there are any changes or unusual change of the properties or liabilities prior to and after taking an office of a particular person.

Mr. Rakkiat Sukthana took the position as the Minister of Public Health on the 14th of November B.E. 2540 (1997). After the submission of the list of properties of himself and his spouse to the NACC, it was found that a large amount of usual money was deposited into the accounts of his spouse and assistant to the Minister and personal secretary. For instance, on the 24th and the 25th of December B.E. 2540 (1997), the evidence of money being deposited into his spouse's account of 33, 400,000 Baht was detected.

The NACC exercises section 77 in the case where there is a reasonable ground to believe that a state official is unusually wealthy and shall conduct the investigation to inquire facts. In addition to the investigation of correctness, actuality, and changes of the account illustrating properties and liabilities, it is necessary to investigate the unusual wealth.

In this case, the NACC investigated in dept particularly the bank account of the secretary and it was found that cash and cheques were deposited into the account. Following the investigation, the secretary confessed that such depositary account was not hers but belonged to Mr. Rukkiat. The latter deposited the money under her name and used the signature created by latter to withdraw money. The NACC found the Kasikorn Bank cheque, Nonthaburi branch, dated the 10th of August B.E. 2541 (1998) issued to be paid to the account payee only, for the amount of 5,000,000 Baht. Once examined further, it was found that the person who bought this cheque was an owner of a pharmaceutical company by which the money was withdrawn from the current account which such owner opened the account under someone else's name to facilitate the withdrawal of the company.

The secretary deposited this cheque into a saving account of the Siam Commercial Bank, Ngamwongwan Branch. The question raised was why the secretary took the cheque from the pharmaceutical company.

Hidden agenda

The secretary firstly provided the testimony to the inquiry sub-committee of the NACC on the 19th of April B.E. 2545 (2002) that the 5,000,000 Baht cheque was the money borrowed from a son of the owner of the pharmaceutical company to pay off the debt of her own gambling. Subsequently, the secretary claimed that she failed to pay the debt within the period prescribed in the contract which was pursued under the legal proceeding by the creditor on the 26th of March B.E. 2542 (1999) and the dispute was settled. The secretary agreed to pay off the debt including interest. In this regard, the court judgment was produced as evidence.

The investigation of the NACC found that the loan agreement between the secretary and the creditor provided that a plot of land as security. The plot of land was at Tambon Tai-Koh, Amphur Samkhonk, Pathumtani. Generally, in the case where the security is a plot of land, a mortgage agreement shall be made. In this case, however, the creditor only held the title deed and the investigation also found that the secretary received the title deed back and sold it to another person for the amount of 1,700,000 Baht on the 25th of August B.E. 2553 (2010) to settle the personal debt. The money gained from the sale of land was not for the debt settlement and another property was placed as the security.

The selling price of a plot of land at 1,700,000 Baht was lower than the loan of 5,000,000 Baht and it was, thus, illustrated that the security and loan were not correlated. This led the NACC to doubt and to continue conducting further investigation.

Once the NACC examined the Court procedure, it was found that, prior to the submission of the court proceeding, no collection letter from a legal office was sent to the debtor and if the debtor refused to settle the debt, the matter would be submitted to the civil court. The plaintiff would then be sent to such debtor to inform that the civil action had begun and they may file an excuse.

In this case, however, the question arose as follows: the fact that the judge ruled that the plaintiff and defendant agreed to settle the debt in accordance with the contract, did this mean that the loan agreement existed? The judge explained the contrary. The Court did not certify that the loan agreement existed. Instead, the court considered whether the conclusion of the agreement to settle the dispute was contradictory to the public order. If it was, the court would rule for the agreement. The question of whether the loan agreement existed was not answered by the Court as the Court did not take evidence.

In addition, it was found that, upon the Court judgment, no debt was settled and judgment execution was not exercised. The NACC found that prior to the judgment execution, the plot of land was already sold to someone else at the price of 1,700, 000 Baht. The secretary brought another plot of land to proceed with the judgment execution and was sold to settle the debt. It appeared later that the purchaser of such plot of land was the secretary's brother who spent the money received from a pharmaceutical company to purchase it.

Another suspicion is that when examining the loan agreement, it was found that the witness in the agreement was the son of the owner of pharmaceutical company who gave money to the secretary's brother who bought the plot of land. To make matters worse, upon examining the travelling data, it appeared that this witness travelled to a foreign country on the signing date of the agreement. It was then clear that this loan agreement was conducted after such date to deceive the officials.

The inquiry sub-committee concluded that the testimony of the secretary shall not be trusted due to a lack of evidence illustrating that the loan existed and concealment of facts by the secretary. The sub-committee had a resolution that there was a circumstance that the offence was committed and this was reported to the Ministry of Public Health.

The Ministry of Public Health subsequently informed the Secretary-General of the NACC that, according to the disciplinary investigation of the case of procurement of drugs and medical supplies, it appeared that such pharmaceutical company sold drugs and medical supplies to the Ministry of Public Health in several provinces and found that the transfer of money from the executive of this company to the secretary for the amount of 5,000,000 Baht may relate to the commission of an offence during the performance of official duties or corruption. The Ministry requested the NACC to conduct a further investigation.

Hints

As from the beginning, it was only an investigation into the account illustrating properties of Mr. Rukkiat Sukthana upon taking the office. It then related to 2 other offences: a case of submitting a false list illustrating properties and a case of unusual wealth. The third criminal case was also appended when the Ministry of Public Health was an injured person resulting from a corruption in the procurement of drugs and medical supplies, the NACC thus appointed a sub-committee to conduct a further investigation.

The NACC sub-committee received additional evidence from the secretary who was serving her sentence at Klong Prem Central Prison as the Criminal Division for Political Office Holder of the Supreme Court sentenced her from the case of bribery of a public health official of Songkla province.

The secretary informed the NACC sub-committee that she was upset that Mr. Rakkiat Sukthana did not show any responsibility for her being prosecuted and gave the testimony stating that the cheque of 5,000,000 Baht was given to Mr. Rakkiat Sukthana, at one of the hotels on Rama IX road, by the owner of the pharmaceutical company as remuneration to Mr. Rakkiat as he made an order to the Ministry of Public Health to procure drugs and medical supplies from the pharmaceutical company. However, as the cheque was made to payee only (it was not able to be cashed without depositing into a bank account). Mr. Rukkiat assigned the secretary to deposit the cheque into the account of Siam Commercial Bank, Ngamwongwan Branch. The bank account belonged to Mr. Rukkiat but was opened under the name of the secretary.

Moreover, the secretary testified that almost all of the money in the account belonged to Mr. Rakkiat and there was a notebook noting when money was deposited into a bank account; how much it was deposited and when it was withdrawn. Mr. Rakkiat examined this notebook and signed or wrote a word “OK” when it was correctly examined.

This notebook was left with the sister of the secretary. The NACC sub-committee examined the notebook and found that the money was noted and the signature was signed.

The NACC ruled that there was sufficient evidence to support the accusation and, hence, informed Mr. Rakkiat of such accusation which he gave a statement of denial to all.

The fight

Mr. Rakkiat raised the legal argument as follows: first, the Criminal Division for Political Office Holder of the Supreme Court was not able to hold the inquiry file of the

NACC as the principle in considering the case and second, the NACC had no inquiry power and, thus, the inquiry was deemed illegitimate while the Attorney-General could not proceed with the prosecution as there was no claimant submitting the complaint against the defendant.

The Constitution and the Organic on the Criminal Procedure for Political Office Holder B.E. 2542 provide that the case file of the NACC shall be held as principle which means that the case file is to be held in respect of scope and the Supreme Court can inquire additional facts and evidence as deemed appropriate. The Court also has the powers to call for relevant documents or evidence from any person or call any person to give a statement. The defendant has the right to argue and bring the evidence of their side to the inquiry Court to confute the evidence in the case file of the NACC.

The first argument failed

The second argument also failed as the Ministry of Public Health, by Mr. Winai Wiriyakijja, the Permanent Secretary, had powers and duties relating to medical profession, public health, promotion and development of health and food and drug control, reported to the Secretary-General of the NACC the facts and circumstances of the defendant concerning the procurement of drugs and medical supplies in the budget year of B.E. 2541 (1998). This resulted in loss for the Ministry of Public Health and requested th NACC to proceed with the inquiry of facts. This meant that the Ministry of Public Health, by Mr. Winai Wiriyakijja, was an injured person which was complete, correct and sufficient for the NACC to have the powers to inquire facts under the law and the Attorney-General had the power to prosecute.

Judgment

The Court found that Mr. Rukkiat Sukthana was guilty under section 149 of the Penal Code (state official demands bribery) and section 157 (wrongfully exercise any of his functions to the injury) as follows:

- As the Minister of Public Health, Mr. Rukkiat Sukthana issued the Notification abolishing the median price of drug under the National List of Essential Drug and failed to issue a new one to replace the abolished price resulting in a corruption in procurement of drug and medical supplies: the price procured was higher than the actual price due to a non-existence price ceiling;
- As the Minister of Public Health, Mr. Rukkiat accepted the money of 5,000,000 Baht from an owner of the pharmaceutical company as illegitimate remuneration.

A panel of judges unanimously ruled for heavy punishment upon considering all the circumstances; upon considering that the defendant was elected as a Member of Parliament for Udonthani for 7 times and was in office as the Minister for 5 times; and upon considering that the defendant graduated a law degree and was a lawyer. Yet, the defendant committed a corruption.

The Court ruled that the defendant shall be sentenced to 15 years in prison.

In regard to a case of unusual wealth, the Criminal Division for Political Office Holder of the Supreme Court seized the properties of 233, 880, 000 Baht to vest in the State.

Conclusion

The corruption case Mr. Rakkiat Sukthana illustrates that it is undeniable that the corruption by politicians and the public sector exists. The corruption occurs at the high level of policy making which results in tremendous loss to the country. The methodology to corrupt is

complex from ensuring that an increase in budget is secured; avoiding rules; ensuring that a loophole exists to allow a full cycle of corruption to cooperating with the private sector.

The movement from the civil society and interest from the general public led to an inspection by an independent organization: the National Anti-Corruption Commission (NACC). The NACC exercised its powers under the Constitution of the Kingdom of Thailand B.E. 2540 (1997) to obtain evidence and facts on unusual wealth and corruption in the case of Mr. Rakkiat Sukthana and the Court ruled for imprisonment and seizure of properties.

In respect of elected politicians, if the means to political power requires a large amount of cost, it is then likely that the politicians will exercise their political powers to gain their capital back. This is a source of corruption to allocate benefit to themselves and to their political party.

It is difficult to combat corruption within the political sphere and such corruption results in a loss of a large amount of money which comes from the public.

.....

One of the means to get rid of this cycle is to elect a good person into the Parliament

Do not vote for a person who provides you with a little bit of money. If such person becomes a politician and attempts to gain their cost back, the corruption at high-level of political cycle will always continue to occur.

Graph 1

Agency	Result of the Investigation
	<p>medical equipments from the recommended company which sell them at a price higher than a normal price to gain personal benefit illegitimately.</p>
<p>2. The fact investigation Committee of the Ministry of Public Health concerning the Government Pharmaceutical Organisation led by Dr. Wichai Chokwiwat as the Chairperson.</p>	<p>During the budget year B.E. 2541 (1998), the procurement of drugs and medical supplies were ordered via the Government Pharmaceutical Organisation for the value of 918, 578, 694 Baht resulting in the estimated loss of 181, 748, 170. 57 Baht.</p> <p>The price paid was higher than the normal purchased price by 50-300 per cent and the incident occurred in 34 provinces around the country.</p>
<p>3. The National Anti-Corruption Commission</p>	<p>In the case of corruption of drugs, it was found that there was evidence to believe that such corruption existed.</p> <p>The officials who are related to the specification of the median price of drug acted negligently and failed to specify the median price of drug. Instead, they allowed a time gap of over one year resulting in the corruption.</p> <p>The NACC ruled that the relevant officials were liable and led to an order to dismiss several officials of the Ministry of Public Health.</p>

The NACC conducted their investigation by requesting evidence from several banks and found that the money of 18 million Baht deposited into the bank accounts were deposited in cash by transferring to Krung Thai Bank, Kumpawaree branch, which was a new account opened on the same day as the day the money was transferred.

Moreover, it was found that the money transferred into the account that day was not only 18 million Baht but there was another amount of 6.4 million Baht deposited into the account of the Saphan Krung Thon junction branch. The cash deposited was used banknotes composing of the 500 and 1,000 banknotes. Considering the band of the banknotes, it was found that such banknotes came from different banks and the persons depositing them were driver and police accompanying the Minister.

Living on the edge

Phra Rukkiat Rakkidtathammo or Mr. Rakkiat Sukthana gave an interview to the media and was invited as a speaker at Office of the National Anti-Corruption Commission. He discussed about his experience when he was a famous politician of the North-eastern part. He was a Member of Parliament for 7 times; was the Minister for 5 times; and was expected to be the Prime Minister of the northeastern people. He went through the most difficult path of his life whereby he was sentenced to 15 year imprisonment; was a fugitive; was divided from his family; imprisoned before being granted with the King's pardon and started his life again under the Buddhism umbrella.

Phra Rukkiat emphasized that his mistakes during which he was a politician was that: "whichever I wished or wanted, I had. I was reckless. I was under all vices but I was happy at the time: I was happy to drink; I was happy to gamble. When I was at my peak, I spent all my money on gambling. I went to Las Vegas, England and Macau to gamble and I, at the time, had trillion Baht."

The changed life was a lesson to remind conscious of others.

“In prison, I was stressed. My mind was everywhere.... I was not at peace. If I had learnt the Dharma earlier, I would have not been in jail. I felt remorse when I was in prison. I thought to myself that I had been in the political sphere since B.E. 2526 (1983) having a bright future and one day I made a mistake. The retribution followed my mistake was tremendous”.

Power of the Civil Society

It is undeniable that the case of corruption in the procurement of drugs and medical supplies of the Ministry of Public Health received attention from the media leading to the fact investigation. It began from the movement of the Rural Doctor Foundation and Rural Pharmacist Foundation. This was a case study on the power of civil society which was able to inspect the unusual performance of duties of state officials resulting in the exposure of corruption.

After the Rural Doctor Foundation and Rural Pharmacist Foundation continuously revealed the corruption in the procurement of drugs and medical supplies in the Ministry of Public Health, this resulted in such topic being widely criticized. It then followed by the network of 30 community development organizations participating in the movement to inspect this corruption and made a public statement requesting the Minister of Public Health, the Deputy Minister of Public Health, the Permanent Secretary and the Deputy Permanent Secretary to resign from office to allow a transparent investigation. They used the mechanism under section 304 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) to gather 50,000 signatures and within two months the signatures sought were complete. This allowed the submission of the matter to the President of the Senate to investigate this corruption case.

The network of 30 community development organizations, moreover, submitted an accusation, to the NACC, that Mr. Rakkiat Sukthana was of unusual wealth which consequently led to an appointment of the inquiry sub-committee. The network also submitted a letter to the NACC requesting that the data from the investigation of the corruption case in the procurement of drugs and medical supplies to be disclosed and this was the first time that any investigation result of the NACC was disclosed to the public.

Pressure from the civil society created an alert in finding the persons committing an offence and led the resignations of the Minister and the Deputy Minister of Public Health while the Permanent Secretary was moved to the Prime Minister's Office. Both the Permanent Secretary and Deputy Permanent Secretary were investigated under the serious disciplinary action.

The prevention and combating corruption in the case of political office holders and high level civil servants needs civil society to strongly involve in the investigation. With the movement of civil society, it will render the investigation procedure in the system more efficient to provide a transparent society without corruption.

We shall show the power to prevent corruption

The chorological calendar

The case of Mr. Rakkiat Sukthana

Year B.E. 2540 (1997)

November 14, B.E. 2540 (1997): came into Office as the Minister of Public Health

December 15, B.E. 2540 (1997): issued the Notification of the Ministry of Public Health on abolishment of the median price of drug under the National List Essential Drug B.E. 2536 (1993)



B.E. 2540 (1997)

December 24th and 25th , B.E. 2540 (1997): it appeared that there was an evidence of money being deposited into the account of his wife for the total amount of 33, 400, 000 Baht.



B.E. 2541 (1998)

June 9th , B.E. 2541 (1998): the Council of Ministers had a resolution to approve, to the Ministry of Public Health, the additional budget for the budget year B.E. 2541 (1998) for the amount of 1,400,000,000 Baht. The Ministry of Public Health allocated such budget to the medical supplies cost under the category of material and operational costs to pay for the drugs and to procure drugs and medical supplies.

August B.E. 2541 (1998): It appeared on the news that the corruption in the procurement of drugs and medical supplies occurred in the Ministry of Public Health and the NACC consequently conducted the investigation on such matter.

August 6th -11th, B.E. 2541 (1998): Mr. Rukkiat Sukthana requested and accepted money from the owner of a company selling drugs and medical supplies for the amount of 5,000,000 Baht as a remuneration for the abolishment of the median price of drug.

September 1st, B.E. 2541 (1998): The Ministry of Public Health appointed the fact investigation committee led by Dr. Banlu Siripanich as the Chairperson and it was found that information and evidence were sufficient to believe that the corruption in the procurement of drugs, equipments and medical devices of some Provincial Public Health Office and hospitals existed.

September 15th, B.E. 2541 (1998)

Mr. Rukkiat Sukthana resigned from office as the Minister of Public Health



B.E. 2542 (1999)

January 4th, B.E. 2542 (1999): A new Notification on the median price of drug under the National List of Essential Drugs B.E. 2542 (1999) was promulgated.



June 25th, B.E. 2542 (1999): The Ministry of Public Health appointed the fact investigation committee concerning the Government Pharmaceutical Organisation led by Dr. Wichai Chokwiwat as the Chairperson and it was found that, in the budget year B.E. 2541 (1998), the purchase order of drugs and medical supplies from other producers without ordering via the Government Pharmaceutical Organisation was made and the amount of order was the total of 918, 578, 694 Baht. The loss was estimated as high as 181, 748, 170.57 Baht.



B.E. 2545 (2002)

January 21th, B.E. 2545 (2002)

The NACC appointed the fact inquiry sub-committee and the sub-committee concluded that, during the time in office as the Minister of Public Health, Mr. Rakkiat abused his power to inappropriately obtain the properties for the total amount of 233, 880, 000 Baht. The Attorney-General, the plaintiff, initiated the legal proceeding against Mr. Rakkiat accusing him of malfeasance in office, to the Criminal Division for Political Office Holder of the Supreme Court. The Attorney-General requested the Court to particularly inquire facts in the case where the amount of money of 5,000, 000 Baht was transferred into the account of the secretary.

September 12th, B.E.2545 (2002): The NACC concluded that the properties deposited into the account of the wife of Mr.Rakkiat on the 24th and the 29th of December B.E. 2540 (1997) was a part of the properties obtained by Mr. Rakkiat which was an unusual wealth.

October 11th, B.E. 2545 (2002): The secretary gave a new testimony to the NACC that the cashier's cheque of 5,000,000 Baht was the bribery given to Mr. Rakkiat by the owner of the pharmaceutical company.

