

Problems in Trans-Boundary Recovery and Return of Assets or Proceeds of Corruption from the Perspective of Thailand

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1. Introduction

In the wake of recent developments in international law and state practice with regard to the worldwide combat against corruption, a global consensus has been reached that elimination of the incentive to commit corruption via the trans-boundary recovery of diverted assets and their proceeds is, *inter alia*, one of the most efficacious means to deter corruption and deprive offenders of financial resources that could be used to commit other crimes and corruption more discreetly and with more subtlety.¹ This conviction is unequivocally and explicitly shared by Thailand. Hence, this country recently developed a two-pronged strategy to tackle problems in the trans-boundary recovery and return of looted assets and proceeds of corruption. The first strategy deals with problems in the recovery and return of assets and their proceeds from overseas. The second deals with problems of such recovery and return from Thailand by a foreign country. As far as Thailand is concerned, both strategies will always be confronted with several hurdles in the domestic laws and regulations of Thailand and in international law. In many ways these hurdles are similar to and different from each other. Although they are essentially legal problems, whether their outcome would be positive or negative often is

contingent upon the political will and motivation of the persons holding the leverage of the policymaking authority of the countries involved and upon the preparedness of the law enforcement agencies of such countries to address them.

With regard to the zeal and actions of Thailand in this matter, the iconic turning point was the resolve of the Thai government to accede to the UNCAC in order to halt rampant corruption and to rectify the country's tarnished image. The author will endeavor to single out and individually address many salient elements that obstruct and frustrate the achievement of objectives in this area, especially regarding the inadequacy of Thailand's institutional and legal frameworks to deal effectively with the impediments inherent in this realm, with a view to proposing pragmatic and workable solutions thereto.

2. Hurdles for Thailand

The problems that Thailand faces in the trans-boundary recovery of assets and their proceeds are substantially the same as in other third world countries: to wit, the inadequacy of preparedness in the country's legal and institutional frameworks, and lack of financial resources and the expertise required to conduct an operation of this kind efficiently. In effect, once it accedes to the Convention, it is foreseeable that Thailand will encounter both legal and practical problems among other hurdles in the trans-boundary recovery and return of the assets and proceeds of corruption from abroad. The legal problems that it may encounter could be both in international law and the domestic laws of the countries from which it seeks the recovery and return of the assets and proceeds of corruption, as well as in its own domestic laws. The practical problems and how to deal with them will be contingent on the policies, resolve and political will of all the countries involved in this operation.

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¹ That is the reason why the United Nations Convention against Corruption (UNCAC) regards the return of looted assets as a fundamental principle of this Convention, and the States Parties to it are required to afford one another the widest cooperation and assistance in this regard (cf. Article 51 of UNCAC).

2.1 Legal Problems for Thailand

Given the extraneous nature of this type of operation, the legal problems and complications should normally be in international law, such problems in the domestic laws of Thailand and of the countries from which it seeks the recovery and return of such assets and proceeds, could nonetheless be of substantial importance too. This is because they can give rise to several dilemmas for policymakers and influence the available options concerning the strategies to be adopted in order to pursue the best course of action.

With regard to problems in international law, the very first of these that Thailand will encounter is that implementation of certain undertakings under the UNCAC will require special agreements between Thailand and the countries from which it seeks to recover assets and proceeds. For instance, the enforcement of the foreign confiscation order or allowing other States Parties to the Convention to seek a confiscation order in a domestic court, and parallelly where foreign and domestic orders are sought to freeze or seize assets, mutual legal assistance treaties (MLATs) and agreement on the recognition of foreign judgments and confiscation orders are needed. The most significant problem for Thailand in this respect is that, to date, the country has never concluded treaties on the recognition of foreign judgments and confiscation orders with any country; it has concluded mutual legal assistance treaties with only a handful of countries. Thus, Thailand can request legal assistance for the recovery of the loot of corrupt high-level officials and politicians only from such countries whose legislation permits them to give legal assistance to foreign countries, even in the absence of MLATs, provided that problems related to mutual recognition of foreign judgments and confiscation orders could also be overcome.

