

Anti-bribery rules in Thailand: A simple guide

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For Japanese enterprises eyeing expansion into Thailand, a clear understanding of Thai anti-bribery laws is indispensable. The fine line between permissible business gestures and what constitutes bribery under Thai law requires careful navigation. Such understanding is essential for Japanese companies aiming to sustain successful ventures in Thailand.

Ensuring operations comply with these laws while aligning with local business ethics is not merely about legal compliance, but about fostering trust and respect among local partners, customers and regulatory entities.

This article aims to guide Japanese businesses through the key aspects of Thai anti-bribery regulations, detailing the legal stance on bribes, their applicability across private and public sectors, and the distinctions in acceptable business hospitality, providing guidance on risk mitigation and compliance.

What counts as a bribe?

In Thailand, a bribe is generally seen as offering or promising any form of benefit to various officials including government officials, legislative members and judicial officials with the intention of influencing their actions contrary to their duties. This broad definition under the Thai Penal Code captures various forms of corruption and emphasises the intent behind the act, rather than its form. For example, providing a monetary gift to a judge for a favourable ruling, or promising a government official a luxury trip in exchange for a contract approval, would constitute bribery.

For Japanese businesses, this concept may reflect familiar principles, albeit with local distinctions. Japanese legislation encompasses specific anti-bribery provisions that are not explicitly mirrored in Thailand's legal framework. For instance, the Companies Act in Japan prohibits individuals from bribing directors or auditors to influence them to perform their duties improperly.



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Similarly, the Financial Instruments and Exchange Act targets corruption within the financial sector by making it illegal to bribe officers or officials of financial instrument business operators. This sector-specific legislation contrasts with Thailand's broader legal stance on anti-bribery, underscoring the differences in how both countries address corruption.

Bribes in private companies

Thailand's anti-bribery legislation targets the bribery of public officials, including when such acts involve entities or individuals from the private sector. These laws criminalise the act of offering, giving or promising anything of value to public officials to improperly influence their actions, including performing, neglecting or delaying any official duty.

In addition to this, it is unlawful for businesses and individuals within the private sector to engage in bribery to alter the outcome of a bidding process, aiming to gain an improper advantage in winning a contract with a government body, or to influence the bid to be higher or lower than what would be a fair price. It is also unlawful for any entity or individual in the private sector to instigate, assist or participate in bribery connected to the responsibilities of procurement or supply management. This includes any unlawful act or inaction aimed at causing financial harm to any party, or dishonestly carrying out, or failing to carry out, procurement or supply management duties.

Although the anti-bribery legislation does not address situations where entities or individuals in the private sector request, accept, offer or exchange promises or gifts, such actions may fall under other criminal offences such as fraud and or misappropriation under the Thai Penal Code. If these actions result in damage to the company, individuals engaging in such behaviour could still face legal consequences under other provisions of the law.

Gifts and business hospitality

Thailand has set clear guidelines under the Notification of the Office of the National Anti-Corruption Commission Re: Ethical Acceptance of Property or Other Benefits by State Officials, issued in 2020 (the "de minimis threshold"). These guidelines describe what is considered acceptable in terms of gifts and hospitality to government officials.

Gifts or benefits derived from family or customary practices, particularly those of reasonable value, are typically permissible. Specifically, gifts from non-relatives valued below THB3,000 (USD82) fall



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within acceptable limits in any single instance. Gifts or benefits offered broadly to the public or an undesignated group are not considered bribes, however, any gift or benefit exceeding this threshold must be reported by the recipient for evaluation of its propriety.

Japanese businesses should ensure that any gifts or hospitality extended in a business context do not exceed the specified monetary threshold, thereby avoiding potential legal and ethical pitfalls.

It is also advisable to formulate and implement a gift and business hospitality policy, and maintain transparency by documenting such exchanges and seeking guidance when in doubt. Following these principles ensures compliance with Thai law while also honouring the local gift-giving culture, and fostering respectful and successful business relationships in Thailand.