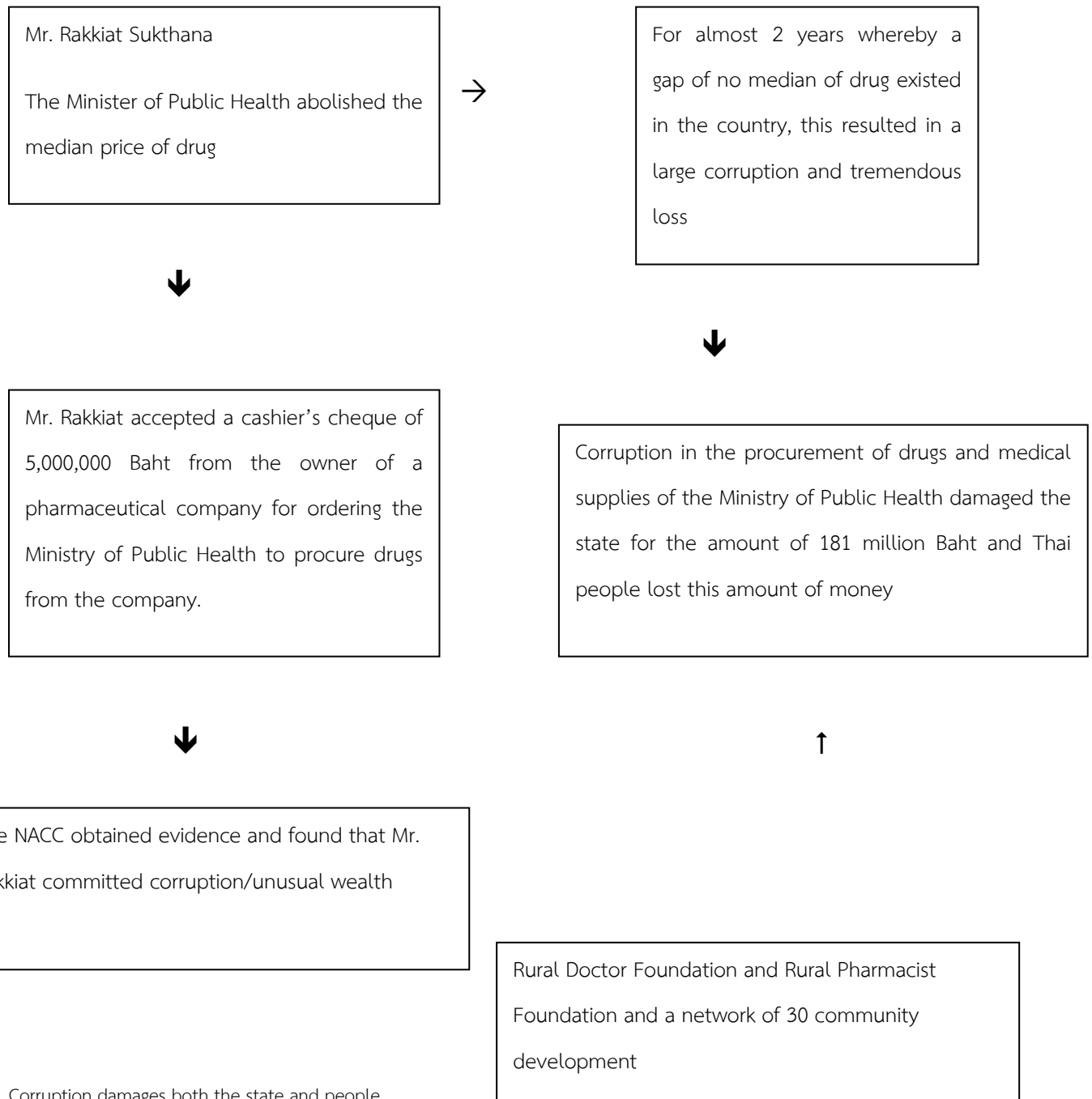
October 24th, B.E. 2545 (2002): The Attorney-General submitted a petition requesting the Criminal Division for Political Office Holder of the Supreme Court to seize the property of Mr. Rakkiat of 233, 880,000 Baht to vest in the state.



B.E. 2546 (2003)

September 19th, B.E. 2546 (2003): The Criminal Division for Political Office Holder of the Supreme Court convicted Mr. Rakkiat for an offence under section 149 of the Penal Code and sentenced him to a 15-year imprisonment without probation.

September 30th, B.E. 2546 (2003): The Criminal Division for Political Office Holder of the Supreme Court ruled that the property of 233, 880,000 Baht shall vest in the state.



For almost 2 years whereby a gap of no median of drug existed in the country, this resulted in a large corruption and tremendous loss



The price of procurement of drugs and medical supplies is higher than the median price.



Budget which came from taxes and was supposed to assist low-income earners in the society was, instead, disbursed for the procurement of drugs and medical supplies.

Corruption at a high level policy maker damages the country tremendously and the injured persons are Thai people.



orders were made to a pharmaceutical company established for this corruption



The numbers of order in the procurement were over the demand



se files: expensive lessons for Thai people

The orders made to the selected

Pharmaceutical company which shares interest

With the persons who made such orders.



Corruption and threatening of

junior officials.

A corruption case of Klong Dan sewage system project

(Mr. Wattana Asavahame)

Pending case No. 2/ 2550

Decided case No. 2/2551

Maintaining the environment is one of the government's policies. The problem of wastewater comes from a various factors, for instance, discarding rubbish into a river by households, and releasing wastewater from a manufacturer into a river. The government disbursed a large amount of budget in solving this problem while a group of politicians took an advantage from the project of establishing the wastewater system. The corruption case of construction of Klong Dan wastewater system and the procurement of land in the project was an example.

Opening a file of wastewater management project

During the period between B.E. 2529 (1986) – B.E. 2538 (1995), several agencies exercised their powers to resolve the problem of wastewater from manufacturers and urban communities in Samutprakarn Province. Pollution Control Department under the Ministry of Science and Technology (at the time) obtained subsidy from Asian Development Bank (ADB) and hired Montgomery Watson Asia Co., Ltd to conduct a feasibility study in constructing a wastewater treatment plant. The result of the study proposed two areas for wastewater treatment plants as follows:

- 1) The east of Samutprakarn in Bang Pu Mai District on the area of 1,550 rai;

2) The west of Samutprakarn in Bang Pla Kod District on the area of 350 rai.

Moreover, the report concluded that the area of Klong Dan district is not appropriate due to watery soil and close distance to the coast.

On the 19th of June B.E. 2538 (1995), Pollution Control Department proposed to the Council of Ministers, under Mr. Chuan Leekpai as the Prime Minister, to consider a plan of a wastewater treatment plant in Samutprakarn for the budget of 13, 162 million Baht using a turnkey method to design an overall wastewater system and treat wastewater in the eastern and southern Samutprakarn. In this case, a private company which proposed to bid for the project must purchase a plot of land to build a wastewater treatment plant. Upon the first phase of construction completion, the plant shall be able to treat wastewater for the amount of 525,000 cubic meters per day and upon the completion of the last phase of the project, the plant shall be able to treat wastewater for the amount of 1,785, 000 cubic meters per day.

The Council of Ministers had a resolution to approve this principle, however, the Office of the National Economic and Social Development Board, Ministry of Industry and Ministry of Interior argued that such matter may overlap with the works of other agencies.

Subsequently, the Council of Ministers, under Mr. Banharn Silpa-archa as the Prime Minister, considered the plan of a wastewater treatment plant again on the 17th of October B.E. 2538 (1995) as proposed by the Pollution Control Department and had a resolution to approve the construction of the wastewater treatment plants in both sides within the amount of 13, 612 million Baht:

- the east is to be constructed in Bang Pu Mai district;
- the west is to be constructed in Bang Pla Kod district

The Council of Ministers also put the project under Department of Public Works, Department of Industrial Works and projects of the Samutprakarn Province together.

A private firm who was a successful bidder shall purchase a plot of land for the use of such project.

Abolishing both wastewater treatment plants and establish a new one at Klong Dan

In regard to the project of wastewater treatment plant, it is divided into two parts: the first part is to construct a wastewater treatment plant.

Pollution Control Department proceeded with a procurement of a wastewater treatment plant by tendering and by specifying rules and details by separating the eastern and western projects.

Subsequently, on the 30th of August B.E. 2539 (1996), Pollution Control Department notified the amendment of the public tendering terms by proposing to either a separate system or combining the systems:

A group of firms submitting tender offers are as follows:

- A group of Marubeni- Hyundai- Sumitomo Consortium proposed for both separate and combine system;
- Joint Venture NVPSKG proposed for the combine system in the eastern part of Samutprakarn

On the 6th of December B.E. 2539 (1996)

Pollution Control Department notified the companies to propose a new plan combining an eastern and western project and establishing a wastewater treatment plant in a western part only. It also amended the contract to “contract of a project to manage

wastewater in western and eastern Samutprakarn” resulting in the land used for such project for the amount of 1,000 rai.

A group of company called “Marubeni-Hyundai- Sumitomo Consortium” was not able to procure plots of land within the time prescribed and thus, withdrew itself from the public tender.

A joint venture, NVPSKG, proposed to construct wastewater pipe under the Chao Praya River and bring wastewater from the western part of Samutprakarn to treat in the eastern part of Samutprakarn, at Klong Dan by citing the reason that the price of land in the western part was too high. Moreover, it proposed to utilize the land of Klongdan Marine and Fishery Co., Ltd with the size of 1,900 Rai under 17 title deeds with an average of 1.03 million Baht- the total amount of 1,965.60 million Baht.

In this regard, the joint venture, NVPSKG, proposed to obtain an additional budget from 13,612 million Baht to 23, 701 million Baht providing a reason that the placement of underground pipes and tunnel system costs more than the original means of surface drilling. However, its advantage was that there would be no traffic jam.

Pollution Control Department proposed to Bureau of the Budget to amend the expenditure from 13, 612 million Baht to 22, 955 million Baht whereby the Chairperson of the National Environmental Board, General Chavalit Yongchaiyudh, approved such additional budget.

Pollution Control Department, thus, signed the contract with the joint venture, NVPSKG. However, it appeared that the Northwest Water International Co., Ltd (N) sent a representative to sign the contract by using the power of attorney. Subsequently, the company informed the Pollution Control Department that it revoked the power of attorney to sign the contract which resulted in the company having no obligation under the contract. Pollution

Control Department requested the joint venture, NVPSKG, to find a person to sign the contract. The joint venture later established Samutprakarn Operating Co., Ltd. In this regard, the Pollution Control Department failed to submit a change of the contracting party to the Minister of Science and Technology and proceeded with the project including the payment to the joint venture despite a lack of contracting party under the contract.

No area in Klong Dan is engaged in the industry. There is no single manufacture. The district is purely for agriculture. The growth and living of the community comes from aquatic animal resources and aquatic farming.

90 per cent of the population is fishermen or in a downstream industry such as producing ka-pi. Our community does not engage in any factory. We grow from our local resources. The government should not involve us with wastewater from the manufactures.

Cha-La Timthong

Human Right Defender

A leader of “Klong Dan” community: protester against the project of wastewater treatment plant

Subsequently, a corruption case of the wastewater treatment plant project was complained and this led the government to suspend the construction on the 24th of February B.E. 2546. Pollution Control Department informed the joint venture that the contract was void and the construction shall be terminated.

In this respect, 98 per cent of the project was preceded by the Pollution Control Department while 58 payments were made. The total amount of payment was 17, 045, 899, 431.40 Baht or 121, 343, 887. 19 US dollars.

Origin of a large plot of land

The second part of the project was to procure plots of land for the construction of wastewater treatment plant.

It began from MuangraeLanthong Co., Ltd. purchasing the land from villagers of Moo 11, Klong Dan District in B.E. 2531 (1988) at a price of 20,000 Baht per rai to build a golf course and vacation homes. However, due to an inappropriate condition of land, in the same year, it sold the land to Palm Beach Resort Development Co., Ltd. at a price of 100,000 Baht per rai. No payment was made but MuangraeLanthong Co., Ltd. became a shareholder of Palm Beach Resort Development Co., Ltd.

Palm Beach Resort Development Co., Ltd. purchased more land from the villagers in the surrounding area by taking canals and public roads to issue false title deeds and sold them to Klongdan Marine and Fishery Co., Ltd. which is a shareholder of the same group for the amount of 200,000 Baht per rai without any payment.

Klongdan Marine and Fishery Co., Ltd. subsequently concluded the false sale of land contract to the joint venture, NVPSKG, for the amount of 1,100,000 Baht per rai and this was the same period where a study whether Klong dan area was feasible for the project of wastewater treatment plant in the pollution control area of Samuntprakarn.

On the 20th of Febuary B.E. 2541 (1998), Pollution Control Department signed the sale of land contract with Klongdan Marine and Fishery Co., Ltd. The land was 1,903 rai and cost

1,956,650,000 Baht which was 1,044,600,000 Baht higher than the median price by the Samutprakarn Land Office.

Movement to protest

Klongdan people protested this project as Klongdan was a green area and the locals were fishermen and manufacturers were 20 kilometer away³. The villagers were unsatisfied with the fact that they were burden with the location of wastewater treatment plant and its smell. The protest highlighted the issue that the project was undertaken without public hearing and environmental impact assessment (EIA).

The protest movement led several agencies to inspect and found issues which are to be investigated further as follows:

- The contract benefited the construction company resulting in an additional money paid by the state from 13, 612 million Baht to 23, 701 million Baht.
- No inspection on the price of land which was 1, 065 million Baht higher than the actual price.
- No inspection on the purchased land whether all plots of land were obtained prior to transfer of ownership.
- The feasibility of the location of the wastewater treatment plant was not conducted and neither was the current in the gulf considered.
- Economic loss, loss of food sources and local abundance were not considered.
- No inspection on the wastewater treatment plant whether it is environmentally friendly.

³ Handbook on public participation in the environmental impact assessment conducted by network of environment protection, March B.E. 2557 (2014)

- No maintenance cost was considered, for instance, electricity fee and maintenance fee.
- No management plan to define whose responsibility it was.

During late B.E. 2543 (2000), the villagers of Klongdan protested for a suspension of construction of the project until the environmental impact assessment was conducted and the corruption in the project was inspected. Leaders of the villagers and independent academics conducted an in-depth feasibility research which illustrated that the project was unsuitable and was published via the media. It was widely understood that this project involved corruption. Ministry of Natural Resources and Environment appointed an investigation committee and, on the 24th of February B.E. 2546 (2003), published a statement regarding the investigation result that the contract damaged the country and suspended the construction. The Ministry also appointed a committee to investigate further to find the persons committing such offence.

The Parliamentary committee inspected facts and concluded in accordance with the information stated in complaint letters to several agencies that this project damaged the environment and lacked of transparency in the procedure.

If this project continues to be undertaken, it will affect coastal fisheries and farming particularly mussel farming and coastal ecology which would affect the quality of environment and natural resources. In this regard, as it is a mega project which releases freshwater of 500,000 cubic meters per day into the sea. This would, as a result, reduce salinity and affect coastal fishery farming. To make matter worse, even if the Pollution Control Department conducted an experiment, such experiment was in a lab which was different from the study of the Samutprakarn Fisheries Office which conducted the study in the area.

Environment Committee, the Senate

June 1st, B.E. 2544 (2001)

Illegitimate acquisition

According to the complaints, the NACC began the investigation regarding the corruption. It appeared that title deeds of 5 plots of land were issued illegitimately or around 1,358 rai and the source of such land come from the fact that Mr. Wattana Asawahame abused his power as the Deputy Minister of Interior and the Minister of the Prime Minister's Office to force and threaten several people including forcing the officials of the Department of Land and Department of Provincial Administration to issue the title deeds in exchange of small Buddha image.⁴

The NACC conducted the investigation from gathering the evidence related to the issuance of title deeds including the history of such land. The NACC considered the law on the issuance of title deed procedure; restrictions on the issuance of title deed and other evidence.

⁴ The Court Judgment pending case number Aor Mor 2/2550, decided case number Aor Mor 2/2551

According to the conditions of the land stipulated in the term of reference for the tender for construction of wastewater treatment plant, such land was to be a large 1,900 rai plot of land which was difficult for a person to own such land. The land proposed by the joint venture, NVPSKG, to the Pollution Control Department was hundreds of plot of land. Some were public canals but there was a title deed for such canals. To make matters worse, such plots of land were announced by Samutprakarn Land Office to be restricted for provincial garbage collection and no person shall trespass.

According to the investigation, it was found that Mr. Wattana Asavahame purchased these plots of land from villagers. The former owner of land stated that Mr. Wattana sent his servant to force them to sell the land and threatened that if they did not sell the land, he would buy all the land surrounding this plot of land which would lead this leftover land the only one without any entrance. The owner, thus, decided to sell the land cheaply. The purchaser was Klongdan Marine and Fishery Co., Ltd. established by Mr. Wattana Asavahame, and this company was also a shareholder in the joint venture, NVPSKG.

It appeared, moreover, that the official at the land office contacted to purchase land for Klongdan Marine and Fishery Co., Ltd and Mr. Wattana forced the official at the land office to issue the title deeds even though such land was restricted and the villagers held the ownership document *Sor Kor* 1 while some plots of land was eroded by the sea and became sea.

The evidence was another matter as Endoscopic Land Surveyors was bought by Mr. Wattana to particularly use in this purchase of land. The purchase evidence was found and the owner of the company insisted that Mr. Wattana was the person who ordered the endoscopic which was the evidence obtained by the Treasury Department.

The NACC conducted the investigation and found that Mr. Wattana Asawahame abused his powers as the Deputy Minister of Interior and threatened officials of the Samutprakarn land office, Bang Pli Branch, to issue the title deeds on the restricted land.

Mr. Pisarn Kanchanaprapan and Mr. Somchai Tangnoi testified that they were threatened by Mr. Wattana due to a delay in the issuance of title deeds.

Mr. Wattana stated to Mr. Pisarn that:

“Mr. Pisarn, you were not speaking the human language. I am the Minister. I could give you fame or destroy you”.

He also pressed Mr. Somchai to issue the title deeds and said that even if he were not a Minister, he had several friends who were.

Mr. Wattana said that he had no power to grant benefit or harm an official of the Department of Land as he was not directly responsible for the Department of Land. The appointment and removal of officials of the Provincial Land Office or official of the Department of Land is the direct powers and duties of the Department of Land. However, the Court considered and found that it was an abuse of power as Mr. Wattana who was, at the time, the Deputy Minister of Interior attended the Council of Ministers meeting to provide opinion in the meeting and can have a resolution in the activities of the Departments or Ministries including the rights to voice his opinion and the resolution to appoint government officials level 10 and 11. The claim made by Mr. Wattana was, thus, rejected.

Moreover, according to the investigation, it was found that, on the day that the title deeds were delivered at home, Mr. Wattana gave each official, Mr. Somnard Donmin, Mr. Komchit Wityadecha and Mr. Pornchai Diskul, a golden Buddha image. It was clear that this was to seduce and reward the government officials in issuing the title deeds even though Mr. Wattana claimed that such Buddha images were not expensive and distributed to the general public and they were copies of the real Buddha image and only cost 100 Baht each.

The NACC found, on the 14th of June B.E. 2550 (2007) that a criminal offence was committed by Mr. Wattana Asawahame for the offence of threatening or seducing an administrative official and officials Samutprakarn Land Office, Bang Pli Branch to issue the title deeds of 1,900 rai overlapping the public canals and garbage storage area to sell them to the Pollution Control Department. It was an offence under section 148 and section 157 of the Penal Code.

Moreover, the NACC ordered the Buddha images given to the Land Department officials forfeited and vest in the state. The NACC found that there was sufficient evidence for

gross disciplinary action and criminal offence to indict 11 officials at the Department of Land and the Department of Provincial Administration, *Kan nan* of Klong Dan district.

The NACC submitted the matter to the Attorney General to the Criminal Court Division for Political Office Holder of the Supreme Court.

The Supreme Court considered and found that Mr. Wattana Asawahame committed an offence under section 148 of the Penal Code and sentenced Mr, Wattana to 10 year imprisonment, forfeited the golden Buddha images and withdrew title deeds for 5 plots of land for the 1,358 rai which the joint venture, NVPSKG, proposed to sell to the Pollution Control Department. The Court ruled that the land shall vest in the State and dismissed the claim against the state officials as the statute of limitation expires.

Conclusion

A corruption at the national level exhausting budgetary money from people's taxes occurs from cooperation in committing crimes at different levels whether it is a distortion of fact, amendment of a contract to facilitate the private company providing benefits, the threatening of powers against the public and low-level officials. At last, the country loses budgetary money, opportunity to solve problems and creates disputes with the local villagers.

The construction of the wastewater plant treatment, Klong Dan district, is 90 per cent completed and has been abandoned as the remembrance for the corruption which led the country to lose 23,701 million Baht. Such money was money of the readers and every Thai.



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Graph 5: map of locations

1. Bang Pu district, Muang, Samutprakarn
2. Bang Pla Kod district, Phra Samutchedi, Samutprakarn
3. Klong Dan district, Bang Bor, Samutprakarn

NVPSKG

Graph 6: NVPSKG consisted of:

N= Northwest Water International Co., Ltd.

V= Vjitpan Korsang Co., Ltd.