With regard to the legal problems associated with Thailand's domestic laws, although state practice has evolved from the earlier principle that the confiscating state had exclusive proprietorship over the confiscated assets and proceeds, under the Convention the requesting state could call on the confiscating state

to "consider" returning the assets and proceeds to the requesting state. However, any such consideration is still entirely discretionary and the confiscating state is allowed to deduct reasonable costs from the proceeds before they are returned. The requesting state may nonetheless encounter reluctance from the confiscating state to cooperate fully in the assets recovery process. Hence, a practice has been adopted of offering an incentive in terms of "asset sharing" in addition to the deduction of reasonable recovery costs to ensure the full cooperation of the state making the request. Although from a practical point of view, such a practice may be justifiable, with the rationale being that without personal interest in the deal the confiscating state may not be zealous in cooperating, the adoption of such a practice may not be altogether in keeping with the prevailing Thai legislation and therefore not entirely feasible legally. From the standpoint of Thailand, in cases of "grand corruption" the whole country is deemed to have been victimized en masse, so the recovered funds must be paid back to the government and used for the betterment of the country. As the country's assets, the recovered funds must be disposed of under the financial laws and regulations of the country; however, the current financial laws and regulations do not provide for "asset sharing." Therefore, disposal of part of the recovered assets for such a purpose may not be legally "doable." Asset-sharing would, therefore, require the enactment of implementing legislation, failing which the problem of seeking the cooperation of a country from which Thailand seeks to recover assets would remain a stumbling block.

Moreover, even the mere accession of Thailand to the UNCAC, which is a fundamental legal framework for international assets recovery, may precipitate legal problems with regard to both the domestic laws of the country and international law. In the context of international law, in view of the fact that the Thai legal system has adopted the "dualist approach,"²

² According to the "dualist" school of thought, an international treaty requires implementing legislation to be applicable on an internal plane.

implementing legislation would be required if there is no enabling legislation to cover all commitments made under a convention such as the UNCAC. Even if the inability to implement some commitments of the Convention could be tolerated on the international plane, intransigence on the internal plane may be politically motivated and could thwart Thailand's accession to the UNCAC, especially under the prevailing political circumstances. Thus, the accession of Thailand to the UNCAC is unlikely in the near future, unless the government administration could persuade Parliament to condone some imperfection in this matter. Nonetheless, the trans-boundary recovery of assets would still be possible, but only in certain cases and only on a make-shift basis. Several safe havens exist that corrupt officials and politicians could still choose for hiding their loot and the proceeds of their corruption; there are also shortfalls in Thailand's efforts to eradicate corruption that would also serve to frustrate recovery efforts.

2.2 Practical Problems for Thailand in the Recovery of Assets from Abroad

As for the practical problems and impediments, the major factors that could serve as a drawback for Thailand in its trans-boundary recovery attempts to have the diverted assets and their proceeds returned from abroad are often related to the policies and political will of the country involved. Such problems may also be due to the inadequacy of the country's preparedness in terms of human resources; for example, the specialized technical expertise required in this field is extremely limited and normally provided by private lawyers whose services are very expensive. The inadequacy of Thailand's preparedness is also related to its legal and institutional framework in this field of international cooperation, which is relatively new for Thailand. In effect, even at this point in time, Thai public authorities are still disputing over their respective legitimacy to be the competent authority of the country for the recovery of the assets and proceeds of corruption. To date, three public authorities have been dealing with this matter separately, namely the Office of the