Stance on facilitation payments

Within the Thai legal framework, “facilitation payments” – sums given to expedite routine services – are not explicitly exempted from being classified as bribery. This applies to transactions in both the public and private sectors.

As described, the above-mentioned de minimis threshold indicates that certain gifts and hospitality may not be considered bribes, provided they meet specific criteria. It is implied that these gift and hospitality exceptions should not influence an official’s actions contrary to their duties.

Notably, if facilitation payments are made with the purpose of encouraging an official to carry out their regular duties, the person making such payments typically would not face prosecution, although this is determined on the facts of each individual case.

Corporate and individual accountability in Thailand’s anti-bribery legislation: Penalties and provisions. In Thailand’s legal framework, penalties for corporate violations of anti-bribery laws are specified under certain conditions. Corporations are held liable when offences are committed to achieve their objectives and result in their benefit, as outlined in the Penal Code, the Submission of Bids Act, and the Public Procurement Act.

The Organic Act on Anti-Corruption clarifies that corporations lacking adequate internal controls to prevent offences committed by individuals acting on their behalf will be deemed liable, facing fines of one to two times the resulting damages or benefits.



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For public sector bribery, individuals (offerors) risk up to seven years imprisonment and fines, whereas public officials (receivers) could face the death penalty. In contrast, private sector bribery penalties for offerors include imprisonment and fines based on the bid price or contract value, with no specific provisions for receivers in private transactions.

Protecting your business: The importance of good procedures. Protecting your company from the risks of bribery means implementing internal procedures. A comprehensive anti-bribery framework is not just about compliance – it is a strategic defence that safeguards your business' integrity, reputation and financial well-being. It is advisable for Japanese corporations to follow the steps below.

1. Develop a clear anti-bribery policy. Begin by drafting a clear and comprehensive anti-bribery policy that reflects both Thailand's legal requirements and your corporate values. This policy should unequivocally prohibit bribery in all forms, providing employees with a clear understanding of acceptable behaviours and the consequences of non-compliance. It should also require employees to sign an acknowledgment of understanding.
2. Implement training programmes. Educate staff at all levels about the dangers of bribery and the importance of ethical business practices. Tailor training sessions to include scenarios employees might encounter in Thailand, ensuring relevance and applicability.
3. Establish a transparent reporting mechanism and oversight committee. Create a secure and anonymous channel for employees to report suspected bribery and set up a dedicated committee to address bribery-related issues. This encourages a culture of openness and accountability, allowing issues to be addressed proactively.
4. Conduct regular risk assessments. Identify areas within your business operations that are vulnerable to bribery and corruption. Regularly assess these risks and adjust your strategies accordingly to mitigate them.
5. Monitor and review. Regularly audit your anti-bribery measures to ensure their effectiveness. Adjust policies and training programmes as necessary, based on audit findings and changes in Thai laws.

By crafting and implementing these procedures, your business can navigate Thailand's complex legal terrain with confidence, ensuring compliance while upholding the highest standards of integrity.

Conclusion

Navigating Thailand's anti-bribery legislation is complex yet crucial for Japanese companies aiming for ethical business practices and legal compliance. Recognising these challenges, our firm – with key members including former officers of the National Anti-Corruption Commission, former public prosecutors, retired judges from the Supreme Court, and retired general police from the Royal Thai

police – offers tailored services to ensure your business not only meets legal standards but also maintains ethical conduct.

From policy development to employee training and risk assessments, we offer comprehensive assistance to effectively manage these legal complexities. Establishing a transparent anti-bribery policy, educating employees, setting up a reliable reporting system, conducting risk assessments, and regularly reviewing policies are important steps in protecting your firm's operations from bribery risks. Ultimately, these measures extend beyond mere legal protection; they cultivate a culture of integrity and respect, thereby laying the foundation for lasting success in the Thai market.



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