P= Prayoonwit Karnchang Co., Ltd

S = Seesangyotha Co., Ltd

K = Krungthon Engineer Co.,Ltd

G= Gateway Co., Ltd

Graph 7 sources of the land for wastewater treatment plant construction

Muangraelarntong Co.,Ltd. bought land from villagers of Moo 11, Klong Dan district



Sold to Palmbeach Development Co., Ltd.

bought additional land from the issuance of false title deeds for public canals and roads

Sold to



Klong Dan Marine and Fisheries Co., Ltd

Sold to



Joint Venture, NVPSKG

Concluded a sale contract with

Pollution Control Department

For 1.903 rai

Table 2 order on compensation

Corruption damages both the state and people

On the 16th of May B.E. 2557 (2014), Pollution Control Department, Ministry of Natural Resources and Environment issued an order to pay a compensation in the case of tortious act of the officials in the integrated construction and wastewater treatment plant in the pollution controlled area of Klong Dan district, Samutprakarn, as follows:

1. Mr. Wattana Asawahame

While Mr. Wattana was the Deputy Minister of Interior, he managed to issue the title deeds for an illegitimate procurement of 912,000,000 Baht and 80 per cent of such figure was to be calculated as compensation – 729,600,000 Baht. Moreover, the procurement of land was not in accordance with the purposes of the integrated design and wastewater treatment plant in the east and west side of Samutprakarn was illegitimate. Thus, the compensation shall be 30 per cent of the losses 15,200, 549, 758 Baht and 121, 343, 887.19 US dollars which equaled 4,560, 164, 927.40 Baht and 36, 403, 166. 457 US dollars- the total amount of 6,637, 066,254.024 Baht.

2. Mr. Yingphan Manasikarn

During the time in office as the Minister of Science, Technology and Environment, he proposed the project for an approval of the Council of Ministers. This facilitated the loss of the public sector. Thus, Mr. Yingphan shall pay a compensation of 25 of the loss which is 4,770,888,537.004 Baht.

3. Official of the Pollution Control Department

3.1 Mr. Pakit Kirawanich: while serving as the Director-General of Pollution Control Department during April B.E. 2538- 30th of September B.E. 2540, he supervised the officials and shall, thus, pay the compensation of 20 per cent which equals 3,816,710,829.616 Baht;

3.2 Mr. Sisithan Pirojboriboon: as the then deputy Director-General of Pollution Control Department, he shall be responsible for 10 per cent of the damaged value which equals 1,908,355,414.808 Baht

3.3 Mrs. Yuwaree Inna: the responsible official for the project shall pay 10 per cent compensation which equals 1,908,355,414.808 Baht

4. Mr. Narong Yordsirajinda: President of the Board of Sub-District Administration Organisation (SAO) Klong Dan, Mr. Cha-aim Pumim, President of the Klong Dan SAO Council and Mr. Boonlue Po-Arun, a member of Klong Dan SAO Council who took the opportunity to serve their interest. They shall, as a result, pay 5 per cent compensation which equals 954,177,707. 388 Baht.
5. Other relevant officials: Tendering Committee consisting Mr. Sirithan Pirojboriboon, Mr. Klaew Thongsom, Mr. Smith Palwatwichai, Mr. Narong Kaewsawedphan, Mr. Chanin Thongthammachard and Mr. Chanont Dtiranarat shall be responsible for 60 per cent of the loss of 1,044,600,000 Baht accounted for 626,760,000 Baht by which each person shall be equally responsible for 313,380,000 Baht.

In this regard, in order to maintain the official interest, Pollution Control Department shall submit a request to the Court to further consider the criminal case and force the defendants to pay such compensation.

Picture 1: location of the integrated wastepipes and wastewater treatment plant

The construction is 90 per cent completed and yet they are not in use. The state has lost a total of 23,701 million Baht.

Klong Dan villagers

An example of strong community which shall be honored

Klong Dan villagers began their movement to protest against the wastewater treatment plant of Samutprakarn in B.E. 2541 (1998) when they were aware that their homes

were going to be an area for the construction of wastewater treatment plant even though the area of Klong Dan has never encountered with wastewater and was not a factory location. Klong Dan locals were fishermen and agriculturalists. The construction of wastewater treatment plant would greatly affect the environment including fisheries which was the main source of income and way of life of the community. To make matters worse, there was no transparency in the undertaking of such project which clearly illustrated corruption.

Throughout 3 to 4 years of cooperation, Klong Dan villagers fought to protest this project by using the following methods:

1. Method: leaders of the community and independent researchers conducted an in-depth analysis regarding the inappropriateness of the project

The result obtained:

The result led to the disclosure of corruption of 20,000 million Baht. The research study was widely published and it raised awareness in the society. The Ministry of Natural Resources and Environment appointed the fact inquiry committee which led to the termination of the construction and investigation to find the offenders.

2. Method: Protest

Result obtained:

News were presented to the public which led the awareness of the public

3. Method: submitting a complaint letter to the relevant government officials

Result obtained:

The officials and different sub-committees went into the area to investigate facts and found the same conclusion as the information provided by the villages in the complaint letter and viewed that the project shall be terminated and the fact shall be investigated.

We shall help to show the powers to prevent corruption

The success of Klong dan villager in opposing the wastewater treatment plant project of Samutprakarn came from strong unity and cooperation. The leaders of villagers acquired knowledge and participated with the network of the civil society to press this problem to appear to the public.

The opposition of Klong Dan villagers was not only to maintain the interest of the community but to protect the nation interest and disclose the corruption in a mega project. If every community is as strong as Klong Dan community, corruption would be difficult and this would help to build a fair society which is far from corruption.

The incident calendar

The case of Mr. Wattana Asawahame

B.E. 2538 (1995)

June 19th, B.E. 2538 (1995)

Pollution Control Department proposed a plan of wastewater management project in Samutprakarn with the proposed budget of 13,612 million Baht to the Council of Ministers by turnkey to design the construction of the integrated and wastewater treatment plant in the east and west side of Samutprakarn.

October 17th, B.E. 2538 (1995)

The Council of Ministers had a resolution to approve, in principle, the construction of the wastewater treatment plant in both sides of Samutprakarn under the budget of 13,612 million Baht.

- The west side at Nai Klong Bang Pla Kod district
- The east side at Bang Pu Mai district

B.E. 2539 (1996)

August 30th, B.E. 2539 (1996)

Pollution Control Department announced the amendment in the conditions of the tender to be either the integrated or separate system.

December 6th, B.E. 2539 (1996)

Pollution Control Department announced that a new plan combining the west and east side of Samutprakarn to the east side only shall be proposed and the land for such project was 1,900 rai.

B.E. 2540 (1997)

January 20th, B.E. 2540 (1997)

Marubeni-Hyundai-Sumitomo Consortium withdrew from the tendering as they could not find the land within the prescribed time period.

March 25th, B.E. 2540 (1997)

The National Environmental Board under General Chavalit Yongchaiyudh, the Prime Minister, as the Chairperson, had a resolution following the proposal made by the Pollution Control Department to increase the budget from 13,612 million Baht to 22,955 million Baht for extending the wastewater pipe to the east side of Samutprakarn which was in Klong Dan district as proposed by the joint venture, NVPSKG, to use 1,903 rai of Klong Dan Marine and Fisheries Co., Ltd.

B.E. 2546 (2003)

February 24th, B.E. 2546 (2003)

A complaint for corruption in the wastewater management project was made and the government, as a result, ordered such project to be terminated.

February 28th, B.E. 2546 (2003)

Pollution Controlled Department informed the joint venture that the contract shall be void and the construction shall be terminated.

B.E. 2550 (2007)

June 14th, B.E. 2550 (2007)

The NACC criminally charged Mr. Wattana Asawahame under section 148 and section 157 of the Penal Code for the offence of threatening or inducing the administrative officials and officials of Samutprakarn Land Office, Bang Pli branch, to issue the title deeds of 1,900 rai overlapping the public canals and garbage storage area in order to sell them to Pollution Control Department.

B.E. 2552 (2009)

February 25th, B.E. 2552 (2009)

The Criminal Division for Political Office Holder of the Supreme Court ruled that Mr. Wattana Asawahame was liable under section 148 of the Penal Code and sentenced him to 10 years imprisonment. The Court also ordered Buddha images to be forfeited and titles deeds of 5 plots for the area of 1,358 rai, proposed to sell to the Pollution Control Department by the joint venture, NVPSKG, to be withdrawn. The land shall vest in the state.

Pollution Control Department conducted the study on feasibility of the construction of wastewater treatment plant and the result of the study proposed the undertaking of the wastewater treatment plant in 2 places: the east side at Bang Pu Mai district and the west side at Bang pla God district.



Pollution Control Department proposed, to the Council of Ministers, the plan of wastewater treatment plant in Samutprakarn within the budget of 13,612 million Baht.



Pollution Control Department proposed a new plan by combining the west and east side together to be the east side only in Klong Dan. This led to a large plot of land to be used for construction which is 1,900 Rai.



The Joint Venture, NVPSKG, was the only party which was able to find the land and proposed to use the land of Klong Dan Marine and Fisheries Co.,Ltd. of 1,903 rai divided into 17 title deeds. The average price was 1.03 million Baht per rai and the total price was 1,965.60 million Baht.



The corruption of the wastewater treatment plant in Samutprakarn

The NACC found that a criminal offence was committed by Mr. Wattana Asawahame for the offence of threatening or seducing an administrative official and officials Samutprakarn Land Office, Bang Pli Branch to issue the title deeds of 1,900 rai overlapping the public canals and garbage storage area to sell them to the Pollution Control Department.



Mr. Wattana Asawahame abused his power as the Deputy Minister of Interior and the Minister of the Prime Minister's Office to force and threaten several people including forcing the officials of the Department of Land and Department of Provincial Administration to issue the title deeds in exchange of small Buddha image



Pollution Control Department signed the sale of land contract with Klongdan Marine and Fishery Co., Ltd. The land was 1,903 rai and cost 1,956,650,000 Baht which was 1,044,600,000 Baht higher than the median price by the Samutprakarn Land Office

Pollution Control Department proposed to the Budgetary Bureau for an amendment of the expenses from 13, 612 million Baht to 22,955 million Baht.



The State lost 23,701 million Baht.

The corruption case of the procurement of fire trucks and boats of Bangkok Metropolitan

Pending case number Aor Mor 5/2554

Decided case number Aor Mor 7/2556

On the 27th of August B.E. 2547 (2004) at 17.00 hrs, two days prior to the election of the Governor of Bangkok Metropolitan, Mr. Samak Suthoravej, during the performance of duties on his last day as the Governor of Bangkok Metropolitan and acting for the Governor of Bangkok, signed the contract purchasing fire boats and trucks in the project to develop the management and efficiency in disaster prevention and mitigation of Bangkok Metropolitan. Why was he in such a rush?

Public disaster prevention and mitigation falls within the duties of government agencies. The fire leads to a loss of accommodation and properties as provided in the statement “the effect of having been burglarized ten times is less than the effect of one time fire”. The general public is afraid of fire and gives their faith to the fire stations to send their fire trucks promptly, extinguish the fire and minimize the damages.

The corruption in the procurement of fire trucks and boats including the mitigation equipments created a budget loss of 2,355 million Baht. This was not legitimate and was without any consideration of interest of the country. It was not reasonable and damaged the state.

The claim for the procurement between Government to Government and upon the reciprocal basis facilitated the interests of a private company which proposed the unusually high price without tendering was a smart corruption while it involved the accomplices at different levels of such procurement. This is, thus, a case study on a project without transparency and the use of different techniques to avoid rules.

The damage lays upon the public unavoidably and this led to a loss of taxes while the work of disaster mitigation still lacks of efficiency and cannot be relied upon when the fire breaks out.

Sources of the procurement project

In late B.E. 2545 (2002), the government had a policy to transfer the Police Fire Brigade from the Royal Thai Police to be under Bangkok Metropolitan Administration and former fire trucks were distributed to other agencies to prepare for a purchase of new fire trucks.

Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG from Austria proposed to sell fire extinguisher equipments via a representative of Thepyont Automotive Industry Co., Ltd which proposed to Police Major General Athiluck Danchukiat, the then commander of the Police Fire Brigade, Royal Thai Police.

Pol. Maj. Gen. Athiluck Danchukiat, the then commander of the Police Fire Brigade, brought a representative from Thepyont Automotive Industry Co., Ltd to see Mr. Pracha Maleenont who was responsible for the supervision of Bangkok Metropolitan Administration. This was to request for a support in the procurement of 800 fire trucks and the academic adviser to Mr. Pracha Maleenont proposed to use the G to G method in the procurement to expand the market for OTOP to foreign countries basing upon the 100 per cent reciprocal basis (counter-trade).

After the Council of Ministers had a resolution approving the Royal Thai Police to transfer the tasks of fire disaster prevention and mitigation to Bangkok Metropolitan Administration, Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG proposed a project via the then Austrian Ambassador to the Kingdom of Thailand on the 4th of June B.E. 2546 (2003). The Austrian Ambassador submitted a letter to the Minister of Interior proposing to sell fire trucks and disaster mitigation equipment upon the G-to-G nature, between the Kingdom of Thailand and Federal Republic of Austria, including finding of funding source and bearing the trade obligation of 100 per cent counter trade.

In the quotation of Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG, dated May 28th, B.E. 2546 (2003), proposed to the Minister of Interior, consisted of the followings:

- 1, proposal to sell 315 fire trucks and boats;
2. 18 products;

3. for the price of 156, 953, 203 Euro;
4. particular details were specified for each product- proposed unit and price per unit;
5. taxes, price validity, delivery of proposed product, payment of counter trade and warrantee.

The Austrian Ambassador also paid a visit to Mr. Pracha Maleenont, the then Deputy Minister of Interior to propose a sale of fire trucks and equipments which Mr. Somsak Kunngen submitted a note to Mr. Samak Suthoravej, the Governor of Bangkok Metropolitan, on the cooperation between Thailand and Austria on the fire prevention and mitigation. Mr. Samak Suthoravej submitted a response note to Mr. Pracha Maleenont.

The route to procurement

After the Bangkok Metropolitan Administration established the Bureau of Disaster Prevention and Mitigation and 76 fire brigade stations, Pol. Maj. Gen. Athiluck Danchukiat, who was transferred from Royal Thai Police to be the Director of Bureau of Disaster Prevention and Mitigation, proposed the procurement of durable objects to be used in the fire extinguisher operation to Mr. Samak Suthoravej, claiming that it was necessary and asked for the approval of the procurement of 350 different fire trucks and water trucks and 30 fire boats including other disaster equipments which matched the list in the quotation of Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG. Mr. Samak Suthoravej approved this project on the 3rd of March B.E. 2547 (2004) and proposed to the Minister of Interior for consideration.

Subsequently, on the 22nd of June B.E. 2547 (2004), the Council of Ministers approved, in principle, the project to develop management and efficiency in disaster prevention and mitigation as proposed by Bangkok Metropolitan Administration by which the Council of Ministers stated that the followings shall be operated:

○ An Institute or training center for fire extinguishing and disaster mitigation or fire extinguishing school which is to be established shall be an agency under Department of Disaster Prevention and Mitigation

○ In regard to accepting the assistance from the Austrian Government in the form of G to G including the finding of funding source and accepting the obligation of 100 per cent counter within the amount of 8,000 million Baht shall only be accepted as necessary.

○ Items, equipments, durable objects and other necessary vehicles imported from foreign countries shall be examined in details and shall only be imported in respect of necessary parts which do not exist or cannot be produced in the country.

In this regard, A.O.U. (Agreement of Understanding) and Purchase/Sale Agreement were concluded and such agreements specified the contracting parties which were the Government of Thailand by Bangkok Metropolitan Administration, Ministry of Interior and Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG. The main contents are as follows:

○ Specifying the amount of payment for the purchase under the agreements

○ The Austrian government charges the interest rate of 3.5 per cent per year for the 9 installments which equals 10, 472, 004.02 Euro or 523, 650, 210 Baht.

○ Bangkok Metropolitan Administration has the burden to pay 133,749,780 Euro or 6,687,489,000 Baht for the products under which 60 per cent of this amount comes from the government budget and 40 percent comes from the budget of Bangkok Metropolitan Administration

Remark: this case is a usual purchase and the Austrian government is not deemed to provide any financial assistance to the Thai government.

Corruption

The project to develop the management and efficiency in disaster prevention and mitigation of Bangkok Metropolitan or the project for procurement of fire trucks and boats of Bangkok Metropolitan Administration consist of several issues questions transparency.

1. The issue of price

- 1.1 the first issue: upon a price comparison, it was found that the procurement of Bangkok Metropolitan Administration was at a higher price than the previous procurement by the Ministry of Interior;

- 1.2 the products proposed by Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG to Bangkok Metropolitan Administration allowed the Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG to acquire the benefit of 48.77 per cent compared to their cost which was higher than the appropriate commercial standard.

2. This contract was made in the manner of government to government (G to G)

Even though it was claimed that the procurement under this project was by government to government, in reality, it was not under this manner. The specification for the procurement method in the manner of government to government was an excuse for not participating in a tender with other firms which was under the procurement rule. An avoidance of competition was an obstruction to other sellers to fairly compete.

It is illustrated that this process was not aim to maintain the interest of the nation and Thai people. To make matters worse, it provides more advantage to the Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG to be a Party to the contract with Bangkok Metropolitan Administration without a competition and able to propose the quotation at high price

Concerned people

When the media began investigating and a petition was submitted to the National Anti-Corruption Commission (NACC) accusing for politicians, high level government officials and private business operator of corruption in the procurement of fire trucks and boats, the NACC started undertaking the fact inquiry and it is appeared that there were pieces of evidence stating 11 offenders (see Table 3) committed an offence in which can be separated into the criminal offence and disciplinary action.

The NACC was the prosecutor taking a legal action against the offenders to the Criminal Division for Political Office Holder of the Supreme Court in an offence of abuse of official duties, offences under the Act on Offences Relating to the Submission of Bids to State Agencies as follows:

1. Mr. Pokin Polakul, Minister of Interior
2. Mr. Pracha Maleenont, Deputy Minister of Interior
3. Mr. Wattana Muangsuk, Minister of Commerce
4. Pol. Maj. Gen. Athiluck Tanchukiat, Director of the Bureau of Disaster Prevention and Mitigation, Bangkok Metropolitan
5. Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG

6. Mr. Apirak Kosayothin, Governor of Bangkok Metropolitan (only for the offence of malfeasance in office)

In this regard, Mr. Samak Suthoravej is dead and, hence, is not prosecuted.

Mr. Pokin Polakul

Mr. Pokin proposed the project to the Council of Ministers for consideration, and it was approved by the Council of Ministers to sign the A.O.U in the procurement of products.

In the inquiry and decision making of the prosecution of criminal offence, the case was separated into 2 issues as follows:

1. The proposal of project for approval of the Council of Ministers

It was found that Mr. Pokin Polakul just took an office and no evidence illustrating that he was involved in this project from the beginning. In respect of the proposal of project to the Council of Ministers, it was because Bangkok Metropolitan Administration could not submit the proposal directly but shall propose it through the Minister of Interior. Regarding to this, Mr. Pracha Maleenont, as the Deputy Minister supervising the Bangkok Metropolitan Administration, issued a note in the letter proposing to the Council of Ministers for further consideration.

Mr. Pokin Polakul's conduct was in the manner of abusing the Council of Ministers Resolution by obtaining the contract without tendering and he also did not have the power to approve the project.

2. Signing the A.O.U (Agreement of the Understanding)

It is appeared that, prior to the signing, Mr. Pokin Polakul enquired Mr. Samak Suthoravej, Governor of Bangkok Metropolitan, the project owner, about the correctness of the process and he was confirmed that the project was examined and no problem was found.

Moreover, the urgent letter was submitted to Mr. Pokin Polakul, dated August 4th, B.E. 2547, for ensuring that the signing of A.O.U was in compliance with the Council of Ministers's resolution, dated January 7th B.E. 2546 as it was an urgent matter. This was contradictory to the reality and the signing of A.O.U by Mr. Pokin Polakul was not mandated, in writing, by the Minister of Foreign Affairs and was a violation of the Council of Ministers Resolution dated January 21st, B.E. 2535.

The Criminal Division for Political Office Holder of the Supreme Court dismissed Mr. Pokin Polakul, the 1st defendant.