National Anti-Corruption Commission (NACC),³ the Office of the Attorney General, and the Anti-Money Laundering Office (AMLO), but only on a make-shift basis, since none of them could legitimately claim to be officially and exclusively in charge of this mission. In this connection, the Office of the Attorney General asserts that, since it as the "National Central Authority" has been conferred by law the task of performing duties related to extradition, it *de facto* also acts as the international contact point for the trans-boundary recovery of looted assets and proceeds of the crime. This is a parallel function in that the person whose extradition is sought would have transferred such assets overseas; therefore, the recovery of those proceeds from crime is closely related to the extradition of the person concerned.⁴ The thinking is that it should, therefore, be allowed to continue to perform the task because this parallel function of its duties is after all already known to foreign countries. Similarly AMLO contends that it would be more suitable to serve as the responsible authority for the recovery of such assets and proceeds, especially those related to corruption owing to the fact that, in cases of so-called grand corruption, corrupt high-ranking officials and politicians often try to conceal and defeat the tracing of diverted assets through money laundering. Thus, as specialists with expertise in this area, AMLO would be more apt to out-perform any other public authorities in recovering looted assets and the proceeds of corruption. In spite of the pertinence of these arguments, the NACC seems to have even more compelling arguments since effecting the recovery and return of assets and the proceeds of corruption is widely recognized as the most efficient deterrent to corruption. The Commission forms an essential part of the national anti-corruption apparatus, and the tasks

³ The NACC was established by virtue of the organic law under Section 18(8) of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007).

⁴ Because a safe haven for the looted assets and their proceeds and for the offender is an incentive for the commission of further crimes.

which are conferred upon the NACC by organic law prevail over any other parliamentary acts. The NACC should therefore be the competent authority for the trans-boundary recovery of assets and their proceeds, or at least the focal point for the coordination of such efforts among Thai public authorities and the contact point for international cooperation in asset recovery operations. Another argument in favor of the NACC in this connection is that the Commission is, by resolution of the Council of Ministers, in charge of Thailand's accession to the UNCAC and its subsequent implementation. Consequently, given that the recovery and return of looted assets and their proceeds form an integral part of the fundamental principles of the Convention, the NACC should logically be the "Central Authority," rather than a mere focal point in this matter. *A fortiori*, as NACC is the responsible authority for the adherence of the country to the UNCAC, who else would other States Parties to the UNCAC contact if not the NACC?

Currently, Thailand is still working out a cogent solution to this controversial problem, the awaited outcome of which is being temporarily stalled by the ongoing political unrest in the country. Pending a positive outcome of this endeavor, the actions of the Thai authorities in the trans-boundary recovery of looted assets and their proceeds will inevitably remain fragmented, or perhaps inefficient,⁵ unless the three authorities strike the proper balance between their opposing interests so that this bickering can be settled amicably.

3. Problems in the Tracing of Assets and the Proceeds of Corruption

As in any other third world country, at the initial phase of Thailand's recovery operation one of the major problems for the country was tracing the diverted assets and

proceeds of corruption. Normally, such a task is complicated by the fact that major corruption usually occurs when the key machinery of the country or the very country itself is controlled by corrupt politicians and high-ranking officials. In such cases accurate information about the assets looted from the state treasury is very difficult to obtain, and this is the principal drawback in attempting to trace the diverted assets and proceeds of corruption, especially when they have been laundered and cleverly concealed by experts with adequate time and control of the country's machinery at the very moment that such corruption occurred. They can effectively defeat efforts to trace the money and complicate its seizure and recovery. Besides, expertise in money-laundering has been developed to a high degree and the enormous amounts of proceeds involved in grand corruption make it possible for perpetrators to hire troops of highly competent asset-laundering experts to conceal the loot and their proceeds, which makes tracing such money even more complex and much more expensive. Such situations give rise to a set of problems, the successful solution of which depends very much on the political will and policy of all the countries involved.

4. Problems of Policy and Political Will of Interested Countries

As mentioned previously, efficiency and success in the trans-boundary recovery and return of such assets and proceeds very much depend on both the policy and political will of all the countries concerned.

Lack of political will on the part of the confiscating country is the major drawback and common barrier to the successful recovery of diverted assets. Strong political will and commitment on both sides is, therefore, essential for a successful recovery operation. Countries from which assistance in the recovery of assets and their proceeds is sought might be reluctant to cooperate either for fear that the recovery operation could be politically motivated and designed to settle old accounts with political

⁵ The scandal involving Rakesh Saxena is a case in point, where only a symbolic amount of the proceeds of the crimes could be retrieved; this is an example *par excellence* of such a flaw and scenario.

enemies or opponents, or they could also be merely reluctant to move against powerful interest groups such as major banks. This is especially so where the banks in question are not only holding the proceeds, but may also have been involved in facilitating their transfer, or where such countries stand to gain immensely in the event that the proceeds deposited in the banks are definitively unrecoverable after the death of the corrupt politicians or the high-level officials who had held the bank accounts in question, which is far from being a rare and unusual case.⁶

5. Dilemmas for Policymakers in the Recovery of Assets and the Proceeds of Corruption

Among the major dilemmas that Thailand has had to face in its trans-boundary assets recovery operations are those relating to the cost of asset recovery operations, as well as to the choice of strategies to adopt in implementing the recovery operations.

5.1 Dilemma over Trans-boundary Asset Recovery Operation Costs

With regard to the financial factor, which is the first difficult dilemma for the country, its root cause can be traced to the fact that normally, during the time when the corruption occurred and the proceeds were exported, the corrupt high-level officials involved had controlled key state agencies and functions, including law-enforcement agencies, banks and other financial institutions, thus making it difficult to acquire accurate information about the corruption case, which is a major handicap in the tracing of the assets and proceeds of such crimes. The direct involvement of high-ranking officials or leaders of the country themselves in corruption can decisively thwart any actions that the country might otherwise take. Besides, the diverted assets and their proceeds are usually laundered and meticulously concealed by highly competent

experts in money laundering. Furthermore, in order to conceal and defeat attempts to trace the money and to complicate its seizure and recovery, the diverted assets are frequently transferred to many different countries, which further complicates the efforts to trace and seize them, *a fortiori*, because most countries, including Thailand, normally do not allow foreign lawyers to practice law and handle cases in their domestic courts. When coupled with the differences in the local laws of such countries, this situation makes retention of local legal counsels inevitable. However, because the retention of legal counsel in Western countries could be exceedingly expensive, this constitutes one of the major hurdles for Thailand in such an exercise. The costs in mounting trans-boundary asset recovery operations in Western countries are often exorbitant. For instance, the average fee for the retention of legal counsel in the United Kingdom is £300 per person/hour.⁷ An operation of this type requires extensive use of human resources, and asset recovery operations, especially in the case of grand corruption, may take years to conclude.⁸ (By contrast the cost of a decent meal for the average Thai person is only £2.) When such high fees are combined with the posting of financial advances/rewards, which may be needed in several countries, to compensate the defendants in the event that the civil action is unsuccessful, the total cost of an asset recovery operation would be exceedingly high and difficult for Thailand to meet. After all, a third world country like Thailand often lacks the resources required to mount international asset recovery operations. The dilemma from which Thailand must extricate itself is to determine whether it would be worthwhile to take the risk of not being able to recover the high costs of such an operation from its attempt to have its assets returned. Spending such a great deal of money in advance on private lawyers based on the uncertain hope of actually being able to recover the costs would

⁶ Such was the case involving the assets that a Laotian general had deposited in a Swiss bank. To date, over 35 years after his death, neither the Laotian government nor his heirs could recover those assets. This is a good example of such a scenario.

⁷ Quotation of two British law firms in London.

⁸ In at least two pending cases of embezzlement and fraud, the operations for trans-boundary recovery of the assets deriving there from have been dragging on for almost a decade.

not be so easy to explain to parliament and the general public. The policymakers of the country are thus faced with a delicate dilemma over whether or not to pursue the proceeds of the corruption and the assets deriving there from, as most countries do in cases of major corruption, in spite of such uncertainties.

There are, in effect, two quite different options from which Thailand must choose. First, it is widely recognized that the recovery of the financial and other proceeds of corruption is a form of punishment and a means to eliminate the incentive to commit corruption if offenders can be deprived of the financial resources that could be used to commit other crimes and further corruption. Recovery is thus one of the most efficacious means to deter other corruption. Hence, the financial factor and the successful recovery of what has been diverted from the country and its people can very well be less important to a country's decision-makers than the sanctioning and imprisonment of the offenders, especially where the settlement of old accounts with their political enemies and opponents constitutes a hidden agenda, regardless of the fact that most third world countries often lack the resources needed to mount such an exceedingly onerous legal recovery operation. This option in the dilemma consists, therefore, in going ahead with asset recovery operations in spite of the risk of the recovered assets being drowned by the high cost of recovery operations. The aim is primarily to penalize the offenders.