Mr. Pracha Maleenont

After Police Major General Athiluck Danchukiat brought representatives of Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG to meet Mr. Pracha Maleenont, Mr. Pracha undertook the procurement of fire trucks and boats including the equipment to mitigate disaster from Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG. Moreover, he went to a study visit as invited by Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG in the Republic of Austria and the Kingdom of Belgium. Subsequently, he ordered to amend Police Major General Athiluck Danchukiat's note before submitting it to the Council of Ministers for consideration and attempt to press Mr. Apirak Kosayothin to open L/C to Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG even though Mr. Apirak just took office as Mr. Samak Suthoravej vacated the office.

The Criminal Division for Political Office Holder of the Supreme Court ruled that Mr. Pracha Maleenont, the 2nd defendant, committed an offence under section 157 in conjunction with section 83 and section 13 in conjunction with section 12 of the Penal Code of the Act on Offences Relating to the Submission of Bids to State Agencies B.E. 2542 and sentenced to 12 year imprisonment.

Mr. Wattana Muangsuk

As the Minister of Commerce who gave the approval in the case where the Director-General of Department of Foreign Trade concluded the reciprocal sale agreement with Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG and used the export figures for processed chicken (boiled chicken) to Japan to balance out with the reciprocal sale agreement by which Mr. Wattana Muangsuk is the one who pressed for this matter in the Council of Ministers and resulted in the Council of Ministers resolution highlighting the exportation of frozen boiled chicken as the priority exported products. The undertaking was not beneficial to the country as the exported figures did not increase. It was merely taking the current figures to use in the manner of reciprocal trade. This resulted in the damage in the country and created the conditions for the Council of Ministers to approve the project to develop the management and increase the work efficiency of the Bureau of disaster prevention and mitigation of Bangkok Metropolitan Administration to sign the purchase contract of fire trucks.

During the trial, it was heard that Mr. Wattana Muangsuk was merely a supervisor of the organization and did not sign the counter trade contract. He also did not receive any direct benefit from the fact that the Thai exporting firms used the exportation figure to balance out with the frozen processed chicken. It was, as a result, not a malfeasance in office or failure to perform duties to facilitate the interest of himself or other person.

Police Major General Athiluck Danchukiat

Police Major General Athiluck Danchukiat was the person who initiated the communication with Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG while he was in office at the Bureau of Fire Brigade at the end of B.E. 2545 and was involved with this project. When the government had a policy to transfer the Police Fire Brigade from the Royal Thai Police to be under Bangkok Metropolitan Administration, he took the representative of Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG to see Mr. Pracha Maleenont, the then Deputy Minister of Interior who had the powers to supervise Bangkok Metropolitan Administration to press for the purchase of fire trucks and boats including the disaster prevention and mitigation equipments of the Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG.

When the Royal Thai Police transferred the project of the Fire Brigade to Bangkok Metropolitan Administration, Police Major General Athiluck Danchukiat requested to be moved ensure that the purchase of these products occurred. In this regard, Pol. Maj. Gen. Athiluck made a note of the project to develop the management and work efficiency of the Bureau of Disaster Prevention and Mitigation to Pracha Maleenont as contacted earlier.

Remarks: the list of purchased product proposed for procurement contained the same details as the quotation proposed by the Ambassador of the Republic of Austria to Thailand to the Minister of Interior and this was a ground to believe that this project was not based upon necessity of Bangkok Metropolitan Administration. Instead, it was meant to be identical to the quotation the Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG proposed via the Ambassador of the Republic of Austria to Thailand.

Pol. Maj. Gen. Athiluck, as the Chairperson of the project did not follow the Council of Ministers Resolution stating that the draft agreement shall be submitted to the Ministry of Foreign Affairs for consideration. Instead, he proposed to Mr. Pokin Polakul, the then Minister of Interior, to sign the agreement with Austrian Government. This process was a rush and concise without considering any rule and when considering the high price proposed by Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG, it was believed that Pol. Maj. Gen. Athiluck conducted an act to benefit the Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG without considering the benefit of the country.

The Criminal Division for Political Office Holder of the Supreme Court ruled that Police Major General Athiluck Danchukiat, the 4th defendant, committed an offence under section 157 in conjunction with section 83 of the Penal Code of the Act and section 12 of the Act on Offences Relating to the Submission of Bids to State Agencies B.E. 2542 and shall be liable to 10 years imprisonment.

Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG

Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG proposed the project of selling fire trucks and disaster mitigation equipments via Ambassador of the Republic of Austria to Thailand. Ambassador and the Ambassador submitted a letter to the Minister of Interior

proposing that the process shall be undertaken in the manner of G to G, between Thailand and Republic of Austria.

Subsequently, when Pol. Maj. Gen. Athiluck Danchukiat proposed the procurement project of durable articles for the fire brigade activities of Bangkok Metropolitan Administration, it is appeared that the purchase order was identical to the quotation of Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG which was once proposed to the Minister of Interior for consideration earlier.

The claim that the procurement in the project contained unfair price competition, reciprocal trade proposal and was conducted in the manner of G to G were merely excuses to benefit the Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG to be the person with the right to conclude the contract with Bangkok Metropolitan Administration which was the conduct violating the Act on Offences Relating to the Submission of Bids to State Agencies B.E. 2542.

Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG, the 5th defendant, failed to appear before Court on the first day of trial. The Criminal Division for Political Office Holder of the Supreme Court disposed of the case of the 5th defendant.

Mr. Apirak Kosayothin

Prior to taking office as the Governor of Bangkok Metropolitan following Mr. Samak Suthoravej, Mr. Apirak Kosayothin knew that the corruption related to the procurement of fire trucks and boats including the disaster mitigation equipments in this project. Thus, upon taking the office, Mr. Apirak ordered Pol. Maj. Gen. Athiluck Danchukiat to find the price procured by Royal Thai Police to compare with this quotation. Moreover, he asked the Ministry

of Interior to examine and reconsider the project twice. The Ministry of Interior informed Bangkok Metropolitan Administration that this project was approved by the Council of Ministers, and the A.O.U and purchase agreement were signed including the process of the reciprocal trade was undertaken with the Department of Foreign Trade. Thus, the Ministry of Interior informed that such project could not be reconsidered and further informed Bangkok Metropolitan Administration to speed up the payment for Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG by opening the L/C in order to ensure that the good relationship between Thailand and Austria is not affected.

Mr. Apirak also appointed a committee to consider the details of the procurement of fire trucks and boats and disaster mitigation equipments to negotiate the rights and benefits with Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG and this resulted in Bangkok Metropolitan Administration saving 250,000,000 Baht.

From the date Mr. Apirak was the Governor of Bangkok Metropolitan until the date the L/C was issued, there had been unclear conclusion as being accused that this project was corrupted and if L/C was not issued, a legal action may be taken against Bangkok Metropolitan Administration concerning damages under the contract. Prior to the issuing of the L/C, it was the power of Mr. Apirak, the Governor of Bangkok Metropolitan, to consider whether or not to issue the L/C, which he was supposed to examine and decide on the transparency of the agreement and high price of the products complained. Mr. Apirak, on the contrary, failed to perform such duties. He failed to examine and made several amendments on the conditions of the L/C, for instance, payment conditions, points of delivery, and installment, resulting in Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG gaining benefit from the opening of L/C which was a malfeasance in office or an illegitimate failure to perform duties.

Nonetheless, upon the trial consideration, the Court concluded that the fact obtained by witness enquiry and evidence were insufficient to rule that, the 6th defendant,

Mr. Apirak Kosayothin, intentionally performed his duties to damage Bangkok Metropolitan Administration or intentionally corrupted for the benefit of the 5th defendant. Thus, the act performed by Mr. Apirak was not an offence.

The Criminal Division for Political Office Holder of the Supreme Court ruled that the case of the 6th defendant, Mr. Apirak Kosayothin, shall be dismissed.

Damages

Damages occurred from the corruption in the procurement of the project to develop the management system and to increase the efficiency of disaster prevention and mitigation of Bangkok Metropolitan, which can be divided as follows:

First, the value of damages of this project was the total of 6,687,500,000 Baht. The cost of Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG was 4,495,300,000 Baht and, thus, the benefit gained by Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG was 2,192,200,000 Baht.

The proportion of benefit in relation to the cost was 48.77 percent which was higher than the fair price according to the Court ruling.

To make matters worse, Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG was wholly bought by General Dynamics Worldwide Holdings, Inc, the United State firm, in October B.E. 2546 despite the fact that it was still the firm governed by Austrian Law and located in Austria.

Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG employed Smati Vehicle N.V., a Belgian firm, to procure, produce and assemble fire trucks and disaster mitigation equipments

(except for fireboats) for Bangkok Metropolitan Administration at the cost of 28 million Euro or 1,400 million Baht.

Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG was not a producer or assembler of products proposing a direct sale. Instead, it was an agent and managed to procure the products for Bangkok Metropolitan Administration.

Secondly, it was not necessary to press for the procurement of durable articles for disaster prevention and mitigation of Bangkok Metropolitan.

The result of the research study by Chulalongkorn University conducted in B.E. 2526 concluded that the disaster mitigation of Bangkok Metropolitan Administration shall consist of 78 fire stations and 728 fire trucks.

Regarding to this, 35 fire stations under Police Fire Brigade, the Royal Thai Police, were transferred to Bangkok Metropolitan Administration and 43 stations were lack. Moreover, there was a lack of personnel to use the fire trucks and this, thus, was not necessary to purchase 315 fire trucks and boats. The unused trucks would be damaged and the usage period would be less than what they should have been.

Conclusion

The procurement project was not under fair competition or was a bid rigging resulting in the State overpaying the public budget. Moreover, there was a channel for state officials related to the procurement to illegitimately exploit the price proposer and in the case of the person holding political office or state officials engaged or took part in supporting the committing of an offence by failing to perform their duties. This led to more serious damage and complication.

The Act on Offences Relating to the Submission of Bids to State Agencies B.E. 2542 is the law with the purpose or reason for promulgation to oversee the procurement of

products and services regardless of procurement or hiring or other methods by every state agency. The transparent and fair price competition would maximize the state interest.

The conduct to violate to avoid this Act is a criminal offence and the corruption in this manner occurred from the well organized cooperation of people with powers at several levels and it was difficult to investigate and prosecute. The conscious of persons with power which could benefit or harm the procurement of the government agency is important. The private sector shall also remember that the damages from the corruption in procurement, even if it is beneficial to them and business operation, it damages the society and the country which they are unavoidably a part of the country.

Table 3 the list of accusers

Number	Name	Position	Time period
1	Mr. Pokin Pollakul	Minister of Interior	March 10 th , B.E. 2547- March 11 th , B.E. 2548
Ruling of the NACC: that the offender committed a criminal offence			
Indictment to The Criminal Division for Political Office Holder of the Supreme Court		Malfeasance in office or a failure to perform duties or corrupt to benefit other people and cause damages to the State	
Court ruling	The case was dismissed		
Number	Name	Position	Time period
2	Mr. Pracha Maleenont	Deputy Minister of Interior	October 3 rd , B.E. 2545-March 11 th , B.E. 2548
Ruling of the NACC: the offender committed a criminal offence			
Indictment to The Criminal Division for Political Office Holder of the Supreme Court		Malfeasance in office or a failure to perform duties or corrupt to benefit other people and cause damages to the State	

Court ruling	12 years imprisonment		
3	Mr. Somsak Khunnegn	Assistant to the Secretary of the Minister of Interior acting for the Secretary of the Minister of Interior	October 7 th B.E. 2545- March 11 th B.E. 2548
Ruling of the NACC : the accusation had no ground			
4	Mr. Wattana Muangsuk	Minister of Commerce	November 8 th , B.E. 2546- March 11 th B.E. 2548
Ruling of the NACC: the offender committed a criminal offence			
Indictment to The Criminal Division for Political Office Holder of the Supreme Court		Malfeasance in office or a failure to perform duties or corrupt to benefit other people and cause damages to the State	
Court ruling: the case was dismissed			
1 st , 2 nd and 4 th defendants were officials cooperated to perform or failed to perform their duties resulting in the damage to any of the person and corporately committed an offence under the Act on Offences Relating to the Submission of Bids to State Agencies B.E. 2542			
5	Mr. Samak Suthoravej	Governor of Bangkok Metropolitan	July 23 rd , B.E. 2543- September 6 th B.E. 2547
Ruling of the NACC: the offender committed a criminal offence			
Indictment to The Criminal Division for Political Office Holder of the Supreme Court		The accused was dead prior to the submission of the case to the Court	
6	Police Major General Athiluck Danchukiat	Director of the Bureau of Disaster Prevention and Mitigation, Bangkok Metropolitan Administration	November B.E. 2546- September 30 th B.E. 2547
Ruling of the NACC: the offender committed a gross disciplinary violation and a criminal offence			

Indictment to The Criminal Division for Political Office Holder of the Supreme Court		Malfeasance in office or a failure to perform duties or corrupt to benefit other people and cause damages to the State	
7	Mr.Rachane Pojasunthorn	Director-General of Department Of Export Promotion during the time he was the Department of Foreign Trade.	
Ruling of the NACC: the offender committed a non-gross disciplinary violation.			
8	Mr. Mario Menar	A representative of Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG, the person who signed for the Department of procurement complementary to the Agreement of Understanding dated August 27 th , B.E. 2547 with the Bangkok Metropolitan Administration acting as the representative of Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG in the signing.	
Ruling of the NACC: there was no ground for the accusation and, thus, dismissed the case.			
9	Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG	The Party to the contract of sale of fire trucks and disaster mitigation equipments complementary to the Agreement of Understanding dated August 27 th , B.E. 2547 with the Bangkok Metropolitan Administration	
Ruling of the NACC: the person committed a criminal offence in assisting or facilitating the commission of an offence of the 1 st and 2 nd defendants and the 4 th to 6 th defendants relating to the Submission of Bids to State Agencies			
Indictment to The Criminal Division for Political Office Holder of the Supreme Court		Dispose of a case as the person failed to appear in Court on the first day of trial.	
10	Mr. Apirak Kosayothin	Governor of Bangkok Metropolitan	September 6 th B.E. 2547- August 29 th B.E.

			2551
Ruling of the NACC: the person committed a criminal offence.			
Indictment to The Criminal Division for Political Office Holder of the Supreme Court		Malfeasance in office or a failure to perform duties or corrupt to benefit other people and cause damages to the State	
Ruling of the Court: a case is dismissed.			
11	Lady Nathanont Taweessin	Permanent-Secretary of Bangkok Metropolitan Administration	October 1 st , B.E. 2545 – September 30 th B.E. 2549
Ruling of the NACC: there was a ground to believe that a gross disciplinary violation was committed.			

Table 4 Ruling of the Central Administrative Court

Case number	Pending case number 1843/2553
Submission of a claim against	Court ruling
Lady Surat Suthoravej, a wife; Mrs. Kanchanaporn Chailarp, a descendent; Mrs. Kandapa Moongthin, a descendent of Mr. Samak Suthoravej to pay the compensation occurred from the intentional negligence	The Court ruled that the descendents shall pay for compensation of 30 per cent of the total damages (1,958 million Baht) or 587,580,000 Baht including the interest of 7.50 per cent per year as from the date of the submission of the case and shall settle the payment within 60 days as from the date of the ruling.

Case number	Pending case number 1843/2553
Submission of a claim against	Court ruling
Mr. Pracha Maleenont for the offence relating to the procurement of fire trucks and boats	To pay the compensation to Bangkok Metropolitan Administration for the amount of 587, 580,000 Baht including the interest of 7.50 per cent per year.

Case number	Pending case number 1843/2553
Submission of a claim against	Court ruling
Mr. Apirak Kosayothin to repay the compensation to the Bangkok Metropolitan Administration	The Court withdrew the order of the Bangkok Metropolitan Administration ordering Mr. Apirak to repay the compensation as his conduct was not found guilty.

No case is final. All Parties to the case can appeal to the Supreme Administrative Court.

Table 8 specifications of the fire trucks in the procurement project

Fire trucks of 4x4 including the mobile feed pump

Chassis is a Mitsubishi L200, single part, four wheel drive, produced in Thailand in 2004

38- feet Boat trucks

The components of a boat are from Seat Boat Co., Ltd located in Pattaya, Banglamung, Chonburi

**Table 5 Comparison of the selling price of Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG
with other firms from DSI**

Companies	Price differences
Chess Enterprise (Siam) Co., Ltd	Prices of all products were lower – the total of 3,007,171,000 Baht which was 3,680,318,000 Baht excluding tax and import duty.
Kanchana Equipment Co., Ltd	Only for fire trucks including taxes, they were 2,389,050 Baht cheaper and for the total of 72 fire trucks, it was 171, 011, 600 Baht cheaper.

**Table 6 Comparison of the price from procurement of the Department of Disaster
Prevention and Mitigation B.E. 2547 and Bangkok Metropolitan Administration**

4x4 including the mobile feed pump

Details	Differences
Chassis of the Mitsubishi 4x4 assembled by Kanchana equipment Co., Ltd with Japanese feed pump.	Bangkok Metropolitan Administration paid 2,154,050 Baht more for each fire truck and for 72 fire trucks, the price paid was 154,875,600 Baht
Fire trucks and ladder of 13 metre	
Details	Differences
Finnish Chassis bought from Chess Enterprise (Siam) Co., Ltd with similar standard with the higher capacity of feed pump	Bangkok Metropolitan bought at the rate of 17,143,200 Baht for 9 trucks and were 154,875,600 Baht more expensive.
Fire trucks of 2,000 liter	
Details	Differences
Bought from Tripetch Isuzu Co., Ltd	Bangkok Metropolitan Administration bought at the rate of 15,455,370 Baht higher for the

	amount of 144 fire trucks and were 2,225,573,280 Baht higher in price.
Water truck of 20,000 liter	
Details	Differences
The size of 10,000 liter bought from Mitsubishi Motors (Thailand) Co.,Ltd	Bangkok Metropolitan Administration paid 15,189, 100 Baht higher for each truck and for the total of 72 trucks, it was 1,093,615,200 Baht higher.
Electricity truck of the size 30 KVA	
Details	Differences
Bought from Mitsubishi Motors (Thailand) Co., Ltd	Bangkok Metropolitan Administration paid 56,577,250 Baht higher for each truck and for the total of 7 trucks, it was 396,040,750 Baht higher.

Table 7 fire boats

The sub-committee on fact inquiry compared the price to find out how much Bangkok Metropolitan Administration overpaid. Some products could not be compared as the exact qualifications could not be found. The most obvious comparison was the fire boats

Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG Purchased fire boats from Seat Boat Co., Ltd which produced and assembled in Pattaya for the price of 14,300,000 Baht per fire boat.	Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG sold fire boats to Bangkok Metropolitan Administration for 25,462,100 Baht.
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If Bangkok Metropolitan Administration had directly purchased them from Seatboat Co., Ltd, it would have saved 11,162,100 Baht per boat, and for the amount of 30 fire boats, it would have saved 334,523,000 Baht.

Table 9 Summary of the damages (according to the inquiry)

The cost of product = 206.6 million Baht

The cost of fire boat = 429 million Baht

Right Subrogation – the purchase of capital agricultural products

147.1 million Baht

The cost of chassis, body of a car and equipments = 2,473.4 million Baht

Insurance and transportation cost = 294.8 million Baht

Financial cost = 1,178.0 million Baht

The project cost 6,687.5 million Baht

The total cost was 4,728.9 million Baht. The benefit obtained by the Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG was 1,958.6 million Baht. The proportion of the benefit per cost was 41.4 per cent.

Table 10. Information on other damages

According to the research study of Chulalongkorn University B.E. 2526, it concluded that disaster mitigation of Bangkok Metropolitan Administration shall consist of the follows:

78 fire stations

35 fire stations of the Royal Thai Police was transferred to Bangkok Metropolitan Administration

728 fire trucks and 315 fire trucks were purchased by Bangkok Metropolitan Administration.

Summary: A lack of 43 fire stations and personnel. It was, thus, not necessary to press for the purchase of fire trucks and boats as when the trucks were unused they would be more deteriorated.

Table 9. Information of the Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG

- In October B.E. 2546, Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG was bought by General Dynamic Worldwide Holdings, Inc. from the US but it was still a legal entity under the Austrian law.
- Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG hired Somati Vehicle N.W. of Belgium was the one procuring, producing and assembling the fire trucks and disaster mitigation equipment (except for fire boats) to Bangkok Metropolitan Administration. The firm received the production fee of 28 million Euro or approx. 1,400 million Baht.
- Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG did not directly produce or assemble products but merely an agent to manage to procurement of products for Bangkok Metropolitan Administration.

Event calendar

The case of fire trucks and boats

B.E. 2545

At the end of B.E. 2545, the government had a policy to transfer the Bureau of Fire Brigade under the Royal Thai Police to be under the responsibility of Bangkok Metropolitan Administration

B.E. 2545

January 21st, B.E. 2546

The Council of Ministers had a resolution to order the Royal Thai Police to transfer the tasks of disaster prevention and mitigation to Bangkok Metropolitan Administration.

B.E. 2546

June 4th, B.E. 2546

Austrian Ambassador to Thailand submitted a letter to the Minister of Interior to propose the project of selling fire trucks and disaster mitigation of Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG and propose to conduct an agreement under G to G.

August 18th, B.E. 2546

Bangkok Metropolitan Administration established the Bureau of Disaster Prevention and Mitigation.

B.E. 2547

January B.E. 2547

Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG invited Mr. Pracha Maleenont, the Deputy Minister of Interior, to conduct a study visit at the factory called MAN which manufactured a body of a fire truck for Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG in Austria and Belgium.

March 3rd, B.E. 2547

Mr. Samak Suthoravej, the Governor of Bangkok Metropolitan, approved the project of procurement of durable goods for the purpose of fire activities as proposed by Police Major General Athiluck Danchukiat, the then Director of Bureau of Disaster Prevention and Mitigation, Bangkok Metropolitan Administration. The proposed durable goods were as follows: 315 fire trucks and water trucks, 30 fire boats including other disaster mitigation equipments

which were identical to the list in the quotation proposed by Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG through the Austrian Ambassador.

B.E. 2547

June 22nd, B.E. 2547

The Council of Ministers had a resolution to approve the principle and conducted A.O.U (Agreement of Understanding) and Purchase/Sale Agreement.

July 29th, B.E. 2547

The Austrian Trade Counselor submitted a draft A.O.U to Police Major General Athiluck Danchukiat who then directly proposed to Mr. Samak Suthoravej without going through the Permanent Secretary of Bangkok Metropolitan. Mr. Samak Suthoravej signed the letter and proposed, on the same date, to Mr. Pokin Pollakul, the Minister of Interior.

July 30th, B.E. 2547

A.O.U. was signed between Mr. Pokin Pollakul, the Minister of Interior, and Dr. Herbert Traxi, the Austrian Ambassador to Thailand.

August 18th, B.E. 2547

Lady Nathanont Taweessin, the Permanent Secretary of Bangkok Metropolitan, submitted, to the Attorney-General, a draft Purchase/Sale Agreement of vehicles and fire distinguishing equipments of Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG for consideration in accordance with the Rule of Bangkok Metropolitan on Procurement B.E. 2538 clause 126.

August 24th, B.E. 2547

The Council of Ministers had a resolution approving the Minister of Interior (Bangkok Metropolitan) to indebt over the fiscal year for the project of procurement of fire

trucks and boats in the amount of 6,687,489,000 Baht and approved an additional budget for the fee in opening the Letter of Credit (L/C) for the amount of 20,000,000 Baht or as actually paid, including ordering the Ministry of Commerce to proceed any undertaking related to reciprocal trade following the Council of Ministers resolution on July 20th, B.E. 2547 highlighting boiled chickens as the priority product.

August 27th, B.E. 2547

Lady Nathanont Taweessin, Permanent Secretary of Bangkok Metropolitan submitted a letter to the Office of Attorney General to withdraw the draft Purchase/Sale Agreement providing the reason that it could be compared to the copy of agreement of Central Administration Bureau of the Kingdom of Thailand.

Mr. Pokin Pollakul signed to approve the process of the project

17.00 hrs, the Purchase/Sale Agreement was signed to complement the Agreement of Understanding between the Kingdom of Thailand and the Republic of Austria by Bangkok Metropolitan- Mr. Samak Suthoravej, acting for the Governor of Bangkok Metropolitan, prior to an election of the Governor of Bangkok Metropolitan, and Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG- Mr. Mario Meenar.

August 29th, B.E. 2547

Mr. Apirak Kosayotin was elected as the Governor of Bangkok Metropolitan

August 31st, B.E. 2547

Prior to assigning the work in duties to Mr. Apirak Kosayotin, Mr. Samak submitted a letter to the manager of Krung Thai Bank to open the L/C for the amount of 133,749,780 Euro to Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG and Bangkok Metropolitan paid the fee of 20,000,000 Baht and assigned the power of attorney to Police Major General Athiluck

Danchukiat, the Director of Bureau of Disaster Prevention and Mitigation under Bangkok Metropolitan, to undertake the process and sign.

September 6th, B.E. 2547

Mr. Samak Suthoravej assigned the work of the Governor of Bangkok Metropolitan to Mr. Apirak Kosayothin.

September 9th, B.E. 2547

Mr. Apirak Kosayothin ordered Police Major General Athiluck Danchukiat to find the price of fire trucks purchased by the Royal Thai Police to conduct a price comparison.

September 10th, B.E. 2547

Office of the Attorney-General returned the draft Purchase/sale Agreement of the vehicles and fire extinguishing equipments between Bangkok Metropolitan and Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG, which was under the consideration, as requested by the Permanent-Secretary of Bangkok Metropolitan.

September 20th, B.E. 2547

Mr. Apirak Kosayothin invited the Austrian Ambassador to Thailand to discuss about the details of procurement of fire trucks in this project.

September 27th, B.E. 2547

Mr. Apirak Kosayothin sent a letter to Krung Thai Bank to withhold the opening of the L/C and terminate the power of attorney by Mr. Samak Suthoravej to Police Major General Athiluck Danchukiat (1st withholding of the opening of L/C).

September 30th, B.E. 2547

Mr. Apirak Kosayothin sent a letter to the Minister of Interior requesting to reconsider the procurement of fire trucks and equipments (1st reconsideration)

October 1st, B.E. 2547

Mr. Somsak Khun-negn, deputy assistance to the Secretary of the Minister acting for the Secretary of the Minister of Interior sent a note informing Mr. Apirak Kosayothin that the procurement could not be reconsidered as it was approved by the Council of Ministers. Police Major General Athiluck Danchukiat retired and was replaced by Mr. Niyom Kannasud.

October 4th, B.E. 2547

Mr. Yuttaphong Jarassathien, Puea Thai MP (former Democrat MP) submitted a petition to the NACC regarding the corruption in this procurement project.

October 12th, B.E. 2547

Mr. Apirak Kosayothin sent a letter to the Minister of Interior for reconsideration of the procurement of fire trucks and equipments (2nd request for reconsideration) as the reciprocal contract signed after the purchase/sale contract was not in accordance with the procedure of the Ministry of Commerce and a petition was made to the NACC.

Mr. Apirak Kosayothin sent a letter to the manager of Krung Thai Bank for withholding the approval of L/C (2nd withholding request).

November 5th, B.E. 2547

Mr. Pokin Pollakul sent a letter to Mr. Apirak that the procurement was conducted under G to G; A.O.U. was made under the official rule; and the agreement was signed. Thus, in order to ensure that this did not affect a good relationship between countries,

Bangkok Metropolitan Administration should proceed in accordance with the conditions. The petition to the NACC should be left to be continued.

November 25th, B.E. 2547

Mr. Apirak Kosayothin appointed a committee to consider the details of the procurement. The committee reviewed the details from 6 meetings and negotiated with Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG for additional rights and benefits for the amount of 250 million Baht.

B.E. 2548

January 10th, B.E. 2548

Mr. Apirak Kosayothin sent a letter to Krung Thai Bank to approve the L/C by giving the power of attorney to Mr. Niyom Kannasud, Director of the Bureau of Disaster Prevention and Mitigation, Bangkok Metropolitan, to proceed and sign.

B.E. 2548-2556, the NACC conducted an inquiry and submit the case to the Court.

September 30th, B.E. 2556

The Criminal Division for Political Office Holder of the Supreme Court made the ruling on 6 defendants in accordance with the NACC indictments

Policy to transfer the Fire Brigade
Bureau of the Royal Thai Police to
Be under the responsibilities of
Bangkok Metropolitan

→ Bangkok Metropolitan

established the Bureau of Disaster Prevention and
Mitigation and 78 fire stations



Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG proposed
to sell fire trucks through the Austrian Ambassador
to Thailand



The Austrian Ambassador to Thailand proposed the project

Of selling fire trucks to the Minister of Interior in the manner of

G to G and use reciprocal trade of 100 per cent

Bangkok Metropolitan ordered fire trucks and boats from Steyr-Daimler-PUCH Spezialfahrzeug
AG&CO KG to use in the project to develop the administration and increasing the efficiency in
disaster prevention and mitigation



A.O.U and purchase/sale agreement between the Government of Thailand by Bangkok Metropolitan Administration, Ministry of Interior, and Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG were made. The agreements were made under the normal sale agreement while the Austrian government did not provide any financial assistance to the Thai government.



This was used as an excuse to avoid a fair competition



It was used as an excuse to propose an absurdly expensive fire trucks without any inspection.



Steyr-Daimler-PUCH Spezialfahrzeug AG&CO KG gained the benefit per cost of 48.77 per cent which was higher than the price under the appropriate commercial standard.



The amount of exportation of frozen processed chickens (boiled) to Japan was used to balance out the reciprocal account which did not provide any benefit to the country as the exportation figure did not increase.

Case of former Governor of Provincial Electricity Authority in the case of unusual wealth

(Mr. Sunthorn Dtanthaworn)

Pending case number 1673/2546

Decided case number 6035/2547

A complaint against a political office holder or state official for unusual wealth to the National Anti-Corruption Commission (NACC) is a duty of the public. Ignorance and viewing that corruption is far out of reach is an indirect harm to the country. If the public have confidence in justice, have faith in transparency, and courage to maintain justice, the public shall submit a complaint against a person committing a malfeasance in office or unusual wealth to the NACC for inquiry which will help to strengthen combating of corruption of the country and maintain the interest of the country and public.

It is sad to see that the corruption occurred in every level, the general public will see the corruption appeared in media only when it is an important case involving high level officials or politicians. The fact is that corruption or malfeasance in office especially unusual wealth, even if it is a small case, it results in damages to the country.

The case of Mr. Sunthorn Dtanthaworn received wide interest as the accuser was in office as the Governor of Provincial Electricity Authority

It started from a complaint

The complaint was submitted to the National Anti-Corruption Commission that the accuser, at the time of being the Governor of Regional Electricity Authority, was usually wealthy. According to the primary fact inquiry of the NACC concerning the status of the accuser, whether it was the history of work, income and properties prior and after taking the office, the 5- year payment of personal tax, the declaration of account showing particular of assets and liabilities under the annex to the Decree on declaration of account showing particular of assets and liabilities of state officials B.E. 2535 submitted to the NACC including the deposit accounts of different banks and financial transactions of the accuser and spouse and the ownership of rights and land, cars, rights and concession, capital and liabilities .

It appeared that the assets of the accuser increased tremendously after taking office as the Governor of Regional Electricity Authority, the NACC had a resolution to consider such case and, subsequently, the NACC appointed the sub-committee on fact inquiry.

Inquiry

The sub-committee conducted the inquiry and collected additional evidence following the primary fact investigation by dividing the period of investigation into three periods as follows:

- Before the accuser taking the office in B.E. 2539
- During the period where the complaint was submitted on the 17th of November B.E. 2540
- During the retirement period on the 30th of September B.E. 2542

Suspicious behavior

The fact and evidence appeared that, according to the declaration of personal tax of the accuser of the past 5 years, it did not appear that there were any other income besides salary and bonuses.

According to the inquiry and investigation of the declaration of account showing particular of assets submitted on the 1st of October B.E. 2539 upon taking the office as the Governor of Regional Electricity Authority had money deposited in 5 bank accounts for the amount of 1,334,041.60 Baht. The accuser had one house, capital and loan, 5 plots of land, rights and concession of 220,000 Baht which accounted for the total of 27,166,689.89 Baht. However, on the 17th of November B.E. 2540, upon the submission of the complaint, the accuser had money deposited in 18 bank accounts for the amount of 24,201,285.89 Baht, capital, one house, 5 plots of land which equaled the total of 40,898,535.89 Baht. After that, on the 30th of September B.E. 2542 which was the retirement day of the accuser, the accuser had money in 15 bank accounts for the amount of 5,123,735.12 Baht, capital, 4 plots of land by which the accuser transferred the old house to his child and built a new house for the total of 19,242,955.99 Baht.

It is to be noted that from the period that the accuser took office until the period the complaint was submitted against the accuser, the accuser's assets increased by 13,731,846 Baht.

In respect of the saving accounts which were suspicious, after being accused from the 17th of November B.E. 2540 until the retirement date of September 30th, B.E. 2542, the money was withdrawn from different bank accounts and only 5,123,735. 12 Baht remained. This reduced from 21 million Baht and caused suspicion. If it were legitimate, money would not have to be withdrawn. It illustrated that the money was obtained illegitimately.

Moreover, the additional deposited money was found for the amount of 3,086,538.01 Baht and it was not declared. The sub-committee, thus, filed an additional charge against the accuser.

Excuses

The NACC ordered the alleged culprit to submit a declaration of account showing particular of assets under section 79 of the Organic Act on counter corruption B.E. 2542.

The accused submitted a declaration of account showing particular of assets and liabilities from the 1st of October B.E. 2539 until the 17th of November B.E. 2540 and the 30th of September B.E. 2542 and informed that an increase of assets came from investment in the stock market by taking the witness to verify that such witness was a stock broker for the accused and traded gems on behalf of the accused. The profits gained came in cash and deposited in banks. Sometimes, the gems were returned in envelopes which mean that the investment had been going on for 2 years. Throughout the investment period, the investment was smooth and no argument regarding the money, profits or estimation of the value of gems returned with the envelope. It was an investment with profits.

According to one witness, who was a senior inspector, Department of Financial Institute Inspection, Bank of Thailand, confirmed that during the period of B.E. 2539- B.E. 2540, Thailand encountered the economic crisis and the stock market plummeted. In such case, it was not believable that any kind of investment would provide a return of 2.5 percent per month and such return would be consistent for 2 years.

Subsequently, the NACC had a resolution with a majority indicting the accused of unusual wealth; obtaining unusually large amount of assets or such assets were increased unusually or the assets were illegitimately obtained from performance of duties or abusing the power as the Governor of Regional Electricity Authority. The assets were the total of 15,260,380.56 Baht.

It is to be noted that the value of assets on the date of complaint was more than the asset prior to taking of the office by 13,731,846 Baht and 3,086,538.01 Baht was found later. When deducting the salary, remuneration and bonuses acquired during such period of time of 1, 558,003.45 Baht, it appeared that the asset of 15,260,380.56 Baht could not explained the origins.

The Court Ruling

The civil court ruled on the case on December 15th, B.E. 2547 that the assets of the offender of 15,260,380.56 Baht shall vest in the State or shall disburse other assets to the Ministry of Finance. If such offender fails to comply with the Court order, the Court ruling shall be deemed to replace the expression of intention.

The defendant appealed and the Court of Appeal ruled on the 8th of July B.E. 2548 insisted on the previous ruling of the Court of First Instance. Subsequently, the accused appealed to the Supreme Court but the Supreme Court ordered that, since the accused failed

to submit a copy of appeal to the petitioner within 7 days following the order of the Court of First Instance, this deemed to ignore the appeal and the case shall be disposed.

Summary

The complaint against a State official regarding unusual wealth to the NACC leads to an investigation and upon the investigation, if a ground is found; the Attorney-General would submit a case to the Court. If the Supreme Court ruled that such offender was of unusual wealth, the Court will make a judgment ordering the increased assets to vest in the State.

This procedure is a preventative tool against a state official from abusing their powers and finding benefits for themselves. Such procedure comes from an interest of the public and those who find corruption to submit a complaint. Being eyes and ears to be inspected by members of every unit in the society is, therefore, an important power creating a transparency in the government sector.

The case of unusual wealth of former Municipal Clerk of Chiangmai Municipality

(Mrs. Benjawan Thongsean)

Pending case number Mor. 1/2553

Decided case number Mor. 4/2554

The Constitution of the Kingdom of Thailand B.E. 2540 provides investigative measures and organization inspecting the state powers in order to increase the efficiency in tackling the problem of corruption and malfeasance in office of the public sector and political organization. Section 297 provides that a National Anti-Corruption Commission consisting of 9 Commissioners shall be established and a commissioner shall be appointed upon the selection procedures and also provides for the power of inspection.

One of the duties of the National Anti-Corruption Commission is to conduct an inquiry and make a ruling whether a political office holder or state official is unusually wealthy, committed a malfeasance in office or committed an offence under the duties in the justice procedure including inspecting the legality, existence and changes in assets and liabilities of a political office holder and state official as prescribed in the Organic Act on Counter Corruption and in accordance with the accounts and annexed documents as submitted.

In respect of the declaration of account showing particular of assets and liabilities, the Constitution of the Kingdom of Thailand B.E. 2540 and B.E. 2550 provide that a political office holder shall submit a declaration of account showing particular of assets and liabilities every time upon taking the office or vacating the office (see table 1-5). In this regard, such person shall submit accounts of himself, spouse and children under the legal age. The

Constitution provides further that the declaration of account showing particulars of assets and liabilities shall be submitted in 3 periods as follows:

1. Upon taking the office, it shall be submitted within 30 days as from the date of taking the office;
2. Upon vacating the office, it shall be submitted within 30 days as from the date of vacating the office;
3. Within 30 days as from the date of vacating the office for 1 year

Moreover, the Constitution provide the political penalty, in addition to the criminal offence, in the case of intentional failure to submit the declaration of account showing particular of assets and liabilities or intentionally submitting a false declaration of account showing particular of assets and annexed documents or conceal facts which are supposed to be declared the offender shall be prohibited from holding a political position or holding a position in a political party for 5 years as from the date the Criminal Division for Political Office Holder of the Supreme Court gives the ruling.

In respect of disclosing the account showing the particulars of assets and liabilities to the public, it shall only be made in regard to the accounts of the Prime Minister and Ministers. In the case of other persons holding political positions, it shall only be disclosed if it is useful to the case trial or decisive judgment and requested by the Court or the State Audit Commission.

A complaint accusing a political office holder or state official of unusual wealth leads to a non complex inquiry beginning with informing the accuser to declare an account of particulars of assets and liabilities (in the case where Constitution does not provide that the position of the accuser shall submit the declaration of an account of particulars of assets and liabilities). Subsequently, the investigation of legitimacy and income from the position for consideration shall be conducted. If the assets are more than what he or she should obtain

from the position, the accused shall clearly illustrate the origin of such assets, for instance, inheritance or sale of land. If the accused cannot illustrate the original source of increase asset, the court shall order such asset to vest in the state like the case of Mrs. Benjawan Thongsian.

It started from an anonymous letter

This case came from an anonymous letter sent to the National Anti-Corruption Commission (NACC) which, after the fact investigation, it was found that there was a reasonable ground to believe that Mrs. Benjawan Thongsian, the accused, was unusually wealthy under section 77 of the Organic Act on Counter Corruption B.E. 2542.

On the 20th of September B.E. 2547, the NACC appointed the sub-committee to inquire into fact and informed Mrs. Benjawan to submit an account of particulars of assets and liabilities under section 79.

Mrs. Benjawan Thongsian was a Municipal Clerk of Chiangmai Municipality from the 1st of April B.E. 2543 until the 31st of December B.E. 2544. During the period when Mrs. Benjawan was in office, she was accused of conducting a gross disciplinary violation in the case of active bribery. Chiangmai Municipality dismissed her from office due to the commission of gross disciplinary violation after the NACC inquired into facts and ruled that she committed a criminal offence. Moreover, Mrs. Benjawan was liable to a disciplinary offence and dismissed from office (see table 7).