Second, major corruption cases usually involve principally the pursuit of the proceeds or other assets deriving from the corruption. Normally new governments of the countries previously victimized by major corruption cases maintain that, as mentioned previously, the whole country and its people have been victimized en masse so the proceeds of corruption must be recovered and returned to the government and used for the betterment of the country and the people. In such cases financial considerations and cost-effectiveness would be the prime concern of the country's policy. Thus, the successful recovery of what had been looted from the

people could be more important to the public and policymakers of the country than obtaining convictions for all the criminal acts involved and the imprisonment of the offenders. It is for this reason that offenders may be offered immunity from prosecution in exchange for the fullest collaboration that would lead to the optimum recovery of the looted assets and their proceeds.⁹ Financial concerns and the cost of asset recovery operations could thus be the decisive factor regarding the country's policy whether to back off or proceed with those recovery operations, notwithstanding their extremely high costs. Hence, in seeking recovery of the diverted funds, the country is obliged to choose between seeking justice in the punishment of the corrupt politicians or officials and successfully recovering the looted assets. It is therefore a matter of policy for the country to decide on which alternative to pursue. There has never been a fixed pattern in the practice of Thailand in this regard. The country's policy is variable and is contingent upon the resolve of the policymakers at a point in time. There is no denying, however, that sometimes a new government may be committed to neutralizing the ousted corrupt leader in exile by trying to bring him to justice and to eliminate any threat he poses by confiscating and recovering the largest amount possible of the looted assets. Under such circumstances, recovery operations would be mounted regardless of their costs in the options equation.

Another difficult policy question for the country is the dilemma over the selection of the appropriate strategies for reflecting the method for recovery of the assets and their proceeds, because the legal factors that Thailand has had to take into consideration in trans-boundary asset recovery depend largely on the legal systems of the countries in which the assets are located. This is the decisive factor in choosing the mode of recovery, that is, "civil" or "criminal" recovery,

⁹ Which is commonplace as a practice of the Thai police in spite of the fact that there is no law that authorizes such a derogation.

each of which presents advantages and disadvantages, depending upon whether the country in question is a “common law” or “civil law” country. For instance, in a “common law” country, Thailand would choose civil recovery as it is advantageous for the country. A civil claim usually requires a lower burden of proof; in civil proceedings the link between the looted assets or their proceeds and the criminal acts at their origin needs to be established only on the ground of balanced probabilities, and a judgment in *absentia* may be issued in cases where the defendant fails to appear. A major disadvantage of civil action is that such an approach could be very complicated and exceedingly expensive for Thailand. Owing to the differences in the local law of the country where the looted assets are located, the retention of local legal counsel is indispensable, yet retention of such experts could be exceedingly onerous. Besides, in some cases it is also legally impossible for a state to bring civil action in another country.

The advantage of criminal recovery is that criminal law generally provides investigators with privileged powers regarding access to information both at the national and international levels, making it easier to overcome bank secrecy and to obtain orders to freeze accounts. Another clear advantage of the criminal recovery approach is that it involves a lower level of financial resources on the part of the requesting state, because most of the investigative work would be undertaken by the law enforcement agencies of the other country. Furthermore, States Parties to the UNCAC are mandated to provide each other with assistance and cooperation in criminal cases.

However, criminal recovery is not without disadvantages, since the actual confiscation and refunding of the assets to the victims may prove more complex than in civil recovery, because most legal systems still require that the illicit origin of the proceeds of corruption be established beyond a reasonable doubt.

The choice of method for recovering the assets is thus a frustrating dilemma for Thailand,

a fortiori when to date, asset recoveries have been fragmented and carried out separately by three different authorities not coordinating with each other, and not having a central authority with adequate expertise in this area to consistently choose the method of recovery that would best protect the interests of the country.