In the case of being accused of unusual wealth, the NACC called Mrs. Benjawan Thongsian to acknowledge the offence of unusual wealth composing of:

- Land – Bang Sue district, Bangkok, including the building
- Land – Pa tan sub-district, Muang district, Chiang mai, for the price of 1,800,000 Baht
- Land- Pa tan sub-district, Muang district, Chiang mai, for the price of 1,200,000 Baht

- House number 259 Pa tan sub-district, Muang district, Chiang mai, the evaluated value of 1,864,820 Baht

60,000 units of Government Savings Bank's lottery for the value of 3,000,000 Baht

Challenging the accusation

Mrs. Benjawan challenged the accusation and gave the testimony to the sub-committee on fact inquiry on the 27th of April B.E. 2552 that, during the time in office as the Municipal Clerk, Aranyaprated, Prachinburi, someone gave her a monthly expense of 10,000 Baht, bought a plot of land in Nakornnayok, built a house in Sri Saked province, bought a car and gave gems and cash from selling Buddha images regularly. Afterwards, such person still gave her a monthly expense and Mrs. Benjawan used the money from the sale of gems and Buddha images to purchase the assets under the accusation.

According to the inquiry and collection of evidence, the NACC and the sub-committee found the followings:

- Income from the government and other incomes between B.E. 2543-
- B.E. 2544 was the total of 2,044,070 Baht
- From the date Mrs. Benjawan took office as the Municipal Clerk of Chiang Mai until the date of being complained in December B.E. 2544, there were 5 additional assets and the assets amounting to 17,271,431.58 Baht
- Even if there were profits from selling gems and gold, there was a ground to believe that the amount of 7,148,810 Baht which unusually increased during the time as Municipal Clerk of Chiang Mai. Such assets unusually increased beyond the status and income.

Mrs. Benjawan took office as the Municipal Clerk of Chiang Mai on the 1st of April B.E. 2543



She was complained in December B.E. 2544

Increased of 5 assets

the total amount was 17,271,431.58 Baht

The ruling of the NACC

The NACC ruled that Mrs. Benjawan Thongsean was unusually wealthy under section 4 of the Organic Act on Counter Corruption B.E. 2542 and submitted the case to the Attorney General to proceed with the prosecution to the Court to order such assets to vest in the State under section 80 (4) of the Organic Act on Counter Corruption B.E. 2542.

Subsequently, on the 11th of November B.E. 2554, the Sri Saked Provincial Court ordered that 5 assets of Mrs. Benjawan Thongsean including fruits of such money and assets to vest in the State including interest of 7.5 per cent per year of the money 6,748,810 Baht.

Mrs. Benjawan did not appeal and the case was, thus, final.

Conclusion

The powers and duties of a state official regardless of position relate to several benefits. If a state official lacks of moral and exercises his powers and duties to give advantage to himself, it will harm the country. Monitoring and reporting the behavior of unusual wealth of a state official to an independent organization such as National Anti-Corruption Commission is one of the means to ensure that State forfeits the assets to vest in the State if, upon the inspection, it was found that such increased asset was gained by corruption.

Moreover, this is to prevent state officials from malfeasance in office thinking that there is no state measure or tool to inspect such conduct.

It is the duty of every citizen to maintain the national interest which is also the interest of the public.

Table 1 persons who are under the duties to submit an account of particulars of assets and liabilities to the NACC upon taking the office or vacating the office.

1. Political office holders;
2. Political office holders as prescribed by the Notification of the NACC on determining that local chief administrators, deputy chief local administrators and assistant to local chief administrators and members of the local councils shall be political office holders B.E. 2554;
3. State officials under the Organic Act on Counter Corruption B.E. 2542 as amended (No. 2) B.E. 2554 section 39;
4. State officials as prescribed by the NACC in additional to section 39

Table 9 Political office holders who shall submit accounts of particulars of assets and liabilities to the NACC

1. Prime Minister
2. Ministers
3. Members of the Parliament
4. Members of the Senate

Table 10.

Political Office Holders under the Notification of the National Anti-Corruption Commission on prescribing the position of local administrator, local deputy administrator, assistant to the local administrator and members of the local Assembly of the Local Administrative Organisation to be political office holders B.E. 2554 who shall submit the account of assets and debts to the National Anti-Corruption Commission

1. Local Administrative Organisation

1.1 Provincial Administrative Organisation

- Chief Executive of Provincial Administrative Organisation
- Deputy Chief Executive of Provincial Administrative Organisation
- Adviser and secretary to the Chief Executive of Provincial

Administrative Organisation

- Members of the Provincial Administrative Assembly

1.2 City Municipality

- Governor of the Municipality
- Deputy Governor of the Municipality
- Adviser and secretary to the Governor of the Municipality
- Members of the Municipality Assembly

1.2 Town Municipality

- Governor of the Municipality
- Deputy Governor of the Municipality
- Adviser and secretary to the Governor of the Municipality
- Members of the Municipality Assembly

1.3 Sub-District Municipality

- Governor of the Municipality
- Deputy Governor of the Municipality
- Adviser and secretary to the Governor of the Municipality

1.4 Sub-District Administrative Organisation

- Chief Administrator of Sub-District Administrative Organisation
- Deputy Sub-District Administrative Organisation
- Secretary to the Chief Administrator Sub-District Administrative

Organisation

2. Extraordinary local administrative organization

2.1 Bangkok

- Governor of Bangkok Metropolitan
- Deputy Governor of Bangkok Metropolitan
- Chief adviser, adviser, secretary and assistant secretary to the Governor of Bangkok Metropolitan
- Members of the Bangkok Metropolitan Assembly

2.2 Pattaya Metropolitan

- Chief Administrator of Pattaya Metropolitan
- Deputy Chief Administrator of Pattaya Metropolitan
- Chief adviser, adviser, secretary and assistant secretary to the Chief Administrator of Pattaya Metropolitan
- Members of the Pattaya Metropolitan Assembly

Table 11 state officials under the Organic Act on Anti-Corruption B.E. 2542 as amended by (No. 2) B.E. 2554 section 39 who shall submit an account of assets and debts to the NACC

- (1) President of the Supreme Court
- (2) President of the Constitutional Court
- (3) President of the Supreme Administrative Court
- (4) Attorney-General
- (5) Election Commissioner
- (6) Ombudsman
- (7) Justice of the Constitutional Court
- (8) State Audit Commissioner
- (9) Vice President of the Supreme Court
- (10) Vice President of the Supreme Administrative Court
- (11) Chief of the Bureau of Military
- (12) Justice of the Supreme Court
- (13) Justice of the Supreme Administrative Court
- (14) Deputy Attorney-General
- (15) Persons holding high level positions (in accordance with the definition in section 4)
 - Head of the governmental organs at the level of Ministry, Sub-Ministry and Department
 - Permanent Secretary of the Ministry of Defence
 - Commander-in -Chief of the Royal Thai Army
 - Commander- in- Chief of the Army Service
 - Commissioner General of the Royal Thai Police
 - Permanent Secretary of Bangkok Metropolitan Administration
 - Members of the Board and executive of a State Enterprise
 - Chief of independent organizations, a juristic person, under the Constitution

- Members of the Board and executive of a state organ as prescribed by the Anti-Corruption Commission and published in the Government Gazette
- Persons holding other offices as prescribed by law

Table 12 state officials as prescribed by the Anti-Corruption Commission as added under section 39 who shall submit an account of assets and debts to the Anti-Corruption Commission

- (1) President of the Supreme Court
- (2) President of the Constitutional Court
- (3) President of the Supreme Administrative Court
- (4) Attorney-General
- (5) Election Commissioner
- (6) Ombudsman
- (7) Justice of the Constitutional Court
- (8) State Auditor
- (9) Vice President of the Supreme Court
- (10) Vice President of the Supreme Administrative Court
- (11) Chief of the Military Bureau
- (12) Supreme Court Judge
- (13) Justice of the Supreme Administrative Court
- (14) Deputy Attorney-General
- (15) Persons holding high level position as prescribed by law
- (16) Permanent Secretary of the Ministry of Defence as prescribed by the Organic Act on Anti-Corruption Commission
- (17) Director, deputy Director and members of the Board of Directors of the Bank of Thailand
- (18) President and members of the Stock Exchange Commission

- (19) President of the House of Representative
- (20) President of the Senate
- (21) National Telecommunication and Broadcasting Commissioners and the Secretary –General of Office of the National Telecommunication and Broadcasting Commission
- (22) Chairperson of the Policy, member of the Board of policy, executive boards, director and deputy director of Thai Public Broadcasting Service
- (23) Chairperson and inspection members in accordance with the Notification of the Reform Group under the Democratic Regime
- (24) Assistants to the Minister
- (25) Representative of Thai Trade

Table 13 knowing the National Anti-Corruption Commission

The National Anti-Corruption Commission (NACC) is an independent organization under the Constitution of the Kingdom of Thailand. A commissioner shall be an apparent integrity, selected by the selection committee under the Constitution and appointed by the King with the advice of the Senate.

The NACC consists of the President of the Commission and 8 qualified members and shall be in office for a term of 9 years.

Table 14 The ruling of the NACC in the case of Mrs. Benjawan Thongsean

On the 22nd of April B.E. 2551, the NACC unanimously ruled with 9 votes following the opinion of the inquiry sub-committee in the case of accusation of Mrs.

Benjawan Thongsean during the time in office as the Municipal Clerk of Chiang Mai. It ruled that Mrs. Benjawan actively called for bribery or other remuneration from Mrs. Supattra Kasamerungkit, an official of Chiang Mai Municipality as the return for assisting her transfer to Chiang Mai Municipality and this was the ground for gross disciplinary violation under section 82 paragraph two and paragraph three of the Civil Service Act B.E. 2535 and commission of a criminal offence under section 149 and section 157 of the Penal Code.

On the 22nd of April B.E. 2551, the NACC unanimously ruled with 9 votes following the opinion of the inquiry sub-committee in the case of accusation of Mrs. Benjawan Thongsean, during the time in office as the Municipal Clerk of Chiang Mai, for her active bribery for requesting flight tickets from Queensland Engineering Co., Ltd which was a Party to the Contract with Chiang Mai Municipality in the construction project of Chiang Mai Municipality Hospital. This was a ground for gross disciplinary violation under section 82 paragraph two and paragraph three of the Civil Service Act B.E. 2535 and commission of a criminal offence under section 149 and section 157 of the Penal Code.

In this regard, the reports, documents and opinions relating to the accusation of Mrs. Benjawan Thongsien were submitted to her commander to consider the disciplinary penalties and submitted to the Attorney-General to prosecute her in the criminal case in the Court following such offences in accordance with section 92 and section 97 of the Organic Act on Counter Corruption B.E. 2542.

Corruption Case of amending the cost appraisal of the construction project of clarifiers
and electrical conduits surrounding Chitralada garden

(Mr. Kasame Jaihong)

Pending case number Aor 2335/2550

Decided case number Aor 1296/2551

Necessarily, the determination of conditions concerning procurement in a state agency has to be transparent without any hidden aim to facilitate any party. The arrangement to avoid competition in the fair price proposal process is deemed to be an offence. The responsible person may be accused as a person performing or failing to perform duties or malfeasance in office such as the case of Mr. Kasame Jaihong, the former Governor of Metropolitan Electricity Authority.

Construction of clarifiers and underground electrical conduits surrounding Chitralada garden

Chitralada project was the construction of clarifiers and underground electrical conduits under turnkey by pipe jacking of 10,423 meters along the road surrounding Chitralada garden and nearby roads which was under the responsibility of the Metropolitan Electricity Authority under the National Economic and Social Development Plan No. 7 by which the project began in B.E. 2539.

The Metropolitan Electricity Authority hired Bureau of Academics, Chulalongkorn University, to conduct the Terms of Reference (TOR) specifying that the construction of the Chitralada project shall be under turnkey by which a contractor shall design and construct in accordance with the standard building plan prescribed by the Metropolitan Electricity Authority.

The design was under pipe jacking which means that the road surface would not be opened but a tunnel under the road surface would be constructed instead.

The project procedure began by Mr. Kasame Jaihong, the then Deputy Governor of Metropolitan Electricity Authority, Division of academic and plans, appointed as the Chairperson of the Procurement Working Group. The then Governor of Metropolitan Electricity Authority appointed the Cost Appraisal Evaluation Committee on the 22nd of March B.E. 2539. The Committee evaluated the cost appraisal at 577,367,881 Baht excluding VAT and specified that the time for construction would be 900 days following the construction conditions.

The next process was that the Tender Committee used such cost appraisal as the reference in the tender and any amendment to the cost appraisal could be by the cost Appraisal Evaluation Committee appraisal other persons shall only be approved by the cost Appraisal Evaluation Committee

Tendering

There were 6 proposals

Ruam Nakorn Kor Sang (Thailand) Co., Ltd proposed the lowest price but it was not in accordance with the construction plan, for instance, the use of road surface, and lack of qualifications. It, as a result, failed to satisfy the committee considering the tender;

Italian-Thai Development PLC proposed the second lowest bid at 692,965,170 Baht which was higher than the cost appraisal determined by the committee considering the cost appraisal but still within the criteria for consideration of the committee considering the tender

The amendment of the cost appraisal

Mr. Kasame Jaihong, the Chairperson of the Procurement Working Group consulted with the Chairperson of the Tender Committee regarding the differences between the cost appraisal and the price proposed by Italian-Thai Development PLC and agreed to proceed with the 2nd evaluation of cost appraisal by using the construction plan of the Italian-Thai Development PLC as the base to evaluate the cost appraisal. The new cost appraisal was 616,222,000 Baht and if included VAT, it would be 659,357,540 Baht. However, the price proposed by Italian-Thai Development PLC was still higher than the cost appraisal.

Mr. Kasame Jaihong was accused of knowing and undertaking the 3rd amendment of the cost appraisal by which the Cost Appraisal Evaluation Committee did not involve and thus such amendment was not in accordance with the rule of the Metropolitan Electricity Authority.

The figures were amended from 616,222,000 Baht to 640,388, 832 Baht and when it included VAT, it was 685,216,050.24 Baht and the time for construction was reduced to 780 days to ensure that the construction would be completed within the timeframe of the 7th National Economic and Social Development Plan. The high technology was used. Subsequently, the amended document was photocopied again to ensure that the false document still contained other parts of the statements and signatures of all members of the Cost Appraisal Evaluation Committee.

The amendment of figures to obtain this cost appraisal made the price proposed by Italian-Thai Development PLC 7,749,119.76 Baht higher than the cost appraisal whilst, in reality, it was 33,594,630 Baht higher than the actual cost appraisal.

Later, Mr. Kasame Jaihong reported to the meeting of the Metropolitan Electricity Authority Board for approval of the Italian-Thai Development PLC to construct the clarifiers

around Chitralada garden. The Board was induced by the report and approved Italian-Thai Development PLC for the amount of 619,895,170 Baht.

The amendment of cost appraisal was an illegitimate conduct to benefit Italian-Thai Development PLC causing damage to the Metropolitan Electricity Authority due to higher cost.

Complaint

On the 15th of July B.E. 2541, a complaint was sent in the form of anonymous letter from the Metropolitan Electricity Authority to the Counter Corruption Commission accusing Mr. Kasame Jaihong of committing an offence under the Act on Offences of Officials in State Organizations or agencies B.E. 2502.

The N.C.C. investigated and found that an offence was committed and the Attorney-General submitted a criminal case to the Criminal Court.

On the 9th of April, B.E. 2551, the Criminal Court found that Mr. Kasame Jaihong, the former Governor of Metropolitan Electricity Authority, committed an offence under section 11 of the Act on Offences of Officials in State Organizations or Agencies B.E. 2502 as he was the official performing duties or failing to perform duties causing harms to a person or malfeasance in office. The offender shall be liable to one year imprisonment and a fine of 20,000 Baht. However, since the offender had never been criminally sentenced and the Court saw that he should be given an opportunity to change himself, the imprisonment shall be suspend for two years and the defender was ordered to perform public activities for the society interest as specified by probation officials for 16 hours. If the defendant fails to pay the fine, the process under section 29 and 30 of the Penal Code shall be undertaken.

Neither the plaintiff nor the defendant appealed. The Case was final.

Conclusion

It is a loss of opportunity if a procurement project of any state agency is not transparently undertaken, a responsible official shall necessarily be determine and hold the interest of the country. Instability and moving away from justice by overlooking the overall picture and failing to withhold integrity and dignity causes damages.

Being eyes and ears to inspect members of every unit and submitting a complaint to an independent organization such as the NACC is, therefore, an important mechanism in maintaining the interest of the nation.

Table 15

Turnkey means a contractor shall design the construction which is different from the usual manner which a government agency would provide the construction plan.

In constructing in the manner of turnkey, the contractor will survey the location and consider it together with the purpose of construction then consequently undertake the construction design.

Picture 2

Pipe jacking is a construction without opening the road surface but will dig a tunnel from one side of the road through the ground to the other side of the road and then take the electrical conduits through the tunnel. This method does not cause any traffic problem.

The 7th National Economic and Social Development
Plan specifying Chitralada project

→ Metropolitan Electricity Authority
hired the Bureau of Academics,
Chulalongkorn University to conduct
the TOR and details.

Deputy Governor of Metropolitan Electricity Authority, Division of Academic and Plans,
appointed as the Chairperson of the Procurement Working Group



The Governor of Metropolitan Electricity Authority appointed the Cost Appraisal Evaluation
Committee

The Metropolitan Electricity Authority Board was induced by the report and approved Italian-
Thai Development PLC for the amount of 619,895,170 Baht.



Corruption in the clarifiers surrounding Chitralada garden and the State lost over 33 million Baht

Corruption damages both the state and people

The Cost Appraisal Evaluation Committee evaluated the cost appraisal of the construction project of clarifiers around Chitralada garden for the amount of 577,367,881 Baht excluding VAT and specified the construction time at 900 days in accordance with the TOR



Construction Tendering Committee used the cost appraisal as the reference for tender.

→ there were 6 contractors submitting the proposal and Ruamnakorn Kor Sang (Thailand) Co., Ltd proposed the lowest bid but was not in accordance with the

construction plan.



Italian-Thai Development PLC proposed the second highest bid but the proposed price was much higher than the cost appraisal.

Chairperson of the Procurement Working Group amended the cost appraisal without the Cost Appraisal Evaluation Committee inconsistent with the rule of the Metropolitan Electricity Authority.



The amended cost appraisal rendered the cost appraisal to be 7,749,119.76 Baht higher which, in fact, it was 33,594,630 Baht higher than the cost appraisal.

Chairperson of the Procurement Working Group reported to the Metropolitan Electricity Authority Board and requested for the approval for Italian –Thailand PLC to construct clarifiers surrounding Chitralada garden.

The case of malfeasance in office

(Mr. Panya Dtandtiyawarong)

Pending case number 45410425

Decided case number 09634346

Malfeasance in office causes harm to a person while rendering the benefits to other people. Such commission of the offence shall be a criminal offence, such as, the case of Mr. Panya Dtantiyawarong, Chairperson of the State Audit Commission.

Office of the Auditor General of Thailand

Office of the Auditor General of Thailand is an independent inspective organization consisting of State Audit Commission, Committee on Disciplinary Public Budget, Auditor General and Office of the Auditor General of Thailand

State Audit Commission, established under the Organic Act on State Audit B.E. 2542 shall have the duties in supervising the Office of the Auditor General of Thailand, determining policies and framework of the Auditor General.

One of the main duties and powers of the State Audit Commission is to select a person to be the Auditor General by proposing a list of candidates to the Senate for approval under the Rule on Criteria and Procedures for Selection B.E. 2543.

Sources of selection of Auditor General

Auditor General is a highly important position as such person has the powers to financially inspect the government sector whether or not it is in accordance with the law on public finance including the inspection of disbursement of money.

On the 3rd of July, B.E. 2545, State Audit Commission selected candidates for the position of Auditor General by secret ballot. The list of candidate composed of the 3 qualified

persons following the proposal of Selection sub-committee. The 3 qualified persons were as follows: Mr. Prathan Dabpetch; Mrs. Jaruwan Menthaga; Mr. Nonthapol Nimsomboon.

The result of the voting was as follows:

- Mr. Prathan Dabpetch received 5 votes
- Mrs. Jaruwan Menthaga received 3 votes
- Mr. Nonthapol Nimsomboon received 0 vote

Mr. Prathan Dabpetch, Deputy Director of the Office of the Auditor General of Thailand, acting for the Director of the Office of the Auditor General of Thailand and acting as Director of the Office of the Auditor General of Thailand received most votes and not less than one half of the existing Commissioners.

The Commission, as a result, had a resolution to propose Mr. Prathan Dabpetch as the candidate to be considered for approval by the Senate.

Violation of the Resolution of Commission

Later, Mr. Panya Dtandtiyawarong, the Chairperson of the State Audit Commission violated the resolution of the Commission by not proposing Mr. Prathan Dabpetch to the Senate. Instead, he proposed the name of Mr. Prathan Dabpetch and two other persons which were: Mrs. Jaruwan Menthaga; Mr. Nonthapol Nimsomboon, via the President of the Senate for the Senate to consider the persons under the list and request for approval. In this regard, it can be understood that the Chairperson had an intention to obstruct Mr. Prathan Dabpetch from taking the office and for Mrs. Jaruwan Menthaga to take the office as Mr. Nonthapol Nimsomboon was under the investigation for gross disciplinary violation.

On the 16th of November B.E. 2544, the Senate convened the meeting and had a resolution with the votes of 91 to 70 that the Senate was able to select any person from the list without having to necessarily choose Mr. Prathan Dabpetch.

The meeting of the Senate selected Mrs. Jaruwan Menthaga as the Auditor General.

On the 11th of December B.E. 2544, Mr. Prathan Dabpetch submitted a letter to the President of the National Anti-Corruption Commission (NACC) claiming that the conduct of Mr. Panya Dtandtiyarawong was malfeasance in office under the Organic Act on State Audit and the Rule of the State Audit Commission on Criteria and Procedures on selection of candidates for Auditor General.

Inquiry

The National Anti-Corruption Commission appointed an inquiry sub-committee. According to the inquiry, it was found that there was ground to believe that Mr. Panya Dtandtiyarawong committed a criminal offence and, as a result, informed such accusation to Mr. Panya Dtandtiyarawong of performing or failing to perform to cause a damage to a person under section 157 of the Penal Code including submitting the report to the Attorney –General for the prosecution of a criminal offence while the NACC had a resolution to indict Mr. Panya Dtandtiyarawong.

The Court of First Instance considered and ruled that Mr. Panya Dtandtiyarawong committed an offence and sentenced him to 3 year imprisonment.

Mr. Panya Dtandtiyarawong appealed and the Court of Appeal acquitted the plaintiff and co-plaintiff which was Mr. Prathan Dabpetch.

The Supreme Court reversed the decision of the Court of Appeal and found that Mr. Panya Dtandtiyarawong committed an offence under section 157 of the Penal Code and shall be liable to imprisonment for a period of 3 years and to a fine of 20,000 Baht. The sentence of imprisonment shall be delayed for 2 years.

Lady Jaruwan Menthaga did not vacate the office as the Audit General after the Supreme Court found that Mr. Panya Dtandtiyarawong committed an offence and gave the reason that she was appointed by the King.

Conclusion

An official or government official who is, by law, given powers, duties and responsibilities to perform which may provide benefit and harm under the provision of the law shall cautiously perform his duties and if such act is outside the scope as prescribed by law causing any harm to another person, a penalty is particularly prescribed for such official. This is to prevent and provide opportunity for the injured person to make a complaint and claim his right against an illegitimate performance of duties.

The case of malfeasance in office (Ratchada land)

Police Lieutenant General Thaksin Shinnawatra

Pending case number at Aor Mor 1/2550

Decided case number at Aor Mor 1/2550

According to the fact that Lady Pojamarn Shinnawatra auction and bought a plot of land next to Tiam Ruammit road on Ratchadapisek area close to Thailand Cultural Center from the Rehabilitation and Improvement of the Financial Institutes Fund which was under the supervision of the Bank of Thailand, Ministry of Finance. Mr. Thaksin Shinnawatra, the then Prime Minister, signed to give consent to the spouse resulting in him being a party to the contract or being a stakeholder in the intention to purchase and sell contract, purchase of land contract and title deeds. Such manner was conflict of interest and conflict of public interest violating section 100(1) of the Organic Act on Counter Corruption B.E. 2542.

Ratchada plot of land

The Rehabilitation and Improvement of the Financial Institutes Fund is a state enterprise under the supervision of Bank of Thailand and the Bank of Thailand was under the supervision of Ministry of Finance. The Fund is a legal entity established for the purpose of rehabilitating and improving the system of financial institutes to gain security and stability during the time of the crisis of financial institutes whereby such institutes faced with a large amount of non-performing loans, lack of liquidity and revolving fund. If the government allowed such institutes to be bankrupted, a large number of people who conducted transactions with such financial institutes would be harmed and the economy of the country would collapse.

When Erawan Trust Fund Co., Ltd faced with a lack of financial liquidity, the Fund helped to rehabilitate; increase the fund; transfer the registered shares and pay for 75 per cent of the shares. This was to strengthen Erawan Trust's finance before considering a further sale of shares as the Erawan Trust was still in the red. It was, thus, necessary to ensure that the finance of trust was in the black.

As a result, on the 24th of August B.E. 2538, The Rehabilitation and Improvement of the Financial Institutes Fund purchased 2 plots of land from Erawan Trust as follows:

Plot 1	✦	plot 2
Next to Thailand Cultural Centre for the total		next to Tiam Ruammit road
of 18 title deeds for the amount of 85 rai		for the total of 13 title deeds
3 ngan and 65 tarangwa		for the amount of 35 rai 2 ngan and 69 tarangwa
for 2,749 million Baht		for 2,140 million Baht



For the total amount of 4,889 Baht

This rendered Erawan Trust to be able to use the profits earned from the sale of land to deduct from the existing accumulated loss of profit and to sell the shares.

B.E. 2544

Subsequently, in B.E. 2544, the Rehabilitation and Improvement of the Financial Institutes Fund amended the criteria for non –performing assets to calculate the loss of profit by using the then evaluated price of the Department of Land as the price reflecting the real value. This, as a result, reduced the price of land.

	Plot 1	✦	plot 2
B.E. 2538	2,749 million Baht		2,140 million Baht
	(Decreased by 52.28 per cent)		(decreased by 64.76 per cent)

B.E. 2544

1,310.10 million Baht

754.50 million Baht

This plot of land was infamously known as ratchadapisek land or “ratchada land”

On the 18th of March B.E. 2546, the Fund Administrative Committee approved the sale of assets of the Fund by auction and auctioned the ratchada land on the internet on the 22nd of July B.E. 2546 between 16.00 hrs- 16.30 hrs and prescribed the minimum price at 870 million Baht- the evaluated price of the Department of Land plus 15 per cent and the bidders shall place a deposit guarantee of 10 million Baht. There were 8 persons who registered their intention to purchase the land and 3 bidders who placed the deposit. However, upon the time of bidding, no person bid, the Fund, thus, terminated the auction.

Subsequently, the Fund conducted a survey on the radchada land to include all 13 title deeds by deducting the part for public purpose and separate into 4 title deeds for the total amount of 33 rai and 78.9 tarangwa. The Fund announced the tender and prescribed the date of submission of the bid on the 16th of December B.E. 2546 without specifying the minimum price but required a deposit guarantee of 100 million Baht. The announcement for such tender specifying the number of the title deeds newly surveyed on the 19th of December B.E. 2546. The media reported that Lady Pojamarn Shinnawatra, spouse of the then Prime Minister, would participate in the bid.

On the date of submission of the bid, there were 3 bidders as follows:

1. Lady Pojamarn Shinnawatra provided the power of attorney to her lawyer to submit the bid and proposed the price of 772 million Baht
2. Noble Developmnet PLC proposed the price of 750 million Baht
3. Land and House PLC proposed the price of 730 million Baht

Lady Pojamarn Shinnawatra was the highest bidder and the Fund Administrative Committee approved Lady Pojamarn Shinnawatra as the bid winner and Lady Pojamarn made the intention to purchase and sell contract with the Fund on the 17th of December B.E. 2546.

The sale of land contract and transfer of rights were made on the 30th of December B.E. 2546 by which Mr. Thaksin Shinnawatra, the Prime Minister, made a consent letter as the spouse together with a copy of state official card for the political office holder as the Prime Minister as an evidence.

Interest for themselves and other people

The beginning of this case came from a group of government officials at Ministry of Finance called “whistle blowers” submitted information of suspicious tendering of ratchada land to the Auditor General and later, the commission investigating the conduct which causes damages to the State appointed an inquiry sub-committee on the 31st of October B..E. 2549.

Observations from the investigation were:

- The fact that the Fund reduced the price of the land during the time which Mr. Thaksin Shinnawatra was the Prime Minister
- There was no minimum price of the land in the tender process which resulted in the price of the bid winner, Lady Pojamarn Shinnawatra, was lower than the minimum price of the land of the first auction
- The invitation to bid did not specify a complete details
- Increase of deposit guarantee to 100 million Baht from 10 million Baht in the first auction. Such high amount of deposit obstructed other potential bidders.

It was clear that the Fund was unable to sell the land under a fair competition resulting a loss of benefit from such sale of land.

To make matters worse, the fund administrative committee consisted of:

Governor of the Bank of Thailand the Chairperson

Permanent Secretary of the Minister of Finance deputy Chairperson

Between 5 and 9 Members of the committee as appointed by Minister of Finance

It was illustrated that every position was in the status that could be influenced by the Minister of Finance and the Prime Minister or government who supervised the Ministry of Finance.

The National Anti-Corruption Commission prescribed the Notification specifying that Prime Minister and Ministers are state officials prohibited to be a party to a contract or having interest in the contract made with a state agency which he performs duties as the state official who conducts supervision, control, inspection or legal proceeding under section 100(1) of the Organic Act on Counter Corruption B.E, 2542. In this regard, undertakings by a spouse shall be deemed undertakings of such office holder.

Police Lieutenant General Thaksin Shinnawatra was the Prime Minister and, as the official under the law, he had duties to manage or supervise the operation of the Rehabilitation and Improvement of the Financial Institutes Fund and yet he gave his consent to Lady Pojamarn Shinnawatra, the spouse, to propose a bid in the land auction, to make an intention to purchase and sale the land contract and a purchase of land contract with the Fund.

The inquiry sub-committee concluded the view that Police Lieutenant General Thaksin Shinnawatra committed an offence under section 100(1) of the Organic Act on Counter Corruption B.E. 2542 and Lady Pojamarn Shinnawatra was an accomplice in such offence under section 86 of the Penal Code.

The Court Ruling

On the 21st of June B.E. 2550, the Attorney-General, the plaintiff, submitted a case against Police Lieutenant General Thaksin Shinnawatra, the 1st defendant and Lady Pojamarn Shinnawatra, the 2nd defendant, to the Criminal Division for Political Office Holder of the Supreme Court in the offence of “ a state official being a party to a contract or having interest in the contract made with a state agency which he performs duties as the state official who conducts supervision, control, inspection or legal proceeding and being a partner or shareholder in a partnership or company which is a party to a contract made with a state agency for the benefit of himself or other person”. Such offence is an offence under the Organic Act on Counter Corruption B.E, 2542 and the Penal Code.

The Court accepted the submission of the case on the 10th of July B.E. 2550.

The Panel of Judges had a resolution of 7 to 2 votes that Lady Pojamarn Shinnawatra, the 2nd defendant, was not guilty and not liable to the penalty under section 122 with Police Lieutenant General Thaksin Shinnawatra, the 1st defendant. The Panel unanimously voted that the land was not the proceed of crime and had a resolution of 7 to 2 votes that the money Lady Pojamarn Shinnawatra, the 2nd defendant paid for the land was not the direct proceed of crime and, therefore, the land and money were not the assets to be forfeited under section 33(1) and (2) of the Penal Code.

According to the evidence and the inquiry, it was concluded that Police Lieutenant General Thaksin Shinnawatra, the 1st defendant, committed an offence and during

the time of the offence, he was the Prime Minister assigned to be administer the state affairs to ensure the maximum public interest. However, he violated the provisions of law despite being the head of the government and should have be a good model, be an apparent honest person and should have acted in accordance with good morals of the political office holder. The penalty shall not, therefore, be delayed.

The Panel of Judges also ruled that Police Lieutenant General Thaksin Shinnawatra, the 1st defendant. Committed an offence under section 100(1) paragraph three and section 122 paragraph one of the Organic Act on Counter Corruption B.E. 2542 and shall be liable to a 2-year imprisonment. In regard to other offences and requests shall be dismissed for Lady Pojamarn Shinnawatra, the 2nd defendant.

If the land were bought at the price of 2,140 million Baht

And sold at the price of 772 million Baht

How much would the loss be?

The case of an offence of a state official being a party to a contract made with a state agency (extra lottery with 2 ending digits and 3 ending digits)

(Police Lieutenant General Thaksin Shinnawatra)

Pending case number at Aor Mor 1/2551

Decided case number at Aor Mor 10/2552

Malfeasance in office causes harm to government agencies, for instance, in the case of project to issue extra lottery with 2 and 3 ending digits (legitimate lottery) by the Government Lottery Office causes damages to the Ministry of Finance and Ministry of Transportations.

The inquiry of the Committee investigating an act causing damages to the State as complained by the Ministry of Finance and Ministry of Transportations led to a submission of a case to the Criminal Division for Political Office Holder of the Supreme Court and found that Police Lieutenant General Thaksin Shinnawatra, the Prime Minister, committed a criminal offence.

Project on issuance of extra lottery

On the 18th of June B.E. 2546, the Committee on the Government Lottery convened the meeting and had a resolution to approve the principle relating to the project of issuance of extra lottery with 2 and 3 ending digits (legitimate lottery) and, subsequently, asked the Ministry of Finance to consider and to ask for the approval from the Council of Ministers in the 3 principles as follows:

1. to allow the Government Lottery Office to issue extra lottery 2 and 3 ending digits (legitimate lottery);
2. to disburse the money after deduction of the operational expenses under the project to the society interest;
3. to waive and deduct the taxes in accordance with the Royal Decree issued by virtue of the Revenue Code on revenue exemption (No. 310) and gambling tax under the Gambling Act B.E. 2478

On the 8th of July B.E. 2546, the Council of Ministers had a resolution to approve as proposed by the Ministry of Finance and undertake the issuance of extra lottery 2 and 3

ending digits (legitimate lottery) under such project by starting from the 1st of August B.E. 2546 until the 16th of November B.E. 2549.

Government Lottery Office started to disburse the money earned from the project for the purpose of society interest from February B.E. 2547 until the 15th of September B.E. 2549 for the amount of 16,000 million Baht.

Government Lottery Office

Government Lottery Office established for the purpose of earning money for the state by selling the government lottery with the clear allocation of awards as follows:

- 60 per cent of the earning from the sale of government lottery shall be disbursed for the award
- 28 per cent of the earning from the sale of government lottery shall vest in the state
- 12 per cent of the earning from the sale of government lottery shall be disbursed for the administrative work

The project of extra lottery with 2 and 3 ending digits (legitimate lottery) did not specify the clear proportion of earning and expenses. Despite claiming that the issuance of extra lottery was to disburse money for the national interest, it appeared that the issuance of extra lottery was not specified in accordance with the practice of Government Lottery Office.

Thus, the issuance of such extra lottery was not the Government Lottery or non-profit lottery under the Act on Government Lottery Office which was not at risk of losing money as the specification of payment of award who won the prize of 2 and 3 ending digits without

specifying the amount of award. This led the Government Lottery Office to lose the money for the total of 7 installments from the issuance of 80 installments for the amount of 1,600 million Baht.

For this reason, it could not be exempted from taxes under the Royal Decree on the exemption of revenue code, B.E. 2540 and the Ministerial Regulation, B.E. 2503 and B.E. 2543

Moreover, the fact that the earning from the issuance of lottery after the deduction of expenses was not submitted to the Ministry of Finance was incorrect even if the money was used in projects for public interest such as education, public health, religion and other social matters, this shall be deemed to violate the public administration.

Non-profit lottery or raffle

Public project which the earning from the issuance of lottery was disbursed was in the manner of facilitating populism of the majority political party.

The issuance of lottery in such manner was not the issuance of non-profit lottery or government lottery but was the issuance of raffle with the approval of the Ministry of Interior which was the violation of the following laws:

- the issuance of raffle was a violation to section 5 and section 9 of the Act on Government Lottery Office, B.E. 2517 as it fell outside the purpose of Government Lottery Office.
- bring the earning to the society can be done by several means. Some are legitimate while some are not and this means was not legitimate violating section 4 and section 13 of the Treasury Act B.E. 2491, section 23 and section 27 of the Act on Government Lottery Office B.E. 2517 which provide that the money from the state agencies after the deduction of expenses shall be submitted as income of state.

- reduction and exemption of taxes violated Royal Decree issued by virtue of the Revenue Code on revenue exemption (No. 310) B.E. 2540 section 5 *quarter decies* (2) and the Ministerial Regulation issued by virtue of Gambling Act B.E. 2478

Harm to Thai people

From the 25th of September B.E. 2546 until the 14th of September B.E. 2549, Government Lottery Commission approved the money from the project of issuance of raffles with 2 and 3 ending digits (legitimate lottery) for the purpose of society interest for the amount of 13,679,596,802.79 Baht and paid Royal Thai Police for the amount of 2,347,908,433.15 Baht. The total amount was 16,027,505,235.94 Baht. In this regard, during the trial, the government agencies, obtaining the money, returned it to Government Lottery Office for the amount of 1,165,250,370 Baht. The remaining 14,862,254,865.49 Baht was not returned.

The damage occurred to the Ministry of Finance as the officials did not deduct the withholding tax from the discount of extra lottery and did not receive VAT from the selling price for the amount of 8,970,740, 910.22 Baht.

The damage from which the Ministry of Interior did not receive the tax under the Gambling Act B.E. 2478 which was supposed to be 10 per cent of the price of the lottery. However, it was deducted 0.5 per cent and amounted to 12,792,152,581.50 Baht.

The damage which Bangkok Metropolitan Administration was the income from local tax of 2.5 per cent of the amount of money which had to pay for tax equaled 336,635,594.25 Baht.

The total amount of damage to the state was 36,961,783,951.91 Baht.

Performance of duties which violated the law

Police Lieutenant General Thaksin Shinnawatra and the Council of Ministers including the Government Lottery Commission had a resolution approving the issuance of extra lottery with the ending of 2 and 3 digits (legitimate lottery) in the manner of raffles and such act was the illegitimate performance of duties which caused damages to Government Lottery Office as the assets and personnel of Government Lottery Office under such project. The act also illustrated an intention to seek illegitimate benefit and, thus, was a corruption under section 1(1) and section 157 respectively.

In respect to having the resolution to disburse the state money without any right to do so or even to have the resolution to do so, Police Lieutenant General Thaksin Shinnawatra, the Prime Minister, had duties and powers to administer the public affairs under the Act on Public Administration B.E. 2504 supervising the Government Lottery Office. Thus, it was a violation to section 23 and section 27 of the law on Government Lottery Office B.E. 2517 by taking the interest for the benefit of himself or other person which was also an offence under section 152 of the Penal Code.

In regard to an exemption or reduction of taxes, Police Lieutenant General Thaksin Shinnawatra, as the Prime Minister, together with the Council of Ministers and Government Lottery Board had a resolution to allow exemption of taxes. This was a performance of duties which caused damages to Government Lottery Office and malfeasance in office under section 157 of the Penal Code.

The trial

In accordance with the evidence from the consideration of the Criminal Division for Political Office Holder of the Supreme Court in conjunction with the result of the inquiry of the Committee on the investigation of an act causing damages to the State as claimed by the Ministry of Finance and the Ministry of Interior, and the National Anti-Corruption Commission, during the trial, submitted a request to be a Party to the case instead of the Committee on the investigation of an act causing damages to the State,

Police Lieutenant General Thaksin Shinnawatra failed to turn up on the date of the first trial, the Court, thus, ordered an arrest warrant and disposed of the case temporarily.

Conclusion

Any conduct which relies upon the powers and duties in office even if it is argued that such conduct is for the benefit of the society and violates the law, the person is unavoidably found to be liable for such offence.

The corruption case of conflict of interest and unusual wealth

(Police Lieutenant General Thaksin Shinnawatra)

Pending case number at Aor Mor 14/2551

Decided case number at Aor Mor 1/2553

Confliction between the personal interest and public interests or “conflict of interest” is highly sensitive especially in the case of exercising the state power, such as, head of the government, policy planning, approval and omission, support and promotion through a government agency under the supervision which facilitates the benefit of his or his family or cronies’ businesses shall be an illegitimate conduct and a criminal offence. In such case, Court judgment would be to forfeit and to vest those properties in the State like the case of Police Lieutenant General Thaksin Shinnawatra.