5.2 Problems for Thailand in the Trans-boundary Recovery of Assets and Proceeds from Thailand by Foreign Countries

Although Thailand has never been known as a safe haven for the concealment of illicit assets, and it is unlikely that large amounts of foreign assets of dubious origin would be deposited in banks in Thailand, because banking secrecy in Thailand is not sacrosanct as it is in Switzerland. It is well known that the laundering of large amounts of foreign assets of illegal origin is far from being rare in Thailand. Therefore, the recovery from Thailand of such assets and the proceeds of crime could also be just as important as recovery from abroad. The problems for Thailand, as the country being requested for the recovery of assets and their proceeds from Thailand by foreign countries, as well as for a requesting foreign country, or for both, can be legal (in terms of both international and domestic laws) and *practical*.

5.3 Legal Problems

As in the case in the recovery by Thailand of assets from foreign countries, the major problem in the recovery by a foreign country of assets from Thailand under international law is that the implementation of some of the mandatory provisions of the UNCAC in Thailand lacks the required special agreements between Thailand and the countries seeking the recovery and return of the proceeds of corruption. An example would be the agreements on the recognition of foreign judgments and confiscation orders that, to date, Thailand has not concluded with any country. Thus, given that the Thai legal system is a “dualistic” regime, such a treaty and its enabling or implementing legislation are required for the application of the treaty in the Thai legal system. The confiscation of assets and their proceeds in Thailand by force of foreign

judgments and confiscation orders is not legally possible. Thus, asset recovery by a foreign country must be done by “direct recovery,” whereby the requesting state must file a lawsuit in the competent Thai court in order to prove its ownership of the property in question. Thailand has so far concluded MLATs with only a few countries. Therefore, the countries that have not concluded such treaties with Thailand could seek legal assistance for the recovery of illegal assets from Thailand only if their law permits reciprocity in this matter even without MLATs and treaties on mutual recognition of the judgments and confiscation orders of foreign courts. Yet, even in such a case, under Thai law it is still at the entire discretion of Thailand to choose whether or not to give the requested assistance.

Problems in the domestic laws of the country are just as hard to overcome. In effect, although Article 53, subparagraph (a) of the UNCAC requires the States Parties to take the measures necessary to ensure that other States Parties may file civil claims in each others domestic courts to prove their ownership of the properties which have been acquired by an offence established in accordance with the Convention. Subparagraph (b) of the UNCAC requires that measures to ensure that the courts of all States Party have the power to order the payment of damages to other States Parties. Sub-paragraph (c) requires that measures to ensure that the courts considering criminal confiscation also take into consideration the civil claims of other States Parties. Direct civil recovery of illegal assets in Thai courts by foreign countries or governments in compliance with the UNCAC is still not legally possible because under Thai law the states and governments are not vested with juristic personality so they do not have a *locus standi* and competence to be a party in litigation in Thai courts. Besides, under Thai law, without agreements on mutual recognition of judgments and confiscation orders of foreign courts and MLATs, confiscated assets belong to the state and, as such, they must be turned over to the state and not to the requesting countries.

5.4 Practical Problems in the Recovery and Return of Assets to Foreign Countries

One of the major practical problems in the recovery and return of assets or their proceeds to foreign countries is that, in the absence of a central authority for such purposes, the recovery of assets or their proceeds in Thailand by foreign countries is fragmented and usually done on a makeshift basis. Often their success depends on personal connections with the Thai authorities with whom they are dealing. Recovery operations are thus carried out without any coordination between the public authorities concerned. Hence, the level of their efficiency is often mediocre owing to the lack or the inadequacy of the required expertise for such complicated operations, especially if the assets and their proceeds were professionally laundered by highly competent experts, and the property-based confiscation regime under prevailing legislation has not been superseded by a “value-based” confiscation regime, which is currently still in the process of being enacted. The major hurdles in the restructuring of the public authorities involved in the recovery of assets are as follows:

First, there are budgetary implications in the establishment of a new public authority, which run counter-current to the policy of the government to reduce the number of government agencies and public authorities, especially those which are redundant and may involve the allocation of additional budget and the recruitment of more staff. The policy of the government is to try to reduce the staff of the administration through its early retirement program. In this respect it should be noted that it is precisely in order to eliminate redundancy that such a “central authority” should be set up.