Head of the government

Police Lieutenant General Thaksin Shinnawatra was in office as the Prime Minister for two consecutive terms.

The first term was from the 9th of February B.E. 2544

The second term was from the 9th of March B.E. 2548 until the 19th of September B.E. 2549 when the Administrative Reform Group under the democratic regime with the King as the Head of State began with the coup d’ etat.

One of the arguments claimed by the Administrative Reform Group under the democratic regime with the King as the Head of State for overthrowing the government was that the public administration was corrupt and malfeasance in office was widely conducted, the Group, thus, appointed the Committee on the investigation of an act causing damages to the State to conduct an investigation of corruption act by the government under the supervision of Police Lieutenant General Thaksin Shinnawatra. The Committee spent 1 year and 9 months conducting such investigation and concluding 24 case files.

One of the most important cases was the unusual wealth. During the time in office as the Prime Minister, he was still a shareholder of Shin Corporation PLC and abused his powers by issuing

several measures which facilitated the benefit of Shin Corporation PLC and its subsidiaries for the total of 7 cases. This led to an increase in share prices of such firms before selling 1,149 million shares to Temasek in Singapore for the amount of 69.70 thousand million Baht. Upon calculating together with the dividend gained between B.E. 2546- 2548, the total amount was 76.60 thousand million Baht.

Table 16

Shin Corporation PLC

Specific information

Former name: Shinnawattra Computer and Investment Co., Ltd

Changed to: Shinnawattra Computer Co., Ltd

And changed to: Shinnawattra Computer and Communications Co., Ltd

On the 13th of November B.E. 2535, it was transformed to PLC

Registered capital: 5,000,000,000 Baht

The type of business operation:

- obtaining a direct concession in the satellite project from the state under the contract to operate the communication satellites within the country
- being a majority shareholder in Advanced Info Service PLC or AIS
- being a shareholder in Shin Satellites PLC or Thaicom PLC
- operating the business by being a shareholder in subsidiary companies which operated mobile telecommunications, satellites and others.

Advanced Info Service PLC (AIS)

Specific information

Type of business operation:

- obtaining a concession from the state under the contract to operate mobile phone services from the Telephone Authority of Thailand
- being a majority shareholder of over 90 per cent in Digital Phone Co., Ltd (DPC)

Digital Phone Co., Ltd (DPC)

Specific information

Type of business operation:

- obtaining a concession to operate mobile phone services from Communications Authority of Thailand (currently is a CAT Telecom PLC)

The Attorney General submitted a case to the Criminal Division for Political Office Holder of the Supreme Court to order a forfeiture of properties of Police Lieutenant General Thaksin Shinnawatra to vest in the State as such properties were proceeds of the offence of conflict of interest between the personal and public interests during the time in office as the Prime Minister.

Table 17 shareholding of Shin Corporation PLC

As of the 10 th of April B.E. 2541	
Police Lieutenant General Thaksin Shinnawatra	Numbers of shares held: 32,930,000
Lady Pojamarn Shinnawatra	Numbers of shares held: 34,650,000

Mr. Banpoj Damapong	Numbers of shares held: 6,847,395
Total	74,417,395

As of the 16 th of March B.E. 2542	
Police Lieutenant General Thaksin Shinnawatra	65,840,000
Lady Pojamarn Shinnawatra	69,300,000
Total	135, 140,395
48.75 per cent of the total shares	

As of the 11 th of June B.E. 2542	
Police Lieutenant General Thaksin Shinnawatra	
Transferred 32,920,000 shares	
To Ampearl Rich Investment Co.,Ltd	

As of the 1 st of September B.E. 2542	
Police Lieutenant General Thaksin Shinnawatra	Transferred 32,920,000 shares
To Mr. Panthongtae Shinnawatra	
Transferred	2,000,000 shares
To Ms. Yingluck Shinnawatra	
Lady Pojamarn Shinnawatra	Transferred 42,465,000 shares
To Mr. Panthongtae Shinnawatra	
	Transferred 26,825,000 shares
To Mr. Banpoj Damapong	

As of the 9 th of September B.E. 2545 and the 7 th of May B.E. 2546	
Lady Pojamarn Shinnawatra	Transferred 440,000,000 shares
To Ms. Pinthongta Shinnawatra	

As of the 20 th of January B.E. 2549	
Ample Rich Co.,Ltd	Transferred 164,600,000 shares
To Mr. Panthongtae Shinnawattra	
	Transferred 164,600,000 shares
To Ms. Pinthongta Shinnawattra	

The total of shares transferred by Police Lieutenant General Thaksin Shinnawattra and Lady Pojamarn Shinnawattra to other persons was: 1,149,490, 150

This was calculated as 28 per cent of the total shares.

In addition, in the account showing the particulars of assets and liabilities, Police Lieutenant General Thaksin Shinnawattra did not declare the shares in Shin Corp held under the name of himself and spouse to the National Anti-Corruption Commission

Facilitating the benefits to Shin Cooperation PLC and its subsidiaries

During the time in office as the Prime Minister, Police Lieutenant General Thaksin Shinnawattra performed and abused his duties to facilitate the benefits to Shin Cooperation PLC and its subsidiaries in 7 cases as follows:

Case 1: issuance of the law transforming the concession in the telecommunications sector to excise duty

Case 2: amendment of the contract to reduce the proportion of income of mobile phones in the form of prepaid payment to AIS

Case 3: amendment of the contract to allow AIS to use the roaming and to deduct expenses from the revenue as well as to reduce the rate for using the roaming

Case 4: approval of IP star satellite by amending the technical conditions of reserved satellite of Thai com 3 which was Thai com 4, an IP star satellite, used for international communications. This was outside the concession contract.

Case 5: amendment of the concession contract to reduce the numbers of shareholders in Thai Com

Case 6: approval of the disburse of compensation

Case 7: approval the Burmese government to receive the loan from EXIM Bank to purchase goods and services of Thai Com Co., LTd

Case 1: issuance of the law transforming the concession in the telecommunications sector into excise duty

Police Lieutenant General Thaksin Shinnawatra abused his powers and duties as the Prime Minister through the legislative procedure to amend the rate of excise duties by reducing and exempting the excise duties for the business operation of mobile phone services from 50 per cent to 10 per cent. To make matters worse, on the 11th of February B.E. 2546, he approved the deduction of excise duties from the concession fee or proportion of income which the Party to concession contract had to provide to the State. This was to facilitate the benefit to Shin Corp and its subsidiaries and obstructing a new business operator from entering into the competition in the market.

Such act resulted in a decrease in the concession fee under the contract of the State and injured the State. It also facilitated the interest of his and his cronies' business operations and distorted the exercise of legislative powers- a tool to obstruct telecommunication business operation of other competitors.

It was clear that the direct purpose was for AIS as, during the year B.E. 2546, AIS had to pay the concession to the Telephone Authority of Thailand for the rate of 25 per cent but the amendment of the law rendered AIS to pay the concession fee of 15 per cent.

Case 2: amendment of the contract to reduce the proportion of income of mobile phones in the form of advanced payment to AIS

In B.E. 2542, AIS started mobile phone services in the form of pre-paid under the name "one-to-call" by which the Administrative committee specified that the proportion revenue submitted to the Telephone Authority of Thailand (TAT) shall be 25 per cent and 30 per cent in the 16th year of the concession (October B.E. 2548 – September B.E. 2549)

AIS proposed to TAT for a reduction of proportion revenue and such matter was submitted to the TAT Board which then led to an agreement annexed to the main contract on the 15th of May B.E. 2544. The content of the annex as that AIS shall pay the proportion revenue to the Telephone Authority of Thailand (TAT) for the unchanged rate of 20 per cent throughout the contract.

The annex to such contract was not submitted to the Strategic Plan Committee under section 22 of the Act on Private Participation in State Undertakings Act. B.E. 2535 (1992) and was not submitted to the Council of Minister for consideration.

Moreover, the reduction of such revenue did not render AIS to reduce the services fee to the public. It did not encourage more service users which would, in return, increased the revenue of TAT. On the contrary, AIS made more profits due to a deduction of concession fee and reached the point where it would be quicker than its competitors in making profits and paying the dividend to shareholders more than its competitors. This resulted in a higher price of shares of AIS and attracted the investors.

The deduction of proportion revenue submitted to TAT from the amendment of contract meant that TAT lost the income which it was supposed to obtain for the amount of 14,213 million Baht (from B.E. 2544 until B.E. 2549) and the future damages of 56,658 million Baht (October B.E. 2549- September B.E. 2559).

TAT lost approximately 70,872 million Baht of its income.

Police Lieutenant General Thaksin Shinnawatra participated and obtained the benefit from such case as he was the Prime Minister who had the powers commanding and supervising TAT and facilitated the benefits to AIS which Shin Corp held 42.90 per cent in which Police Lieutenant General Thaksin Shinnawatra was a shareholder. This also benefited his personal interest.

Case 3: amendment of the contract to allow AIS to use the roaming and deduct the revenue including reducing the rate for using roaming

Amendment of the contract to allow the business operation of mobile phone services to use roaming and to deduct the revenue and the case of reduction of the rate for using the roaming were to benefit Shin Corp and AIS can be divided into 2 cases as follows:

Case 3.1 Amendment of the contract to allow the business operation of mobile phone services to use roaming and to deduct the expense from its revenue

On the 27th of March B.E. 2553, AIS participated in the business operation of mobile phone with TAT under the 20-year contract by which it had to pay the annual remuneration as prescribed in the conditions and subsequently, on the 20th September B.E. 2539, the contract was extended to 25 years.

AIS Co., Ltd applied for the operation of mobile phone services under roaming by which the benefits shall be shared to TAT for the rate under the main contract. However, on the 21st of August B.E. 2545, AIS requested for a deduction of the use of network from the revenue before giving the share to TAT. TAT Board viewed that the revenue from other operators using AIS network shall be calculated in the proportion revenue under the main contract and the expenses of the AIS from using the networks of other operators shall be burden on AIS to expend its network to ensure the services.

AIS submitted a request to amend the principle of using the networks on the 26th of August B.E. 2545 and the TAT Board approved such request by AIS on the 5th of September B.E. 2545.

To avoid the expenses incurred and burden it on TAT resulted in TAT losing 6,960 million Baht from October B.E. 2545 until April B.E. 2551.

Case 3.2 the reduction of the expenses of roaming between TAT and DPC under the contract to operate the digital radio communication services (Digital PCN or Personal Communication Network)

The contract lasted for 17 years and DPC shall pay the minimum remuneration of or under the rate of whichever is higher.

In December B.E. 544, AIS became a majority shareholder of over 90 per cent of the total shares of DPC and 90 per cent of members of the DPC executive Board was from AIS. These two firms could be seen as the company. On the 27th of November B.E. 545, CAT approved DPC to use the network with AIS by which CAT would receive the revenue of 2.10 Baht per minute which, subsequently, DPC submitted a letter to CAT requesting for a reduction of the remuneration to 1.10 Baht.

On the 28th of June B.E. 2549, CAT approved the rate to 1.00 to 1.10 Baht per minute and this caused 796 million Baht damage to CAT.

The annex to the concession agreement and the reduction of the remuneration for network usage was not correctly preceded under the Act on Private Participation in State Undertakings B.E. 2535.

Case 4: approval of IP star satellite by amending the technical conditions of reserved satellite of Thai com 3 which was Thai com 4, an IP star satellite, used for international communications. This was outside the concession contract.

The project of internal satellite was for the purpose of internal communication which the Ministry of Transportations was the agency administrating the main satellite and the system of reserved satellite.

Shin Corp. received the concession agreement in B.E. 2534 and, under such agreement, it had to send the satellite Thai Com 1 and 3 to the space as the main satellites and send Thai com 2 and 4 as the reserved satellites for the purpose of internal communications. In this regard, any change of administrative plan under the contract shall be approved by the Ministry of Transportations.

Table 3 Comparison between Thai Com 3 and IP star satellites

Thai Com 3	IP Star
Frequency channel C-Band of 25 transponders	None
Frequency channel Ku-Band of 14 transponders	KU- Band in the form of sport beam 84 beams and chef beam 3 beams and broadcast beam of 7 beams
No Ka-Band	Yes

Thus, IP star satellite was a new satellite which was not able to substitute the reserved satellite of Thai Com 3.

Shin Satellite PLC or Thai com was established under the agreement to administer the project and it sent Thai Com 1 into the space in B.E. 2536 and Thai Com 2 in B.E.

2537 under the plan annexed to the concession agreement. It was approved to send Thai Com 3 into the space before the time prescribed in the plan as requested by Thai Com in B.E. 2540 and planned to send Thai Com 4 into space as the reserved satellite in B.E. 2541.

Upon the prescribed time for sending Thai Com 4 into space, Thai Com Co., Ltd requested for a delay twice and requested for an amendment of the qualification of Thai Com 4 to IP Star satellite to be used as the reserved satellite under the agreement.

Ministry of Transportations requested the Department of Postal Services to study the technical conditions of IP Star and the study found that IP star was the new satellite and not a reserved satellite. The result of the study was considered in the committee co-operating the satellite project for internal communications, the meeting had a resolution that it was a main satellite- the same view as the Department of Postal Services.

Subsequently, the resolution of the meeting of the committee co-operating the satellite project by amending and approving IP Star as the reserved satellite as requested by Thai Com and on the 24th of September B.E. 2545, the Minister of Transportations approved as requested.

IP Star was sent into the space on the 11th of August B.E. 2548 as the reserved satellite of Thai Com 3 despite not being able to substitute Thai Com 3 as it used different technologies and provided 94 per cent of the internet usage in foreign countries while providing only 6 per cent of the internet usage in the country. It is, therefore, a satellite outside the concession agreement.

Such approval was not legitimate and facilitated the benefit to Thai Com without complying with the concession agreement. The State lost 4,000 million Baht and was not provided with Thai Com 4. Besides, the IP star project was a new project falling outside the scope of the concession agreement and should have, thus, be tendered in a fair competition.

The illegitimate approval was, therefore, to facilitate the benefits to Thai Com of Police Lieutenant General Thaksin Shinnawattra. The value of the project was 16,000,000,000 Baht.

The approval was speedily and suspiciously preceded which rendered the State to lose 16,000 million Baht.

Case 5: amendment of the concession contract to reduce the numbers of shareholders in Thai Com

The agreement to operate the business of satellite within the country between Shin Corp PLC and the Ministry of Transportations specified the conditions in clause 4 regarding the establishment of new company that Shin Cooperation PLC shall be the majority shareholder of the newly established company to administer the satellite project and shall hold not less than 51 per cent of the total shares.

On the 27th of October B.E. 2547, the Ministry of Information and Communications Technology (work transferred from Ministry of Transportations under the reform on public administration law) approved the amendment of the agreement to operate the satellite for communications within the country, reducing the proportion of the shares held by Shin Cooperation PLC in Thai Com, a newly established company under the agreement, from no less than 51 per cent to no less than 40 per cent as requested by Thai Com with the reason that it needed a great amount of capital to invest in the IP star satellite project. It, thus, had to find an alliance for such investment.

In reality, such amendment of the agreement resulted in the situation where an increase of capital in any project especially in an IP star satellite project which needed the capital of 16,000 million Baht, Shin Corp, as the majority shareholder of 51 per cent, did not need to raise money or take any loan to maintain the 51 per cent shares and the reduction of the shares affected the confidence and stability in undertaking a project of Shin Corp PLC, as the person obtaining the concession agreement which should have had the total absolute management powers.

The approval without an approval of the Council of Ministers was, therefore, an illegitimate approval and was to facilitate Shin Corp of Police Lieutenant General Thaksin Shinnawatra.

Case 6: approval of the disburse of compensation of Thai Com 3 Satellite to rent foreign channels

The agreement to operate the business of satellite within the country between Shin Corp PLC and the Ministry of Transportations specified conditions to provide a reserved satellite and to insure every kind of assets including specifying clearly the conditions for management of damaged or loss properties.

In the case where damage occurs, it shall be quickly repaired or in the case of loss, it shall be replaced promptly. Ministry of Transportations shall provide compensation obtained from the Insurance Company, when such case occurs, to Thai Com to repair or replace such property.

In B.E. 2546, Thai Com 3 was damaged and Thai Com requested for some parts of the compensation obtained from the insurance company to rent a foreign satellite at the rate of 6.70 million US dollars to replace the original channel and used as the reserved satellite.

This request was contradictory to the concession agreement as Thai Com violated the agreement. There was no reserved satellite if any problem occurred with Thai Com 3 satellite. Thus, Thai Com shall bear all the operational cost and ensure that there were sufficient and continuous satellites in operation. The company had no right to disburse the compensation money to rent foreign channels but should have spent all the compensation money of 33 million USD to build a new satellite as a replacement as specified in the concession agreement.

The Ministry of Information and Communications Technology approved as requested by Thai Com and that was an illegitimate approval and facilitated benefits for Thai Com. This resulted in Thai Com not needing to raise money or take any loan to pay for the rental fee of foreign channels to replace Thai Com 3 satellite and injured the State as the compensation should have been under the supervision of the State and be maintained as the security deposit.

Case 7: approval the Burmese government to receive the loan from EXIM Bank to purchase goods and services of Thai Com Co., Ltd

In B.E. 2546, Thailand under the leadership of Police Lieutenant General Thaksin Shinnawatra showed that it was ready to provide financial assistance to the Union of Myanmar after attending the ASEAN summit in Bali, Republic of Indonesia. The government claimed that it was an official discussion but did not appear in the minute meeting. The assistance in the form of loan of 3,000 million Baht for the Union of Myanmar was for the purchase construction machines and equipments from Thailand for the construction of infrastructure.

Subsequently, Thai government increased the amount of assistance to 4,000 million Baht under 12 year loan and reduced the rate of interest from 5.75 per cent to 3 per cent and extended the time for free interest from 2 years to 5 years. EXIM Bank was to lend such money.

Nonetheless, providing a low interest rate loan below the cost is not the purpose of the establishment of Export-Import Bank of Thailand under the Export-Import Bank of Thailand Law. EXIM Bank, as a result, requested for a protection against damages under section 3 of the Act. The Council of Ministers had a resolution to approve and order the Ministry of Finance to allocate annual budget to compensate the Bank for the damaged cost of approximately 140 million Baht and to compensate the differences of the interest obtained from the government of the Union of Myanmar and the cost of the interest of the Bank which is approximately 670 million Baht.

After the government of the Union of Myanmar received such loan, the Commercial Bank of the Union of Myanmar requested an approval for a procurement contract between Thai Com and Ministry of Communications of the Union of Myanmar to purchase IP Star equipments and tools for operating telephone services in the country for the amount of 15 million USD or approximately 593.5 million Baht. In such case, EXIM Bank agreed and disbursed the loan to Thai Com directly.

During such period of time, Shin Corporation PLC was the majority shareholder of Thai Com holding 51.48 percent of the total shares, foreign policy undertaken for the benefit of Thai Com by which Police Lieutenant General Thaksin Shinnawatra, family and cronies also benefited. The purpose of proving such loan was to procure the development of telecommunications system from the government of the Union of Myanmar. This caused the Export-Import Bank of Thailand and Ministry of Finance damages.

Forfeiture of assets

In all 7 cases, there was evidence illustrating that Police Lieutenant General Thaksin Shinnawatra abused the state powers during the time in office as the Prime Minister to benefit his business. The committee on investigation of conduct causing damages to the State found that the money gained from the sale of shares, dividend and interest of Shin Corporation PLC was the assets obtained from a conduct under the conflict of interest between the personal and public interest. It was the illegitimate gain from the performance of duties or abuse of powers which was an unusual wealth and the committee on investigation of conduct causing damages to the State ordered a forfeiture of money and assets including their fruits until the Court make the final ruling.

Conclusion

Criminal Division for Political Office Holder of the Supreme Court ruled that the money from the sale of shares and dividends of Shin Corporation PLC for the amount of 46,373,687,454.70 Baht including the fruits shall vest in the State. It also enforced the judgment and 49,000 million Baht vested in the State.