Second, in all likelihood, the public authorities currently involved one way or another in asset recovery would surely be not pleased to relinquish their power in this matter; they may insist on maintaining the status quo, in which case only the government could arbitrate. However, because there would surely be political bickering and power struggles in the Government itself; ultimately the minister in charge of the three

interested authorities have the final say in this regard if he/she had the necessary leverage in the current coalition government.

Under such circumstances, it would surely take some time before the “central authority” in question could be put into place. In the meantime, Thailand and the countries seeking the recovery of assets in this country would still have to endure the inconvenience of not having a focal point in this matter.

6. Conclusion

Asset recovery and return operations, especially in cases of grand corruption, could be very complex and delicate, requiring the assistance of highly competent technical experts in this specialized field, that are very scarce in Thailand. Thus, the course of action that Thailand should take in this matter is not to tarry in acceding to the UNCAC as soon as possible and not to wait for the enactment of comprehensive implementing legislation for every residual commitment not yet covered by the three major implementing acts. This is a much less urgent matter in view of the fact that the acts already permit the implementation of all core principles of the UNCAC, and the other States Parties should have no interest in impeding the adherence of Thailand to the UNCAC. The implementation of the said residual commitments could always be gradually accomplished at a later stage. Accession to the UNCAC would make Thailand eligible to benefit from the assistance and technical training offered under the UNCAC, which would better equip the NACC with the required expertise and the technical know-how for the efficient recovery of the assets and proceeds of corruption. The national authority for asset recovery should be put into place expeditiously in order to facilitate trans-boundary asset recovery in conjunction with other States Parties to the Convention in order to optimize the achievement of the objectives of the States Parties in their global efforts to eradicate corruption worldwide. The creation of a central authority for the recovery of the assets and proceeds of

criminal activities may prove to be complicated and controversial. In all likelihood, the two other government agencies which have also been dealing in some capacity with asset recovery may not easily relinquish their powers in this connection.

Furthermore, since asset recovery was formerly just part of NACC’s duties not the centerpiece in the suppression of corruption, the Commission has not been allocated much in the way of the financial and human resources needed for the purpose. However, now that asset recovery has become a major legal device to deter and suppress corruption, the financial and human resources currently at the disposal of the NACC for this task no longer suffice; they need to be increased as soon as possible through the recruitment of more staff to meet the new requirements in this field of international cooperation. With regard to budgetary matters, committing a certain percentage of the assets recovered in corruption cases to strengthening the institutional and legal anti-corruption framework is quite common in other countries and by far the most feasible means for allocating the necessary funds.¹⁰ As for the human resources aspects, apart from the recruitment of more staff, the acquisition of expertise through the overseas training of NACC staff by means of international cooperation is highly recommended. Besides, with so important an investment, the mandate of the “central authority” might as well be expanded to encompass the “proceeds of all sorts of crimes” and not just the “proceeds of corruption,” by using the terms of “assets and their proceeds” instead of “assets and proceeds of corruption.” Such a “central authority” should be established by legislation to ensure the full cooperation of all agencies concerned, public and private. Pending the advent of that authority, the NACC should be conferred the task of acting as the focal point for all international asset recoveries, and to that end,

¹⁰ Because it does not tamper with the normal course of the annual budget allocation by the Parliament; therefore, it is less exposed to opposition.

the government should do whatever it takes to ensure that the public authorities currently involved in asset recovery cases effectively coordinate and cooperate with each other through the NACC in these matters.

Wherever political will¹¹ is weak, there is little chance that the complex legal and factual problems typically occurring in asset recovery cases will be overcome. Attention should also be paid to the fact that the pecuniary gains from the reduction, if not eradication, of corruption will largely surpass the expenses incurred in strengthening the NACC so that it will be able to recover illicit assets and their proceeds.

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¹¹ Both at international and domestic levels.

